



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr Warren Polglase

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

# Agenda

## Planning and Regulation Reports

### Ordinary Council Meeting

### Tuesday 20 April 2010

held at Murwillumbah Cultural & Civic Centre  
commencing at 4.30pm

### **COUNCIL'S CHARTER**

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

Tweed Shire Council has the following charter:

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

## Items for Consideration of Council:

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<b>5</b>	<b>[PR-CM] Development Application DA09/0815 for a Four Storey Dwelling House, Inground Swimming Pool including SEPP1 Objection to Three Storey Height Limit at Lot 3 DP 1074375, No. 581 Piggabeen Road, Piggabeen</b>	<b>35</b>
<b>6</b>	<b>[PR-CM] Tweed Development Control Plan Section B23 - Hastings Point Locality Based Development Code</b>	<b>77</b>
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## **ORDINARY ITEMS FOR CONSIDERATION**

### **REPORTS THROUGH THE GENERAL MANAGER**

### **REPORTS FROM THE DIRECTOR PLANNING AND REGULATION**

## **MATTERS FOR CONSIDERATION UNDER SECTION 79(C)(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

The following are the matters Council is required to take into consideration under Section 79(C)(1) of the Environmental Planning and Assessment Act 1979 in assessing a development application.

### **MATTERS FOR CONSIDERATION**

1. In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application:
  - (a) the provisions of
    - (i) any environmental planning instrument; and
    - (ii) any draft environmental planning instrument that is or has been placed on exhibition and details of which have been notified to the consent authority, and
    - (iii) any development control plan, and
    - (iv) any matters prescribed by the regulations,that apply to the land to which the development application relates,
  - (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts of the locality,
  - (c) the suitability of the site for the development,
  - (d) any submissions made in accordance with this Act or the regulations,
  - (e) the public interest.

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**4 [PR-CM] Development Application DA09/0385 for a Telecommunications Facility (30 Metre High Monopole and Associated Infrastructure) at Lot 17 DP 778719, No. 19 Meadow Place Uki**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA09/0385 Pt1**

**SUMMARY OF REPORT:**

Council at its meeting on 17 November 2009 considered the application for a telecommunications facility (30 metre high monopole and associated infrastructure) at No. 19 Meadow Place, Uki. At this meeting, Council resolved:

*“That the application be deferred for presentation at a future Council meeting following the conduct of a public meeting by Optus in the Uki community in order to properly gauge community opinion on this proposal and report the outcome of that meeting to Council.”*

Further to Council’s resolution, Optus organised a meeting with the Uki residents on Monday 7 December 2009 held at the Uki Hotel.

Following this meeting, the application was again reported to Council on 15 December 2009 for determination. However, Council resolved:

*“That this item be deferred pending effective community consultation by the applicant to determine a more suitable site for the telecommunications tower”.*

The applicant was advised of this resolution by letter dated 23 December 2009. Optus responded to this letter on 11 January 2010, stating that they consider the search for alternative sites for a mobile base station in the Uki area to be exhausted, and as such requests that DA09/0385 be determined.

Following this meeting, the application was again reported to Council on 16 February 2010 for determination. However, Council resolved that:

- “1. This matter be referred back to Optus to request public consultation within the next month.*
- 2. Optus seek a suitable site for telecommunication with full community cooperation.*
- 3. This matter be further considered at Council’s meeting to be held in April.”*

The applicant was advised of this resolution by letter dated 18 February 2010. Optus responded by letter dated 2 March 2010 of which is attached to this report.

The Council report has again been reproduced for Council's determination.

**RECOMMENDATION:**

**That Development Application DA09/0385 for a telecommunications facility (30 metre high monopole and associated infrastructure) at Lot 17 DP 778719, No. 19 Meadow Place, Uki 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 S8479F, Sheets G1 – G4 prepared by Daly International dated 06/04/2009, 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. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.**

[GEN0135]
- 4. Access to the site shall be upgraded to provide a bitumen seal from edge of the existing road carriageway of meadow Place to the property boundary.**

[GENNS01]
- 5. Erosion and Sediment Control shall be provided and maintained in accordance *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - “Code of Practice for Soil and Water Management on Construction Works”.**

[GENNS01]
- 6. The access track from the property boundary at Meadow Place to the Optus Compound shall be upgraded to provide a driveway of minimum standard to allow a 2 wheel drive vehicle access to the compound under all weather conditions.**

[GENNS01]
- 7. A Right of Carriageway shall be created over the existing property access road servicing the proposed Optus compound.**

[GENNS01]
- 8. An easement for electricity supply (minimum 2m wide) shall be created (as required) over the electricity infrastructure within Lot 17 DP 778719 servicing the proposed Optus compound.**

[GENNS01]
- 9. The monopole is to be painted mist green to blend with it's surrounds.**

[GENNS02]
- 10. At the commencement of building works and in perpetuity the leased area 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’.**

[GENNS03]



## **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

11. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

12. Detailed design drawings for the proposed access road to the monopole site must be submitted for approval by Director Planning and Regulation. The location of native vegetation species must be indicated and named on the plans and measures to avoid or ameliorate impacts indicated. In particular, avoidance of the average 2m wide root plate for larger Brushbox (*Lophostemon confertus*) trees and avoidance of damage to the Strangler Fig (*Ficus watkinsiana*) roots must be demonstrated.

[PCCNS01]

13. A vegetation management plan must be submitted for approval by Director Planning and Regulation detailing compensatory works as an offset for loss of native species. Such works must include planting of a minimum of 30 native species and Camphor Laurel and other weed species control within a defined area no less than 1 hectare in area.

[PCCNS02]

## **PRIOR TO COMMENCEMENT OF WORK**

14. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
  - (b) the person having the benefit of the development consent has:
    - (i) appointed a principal certifying authority for the building work, and
    - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
  - (c) the principal certifying authority has, no later than 2 days before the building work commences:
    - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
    - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
    - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
    - (ii) notified the principal certifying authority of any such appointment, and

- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

16. 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]

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

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

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

[PCW0985]

## **DURING CONSTRUCTION**

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

[DUR0005]

19. 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]

20. 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]
21. 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]
22. 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]
23. 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]
24. 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.  
Any damage to property (including pavement damage) is to be rectified by the Developer to the satisfaction of the General Manager.  
[DURNS01]

#### **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. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.  
[POC0805]

#### **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. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.**

[USE1035]

**31. Works must be completed by qualified bush regenerators in accordance with the approved vegetation management plan.**

[USENS01]

**REPORT:**

**Applicant:** Optus Mobile Pty Ltd  
**Owner:** Mr D Nelmes and Mrs C Timbs  
**Location:** Lot 17 DP 778719, No. 19 Meadow Place Uki  
**Zoning:** 1(a) Rural  
**Cost:** \$200,000

**BACKGROUND:**

Council has received an application for the construction of a telecommunication facility at Lot 10 DP 778719, No. 19 Meadow Place Uki. The telecommunication facility will comprise of:

- A 30 metre high monopole with 6 panel antennas mounted on a circular headframe and 2 x 1.2 metre parabolic antennas at 26 metres.
- A prefabricated equipment shelter will be located at the base of the proposed monopole.
- A high security chain wire fence around the proposed compound;
- Ancillary and associated equipment including items such as safety equipment, amplifiers, diplexers, triplexers, mounts, feeders, cable trays, and other associated infrastructure which are all considered to be necessary to facilitate the safe operation of the authorised facilities.

Optus have stated that the purpose of siting a mobile tower in this location is that they have identified the need to improve digital mobile telephone coverage and to introduce the new Optus 3G mobile phone network to the areas of Uki, Dum Dum and rural surrounds.

The proposed site is located approximately 1.1 km north east of Uki Village on an elevated rural property. The subdivision pattern in this vicinity comprises of a mixture of small and large rural holdings used for both farming practices and residential occupation. The closest dwelling house to the facility is approximately 150 metres. The proposed location for the telecommunication facility is located amidst a dense plot of vegetation made up of predominantly camphor laurel trees with a number of native species. Access to the proposed site is achieved firstly via the existing driveway which leads to the existing residence on the property and secondly onto an existing dirt track.

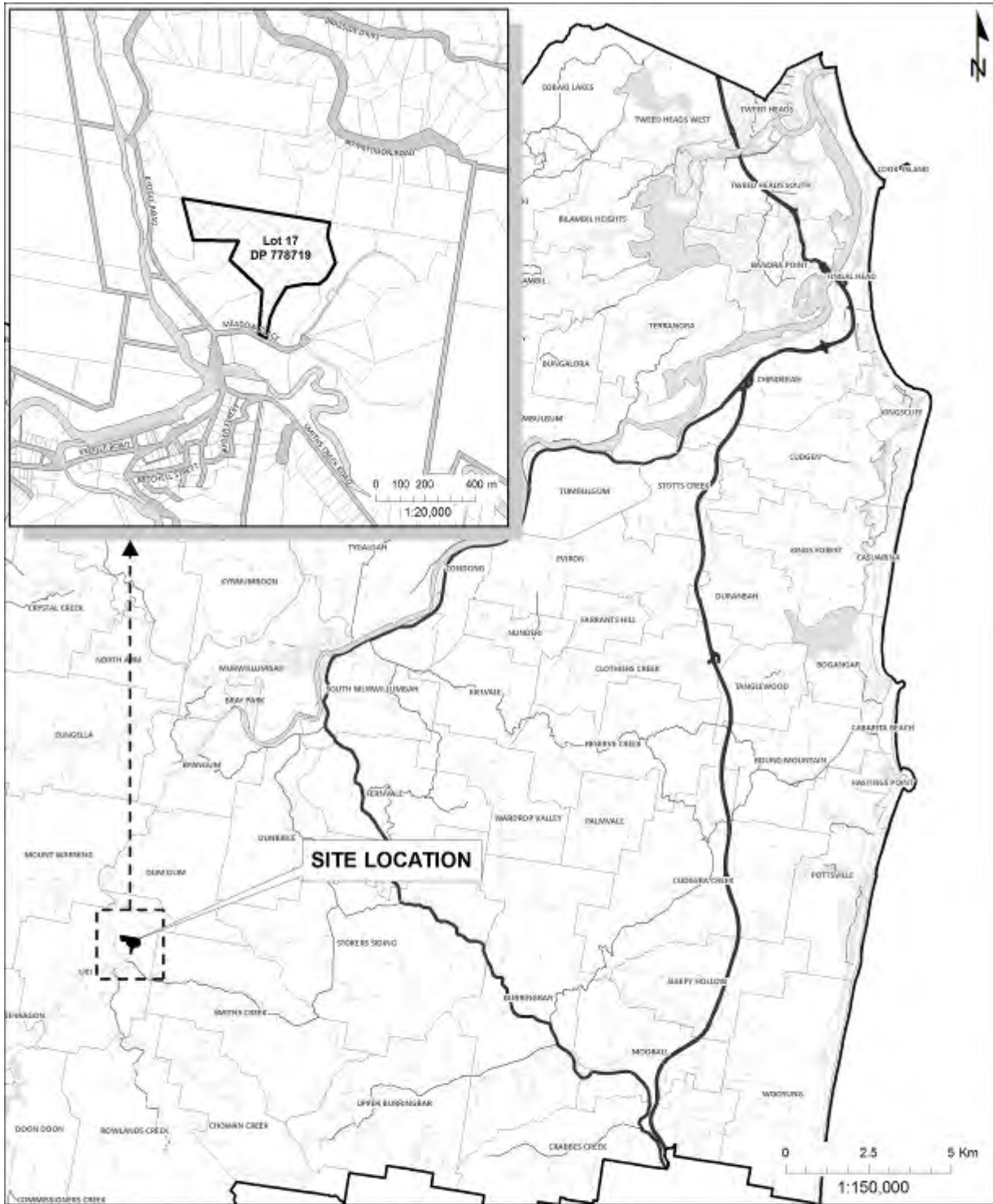
The applicants have stated that the proposed site was preferred as opposed to other locations in the Uki area for the following reasons:

- The elevated position of the site;
- The visual screening the existing tree cover affords;
- The Rural 1(a) zoning as opposed to an environmental protection zoning which incorporates a majority of the high points in Uki;
- The site is readily accessible;
- The availability of power at close range; and
- The lower ecological value of the site;

The application was advertised for a period of fourteen (14) days from Wednesday 22<sup>nd</sup> July 2009 to Wednesday 5<sup>th</sup> August 2009. During this period forty (40) submissions were received comprising of thirty four (34) objections and six (6) submissions in favour of the development. The most common issues raised were regarding the visual impact of the monopole, health concerns from electromagnetic energy generated from the facility and consideration of alternative locations. An assessment of the issues raised is summarised within the body of this report.

Following the assessment against the relevant heads of consideration, Council Officers consider that the proposed telecommunication facility will enhance the telecommunications services in Uki and the broader locality and therefore are recommending approval of the application. It is considered that the location and design of the proposal is suitable without causing any significant adverse impacts on the natural and built environments, the communications facility will also create a positive impact socially and economically by providing enhanced telecommunications coverage for the locality.

**SITE DIAGRAM:**



**LOCALITY PLAN**  
 Lot 17 DP 778719  
 No.19 Meadow Place, Uki

Filename: z:\usr\planning\msd\A4P\_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 4 November, 2009

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Call date 4 November, 2009  
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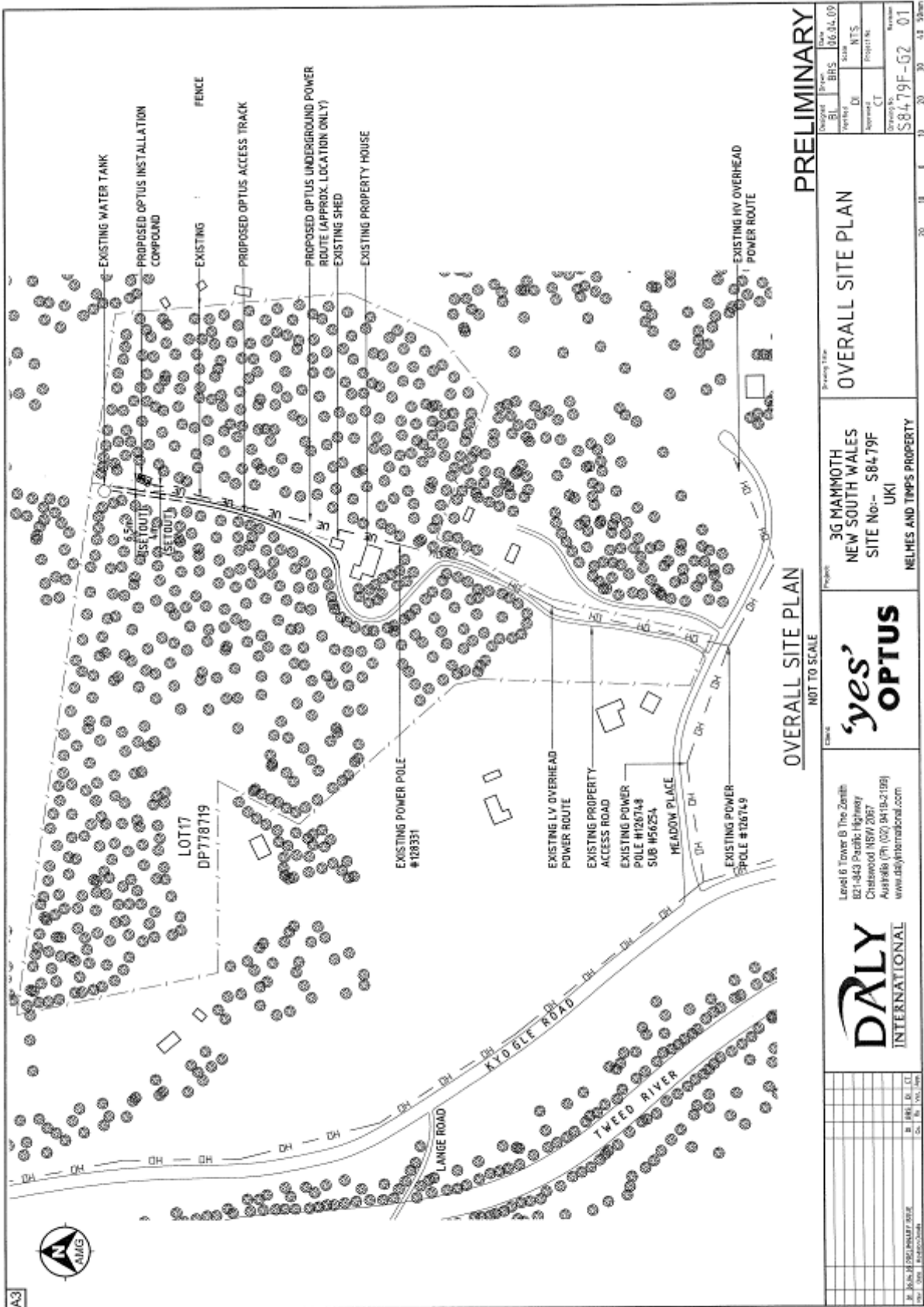
Coordinate System - MGA Zone 56  
 Datum - GDA 84

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Civic and Cultural Centre  
 3 Tambourine Road  
 Manildra NSW 2496  
 PO Box 816  
 Manildra NSW 2484  
 T: (02) 6670 2400 | 1500 292 872  
 F: (02) 6670 2403  
 W: www.tweed.nsw.gov.au  
 E: planningreforms@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:



**OVERALL SITE PLAN**

NOT TO SCALE

**PRELIMINARY**

Client: BRS	Date: 06/04/09
Version: 01	Scale: NTS
Approved: CT	Project No:
Drawn By: S8479F-02	Revision: 01

**OVERALL SITE PLAN**

Project: **3G MAMMOTH NEW SOUTH WALES**  
 SITE No:- **S8479F**  
 UKI  
 NEMES AND TEMPS PROPERTY

Client: **'yes' OPTUS**

Level 6 Tower B The Zenith  
 821-843 Pacific Highway  
 Chateau NSW 2067  
 Australia (Ph) (02) 94194109  
 www.optusinternational.com

**DAILY INTERNATIONAL**

Author	Drawn	Checked	Reviewed







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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The main objective of Clause 4 is:

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

The subject proposal seeks consent for the erection of a telecommunications facility comprising of a 30 metre high monopole and ancillary infrastructure. The proposal involves minor modification to the natural environment in the form of the removal of a small clump of camphor laurel trees. The remaining vegetation including native species will not be touched. It is considered that the proposed development will have minimal impact on the natural environment.

In terms of the developed character of the area the proposal will facilitate better technological availability for people in the area which could potentially enhance economic viability in the area.

The proposed development is therefore considered to be consistent with the aims of this plan.

Clause 5 - Ecologically Sustainable Development

The proposed development is consistent with the four principles of ecological sustainable development by;

- a) not creating irreversible environmental damage.
- b) the environment is maintained for the benefit of future generations.
- c) the biological diversity and ecological integrity is retained and a fundamental consideration.
- d) the environmental qualities of the locality are retained.

Clause 8 Consent considerations

The subject land is zoned 1(a) Rural.

The primary objective of the 1(a) zone is to enable the ecologically sustainable development of land that is suitable primarily for agricultural and natural resource utilisation purposes and associated development and to protect rural character and amenity.

The proposal is consistent with the primary objective of the zone by aiding technological advancement in the rural area while not compromising the rural character and amenity of the area.

The proposed telecommunication facility is consistent with the secondary objective of the 1(a) zone by allowing development that is not suitable within an urban area due to the greater visual impact it generates and at the same time improving telecommunications in the locality. The proposed telecommunication facility is permissible with consent.

The other aims and objectives of this plan that are relevant have been considered and addressed within this report.

An assessment addressing relevant policies has been undertaken identifying that the development would not create an unacceptable cumulative impact on the community, locality or catchment.

### Clause 11 - Zone objectives

#### *Primary objectives*

- *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 objectives*

- *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 proposal is defined by the Tweed LEP 2000 as a Telecommunication Infrastructure (Facility). The proposal is considered permissible with development consent and is consistent with the objectives of the zone by aiding technological advancement in the rural area while not compromising the rural character and amenity of the area.

### Clause 15 - Essential Services

Electricity supply is available from Meadow Place. Power is proposed to be supplied as an extension to this supply. The power supply is proposed to be run underground via a 2 metre easement.

### Clause 16 - Height of Building

The proposed equipment shelter is single storey in height, with the associated tower being approximately 41m in height. Under the definition of storey within the Tweed LEP 2000 the tower can not be measured in storeys, however given the placement of the tower amongst vegetation of a comparable height and scale the proposal is considered consistent with the clause.

### Clause 39A – Bushfire Protection

The site is identified as being prone to bush fire. The telecommunication facility is considered to comply with the clause due to the following:

- The development will not create a significant adverse impact on the implementation on bush fire control strategies. The telecommunication facility will assist bush fire control by providing communications.
- The facility will not increase the threat to the lives of residents, visitors or emergency service personnel (the facility does not house residents or visitors).
- The facility will be constructed of non-flammable material.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

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

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.

Due to the site being heavily vegetated, it is considered that the development will not cause a loss of prime crop or pasture land.

#### **SEPP (Infrastructure) 2007**

The proposed development is classified under Division 21 as development that requires consent from Council. The SEPP stipulates:

*‘Development for the purposes of telecommunications facilities, other than development in clause 114, may be carried out by any person with consent on any land.’*

Hence the application is applying for consent to erect the telecommunications tower.

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

The land is within the 1(a) Rural Zone and the provisions of this SEPP apply to the proposed development.

The principles are stated and addressed as follows:

*The Rural Planning Principles are as follows:*

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

It is considered that the proposed development satisfies the rural planning principles as it will provide development on rural land that will contribute to the broader community needs by improving telecommunications in the locality.

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

N/A

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

**Tweed Development Control Plan**

**A2-Site Access and Parking Code**

Vehicular access to the site is proposed via Meadow Place. An existing driveway

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

N/A

**(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**

Noise

Some level of noise will be generated during the construction phase for the proposed monopole. During the operation phase of the lifespan of the monopole noise associated with use of air conditioning plants servicing the equipment shelter will be generated. However, considering the distance to nearby dwellings is approximately 150 metres, no significant impacts are anticipated. If the development is approved appropriate conditions of consent can be utilised to address any subsequent noise issue associated with construction works and the use of the air- conditioning units.

Lighting

The application does not make mention of any security lighting to be used at the facility. It is considered that this issue can be addressed by appropriate conditions of consent.

Contamination

The issue of contamination has been considered in the SEE. The SEE states that the site is heavily vegetated and the site has not been used for any other uses. Council's mapping system shows that there are no cattle dip sites within 200m of the proposed facility. An examination of the available aerial photos and topographical maps for the site also do not indicate that the site was used for any potentially contaminating activity.

Radiofrequency Electro Magnetic Emissions (RF-EME Levels)

The Australian Government and the Australian Communications and Media Authority (ACMA) (Australia's regulator for broadcasting, the internet, radio-communications and telecommunications) published a Factsheet titled Mobile phone base stations and electromagnetic radiation (EME).

The following is an extract from the fact sheet;

*"ACMA has made mandatory EME exposure limits for installations such as broadcast towers and mobile phone base stations. The exposure limits set by ACMA were determined by the **Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)** based on recent scientific findings and the world's best practice. **These limits are many times below a level of exposure to EME** that is known to have adverse effects on the human body and are consistent with **World Health Organisation** guidelines.*

*ACMA has adopted a precautionary approach to the regulation of EME, ensuring that **exposure limits** to emissions from communications transmitters are stringent and **lower** than those levels that have been found to cause adverse health effects.*

*Public exposure to emissions from radio-communications transmitters is generally many times less than the exposure limits required by the standards. ARPANSA conducted audits of base stations between 1997 and 1999, and again in 2003. The results show low EME levels were found in areas accessible to the public."*

Radiofrequency Electro Magnetic Emissions (RF- EME) from the operation of the Base Station has been assessed and a report has been provided dated 24/04/09. This Report has been prepared in accordance with the requirements of The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and estimates the maximum cumulative EME levels (% of ACMA mandated exposure limit) produced by the site at ground level at the following distance from the antennas:

Distance from the antennas at 19 Meadow Place	Maximum Cumulative EME Level
0m to 50m	0.0051%
50m to 100m	0.0079%
100m to 200m	0.042%
200m to 300m	0.042%
300m to 400m	0.024%
400m to 500m	0.014%

The values of electromagnetic energy are given as percentages of the permitted limit. The results indicate that the **maximum estimated EME level is 0.042% of the ACMA mandated exposure limit at a distance of 202.67m**. The report demonstrates that the predicted emissions produced by the proposed facility are well within these standards. Therefore the operation of the Base Station is not expected to give rise to any RF- EME issue for the public.

#### Visual Impact

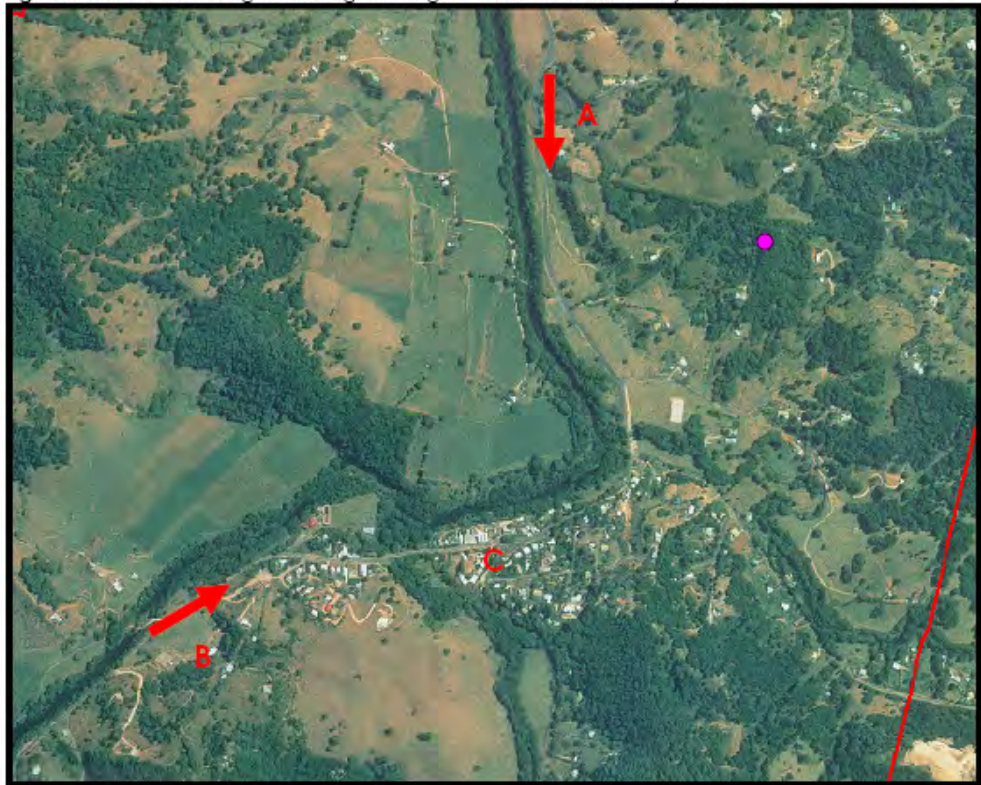
The proposed monopole is 30 metres in height and located on the top of an existing hill, some level of screening is afforded to the development from existing mature tree species that are located on the hill top. The undulating and winding terrain also assists in mitigating numerous view sheds to the site. The proposed monopole is to be painted mist green as to blend with its surrounds. The monopole structure has a relatively small circumference and the type of headframe is in a compact circular form as to further reduce the visual impact.

The following is a response provided by the applicant regarding the potential impact of the main view sheds of concern with this proposal.



- *Figure 3 below depicts view sheds when exiting and entering Uki village.*

Figure 3. Viewsheds entering and exiting Uki Village. Pink dot denotes the subject site.



Source: <http://imagery.maps.nsw.gov.au/>

- *Entering Uki heading north east along Kyogle Road “B”, the proposed monopole will not be visible.*
- *Entry into Uki heading south along Kyogle Road “A”; the proposed monopole is also unlikely to be detected until just before/driving past 1361 Kyogle road (refer to photo 6 below). The driver’s attention would have to be towards the left of the vehicle to view the proposed monopole. The impact of this view shed will be mitigated by vegetation which will make detection by drivers passing by difficult.*

**Photo 6.** Photograph taken from 1361 Kyogle road looking north east towards cherry picker and proposed site (proposed site located 140m behind cherry picker). The orange arrow indicates location of cherry picker. Pink arrow indicates compensation (distance & angle) for approximate location.



- *Views from the main centre of the village area “C” (commercial/tourist area). The proposed site location is difficult to detect from the centre of the village because of the elevated terrain at the northern end of the village. It is not anticipated that the monopole would be visible from the central area of Uki Village.*
- *There is minimal to no detrimental effect when heading through Uki village along Kyogle Road due to the double factors of dense mature vegetation and sharply twisting roads/ undulating steep terrain that limits the “panoramic view sheds”. Panoramic view sheds are more common when driving through rural farmland largely cleared of the majority of vegetation combined with gently undulating terrain. The only area where varying degrees of view to the proposed monopole can be gained is at the end of Meadow Place. The figures below identify potentially 4 properties which may have Mount Warning and the proposed monopole in the same view shed.*



From the information submitted above by the applicants, it is conceded that the proposed monopole may have some visual impact in public areas and on some neighbouring private properties as it will not be completely invisible as the facility needs a clear line of sight for transmission. However, the main view sheds of concern's impact is considered to be minimal as the applicants have designed the facility to be amongst existing mature tree species and the monopole is to be painted mist green as to blend with its surrounds.

#### Consideration of Alternative Sites

The applicant provided the following analysis of alternative sites:

*"When looking at alternative sites there is a limit as to how far the 3G mobile base station can be located from the targeted coverage area (in this case the township of Uki). Even though 3G coverage from a mobile station may reach many kilometres out from the actual base station the greater the distance from the base station the greater degradation the 3G signal suffers. Signal degradation leads to commonly experienced problems such as dropping out, poor connectivity, etc.*

#### **Alternative sites considered - (please refer to Map 1)**

*A telecommunications facility at this location would have been prominent from the main street of Uki.*

#### **Candidate 2 - Lot 2 DP 581366 No. 22-30 Aults Road Uki**

*Difficulties were encountered in sourcing power to this site. Additionally it was also anticipated that there would be difficulty in getting heavy machinery to the site (for construction) due to the steep gradient of the terrain.*

#### **Candidate 3 - Lot 53 DP 755754, Langes Road, Uki**

*Inability to obtain tenure approval from the property owner.*

#### **Candidate 4 - Water Treatment works, end of Old Convent Road, Uki**

*As per candidate 1.*

#### **Candidate 5 - Water Reservoir at end of Grants Road, Uki**

*Existing layout of area around water reservoir is problematic. There was difficulty in locating an appropriate area for the facility to be erected.*

#### **Candidate 6 - Lot 4 DP 43844 1359 Kyogle Road, Byangum NSW**

*Insufficient space left on property to appropriately accommodate the proposed facility. Furthermore, the existing house is already located in the prime area for any proposed telecommunications facility.*

**Candidate 7 - Property at end of Sunrise Place, Uki**

*As per candidate 3.*

**Candidate 8 - Working Quarry site off Smiths Creek Road, East of Uki**

*Site was discounted from a radiofrequency perspective because the 3G signal to Uki was blocked by terrain of a greater elevation to the west of the quarry. Basically, the main intended target of the 3G coverage, Uki Village, would have received no coverage from this location. Please see Figure 1 for a 3D illustration. Additionally the quarry is also a working quarry which also makes it difficult to secure an area that will not impede quarry activities now and in the future.*

**Candidate 9 - Site located around Mt Wollumbin**

*This site was very difficult to access by heavy machinery due to the steep terrain. It is also probable that the creation of a significant power easement (20m wide) requiring tree removal, would have been needed if this site had been progressed.*

**Candidate 10 - Lot 17 DP 778719, 19 Meadow Place, Uki**

*Candidate 10 is situated on elevated terrain outside the main Uki village area. This candidate has many attractive features for telecommunications facility siting including access, power and good vegetation cover.*

*Following critical evaluation of the above candidates, a preferred nominated candidate is then selected. This selection is based on a number of key issues including radiofrequency coverage; planning/environmental considerations; engineering criteria; and the availability of the site and associated construction costs (as outlined in greater detail in Section 2.2 above).*

*In this particular instance, the proposed candidate identified as Candidate 10 at Lot 17 DP 778719, 19 Meadow Place, Uki was considered as the optimum outcome to provide Optus 3G mobile and wireless broadband to the Uki area."*

Council is satisfied with the applicant's analysis as detailed above and accordingly has recommended approval for the subject site based on appropriate conditions of consent.

### Flora and Fauna

The site is mapped under the Tweed Vegetation Management Strategy 2004 as Camphor Laurel dominated vegetation of low ecological significance and low ecological sensitivity. A site visit confirmed that the area upon which the monopole is proposed is mainly cleared and surrounded by Camphor Laurel, declared a Noxious Weed in Tweed Shire in March 2009. Camphor Laurel trees up to 6m as well as 10 rainforest edge species saplings 1 to 2m will require removal to enable the monopole erection. In addition, some further minor removal of native and exotic vegetation is likely along the proposed access road.

The larger site is mapped as Steep Protected Land in part with slopes over eighteen degrees. Ecological value exists within the occasional large (greater than 40cm diameter at breast height) Brushbox and Strangler Fig trees on the lot at lower elevation and regeneration of native rainforest seedlings is occurring in the vicinity of these trees. Despite the dominance of Camphor Laurel, these regenerating species indicate that the hillside could be rehabilitated to Brushbox Open Forest with a rainforest understorey over a period of time if significant effort were to be expended. Such occurrences are greater than 50m from the proposed monopole site and thus potential fauna using these trees are unlikely to be affected by installation of the tower.

Wildlife Atlas records for the surrounding 5km radius include records of a number of threatened flora and fauna species and the site is likely to provide occasional forage habitat for some of these threatened species such as the Grey-headed Flying Fox, Rose-crowned Fruit Dove and Superb Fruit Dove. However, the habitat is unlikely to provide roost sites for these species such that they could be considered resident on site.

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

The existing vegetation will provide a visual screen to the subject proposal. The elevated nature of the hill top affords the desired level of coverage to the proposed telecommunication tower. The proposed telecommunication facility will provide for a greater/better telecommunications service for the locality. The site has been deemed to be suitable for the proposal.

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

The application was advertised for a period of fourteen (14) days from Wednesday 22<sup>nd</sup> July 2009 to Wednesday 5<sup>th</sup> August 2009. During this period forty (40) submissions were received comprising of thirty four (34) objections and six (6) submissions in favour of the development. In response to the various objecting submissions the following assessment of the common issues raised is summarised below.

Objection	Response
Health concerns from electromagnetic energy generated from the facility	This has been discussed previously in this report.
Devaluation of property prices	The consideration of property prices is not a Section 79C matter for consideration.
Increased Traffic	The facility will be unmanned and service vehicles are expected to attend the facility for maintenance purposes only on average four (4) times per year. Due to the limited amount of servicing, additional traffic on Meadow Place is not considered an issue.
Alternative sites	<p>Optus has a network of base stations throughout Australia and when an area is identified to have poor network coverage or capacity a new facility has to be located to fit into the existing network. Optus, where practicable will try and locate telecommunications equipment on existing structures or rooftops.</p> <p>A search of the area has revealed that due to the area being generally rural, there are no existing structures such as water towers that would be suitable to house a telecommunications facility.</p> <p>In choosing the proposed location for the monopole, the applicants also considered a number of alternative sites, <b>attached</b> to this report is a copy of the applicants assessment of Alternative Sites.</p>
Location/site unsuitable	A search of the area has revealed that there are no other telecommunications facilities in the area. In order to reduce the number of facilities in the area Telstra would normally co-locate, but there are no such towers in the area.
Lack of community consultation	It is not a statutory obligation for the applicants to undertake community consultation.
Visual impacts	This has been discussed previously in this report.

**(e) Public interest**

The submissions that have been received are noted, Council currently has no specific policies in relation to telecommunication tower development. The proposal is a permissible form of development in the 1(a) zone and therefore can be assessed by Council.

The visual impact on the adjoining landowners will be minimal as the applicants have designed the facility to be amongst existing mature tree species and the monopole is to be painted mist green as to blend with its surrounds.

The communities concerns in regard to health risks are acknowledged and have been considered. However, current research indicates that the potential for health implications from EME levels is minimal. In this instance Council relies on the relevant standards from ARPANSA and other authorities. Council's Environmental Health Officers deemed the submitted information and reporting on the potential health risks of the monopole to be consistent with outlined Australian standards. The proposed development is consistent with all relevant guidelines and proposed to be conducted in accordance with outlined Australian standards. The proposed telecommunication facility will provide for a greater/better telecommunications service for the locality.

**OPTIONS:**

1. Resolve to adopt the recommendations made and approve the development application.
2. Resolve to refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed telecommunication facility will enhance telecommunications services in the locality. The location and design of the proposal is considered suitable without any significant adverse impacts on the natural and built environments, the communications facility will create a positive impact socially and economically by providing enhanced telecommunications coverage for the locality.



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Applicant's assessment of alternative sites (ECM 8404297)
  2. Report prepared by Optus detailing the outcomes and discussion of meeting held 7 December 2009 (ECM 12232987)
  3. Optus' letter of response dated 11 January 2010 (ECM 12231966)
  4. Optus' letter of response dated 2 March 2010 (ECM 14521333)
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**5 [PR-CM] Development Application DA09/0815 for a Four Storey Dwelling House, Inground Swimming Pool including SEPP1 Objection to Three Storey Height Limit at Lot 3 DP 1074375, No. 581 Piggabeen Road, Piggabeen**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA09/0815 Pt1**

**SUMMARY OF REPORT:**

An application has been received to erect a new four storey dwelling house with double garage, in ground swimming pool on the subject property. The proposed dwelling house consists of three components, the first component is single storey and the second is two storeys. This third component is located in the area of downslope which is located at the northern side of the building platform; this has resulted in an undercroft area having a height exceeding 1.5m. Therefore the dwelling house by definition is four storey and exceeds the maximum mandatory height requirement of DCP A1 Part A by 2.96m. However the areas of non-compliance being the fourth storey and the height variation will only be visible and evident by the residents of the site as it is remote from any external parties and public place. Also the subject dwelling house is only likely to be visible from a kilometre away to the north on Piggabeen Road where even then it will be partially obscured by the existing vegetation.

The subject allotment is located on the southern side of Piggabeen Road and is subject to a three storey height limit under the provisions of part 5, clause 16 of the Tweed LEP 2000.

The allotment is vacant and has a fall to the north (front boundary) of approximately 8 to 18 degrees.

The proposal was notified and one objection was received which was taken into consideration in the assessment of this application.

After a comprehensive assessment of the application and taking into consideration the objection received it is considered that the variations to DCP Section A1 Part A and the objection to the SEPP 1 are justifiable for the reasons outlined in this report.

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

It is considered that the application is worthy of approval.

**RECOMMENDATION:**

**That: -**

- A. Council assumes the concurrence of the Director-General of the Department of Planning for the approval of the SEPP 1 objection to Clause 16 of Tweed Local Environmental Plan 2000 to vary the 3 storey height limit.**

- B. Development Application DA09/0815 for a four storey dwelling house, inground swimming pool including SEPP1 objection to three storey height limit at Lot 3 DP 1074375, No. 581 Piggabeen Road Piggabeen be approved subject to the following conditions: -**

**GENERAL**

1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.  
[GEN0015]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
3. In respect of SEPP 44 Koala Habitat Protection the following conditions are imposed:
  - i) Trees are to be retained and removed in accordance with map (plan) on the second page in the Ecological Assessment/Fuel Management Report prepared by the applicant and dated 10-3-2010. No other trees are to be removed.
  - ii) Trees to be removed are to be flagged with orange tape and removed prior to construction works commencing.
  - iii) Barriers are to be erected identifying trees to be retained as 'no-go zones'. These barriers are to be placed outside the critical root area (the drip-zone) prior to construction works commencing and are to remain for the period of the construction, including ancillary features.
  - iv) Koala Protection Measures – Prior to construction works, trees being removed are to be checked for koalas. If koalas are present then wait for them to move on before removing tree.
  - v) Koala Protection Measures – For the life of the development, prior to trimming or pruning trees check for koalas. If koalas are present then wait for them to move on before trimming or pruning tree.

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

3. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.  
[PCC0945]
4. 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]

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

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

will not be approved until prior separate approval to do so has been granted by Council under S68 of the Local Government Act.

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

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

[PCC1145]

6. An application 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 water, sewerage, on site sewerage management system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a construction certificate.

[PCC1195]

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

Any application to install/operate an onsite sewerage management system (private ejection pump station) under Section 68 of the Local Government Act 1993 shall be accompanied by three copies of detailed hydraulic design report certified by a qualified hydraulic engineer and shall address the following criteria:

- \* System type and specifications including pump-well volume, pump specifications and rising main size, length and location.
- \* Details of operation and maintenance
- \* The sewer pump is to be constructed in a flood proof well.

Any approval to install an on site sewerage treatment system (private ejection pump station) shall comply with the hydraulic design specifications as certified by a qualified Hydraulic Engineer including all recommendations of that report and any addendum to the report to the satisfaction of Councils General Manager or his delegate.

[PCC1295]

8. Prior to the issue of the construction certificate the applicant/owner is to submit to the nominated principal certifying authority details of the external colours and finishes of the development which are sympathetic to the bushland environment.

[PCCNS01]

**PRIOR TO COMMENCEMENT OF WORK**

9. The proponent shall accurately locate and identify any existing 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]

10. 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]

11. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
  - (i) appointed a principal certifying authority for the building work, and
  - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority has, no later than 2 days before the building work commences:
  - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-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]

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

[PCW0225]

13. Residential building work:

(a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

- \* in the name and licence number of the principal contractor, and
- \* the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

- \* the name of the owner-builder, and
- \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

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

[PCW0235]

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

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

[PCW0245]

15. 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]

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

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

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

[PCW0985]

#### **DURING CONSTRUCTION**

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

[DUR0005]

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

[DUR0245]

20. 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]

21. 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]

22. 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]

23. 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]

24. **Excavation**

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

25. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Occupational Health and Safety Regulation 2001.

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

26. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

27. All work associated with this approval is to be carried out so as not to impact on 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]

28. **Swimming Pools (Building)**

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

- (b) **Swimming pools shall have suitable means for the drainage and disposal of overflow water.**
- (c) **The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.**
- (d) **Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.**

[DUR2075]

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

[DUR2085]

**30. The proposed swimming pool is to be sited a minimum distance of 6 metres from any effluent disposal area.**

[DUR2105]

**31. 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]

**32. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.**

[DUR2245]

**33. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:**

- (a) **internal drainage, prior to slab preparation;**
- (b) **water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;**
- (c) **external drainage prior to backfilling.**
- (d) **completion of work and prior to occupation of the building.**

[DUR2485]

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

[DUR2515]

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

[DUR2525]

**36. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.**

[DUR2545]

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

- \* 43.5°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]

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

[DUR2775]

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

39. 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]

40. 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]

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

[POC0235]

42. Application is to be made to Tweed Shire Council for a street address number. The number is to be prominently displayed prior to the occupation of the building.

[POC0245]

43. 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]

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

[POC1055]

## **RURAL FIRE SERVICE CONDITIONS**

### **Asset Protection Zones**

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities.

1. At the commencement of building works and in perpetuity the property around the building shall be managed as follows 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':
  - north for a distance of 20 metres as an asset protection zone;
  - east for a distance of 9 metres as an asset protection zone;
  - south for a distance of 15 metres as an asset protection zone; and
  - west for a distance of 19 metres as an asset protection zone (APZ). (Note: in forested areas a portion of the APZ may be maintained as an outer protection zone as specified in Table A2.7 of 'Planning for Bush Fire Protection 2006'.)

### **Water and Utilities**

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

2. Water, electricity and gas are to comply with the following requirements of section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
  - The water source shall be made available or located within the inner protection area (IPA) and away from the structure.
  - A hardened ground surface for truck access is to be supplied up to and within 4 metres of the water source.
  - A 65mm metal Storz outlet with a gate or ball valve shall be provided.
  - In recognition that no reticulated water supply exists, a 20000 litre water supply shall be provided for fire fighting purposes.
  - Above ground tanks are manufactured of concrete or metal and raised tanks are to have their stands protected. Plastic tanks shall not be used.
  - A minimum 5hp or 3kW petrol or diesel powered pump shall be made available to the water supply. A 19mm (internal diameter) fire hose and reel shall be connected to the pump.

- **Gas cylinders kept close to the building shall have release valves directed away from the building. Connections to and from gas cylinders are to be metal. Polymer sheathed flexible gas supply lines to gas meters adjacent to building are not to be used.**

#### **Access**

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation.

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

#### **Design and Construction**

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack.

4. **New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' Level 3.**
5. **All exposed/external timber used in the development shall be of a fire resistant timber species as identified in RFS Development Control Note 001. These species include: Blackbutt, Kwila (Merbau), Red Iron Bark, Red River Gum, Silver Top Ash, Spotted Gum and Turpentine.**
6. **All Class 10 structures as defined per the 'Building Code of Australia' 2006 attached to or within 10 metres of the habitable building shall comply with Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' Level 3.**
7. **Roller doors, tilt-a-doors and other such doors shall be sealed to prevent the entry of embers into the building**
8. **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'.**
9. **Proposed bi-fold doors, french door and the like on the dwelling may be unscreened if it's a proprietary type door system incorporating, 5mm toughened glass, non combustible seals, and a design that does not permit gaps greater than 1.8mm in diameter to prevent the penetration of embers. Draught excluders, seals and door furniture shall be manufactured from materials having a "Flammability Index" no greater than 5. The entire door system (including jamb and seals) shall be designed and constructed to withstand 29kW/m<sup>2</sup> of radiant heat flux.**

#### **Landscaping**

10. **Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'**

**REPORT:**

**Applicant:** Mr GK Wilcock and Mrs LM Wilcock  
**Owner:** Mr GK Wilcock and Mrs LM Wilcock  
**Location:** Lot 3 DP 1074375 No. 581 Piggabeen Road, Piggabeen  
**Zoning:** 1(a) Rural  
**Cost:** \$650,000

**BACKGROUND:**

The subject site encompasses an area of 3.799 Hectares and is located on the southern side of Piggabeen Road and is irregular in shape with a steep slope to the road frontage. The subject site is in a rural area and is densely vegetated for the majority of the property. The existing near level building platform is approximately in the centre of the upslope which is the only logical location for the proposed dwelling house, and as such provides for boundary setbacks in excess of 8.2m.

The subject site is zoned 1 (a) Rural and is located within a designated 3 storey area as per clause 16 of the Tweed Local Environmental Plan (LEP) 2000.

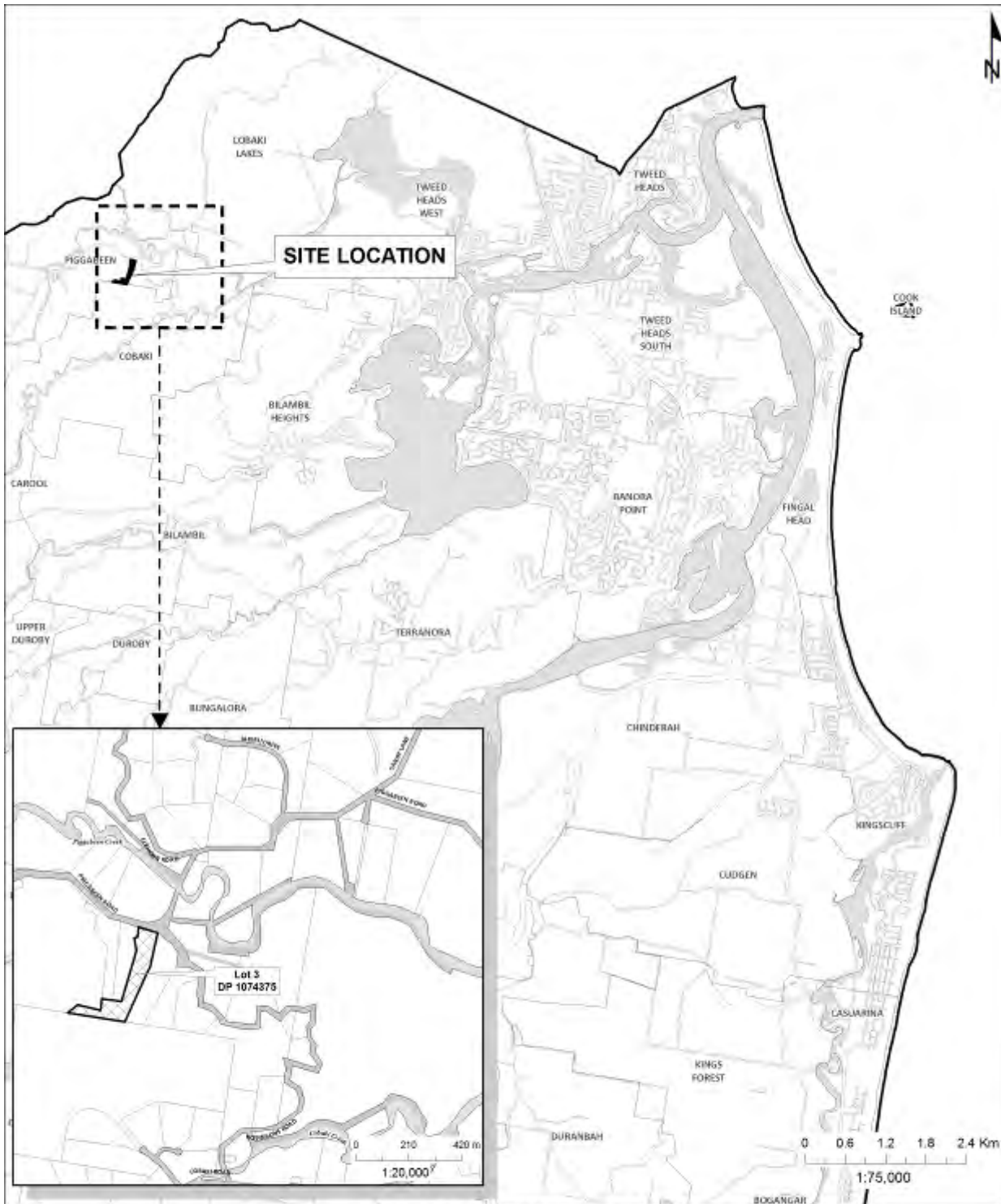
The plans submitted disclosed a three storey dwelling house with an undercroft area having a subfloor height exceeding 1.5m. Since this constitutes a storey as defined in the Tweed Shire Council LEP the development application was notified as a four storey dwelling house with attached double garage and inground pool.

The proposed dwelling house consists of three components, the first being single storey at the rear/south (comprising of a garage, guest room with ensuite, bar area, courtyard and outside bathroom), the second being two storey adjoining the northern side of the first component (comprises of a study, lounge area, entry and courtyard on the ground floor with three bedrooms, ensuite and bathroom on the first floor) and the third component comprising of three levels. The lower level of the third component consists of a laundry, store and rumpus/games, the ground floor comprises of a kitchen, dining and verandah, and the top level comprises of a master bedroom, verandah and ensuite.

The first and second components of the dwelling house do not exceed 9.0 metres in height; however the third component has a maximum height of 11.96m above existing ground level. This third component is located in the area of upslope which is located at the northern side of the building platform; this has resulted in an undercroft area having a height exceeding 1.5m and in the height of the dwelling exceeding 9 metres.

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

**SITE DIAGRAM:**



**LOCALITY PLAN**  
**Lot 3 DP 1074375**  
**No. 581 Piggabeen Road, Piggabeen**

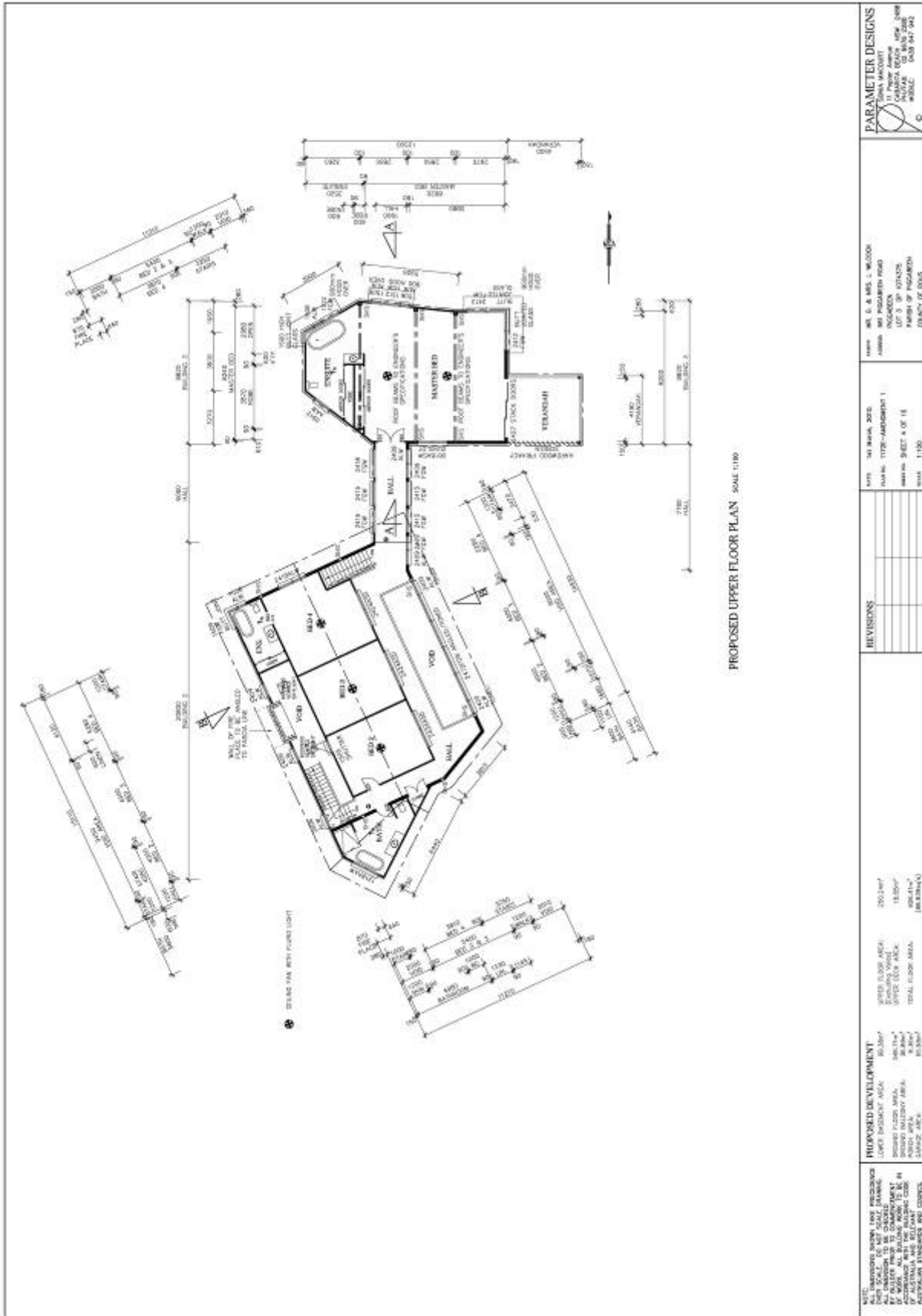
<p>Filename: z:\esri\planning\msd\A4P_B&amp;W SitePlan.mxd                  Author: J Batchelor - Planning Reforms Unit                  Date Printed: 26 February, 2010</p>	<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and 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 diagrammatic 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 1300. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p><b>GDA</b>                  Coordinate System - MGA Zone 56                  Datum - GDA94                  © Dept. of Lands &amp; Tweed Shire Council                  2010                  2010/01/30/04                  COM 0163 - NOT CERTIFIED</p>	<p> Civic and Cultural Centre                  3 Tunbulgun Road                  Murwillumbah NSW 2484                  PO Box 816                  Murwillumbah NSW 2484                  T: (02) 6670 2400   1300 292 672                  F: (02) 6670 2483                  W: www.tweed.nsw.gov.au                  E: planning@tweed.nsw.gov.au</p>	 <p><b>TWEED</b>                  SHIRE COUNCIL</p>
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PROPOSED UPPER FLOOR PLAN SCALE 1:100

NOTE: DIMENSIONS SHOWN FOR PRELIMINARY DESIGN ONLY. TO BE SET AS PER APPROVED DRAWING. ALL DIMENSIONS TO BE TO FACE UNLESS OTHERWISE SPECIFIED. ALL DIMENSIONS TO BE TO FACE UNLESS OTHERWISE SPECIFIED. ALL DIMENSIONS TO BE TO FACE UNLESS OTHERWISE SPECIFIED.

**PROPOSED DEVELOPMENT**  
 LOWER FLOOR AREA: 80.20m<sup>2</sup>  
 UPPER FLOOR AREA: 250.10m<sup>2</sup>  
 TOTAL FLOOR AREA: 330.30m<sup>2</sup>

**REVISIONS**

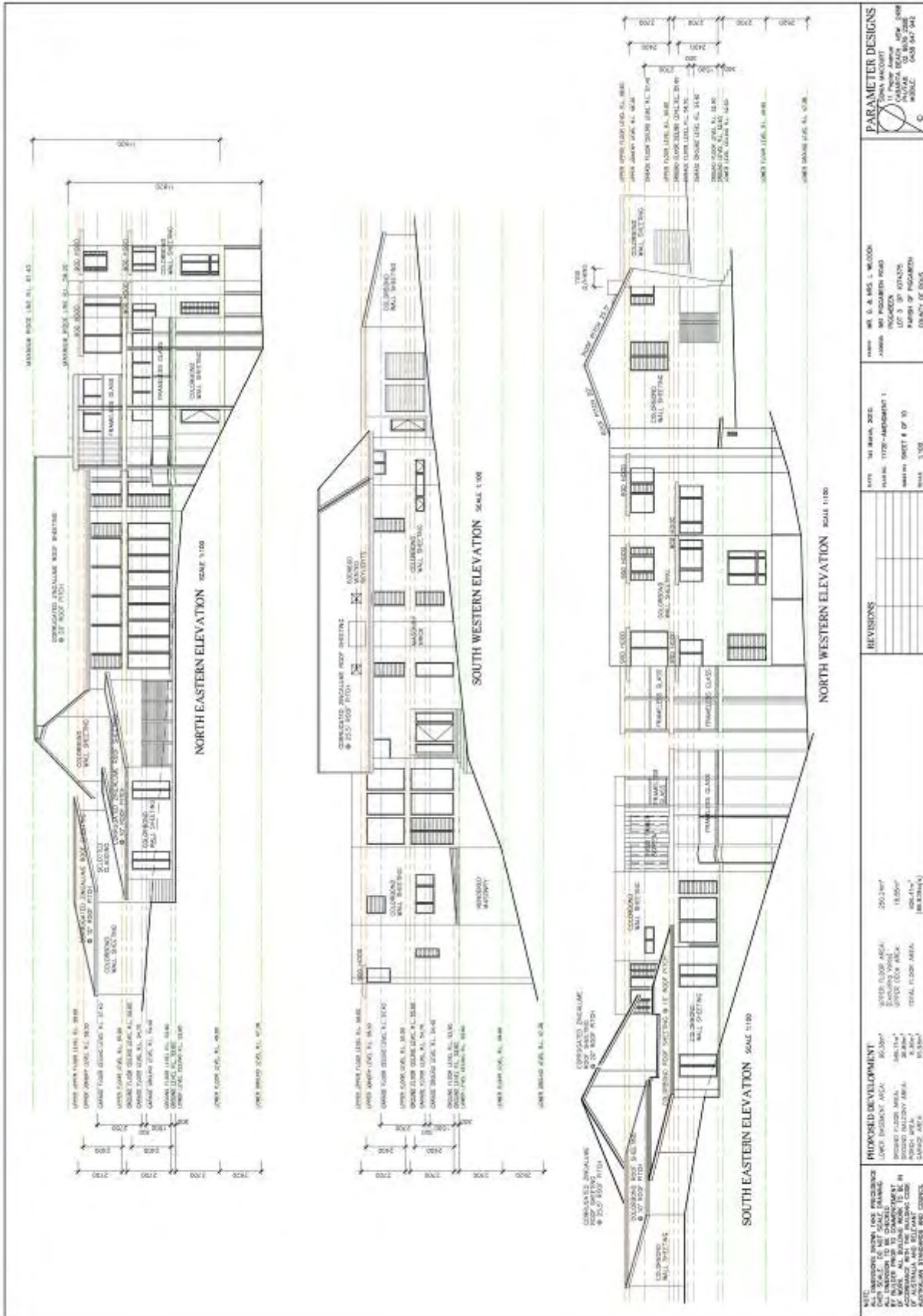
NO.	DATE	DESCRIPTION

DATE: 24 March 2010  
 DRAWN BY: T. WOODCOCK  
 SHEET NO. OF 18  
 SCALE: 1:100

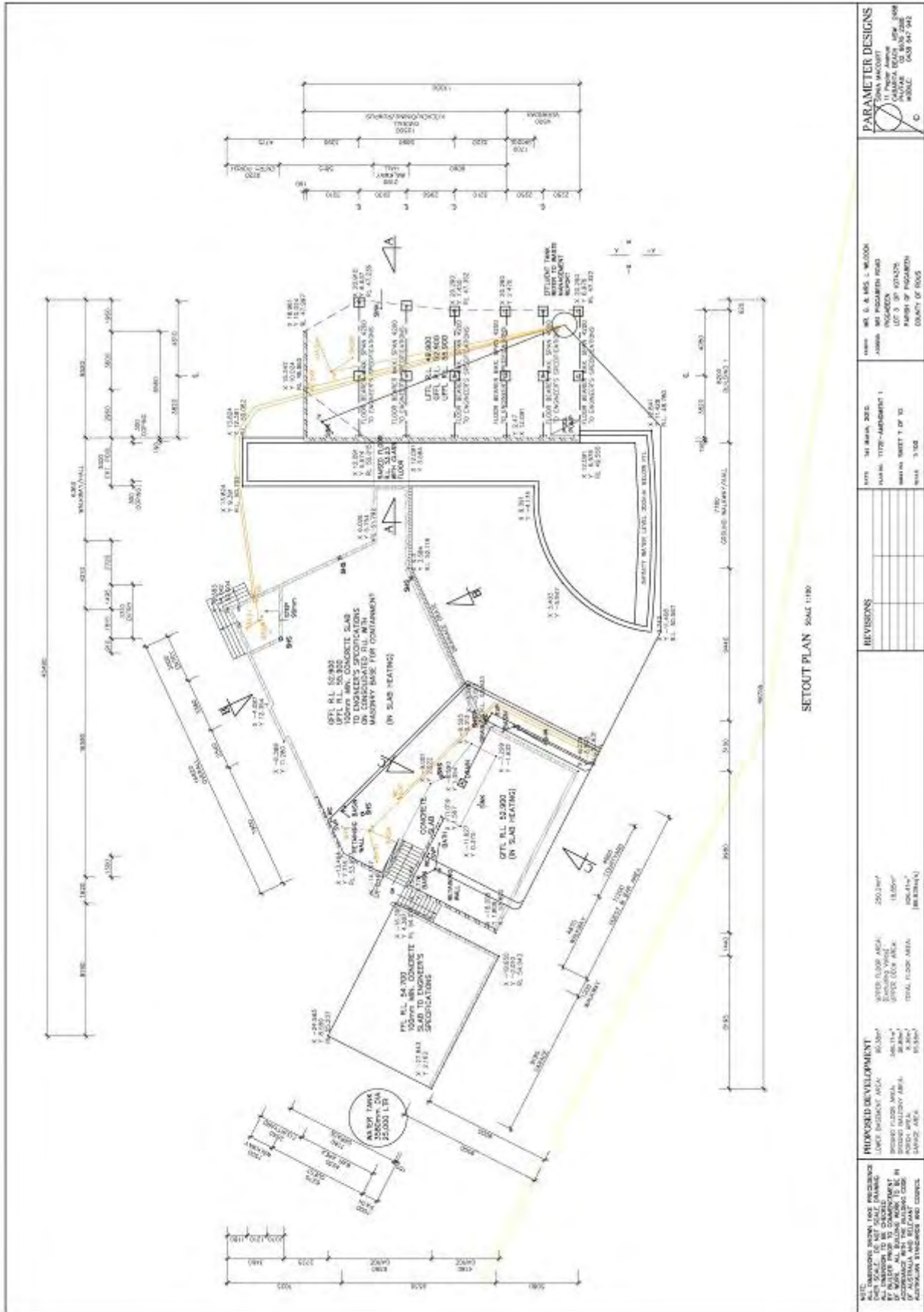
DESIGNED BY: M. E. & M. S. WOODCOCK  
 11 PRINCE ALBERT ROAD  
 WARRINGTON, CHESHIRE WA9 2JH  
 TEL: 01925 444444 FAX: 01925 444444  
 EMAIL: INFO@WOODCOCKDESIGN.CO.UK

**PARAMETER DESIGNS**  
 11 PRINCE ALBERT ROAD  
 WARRINGTON, CHESHIRE WA9 2JH  
 TEL: 01925 444444 FAX: 01925 444444  
 EMAIL: INFO@WOODCOCKDESIGN.CO.UK



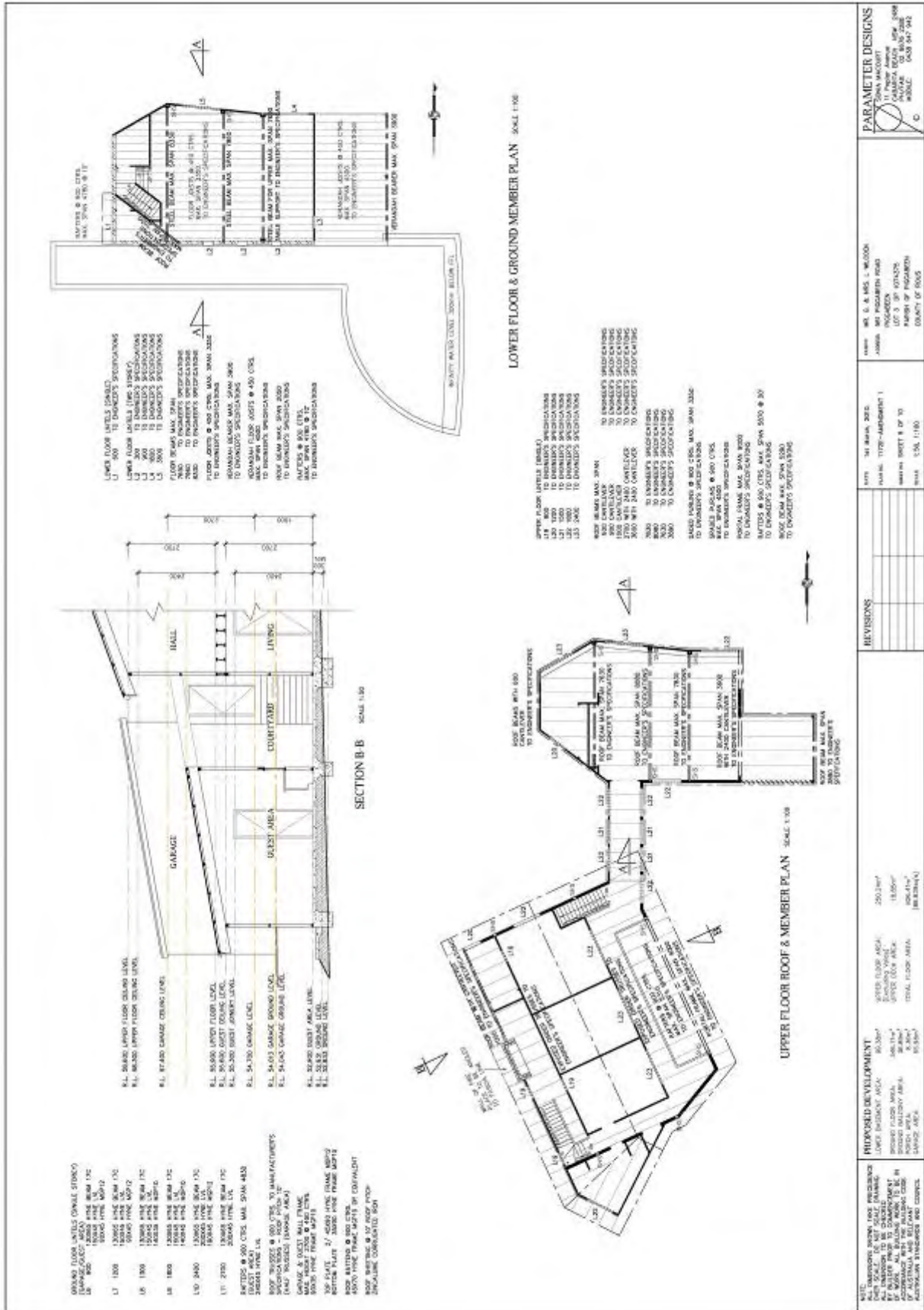


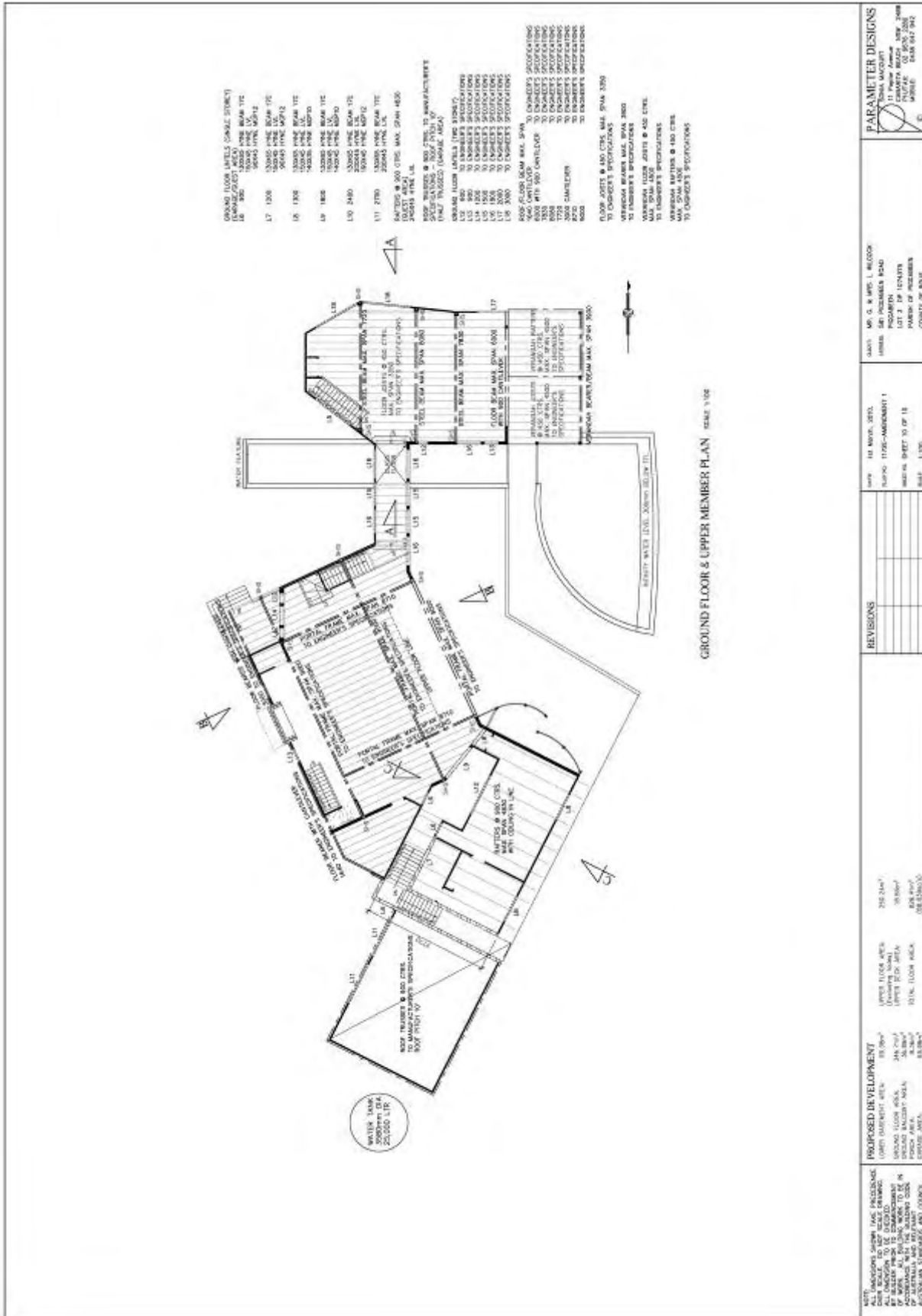
<p>NOT TO SCALE, FOR PRELIMINARY DESIGN PURPOSES ONLY. THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION. IT IS FOR INFORMATION ONLY. THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN AND DOES NOT WARRANT THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.</p>	<p><b>PROPOSED DEVELOPMENT</b></p> <p>LOWER FLOOR AREA: 95.20m<sup>2</sup></p> <p>UPPER FLOOR AREA: 250.20m<sup>2</sup></p> <p>TOTAL FLOOR AREA: 345.40m<sup>2</sup></p> <p>TOTAL FLOOR AREA: 345.40m<sup>2</sup></p>	<p><b>REVISIONS</b></p> <table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td>1</td> <td>14 MAR 2010</td> <td>ISSUED FOR PERMIT</td> </tr> </table>	NO.	DATE	DESCRIPTION	1	14 MAR 2010	ISSUED FOR PERMIT	<p><b>PARAMETER DESIGNS</b></p> <p>11 PETER STREET          11 PETER STREET          AUCKLAND          TEL: 09 488 1942          FAX: 09 488 1942</p>
NO.	DATE	DESCRIPTION							
1	14 MAR 2010	ISSUED FOR PERMIT							











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

The application was lodged as a requirement of the Environmental Planning and Assessment Act 1979 and is required to be evaluated using the relevant terms of clause 79C of the Act.

As a part of the assessment process a site visit was made by Council's assessing officer of the subject site and surrounding area. Impacts have been discussed with the applicant, and their building designer.

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

#### **Tweed Local Environmental Plan 2000**

##### Part 1 Clause 4 - Aims of the Plan

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

##### Clause 5 - Ecologically Sustainable Development

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

##### Clause 8 Consent considerations

##### Zone Objectives

The subject site is zoned 1 (a) Rural. The primary objective of the zoning is:-

- 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.

This relates to the provision for and maintenance of agricultural, natural resource utilisation and detached housing without adversely affecting the rural character and amenity of the area. The proposed development is consistent with the primary objective of the zone.

The secondary objectives of the zoning are

- 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 secondary objectives relate to allow some diversity of land uses provided it achieves design outcomes compatible with the primary objectives. The proposed development is consistent with the secondary objective of the zone.

### Cumulative Impacts

The proposed building at four storeys is a response to the site conditions and the applicant's requirements. The proposed dwelling is unlikely to dominant the immediate streetscape due to its location in the centre of the upslope. The proposal is unlikely to have an unacceptable cumulative impact on the community, locality or area of the Tweed as a whole.

### Clause 11 - Zone

The subject site is zoned 1 (a) Rural and the proposed development being a single dwelling house will be consistent with the approved use of the site.

The immediate locality predominantly contains single and two storey dwelling houses and agricultural structures.

### Clause 15 - Essential Services

The site has access to essential services including electricity and telecommunications. The site will have its own water supply and on-site sewerage management.

### Clause 16 - Height of Building

The proposed development consists of a three storey dwelling with an undercroft area exceeding 1.5m in height which constitutes a four storey dwelling house. Accordingly the applicant has submitted a SEPP 1 objection to the three storey height limitation under clause 16 under the TLEP 2000. This is discussed later in this report.

### Clause 17 - Social Impact Assessment

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

### Clause 34 - Flooding

A minor portion of the allotment is identified as being in a flood prone area. The proposed development will be constructed above this flood level. Therefore the proposal will not increase the effect of flooding on the community and is considered to be consistent with the aims of the policy.

### Clause 35 - Acid Sulfate Soils

The allotment is identified as being class 5 and as the proposal involves minimal excavation no specific requirements are required.

### Clause 39A – Bushfire Protection

The site is identified as being in a bushfire prone area. The application was referred to the Rural Fire Service for comments. Extra conditions have been added to the conditions of approval to help protect the dwelling from bushfire attack as recommended by the Rural Fire Service.

It is to be noted that the Tweed Vegetation Management Strategy 2004 identifies the significant vegetation on the property as being sclerophyll open forests/woodlands.

Clause 54 – Tree Preservation Order

The site is not affected by any tree preservation order.

Other Specific Clauses

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

**State Environmental Planning Policies**

SEPP No. 1 - Development Standards

A SEPP 1 objection has been lodged against the requirement under clause 16 of the Tweed LEP 2000 in that the proposed dwelling house exceeds the three storey height limit for the area.

The application was not required to be referred to the Department of Planning for the granting of the concurrence of the Director-General as Council may assume approval of the SEPP 1 objection to vary the three storey height limit for the area.

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

**“1. What is your application for?**

*To build a dwelling*

*The application involves the construction of a dwelling with and attached garage and the construction of a swimming pool.*

**2. Where is the land located?**

*The subject site is located in the area known as Piggabeen. The land is described legally as Lot 3DP L074375, No.581 Piggabeen Road, Piggabeen.*

**3. What is the land zoned?**

*The subject site is zoned 1 (a) - Rural under the provisions of the Tweed LEP 2000.*

**4. What are the objectives of the zone?**

*The objectives of the zone have been detailed in this report.*

**5. Which Development Standard is proposed to be varied?**

*The proposed development is not strictly consistent with clause 16 of the Tweed LEP in that the proposed dwelling exceeds the three storey height limit for the area.*

*The objective of the clause is "to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land".*

*Furthermore the clause states:*

- (2) *Consent must not be granted to the erection of a building which exceeds the maximum height or number of storeys indicated on the Height of Buildings*

*Map in respect of the land to which the application relates.*

**6. Why is the standard unreasonable or unnecessary in this circumstance?**

*A relatively small portion of the northern most area of the master bedroom and attached ensuite is considered to be four storeys in height as the foundation area directly below exceeds 1.5 metres in height for approximately the last 2 metres of the building.*

*The height of the proposed building is not considered to be unreasonable on the basis that:*

*Only a relatively small section (20 m<sup>2</sup>) of the proposed dwelling exceeds the height requirement.*

*Topography and vegetation on site are anticipated to act as screening for the proposed dwelling.*

*Nearest adjoining dwelling houses are 250 metres to the west through dense vegetation, 480 metres to the north through vegetation and 210 metres to the east through vegetation. The nearest house to the south is in excess of one kilometre.*

*Rural area with inherent expectation for larger buildings.*

*Sunlight will still be accessible to adjoining properties with no overshadowing anticipated because of distances from building site.*

*Building designed with minimal cut and fill, as per current best practice and Tweed DCP design controls, which has created a larger and higher foundation area.*

**7. Is the proposal consistent with the objectives of the standard?**

*The objective of the standard is:*

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

*It is considered that given the rural nature of the area that the proposed dwelling is appropriate for its location, surrounding development and the characteristics of the land.*

*The surrounding area has a mixture of single and multi-storey dwellings. Some of these dwellings are located quite prominently with a significant visual impact.*

*Even though these buildings appear to be consistent with the height requirements of the LEP they have a significant impact on the streetscape as there is minimal screening utilised to obscure them from view from the road or adjoining properties.*

*The street frontage to the subject site and adjoining subject sites are heavily vegetated, which effectively screens the subject property from view from the street. Furthermore the area surrounding the proposed building site is also highly vegetated which will further obscure the proposed dwelling from sight.*

*It is considered that the height, bulk and scale of the development is not excessive having regard for the 1(a) Rural land zoning, the topography of the land, positioning of the proposed dwelling and the dense vegetation on site.*

*The design of the proposed dwelling further reduces any visual impact by utilising contrasting design techniques such as sections of pitched roof versus skillion roof versus a grass top roof.*

*These elements help to break up the roof line reducing overall visual bulk, having a positive effect on built bulk.*

*As the proposed building site is located on a levelled pad behind a steep heavily vegetated slope, it is considered that the existing vegetation and the natural contours of the land will effectively screen the majority of the dwelling from public view and as such greatly reduce any apparent visual impact arising due to bulk and or scale of the dwelling.*

*It is contended that the natural contours of the subject site present a major topographical and geotechnical constraint. In addition the highly vegetated nature of the site precludes construction in some areas due to unsupportable risk of bushfire.*

*This has created a situation whereby the proposed building site is the only area on the subject property which can reasonably be used for a dwelling.*

*The northern and most visible elevation has been designed so that it presents an attractive residential character with large open areas and minimal bulk and scale. The dwelling, whilst large, is anticipated to present a strong residential character and will positively contribute to the amenity of the surrounding area.*

*It is contended that the design for the proposed dwelling, coupled with the site characteristics, vegetation and distances to houses on adjoining properties that the proposed dwelling is consistent with the objective for the development standard.*

**8. How does the proposal fit in with the existing location of dwelling houses in a two kilometre radius?**

*The proposed dwelling is well set back from all existing dwellings in the general area. It is not anticipated that there will be any effects from overshadowing.*

**9. What are the possible environmental impacts of the proposal? Will it involve the removal of trees and/or native vegetation; destruction of wildlife, habitats/corridors or wetlands; or erosion due to necessary earthworks?**

*No significant environmental impact anticipated from the proposed development.*

*There is minimal removal of trees or native vegetation. This is in fact one of the reasons behind the use of the proposed building site, to minimise any possible environmental impact.*

**10. Describe any natural hazards which affect or may affect the subject property**

*The property is affected by bushfire and flooding. These matters have been addressed further elsewhere in this report.”*

**Response to SEPP 1 Objection :** In response to the SEPP 1 objection to clause 16 of the Tweed LEP it is acknowledged the majority of the dwelling house complies with clause 16 and the third component exceeds the three storey height limit due to the topography of the site. When put into context with the location of the existing building platform in the centre of the upslope as viewed from the north it is considered that the existing vegetation will effectively minimise the dominance of the dwelling house when viewed from a public place. To further reduce the impact of the dwelling house it is considered appropriate to include a condition of consent requiring that the external colours and finishes be sympathetic to the bushland environment.

The footprint of the dwelling house which exceeds 3 storeys is considered to be minor in size at only 20m<sup>2</sup> in area. However the areas of non-compliance being the fourth storey and the height variation will only be visible and evident by the residents of the site as it is remote from any external parties and public place. The subject dwelling house is only likely to be visible from a kilometre away to the north on Piggabeen Road where it will be obscured by the existing vegetation.



The photograph above is taken from Piggabeen Road approximately 1 kilometre away and the clearing and structure in the centre of the photograph represents the rear/south side of the building platform.





The photograph above has been taken from the rear of the building platform looking north. This confirms the size of the platform and the location of existing screen planting



The photograph above has been taken of the northern side of the building platform looking south. This confirms the area of upslope which will contain the four storey and contributes to the height exceeding 9 metres as prescribed by the controls of the DCP.

**SEPP (North Coast Regional Environmental Plan) 1988**

Clause 12: Impact on agricultural activities

The proposed development is unlikely to impact upon the use of adjoining or adjacent agricultural land and will not result in a loss of prime crop or pasture land due to the topography of the site.

Clause 15: Rivers, streams and wetlands

The proposed development will not adversely affect any nearby river or stream, coastal or inland wetland or fishery habitat area.

Clause 29A: Natural areas and water catchment

The proposed development includes minimal clearing of natural vegetation. Notwithstanding an erosion and sediment control plan will be implemented which will successfully contain on the site any erosion or sediment caused by the proposed development.

SEPP No. 26 - Littoral Rainforests

The subject property is located outside the designated rainforest area and associated buffer area

SEPP No. 44 - Koala Habitat Protection

The subject site was inspected and the proposal assessed by Councils Ecologist on the 12 March 2010 and it was revealed that:

- The subject site is mostly vegetated with an existing cleared area for the proposed dwelling and additional cleared patches to the north.
- The site is mapped as having high ecological status and areas of low-moderate ecological sensitivity.
- The site is mapped as Secondary Class A Koala Habitat. Therefore, SEPP 44 Koala Habitat Protection will need to be considered
- The subject site is mapped as a Regional Wildlife Corridor.
- The site is mapped as young forest, and this was supported from observations at the site visit. There are a few larger and older trees on the property.
- Threatened fauna species recorded in the local area include Koala, Osprey, Black-necked Stork. The site is not considered to contain suitable habitat for the Osprey and Black-necked Stork.
- Threatened flora species recorded in the local area include Brush Cassia (*Cassia brewsteri* ssp. *marksiana*), Fine-leaved Tuckeroo (*Lepiderema pulchella*), Rough-shelled Bush Nut (*Macadamia tetraphylla*), Spiny Gardenia (*Randia moorei*), White Laceflower (*Archidendron hendersonii*) and Marblewood (*Acacia bakeri*). None of these species were recorded in the area of the proposed dwelling or APZ. It is possible that Brush Cassia, Marblewood, Fine-leaved Tuckeroo, and White Laceflower may colonise at the site in the future in the absence of fire. The site is unlikely to contain suitable habitat for the colonisation of Rough-shelled Bush Nut and Spiny Gardenia.

- The Rural Fire Service has required an Asset Protection Zone (APZ) (of 15 m to the south, 9 m to the east, 20 m to the north, and 19 m to the west of the proposed dwelling) and that the APZ be maintained as an Inner Protection Area.
- In attaining the performance requirements specified in the RFS Planning for Bushfire Protection Guidelines and the Standards for Asset Protection Zones, this will require the removal and trimming of some Eucalyptus trees, identified in the plan on the second page of the Ecological Assessment/Fuel Management Report prepared by the applicant and dated 10-3-2010.
- None of the trees identified as to be removed are identified on the plan as koala feed trees, as listed on Schedule 2 of SEPP 44. However, at the site inspection it appeared that one small tree may have been a juvenile Tallowwood. As this is a rough-barked species it is not suitable for retention in the APZ. In addition, a few trees will require pruning and/or trimming over the life of the development (but not removal), including Forest Red Gum and Tallowwood. Forest Red Gum and Tallowwood are recorded in Schedule 2 of SEPP 44 as preferred koala feed trees.
- The trees to be removed, and pruned and/or trimmed in the future, are relatively young and did not contain any obvious hollows.

It is recommended that the development application be approved subject to conditions of consent:

SEPP (Rural Lands) 2008

Further to clause 10 it is considered that the proposed development should not affect the existing uses and approved uses of land in the vicinity of the development, and is unlikely 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.

SEPP No 71 – Coastal Protection

The subject site falls outside the coastal zone as identified under SEPP 71.

SEPP (Building Sustainability Index: BASIX) 2004

The Applicant has provided a valid BASIX certificate for the proposed development in accordance with the legislation and the latest amended plans.

It is considered that the requirements if this SEPP have been satisfied.

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

Draft LEP 2010 is currently on exhibition until 31<sup>st</sup> March 2010, and in this document a maximum building height of 10m is proposed. Whilst this has not been formally adopted it can be taken into account subject to variation to the 9m maximum as prescribed in DCP A1 Part A.

The maximum 10m building height in the Draft LEP 2010 represents an additional 1m above the existing height limit of the DCP A1. The current proposal having an overall height of 11.96m represents a variation of 1.96m over the Draft LEP 2010. This height variation has been discussed below under Design Control 5 of DCP A1 Part A.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code Part A

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

Section A1 of the DCP is divided into two chapters.

Chapter 1 Building Types

The Building Type proposed is 'Housing'.

The DCP describes that housing developments generally contain up to two storeys and details the minimum and maximum standards required for this Building Type.

The DCP envisages dwelling houses up to two storeys but does not prohibit three storeys, provided that they demonstrate compliance with the mandatory controls of the DCP and do not exceed the number of storeys permitted by the Local Environment Plan 2000 for the locality.

The proposal meets generally the mandatory controls of the DCP and specifically for chapter 1 as outlined below.

Objectives:

- To be well designed and attractive.
- To be of an appropriate scale relative to the existing or desired future pattern of development.
- To provide landscaped and deep soil areas on the lot.
- To provide amenity for residents without compromising the amenity of neighbouring properties.
- To address the street and to make a positive contribution to its established or envisaged streetscape character.
- To maximise the sustainability of the building during its lifecycle.
- To minimise the impact on the natural environment.
- To minimise the impact on the natural landscape through inappropriate or unnecessary cut and fill.

Controls

- a. Dwelling houses in existing urban areas must be consistent with the scale and character of surrounding dwelling houses or as envisaged through an adopted concept plan, locality plan, design statement or the like.
- b. In new subdivision areas dwelling houses are to be designed to conserve any natural landscape features of the site and surrounding area.
- c. In new subdivision areas dwellings must be consistent with any design scheme adopted for that subdivision.

- d. Deep soil areas are to be provided to the front and rear of sites in accordance with this Part.
- e. Entrances are to be clearly visible from the street, where the allotment has a street frontage, and there is to be a clear line of access to the building from the street.
- f. Dwelling houses are to meet the controls as set out in this Part A: Site and Building Design Controls.
- g. Dwelling houses on non urban zoned land shall not, for the purpose of this Plan, be restricted to the deep soil zone, setback and carport, garages and outbuildings controls where it is demonstrated that compliance with a particular control would be unreasonable in the circumstances.

## Chapter 2- Site and Building Design Controls

### Design Control 1-Public Domain Amenity

The proposed development by definition is a four storey dwelling house which is within an existing rural area. The adjoining properties consist of single and two storey dwelling houses with related agricultural structures. The existing vegetation on the site located between the front boundary and the building platform together with the natural contours of the site will assist in screening the dwelling house from the street. The height and location of the development will not significantly diminish the public views to any heritage items, dominant landmarks or public buildings from public places.

The entry doors of the proposed dwelling house will not be visible from the public domain as required by the controls due to the front boundary setback and the topography of the site. A relaxation to this control is considered appropriate as it is unrealistic to satisfy this requirement.

### Streetscape and Public Views and Vistas

No public views or vistas will be affected by the proposal. It is considered that the height and location of the development will not adversely obscure views of major natural features such as the water, ridgelines or bushland from public places. The topography of the site, coupled with the existing vegetation, lack of public viewing areas and the allotment size will not result in the development obscuring public view corridors.

### Design Control 2 -Site Configuration

#### Deep soil zones (DSZs)

The subject site is in a rural area and therefore the provisions of the DCP allow for the DSZ requirements to be disregarded. Notwithstanding there is adequate area at the front and rear of the development to accommodate adequate deep soil zones.

#### Impermeable Site Area

The impervious area of the development is 676.8m<sup>2</sup> which equates to 5.61% of the site which is well within the acceptable range and satisfies the provisions of the DCP. This will allow adequate area to enable water to infiltrate the site.

### External Living Areas

The proposed development comprises of a north facing courtyard and a separate northern facing verandah adjacent to the proposed swimming pool. Also the master bedroom has an adjacent verandah with a northerly orientation.

### Landscaping

It is intended to retain the existing vegetation on site, with the exception of the building platform. It is the owners intention during and after construction to plant additional landscaping around the dwelling house. This will improve the amenity of the area and minimising any possible visual impact from the development.

### Topography, Cut and Fill

The allotment is vacant and has a fall to the front of approximately 8 to 18 degrees.

The design of the proposed development has responded to the site conditions by minimising cut and fill. This has been achieved by incorporating suspended floors to areas of steep grade and utilising the existing near level building platform for entry and vehicular access to the garages by the use of slab on ground in these areas.

### Design Control 3 -Setbacks

The DCP contains the following requirements relating to building setback:

- a. Dwelling Houses are to be setback 6 metres from the street boundary.
- b. On corner allotments the setback along the secondary street (the street to dwelling has its secondary frontage) is 3m.
- c. In older established areas and on infill sites Dwelling Houses are to be consistent with the setback distance of neighbouring buildings and are to be the average of the setbacks of neighbouring dwellings on either side. This setback can be varied up to plus or minus 1m.
- d. Garages and carports, including semi-basement garages and attached garages, are to be set back a minimum of 1 metre from the dwelling's front facade.
- e. Council may approve the erection of a dwelling or garage, which does not comply with the required building line setback in circumstances, outlined elsewhere within this document, or where –
  1. The levels, depth and shape of the allotment, or
  2. The exceptional conditions of the site such as excessive grades or slope, make it necessary or expedient to do so, and:
    - the proposal will not affect the amenity of adjoining properties,
    - no valid objections are received from adjoining property owners,
    - the proposal will not create an unwanted precedent to the vicinity,
    - the structure is located a minimum of 900mm from the side boundary of the property,
    - the proposal will not impede on the required pedestrian and traffic sight lines.

The proposed development will be sited in excess of 6m off the front boundary, 8.2m off the western boundary, 9m off the eastern boundary and in excess of 100m from the rear boundary.

#### Design Control 4 -Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP.

The proposed dwelling house complies having a total of four off street car parking spaces provided, two in front of the proposed garage and two within the double garage proposed.

The garage which is setback more than the required metre behind the building façade, does not occupy more than 50% of the street frontage, and has been articulated with the design of the dwelling house to complement its front elevation.

#### Design Control 5 -Height

The proposed dwelling house is not completely consistent with the Design Control for Building height. As such a variation is requested for Design Control 5 - Height,

The relevant design controls are listed as:

- a. 9 m is the maximum overall building height for Dwelling Houses.
- b. 8.5 m is the maximum wall plate height for Dwelling Houses

Section A1 - Residential and Tourist Code of Council Development Control Plan 2008 states that Council will "consider a relaxation or variation to a mandatory control due to excessive site constraints including:

*The site being located in an 'infill' (Infill development is an allotment that is neighbored or adjoins a property that supports a building, including sites with new subdivisions, where that development has already occurred, and to the extent only that an existing building hinders the achievement of the mandatory control).*

- *Established dwellings located in subdivisions created prior to the year 2000*
- *Sites with highly irregular geometry*
- *Sites with major topographical or geotechnical constraints.*

As the proposed development is not strictly consistent with the design controls assessment against the objectives is necessary.

The objectives for the Design Control are as follows:

- *To design new development appropriate to the existing building scale in the street and the local area.*

The surrounding area has a mixture of single and multi-storey dwellings; some of these dwellings are located quite prominently with a significant visual impact. Even though these buildings appear to be consistent with the height requirements of Section A1 they have a significant impact on the streetscape as there is minimal screening utilised to obscure them from view from the road or adjoining properties. The street frontage to the subject site and adjoining subject sites are heavily vegetated, which effectively screens the subject property from view from the street. Furthermore the area surrounding the proposed building site is also highly vegetated which will further obscure the proposed dwelling from sight.

It is considered that the height, bulk and scale of the development is not excessive having regard for the 1.(a) Rural land zoning, the topography of the land, positioning of the proposed dwelling and the dense vegetation on site.

The design of the proposed dwelling further reduces any visual impact by utilising contrasting design techniques such as sections of pitched roof versus skillion roof. These elements help to break up the roof line reducing overall visual bulk, having a positive effect on built bulk. With exception of the small section of the roof above bedroom 4 and the master bedroom the building is compliant with both the wall plate and maximum heights.

Additionally the majority of the three storey section has utilised a flat roof with minimal ceiling space so as to minimise the building height when viewed from the street. As the proposed building site is located on a levelled pad behind a steep heavily vegetated slope, it is considered that the existing vegetation and the natural contours of the land will effectively screen the majority of the dwelling from public view and as such greatly reduce any apparent visual impact arising due to bulk and or scale of the dwelling.

- *To ensure new development mentions on appropriate residential character*

The existing area has a variety of different building designs and forms, leading to no true consistent character for the area apart from rural residential. The proposed dwelling house presents as a well designed, attractive larger dwelling house and is anticipated to contribute well to this streetscape and complement the existing character of the area. The northern and most visible elevation has been designed so that it presents an attractive residential character with large open areas and minimal bulk and scale. The dwelling, whilst large, is anticipated to present a strong residential character and will positively contribute to the amenity of the surrounding area.

The mandatory controls can be varied for sites with "major topographical or geotechnical constraints". It is considered that the natural contours of the subject site present a major topographical and geotechnical constraint. In addition the highly vegetated nature of the site precludes construction in some areas due to unsupportable risk of bushfire. This has created a situation whereby the proposed building site is the only area on the subject property which can reasonably be used for a dwelling. The building design incorporates a 2700 mm ceiling height, minimal slab on ground construction and no significant cut or fill, all of which are desirable under the objectives of Section A1 of the DCP. However these design features also act to preclude three storey developments on any site without flat land even though it is permissible under the Tweed Local Environmental Plan 2000.



It is considered that whilst the dwelling house does not strictly comply with the Design Control 5 it is consistent with the objectives of the DCP, and considering the major topographical and geotechnical constraints on the site together with the existing vegetation which will screen a portion of the development the variation should be supported.

#### Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms.

The proposed dwelling house satisfies this design controls.

#### Design Control 6- Building Amenity

##### Sunlight Access

The proposed dwelling house has been orientated to the north, taking account of topography, utilising passive solar design techniques to maximise solar access during winter and minimise heating during summer months. The proposal includes private open space by the provision of decks orientated to the north and therefore will receive sufficient access to sunlight. Due to the nature of the rural area and the building setbacks shadow diagrams have not been included as no other properties will be adversely affected by a loss of sunlight.

##### Visual Privacy

Due to the size of the rural allotment and the location of the proposal and the physical separation to surrounding dwelling houses overlooking of adjoining properties will be negligible.

The proposed building generally complies with the objectives of this control.

##### Acoustic Privacy

The sound insulation of this design complies with the objectives of this control and a suitable condition on the consent will be imposed to control air conditioning and other mechanical equipment.

##### View Sharing

The proposal satisfies this control as each of the neighbouring properties has its own exclusive opportunity to the views from their properties.

##### Natural Ventilation

The design complies with this control. The dwelling provides for adequate natural ventilation of the dwelling with openable windows and ample breeze paths.

##### Building Orientation

The dwelling house has been sited on the property to optimize views and solar access and complies with the objectives of this control by the provision of the majority of active living areas having a north-easterly aspect.

##### Building separation

The proposed building has been sited with adequate boundary setbacks and is therefore considered that this control has been satisfied.

#### Design Control 7 – External Building Elements

##### Fences and Walls; Front, Side and Rear

There are no fences proposed in this application.

## Roof

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

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

### Design Control 8 -Building Performance

The proposal is consistent with this design control. As discussed previously the proposal is consistent with the SEPP (Building Sustainability Index: BASIX) 2004.

### Design Control 9- Outbuildings

There are no outbuildings proposed as part of this application.

### Design Control 10- Swimming pools and spas

There is an inground swimming pool proposed as a part of this application which satisfies the applicable controls.

### Design Control 11- Tennis Courts

There is no tennis court proposed as part of this application

### Design Control 12 - Floor Space Ratio (FSR)

The proposed dwelling house has a site coverage of 329.21m<sup>2</sup> which translates to less than 1% of the site. Under Tweed DCP A1 the maximum FSR applicable for this proposal is 0.55:1 for the dwelling house as the site has an area of 3.799 hectares. The proposed FSR for the dwelling house is 0.02:1 which satisfies this design control.

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

### Clause 92(a) Government Coastal Policy

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

### Clause 92(b) Applications for demolition

A condition will be included requiring demolition of the unauthorised outbuilding prior to occupation of the dwelling house.

### Clause 93 Fire Safety Considerations

None required.

### Clause 94 Buildings to be upgraded

None required.

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

### Context and Setting

The design, scale and appearance of the dwelling house are considered to be reasonable given the site characteristics and its rural location.

Access, Transport and Traffic

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

Flora and Fauna

No significant impacts anticipated as a result of the development.

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

Surrounding Land uses/Development

The proposal is not inconsistent with the surrounding land use and the site is suitable for the proposed development. The property is located within an existing rural area and utilities of power and telecommunications are provided to the site. A mixture of old and new dwellings with varying architectural styles exist within the area, the design of the dwelling is considered to be in keeping with the existing residential character of the area.

Topography

The building has been designed having regard for the existing contours of the land. Where required the building has a suspended floor to take into account existing site characteristics and the slope of the land. As there is a slope in excess of 10% across the building site, the building has been designed using a combination of slab on ground and pier and beam construction so as to minimise the extent of any cut and fill.

Site Orientation

The active living areas have been oriented to the north to take advantage of solar access.

A11-Public Notification of Development Proposals

In accordance with DCP Part A11-Public Notification of Development Proposals adjoining property owners were notified of the proposal and in response only one objection was received to the proposal.

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

In accordance with DCP Part A11 adjoining property owners were notified of the proposal and in response only one objection was received to the proposal.

Each objection and a response are listed as follows:-

- *Building height exceeds maximum permitted. The four storey height is considered excessive, not consistent with the adjoining development.*

Response – This objection is acknowledged, however permissibility comes from the final determination of the development application considering the SEPP 1 Objection. Whilst the number of storeys proposed is not consistent with the Tweed LEP, it is considered that the proposal satisfies the objectives of DCP A1 Part A and the SEPP 1 objection is supported as detailed in this report.

- *The owners are living in a shed on the property.*

Response – A site inspection revealed that the owners are living in a tent which is located inside a roofed deck located to the south of the building site. This matter will be referred to Council's Compliance Team for investigation and action.

**(e) Public interest**

The development will not prejudice the public interest.

**OPTIONS:**

1. Council resolves to approve the development application subject to conditions.
2. Council resolves to refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court which would incur financial costs to Council in defence.

Should the application be approved there is potential for one or more of the objectors to lodge an appeal against the adequacy of the processing of the application would incur financial costs to Council in defence.

**POLICY IMPLICATIONS:**

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

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

**CONCLUSION:**

On balance the assessment of the relevant planning matters, it is considered that the proposed development is suitable for approval, subject to conditions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**6 [PR-CM] Tweed Development Control Plan Section B23 - Hastings Point Locality Based Development Code**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/DCP/B23 Pt8**

**SUMMARY OF REPORT:**

This report provides an overview of the Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code ("the Code"), and recommends that Council publicly exhibits the draft Plan.

On 30 October 2008 Council resolved that a detailed locality plan and development control plan be prepared for the Hastings Point locality; in response, Council's Planning Reform Unit (PRU) sought quotations, and engaged Ruker and Associates Urban Design, effective as of 15 April 2009.

Since that time PRU staff has worked with the consultant to undertake extensive community consultation and provide input into development of the Draft Code. A preliminary document was received in January 2010, which was reviewed and returned to undertake further amendments considered pertinent to the existing, and desired future character of the locality.

The Draft Code is now presented in 'precincts' enabling the local community to identify with guidelines and controls customised to the unique features, characteristics and specific contextual issues of the various locations within Hastings Point.

In recognition of this local diversity and 'uniqueness', and in response to submissions and outcomes of the landowner workshops, a number of controls have been recommended in variance to the standard requirements of the Tweed DCP s A1 Residential and Tourist Development Code, and relate specifically to building height, setbacks, and floor space ratio (FSR), as tabled in this report.

The Code has attempted to address community concerns and approached this through a range of processes significant to this planning process including:

- Visual analysis and visual impact assessment
- Character analysis and interpretation
- Built form and design-lead solutions

An extensive public consultation process has been undertaken and is addressed further in the report. Comments were received from the two landowner workshops, and a comprehensive questionnaire sent to all landowners, with concerns about economic, social and environmental impacts expressed.

The Draft Code has reached the stage where additional refining through a final public consultation stage is necessary to ascertain community support and acceptance for the approach presented by the consultant. It is proposed that the Draft Plan go on public exhibition for a period of not less than 60 days, during which a further landowner workshop will be conducted.

This report seeks Council's endorsement for the exhibition of the Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code for a period of 60 days.

**RECOMMENDATION:**


**That:-**

- 1. The report on Tweed Development Control Plan Section B23 - Hastings Point Locality Based Development Code be received and noted;**
- 2. Tweed Development Control Plan Section B23 - Hastings Point Locality Based Development Code be publicly exhibited for a minimum period of 60 days, in accordance with section 74E of the *Environmental Planning Assessment Act 1979*; and**
- 3. Following public exhibition the Draft Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code, having regard to matters arising from the public consultation and any submissions received, a further report be submitted to Council seeking final adoption of the Plan.**

REPORT:



**Hastings Point Locality Based Development Code  
Tweed DCP Section B23**

 Land to which this Plan applies

 Precinct Boundaries

0 150 300m



Cadastral 31 March, 2010  
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**Figure 1: Hastings Point Precinct Boundaries Interim Controls**

## Background

On 21 August 2007 Council engaged Ruker Urban Design to assess the appropriateness of the height and density controls under the Tweed LEP 2000 for development in Hastings Point. The final report was considered by Council on 22 April 2008 at which it was resolved:

- “1. Council amend Section A1 of the Tweed Development Control Plan to include interim development controls in relation to the height and density limit in Hastings Point applicable to all land south of the Cudgera Creek Bridge, restricting height to two (2) storeys only with such provision being reviewed no later than 12 months from the date of adoption.***
- 2. That the draft amendment be publicly exhibited in accordance with s 74E of the Environmental Planning Assessment Act 1979.”***

The interim controls were incorporated into Tweed DCP Section A1, and subsequently amended by resolution of Council, as follows:

- **25.11.2008** - Amendment to Area Specific Site Controls to include height and density provisions for Hastings Point – south of Cudgera Creek Bridge Council Resolution,
- **21.04.2009** - Extension of the Area Specific Site Controls relating to Hastings Point (south of Cudgera Creek Bridge) to the whole locality of Hastings Point.
- **28.04.2009** - Repeal of an Area Specific interim site control (density ratio of 1 dwelling per 250m<sup>2</sup> of site area) and the inclusion of a new density control of no more than 2 dwellings (dual occupancy) per site relating to Hastings Point

Height and density controls stipulated in the interim controls are:

- a. The maximum building height is 2-storeys and 8 metres.
- b. The maximum density on any lot or combination of lots comprising a development site is two dwellings (dual occupancy).

A review period of 12 months from adoption was applied, except where a locality or structure plan, or area specific planning controls are in preparation in which case it will be the adoption date of that body of work and the concurrent or subsequent repeal of the interim provisions.

## Resolution to prepare the Hastings Point Locality Plan and DCP

On 30 October 2008 Council resolved that a detailed Locality Plan and Development Control Plan be prepared for the Hastings Point locality; in response to which Council's Planning Reform Unit (PRU) sought quotations, and engaged Ruker and Associates Urban Design, effective as of 15 April 2009.



Since that time PRU staff has worked with the consultant to undertake extensive community consultation and provide input into development of the Plan. A preliminary plan was received in January 2010, which was reviewed and returned to undertake further amendments considered pertinent to the character, both existing and desired future character of the locality.

### **Public consultation**

An extensive public consultation process has been undertaken comprising:

- Two landowner workshops, with a third proposed during the public exhibition period,
- Comprehensive questionnaire mailed to all landowners,
- Site inspections with community representatives,
- 'Walk-and-talk' where PRU staff, during site inspections, were able to discuss options for the future of Hastings Point with interested residents.

Extensive comment was received from the two landowner workshops and comprehensive questionnaire, with concerns about economic, social and environmental impacts being raised.

### **Questionnaire responses considered**

A comprehensive 7-page questionnaire was mailed to all landowners; comments have been tabulated, and collated into themes to allow identification of key issues.

More than 130 responses to the questionnaire were received, the majority from landowners, however, because of a number of anomalies in responses, and the intention to collect qualitative information only, all information was used to develop a broad 'feeling' of the communities concerns, likes, dislikes, aspirations and fears for Hastings Point. The consultant was then tasked with formulating the future desired character on which any new controls and urban design principles would be based.

### **Landowner workshops**

More than 90 landowners, family and friends attended the first workshop held on 28 June 2009, with a similar number at the follow-up workshop (20 September 2009).

Representatives from all interested parties were present and able to express their point of view in a forum where free and open expression was encouraged.

Council officers provided information on water quality, estuary monitoring, flooding and flood modelling, before Noni Ruker and Steve Hammond (Landscape Architect) made presentations prior to the breaking into small groups to workshop issues.

Feedback from both events was very positive and pointed to the workshops being both important, and a productive process at which the community had opportunity to meet with the consultant and present their thoughts directly to the document's author.

## Document structure

As a result of the initial review by PRU staff, the draft Plan is now presented in 'precincts' enabling the local community to identify guidelines and controls customised to the precinct-specific contextual issues and unique features within Hastings Point.

The Code has attempted to address community concerns and expectations through the adoption of a range of contemporary planning approaches, some of which are a significant addition to the way plans have previously been prepared and include:

- Visual analysis and visual impact assessment,
- Character analysis and interpretation,
- Built form and design-lead solutions,
- Precincts approach to guidelines and development controls.

The Code contains controls, guidelines and discussion of the following:

- Urban Structure;
- Vision;
- Precinct areas (with objectives and controls);
- Precinct character (Both existing and desired future);
- Building character;
- Public open space;
- Scenic protection and visual assessment (establishing objective standards for impact assessment);
- Environmental protection;
- Foreshore protection;
- Urban vegetation;
- Circulation and access;
- Building type controls;
- Design concepts to suit Hastings Point;
- Design resource kit.

Four broad precincts have been defined in the Code for the purpose of differentiating character, guidelines and controls; the four precincts are:

- The Centre;
- Peninsula Street and the Northern entry;
- Creek Street;
- Hastings Point South, as identified on figure 1.

A 'Control Diagram' has been presented for each precinct identifying key requirements of the Code, including details such as:

- Building type and location;
- Built form;
- Building setbacks;
- Building design criteria;
- Riparian buffers;
- Infrastructure improvements;

- Vegetation planting locations.

Building type controls have been presented addressing the three major building types found in the locality, namely:

- Dwelling houses;
- Dual occupancies and town houses;
- Shop-top residential buildings and residential flat buildings

Controls have been set out consistent with the format of Council's DCP A1 using identical headings for ease of cross-reference.

Design resource material is provided as appendices for the purpose of providing additional information directly relevant to the locality and includes:

- Landscape design ideas;
- Building design and materiality.
- Vegetation community species planting lists;
- Constraints maps.

### Specific features of this Plan

In recognition of this local diversity and 'uniqueness', and in response to submissions and outcomes of the landowner workshops, a number of controls have been recommended above-and-beyond the standard requirements of DCP A1, and relate specifically to building height, setbacks, and floor space ratio (FSR).

### Building height

Maximum height of buildings						
Building type	Overall	Wall Plate	When southern side is within 3 metres of boundary	Detached garage And carports		
				Eaves	Flat roof	Pitched roof
Dwellings, Dual Occupancy, town houses (See note *)	8	7.5		2.4	2.7	3.5
Shop top residential and RFBs (See note **)	10	9	7	2.7	3.5	4.5

**Note:\*** Centre Precinct - Shop-top RFBs and RFBs up to 3 storeys may be considered by Council where a range of requirements spelt out in the Code are met.

**\*\*** Hastings Point South Precinct - RFBs up to 3 storeys in may be considered by Council where a range of requirements spelt out in the Code are met.

While building height has been prescribed for each building type within the Building Type Controls section, their location and certain qualifiers are defined within the Control Diagram for each precinct, as summarised below:

<b>Precinct specific building controls (summary only)*</b>			
<b>Precinct</b>	<b>Controls</b>		
	<b>Caravan Park</b>	<b>Commercial Lots</b>	<b>Residential Lots</b>
<b>The Centre</b>	<ul style="list-style-type: none"> <li>• Providing caravan, tent and cabins only.</li> </ul>	<ul style="list-style-type: none"> <li>• Widened footpath to 6 metres.</li> <li>• Commercial buildings and coastal shop-top housing.</li> <li>• Shop-top RFBs up to 3 storeys may be considered.</li> <li>• 3<sup>rd</sup> storey maximum of 30% of level below.</li> </ul>	<ul style="list-style-type: none"> <li>• In 2b zone – Dwelling houses, Dual occupancies, Granny flats and town houses.</li> <li>• RFBs up to 3 storeys may be considered.</li> <li>• RFBs to be a maximum of 2 storeys for at least 10 metres back from front setback.</li> <li>• Third level to be 30% of level below.</li> </ul>
<b>Peninsula Street and Northern Entry</b>	<ul style="list-style-type: none"> <li>• Retained for holiday accommodation and associated facilities.</li> </ul>	<ul style="list-style-type: none"> <li>• Redevelopment along Tweed Coast Road to consider shopfronts with zero setbacks along the road where shown.</li> <li>• Redevelopment in front of the caravan park to provide 10 metre landscaped area along the road.</li> </ul>	<ul style="list-style-type: none"> <li>• In 2b zone – dwelling houses, dual occupancies, granny flats and town houses, and small coastal RFBs.</li> </ul>
<b>Creek Street</b>	<ul style="list-style-type: none"> <li>• Retained for holiday accommodation and associated facilities.</li> </ul>	<p style="text-align: center;"><b>Subdivision</b></p> <ul style="list-style-type: none"> <li>• New streets to provide view corridors to surrounding natural landscape.</li> <li>• Lots created on Creek Street to be consistent with existing allotments.</li> </ul>	<ul style="list-style-type: none"> <li>• In 6b, 2a and 2e zones - dwelling houses, dual occupancies, granny flats.</li> <li>• In 2b zone – dwelling houses, dual occupancies, granny flats and town houses.</li> </ul>
<b>South Hastings Point</b>		<ul style="list-style-type: none"> <li>• Redevelopment along Tweed Coast Road to consider shopfronts with zero setbacks along the road where shown.</li> <li>• Redevelopment of petrol station is located must provide a 10 metre landscaped setback along southern boundary.</li> </ul>	<ul style="list-style-type: none"> <li>• In 2a and 2b zones – dwelling houses, dual occupancies, granny flats and town houses.</li> <li>• RFBs up to 3 storeys may be considered.</li> <li>• RFBs to be a maximum of 2 storeys for at least 10 metres back from front setback.</li> <li>• Third level to be 30% of level below.</li> </ul>

**Note:** \* Detail relating to the location of recommendations listed are shown in the Control Diagram for each precinct.

## Setbacks

Setbacks are an important feature defining the character of both streetscapes and precincts more broadly within Hastings Point. Front setbacks can vary significantly; this variation a part of the existing character of the locality. The use of variable setbacks is an attempt to protect this defining feature and ensure that future development is consistent with the desired future character of the precinct and locality. The following table summarises the key setback requirements.

Setback requirements by building type			
Building Type	Front setbacks	Side setbacks	Rear setbacks
Dwelling houses	<ul style="list-style-type: none"> <li>In accordance with precinct plan in Part 4;</li> <li>can vary +/- 1 metre;</li> <li>Can vary by up to +/- 2 metres where the angle of the front and side boundaries vary by more than 10 degrees.</li> </ul>	<ul style="list-style-type: none"> <li>No variation to DCP A1.</li> </ul>	<ul style="list-style-type: none"> <li>Minimum 5.5 metres.</li> </ul>
Dual occupancies and town houses		<ul style="list-style-type: none"> <li>1.5 metres for the first and second levels;</li> <li>3.0 metres from southern boundary;</li> <li>4.0 metres where walls contain primary windows of living areas.</li> </ul>	<ul style="list-style-type: none"> <li>Minimum 8.0 metres.</li> </ul>
Shop-top residential and residential flat buildings		<ul style="list-style-type: none"> <li>Zero for at least 5.0 metres back from the street boundary.</li> <li>Can have 1.5 metre minimum first and second levels;</li> <li>3.0 metres from southern boundary for third level;</li> <li>4.0 metres where walls contain primary windows of living areas</li> </ul>	<ul style="list-style-type: none"> <li>Minimum 8.0 metres.</li> <li>Minimum of zero for shop-top housing and RFBs</li> </ul>
	<ul style="list-style-type: none"> <li>Built to street boundary.</li> </ul>		

## Floor Space Ratios (FSR)

The following table summarises variations to FSR requirements under this Code.

Building type and maximum FSR		
Dwelling houses	Dual occupancies and town houses	Shop-top residential and residential flat buildings
<ul style="list-style-type: none"> <li>No variation to DCP A1.</li> <li>0.55:1 except where dwelling does not cover more than 50% of the site in which case 0.65:1</li> </ul>	<ul style="list-style-type: none"> <li>No variation to DCP A1.</li> <li>Dual occupancy - 0.55:1 except where dwelling does not cover more than 50% of the site in which case 0.65:1; 0.45:1 for detached dwellings</li> <li>Town houses – 0.8:1</li> </ul>	<ul style="list-style-type: none"> <li>Shop-top RFBs 1:1.</li> <li>RFBs and Shop-top housing 0.8:1.</li> </ul>

## **Building design criteria**

One of the unique features of the Code is the inclusion of the 'Design Resources' appended to the Code and cross-referenced to development controls for each precinct. The Design Resources provide extended building design criteria to ensure that future development compliments the desired future character of the locality as a small coastal settlement. The design criteria include:

- Building form;
- Building footprint and height;
- Building materials and detailing;
- Landscaping;
- Roof design;
- Colours;
- Fences and Walls, and
- Rams and driveways.

Photographic representations are used to help visualise potential outcomes of the application of these criteria, as illustrated in the extract below.

## 6.2.1 DESIGNING TO SUIT HASTINGS POINT

Hastings Point's desired future character is as a small coastal village. As such buildings; whether single detached houses or multi-dwelling buildings, need to reflect the scale of a smaller settlement rather than an urban setting.

This necessarily requires a greater degree of design consideration for breaking down the bulk of the building, carefully detailing the building to give it a residential feel, breaking up the roof form and using lightweight materials.

Responsiveness to the site and the local environment as well as improving internal amenity and livability will also help to further modulate the buildings form and assist in breaking down building bulk.

*The building is clad and it has a variety of domestically scaled windows and doors rather than all the walls being glass.*

*The garage is not more prominent than the buildings elevations. It has garage doors in line with the buildings elevation.*

*Landscaping features along the street using local species*



*The building is broken down into a series of forms.*

*A composition of materials including timber and weatherboard gives the building a coastal feel.*

*Skillion roof with overhangs and feathered edges softens the building against the sky.*

*The footprint of the top level of the building is only a portion of the level below. The top level of the building is under the roof.*

*Windows are shaded.*

This is just one example of a building that has some of the design attributes appropriate for buildings in Hastings Point.

### Public domain strategies

In addition to development controls relating to specific building types and precincts, the Code also makes a number of recommendations relating to public domain and streetscape. These public areas are an important component of existing character, and will have a significant role to play in establishing the desired future character of Hastings Point. Recommendations include:

- Estuary Beach Park:
  - Additional shade planting;
  - Extended pathway;
  - Upgrading BBQ and shelters.

- The Headland:
  - Enhanced planting;
  - Retain camping areas;
  - Rationalise access paths.
- Cudgera Creek Foreshore:
  - Recognise riparian areas to provide habitat and natural embankment stabilisation;
  - Establishment of riparian buffers

The following is an extract from the draft Code showing an example of streetscape improvements



Artists impression of the Tweed Coast Road with street tree planting and shrub planting



Existing view along the Tweed Coast Road looking north

## Key issues

Matters which may generate responses from the community include:

- Residential building height: maximum building height varies between precincts, and while an overall height limit of 8 metres is recommended for residential dwellings, there is scope for 3 storeys under certain circumstances;
- Density and permissible building types: permissible building types for each precinct have been recommended;
- Setbacks: front and rear setbacks of up to 10 metres may impact in certain locations as identified in the 'Control Diagrams' for each precinct;



- Vision: the vision presents one of a range of potential future built form outcomes for the locality;
- Application of design criteria: the ability of the design criteria to assist the community understand how buildings can be designed and constructed to be consistent with the desired future character of the locality will be an important part of the final success of this document.
- Structure and language: Some variations to the format of the document and grammar are expected in the finalised document.

Submissions regarding these and other matters will provide valuable feedback which will be considered when preparing the finalised document.

### **CONCLUSION:**

The draft Code has been prepared on the basis of extensive community consultation with the local landowners and residents, and having regard to the existing built and natural environment.

The consultant has provided a draft Code that has undergone several amendments. The project has reached a stage where the principles, ideas, and controls within the code need to be 'tested' for their level of acceptance within the broader community. The draft Code is considered suitable for exhibition purposes.

Planning staff would like to acknowledge however that there are certain elements of the Code that will need to be refined or further clarified following exhibition, when the document is formally handed over to Council and the consultant's role ceases.

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

Nil.

### **POLICY IMPLICATIONS:**

The policy implications from adoption of this plan will be a change in building height that will need to be amended in the Tweed LEP 2000, and any finalised version of Draft Tweed LEP 2010.

### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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. Copy of Tweed DCP Section B23 – Hastings Point Locality Based Development Code for endorsement (ECM 14878201)
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**7 [PR-CM] Pottsville Locality Based Development Code**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/DCP/B21 Pt2**

**SUMMARY OF REPORT:**

Council originally resolved on 29 May 2007 to prepare a locality plan and DCP for Pottsville, which commenced with the appointment of the firm Architectus as Council's Consultant in June 2007. A draft DCP and Locality Plan was publicly exhibited in May 2008. As a result of an emerging appeal in the Land and Environment Court relating to a major shopping centre proposed on the Seabreeze Estate. In August 2008 Council resolved to investigate suitable site options for a supermarket within the Pottsville village centre. Following the successful defence of the Seabreeze Land and Environment Court Appeal, and upholding of Council's Retail Strategy, Council's Planning Reform Unit produced a revised Draft DCP and Locality Plan, which was endorsed by Council for public exhibition at its meeting of 15 September 2009.

The project process has been a varied one that has resulted in two public exhibition processes, each with a different Plan, with the latter current Plan being prepared by Council staff. This resulted in-part from Council's legal defence to an out-of-centre supermarket and the Council's subsequent resolution to reinvestigate suitable site options for a supermarket within the Pottsville village centre, with the view to upholding the adopted retail strategy.

The public exhibition was conducted in October/November 2009 of the draft Development Control Plan – Section B21 Pottsville Locality Based Development draft Plan (the "draft Plan") and a detailed summary of submissions is addressed in the report. It identifies the key issues raised in the 42 public submissions received and a response upon which the final draft Plan has proceeded.

The draft Plan, having been widely consulted on, and prepared with regard to the need to provide for ecologically, socially and economically sustainable development, is now considered suitable for adoption.

Adoption of the Plan will advance the effectiveness of Council's broader strategic planning framework and will continue with the appropriate growth management principles for Pottsville, as previously delivered through the Pottsville Village Strategy 1997.

**RECOMMENDATION:**

**That Council:-**

- 1. Receives and notes the amendments to the publicly exhibited Draft Development Control Plan Section B21 - Pottsville Locality Based Development draft Plan, arising from the review of public consultation submissions;**
- 2. Adopts the Development Control Plan Section B21 - Pottsville Locality Based Development draft Plan, as amended, and provided as an attachment to this report, and resolves to give public notice of the Plan's adoption in accordance with Clause 21(2) of the Environmental Planning and Assessment Regulation 2000; and**
- 3. Requests the Director of Planning and Regulation to forward a copy of Development Control Plan Section B21 - Pottsville Locality Based Development draft Plan to the Director-General of the NSW Department of Planning in accordance with Clause 25AB of the Environmental Planning and Assessment Regulation 2000.**

## **REPORT:**

### **BACKGROUND:**

In accordance with the four-year priority actions of the *Tweed 4/24 Strategic Plan* (Tweed Futures), Council's Planning Reform Unit (PRU) along with their consultant, Architectus, commenced the preparation of a new draft Pottsville Locality Plan and Development Control Plan (DCP). The process began in 2007 and concluded with the exhibition a draft Plan in May 2008.

Several issues were raised for consideration subsequent to the public exhibition. They included the need to further investigate options for a retail supermarket within the Pottsville village, which stemmed from Council's successful defence in the NSW Land and Environment Court against a deemed refusal appeal for a supermarket and ancillary shops proposed within the Seabreeze Estate, and following expressions of interest from the Land and Property Management Authority (formerly Dept of Lands) for, among others, the development of specified Crown land within the Pottsville village centre for retail supermarket purposes.

At the Ordinary Council Meeting of 12 August 2008 it was resolved to investigate site suitability options to determine whether appropriate sites existed within the village centre to accommodate the village's longer-term retail needs, in accordance with Council's adopted retail strategy. Several sites were subsequently identified and along with additional urban design investigations the draft 'Architectus' Plan was substantially redrafted by the Planning Reform Unit. Among the amendments was the consolidation of the locality based and regulatory based elements. This process is consistent with other adopted like plans and provides a clearer connection between the strategic 'visioning' aspect and the design controls in a comprehensive DCP format, with the added benefit of there being a mandatory requirement under the Environmental Planning and Assessment Act 1979, for its consideration and compliance with any development application.

Council further resolved on 15 September 2009 to publicly exhibit the draft DCP, Section B21 - Pottsville Locality Based Development draft Plan ("the draft Plan"), following which public exhibition occurred between 14 October 2009 and 24 November 2009. As part of the Planning Reform's community engagement strategy for the draft Plan two public information sessions were held in Pottsville, and included a formal powerpoint presentation and open discussion forum.

Forty-two public submissions were received, the details of which are addressed further in this report. The draft Plan for adoption includes a public consultation section presented in a format similar to that utilised in the Tweed Urban and Employment Land Release 2009.

### **KEY FEATURES OF THE PROPOSED NEW PLAN**

The draft Plan is a locality based planning document aimed at guiding the development of Pottsville over the next 25 years, and is subject to a five year review period. It is the culmination of an extensive strategic planning body of work developed through the Tweed 2000+ strategic Plan (2000), Tweed 4/24 Strategic Plan (2004), the Pottsville Village Strategy 1998 and Council's adopted Retail Strategy (2005).

The draft Plan's area of application is identified in Figure 1.2 of the Plan, comprising the village centre, surrounding urban residential and employment areas. Its format is structured in such a way that the Plan's regulatory and urban design controls are entrenched within the broader strategic visioning component so that the end user is familiarised in a holistic sense with the overall picture both of how the area is likely to grow but also what the expectations are for development on an individual lot basis. This format is advantageous to most DCP formats where the controls and developments of individual sites are often looked at in isolation or a vacuum of other competing factors. It recognises the importance of the interrelationship between individual lots and their immediate area and those areas within the locality.

The draft Plan contains strategies and guidelines in the following areas:

- Urban Structure
- Traffic and Transport – Public Transport
- Traffic and Transport – Bicycle
- Traffic and Transport – Pedestrian
- Traffic and Transport – Road Network
- Environment
- Community Facilities
- Education
- Village Centre Structure Plan
- Village Centre Key Development Sites
- Retailing
- Supermarket design
- Public Domain and Infrastructure
- Area Specific Strategies for Pottsville North, Koala Beach, Seabreeze Estate, Pottsville Waters, Black Rocks Estate, Dunloe Park Release Area, Kings Land Release Area and Employment Lands Release Area.

Most notably by way of improving sustainable planning for Pottsville are strategies and urban design measures for:

- Establishing a Pottsville Urban Structure Plan;
- Raising the total building height permitted within specified areas of the village centre to allow for residential accommodation in a part 3 storeys/11m building format;
- Expanding retail and mixed-use development opportunities within the village centre to meet longer-term community demand,
- Pursuit of the north loop road immediately to the north of the existing shops fronting Coronation Avenue as measure to improve accessibility, business and recreational opportunities;
- Maintaining the functional hierarchy and supremacy of the village centre as the primary Pottsville business centre through the identification of potential full-line supermarket sites;
- Public domain improvement works, and
- Identification of potential opportunities for youth and community facilities.

The overarching principle of the draft Plan is to foster development which reaffirms the broad settlement pattern of Pottsville through a framework that encourages active consideration of environmental constraints, whilst maintaining and enhancing the existing 'connected villages' structure. The village centre is to be consolidated as the primary activity hub for the Pottsville community by increasing its opportunity for retail, commercial and accommodation development, encouraging a mix of business and community uses, improving the quality of the public domain and enriching the experience for residents and visitors.

## **PUBLIC EXHIBITION AND SUBMISSION REVIEW**

The public exhibition concluded with 42 public submissions and an assessment of the issues raised is provided as Attachment 1, which is also included in the public consultation section of the Plan. There were several recurring issues that are noteworthy and that require some discussion within this report, as provided below.

The Plan canvasses the possibility of the future road opening of Phillip Street, if required as part of a future road management strategy for the area. This raised quite a lot of discussion and opposition through the submissions, as did, the proposed increase in building height within the village's primary business centre, and to the location of a possible supermarket on the Crown Land site ('Site F' on Figure 4.7, page 104 of the Plan).

### **Post Exhibition Amendments**

Post the public exhibition period, several amendments have been made to the Plan, namely, but not limited to:

- *Increase in the study area to align with the Hastings Point Locality Based Development Code*

A gap between the extents of the two study areas previously existed, however served no apparent objective. For continuity, the Pottsville study area was extended to the north to include the previous gap.

- *Reduction in previously exhibited building heights for the village centre*

As discussed within this Council report, post review of the public submissions and further modelling the maximum height of buildings in the village centre has been reduced from 13.6m to 11m.

- *Refinement of Design Controls for development in the village centre*

Post review of the public submissions and further urban design modelling several of the Design Controls applicable to the village centre were amended to reflect the reduced building height and to provide greater setback requirements from property boundaries.

- *Additional heads of consideration for potential supermarket development sites*

Additional clarification and heads of consideration for potential supermarket development sites have been included to ensure a positive outcome by way of infrastructure provision and urban design qualities.

- *Refinement of traffic network improvement strategies*

As discussed within this Council report, greater clarification has been included for several of the traffic network improvement strategies and their links between key development opportunities.

- *General Housekeeping*

General formatting to improve the readability of the Plan.

### **Locating a Potential Full-Line Supermarket within the Pottsville Village**

The possibility of locating a 'full line' supermarket within the village centre has been the most discussed and analysed element of the project; both the consultant, Architectus, and Council's planning staff concluding that the preferred sustainable option for the Pottsville village is to consolidate the business centre by locating any future supermarket within the village. This approach is also consistent with the adopted retail strategy, which has been consistently applied throughout the Tweed.

The broader issues raised about the supermarket comprised:

- whether there was in fact a need for a full-line supermarket in Pottsville;
- the potential of a full-line supermarket to cause economic stress on current businesses;
- doubt as to whether a full-line supermarket could positively integrate into the existing urban character of the village centre;
- whether a full-line supermarket would result in adverse traffic impacts on the village centre and surrounding area;
- that some, and in some cases all, of the sites identified in the draft Plan were not suitable for a full-line supermarket, as well as, some support that the identified sites were suitable for the a full-line supermarket, which included a submission from a major retail supermarket operator that at least some of the sites would be suitable; and,
- that the adopted retail strategy as promoted in the draft Plan is supported.

As with other forms of development it is generally not the Council's role to determine whether a full-line supermarket is needed and where it should be specifically located. The role of the locality plan is to ensure that it provides appropriate guidance for the location of a supermarket should the 'market' determine that there is sufficient demand for one, and to ensure that there are suitable sites and urban design guidelines to assist the industry with its commercial decisions about siting, size and design.

Whether there is sufficient demand for a retail supermarket to be pursued the industry is best placed to make that determination. It is however noteworthy that residents of the Pottsville community have made many representations about their desire for a larger supermarket in the locality, this was quite evident during the Court Appeal involving the Seabreeze supermarket proposal; a case where the communities apparent desire for a supermarket was seemingly greater than the location as then proposed.



The planning system is not designed nor should it be used to stifle competition in the commercial / business sector. It is arguable that greater competition has the potential for providing customers/the community with access to a wider variety and quality of products and services at more competitive prices. The planning system is very much the facilitator of competition in that it should be providing a fair and equitable environment 'a level playing field,' with the ability to stimulate innovation and diversity. The draft Plan provides the opportunity for this to occur in a structured way that is ultimately targeted at ensuring the desirability and sense-of-place of the Pottsville village centre, and the locality generally.

In determining the suitability of potential supermarket sites a detailed desktop and urban design analysis was undertaken that also included a traffic assessment by Council's Traffic and Transport engineers. It was concluded that the existing road network is operating well under its design capacity and has the ability to sustain the additional traffic a full-line supermarket would generate, albeit with the possibility of requiring additional traffic management or road design measures.

Owing to the opportunity for improving the existing road network and pedestrian permeability and access throughout the village the draft Plan canvasses several potential options, including extensions of existing roads, new laneways and other traffic management methods, such as road alignment and pedestrian crossings. A highly desirable option for improving overall accessibility is the 'North, or rear laneway', which has the potential to bypasses a section of the main street (Coronation Avenue), and the draft Plan provides options for the loop road in two configurations that are dependant upon the final built form of the village, and which are contingent upon the location of any new supermarket.

Acknowledging the issues raised in the public submissions about the suitability of the identified potential supermarket sites it is noteworthy that the Plan is very clear about the constraints as well as the opportunities presenting each of the sites. The Plan makes no assumption about the ultimate capacity of the site to support a supermarket as this will only be determined following detailed site investigation at the development application level of detail, which is the responsibility of the proponent. Following the line of the planning system, detailed assessment of a sites suitability to support a supermarket would then be subject to the merit review process detailed by the *Environmental Planning and Assessment Act 1979*.

Best practice sustainable and socially responsive planning and design indicates that any new supermarket should be located within the village centre. However, the draft Plan has been designed to ensure that in the event that a supermarket cannot be sited in the village centre that one is not precluded altogether and that other potentially suitable areas may be considered, including within the future urban release area colloquially known as 'Dunloe Park.'

In summary, the Pottsville village centre has fulfilled a wider role than simply a place to shop; the village centre also provides the focus for community, cultural and entertainment activities for the whole community. The draft Plan seeks to maintain these functions and where possible encourage enhancement. The consolidation of the village centre as the primary activity hub is seen as an essential ingredient of maintaining that role, and improving opportunities for retail, commercial and accommodation development by providing appropriate guidance and commitment through the draft Plan, which should lead to improvements in the quality of the public domain and enriching the experience for Pottsville residents and visitors.

## **Building Heights in The Village Centre**

The Tweed LEP 2000 presently restricts development within the village centre to 2 storeys (10 metres max), with the exception of a component of 'Site F' which is restricted to 3 storeys (15 metres max).

The draft Plan was exhibited with a building height of 13.6 metres in the village centre, which is consistent with the adopted Tweed DCP Section A1 – Residential and Tourist Development draft Plan. Following the exhibition further design testing was undertaken and has resulted in a reduction from the 13.6m height to an 11m height. In areas currently zoned 2-storey under the Tweed LEP 2000 a commercial building is permitted to 10 metres whereas in a 3-storey area that height increases to 15 metres. The draft Plan is premised on improving the diversity and availability in both the business sector and housing sector. Through considered design solutions and illustration the draft Plan proposes mixed use development to height of 11 metres, which can comprise of three levels; retail, commercial and residential, without significant impact on the village's character.

The building heights proposed in the draft Plan are a rationalisation of the heights adopted in both the Tweed LEP and Tweed DCP, and provide greater opportunity for achieving the objectives of the draft Plan. The following map shows the extent of the amended building heights proposed.



**Figure 4.16 Maximum Building Height**  
Map of Extents

*Figure 1.1 –Height Of Buildings Within The Village Centre*

In addition to the 2.6m reduction in maximum building height, additional design controls have been included to reduce the bulk of development as viewed from the street level. In this regard, a 2<sup>nd</sup> storey setback control of 3 metres from the primary frontage has been added to the draft Plan, as well as the allowable 3<sup>rd</sup> storey component being restricted to 30% of the floorplate below. Previously, up to 70% was proposed. These amendments have also resulted in a reduced permissible floor space ratio (FSR).

The figure below provides a graphical demonstration of the controls contained.

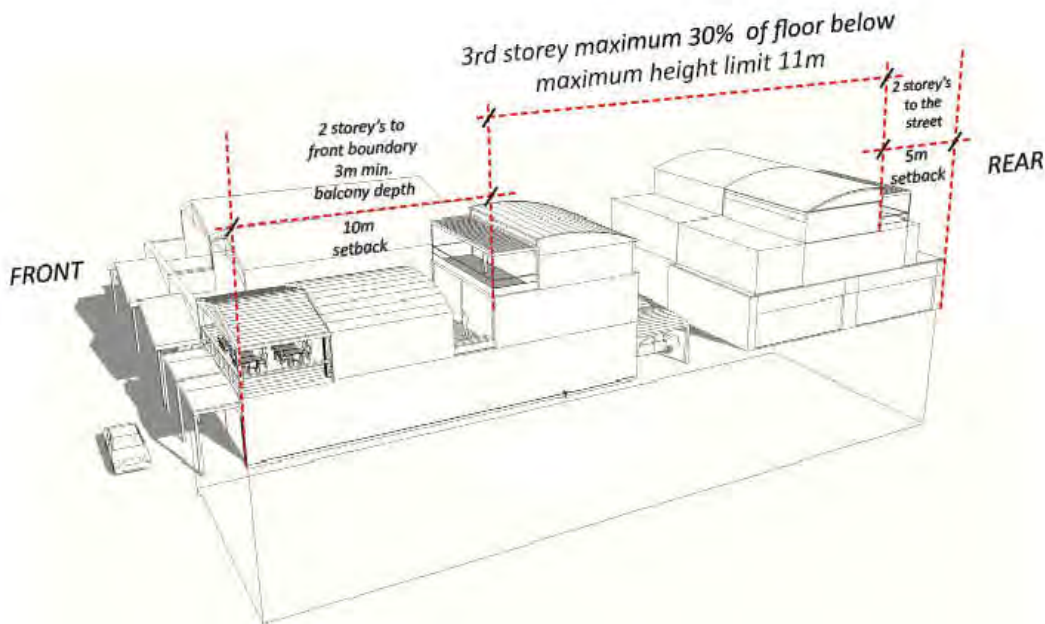


Figure 1.2 – Building Controls

As discussed above, the amendments made to the draft Plan post further modelling and public submissions received substantially reduce building bulk and visual prominence above the ground floor. Coupled with the building material requirements and identification of desirable design considerations detailed within the draft Plan, it is considered that the draft Plan will enable the delivery of high quality development that retains the characteristics of the Pottsville village centre and promotes good design within more contemporary forms into the future.

In summary, the height limits are considered appropriate and desirable for the locality and provide greater opportunity for delivering both improved diversity in housing choice and affordability, which are considered to be greater benefits to the Tweed community than the limited, if not imperceptible, cost on the villages' urban character, that is, the draft Plan is socially and economically responsive.

### **The Opening of Phillip Street to Through Traffic**

At present, Phillip Street provides a north-south link alongside the Market Park from Coronation Avenue, terminating in a cul-de-sac, approximately 50 metres north of Phillip Street/Overall Drive. Whilst previously being a through road, the closure of the road in front of the Pottsville Neighbourhood Centre has enabled Phillip Street to be a more pedestrian friendly environment with fewer vehicular movements, direct pedestrian linkages from the Neighbourhood Centre to the Market Park, and has resulted in a safer environment for passive recreational use of the Market Park. Many of the submissions received detailed a strong value in the retention of these qualities, along with concerns regarding the potential increase in noise and how that would relate to amenity levels and the loss of property values.

The potential opening of Phillip Street to through traffic was included in the draft Plan for several reasons, firstly the need to ensure adequate vehicular servicing for any 'full line' supermarket site (delivery trucks and car parking) and an extended retail precinct, and secondly, to enable future opportunities to further disperse vehicular traffic within the village centre road network, creating greater levels of traffic efficiency in the village centre.

It is quite clear that the predominate nexus in re-establishing Phillip Street as a through road is the potential location of a full line supermarket along Phillip Street and at present the traffic feedback received has indicated that void of a full line supermarket being positioned along Phillip Street, the need to reinstate Phillip Street as a through road is not present.

In light of the operational timeframe of the draft Plan (25 year time horizon) and the draft Plans emphasis on reinforcing the Council's Retail Strategy, removing this component from the draft Plan was considered premature and would undermine some of the key objectives of the draft Plan.

Accordingly, the draft Plan has been amended post public exhibition to include the principle that in the event of Site's A, B or G (as identified on Figure 4.X) being developed for a supermarket use, that should the traffic impact assessment submitted require the extension of Phillip Street as a through road, that design options are to be explored, in consultation with the Pottsville community, to achieve the following objectives:

- Pedestrian primacy over vehicular traffic is to be maintained along Phillip Street
- Clear and legible pedestrian and cycle crossing points are to be identified and provided to maintain and where possible enhance safety and permeability either side of Phillip Street
- Traffic calming methods and other design solutions are to be explored to maintain pedestrian safety and comfort levels.
- That the details of the consultation undertaken be recorded and included as part of any Development Application submitted.

Other issues raised by way of public submissions are addressed within Attachment 1 – Public Consultation Submission Review.

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

The adoption of the draft Plan will necessitate amendments to several Council documents, including the Tweed LEP, amendments to existing Section 94 Contribution Plans and the development of a comprehensive Public Domain Improvements and Infrastructure Plan.

#### **POLICY IMPLICATIONS:**

The adoption of the Pottsville Locality Based Development draft Plan seeks to provide a clear direction and prioritisation of Council's strategic planning as it relates to the Pottsville locality.

## **CONCLUSION:**

The Pottsville locality has had the benefit of a robust and highly relevant strategic plan, *Pottsville Village Strategy 1998*, which has played a significant role in managing the growth of the village during times of increasing redevelopment pressure. However, that Plan, although still of some relevance, needs to be updated.

The draft Plan has been drafted taking account of the many valuable and relevant elements of the earlier Strategy, extensive community consultation, as well as seeking to take the best of current best practice urban planning, community input and Land and Environment Court outcomes.

Pottsville is a unique and diverse place and has many challenges to face as new development occurs and as the population increases. Among those challenges is maintaining the sense of place that Pottsville residents and visitors have about the village. This requires careful planning about what uses should and should not be permitted to occur in and around the village, whilst at the same time respecting that the area is in a state of continual transition and evolution. The draft Plan has taken all of these factors in to account and has been designed to foster Pottsville village as meeting place for business, residents and visitors, whilst at the same time allowing the village to grow and expand to meet the needs of the community as it grows and diversifies.

Principally, the draft Plan is about ensuring that the growth of the village and its surrounding areas is managed in a coordinated way, that the communities right to contribute to local planning is preserved and made easier by way of clear intentions and legible provisions, and to ensure that new developments are not ahead of their time. Future generations will have the ability to have their say about the development and direction of growth within the village as the Plan is scheduled for review every five years.

The draft Plan since exhibited has been amended to take in to account the matters raised in this report relating to the receipt of public submissions and feedback.

The draft Plan is premised on best practice, it is highly relevant and geared to managing development and growth into the future.

## **UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Public Consultation Submission Review (ECM 14825522)
  2. Copy of Tweed DCP Section B21 – Pottsville Locality Based Development Code for endorsement (ECM 14877827)
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**8 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**ORIGIN:**

**Director Planning & Regulation**

**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

**That Council notes the March 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: -

<b>DA No.</b>	DA09/0494
<b>Description of Development:</b>	Two (2) lot subdivision
<b>Property Address:</b>	Lot 4 DP 1133303 No. 358 Back Creek Road, Back Creek
<b>Date Granted:</b>	1/3/2010
<b>Development Standard to be Varied:</b>	Clause 20(2)(a) - Minimum lot size 40ha
<b>Zoning:</b>	1(a) Rural
<b>Justification:</b>	The proposed development incorporates two (2) allotments: proposed Lot 5 - 60.22ha; and proposed Lot 6 - 39.25ha. The subdivision is proposed along the alignment of Back Creek. The applicant has stated that it would be unreasonable to include 0.75ha across Back Creek to meet the 40ha minimum lot size. The applicant has acknowledged that proposed Lot 6 will have to rely on existing use rights (relating to the existing dwelling approved under DA04/0459) for a dwelling entitlement as a result of Lot 6 not meeting minimum requirements. The proposed subdivision incorporates only one allotment less than minimum, which is 98.125% of the minimum area. Therefore, Council has assumed concurrence pursuant to Planning Circular B1 (issued 17 March 1989).
<b>Extent:</b>	Lot 5 = 39.25ha = 98.13% of the 40ha minimum
<b>Authority:</b>	Tweed Shire Council

<b>DA No.</b>	DA09/0722
<b>Description of Development:</b>	Dwelling, swimming pool & spa
<b>Property Address:</b>	Lot 31 DP 1030322 Collins Lane, Casuarina
<b>Date Granted:</b>	19/3/2010
<b>Development Standard to be Varied:</b>	Clause 32B(4)(b) – overshadowing
<b>Zoning:</b>	2(e) Residential Tourist, 7(f) Environmental Protection (Coastal Lands)
<b>Justification:</b>	The proposal will result in a minor departure from the standard and this is restricted to very late in the afternoon, being approximately 7pm mid summer daylight saving time.
<b>Extent:</b>	The standard is considered to be unreasonable and unnecessary in the circumstance. The proposal will result in a minor departure from the standard and this is restricted to very late in the afternoon, being approximately 7pm mid summer daylight saving time. During this time all two storey dwellings along the coastal strip project shadows onto the coastal foreshore areas. It is contended that the minor departure from the development standard will not adversely affect the coastal foreshore or the beachfront.
<b>Authority:</b>	Tweed Shire Council

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.



**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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