

TITLE: [PR-CM] Development Application DA10/0480 for the Demolition of Existing Dwellings and Construction of a Refreshment Room and Ancillary Function Centre at Lots 9 and 10 Section 4 DP 2974 Nos. 9-11 River Street, South Murwillumbah and Road 5190 Stafford Sreet, South Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA10/0480 Pt2

SUMMARY OF REPORT:

Development Application DA10/0480 is for a proposed refreshment room and ancillary function centre to be located at 9 - 11 River Street, South Murwillumbah. The Centre is proposed to be a two storey development consisting of ground level parking and entry, and upper floor Refreshment Room/Function Areas incorporating a commercial kitchen, bar, dining areas, office, associated facilities and storage. The application is being reported to Council at the request of Councillor Youngblutt.

There has been some confusion throughout this DA process as to the intended use of the new building. However, it was qualified within the Amended Acoustic Report, dated 17 January 2011, which accompanies the most recent amended plans, that the building will be used as a "refreshment room with ancillary function area".

The applicant proposes to provide twenty-one (21) car parking spaces on site.

The proposed hours of operation for the development are:

- Monday – Thursday 9.30am – 9.30pm
- Friday 9.30 am – 11.00pm
- Saturday 8.00am – 12.00am (midnight to allow for functions)
- Sunday 8.00am – 9.30pm

Council at its meeting held on 14 December 2010 resolved to defer the application so that amended plans can be reported, at a future Council meeting. The applicant provided additional information and amended plans on 21 December 2010 and 8 February 2011 which this report relates to.

It is considered that the proposed function centre arrangement will unreasonably impact upon the amenity of the adjoining residential dwellings and cannot adequately provide on-site car parking to cater for the proposal, and it is therefore recommended that the application be refused.

RECOMMENDATION:

That Development Application DA10/0480 for the demolition of existing dwellings and construction of a refreshment and ancillary function centre at Lots 9 and 10 Section 4 DP 2974; Nos. 9-11 River Street, South Murwillumbah

and Road 5190 Stafford Street, South Murwillumbah be refused for the following reasons:

- 1. The application has failed to satisfy Clause 8(1) of the Tweed LEP 2000 specifically Clause 8(1)(c). The development will have an adverse cumulative impact in the shire created by lack of car parking spaces.**
- 2. The application is not considered satisfactory with regard to parking and access. Adequate car parking has not been provided in accordance with Tweed Shire Council Development Control Plan Section A2 - Site Access and Parking Code.**

REPORT:

Applicant: Mr C Dudgeon
Owner: Mr CI Dudgeon and Mrs RJ Dudgeon
Location: Lots 9 and 10 Section 4 DP 2974, Nos. 9-11 River Street, South Murwillumbah and Road 5190 Stafford Street, South Murwillumbah
Zoning: 3(c) Commerce and Trade
Cost: \$960,000

BACKGROUND:

The original DA for a function centre was submitted to Council on 20 July 2010 with sections of the report also referring to partial and possible dual use of the building as a restaurant. The application submitted proposed a building of two storeys consisting of ground level parking and entry, and upper floor Function Areas/restaurant incorporating a commercial kitchen, bar, dining areas, office, associated facilities and storage.

The proposal was submitted to the December Council meeting with a recommendation for refusal. Council resolved at the meeting to defer the decision in order for the applicant to amend the plans to resolve the areas of concern.

The building contains large timber decks orientated to the River at the rear and to the River Street frontage.

The building is to be constructed using a variety of building materials – including a rendered painted block work, decorative stonework, weatherboard and metal roofing.

The applicant provided additional information and amended plans on 21 December 2010 and 8 February 2011, for which this report relates to. It was also clarified within these submissions that the proposal involves a "refreshment room with an ancillary function room" use.

The applicant amended the function centre component of the development to cater for 79 seats and 5 staff. As such the development requires a total of 26.2 car parking spaces to cater for the Function Centre component of the proposed. With a 20% reduction for ESD reduction the total number required for the function centre component is 21 car parking spaces.

The applicant submits that there is 100.48m² of dining area and 5 staff for the refreshment room which would result in a requirement of 19.3. With a 20% ESD reduction, the total number required for the refreshment room component is 16 car parking spaces.

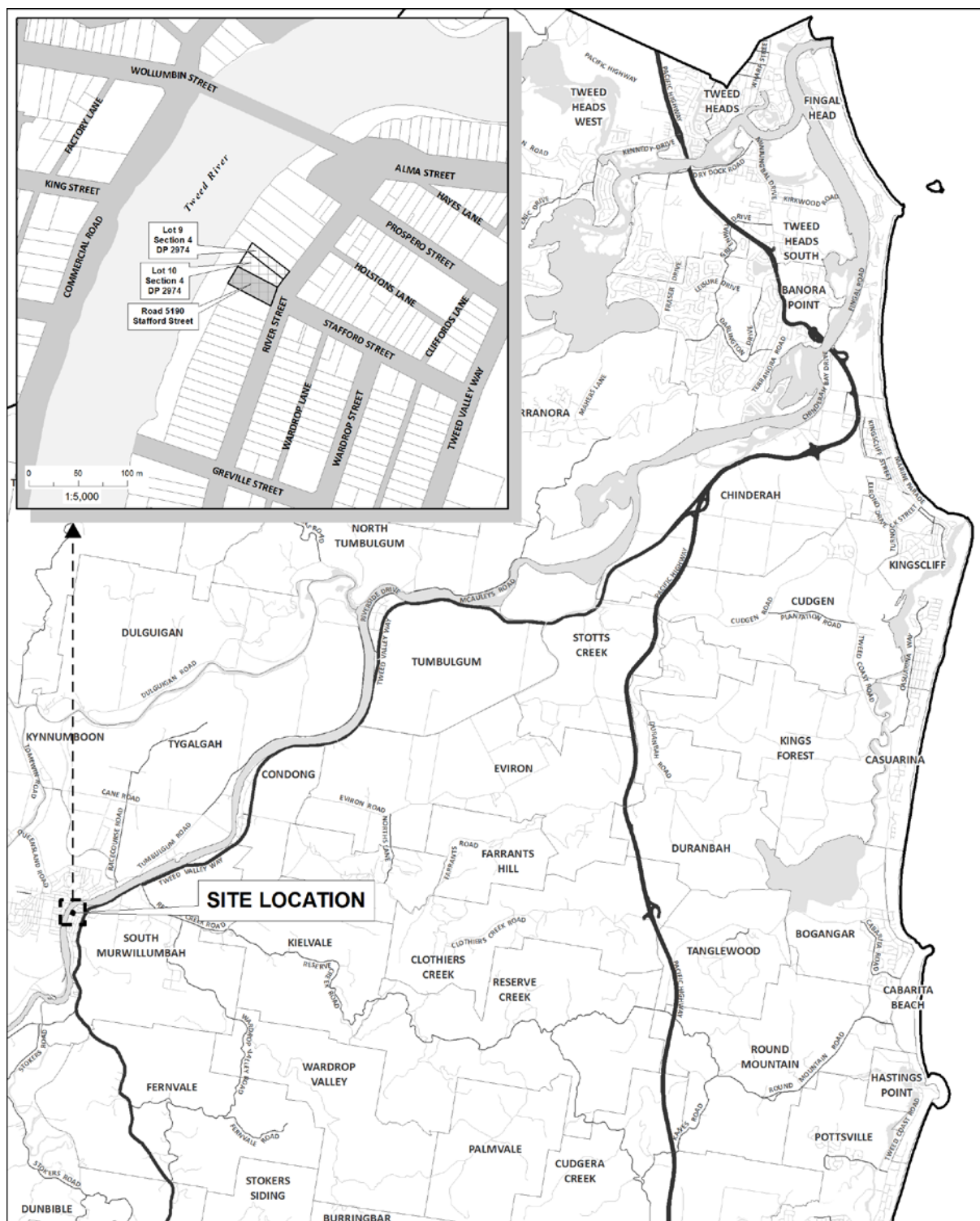
The applicant has proposed 21 on site car parking spaces.

After discussions with internal sections within Council and the applicant it was considered that there are still issues surrounding calculations of the car parking. The plans have not been amended in regards to the Gross Floor Area of the development. It is considered that the applicant's calculations of the number of seats for the function centre and the selection of the dining area have been reduced to fit the number of car

parking spaces provided on site. As such it is still considered that there are car parking issues for the development.

It has been calculated that there is approximately 228m² of dining area and with the new number of 5 staff at peak times the development requires 37.6 spaces to be fully compliant. With a 20% reduction for ESD reduction the total number required for the refreshment room component is 31 car parking spaces. It is therefore considered that the proposal still has a shortfall of 10 car parking spaces.

SITE DIAGRAM:



Locality Plan

Lots 9 and 10 Section 4 DP 2974

Nos. 9-11 River Street, South Murwillumbah and Road 5190 Stafford Street, South Murwillumbah

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and 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 1100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastre: 05 April, 2011
© Land and Property Management Authority (LPMA) & Tweed Shire Council.
Boundaries shown should be considered approximate only.

0 980 1,920 M
1:100,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED
Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 815
Murwillumbah NSW 2484
T | (02) 6870 2400 | 1300 292 872
F | (02) 6870 2429
W | www.tweed.nsw.gov.au
E | planningreforms@tweed.nsw.gov.au

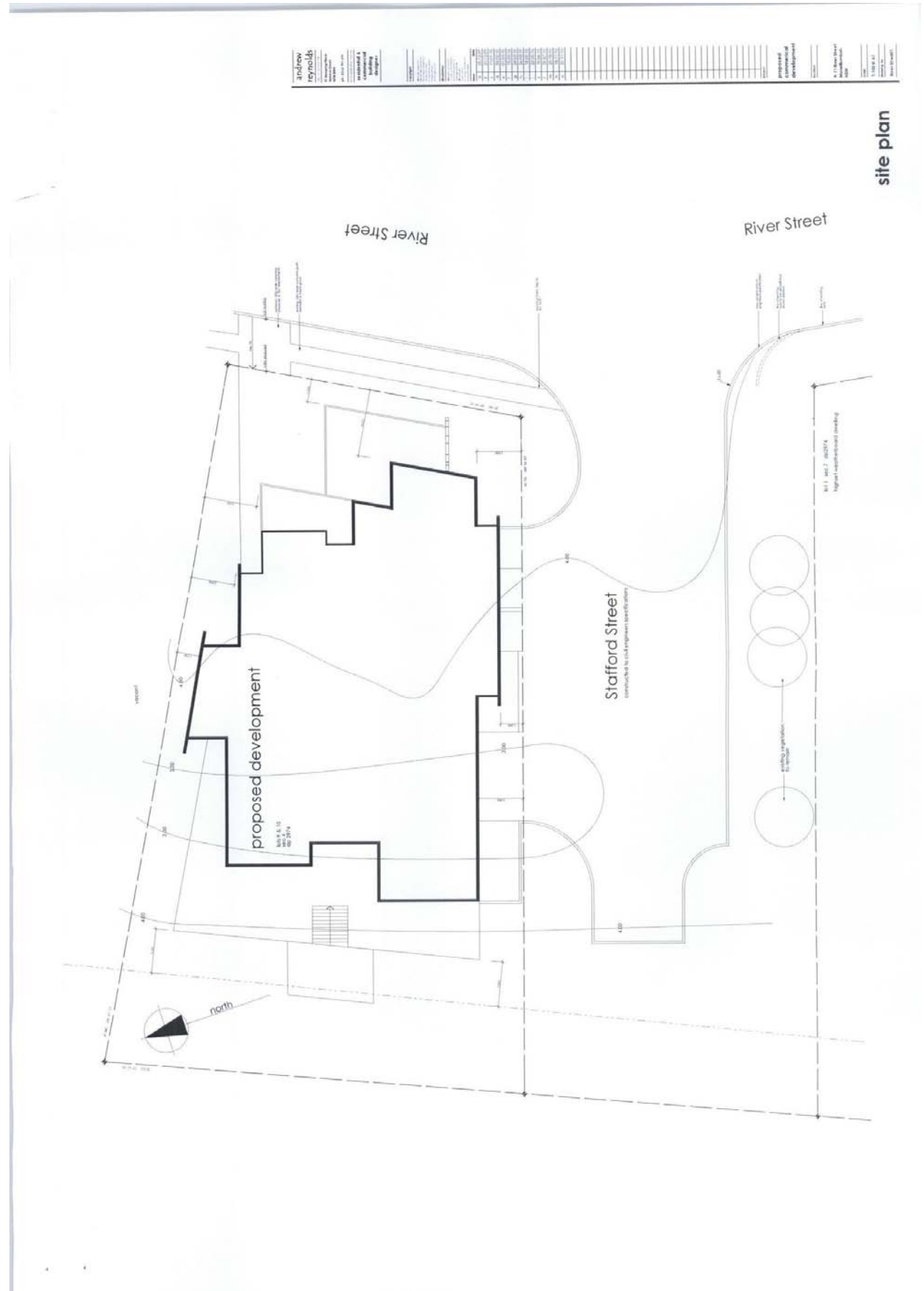


Report: Z:\SRP\PUBLIC\DRAWING\TEMPLATES\BASEMAPS\SiteMap_LocalityPlan_A4P.mxd

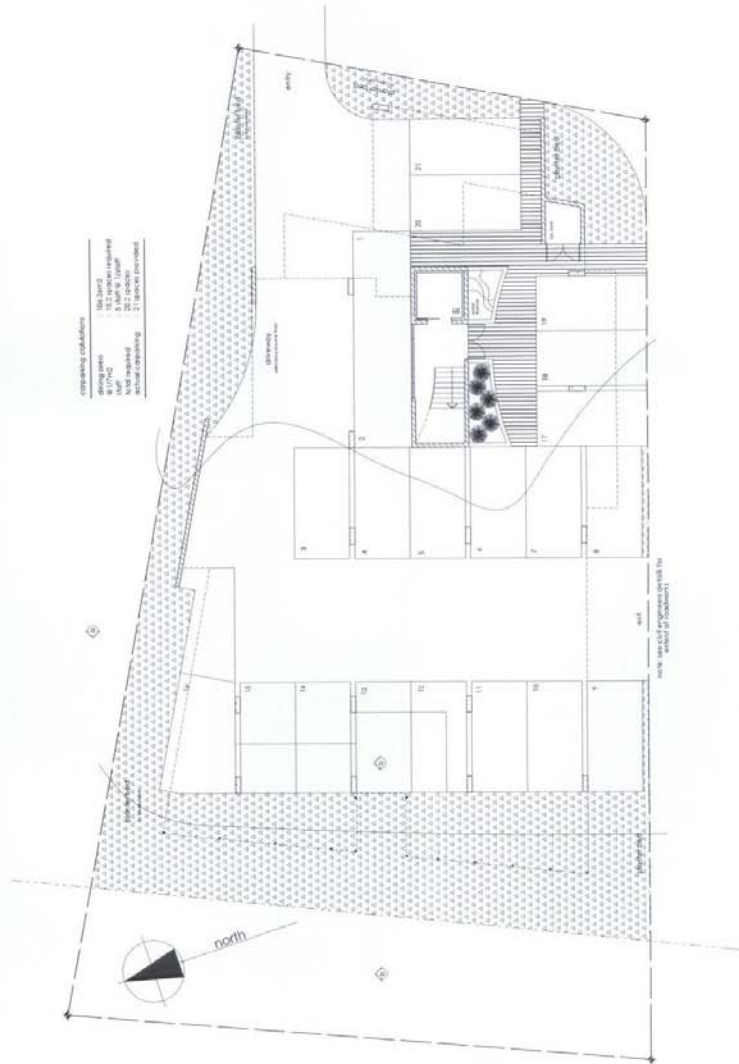
Author: jbateman - Planning Reforms Unit

Date Printed: 05 April, 2011

DEVELOPMENT PLANS:



site plan



no.	description	quantity	unit	material
1	1800 floor	3.00	m ²	1800 floor
2	1.5 m concrete	1.00	m ²	1.5 m concrete
3	200 mm concrete	2.00	m ²	200 mm concrete
4	1.5 m concrete	1.00	m ²	1.5 m concrete
5	200 mm concrete	1.00	m ²	200 mm concrete
6	1.5 m concrete	1.00	m ²	1.5 m concrete
7	200 mm concrete	1.00	m ²	200 mm concrete
8	1.5 m concrete	1.00	m ²	1.5 m concrete
9	200 mm concrete	1.00	m ²	200 mm concrete
10	1.5 m concrete	1.00	m ²	1.5 m concrete
11	200 mm concrete	1.00	m ²	200 mm concrete
12	1.5 m concrete	1.00	m ²	1.5 m concrete
13	200 mm concrete	1.00	m ²	200 mm concrete
14	1.5 m concrete	1.00	m ²	1.5 m concrete
15	200 mm concrete	1.00	m ²	200 mm concrete

Legend

material	description
1800 floor	1800 floor
1.5 m concrete	1.5 m concrete
200 mm concrete	200 mm concrete
1.5 m concrete	1.5 m concrete
200 mm concrete	200 mm concrete

Notes

- 1. New concrete structure for water in basement
- 2. Existing structure

ground floor plan

andrew
reynolds

architect
100 - 1000
100 - 1000
100 - 1000

proposed
development

NO.	DESCRIPTION	DATE
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
31		
32		
33		
34		
35		
36		
37		
38		
39		
40		
41		
42		
43		
44		
45		
46		
47		
48		
49		
50		
51		
52		
53		
54		
55		
56		
57		
58		
59		
60		

1:100
DATE: 10/1/2009
SCALE: AS SHOWN

PROJECT NO. 100-1000

DRAWN BY: [Name]

CHECKED BY: [Name]

DATE: 10/1/2009

SCALE: AS SHOWN

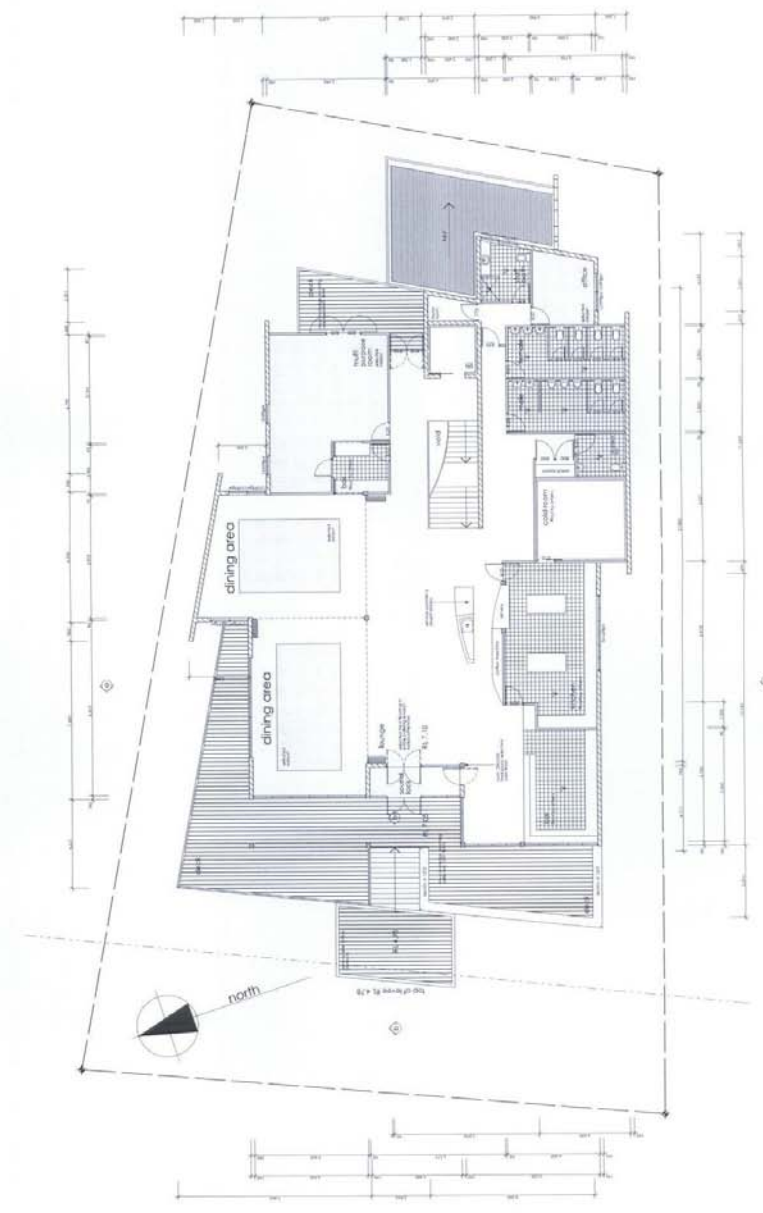
PROJECT NO. 100-1000

DRAWN BY: [Name]

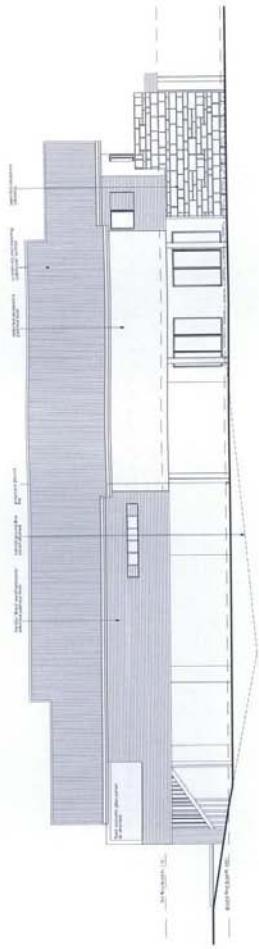
CHECKED BY: [Name]

DATE: 10/1/2009

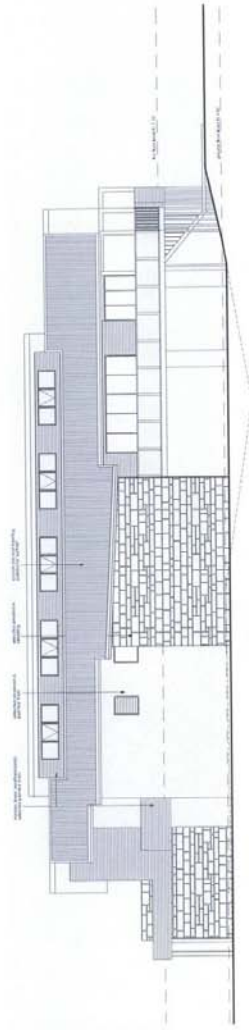
SCALE: AS SHOWN



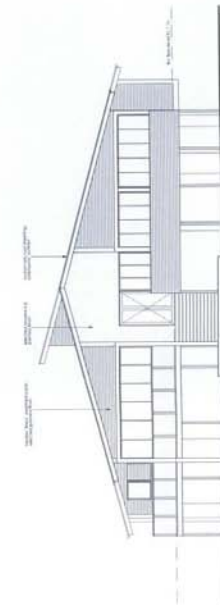
first floor plan



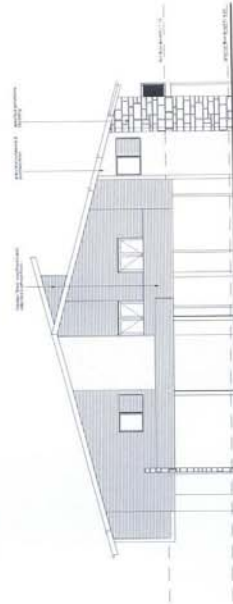
south elevation



north elevation



west elevation

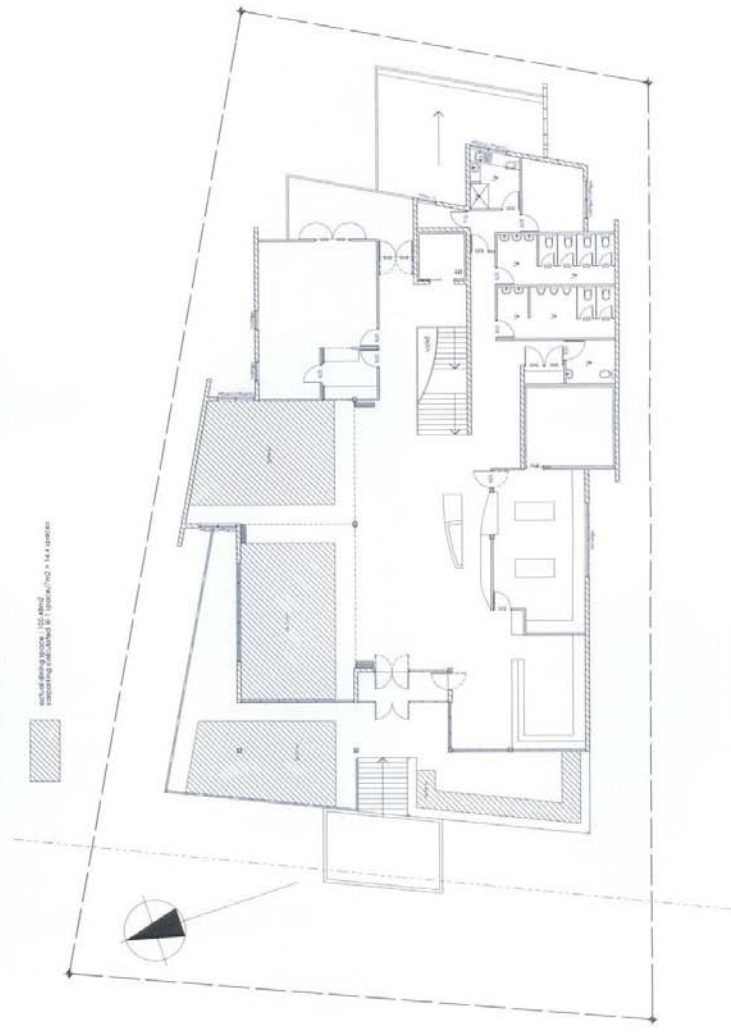


east elevation

andrew reynolds
architect
1000 10th Street
San Francisco, CA 94103
415.774.8888
www.andrewreynolds.com

proposed development
1000 10th Street
San Francisco, CA 94103
415.774.8888
www.andrewreynolds.com

NO.	DESCRIPTION	DATE
1	PROPOSED DEVELOPMENT	10/15/2014
2	REVISIONS	
3	REVISIONS	
4	REVISIONS	
5	REVISIONS	
6	REVISIONS	
7	REVISIONS	
8	REVISIONS	
9	REVISIONS	
10	REVISIONS	
11	REVISIONS	
12	REVISIONS	
13	REVISIONS	
14	REVISIONS	
15	REVISIONS	
16	REVISIONS	
17	REVISIONS	
18	REVISIONS	
19	REVISIONS	
20	REVISIONS	
21	REVISIONS	
22	REVISIONS	
23	REVISIONS	
24	REVISIONS	
25	REVISIONS	
26	REVISIONS	
27	REVISIONS	
28	REVISIONS	
29	REVISIONS	
30	REVISIONS	
31	REVISIONS	
32	REVISIONS	
33	REVISIONS	
34	REVISIONS	
35	REVISIONS	
36	REVISIONS	
37	REVISIONS	
38	REVISIONS	
39	REVISIONS	
40	REVISIONS	
41	REVISIONS	
42	REVISIONS	
43	REVISIONS	
44	REVISIONS	
45	REVISIONS	
46	REVISIONS	
47	REVISIONS	
48	REVISIONS	
49	REVISIONS	
50	REVISIONS	
51	REVISIONS	
52	REVISIONS	
53	REVISIONS	
54	REVISIONS	
55	REVISIONS	
56	REVISIONS	
57	REVISIONS	
58	REVISIONS	
59	REVISIONS	
60	REVISIONS	
61	REVISIONS	
62	REVISIONS	
63	REVISIONS	
64	REVISIONS	
65	REVISIONS	
66	REVISIONS	
67	REVISIONS	
68	REVISIONS	
69	REVISIONS	
70	REVISIONS	
71	REVISIONS	
72	REVISIONS	
73	REVISIONS	
74	REVISIONS	
75	REVISIONS	
76	REVISIONS	
77	REVISIONS	
78	REVISIONS	
79	REVISIONS	
80	REVISIONS	
81	REVISIONS	
82	REVISIONS	
83	REVISIONS	
84	REVISIONS	
85	REVISIONS	
86	REVISIONS	
87	REVISIONS	
88	REVISIONS	
89	REVISIONS	
90	REVISIONS	
91	REVISIONS	
92	REVISIONS	
93	REVISIONS	
94	REVISIONS	
95	REVISIONS	
96	REVISIONS	
97	REVISIONS	
98	REVISIONS	
99	REVISIONS	
100	REVISIONS	



EXCLUDE FROM CALCULATION OF AREA
RESPECTING CALCULATION OF TOTAL FLOOR AREA

andrew reynolds
ARCHITECTS
1000 WEST 10TH AVENUE
DENVER, CO 80202
TEL: 303.733.8800
WWW.ANDREWREYNOLDSARCHITECTS.COM

NO.	DESCRIPTION	DATE
1	CONCEPT DESIGN	10/15/11
2	SCHEMATIC DESIGN	11/15/11
3	PRELIMINARY DESIGN	12/15/11
4	FINAL DESIGN	01/15/12
5	CONSTRUCTION DOCUMENTS	02/15/12
6	CONSTRUCTION ADMINISTRATION	03/15/12
7	POST-OCCUPANCY EVALUATION	04/15/12

PROJECT: **CONSTRUCTION ADMINISTRATION**
CLIENT: **UNIVERSITY OF DENVER**
LOCATION: **1000 WEST 10TH AVENUE, DENVER, CO**
DATE: **03/15/12**

dining area calculation plan

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development is considered not to be consistent with the aims of the Tweed Local Environmental Plan (Tweed LEP). The proposed development is not considered to be consistent with the vision of the shire *“to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.”* The proposed development is for a refreshment room/function centre development in a commercial zone which adjoins residential land. It is considered that the proposed is not compatible with the area’s residential amenity qualities and as such does not comply with the development standards contained within the Tweed LEP.

Clause 5 - Ecologically Sustainable Development

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

The proposal is consistent with the aims and the ecological sustainable development principles outlined within the plan.

Clause 8 (1) - Consent consideration

Clause 8 (1) specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

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

Clause 8(1)(c) Cumulative Impact: The proposed development if approved would be considered to create an adverse cumulative impact in the Shire. The Tweed Shire currently has a sufficient number of properties which is of a more appropriate size that is zoned for commercial purposes that would accommodate this type of development. By approving this application would

encourage other non conforming applications to be lodged. Therefore, the proposed development if approved would establish an adverse cumulative impact in the Shire.

Clause 11 - Zone Objectives

Clause 11 of the LEP relates to zone objectives. The subject land is zoned 3(c) Commerce and Trade under the provisions of the LEP. The primary objective is to:

- *to provide for commercial, bulky goods retailing, light industrial and trade activities which do not jeopardise the viability or function of the sub-regional or business centres*

Secondary objectives:

- *to provide for those retailing activities which are not suited to, or desirable in, the other business zones or which serve the needs of the other businesses in the zone.*
- *to allow for other development that is compatible with the primary function of the zone.*

The subject site is zoned 3(c) Commerce and Trade and refreshment rooms and function centres are permissible in the zone with consent.

The proposed development is considered to be generally consistent with the primary and secondary objectives of the zone.

Clause 13 - Development of Uncoloured Land on the Zone Maps

The Stafford Street Road Reserve is unzoned. The refreshment room/function centre is permissible within the 3(c) zone, and hence is compatible with development permissible in the adjacent zone. It is therefore considered that the proposed complies with this clause.

Clause 15 - Essential Services

The subject site is currently serviced by way of existing stormwater management, electricity, sewer and water connections.

Clause 16 - Height of Building

The subject site currently has a statutory height limit of three (3) storeys. The proposal incorporates a two (2) storey development. Therefore the proposed height is in accordance with the provisions of Clause 16 of the Tweed LEP.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality. The applicant has provided an assessment in this regard. The applicant concludes that there will be positive impacts through the creation of employment. It is however

considered that the proposal will reduce the existing residential amenity. It is therefore considered that there will be negative social impacts in the locality and it is therefore recommended that the proposal be refused.

Clause 34 - Flooding

The design flood level of the site is 7.1m AHD. The proposed finished floor level of the function centre is 7.1m AHD.

According to the Flooding DCP the proposed ground floor use is compliant with the Flood Policy as it is not for a habitable use. Building materials and electrical wiring below the floor level would need to be designed to withstand possible submergence in water, in accordance with Council's standard requirements.

Clause 35 - Acid Sulfate Soils

The site is nominated as containing Class 4 Acid Sulfate Soils according to Council's Acid Sulfate Soils maps. Class 4 soils indicate that Acid Sulfate Soils may be disturbed if works extend greater than 2.0m below natural ground level.

The development is generally located at existing ground level, and above (filling required). The only works required below the existing ground level are footings, drainage and service provision. Works are not anticipated to extend beyond 2.0m below the existing ground level and hence are not anticipated to disturb acid sulfate soils.

Other Specific Clauses

There are no other applicable clauses.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

There are no particular matters for consideration under the North Coast Regional Environmental Plan relating to the construction of a function centre within the Murwillumbah township.

SEPP No. 55 - Remediation of Land

This Policy provides that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines.

Council has adopted a Contaminated Land Policy, which contains details of the information required to be submitted with applications for development. The applicant has provided an assessment against section 3.4.1 of the Policy which outlines that the site is unlikely to be contaminated. It is therefore considered that the proposal complies with the provisions of SEPP No. 55.

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

The Tweed Local Environmental Plan 2010 was on public exhibition from 27th January 2010 until 30 April 2010. In this Draft LEP the site is within the B5 – Business Development Zone. Within the B5 zone a Function Centre is prohibited. It is therefore considered that the Draft LEP 2010 envisages that a function centre within the Business Development Zone is not an appropriate use of the site.

(a) (iii) Development Control Plan (DCP)Tweed Development Control PlanA2-Site Access and Parking Code

Council's DCP Section A2 contains different requirements for car parking dependent upon the proposed use within a development. The applicant has identified that he wants the proposal to operate as a Refreshment Room and Ancillary Function Room. The DCP contains varying requirements for car parking for these uses.

For a function centre the following rates apply:

Customer Car Parking	Staff Car Parking	Delivery, Service Vehicle parking	Bicycle parking
0.3 spaces to each seat	0.5/staff	1 HRV	1/20 seats up to a maximum of 10 spaces

The applicant states that for the function centre component there will be 79 seats and 5 staff. As such the development requires a total of 21 car parking spaces to cater for the Function Centre component of the proposed including a 20% ESD reduction.

The plan provided by the applicant, WD10, provides a furniture layout plan which has 128 seats shown. Based on this it is considered that the proposed function centre component can cater for a much larger number of seats than what the applicant has proposed. If Council imposes a condition to cap the number of people for a function centre from a compliance perspective it will be very difficult to ensure that there will be a maximum of 79 seats. This can lead to numerous compliance issues if there are complaints in the future. It appears that the applicant has configured the calculations of the number of seats to ensure that car parking requirements are met with what car parking is proposed on site.

The proposed development is for a Refreshment Room and Ancillary Function Centre. As such, the following rates apply for a refreshment room:

Customer Car Parking	Staff Car Parking	Delivery, Service Vehicle parking	Bicycle parking
1/7m ² dining area	1/staff peak	1 HRV at	1/5 car park

	operating time		
--	-------------------	--	--

The applicant submits that there is 100.48m² of dining area and 5 staff for the refreshment room which would result in a requirement of 19.3 spaces for the refreshment room component of the proposed. With a 20% reduction for ESD reduction the total number required for the refreshment room component is 16 car parking spaces.

However, it has been calculated that there is approximately 228m² of dining area and 5 staff at peak times. The applicant has created a dining area that is unreasonably undersized for the size of the proposed Gross Floor Area and only incorporates small sections of the floor area. If Council were to approve the proposal with this dining area it would be very difficult to ensure that the area nominated as 'dining area' will be the only area used.

Therefore it is considered that the development requires 31 car parking spaces for a refreshment room component including the 20% reduction for ESD.

There is also a Multi-Purpose room which has not been identified as being utilised for either the Function Centre or the Refreshment Room. It is considered that a number of seats for the function centre component could potentially be increased or the dining area for the function centre could be increased creating a larger number of car parking spaces required.

The applicant has provided a total of 21 onsite car parking spaces which will be provided on-site at Ground Level.

Vehicular access to the proposed ground level undercover car parking will be via an entry-only driveway in River Street and an exit-only driveway in Stafford Street.

The information provided was assessed by Council Engineer's who indicated that the applicant was required to provide all car parking spaces on the subject site or provide adequate arguments for alternate solutions. The applicant provided amended plans on 21 December 2010 with the provision of 21 on site car parking spaces and the removal of the Stafford Street parking option. Council officers determined that the proposed Function Centre and Refreshment Room is still out of scale for the size of the site. The amended plans have not reduced the overall size of the building rather the calculations have manipulated to comply with the number of car parking spaces provided on site. It is considered that the number of car parking spaces required to cater for the proposal is 31 spaces. With this calculation there is still a car parking shortfall of 10 spaces.

As a result of the car parking shortfall and the options being submitted to Council not being appropriate for the proposal, the proposed development is being recommended for refusal based on the lack of car parking to cater for the proposal.

A3-Development of Flood Liable Land

Council's DCP Section A3 nominates that the Design Flood Level for the site is 7.1 metres AHD. The development will have a floor level of 7.1m which is equal to the 1 in 100 year flood level. According to the DCP the proposed ground floor use is compliant with the Flood Policy as it is not for a habitable use. Building materials and electrical wiring below the floor level would be designed to withstand possible submergence in water, in accordance with Council's standard requirements.

A4-Advertising Signs Code

The subject application does not seek approval for any specific advertising signage. A 'Building Identification Sign' will be erected on the eastern facade of the development and a smaller sign 'building identification sign' will be erected on the western facade. This can be conditioned should the application be approved.

A11-Public Notification of Development Proposals

The notification and advertising of Development Proposals is determined by Council's DCP Section A11. The original plans for the proposed development were notified for a period of 14 days from 9 August to 23 August 2010. From this period, there were three submissions received, being 2 objections to the proposal and 1 in favour of the submission. The main points of the objections were car parking which would be adjoining the residential allotment on Stafford Street and noise generated from the proposed use. The support for the proposal was that it would help revitalise the area. There was no re-advertising or re-notification of the amended plans and information received in January/February 2011. Further consideration of the submissions received is outlined later in this report.

A13-Socio Economic Impact Assessment

The applicant has provided an assessment in this regard. The applicant concludes that there will be positive impacts through the creation of employment. It is however considered that the proposal will reduce the existing residential amenity. It is therefore considered that there will be negative social impacts in the locality and it is therefore recommended that the proposal be refused.

B22 - Murwillumbah Town Centre

DCP Section B22 applies to the Murwillumbah Town Centre, which includes the subject site. The DCP was adopted by Tweed Shire Council on 13 May 2008 and came into effect on 04 June 2008. However, the section of the DCP that relates to the subject site has been deferred at this stage. As such, the provisions of the DCP which relate to the subject site are not applicable to the development proposal.

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

Clause 92(a) Government Coastal Policy

Not applicable.

Clause 92(b) Applications for demolition

The applicant supplied a demolition works plan. Council's Building Services Unit has provided Conditions of consent should the application be approved.

Clause 93 Fire Safety Considerations

Not applicable.

Clause 94 Buildings to be upgraded

Not applicable.

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

Context and Setting

The amended proposal was assessed by Council's Environmental Health Services Unit who has provided the following assessment in regards to the acoustic issues, contaminated land, Acid Sulfate Soils, Demolition and Food Safety with the subject proposal in the locality.

"Noise – An amended Environmental Noise Impact Report (ENIR) has been prepared by CRG Traffic & Acoustics Pty Ltd dated 17 January 2010 (crgref:10163a). The report indicates that potential noise impacts from patron activity, amplified music and mechanical plant can be appropriately managed with the implementation of noise mitigation measures. These mitigation measures will be appropriately conditioned.

*In accordance with the 'Planning for Entertainment Guidelines 2009' a restriction in operating hours will be conditioned as a **'REVIEWABLE CONDITION'**. This will give Council the opportunity to review the operating hours of the proposal in light of any reasonable noise complaints.*

The ENIR indicates that patrons utilising the western and eastern decks are predicted to have minor noise impacts if boisterous behaviour is observed during evening and night time periods. This is most likely to occur during functions on Saturday nights. To mitigate noise from the small eastern deck it is proposed to exclude patrons during evening and night time periods. It is proposed to mitigate noise from the larger western deck by controlling patron behaviour. Correspondence from CRG Traffic & Acoustics Pty Ltd dated 12 October 2010 indicates that noise impacts from boisterous behaviour will be managed by complying with conditions of the required liquor licence.

The EINR indicates that amplified music will be below the adopted noise criteria assuming that this activity is undertaken within the function areas

with all windows and doors closed. The amended plans have replaced the bi-fold doors leading out to the western deck with fixed glass and a sound lock door. This amendment is considered adequate to reduce potential noise impacts from amplified music.

The ENIR does not consider potential noise impacts from off-site car parking and patron behaviour leaving the premises which is considered particularly important due to limited on-site parking compared to the potential patron capacity of the proposal for weddings. This will required further consideration in the event off-site car parking is required by the Development Assessment Unit to meet minimum car parking requirements.

Contaminated Land - No indication of contaminating activities from aerial photography (1962, 2000, 2004, 2007 & 2009). Aerial photography indicates residential style structures located on the sites since 1962. Council's Enlighten shows that there are no dip sites within 200m of the subject property. A site inspection undertaken on the 14/09/10 indicates that the southern building has been used for commercial purposes (swimming pool supplies). A statement has been provided by the previous business owner dated 11 March 2011 indicating that packaged pool chemicals were only stored internal to the building. No further considerations required.

ASS – Council's Enlighten indicates the subject site is Class 4 Acid Sulfate Soil. The submitted plans indicate that excavations will not extend below 2m of the ground surface level and therefore ASS are not anticipated to be intercepted. No further considerations required.

Demolition – It is proposed to demolish the existing dwellings. No slab on ground was evident during inspection undertaken on the 14 September 2010 and therefore pre-demolition testing is not required. In the event that the application is recommended for approval conditions will be applied relating to the appropriate management and disposal of asbestos.

Food Safety – Limited details have been provided relating to the construction of the food premises. Further details would be required prior to issue of a construction certificate in the event the proposal was recommended for approval.”

Considering the above information the development application is conditionally supported by Council's Environmental Health Unit.

Access, Transport and Traffic

Access, transport and traffic have been discussed under the Development Control Plan Section A2 above. Due to the lack of sufficient car parking to cater for the proposed development the proposal is recommended for refusal.

Stormwater

An information request was sent out on 18 October 2010 with 13 items relating to the stormwater issues on site. The proposed building straddles a drainage flow path where the toe of the flood levee meets the natural surface and a pipe connects this runoff to Council's drainage system in Stafford St at the side boundary of No 11 River St. The DAP minutes for this development recognise and state that "Any proposal to alter the gully would need to be supported by an engineering design". No such design was provided as negotiations between Council and the applicant resulted in no clear stormwater management that could be implemented.

Amended plans were submitted on 11 February 2011.

Council's Development Engineer has indicated that the information provided still has issues however these issues can be overcome with the provision of an on-site detention basin. Council's engineer has provided the following comments:

"Stormwater Issues

It is recommended that a condition requiring on-site mitigation of the development's stormwater be applied, such that stormwater works through the levee can be avoided.

Flooding Issues

A revised detail for the proposed landing area onto the levee has been provided. This shows a removable platform supported on the landward side by a structural staircase. There are no footings required within the levee crest, although the platform would bear onto the embankment.

This is generally acceptable, and a consent condition is recommended to specify engineering details needed for the construction certificate."

It is therefore considered that the proposed stormwater issues can be overcome with the provision of conditions.

(c) Suitability of the site for the development

Surrounding Landuses/Development

As stated previously it is considered that the scale and type of development will create negative impacts on the surrounding residential amenity. The issues relating to car parking, acoustics and stormwater cannot be overcome with the development in its current form. It is therefore recommended that the application be refused.

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

The development application was referred to the Department of Environment, Climate Change and Water as the proposal includes works within 40m of a waterway. The Department responded on 2 September 2010 with no further assessment by the NSW Office of Water is necessary. It is therefore considered that the proposed development is consistent with the Water Management Act 2000.

Public Submission

The original plans for the application were placed on exhibition for fourteen (14) days commencing Monday 9 August 2010. From this period there were two (2) submissions against the proposal and one (1) in support of the application. The amended plans and information received in January/February 2011 were not readvertised or renotified. The officers' response to the issues raised in the submissions to the original proposal are provided below:

Issue	Comment	Assessment
Car Parking along Stafford Street	<i>The proposed function room/convention centre would not only reduce access to the rear of my property but will in effect bring the car park to within 3-4 metres of my home with cars parking all along the northern border of my home and all headlights leaving the premises will be directly shone at my home up until 12.30am on weekends.</i>	It was considered that the proposed car parking along Stafford Street was unacceptable as it would result in a negative impact on the residential amenity of the adjoining dwelling. The applicant has provided an amended proposal which removed the car parking along Stafford Street. As such this is no longer an issue and does not warrant refusal.
Noise from people leaving	<i>The noise of people leaving and car doors slamming into the early hours would make my home neither liveable or rentable.</i>	It was considered that the proposed function centre would result in an unacceptable level of noise and would result in a negative impact on the residential amenity of the adjoining dwelling. Council's Health Services unit have provided conditions of approval and as such this issue does not warrant refusal.
Noise from the use	<i>Great care has been taken to supply noise assessment reports but these reports while stating some current noise levels in the area fail to give any definite facts as to noise generated by the proposal and in fact state that no car park survey has been undertaken, they then go on to say the main onus of noise control will be on</i>	It was considered that the proposed function centre would result in an unacceptable level of noise and would result in a negative impact on the residential amenity of the adjoining dwelling. Council's Health Services unit have provided conditions of approval and as such this issue does not warrant refusal.

Issue	Comment	Assessment
	<p><i>the staff to maintain customers boisterous activity.</i></p> <p><i>Noise from DJ's and performers emanating from the premises will not and cannot be controlled so as not to interfere with the surrounding residents peace.</i></p>	
Stafford Street car park	<p><i>We believe that the development of that part of Stafford St as a car park will block or at least restrict access to our property and also impede access of emergency vehicles should the need arise. There is no access for repairs and maintenance to be carried out on the rear of several of the buildings to the south of the development other than via the levee bank.</i></p>	<p>This issue should not be taken into consideration as access to the site is maintained from the River Street Frontage. Access to the rear of the site is not a town planning issue and as such does not warrant refusal.</p>
Car Parking	<p><i>The capacity of the restaurant/function centre is greater than the number of car spaces provided in the proposal. Despite the observations of the Traffic Report that there is ample on street parking, during significant events such as church services, funerals, building an maintenance in the vicinity, residents currently have difficulty with parking outside their homes. This situation will only be exacerbated by the development.</i></p>	<p>It is considered that the number of car parking spaces provided for the proposal is not sufficient to cater for the development. As such the proposed development is recommended for refusal.</p>
Noise	<p><i>In the Acoustic Report that noise from amplified music is "a prediction only and will need to be tested onsite at construction completion." By the time construction is completed it may well be too late to modify the sound impacts.</i></p> <p><i>We are also concerned about boisterous and antisocial behaviour of patrons. The levee bank gives unrestricted access to dwellings to the south and intoxicated persons are not going to know or care that this is private property where</i></p>	<p>It was considered that the proposed function centre would result in an unacceptable level of noise and would result in a negative impact on the residential amenity of the adjoining dwelling. Council's Health Services unit have provided conditions of approval and as such this issue does not warrant refusal.</p>

Issue	Comment	Assessment
	<i>residents want to go about their lives in peace. Staff at the venue may be able to influence patrons while they are on the premises but once they leave there are no controls.</i>	

(e) Public interest

This application is not considered to be in the public interest. Approval of this development would undermine the importance of the South Murwillumbah area, create a dangerous precedent for Clause 8(1) of the Tweed LEP 2000 and not result in a good planning outcome. For these reasons the application is recommended for refusal.

OPTIONS:

1. Refuse this application.
2. Grant in-principle approval and require a further report to Council providing recommended conditions of development consent.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination by Council the applicant has a right to appeal to the NSW Land & Environment Court.

POLICY IMPLICATIONS:

It is the officers view that should this application be approved, it will set an unreasonable precedent for interpretation of Clause 8(1) of the Tweed LEP 2000. Additionally any approval that does not provide adequate car parking spaces to cater for the proposal would compromise the integrity of Council's Development Control Plan Section A2.

CONCLUSION:

The proposal before Council is not considered to be a satisfactory use for the site. The site constraints and zoning of the land make it imperative that whatever development occurs on the site will create an attractive design that will function efficiently and obviously be economically successful. The proposed design does not address these constraints effectively despite Council's requests for further information. The proposed use and design is not considered satisfactory thus warranting refusal of the application.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

