



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland (Mayor)

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

Agenda

Planning and Regulation Reports **Ordinary Council Meeting** **Tuesday 15 November 2011**

held at Murwillumbah Cultural and Civic Centre
commencing at 3.30pm

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

ORIGIN:

Director Planning and Regulation

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes the October 2011 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/refused where a variation in standards under SEPP1 has occurred.

DA No.	DA10/0505
Description of Development:	Three (3) lot subdivision
Property Address:	Lot 9 DP 583345 No. 70-76 Reserve Creek Road, Kielvale
Date Granted:	20/10/2011
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	1(a) Rural, 1(b2) Agricultural Protection
Justification:	Proposed lot 3 includes approximately 4265m ² of 2(d) zoned land and is inclusive of the totality of 1(a) and 1(b2) zoned land on the subject site (30.575ha) with a proposed area of 22.78ha. Approximately 21.75ha of this land is zoned 1(a) and 6100m ² is zoned 1(b2).
Extent:	The variation to the 40ha minimum lot size for the 1(a) zone = 45.64%. The variation to the 40ha minimum lot size for the 1(b2) zone = 98.47%. These variations are existing on the current Lot 9. The extent of variations will neither reduce nor increase following this subdivision proposal.
Authority:	Director General of the Department of Planning

DA No.	DA11/0278
Description of Development:	Shed
Property Address:	Lot 6 DP 777940 No. 1282 Tyalgum Road, Tyalgum
Date Granted:	21/10/2011
Development Standard to be Varied:	Clause 24 - Set backs to designated roads
Zoning:	1(a) Rural
Justification:	Variation: 80% of the 30m front building setback to a designated road. Justification: Council has previously approved fill to the property for a shed and dwelling pad 6m from Tyalgum Rd front boundary (ref DA08/1137) due to the allotment being flood affected.
Extent:	Request to construct a 12m x 12m rural farm shed with an open 3m carport bay with a 6m front building line to Tyalgum Rd
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA11/0402
Description of Development:	Two (2) lot rural subdivision
Property Address:	Lot 4 DP 621378 No. 65 Pinnacle Road, Pumpenbil
Date Granted:	27/10/2011
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	1(a) Rural
Justification:	The proposed development incorporates a SEPP 1 Objection as the proposal not meeting the minimum 40 hectare allotment size requirement in this land zone.
Extent:	Less than 10%
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA11/0447
Description of Development:	Dwelling
Property Address:	Lot 391 DP 1148511 No. 175 Overall Drive, Pottsville
Date Granted:	18/10/2011
Development Standard to be Varied:	Clause 16 of TLEP and Clause 32B of NCREP
Zoning:	2(a) Low Density Residential
Justification:	The applicant has requested a Variation to the requirements of Clause 32b of the NCRP. As the proposed two storeys dwelling on the property will cast a shadow on the foreshore after 7pm midsummer. The applicant contends that the topography of the area is a significant factor as the nearby hill intercepts the sun and shadows the foreshore which negates any impact from the dwelling.
Extent:	The dwelling will cast a shadow on the open waterfront open space behind the dwelling After 6.30pm mid - summer and will have negligible impact on the open waterfront area.
Authority:	Tweed Shire Council under assumed concurrence

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

Nil.

9 [PR-CM] Development Application DA11/0164 for alterations, additions and part demolition of three flats to construct a three storey dwelling at Lot 2 DP557216 26 Tweed Coast Road Hastings Point

ORIGIN:

Building & Environmental Health

FILE NO: DA11/0164 Pt2

UPDATED INFORMATION:

At its meeting of 18 October 2011 Council resolved the following in respect of DA11/0164, No. 26 Tweed Coast Road, Hastings Point:

1. A workshop be held for Councillors with regards to which DCP applies in light of an unforeseen inconsistency; and
2. This item be deferred to the next Council meeting after the Workshop.

Since the last meeting, Council officers have been made aware by the applicant that an earlier, out-dated version of the DA plans was included in the officers' report to Council.

The plans contained within the October Business Paper were the first 'amended' plans received by Council for this DA, and not the final version, and therefore some of the written content of the report would not have matched with the out-dated plans.

This report has corrected the error by replacing the plans with the correct version, and no change is required to the written content of the report to the October Council Meeting, as provided below.

SUMMARY OF REPORT:

An application has been received to demolish a large part of the old existing residential flats on 26 Tweed Coast Road and construct a substantial three storey dwelling. The property is a battleaxe block situated on the east side of Tweed Coast Road Hastings Point and is affected by a number of constraints such as coastal hazard erosion lines and bushfire.

The application was notified to adjoining & nearby property owners (45 letters) and seven (7) submissions were received objecting to the proposal. The objectors' main concerns with the proposal were the overbearing bulk of the dwelling, overshadowing, loss of view, possible damage during construction to surrounding property, loss of access to 'right of ways' and non compliance with the Hastings Point Development Control Plan B 23. After consultation with key parties the proposal was modified from the original submission and re-notified with no further submissions being received.

The amended design improved some of the impacts but was likely to still have considerable adverse impact on the amenity of the adjoining property to the south and did not comply with the Hastings Point Development Control Plan B 23. The applicant further modified the design and submitted a final proposal that was notified again to the immediate neighbours and is now the subject of this report.

The proposal is now considered a reasonable development given the specific constraints of the site and while not fully compliant with the Hastings Point Development Control Plan B 23, the extent of non-compliance is not likely to contribute significantly over and above a fully compliant development in regard to adverse effect on the amenity of the surrounding property occupants or to community in general. The proposed building provides a transitional effect across the site between the existing three story units to the north and the lower property to the south.

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

RECOMMENDATION:

That Development Application DA11/0164 for alterations, additions and part demolition of three flats to construct a three storey dwelling at Lot 2 DP557216 26 Tweed Coast Road, Hastings Point 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 Johnston EP:01 Issue V, Johnston DA:01 Issue V, Johnston DA:02 Issue V, Johnston DA:03 Issue V, Johnston DA:04 Issue V, Johnston DA:04A Issue V and Johnston DA:05 Issue V prepared by Brian Kenny and dated 29 August 2011, 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. **The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.**
[GEN0300]
4. **The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate. The footing design is to incorporate design principles as detailed in the structural design intent certificate by Mark Traucnieks consulting Engineers dated 8th March 2011 to address potential coastal erosion influences.**
[PCC0945]

5. The existing brick barbeque on the foreshore are east of the site is to be removed.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. 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]

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

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

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]

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

[PCW1065]

9. Dilapidation reports detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and driveway are to be prepared and certified by a suitably qualified and experienced structural engineer. The reports are to be submitted to Council prior to commencement of ANY works on the site.

[PCW0775]

10. Prior to the commencement of work on the stormwater system a site inspection is to be arranged with the Principal Certifying Authority to discuss site drainage.

[PCW0995]

11. Prior to commencement of any work on the site a construction management plan is to be submitted to and approved by the Principal Certifying Authority. The plan is to detail how the construction will manage deliveries, general construction vehicle movement, concrete deliveries, traffic management, and in particular the minimisation of disruption to the residential units that share the driveway access.

[PCWNS01]

PRIOR TO COMMENCEMENT OF WORK

12. 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]

13. 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]

14. 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]

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. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

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]

18. 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]

19. During construction the Principal Certifying Authority is to be provided with a Registered Surveyors' floor level certificate at each floor platform stage and when the roof framework is in place, to confirm that the height of the building is proceeding in accordance with the approved plans.

[DURNS01]

20. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake the works.

[DUR0675]

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

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]

22. Construction and management of the building shall comply with Section 1.0 of the Bushfire Threat Assessment Report by BCA Check Pty Ltd dated 15th February 2011 and all boundary fences are to be constructed of non-combustible materials.

[DURNS02]

DURING CONSTRUCTION

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

[DUR2705]

24. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

25. 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]

26. 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]

27. 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]

28. 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]

29. 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]

30. 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]

31. 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]

32. 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]

33. **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]

34. **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]

35. **Plumbing**

(a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.

(b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

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

[DUR1945]

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

[DUR2515]

38. **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]

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

[DUR0445]

40. **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]

41. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

42. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

43. Upon completion of all works on the site and prior to the issue of an Occupation (including interim) / Subdivision Certificate, a further dilapidation report is to be prepared and certified by a suitably qualified and experienced structural engineer detailing the current general condition including the structural condition of the adjoining buildings / sites, infrastructure and roads. The dilapidation reports shall take into consideration the findings of the original reports and provide to Council the written acceptance of the adjoining / adjacent owners confirming agreement that no damages have occurred / repairs carried out are acceptable.

[POC0825]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

44. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

45. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.

The street number is to be on a white reflective background professionally painted in black numbers 100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

[POC0265]

46. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

USE

47. 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]

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

[USE0505]

REPORT:

Applicant: Mrs K Johnston
Owner: Mrs K Johnston
Location: Lot 2 DP 557216, No. Tweed Coast Road, Hastings Point
Zoning: 2(b) Medium Density Residential
Cost: \$975,000

BACKGROUND:

The property is zoned 2(b) Medium Density Residential under Tweed Local Environmental Plan 2000 and is located on the eastern side of Tweed Coast Road Hastings Point in the Peninsula Street & Northern Entry Precinct. The property is a battleaxe block containing three existing small residential units totalling approximately 193m² in floor area.

An application has been received to demolish part of the existing structures and to construct a substantial three (3) storey dwelling on the subject property.

The submitted proposal has been designed to maintain the floors and walls of the existing brick and concrete units at the east end of the site to utilize the existing resource minimising waste and construction costs. An engineer's evaluation of the viability of the existing structure was provided to validate the design brief in this regard.

The application was notified to 45 adjoining & nearby property owners and seven (7) submissions were received objecting to the proposal. The objectors' main concerns with the original proposal were the overbearing bulk of the dwelling, overshadowing, loss of view, possible damage during construction to surrounding property, loss of access to 'right of ways' and non-compliance with the Hastings Point Development Control Plan B 23. After consultation with key parties the proposal was modified from the original submission and re-notified with no submissions being received.

The amended design improved some of the impacts but was likely to still have considerable adverse impact on the amenity of the adjoining property to the south and did not comply with the Hastings Point Development Control Plan B 23. After further consultation with Council's Building Surveyor the applicant further modified the design and submitted a final proposal that was notified again to the immediate neighbours and is now the subject of this report.

The original submitted design has been modified by the applicant in response to the objectors and Council officers concerns by:

- Reducing the overall height by one (1) metre and the southern side wall plate height by 830mm. Achieved by lowering roof pitch, lowering ceiling height on top floor by 300mm and lowering floor level of third storey by 300mm.
- Reduction of the third storey by compressing the floor plan four (4) metres towards the west and realigning 1.5 metres to the north.
- Adjusting the proposed finished ground level adjoining the building and in relation to the existing ground level so as to provide a stable low impact boundary interaction and be able to measure building height more favourably.

These modified plans are now the plans considered in this report and although no submissions were received to the re-notification it is recognised by thorough examination of

the modified plans that some of the concerns previously raised in regard to non-compliance with the DCP B23 would remain.

The proposed building provides a transitional effect across the site between the existing three story units to the north and the lower property to the south.

The proposal has one main area of deviation from the Hastings Point Locality Based Development Code - DCP section B 23 in that the height is generally 500mm higher than prescribed.

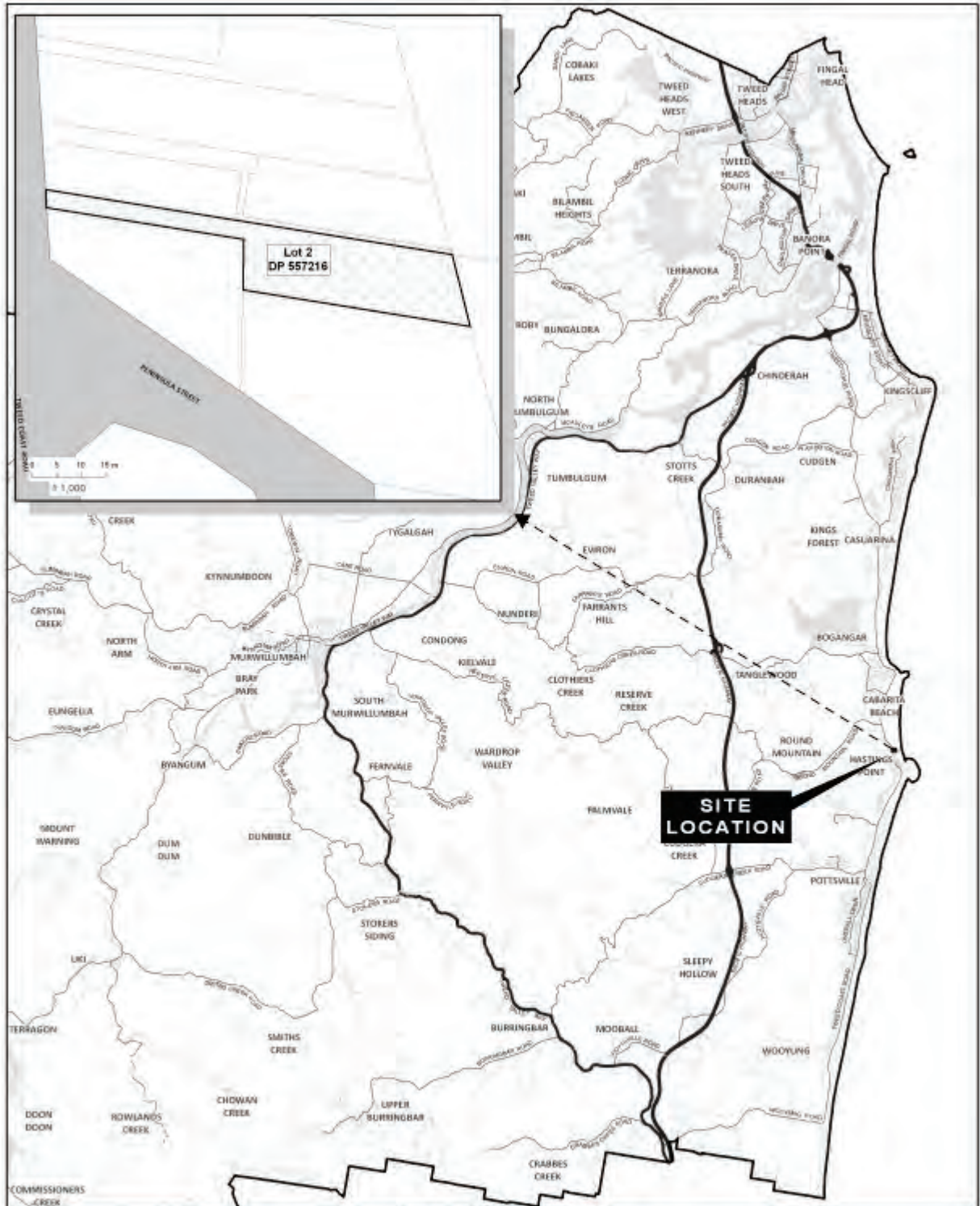
The proposal also has one main deviation from Council's DCP Part A1 in that the rear boundary setback to the foreshore boundary is 2.5m and not the required 5.0m-8.0m.

As an 'addition' variations can be considered and the proposed encroachment allows the landowner to take full advantage of the north easterly ocean/beach views beyond the adjacent three storey building to the north.

In this proposal the extent of works is such that the development could (from Land & Environment Court case history) be determined as new work not additions and therefore could be compelled to comply with all controls.

It seems reasonable however in this proposal to apply the requirements of Council's Development Control Plans as far as practical.

SITE DIAGRAM:



Locality Plan

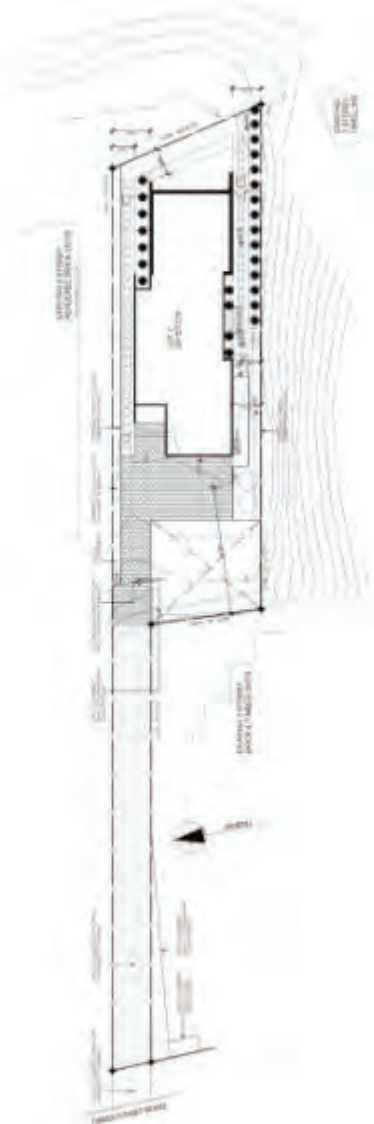
Lot 2 DP 557216
No.26 Tweed Coast Road, Hastings Point

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs (which may be incurred in a search of data being accessed) in any way and for any reason. This information is supplied for the general public and is to be considered indicative and does not constitute any offer. It should not be used for any commercial purpose and prior to any transaction a "find before the buy" enquiry must be made by calling 1300 767 666. The information contained in this document remains valid for 10 days only from the date of supply.</p>	<p>Copyright © September, 2011 © Land and Property Management Authority (LPM) & Tweed Shire Council Boundaries shown should be considered approximate only.</p> <p>Scale: 1:145,000 @ A4 Portrait GDA 94 Map 26 of Northern Table Top</p>	<p>Civic and Cultural Centre 3 The Judges Road Murwillumbah NSW 2484 PO Box 515 Murwillumbah NSW 2484 Tel: (02) 6670 2400 / 1369 292 872 Fax: (02) 6670 2429 www.tweed.nsw.gov.au planning@tweed.nsw.gov.au</p> 
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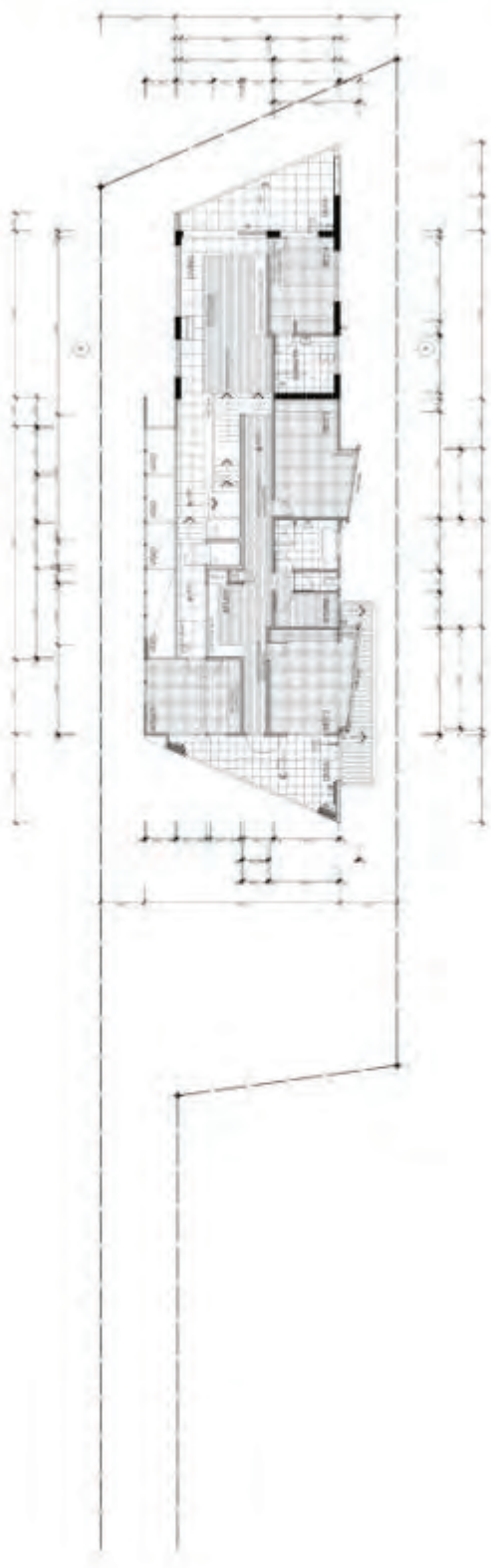


STORMWATER MANAGEMENT PLAN

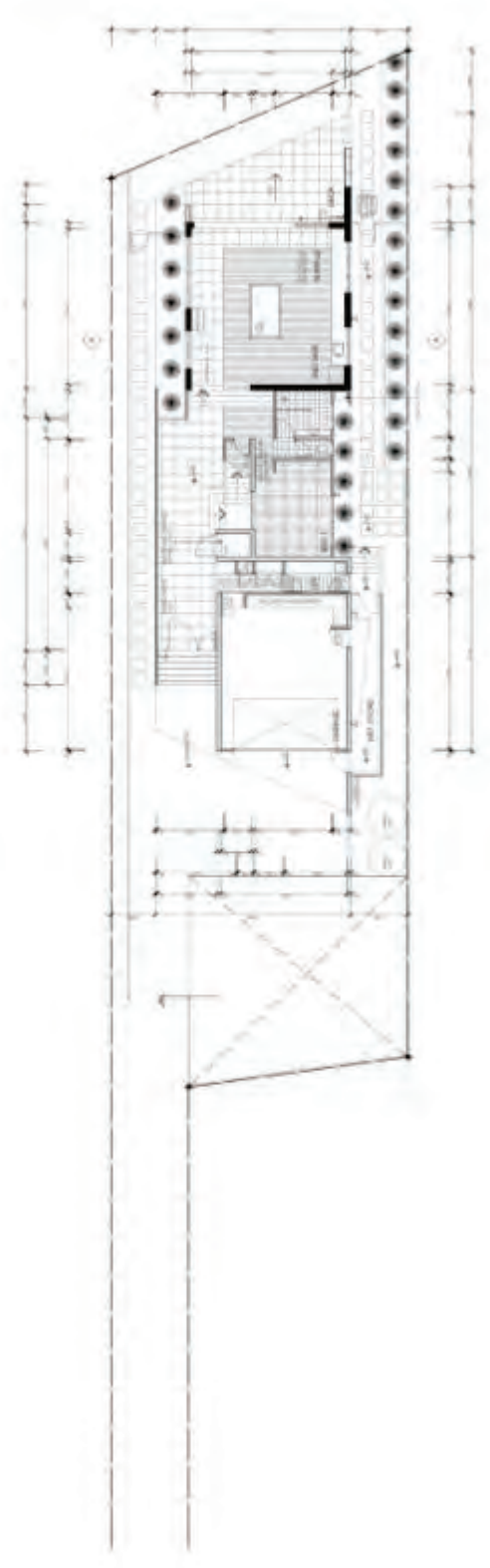


SITE PLAN

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PROPOSED FIRST FLOOR PLAN

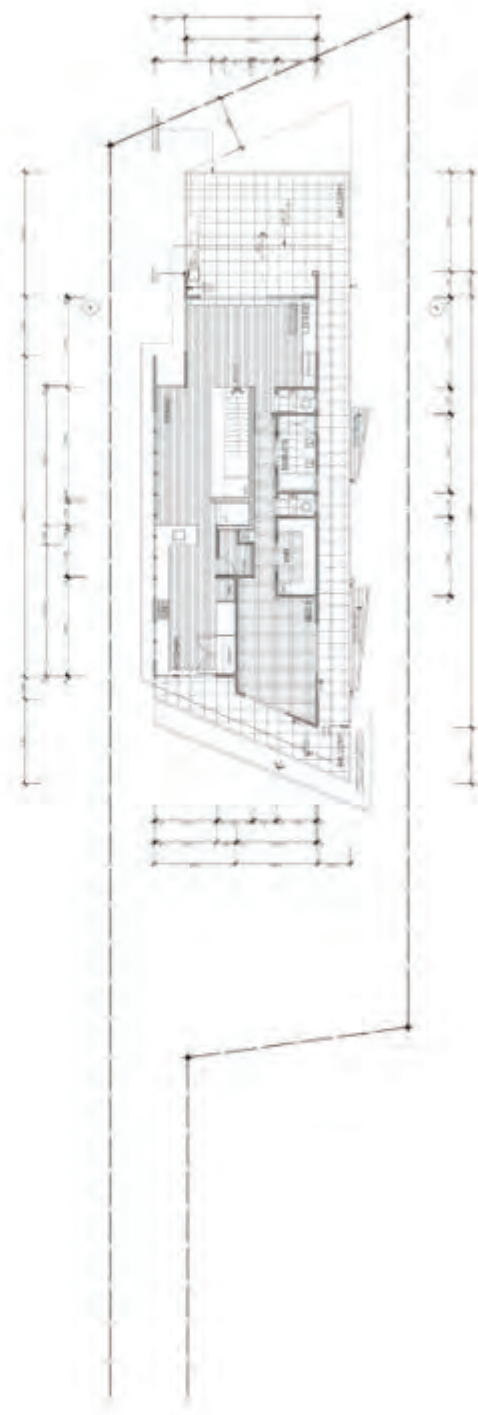


PROPOSED GROUND FLOOR PLAN

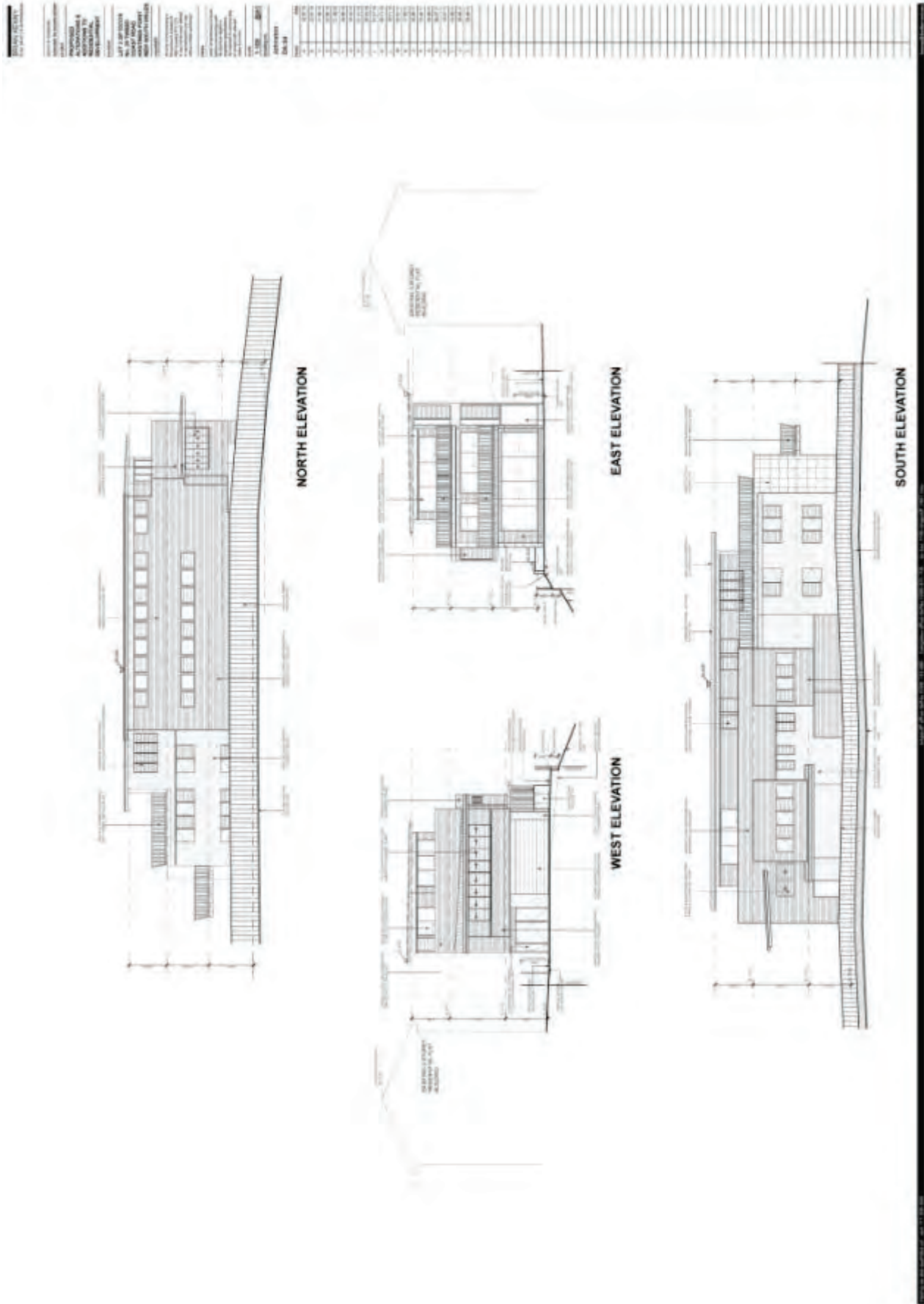
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PROPOSED ROOF PLAN



PROPOSED SECOND FLOOR PLAN





The following photos are provided of the site taken by Council's assessing officer.



Figure 1- view from headland



Figure 2- view from beach.



Figure 3 –view from beach waterline at low tide



Figure 4-West view of existing units foreground building to be partly retained



Figure 5- view north from dwelling entry of adjoining property to south



Figure 6 – view North West from yard of adjoining property to south



Figure 7-East view- single storey unit, garage and carport to be demolished



Figure 8 View north from main pedestrian path in village



Figure 9 View of adjacent three storey units.

ASSESSMENT:

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 numerous site visits by Council's assessing officer have been undertaken to all of the surrounding properties and viewfields in Hastings Point, involving many hours. Impacts have been discussed by phone with many of the objectors and concerns raised have been discussed in meetings with the owner and her representatives.

The assessment also utilised the expertise of Council Senior Urban Design Planner who gave assistance in gauging the impact of the development in the context of the Hastings Point Locality Based Development Code- DCP Section B 23.

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

Part 1 Clause 4 - Aims of the Plan

The aims or objectives of the plan are not compromised by the proposed development

Clause 5 – Ecologically sustainable development

For the scale of this development compliance with the submitted BASIX certificate achieves the objective of this clause.

Clause 8 Consent considerations

Zone Objectives

The subject site is zoned 2(b) Medium Density Residential. The primary objective of the zone is to encourage development for the purpose of medium density housing that achieves good urban design outcomes. The secondary objectives relate to allowance for non residential and tourist development and to discourage the under-utilization of the land for residential purposes, particularly close to the Tweed Heads sub region area.

The proposed development is not consistent with the primary objective of the zone but it has been argued by the applicant that there are a number of constraints to the site that justify the single dwelling being proposed and is therefore not antipathetic to the objectives of the zone.

The coastal hazard 2050 hazard line is positioned on the eastern boundary and the battleaxe site is bushfire affected to BAL 40 & BAL 29. These constraints alone are reasonable argument to limit the risk exposure to a single occupancy. Also a past development of 4 units to the west was established from the original parcel that the subject site was a part of, so it can be argued that medium density has already been achieved.

Cumulative Impacts

The proposed building at three storeys is consistent with other buildings in the area and is unlikely to be dominant amongst the Peninsula Street & Northern Entry Precinct when viewed from a distance and is within the view field boxes contained in the Visual Settings part of Council's DCP -B23.

There is an argument for cumulative impact on the locality in that the building does not comply with the height restrictions of the Hastings Point Locality Based Development Code- DCP section B 23 or rear setback provisions of DCP – A1. That argument can be countered by the unique considerations of this site as discussed further in the report.

Part 3 Clause 15 - Essential Services

All essential services are available within the area.

Clause 16 - Height of Building

The proposal complies with the three (3) storey control under the TLEP 2000.

Clause 17 - Social Impact Assessment

A social impact assessment is not required given the relatively minor nature of the proposal being satisfied that it is unlikely to have a significant social or economic impact in the locality.

Part 7 Clause 35 - Acid Sulfate Soils

The site is not affected by acid sulfate soils.

Clause 36 - Coastal erosion outside Zone 7(f)

1) Objective

- *to protect land that may be subject to coastal erosion (but not within Zone 7 (f) from inappropriate development.*
- (2) *In determining whether to grant consent to development involving the erection of a building or the carrying out of a work at or above the surface of the ground on land that in the consent authority's opinion may be subject to coastal erosion, the consent authority must:*
- (a) *consider*
 - (i) *the likelihood of the proposed development adversely affecting the behaviour or being adversely affected by the behaviour of the sea, or of water in an arm of the sea or any other body of water, and*
 - (ii) *the likelihood of the proposed development adversely affecting any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea, any arm of the sea or any other body of water, and*
 - (iii) *the likelihood of the proposed development adversely affecting the landscape or scenic quality of the locality, and*
 - (iv) *the potential impacts of climate change including sea level rise.*

The issues requiring consideration in this clause have been discussed further in the report under the heading of 'Any coastal zone management plan' and are considered satisfied.

Clause 39A – Bushfire protection

The issues requiring consideration in this clause have been discussed further in the report under the heading of 'Suitability of the site for the development' and are considered satisfied.

Other Specific Clauses

None apparent

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B – Development Control – coastal lands

This clause controls development which could impede public access to a foreshore or overshadow the foreshore before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).

It is recognised throughout all coastal areas that existing urban areas will have some impact in regards to the shadow of the foreshore.

In this case a State Environmental Planning Policy No.1 objection has been included in the application and the facts and argument presented are acceptable.

The extent of the shadow is limited to the vegetated dunal area and does not extend to the beach. In addition, the shadowed areas comprise managed grasslands and are not embellished with playground equipment, picnic facilities, etc and are therefore not used intensively by the public. The shadow diagrams submitted are typical of development along the coastline.

Clause 43 - Development Control- residential development

The proposed development is consistent with the objectives of the North Coast Regional Environmental Plan 1988 Division 2 for Urban Housing requiring broader consideration of roads, access to services, transport, site erosion and of maximising density.

SEPP No 55 – Remediation of Land

There is no evidence or past land use activity that would suggest that the land is contaminated.

SEPP No 71 – Coastal Protection

The development is generally consistent with the specific provisions and intent of Clause 8 of SEPP 71.

NSW Coastal Policy, 1997

The proposed dwelling is not inconsistent with the Coastal Policy

SEPP (Building Sustainability Index: BASIX) 2004

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

(a) (ii) Any proposed Instruments

Draft Tweed Local Environmental Plan 2011 proposes similar controls to the site as currently exist. The Draft Plan is due to be re-exhibited latter this year and needs no further consideration in the context of the proposed development.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Section A1 of Tweed DCP applies and includes detailed parameters for improved site outcomes including the provision of height controls, 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 goes on to set the minimum and maximum standards required for this Building Type.

The DCP envisages primarily up to two storeys but does not prohibit three storeys, although it follows, that they demonstrate compliance with the mandatory controls of the DCP and must be permissible by 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.

The proposed building in its original form attracted many submissions objecting to the proposal particularly relating to the bulk and scale of the proposed dwelling. The final plans the subject of this report have addressed reasonably the concerns and are now considered to satisfy the objectives and controls of chapter 1 above.

More detail is provided in the latter sections of this report.

Chapter 2- Site and Building Design Controls

Design Control 1-Public Domain Amenity

Streetscape and Public Views and Vistas

The proposed development is to be constructed on a battleaxe block and will not be readily visible from the street or other public domain. Because of its location the proposed dwelling will not compromise the objectives of this control.

Design Control 2 -Site Configuration

Deep soil zones (DSZs)

An area of deep soil zone is available at the rear and is considered adequate given the location of the existing building to be retained.

The front deep soil zone is compliant with the controls as applied to a battleaxe block.

Hastings Point Development Control Plan B 23- adjustments

Soft landscaping is required to the rear deep soil zone:

On this site where the existing building is being maintained there is little area available and any significant planting would be in conflict with the Planning for Bushfire Protection objectives for asset protection zones.

Impermeable Site Area

The area of the site is 784m² subsequently the maximum impermeable site area permitted at the completion of the development will be 60%. From the plans submitted the development will create an impermeable area of approximately 58% and will comply with the design control. This will enable water to adequately infiltrate on the site.

External Living Areas

The dwelling makes provision for compliant external living areas in the form of balconies on the second and third level and ground floor deck to the east. These have been designed to gain solar access and views to the north east around the existing three unit building to the north and views to the west.

Hastings Point Development Control Plan B 23- adjustments

Screening is required to the balconies that overlook neighbouring lots:

There is no screening proposed to the sides of the eastern balconies. Northern solar benefits and north easterly views would be greatly impacted if screening was added. It is also typical for screening to be placed on the south side only of a property as screening the north facing elevations would impede solar access.

Landscaping

There is little existing landscaping on the site and some planting is proposed on the north and south elevations of the site but limited so as not to increase bushfire risk or impact on available views and solar access.

Hastings Point Development Control Plan B 23- adjustments

The plan encourages native species landscaping:

Limited opportunity exists due to the bushfire risk and the existence of a pedestrian 'Right of way' along the northern boundary. The front deep soil zone can accommodate an area of indigenous shrubs consistent with the plan.

Topography, Cut and Fill

The property is a generally flat site and the proposed filling and boundary retaining adjustments comply.

Design Control 3 -Setbacks

The proposal is consistent with or in excess of the setback controls of DCP A1 for additions; having a 2.0-3.5 metres northern boundary setback, 11-15 metres western boundary setback, 2.5 metre eastern boundary setback and 1.1-4.2 metres from the southern boundary.

Hastings Point Development Control Plan B 23- adjustments

The 8.0m landscape setback in Fig.4.6 of DCP B-23 does not apply to single dwellings.

The proposal also has one main deviation from Council's DCP Part A1 in that the rear boundary setback to the foreshore boundary is 2.5m and not the required 5.0m-8.0m.

As an 'addition' variations can be considered and the proposed encroachment allows the landowner to take full advantage of the north easterly ocean/beach views.

In this proposal the extent of works is such that the development could (from Land & Environment Court case history) be determined as new work not additions and therefore could be compelled to comply with all controls.

It seems reasonable however in this proposal to apply the requirements of Council's Development Control Plans as far as practical.

The 2.5m rear boundary setback is considered reasonable.

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 two off street car parking spaces provided behind Council's building line and vehicle access to these spaces is considered adequate.

Hastings Point Development Control Plan B 23- adjustments

Proposal complies with additional controls.

Design Control 5 -Height

Building Height

The proposal complies with the three (3) storey control under the TLEP 2000.

The development has a proposed nominated overall height of 8.60m above finished ground level(19.0m AHD) and a nominated wall plate height of 7.80m (18.67m AHD).

This is consistent with DCP Part A1 but generally 500mm higher than the Hastings Point DCP B23.

Hastings Point Development Control Plan B 23- adjustments

The proposed dwelling does not comply with the maximum overall building height of 8.0m and maximum wall plate height of 7.5m affecting the subject site under Section B23 of Tweed DCP. It should be noted at this point that had a multi-unit development been proposed as permissible on the site, then the maximum building height allowable would be 10.0m

The owners brief in the design was to maintain most of the existing two storey building and this has meant that the floor levels of the existing building have to a large extent dictated the levels and height of the new design.

The impact will be that the upper level unit of the building to the north may lose a small section of rural view to the south but will maintain the majority of view in all other directions. Importantly the view from the living areas to the headland will

be maintained as the third storey level is setback 6.0m from the eastern boundary.

The impact of the increased wall plate height is offset on the southern boundary by the fact that the third storey wall has been setback 4.2m from the southern boundary. This increased southern boundary setback of the upper storey has been critical in the consultation process.

It is considered that the increased wall plate height has no significant impact on the property to the south greater than a fully compliant building due to the increased boundary setback.

Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a ceiling height of 2.4m which was reduced from 2.7m in the original plans so as to reduce the overall building height. The proposal complies with the DCP.

Design Control 6- Building Amenity

Sunlight Access

The dwelling includes private open space by the provision of balconies orientated northeast, east and west and therefore will receive sufficient access to sunlight.

The proposed dwelling will overshadow the adjoining southern side property. The shadow diagrams submitted with the application show the extent of overshadowing of the 2nd redraft design which has not been required to be redrafted on the basis that the reduced building size will lessen the extent of shadow. The shadow diagrams indicate that some over shadowing will occur to different portions of southern property during in the winter months as the sun moves through the sky. Shadowing is more extensive in the late afternoon as is to be expected from most developments. The prescriptive requirement of this control is to ensure for neighbouring properties,

- Sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9 am and 3pm on June 21.
- Windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.

The proposed dwelling complies and exceeds the sunlight requirements above.

Visual Privacy

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

The building has limited windows on the north side and those on the south side are screened by the existing landscaping of the property to the south.

These design features will provide for reasonable protection of visual privacy to the lower properties while at the same time allowing the building owner to take full advantage of the primary ocean views.

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 impact will be that the upper level unit of the building to the north may lose a small section of rural view to the south but will maintain the majority of view in all other directions. Importantly the view from the living areas to the headland will be maintained as the third storey level is setback 6.0m from the eastern boundary. The primary views of the upper unit to the north will not be impacted and the principles of view sharing are considered satisfied.

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 has been sited on the property to optimize coastal views and solar access and complies with the objectives of this control.

Building separation

The proposed building has been sited with generous side boundary setbacks with no primary windows/doors of living areas orientating to side boundaries and complies.

Design Control 7 – External Building Elements

Fences and Walls; Front, Side and Rear

The submitted architectural plans indicate some boundary fencing is proposed and complies with the controls of the plan. It is noted that timber paling fencing is proposed which is in conflict with the bushfire requirements and has been conditioned to be constructed of non-combustible materials.

Hastings Point Development Control Plan B 23- adjustments

Proposal complies with the additional controls for fencing.

Roof

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.

Hastings Point Development Control Plan B 23- adjustments

The proposed roof complies with additional controls to the extent necessary taking into account the height limits imposed.

The elevations, materials and detailing, colour and form are all consistent with the additional controls and the emerging trends of redevelopment in the area.

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 no pool proposed as a part of this application

Design Control 11- Tennis Courts

There is no tennis court proposed as part of this application

Design Control 12 - Floor Space Ratio (FSR)

Under Tweed DCP A1 the maximum FSR applicable for this proposal is 0.65:1 for the dwelling as the site has an area of 784m² and the site coverage is less than 50%. The proposed FSR for the dwelling is 0.64:1.

Hastings Point Development Control Plan B 23

Part 05 Visual Setting

The building complies with this section of the plan.

The proposed building has a maximum roof height of 19.0m AHD which is approximately equal to the eave level of the three storey building to the north. The proposed building will present as a 1-2 storey building from the beach.

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

Clause 92(a) Government Coastal Policy

The proposal is consistent with the goals and objectives outlined within the policy

Clause 94 Consent authority may require buildings to be upgraded.

The proposed building will comply with the Building Code of Australia and therefore clause 94 is considered satisfied.

(a) (v) Any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*)

The proposed building is consistent with the Tweed Coastline Management Plan 2005 which suggests any redevelopment within the maximum 100year hazard line should require deep pile foundations or similar.

Engineers detail with the application show that the building will be provided with deep pile footings.

Council's Draft DCP B25 has also been taken into account in this application. The deep pile footings in the engineers design statement are consistent with the requirements for development within the 100year hazard line.

Revised Coastal hazard lines show the 50 year line approximately at the rear eastern boundary of the property and the 100 year line just westward of the proposed building. . These revised lines are not yet adopted but the available building envelope of the site is seaward of the existing and revised 100 year lines.

In addition the proposal with the deep pile foundations appears to satisfy as far as practical without sterilising the site, the planning criteria contained in Section 4.2 of the NSW Coastal Planning Guideline: Adapting to Sea Level Rise.

In the future there is potential for the proposed building to collapse under wave action if the hazard line predictions are realised and the building is not further protected or demolished beforehand. This is the same potential for all the development along this particular coastal strip and should collapse occur the beach would be impacted by building debris.

It is likely that cease use and demolition orders would precede such an outcome.

The owner has provided the following signed statement to address the potential for coastal erosion of the site.

Sep 19 11 10:47a

Ian Johnston

+61733956644

p.1

ATTENTION: BARRY STEGEMAN

Risk acknowledgement -- Coastal Erosion

As the owner /owners of the property at Lot 2, Sec.....

DP 551216 ROC (DP 268604)

Address 26 TWEED COAST RD, HASTINGS POINT 2489

I/we acknowledge Council's draft DCP25 "Coastal Hazard" and the NSW Department of Planning "NSW Coastal Planning Guideline Adapting to Sea Level Rise" August 2010.

Having regard to the above documents I/we understand that future coastal erosion has the potential to affect our property and I/we accept all risk and responsibility associated with the proposed development, including the extent to which we will engineer and construct the building to mitigate any future erosion effect.

Owners; Name & Signature

- 1. KAY JOHNSTON [Signature]
2. 115 WYNDHAM RD
3.

Stamp: TWEED SHIRE COUNCIL, FILE No: DA11/0164 Pt 2, REC'D: 19 SEP 2011, ASSIGNED TO: Stegeman B, HARD COPY [checked] IMAGE []

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

Context and Setting

The property is redevelopment within an established residential subdivision which has been specifically created for residential development. The proposed development is of a design generally in keeping with the architectural style and residential character of the area taking into account the redevelopment occurring overall in the area.

Access, Transport and Traffic

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

Flora and Fauna

Minimal impact is envisaged; the site has no significant plantings and is part of an existing urban environment.

Natural hazards

The site is mapped as being impacted by possible coastal erosion. These impacts have been assessed in the earlier section of this report under the heading of coastal management plan and are not considered to be sufficient to prevent the proposed development from proceeding. Future consideration may be necessary to deal with possible retreat in the event that coastal erosion is not prevented.

Site design and Internal design

The building is considered to be of reasonable design taking into account the relationship with the adjacent building to the north. The external finishing is mixed and provides good architectural merit.

The proposal provides for a transition between the large building to the north and the property to the south.

(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 residential area and utilities including reticulated water, public sewer and power 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.

Site Orientation

The living areas of the dwelling have been mainly orientated to the northeast east and west to optimise ocean/rural views and breezes and solar access to the north.

Bushfire

The site is affected by bushfire and can be accommodated by constructing the home in accordance with the provisions of Planning for Bushfire Protection. A Bushfire Threat Assessment Report has been submitted with the application and is supported.

Landscaping is to be strictly in accordance with the report so as to not contribute to the bushfire risks.

A condition has been included to require the building to be constructed in accordance with section 1.0 of that report.

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

The application was notified to surrounding properties when first received and again after the first amendment as the application did not address the initial concerns of Council's assessing officer or those of the objectors. A second and then third amendment was then received which made numerous changes to address the concerns. During the initial notification, seven (7) written submissions were received. The main issues raised have been summarised below:

Issue	Objection Comment	Assessment
Bulk and scale is excessive	The building is too large for the site and will impact adversely on amenity of the property to the south and create overbearing dominance.	The building was reduced in height and the upper story was reduced and moved to 4.2m from the southern boundary. Boundary fence/retaining adjustments were also made.
Loss of views	The proposal will obstruct views to the south from the upper level unit of the adjacent building to the north.	The building has been reduced in height to 19.0m AHD to be no higher than the eaves of the adjacent three storey building to the north. The impact will be that the upper level unit of the building to the north may lose a small section of rural view to the south but will maintain the majority of view in all other directions. Importantly the view from the living areas to the headland will be maintained as the third storey level is stepped back and achieves a 6.0m setback from the eastern boundary. The primary views of the upper unit to the north will not be impacted and the principles of view sharing are

Issue	Objection Comment	Assessment
		considered satisfied.
Height and setback non compliant	Height and rear setbacks do not Comply with DCP B23	Impacts of height and setback have been addressed adequately in the modified plans by reducing the height and adjusting the size and setbacks of the upper floor. The proposal is consistent with the visual setting requirements of DCP B23.
Possible damage to adjacent building during construction	Construction traffic and methods may damage adjacent building and driveways	Conditions have been proposed to require dilapidation reports before commencing and to require construction techniques to address concerns.
Existing right of ways may be obstructed	Existing legal access may be obstructed	Plans have been adjusted to clearly show ready defined access to Right of footway and carriageway.
Shadowing of foreshore and property to south	The proposal will shadow the foreshore and property to the south	The building has been reduced to the extent that the projected shadows will be reasonable in relation to permissible development adjoining foreshores and reasonable allowance for shadowing of adjoining properties as described in DCP A1.
Visual settings not observed	The Visual setting requirements of DCP B23 are not being observed	The reduction of the height of the building complies with the Visual setting requirements of the DCP.

(e) Public interest

The proposed development raised no major implications in terms of the public's 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 applications 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 which would incur financial costs to Council in defence.

The possible future legal or financial implications of development affected by Coastal Hazard lines are unknown.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

On the balance of 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 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.

10 [PR-CM] Development Application DA11/0099 for a Detached Dual Occupancy at Lot 1 DP 777228; No. 61 Bimbadeen Avenue, Banora Point

ORIGIN:

Development Assessment

FILE NO: DA11/0099 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Development Application for the construction of a detached dual occupancy development on the above mentioned site. Dwelling 1 would be located at the front of the site, with Dwelling 2 positioned to the rear; access between the two properties would be located adjacent to the north-eastern boundary of the site. The development is proposed to be subdivided to create two Strata Titled lots and the construction of a right of carriageway to the adjacent property, known as Lot 4 DP 814476 (2E Peter Street), which is currently held in the same ownership as the subject site. No formal 'connection' to this right of way is to be provided at this stage.

The proposed development comprises non-compliances with mandatory controls relating to cut and fill and height of retaining walls, primarily required for the manoeuvring area at the rear of the site and on account of the proposed right of carriageway to the adjoining lot. The development also comprises non-compliances with regard to the lack of adequate private and useable outdoor spaces that are sufficiently integrated to each dwelling.

No submissions were received for the proposed development.

Having regard to the assessment against Clause 8(1) of the Tweed LEP 2000 and non-compliance with the Development Control Plan A1, the proposed detached dual occupancy is considered to be an unacceptable form of development and is recommended for refusal.

Councillor Polglase has requested that the development application be reported to Council.

RECOMMENDATION:

That Development Application DA11/0099 for a detached dual occupancy at Lot 1 DP 777228; No. 61 Bimbadeen Avenue, Banora Point be refused for the following reasons:

- 1. The proposed development proposes excessive levels of cut and excessive height for retaining walls.**
- 2. The application fails to provide adequate usable ground floor external living areas or outdoor spaces that are sufficiently integrated to the houses to facilitate private outdoor recreational and relaxation space.**

- 3. The application fails to adequately comply with:**
 - * Tweed Local Environmental Plan 2000; and**
 - * Tweed Development Control Plan Section A1 Part B.**

- 4. The development is not considered to be consistent with the general public interest as the development fails to uphold the integrity of the approved planning instruments for the Shire.**

REPORT:

Applicant: Mr AJ Downes
Owner: Mr Alan J Downes & Mrs Anne Downes
Location: Lot 1 DP 777228 No. 61 Bimbadeen Avenue, Banora Point
Zoning: 2(a) Low Density Residential
Cost: \$570,000

BACKGROUND:

The Subject Site

The subject site has a total area of 1161m² and is of a rectangular shape with a frontage of approximately 20m to Bimbadeen Avenue. The site is relatively steeply sloping, sloping up from approximately RL 5.6m AHD from Bimbadeen Avenue to RL 23m AHD at the rear boundary.

The site is presently vacant and has been cleared of substantial vegetation, with only one tree being located at the south western corner of the site. The site overlooks the Tweed River, with only the road separating the lot from the river bank.

Surrounding development consists predominantly of low density, detached dwelling houses with considerable rear setbacks and areas of deep soil zones comprising dense vegetation.

There is a Section 88B Instrument applicable to the subject site that indicates a 1.7m wide drainage easement located along the northern boundary of the site.

The Proposed Development

Council is in receipt of a Development Application for the construction of a detached dual occupancy development. The application was lodged on 7 March 2011.

The development comprises the construction of a dual occupancy development. Dwelling 1 is proposed to be located at the front of the site with Dwelling 2 positioned to the rear. Access between the two properties is proposed to be via a combined driveway crossing located adjacent to the north-eastern boundary of the site.

The design of both dwellings is contemporary with skillion roofs, utilising varying materials within the building facades.

Details of dwelling 1 as follows:

- Two storey at the front and one storey at the rear;
- Outdoor area located at the front (south) of the lot, adjacent to the road;
- Comprises three (3) bedrooms, open plan dining/living area and kitchen; study; external deck on the upper floor and double garage located to the rear.

Details of dwelling 2 as follows:

- Three storeys; although constructed in a 'tiered' formation into the slope of the site;

- Outdoor area located to the rear (north) of the site although this area is relatively steep sloping;
- Comprises two (2) bedrooms and rumpus room; open plan living/dining area and kitchen; study; two bathrooms and w.c, double garage and small deck area.

The development is proposed to be subdivided to create two Strata Titled lots and originally proposed the creation of a right of carriageway along the northern boundary of the site, to provide future access to the adjacent property known as Lot 4 DP 814476 (2E Peter Street), which is currently held in the same ownership as the subject site and is wanted by the applicant to accommodate a second legal access to this property.

No formal 'connection' of this right of way is to be provided at this stage, due to the 'cut' at the end of the maneuvering area for Unit 2. Any future works on 2E Peter Street to connect to the right of way would be the subject of future applications to Council.

Site History

A search of Council's records has indicated that the following development application has been considered on the subject site:

An application for a 5 Lot Subdivision (DA05/0848) was withdrawn in March 2008 as a result of concerns from Council's Development Engineering Unit with regard to: site stability; level of proposed earthworks; required cut and retaining walls (up to 3.6m in height); vehicle manoeuvring; stormwater and drainage issues.

Prior to lodgement of the subject application the applicant attended a meeting of Council's Development Assessment Panel (DAP) on 14 July 2010. Within that meeting the following issues were raised by Council Officers:

- Excessive cut and fill and that any variations proposed to Section A1 of the DCP should be justified in accordance with the Mandatory Controls and may be considered where it can be demonstrated the extent of earthworks has been limited and where the cut and fill is within the immediate curtilage of the dwelling;
- Elevations with large high expanses of blank wall should be further articulated. Consideration should be given to reducing any overlooking to adjoining properties;
- Further detail should be provided on height, location and depth of all retaining walls;
- Dwelling 1 does not appear to comply with the requirement to provide adjacent external living area located at ground level to a habitable room. Mandatory control provision should be addressed in this regard and demonstration of whether sufficient useable open space provided;
- Justification of deep soil zones and front setback variances.

The development application before Council now is substantially the same as those that were submitted to the meeting of the DAP of 14 July 2011.

Council Officers have, since the DAP meeting and throughout the assessment process, consistently raised concerns specifically with regard to the level of proposed cut outside of the building footprint, and the height of retaining walls and with the lack of useable and private outdoor living areas that are sufficiently integrated with each of the dwellings.

In response to Council's concerns, revised details were received on 17 August 2011 proposing the following amendments:

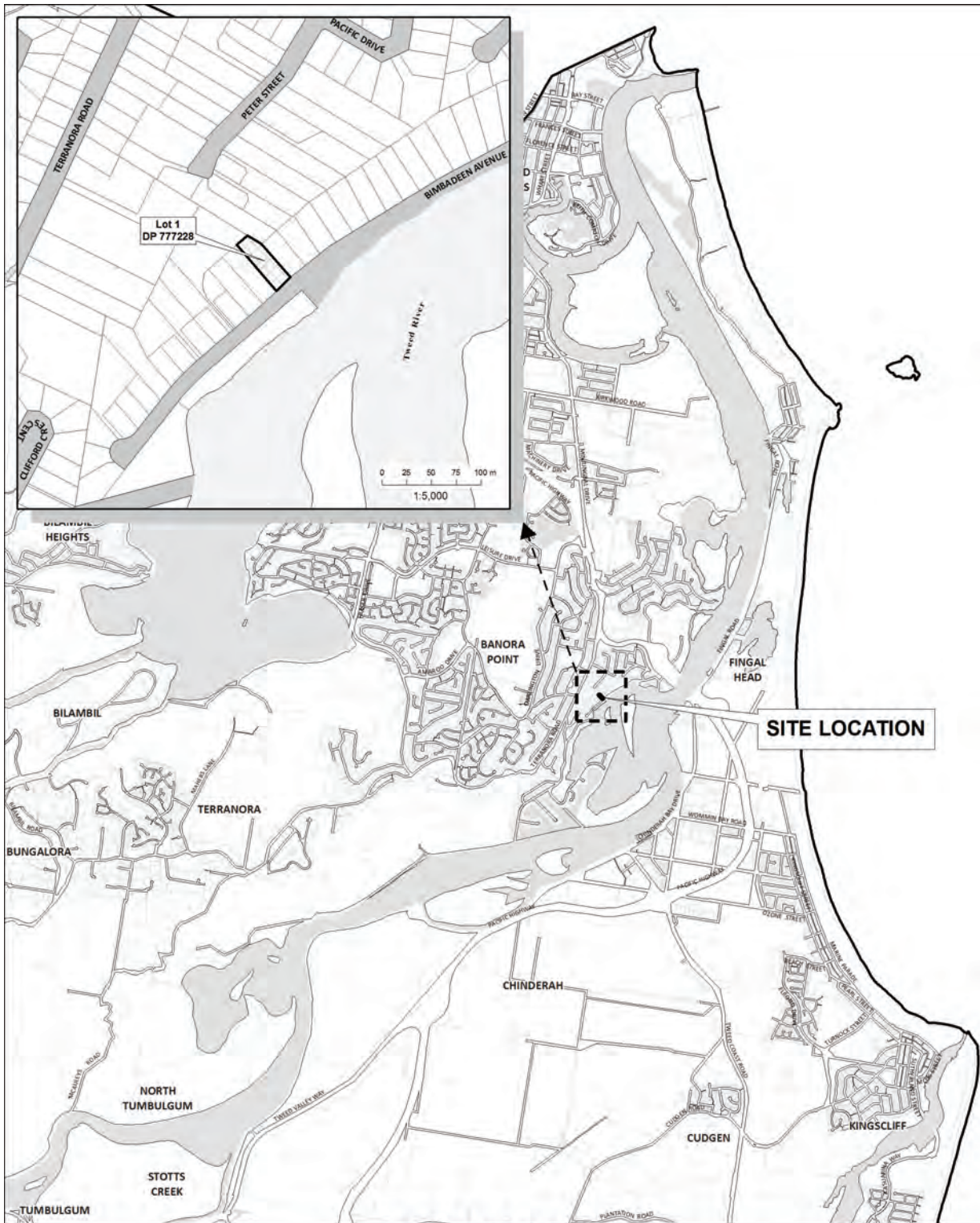
- Reduction in the level of cut required by raising the floor level of the garage and entry to Unit 2 by approximately 0.5m;
- Retaining wall 'split' into two smaller retaining structures (2 x 2.1m high walls as opposed to a 4.5m high wall);
- Design of Unit 2 amended to substitute bedroom 3 for a 'rumpus room' on the lower floor with sliding doors leading to a small deck that links to the ground level via steps, which orients to the north (adjacent to the access way).

Despite the proposed modifications, it is considered that significant non-compliances with Development Control Plan Section A1 remain and have not been adequately justified. The extent of the driveway and proposed manoeuvring area, and therefore level of cut and height of retaining walls, is required primarily on the basis of a right of carriageway that does not serve the current proposal. Further, it is considered that minor amendments to the proposed development would also result in improved areas of private useable outdoor living areas, particularly to Unit 2, which could be better integrated to each dwelling.

Conclusion

It is considered that the proposed development still comprises non-compliances with the Development Control Plan that cannot be justified in this instance, as detailed further within this report. Therefore, having regard to the assessment against Clause 8(1) of the Tweed LEP 2000 and non-compliances with Development Control Plans A1, the proposed detached dual occupancy development is recommended for refusal.

SITE DIAGRAM:



Locality Plan

Lot 1 DP 777228
No. 61 Bimbadeen Avenue, Banora Point

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Cadastre: 31 October, 2011
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Boundaries shown should be considered approximate only.

0 0.5 1 Km
1:50,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED
Map Projection: Universal Transverse Mercator
Horizontal Datum: Geoidetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56
GDA

Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484
T | (02) 6670 2400 | 1300 292 872
F | (02) 6670 2429
W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au

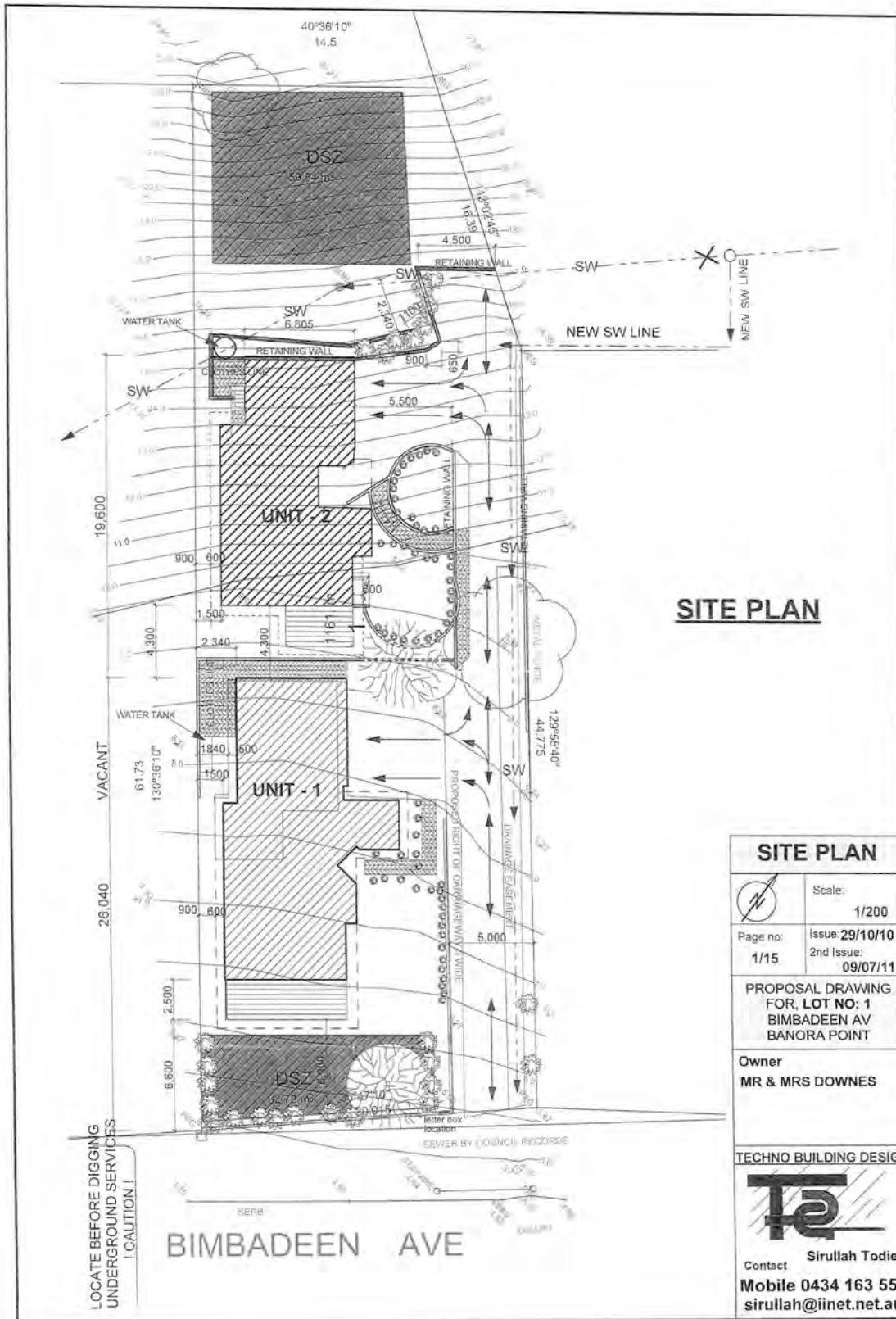


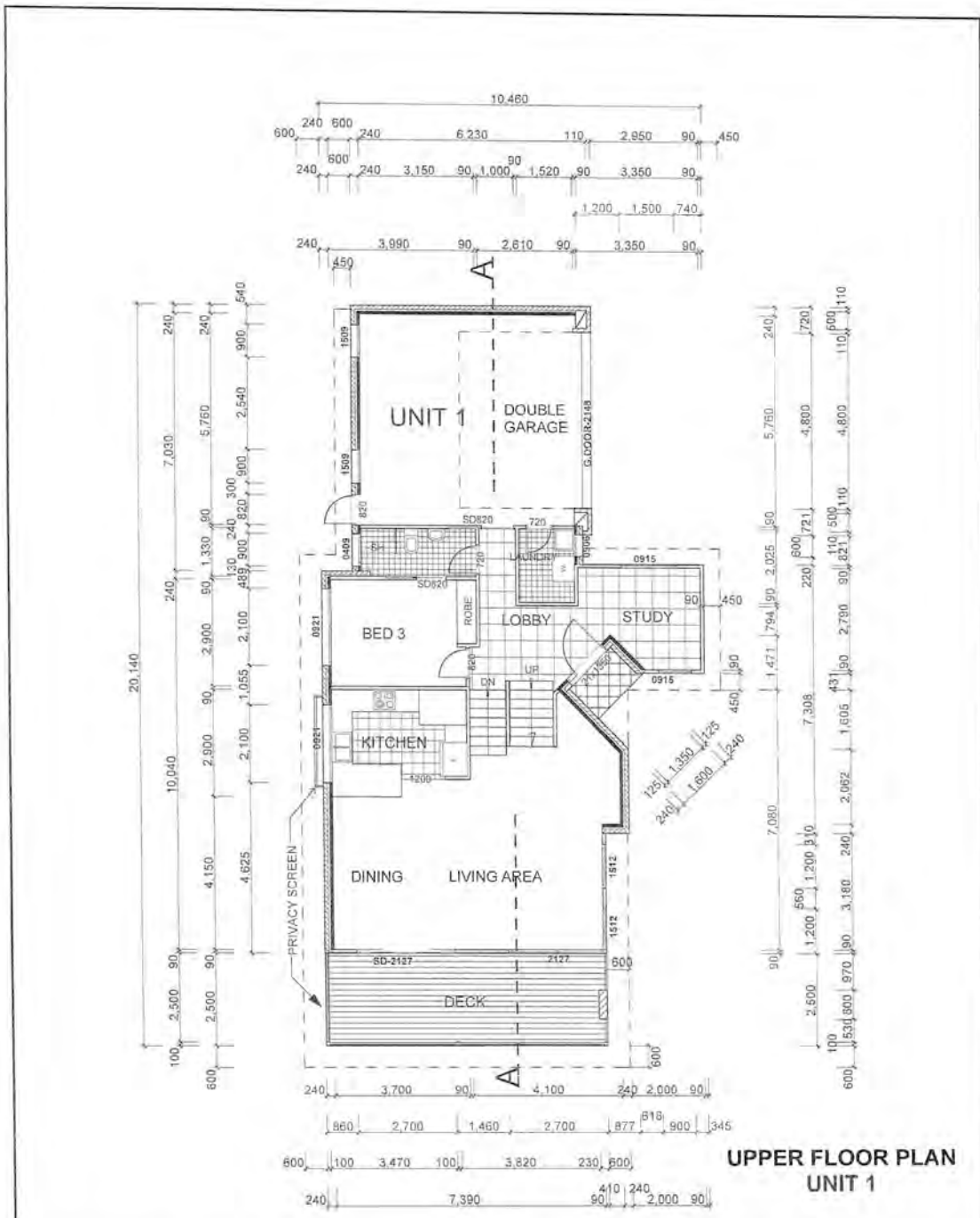
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Author: @Bartelma - Planning\Documents

Date Printed: 13 October, 2011

DEVELOPMENT PLANS:





**UPPER FLOOR PLAN
UNIT 1**

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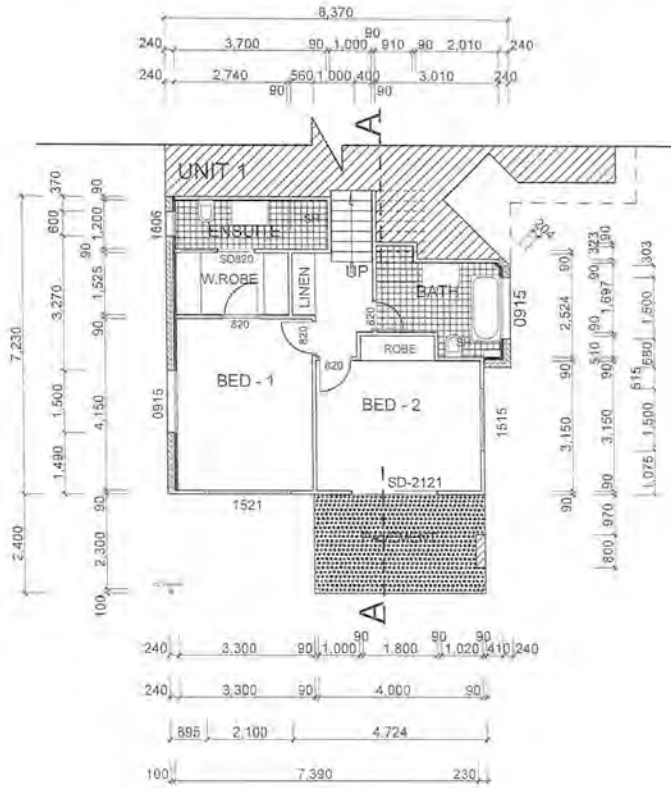
Contact **Sirullah Todie**
Mobile 0434 163 555
sirullah@inet.net.au

PROPOSAL DRAWING FOR LOT NO: 1 BIMBADEEN AV BANORA POINT

Owner
MR & MRS DOWNES

UPPER FLOOR PLAN	
AREAS, UPPER FLOOR AREA 138.20m ² DECK AREA 18.50	
2nd Issue: 09/07/11	

Issue: 29/10/10
Scale: 1/100
Page no: 4/16



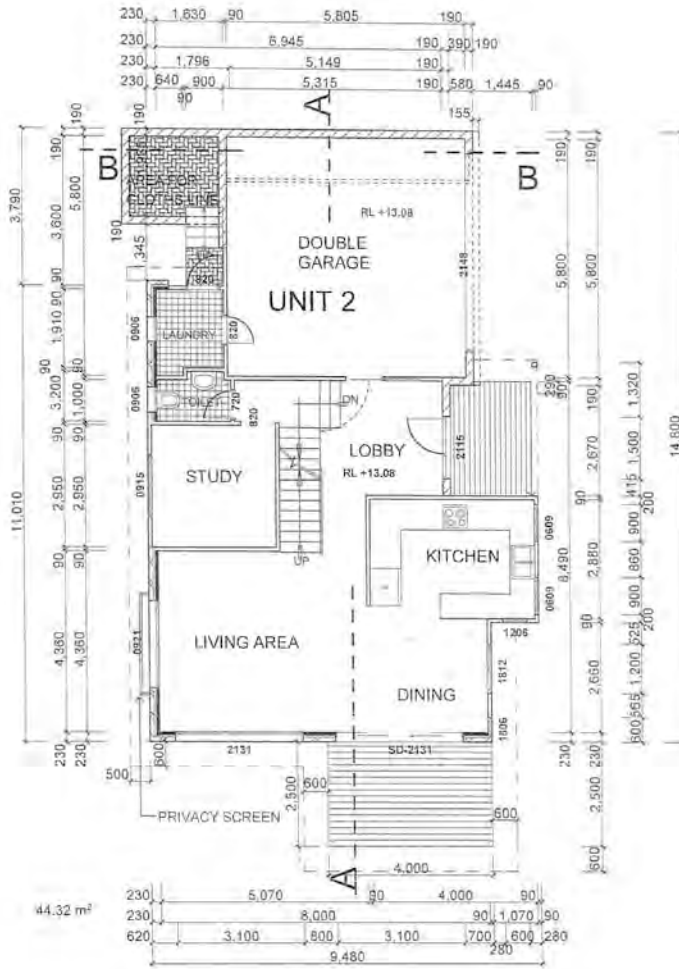
LOWER FLOOR PLAN

54.43 m²

TOTAL SITE AREA	1161.0m ²
TOTAL AREA OF UNIT 1&2 (UPPER FLOOR)	249.90m ²
TOTAL DECK AREA OF UNIT 1&2	28.1m ²
TOTAL SITE COVERED AREA IS	%21.52 OF LAND 249.90m ²
OPEN SPACE LEFT	%78.48 OF OPEN AREA

LANDSCAPE DETAIL	
LARGE DWELLINGS	138.20>65m ²
80m ² /dwellings landscaping	
2x80m ² =	160m ² OR %30 OF SITE AREA
REQUIRED LANDSCAP AREA	=348.3m ²
LANDSCAPE DESIGNED	= 294.65m ²

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				<p>AREAS, LOWER FLOOR AREA 54.40m²</p>	<p>Scale: 1/100</p>  <p>Page no: 5/16</p>
				<p>2nd Issue: 09/07/11</p>	



UPPER FLOOR PLAN

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Mobile 0434 163 555
sirullah@iinet.net.au

PROPOSAL DRAWING FOR, LOT NO: 1 BIMBADEEN AV BANORA POINT

Owner
MR & MRS DOWNES

UPPER FLOOR PLAN UNIT 2

AREAS,

UPPER FLOOR AREA 111.70m²
DECK AREA 9.60m²

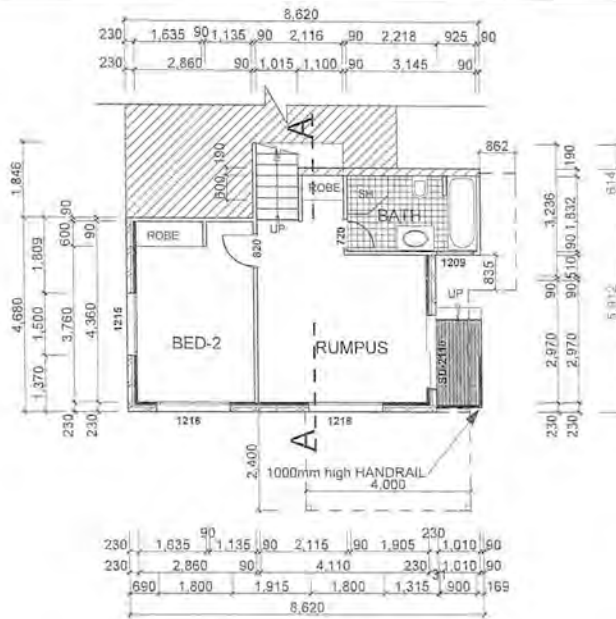
2nd Issue: **09/07/11**

Issue: **29/10/10**

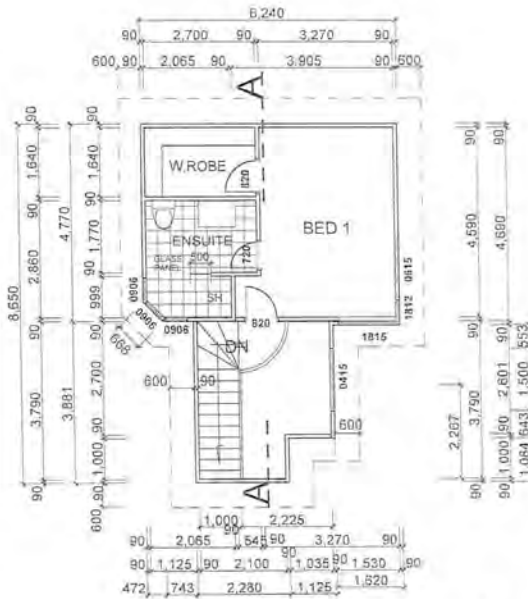
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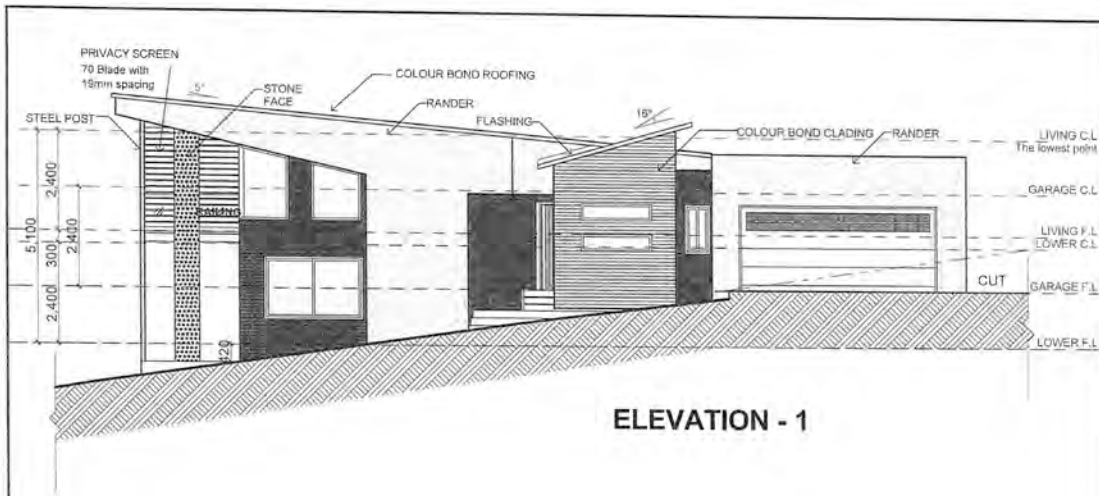


LOWER FLOOR PLAN UNIT-2



FIRST FLOOR PLAN UNIT-2

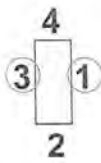
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				<p>AREAS, LOWER FLOOR AREA 54.43m² FIRST FLOOR AREA 41.81m²</p>	<p>Scale: 1/100</p>  <p>Page no: 7/16</p>
				<p>2nd Issue: 09/07/11</p>	



ELEVATION - 1



ELEVATION - 3



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PROPOSAL DRAWING
FOR, LOT NO: 1
BIMBADEEN AV
BANORA POINT

Owner
MR & MRS DOWNES

ELEVATION 1 & 3
UNIT 1

AREAS,

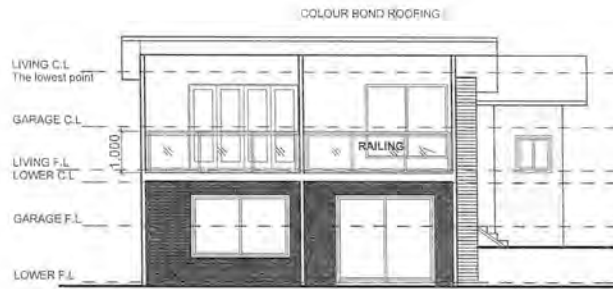
2nd Issue: 09/07/11

Issue:
29/10/10

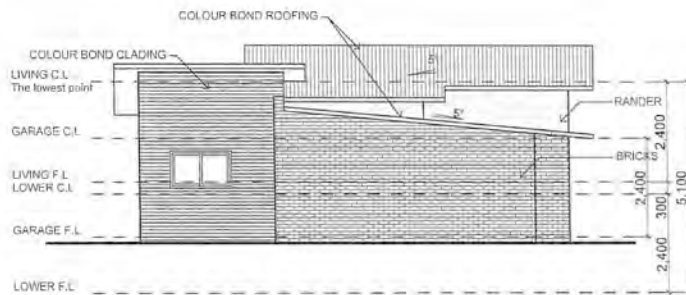
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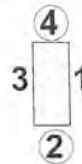
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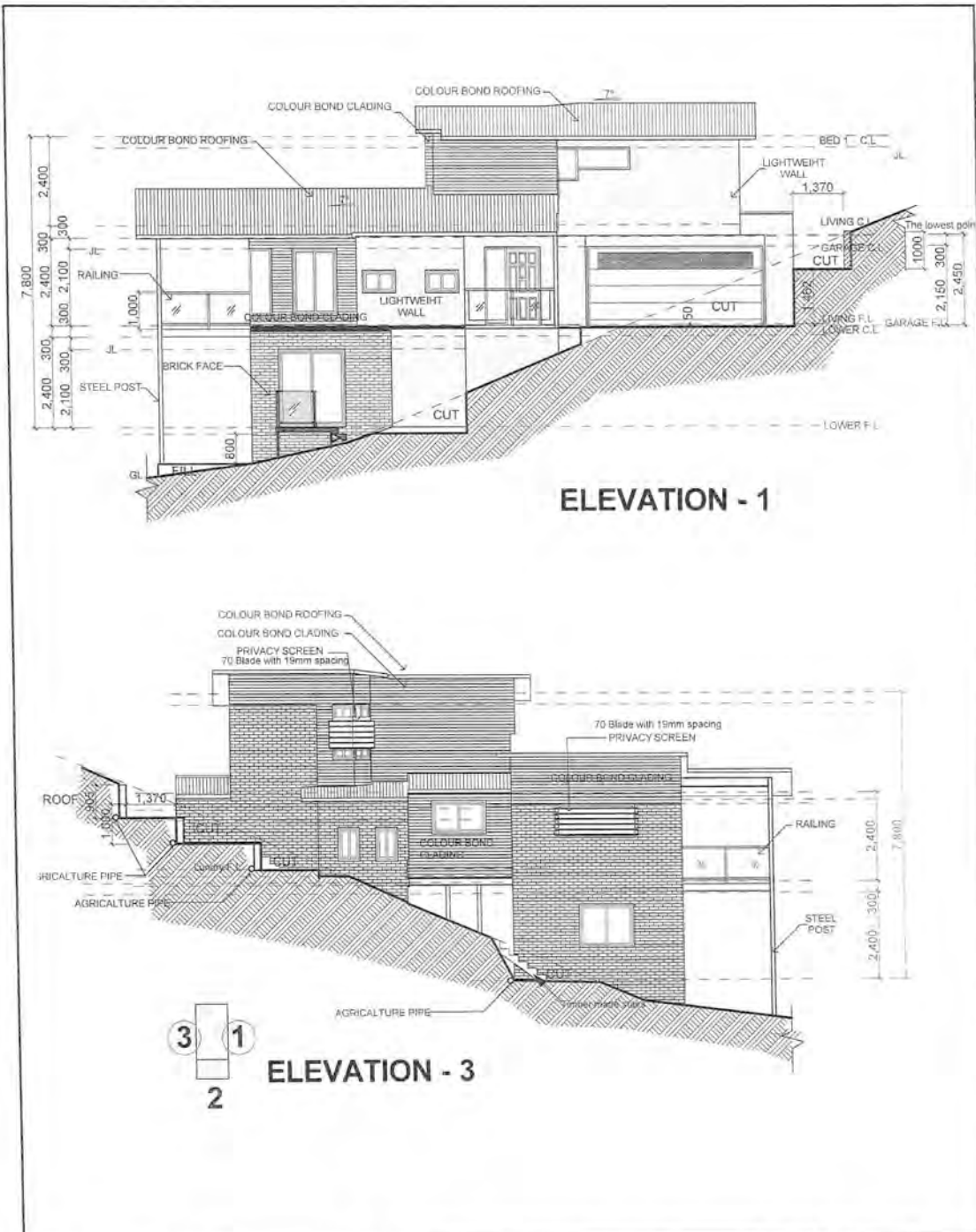
ELEVATION - 2



ELEVATION - 4



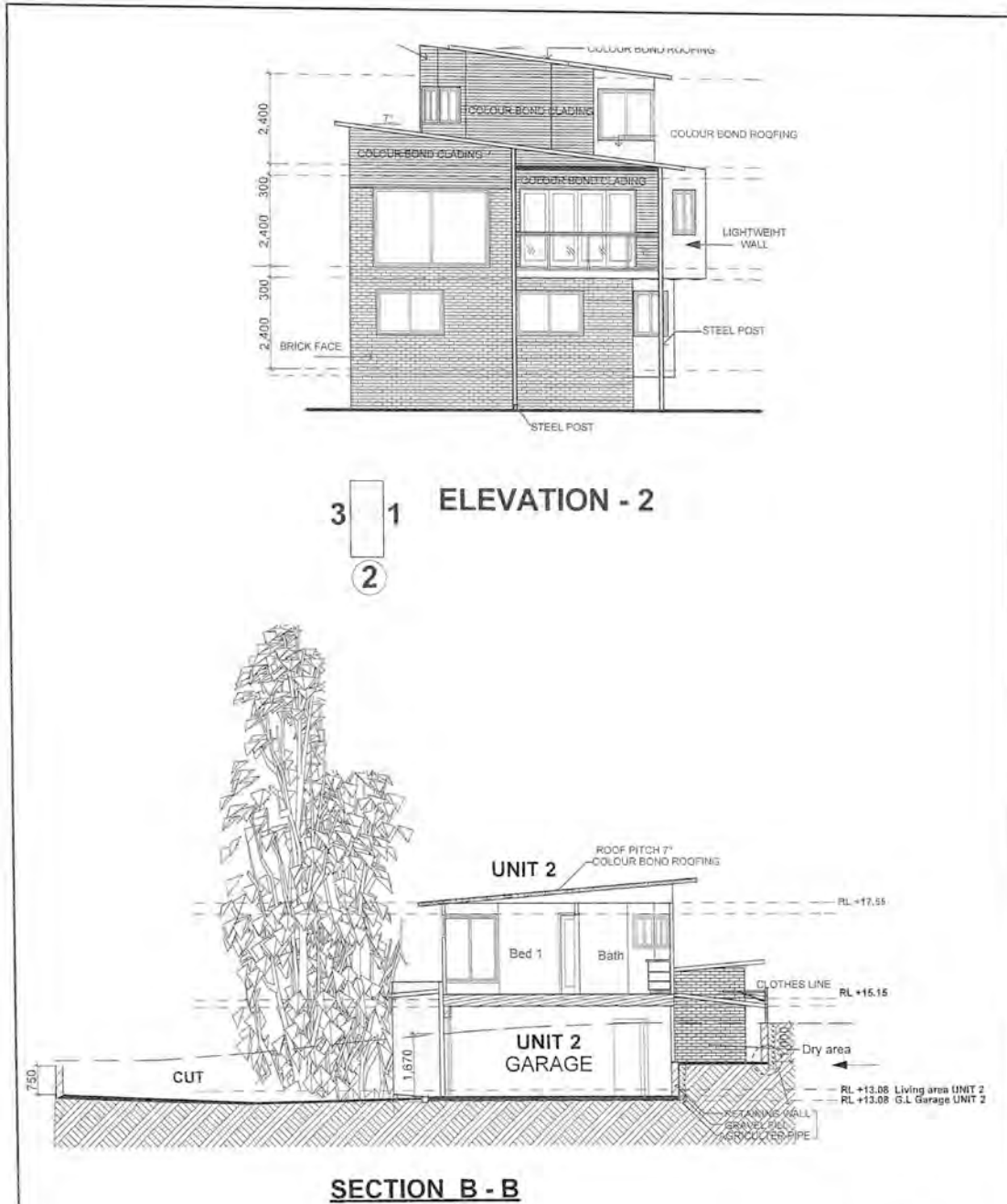
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				<p>AREAS,</p>	<p>Scale: 1/100</p>  <p>Page no: 9/16</p>
				<p>2nd Issue: 09/07/11</p>	



ELEVATION - 1

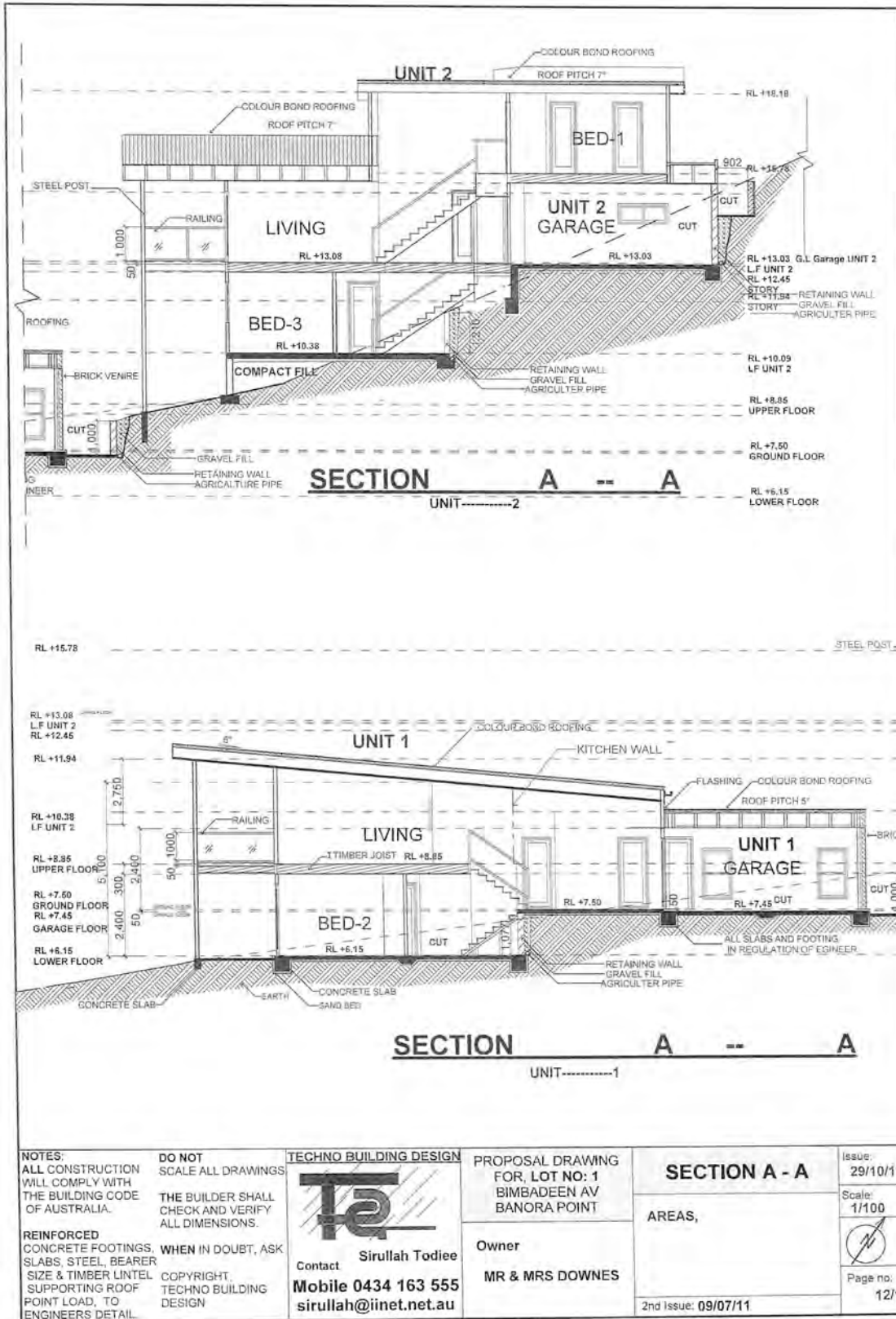
ELEVATION - 3

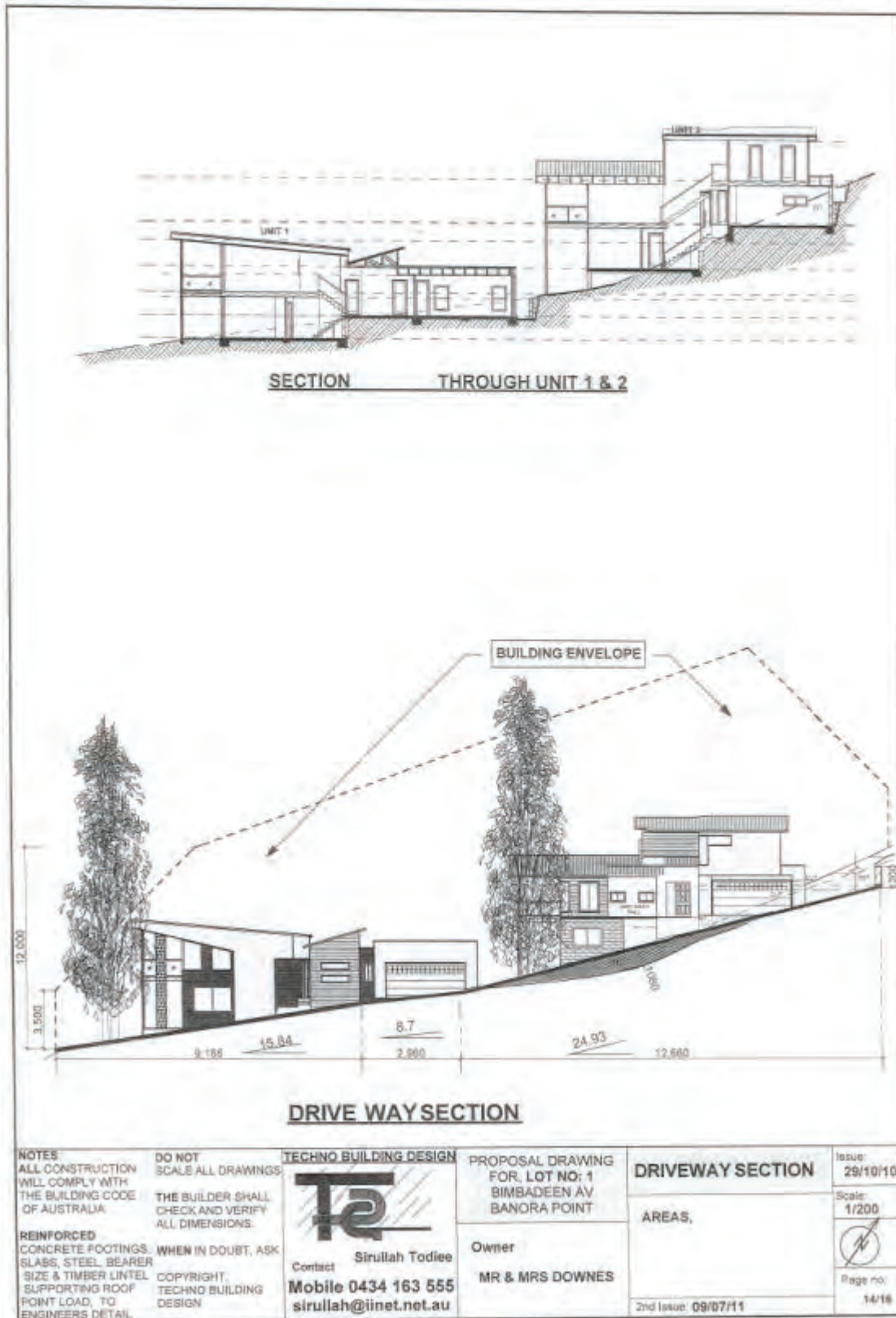
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				<p>AREAS,</p>	<p>Scale: 1/100</p>  <p>Page no: 10/16</p>
				<p>2nd Issue: 09/07/11</p>	



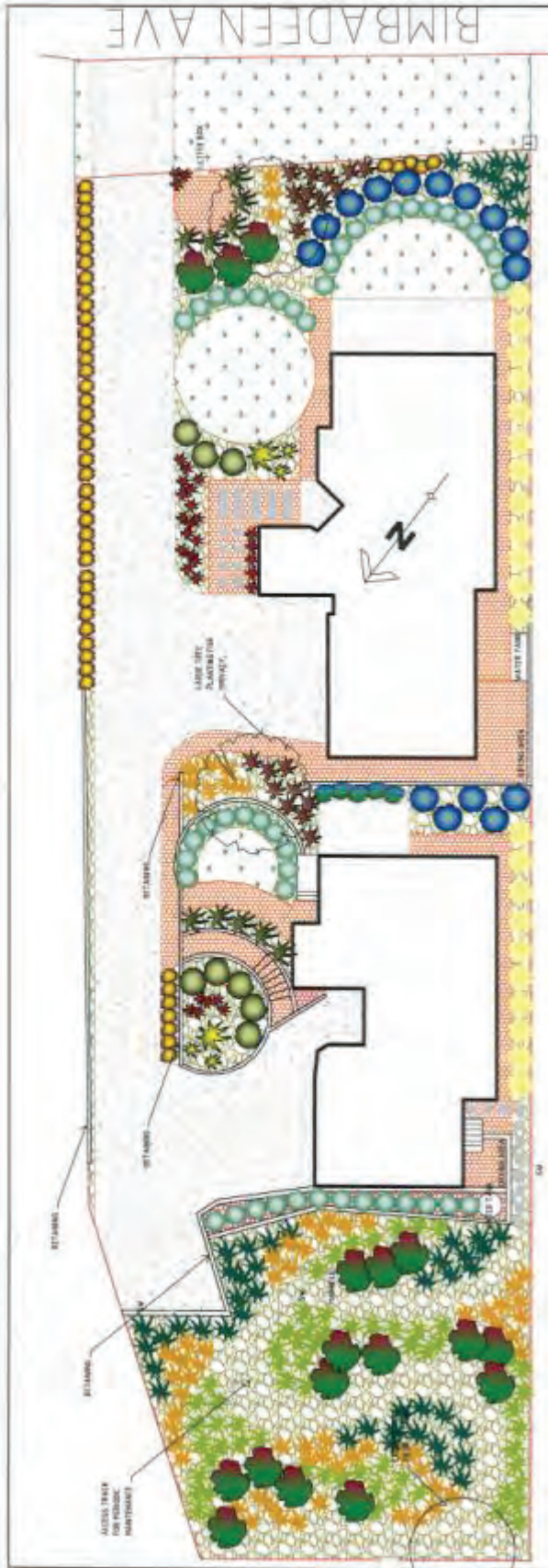
UNIT-2

<p>NOTES: ALL CONSTRUCTION WILL COMPLY WITH THE BUILDING CODE OF AUSTRALIA.</p> <p>REINFORCED CONCRETE FOOTINGS, SLABS, STEEL, BEARER SIZE & TIMBER LINTEL SUPPORTING ROOF POINT LOAD, TO ENGINEERS DETAIL.</p>	<p>DO NOT SCALE ALL DRAWINGS</p> <p>THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS.</p> <p>WHEN IN DOUBT, ASK</p> <p>COPYRIGHT, TECHNO BUILDING DESIGN</p>	<p>TECHNO BUILDING DESIGN</p>  <p>Contact Sirullah Todiee Mobile 0434 163 555 sirullah@inet.net.au</p>	<p>PROPOSAL DRAWING FOR, LOT NO: 1 BIMBADEEN AV BANORA POINT</p> <p>Owner MR & MRS DOWNES</p>	<p>ELEVATION - 2 & SECTION B - B</p> <p>AREAS,</p>	<p>Issue: 29/10/10</p>
					<p>Scale: 1/100</p>  <p>Page no: 11/16</p>
				<p>2nd Issue: 09/07/11</p>	





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				<p>AREAS,</p>	<p>Scale: 1/200</p>  <p>Page no: 14/16</p>



IMPERMEABLE SITE AREA CALCULATION

SURFACE TYPE	AREA	IMPERM FACTOR	PERCENTAGE
TURF	57	0	0.00
GARDEN BEDS	440	0	0.00
PEBBLED AREAS	102	0.75	6.50
DRIVEWAY	281	1	24.20
BUILDINGS	273	1	23.51
TOTALS	1161		54.31

NB: Garden Bed/Deep Soil Planting 30% of total allotment area.

LEGEND

	CONCRETE
	AS PER BUILDER
	PAVING
	AS PER BUILDER
	STEPPERS
	CUSTOMER SELECTION
	PEBBLES
	20MM RIVER ROCK
	PEBBLES
	75MM RIVER ROCK
	TURF - A GRADE
	EMPIRE ZOYSIA
	MULCH
	HDDP PINE

PLANT SCHEDULE

	TREES	<i>Doryanthes excelsa</i> , <i>Gynera Lily</i> , 300mm x 35
	SHRUBS	<i>Acmena hemilampira</i> , <i>Blush Satinash</i> , 300mm x 17
	SHRUBS	<i>Grevillea species</i> , <i>Lady Q</i> , 300mm x 15
	SHRUBS	<i>Syzygium species</i> , <i>Little Gem</i> , 200mm x 8
	SHRUBS	<i>Syzygium species</i> , <i>'Hinterland Gold'</i> , 100mm x 27
	SHRUBS	<i>Austrocyrtus insipidus</i> , <i>Blossing Beauty</i> , 250mm x 4.6
	FEATURE PLANTS	<i>Xanthorrhoea species</i> , <i>Grass Tree</i> , 45L x 2, 300mm x 4
	TREES	<i>Angonanthus species</i> , <i>Kangaroo Paw</i> , <i>Bush Inferno</i> , 140mm x 20
	SHRUBS	<i>Cordyline stricta</i> , <i>Slender Palm Lily</i> , 250mm x 20
	GRASSES AND LILLES	<i>Isalepis rostrata</i> , <i>Knobly Club Rute</i> , 140mm x 70
	SHRUBS	<i>Dianella caerulea</i> , <i>'King Alfred'</i> , 140mm x 48
	SHRUBS	<i>Lomandra canteridella</i> , <i>'Tanky'</i> , 140mm x 64
	GROUND COVERS	<i>Grevillea juniperina</i> , <i>'Holmgio'</i> , 140mm x 14
	GROUND COVERS	<i>Starcia annua</i> , <i>'Purple Fanfare'</i> , 140mm x 5

BUSCAPES 4/4/4 4/4/4 4/4/4
LANDSCAPE DESIGN AND CONSTRUCTION
The Hub
1/4-1/2 Bimba Ave, Banora Point NSW 2486
Tel: 08 93 80 004 Fax: 08 93 80 020
Email: info@buscapes.com.au

Project: A AND A DOWNIES
Proposed Residence
Lot 1 Bimbadeen Ave
Banora Point

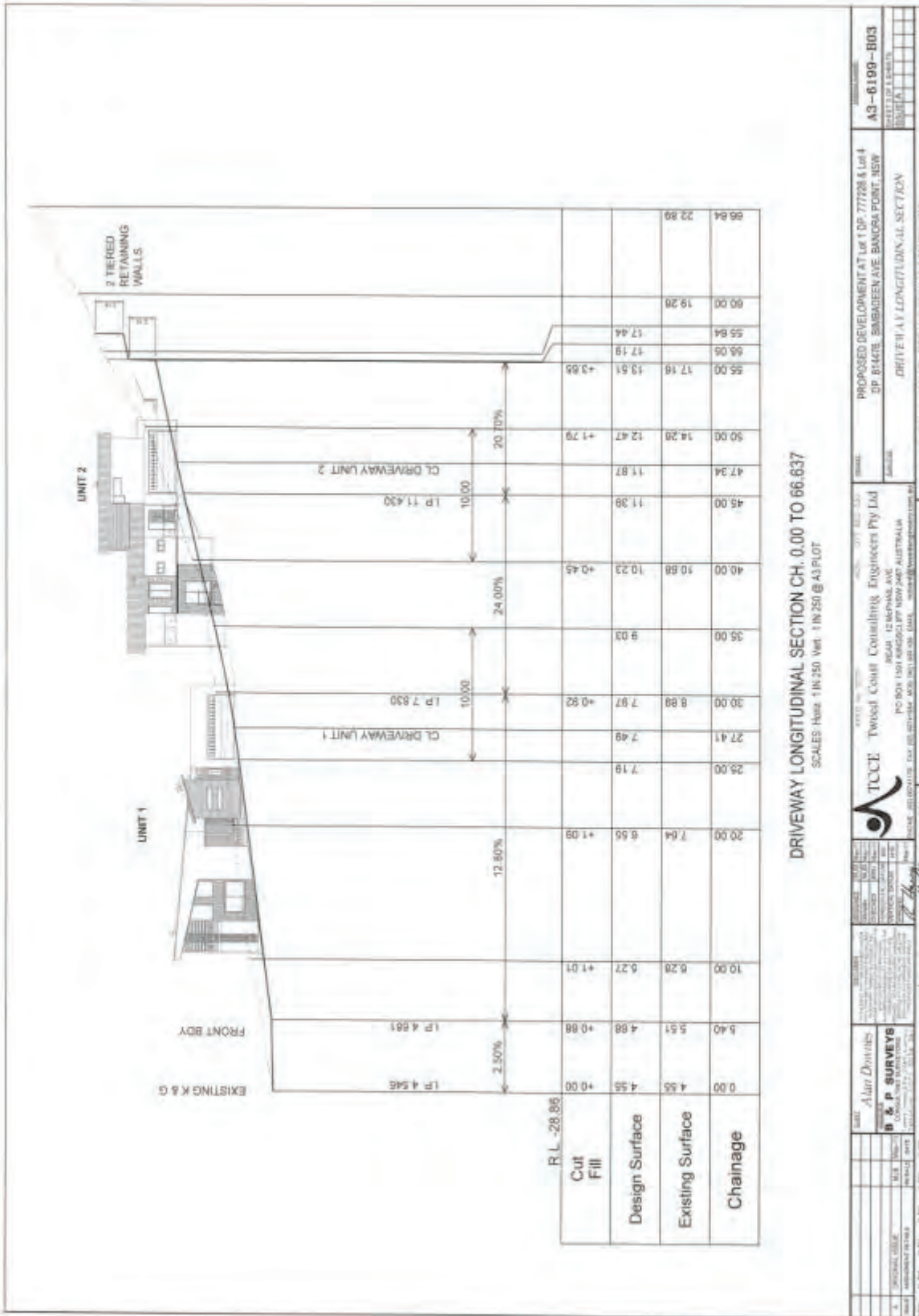
Scale: NOT TO SCALE
Date: AUGUST 2011

Project Number: 11-019 (SHEET 1 OF 1)

Client: [Redacted]
Date: [Redacted]

Drawn by: [Redacted]
Checked by: [Redacted]

Scale: 1:1000
Date: [Redacted]



ALAN DOWDALL CIVIL ENGINEER 10/110 WILSON ST. SYDNEY NSW 2000 TEL: (02) 9550 1111 FAX: (02) 9550 1112 www.alandowdall.com.au		B & P SURVEYS CIVIL ENGINEERS 10/110 WILSON ST. SYDNEY NSW 2000 TEL: (02) 9550 1111 FAX: (02) 9550 1112 www.bpsurveys.com.au	
PROJECT NO: 10/110 WILSON ST. SYDNEY NSW 2000 DRAWING NO: 10/110 WILSON ST. SYDNEY NSW 2000		PROJECT NO: 10/110 WILSON ST. SYDNEY NSW 2000 DRAWING NO: 10/110 WILSON ST. SYDNEY NSW 2000	
DATE: 10/11/11 SCALE: 1:200 SHEET NO: 1 OF 1		DATE: 10/11/11 SCALE: 1:200 SHEET NO: 1 OF 1	
CLIENT: Alan Dowdall PROJECT: 10/110 WILSON ST. SYDNEY NSW 2000		CLIENT: Alan Dowdall PROJECT: 10/110 WILSON ST. SYDNEY NSW 2000	
DRAWN BY: Alan Dowdall CHECKED BY: Alan Dowdall		DRAWN BY: Alan Dowdall CHECKED BY: Alan Dowdall	
PROJECT TITLE: PROPOSED DEVELOPMENT AT Lot 1 DP 77728 & Lot 4 DP 81478, 58 BARRACK STREET, BANORA POINT, NSW		PROJECT TITLE: PROPOSED DEVELOPMENT AT Lot 1 DP 77728 & Lot 4 DP 81478, 58 BARRACK STREET, BANORA POINT, NSW	
DRAWING TITLE: DRIVEWAY LONGITUDINAL SECTION		DRAWING TITLE: DRIVEWAY LONGITUDINAL SECTION	
PROJECT NO: 10/110 WILSON ST. SYDNEY NSW 2000		PROJECT NO: 10/110 WILSON ST. SYDNEY NSW 2000	
DRAWING NO: 10/110 WILSON ST. SYDNEY NSW 2000		DRAWING NO: 10/110 WILSON ST. SYDNEY NSW 2000	

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

A principle aim of the Plan is to ensure:

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 [and] to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

The proposed development is of a relatively minor nature and scale and is not likely to impact on the character of the Tweed as a whole. The proposed dwellings, whilst of a contemporary design, are not considered to be incompatible with the surrounds or the area's environmental and residential amenity qualities. However, the development proposes a significant level of cut and retaining walls of significant height. Further, the proposal fails to provide adequate outdoor spaces for liveability, which, in Council's opinion, the site is capable of achieving.

On this basis it is considered that the development does not provide certain development requirements and fails to be compatible with the area's environmental and residential amenity qualities.

This clause also requires that development complies with the zone objectives. This is addressed below.

Clause 5 - Ecologically Sustainable Development

The intent of this clause is to provide for development which is compatible with principles of ecological sustainable development (ESD) including the precautionary principle, inter-generational equity, ecological and environmental factors.

It is considered that the scale and nature of the proposed dual occupancy development is minor and, as the site has already been substantially cleared of vegetation, would not conflict with principles of ESD.

Clause 8 – Consent Considerations

It is considered that the development would be consistent with the primary objectives of the 2(a) Low Density Residential Zone; the subject site is in excess of 1000m² and therefore meets the requirements of Item 2 of the 2(a) Zone (one dwelling per 450m²). The subject site is located in an established residential area and it is generally considered that the proposed dual occupancy

development would not have an unacceptable impact on the area of Tweed as a whole.

However, the development proposes excessive cut, retaining walls of significant height and fails to integrate useable, private outdoor space with each of the units. It is therefore considered that the development would, by reason of the lack of private and usable outdoor spaces, fail to provide areas for relaxation and recreational purposes for future residents to enjoy; is inconsistent with surrounding low density housing character and would, by virtue of it being carried out and the precedent that this may set, be harmful to the community and immediate locality.

Further, the level of cut and height of retaining walls, which serves predominantly for a right of carriageway to the adjoining lot and does not benefit the subject proposal, would: be out of character with adjoining development; impact on adjoining visual amenity; set a harmful precedent for similar development in the locality and is not considered to be justified in this instance. It is therefore considered that the development is inconsistent with the clause.

Clause 11 – Zone Objectives

The subject site is located within the 2(a) Low Density Residential Zone. The objectives of which are as follows:

Primary objectives:

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

Secondary objectives:

To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.

To allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.

Whilst the subject proposal meets the requirements of the minimum lot size within the low density residential zone, it is considered that the lack of useable private outdoor space as well as excessive cut and height of retaining walls, does not achieve good urban design outcomes and would not be consistent with surrounding low density housing character or amenity.

It is therefore considered that the proposal is inconsistent with the objectives of the clause.

Clause 15 - Essential Services

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

The subject site has existing access to essential services. The dwellings will be connected to Council sewer and water.

Clause 16 - Height of Building

The subject site is located within an area that has been mapped as having a height of 3 storeys.

Unit 1 is two storeys and therefore below the maximum allowable height. Unit 2 is technically three storeys in height (maximum of 9.2m in height) and therefore complies with the clause.

Clause 17 - Social Impact Assessment

This clause requires Council to consider whether a proposed development is likely to have a significant social or economic impact.

It is considered that, given the minor scale and nature of the dual occupancy development, the proposal would be unlikely to impact significantly on surrounding residential amenity. However, as previously detailed, the scale of proposed cut and height of retaining walls is a concern in terms of the impact on visual and residential amenity, as would be the lack of external living spaces for future occupants of the proposed development.

It is considered however that a social impact assessment is not required.

Clause 35 - Acid Sulfate Soils

The subject site is mapped as being Class 5 ASS.

The SEE advises that the development is occurring on an elevated part of the site and hence it is considered unlikely that any ASS would be disturbed by the development.

Given the sloping nature of the site and close proximity to a waterbody it is considered reasonable to request details of ASS (sediment and erosion controls) as part of an assessment to any future development consent.

Other Specific Clauses

Clause 34 – Flooding

The southern portion of the site is flood prone, being affected by the Probable Maximum Flood (PMF) level of RL 7.5m AHD – RL 8m AHD.

The objectives of the clause are as follows:

- *To minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.*
- *To minimise the adverse effect of flooding on the community.*

A small portion of the south of the site is affected by the PMF level and it is therefore considered that the proposed development is compatible and will be unlikely to exacerbate flooding on the surrounding community.

Clause 54 – Tree Protection Order

The site is subject to Council's 2011 Tree Preservation Order (Koala Habitat mapping) and on this basis this clause applies. As previously detailed the site has been substantially cleared of vegetation and will not result in the loss of any known koala feed trees.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

Clause 32B of the NCREP is applicable to this proposal as the subject land falls under the jurisdiction of the NSW Coastal Policy. The Policy specifically seeks to identify, protect and promote the aesthetic qualities of both natural and built environments. Further, the Policy states that in assessing development application proposals:

- (a) Council is required to consider the NSW Coastal Policy 1997 when assessing applications for development to which the policy applies.
- (b) Council is also required to consider the Coastline Management Manual
- (c) A consideration of the North Coast: Design Guidelines is required
- (d) Public access to the foreshore must not be impeded.
- (e) Council is required to consider whether the development would result in overshadowing of beaches or adjacent open space.

The proposal is considered not to be inconsistent with Clause 32B (a), (b) (d) and (e) as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent public open space.

However, consideration of the proposal raises concerns in relation to several design principles of the North Coast: Design Guidelines that apply to all future coastal development, as follows:

- Ensure development responds sensitively to the density and scale of the existing settlement;
- Ensure planning and development respond to the local topography and climate;

- In multi-dwelling development, provide a street entry for each dwelling, avoid battle-axe, villa-style development and design appropriately to topography, climate and aspect;
- Reinforce original subdivision patterns and streetscapes that characterise the settlement, maintain consistent setbacks from front and rear of lots in low density areas and continuous street and awning edges along core streets/perimeters of major blocks.

Whilst the overall density and scale of the proposed development is consistent with surrounding development, it is considered that the lack of useable private outdoor spaces and limited external living areas, would not be characteristic of surrounding, low density residential dwellings. The extent of proposed cut as well as height of retaining walls is also not considered to be in keeping with existing development.

Development should respond to local topography and it is considered that the proposal has gone some way to responding to the relatively steeply sloping site. However, as detailed within this report, the development proposes significant cut within the driveway and manoeuvring area at the rear of the site, and retaining walls of considerable height, primarily to allow for a right of carriageway to the adjoining lot. It is considered that these non-compliances with Council's DCP have not been adequately justified in this instance and would set a harmful precedent for similar development in the locality.

The proposed development has failed to provide external living areas or useable landscaped areas with a northerly orientation. It is considered that relatively minor alterations to the site layout could achieve both internal and external living areas that have, at least to some extent, a northerly orientation whilst maintaining views toward the river. Further, proposed Unit 2 has a limited external living area and both units lack adequate areas of private and useable outside space that are sufficiently integrated to each of the units. It is therefore considered that the development has not adequately considered climate or aspect.

The location of the only outdoor space to Unit 1 within the front setback has the potential to generate a requirement for solid, high fencing to increase privacy of this area for future residents. Such fencing would be out of character with the surrounding open and landscaped front setbacks; would be detrimental to streetscape character; and set an undesirable precedent for similar development.

In this respect, the proposal is not consistent with (c) – a consideration of the North Coast Urban Design Guidelines.

Clause 43 – Residential Development

Clause 43 states that the council shall not grant consent to development for residential purposes unless:

- (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*

- (b) *it is satisfied that the proposed road widths are not excessive for the function of the road [...].*
- (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

It is considered that the density of the dwelling has been met without adversely affecting the environmental features of the land. It is the construction of the right of carriageway to the adjoining lot that necessitates excessive levels of cut and significant retaining walls. As previously detailed within this report, it is considered that the development would adversely affect the environmental features of the land, by reason of the excessive level of cut and height of retaining walls.

The development proposes a 5m wide driveway only and proposes no alterations to the existing road network. The application has been referred to Council's Development Engineering Unit who has advised that appropriate conditions of consent can be imposed to address construction phase erosion and sediment control.

SEPP No 71 – Coastal Protection

The subject site is nominated as being SEPP 71 affected and within a Sensitive Coastal Location. The site is located within 40m of the waterway and therefore the development application was referred to the Office of Water who have advised that a Controlled Activity Approval is not required under clause 39A of the *Water Management Amendment (Controlled Activities Regulation 2008)* and no further assessment required.

The subject land does not have frontage to the coastal foreshore reserve and therefore many of the objectives from a) to p) do not apply to the subject site.

Of note is matter for consideration (d):

The suitability of the development and its type, location and design and its relationship with the surrounding area.

The proposed dual occupancy is considered suitable in its type (detached) and location (established residential zone) and the design of the proposed dwellings, whilst of a contemporary nature, would be in keeping with the general character of the area. As previously detailed the site has already been substantially cleared of vegetation and will therefore not require the removal of any native vegetation and is unlikely to impact on threatened species.

However, it is the lack of landscaped areas of useable private outdoor space that are sufficiently integrated to the design of the dwellings, that is not in keeping with the general character and layout of development in the surrounding area. Further, the extent of proposed cut and height of the proposed retaining walls are also considered to be out of character with the surrounding area and would set a harmful precedent for similar development.

The proposal therefore is considered to be inconsistent with SEPP 71.

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

The Draft Tweed Local Environmental Plan is due to be exhibited and is yet to be adopted by Council. In this Draft the site is nominated within the R2 – Low Density Residential Zone. The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment, and
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed development would remain permissible with consent in the R2 zone. It is generally considered that the proposed dual occupancy development is consistent with the objectives of the R2 Zone as it provides housing of a low density residential environment. It is however considered that the lack of liveable outside living areas would also be inconsistent with this low density residential zone.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed development predominantly complies with DCP Section A1, however the applicants have requested variations to the landscaping and cut and fill provisions. These assessments are detailed below.

Landscaping

The applicants have sought a variation to the following landscaping controls:

- *Provide useful outdoor spaces for liveability by coordinating the design of external living areas, driveways, parking areas, communal drying areas, swimming pools, utility areas, deep soil areas and other landscaped areas with the design of the dwelling.*
- *Where the ground floor level of a dwelling is above the finished external ground level reached through a door or doorways, there is to be a physical connection made between these levels. Examples of a physical connection include stairs, terraces, and the like.*

The proposal has failed to attempt to create useful outdoor spaces for liveability by coordinating external living areas, driveways, deep soil zones and landscaping with design of the dwellings. The applicant has made no attempt to create a physical connection to the rear deep soil zone area. As can be seen in the plans Unit 2 has no connection to this area via the rear elevation and the landscaping plan does not show any physical connection such as stairs, terraces, or the like and how this area is to be integrated into the overall development.

In response to Council's concerns the third bedroom on the ground floor of Unit 2 has been converted to a 'rumpus' room. Questions are raised as to whether this is an acceptable outcome, given the ease to which this could be converted back to a bedroom and the accessibility/useability of both the 'rumpus' room and the landscaped area at the side (east) of the dwelling that affords no privacy or link to the rear deep soil zone.

It must be noted that the lack of useable and private open space is a concern that has been continually raised with the applicant through the entire assessment process. It is considered that the rear deep soil zone could at least be integrated into the development and become a common area for units 1 and 2. This would then allow for unit 1 to have provision for a sufficient private open space area, as none has been provided for this unit. The location of the only outdoor amenity area in the front setback also adds concerns that a high, obscure fence may be required in order to increase privacy. Such a fence would be likely to cause visual amenity issues and be detrimental to surrounding streetscape character and would therefore be unlikely to be approved by Council.

In regards to landscaping for the rest of the development, the proposed landscaping is considered appropriate and is compatible with the design of the dwellings.

Cut and Fill

As the site slopes up from Bimbadeen Avenue (from approximately 5.6m AHD at the frontage of the site to 23m AHD at the rear boundary) the development will inevitably propose cut and fill.

It is acknowledged that the design of the proposed development is sympathetic with the steep topography of the site. However, cut of the land in excess of 1m is still proposed to allow for Unit 2's garage and substantial cut is proposed within the driveway and adjacent to the manoeuvring area for unit 2. Two cuts are proposed and will be retained by two walls, each with a maximum height of 2.1 metres. A variation to the following controls has therefore been requested:

- e. *Site excavation / land reforming is to be kept to a minimum required for an appropriately designed site responsive development.*
- f. *The maximum level of cut is 1m and fill is 1m except for areas under control j (refer to DCP).*
- g. *Retaining walls maximum 1.2m.*
- h. *Cut areas are to be set back from the boundaries at least 900mm; fill areas are to be setback from the boundary a minimum of 1.5m.*
- j. *Excavations in excess of one metre within the confines of the building and on driveways may be permitted, to allow for basement garages providing the excavations are adequately retained and drained, in accordance with engineering details.*
- m. *The top of any battered cut (or retaining wall) and the toe of any battered fill (or retaining wall) is not to be closer than 900mm for cut and 1.5m for fill to any property boundary, where the overall height at any point exceeds 500mm.*

It is generally considered that the level of proposed cut within the building curtilage is acceptable; this is confirmed by a general advice note from the Director of Planning in an email dated 9 May 2011. Reducing the level of cut in this location would only result in a building of greater height, which would in turn have greater impact on the visual amenity of the locality.

However, as advised by the Building Services Manager, whilst it has been agreed that cutting within the footprint of a building in excess of 1m may be acceptable, where the perimeter is retained by foundation walls made little difference to the external appearance of the building, this is not the case for development that greatly alters the land contours around the building.

Council officers have continually raised concerns in respect to the amount of required cut and height of retaining walls and, as detailed within this report, the applicant has failed to address these concerns or adequately justify the variations to the DCP mandatory controls.

It is considered that the level of cut could be minimised, if not completely avoided, if Unit 2's garage was relocated to the southern portion of the dwelling, which would also aid in addressing other concerns raised with the proposal in an effort to achieve a more responsive design (such as allowing for access to external living space to the rear and increased balcony area to Unit 2). The applicant has been reluctant to consider this option and has advised that the right of carriageway is 'an essential component of the development'.

The extent of the driveway and the required cut of the land is on account of the proposed right of carriageway to allow for access to No. 2E Peter Street to the north of the site. As the level of cut within the driveway area does not benefit the proposed dual occupancy development, Council does not consider that a variation to the above mentioned DCP controls is justified in this instance. This is particularly prevalent given an alternative arrangement could be easily achieved without substantial redesign of the proposed development.

Should the applicant wish to construct a right of carriageway to serve a future development within the adjoining lot, this should be included within any future application to Council. Any proposed cut could be considered at that point, with adequate justification, including architectural and or landscape drawings, as to why any relaxation to the mandatory controls should be accepted. As detailed at length within this report, Council Officers consider that the proposed variations to the DCP mandatory controls, on the basis of a potential future development which is not located on the subject site, can not be supported.

Therefore it is considered that the extent of cut within the driveway and manoeuvring area and height of retaining walls are unacceptable forms of development and such a variation cannot be justified in this instance.

Visual Privacy

There are some concerns with regard to the orientation of Unit 2 which faces the adjoining property on the north eastern boundary of the site. There is the potential for overlooking into the rear open space area of the adjacent property from the proposed balcony and windows of Unit 2 (Elevation 1). Reorientation of

the dwelling may also reduce the potential for overlooking from primary living areas toward the currently vacant adjoining lot to the west of the subject site. Whilst loss of privacy is not specifically a reason for refusal itself, it is considered that reorientation of proposed Unit 2 could mitigate overlooking and the potential for disturbance to the occupants of the adjacent properties.

A2-Site Access and Parking Code

Access to the proposed development will be via a proposed right of carriageway from Bimbadeen Avenue which will also benefit Lot 4 DP 814476 to the rear (north) of the site. The development application has been referred to Council's Development Engineers who have advised that the access driveway will be potentially hindered by the stay wire supporting the existing power pole and a gully pit located on the alignment of the northern boundary. The design of the driveway must address this.

Each unit comprises a double garage and parking for additional vehicle in a stacked arrangement on the driveway. The development also proposes a turning area in front of each of the double garage to ensure vehicles enter and exit the site in a forward gear. As previously detailed however the extent of cut and height of retaining walls required to provide the driveway and turning area are not considered to be justified, given the proposed garage for Unit 2 could easily be repositioned to the south of the building.

However it is considered that the development complies with the requirements of A2.

A3-Development of Flood Liable Land

As previously detailed a small portion of the front (south) of the site is affected by the PMF. As the site is located within the R2 zone there is no requirement for the building to be constructed above the PMF level or for the provision of an evacuation route above the PMF Level. The development accords with the requirements of Section A3 of the DCP.

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

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. The subject site is governed by the requirements of Clause 92(a) Government Coastal Policy. The proposal does not pose a threat to coastal processes.

(a) (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

Not applicable to the proposed development.

(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

Whilst the contemporary design and appearance of the buildings may not necessarily be in keeping with surrounding development, it is considered that they would provide a modern contrast and contribute to visual amenity and design interest within the locality.

However, as previously detailed within this report, the proposed level of cut and height of the two tiered 2.1m high retaining walls are considered to be excessive and would significantly impact on the visual amenity of the locality.

Access, Transport and Traffic

As previously detailed within this report adequate parking and access is provided for the proposed dual occupancy development, with the proposed access way being a minimum of 4.5m in width which complies.

Council considers however that the creation of the right of carriageway to the adjoining lot, and resultant cut and significant retaining walls for this purpose, are not justified in this instance.

Cumulative Impacts

The approval of this development application, in Council's opinion, would set a harmful precedent for similar development within the locality and within the Shire as a whole. The purpose of the DCP and other relevant planning policy is to ensure attractive, liveable and sustainable development that is in keeping with its surroundings and makes a positive contribution to surrounding residential and visual amenity.

As detailed within this report, the proposal has failed to provide useful outdoor spaces for liveability by coordinating external living areas, deep soil zones and landscaping with the dwelling design. Further, the variations sought to the DCP's mandatory controls with regard to the level of cut and height of proposed retaining walls, to serve the proposed right of carriageway to the adjoining lot, cannot be justified within the current development application and would also set a harmful precedent for similar development within the locality.

(c) Suitability of the site for the development

Topography

The development does take consideration of the site topography and, given the steeply sloping nature of the site, Council appreciates that some level of cut will be inevitable. However, it is considered that the opportunity exists to reposition the garage of Unit 2 in order to minimise the extent of the driveway area and reduce

the level of proposed cut and height of retaining walls. As detailed, this may also provide greater opportunity for improved external living areas and the coordination of external and internal living areas.

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

There were no submissions received for the proposed development.

(e) Public interest

It is considered that the proposed dual occupancy development would not impact on the public or community interests. However, as detailed, the level of cut and height of retaining walls as well as lack of useable private outdoor space that is sufficiently integrated to the dwelling design, are elements of the proposal that, if approved, would set a harmful precedent for similar, undesirable development in the future.

OPTIONS:

1. Refuse this application in accordance with the recommendation for refusal.
2. Grant in-principle support for the proposal, and that the officers bring back a further report to Council with possible conditions of development consent.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be unhappy with the determination they have the right to appeal the decision in the NSW Land & Environment Court.

POLICY IMPLICATIONS:

The proposed development could potentially set an unwarranted precedent for the relaxation of mandatory controls contained in the relevant planning policy documents, without sufficient justification with this regard.

CONCLUSION:

It is considered that the proposed development comprises non-compliances with the Development Control Plan that have not been sufficiently justified in this instance. Therefore, having regard to the assessment against Clause 8(1) of the Tweed LEP 2000 and non-compliances with Development Control Plans A1, the proposed dual occupancy development is recommended for refusal.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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11 [PR-CM] Class 1 Appeal in Relation to Amendment (DA10/0160.01) to Development Consent DA10/0160 for the Change of Use from Motel to Combined Motel and Permanent Residential Apartments at Lot 9 DP 1094335; No. 77 Tamarind Avenue, Bogangar

ORIGIN:

Development Assessment

FILE NO: DA10/0160 Pt1

SUMMARY OF REPORT:

Council granted consent on 21 September 2010 for a change of use application from a motel to combined motel and permanent residential apartments at Lot 9 DP 1094335 No. 77 Tamarind Avenue, Bogangar.

Council received an application on 23 December 2010 to amend Development Consent DA10/0160. The amendment to Development Consent DA10/0160 was to review the contributions levied against the proposal, specifically the Tweed Road Contribution Plan (TRCP) charges levied under S94 Plan No.4.

The applicant's justification that the multi dwelling housing rate of 3.9 trips per unit is based on a three bedroom unit was not supported as TRCP calculations are calculated on a land use rate of 3.9 trips per unit, which does not take into account the number of bedrooms per unit. The S96 amendment application was refused on 12 May 2011 as Council did not concur with the applicant's submission.

On 26 July 2011 Council received a Class 1 Appeal relating to the refusal of the Section 96 application DA10/0160.01.

On 21 October 2011 Council received correspondence from Council's solicitors that the applicant had issued a Notice of Discontinuance, with the terms of the discontinuance being:

1. That there be no order as to cost.

As such, each party is to pay their own costs. Council's solicitors advised on 19 October 2011, that Council's cost to date are approximately \$10,470.24. Council's solicitors also advised for Council to agree to the terms of the discontinuance, due to the fact that if Council was successful in any hearing in this matter, Council's costs would be considerably higher and there would still most likely be no cost ordered in favour to Council. Accordingly the appeal has been discontinued with both parties agreeing to pay their own costs.

RECOMMENDATION:

That the report on the Class 1 Appeal in Relation to Amendment (DA10/0160.01) to Development Consent DA10/0160 for the Change of Use from Motel to Combined Motel and Permanent Residential Apartments at Lot 9 DP 1094335; No. 77 Tamarind Avenue, Bogangar be received and noted.

REPORT:

Applicant: Left End Pty Ltd
Owner: The Owners Strata Plan 76700 The Owners Strata Plan 79344
Location: Lot 9 DP 1094335 No. 77 Tamarind Avenue, Bogangar
Zoning: 2(e) Residential Tourist
Cost: N/A

BACKGROUND:

DA10/0160

Council received an application for a change of use of an existing from motel to a combined motel and permanent residential apartments on 18 March 2010. The application was granted consent on 21 September 2010.

The existing motel comprised 50 units and one managers unit, within a three, and four and partial five storey building. The partial fifth floor is an existing mezzanine located within unit number 50. The application proposed that all units (44) located on levels one to four become permanent residential units, with all units (6) located on the ground floor remaining as tourist accommodation/motel (due to flooding constraints).

The proposal was charged section 94 and section 64 contributions in accordance with the policies. The Tweed Roads Contribution Plan (TRCP) was levied in accordance with the policy with the existing motel credited at a motel rate of 5 trips per 100m², with the proposed permanent residential component levied at a multi dwelling housing rate of 3.9 trips per unit.

DA10/0160.01

Council received an application pursuant to section 96 of the Environmental Planning and Assessment Act 1979 on 23 December 2010 to amend Development Consent DA10/0160. The amendment to Development Consent DA10/0160 was to review the contributions levied against the proposal, specifically the TRCP charges levied under S94 Plan No.4. The proposed modification sought no change to the approved form or type of development.

The applicant states that the application of the multi dwelling trip rate of 3.9 trips per unit is based on a three (3) bedroom unit. Therefore, as the proposal seeks approval for the permanent use of mainly one (1) bedroom units a reduced rate should have been applied.

The applicant's justification was not supported as TRCP calculations are calculated on a land use rate of 3.9 trips per unit, which does not take into account the number of bedrooms per unit. The application was refused on 12 May 2011.

The applicant's statement is provided below:

"The standard multi dwelling (permanent residential) trip rate of 3.9 trips/unit has been applied. It is understood this trip rate is based on a 3 bedroom unit and is used as an average to be applied to multi unit development which in normal circumstances includes a range of unit types with varying bedroom numbers.

In this instance, 41 of the 44 units approved for permanent residential use are either studio or one (1) bed apartments and the standard 3.9 trips/unit is not representative of

the actual demand which will be generated by the use of the units for permanent residential accommodation. The contribution plan envisages such situations with Section 7.3 stating as follows:

This Plan assumes particular land uses and traditional containment factors consistent with a wide range of urban forms, but not all situations can be pre-empted. From time to time, Council may receive development applications that do no fit with these assumptions. Council will assess these instances on the merit of the individual case.

The application clearly does not fit the standard assumptions and it is noted all other applied S94 plans differentiate between one (1), two (2) and three (3) bed units, applying varying rates to each. As the 3.9 trips/unit is based on a three (3) bedroom unit a third of the trip rate should be applied to studio and one bed units, two thirds to the two (2) bed unit and the full amount to the three bed unit as outlined below:

*41 X 1 Bed/Studio X 1.3 trips = 53.3
2 X 2 Bed X 2.6 trips = 5.2
1 X 3 Bed X 3.9 trips = 3.9
= 62.4 trips*

*Minus the existing trips generated by the previous Motel use:
= 62.4 trips – 86.9065 trips = - 24.5065 trips*

As per the above calculations the application generates less demand on Road infrastructure and the application of a contribution under S94 Plan No.4 is not warranted in this instance.

The applicant's claims in regards to the calculation of TRCP were not concurred with. The TRCP trip rates are not directly linked to bedroom numbers and accordingly the applicants Section 96 application to amend the applicable contributions was refused in May 2011.

Class 1 Appeal

On 26 July 2011 Council received an application for a class 1 appeal relating to the refusal of Section 96 application DA10/0160.01.

Notice of Discontinuance

On 21 October 2011 Council received correspondence from Council's solicitors that the applicant had issued a Notice of Discontinuance, with the terms of the discontinuance being:

1. That there be no order as to cost.

As such, each party is to pay their own costs. Council's solicitors advised on 19 October 2011, that Council's cost to date are approximately \$10,470.24. Council's solicitors also advised for Council to agree to the terms of the discontinuance, due to the fact that if Council was successful in any hearing in this matter, Council's costs would be considerably higher and there would still most likely be no cost ordered in favour to Council. Accordingly the appeal has been discontinued with both parties agreeing to pay their own costs.

OPTIONS:

1. Receive and note this report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Minimal costs have been incurred as a result of the Appeal.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

As this matter has been discontinued from the NSW Land and Environment Court no further action is required from Council.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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