



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr G Bagnall

**Councillors:** P Youngblutt (Deputy Mayor)  
M Armstrong  
C Byrne  
B Longland  
K Milne  
W Polglase

# Agenda

## **Planning Committee Meeting Thursday 6 November 2014**

held at Murwillumbah Cultural and Civic Centre  
commencing at 5.00pm

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C**  
**79C Evaluation**

(1) Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- (iii) any development control plan, and
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
- (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979 ),

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 in 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.

**Note:** See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995 ), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .

(2) Compliance with non-discretionary development standards-development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 80 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
  - (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
  - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

**Note:** The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

- (4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) Definitions In this section:
  - (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
  - (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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## Items for Consideration of Council:

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4	[PR-PC] Unauthorised Earthworks and Pollution Events at Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum	77
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C1	[PR-PC] Penalty Infringement Notice - Development Application DA13/0618 for the Use of Existing Building and Internal Alterations of a Restaurant and Shop at Lot 618 DP 508200 No. 2-8 Willow Avenue, Bogangar	111

## SCHEDULE OF OUTSTANDING RESOLUTIONS

### 1 Schedule of Outstanding Resolutions - Planning Committee

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## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
  - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
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### CODE OF MEETING PRACTICE:

#### **Section 2.8 Outstanding Resolutions**

*No debate is to be allowed on Outstanding Resolutions. Any changes to or debate on Outstanding Resolutions should only be by way of a Notice of Motion or a report to Council.*

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### PLANNING COMMITTEE - 1 MAY 2014

- 11 [PR-PC] Development Application DA10/0737 for Alterations to Existing Highway Service Centre Comprising of Two New Diesel Refuelling Points, Expansion of Truck Refuelling Canopy, New Truck Parking Area (36 New Bays) and the Replacement of Existing Truck Parking Area with Additional Car Parking Spaces and Dedicated Bus Drop-off Area (Application includes LEP Amendment) at Lot 1 DP 1127741 and Lot 2 DP 1010771 No. 1 Ozone Street, Chinderah

**P 48**

**Cr W Polglase**  
**Cr P Youngblutt**

**RECOMMENDED** that Development Application DA10/0737 for alterations to existing highway service centre comprising of two new diesel refuelling points expansion of truck refuelling canopy new truck parking area (36 new bays) and the replacement of existing truck parking area with additional car parking spaces and dedicated bus drop-off area (application includes LEP Amendment) at Lot 1 DP 1127741 and Lot 2 DP 1010771 No. 1 Ozone Street, Chinderah be deferred for a workshop with Council.

**Current Status:** A Councillors Workshop has been held on 22 May 2014. John Fraser, Project Manager at BP, confirmed on 22 September that the additional studies requested are close to being finalised for submitting, and BP's Lawyers are working toward negotiation on the Cost Agreement relating to the planning proposal. Additional information was received by Council on 2 October 2014. Council officers are currently reviewing this information, and are aiming to submit a report back to the Planning Committee meeting before the end of the year.

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## REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

### 2 [PR-PC] Development Application DA14/0373 for a Detached Dual Occupancy and Garage Over Three Stages at Lot 2 DP 582784; No. 7 Mitchell Street Uki

**SUBMITTED BY:** Development Assessment and Compliance

**FILE REFERENCE:** DA14/0373 Pt1

Valid



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
  - 1.2 Improve decision making by engaging stakeholders and taking into account community input
  - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
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### SUMMARY OF REPORT:

Consent is sought for a detached dual occupancy and garage over three stages.

There is one large dwelling and one small dwelling and the applicant intends to utilise the small dwelling as a secondary dwelling whilst construction of the principle dwelling is undertaken. Thereafter, the small dwelling will function as a secondary dwelling. It is not proposed to torrens or strata subdivide the proposed development.

Due to the slope of the site, the applicant has proposed parking on an existing level area of the site which is proposed to become the driveway (subject to minor earthworks).

The parking is proposed in a 'stacked' arrangement for all three spaces on the driveway.

The property exhibits two driveway crossovers which are necessary due to the slope of the site (and in fact are mostly existing with only minor earthworks required to formalise). The existence of two crossovers provides that in either direction, only two vehicles are really stacked as the third can enter and exit the site from the other crossover.

A Section 138 application is required to be lodged with Council for the crossovers. The proposed crossover on the western elevation requires approximately 20m of works within the Council road reserve; whilst the crossover on the east requires approximately 10m of works.

Stage 1 - Construction of Dwelling No.2 and undercover parking space:  
Dwelling 2 has a floor area of 48m<sup>2</sup> and is setback approximately 2.4m from the front boundary.



Dwelling 2 is comprised:

- 1 bedroom
- Combined Bathroom and laundry
- Kitchen
- Living area

Stage 1 also includes the construction of one undercover parking space (for the smaller dwelling) to be accessed from the eastern side of the site. This is sufficient for the first stage of the development.

Stage 2 - Construction of Dwelling No.1 and vehicle access (western side of the site):

Dwelling 1 has an enclosed floor area of 140.9m<sup>2</sup> and is setback approximately 2.9m from the front boundary.

Dwelling 1 is comprised:

- 3 bedrooms
- Laundry
- Bathroom
- Kitchen
- Dining
- Living area

Stage 2 also includes the construction of the vehicular access from the western side of the site. The remaining two parking spaces are proposed to be constructed at this stage.

Stage 3 - Construction of Dwelling No.1 garage.

Stage three incorporates the construction of a 'drive through' garage to provide covered parking for the main dwelling (for the central or 'middle' space).

The application will result in three stacked spaces within the driveway at the completion of Stage 3.

The application is being reported to Council as the proposed height variation exceeds 10% of the prescribed maximum 8m height standard under the Tweed Local Environmental Plan 2014. Subject to the recommended conditions, the proposed variation is considered warranted and approval of the proposed development is recommended.

## RECOMMENDATION:

That Development Application DA14/0373 for a detached dual occupancy and garage over three stages at Lot 2 DP 582784; No. 7 Mitchell Street Uki be approved subject to the following conditions:

### GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans listed in the below table, as numbered in red, except where varied by the conditions of this consent.

Drawing No.	Issue	Sheet No.	Prepared by	date
843/14	-	1 of 6	Trevor White - building design	8/5/2014
843/14	-	2 of 6	Trevor White - building design	8/5/2014
843/14 <sup>A</sup>	A	3 of 6	Trevor White - building design	2/9/2014
843/14	-	4 of 6	Trevor White - building design	8/5/2014
843/14	O	5 of 6	Trevor White - building design	28/8/2014
843/14	O	6 of 6	Trevor White - building design	28/8/2014

[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]

### PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. A staged landscape plan, consistent the staging of the development is to be submitted (at 1:100 to 1:1000 scale) and approved by Council's General Manager or delegate prior to the issue of a Construction Certificate. The landscape plan shall include:

- a) A site showing the existing features, including north point, access driveways and an outline of proposed buildings indicating doors and windows. All trees marked as 'retain' in Appendix 1 are to be located to scale on the map, marked as to be retained and identified by the following features:

- botanical and common names,

- height and girth,
  - habitat features,
  - radial distance of canopy and calculated tree protection zone, in accordance with Australian Standard AS 4970-2009 Protection of trees on development sites.
- b) A detailed plant schedule indicating the location of all proposed planting and any existing vegetation to be retained on the site. The plan is to include a detailed plant schedule which shall include:
- species listed by botanical and common names, where the proportion of total plant numbers meets a minimum 80% local native plant composition.
  - noxious or environmental weed species shall not be proposed.
  - specific location, planting densities and quantities of each species; pot sizes; the estimated sizes of the plants at maturity, and proposed staking methods, if applicable.
- c) While other plants may be considered, a selection of the recommended plants identified in Appendix 1 should be used in the plan.
5. In reference to Appendix 1 (to be read in conjunction with *dwg No. 834/16 sheet 5 of 6 prepared by Trevor White building designs dated 28<sup>th</sup> August 2014*) the scope of vegetation works shall be limited to trees identified as 'remove' or 'remove if desired'.

Appendix 1. List of tree species to be retained/removed (to be read in conjunction with *dwg No. 834/16 sheet 5 of 6 prepared by Trevor White building designs dated 28<sup>th</sup> August 2014*).

Botanical name	Common name	Tree #	Council decision
<i>Flindersia australis</i>	teak	1	retain
	<i>dead tree</i>	2	remove
<i>Eucalyptus pilularis</i>	blackbutt	3	remove
<i>Corymbia torelliana</i>	cadagahi	4	remove
<i>Corymbia citriodora</i>	lemon scented gum	5	retain
<i>Stenocarpus sinuatus</i>	wheel of fire	6	retain
<i>Psidium cattleianum</i>	strawberry guava	7	remove
<i>Family Melastomataceae</i>	Tibouchina	8	remove if desired
<i>Spathodea campanulata</i>	African tulip tree	9	remove
<i>Syzygium crebrinerve</i>	purple cherry	10	retain
<i>Ceiba speciosa</i>	silk floss tree	11	remove if desired
<i>Koelreuteria paniculata</i>	golden rain tree	12	remove
<i>Brachychiton australis</i>	broad leaved bottle tree	13	retain
<i>Caesalpinia ferrea</i>	leopard tree	14	remove if desired
<i>Jagera pseudorhus</i>	foambark	15-20	remove
<i>Jagera pseudorhus</i>	foambark	21	retain

Appendix 2. Recommended plant list

Species name	Common name	Height - typical upper (m)
<i>Archontophoenix cunninghamiana</i>	bangalow palm	5-8
<i>Adiantum hispidulum</i>	rough maidenhair	<0.5
<i>Alpinia caerulea</i>	native ginger	1-2
<i>Atractocarpus chartaceus</i>	thin-leaved gardenia	0.5-1
<i>Breynia oblongifolia</i>	coffee bush	1-2
<i>Callistemon salignus</i>	willow bottlebrush	5-8
<i>Callistemon viminalis</i>	weeping bottlebrush	5-8
<i>Carex appressa</i>	tall sedge	0.5-1
<i>Commelina cyanea</i>	native wandering jew	2-5
<i>Cordyline congesta</i>	tooth-leaved palm lily	1-2
<i>Cordyline petiolaris</i>	broad-leaved palm lily	0.5-1
<i>Cordyline rubra</i>	palm-lily	<0.5
<i>Cupaniopsis anacardioides</i>	tuckeroo	8-20
<i>Dianella caerulea</i>	blue flax-lily	2-5
<i>Doodia aspera</i>	prickly rasp fern	2-5
<i>Duboisia myoporoides</i>	corkwood	5-8
<i>Hovea acutifolia</i>	pointed-leaved hovea	2-5
<i>Eupomatia laurina</i>	bolwarra	5-8
<i>Linospadix monostachya</i>	walking-stick palm	<0.5
<i>Lomandra longifolia</i>	spiny-headed mat-rush	<0.5
<i>Macaranga tanarius</i>	blush macaranga	5-8
<i>Melastoma affine</i>	blue tongue	1-2
<i>Pilidiostigma glabrum</i>	plum myrtle	1-2
<i>Pittosporum revolutum</i>	rough fruit pittosporum	0.5-1
<i>Psychotria loniceroides</i>	hairy psychotria	1-2
<i>Syzygium hodgkinsoniae</i>	red lilly pilly	5-8
<i>Viola hederacea</i>	ivy-leaved violet	2-5
<i>Wikstroemia indica</i>	tiebush	1-2

[PCC0585]

6. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works:

(a) Vehicular access

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following:

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works

- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

[PCC0895]

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

[PCC0945]

8. 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 Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

- b) Where Council is requested to issue a construction certificate for subdivision works, 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 Local Government Act will then NOT be required.

[PCC1145]

9. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a construction certificate.

[PCC1195]

#### **PRIOR TO COMMENCEMENT OF WORK**

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

[PCW0005]

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

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

[PCW0215]

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

[PCW0225]

**13. Residential building work:**

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

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

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

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

[PCW0235]

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

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

[PCW0245]

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

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

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

[PCW0255]

16. Prior to commencement of building works a stormwater drainage plan is to be submitted to and approved by the Principal Certifying Authority.

[PCW0955]

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. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

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. 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]

19. Prior to the commencement of work erosion and sedimentation control measures are to be installed and operational. Erosion and sedimentation control devices shall be installed in accordance with the publication, "Managing Urban Stormwater - Soil and Construction", prepared by the NSW Department of Housing. All erosion and sedimentation controls shall be maintained throughout the period of construction.

[PCWNS01]

#### **DURING CONSTRUCTION**

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

[DUR0005]

21. 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]

22. 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]

23. 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]

24. 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]



25. **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]
26. **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 Work Health and Safety Regulation 2011.**  
[DUR0415]
27. **Excavation**
- (a) **All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.**
- (b) **All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.**  
[DUR0425]
28. **The finished floor level of the building should finish not less than 225mm above finished ground level.**  
[DUR0445]
29. **A survey certificate from a Registered Surveyor is to be submitted to the Principal Certifying Authority at garage slab or footing stage, prior to pouring concrete, to confirm that the approved driveway gradients will be achieved.**  
[DUR0475]
30. **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]
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. **The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.**  
[DUR1015]

33. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development. [DUR1025]
34. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times. [DUR2015]
35. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site. [DUR2185]
36. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed. [DUR2245]
37. 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]
38. 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 Plumbing Code of Australia and AS/NZS 3500. [DUR2495]
39. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
40. 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]
41. 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:-
- \* 45°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]

- 42. Weed control works shall be undertaken across the entire site and will be managed in perpetuity of the dwelling. The Class 4 Noxious weed *Cinnamomum camphora* (camphor laurel) shall be eradicated from the site using appropriate control methods.
- 43. All tree removal works shall be undertaken by a suitably qualified and experienced local Arborist (minimum qualification being TAFE Certificate III in Arboriculture).
- 44. All material removed shall be mulched on site or the timber recovered for use as appropriate.

[DURNS01]

#### PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

- 45. 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).
- 46. Prior to the issue of an occupation certificate,
    - (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
    - (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
      - (i) the method of protection; and
      - (ii) the date of installation of the system; and
      - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
      - (iv) the need to maintain and inspect the system on a regular basis.

[POC0205]

[POC0235]

- 47. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).
- 48. 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.

[POC0355]

[POC0435]

49. All landscaping work is to be completed in accordance with the approved plans prior to the issue of a final occupation certificate for each stage.

[POC0475]

50. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

51. 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]

## USE

52. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

53. Subdivision of the development, including strata subdivision, is not permitted.

[USE1255]

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

1. The recommendations are based on the plan prepared by Trevor White Building Design, titles 'Proposed Dual Occupancy Comprising Two Dwellings & One Garage', numbered 843/14A and dated 2 September 2014 (Amendment A).
2. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
3. Electricity and gas services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
4. New construction shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3935-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
5. Roofing shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall be non-combustible.
6. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bushfire Fire Protection 2006'.

**REPORT:**

**Applicant:** Mr AS Hmelnitsky  
**Owner:** Mr Alexander S Hmelnitsky & Ms Kellie T Hopkins  
**Location:** Lot 2 DP 582784 No. 7 Mitchell Street, Uki  
**Zoning:** RU5 Village  
**Cost:** \$278,200

**Background:**

Consent is sought for a detached dual occupancy and garage over three stages.

There is one large dwelling (referred to as Dwelling 1) and one small dwelling (referred to as Dwelling 2) and the applicant intends to utilise the small dwelling as a secondary dwelling whilst construction of the principle dwelling is undertaken. Thereafter, the small dwelling will function as a secondary dwelling. It is not proposed to torrens or strata subdivide the proposed development.

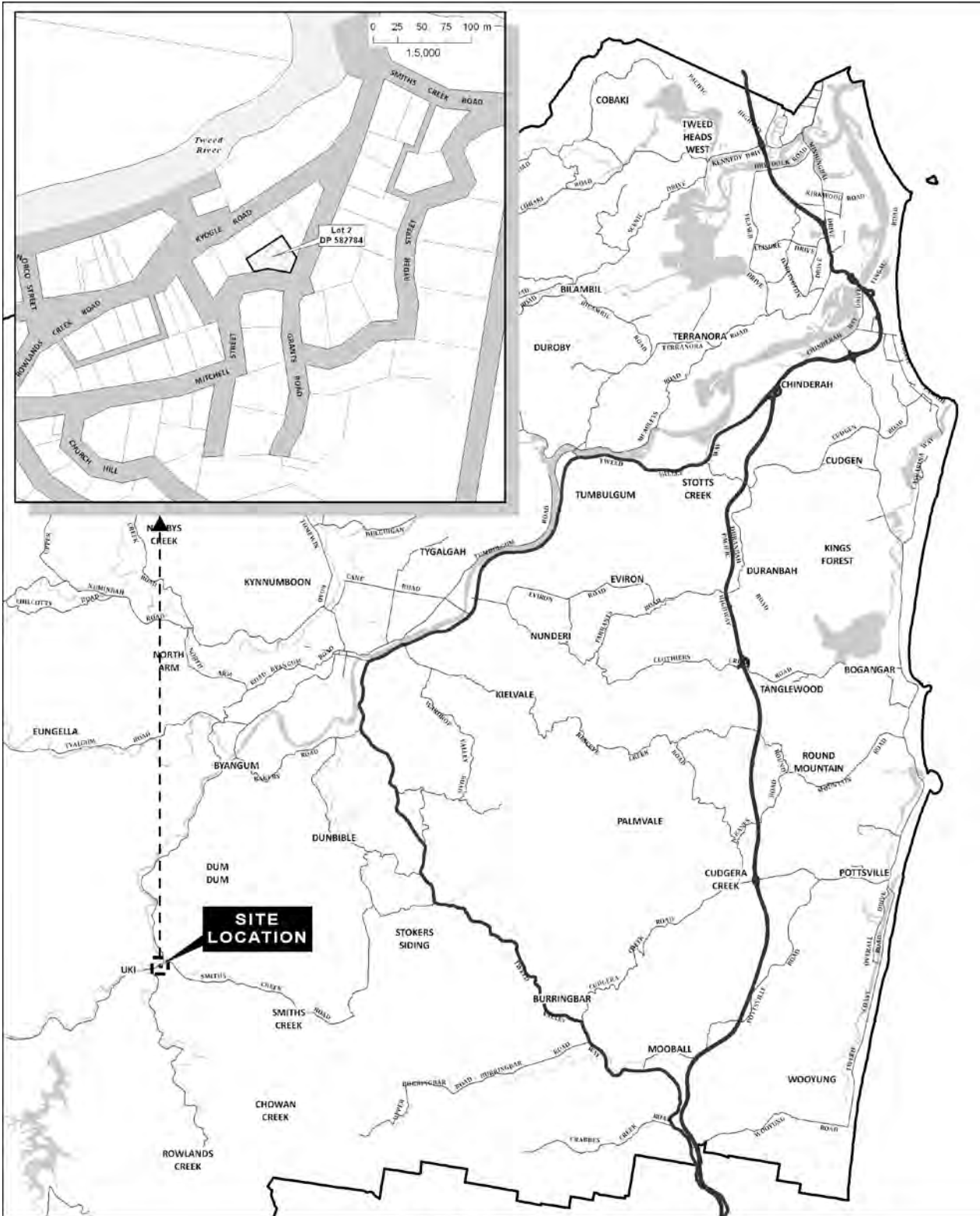
The definition of a secondary dwelling is such that it can only be established in conjunction with another dwelling. As the applicant wishes to construct the small dwelling first, it cannot be defined as a secondary dwelling and the application has thus been lodged as a detached dual occupancy. The small dwelling will be consistent with the maximum prescribed size for a secondary dwelling. Though this is an unorthodox approach, in this case the applicant was advised by Council staff prior to lodging the application that this was acceptable. The matter has been discussed at length with Council's Technical Officers and Manager Development Assessment. It has been determined that this approach is acceptable *in this case* however future applications for similar development must be assessed along the lines of a (small) single dwelling first, then a subsequent application for the principle dwelling and conversion of the original dwelling to a secondary dwelling.

In this case the small dwelling cannot 'switch' definitions once the main dwelling has been built. As such, it will be referred to as a dual occupancy and conditions applied to restrict its use to that of a secondary dwelling (including the exemption from contribution charges).

The site is steeply sloping and heavily vegetated in parts.

An earlier consent (DA09/0340) for a single dwelling existed on the site until recently (the site is vacant and undeveloped). This consent was for a single dwelling with three DCP A1 variations (building height, front setback and garage set behind the front elevation). Due to the features of the site (steeply sloping), the proposed variations were considered acceptable and the application was approved. The development does not appear to have been commenced and accordingly the consent appears to have lapsed on 13 July 2014. Note that this date is after lodgement of the subject application. A letter was submitted with the application stating that the owners do not wish to proceed with the original consent (which had lapsed at the time of writing of this report).

**SITE DIAGRAM:**



**Locality Plan**  
 Lot 2 DP582784;  
 No.7 Mitchell Street, Uki

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way, and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for any construction purposes and prior to any construction a "call before you dig" enquiry must be made by calling 8136. The information contained on this document is valid for 60 days from the date of supply.

Cadastre: 20 October, 2014  
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 Boundaries shown should be considered approximate only.



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





DEVELOPMENT/ELEVATION PLANS:

**GENERAL NOTES**  
 All work to be carried out in accordance with the relevant Australian Standards and written provisions like provisions like the building is to verify all dimensions on site prior to commencement of any work and the copyright to the design is retained by the architect. All work is to be carried out in full accordance with the relevant Australian Standards and written provisions like provisions like the building is to verify all dimensions on site prior to commencement of any work and the copyright to the design is retained by the architect. All work is to be carried out in full accordance with the relevant Australian Standards and written provisions like provisions like the building is to verify all dimensions on site prior to commencement of any work and the copyright to the design is retained by the architect.

**trevor white - building design**  
 237 revlands creek road,  
 ulu, NSW, 2484  
 phone / fax (00) 84795180  
 email: trevortwhite@trevorwhite.com.au  
 b.d.a. a new membership  
 no. 01444444  
 no. 01444444  
 no. 01444444

date: 29th May 2014  
 drawn: ZDN  
 checked: TJA  
 scale: 1:100  
 floor area: 220.0m<sup>2</sup>  
 NO. OF DWELLINGS: 2  
 NO. OF CAR SPACES: 2  
 NO. OF CARPORTS: 2  
 NO. OF GARAGES: 2  
 NO. OF STORES: 2  
 NO. OF OFFICES: 2  
 NO. OF SHOPS: 2

client: **A. HVELNITSKY  
K. HOPKINS**  
 project: **PROPOSED DUAL  
OCCUPANCY COMPRISING  
TWO DWELLINGS & ONE  
GARAGE**  
 property description:  
 LOT 1 D: 589784 -  
 MITCHELL STREET, MKI  
 sheet: 1 of 4  
 ref. no.: 843/14

INDOOR DOOR SCHEDULE - MAIN HOUSE		INDOOR DOOR SCHEDULE - DWELLING NO. 2		INDOOR DOOR SCHEDULE - GARAGE	
NO.	HEIGHT	NO.	HEIGHT	NO.	HEIGHT
DI 01	2100	DI 01	2100	DI 01	2100
DI 02	2100	DI 02	2100	DI 02	2100
DI 03	2100	DI 03	2100	DI 03	2100
DI 04	2100	DI 04	2100	DI 04	2100
DI 05	2100	DI 05	2100	DI 05	2100
DI 06	2100	DI 06	2100	DI 06	2100
DI 07	2100	DI 07	2100	DI 07	2100
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DI 100	2100	DI 100	2100	DI 100	2100

**EASTERN ELEVATION**  
 DWELLING NO. 2 SHOWN IN THIS ELEVATION TO INDICATE ITS POSITION RELATIVE TO DWELLING NO. 1

**WESTERN ELEVATION (DWELLING 1)**

**SOUTHERN ELEVATION**

**NORTHERN ELEVATION (DWELLING 1)**

**FLOOR FRAMING PLAN**

**FLOOR PLAN - DWELLING 1**

**FLOOR PLAN DWELLING 2**

**COVERED DECK**

**LIVING**

**DINING**

**KITCHEN**

**BED 1**

**BED 2**

**BED 3**

**BED 4**

**BED 5**

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**BED 304**

**BED 305**







**GENERAL NOTES:**  
 All work to be carried out in accordance with the relevant Australian Standards and the Building Code of Australia and any other applicable codes of practice. The contractor is to verify all dimensions on site and ensure that the proposed work is in accordance with the approved plans. The contractor is to be responsible for obtaining all necessary permits and approvals. The contractor is to ensure that the proposed work is completed in accordance with the approved plans and specifications. The contractor is to ensure that the proposed work is completed in accordance with the approved plans and specifications. The contractor is to ensure that the proposed work is completed in accordance with the approved plans and specifications.

**trevor white - building design**  
 331 rowlands creek road,  
 ukul, nsw 2484.  
 phone / fax (02) 66795180  
 email: trevwhite@btinternet.com

ba1 a. nsw membership  
 no. 015-52  
 accredited building designer  
 no. 6031



date	01 May 2014
drawn	DDN
checked	TUN
scale	1:50 1:1 1:200
floor area	DRILLINGS 1: 142.8 sq m ENCLOSURE 1: 4.2 sq m GARAGE 1: 22.8 sq m ENCLOSURE 2: 48.5 sq m ENCLOSURE 3: 3.0 sq m

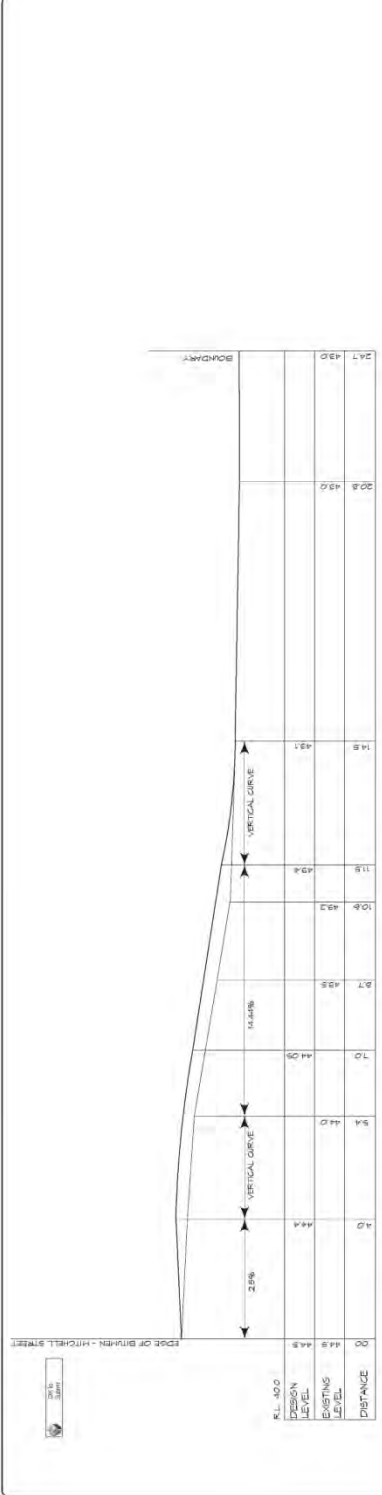
client  
**A. HMEINITSKY  
 K. HOPKINS**

Project  
**PROPOSED DUAL  
 DWELLING COMPRISING  
 TWO DWELLINGS & ONE  
 GARAGE**

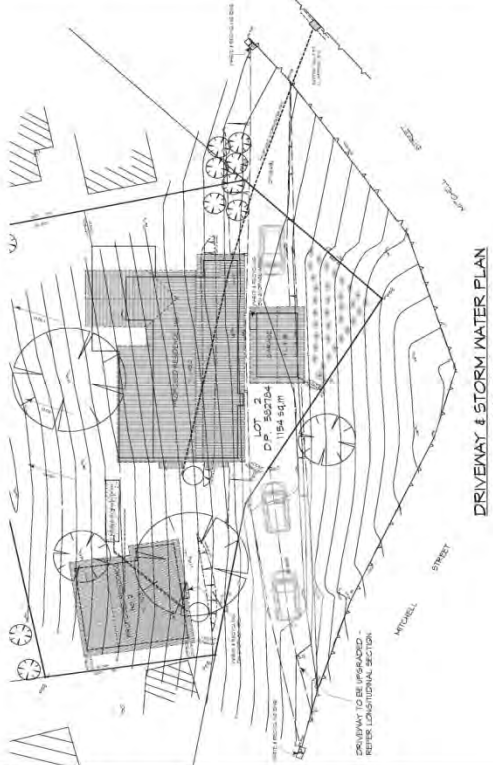
Property description  
**LOT 2 IN D.P. 582784 -  
 7 MITCHELL STREET, UKI**

dwg no.  
**843/14**

Sheet  
**4 of 4**



LONGITUDINAL SECTION OF DRIVEWAY AT WESTERN END  
 SCALE 1:50



DRIVEWAY & STORM WATER PLAN  
 SCALE 1:200

**GENERAL SAFETY NOTES:**  
 The contractor is to ensure that all work is carried out in accordance with the relevant Australian Standards and the Building Code of Australia. The contractor is to ensure that all work is completed in accordance with the approved plans and specifications. The contractor is to ensure that all work is completed in accordance with the approved plans and specifications. The contractor is to ensure that all work is completed in accordance with the approved plans and specifications.

**GENERAL NOTES:**  
 The contractor is to ensure that all work is carried out in accordance with the relevant Australian Standards and the Building Code of Australia. The contractor is to ensure that all work is completed in accordance with the approved plans and specifications. The contractor is to ensure that all work is completed in accordance with the approved plans and specifications. The contractor is to ensure that all work is completed in accordance with the approved plans and specifications.

PROJECT DETAILS	PROJECT DETAILS	PROJECT DETAILS	PROJECT DETAILS
Site Area: 100 sqm	Roof Area: 100 sqm	Enclosures: 100 sqm	Garage: 100 sqm
Conditioned Floor Area: 123 sqm	Roof Area: 123 sqm	Enclosures: 123 sqm	Garage: 123 sqm
Unconditioned Floor Area: 38 sqm	Roof Area: 38 sqm	Enclosures: 38 sqm	Garage: 38 sqm
Site Area: 100 sqm	Roof Area: 100 sqm	Enclosures: 100 sqm	Garage: 100 sqm

**WATER COMMENTS:**  
 The contractor is to ensure that all water is carried out in accordance with the relevant Australian Standards and the Building Code of Australia. The contractor is to ensure that all water is completed in accordance with the approved plans and specifications. The contractor is to ensure that all water is completed in accordance with the approved plans and specifications. The contractor is to ensure that all water is completed in accordance with the approved plans and specifications.

**ENERGY COMMENTS:**  
 The contractor is to ensure that all energy is carried out in accordance with the relevant Australian Standards and the Building Code of Australia. The contractor is to ensure that all energy is completed in accordance with the approved plans and specifications. The contractor is to ensure that all energy is completed in accordance with the approved plans and specifications. The contractor is to ensure that all energy is completed in accordance with the approved plans and specifications.





**GENERAL NOTES**  
 all work to be done in accordance with the Building Code of Australia and the relevant standards and specifications. written dimensions take precedence over verbal dimensions. all dimensions on these drawings are to be confirmed by the client prior to commencement of any work. trevor white - building design and construction is a registered architect and a member of the architectural profession. trevor white - building design trevor white - building design

**trevor white - building design**  
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 ubi. rsw 2484. (02) 66795980  
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 b.d.a. membership no. 016-92 accredited building designer no. 6091

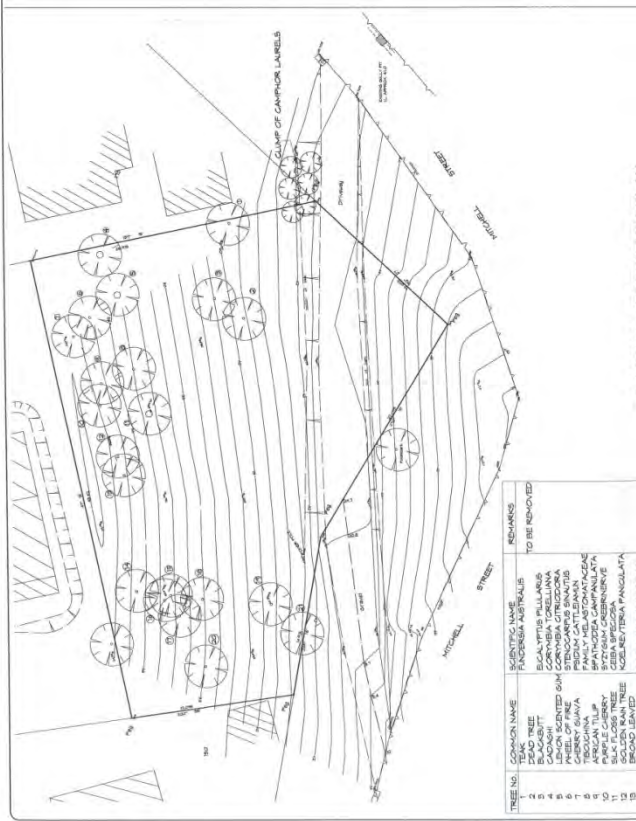
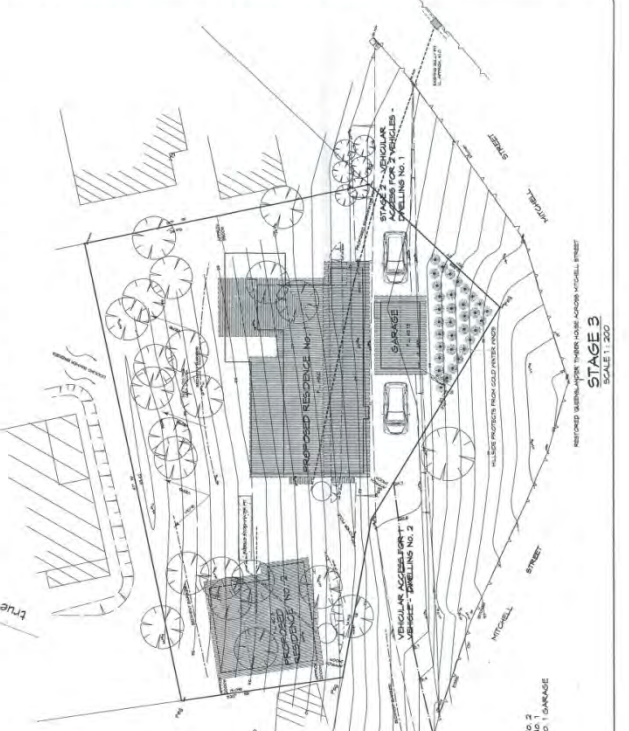
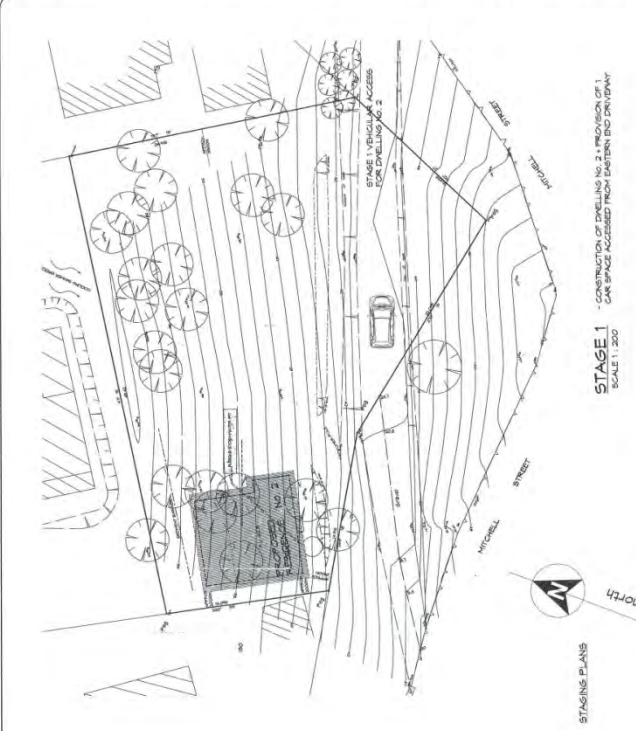


date: 26th Aug. 2014  
 drawn: DPA  
 checked: TJM  
 scale: 1:200  
 floor area: DWELLING 1: 140.84m<sup>2</sup> ENCLOSED: 4.28m<sup>2</sup> ENTRY DECK: 4.28m<sup>2</sup> GARAGE: 223.94m<sup>2</sup>  
 DWELLING 2: 48.84m<sup>2</sup> ENCLOSED: 4.28m<sup>2</sup> ENTRY DECK: 3.58m<sup>2</sup>

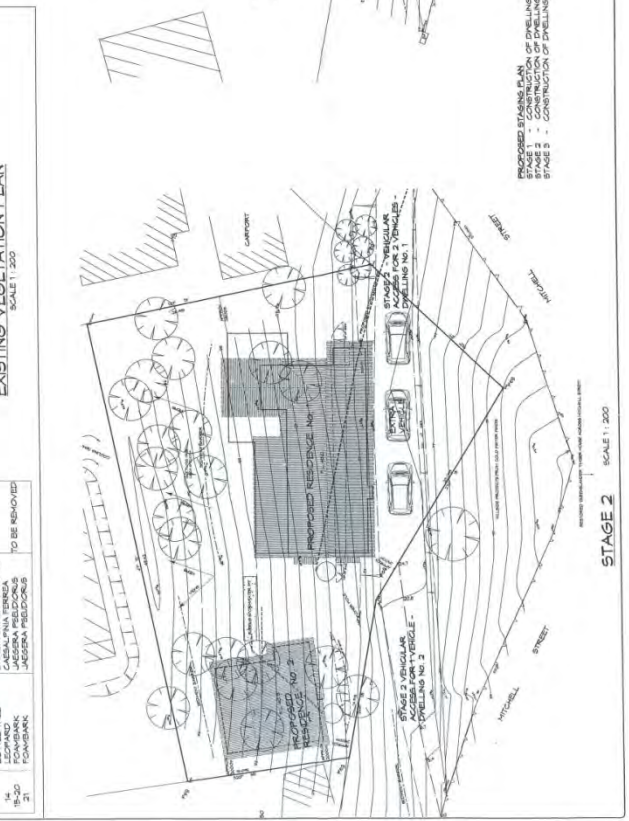
client: A. HMELNITSKY K. HOPKINS  
 project: PROPOSED DUAL PROPOSED DWELLINGS TWO DWELLINGS & ONE GARAGE  
 property description: LOT 2 IN D.P. 562784 - 7 MITCHELL STREET, UBI

drawing title: EXISTING VEGETATION PLAN  
 PROPOSED STAGING PLAN

dwg. no. 843/14 sheet 5 of 6



TREE NO.	COMMON NAME	SCIENTIFIC NAME	REMARKS
1	LENDYNE	ANDERSONIA AUSTRALIS	TO BE REMOVED
2	BLACKBERRY	EGALYPTUS PILLULARIS	TO BE REMOVED
3	LEMON SCENTED GUM	CORYMBIA CITRUCORONA	TO BE REMOVED
4	CHERRY GUM	SYDNEY GUM	TO BE REMOVED
5	REDGUM	PARROTIA AUSTRALIS	TO BE REMOVED
6	WATTLE	ACACIA SPINOSA	TO BE REMOVED
7	WATTLE	ACACIA SPINOSA	TO BE REMOVED
8	WATTLE	ACACIA SPINOSA	TO BE REMOVED
9	WATTLE	ACACIA SPINOSA	TO BE REMOVED
10	WATTLE	ACACIA SPINOSA	TO BE REMOVED
11	WATTLE	ACACIA SPINOSA	TO BE REMOVED
12	WATTLE	ACACIA SPINOSA	TO BE REMOVED
13	WATTLE	ACACIA SPINOSA	TO BE REMOVED
14	WATTLE	ACACIA SPINOSA	TO BE REMOVED
15	WATTLE	ACACIA SPINOSA	TO BE REMOVED
16	WATTLE	ACACIA SPINOSA	TO BE REMOVED
17	WATTLE	ACACIA SPINOSA	TO BE REMOVED
18	WATTLE	ACACIA SPINOSA	TO BE REMOVED
19	WATTLE	ACACIA SPINOSA	TO BE REMOVED
20	WATTLE	ACACIA SPINOSA	TO BE REMOVED
21	WATTLE	ACACIA SPINOSA	TO BE REMOVED
22	WATTLE	ACACIA SPINOSA	TO BE REMOVED



**GENERAL NOTES**  
 all work to be carried out in accordance with the Building Code of Australia and written dimensions take precedence over all other information.  
 the builder is to verify all dimensions on site prior to commencement of any work, and the copyright is reserved for the property of trevor white - building design and must not be reproduced or used in any form without the written permission of trevor white - building design.

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**bda**  
 BUILDING DESIGNERS AUSTRALIA

date: 26 May 2014  
 drawn: DDM  
 checked: TJA  
 scale: 1:100 : 1:50  
 floor area: DWELLING 1: 40.9 sqm  
 DWELLING 2: 22.8 sqm  
 GARAGE: 22.8 sqm  
 DWELLING 1 ENTRY CRACK: 2.8 sqm  
 DWELLING 2 ENTRY CRACK: 2.8 sqm  
 GARAGE ENTRY CRACK: 2.8 sqm

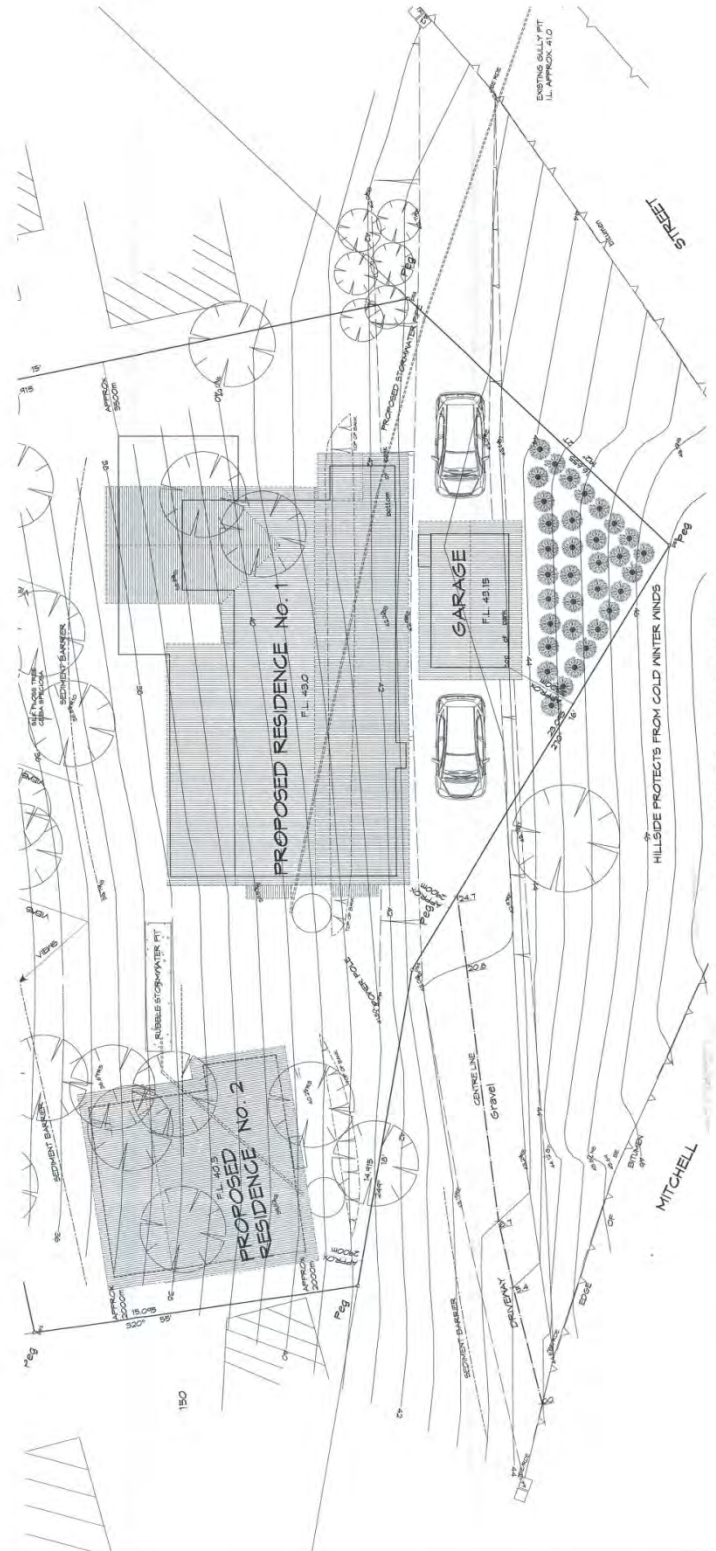
client: **A. HMELNITSKY K. HOPKINS**  
 Project: **PROPOSED DUAL DWELLING WITH TWO DWELLINGS + ONE GARAGE**  
 property description: **LOT 2 IN D.P. 5627B4 - 1 MITCHELL STREET, UKI**

drawing title: **DRIVEWAY DETAILS DWELLING NO. 2**

dwg. no. **B43/14** sheet **6 of 6**

REL. 42.0	0	5.4	7.0	8.7	9.6	11.5	15.0	16.0	20.8	24.7
FILL	0	0	0.7	0.5	0.2	0.9	0.2	0	0	0
CUT	0	4.0	4.0	4.5	4.2	4.5	4.2	4.1	4.0	4.0
DESIGN LEVEL	44.5	44.0	44.0	43.5	43.2	43.5	43.2	43.1	43.0	43.0
EXISTING LEVEL	44.5	44.0	44.0	43.5	43.2	43.5	43.2	43.1	43.0	43.0
DISTANCE	0	5.4	12.4	19.1	23.7	35.2	40.8	45.9	56.7	81.4

LONGITUDINAL SECTION OF DRIVEWAY AT WESTERN END  
 SCALE 1:50



DWELLING 2 DRIVEWAY PLAN VIEW  
 SCALE 1:100

**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 2014**

**Clause 1.2 - Aims of the Plan**

The development is consistent with the aims of TLEP 2014 as set out within Clause 1.2.

**Clause 2.3 - Zone objectives and Land use table**

The objectives of the RU5 Village zone are to provide for a range of land uses, services and facilities that are associated with a rural village and to ensure that new development responds to and respects the character of a rural village.

The proposed development which will provide residential development (dual occupancy) within the village area is considered to accord with both objectives.

**Clause 4.3 - Height of Buildings**

The LEP prescribes a maximum height of 8m for the site. The proposed development proposes a variation to this, with an overall height of 9m.

**Justification provided by applicant:**

**"Tweed LEP 2014 - Section 4.3**

*The site is shown on Tweed LEP 2014 maps as being in an area designated 'I' which has a building height limit of 8 metres. The proposed Dwelling No. 1 has its highest point set at 9 metres which is 1 metre high than the standard. Variations to this standard are required to be justified by an objection to the standard that shows how the standard is unreasonable in the specific context of the proposal.*

*The relevant objectives stated in Section 4.3 are as follows:*

- b) to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity.*
- f) to limit the impact of the height of a building on the existing natural and built environment.*
- g) to prevent gross overshadowing impacts on the natural and built environment.*

*In response to (b), above, the steepness of the site is an important factor as is the location of the bitumen road formation of Mitchell Street relative to the site of Dwelling No. 1. Figure 1 demonstrates the difference in elevation between the road formation and the proposed Dwelling No. 1 site and shows*



how the additional 1 metre of roof above the 8 metre height limit will have no adverse effect on the 'urban character and level of amenity'.

In response to (f) above, Figure 1 also demonstrates how the height variation will have no adverse effect on the natural environment. The dwellings on the adjoining properties are relatively remote from the proposed Dwelling No. 1 and at considerably different floor levels. This, together with the fact that they are not able to be viewed from any public place in a comparative way means the impact on the built environment will be negligible.

In response to (g) above, Figure 1 demonstrates that the elevated land to the south will have some minor overshadowing in winter whilst the relative locations of adjoining dwellings will result in little or no overshadowing of them.

It should also be noted that should these arguments be rejected, the part of the roof which is outside the height limit could easily be modified to be a hip rather than a gable. This would however reduce the amount of winter sun extending on to the veranda, allowed by the open gable. It would not provide any benefit to anyone."



Figure 1

Ten percent of 8m is 80cm - thus the 1m variation represents a variation of greater than 10%. As such, this application is being reported to Council. The applicant's justification for the height variation in accordance with Clause 4.6 of TLEP 2014 is generally accepted and the height variation is thus considered warranted.

#### Clause 4.4 - Floor Space Ratio

The development has a total of 211.2m<sup>2</sup> of floor space (including the garage). The area of the site is approximately 1154m<sup>2</sup>. This results in an FSR of 0.18:1 which is well below the prescribed maximum of 2:1 prescribed by the FSR map.

#### **Clause 4.6 - Exceptions to development standards**

The applicant seeks an exception to the Height of Buildings development standard. The Building Heights map provides an 8m building height limit for the site.

In accordance with clause 4.6(3) the applicant has provided a written request in relation to the proposed variation.

The applicant provided the following comments:

*"Tweed LEP 2014, Section 4.6*

*The objectives stated in Section 4.6 (Exceptions to development standards) are as follows:*

1. (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development.*
- (b) *to achieve better outcomes for and from development by allowing flexibility in certain circumstances.*

*In response to 1(a), the variation sought is, as discussed previously relatively minor and would presumably fall within the 'degree of flexibility' applied in this objective.*

*In response to 1(b), again the variation is relatively minor and will result in a 'better outcome' for reasons or more appropriate design and design which provides better access to winter sun.*

2. *The subject development standard in this case is not excluded from this clause.*
- 3 (a) *The development standard is unreasonable and unnecessary in this case for reasons demonstrated in the responses to the objectives in Section 4.3 above.*
- (b) *Once again, the grounds for contravening the development standard are demonstrated in the responses to the objectives in Section 4.3 above.*
4. *This part is outside the responsibility of the proponent.*
5. *This part is outside the responsibility of the proponent.*
6. *This part is not relevant to this application.*
7. *This part is not the responsibility of the proponent.*
8. (a) *and (b) are not relevant to this application.*
- (c) *The proposed development would not contravene the provisions of Section 5.4(q) as the total floor area of the secondary dwelling*

*does not exceed the greater of: (a) or (b) in that clause which in this case is 60 square metres."*

The proposed development is considered consistent with the objectives of the R5 zoning, does not raise any matter of significance for State or regional environmental planning, is not considered to be contrary to the public's interest, and the extent of the variation is considered to be minor.

Due to the slope of the site, design options are limited and it is considered that the proposed design will result in an improved level of amenity for future residents by way of improved access to sunlight and breezes with negligible effects on the environment, or streetscape amenity.

The subject application does not propose any subdivision or strata subdivision.

After determination of the subject application, the Council will keep a record of its assessment of the factors addressed in the applicant's written request referred to in subclause (3), in accordance with Clause 4.6(7).

The subject application does not contravene BASIX certification requirements.

Accordingly, the justification presented by the applicant is generally supported and support for the proposed variation is thus recommended.

#### **Clause 5.4 - Controls relating to miscellaneous permissible uses**

The development does not technically involve any miscellaneous permissible uses. It is noted however that the small dwelling meets the secondary dwelling maximum size controls (less than 60m<sup>2</sup>) with an area of 48m<sup>2</sup>. Thus, contribution charges will not apply and strata subdivision will not be permitted.

#### **Clause 5.9 - Preservation of Trees or Vegetation**

The development requires removal of vegetation as follows:

- six (6) x *Jagera pseudorhus* (foambark)
- one (1) x *Eucalyptus pilularis* (blackbutt)
- one (1) x dead eucalypt tree

A site inspection indicated that the above vegetation had already been removed prior to approval being given to the application. Council's Natural Resource Management Unit was asked to visit the site to assess the extent of the clearing and advise on possible compensatory planting. Advice from NRM was received to the effect that it would be difficult to require significant compensation on the site due to the RFS requirement for the site to be managed as an inner protection area (which prescribes a maximum canopy cover of 15%). Notwithstanding, it has been considered appropriate to modify Council's standard condition relating to the provision of a detailed landscaping plan prior to issue of construction certificate, to require some specific planting and retention of vegetation which the applicant has indicated will remain. The following conditions have been recommended:



- 1) A landscape plan (at 1:100 to 1:1000 scale) is to be submitted and approved by Council's General Manager or delegate prior to the issue of a Construction Certificate. The landscape plan shall include:
  - a) A site showing the existing features, including north point, access driveways and an outline of proposed buildings indicating doors and windows. All trees marked as 'retain' in Appendix 1 are to be located to scale on the map, marked as to be retained and identified by the following features:
    - botanical and common names,
    - height and girth,
    - habitat features,
    - radial distance of canopy and calculated tree protection zone, in accordance with Australian Standard AS 4970-2009 Protection of trees on development sites.
  - b) A detailed plant schedule indicating the location of all proposed planting and any existing vegetation to be retained on the site. The plan is to include a detailed plant schedule which shall include:
    - species listed by botanical and common names, where the proportion of total plant numbers meets a minimum 80% local native plant composition.
    - noxious or environmental weed species shall not be proposed.
    - specific location, planting densities and quantities of each species; pot sizes; the estimated sizes of the plants at maturity, and proposed staking methods, if applicable.
  - c) While other plants may be considered, a selection of the recommended plants identified in table 1 should be used in the plan:
2. In reference to Appendix 1 (to be read in conjunction with *dwg No. 834/16 sheet 5 of 6 prepared by Trevor White building designs dated 28<sup>th</sup> August 2014*) the scope of vegetation works shall be limited to trees identified as 'remove' or 'remove if desired'
- 3) Weed control works shall be undertaken across the entire site and will be managed in perpetuity of the dwelling. The Class 4 Noxious weed *Cinnamomum camphora* (camphor laurel) shall be eradicated from the site using appropriate control methods.
- 4) All tree removal works shall be undertaken by a suitably qualified and experienced local Arborist (minimum qualification being TAFE Certificate III in Arboriculture).
- 5) All material removed shall be mulched on site or the timber recovered for use as appropriate.

### **Clause 5.10 - Heritage Conservation**

The site is within the Uki Conservation Area.

The land does not contain any known archaeological sites.

No demolition of any item within the conservation area is proposed.

Clause 5.10 prescribes that development consent is required for erecting a building on land that is within a heritage conservation area. The consent authority must consider the impact of a development on heritage, prior to giving consent to an application. A consent authority may, prior to giving consent to an application, require a heritage management document to be prepared.

In this case, the applicant has sought consent for the proposed residential development. The proposed development is minor and within an existing residential area. The development is not considered to have a negative impact on the heritage conservation area given it is for small scale residential development on a singular allotment, surrounded by other similar development. The proposed development is appropriately designed to be sympathetic to the local Uki area and the low density, leafy character of Mitchell Street. As such, a heritage management document is not considered to be required.

A heritage conservation management plan is not considered to be required.

### **Clause 5.11 - Bush fire hazard reduction**

The site is bushfire prone and a report was requested from the applicant in order to appropriately ascertain bushfire risk for the site. The submitted report identifies that BAL 12.5 construction will be required and that the whole site shall be managed as an inner protection area (IPA). The report was referred to the Rural Fire Service who provided the following comments/conditions:

1. The recommendations are based on the plan prepared by Trevor White Building Design, titles 'Proposed Dual Occupancy Comprising Two Dwellings & One Garage', numbered 843/14A and dated 2 September 2014 (Amendment A).

#### ***Asset Protection Zones***

*The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below crucial limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:*

2. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

### **Water and Utilities**

*The intent of measure is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:*

3. Electricity and gas services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

### **Design and Construction**

*The intent of measure is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:*

4. New construction shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3935-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
5. Roofing shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall be non-combustible.

### **Landscaping**

6. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bushfire Fire Protection 2006'.

### **Clause 7.2 - Earthworks**

There are some earthworks required to facilitate the proposed development, namely excavation for driveway access and creation of a flat area within the building footprint. Consent has been sought for the earthworks at part of the development application (as required by Clause 7.2).

In revised information submitted 3 September 2014, the applicant has clarified the extent of excavation as follows:

- 1.5m of cut beneath Dwelling 1 (within building footprint)  
DCP A1 allows a maximum of 3m cut for slopes up to 18 degrees which the site is. In this regard the proposed cut is considered acceptable and standard conditions will be applied regarding retaining/batters.
- 1m of cut to the south of Dwelling 2 (outside building footprint)  
There is approximately 1m of cut proposed to the south of dwelling 2 to provide a small outdoor living area. This is consistent with the 1m maximum control prescribed by DCP A1.
- 1m cut for driveway access  
Access is predominantly existing but requires a small amount of widening. At the western end, around 300mm of fill is also required to grade up to Mitchell Street.

Standard conditions will be applied requiring all earthworks to be in compliance with Council's standards with relevant erosion and sediment control utilised.

In relation to the remaining matters under Clause 7.2, the proposed earthworks, subject to conditions, are not considered to be detrimental to drainage patterns or soil stability in the locality nor cause adverse impacts to any adjoining properties. Fill will not be required to be imported to the site and it is not anticipated that the minor excavation would disturb any relics, waterways or the characteristics of the heritage conservation area.

The development is considered to be satisfactory with regard to Clause 7.2.

### **Clause 7.3 - Flood planning**

The site is flood prone with a 1 in 100 year flood level of 22.7m AHD. The corresponding minimum floor level is 23.2m AHD. Review of Council's topographic information for the subject site indicates that it sits between the 40m and 50m contours and as such is well above the required minimum floor level (23.2m). There are no further concerns from a flooding perspective.

### **Clause 7.4 - Floodplain risk management**

As above. The proposed development is located well out of the flood plain and is by the PMF. No specific emergency response or evacuation measures are required.

### **Clause 7.5 - Coastal risk planning**

The subject land is not identified as being subject to coastal risk.

### **Clause 7.6 - Stormwater Management**

The development maintains ample permeable area suitable for the infiltration of water. Guttering will convey roof water to rainwater tanks for storage.

### **Clause 7.10 - Essential Services**

Essential services are available at the site and connections will be required. Rainwater tanks will also be utilised.

### **State Environmental Planning Policies**

There are no relevant SEPPs.

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

There are no relevant draft environmental planning instruments.

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

##### **Tweed Development Control Plan**

##### **A1-Residential and Tourist Development Code**

A detailed DCP A1 (Part A) assessment is provided on file.

The following variations to DCP A1 are proposed:

1. Dwelling entries not visible from the street (due to slope)
2. Front setbacks (Dwelling 1 is 2.9m from front boundary, Dwelling 2 is 2.4m from front boundary)
3. Garage is forward of the building line (this is permitted in exceptional circumstances by Control C6, the site is considered to qualify)
4. Rear setbacks

DCP Variation Assessment:

1. Dwelling entries not visible from the street

Due to the slope of the site, the dwelling entries are generally not visible from the street but they are easily discernible upon entry to the site. The development is consistent with similar development in the Uki area and though it has reduced front boundary setbacks (assessed in detail under 'setbacks' control below), it is considered to be reasonable in terms of bulk and scale and an appropriate response to the constraints of the site. Facade elements are appropriately incorporated into the building design.

2. Front setbacks

The development contains large setback variations.

- Dwelling 1 is set back approximately 2.9m from the front boundary.
- Dwelling 2 is set back approximately 2.4m from the front boundary.
- The garage is set back approximately 2.9m from the front boundary.

The applicant has submitted justification as follows:

- a) *The road boundary in this area could be considered to be a secondary road frontage, due to the almost 90 degree bend in Mitchell Street which would allow a 3m setback.*
- b) *The edge of the bitumen road pavement is between 12.5m and 15m from the corners of the building.*
- c) *The level of the bitumen in the vicinity of the variations sought is several metres in elevation above the floor level of the buildings so the buildings will not impose onto the street.*
- d) *To avoid further earthworks for driveway extensions, the main building has been located close to the existing driveway which results in the main building being closer to the road boundary than 6m. "*

A site inspection has confirmed that the road reserve in this location is quite wide (approximately 20m on the western elevation and 10m on the eastern elevation). The dwellings will be down slope of the road and are not considered to result in adverse impacts in relation to overlooking or imposition on the streetscape. The proposed location of the dwellings also minimises excavation on the site.

The subject site is quite unique in terms of its slope and road frontage. Review of other sites in the locality would indicate that there are other structures, inclusive of dwellings which appear to be located closer to the front boundary than 6m. In this regard, the proposed setback variation is not considered to be out of character with surrounding development.

3. Garage is forward of the building line

In relation to the garage, control C6 provides that

*C6. Council may approve the erection of a garage which does not comply with the required front building line setback where exceptional circumstances, such as the depth and shape of the allotment, slope or grade, make it necessary and as supported by a site analysis that demonstrates:*

- i. No other suitable location is available behind the building line;*
- ii. There is no vehicular access to the rear or side of the allotment;*
- iii. The proposal will not affect the amenity of adjoining properties;*
- iv. The design of the garage is complimentary to the design, materials and roof form of the dwelling;*
- v. The proposal will not create an unwanted precedent to the vicinity;*
- vi. The proposal does not result in the creation of additional driveway access;*
- vii. The proposal will not impede on the required pedestrian and traffic sight lines;*
- viii. There are no valid objections are received from adjoining property owners;*
- ix. The structure is located a minimum of 900mm from the side boundary of the property.*

The site is considered to meet these requirements and it is noted that locating the garage in this location removes the need for considerable earthworks or engineering to locate it further down the slope.

There is not considered to be significant adverse impact on the streetscape as a result of the proposed reduced setbacks and approval of the proposed variation is recommended.

4. Rear setbacks

In relation to rear setbacks, the table prescribes that a 12m setback is required as the building is greater than 4.5m in height.

Review of the plans indicates that Dwelling 1 has a rear setback of 10.5m minimum, and Dwelling 2 has around 3.7m. The dwelling to the rear has access from Kyogle Road and is oriented to the north. This dwelling is also located significantly lower than the subject site (below the 40m contour). The dwelling to the west has quite a steep driveway that provides physical separation from the boundary. Both of these dwellings are oriented to the north and would not appear to contain any outdoor living areas which could be overlooked by the proposed development.

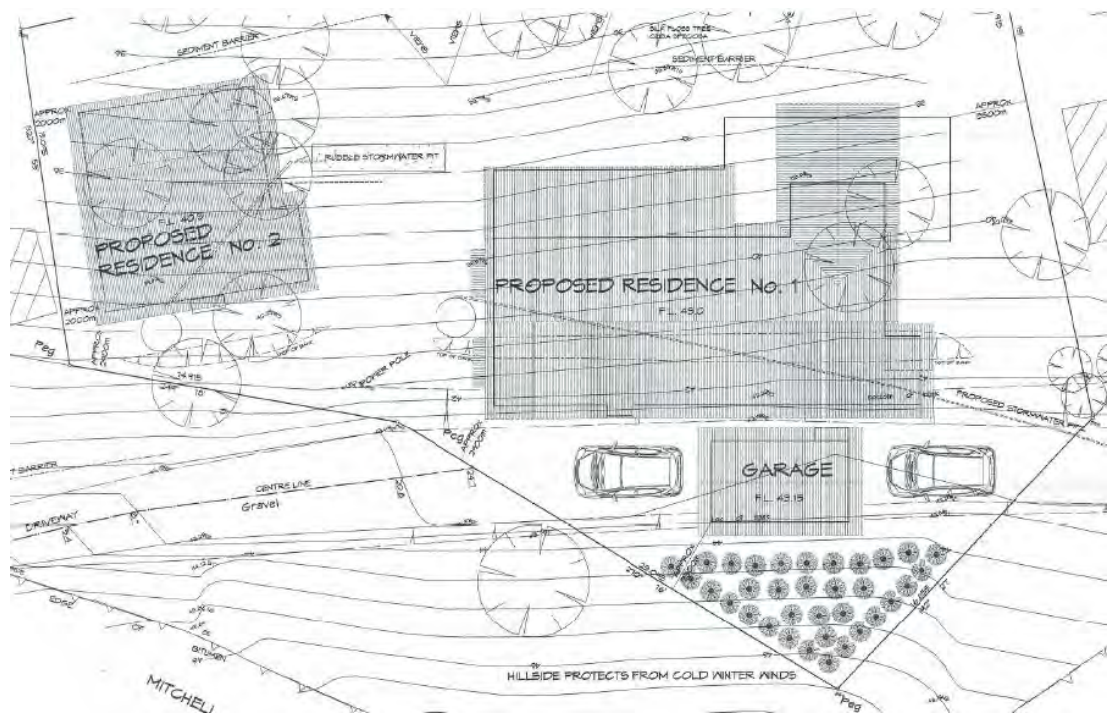
A building less than 4.5m in height requires a 5m rear setback. It is considered that the height of the buildings is a function of the slope - in that the proposed design has been selected in order to minimise earthworks on the allotment. The size of the lot is such that a dual occupancy is permissible; in effect consent is sought for a smaller development footprint than the maximum that is theoretically permissible. If a concession is given

for the slope and the 5m setback is applied, Dwelling 1 well exceeds the setback whilst Dwelling 2 is around 1.3m short. When it is considered that due to the slope the only real external living area is provided on the suspended decks, it is apparent that greater separation actually exists as vertical separation is also provided.

The constraints of the site are such that the proposed development (inclusive of the proposed variations) is considered to be an appropriate response to the site and subsequently, the proposed variations are considered suitable for approval. As such, approval of the application is recommended.

### A2-Site Access and Parking Code

The application proposes three stacked car parking spaces at completion of Stage 3, one for the main dwelling, one for the secondary dwelling and one visitor's space as per the figure below:



Note - there are two driveway crossovers, one to the east and one to the west of the property.

DCP A2 provides that:

**Tandem or Stacked Spaces** means two (2) parking spaces arranged in such a way that vehicular access to one (1) of the parking spaces cannot be obtained without crossing the other space.

Further, the DCP specifies that:

C9. Tandem or stacked parking is not generally favoured. However, a limited number of stacked employee and/or resident spaces may be considered where suitably justified, addressing the following:

- A demonstrated need for tandem or stacked parking ;
- Demonstration of no inconvenience to employees/residents;
- Demonstrated assessment that the provision of tandem or stacked parking will not adversely affect the functioning of parking and access to the site;
- No more than two (2) cars are parked in a stacked arrangement, so that no more than one (1) vehicle has to move to allow egress of another;
- Tandem or stacked parking is only to be used for people employed or residing on the premises where vehicles are likely to be parked all day or a major part of the day;
- Paired tandem or stacked spaces must be used by the occupants of the same tenancy;
- Sufficient space shall be provided on site for shifting vehicles without requiring their movement onto public streets;
- Tandem or stacked parking will not be permitted for customer/public parking or multi dwelling housing;
- The minimum length of tandem or stacked parking is 10.4m.

In relation to the required number of spaces, the DCP prescribes for a 'dual occupancy' that one space per dwelling and one visitor space be provided (i.e.: 2 spaces per dwelling). For a 'dwelling' one space is required plus provision of driveway parking for another vehicle. A 'secondary dwelling' requires one space.

The application has been lodged as a dual occupancy however will function as a dwelling and secondary dwelling (with conditions applied to restrict the use). As such, it is considered appropriate to require parking to be provided as per the dwelling and secondary dwelling controls. As such, a total of three spaces will be required, one for each dwelling plus driveway parking for another vehicle.

The proposed development meets this numerical requirement.

Due to the slope of the site, the applicant has proposed parking on an existing level area of the site which is proposed to become the driveway (subject to minor earthworks).

The parking is proposed in a 'stacked' arrangement for all three spaces on the driveway. Stage 1 proposes one undercover parking space (for the smaller dwelling) to be accessed from the eastern side of the site. This is sufficient for the first stage of the development.

Stage 2 of the development comprises the construction of the main dwelling and the vehicular access from the western side of the site. The remaining two parking spaces are proposed to be constructed at this stage.

Stage three incorporates the construction of a 'drive through' garage to provide covered parking for the main dwelling (for the central or 'middle' space).

The application will result in three stacked spaces within the driveway at the completion of Stage 3. The DCP prescribes that not more than two spaces shall be stacked.



Notwithstanding, the property exhibits two driveway crossovers which are necessary due to the slope of the site (and in fact are mostly existing with only minor earthworks required to formalise). The existence of two crossovers provides that in either direction, only two vehicles are really stacked as the third can enter and exit the site from the other crossover. As such, the three spaces are not considered to present a major impediment in terms of useability for future residents. Council's Development Assessment Engineer has confirmed verbally that whilst not ideal, the proposed arrangement can be supported in this instance.

As such, the provisions of DCP A2 are considered to be appropriately satisfied for the proposed development.

### A3-Development of Flood Liable Land

Section A3 advises that for residential development the habitable areas of all residential buildings are to be at a level of not less than Council's adopted minimum floor level for development.

The site is flood prone with a 1 in 100 year flood level of 22.7m AHD. The corresponding minimum floor level is 23.2m AHD. Review of Council's topographic information for the subject site indicates that it sits between the 40m and 50m contours and as such is well above the required minimum floor level (23.2m). Accordingly, it is considered that the proposed development meets the objectives of Section A3 of the DCP.

### B20-Uki Village

This site specific DCP provides the overarching planning framework for the proposed application (with DCP A1 applying in the absence of like controls within DCP B20).

The site is within the Uki East precinct:

***Uki East** – Primarily east of Rowlands Creek and contained by the eastern boundary of the village, this area is predominantly occupied by detached residential that have traditional village residential qualities such as large lots, mature trees and architecture reflecting rural (rather than suburban) qualities.*

The objectives of this precinct are to ensure that the precinct continues to function as an area of detached houses with traditional village residential qualities and to allow for alternative residential uses (such as dual occupancies) where the development is sympathetic to the existing residential qualities of the precinct.

It is considered that the proposed development meets these objectives and will contribute a well designed and interesting development to the existing residential area. The relevant performance criteria specify the encouragement of detached residential development within the precinct, which is precisely what is proposed in the subject application.

The development is also considered to maintain the broader land use objectives of the Uki village area by creating further residential development in a dedicated residential area - i.e. utilising land for its desired purpose.

#### Village form and structure objectives (p16)

The village form and structure objectives seek to consolidate residential and urban development in the village whilst ensuring that increased site density (as in the case of the subject application) will not lead to adverse impacts on the visual or scenic qualities of the village.

The corresponding performance criteria prescribe a site density for the Uki East precinct of not greater than one dwelling per 750m<sup>2</sup> site area on land with a slope of 11-20 degrees. The subject site has a slope of up to 18 degrees. The site area is 1154m<sup>2</sup> which corresponds to sufficient site area for 1.5 dwellings (1154m<sup>2</sup>/750m<sup>2</sup>). The DCP does not differentiate between 'dwellings' and 'secondary dwellings'. As the definition of 'secondary dwelling' is such that it can only be occupied in conjunction with a principle dwelling and can never be subdivided, it is considered that the proposed development is not inconsistent with the above control. Additionally, the site area would permit more than one dwelling (1.5 dwellings) and as such, it is considered that the small (and ancillary) secondary dwelling can be accommodated on site without adverse impacts.

The performance criteria also prescribe that applications for multi-dwelling housing shall comply with the provisions of DCP A1. A detailed DCP A1 assessment is provided on file and discussed above however for the purposes of LEP 2014, the proposed development has been defined as 'dual occupancy - detached' (not 'multi-dwelling housing') and has thus been assessed as such.

#### Heritage, Character and Identity controls

The site is not a heritage building or within a heritage place as listed within Appendix 2 of the DCP. The applicant provided sufficient information to confirm that the development will not impact adversely on the Uki Village Heritage Conservation Area (as assessed under LEP 2014 above). The proposed building design is sympathetic to the location of the site and will not protrude above any ridgelines. The slope of the site is such that the development will be located on the down slope side of the existing road and as such will have benign environmental impacts. Some vegetation removal is required (as discussed above) and conditions will be applied requiring submission of a detailed landscaping plan including replacement planting of mature vegetation prior to issue of a construction certificate.

#### Built Form, Scale and Appearance controls

The objectives of this section aim to maintain the existing built form and scale of the village.

The subject application has a variation to the 8m height control for the Uki East precinct. By way of justification for the proposed variation, the applicant has supplied the following:

*"The highest point of the room is 9m above the ground which exceeds the 8 metre Uki DCP limit, however the steepness of the site should allow some leeway and the fact that the building will not be readily visible considerably lessens the effect of this minor variation from the control."*

LEP 2014 also enshrines the 8m height limit and as such, detailed assessment has been undertaken against the LEP control (being the highest control) above. For the reasons outlined in that section, the proposed variation (which relates to a small portion of the building only) is considered to be acceptable.

The building design is considered to be consistent with the low density residential character of the Uki East precinct and the reduced setbacks (as assessed in detail under DCP A1 above as there are no prescriptive controls in DCP B20) are considered appropriate in the context of surrounding residential development.

Due to the slope of the site, the proposed garage is unable to be sited behind the front elevation of the dwelling. Notwithstanding, the design is considered to be appropriate (see DCP A1 assessment for detailed comments in this regard).

In terms of streetscape character, it is considered that the proposed development is sympathetic to the existing relaxed residential character within the Mitchell Street area. The dwelling is nestled into the hill and will not impact adversely on the streetscape in terms of bulk or scale. The garage wall (not the garage door) will face the street (but again this is nestled below street level). There are windows set into the street elevation to lessen visual impact. The location of the garage (inclusive of its position forward of the building line) is considered to be acceptable.

#### Open Space and Landscaping controls

The application has not addressed the landscaping controls of DCP B20 however it is considered that Council's standard process of requiring submission of a detailed landscaping plan prior to issue of construction certificate be followed. Upon request from Council, the applicant did submit a tree survey which indicates that some mature vegetation will be retained. The landscaping plan will serve to complement this survey and is considered to result in satisfaction of the DCP B20 landscaping controls. It is noted that DCP B20 requires at least 40% of the site to be landscaped area - the site area easily allows for this requirement to be met.

#### Car Parking Provision/Access, Driveways and Parking controls

The originally submitted application proposed parking within the road reserve and one space within the proposed garage, which is not acceptable for the overall development. The applicant was requested to provide a revised parking arrangement which now shows three stacked spaces on the driveway (wholly within the subject site). DCP B20 requires compliance with DCP A2. As detailed under DCP A2, the development now provides sufficient parking (including visitor parking).

#### Infrastructure

Services are available to the site. New connections will be required.

### Environmental Performance

This section of the DCP requires a higher than average performance standard for new development in Uki in terms of environmental rating; urban design qualities; public domain contribution and building quality.

The proposed development will utilise rainwater tanks and the submitted BASIX certificate indicates that 4 star fittings will be used in bathrooms and kitchens. This complies with the criteria for the DCP.

Standard conditions will be applied regarding appropriate approvals for stormwater devices. Stormwater is proposed to be directed to a rubble pit for dwelling 2 and piped to the street for dwelling 1. Council's Development Assessment Engineer has verbally advised that standard conditions are appropriate to regulate this.

### Hazard Management

As discussed previously in this report, the subject site is mapped as being Bushfire Prone Land.

The objective of this section is to ensure that any development has proper regard to environmental constraints such as flooding and bushfire.

DCP B20 has established performance criteria and acceptable solutions for hazard management.

Performance Criteria:

*P1 New development has provision for fire fighting purposes.*

The proposed residential development (dual occupancy) is located in an area serviced by reticulated water, with hydrants situated in close proximity (within 70m) to the proposed dual occupancy development.

Acceptable Solutions:

*A1 All development in the areas identified by B20 - Map 7 conforms with guideline document "Planning for Bushfire Protection" and is supported by a Bushfire Management Plan.*

*A2 Where vegetation clearing is required for fire risk management and fuel load reduction, seek to remove weed and exotic species and retain or re-plant native plant species to maximise habitat values and the biodiversity outcome. A weed Management Plan is to be submitted.*

As previously discussed the proposed residential development (dual occupancy) was referred to the NSW Rural Fire Service for comments and conditions (please refer to section Clause 5.11 of this report). Accordingly the proposed development is considered to meet the acceptable solutions of Section B20.

The proposed development is considered to achieve appropriate compliance with DCP B20 with variations appropriately justified based on the constraints of the site.

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

Clause 92(a) Government Coastal Policy

The development is not located on land to which Clause 92(a) applies.

Clause 92(b) Applications for demolition

The application does not incorporate demolition.

Clause 93 Fire Safety Considerations

Appropriate conditions have been applied to the application with regard to fire safety.

Clause 94 Buildings to be upgraded

The application does not relate to buildings to be upgraded.

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

The land is not affected by a coastal zone management plan.

**Tweed Shire Coastline Management Plan 2005**

The land is not affected by this plan.

**Tweed Coast Estuaries Management Plan 2004**

The land is not affected by this plan.

**Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)**

The land is not affected by this plan.

**(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 proposed development overall is considered to represent a reasonable response to the constraints of the site and the subject location.

### Flora and Fauna

Council's Natural Resource Management Unit has reviewed the application and provided the following comments:

#### Ecological Values:

The site is not mapped as containing significant vegetation being identified as 'Substantially Cleared of Native Vegetation' under the Tweed Vegetation Management Strategy (TVMS) 2004 mapping. On site, a number of rainforest trees (predominately *Jagera pseudorhus* (foambark) are growing to the west and north, most of which are semi-mature/mature. A number of weeds and exotic species are also present onsite including *Cinnamomum camphora* (camphor laurel).

A site inspection on Wednesday 3 September 2014 found no threatened flora or fauna species.

#### Impact Assessment

A total of eight (8) native trees will require removal. More specifically (in reference to *dwg No. 834/16 sheet 5 of 6 prepared by Trevor White Building Designs dated 28<sup>th</sup> August 2014*) the native trees requiring removal include:

- six (6) x *Jagera pseudorhus* (foambark) tree No. 15 - 20;
- one (1) x *Eucalyptus pilularis* (blackbutt), tree No. 3 and;
- one (1) x dead eucalypt tree, tree No. 2.

While NRM would ideally like to see the trees retained, or at least achieve some like for like offsetting, it was considered that such a result would be difficult given the highly constrained nature of the site. There is limited suitable space for planting large rainforest trees to the south and inner protection zone (IPZ) requirements restrict restoration works to the north. NRM therefore recommend that the focus be on achieving a sound landscaping outcome which promotes local native species, reduces exotics and weeds and is compliant with NSW RFS Planning for Bushfire Protection IPZ requirements.

Detailed conditions have been applied.

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

The suitability of the site for the development has been demonstrated by way of general consistency with the applicable environmental planning instruments and the Tweed Development Control Plan with minimal environmental impact. The proposal is consistent with the residential character of the locality.

#### Surrounding Landuses/Development

The subject site adjoins 5 and 9 Mitchell Street and 1431 Kyogle Road. All adjoining sites are comprised of single dwelling houses.

Development within the area is generally characterised by single dwelling houses and associated outbuildings.

Due to the topography of the area, most dwellings located on the northern side of Mitchell Street are located below the street frontage, accordingly are not readily visible from the street elevation. Whilst dwellings located on the southern elevation of Mitchell Street are elevated above the road reserve.

The proposed development is generally consistent with design criteria as set out in DCP A1 and DCP A2 and therefore it is considered that the proposed development will be unlikely to impact significantly on the residential amenity of future occupants and neighbouring properties.

The site is considered suitable for the proposed development.

#### Topography

The subject site is a steep sloping site, with a slope of up to 18 degrees. The site falls away from the Mitchell Street road reserve with an aspect of north, north-west. The siting of the buildings relate well to existing site conditions and topography.

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

The application was notified for fourteen days from 2 to 16 July 2014. During this time, no submissions from the public were received.

The development was referred to the NSW Rural Fire Service.

The RFS returned recommended conditions of consent which have been applied to the application.

#### **(e) Public interest**

Subject to the recommended conditions, the proposed development is considered to be in the public interest.

#### **OPTIONS:**

1. Approve the application in accordance with the recommended conditions of consent.
2. Refuse the development for specified reasons.

Council officers recommend Option 1.

#### **CONCLUSION:**

The proposed development is considered suitable for the site and detailed assessment of the proposed variations (front setbacks and building height) has indicated that support of the application is warranted.

Subject to the recommended conditions of consent, the application is thus recommended for approval.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Consult-**We will listen to you, consider your ideas and concerns and keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**3 [PR-PC] Development Application DA14/0388 for Conversion of Garage to a Study/Lounge and Master Bedroom with Carport within Existing Dual Occupancy at Lot 2 SP 17450 No. 2/68 Oyster Point Road, Banora Point**

**SUBMITTED BY: Development Assessment and Compliance**

**FILE REFERENCE: DA14/0388**

Valid



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making process

### SUMMARY OF REPORT:

The subject application has been lodged following Council's investigation of a compliance matter at the subject site. The owner of Unit 2, 68 Oyster Point Road has been undertaking building works at his property without development consent for several years. On 18 June 2014 the owner lodged a concurrent Development Application and Building Certificate to rectify the unlawful nature of works already undertaken at the site.

The application seeks consent for the conversion of a garage to a study/lounge and master bedroom with a new carport within an existing dual occupancy. The Building Certificate contains the same information and cannot be issued unless development consent is granted. As most of these works have already been undertaken Council cannot retrospectively approve the development but Council can approve the ongoing use of the dwelling in the manner proposed in this application.

The application has raised issues in terms of car parking, land owners consent and additional unauthorised works outside the scope of this DA. However all of these issues are addressed within the report.

Whilst complicated due to the unauthorised works, the nature of the work itself is minor residential amendments. The application is merely being reported to Council given the extent of unauthorised works. No neighbours will be negatively affected and the development generally satisfies Council's controls. Accordingly the application is recommended for conditional approval with additional recommendations in regards to additional compliance matters and the issuing of a penalty infringement notice for the works already undertaken without approval.

**RECOMMENDATION:**

**That:**

- A. **ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**  
(g) **advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- B. **Council continues investigating the additional unauthorised works at Unit 2, 68 Oyster Point Road which fall outside the scope of DA14/0388 (as detailed in this report). Council staff should work with the owner to rectify the works and obtain the approvals necessary to regularise the works.**
- C. **Council issues the owner of Unit 2/69 Oyster Point Road, Banora Point with a Penalty Infringement Notice for the unauthorised works addressed within DA14/0388 (illegal conversion of garage into habitable space).**
- D. **Development Application DA14/0388 for a conversion of garage to a study/lounge and master bedroom with new car space within existing dual occupancy at Lot 2 SP 17450 No. 2/68 Oyster Point Road, Banora Point be approved subject to the following conditions:**

**"DEFERRED COMMENCEMENT"**

**This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A".**  
Such evidence is to be provided within six months of the date of notification. Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 95 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

**SCHEDULE "A"**

**Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 95 of the Regulations as amended.**

- A. **The owner is to provide additional information in regard to the existing Building Certificate application (BC14/0078) in respect of the conversion of the garage to a study/lounge and master bedroom with carport. The Building Certificate application is to include the following;**
- a) **A compliance certificate in respect that cross flow sub-floor ventilation in accordance with Part 3.4.1 Sub-floor Ventilation of the NCC (BCA) 2014 has to be provided to the timber floor of the garage conversion.**
  - b) **A compliance certificate in respect that a termite barrier in accordance with Part 3.1.3 Termite Risk Management of the NCC (BCA) 2014 has been incorporated into the design of the garage conversion.**
  - c) **A compliance certificate in respect that a hard wired smoke detector has been installed outside the bedroom door of the recently constructed bedroom in accordance with Part 3.7.2 Smoke Alarms of the NCC (BCA) 2014.**

- d) Structural Engineers certification in respect of the garage conversion and the carport construction inclusive of the floor, post, roof and connection to the existing dwelling.
- e) Evidence that the roller door and storm screens has been removed from the carport.
- f) Details are to be submitted detailing the disposal of roof water drainage from the carport.
- g) Submission of an up to date survey report prepared by a registered surveyor.

It is to be noted that the Building Certificate cannot be issued until such time that a new laundry has been constructed subject to obtaining prior Development Consent and a Construction Certificate, and a Final Occupation Certificate.

- B. The owner is to lodge a Development Application proposing the construction of a new laundry. Additionally such application should also seek approval for all unauthorised works as detailed in this report which fall outside the scope of this DA (where statutorily required). Such application must be accompanied with a Building Code of Australia Compliance/Rectification Report prepared by a qualified Building Certifier.

#### **SCHEDULE B**

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

#### **GENERAL**

1. This consent only authorises the:

- use of the previous garage within Unit 2 to be used as a study/lounge and master bedroom; and
- revised driveway and use of two new car spaces for use by Unit 2.

The approved development (as detailed above) shall be completed in accordance with the Statement of Environmental Effects and Plan Nos

- Job No: BGP 131102 Sheet 01 of 08 prepared by B.G.Plans Design and Drafting and dated 20 November 2013;
  - Job No: BGP 131102 Sheet 02 of 08 prepared by B.G.Plans Design and Drafting and dated 20 November 2013;
  - Job No: BGP 131102 Sheet 03 of 08 prepared by B.G.Plans Design and Drafting and dated 20 November 2013;
  - Job No: BGP 131102 Sheet 04 of 08 prepared by B.G.Plans Design and Drafting and dated 20 November 2013;
  - Job No: BGP 131102 Sheet 05 of 08 prepared by B.G.Plans Design and Drafting and dated 20 November 2013;
  - Driveway Plan dated 21 September 2014;
- except where varied by the conditions of this consent.

[GEN0005]

2. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Prior to Council issuing Building Certificate BC14/0078 all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.

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

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

- |   |       |
|---|-------|
| (a) Open Space (Casual):<br>0.1667 ET @ \$549 per ET<br>(\$502 base rate + \$47 indexation)<br>S94 Plan No. 5                                 | \$92  |
| (b) Open Space (Structured):<br>0.1667 ET @ \$629 per ET<br>(\$575 base rate + \$54 indexation)<br>S94 Plan No. 5                             | \$105 |
| (c) Shirewide Library Facilities:<br>0.1667 ET @ \$847 per ET<br>(\$792 base rate + \$55 indexation)<br>S94 Plan No. 11                       | \$141 |
| (d) Bus Shelters:<br>0.1667 ET @ \$64 per ET<br>(\$60 base rate + \$4 indexation)<br>S94 Plan No. 12  | \$11  |
| (e) Eviron Cemetery:<br>0.1667 ET @ \$124 per ET<br>(\$101 base rate + \$23 indexation)<br>S94 Plan No. 13                                    | \$21  |
| (f) Community Facilities (Tweed Coast - North)<br>0.1667 ET @ \$1404 per ET<br>(\$1,305.60 base rate + \$98.40 indexation)<br>S94 Plan No. 15 | \$234 |

<p><b>(g) Extensions to Council Administration Offices &amp; Technical Support Facilities</b>  <b>0.1667 ET @ \$1880.38 per ET</b>  <b>(\$1,759.90 base rate + \$120.48 indexation)</b>  <b>S94 Plan No. 18</b></p>	<p><b>\$313.46</b></p>
<p><b>(h) Cycleways:</b>  <b>0.1667 ET @ \$478 per ET</b>  <b>(\$447 base rate + \$31 indexation)</b>  <b>S94 Plan No. 22</b></p>	<p><b>\$80</b></p>
<p><b>(i) Regional Open Space (Casual)</b>  <b>0.1667 ET @ \$1103 per ET</b>  <b>(\$1,031 base rate + \$72 indexation)</b>  <b>S94 Plan No. 26</b></p>	<p><b>\$184</b></p>
<p><b>(j) Regional Open Space (Structured):</b>  <b>0.1667 ET @ \$3872 per ET</b>  <b>(\$3,619 base rate + \$253 indexation)</b>  <b>S94 Plan No. 26</b></p>	<p><b>\$645</b></p>

[POC0395/PSC0175] - [GENNS01]

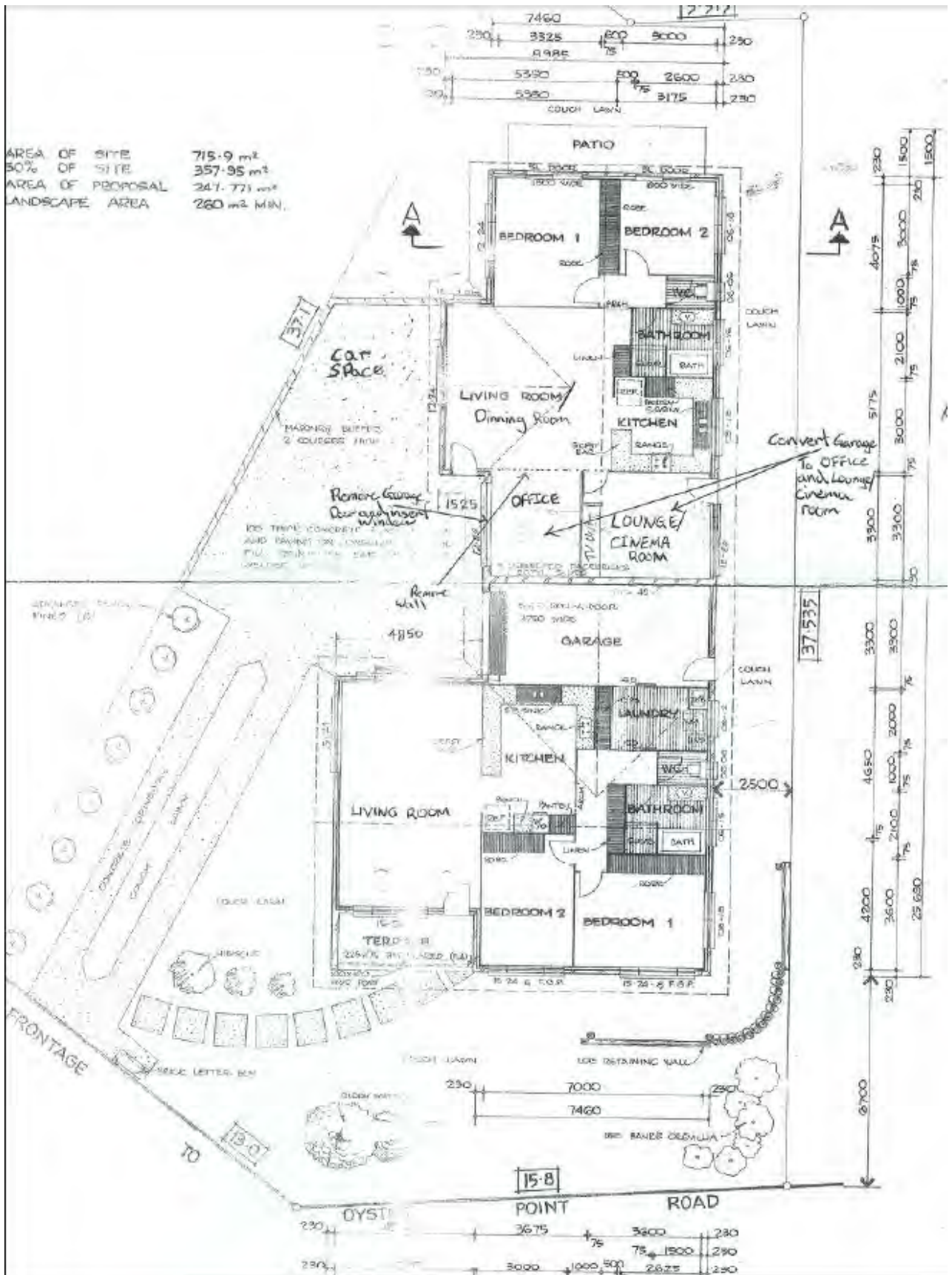
3. **Unit 2 is to have two onsite parking spaces in accordance with the approved driveway plan. If the resident of Unit 1 parks in front of the Unit 1 garage Unit 2 is to reverse out of the driveway to exit the property.** [GENNS02]
  
4. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.** [GEN0115]

**REPORT:**

**Applicant:** Mr RP Dascoli and Mrs AN Dascoli  
**Owner:** Mr Robert P Dascoli & Mrs Ainsley N Dascoli  
**Location:** Lot 2 SP 17450 No. 2/68 Oyster Point Road, Banora Point  
**Zoning:** R2 - Low Density Residential  
**Cost:** \$2,000

**Background:**

DA14/0388 and the associated Building Certificate BC14/0078 were lodged on 18 June 2014. The DA originally described the proposed development as: "a conversion of garage to an office & lounge room/cinema within existing dual occupancy. The Building Certificate contains the same information and cannot be issued unless development consent is granted. The works originally proposed are shown on the following plan.



A site inspection revealed that the submitted plan did not accurately reflect what was on site and accordingly a further information letter was sent to the applicant on 31 July 2014 seeking clarification on the proposal.

The applicant responded on 19 August 2014 with a revised set of plans and very little written documentation to detail the amended plans. It appears that the plans were amended to show:

- The carport structure (now enclosed with roller door) adjoining the northern elevation of living room;
- Living room window on northern elevation replaced with sliding doors into the carport;
- Decking behind the carport structure;
- Block wall from 0.8m to 2.6m in height for a length of 3m on the eastern boundary supporting a 1.6m high timber fence;
- 0.7m high timber retaining wall on the eastern boundary;
- 1m of compressed fill underneath the carport slab;
- New handrail and stairs to decking;
- Toolshed located under deck;
- Creation of a sub-floor games room under Beds 1 & 2;
- Concrete block sub-floor retaining walls up to 1.4m in height;
- Removal of the balcony structure on the southern elevation outside Beds 1 & 2;
- Replacement of Bed 1 and Bed 2 sliding doors with windows;
- Location of an enclosed outdoor laundry on the western boundary;
- New proposed use of garage conversion to *study and third bedroom* (from office & lounge room/cinema);
- Relocation of Unit 1's secondary car space from behind Unit 1's garage to the northern elevation of Unit 1 within the front setback;
- Use of Unit 1's secondary car space as a vehicle turning area;
- Location of a secondary car space for Unit 2 adjacent to the front boundary in an approved landscaping area which is also currently used for bin storage.

These changes are shown on the below diagrams which the applicant lodged throughout the assessment process.





Given the lack of written justification to amend the application to incorporate all the unauthorised work Council staff have assessed the application based on the original request to convert the garage into habitable space and create an additional car space (not carport) to accommodate the additional habitable floor area (but Council acknowledges the garage is now used as a study and third bedroom not a media room and we acknowledge the revised parking plan to support this change).

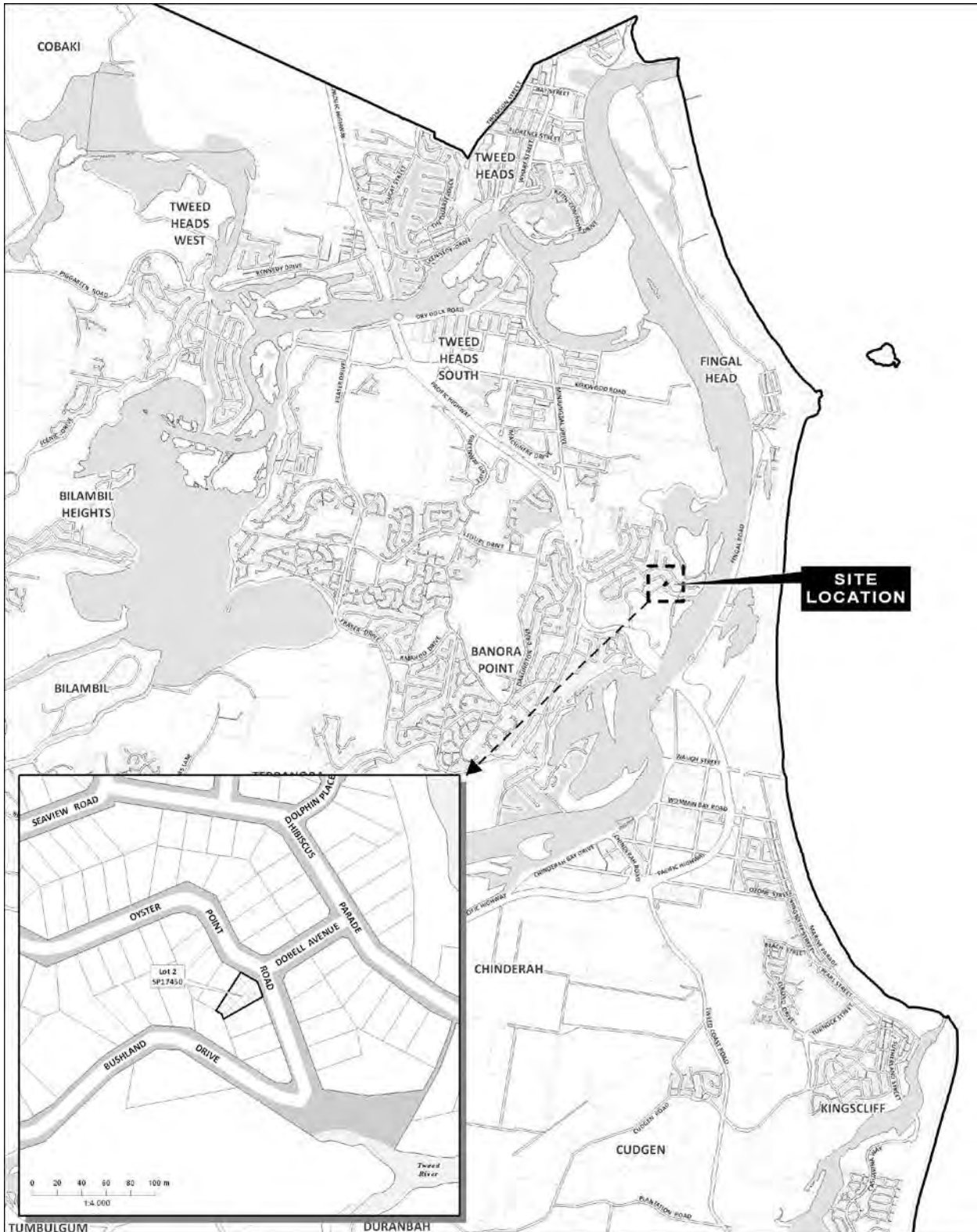
A second development application will be required to cover a new compliant laundry, and all the other unauthorised works as identified in this report.

Approval of the application as lodged originally will represent the first step in rectifying years worth of illegal works. The next step will be a second development application and an additional building certificate to reflect the future DA.

### Owners Consent

The application was initially lodged with only the owner of Lot 2 signing the development application form. Once works were proposed in the common property area (car parking area) Council requested owners consent from the body corporate. The owner of Unit 2 has been unable to contact the owner of Unit 1 and accordingly the owner of Unit 2 obtained a quorum for the body corporate between himself and his wife. Council has received legal advice (attached) stating that given the application has now been accompanied by the body corporate seal Council can determine the application without receiving anything from the owner of Unit 1.

**SITE DIAGRAM:**



**Locality Plan**

Lot 2 SP17450:  
No.2/68 Oyster Point Road, Banora Point

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Cadastral 22/10/2014  
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Boundaries shown should be considered approximate only.

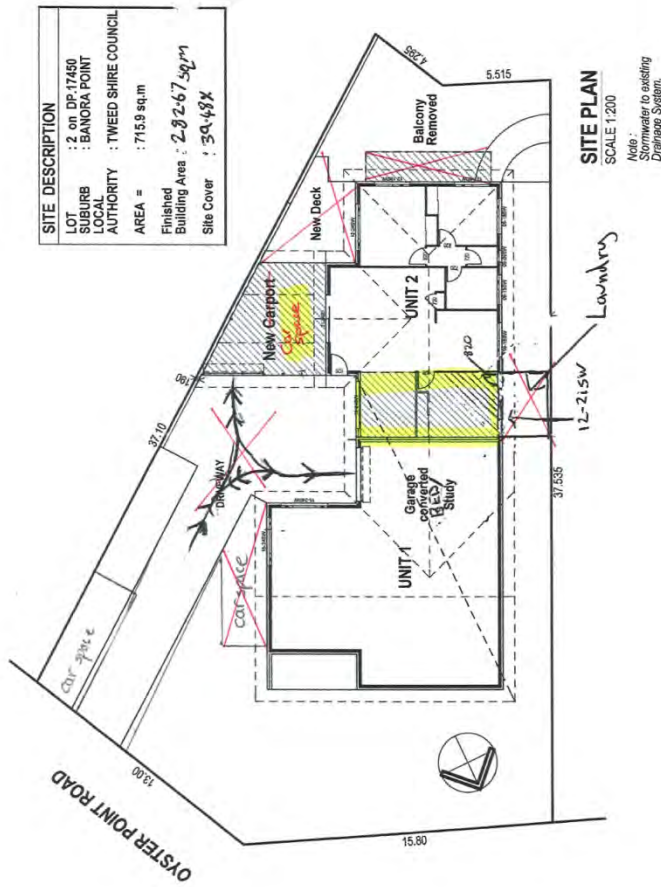
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DO NOT SCALE  
COPY ONLY - NOT CERTIFIED  
GDA  
File Projection: Universal Transverse Mercator  
Horizontal datum: Geoidetic Datum of Australia 2004  
Map of Australia, Zone 55

**Civic and Cultural Centre**  
3 Tumbulgum Road  
Merrimbah NSW 2484  
PO Box 316  
Merrimbah NSW 2484  
T (02) 6570 2400 | 1300 292 872  
F (02) 6570 2429  
W www.tweed.nsw.gov.au  
E planning.reforms@tweed.nsw.gov.au



DEVELOPMENT PLANS:

**=** Approved  
**X** Not Approved



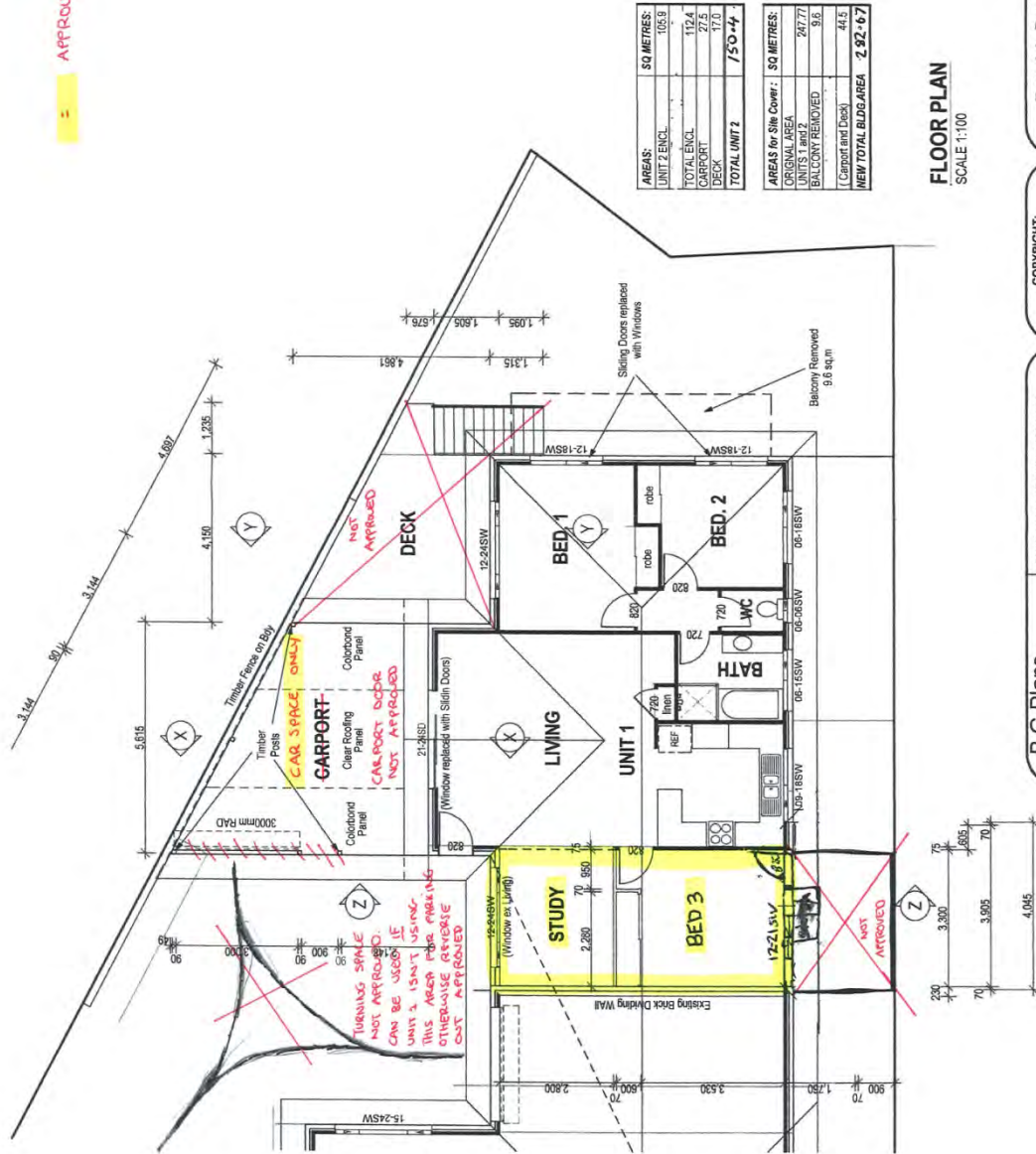
SITE DESCRIPTION	
LOT	: 2 on DP:17450
SUBURB	: BANORA POINT
LOCAL AUTHORITY	: TWEED SHIRE COUNCIL
AREA =	: 715.9 sq.m
Finished Building Area	: 282.67 sq.m
Site Cover	: 39.48%

**SITE PLAN**  
 SCALE: 1:200

Note:  
 Stormwater to existing  
 Drainage System.

<b>B.G. Plans</b> Design & Drafting 12-21.5W BANORA POINT NSW 2486 Lorraine B.F. COUSMETT CBRK, A/C 1891, L/C 109659 Ph: (07) 2331 537 Fax: (07) 2331 42013	<b>COPYRIGHT:</b> This Drawing remains the Property of: B.G. PLANS and is provided for the use shown on this drawing only. No part may be reproduced in whole or in part without written permission.	DATE: 26/11/13 ISSUE NO.: FINAL SHEET NO.: 01 of 08 SCALES: AS SHOWN
		CLIENT: <b>R. and A. Dascoll</b> PROJECT: <b>Proposed Additns. and Altrms.                  Unit 2, No.68 Oyster Point Rd.                  BANORA POINT</b>

APPROVED



FLOOR PLAN  
SCALE 1:100

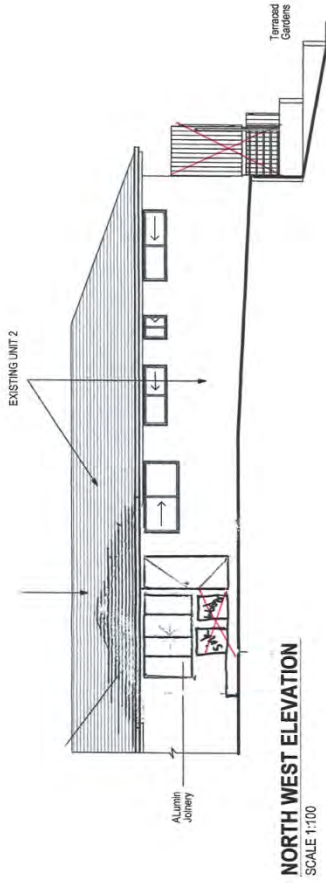
CLIENT: **R and A. Dascoli**  
 PROJECT: **Proposed Addms. and Altrns. Unit 2, No.68 Oyster Point Rd. BANORA POINT**  
 DATE: 20/11/13  
 ISSUE NO: FINAL  
 SHEET NO: 02 of 08  
 SCALES: AS SHOWN

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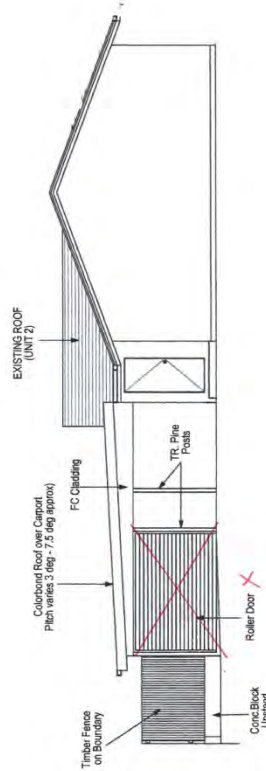
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**NORTH WEST ELEVATION**  
SCALE 1:100

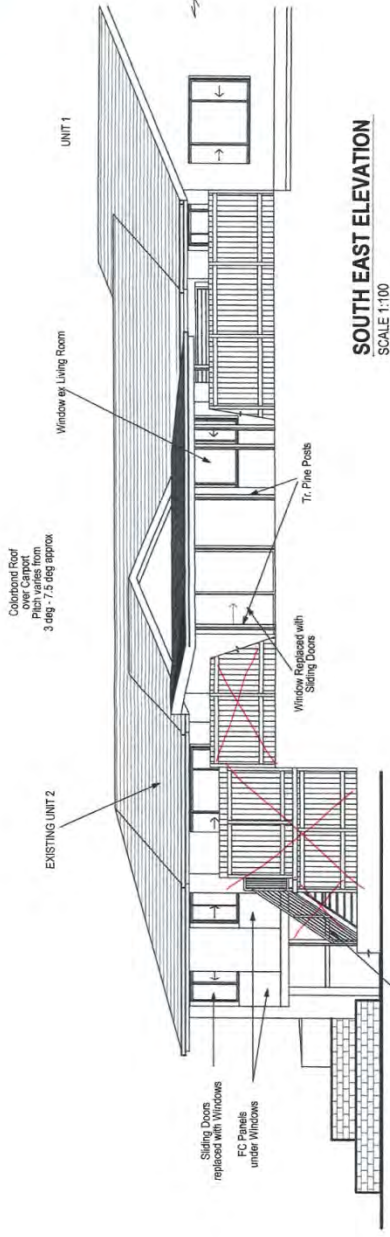


**NORTH EAST ELEVATION**  
SCALE 1:100

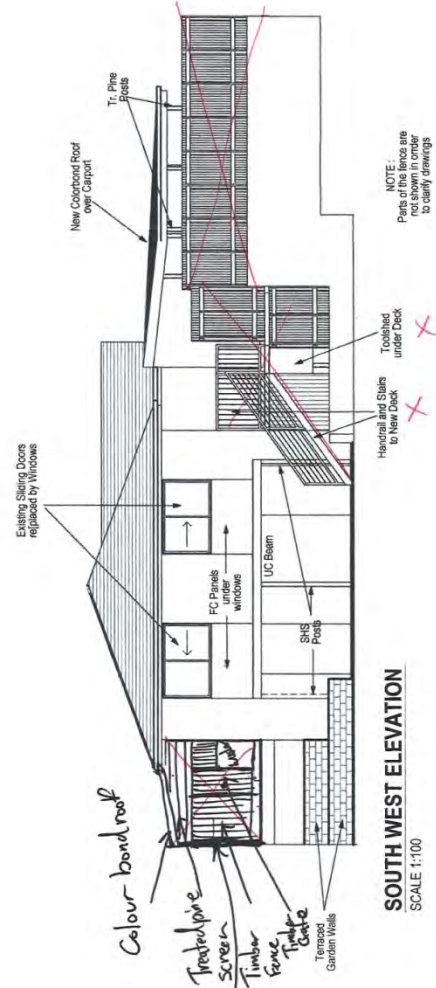
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	<p>PROJECT: <b>R. and A. Dascoli</b> <b>Proposed Additns. and Altrns.</b> <b>Unit 2, No.68 Oyster Point Rd.</b> <b>BANORA POINT</b></p>	<p>SHEET NO: 03 of 08</p>
	<p>SCALE: AS SHOWN</p>	

X Not Approved



**SOUTH EAST ELEVATION**  
SCALE 1:100



**SOUTH WEST ELEVATION**  
SCALE 1:100

CLIENT: <b>R. and A. Dascoli</b>	DATE: 20.11.13	Job No. BGP/13102
PROJECT: <b>Proposed Addns. and Altrns. Unit 2, No.68 Oyster Point Rd. BANORA POINT</b>	ISSUE NO: FINAL	SHEET NO: 04 of 08
	SCALES: AS SHOWN	

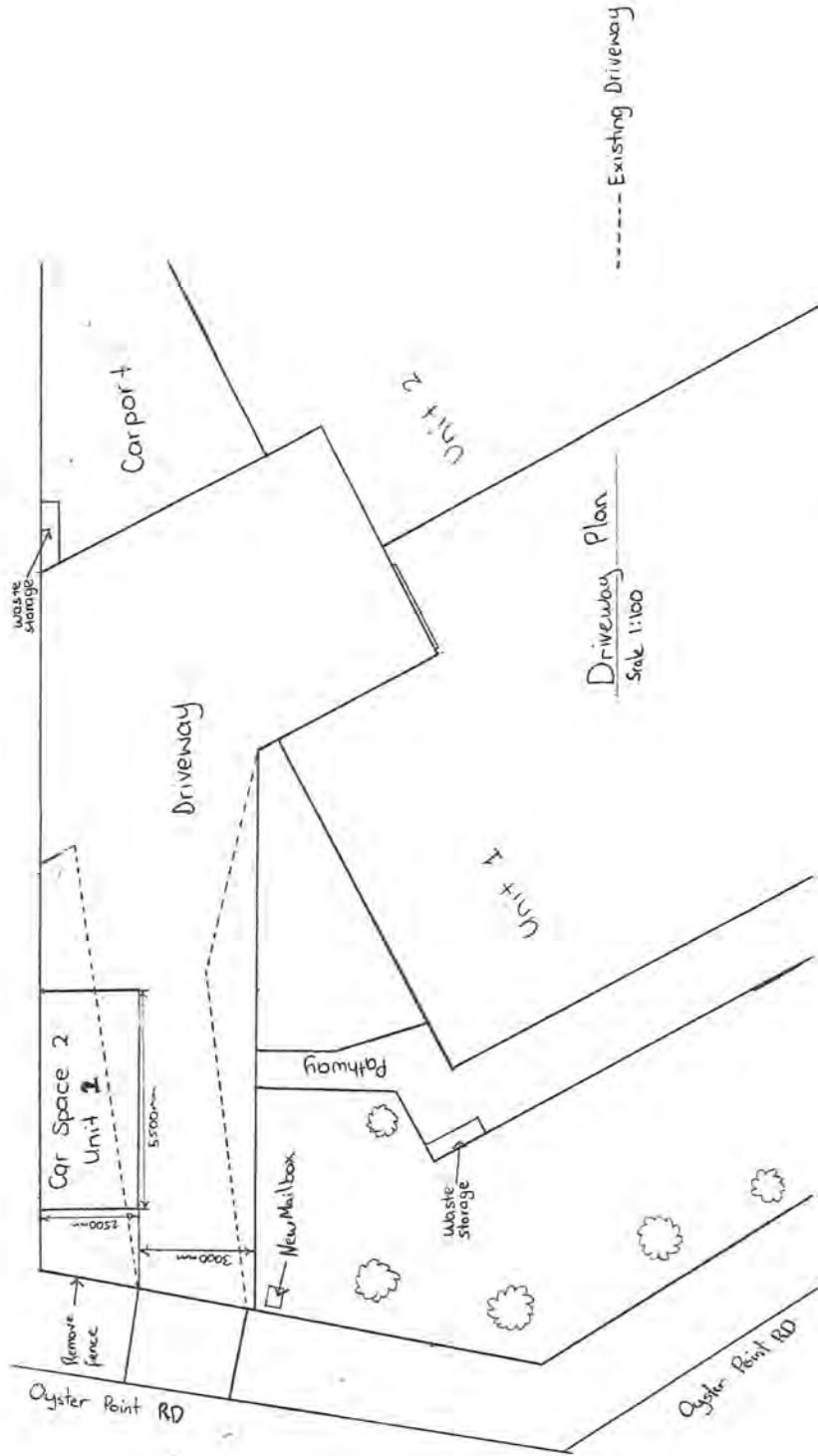
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Driveway Plan  
Scale 1:100

R and A Bascoli	21.9.14
Unit 1 and Unit 2 of 68 Oyster Point Rd Banora Point	Scale 1:100 SP17450

**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 2014**

Clause 1.2 – Aims of the Plan

The proposed development is generally in keeping with the aims of the plan. The development represents minor residential building work in a residential zone. Whilst some building works have been undertaken without consent this development application represents an opportunity to regulate the works already undertaken with conditions of consent relating to building certificates and engineering certification.

Clause 2.3 – Zone objectives and Land use table

The site is within the R2 Low Density Residential zone which has objectives pertaining to the provision of a low density residential environment with a range of facilities and services to meet the day to day needs of residents. The proposed works to one of two existing dwellings (dual occupancy) remains consistent with the zone objectives and represents a land use still permissible in the zone.

Clause 4.1 to 4.2A - Principal Development Standards (Subdivision)

These clauses are not relevant as the application does not propose a subdivision.

Clause 4.3 - Height of Buildings

The proposed works all occur at a single storey level which is well below the maximum prescribed height limit of 9m.

Clause 4.4 – Floor Space Ratio

The proposed development utilises an existing garage for additional floor space and accordingly the FSR of the proposed development increases to 0.39:1 which is well below the maximum allowable FSR of 0.8:1.

Clause 4.6 - Exception to development standards

Flexibility under this clause is not required as the development is permissible in the zone.

Clause 5.4 - Controls relating to miscellaneous permissible uses

The development does not relate to a miscellaneous permissible use.

Clause 5.5 – Development within the Coastal Zone

The development will not impact adversely on the coastal zone. It will not impact upon access to any coastal areas or detract from the natural features of any such area.

Clause 5.9 – Preservation of Trees or Vegetation

No vegetation clearing is required to facilitate the proposed development.

Clause 5.10 - Heritage Conservation

The building is not a heritage item, nor does the site comprise part of a heritage conservation area.

Clause 5.11 - Bush fire hazard reduction

The site is mapped within a bushfire buffer area only. The applicant was requested to provide a bushfire risk assessment to determine the BAL rating for construction. The applicant provided that the site is within a mangrove/scrub vegetation buffer area, with a slope of 5-10 degrees which results in a BAL level of 12.5. The applicant provided that works undertaken on site comply with this provision however suitable conditions of consent have been imposed to enforce this requirement.

Clause 7.1 – Acid Sulfate Soils

Class 5 ASS are present on the site. The proposed works do not require any excavation greater than 1m, all which will be contained within the building envelope. As such, there is no requirement for submission of a Minor Works Management Plan and no further assessment is required.

Clause 7.2 - Earthworks

Minor modification of the ground level appears to have occurred under dwelling 2 (to create the under croft area) however this does not appear to have exceeded 1m cut. This aspect of the unauthorised works will be addressed as part of the recommended conditions of consent at which point further erosion and sediment control measures will be in place if necessary.

Clause 7.3 – Flood Planning

The site is not flood prone, the proposal has no ramifications for Clause 7.3.

Clause 7.4 - Floodplain risk management

The proposal will have no impact on floodplain risk management.

Clause 7.5 - Coastal risk planning

The proposed development will have no impact on coastal risk.

Clause 7.6 - Stormwater Management

There will be no impacts on the existing stormwater system from the proposed development.

Clause 7.8 – Airspace operations

The proposed development will have no impact on airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

The proposed development is not within the nominated flight paths.

Clause 7.10 - Essential Services

The proposed development already has access to all essential services.

Other Specific Clauses

The development is considered to be consistent with TLEP 2014 as demonstrated above. There are no further clauses under which consideration is required.

**State Environmental Planning Policies**

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

Clause 1.9 of LEP 2014 provides that SEPP (NCREP) does not apply to land to which LEP 2014 applies.

**SEPP No 71 – Coastal Protection**

In consideration of SEPP 71 the development is well removed from the foreshore. It is considered that the proposed development will not impact upon the natural, cultural, recreational and economic attributes of the foreshore or restrict access to such. The proposal is consistent with the aims of SEPP 71.

**SEPP (Exempt and Complying Development Codes) 2008**

As detailed within the report some of the works undertaken would be considered exempt development. However where such unauthorised works have occurred outside the provisions of the SEPP (Exempt and Complying Development Codes) 2008 there are recommended conditions of consent to enable a lawful way forward with the works undertaken to date.

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

There are no Draft Environmental Planning Instruments applicable to the site.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The dual occupancy was originally approved in 1981 under a very different planning regime. The proposed conversion of the Unit 2 garage into habitable space and the erection of a car port raises no significant issues with Tweed DCP Section A1.

A2-Site Access and Parking Code

Council's current Tweed DCP Section A2 requires dual occupancies to have 2 spaces per unit (one designated space and one additional space for visitors in the driveway). The dual occupancy was originally approved in 1981 with only one car space per unit. Given the additional floor area proposed for Unit 2, Council staff has required Unit 2 to find one additional onsite parking space. Amended plans were lodged during the assessment process that now show an additional space in the common property areas of the Strata Property. This space satisfies Tweed DCP Section A2.

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

Clause 92(a) Government Coastal Policy

The subject land is within the coastal policy area affected by the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*. The proposed development is consistent with the objectives, strategies and actions of the policy.

Clause 92(b) Applications for demolition

There is no demolition proposed as part of this application.

Clause 93 Fire Safety Considerations

The proposed development is not considered a change of use and Clause 93 is not relevant to the application.

Clause 94 Buildings to be upgraded

Council's Building Surveyor has provided appropriate conditions with regard to Clause 94.

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

Tweed Shire Coastline Management Plan 2005

Tweed Shire Coastline Management Plan 2005 applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted

by coastline hazards plus relevant Crown lands. The subject site is not located on the coastal foreshore and is not affected by coastal hazards.

**Tweed Coast Estuaries Management Plan 2004**

The proposed development is not within an area close to Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

**Coastal Zone Management Plan for Cobaki and Terranorra Broadwater (adopted by Council at the 15 February 2011 meeting)**

The subject site is not located within the Cobaki or Terranorra Broadwater areas and therefore this plan is not relevant to the proposed development.

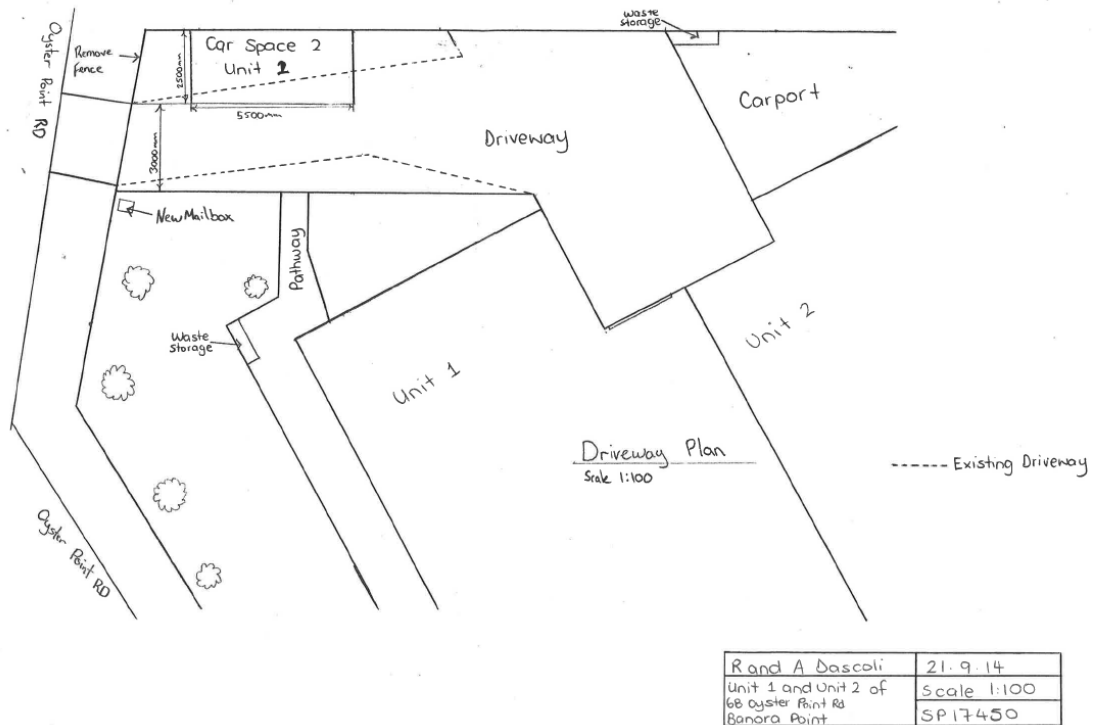
**(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

**Context and Setting**

The proposed development represents minor building works to an approved dual occupancy. The works are to occur to the rear unit and are visible to the street only in that the new carport can be seen from the front elevation. The design of the proposed carport is consistent with the existing residential character. The development will not create any significant adverse impact on the natural or built environment.

**Access, Transport and Traffic**

During the process of the application the applicant amended their proposed parking layout to ensure compliance with DCP A2 which requires Unit 2 to provide an additional space for parking on site. The revised layout demonstrated an extra car parking space on the south western boundary (within the common property areas of the site) for Unit 2 as follows:



The application was referred to Council's Traffic Engineer who has stated that:

*"The submitted scaled drawing provides that vehicles can enter and leave the site in a forward direction. Should a turnaround space be occupied and a vehicle reverses onto Oyster Point Road it is considered that, given the comparatively short distance (<20m), the road's low traffic volumes and the likelihood that it is currently occurring, the proposed plan is acceptable."*

Therefore the proposal is considered acceptable on traffic and parking grounds.

### Construction

The proposed works whilst simple in nature have been complicated by the applicant undertaking works prior to the approval being issued. Some of the works fail to meet the relevant standards and accordingly the application was referred to Council's Building Department for their consideration. The following comments were received:

A. The original attached single garage has been modified by the:

- i. *Removal of the internal laundry and relocating it outside against the north western external wall of the original garage, removal of the garage door and associated cladding to the southern elevation and the removal of brickwork to the north western end of the garage.*

It is to be noted; the new location of the laundry is within an unauthorised structure being a roofed deck attached to the northern wall of the original garage and extending up to the north western side boundary. It is also quite obvious that the new hot water service and associated laundry plumbing has not been installed by a licensed

plumber. This awning which has a wall along the boundary has been erected contrary to the requirements of Part 3.7.1 of the NCC (BCA) 2014 and should be removed or modified subject to being cut back to stand a minimum of 900mm off the north western boundary in order to satisfy the requirements of SEPP - Exempt & Complying Development.

Therefore a new Development Application will be required for the construction of a new laundry. This new laundry will need to be approved and constructed before the unauthorised works associated with the original garage can be addressed by the issue of a building certificate application.

It is to be noted that the Structural Engineers Certificate from Rymark Engineers dated 29 June 2011 relates only to the blockwork retaining wall of the subfloor area located at the rear or western end of the dwelling and not to any works associated with the garage conversion and carport construction.

- ii. Installation of a timber floor located on top of the existing garage slab. No provision has been made for cross flow sub-floor ventilation in accordance with Part 3.4.1 Sub-floor Ventilation of the NCC (BCA) 2014. This will need to be addressed in any Building Certificate Application by the submission of a compliance certificate in this regard.*
  - iii. The area of the original garage has been divided into a master bedroom and a study/ lounge room. A hard wired smoke detector is required to be installed outside the bedroom door of the recently constructed bedroom. This will need to be addressed in any Building Certificate Application by the submission of a compliance certificate in regards to Part 3.7.2 Smoke Alarms of the NCC (BCA) 2014.*
  - iv. There is no evidence that a termite barrier in accordance with Part 3.1.3 Termite Risk Management of the NCC (BCA) 2014 has been incorporated into the design of the floor, wall and linings of this garage conversion. Also there is low ability to carry out a physical inspection of the subfloor area. These issues will need to be addressed in any Building Certificate Application by the submission of a compliance certificate in to Part 3.1.3.*
- B. An irregular shaped carport (5.615m x 6.4m x 6.37m x 7m) has been erected without consent which extends from the south eastern wall of the living room to a distance of 190mm (according to plans by B.G. Plans dated 20:11:13) off the south eastern boundary.

Prior to further consideration to retain this structure the Building Unit requires the following matters are to be addressed:

- i. Structural Engineers certification in respect of the carport construction inclusive of the floor, post and actual construction is to be submitted. It is to be noted that the owner informed me that the Engineer indicated at the time of his inspection that additional structural members were required to ensure the stability of the roof.



- ii. The carport does not comply with the requirements of clause 3.7.1.6 of the NCC (BCA) 2014 in that the carport is required to have two or more sides open. To satisfy this requirement the roller door and storm screens are to be removed from the carport.
- iii. Details are to be submitted detailing the disposal of roof water drainage from the carport.
- iv. Submission of an up to date survey report prepared by a registered surveyor in respect of the whole property and all current building works.

To establish a lawful way forward and rectify these unauthorised works it has been recommended to impose the following conditions which form part of the recommendation:

### **Deferred Commencement**

This consent shall not operate until the following information is submitted to Council:

1. The owner is to lodge a Building Certificate application in respect of the conversion of the garage to a study/lounge and master bedroom with carport. The Building Certificate application is to include the following:
  - a) A compliance certificate in respect that cross flow sub-floor ventilation in accordance with Part 3.4.1 Sub-floor Ventilation of the NCC (BCA) 2014 has to be provided to the timber floor of the garage conversion.
  - b) A compliance certificate in respect that a termite barrier in accordance with Part 3.1.3 Termite Risk Management of the NCC (BCA) 2014 has been incorporated into the design of the garage conversion.
  - c) A compliance certificate in respect that a hard wired smoke detector has been installed outside the bedroom door of the recently constructed bedroom in accordance with Part 3.7.2 Smoke Alarms of the NCC (BCA) 2014.
  - d) Structural Engineers certification in respect of the garage conversion and the carport construction inclusive of the floor, post, roof and connection to the existing dwelling.
  - e) Evidence that the roller door and storm screens has been removed from the carport.
  - f) Details are to be submitted detailing the disposal of roof water drainage from the carport.

- g) Submission of an up to date survey report prepared by a registered surveyor.

It is to be noted that the Building Certificate cannot be issued until such time that a new laundry has been constructed subject to obtaining prior Development Consent and a Construction Certificate, and a Final Occupation Certificate.

2. The owner is to lodge a Development Application proposing the construction of a new laundry (that complies with the relevant provisions).

Such applications and information shall be submitted within 90 days of the date of this approval.

- 3 A Building Certificate in respect to the laundry if works are undertaken prior to obtaining development consent in this regard.

C. Residual unauthorised matters outside the scope of this DA

- i. The roofed, enclosed deck located between the north western wall of the original garage/laundry and the north western boundary is to be demolished or cut back 900mm to comply with clause 2.12 of SEPP (Exempt & Complying Development) 2008.
- ii. The window opening in the south eastern wall of the living room has been modified with the installation of a sliding glass door.
- iii. A deck has been constructed at a height in excess of 2.5 metres above ground level to between the south eastern wall of bedroom 1 to the south eastern boundary with a storeroom directly underneath and a stair attached to the western end.

This building work does not comply with the clause 3.7.1.7 Allowable encroachments of NCC (BCA) - 2014 in regards to the height of the deck being more than 1.0m above ground level and located within 450mm of the southern boundary. Also the balustrade to the stairs is non compliant with the requirements of the clause 3.9.2.3 of NCC (BCA) - 2014.

- iv. An undercroft area has been created under bedroom 1 & 2 by the construction of concrete blockwork walls and removal of isolated piers and installation of structural steel columns and beams. An engineer's construction compliance certificate from Rymark Engineers Pty Ltd dated 29 June 2011 has been submitted respect of the sub floor block retaining wall. Also a Engineer's Design/Check/Intent to Inspect Certificate dated 14 January 2014 has been submitted from the same Engineer. It is to be noted that none of this documentation from Rymark can be considered as structural certification in respect of all of the sub floor works.

- v. The rear balcony located off the western wall of bedroom 1 & 2 has been demolished and the sliding doors to these rooms have been replaced with windows without obtaining prior approval.

In regards to the above unauthorised works it is recommended that the owner submits a Development Application in respect of the unauthorised building works together with a building certificate application with a structural engineer's certificate of structural adequacy and a NCC (BCA) compliance report.

It is further recommended that the applicant receive penalty fines for undertaking work without prior approval.

As these matters are separate to the Development Application currently before Council there is a separate recommendation as part of this report in regards to pursuing a lawful way for the owner of this unit to rectify all unauthorised matters.

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

Surrounding Landuses/Development

The proposed alterations are entirely consistent with the nature of other residential development in the vicinity of this site. The works enable the owner to better utilise their property without negatively impacting on any adjoining development.

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

The application was notified to adjoining owners however no submissions were received in regards to the application.

**(e) Public interest**

The proposed development (subject to the recommended conditions of consent) is consistent with relevant environmental planning instruments, and Council policy requirements. The proposal is considered suitable and appropriate for the subject site, given its permissibility, surrounding low density residential development, the presence of similar structures in the vicinity and the ability of the development to facilitate the changes. As such the proposal is considered to be in the public interest.

**OPTIONS:**

That Council:

1. Approves the application and follow up all outstanding unauthorised works as a compliance matter; or
2. Refuses the application and commence legal action to rectify all illegal works by reinstating the development to its original state.

Council officers recommend Option 1.

**CONCLUSION:**

The proposed development represents minor residential works to an existing unit within an approved duplex. Ordinarily such works could be assessed under staff delegation however due to the extent of unauthorised works the matter has been reported to Council.

The recommended conditions of consent represent a lawful way forward for the applicant. Some of which get resolved by this DA and the relevant building certificate (conversion of garage into habitable space) and others (laundry, deck etc) with the need for a future DA (and future Building Certificates) to resolve other unauthorised works.

Approval with conditions is considered to be in accordance with the general public interest, with no significant impacts anticipated for surrounding land owners, the environment and the local community in general.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Yes, legal advice has been received in regard to owners consent and this advice is attached for Council's reference.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Confidential Attachment Legal Advice (ECM 3497543)

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4 [PR-PC] Unauthorised Earthworks and Pollution Events at Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum

SUBMITTED BY: Development Assessment



## Caring for the Environment

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
  - 4.1 Protect the environment and natural beauty of the Tweed
  - 4.1.3 Manage and regulate the natural and built environments
- 

### SUMMARY OF REPORT:

The purpose of this report is to provide Council with an update on the actions taken to advance enforcement further to the resolution from 7 August 2014 Planning Committee Meeting, which stated:

- “A. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
  - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
  
- B. Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek, endorses the following:**
  - 1. Issues a Notice of Direction to take clean-up action under Section 91 of the Environment Operations Act 1997, to the owner of the site, to undertake remediation works on the adjoining property Lot 2 DP 815182 and adjoining parts of Hopping Dicks Creek; and**
  
  - 2. Instructs Council's solicitors to commence Class 5 proceedings in the NSW Land and Environment Court action in respect of the failure by the site owner to gain development consent for certain works on the Crown Road Reserve that runs through Lots 127 and 128 DP 755724 under the Environmental Planning and Assessment Act 1979.”**

In terms of Point 1 of the above resolution, Council has issued a clean-up notice to the owner. The owner has since cooperated with Council on this action, and has engaged a suitably qualified expert to prepare a Clean-Up Notice Plan. Council officers have reviewed this plan and consider it to be suitable for the works required. The owner has advised that the necessary remediation works will commence on 3 November 2014. Council officers

have notified the adjoining property owner of these works, and will continue to monitor the progress of the works.

In respect of Point 2 of the resolution, Council officers have provided initial information to Council's solicitors as the basis for the preparation of Class 5 proceedings. Council's solicitors have provided further advice that the advancement of these proceedings will necessitate a much high order of further investigation and evidence, as well as an assessment of the risks to Council.

In light of the substantial resources required and apparent risk for Council to advance these proceedings, and given the more recent level of cooperation and action taken by the site owner in responding to Council's Clean-Up Notice, it is considered appropriate that Council determine not to advance the previously resolved Class 5 proceedings against the site owner.

**RECOMMENDATION:**

**That:**

- A. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- B. Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek, endorses the following:**
- 1. Receives and notes the progress of the owner's response to Council's most recent Clean-Up Notice; and**
  - 2. The Council decision of 7 August 2014 to take Class 5 proceedings in the NSW Land and Environment Court against the site owner be discontinued.**

## REPORT:

### Previous Council Resolution

At its meeting of 7 August 2014 Planning Committee Meeting, Council resolved the following:

- “A. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- B. Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek, endorses the following:**
- 1. Issues a Notice of Direction to take clean-up action under Section 91 of the Environment Operations Act 1997, to the owner of the site, to undertake remediation works on the adjoining property Lot 2 DP 815182 and adjoining parts of Hopping Dicks Creek; and**
  - 2. Instructs Council's solicitors to commence Class 5 proceedings in the NSW Land and Environment Court action in respect of the failure by the site owner to gain development consent for certain works on the Crown Road Reserve that runs through Lots 127 and 128 DP 755724 under the Environmental Planning and Assessment Act 1979.”**

### Further Actions

In terms of Point 1 of the above resolution, Council has issued a clean-up notice to the owner. The owner has since cooperated with Council on this action, and has engaged a suitably qualified expert to prepare a Clean-Up Notice Plan. Please refer to Attachment 2 for a copy of this document. Council officers have reviewed this plan and consider it to be suitable for the works required. The owner has advised that the necessary remediation works will commence on 3 November 2014. Council officers have notified the adjoining property owner of these works, and will continue to monitor the progress of the works.

In respect of Point 2 of the resolution, Council officers have provided initial information to Council's solicitors as the basis for the preparation of Class 5 proceedings. Council's solicitors have provided further advice that the advancement of these proceedings will necessitate a much high order of further investigation and evidence, as well as an assessment of the risks to Council. A copy of this advice is provided as a confidential attachment.

In light of the substantial resources required and apparent risk for Council to advance these proceedings, and given the more recent level of cooperation and action taken by the site owner in responding to Council's Clean-Up Notice, it is considered appropriate that Council to determine not to advance the previously resolved Class 5 proceedings against the site owner.

**OPTIONS:**

Option 1

That Council endorses the recommended actions, including the discontinuation of Class 5 proceedings in the NSW Land and Environment Court against the site owner; or

Option 2

That Council's decision of 7 August 2014 to take Class 5 proceedings in the NSW Land and Environment Court against the site owner be discontinued.

The officers recommend Option 1.

**CONCLUSION:**

It is considered that the extent of resourcing and risk associated with the proposed Class 5 proceedings for this matter warrants a review of Council's previously endorsed position.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

The most recent advice from Council's solicitor's highlights the likely extensive resources and risk to Council in advancing the proposed Class 5 proceedings.

**c. Legal:**

The latest legal advice from Council's solicitors is provided within a confidential attachment.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. A copy of the legal advice provided by Marsdens solicitors dated 16 October 2014 (ECM 3493678)

Attachment 2. A copy of the document titled "Clean-Up Notice Works Plan - Unnamed tributary to Hopping Dicks Creek, Tyalgum, Lot 127 DP755724, prepared by Peter Menzies for the site owner, dated 22 September 2014 (ECM 3493679)

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**5 [PR-PC] Landowner Request for Project Reprioritisation, Wardrop Valley Employment Land Planning Proposal**

**SUBMITTED BY: Strategic Planning and Urban Design**

Valid



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development

### SUMMARY OF REPORT:

A request was received for a rezoning of land at Wardrop Valley, for the principal purpose of supplying employment based development. The subject allotments, comprising potential employment land 'Area 6' of the Tweed Employment Land Strategy 2009, have a combined gross area of about 60ha.

At its meeting of 19 June 2014 Council adopted a priority project based work-plan to guide the resource allocation of the Strategic Planning and Urban Design Unit for the 2014/15 year.

The Wardrop Valley planning proposal was identified in the June report, Table 1 - "Strategic planning project prioritisation plan", as a Priority 3 project.

A Councillors workshop was held on 26 September 2013 and canvassed the potential issues of pursuing a rezoning for a single purpose, as well as the potential infrastructure limitations of proceeding with a mixed zoning. This was followed by a further Councillor workshop, with the landowners, on 9 October 2014.

The basis for the October workshop was to enable the landowners to address councillors directly, and to seek their support for the reprioritisation of the planning proposal from the current Priority 3 to a Priority 1 status.

This report highlights some considerations for Council, in particular emerging data that supports the additional supply of employment lands, and the prevailing challenges of managing the very high demand for strategic planning resources.

The report provides 2 Options for Council's consideration. The first option is the acceptance of the landowner's request to advance and reprioritise the subject Planning Proposal. This option acknowledges that there is a demand for additional employment land, but prior to the planning proposal being progressed to an LEP amendment, further work must be done to establish what and where, and how that demand can be best met through the zone based

system, under the LEP, over the longer-term. The second option is for Council not to support the advancement of the proposal at this stage, acknowledging that current project prioritisation is serving Council's vision and that any reprioritisation should be considered at the annual review of the Work Plan, along with other competing projects.

The Council officers recommend Option 1.

**RECOMMENDATION:**

**That:**

- 1. Council, in respect of the property known as Lots 4, 5, 6, 7, 8 and 9 of DP 811482, Lot 1 of DP 842157, Lot 1 of DP 1069561 and Part Wardrop Valley Road Reserve, Wardrop Valley Road, Murwillumbah, support the following option (referred to as Option 1 in the report), involving the reprioritisation of the Wardrop Valley Planning Proposal to Priority 1, subject to the following:**
  - a) The Landowner is to undertake a market based analysis (study) of the projected demand for employment land (commercial, industry, retail and special uses) to 2021 and 2031, prior to the planning proposal being referred for a Gateway Determination and becoming an LEP amendment; and**
  - b) The study is to include an evaluation of current land and floor plate availability, and establishes the land and floor plate requirements for each demand sector. This must include an assessment of the likely spatial demand for each sector within the broader Tweed LGA to clearly establish the location demand requirement for the subject lands over those periods. The analysis must not be solely limited to employment uses and must consider appropriate compatible uses, such as residential, recreation and tourist uses. Ultimately the final study must clearly identify the range of zonings required to achieve the demand and supply scenarios.**
- 2. Council amends the 2014/2015 Work Plan by reprioritising the Urban Agriculture Policy to a Priority 2 project.**

## REPORT:

The owner(s) ("landowner") of Lots 4, 5, 6, 7, 8 and 9 of DP 811482, Lot 1 of DP 842157, Lot 1 of DP 1069561 and Part Wardrop Valley Road Reserve, Wardrop Valley Road, Murwillumbah made a request for Council to prepare a planning proposal on 7 December 2012.

The request was made through the landowner's town planning consultant; Darryl Anderson Consulting Pty Ltd, and sought to rezone land currently identified as RU2 Rural Landscape under the *Tweed Local Environmental Plan 2014* to predominately IN1 Industrial to enable employment based development and E2 Environmental Conservation to protect known ecological communities. The proposal cites the *Tweed Employment Land Strategy 2009* as the strategic justification for the rezoning sought, with the subject allotments comprising potential employment land 'Area 6', which has a gross area of about 60 hectares.

This business paper report was preceded by a Councillor workshop with the landowner on 9 October 2014. A Councillor workshop was also conducted on 26 September 2013, as well as an Executive Management Team (EMT) briefing on 6 August 2013 and EMT - Landowner meeting on 20 August 2014.

At its meeting of 19 June 2014 Council adopted a priority project based work-plan to guide the resource allocation of the Strategic Planning and Urban Design Unit (SPU) (previously known as the "Planning Reforms Unit") for the 2014/15 year. That report is available through the Council's internal document management system (DOC 3379013). The following excerpts from the report highlight the essence of the Council's adopted work plan rationale.

*"There is an essential need for Council to indicate its collective preference with regard to the strategic planning priorities within the Tweed Shire, and without which the Operational Division of the Council has no overriding guidance as to where the Planning Reform Unit's scarce resources should best be allocated.*

*It is well known and understood that the strategic planning priorities of the Council are established by the elected body, whereas the allocation of resources remains an operational activity under the jurisdiction of the General Manager and their delegates. These two functions are each a dependant on the other for the efficient and effective delivery of policy that can effectuate tangible outcomes.*

*With regard to the resources presently available within the Planning Reform Unit it is estimated that the Unit would be running at capacity with the extensive level of projects and corresponding resource demand arising from the Work Plan in Table 5.*

*What this will most likely translate too is a channelling of resources to Priority 1 projects when required, and for the duration of that demand. During these periods other lower priority projects may receive minimal or no resourcing and their advancement may be temporarily ceased.*

*This may be viewed several ways, but ultimately the level of resourcing is linked to three key overriding factors: the overall benefit of the project to the broader community ranked against all others, the reasonable likelihood of the project actually succeeding, and the ability and track record of the proponent to actually deliver an outcome within a reasonable time frame."*

The Wardrop Valley planning proposal was identified in the June report, Table 1 - "Strategic planning project prioritisation plan", as a Priority 3 project. In logistical terms Priority 3 provides a holding pattern for projects, with resourcing only for information sought against the file and not to progress the actual project.

The basis for the workshop on 9 October was for the landowner to address councillors directly, and to seek their support for the reprioritisation of the planning proposal from the current Priority 3 to a Priority 1 status.

The landowner raised several issues that are believed to warrant the advancement of the planning investigations. Importantly the landowner agreed to commission a full and proper market analysis of the current supply of employment lands and the projected demand for additional services, which would be based on the NSW Department of Planning and Environment's 2014 revised population projections. This study would address each of the three main business groups; industry, retail and commercial, and to a lesser extent 'special-uses', and analyse the likely floor space demand for each business sector, relative to the site's service catchment and service delivery function within the broader Tweed region.

The landowner's key points raised at the workshop may be summarised, but not limited to:

1. The subject lands are identified in the Council's Tweed Urban and Employment Lands Strategy 2009, as Area 6 on the Potential Employment Land Map. The site designation is for 'short-term' delivery, meaning available to maintain supply from 0-10 years.
2. Based on previous experience with the development of the adjacent Industry Central employment area, the lead time for rezoning land and making it ready for sale is anywhere from 5 - 10 years, and is dependent on many regulatory, economic and State government policy factors.
3. Despite the apparent observational slow take-up rate of the Industry Central business park the landowner advised that most if not all allotments have been sold and that many owners are in the pipeline of developing their sites. It was noted that some owners have purchased to relocate and expand their current business; some have purchased to secure a larger lot for future purposes, acknowledging the relative short supply of larger industry lots available in the Tweed, while a lesser number have purchased for investment, further reinforcing that the 'industry' believes there to be substance not just perception to the claim that the Tweed has a limited supply and what is available will likely be outpaced by the demand of the projected growth market.

Enabling the advancement of the planning proposal in the light of the adopted work plan and fixed resourcing raises the question as to how that can be reasonably achieved without impact on current priorities, or what projects can be deferred. Ultimately this is a consideration and determination for the elected Council.

The following factors may assist Council with its determination.

- A. Since the Work Plan was adopted in June there have been three projects removed by way of Council resolution. Each of those projects had a low priority ranking and essentially did not free-up any additional resources.

- B. Since the adoption, Council has resolved to increase the number of Priority 1 projects by including "holiday rentals", a review of regulatory provisions pertaining to the use of residential premises for holiday letting, as a Priority 1 project.
- C. Several Priority 1 projects, including Scenic Landscape Strategy, Fingal Head Heights Review, Environmental Zones Review, Holiday Rentals, and Urban Agriculture Policy, are not yet commenced. This is due to a shortfall in present resourcing, primarily caused by the transitioning from the previous year's work programmes to the adopted work plan. To accommodate the Wardrop Valley Planning proposal it is suggested the 2014/2015 Work Plan be amended by reprioritising the Urban Agriculture Policy to a Priority 2 project. This Policy should logically follow the adoption of the Rural Lands Strategy, Rural Villages and the Environmental Sustainability Study all of which are still in development.
- D. Whilst the landowner has indicated a willingness to fund a contract town planner to work on the planning proposal, which is not too dissimilar to the Unit's current mode of operation, that by itself will not alleviate the overall resourcing impact on both the SPU and more so other Divisional work areas, in particular infrastructure engineering and natural resource management.
- E. The SPU's resource commitment, as reported to the June meeting, was estimated to fluctuate between 90-145%, and this has remained fairly static.
- F. According to the revised projections (2014) prepared by the demography unit of the NSW Department of Planning and Environment, the population of Tweed is projected to expand to 109,400 by 2031, representing a growth rate of about 1049 persons per annum. Whilst growth in all age cohorts is predicted to be strong, it is particularly so in the family dominated age cohorts of 0-19 and 35-49.

The 2011 Census data also showed that Tweed supported around 23,000 jobs, accounting for about 13% of total jobs on the North Coast, with major industries comprising; health care and social assistance, retail trade, accommodation and food services, and education and training. The largest employing occupation, representing about 19% of Tweed jobs, was 'professionals'.

Anecdotal evidence suggests that over the past 5 years the employment industries are trending away from the more traditional resource sector and toward knowledge-intensive industries, which has a higher potential to curtail the outflow of workers to South-East Queensland.

Tweed currently has about 258ha of industrial zoned land, 225ha of 'business' zoned land (of varying business zones), and 245ha of 'special use' land, comprising key tourist, special activities and infrastructure.

Preliminary investigations conducted as part of the DP&E's preparation of the next generation State-regional policy: 'Regional Growth and Infrastructure Planning,' alludes to an additional employment growth in jobs of about 2,200 by 2021, bringing the projected total jobs to just over 25,000, and a further increase of about 2,000 jobs over the following ten years to 2031. This would represent an average job growth rate above that experienced between 2006 and 2011. Within this there are both increases in some industry sectors and declines in others. For example, it is projected that

growth will be strongest in areas of health care, retail trade and food and beverage, whereas job losses are predicted in agriculture, manufacturing, and allied industries.

Early estimates for additional employment lands to 2031, and which need to be validated for specific sites and industries through detailed and tailored market analysis, indicates a projected demand (moderated at 75% demand to floor space, which assumes that land take-up will be affected by greater utilisation of existing floor space) at:

Commercial	51,000m <sup>2</sup>	land requirement	9ha (gross)*
Industry	197,000m <sup>2</sup>		50ha
Special Uses	65,000m <sup>2</sup>		15ha

\* this takes into account land for; environmental buffers, roads, parking, open space, infrastructure, and the like.

What the emerging trends and assumptions seem to indicate is that overall population and jobs growth will remain fairly strong in the Tweed LGA out to 2031. Whilst overall projected population of the LGA has been revised down indicators suggest that Tweed's employment market will continue to expand and consequently there will be demand for additional suitably zoned land.

#### **OPTIONS:**

That:

1. Council, in respect of the property known as Lots 4, 5, 6, 7, 8 and 9 of DP 811482, Lot 1 of DP 842157, Lot 1 of DP 1069561 and Part Wardrop Valley Road Reserve, Wardrop Valley Road, Murwillumbah, support the following option (referred to as Option 1 in the report), involving the reprioritisation of the Wardrop Valley Planning Proposal to Priority 1, subject to the following:
  - a) The Landowner is to undertake a market based analysis (study) of the projected demand for employment land (commercial, industry, retail and special uses) to 2021 and 2031, prior to the planning proposal being referred for a Gateway Determination and becoming an LEP amendment; and
  - b) The study is to include an evaluation of current land and floor plate availability, and establishes the land and floor plate requirements for each demand sector. This must include an assessment of the likely spatial demand for each sector within the broader Tweed LGA to clearly establish the location demand requirement for the subject lands over those periods. The analysis must not be solely limited to employment uses and must consider appropriate compatible uses, such as residential, recreation and tourist uses. Ultimately the final study must clearly identify the range of zonings required to achieve the demand and supply scenarios.
2. Council amends the 2014/2015 Work Plan by reprioritising the Urban Agriculture Policy to a Priority 2 project.

The above options provide two different scenarios. The first option is an outright acceptance of the landowner's request, but requires a consideration of competing, current, priorities. It also acknowledges that the demand for employment zoning is not yet quantified and that there is likely to be a real demand for a mixed rather than singular zoning. It requires that the landowner prepare an appropriate market based demand-supply study prior to, and in support, of Council seeking a Gateway Determination and the NSW DP&E and converting the 'request' into an LEP amendment.

The second option recognises that there are competing projects for Council's resources, and that it may be more equitable or appropriate to consider project priority or reprioritisation collectively, at the annual review.

Should Council proceed to reprioritise the Wardrop Valley Planning Proposal to a Priority 1, then Council officers recommend that Council concurrently endorse the reprioritisation of the Urban Agricultural Policy to a Priority 2 project.

### **CONCLUSION:**

The Landowners made a request of the Council to exercise its statutory functions in respect of preparing a planning proposal to rezone land currently identified as RU2 Rural Landscape under the Tweed Local Environmental Plan 2014 to predominately IN1 Industrial to enable employment based development and E2 Environmental Conservation to protect known ecological communities.

The request is made on two overarching points; that there is a real and projected demand for additional employment lands within the Tweed, particularly for larger sites, and the Council's Employment Land Strategy 2009 has specifically identified the subject lands as a short-term potential employment land (Area 6), suitable for strategic investigation.

The Council's adopted strategic planning Work Plan 2014/15 has identified the planning proposal as a Priority 3 project. The landowners now seek Council's support to reprioritise the project to a Priority 1, and to assist with the resourcing of the planning proposal have made an offer to fund (within reasonable limits, and estimated at about \$60,000 per annum over 2 years) a contract planning consultant to work within the Strategic Planning and Urban Design Unit. This is in addition of the requirement for the landowner's to fund the cost of associated studies.

Whilst it is acknowledged there is a positive contribution to the landowner's willingness to fund a contract planner, it must be borne-in-mind that planning proposals inherently draw significant resources from a wide-range of professions within the Council, which are not themselves directly supported by additional resourcing, and that the contractual method is already a standard practice of the SPU. This method, which was originally aimed at cost recovery, has now been utilised for several years as a means of undertaking a larger volume of work and consequently is no longer the additional project management practice available to achieve greater work load progression. The resource limitations and the need for Council to shift to a priority based Work Plan is inclusive of this practice. In other words limitation of the SPU to undertake additional projects discussed in the June report is an acknowledgement that the benefit of the contract system is being exhausted, if not exceeded. It must be noted that projects of this magnitude require significant resourcing.

The challenge for Council is to ensure that an adequate supply of employment land is available to meet demand, when that demand arises. Reactive supply is not an appropriate

response to the employment land market due to the very long lead times arising at the three critical development stages: strategic planning, development consent, and construction. At the same time Council needs to ensure, particularly given the restrictive zoning system under NSW planning law, that the demand is catered for with the supply of the 'right' zoning in the 'right location' and should avoid banking on single zones for large areas.

The landowners' request for a planning proposal that is based solely on industrial lands is, in light of emerging data on population and jobs growth, questionable, and the landowners themselves have acknowledged that a diversity in the zoning may be required. Determining what zoning is appropriate before resolving to prepare a planning proposal is then the only acceptable way forward. To this end, the landowners' have agreed to prepare a market demand-supply analysis for the site. This is presented as Option 1, above.

The prevailing resource limitations of the SPU combined with an emerging need to further explore the long-term strategic opportunities for these lands, consistent with its own planning strategies, raises for consideration the best way that this can be achieved. It requires Council to consider the currency of the present Priority 1 projects against what appears to be an obvious need to progress planning strategies for Wardrop Valley.

This report provides 2 Options for Council's consideration and resolution.

Once the Council has indicated its collective preference with regard to the strategic planning priorities, the Operational Division; Planning and Regulation, through the Strategic Planning and Urban Design Unit, will reallocate resources accordingly, and proceed to liaise with the landowners.

It should also be noted that Tweed Council is a landowner and party to the planning proposal. Contractual arrangements with the main landowner require that Council fund its apportionment of costs, which, based on the small land area, is relatively minor. Under the arrangements the main landowner, through their consultant, Darryl Anderson Consulting, will be the 'applicant' for the proposal.

## **COUNCIL IMPLICATIONS:**

### **a. Policy:**

Corporate Policy Not Applicable

### **b. Budget/Long Term Financial Plan:**

Planning proposal projects of this magnitude are resource intensive and draw from a wide range of disciplines. These projects are contract based and aimed at cost recovery, as such there should be negligible impact on budgets and forward estimates.

### **c. Legal:**

Not Applicable.

### **d. Communication/Engagement:**

Not Applicable at this stage, noting that extensive community consultation is a key element of strategic policy.



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Council's adopted 2014/2015 Priority 1 Projects Planning Reforms Unit Work Program. (ECM 3499622)

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**6 [PR-PC] Coastal Villages Planning Proposal and Amendments to Tweed Development Control Plan - Section B23 Hastings Point**

**SUBMITTED BY:** Strategic Planning and Urban Design

**FILE REFERENCE:** PP14/0001 Pt1

Valid



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
  - 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
  - 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development
- 

### SUMMARY OF REPORT:

This report relates to the strategic policy currently being developed or modified for the coastal villages of Hastings Point and Pottsville, and in response to prior resolution of the Council. In particular, Council's endorsement to refer a planning proposal for a Gateway Determination and to enable the public exhibition of it and an associated DCP is sought.

The Hastings Point Locality Based Development Code (Hastings Point Code) was prepared through 2010 and adopted as Section B23 of the Tweed Development Control Plan 2008 at Council's meeting of 14 December 2010. Within the plan preparation stage of the Hastings Point Code recommendations relating to Lot 156 DP 628026 (referred to as Lot 156) were not fully implemented as a development application for the site was being considered concurrently. The development application process has since concluded by way of refusal. Consistent with the relevant Notice of Motion resolved at the Council meeting of 17 October 2013, Council officers have undertaken a review of the previous development application documentation including interdivisional recommendations, commentary made within the Director General's report on a Major Project Application, and applied best practice urban design principles combined with a more detailed constraints mapping exercise enabling draft amendments to be prepared for the Hastings Point Code and Tweed LEP.

To further the implementation of both the Hastings Point Code and Pottsville Locality Based Development Code, a Planning Proposal (draft PP) has also been prepared, and incorporates the Codes' zoning, building height, floor space ratio and lot size recommendations.

It is also acknowledged that an independent environmental assessment has been submitted from a member(s) of the public and that its review will be undertaken by the NRM Unit. Should the need for substantive amendment to the draft PP result from this review, a further report to Council will precede any public exhibition, otherwise it will be included within the general public submission review to be later reported on.

**RECOMMENDATION:**

**That:**

- 1. A Planning Proposal to facilitate the strategic objectives of the Hastings Point and Pottsville Locality Based Development Codes be prepared and submitted to NSW Planning & Environment, requesting a Gateway Determination under Section 56(1) of the Environmental Planning and Assessment Act 1979;**
- 2. On receiving an affirmative Determination Notice, the Planning Proposal be finalised and exhibited in accordance with the Determination or where there is no condition, for a period not less than 30 days;**
- 3. The Minister for Planning and Infrastructure or his Delegate be advised that Tweed Council is not seeking plan making delegations for this planning proposal;**
- 4. The public exhibition of draft Tweed Development Control Plan, Section B23 – Hastings Point Locality Based Development Code, be undertaken for a minimum period of 30 days, in accordance with section 74E of the Environmental Planning Assessment Act 1979; and**
- 5. Following public exhibition a further report is to be submitted to Council detailing the content and response to submissions received.**

## REPORT:

In 2010, Council adopted the Pottsville Locality Based Development Code (Pottsville Code) and the Hastings Point Locality Based Development Code (Hastings Point Code), being Sections B21 and B23 of the Tweed Development Control Plan. Whilst a core role of each of these Codes includes the provision of development controls, both documents also contain strategic recommendations, many of which require amendments to the Tweed Local Environmental Plan, in order to take effect. The need to embody these amendments into the LEP framework has been acknowledged in the Strategic Planning and Urban Design Unit (SPU) Work Plan 2014/15, by way of its Priority 1 project status (Coastal Villages PP).

### Draft Development Control Plan - Section B23 - Hastings Point Development Code

In addition to implementing several of the strategic components of the Pottsville and Hastings Point Codes, additional site specific information is now available relating to Lot 156 of DP 628026 (referred to as Lot 156). By way of background, Lot 156 involves a large, predominately under-developed parcel at the western end of Creek Street, Hastings Point. A portion of the property is currently zoned for urban purposes and the remainder comprises a Deferred Matter within the Tweed LEP 2014 and environmental protection within the Tweed LEP 2000.

The Hastings Point Code included limited discussion regarding Lot 156 in light of development application processes that were being undertaken concurrently to the Codes' preparation, however the DA process has now concluded, by way of refusal. It is now considered appropriate to utilise the specialist studies and findings contained within the development assessment process to better inform the strategic framework for Lot 156. This approach has been resolved by Council as a Notice of Motion at its meeting of 17 October 2013 and is considered to provide greater clarity to the developer and the public, as well provide a planning framework that reflects best practice for the site.

Amendments have been drafted to Part 4 - Precinct Specific Strategies - 4.2 Creek Street within Hastings Point Code as follows:

1. Recommendations regarding the size and location of the developable footprint of Lot 156 by establishing suitable protection and buffers for land of environmental quality;
2. Clarify the existing condition and future desired character for Creek Street as a whole and Lot 156 within that context, both in relation to built form and engineering design (i.e. road upgrades, flooding controls etc); and
3. Provide clearer guidance by way of improved drafting, simplifying the relationship/s between controls and correction of minor errors.

A full copy of the draft Part 4.2 is provided as Attachment 1 of this report and specific discussion regarding the development footprint is provided below.

#### *Lot 156 - Development Footprint*

The identification of a revised development footprint over Lot 156 is the outcome of a site constraints exercise which maps environmental significant lands combined with the application of appropriate buffers to those lands. This constraints exercise accounts for the

high ecological value of the terrestrial and estuarine vegetation communities including state significant wetlands and salt marsh areas over the site. The source of the constraints mapping has been based on vegetation mapping carried out for Council in 2009 and verified by Tweed Shire Council by way of aerial photo analysis and site inspections in 2013.

As displayed within Figure 1, the draft development footprint of Lot 156 is to be defined by achieving:

- A 50m buffer to the intertidal and salt marsh extents of Christies Creek;
- A 50m buffer to areas of high wetland conservation value (as mapped by Australian Government Department on the Environment and Heritage)
- A 50m buffer to the intertidal and salt marsh extents identified to the western edge of the site
- A 20m buffer to existing terrestrial native vegetation located within the eastern, south western and western parts of the site.
- A 100m buffer to SEPP 14 Wetland areas.

Figure 1 - Proposed Buffers and Development Footprint for Lot 156



**Precinct Boundary**

▭ Creek Street Precinct

**2012 Aerial Imagery**

SOURCE:  
Aerial imagery was captured on  
6th to 9th May 2012 © AAM Pty Ltd

**COMBINED ENVIRONMENTAL CONSTRAINTS**

**Vegetation**

SOURCE:  
Vegetation mapping carried out  
by Henry James 2009 and  
verified by Tweed Shire Council in 2013

**Coastal Wetlands  
State Environmental  
Planning Policy No.14**

SOURCE:  
NSW Planning & Environment

**Coastal Wetlands  
State Environmental  
Planning Policy No.14**

SOURCE:  
NSW Planning & Environment

**Local Environmental  
Plan 2000**

SOURCE:  
Tweed Shire Council  
Environmental Protection Zones

**Wetlands Conservation Value**

SOURCE: NSW Department of Planning  
Part of the NSW Comprehensive Coastal  
Assessment (CCA).  
Wetlands of High Conservation Value and  
Their Threats in the Tweed Catchment.

**Wetlands**

SOURCE:  
NSW National Parks and  
Wildlife Service. Wetlands of NSW

**Directory of  
Important Wetlands**

SOURCE:  
Australian Government Department  
of the Environment and Heritage.  
Directory of Important Wetlands  
Spatial Database Including Wetlands  
Type and Criteria.

The abovementioned methodology has been endorsed by Council's Natural Resource Management Unit (NRM unit) as appropriate to both Council's existing environmental planning framework and the site specific conditions of Lot 156.

Further to Council officers' assessment, additional technical assessment, prepared by Australian Wetland Consulting Pty Ltd on behalf of a Hastings Point resident(s), has been received. The privately commissioned report advocates greater buffers than the methodology detailed above, which would further reduce the development footprint of Lot 156. Council's NRM unit is currently reviewing this documentation and should their findings result in significant amendments to the developable footprint of Lot 156, a further Council report will be prepared prior to public exhibition. Should the NRM unit conclude that no, or only minor amendments be required, that information will be considered within the formal public exhibition process of the draft Hastings Point Code and draft PP.

#### Draft Planning Proposal (Coastal Villages)

As discussed above, both the Hastings Point and Pottsville Codes provide strong guidance for development within both settlements, however several of these provisions require amendment to the Tweed LEP in order to take effect. Accordingly, a draft planning proposal (draft PP) has been prepared and seeks to make amendment to the Tweed LEP 2014 written instrument (inclusion of additional item to Schedule 1 - Additional Permitted Uses) and maps (amendment to Land Zoning, Lot Size, Floor Space Ratio, Height of Buildings and Additional Permitted Use Maps) to provide an integrated and consistent planning framework for the localities. Broadly, the draft PP seeks to facilitate:

#### Hastings Point

- The protection of environmental attributes located on Lot 156 DP 628026,
- The establishment of a suitable urban footprint the facilitate the development of Lot 156 DP 628026,
- The protection of existing character and realise the desired future character throughout Hastings Point.

#### Pottsville

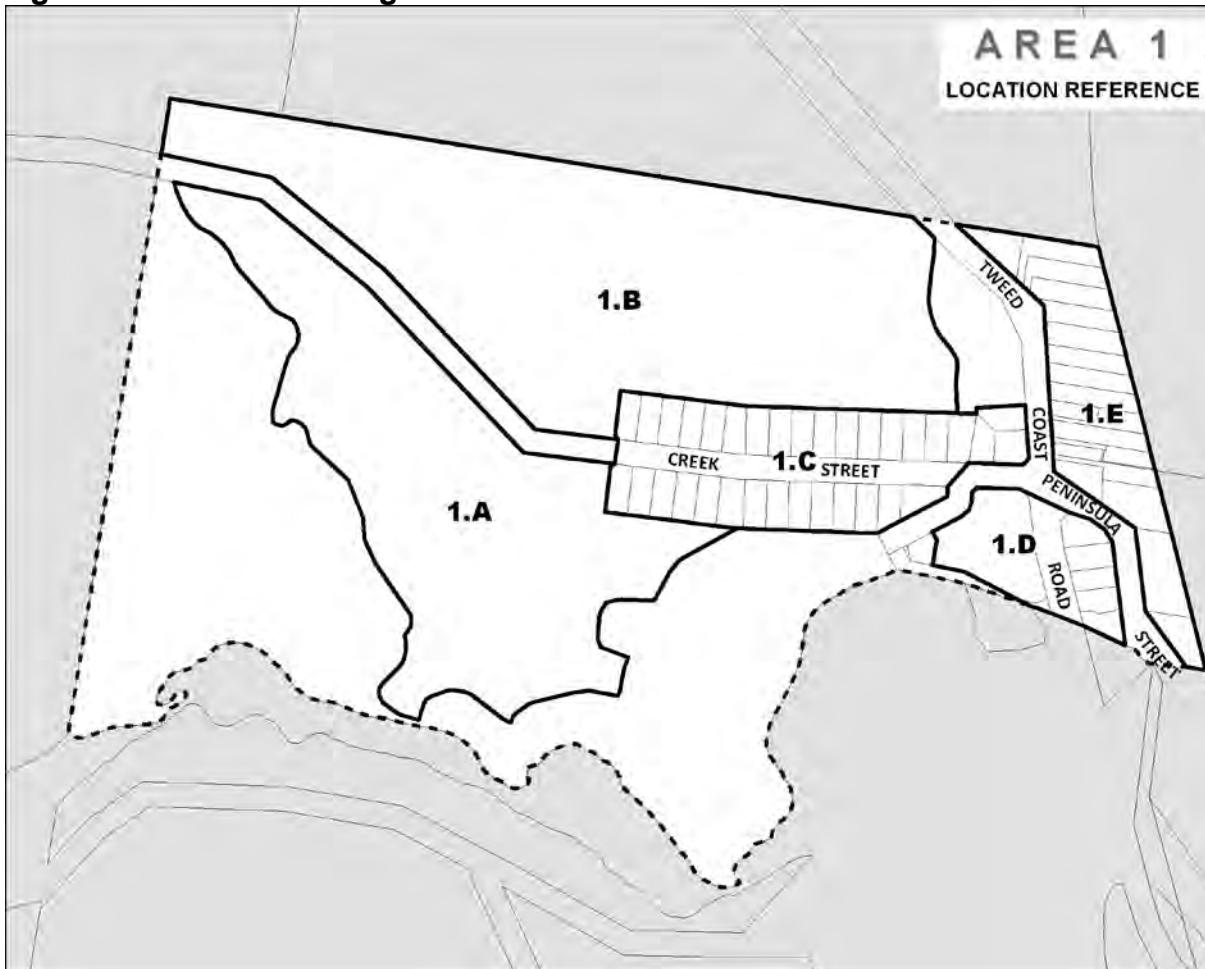
- The expansion of the Pottsville village centre to accommodate current and future demand,
- The realisation of the future desired character of the Pottsville village centre,
- Housekeeping amendments originating from the transition of Council's previous LEP into the Standard Instrument LEP format.

The following section provides specific discussion of the amendments sought, grouped into four distinct Areas.



**AREA 1 - HASTINGS POINT NORTH AND CREEK STREET**

**Figure 2 - Area 1 - Hastings Point North and Creek Street**



**Area 1.A**

	Existing	Proposed
Zoning	R1 General Residential	R2 Low Density Residential/ Deferred Matter (pending E-Zone Review)
Maximum Height of Buildings	13.6m	8m
Maximum Floor Space Ratio	2:1	0.8:1
Minimum Lot Size	450m <sup>2</sup>	700m <sup>2</sup>

Summary of changes: Zoning amendment to reduce the size of the urban footprint and reflect the zoning of the precinct, reduction in maximum height of buildings and floor space ratio, increase in minimum lot size.

Also discussed above, is that Area 1.A, being the area of Lot 156 presently zoned for urban purposes, involves a significant suite of statutory amendments. The amendments essentially comprise a reduction in the urban footprint to enable increased environmental protection. In light of the ongoing 'E-Zone Review', being undertaken by the NSW Department of Planning and Environment (DP&E), the area of environmental protection is proposed to be deferred at this time (that is, it will default to LEP 2000). Council officers will continue to liaise with DP&E staff throughout the Gateway Determination process to establish any alternative options that might better reflect the environmental sensitivity of the land.



Within the urban footprint, the Hastings Point Code prescribes that Lot 156 is to be developed as an extension of the existing Creek Street character. Accordingly, the maximum height of buildings, maximum floor space ratio and minimum lot sizes are proposed to reflect those present throughout Creek Street. The amendments proposed significantly affect the theoretical development potential of the Area, both by a reduction in development footprint and a reduction of development scale within the footprint. However, the proposed amendments are considered to reflect the environmental qualities of the site and provide a statutory framework that reflects the desired future character of the Area, as established within the Hastings Point Code.

### Area 1.B

	Existing	Proposed
Zoning	RE2 Private Recreation	RE2 Private Recreation
Maximum Height of Buildings	10m	8m
Maximum Floor Space Ratio	Not prescribed	Not prescribed
Minimum Lot Size	Not prescribed	Not prescribed

Summary of changes: Reduction in maximum height of buildings.

Consistent with the findings of the Hastings Point Code for the Creek Street precinct, the draft PP seeks to reduce the maximum building heights to 8m.

### Area 1.C

	Existing	Proposed
Zoning	R2 Low Density Residential	R2 Low Density Residential
Maximum Height of Buildings	8m	8m
Maximum Floor Space Ratio	0.8:1	0.8:1
Minimum Lot Size	450m <sup>2</sup>	700m <sup>2</sup>

Summary of changes: Increase in the minimum lot size permitted from 450m<sup>2</sup> to 700m<sup>2</sup>.

The Hastings Point Code identified that the current conditions of Creek Street be retained, and form the basis of its desired future character. Whilst the Hastings Point Code details a comprehensive list of the existing features that contribute to the precincts character, the prevailing lot size of greater than 700m<sup>2</sup> is considered a central feature that facilitates many of the other character elements. Accordingly, the draft PP seeks to embody this character feature within the statutory framework, providing a clearer means for realising the visions established within the Hastings Point Code.

### Area 1.D

	Existing	Proposed
Zoning	R3 Medium Density Residential	R3 Medium Density Residential
Maximum Height of Buildings	8m	8m
Maximum Floor Space Ratio	2:1	0.8:1
Minimum Lot Size	Not applicable	Not applicable

Summary of changes: Reduction in maximum floor space ratio.

The Hastings Point Code identified that whilst the land encompassed within Area 1.D was suitable for medium density development, Residential Flat Buildings (RFBs) or Shop-Top

Housing/RFBs were not considered suitable. As the existing maximum FSR provision of 2:1 is designed to support Shop-Top RFB development, it is no longer appropriate, instead the FSR should reflect the desired building types, being dual occupancy and townhouse development.

### Area 1.E

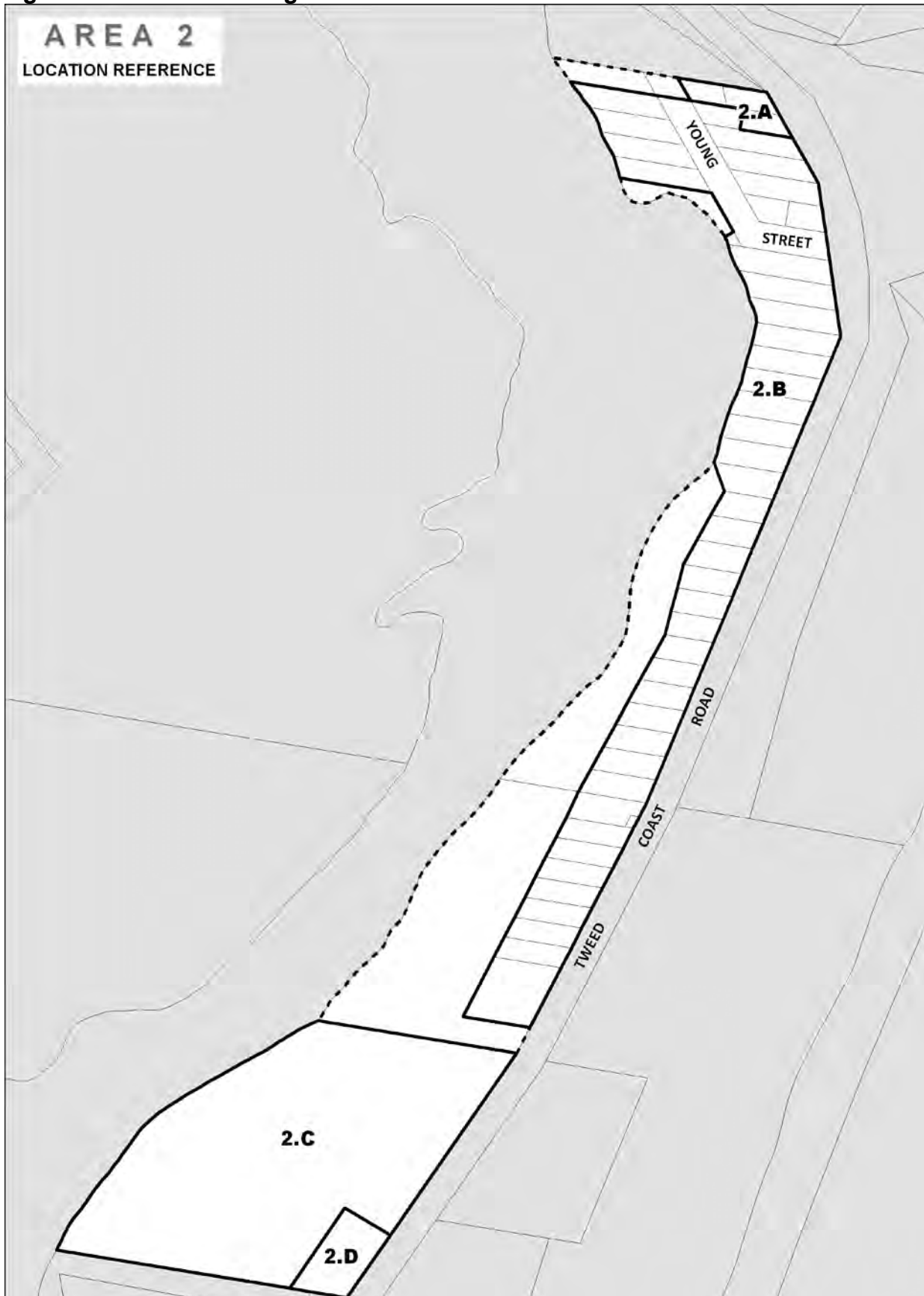
	Existing	Proposed
Zoning	R3 Medium Density Residential	R3 Medium Density Residential
Maximum Height of Buildings	10m	8m
Maximum Floor Space Ratio	2:1	1:1
Minimum Lot Size	Not applicable	Not applicable

Summary of changes: Reduction in the maximum height of building and floor space ratio.

The Hastings Point Code provides site specific building height and FSR provisions for the land contained within Area 1.E, which is sought to be embedded into the LEP.

**AREA 2 - HASTINGS POINT CENTRAL AND SOUTH**

**Figure 3 - Area 2 - Hastings Point Central and South**



## Area 2.A

	Existing	Proposed
Zoning	R3 Medium Density Residential	B1 Neighbourhood Centre
Maximum Height of Buildings	10m	10m
Maximum Floor Space Ratio	2:1	1:1
Minimum Lot Size	Not applicable	Not applicable

Summary of changes: Change in land use zoning and reduction in maximum floor space ratio.

Area 2.A comprises the existing Hastings Point general store and two adjoining residential developments. The land use zone change from medium density to neighbourhood centre zoning better reflects both the existing and proposed future desired use of the sites, as stipulated within the Hastings Point Code. The Hastings Point Code also provides a specific maximum floor space ratio for development permitted on the site, which is proposed to be embodied within the LEP.

## Area 2.B

	Existing	Proposed
Zoning	R3 Medium Density Residential	R2 Low Density Residential
Maximum Height of Buildings	8m	8m
Maximum Floor Space Ratio	2:1	0.8:1
Minimum Lot Size	Not prescribed	350m <sup>2</sup>

Summary of changes: Change in land use zoning, reduction to maximum FSR and inclusion of minimum lot size provisions.

The findings of the Hastings Point Code concluded that this precinct was suitable for residential accommodation types other than Residential Flat Buildings (RFBs). Accordingly the draft PP seeks to amend the applicable land use zoning to a residential zone within which RFBs are not permitted and reduce the maximum floor space ratio provisions to correlate with the residential types encouraged by the Code. In acknowledging that the Hastings Point Code identified 'medium density' building types other than RFBs as suitable, a smaller minimum lot size than generically used for the low density zone within the Tweed LEP 2014 is proposed. The 350m<sup>2</sup> minimum lot size has been matched to existing lot sizes, contemporary development forms approved within the precinct and the desired future character discussion of the Hastings Point Code. Whilst the minimum lot size control in itself does not control density, it does afford the opportunity for dual occupancy and town house development to be subdivided by way of Torrens Title, as opposed to Strata Title, which has been identified as an industry desire and direction for some time.

## Area 2.C

	Existing	Proposed
Zoning	R1 General Residential	R1 General Residential
Maximum Height of Buildings	8m	8m
Maximum Floor Space Ratio	2:1	1:1
Minimum Lot Size	450m <sup>2</sup>	450m <sup>2</sup>

Summary of changes: Reduction in maximum floor space ratio

Area 2.C comprises 'The Point' seniors living development. Changes to the maximum floor space ratio are proposed to reflect those established within the Hastings Point Code.

**Area 2.D**

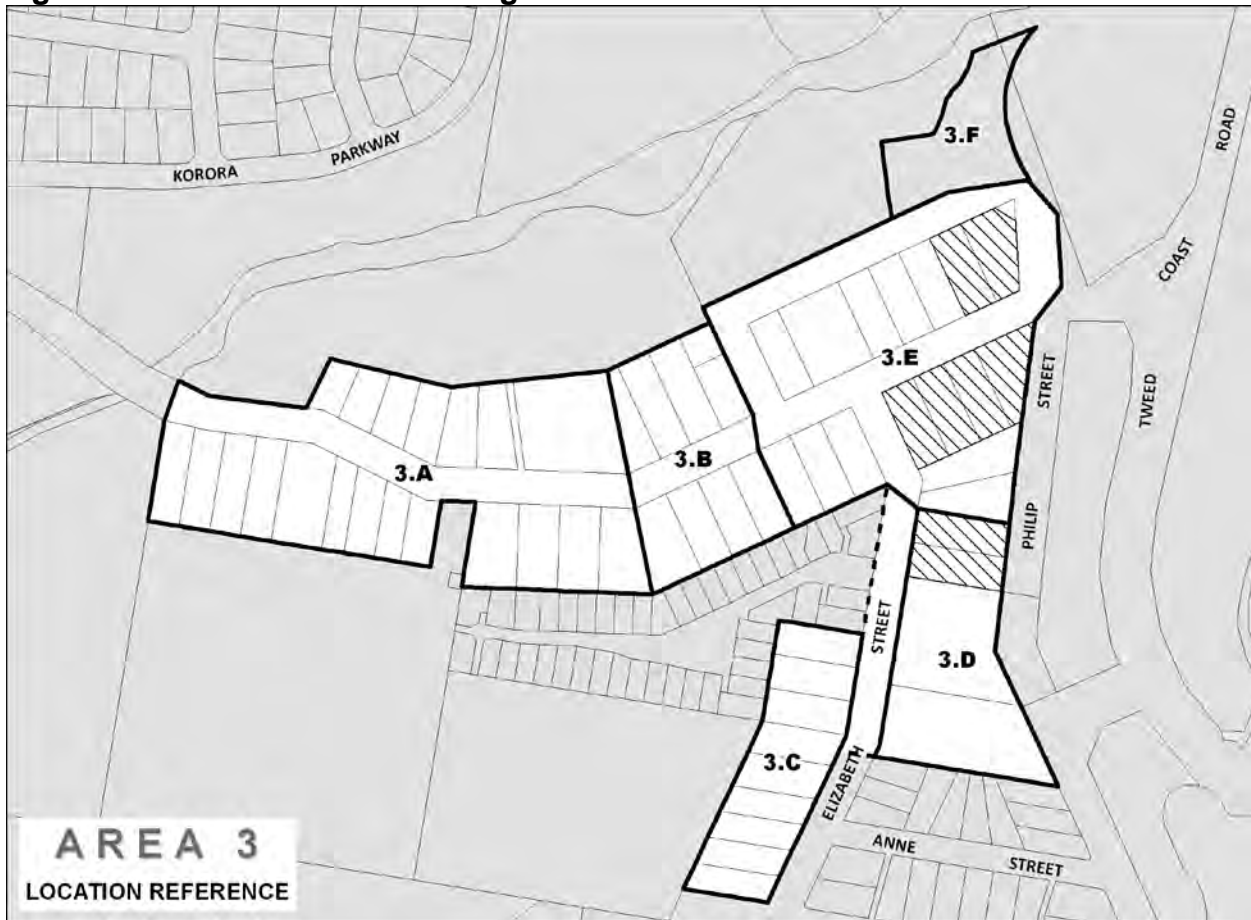
	Existing	Proposed
Zoning	R1 General Residential	B2 Local Centre
Maximum Height of Buildings	8m	8m
Maximum Floor Space Ratio	2:1	1:1
Minimum Lot Size	450m <sup>2</sup>	Not applicable

Summary of changes: Change to land use zone, reduction in maximum floor space ratio and removal of minimum lot size provisions.

Area 2.D comprises the existing Shell service station site. The Hastings Point Code acknowledges the presence and likely continuance of the service station and encourages additional low-scale commercial premises on the site. Accordingly, the draft PP utilises the Local Centre zone, permitting service stations and additional commercial activities in the future. The draft PP proposes to remove the existing prescribed minimum lot size as the standard is not considered relevant to commercial-based development. The maximum floor space ratio is proposed to be lowered to reflect the size and building type specific provisions contained within the Hastings Point Code.

**AREA 3 - POTTSVILLE VILLAGE CENTRE**

**Figure 4 - Area 3 - Pottsville Village Centre**



**Area 3.A**

	Existing	Proposed
Zoning	R3 Medium Density Residential	B2 Local Centre - plus additional permitted use
Maximum Height of Buildings	9m	11m
Maximum Floor Space Ratio	2:1	1.85:1
Minimum Lot Size	Not applicable	Not applicable

Summary of changes: Amendment to land use zoning, proposed additional permitted land use, increase in maximum building height and reduction in maximum floor space ratio.

Located on the periphery of the Pottsville village centre, the Pottsville Code identifies specific building height and floor space ratio controls for the Area, which are directly translated through the draft PP.

The Pottsville Code identifies the Area for 'Mixed Use', however the translation of this broad intention into the Tweed LEP 2014 is considered to require the inclusion of an additional permitted use. In this regard, whilst the Tweed LEP 2014 possess two zones that are considered predominately appropriate, being the B2 Local Centre and B4 Mixed Use zones, both zones only permit residential accommodation in the form of shop-top housing. Whilst this requirement is generally appropriate to ensure the primacy of commercial use within business areas, the intention of the Pottsville Code was not to require mixed use on each site, rather a mixture of uses within the Area. Accordingly, it is considered to include

residential accommodation as an additional permitted use within the Area, enabling stand alone residential development to be permissible, as well as regular business uses. This approach allows the intentions of the Pottsville Code to be realised, whilst not undermining other business centres throughout the Tweed Shire.

### Area 3.B

	Existing	Proposed
Zoning	R3 Medium Density Residential	B2 Local Centre
Maximum Height of Buildings	9m	11m
Maximum Floor Space Ratio	2:1	1.85:1
Minimum Lot Size	Not applicable	Not applicable

Summary of changes: Amendments to land use zoning, increase to maximum height of buildings and decrease to maximum floor space ratio.

The draft PP seeks to undertake zoning, height of buildings and floor space ratio amendments to reflect the specific controls and strategies contained within the Pottsville Code.

### Area 3.C

	Existing	Proposed
Zoning	R3 Medium Density Residential	B2 Local Centre - plus additional permitted use
Maximum Height of Buildings	9m	9m
Maximum Floor Space Ratio	2:1	1.85:1
Minimum Lot Size	Not applicable	Not applicable

Summary of changes: Amendments to land use zoning and decrease to maximum FSR.

As per Area 3.A, Area 3.C is recommended within the Pottsville Code to be a mixed use Area, accordingly a business zone with an additional permitted use (being residential accommodation) is proposed. Amendments to the maximum floor space ratio map are proposed to reflect the provisions of the Pottsville Code.

### Area 3.D

	Existing	Proposed
Zoning	R3 Medium Density Residential	B2 Local Centre
Maximum Height of Buildings	9m	11m
Maximum Floor Space Ratio	2:1	1.85:1/ Not applicable
Minimum Lot Size	Not applicable	Not applicable

Summary of changes: Amendments to land use zoning, increase in maximum height of buildings, reduction and removal in maximum floor space ratio.

As per the Pottsville Code, Area 3.D is proposed to be rezoned for business purposes as well as increase the maximum building height to 11m. Further, no maximum floor space ratio provisions will be prescribed for the two community use sites (Pottsville Neighbourhood Centre and North Coast Area Health Services), whilst the remainder (shown as hatched) will possess a 1.85:1 maximum.

### Area 3.E

	Existing	Proposed
Zoning	B2 Local Centre	B2 Local Centre
Maximum Height of Buildings	9m	11m
Maximum Floor Space Ratio	2:1	2:1/ 1.85:1
Minimum Lot Size	Not applicable	Not applicable

Summary of changes: Increase in maximum height of buildings, partial reduction to maximum floor space ratio.

The draft PP seeks to undertake zoning, height of buildings and floor space ratio amendments to reflect the specific controls and strategies contained within the Pottsville Code. Properties within the Area shown as hatched within Figure 4 will retain the existing 2:1 Maximum floor space ration, whilst the remainder will be reduced to 1.85:1, as discussed within the Pottsville Code.

### Area 3.F

	Existing	Proposed
Zoning	RE1 Public Recreation	RE1 Public Recreation
Maximum Height of Buildings	9 meters	11 meters
Maximum Floor Space Ratio	Not applicable	Not applicable
Minimum Lot Size	Not applicable	Not applicable

Summary of changes: Increase to maximum height of buildings.

The Pottsville Code identifies an increase in maximum building height to the Area identified as Area 3.F to enable the provision of additional community infrastructure. The draft PP reflects the height of buildings amendment detailed.



**AREA 4 - SEABREEZE ESTATE**

**Figure 5 - Area 4 - Seabreeze Estate**



**Area 4.A**

	Existing	Proposed
Zoning	R1 General Residential	B2 Local Centre
Maximum Height of Buildings	13.6m	13.6m
Maximum Floor Space Ratio	2:1	2:1
Minimum Lot Size	450m <sup>2</sup>	Not applicable

Summary of changes: Change to land use zoning, removal of minimum lot size provisions.

Area 4.A has been identified as a commercial node within both the DA approved Seabreeze masterplan, the Pottsville Code and Section B15 Seabreeze Estate of the Tweed Development Control Plan. Accordingly, a business zone has been applied to enable an appropriate range of commercial based activities and not unnecessarily restrict land use to residential based activities.

**Area 4.B**

	Existing	Proposed
Zoning	R1 General Residential	R2 Low Density Residential
Maximum Height of Buildings	13.6m	9m
Maximum Floor Space Ratio	2:1	0.8:1
Minimum Lot Size	450m <sup>2</sup>	450m <sup>2</sup>

Summary of changes: Change in land use zoning, reduction in maximum height of buildings and floor space ratio.

The amendments proposed within Area 4.B are considered to be a housekeeping matter, rather than a specific planning strategy. In this regard, within urban expansion areas the Tweed LEP 2014 included the planning provisions as a 'best fit translation' of the existing framework, or development as constructed. Area 4.B at was still in a Greenfield state for the majority of the preparation of the Tweed LEP 2014, however is now almost completely developed with low density housing. The draft PP provides an opportunity to amend the zoning to reflect the Areas development and provide consistency with the remainder of the Seabreeze Estate.

#### **Area 4.C**

	Existing	Proposed
Zoning	R1 General Residential	RE1 Public Recreation
Maximum Height of Buildings	13.6m	10m
Maximum Floor Space Ratio	2:1	Not applicable
Minimum Lot Size	450m <sup>2</sup>	Not applicable

Summary of changes: Change in land use zoning, reduction in maximum height of buildings and removal of floor space ratio and minimum lot size requirements.

As per Area 4.B, the amendments proposed within Area 4.C are considered to be a housekeeping matter, rather than a specific planning strategy. In this regard, the land within Area 4.C has now been dedicated to Council primarily for open space purposes. The draft PP provides an opportunity to amend the zoning to reflect the Areas use for open space and provide consistency with the remainder of the Seabreeze Estate.

#### **OPTIONS:**

That Council:

1. Endorses the referral of the draft PP to the NSW Department of Planning and Environment for a Gateway Determination and the public exhibition of the draft DCP and PP; or
2. Defers public exhibition for a Councillor workshop.

Council officers recommend Option 1.

#### **CONCLUSION:**

The implementation of the statutory components of the Hastings Point and Pottsville Locality Based Development Codes is highly desirable in by providing a complimentary suite of planning provisions for development within the localities. The preparation of a draft Planning Proposal for the localities is considered to satisfy previous Council resolutions and enable the planning recommendations detailed within the Codes to be properly enacted.

The draft Hastings Point Code seeks to provide clarity to the extent and scale of urban development on Lot 156 DP 628026, which has been tested through various development application processes over a number of years. The public exhibition of the draft Hastings

Point Code will enable community consultation of the development footprint and desired forms of development for the Creek Street precinct, which has accounted for the various specialist studies undertaken.

Both the draft Hastings Point Code and draft Planning Proposal are considered appropriate for public exhibition, subject to a Gateway Determination being granted by NSW Department of Planning and Environment.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Consult-**We will listen to you, consider your ideas and concerns and keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.                      Draft Part 4.2 Creek Street of the Tweed Development Control Plan 2008 (ECM 3497310)

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**7 [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**SUBMITTED BY: Director**

Valid



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
  - 1.4 Strengthen coordination among Commonwealth and State Governments, their agencies and other service providers and Statutory Authorities to avoid duplication, synchronise service delivery and seek economies of scale
  - 1.4.1 Council will perform its functions as required by law and form effective partnerships with State and Commonwealth governments and their agencies to advance the welfare of the Tweed community
- 

### **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 2014 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.

<b>DA No.</b>	DA13/0602
<b>Description of Development:</b>	Two lot subdivision
<b>Property Address:</b>	Lot 6 DP 619881 No. 332 Clothiers Creek Road, Nunderi
<b>Date Granted:</b>	3/10/2014
<b>Development Standard to be Varied:</b>	Clause 21 - Subdivision in Zone 1(c)
<b>Zoning:</b>	1(c) Rural Living
<b>Justification:</b>	Non-compliant allotment can be adequately serviced by on site effluent disposal system.
<b>Extent:</b>	Proposed lot 1 covers 8200m <sup>2</sup> or 82% of the required standard. Therefore extent of variation is 18%.
<b>Authority:</b>	Director General of the Department of Planning

<b>DA No.</b>	DA14/0050
<b>Description of Development:</b>	Detached dual occupancy
<b>Property Address:</b>	Lot 7 DP 22375 No. 204 Kennedy Drive, Tweed Heads West
<b>Date Granted:</b>	3/10/2014
<b>Development Standard to be Varied:</b>	Clause 32B(4)(b) - Overshadowing
<b>Zoning:</b>	R2 Low Density Residential
<b>Justification:</b>	The proposal does not negatively impact on the recreational integrity of the foreshore open space at this location, with the overshadowing being limited to an area of approx 20m <sup>2</sup> .
<b>Extent:</b>	The overshadowing would be limited to an area of approx 20m <sup>2</sup> .
<b>Authority:</b>	Tweed Shire Council under assumed concurrence

<b>DA No.</b>	DA14/0508
<b>Description of Development:</b>	Boundary alteration
<b>Property Address:</b>	Lot 93 DP 807666 No. 128 Bonnydoon Road, Uki and Lot 100 DP 1084942 No. 201 Smiths Creek Road, Uki
<b>Date Granted:</b>	16/10/2014
<b>Development Standard to be</b>	Clause 20(2)(a) - Minimum lot size 40ha

<b>Varied:</b>	
<b>Zoning:</b>	7(d) Environmental Protection (Scenic/Escarpment) and RU2 Rural Landscape
<b>Justification:</b>	The proposed development results in an increase to the area of existing lot 93 from 21.89ha to 39.15ha (as proposed lot1) which is an improvement with respect to this allotment meeting the minimum lot size.
<b>Extent:</b>	Proposal will result in a variation of 2.125% to the development standard
<b>Authority:</b>	Tweed Shire Council under assumed concurrence

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## CONFIDENTIAL ITEMS FOR CONSIDERATION

### REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

- C1 [PR-PC] Penalty Infringement Notice - Development Application DA13/0618 for the Use of Existing Building and Internal Alterations of a Restaurant and Shop at Lot 618 DP 508200 No. 2-8 Willow Avenue, Bogangar**

#### REASON FOR CONFIDENTIALITY:

This report has been made Confidential so as not to prejudice any future legal proceedings.

#### Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Valid



## Civic Leadership

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- |       |  |
|-------|--|
| 1     | Civic Leadership   |
| 1.2   | Improve decision making by engaging stakeholders and taking into account community input       |
| 1.2.1 | Council will be underpinned by good governance and transparency in its decision making process |
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