



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

Councillors: G Bagnall (Deputy Mayor)
C Byrne
B Longland
W Polglase
P Youngblutt

Agenda

Planning Committee Meeting Thursday 3 December 2015

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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1	[PR-PC] Development Application DA15/0093 for 26 Residential Units in Conjunction with 556m2 of Commercial Space and Existing Two Room Dental Surgery and Partial Demolition of Existing Structure at SP 84793 No. 13-19 Church Lane, Lots 2, 4, 5 and 6 SP84793; Nos. 2, 4, 5 and 6/13-19 Church Lane, Murwillumbah	7
2	[PR-PC] Development Application DA05/0004.04 for an Amendment to Development Consent DA05/0004 for Filling of Land at Lots 11-14 DP 87175 and Lots 2-9 DP 781714 Turnock Street, Kingscliff	105
3	[PR-PC] Development Application DA12/0170.12 for an Amendment to Development Consent DA12/0170 for Alterations and Additions to Motel (Staged) at Lot 100 DP 1208306 No. 19-25 Cypress Crescent, Lot 1 Sec 4 DP 29748 No. 26 Tweed Coast Road, Lot 2 Sec 4 DP 2 9748; No. 28 Tweed Coast Road Cabarita Beach	115
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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA15/0093 for 26 Residential Units in Conjunction with 556m² of Commercial Space and Existing Two Room Dental Surgery and Partial Demolition of Existing Structure at SP 84793 No. 13-19 Church Lane, Lots 2, 4, 5 and 6 SP84793; Nos. 2, 4, 5 and 6/13-19 Church Lane, Murwillumbah

SUBMITTED BY: Development Assessment and Compliance

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 application seeks approval for the construction of a mixed development for residential and commercial purposes. The application is being reported to the Planning Committee at the request of Councillors Milne and Bagnall. The proposal will include the construction of 26, two bedroom residential units and 556m² of commercial space separated into four offices and one dental surgery. The steeply sloping site is 2970m² in area and is located on the northern edge of the Murwillumbah central business district (CBD). The land consists of two existing partially vacant Lots, with the exception of a commercial development located in the south western corner of the site facing Police Lane. A portion of this existing commercial building will be retained, including the existing façade, for the described commercial space.

The development will consist of three and four storey 'big houses' identified as A, B and C onsite, including five units being constructed above the existing commercial offices and dental surgery. The site will also provide onsite open and semi basement style carparking and communal open space. The development will have a single crossing for vehicular traffic in Church Lane, at the rear of the Murwillumbah Police Station.

The site is zoned R3 – Medium Density Residential pursuant to the Tweed Local Environmental Plan 2014. The height limit for the site is 12.2m while the maximum floor space ratio (FSR) permissible onsite is 1.2:1. The residential use is permissible with consent. The proposed buildings vary in height over the site due to existing ground levels, however the maximum height limit proposed onsite is 13.1m for a lift overrun for small

sections of Building A, exceeding the maximum height limit. The roof line will however be below 12m for the western elevation of Building A. The proposed FSR is 0.97:1, and is therefore compliant in this regard.

The commercial premises upon the site will continue to enjoy the benefit of existing use rights provisions, being approved and constructed prior to the current zoning, resulting in the commercial offices (excluding the dental surgery) being a prohibited use within the R3 zone.

The site previously contained structures that were demolished some time ago resulting in a partially vacant lot, with benching and concrete slabs being retained creating a terraced development site.

The site has frontage to Church Lane and Church Street, however, the portion of Church Street fronting the site is unformed. Therefore, all vehicular access will be via Church Lane on the northern edge of the Murwillumbah CBD. The site is surrounded by low and medium density residential dwellings to the north, west and east. The Murwillumbah CBD is located directly to the south of the subject site, with the Murwillumbah Police Station and Courthouse being located directly to the south.

The application when lodged in February 2015 was considered deficient in the supply of supporting documentation. Initial assessments also determined that the application was contrary to the various provisions applicable to the site in regards to height, open space, private open space and car parking.

Twelve submissions were received during the initial public advertising period raising objection to the proposal.

Following the initial assessment by Council staff and the public advertising period, a request for further information was issued on 5 March 2015. This request advised that the proposal was not satisfactory in a number of areas and the development would be unlikely to be supported in its proposed form.

Following discussions with the applicant, an amended proposal was prepared and submitted to Council on 7 June 2015. This amended proposal reduced the number of proposed units from 31 to 24 and removed one of the proposed four 'big houses' that included an additional commercial area at street level. Various other changes were made to comply with both state and local provisions applicable to the subject proposal.

This amended application was readvertised. During this 14 day notification period, eight submissions were received. These submissions raised objection to the subject proposal for the following reasons;

- Non-compliance with the relevant provisions including;
 - Height
 - Setbacks
 - Carparking
 - Character of the area including existing heritage
 - Retention of adjoining properties privacy
 - Amenity of adjoining residents
 - Adverse social impact
 - Building separation
 - Inadequate storage areas

- Inadequate deep soil zone widths on western boundary
- Visual amenity
- Loss of views
- Adverse impacts from security lighting
- Overshadowing of existing premises
- Inadequate fencing
- Contamination from previous uses onsite.
- Adverse traffic implications for Church Lane for new and existing residents, visitors, pedestrians and service vehicles
- Unacceptable noise levels emanating from the new development from residents, air conditioners, balconies, traffic in Church Lane
- Inadequate waste management details,
- Insufficient details regarding the treatment of existing retaining walls onsite during demolition and construction,
- No children's play area provided,
- Disturbance of native wildlife,
- Access to the podium area difficult for residents of Building B,
- Unacceptable impact on public views and vistas,
- No dilapidation report,
- Inadequate infrastructure,
- Fumes from the naturally ventilated carpark will adversely impact adjoining residential properties,
- Inadequate bushfire evacuation path,
- No wheelchair access available.

The proposal in its amended form was assessed against the state and local provisions applicable to the development and subject site. This assessment again concluded that the application was not acceptable and the applicant was requested to further amend the development. Amended Plans were received on 3 November 2015. It is these plans that are the subject of the assessment in this report.

The significant amendments to these plans are listed as follows.

- Removal of the 5th storey upon Building A
- Reducing the maximum height of the development from 14.7m to 13.1m.
- Reducing the areas of the building that do not comply with the TLEP height limit of 12.2m
- Reducing the number of Units onsite from 31 to 26 (Despite Version 2 proposing 24 Units)
- Increasing the western side boundary setbacks from 1.49m to 3.01m for Building A
- Increasing the western side boundary setback of the Building C residential component (given the commercial is existing) from 2.02m to 3.85m.
- Reducing the site coverage from 51% to 40%
- Reducing the Floor Space Ratio from 105% to 97%
- Reducing the total roof area from 1502m² to 1193m²
- An increase in the number of carparking spaces from 60 to 66.

It is noted that the third version of the application was not publicly notified due to the improved design including a reduction in the maximum height and increased setbacks to the western boundary that is considered to address the concerns of residents outlined above in regards to height, setbacks and visual impacts.

Following a detailed assessment by Council staff, it is concluded that the proposal be approved subject to certain conditions. These conditions will provide further assurances that the development will be satisfactory upon the site and within the locality. The conditions will also ensure the ongoing use of the site does not have an unacceptable impact upon the locality and residents.

RECOMMENDATION:

That Development Application DA15/0093 for a 26 residential units in conjunction with 556m² of commercial space and existing two room dental surgery and partial demolition of existing structure at SP 84793 No. 13-19 Church Lane, Lots 2, 4, 5 and 6 SP 84793; Nos. 2, 4, 5 and 6/13-19 Church Lane, Murwillumbah be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans as follows;**
 - **Site Plan DA -1.1, Issue D dated 09/10/2015**
 - **Street Level Church Lane DA- 1.2 Issue D dated 09/10/2015**
 - **Mews Level DA - 1.3, Issue D dated 09/10/2015**
 - **Level 1 DA - 1.4, Issue D dated 09/10/2015**
 - **Level 2 DA - 1.5, Issue D dated 09/10/2015**
 - **Level 3 DA - 1.6, Issue D dated 09/10/2015**
 - **Level 4 DA - 1.7, Issue D dated 09/10/2015**
 - **Roof Buildings A and B DA - 1.8, Issue D dated 09/10/2015**
 - **Elevations Sheet 1 of 4 DA - 2.1, Issue D dated 09/10/2015**
 - **Elevations Sheet 2 of 5 DA - 2.2, Issue D dated 09/10/2015**
 - **Elevations Sheet 3 of 5 DA - 2.3, Issue D dated 09/10/2015**
 - **Elevations Sheet 4 of 5 DA - 2.4, Issue D dated 09/10/2015**
 - **Elevations Sheet 4 of 5 DA - 2.5, Issue D dated 09/10/2015**
 - **Elevations Sheet 4 of 5 DA - 2.6, Issue D dated 09/10/2015**
 - **Lower carpark detail plan DA - 3.1, Issue D dated 09/10/2015**
 - **Building A Podium Level DA - 3.2, Issue D dated 09/10/2015**
 - **Building C - Level 1 DA - 3.3, Issue D dated 09/10/2015**
 - **Building C - Level 2 DA - 3.4, Issue D dated 09/10/2015**
 - **Building A - Levels 1, 2, 3 Building B - Levels 1, 2, 3, 4. DA - 3.5, Issue D dated 09/10/2015**
 - **Deep Soil General Arrangement DA - 4.2 Issue D dated 09/10/2015**
 - **Demolition Plan DA - 4.4 Issue D dated 09/10/2015;**
- all prepared by RAD John Rust, Project No. 2556,**
- **Waste Management Plan - prepared by CLA Consultants, Revision A, dated 10 November 2015,**
 - **Landscape Concept Plan - prepared by Mark Baldock, Drawing Number 1409-LCP1, dated November 2014,**

except where varied by the conditions of this consent.

[GEN0005]

2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0115]
3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.
[GEN0135]
4. Any business or premises proposing to discharge wastewater containing pollutants differing from domestic sewage must submit a Liquid Trade Waste Application Form to Council. The application is to be approved by the General Manager or his delegate prior to any discharge to the sewerage system. A Liquid Trade Waste Application fee will be applicable in accordance with Council's adopted Fees and Charges.
[GEN0190]
5. The development is to be carried out in accordance with Council's Development Design and Construction Specifications.
[GEN0265]
6. 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]
7. This development consent does not include demolition of the existing structures on the subject site. A separate approval will need to be obtained for this purpose, as statutorily required.
[GEN0305]
8. No vehicle larger than a standard Small Rigid Vehicle (SRV) as defined in the latest version of AS 2890.2 Parking Facilities - Off-Street Commercial Vehicle Facilities shall service the site.
[GENNS01]
9. The applicant shall ensure that provision is made for fire fighting water supply as specified in the Building Code of Australia for the class and size buildings proposed.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

10. The developer shall provide 66 parking spaces including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.
Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to the Principal Certifying Authority with the Construction Certificate for Building Works.
The allocation of parking areas must be in accordance with Condition 101 of this consent
[PCC0065]
11. Prior to issue of Construction Certificate the applicant is to submit to Council's General Manager or his delegate a list of the finished building materials and colours (including colour product photo images) for approval.
[PCC0175]

12. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a Construction Certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid (as applicable). Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided. [PCC0285]
13. Where earthworks result in the creation of batters and/or cuttings greater than 1m high and/or slopes within allotments 17° (1:3.27) or steeper, such slopes shall be densely planted in accordance with a detailed Landscaping Plan endorsed by Council. This Plan shall accompany the Construction Certificate application for Building works. Such plans shall generally incorporate the following and preferably be prepared by a landscape architect: [PCC0455]
- (a) Contours and terraces where the height exceeds 1m.
 - (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
 - (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
 - (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.
14. The construction of any retaining wall or cut/fill batter must at no time result in additional runoff or ponding occurring within neighbouring properties. All earthworks shall be contained wholly within the subject land. [PCC0485]
15. Site regrading and associated drainage is to be designed to address drainage on the site, as well as existing stormwater flows onto or through the site, and minimising the impact on the local drainage. Detailed engineering plans of finished surface levels and perimeter drainage shall be submitted with the S68 stormwater application for Council approval. Stormwater flows (including the ARI 100 year event) must be appropriately conveyed through the site, in a manner that does not adversely impact on upstream or downstream property. The retaining wall and associated stormwater inlet structure along the northern property boundary shall be located entirely within the subject allotment. The inlet shall be designed to cater for the external catchment up to the Q100 storm event, with appropriate factor of safety and blockage factor as specified in Council's Design Specification D5 - Stormwater Drainage Design. The detailed design shall demonstrate the overland flow portion of the major system can comply with D5.12. [PCC0675]
16. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters: [PCC0705]
- (a) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage within the commercial premises at ground level.

17. 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, including (but not limited to) the construction of a new access (with applicable "sight triangle") in accordance with Section A2 - "*Site Access and Parking Code*" of Council's consolidated Tweed Development Control Plan and Council's "*Driveway Access to Property - Part 1*" Design Specification June 2004.

Applications shall include (as applicable) engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications, including: -

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic Control Plan

18. Details from a qualified Structural Engineer are to be submitted to Council's General Manager or his delegate for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main and include a certificate of sufficiency of design prior to the determination of a construction certificate. [PCC0895]

19. 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]

20. Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Principal Certifying Authority PRIOR to the issue of a construction certificate.

The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

21. Permanent stormwater quality treatment shall be provided in accordance with the following: [PCC1065]

- (a) The Construction Certificate Application for Building Works shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works may incorporate Water Sensitive Urban Design principles and where practical, integrated water cycle management.

- (d) Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any works being undertaken.
- (e) Runoff from all hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas and external catchments) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 - *Stormwater Quality*, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.
- (f) Roof water and external catchments do not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

22. A Construction Certificate application for Building 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.

[PCC1145]

23. Erosion and Sediment Control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

A detailed Erosion and Sediment Control Plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality* shall be submitted with the Section 68 stormwater drainage application.

[PCC1155]

24. Medium density/integrated developments, excluding developments containing less than four attached or detached dwellings and having a Building Code classification of 1a, will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements. Proposed location of bulk water meter to be included on Civil Works Plans.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act, 2000 to be certified by an Accredited Certifier.

25. In accordance with Section 68 of the Local Government Act, application shall be made to Council for any proposed sewerage drainage system. Detail shall include hydraulic drawings, pipe sizes, details of materials and discharge temperatures.

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- [PCC1225]
26. In accordance with Section 68 of the Local Government Act, 1993 any premises proposing to discharge wastewater into Councils sewerage system other than domestic sewage, shall submit to Council a completed Liquid Trade Waste Application for a Liquid Trade Waste Services Agreement. The Application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate to discharge to Council's sewerage system.
- [PCC1255]
- 27 Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. grease arrestor, oil separator, basket traps) must be installed in accordance with Tweed Shire Council's Policy - Discharge of Liquid Trade Waste to Council's Sewerage System. Submission of detailed hydraulic plans and specifications indicating the size, type and location of pre-treatment devices and full details of drainage installations in accordance with AS 3500 shall be submitted to Council for approval along with a Liquid Trade Waste Application Form and all required information required therein.
- [PCC1265]
28. The following additional details are required prior to the issue of a Construction Certificate.
- Evidence that all weather protection awnings will be provided above the pedestrian openings to each of the buildings
 - Suitable evidence shall be provided that large trees can be accommodated within the communal open space areas as proposed by the landscaping plan.
 - Additional details shall be provided regarding the treatment of the internal carparking area at 'mews' level to ensure the safety of pedestrians.
 - Details regarding the provision of privacy screens to balconies of Apartments 1, 2 and 3 within Building A.
29. Prior to the issue of a Construction Certificate for each stage of the project, a Construction Noise Management Plan (CNMP) shall be submitted to, and approved by, the General Manager or delegate. The CNMP is to be developed in accordance with the Interim Construction Noise Guideline (NSW Department of Environment & Climate Change).
- [PCCNS01]
30. Council may not be able to provide fire flows required by the Building Code of Australia for the Class and size of buildings proposed. Therefore, satisfactory evidence shall be provided and approved by the General Manager or delegate that adequate provision is made for firefighting supply in the event that Council mains are found inadequate.
- [PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

31. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and advise the Principal Certifying Authority 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]
32. 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.
33. 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. [PCW0215]
34. 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]

35. 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]

36. 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]

37. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material, as deemed applicable by the Structural Engineer.

The Certificate shall also confirm that the integrity and stability of neighbouring property is not compromised by the proposed development.

[PCW0745]

38. A Dilapidation Report detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and driveways is to be prepared and certified by a suitably qualified and experienced structural engineer. The Report is to be submitted to and accepted by Council prior to commencement of ANY works on the site.

[PCW0775]

39. 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]

40. 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]

41. Prior to the commencement of any works on-site, a detailed site and soil investigation is to be undertaken in accordance with the *Guidelines for Consultants Reporting on Contaminated Sites* (NSW Office of Environment and Heritage 2011). The findings of the investigation, and any proposed Remedial Action Plan, are to be submitted to Council for consideration and approval.

[PCWNS01]

42. Prior to the commencement of demolition works, a demolition application and work plan, in accordance with Council's guideline for demolishing structures, is to be submitted to Council for consideration and approval by the General Manager or delegate.

[PCWNS02]

43. Prior to any soil being extracted from site, the Developer must advise Council of the proposed haul route and intended destination. No material can leave site until the proposed route and destination have been endorsed by the General Manager or his delegate and any applicable Heavy Haulage Contribution paid.

The documentation must include a Traffic Management Plan prepared by an RMS accredited person in accordance with AS1742 and the RMS publication "Traffic Control at Work Sites" (current version) and be endorsed by Council.

The extraction of soil from the site is limited to 2900m³, unless agreed otherwise by Council.

[PCWNS03]

DURING CONSTRUCTION

44. 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]

45. If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment, Climate Change and Water are to be notified immediately, in accordance with the provisions of the *National Parks and Wildlife Act 1974*.

[DUR0025]

46. 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]

47. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.
 $L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
 - B. Long term period - the duration.
 $L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.
- [DUR0215]
48. 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]
49. 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]
50. 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]
51. 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]
52. 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]
53. The finished floor level of the building should finish not less than 225mm above finished ground level.
- [DUR0445]
54. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures", the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011 and the Demolition Plan prepared by C & G Powell Demolition & Asbestos Removal, version 1.1 and dated 28 May 2012.

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

[DUR0645]

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

[DUR0675]

56. All works shall comply with the Pre-Demolition Soil Contamination Investigation and Remediation Management Plan prepared by ADG Consulting. Sub-slab contaminated material shall not be placed in or below the groundwater table. Upon completion of sub-slab remediation (placement) works on site, Council shall be provided with a post remediation validation report to the satisfaction of the General Manager or his delegate. Construction works shall not commence until this report is reviewed and approved by the General Manager or his delegate.

[DUR0685]

57. All site earthworks and extraction shall be carried out in accordance with AS 3798 (current version).

[DUR0795]

58. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.

[DUR0815]

59. All retaining walls proposed are to be constructed in accordance with the construction Certificate approval issued by the Principal Certifying Authority. Please note timber retaining walls are not permitted.

[DUR0845]

60. 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]

61. Provision to be made for the designation of one durable and pervious car wash-down area. The area must be appropriately sized and identified for that specific purpose and be supplied with an adequate water supply for use within the area. Any surface run-off from the area must not discharge directly to the stormwater system.

[DUR0975]

62. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

63. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of any Occupation Certificate.

[DUR0995]

64. 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 excavation operations and also from construction vehicles**
 - **Material removed from the site by wind**
- [DUR1005]
65. **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]
66. **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]
67. **Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.**
- [DUR1045]
68. **Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.**
- [DUR1685]
69. **Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.**
- [DUR1705]
70. **Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.**
- [DUR1725]
71. **Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.**
- [DUR1795]
72. **Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to any use or occupation of the buildings.**
- [DUR1875]
73. **During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection.**
- [DUR1925]
74. **All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation Certificate.**

75. 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]

76. 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]

77. A garbage storage area shall be provided in accordance with Council's "Development Control Plan Section A15 - Waste Minimisation and Management".

[DUR2195]

78. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

79. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal by a waste transporter licensed by the NSW Department of Environment and Climate Change.

[DUR2215]

80. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until any held Maintenance Bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

81. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Council's Engineering Division to arrange a suitable inspection.

[DUR2445]

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

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

[DUR2485]

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

[DUR2535]

84. 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]

85. 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]

86. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not affect or be affected by the sewer main.

[DUR2645]

87. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall be located, installed and operated so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[DUR2835]

88. Should any part of the existing sewer or water supply infrastructure be damaged by the registered proprietor or by any person who is a servant, workman, tenant, invitee, employee, or agent of the registered proprietor Tweed Shire Council will repair the damage at the cost of the registered proprietor.

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

89. Prior to issue of an Occupation Certificate for each stage of the development, all works/actions/inspections etc required at that stage by other conditions or approved Management Plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

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

[POC0205]

91. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

92. Section 94 Contributions

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

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), 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 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. Tweed Road Contribution Plan:

70.9 Trips @ \$1385 per Trips \$98,197

(\$1,317 base rate + \$68 indexation)

S94 Plan No. 4

Sector9_4

b. Open Space (Casual):

18.46 ET @ \$552 per ET \$10,190

(\$502 base rate + \$50 indexation)

S94 Plan No. 5

c. Open Space (Structured):

18.46 ET @ \$632 per ET \$11,667

(\$575 base rate + \$57 indexation)

S94 Plan No. 5

d. Shirewide Library Facilities:

18.46 ET @ \$851 per ET \$15,709

(\$792 base rate + \$59 indexation)

S94 Plan No. 11

e.	Bus Shelters:	
	18.46 ET @ \$66 per ET	\$1,218
	(\$60 base rate + \$6 indexation)	
	S94 Plan No. 12	
f.	Eviron Cemetery:	
	18.46 ET @ \$124 per ET	\$2,289
	(\$101 base rate + \$23 indexation)	
	S94 Plan No. 13	
g.	Community Facilities (Tweed Coast - North)	
	18.46 ET @ \$1411 per ET	\$26,047
	(\$1,305.60 base rate + \$105.40 indexation)	
	S94 Plan No. 15	
h.	Extensions to Council Administration Offices & Technical Support Facilities	
	17.815 ET @ \$1888.66 per ET	\$33,646.48
	(\$1,759.90 base rate + \$128.76 indexation)	
	S94 Plan No. 18	
i.	Cycleways:	
	18.46 ET @ \$480 per ET	\$8,861
	(\$447 base rate + \$33 indexation)	
	S94 Plan No. 22	
j.	Regional Open Space (Casual)	
	18.46 ET @ \$1108 per ET	\$20,454
	(\$1,031 base rate + \$77 indexation)	
	S94 Plan No. 26	
k.	Regional Open Space (Structured):	
	18.46 ET @ \$3890 per ET	\$71,809
	(\$3,619 base rate + \$271 indexation)	
	S94 Plan No. 26	
93.	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.	[POC0395]
94.	All landscaping work is to be completed in accordance with the approved plans prior to the issue of a final occupation certificate for the building.	[POC0435] [POC0475]

95. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 64 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water:	14.376 ET @ \$13,128	\$188,728.13
Sewer:	18.478 ET @ \$ 6,307	\$116,540.75

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

These charges 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.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

96. Prior to the issue of an Occupation Certificate for Stage 1, 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]

97. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of an occupation certificate.

[POC0855]

98. Prior to the issue of an Occupation Certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices, as applicable to each stage of the development.

[POC0985]

99. 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]

100. Prior to the issue of an Occupation Certificate, a certificate of practical completion shall be obtained from Council's General Manager or his delegate for all works required under Section 68 of the Local Government Act, as applicable to each stage of the development.

[POCNS01]

101. All constructed retaining structures in excess of 1.2m in height are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted to the Principle Certifying Authority and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

The certification shall also confirm that the integrity of neighbouring property has not been compromised by the undertaken works associated with the development, as applicable to each stage.

[POCNS02]

102. Prior to the issue of an Occupation Certificate all parking is to be in accordance with the following plans;

- Plan No. DA-1.2 titled 'Street Level Church Lane' dated 10 July 2014 issue D
- Plan No. DA-1.3 titled 'Mews Level' dated 10 July 2014 issue D

Except the following car parking spaces which are to be reallocated to the residential component of the development;

- 6 (six) of the tandem car parking spaces currently designated 'commercial - staff unit 5, numbers 15 to 20' on Plan No. DA-1.2 titled 'Street Level Church Lane' dated 10 July 2014 issue D are to be changed to residential car parking. Tandem spaces which require one vehicle to move before the second vehicle can exit are to be allocated to one unit only.
- 3 (three) of the car parking spaces currently designated 'commercial customer unit 3, numbers C1, C2 and C3' on Plan No. DA-1.3 titled 'Mews Level' dated 10 July 2014 issue D are to be changed to residential car parking for the residential units.
- Bicycle racks are to be provided within the development
- The car parking shall be permanently line marked in white colour and number allocated to each of the residential / commercial components of the development as per the above nominated plans.
- All parking areas are to be certified by a qualified engineer prior to occupation or use.
- Appropriate signposting shall be provided advising customers and visitors that off street parking is available

[POCNS03]

USE

103. 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]

104. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

105. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

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

[USE0875]

107. A backflow containment device will be installed adjacent to Councils water meter installation at the property boundary in accordance with AS3500. The device is to be maintained in accordance with the provisions of AS3500 by the owner of the property at the owners expense.

[USE1455]

108. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[USE1510]

109. Any deliveries to the commercial uses onsite shall be restricted to the following hours;

***7am - 6pm Weekdays**

***8am - 1pm Saturdays**

No deliveries Sundays or Public Holidays

110. Satisfactory arrangements shall be implemented by the body corporate to ensure customer parking located behind security gating is readily available and sign posted accordingly.

[USENS01]

REPORT:

Applicant: LFT (Qld) Pty Ltd

Owner: LFT (Qld) Pty Ltd

Location: SP 84793 No. 13-19 Church Lane, Lots 2, 4, 5 and 6 SP 84793; Nos. 2, 4, 5 and 6/13-19 Church Lane, Murwillumbah

Zoning: R3 - Medium Density Residential

Cost: \$4,000,000

Background:

The application seeks approval for a development containing 26 Residential Units that will integrate with an existing commercial development upon a partially vacant site.

The site will be developed into three 'big houses' labelled A, B and C. Building A will be four storeys and contain nine residential units. This building will be located above a semi basement style 'mews' level parking area that will also extend below Building B. Building B will be four storeys in height and contain 12 units above the 'mews' level carpark. Building C will involve the retention of the street level commercial space over two storeys containing 556m² of floor area within five offices with a further two storeys above containing five residential units. The site will contain 400m² of external combined communal open space in two locations, specifically the south eastern corner of the site above a basement style carpark and between Buildings B and C.

Also associated with the proposal is the construction of 16 open carparks at the 'mews' level for use by the existing commercial spaces onsite, the creation of private open space areas for Units opening onto ground level at the rear, deep soil zones and associated landscaping, bicycle and refuse storage areas, pedestrian and vehicle access.

Vehicular access to the site will be via a two way ramp from Church Lane to the elevated parking area known as the 'mews'. This ramp will also access the basement parking below Buildings A and B. The ramp will also access a semi-basement style carparking area at the Church Lane level. The vehicular access will be located in the south east corner of the site.

Separate pedestrian access will be via a feature entry gate to the communal open space area above the semi underground carpark in the south east corner of the site.

The original application lodged in February this year was not considered to be a proposal likely to be supported due to numerous non-compliance issues identified during the initial assessment by Council. Further, these variations were unlikely to be supported based on the justifications offered by the application. The application was also silent on numerous matters of non-compliance.

In response to the identified issues associated with the original application, requests for further information were forwarded to the applicant on two separate occasions. These information requests and consultation with the applicant's team have resulted in the proposal being amended on two occasions, the final version of the proposal being received on 3 November 2015. It is this amended application that is the subject of this assessment. While the second variation has not been publicly advertised, it is considered that the revised development has addressed various concerns raised by both Council and adjoining residents.

It is considered that the developments evolution and the applicant's willingness to work with Council during the assessment process has resulted in a development that can now be supported.

History

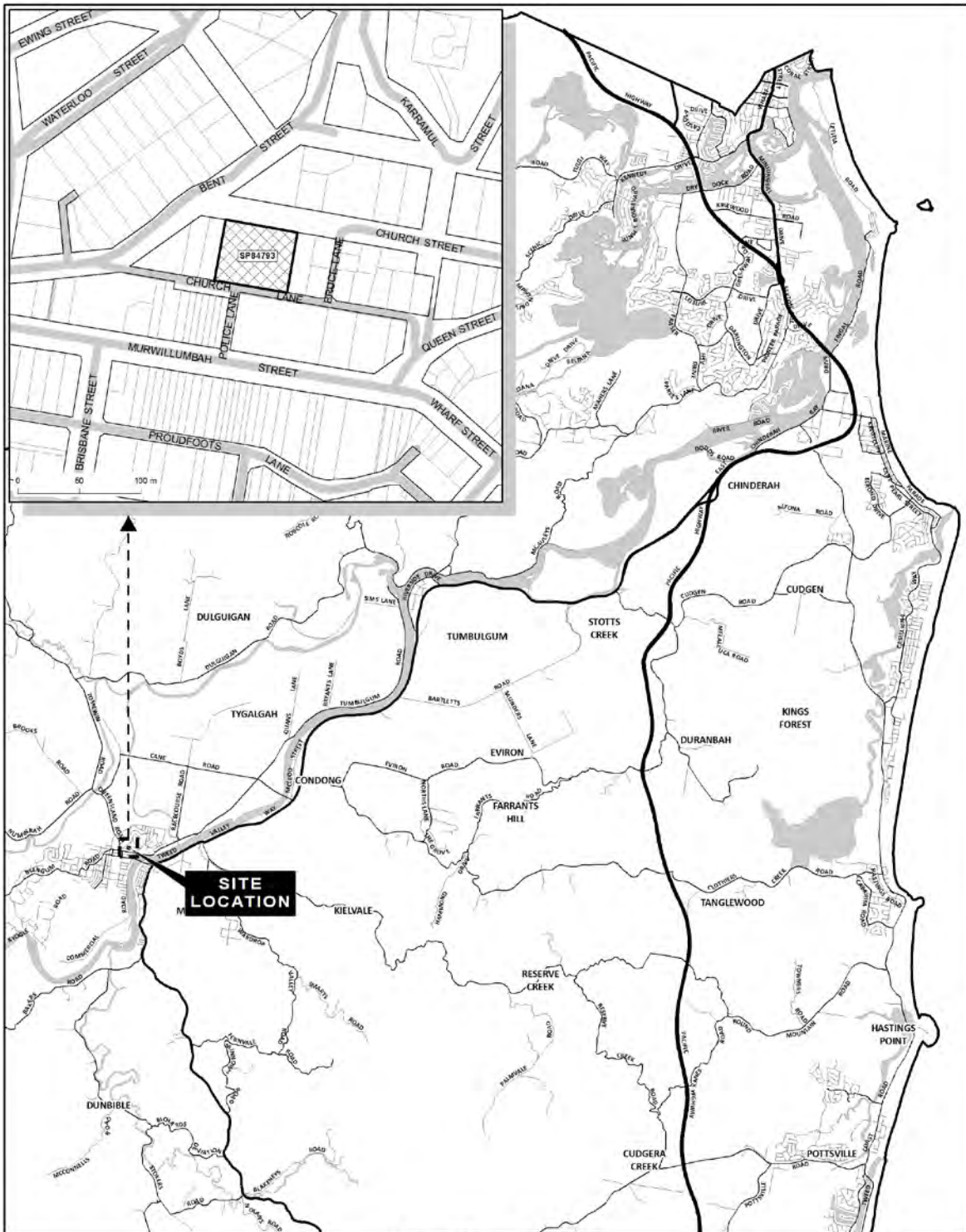
Development Consent for the office premises was issued in conjunction with DAT4/3209. These four offices have a combined floor area of 556m² and are currently commercial space for a professional consultant and a printing business.

DA10/0492 approved the demolition of an old joinery building and garage along the eastern side boundary of the site. This demolition consent permitted the retention of the existing slabs for carparking.

The dental surgery was approved in conjunction with DA11/0510. No change to the approved use is proposed.

A previous application for 23 Units and a Managers Flat was lodged with Council in 2012 (DA12/0271). This application was subsequently withdrawn following discussions with the applicant and Council.

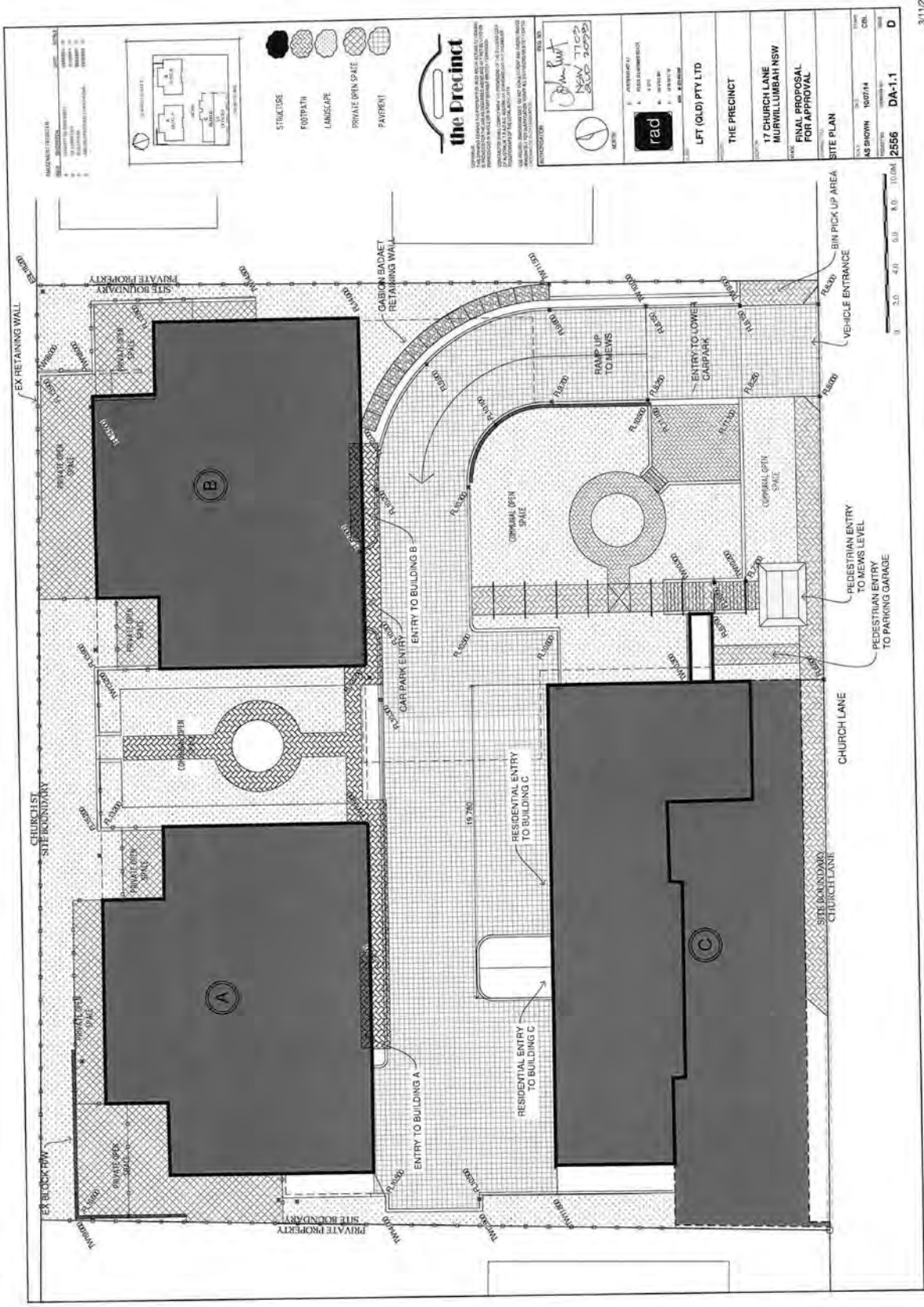
SITE DIAGRAM:



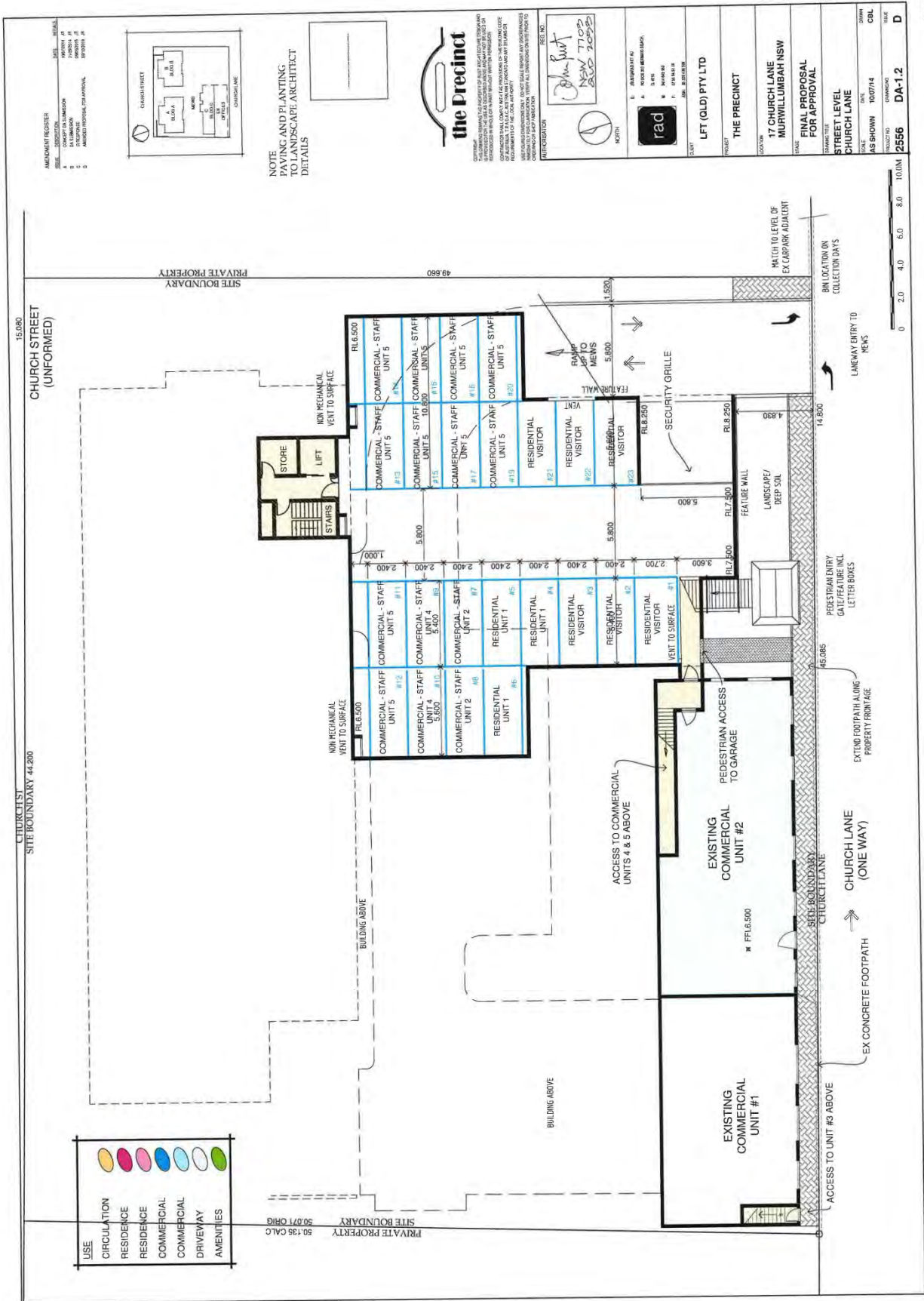
Locality Plan
 Strata Plan 84793
 No.13-19 Church Lane, Murwillumbah

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Call before you dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</p> <p>Mapsheet: 2313M@84793@MURWILLUMBAH@TEMPLETON@local@shel@lca@sp84793@L500_A1100.dwg</p>	<p>Cadastral: 22 October, 2015 © Land and Property Information (LPI) © Tweed Shire Council Boundaries shown should be considered approximate only.</p>	<p>0 1 2 3 Km</p> <p>1:110,000 @ A4 Portrait (2015/10/22) COPY ONLY - NOT CERTIFIED</p> <p>EPSG: 31470 - Universal Transverse Mercator Horizontal Datum: Geoid60, Datum of Australia 1994 Grid: Map Grid of Australia, Zone 56</p> <p>GDA</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484 PO Box 818 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6570 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	 <p>TWEED SHIRE COUNCIL</p>
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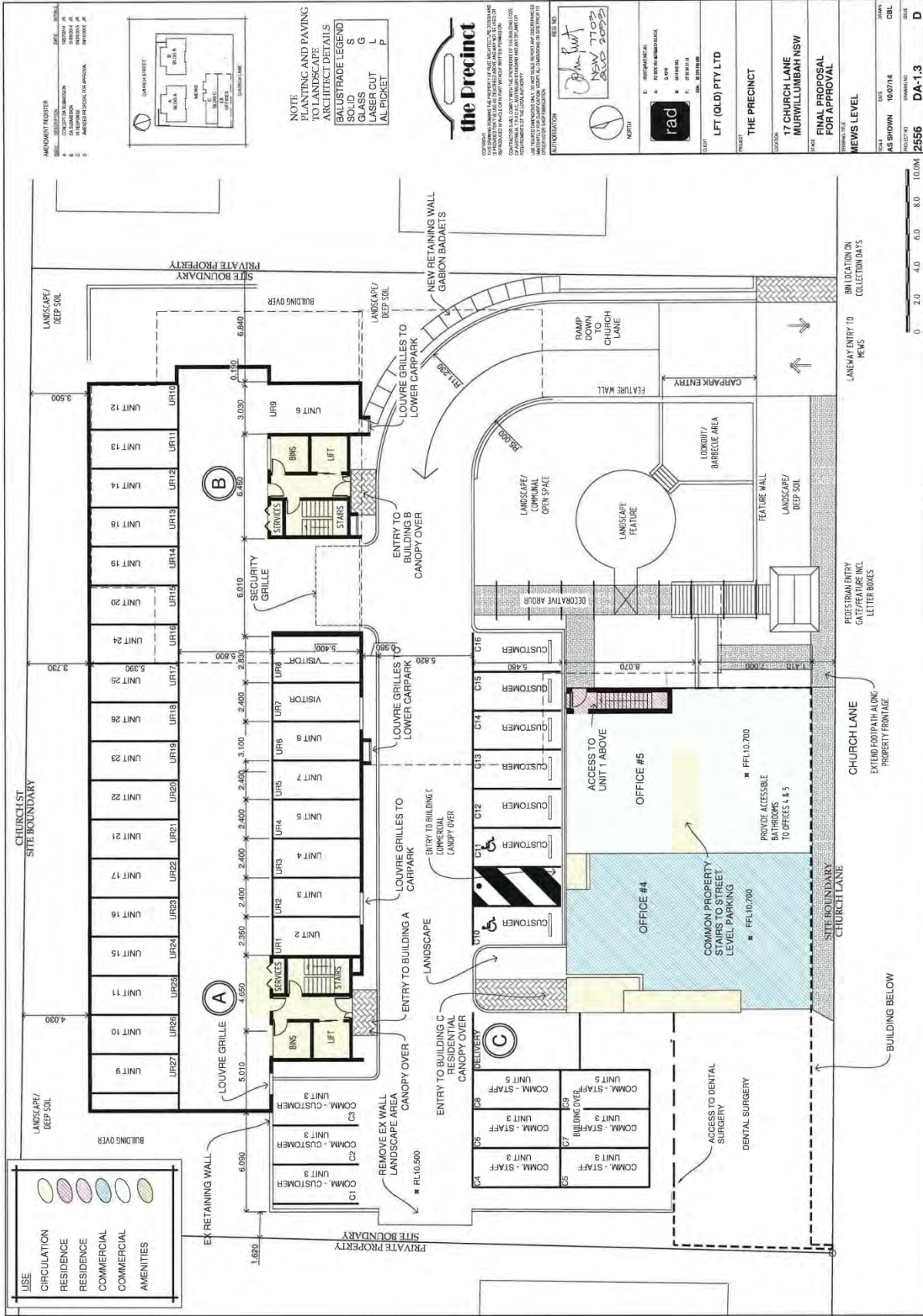
DEVELOPMENT/ELEVATION PLANS:



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MEASUREMENT TOLERANCE: 1:100 = 0.1M

SCALE: 1:100

DATE: 03/11/2015

PROJECT: 17 CHURCH LANE

CLIENT: LIFT (OLD) PTY LTD

DESIGNER: RAD ARCHITECTURE

REVISIONS:

NO.	DESCRIPTION	DATE
1	ISSUED FOR TENDERS	03/11/2015
2	ISSUED FOR APPROVAL	03/11/2015
3	ISSUED FOR APPROVAL	03/11/2015
4	ISSUED FOR APPROVAL	03/11/2015



BALUSTRADE LEGEND

SYMBOL	DESCRIPTION
(Symbol)	GLASS
(Symbol)	ALUMINUM
(Symbol)	LASER CUT
(Symbol)	AL PICKET



THE PRECINCT ARCHITECTURE
17 CHURCH LANE
MURWILLUMBAH NSW
2556
PH: 02 6621 3022
WWW.THEPRECINCT.COM.AU

DESIGNER: RAD ARCHITECTURE
PROJECT NO: 17 CL
DATE: 03/11/15

CLIENT: LIFT (OLD) PTY LTD
DATE: 03/11/15

THE PRECINCT
17 CHURCH LANE
MURWILLUMBAH NSW
FINAL PROPOSAL
FOR APPROVAL

LEVEL 3

NO.	DESCRIPTION	DATE
1	ISSUED FOR TENDERS	03/11/2015
2	ISSUED FOR APPROVAL	03/11/2015
3	ISSUED FOR APPROVAL	03/11/2015
4	ISSUED FOR APPROVAL	03/11/2015

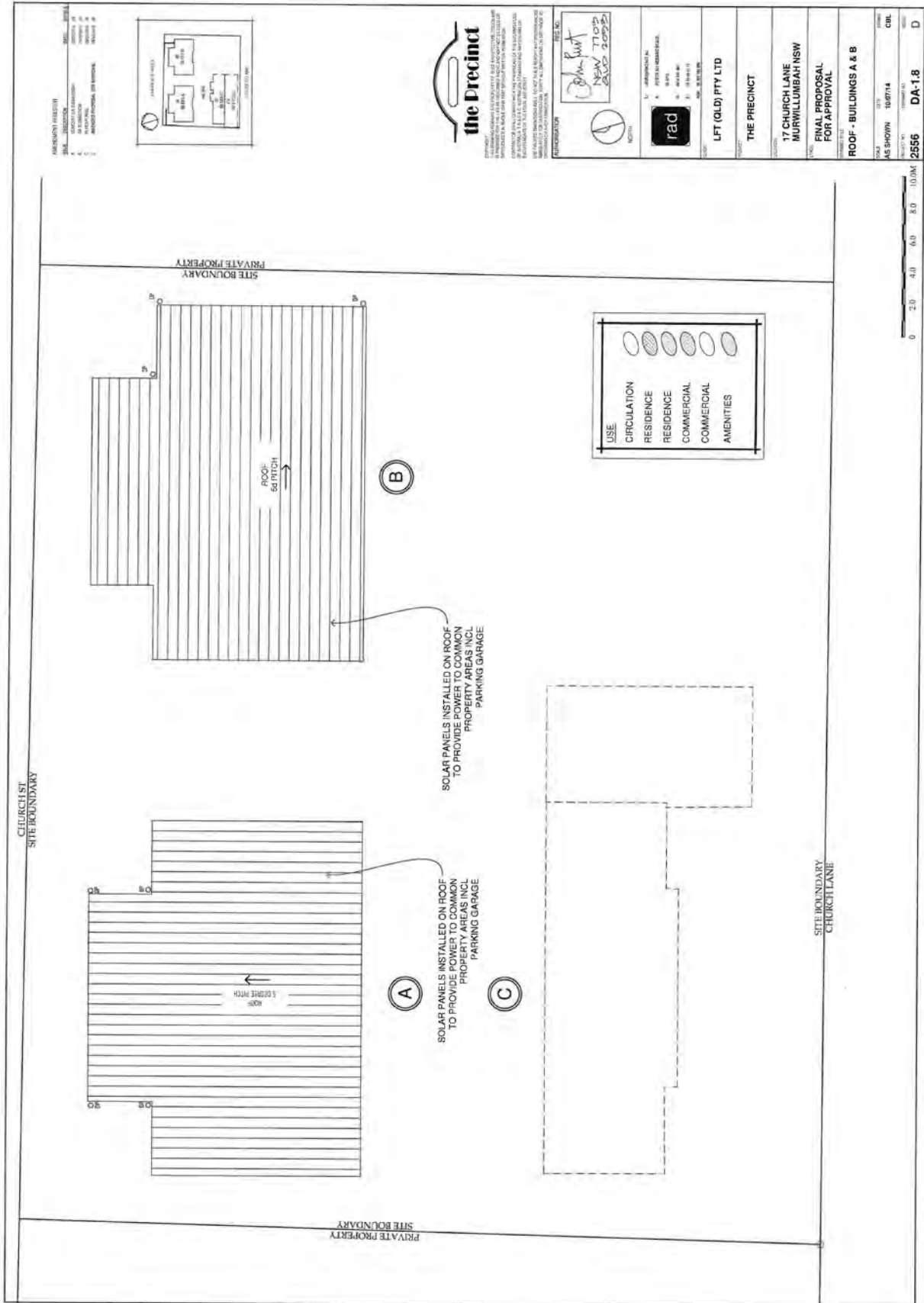
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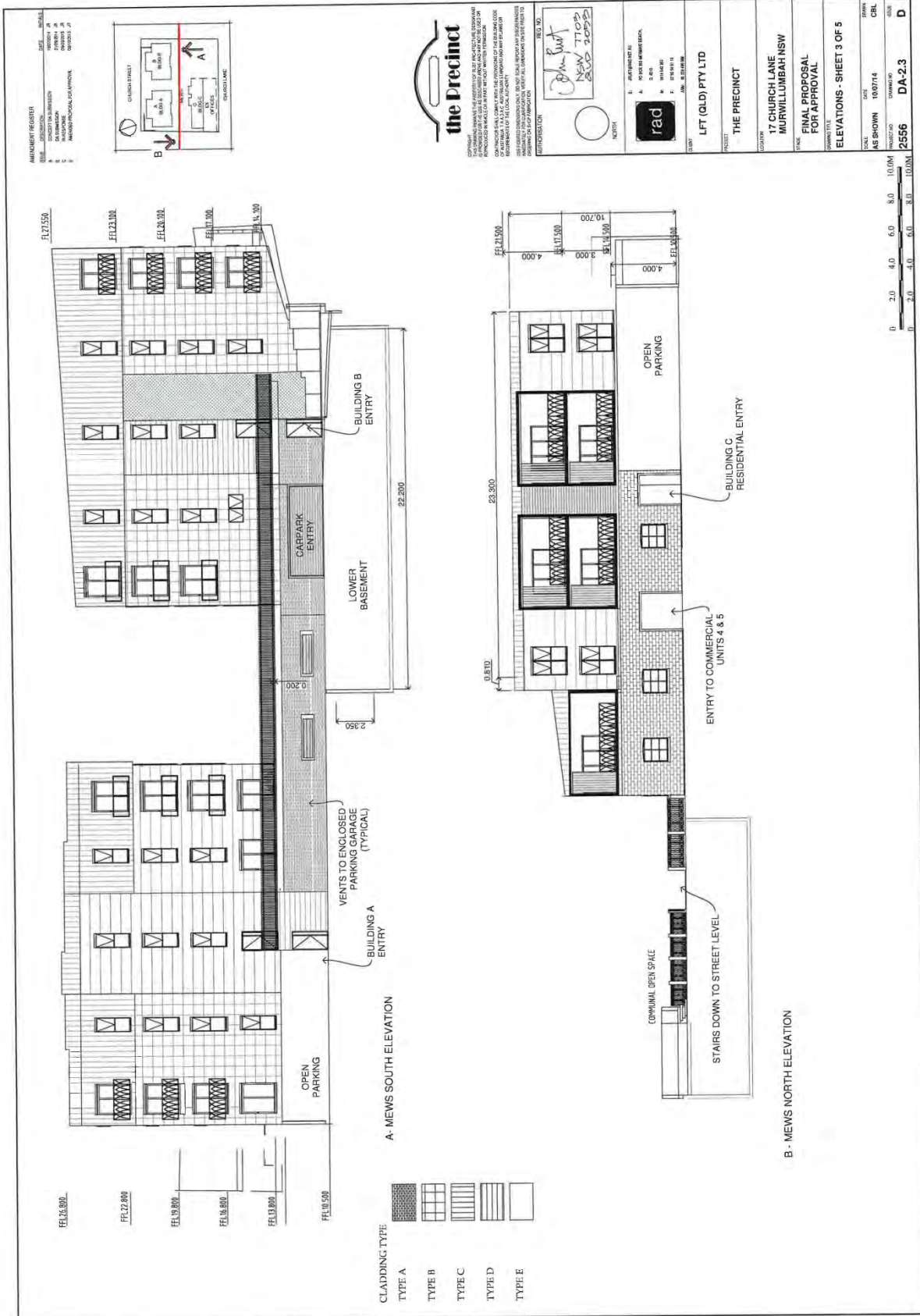


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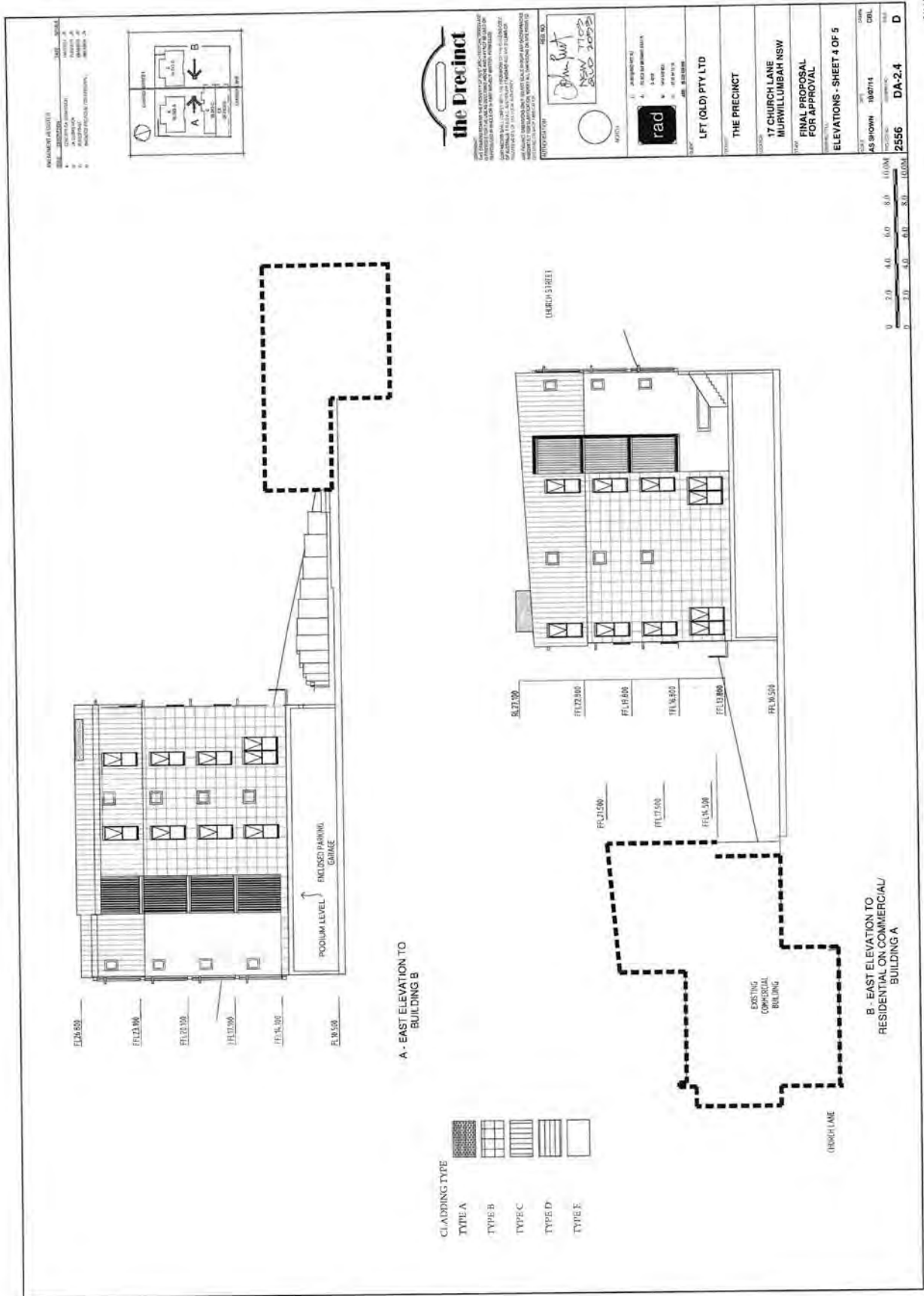


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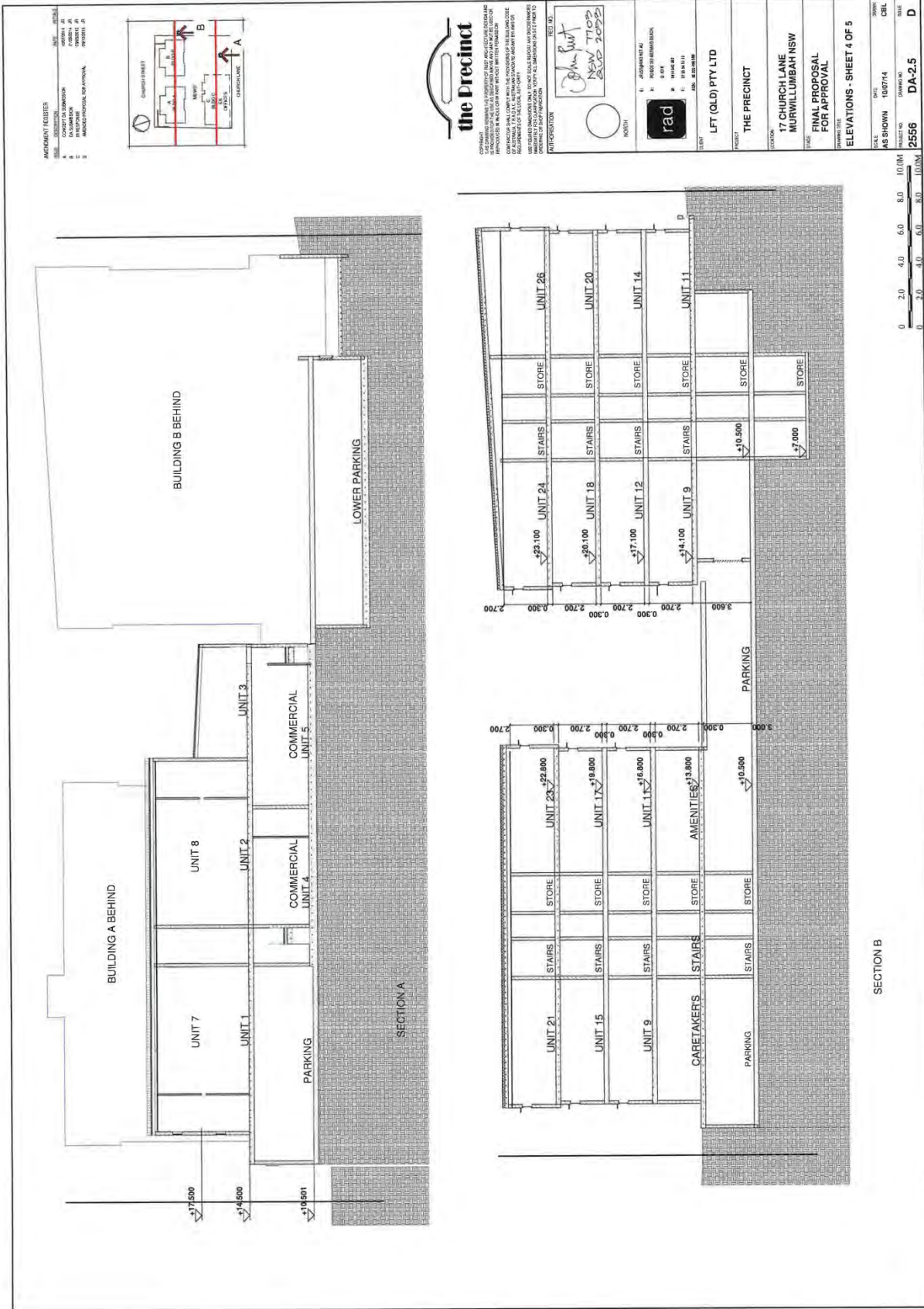


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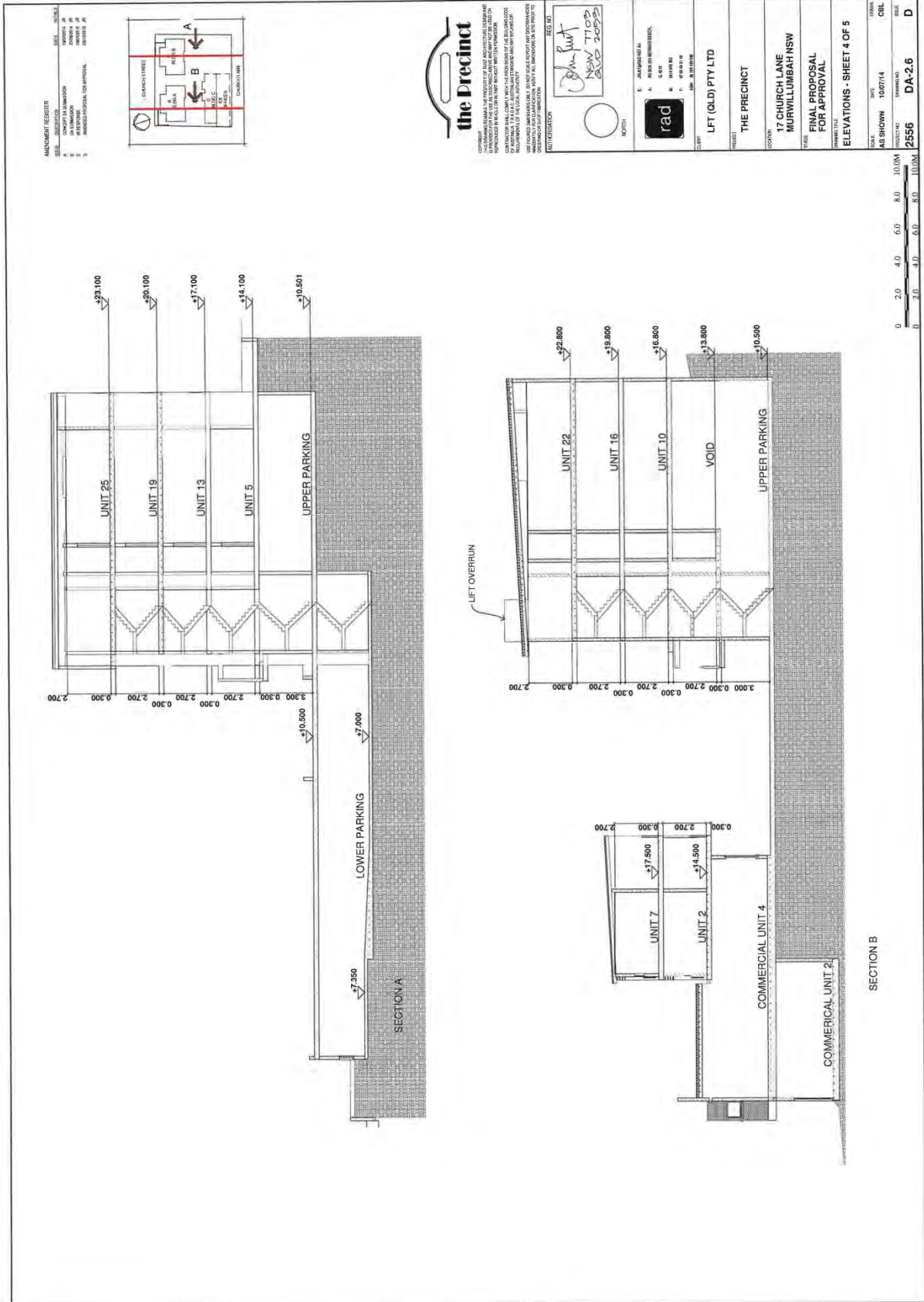
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AMENDMENT REGISTER

REV.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMIT	11/11/15	AD
2	ISSUED FOR PERMIT	11/11/15	AD
3	ISSUED FOR PERMIT	11/11/15	AD
4	ISSUED FOR PERMIT	11/11/15	AD
5	ISSUED FOR PERMIT	11/11/15	AD



CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES AND SERVICES UNDERGROUND AND ABOVEGROUND. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES AND SERVICES UNDERGROUND AND ABOVEGROUND. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES AND SERVICES UNDERGROUND AND ABOVEGROUND.

REF: 15/0110

15/0110

NEW T103

2015

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LFT (OLD) PTY LTD

THE PRECINCT

17 CHURCH LANE

MURWILLUMBAH NSW

FINAL PROPOSAL

FOR APPROVAL

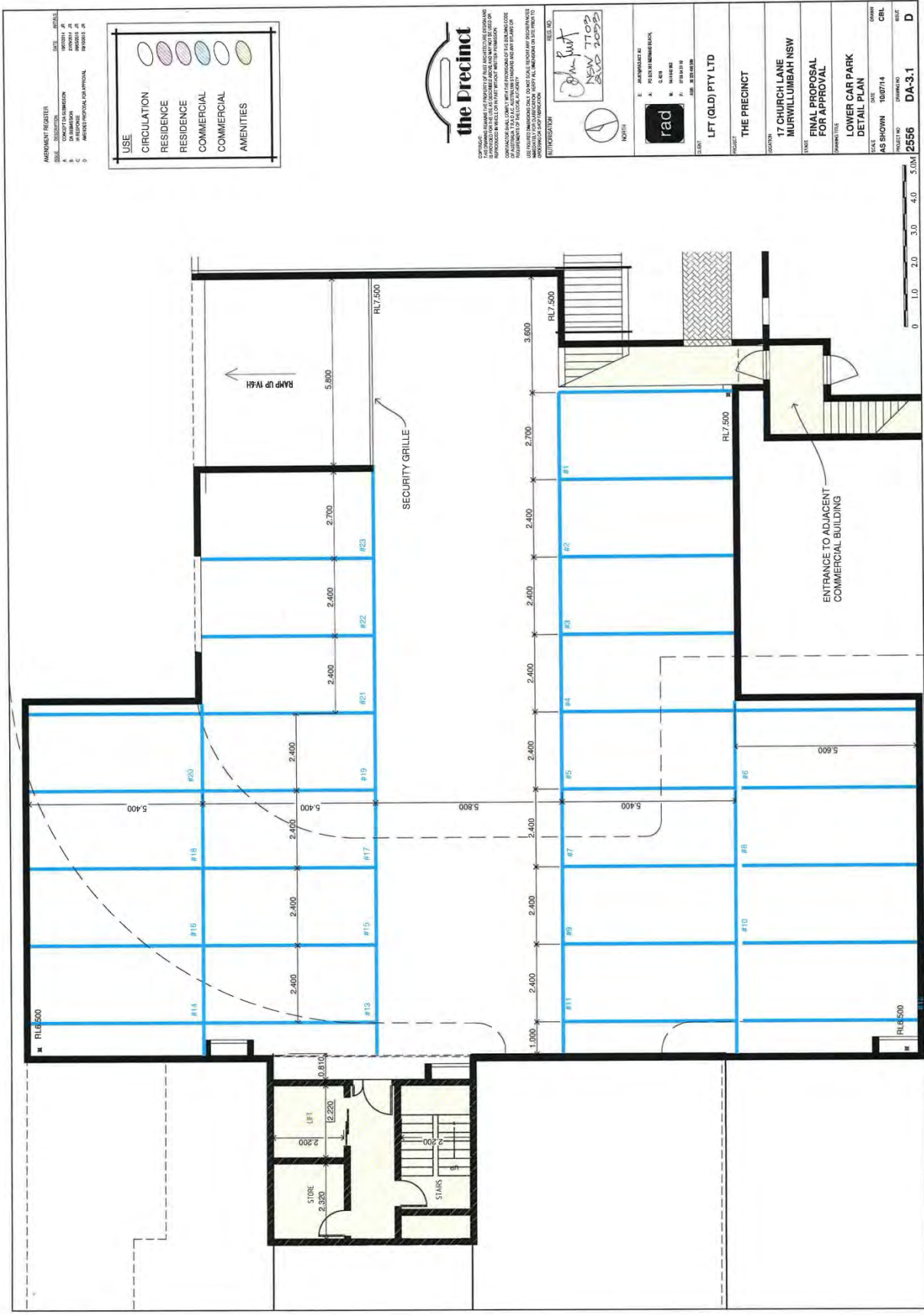
ELEVATIONS - SHEET 4 OF 5

SCALE	DATE	VERSION
AS SHOWN	10/07/14	CBL
PROJECT NO	2556	DA-2.6
DRAWN BY		D



31/1/2015

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AMENDMENT REGISTER
 DATE: 08/01/15
 DRAWN: JAC
 CHECKED: JAC
 APPROVED: JAC
 PROJECT NO: 2556

USE

- CIRCULATION
- RESIDENCE
- RESIDENCE
- COMMERCIAL
- COMMERCIAL
- AMENITIES



NOTES:
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 8. THE CLIENT ACCEPTS RESPONSIBILITY FOR OBTAINING ALL NECESSARY INFORMATION AND DATA.
 9. THE CLIENT ACCEPTS RESPONSIBILITY FOR OBTAINING ALL NECESSARY INFORMATION AND DATA.
 10. THE CLIENT ACCEPTS RESPONSIBILITY FOR OBTAINING ALL NECESSARY INFORMATION AND DATA.

rad
 RAYMOND ARCHITECTS
 17 CHURCH LANE
 MURWILLUMBAH NSW
 2470
 PH: 07 4121 1111
 FAX: 07 4121 1112
 WWW: RAD.AU

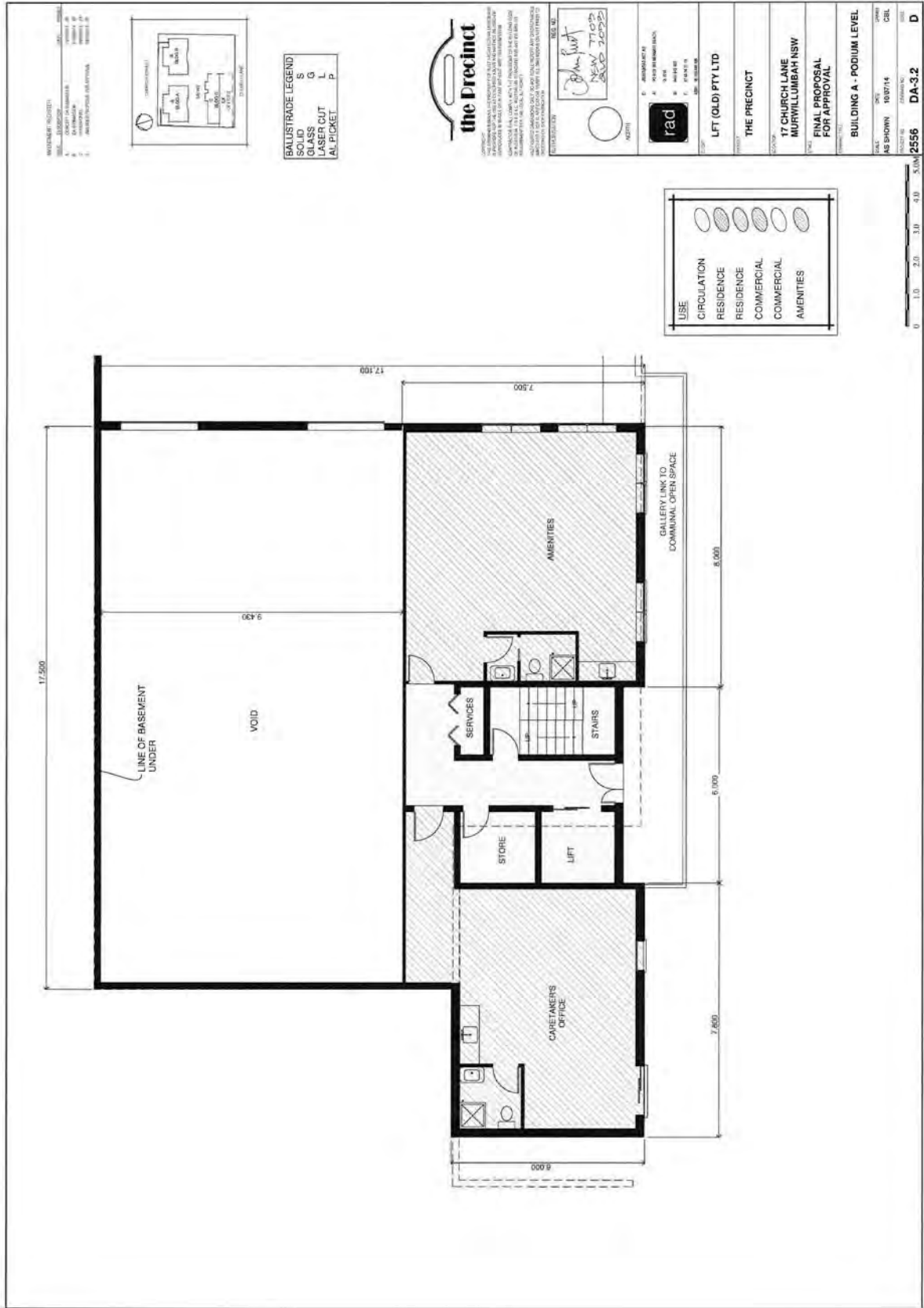
PROJECT: THE PRECINCT
 CLIENT: LFT (OLD) PTY LTD
 DATE: 08/01/15

17 CHURCH LANE
 MURWILLUMBAH NSW
 FINAL PROPOSAL
 FOR APPROVAL
 LOWER CAR PARK
 DETAIL PLAN

SCALE: AS SHOWN 1:100/1:4
 DRAWN: JAC
 CHECKED: JAC
 PROJECT NO: 2556
 SHEET NO: DA-3.1

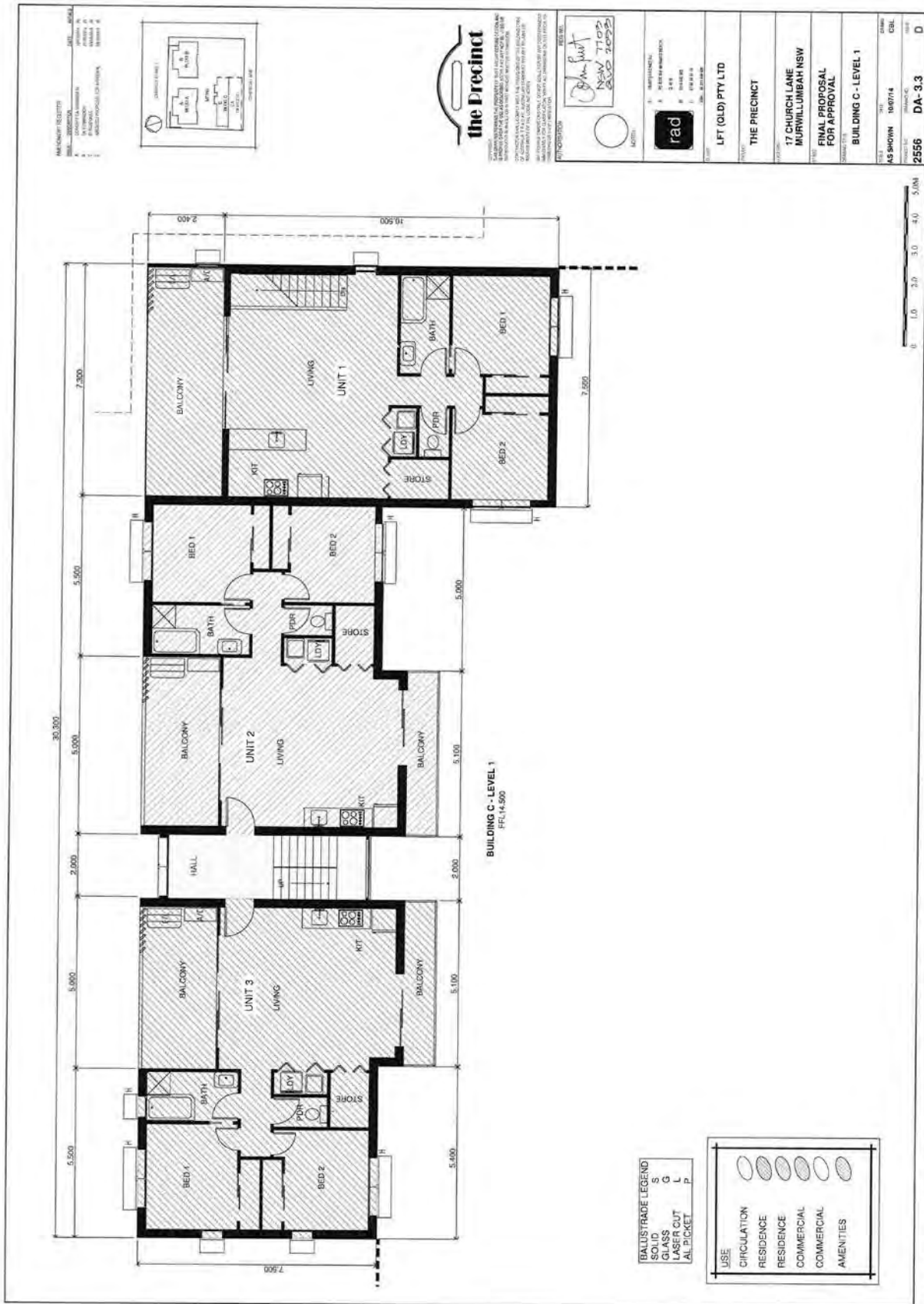
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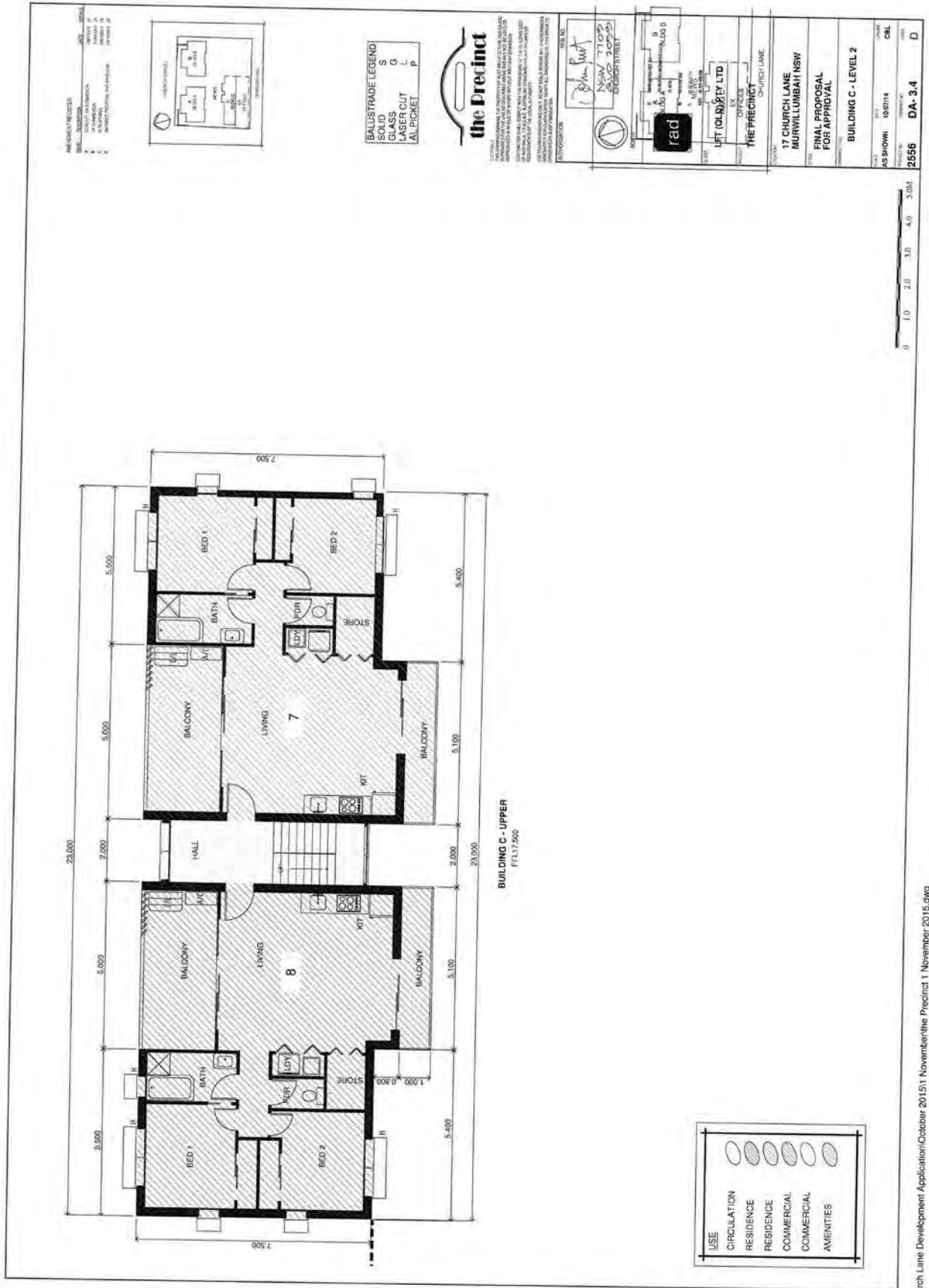


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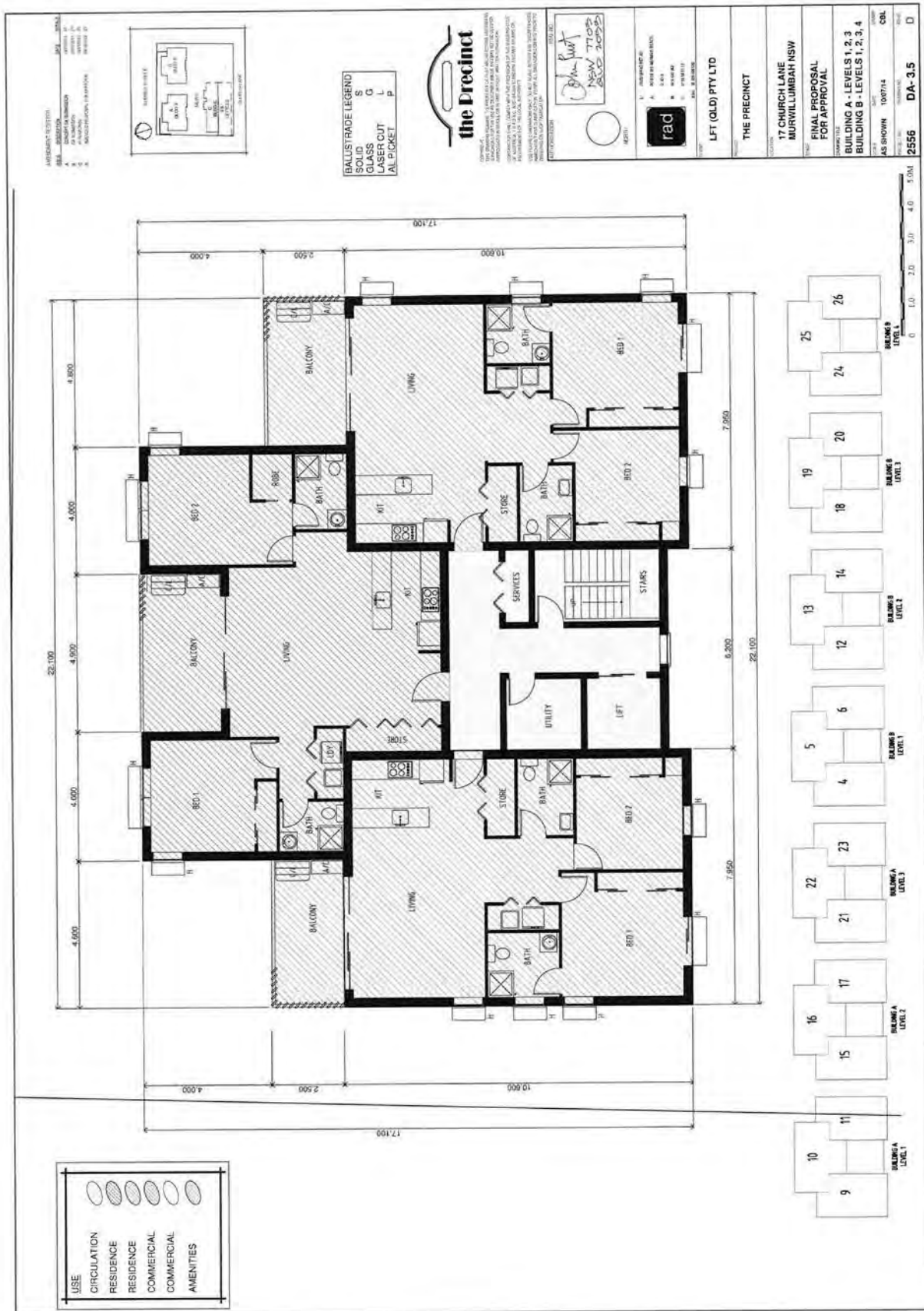
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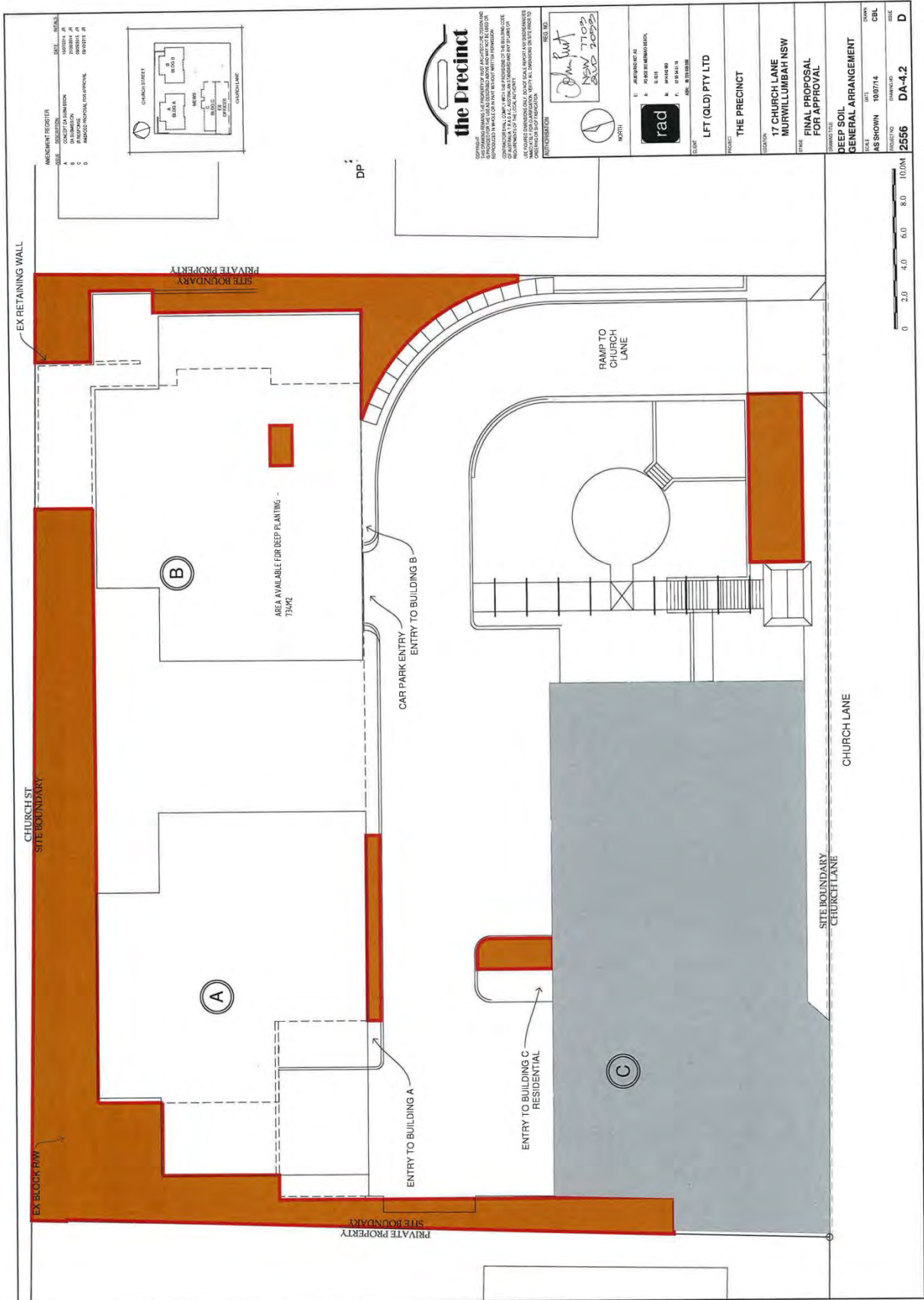


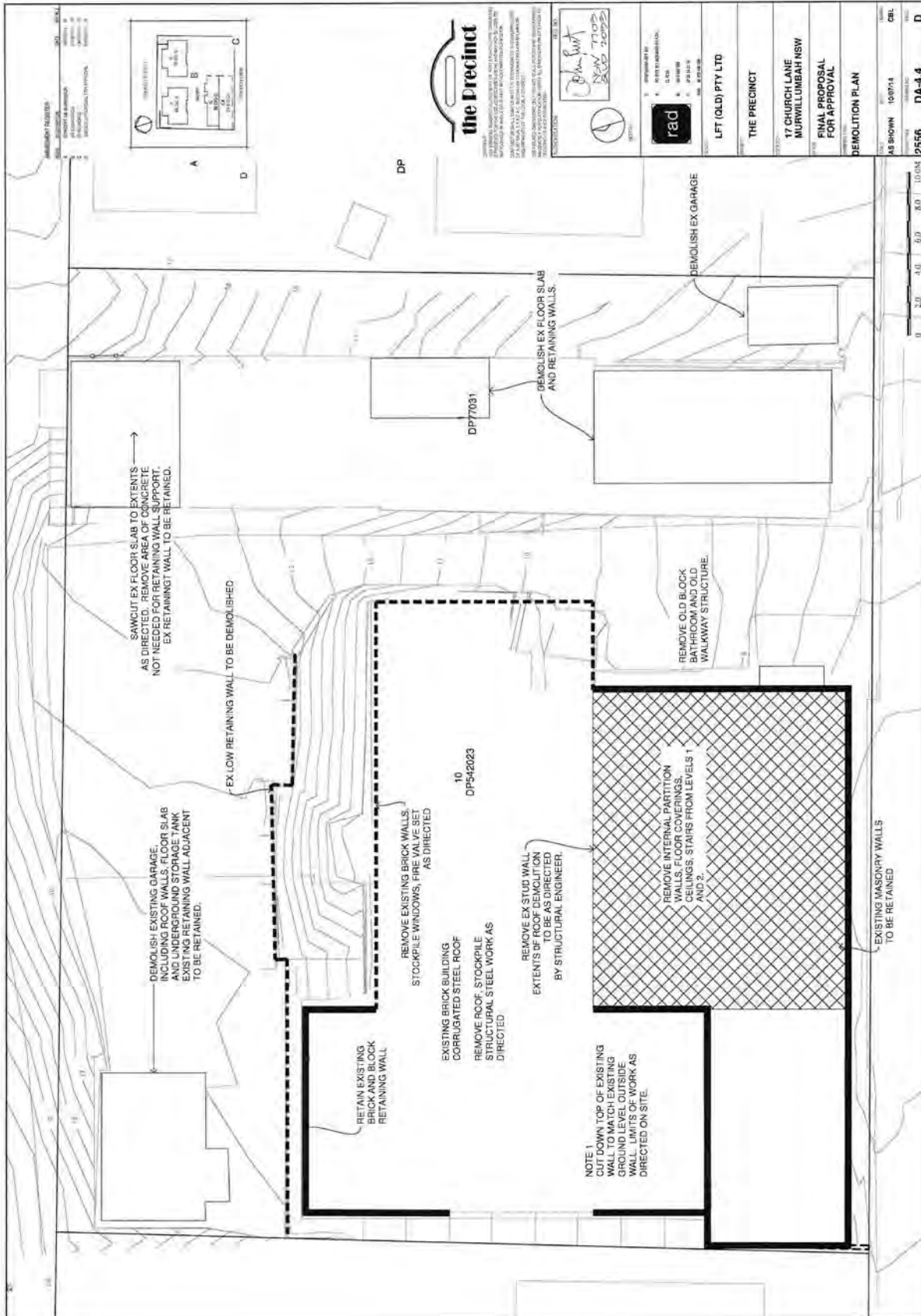
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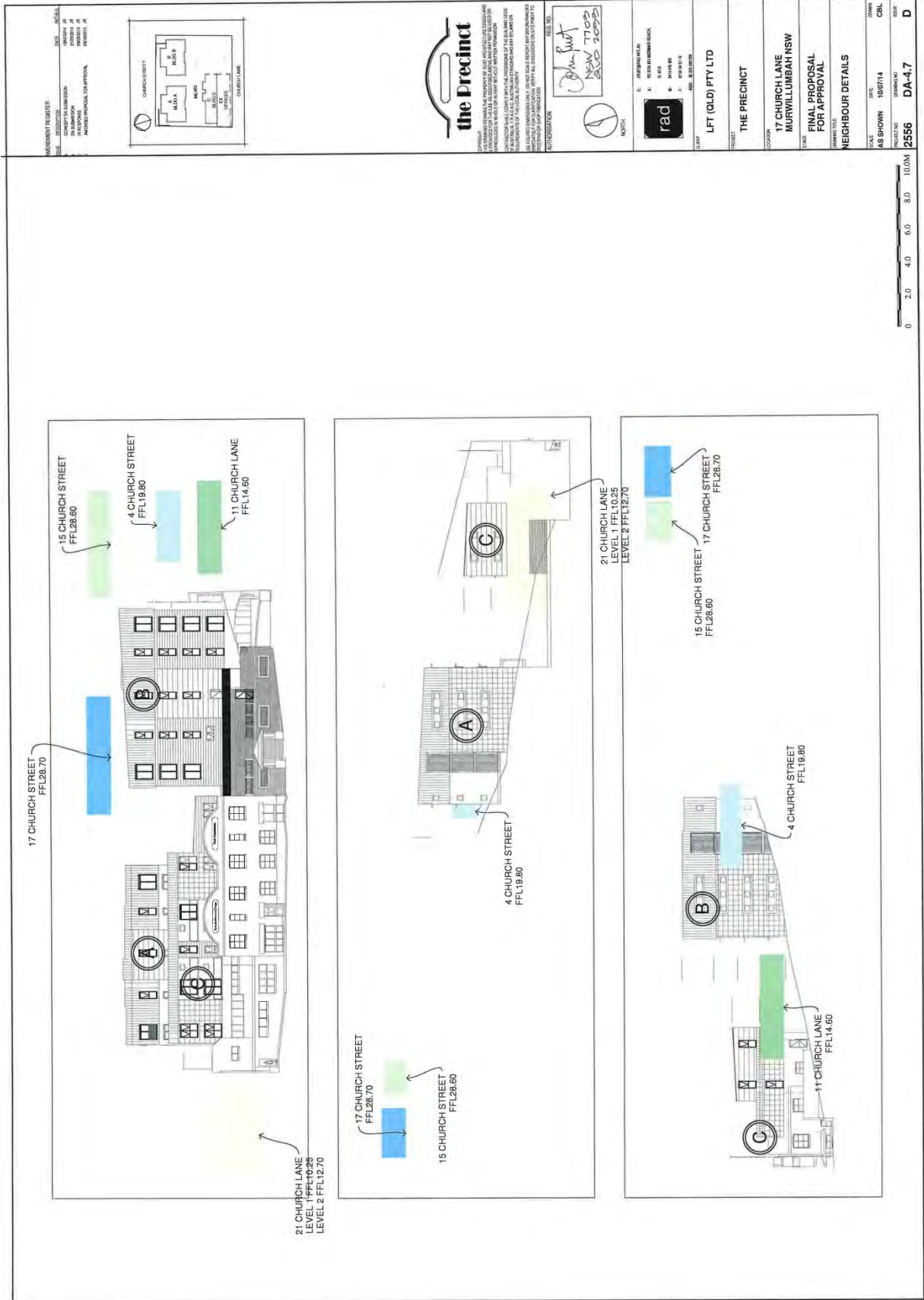
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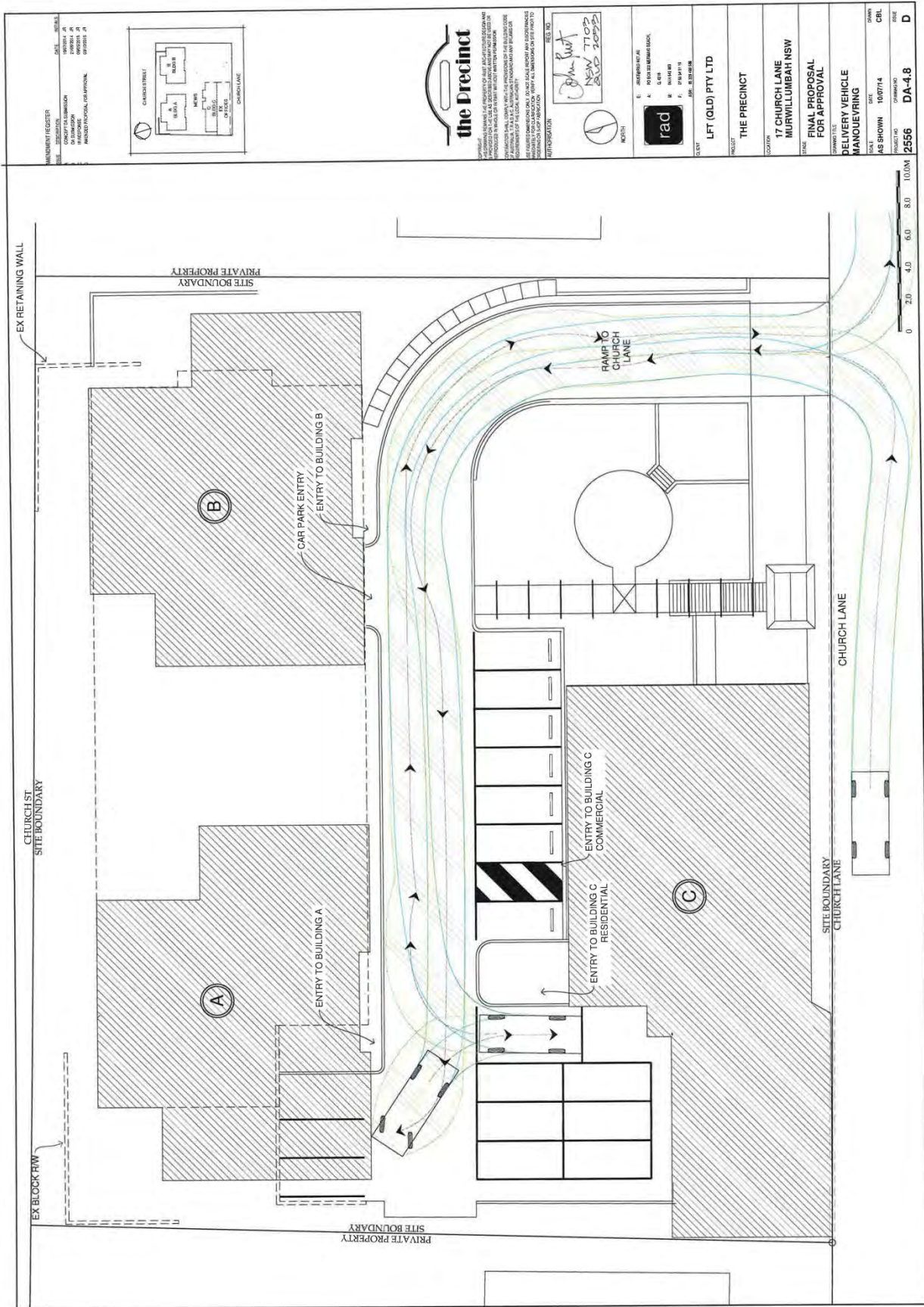




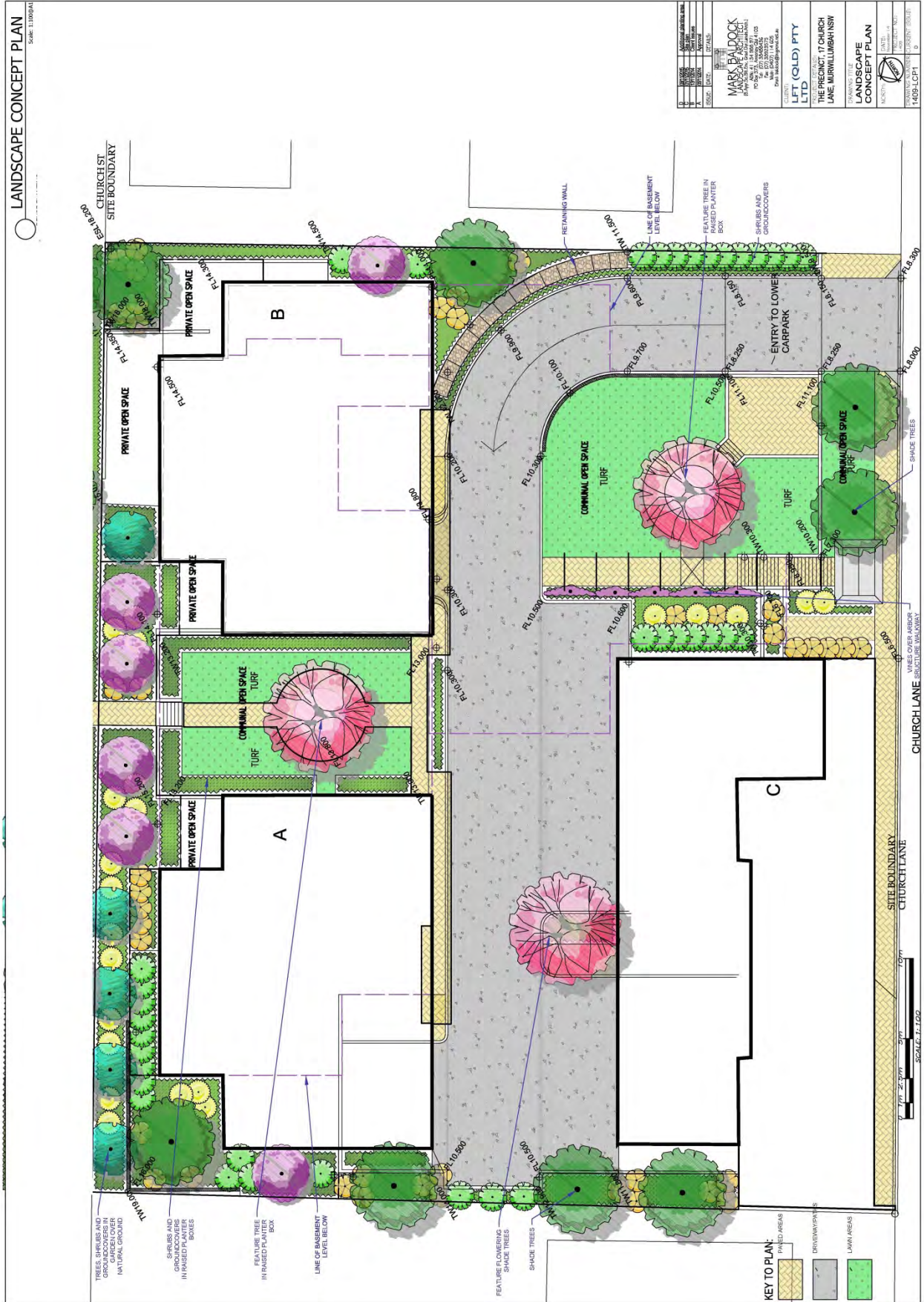
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Consulting Civil/Structural Engineers, Project Managers

Detailed Waste Management Plan - Revision A

Applicant Details

Application No. DA15/0093
 Applicant Name LFT (Qld) Pty Ltd
 Address PO Box 403 West Burleigh Qld 4219
 Phone 07 5520 1066
 Email mail@claconsultants.com.au

Project Details

Address of Development 13-19 Church Lane Murwillumbah
 Description of Proposed Development Retain existing commercial premises and 26 new residential units

Ongoing Operation

Table 1 - Amount of Waste Generated

	Unit	General Waste		Co-mingled Recyclables	
		Rate	Amount (L)	Rate	Amount (L)
Building A	9	80L/Unit/Week	720	40L/Unit/Week	360
Building B	12	80L/Unit/Week	960	40L/Unit/Week	480
Building C	5	80L/Unit/Week	400	40L/Unit/Week	200
Commercial	800m ²	10L/100m ² /day	360	10L/100m ² /day	360

Table 2 - Bins Required

	General Waste		Co-mingled Recyclables	
	Required (L)	Provided (L)	Required (L)	Provided (L)
Building A	720	1,100 1,100 660	360	4x360
Building B	960		480	
Building C	400		200	
Commercial	360		360	
Total	2,440	2,860	1,400	1,440

Notes

- Body corporate responsible for private contractor to move bins to bin collection area on bin days.
- Small tractor type vehicle to be provided to move bins.
- Bin collection areas within private property.
- Body corporate to arrange for weekly recycling pickup with Solo Waste.

8/43 Tallebudgera Creek Road West Burleigh QLD 4219
 P O Box 403 West Burleigh QLD 4219
 Ph: (07) 5520 1066 Fax: (07) 5520 1077

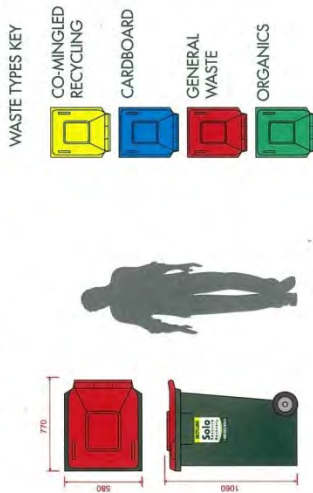
Table 3 - Bin Collection Schedule

		Bulk - General	Bulk - Recycling	Wheely - Gen	Wheely - Rec
Week One	Mon				
	Tue	1,100 + 660			4x360
	Wed				
	Thu				
	Fri	1,100			
	Sat				
	Sun				
Week Two	Mon				
	Tue	1,100 + 660			4x360
	Wed				
	Thu				
	Fri	1,100			
	Sat				
	Sun				

Appendix

Solo Waste Bin Sizes
 CLA Consultants Drawing 07372 – WMP

240 litre Bin



1.5 m³ Bin



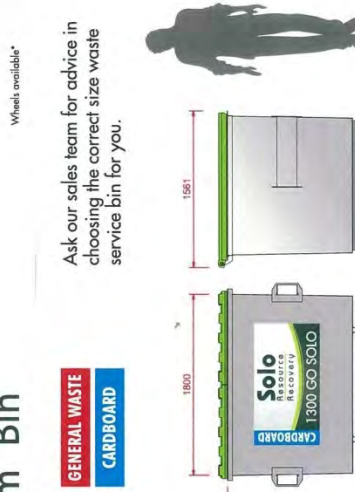
- Commercial & business waste
- Restaurants, retail and industrial

660 litre Bin



- Rigid plastic bins
- Easy maneuverability

3 m³ Bin



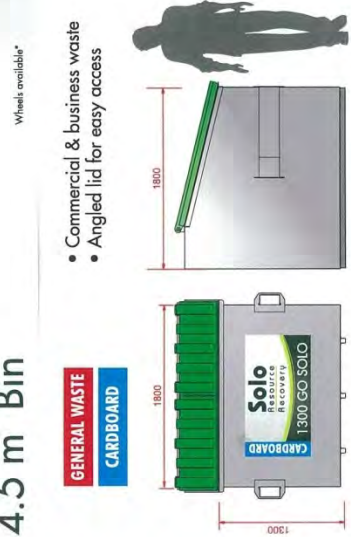
Ask our sales team for advice in choosing the correct size waste service bin for you.

1100 litre Bin



- Rigid plastic bins
- Easy maneuverability

4.5 m³ Bin



- Commercial & business waste
- Angled lid for easy access

Liquid waste services

- Automotive and engineering workshops
- Hospitals and nursing homes
- Retail and take away food outlets
- Cafes, hotels and clubs
- Shopping centres
- Restaurants
- Domestic septic tanks
- Portable toilets



Event services

- Recycling
- Liquid waste removal
- Bulk bin supply
- Portable toilet hire
- General waste removal
- Wheelie bin supply
- Grease trap waste removal
- On site management
- Festivals & sporting events
- Service includes waste report
- Markets and shows
- Waste recycling report available

Contact us

Solo Resource Recovery

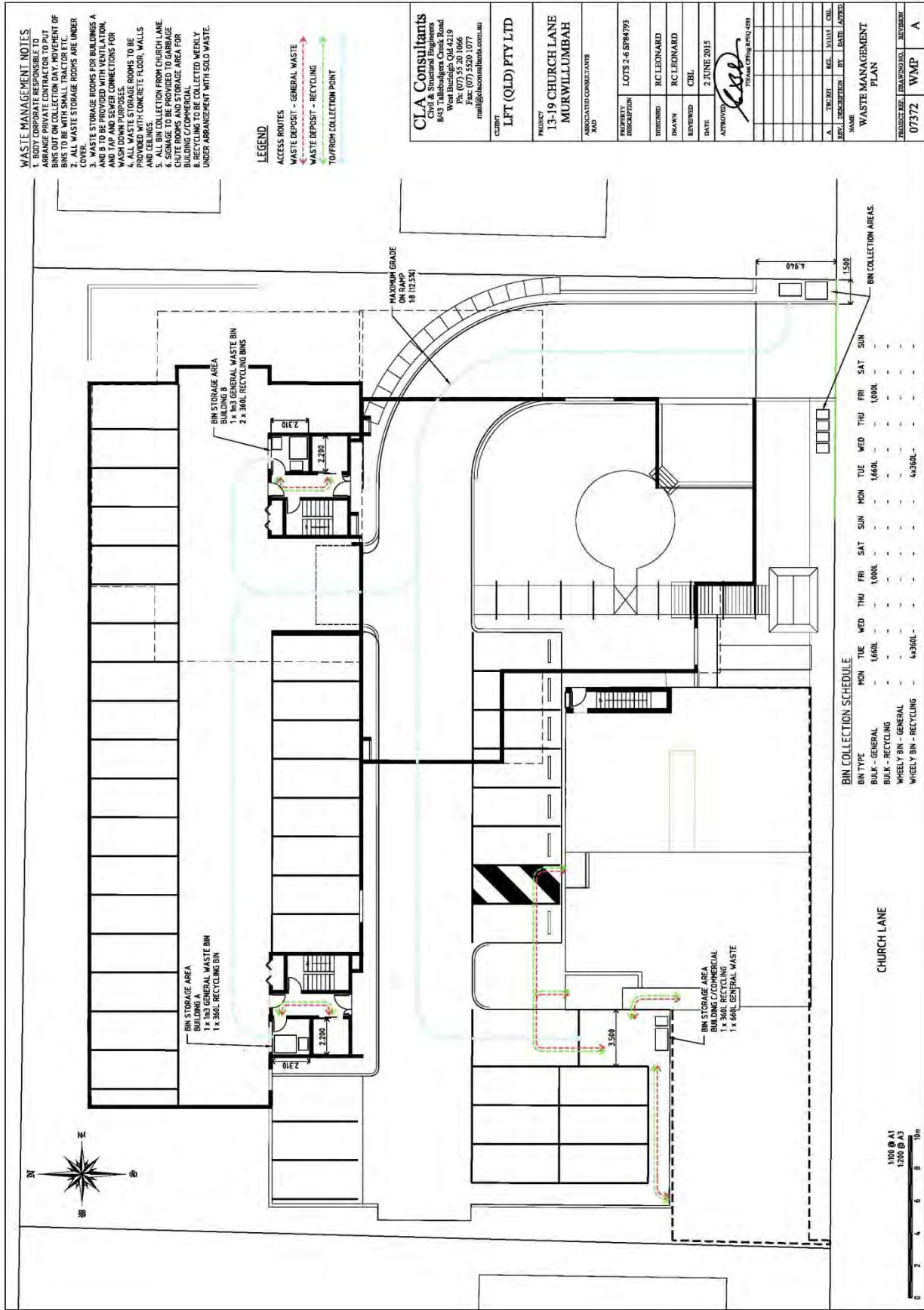


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- Byron**
2 Fowlers Lane
Byron Bay NSW 2479
P. 02 6877 0455
byron@solo.com.au
- Frankston**
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Carrum Downs Vic 3201
P. 03 9770 8040
frankston@solo.com.au
- Port Stephens**
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solohunt@solo.com.au
- Hunter Valley**
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solonant@solo.com.au
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Gardiner Street
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- Perth**
59 Burlington Street
Neville East WA 6155
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perth@solo.com.au



Please note not all services are available in all areas*

1300 GO SOLO (46 7656)



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 Chris & Nicola
 8/43 Tallaboodgen Creek Road,
 West Burleigh QLD 4219
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 Fax: (07) 5609 1077
 mail@ciaconsultants.com.au

CLIENT
 LFT (OLD) PTY LTD

PROJECT
 13-19 CHURCH LANE
 MURWILLUMBAH

ASSOCIATED CONSULTANTS

PROPERTY DESCRIPTION	LOTS 2-6 SIM/195
DESIGNED	RC LEONARD
DRAWN	RC LEONARD
REVIEWED	CBL
DATE	2 JUNE 2015
APPROVED	<i>CBL</i> TRAVIS CHING (MAY 2015)

Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:

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

Environmental Planning and Assessment (EPA) Act, 1979

It is proposed to retain the existing commercial premises onsite and dental surgery fronting Church Lane. Commercial premises are prohibited in the R3 zone, however, the dental surgery, being defined as a medical centre is a permissible use within the R3 zone.

Development Consent for the office premises was issued in conjunction with DA T4/3209. These four offices have a combined floor area of 556m² and are currently commercial space for a professional consultant and a printing business.

Pursuant to the existing use right provisions identified within the EPA Act and EP&A Regulations, the continuation of the commercial offices being 556m² of office space within four Units is satisfactory.

The dental surgery was approved in conjunction with DA11/0510. No change to the building or use is proposed in conjunction with this application. This consent required the provision of 9 carparking spaces for this surgery. This application also indicated that a total of 15 spaces were provided onsite for all commercial premises including this surgery.

Tweed Local Environmental Plan 2014

The application is subject to the provisions of the Tweed Local Environmental Plan 2014. The subject site is zoned R3 – Medium Density residential in accordance with the provisions of this plan.

The residential flat building proposed onsite is permissible with development consent.

Clause 1.2 – Aims of the Plan

The aims of this plan as set out under Section 1.2 of this plan are as follows:

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
 - (b) *to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,*

- (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,*
- (d) *to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
- (e) *to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
- (f) *to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
- (g) *to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,*
- (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
- (i) *to conserve or enhance areas of defined high ecological value,*
- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed development is considered generally consistent with the aims of the plan having regard to the zoning applied to the site for medium density development. The site is in close proximity to the Murwillumbah CBD and the increased population within walking distance to the CBD will be a positive outcome for the local economy. The use of the site for medium density purposes is considered sustainable development providing opportunities for apartment living without the need for vehicles for access to goods and services in the immediate locality.

The design of the building has minimised the impact upon surrounding residential properties while creating a development that provides for appropriate amenity for residents onsite.

The retention of the existing commercial premise onsite will not be contrary to the aims of the plan given that the existing uses will support the local economy and small business operating from the site within close proximity of the CBD of Murwillumbah.

Clause 2.3 – Zone objectives and Land use table

The TLEP 2014 zone applicable to the site is R3 – Medium Density Residential. The objectives of this clause are;

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is considered to be consistent with the objectives of the zone for the following reasons;

- The range of unit styles will provide for the housing needs of the community within a residential zone.
- The proposal is a medium density style development that will increase the density of the Murwillumbah population within walking distance of the CBD
- The proximity of the site to the CBD will ensure residents have access to facilities and services for the day to day living needs, without the need for public or private transport.

It is noted that the site will retain a commercial building containing five commercial premises and an existing dental surgery on the first floor. These uses and buildings are as existing and will remain onsite in accordance with the provisions of the EP and A Act and Regulations, continuing and existing use right provisions. The two uses can co-exist subject to the provision of sufficient parking for both uses. Such will be discussed in a latter section of this report as discussed below. The amenity of the new residential properties will also require protection from any current or future use onsite. This will be discussed in a latter section of this report.

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

No subdivision is proposed

Clause 4.3 - Height of Buildings

Pursuant to the provisions of this Clause, the site has a maximum height limit of 12.2m measured from the ground level at any point of natural ground level below. The site is characterised by previous earthworks for now demolished buildings, creating a terraced style landform.

The proposal will result in the height of Building A exceeding 12.2m being a maximum height of 13.1m. The variation to the nominated height limit is afforded by the provisions of SEPP 65 that allow height variations in certain circumstances in addition to the variation Clause 4.6 of the Tweed LEP 2014. These circumstances will be discussed within a latter section of this report.

Clause 4.4 – Floor Space Ratio

The site has a prescribed floor space ratio of 1.2:1. The proposal will have a floor space ratio of 0.97:1. The proposal is therefore compliant with this Clause.

Clause 4.6 - Exception to development standards

The application will require a variation to the height limit as prescribed by Clause 4.3 of this Plan. The proposed height is permissible by virtue of provisions within SEPP 65 and associated document, the Residential Flat Design Code (RFDC) that override this planning instrument. Regardless, the applicant has applied to vary the clause as provided by this Clause.

(1) *The objectives of this clause are as follows:*

(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 particular circumstances.

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Comment: Council has assumed concurrence for this variation to the standard. Having regard to the subject proposal, a variation to the standard is supported for the following reasons

- The variation is for a relatively small section of the building, while the majority of the building is complaint
- The site is steeply sloping and as recognised by the SEPP, a small relaxation to the maximum height limit is deemed satisfactory.
- The variation will not result in adverse impacts on the streetscape as the skyline will remain visible.
- Adverse impacts such as unacceptable levels of overshadowing and excessive bulk will not emanate from the variation.
- The variation is considered in the public interest as it will provide a significant injection into the housing market within Murwillumbah.

- The maximum height of 13.1m is a 9.3% variation to the development standard and is applicable to a relatively small area of the overall development.

Clause 5.4 - Controls relating to miscellaneous permissible uses

The proposal does not relate to any miscellaneous permissible uses. Not applicable to this application.

Clause 5.5 – Development within the Coastal Zone

The site is not located within the Coastal Zone. Not applicable

Clause 5.9 – Preservation of Trees or Vegetation

The site does not contain any vegetation worthy of retention. Due to the nature of the site, being previously highly modified with only existing concrete slabs being retained, any vegetation onsite is a result of regrowth following demolition.

Clause 5.10 - Heritage Conservation

The site is not within a heritage conservation area nor does it contain any items of heritage. It is noted that the Murwillumbah Heritage Conservation Area ends on the other side of Church Lane thus excluding the subject site.

Aboriginal Heritage – The site is not identified as containing any items of aboriginal cultural significance. The historic levels of disturbance onsite lead to the conclusion that the exposure of any relics or the like is unlikely.

Clause 5.11 - Bush fire hazard reduction

The site is not located within a bushfire hazard

Clause 7.1 – Acid Sulfate Soils

The site is Class 5 Acid Sulfate Soils. The proposal, given the existing levels is unlikely to expose any acid sulfate soils. No further investigation in this regard is considered necessary.

Clause 7.2 - Earthworks

The proposal will require significant earthworks, despite existing levels onsite from previous development. These earthworks to bench the site will result in approximately 2900m³ of fill being exported from the site. Before granting development consent for earthworks the consent authority must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

Any consent granted will be conditioned accordingly to ensure that drainage patterns and soil stability is not adversely impacted by the subject development.

The current state of the site is such that stormwater is not controlled either onsite or from uphill locations.

(b) the effect of the development on the likely future use or redevelopment of the land,

The earthworks are required to facilitate the construction of the proposed development, including basement carparking.

(c) the quality of the fill or the soil to be excavated, or both,

While a preliminary soil contamination report has been provided, a full investigation will be required prior to any earthworks commencing. If necessary, a Remedial Action Plan will be required in conjunction with this full investigation.

(d) the effect of the development on the existing and likely amenity of adjoining properties,

The proposed earthworks will facilitate basement carparking onsite and provide benching for vehicle and pedestrian access. The earth works will reduce the bulk and scale of the development on the steeply sloping site.

(e) the source of any fill material and the destination of any excavated material,

No fill will be imported.

(f) the likelihood of disturbing relics,

Due to the highly disturbed nature of the site, the potential for relics is considered low. However, a condition can be inserted, given the level of excavation requiring certain actions to be commenced if any items are revealed.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,

The site is not in close proximity to any waterways, drinking catchment or sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,

Appropriate measures will be imposed to minimise the impacts of this large excavation during works. The impact on adjoining owners will be minimised given the existing benching and the retention of existing levels on side boundaries for deep soil zones. A Construction Management Plan will be required to protect the amenity of the locality during works at each stage.

A dilapidation report will also be a condition of any consent granted to protect adverse impacts during excavation works onsite.

- (i) *the proximity to, and potential for adverse impacts on, any heritage item, archaeological site, or heritage conservation area.*

The site is located at the rear of the Murwillumbah Street Heritage Conservation Area. The amended proposal will reduce the scale and bulk of the development that sits behind the central business district. The character of the building, will not detract from this area given existing commercial component will not be altered as a result of the development.

The residential component is considered a separate and detracted development from the CBD rather than a development trying to integrate into the CBD urban landscape.

However, it is considered that integration of the development into the heritage forms of the CBD can be improved. As a consequence, a condition of any consent will be included requiring further detail regarding the material and colours proposed for the residential component of the development.

Clause 7.3 – Flood Planning

The lot is part flood liable. Ground levels range from 7m AHD to 20m AHD. The minimum floor level for the residential component is 7.5m AHD. The development will comply with this. The commercial component will remain as existing. Flood free storage areas will be a condition of any consent granted for these commercial premises.

Clause 7.6 - Stormwater Management

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Councils Flooding Engineer has provided the following advice;

"The existing property is partially developed with extensive hardstand, roofs and unfinished building slabs. The downstream minor drainage system drains east along Murwillumbah Street. Council has recently completed an upgrade of the Eastern portion of this system and plans to complete the remaining western portions in the short-term future. These upgrades are not primarily for capacity purposes but to alleviate public health/odour issues related to the buried creek in the locality.

The downstream major overland flow route drains south to Brisbane St. Council is aware of stormwater flooding issues around the Brisbane St-

Wollumbin St intersection. However, upgrade works to Brisbane St are programmed for next year.

Due to the existing fraction impervious of the site and the capacity/planned upgrades of the downstream infrastructure, mitigation of stormwater quantity is not necessary.

A 1% AEP capacity piped system is proposed for the upper half of the development which would surcharge from a pit at the 'mews' level and sheet flows down the driveway to the street in a major event. The upper piped 1% system also has an unofficial overland flow path. This system should be designed with appropriate factor of safety (see D5.04.7) and blockage factor (see D5.10.6). Also, the detailed design should demonstrate the overland flow portion of the major system can comply with D5.12.

The design shows the upstream pit, collecting the external catchment runoff, in Council road reserve. This pit should be inside the lot boundary to avoid future confusion re ownership.

Runoff from upstream lots and council road reserve drains through the subject lot. In this case, a failure of the system would result only in consequences for the subject lot. External flows to the subject site are likely to remain via overland sheet flow. In this case, no easement for stormwater drainage is necessary."

The proposal is considered satisfactory in this regard, subject to the imposition of conditions that will require these works are undertaken.

Clause 7.10 - Essential Services

The site does have access to reticulated water and sewer services. Appropriate arrangements will be made for electrical and telephone services. Stormwater and vehicle access will be discussed in a separate section of this report.

SEPP No. 55 - Remediation of Land

The application has been accompanied by a preliminary site investigation. The report concluded that a detailed site investigation should be carried out to assess residual contamination in surface soil, fill material and sub-slab soils given the previous uses of a printing shop and a timber joinery business.

Council is satisfied that further investigation is acceptable only following any development consent. The findings of these further investigations may then result in the formulation of a Remedial Action Plan to ensure the site is suitable for the proposed use. This remedial action plan will also reflect the large volume of fill being removed from the site to facilitate the necessary finished ground levels.

SEPP No. 64 – Advertising and Signage

No details of additional signage have been provided. The existing commercial premises currently have signage panels located on the front fascia of the Church Lane elevation. Ancillary signage will be required to direct vehicles to onsite

parking for the residential and commercial components of the development. Suitable conditions of consent have been recommended to regulate fill.

SEPP No. 65 - Design Quality of Residential Flat Development

The provisions of this document are the overarching development standards applicable to the site. In the event of an inconsistency between this policy and another environmental planning instrument, whether made before or after this Policy, this policy prevails to the extent of the inconsistency. Accordingly, the provisions of this document will be examined in detail, and the associated documentation, namely the Residential Flat Design Code (RFDC). It is noted that in the early stage of assessment, a draft Apartment Design Code was referred to as required by the SEPP 65 provisions. However, while this Design Code has now been adopted, the SEPP has a savings provision providing that any applications lodged prior to the introduction of the Apartment Design Code will be assessed against the RFDC rather than the new Apartment Design Code. As a result, the proposal will not be assessed against the new provisions (the ADC).

In accordance with Clause 28 of this the Policy, due consideration must be given to the design quality principles outlined within the policy and provided below.

Design Quality Principles	Matters to be addressed	Comment
Context and neighbourhood character	<p><i>-Good design responds and contributes to its context.</i></p> <p><i>-Context is the key natural and built features of an area, It also includes social, economic, health and environmental conditions.</i></p> <p><i>-Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</i></p> <p><i>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</i></p>	<p>The proposal has been broken down in to three 'big houses' to reduce the bulk and scale of the medium density development upon the streetscape. These separated buildings will also provide areas of communal open space for resident's and retain view windows for surrounding dwellings.</p> <p>The height of the building has been responsive to the existing skyline, staying below the natural line of the topography at the rear</p> <p>The proposal will feature two bedroom dwellings in a mixture of floor layouts, maximising the north aspect at the rear of the site and elevated views to the south over Murwillumbah.</p>

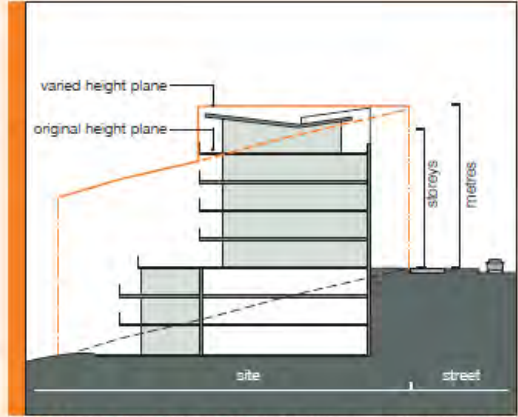
Design Quality Principles	Matters to be addressed	Comment
Built form and scale	<p><i>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</i></p> <p><i>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</i></p> <p><i>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook</i></p>	<p>The building will be of a significant scale and bulk in comparison to the existing surrounding developments. However, the area is recognised as a medium density locality and the transformation of the area over time to increase the density of the locality immediately adjacent to the Murwillumbah CBD is encouraged.</p> <p>Through negotiation between the applicant and Council the original application has been modified to ensure good design outcomes, not only for resident's onsite but also adjoining existing dwellings in regards to built form and articulation</p> <p>The amended plan will result in a development that will have a satisfactory integration into the streetscape, despite the bulk and form of the residential flat building. The proposal will only have a very localised impact visually given the topography and existing built form in the CBD and surrounds.</p>
Density	<p><i>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</i></p> <p><i>Appropriate densities are consistent with the area's existing or projected population.</i></p> <p><i>Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</i></p>	<p>The development is compliant with the nominated FSR for the site and will provide improved housing opportunities within walking distance of the Murwillumbah CBD.</p> <p>The proposal will encourage residents to leave their vehicle at home and access local employment, community facilities, public transport and recreation.</p>

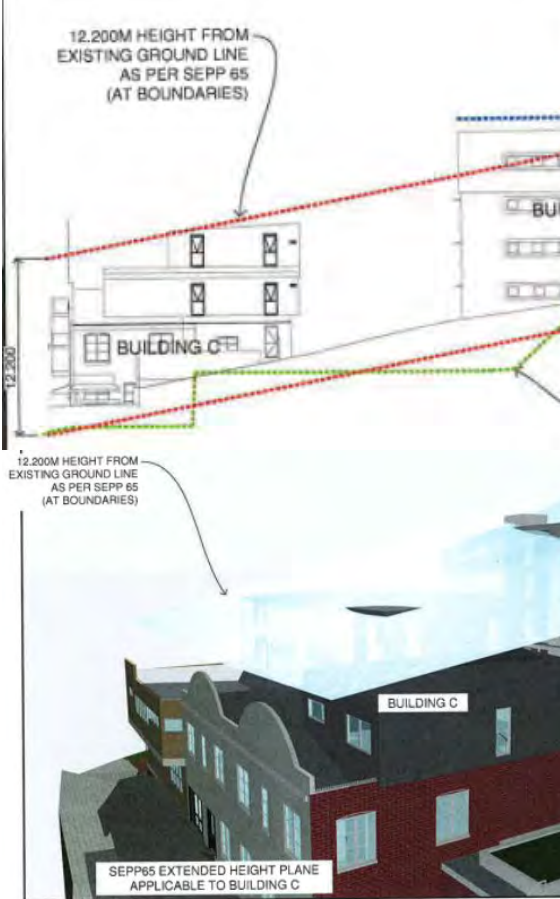
Design Quality Principles	Matters to be addressed	Comment
Sustainability	<p><i>Good design combines positive environmental, social and economic outcomes.</i></p> <p><i>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</i></p>	<p>The proposal has been designed to provide access to natural light and ventilation for all units. Units have northerly aspects with access to individual private open space areas in addition to internal and external communal open space areas onsite.</p> <p>A BASIX certificate will be provided for the site. While mechanical ventilation will be supplied to the units, the design of individual spaces should minimise the use of mechanical ventilation.</p> <p>The site will provide adequate deep soil zones and open space onsite for positive amenity impacts of residents and adjoining properties.</p>
Landscape	<p><i>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</i></p> <p><i>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</i></p> <p><i>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term</i></p>	<p>The proposal has been amended on two occasions to ensure the development will provide satisfactory interface between existing properties and the proposed development.</p> <p>This interface will be assisted by deep soil zones on the boundaries and the Church Lane frontage.</p> <p>The areas of communal open space will enhance the landscape designs on the boundaries and create good opportunities for neighbourhood amenity while respecting neighbours privacy.</p>

Design Quality Principles	Matters to be addressed	Comment
<p>Amenity</p>	<p><i>management</i></p> <p><i>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</i></p> <p><i>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</i></p>	<p>Each Unit will have adequate areas of private open space either at ground level or on a balcony.</p> <p>Room dimensions are complaint with the Residential design flat code in regards to distances from windows and the options for furniture placement.</p> <p>Storage within each unit and the basement has been adequately addressed by the application, following requests for amended designs.</p> <p>Common areas both internal and external onsite will afford residents with satisfactory amenity and also provide separation distance between the big houses for the benefit of the units.</p>
<p>Safety</p>	<p><i>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</i></p> <p><i>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose</i></p>	<p>A Crime Risk Assessment was undertaken for the proposal. This assessment has provided reasonable assurance that the proposal is satisfactory in regard to access control, territorial reinforcement, concealment minimisation and surveillance.</p> <p>For example, apartments are not accessible from neighbouring buildings roof tops or balconies and secure basement areas will provide individual big houses direct access.</p> <p>Fencing on the boundaries will provide security for the site and clear boundaries at Church Lane will delineate between public and private spaces.</p>

Design Quality Principles	Matters to be addressed	Comment
Housing diversity and social interaction	<p><i>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</i></p> <p><i>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</i></p> <p><i>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents</i></p>	<p>The development incorporates different apartment sizes and layouts, with some at podium level proposed for open space on ground floor.</p> <p>The proposal is compliant with the building design aspects of the RDFC regards to aspects and layout</p> <p>The communal spaces upon the site are considered an extremely positive component of the development, given the proposed areas to be provided, these areas elevated aspects and potential views</p>
Aesthetics	<p><i>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</i></p> <p><i>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</i></p>	<p>Whilst still a large building within this context despite the deletion of the upper level of Building A, the photomontage which has been provided illustrates that the overall building height will be below the vegetated ridgeline to the north of the site. This will to some extent ensure the visual continuity of the vegetated ridgeline and thereby assist in the building as being more compatible with the landscape character of this part of Murwillumbah.</p> <p>The elevational composition and colours as illustrated within the submitted photomontage appear generally acceptable. However, more detail will be required prior to the issue of any Construction Certificate.</p>

Residential Flat Design Code

Issue	Provisions	Complies? Comments
Primary Development Controls		
<p>Building Height</p>	<p><i>The SEPP does not delineate maximum height limits for multi storey developments, rather provides for height plane or building envelopes. This is to ensure future development responds to the desired scale and character of the street and allow reasonable daylight access to all development and the public domain.</i></p> <p><i>Regardless, the proposal has applied the provisions of the TLEP 2014, by applying a height limit of 12.2m to the development, pursuant to Clause 4.3.</i></p>	<p>The proposal has applied a building height plane to the subject site. This building height plane is consistent with the diagram provided.</p>  <p>01.54. On steep slopes the height plane is modified along the street edge to facilitate appropriate building forms.</p> <p>As can be seen from the two diagrams provided below, the proposal is compliant with the building height plane limitations specified within the SEPP. The height plane is taken from the highest point of the site and continued parallel with the side boundary. This results in the building being greater than the 12.2m maximum height limits as demonstrated below.</p> <p>The development does not comply with the 12.2m height limit as specified by the SEPP, due to a portion of Building A in the south east corner of the site as shown below. The maximum height of this building from any point on existing ground level is 13.1m. The areas above the 12.2m height limit are shown on the diagram below. This exception to the height limit is consistent with the height plane variations for steep sites specified within the SEPP as provided above.</p> <p>The impacts of this additional height will be discussed in a latter section of this report.</p> <p>The scale of variation to the TLEP 2014 has been significantly reduced as a result of the amended design removing the top floor of building A. While the amended building does protrude above the BHP, the area of non-compliance has been</p>

Issue	Provisions	Complies? Comments
		<p>reduced significantly and the ongoing issues as a result of this variation have also been reduced.</p> <p>Primarily, the visual impact of the building has been significantly reduced, as the skyline is no longer blocked for the primary view corridor along Police Lane.</p> <p>Given the amendments to the development to achieve this improved outcome and the compliance with the SEPP in regards to height, the proposal is now considered acceptable in this regard and the variation should be supported</p> 
<p>Building Depth/Envelope</p>	<p><i>Building envelope mainly apply to development using building envelope controls. Notwithstanding the maximum building depth permissible in general a 10-18m building depth is acceptable.</i></p>	<p>All of the 'big houses' and commercial premise buildings are a maximum depth of 17m. The proposal is compliant in this regard.</p>

Issue	Provisions	Complies? Comments
<p>Building Separation</p>	<p><i>For buildings over three storeys, it is recommended that building separation increase in proportion to building height to ensure appropriate urban form, adequate amenity and privacy for building occupants. Suggested dimensions within a development, for internal courtyards and between adjoining sites are:</i></p> <ul style="list-style-type: none"> - up to four storeys/12 metres - 12 metres between habitable rooms/balconies - 9 metres between habitable/balconies and non-habitable rooms - 6 metres between non-habitable rooms 	<p>The evolution of the development from that originally proposed has resulted in significant positive outcomes to building separation. The removal of the fourth big house from the development has alleviated significant issues in relation to building separation. The proposal provides for separation between buildings A and B of 10m and between building A and building C of 11.4m. Due to the proposed heights of the buildings, this is not compliant with the SEPP specification of 12m.</p> <p>However, the current design has provided increased western side setbacks while maintaining these separation distance at the expense of the floor area of the residential units. Windows between big house A and B have been offset to improve privacy and the removal of the 5th storey will improve any overshadowing to building C as a result of the separation being 0.53m below the minimum stated by the SEPP.</p> <p>Given the positive outcomes to the overall development as a result of these amendments, the variations are considered acceptable in this instance.</p> <p>Balconies on the northern side of Building C will be screened for added privacy from Building A given the variation to the minimum separation distance proposed.</p>
<p>Street Setbacks</p>	<p><i>Front setback – The SEPP provides for a building line of between 5-9m. Secondary setbacks are also considered desirable for upper levels</i></p>	<p>The amended proposal has retained the commercial building in the south west corner of the site. The amended proposal has removed the fourth big house proposed in the south east corner of the site that also contained a small shop at ground level.</p> <p>This removal of the fourth building has resulted in a 1.5m wide footpath being provided for the full frontage of the site within the boundary that extends beyond an existing footpath fronting the commercial premise.</p> <p>An entry statement portico will be located behind this footpath with stairs to a new podium communal open space area. This will be located above a semi basement</p>

Issue	Provisions	Complies? Comments
		<p>parking area located 5m from the front boundary. This wall, 5m from the boundary will be approximately 4m high with grill features to break up this elevation. A small area of deep soil zone 7m x 5m will be located between the existing commercial building and the entry podium. A vehicular access ramp will also be located in the eastern corner of the subject site.</p> <p>Two deep soil zones will also be provided in this area for improved visual amenity. The proposal is considered satisfactory in this regard given the existing building and the improvements to the streetscape.</p>
<p>Side and Rear Setbacks</p>	<p><i>Rear setback 4m Side and rear setbacks should be tested against building separation, open space and deep soil zone requirements. Side setbacks should also be tested against overshadowing</i></p>	<p>The rear of the site fronts an unformed portion of Church Street. Setbacks from this frontage are between 3.36m and 4m. This is not compliant with the SEPP, prescribing a setback of 6m.</p> <p>It is considered that the proposal should be afforded with concessions for the rear boundary setback, given the dual frontage and the unlikely event of Church Street being constructed.</p> <p>Side setbacks</p> <p>The south-eastern side boundary area is proposed to be utilised for vehicle access, 1m from the side boundary. No buildings are proposed in this corner fronting Church Lane, with the exception of a basement carpark. The area above the carpark will be for communal open space and will be separated from the side boundary by a 5.8m driveway.</p> <p>Building B at the rear of the vehicle access is located 2.2m from the eastern side boundary for a distance of 13m or 26% of the 50m side boundary. This area will be a deep soil zone.</p> <p>The western side boundary will retain the existing side boundary setbacks for the commercial building that has a nil side boundary setback. The residential component of Building C has a 3.86m side setback to the western boundary. A 3.15m setback is proposed for the caretaker's office within Building A. The main section of Building A for the</p>

Issue	Provisions	Complies? Comments
		<p>residential units will be a minimum of 3.01m from the western boundary.</p> <p>The SEPP does not specify side boundary setback standards, rather requires assessment to relate side setbacks to existing street scape patterns. These setbacks should also be tested against deep soil zones, open space and building separation.</p> <p>The side setbacks along the western boundary have been increased following discussions with the applicant regarding concerns of bulk scale and overshadowing of the adjoining residential property to the west. These increased setbacks, coupled with the reduced height of Building A will ensure an acceptable level of amenity is maintained for the adjoining property.</p> <p>The side and rear boundary setbacks are considered acceptable.</p>
FSR	<i>SEPP does not nominate maximum FSR. TLEP 2014 nominates a FSR for the site of 1.2:1</i>	1.2:1 is the maximum permissible. A proposed FSR of 0.97:1 is compliant with TLEP 2014.
Site Configuration		
Deep Soil Zone	<i>A minimum of 25% of the open space area of the site is required to be a deep spoil zone, while a greater percentage is desirable.</i>	<p>The amended proposal has provided an increased area for deep soil zones. 417m² will be provided onsite for deep soil planting being greater than 25% of the open space area of the site. As the total open space is 805m², the deep soil zone area minimum is 200m. The SEE provides that 417m² of deep soil zones will be provided onsite.</p> <p>These deep soil zones have improved from the original application with areas provided within the front building setback, along both side boundaries and at the rear.</p> <p>It is acknowledged that the site cannot provide the recommended widths for deep soils zones as nominated with Councils DCP. However, the RFDC does not specify a minimum width therefore the development is considered acceptable in this regard.</p>

Issue	Provisions	Complies? Comments
Fences and Walls	<p><i>No standards. Design considerations should include material selection</i></p> <p><i>Delineate public and private domain</i></p> <p><i>Avoid continuous length of blank walls</i></p>	<p>Fences will delineate between public and private spaces. This fencing will be pool style fencing 1.2m in height.</p> <p>Fencing will also be provided at side and rear. This fencing will be 1.8m high timber construction.</p>
Landscaping	<p><i>The objective of the SEPP in this regard is to add to resident's quality of life, improve micro climate and urban air quality. Provide habitat for native plants and animals.</i></p>	<p>The amended plans have been accompanied by a landscaping plan for the site.</p> <p>The proposed landscaping plan has provided satisfactory areas of landscaping within the deep soil zone and has nominated native plant species within Council's Native Planting Guide</p> <p>Screening between private areas and private terraces is proposed while large trees will be located along the western, northern and eastern boundaries. The area fronting Church Lane forward of the communal open space will soften the elevation screening the basement carpark and significantly improve the streetscape along this section of the Lane.</p> <p>Two areas of communal open space for residents will be provided onsite and softened by large feature trees and turf.</p> <p>The landscaping is considered satisfactory for the proposed development.</p>
Open Space	<p><i>The objective is to provide residents with passive and active recreational opportunities with an area onsite that enables soft landscaping and deep soil planting.</i></p> <p><i>Minimum area of private open space for each apartment at ground floor is 25m²</i></p>	<p>The amended plan has provided increased areas of communal open space and landscaping through the removal of one of the four 'big houses'.</p> <p>The rule of thumb as outlined within SEPP is 25% to 30% of site area. Therefore 743m² of open space is required as a minimum (25%). The amended proposal has 800m² of open space made up of landscaping and communal open space. These areas are comprised of the two podium areas and landscaping within side boundary setbacks.</p> <p>This is considered generally acceptable given the increase in open space area due to removal of 4th big house.</p> <p>The proposal is compliant with the private open space provisions for apartments at ground level with each</p>

Issue	Provisions	Complies? Comments
		area being a minimum of 25m ² . These areas are in addition to the open space calculations above
Orientation	<i>The objectives of this design aspect are to optimise solar access to residential apartments.</i>	It is considered that all units have good solar orientation. However, the private open space areas for the Units on Level 2 of Building A and B will be subject to limited sunlight due to a retaining wall up to 4m in height bordering these areas. While this is not an ideal situation, the steepness of the site and existing benching coupled with the retention of side boundary heights for neighbouring properties benefit has provided these deep cuts. This issue will be limited to 1 of the 26 units and is considered acceptable.
Planting on Structures	<i>The SEPP provides recommended specifications for the establishment of landscape areas on top of basement carparks and roofs</i>	Podium level landscaping above two basement carparks is proposed. No soil depths have been provided. The submission has indicated that the proposal will accommodate the required soil depth in these locations. It is considered appropriate that a condition is inserted to ensure the development can provide sufficient soil depths on these communal open space areas to accommodate the large trees nominated by the landscaping plan provided
Stormwater Management	<i>The volume of impact of stormwater on infrastructure should be reduced by retaining volumes onsite</i>	The SEE states that the stormwater run-off from the site shall be collected and piped to the existing stormwater drainage system which includes a system of gross pollutant traps. More details are provided elsewhere in this report
Site Amenity		
Safety	<i>A Crime Risk Assessment is required for all residential developments more than 20 new dwellings</i>	A crime risk assessment has been undertaken for the subject proposal. This assessment has provided the following details regarding measures undertaken to ensure the safety of residents Access control by restricting accessibility of apartments from balconies, the provision of secure basements and separate access between buildings and commercial components. A 1.8m high timber fence will be provided to side and rear boundaries. The interface between public and private

Issue	Provisions	Complies? Comments
		<p>open space will be limited to the Church Lane frontage.</p> <p>Pedestrian entry will be clearly identified with a portico and landscaping will be at the interface to provide a clear boundary. Safety through surveillance will be proposed as follows</p> <p>Clear line of sight through building entrance and development,</p> <p>Access routes between building entrances and church lane will be well lit.</p> <p>Opportunities for casual surveillance have been provided from primary living areas orientated towards the north. These areas will allow surveillance of 'mews' level and communal open space.</p> <p>No public space is proposed and the body corporate will ensure any vandalism is attended to in a timely manner.</p>
Visual Privacy	<p><i>Visual Privacy is related to building separation standards. The objectives of this standard are to provide reasonable levels of visual privacy externally and internally during the day and night. Outlook and views should also be maximised without compromising visual privacy.</i></p>	<p>Each big house has balconies on the northern side for access to natural sunlight. Due to the elevated nature of the property, all southern facing windows will enjoy views over Murwillumbah to the south towards Mount Warning.</p> <p>The proposal does not meet the minimum separation requirements of 12m between buildings with separation between Building A and B of 10m and between A and C of 11.4m.</p> <p>As discussed previously, the windows facing each other in building A and B have been offset to not directly face each other and are not primary windows but highlight windows, given they will not provide the primary opportunities for light air. Balconies that are directly opposite one another will be required to have privacy screens, this being for balconies within Building C only.</p>
Site Access		
Building Entry	<p><i>Desirable residential identity shall be provided</i></p> <p><i>The entry should orientate the visitor and contribute positively to the streetscape.</i></p>	<p>The street elevation will be retained for the commercial component of the site. The existing vacant street frontage area will feature a footpath, patio roof style pedestrian access and face brick wall 5m from this front boundary. The multi storey buildings will be located on a significant setback at the rear of the site.</p> <p>The deep soil zone forward of these areas will assist in creating a desirable residential identity.</p>

Issue	Provisions	Complies? Comments
		<p>It is considered that the street entry will delineate vehicular and pedestrian access.</p>
<p>Parking</p>	<p><i>The objective s of the SEPP are;</i> <i>-To minimise car dependency for commuting and recreational transport use and to promote alternative means of transport-public transport, bicycling, and walking.</i> <i>-To provide adequate car parking for the building's users and visitors, depending on building type and proximity to public transport.</i> <i>-To integrate the location and design of car parking with the design of the site and the building.</i></p>	<p>Parking is generally provided in sub-basement style at street level and 'mews' level. In contrast to the original proposal, parking areas are enclosed and screened from the street and at the 'mews' level to soften the impact of these hardstand areas.</p> <p>Sixteen spaces for the development will remain open on the 'mews' level however three spaces will be tandem spaces and will be the subject of restrictions in regards to usage in conjunction with the commercial premises.</p> <p>All parking areas will be naturally ventilated.</p> <p>Bicycle parking for the commercial space will be provided at the Street frontage adjacent to the commercial bin store.</p> <p>Bicycle parking will be provided for each unit through the provision of storage hooks for exclusive use of each tenancy</p> <p>The adequacy of numbers of parking will be discussed in a separate section of this report.</p>
<p>Pedestrian Access</p>	<p><i>Identify the access requirements from the street or car parking area to the apartment entrance.</i></p> <p><i>Follow the accessibility standard set out in Australian Standard AS 1428 (parts 1 and 2), as a minimum.</i></p> <p><i>Provide barrier free access to at least 20 percent of dwellings in the development.</i></p>	<p>Pedestrian access to the commercial premises will be maintained. An active street edge along Church Lane is enhanced with a footpath and primary access highlighted with pergola. Pedestrian access is separated from the vehicle access.</p> <p>Internally, residents within Building A and B will have access to the carpark via stairs within the respective buildings.</p> <p>Residents within Building C will need to cross the 'mews' level from the forward basement carpark area.</p> <p>Internal pedestrian movements between Building A and B to access the upper communal open space has been facilitated by a gallery style path on the southern side of these buildings.</p>

Issue	Provisions	Complies? Comments
		<p>As pedestrians will have to cross over the internal 'mews' carpark area, some additional linemarking and signage is considered appropriate to ensure any conflict between vehicles and pedestrians is minimised.</p> <p>Accessibility- No through link is proposed for security reasons from Church Lane to Church Street.</p> <p>The SEE provides that the provision of lifts to the apartment building ensures accessibility to over 70% of the residential product. A condition of consent has been included that requires accessibility meets the Australian Standard for disabled Access.</p>
<p>Vehicle Access</p>	<p><i>Carpark access to be integrated into overall façade and behind building line.</i></p> <p><i>Garbage collection loading and servicing areas are to be screened</i></p> <p><i>Vehicle access points are to be minimised</i></p>	<p>Vehicle access is from Church Lane and access to the ground floor carpark will be via this two way vehicle ramp in the south eastern corner.</p> <p>Access from Church Lane is compliant with Council's development standards and limited to a single point with good separation from Police Lane.</p> <p>The screening of all the sub-basement carparking is considered a positive outcome of the amended design.</p> <p>Pedestrian and vehicle entries have been separated at Church Lane frontage.</p> <p>Garbage areas will be contained within nominated rooms under the respective buildings.</p>
Building Configuration		
<p>Apartment Layout</p>	<p><i>Apartment layouts should be designed to respond to the natural and built environments. Provision of private open space, orientate main living areas adjacent to main private open space.</i></p>	<p>No single aspect units with southerly aspect are proposed.</p> <p>Living spaces are orientated to the primary outlook for all Units and satisfactory access to balconies and outdoor living spaces are directly accessed from living areas.</p> <p>No narrow deep apartments are proposed.</p>

Issue	Provisions	Complies? Comments
Apartment Mix	<i>Diversity of housing types, locate a mix of 1 and 3 bedroom apartments on the ground floor where accessibility is more easily achieved</i>	<p>A variety of housing sizes and layouts are proposed, despite all being 2 bedroom.</p> <p>No apartments are proposed at the Church Lane level. A lift will be available for equal access provisions.</p>
Balconies	<i>Provide a minimum of 1 primary balcony where private open space not provided. Minimum 2m depth. Scaled plans with furniture layout to confirm adequate usable space</i>	<p>A minimum depth of 2.5m proposed for primary balconies per the RDFC is provided.</p> <p>Balconies are located adjacent to living areas and Juliet balconies also proposed for certain units of south facing windows of Buildings A and B.</p> <p>Balconies will also function as means for casual surveillance.</p> <p>Size and location of balconies considered satisfactory</p>
Ceiling Heights	<i>2.7 for habitable rooms. 2.4 for non-habitable</i>	<p>Minimum floor to ceiling heights of 2.7m are provided to main living areas and habitable rooms of all units.</p>
Flexibility	<i>Flexible Design</i>	<p>No apparent issues</p> <p>Windows proposed in each room</p> <p>Adequate room sizes for a variety of furniture layouts</p> <p>Accessibility and mobility appears ok given lift access</p>
Ground Floor Apartments	<i>Contribute to desired streetscape and increase housing choice</i>	<p>No ground floor units as such are proposed however, six units will be located upon the podium level of Building A and B and not accessible directly from 'mews' level.</p> <p>Private open space will be at ground level adjacent to communal open space.</p> <p>Lift will provide access.</p> <p>These units at the podium level will have access to larger areas of private open space in addition to private open space balconies.</p>
Internal Configuration	<i>Double loaded corridor number of Units limited to 8.</i>	<p>No double loaded corridors proposed.</p> <p>Number of units accessible for a single corridor is less than eight.</p>

Issue	Provisions	Complies? Comments
Mixed Use	<p><i>Consideration of mix of uses important to ensure amenity of residents protected</i></p> <p><i>Design legible circulation systems which ensure safety of users</i></p>	<p>As the site will have commercial and residential uses, conditions will be applied to ensure residential amenity is maintained. The nature of the commercial premises will provide some level of assurance that residents will not be adversely impacted by uses.</p> <p>The loading dock at 'mews' level will have restricted hours of operation.</p> <p>Street frontage – The active area of the commercial building will be retained. Pedestrian entry forward of subbasement carpark softened by landscaping. The podium open space area will provide passive surveillance and good views south over Murwillumbah for residents.</p> <p>Commercial and residential entries have been separated. Residential units are located above commercial spaces however; Units are located at the rear of these offices at ground level.</p>
Storage	<p><i>One bedroom apartments – 6m³</i></p> <p><i>Two bedroom apartments 8m³</i></p> <p><i>3 bedroom 10m³</i></p> <p><i>Bicycle storage in basement</i></p>	<p>The units will all meet the minimum storage areas required by the SEPP within their respective units.</p> <p>Bicycle storage proposed on walls of basement adjacent to carparking spaces.</p> <p>Bicycle spaces are provided adjacent to residential lobbies for visitor parking</p>
Building Amenity		
Acoustic Privacy	<p><i>Don't locate busy areas next to quieter areas</i></p>	<p>Buildings A and B balcony locations satisfactory from an acoustic privacy perspective.</p>
Daylight Access Natural Ventilation	<p><i>Minimum of 3 hours sunlight between 9-3 mid winter for 70% of the apartments</i></p> <p><i>Limit single aspect apartments to 10%</i></p>	<p>Overshadowing of building C from Building A during winter will result in Apartments One and Two of building C not receiving 3 hours of sunlight in winter. This is 7% of the development and is permissible. Given the steepness of the site and the evolution of the project to minimise variations to the SEPP, this is considered an acceptable outcome.</p> <p>All Units will be cross ventilated.</p> <p>Buildings are less than maximum depth.</p> <p>All kitchens have access to natural ventilation.</p>

Issue	Provisions	Complies? Comments
Building Form		
Awnings and Signage	<i>Encourage pedestrian activity on streets by providing awnings to retail strips and local awnings over building entries</i>	<p>The SEPP 65 assessment provides that lighting and awnings for weather protection will be provided to building entries.</p> <p>Existing awnings will remain over commercial premise. Awning over pedestrian access to podium indicated as canopy</p> <p>A condition of consent will ensure awnings are provided for weather protection at stairwell openings</p>
Facades	<i>The objective of this provision is to promote high architectural quality in RFBs, ensure new developments have facades that define and enhance the public domain and building elements are integrated into overall building form and design.</i>	<p>The SEPP 65 statement provides that the façade treatment has been a key consideration and has been developed to achieve a built form consistent with the area.</p> <p>The material composition includes a combination of face brick base with a combination of lightweight cladding materials to the upper levels. It is essential to understand what the material finish of the buildings will be to ensure compatibility with the character of the surrounding locality.</p> <p>Further detail regarding the material and colours will be condition of any consent granted to ensure the development will be compatible with the Murwillumbah Heritage Conservation Area adjoining.</p>
Roof design	<i>The objective of this standard is to provide quality roof designs and integrate the design in to the facade</i>	<p>The SEPP 65 assessment considers the roof design is appropriate as it is consistent with the character and built form of the surrounding area and minimises overshadowing and visual impact.</p> <p>The proposal incorporates a variety of roof designs including the existing roof above the commercial building, a flat roof for the units above and skillion style roof lines above building A and B.</p>
Building Performance		
Energy Efficiency	<i>Incorporate passive solar design to optimise heat storage</i>	<p>The SEPP 65 assessment provides that the BASIX Assessment and design verification statement demonstrates that the proposed building has been designed for optimal energy efficiency.</p>

Issue	Provisions	Complies? Comments
Maintenance	<i>Design detail and material selection support long term maintenance of RFBs</i>	No adverse issues associated with maintenance.
Waste Management	<i>A waste management plan is required.</i>	A waste management plan has been provided and is considered satisfactory. This Plan is discussed elsewhere in this report.
Water Conservation	<i>AAA rated appliances</i>	An updated BASIX certificate will be required for the building prior to any positive determination

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been provided for the amended proposal.

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

Draft TLEP 2014 No 17 – Short Term Accommodation is applicable to the subject site. This DLEP 2014 if gazetted may require consent for short term accommodation and schedule certain forms of short-term rental accommodation as exempt development. This draft LEP may have implications for the proposed development however, serviced apartments are currently permissible with consent within the R3 zone, and therefore any change of use for short term rental accommodation does require development consent. The draft may result in short term accommodation being exempt development in certain circumstances, subject to compliance with Councils yet to be determined policy.

The proposal is not considered contrary to this Draft LEP.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The overarching document for assessment of this development is SEPP 65. An assessment of the proposal against the provisions of this State Policy is provided above. The development has also been assessed against the provisions of the site specific DCP B22 – Murwillumbah Town Centre.

There are no additional provisions within this DCP that have not been addressed by these two Policies.

A2-Site Access and Parking Code

The proposal will provide onsite parking in accordance with Council's requirements contained within this DCP.

Carparking will be provided within a semi underground carpark below the proposed communal open space adjacent to the existing commercial building. This carparking area will be accessed by the common driveway in the south east corner of the site. This secure semi underground carpark will contain 20

carspaces. Eight of these spaces will be tandem carspaces. This will be discussed below. This area will be internally linked to Building B for use by residents and visitors.

Uncovered carparking will be located on the “mews” level, also accessed via the single driveway. This open parking area containing 16 spaces will be allocated to the commercial component of the development. Three spaces will be in a tandem formation. The applicant shall be required to allocate all tandem spaces to staff parking to ensure the remaining spaces are available for visitors. A loading bay will also be provided at this level in addition to the carparking.

Carparking below Buildings A and B will be in a semi basement style carpark, accessed via a single double driveway. This secure basement area will provide 27 spaces for the residential accommodation above and visitors.

All spaces have been allocated to specific residential units or commercial spaces. All vehicles will have the ability to enter and leave the site in a forward direction.

Carparking is summarised as follows;

Proposal	Car parking required	Car parking provided
Church Lane level		
<u>Commercial</u> <i>Staff</i> <ul style="list-style-type: none"> Unit 2 (7,8) - 2 car parks Unit 4 (9,10) – 2 car parks Unit 5 (11, 12, 13, 14, 15, 16, 17, 18, 19, 20) – 10 carparks <u>Residential</u> <ul style="list-style-type: none"> Unit 1 (4,6) – 3 car parks Visitor (1,2,3,21,22,23) – 6 carparks 	<u>Commercial</u> Dentist (Health Consulting Room) Staff – 1.2 per consulting room Customer – 1.6 per consulting room 2 consulting rooms requires 5.6 car parks <u>Offices</u> Staff parking 1 per 50m ² of GFA Customer parking is included in staff parking rates 450m ² GFA requires 9 car parks	<u>Commercial</u> 14 car parks <u>Residential</u> 9 car parks
Mews Level		
<u>Commercial</u> <i>Staff</i> Unit 5 (C8, C9) – 2 car parks <i>Customer</i> Unit 3 (C1 – C3) – 3 car parks Unit 3 (C4, C5, C6, C7) – 4 car parks	Staff parking 1 per 50m ² of GFA Customer parking is included in staff parking rates 450m ² GFA requires 9 car parks <u>Residential</u> 1.5 car parking spaces	Mews Level <u>Commercial</u> 16 car parks <u>Residential</u> 27 car parks

Proposal	Car parking required	Car parking provided
No units nominated (C10, C11, C12, C13, C14, C15, C16) – 7 car parks <u>Residential</u> Visitor (UR7, UR8) – 2 car parks Units 2 to 25 have one car park each – 25 car parks	per 2 bedroom unit. Visitor spaces are provided 1 per 4 units. 26 x 2 bedroom units require 39 residential car parks Visitor parking for 26 units requires 6.5 car parks (rounding up provided at total calculation)	
<u>Total car parking</u>	<u>Residential</u> 46 car parks required <u>Commercial</u> 15 car parks required Total 61 required	<u>Residential</u> 36 car parks provided <u>Commercial</u> 30 car parks provided Total 66 provided

Numerically the total number of car parking spaces is correct, although it is noted that the application has provided excess commercial parking and not enough residential parking. It is recommended that some of the commercial carparking is reallocated to ensure the car parks required under DCP No. 2 are provided appropriately for the residential component of the development.

While 10 car parks are required to be reassigned to the residential component, only nine car parks have been recommended to be reallocated due to their proximity in the development. The applicant has provided adequate visitor parking, therefore the parking has been allocated to the residential units. The residential component is one car parking space short, which is considered acceptable.

As mentioned above, the access driveway will be located in the south eastern corner of the site. This access will be two way for vehicles and be the sole driveway access for residents, staff, visitors and customers.

Please note that a small caretaker's office is also proposed within Building A. This office may be used by the body corporate manager that may or may not reside onsite. The additional parking will cater for an additional space generated by this office if the caretaker does not live onsite.

Visitors to the residential component will be required to access carparking behind a security grill. Outside of normal office hours, visitors will also be able to utilise the commercial parking area at the 'mews' level which will not be security gated.

Council's traffic engineer is satisfied with the proposed development in its revised form.

The following condition will be inserted into the development consent

"Prior to the issue of an Occupation Certificate all parking is to be in accordance with the following plans;

- *Plan No. DA-1.2 titled 'Street Level Church Lane' dated 10 July 2014 issue D*
- *Plan No. DA-1.3 titled 'Mews Level' dated 10 July 2014 issue D*

Except the following car parking spaces which are to be reallocated to the residential component of the development;

- *Six of the tandem car parking spaces currently designated 'commercial - staff unit 5, numbers 15 to 20' on Plan No. DA-1.2 titled 'Street Level Church Lane' dated 10 July 2014 issue D are to be changed to residential car parking. Tandem spaces which require one vehicle to move before the second vehicle can exit are to be allocated to one unit only.*
- *Three of the car parking spaces currently designated 'commercial customer unit 3, numbers C1, C2 and C3' on Plan No. DA-1.3 titled 'Mews Level' dated 10 July 2014 issue D are to be changed to residential car parking for the residential units.*
- *Bicycle racks are to be provided within the development*
- *The car parking shall be permanently line marked in white colour and number allocated to each of the residential/ commercial components of the development as per the above nominated plans.*
- *All parking areas are to be certified by a qualified engineer prior to occupation or use.*
- *Appropriate signposting shall be provided advising customers and visitors that off street parking is available."*

A4-Advertising Signs Code

The proposal does not provide any signage details. Ancillary signage will be required for directional purposes for vehicles accessing the residential and commercial Units onsite. Any existing signage for the commercial component can be retained. Any additional signage would be the subject of a separate application, where statutorily required.

A11-Public Notification of Development Proposals

The application was notified on two occasions in accordance with the provisions of this policy. The first period was from the 4 March 2015 until 18th March 2015. This notification resulted in the receipt of 12 submissions.

Due to significant amendments to the proposed development, the application was renotified between the 8th July 2015 and 22 July 2015. During this second notification period, eight submissions were received. All the submissions raised objection to the proposal. It should be noted that the application has been

amended again since this second notification period in response to Council's concerns and submissions received.

It was determined that a third notification period was not necessary as the amendment undertaken that form the development presented to Council have resulted in a proposal that is smaller in scale, site coverage and floor space and lower in overall height. These amendments are considered to partially satisfy concerns raised by the submissions during the two notification periods.

The reasons for objection are as summarised in the table below.

Reason	Comment
<p><i>Number of Units is considered excessive for the site.</i></p> <p><i>Four-storey height is excessive density wise for the site and contrary to maximum height limits. This height will have a negative impact upon adjoining resident's views and result in unnecessary overshadowing to the detriment of adjoining residential properties. The adjoining properties will also be adversely impacted by overlooking from proposed unit windows</i></p>	<p>The numbers of Units onsite have been reduced from 31 to 26 units in response to Council and community concerns in regards to height, bulk, scale and form.</p> <p>This reduction in height will result in a development that complies numerically with the relevant height and FSR provisions as prescribed by SEPP 65. The building height will require a variation to the TLEP 2014, however, the SEPP overrides this Clause within the TLEP 2014.</p> <p>Properties to the rear will be impacted by the development, however views will be available over the top and through the building due to the construction of three 'big houses' and the sloping nature of the site.</p> <p>The proposal has demonstrated that overshadowing of adjoining properties particularly those to the south west will comply with the provisions of the SEPP in regard to the extent and time of overshadowing. The extent of overshadowing upon the property to the south west has been reduced by the removal of the top storey upon Building A.</p> <p>The western side boundary setback of Building A and Building C (residential component) have been increased to reduce the impact upon the residential property on this adjoining land.</p> <p>An examination of overshadowing impacts upon 21 Church Lane was undertaken to determination the impact of the development on this property, given its location on the western side of the subject site.</p>

Reason	Comment
	<p>During the winter months, the building will overshadow the dwelling and rear yard until approximately 10.30 in the morning. The adjoining lot will have full sun from 11am. Overshadowing in the afternoon will be from buildings and existing topography to the east.</p> <p>The reduced height of building A from 14.1m to 13.1m for the lift overrun and increased western side setbacks will reduce the level of overshadowing to this property. The existing topography and vegetation makes it difficult to determine the increased level of overshadowing upon this adjoining dwelling. However, the amended proposal has made a genuine attempt to reduce the impact of the development on this property. This level of impact is considered acceptable in the circumstances.</p>
<p><i>Cut and fill is regarded significant and of concern. The adjoining residents require assurances that the stability of the adjoining land will not be adversely impacted.</i></p> <p><i>A dilapidation report is requested to be associated with any consent issued to protect adjoining properties</i></p>	<p>Earthworks are generally limited to the construction of the proposed basement car parks. Adequate measures are proposed to ensure that overland flow conveyance requirements are maintained, and flow is neither concentrated nor ponded on adjacent properties.</p> <p>The original SEE expects that the material excavated will be suitable for general fill, with no need to import material. No areas of fill are proposed.</p> <p>A dilapidation report will be a condition of any consent granted</p>
<p><i>The site may be contaminated as a result of previous uses, resulting in exposure of contaminated land during significant excavation. Where will contaminated soil be removed to</i></p>	<p>A contamination report has been received and is considered satisfactory for the development application stage.</p> <p>However, the proposal will not proceed until a detailed soil investigation is undertaken in accordance with Guidelines for Consultants Reporting on Contaminated Sites (NSW Office of Environment and Heritage 2011).</p> <p>The findings of the investigation, and any proposed Remedial Action Plan, are to be submitted to Council for consideration and approval prior to issue of a Construction Certificate.</p>

Reason	Comment
<p><i>Setbacks (front and side) are not compliant with Council requirements, creating a sense of overcrowding</i></p>	<p>The setbacks for the front commercial premise will remain as existing. The amended proposal will provide a 4.83m setback from the front building line. This setback will facilitate a footpath for the entire street frontage. This is considered a significant improvement, given the lack of footpath along Church Lane.</p> <p>Behind the footpath, a landscape area will be provided to soften the wall fronting this area that encloses the lower basement carpark.</p> <p>Setbacks from the western side boundary will be retained for the existing commercial premise. The setbacks for the proposed residential units above this commercial building will be a minimum of 3.85m for Building C (residential component) and 3.01m for Building A at the rear.</p> <p>These setbacks have been increased from the development publicly notified to reduce the impact of the proposal on the adjoining property to the west by providing greater separation distance, improving overshadowing and enclosure issues.</p> <p>Dispensation to the Church Street setback at the rear has been accepted, due to this street being the second frontage and not actually formed.</p>
<p><i>The development proposes inadequate carparking onsite and the proposed variation to Council requirements should not be supported by Council</i></p>	<p>The proposal has provided sufficient carparking onsite as detailed in the report in a previous section.</p> <p>The mixed use will offer opportunities for cross utilisation of carparking at the 'mews' level parking given the proximity from the main street and the two uses onsite having different peak usage hours.</p>
<p><i>The variations to the TLEP 2014 should not be supported due to the negative implications of these variations</i></p>	<p>The amended proposal before Council can comply with the provisions of the TLEP 2014 in regards to FSR. The proposal does require a minor amendment to TLEP 2014 in regards to height for one relatively small area of the building. However this limit is overridden by SEPP 65 and cannot be a reason for refusal in isolation.</p>

Reason	Comment
<p><i>Large vehicles such as garbage trucks will not have adequate area to manoeuvre along the one way section of Church Lane to the east of the subject site.</i></p>	<p>The garbage truck currently negotiates the Lane. Recent installation of “No Stopping” zones indicated by yellow edge lines at Bruce Lane will improve heavy vehicle access through the Lane.</p>
<p><i>Church Lane is used as a 'rat run' by vehicles avoiding the Main Street.</i></p>	<p>There is no evidence to confirm this assertion. However the Laneway does have capacity for this type of traffic movement.</p>
<p><i>Any street parking for larger vehicles will not be possible due to existing onsite parking demands.</i></p>	<p>Onsite parking will cater for small rigid delivery vehicles.</p>
<p><i>Increased traffic will result in dangerous conditions for traffic exiting Bruce Lane</i></p>	<p>Recent installation of “No Stopping” zones indicated by yellow edge lines at Bruce Lane will improve heavy vehicle access through the Lane.</p>
<p><i>Visitor parking will occur all day, not just after hours. Therefore leaving the site short of visitor parking is not acceptable.</i></p>	<p>This report has clearly detailed that the site will have sufficient parking for the residential units proposed with cross utilisation possible after hours. Excess commercial parking spaces have been provided.</p>
<p><i>The increased traffic will have adverse impacts on the street or pedestrians due to the lack of footpaths the extra 213 trips per day will have a huge impact on existing residents.</i></p>	<p>A footpath is proposed along the street frontage of the development providing access for residents to Police Lane. This will improve the current situation for the benefit of pedestrians.</p>
<p><i>Church Lane is 5.4m and 4.6m in places, not 6m as indicated on the plans and SEE.</i></p>	<p>The road reserve is 6m wide and where the pavement width is narrow around Bruce Lane, “no stopping” signage has been implemented.</p>
	<p>Currently there is “no stopping” installed in the Lane as a result of rear lane access requirements associated with the current stormwater infrastructure upgrade to Murwillumbah Street. This signage can remain in place to improve heavy vehicle access through the Lane. Overhanging trees have been requested to be trimmed in the Lane and signage has been recently improved indicating directional traffic flow.</p>

Reason	Comment
<p><i>The proposal will result in adverse noise issues for surrounding residents from</i> <i>Increased traffic in church lane</i> <i>Noise from balcony air conditioners</i> <i>Noise from bin movement and use and emptying by garbage truck (62 every fortnight)</i> <i>Bathroom and laundry ventilation</i> <i>Due to the amphitheatre nature of the site, noise generated from the site will be amplified</i> <i>The proposed security grille will generate noise from opening and closing</i> <i>Traffic negotiating the bump over the apex of the hill</i> <i>Apartment residents on the balconies</i></p>	<p>The increased number of residents living in the street will inadvertently increase noise levels however it is not reasonable to expect that the site remains vacant indefinitely.</p> <p>Appropriate conditions will be applied to ensure noise level of any mechanical ventilation does not exceed Australian Standards. Any ongoing use of the development for residential purposes will be subject to the Environmental Protection and Operations Act as are all surrounding properties in regards to noise levels permissible at certain hours of the day and night.</p> <p>The waste management plan has been discussed in a previous section of this report. The proposal is deemed satisfactory in this regard.</p>
<p><i>The proposal will have an adverse impact on the value of adjoining properties. No detail has been provided regarding the proposed method of ventilation for the basement carpark.</i></p>	<p>The carpark will be naturally ventilated.</p> <p>No evidence is provided that the proposal will devalue adjoining properties.</p>

A15-Waste Minimisation and Management

The application has provided a Waste Management Plan that satisfies this DCP. The Waste management Plan will address issues associated with waste management internally and within Church Lane as follows;

- The Body corporate will be responsible for the movement of bins to the collection area in Church Lane on bin collection days. A small tractor style vehicle will be required to move the bins from the ‘mews’ level to the street.
- Recycling and general waste bin are proposed to be bulk waste bins that will be shared between residents. This will reduce the areas required for storage and also reduce the number of bins being transported and placed on the street for collection.
- Weekly pickups of these larger bins will reduce the area required on the street and avoid overcrowding Church Lane with 26 small bins. This will also minimise adverse amenity impacts on adjoining owners from bins being spread along Church Lane and Garbage trucks utilising Church Lane for pickups.
-

As Council is now satisfied with the Waste Management procedures proposed for the development, the consent will be conditioned to ensure these proposed measures are implemented in conjunction with the ongoing use of the property.

A16-Preservation of Trees or Vegetation

The site does not contain any vegetation of significance.

B22-Murwillumbah Town Centre

TDCP Section B22	
Floor Space Ratio control subject to provision of TLEP 2014- Discussed elsewhere	
Site Coverage – The maximum site coverage permissible for the site in accordance with these provisions is 80%. The maximum permissible impervious area is therefore 2400m ² . The site coverage provided by the applicant is 72%. The proposal is compliant in this regard.	
Street Setbacks	<p>Street setbacks have been discussed above within the RRDFC assessment.</p> <p>57% of the street frontage will accommodate the existing commercial premises 1.2m from the street boundary. 30% will feature a footpath, landscape buffer then podium level with semi basement parking below. The remaining 10% will be for the single driveway and side boundary setback in the south eastern corner.</p>
Building Alignment and orientation	The external facades of the building are aligned to Church Lane as is the pedestrian entry to the 'mews' level.
Street Frontage Height	<p>The building height at street level will be maintained following construction of the proposed development. The existing commercial premises will remain as existing and the semi basement style carparking in the south western corner will be 5m high, behind the 4.83m building setback. No objection is raised to the proposed frontage height.</p> <p>The residential component above the commercial building will be a minimum of 4.6m from the front boundary, therefore is setback further from the commercial street frontage height.</p>
Active Street Frontage	The amended proposal has improved the street frontage by maintaining the commercial premise footpath and extending this footpath along the entire frontage. A landscaped deep soil zone will also be provided between the footpath and carpark in the south eastern corner of the site. While the shop originally proposed at this level will be removed, the ability of pedestrians to utilise this footpath will enhance this portion of Church Lane. This landscaping combined with the portico pedestrian entry is considered satisfactory.
Rear Lane	The site has frontage to Church Lane as a primary point of access. The rear of the property is bordered by Church Street, although this portion of Church Street is unformed. No issues of concern are raised in this regard.
Corner Buildings	Not applicable
Awnings	Not applicable to subject site and addressed within the SEPP 65 assessment. Existing awnings will be maintained for the commercial component onsite. Small awnings will be provided for weather protection over entrances for Buildings A and B.

Signage and advertising	None proposed in addition to that already provided on the commercial building frontage. Some signage will be required to direct pedestrians and vehicles accessing the site.
Medium Density Residential Development	<p>The site is within a locality where medium density is encouraged. The proposal is generally compliant with this provision for the following reasons;</p> <ul style="list-style-type: none"> - The site planning optimises habitable rooms overlooking public spaces and minimises overlooking of side boundaries. - Pedestrian paths will be more prominent than vehicles movement areas given the provision of a portico and footpath the full length of the street frontage within the property boundary. - Parking will no longer dominate the streetscape being located behind a wall, 4.3m from the front boundary. - While the parking does project above natural ground level, this area will be screened and landscaped. Parking will not be visible from the street.
Mixed Use Development	<p>While the commercial premises to remain will be subject to existing use rights provisions, consideration to these controls are considered relevant given the nature of the commercial premises on ground floor and residential premises above.</p> <p>The proposal is considered satisfactory in this regard as; Parking will be situated at the rear of the building on the 'mews' level. Entrances to the commercial and residential components will be separated</p> <p>A professional crime assessment has been provided to demonstrate the proposals compliance with the requirements within the RFDC.</p>

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

Clause 92(1)(a)(ii) Government Coastal Policy

The site is not subject to the provisions of the Coastal policy.

Clause 92(1)(b) Applications for demolition

The proposal was accompanied by a demolition report. The detailed site investigation proposed by ADG would adequately inform a future demolition plan. Condition of consent will reflect this requirement.

Clause 93 Fire Safety Considerations

Appropriate conditions have been applied with regard to fire safety.

Clause 94 Buildings to be upgraded

Appropriate conditions have been applied with regard to the proposed alterations and renovations of the commercial premises.

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

Not applicable to the subject site

Tweed Shire Coastline Management Plan 2005

Not applicable to the subject site

Tweed Coast Estuaries Management Plan 2004

Not applicable to the subject site

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

Not applicable to the subject site

- (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



Given the size and scale of the site, a site analysis was undertaken from various points around the Murwillumbah CBD.

The Photos below indicate that any visual impact will be extremely localised given the topography of the land and the surrounding urban landscape.



Figure A- This photo was taken looking west along Murwillumbah Street. The residential units will primarily be screened from view by the existing urban landscape along Murwillumbah Street.



Figure B1, B2 – These photos are a before and after image of the development site looking north along Police Lane. This is the most significant view corridor impacted by the development. The photomontage indicates that the buildings will sit below the existing ridgeline, softening the scale of the development on this view corridor.



Figure C- This view is taken from the bridge over the Tweed River with the subject site located between the trees. The development will not have any significant impact on this view given the screening provided by existing vegetation, topography and urban form.



Figure D- This photo is taken looking over the site to the west. The development will have a significant impact upon the view corridor in this locality. However, the buildings are separated in to 3 big houses and stepped down the hill to ameliorate against these impacts.

The photo imagery supplied by the applicant demonstrates that the evolution of the proposal has now provided a development that will sit below the ridgeline and will no longer dominate the streetscape when viewed from Police Lane (Figure B). The development is recognised as significant in terms of bulk and scale and will have an impact upon the locality. This impact is however partially due to the site being vacant for an extended period and the consolidation of a number of lots to accommodate the proposal. This consolidation does have advantages in regards to street access for traffic and the treatment of the street frontage, particularly given the site has been vacant.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The site is surrounded by a mix of low and medium density residential development to the east, west and north. The Murwillumbah CBD is located to the south of the subject site with the primary frontage Church Lane being located at the rear of Wharf Street.

The locality is zoned R3 Medium Density Residential under the provisions of the TLEP 2014. It is considered the immediate locality is in a transition period with future development of a medium density residential character feasible due to the age of dwellings surrounding.

It is recognised that the development will have a significant impact on the existing residential precinct. However, the proposal is considered consistent with the medium to long term strategic principles of Murwillumbah that are reflected in the various planning documents applicable to the site.

The redevelopment of such a large site will have significant implications on the streetscape, when compared with the redevelopment of a smaller site area. The redevelopment of this larger site, while significantly changing the current streetscape has allowed significant areas of carparking to be provided onsite and vehicular access to be limited to a single driveway. The consolidated redevelopment will also provide a contiguous street frontage for a distance of 60m, which is also considered a positive contribution to Church Lane.

Considerable negotiation has occurred between the applicant and Council to reach a development considered acceptable in terms of bulk and scale. The building will be a dominant urban structure on the streetscape until the area undergoes further transition from primarily low to medium density development.

Flora and Fauna

The site has been significantly modified as a result of historic development onsite that has since been demolished, while leaving some benching with concrete pads. Vegetation onsite is not considered of any value for retention. The proposed landscaping for the new development will provide a significantly improved site in regards to landscaping to soften the structure elements proposed.

Deep soil zones will be featured on the boundaries and will contain large native trees. The development will improve the vegetative integrity of the site.

Topography

The sites topography has provided opportunity and challenges for the applicant during the design and assessment process. The steepness of the site has provided challenges in gaining access to the rear of the site and providing levels satisfactory for the design of a residential development that is compatible with the surrounding streetscape. Existing benching onsite added to these challenges however it is considered that the proposal generally integrates with the locality in regards to topography, despite its bulk and scale.

Site Orientation

The site has frontage to Church Lane, resulting in a south facing orientation. However, the residential units have been provided with balconies facing Church Street rather than Church Lane to provide northerly aspects for the purposes of accessing natural sunlight and air to all units.

However, due to the elevated nature of the site and Units, the residential units will enjoy excellent views to the south over Murwillumbah and beyond to Mount Warning. The orientation of the site is therefore considered to be a significant advantage for resident's onsite, providing both views and a northerly aspect.

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

The application was notified on two occasions in accordance with the provisions of this policy. The first period was from the 4 March 2015 until 18th March 2015. This notification resulted in the receipt of 12 submissions.

Due to significant amendments to the proposed development, the application was renotified between the 8 July 2015 and 22 July 2015. During this second notification period, eight submissions were received. All the submissions raised objection to the subject proposal. It should be noted that the application has been amended again since this second notification period in response to concerns raised by Council and submissions received.

It was determined that a third notification period was not necessary as the amendment undertaken that form the development presented to Council have resulted in a proposal that is smaller in scale, site coverage and floor space and lower in overall height. These amendments are considered to partially satisfy concerns raised by the submissions during the two notification periods.

The reasons for objection have been addressed in a previous section of this report. The objections have been primarily addressed by the amendments undertaken by the proponent and conditions of consent will also add assurances to the submitters that the amenity of the locality will be protected.

(e) Public interest

The proposed development represents reasonable and well considered development which will provide a much need housing injection in to Murwillumbah.

The evolution of the project from that originally proposed is considered a positive outcome for adjoining residents and the town of Murwillumbah, emanating in a development that is will be a positive contribution to the urban landscape while not resulting in an unacceptable adverse amenity for adjoining properties.

The proposed development generally complies with all relevant matters for Council's consideration, being considered suitable for the subject site and without significant environmental impacts.

The proposed development is therefore considered to be in the public interest.

OPTIONS:

1. Approve the application with conditions of approval in accordance with the recommendation of approval; or
2. Refuse the application.

Council officers recommend Option 1.

CONCLUSION:

The proposed development has been the subject of detailed assessment with regard to Council's policies and those prescribed by the State Government, particularly SEPP 65-Design Quality of Residential Apartment Development. Council has assumed concurrence to vary the maximum height limit as prescribed by the TLEP 2014 by virtue of Clause 4.6 of this Plan.

Given the proposal is compliant with the provisions of SEPP 65 which overrides the TLEP 2014, and the development has demonstrated that the height variation will not result in unacceptable adverse amenity issues, the variation is considered justified. It is concluded that the proposal, following a number of significant amendments during the assessment process, represents a reasonable development which will have a positive impact to the economy and housing stock within the Murwillumbah locality. Negligible environmental impacts are envisaged as a result of approval of this application.

The development is considered to be suitable for the subject site and will not reduce the amenity of the surrounding residents or the subject locality.

Approval in accordance with the recommended conditions is therefore recommended.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

The applicant has a right of appeal in the Land and Environment Court in respect of any determination made by Council.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

2 [PR-PC] Development Application DA05/0004.04 for an Amendment to Development Consent DA05/0004 for Filling of Land at Lots 11-14 DP 87175 and Lots 2-9 DP 781714 Turnock Street, Kingscliff

SUBMITTED BY: Development Assessment and Compliance

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:

Council is in receipt of a S96(AA) Application to amend the previously issued Court Approval in relation to DA05/0004 that approved the filling of land at Turnock Street, Kingscliff (Gales Holdings Land).

The original application incorporated filled areas to the north and south of Turnock Street (totalling 360,000m³ now 580,000m³ as a result of DA05/0004.03), four areas of retention and conservation of unfilled areas for the protection of the Mitchell Rainforest Snail, the Wallum Froglet and a Littoral Rainforest Area a haul road extending to the west and connecting with Tweed Coast Road, a conveyor over Tweed Coast Road, drainage works, and water quality treatment works.

The current S96AA modification specifically seeks to remove the requirement for the Wallum Froglet Covenant Area south of Turnock Street as the applicant has stated that the area no longer accommodates the Wallum Froglet due to changed site conditions. The S96 specifically seeks to remove Conditions 1.6 and 1.8 which relate to this Covenant Area and Wallum Froglet Management.

The application was publically exhibited and accordingly Council received 7 objections (two from the same person).

In October 2015 Council Officer's wrote to the applicant expressing concern with the proposed modification. The overarching purpose of the original conditions relating to the Wallum Froglet and its habitat was to provide the best opportunity for the local population of the species to persist in the long term.

Council's approval of the previous S96 Modification (DA05/004.03) has already allowed the removal and eventual filling of the Wallum Froglet covenant area from north of Turnock Street, and replacing it with the Wallum Froglet Habitat Area on Lots 26D DP10715 to the west of the roundabout. Whilst potentially a more practical long term solution, this required a modification to the drainage systems and the establishment of suitable vegetation, and provides no guarantee that a viable population will be established on that site. This approach is largely experimental and iterative, and as such, is inherently risky.

Council Officers were concerned that if the southern covenant area were also removed the risk of local population extinction would be further increased. Although the southern site may not currently support a viable population of Wallum Froglet in isolation, it is known that small numbers of Wallum Froglet continue to utilise the site (and have done so for over 10 years) despite any changes to hydrology and lack of active management.

In light of the broader objectives currently being considered by Council in preparing for the Kingscliff Locality Plan Council Officers met with the applicant and discussed broader options for all of West Kingscliff.

In the meeting both Council and Gales expressed a desire for environmental matters to be considered holistically and it was agreed that the Kingscliff Locality Plan and the Master Plan process (being undertaken by Gales in association with Intrapac) offers the best opportunity to achieve the most appropriate environmental outcomes. This planning work is well underway and it is likely that a Locality Plan will be resolved by mid-2016, with environmental matters potentially resolved prior to this date.

The subject application pre-empts these outcomes and it was considered that resolving the most appropriate use of the subject land should not be determined now but instead through the above described planning processes.

To allow this to happen, Gales have stated that they are would be prepared to withdraw the Section 96 application if Council resolve to not pursue any actions against Gales for non-compliance with the subject conditions (conditions 1.6 and 1.8 of DA05/0004.03) until such time as the Kingscliff Locality Plan has been finalised.

This approach is supported and therefore the current application should be withdrawn (as requested) and Council not enforce Conditions 1.6 and 1.8 of DA05/0004.03 until the Kingscliff Locality Plan Process is complete so that the Gales Holding land that forms part of this DA can be considered more holistically

RECOMMENDATION:

That in regards to Development Application DA05/0004.04 for an amendment to Development Consent DA05/0004 for filling of land at Part Lot 3 DP 828298 Cudgen Road, Cudgen; Lot 26C and 26D DP 10715 Quigan Street, Kingscliff; Lots 11-14 DP 87175 and Lots 2-9 DP 781714 Turnock Street, Kingscliff Council support the applicants withdrawal of the S96 Application as per the applicants letter of request dated 16 November 2015.

AND

That Council not enforce Conditions 1.6 and 1.8 of DA05/0004.03 (as duplicated below) until the Kingscliff Locality Plan Process is complete so that the Gales Holding Land which forms part of this DA can be considered more holistically:

- 1.6 Within 2 years of the date of commencement of DA05/0004 a restriction on user burdening those parts of lot 11 and Lot 12 in DP871753 that are retained for the benefit of the Wallum Froglet (land to the south of Turnock Street) shall be registered in favour of Tweed Shire Council. The instrument shall be in or to the effect of the second Restrictive Covenant annexed to these conditions and will affect the area of land referred to in the annexed second Restrictive Covenant.***

- 1.8 Within 2 years of the date of commencement of DA05/0004 the applicant shall submit to the Council a management plan for the Wallum Froglet Habitat area on Lots 11 and 12 in DP 871753 area which is the subject of the second restrictive covenants. The management plan shall contain provisions with respect to:**
- a. habitat description: baseline survey of current condition and extent of habitat;**
 - b. Wallum Froglet Survey: baseline survey of Froglet population;**
 - c. review and assessment of threatening processes (including weeds, predators, stormwater, physicochemical and hydrological conditions).**
 - d. initial habitat protection and restoration works (e.g., if considered appropriate by the expert preparing the management plan, weeding, drainage or fencing);**
 - e. monitoring: habitat monitoring by photos and annual survey of fixed grid sample points (annual for five years), monitoring by day and night survey of fixed sample points (annual for five years) under suitable weather conditions and during breeding periods. Appropriate methodology, weather conditions and season for monitoring will be described in the management plan, and**
 - f. reporting: preparation by an appropriately qualified, independent expert of annual monitoring report and recommendations for management action which shall be submitted to Council. Should management actions be recommended in the report the Applicant will take reasonable steps to address the recommended management actions.**

The management plan, with the goal of maintaining or improving existing Wallum Froglet habitat, shall be approved by Council within 2 years of commencement of DA05/0004. Once approved the management plan shall be complied with at all times. After approval, the management plan may be varied with the consent of Council.

[GENNS01]

REPORT:

Applicant: Gales Holdings Pty Ltd
Owner: Gales Holdings Pty Ltd
Location: Part Lot 3 DP 828298 Cudgen Road and Tweed Coast Road, Cudgen; Lot 26C & 26D DP 10715; Quigan Street, Kingscliff; Lots 11-14 DP 871753 and Lots 2-9 DP 781714 Turnock Street, Kingscliff
Zoning: R1 - General Residential, 7(l) Environmental Protection (Habitat), 5(a) Drainage Reserve, Deferred Area, RU1 - Primary Production
Cost: Not Applicable for S96

Background & Proposed S96AA Details:

The subject application and the subject site generally have extensive development histories. Relevantly the NSW Land & Environment Court approved DA05/0004 on 28 August 2008.

The approved application incorporated filled areas to the north and south of Turnock Street (totalling 360,000m³), a Wallum Froglet Precinct north of Turnock Street (approximately 1ha of core habitat and an extra 1.4ha in ancillary drainage works) a haul road extending to the west and connecting with Tweed Coast Road, drainage works, and water quality treatment works.

The latest Determination Notice and the Judgement form **attachments** to this report.

The Court approved the proposal subject to three detailed deferred commencement conditions which related to:

- A. A Wallum Froglet Management Plan and 12 months of frog monitoring;
- B. A Revised haulage route to minimise tree loss;
- C. The re-assessment, monitoring and design of the drainage system and water treatment train so that it meets the agreed water quality and hydro cycle features needed to maintain Wallum Froglet Habitat in the Wallum Froglet Precinct area

These conditions were originally to be satisfied within 2 years of the original consent (28 August 2010).

On 20 May 2010 Council approved DA05/0004.01 to extend the 2 year time frame to 5 years for Points B & C and 4 years for Point A (28 August 2013 and 28 August 2012).

On 2 August 2012 Council approved DA05/0004.02 to extend the 4 year time frame for Point A to five years. This amendment had the effect of extending all three deferred matters to be satisfied within 5 years of the original determination date (28 August 2013).

On 20 June 2013 Council Approved DA05/0004.03 which sought to remove the three deferred commencement conditions (and replace their intent within the body of the consent), relocate the approved Wallum Froglet Area from the north of Turnock Street to West of Elrond Drive Roundabout, increase fill, and change stormwater drainage patterns

On 5 August 2013 the applicant undertook lawful physical commencement to ensure DA05/0004 remains valid into perpetuity.

The current S96 Modification proposes that Court-approved conditions 1.6 and 1.8 of DA05/0004, relating to parts of Lots 11 and 12, DP 871753, south of Turnock Street, be deleted. The conditions are as follows:

- 1.6 *Within 2 years of the date of commencement of DA05/0004 a restriction on user burdening those parts of lot 11 and Lot 12 in DP871753 that are retained for the*

benefit of the Wallum Froglet (land to the south of Turnock Street) shall be registered in favour of Tweed Shire Council. The instrument shall be in or to the effect of the second Restrictive Covenant annexed to these conditions and will affect the area of land referred to in the annexed second Restrictive Covenant.

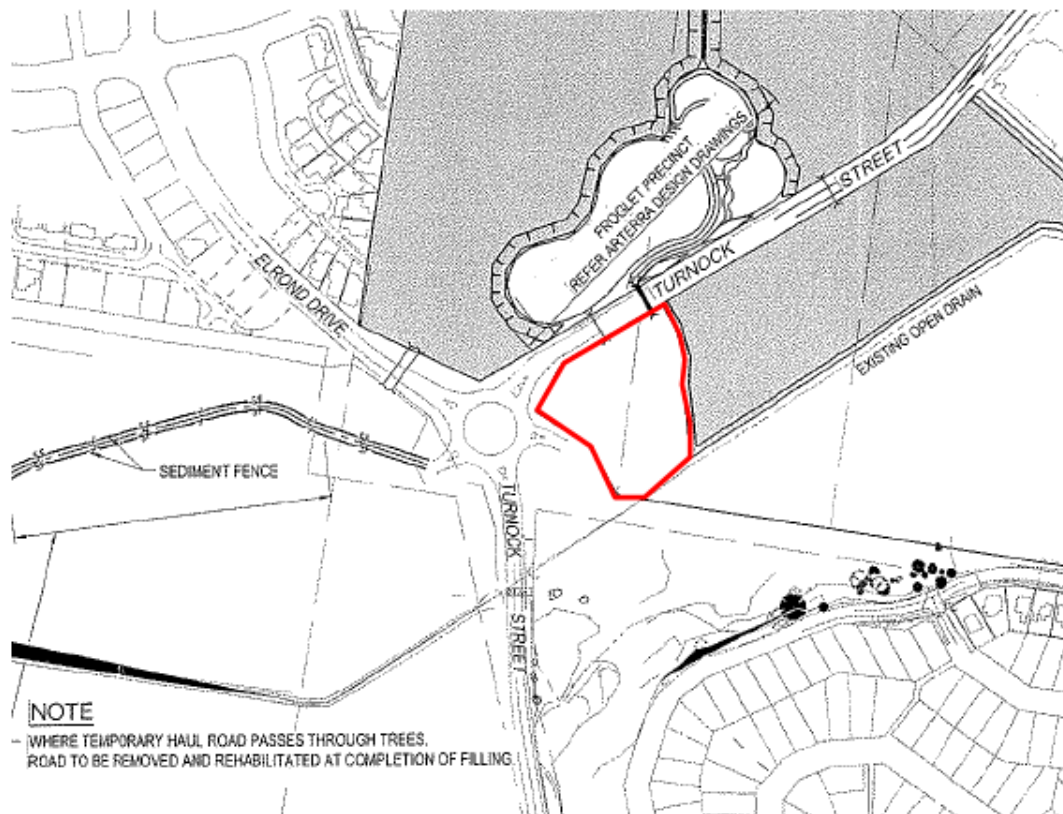
[GENNS01]

- 1.8 *Within 2 years of the date of commencement of DA05/0004 the applicant shall submit to the Council a management plan for the Wallum Froglet Habitat area on Lots 11 and 12 in DP 871753 area which is the subject of the second restrictive covenants. The management plan shall contain provisions with respect to:*
- a. *habitat description: baseline survey of current condition and extent of habitat;*
 - b. *Wallum Froglet Survey: baseline survey of Froglet population;*
 - c. *review and assessment of threatening processes (including weeds, predators, stormwater, physicochemical and hydrological conditions).*
 - d. *initial habitat protection and restoration works (e.g., if considered appropriate by the expert preparing the management plan, weeding, drainage or fencing);*
 - e. *monitoring: habitat monitoring by photos and annual survey of fixed grid sample points (annual for five years), monitoring by day and night survey of fixed sample points (annual for five years) under suitable weather conditions and during breeding periods. Appropriate methodology, weather conditions and season for monitoring will be described in the management plan, and*
 - f. *reporting: preparation by an appropriately qualified, independent expert of annual monitoring report and recommendations for management action which shall be submitted to Council. Should management actions be recommended in the report the Applicant will take reasonable steps to address the recommended management actions.*

The management plan, with the goal of maintaining or improving existing Wallum Froglet habitat, shall be approved by Council within 2 years of commencement of DA05/0004. Once approved the management plan shall be complied with at all times. After approval, the management plan may be varied with the consent of Council.

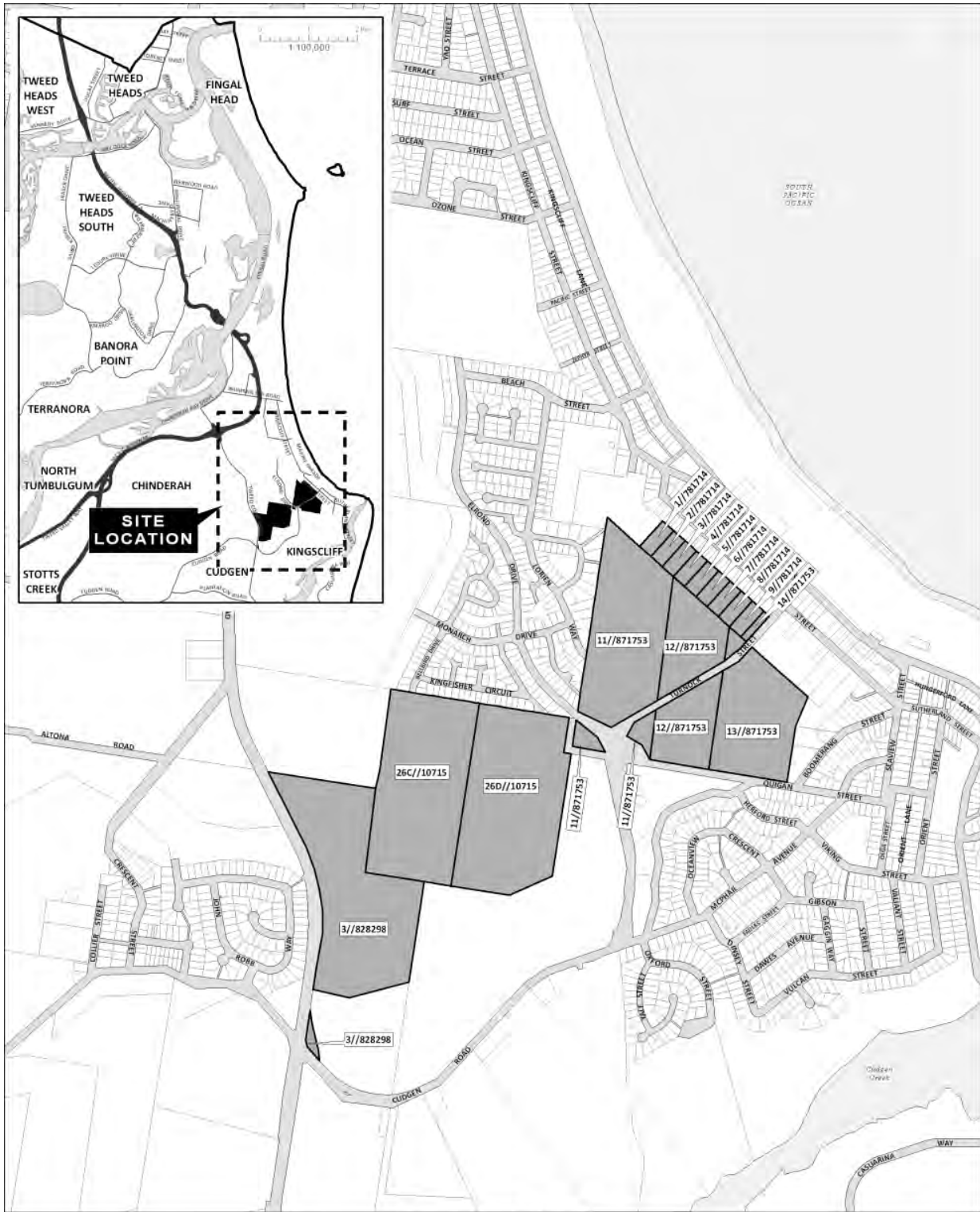
[GENNS01]

The land subject of the above conditions and Restrictive Covenant is shown in Figure 1.



The applicant justifies the modification request by suggesting that the covenant will provide little or no benefit to the Wallum Froglet. The request is supported by a report detailing the results of a recent Wallum Froglet survey which recorded low numbers of calling individuals at the site. Additionally, the applicant argues that it is unlikely that breeding is taking place on the site and that vegetation is degraded and largely unsuitable.

SITE DIAGRAM:



Locality Plan
DA05/0004.03

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AERIAL PHOTOGRAPH 2012:



Aerial Photo
DA05/0004.03

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

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

<p>Cadastral 06/06/2013 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 100 200 300 400 m 1:13,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: Universal Transverse Mercator Horizontal Datum: Geocentric Datum of Australia 1984 Map Grid of Australia, Zone 56</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484</p> <p>T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p> 
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CONSIDERATIONS UNDER SECTION 79C AND 96AA OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

S96(AA) of the Act specifies that a Council can modify a Court Approved development consent only if it is satisfied that the proposed modified development is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken and considered in the assessment of the application.

The Act specifies that in determining an application for modification the consent authority must take into consideration such of the matters referred to in Section 79C(1) as are of relevance to the application.

Given Council is currently preparing for the Kingscliff Locality Plan there is a desire for environmental matters to be considered holistically and it was agreed that the Kingscliff Locality Plan and the Master Plan process (being undertaken by Gales in association with Intrapac) offers the best opportunity to achieve the most appropriate environmental outcomes. This planning work is well underway and it is likely that a Locality Plan will be resolved by mid-2016, with environmental matters potentially resolved prior to this date.

The subject application pre-empts these outcomes and it was considered that resolving the most appropriate use of the subject land should not be determined now but instead through the above described planning processes.

To allow this to happen, Gales have stated that they are would be prepared to **withdraw** the Section 96 application **if** Council resolve to not pursue any actions against Gales for non-compliance with the subject conditions (conditions 1.6 and 1.8 of DA05/0004.03) until such time as the Kingscliff Locality Plan has been finalised.

Council staff are comfortable with this approach and agree that the current application should be withdrawn and Council not enforce Conditions 1.6 and 1.8 of DA05/0004.03 until the Kingscliff Locality Plan Process is complete so that the Gales Holding Land as part of this DA can be considered more holistically:

PUBLIC INTEREST

The application was publically exhibited and accordingly Council received 7 objections (two from the same person).

As the application is proposed to be withdrawn at this time no further assessment of these submissions has been undertaken.

The objectors will be notified of the outcome of this matter.

OPTIONS:

1. That in regards to Development Application DA05/0004.04 for an amendment to Development Consent DA05/0004 for filling of land at Part Lot 3 DP 828298 Cudgen Road, Cudgen; Lot 26C and 26D DP 10715 Quigan Street, Kingscliff; Lots 11-14 DP 87175 and Lots 2-9 DP 781714 Turnock Street, Kingscliff Council support the applicants **withdrawal** of the S96 Application as per the applicants letter of request dated 16 November 2015.

AND

That Council not enforce Conditions 1.6 and 1.8 of DA05/0004.03 (as duplicated below) until the Kingscliff Locality Plan Process is complete so that the Gales Holding Land which forms part of this DA can be considered more holistically:

2. Refuse the S96 Modification.
3. Defer the determination of this S96 pending a full merit assessment report.

Council Officer's recommend Option 1.

CONCLUSION:

The subject application pre-empts the Strategic Planning exercise currently being undertaken within the Kingscliff Locality Plan. Therefore the most appropriate use of the subject land should not be determined now but instead through the above described planning process.

To allow this to happen, Gales have stated that they are would be prepared to withdraw the Section 96 application if Council resolve to not pursue any actions against Gales for non-compliance with the subject conditions (conditions 1.6 and 1.8 of DA05/0004.03) until such time as the Kingscliff Locality Plan has been finalised.

This approach is supported.

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:

Attachment 1. DA05/0004.03 - Latest Determination Notice (ECM 3868677)

Attachment 2. DA05/0004 - Original Court Judgement (ECM 3081447)

- 3 [PR-PC] Development Application DA12/0170.12 for an Amendment to Development Consent DA12/0170 for Alterations and Additions to Motel (Staged) at Lot 100 DP 1208306 No. 19-25 Cypress Crescent, Lot 1 Sec 4 DP 29748 No. 26 Tweed Coast Road, Lot 2 Sec 4 DP 2 9748; No. 28 Tweed Coast Road Cabarita Beach

SUBMITTED BY: Development Assessment and Compliance

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:

Council is in receipt of a Section 96 (S96) which seeks to modify Conditions 84A and 113B of the development consent which refer to noise management and operational hours respectively of the subject site previously known as The Hideaway Motel in Cabarita. The development is now known and marketed as Halcyon House.

The modification seeks to amend Condition 84A to include a reference to an additional Noise Management Plan review (dated 11 August 2015) which supports a concurrent proposed operational hour modification to Condition 113 which would result in trading of the enclosed dining/lounge and outdoor bar areas from 7am to midnight, 7 days per week (currently 7am to 10pm Sunday to Wednesday and 7am to midnight Thursday Friday, Saturday and gazetted NSW Public Holidays and any Sunday immediately before a gazetted NSW Public Holiday that occurs on a Monday). Outdoor facilities, including the pool and BBQ would remain as is, being 7am to 10pm, 7 days per week.

The Noise Management Plan was produced after 2-3 months of operation and accordingly it is recommended that the proposed change in hours of operation is only supported on a trial basis for 6 months to gauge the developments impact over a busy summer period.

The applicant would be required to apply for a Section 96 Application before the 6 month trial period lapses to remove the trial period criteria if the extended hours are sought on a permanent basis. If a Section 96 Application is not received, the hours of operation would revert back to the current hours. The applicant has agreed to the trial basis and the recommendation now reflects the proposed revisions to the consent.

The application is being reported to Council as the application was called up by Councillors Bagnall and Milne.

RECOMMENDATION:

That Development Application DA12/0170.12 for an amendment to Development Consent DA12/0170 for alterations and additions to motel (staged) at Lot 100 DP 1208306 No. 19-25 Cypress Crescent, Lot 1 Sec 4 DP 29748; No. 26 Tweed Coast Road, Lot 2 Sec 4 DP 29748; No. 28 Tweed Coast Road Cabarita Beach be approved with the following amendments being made to the existing consent:

1. Delete Condition 84A and add a new Condition 84B as follows:

84B. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact report prepared by CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012) and recommendations made in the Noise Management Plan Review prepared by MWA Environmental (ref: L37014/PAK/13-048 dated 1 December 2014) and MWA Environmental (ref: L26315/PAK/13-048 dated 11 August 2015) and as it relates to operating hours (approved only on a 6 month trial basis as per Condition 113C), except where modified by this consent.

2. Delete Condition 113B and add a new Condition 113C as follows:

113C. Hours of operation of the business are restricted to the following for a trial period of 6 months from the date of the endorsed modified consent (DA12/0170.12):

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar – 7am to 12 midnight Monday to Sunday.
- Outdoor facilities, including pool and BBQ - 7am to 10pm Monday to Sunday.

A Section 96 Application is to be received before the 6 month trial period lapses to remove the trial period criteria if the extended hours are sought on a permanent basis. If the hours of operation are not modified by way of S96 Application then the hours of operation revert back to the following:

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar – 7am to 10pm Sunday to Wednesday and 7am to 12 midnight Thursday, Friday, Saturday, and gazetted NSW Public Holidays, and any Sunday immediately before gazetted NSW Public Holidays that occur on the Monday.
- Outdoor facilities, including pool and BBQ - 7am to 10pm Monday to Sunday.

REPORT:

Applicant: Western Trust Partnership
Owner: Flaskas Bickle Pty Ltd & Wadley Bickle Pty Ltd
Location: Lot 100 DP 1208306 No. 19-25 Cypress Crescent, Lot 1 Sec 4 DP 29748
No. 26 Tweed Coast Road, Lot 2 Sec 4 DP 29748; No. 28 Tweed Coast
Road Cabarita Beach
Zoning: R2 - Low Density Residential

Background:

Council is in receipt of a Section 96 (S96) which seeks to modify Conditions 84A and 113B of the development consent which refer to noise management and operational hours respectively of the subject site previously known as The Hideaway Motel in Cabarita. The development is now known and marketed as Halcyon House and is gaining prominence as an upmarket holiday destination

DA12/0170 was approved at the Council Meeting of 14 February 2013 for 'Alterations and Additions to Motel'. This application proposed refurbishment and expansion of the existing motel in three stages, resulting in a three storey building with new amenities, construction of outdoor food and beverage area, new caretakers residence, new swimming pool, new restaurant dining space, kitchen and cool room, and addition of new motel rooms.

Since the original approval of the DA, five S96 applications to modify the consent have been received and determined as per the following brief summaries:

- DA12/0170.01 - this S96 modification sought to change the timing of developer contributions to allow the payment prior to Occupation Certificate rather than prior to Construction Certificate, in line with Council's amended policy (approved by delegated authority on 12/09/2013);
- DA12/0170.04 - sought a number of internal and external modifications to the building and also applied increased contribution charges on the basis of the intensification of use of the building (determined by Council and approved on 24/03/2014);
- DA12/0170.07 - sought modification of clerical error in Condition 93A to allow contributions to be paid prior to the issue of an occupation certificate in line with Council's policy (approved by delegated authority on 29/05/2014).
- DA12/0170.10 – sought modification due to further design development made during construction and amendment of the stormwater drainage design. Amendments related to internal layout and external appearance with the setback of the laundry staff change room, amenities area etc. being increased to accommodate a 3.0m wide easement over the stormwater infrastructure.
- DA12/0170.11 – changes to configuration of structures and staging.

The final Occupation Certificate (associated with DA12/0170 and CC15/0289) was issued on 2 July 2015. The subject modification application was lodged 7 weeks after that date on 20 August 2015. As of 19 November 2015, a period of 20 weeks has elapsed since the issue of the final Occupation Certificate.

PROPOSAL

Changes to the proposal are as follows:

- Modify Condition 84A to make reference to a Noise Assessment provided by the applicant

Condition 84A was last modified as part of DA12/0170.11 to include reference to the Noise Management Plan review dated 1 December 2014 and currently reads as follows:

84A. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact report prepared by CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012) and recommendations made in the Noise Management Plan Review prepared by MWA Environmental (ref: L37014/PAK/13-048 dated 1 December 2014) except where modified by this consent.

The applicant proposes to amend Condition 84A as follows to include a second Noise Management Plan review dated 11 August 2015 which supports a concurrent proposed operational hour modification to Condition 113:

The development shall be carried out in accordance with the provisions of the Environmental Noise Impact report prepared by CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012) and recommendations made in the Noise Management Plan Review prepared by MWA Environmental (ref: L37014/PAK/13-048 dated 1 December 2014) and MWA Environmental (ref: L26315/PAK/13-048 dated 11 August 2015 and as it relates to operating hours) except where modified by this consent.

- Modification to Condition 113B to reflect the suggested operational hours contained in the Noise Management Plan review dated 11 August 2015.

Condition 113B restricts operational hours of the business and was last modified by way of DA12/0170.11 to remove the 'trial period' for the use of outdoor facilities within the second dot-point of Condition 113A:

113B. Hours of operation of the business are restricted to the following:

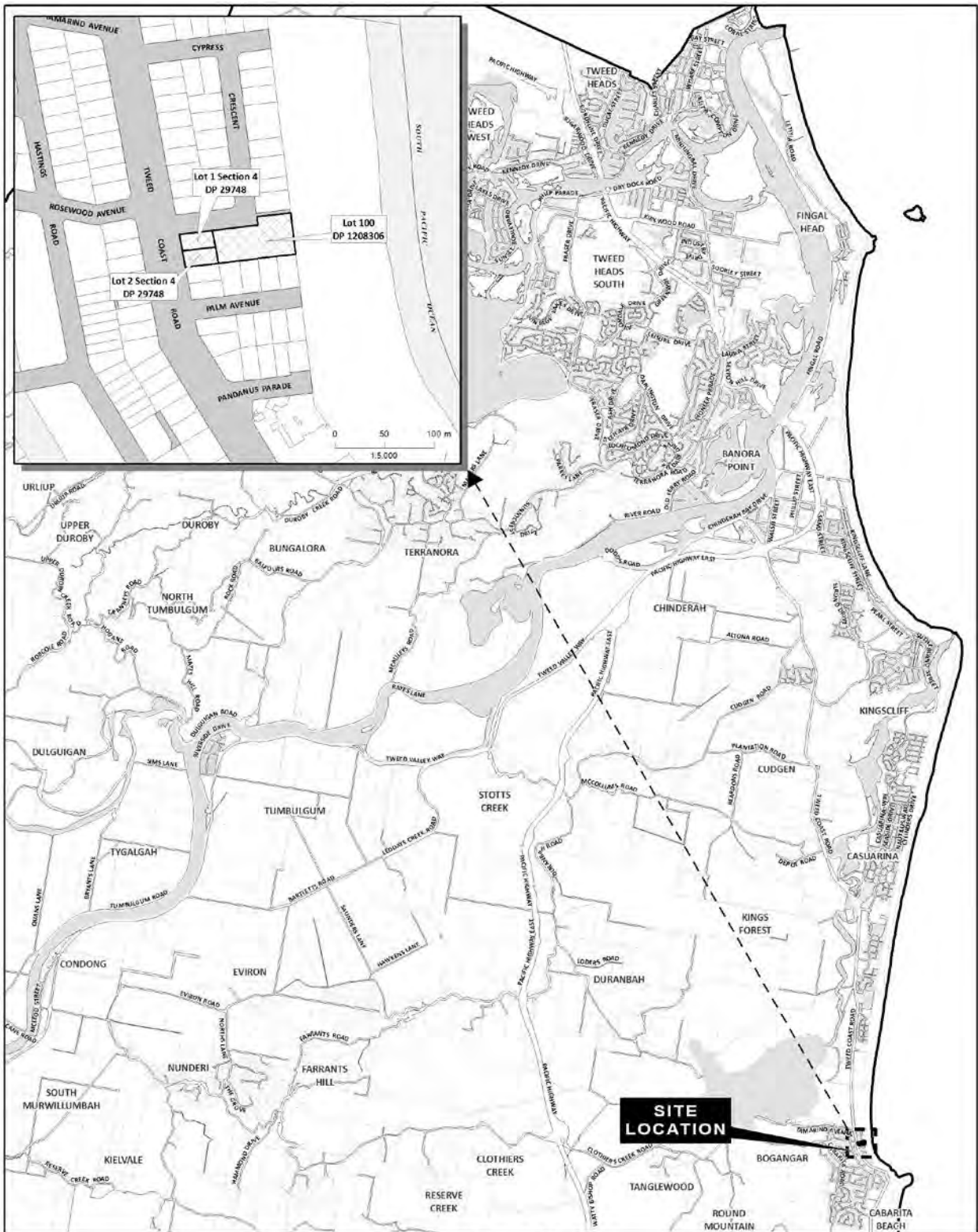
- *Enclosed Dining/Lounge/Bar areas and Outdoor Bar – 7am to 10pm Sunday to Wednesday and 7am to 12 midnight Thursday, Friday, Saturday, and gazetted NSW Public Holidays, and any Sunday immediately before gazetted NSW Public Holidays that occur on the Monday.*
- *Outdoor facilities, including pool and BBQ - 7am to 10pm Monday to Sunday.*

The proposed modification essentially increases hours of operation in the first dot-point only to 7am to midnight, seven days a week, as follows:

Hours of operation of the business are restricted to the following:

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar – 7am to ~~10 pm Sunday to Wednesday and 7am to 12 midnight Thursday, Friday, Saturday and gazetted NSW Public Holidays, and any Sunday immediately before gazetted NSW Public Holidays that occur on the Monday~~ 12 midnight Monday to Sunday;
- Outdoor facilities, including pool and BBQ – 7am to 10pm Monday to Sunday.

SITE DIAGRAM:



Locality Plan

Lot 100 DP 1208306; No.19-25 Cypress Crescent, Cabarita Beach;
 Lot 1 Sec 4 DP 29748; No.26 Tweed Coast Road, Cabarita Beach;
 Lot 2 Sec 4 DP 29748; No.28 Tweed Coast Road, Cabarita Beach

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Cadastral 19/11/2015
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 Boundaries shown should be considered approximate only.

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 1:80 000 @ A4 Portrait
 NOT TO SCALE
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 GDA
 Map projection: Universal Transverse Mercator
 Horizontal datum: Geocentric Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

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 PO Box 816
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CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

S96 of the Act specifies that;

“(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.”*

Accordingly the following report addresses these heads of consideration.

To determine if the S96 Applications are of minimal environmental impact and substantially the same development a 79C (1) Assessment has been undertaken in the first instance:

79C (1) Assessment – Environmental Planning and Assessment Act 1979

The proposed modification seeks to modify conditions relating to noise management and operational hours.

The application was referred internally to Council's Environmental Health Unit for assessment.

Environmental Health Unit

Council's Environmental Health Unit has provided the following review history relating to DA12/0170 and subsequent modification applications:

- DA12/0170 – The original assessment considered all aspects of noise and restricted operating hours to what is currently approved.
- DA12/0170.04 – Proposed amendment related to building configuration and was supported by an amended noise impact assessment. Amendment to operating hour conditions was undertaken to include the enclosed dining area and the Food and Beverage Service Area.
- DA12/0170.11 – Proposed amendment to delete condition requiring a trial period of 12 months for the use of outdoor facilities including pool and BBQ from 7am to 10pm Monday to Sunday. No objections were raised by the assessing EHO and subsequently the trial condition was removed (by full Council – the trial period was not imposed by the Environmental Health Unit).

Current EHU Assessment:

The applicant has submitted a Noise Amenity Review prepared by MWA Environmental dated 11 August 2015. The report states that the change of operating hours will not affect the amenity of the area based on the following key points.

- Inspection undertaken on the 17 July 2015 for the purpose of observing and identifying noise generated by the restaurant operation;
- Operation between 8:30pm and 11:00pm identified a patronage of 25 people;
- Noise measurements were undertaken on the Southern Boundary at 9:20pm and 10:36pm;
- The noise measurement at 10:36pm included two car departing;
- Noise levels were below the adopted criterion of 45dB(A);
- There was no evidence of unruly behaviour.

The report provides the following recommendations:

In summary, the proposal for operating dining areas after 10pm Sunday to Wednesday will not generate any higher noise than will occur on a Thursday, Friday and Saturday or Public Holiday. The noise measurements undertaken on the night of inspection did not identify excessive noise resulted from carparking activities on the Halcyon House site at surrounding residential areas.

The facility has been operational for a period of 2-3 months. Council records do not indicate a history of noise concerns since the commencement of operation. However a number of objections have been raised to the proposed operating hours. The objections raised cover a range of issues and a summary of environmental health related objections is provided below.

Submission Summary	EHO Comment
1. General noise and disco with flashing lights.	Environmental Health Unit agrees that the proposal has the potential to increase noise impacts. Proposal is only supported on a trial basis to demonstrate operational performance over a larger extent of time including summer periods.
2. Noise – Parking and guest overflow onto street. Noise from bottle collections and disposal. Concern that greater noise will intensify over summer months.	Environmental Health Unit agrees that the proposal has the potential to increase noise impacts. Proposal is only supported on a trial basis to demonstrate operational performance over a larger extent of time
3. Continual noise from staff communication/rubbish disposal and transporting of goods. Restaurant is often open until 11pm.	Environmental Health Unit agrees that the proposal has the potential to increase noise impacts. Proposal is only supported on a trial basis to demonstrate operational performance over a larger extent of time
4. Amenity impacts of residents located with 5-10m from development. Restaurant has become a secondary use of to the restaurant and is not used solely by occupants of the premises. Intensification of use and associated noise impacts.	Condition 12 of consent appears to allow use of the restaurant by the public and is not limited to hotel guests only. Environmental Health Unit agrees that the proposal has the potential to increase any noise impacts. Proposal is only supported on a trial basis to demonstrate operational performance over a larger extent of time
5. Increase in operating hours will increase noise impacts already experienced. Limited information provided to support proposed increase in operating hours.	Environmental Health Unit agrees that the proposal has the potential to increase any noise impacts. Proposal is only supported on a trial basis to demonstrate operational performance over a larger extent of time

A review of the surrounding residents' submissions indicates noise impacts from "difficult to regulate activities" such as carpark noise, staff movements and waste management are areas of concern. It would also appear that there are matters of alleged non-compliance with the consent raised by the residents that also need to be further investigated.

It is therefore considered that the application for amendment to extend hours at this time can only be supported on a trial basis so it can be demonstrated that the operational activities of the premises can be appropriately managed to minimise impacts on occupants of surrounding residential premises.

Notification

The proposal was advertised for a 14 day period from 2 September to 16 September 2015. During the exhibition period, no submissions were received.

Council was contacted by an adjoining property owner on 22 September 2015 stating that they and none of their neighbours had received any written advice from Council or the applicant regarding the modification application but had read the advertisement in the Tweed Link.

None of the notification letters had been returned to Council during or after the exhibition period. To this date, there is no explanation for what had occurred.

As such, Council re-advertised the application for a further 14 day period from 30 September to 14 October 2015. A total of four submissions were received during the exhibition period.

Consolidated submissions were forwarded to the applicant on 21 October 2015 for review and comment.

The applicant provided a response to the submissions on 2 November 2015. A summary of this response is provided below:

Submission Summary	Applicant's Comment
1. Mechanical noise from roof	<i>The operators have recently installed an acoustic shell around the mechanical ventilation on the roof to eliminate noise travelling to neighbours when a southerly wind is blowing. They have been in contact with both neighbours since this was last installed to verify they are happy with the outcome. No response has been received so the applicant assumes the matter has been resolved.</i>
2. Bottle noise on the southern boundary from staff	<i>Staff do not empty bins on the southern boundary. Staff use very small bins at night and carry these bins to the front boundary the next day at 10am to empty. This has eliminated bottle noise on the southern boundary.</i>
3. Waste	<i>Waste is no longer being stored along the boundary. The original waste collection company could only collect rubbish every second day. The operators have now negotiated with a new rubbish collection company to collect rubbish every day. On one of the days that a photograph was taken (provided to Council in submissions), the rubbish had built up due to the bin collection company not turning up on a designated day. Excessive bins on the road will be resolved as a result of this initiative.</i>
4. General bottle noise and rubbish	<i>The operators have installed a water machine to supply their own filtered and sparkling water where the bottles will be reused. This will decrease the amount of bottle wastage by at least 50%. They have also installed an acoustic glass crushing machine in the bar that will eliminate all bottle noise. The machine crushes the glass bottles inside the bar area to tiny pieces. The</i>

Submission Summary	Applicant's Comment
	<i>remnants will make no further noise than the sound of gravel into the larger recycle bins. The owners are also currently installing a compost system that will convert each kilogram of food waste to approximately 300grams. This will reduce the amount of waste from the kitchen by approximately 70%.</i>
5. Light spillage from southern boundary to neighbours	<i>The proponents have had an electrician install lowered lighting on the southern boundary below the fence so that no light spillage goes to neighbours. The affected neighbours have commented that they are satisfied with the result.</i>
6. Existing fence on southern boundary to 3 Palm Avenue	<i>The existing fence was steel wire. The owners have, at their own cost, installed a new timber acoustic fence.</i>
7. Staff eating and smoking at the southern boundary	<i>Staff have been informed not to smoke on the southern boundary. Staff have meals inside the property. There is no revelling of staff on the boundary (as described in submissions). The picture (submitted in submissions) of 2 staff enjoying a meal does not reflect revelling and is no different to neighbours doing the same thing on the other side of the fence. There needs to be perspective and context to the comments pertaining to the photos provided in submissions.</i>
8. Extra laundry door on southern boundary	<i>It is incorrect that this room is being used for waste management, loading goods into the hotel and staff movements. The laundry is used solely by housekeeping during the hours of 8am and 5pm. The doorway was approved by the certifier.</i>
9. Disco with flashing lights	<i>The original application for this development some years ago was met with controversy from neighbours perpetuating the myth that the motel was going to become a nightclub and it is disappointing that even after being in operation for nearly 7 months that a neighbour is continuing the accusation of a disco/nightclub with flashing lights proposed for the site. At no time has this occurred, nor has it ever ben envisaged for the site. It seems that because a relative of the owners owns a nightclub that this gives reason for the accusation.</i>

Additional comments are made by the applicant as follows:

- *The facility reopened in May 2015 and since that times the owners/operators have consulted on an on-going basis with their neighbours and invited them to come and experience the restaurant, which they have done. Indeed, many of the neighbours have maintained extremely close relationships with the operation and management and have commended the operators on their professionalism and diligence in maintaining the amenity of adjoining properties.*
- *During this time (since opening), there has recently been only two (2) neighbours come and see the operators about concerns of theirs and to which the operators have responded. As with most businesses, there has been some operational teething issues that they continue to work on, resulting in the implementation of new practices to alleviate concerns raised.*
- *Having regard to the efforts of the operators to liaise with adjoining owners, the operators are dismayed and somewhat disappointed to have received objections from three (3) properties (a total of 4 objections being 3 owners and 1 renting one of those properties), particularly as the two (2) parties objecting remain engaged with operators on dialogue to improve operations. It is worth noting that the other two (2) neighbours on the southern boundary that are full time residents at their properties have not had any issues whatsoever, both of these properties are directly beside the two (2) neighbours which do not even reside full time at their properties and are directly positioned with the same aspect of our property.*
- *Submitters have verbally agreed that the extension of operating hours would not affect them however this is not reflected in their written submissions.*
- *The proposal seeks to increase trading hours from 10pm to midnight Sunday to Wednesday for the restaurant. These extended hours are aimed at ensuring the enjoyment of in-house guests finishing their dinner/having dessert etc. The operators often find there to be only 1 or 2 tables after this time however it is not acceptable for staff to offer guests in room dining only, particularly given the facility represents a five star operation and one that is attempting to showcase the Tweed to an international audience. Indeed the restaurant has been well received by the local community (including those who have gained employment in the facility) and the operators are very pleased that the community has embraced it.*

The applicant has also listed a number of benefits of the operation:

- *Increased tourism to the Tweed region. In this regard the operators are working closely with other tourism operators and local celebrities such as the Margaret Olley Centre, Tropical Fruit World, Joel Parkinson (surfer) and Belinda Jeffery (chef) to increase visitation to the area. Increasing occupancy and the dining experience at Halcyon House will inject further tourism dollars for all to benefit from in the region.*
- *Employment of local community members, particularly young local residents such as apprentice chefs, In this regard the restaurant has recently won the 2014 QLD young chef of the year award and the 2015 best regional restaurant award.*
- *Purchase of food and products from local producers*
- *Purchase of services from local suppliers.*

It is considered that the proposed modification is suitable only on a trial basis to enable the applicant to demonstrate suitable management practices to minimise noise to the residential area.

Minimal Environmental Impact

The proposed S96 modification relates to a modification of operational hours. It is considered that the proposal is suitable for a trial period only.

Based on the applicants noise management report the proposed increase to operating hours will be of only minor environmental impact and it is recommended that the proposed modification be conditionally approved on this basis.

Substantially the Same Development

Having regard for the relevant criteria, the applicant states that the proposed variations result in substantially the same development.

Council assessment concurs.

The proposed amendments retain consistency with previous Council assessment of the proposal against SEPP 1, SEPP 55, SEPP 64, SEPP 71, NCREP 1988, TLEP 2000 and Tweed DCP 2008.

The proposal was approved under the provisions of the TLEP 2000 and relied upon existing use rights for permissibility. The provisions and controls of the TLEP 2014 do not include any elements which would prevent the S96 modification from proceeding. The proposal is considered generally consistent with TLEP 2014.

OPTIONS:

1. Approve the S96 Application with a 6 month trial period by amending the consent as follows:

Delete Condition 84A and add a new Condition 84B as follows:

84B. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact report prepared by CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012) and recommendations made in the Noise Management Plan Review prepared by MWA Environmental (ref: L37014/PAK/13-048 dated 1 December 2014) and MWA Environmental (ref: L26315/PAK/13-048 dated 11 August 2015) and as it relates to operating hours (approved only on a 6 month trial basis as per Condition 113C), except where modified by this consent.

Delete Condition 113B and add a new Condition 113C as follows:

113C. Hours of operation of the business are restricted to the following for a trial period of 6 months from the date of the endorsed modified consent (DA12/0170.12):

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar – 7am to 12 midnight Monday to Sunday.

- Outdoor facilities, including pool and BBQ - 7am to 10pm Monday to Sunday.

A Section 96 Application is to be received before the 6 month trial period lapses to remove the trial period criteria if the extended hours are sought on a permanent basis. If the hours of operation are not modified by way of S96 Application then the hours of operation revert back to the following:

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar – 7am to 10pm Sunday to Wednesday and 7am to 12 midnight Thursday, Friday, Saturday, and gazetted NSW Public Holidays, and any Sunday immediately before gazetted NSW Public Holidays that occur on the Monday.
- Outdoor facilities, including pool and BBQ - 7am to 10pm Monday to Sunday.

2. Refuse the S96 Modification with reasons for refusal.

CONCLUSION:

It is considered that the proposed modification is suitable only on a trial basis to enable the applicant to demonstrate suitable management practices to minimise noise to the residential area.

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.

4 [PR-PC] Planning Proposal PP15/0004 - Water Extraction and Bottling Facilities in Certain Rural Zones

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: PP15/0004 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:

Planning Proposal PP15/0004 seeks to amend the Tweed Local Environmental Plan 2014 to permit water extraction and bottling facilities, with development consent, on land zoned RU1 Primary Production and RU2 Rural Landscape. This report outlines the background of the planning proposal and summarises the outcome of the public consultation undertaken following the Gateway determination.

Water extraction and bottling facilities are located in various rural areas in Tweed Shire. These uses were established prior to gazettal of Tweed Local Environmental Plan (LEP) 2014. Following an approach by an existing operator to modify their facility, it became apparent that water extraction and bottling facilities were no longer permissible in rural zones. This was as a consequence of land use definition changes contained in the standard state-wide LEP template, and consequently, the Tweed LEP 2014.

Water extraction and bottling facilities are considered to be a legitimate land use where it can be demonstrated that they are suitably located by way of the development application process. Consequently, it is recommended that Council should resolve to support the planning proposal, and it be referred to the Department of Planning and Environment for the Local Environmental Plan to be made.

Council, at its meeting of 6 August 2015, resolved to prepare a planning proposal in respect of this matter and submit it to the Department of Planning and Environment for a Gateway Determination.

The planning proposal was exhibited for 28 days and two (2) public submissions have been received. Responses have also been received from NSW Department of Primary Industries – Water and Rural Fire Services.

RECOMMENDATION:

That Planning Proposal PP15/0004 (version 3), being *Tweed Local Environmental Plan 2014 Amendment No. 16*, to enable 'water extraction and bottling facilities' in the RU1 Primary Production and RU2 Rural Landscape zones be forwarded to NSW Planning and Environment requesting the making of the Plan under s.59 of the *Environmental Planning and Assessment Act 1979*.

REPORT:

1. Background

1.1 Planning Proposal request

Mount Warning Springwater operate a water extraction and bottling facility at Kyogle Road, Kunghur. This facility was approved in 2006 (DA05/0995) when the controlling local planning instrument was the Tweed LEP 2000. Mount Warning Springwater are proposing to relocate the operation to land adjoining their existing facility.

During the preparation of the development application it became apparent that under the Tweed LEP 2014, water extraction and bottling facilities were no longer a permissible use in rural zones. Consequently, Mount Warning Springwater made a request to Council to prepare a planning proposal to amend the Tweed LEP 2014 to facilitate their proposal.

The specific request from Mount Warning Springwater was to amend the Tweed LEP to incorporate the proposed facility as an additional permitted use contained in Schedule 1 of the Tweed LEP 2014. Following this request, Council was approached by other land owners enquiring about water extraction and bottling facilities in rural areas of the Shire. As this is a shire-wide matter resulting from a legislation drafting change, rather than a planning consideration change, the planning proposal was examined as a shire-wide amendment to the Tweed LEP 2014, rather than a site-specific Schedule 1 matter.

Council, at its meeting of 6 August 2015, resolved to include this planning proposal as a new Local Environmental Plan on the Work Priorities Plan 2015-2016 and submit it to the Department of Planning and Environment for a Gateway Determination.

1.2 Sustainable use and management of groundwater in Australia

Groundwater is a public resource. In New South Wales, the entitlement (often called a licence) to access and use this resource is granted by the NSW Office of Water (part of the Department of Primary Industries). The licence generally specifies matters related with management of groundwater use such as volume of water permitted to be extracted, length of tenure and other conditions of use. One of the conditions is the permissibility of water extraction in a local environmental plan. Should this LEP amendment be finalised, development applications for water extraction facilities will be assessed by Council, whilst granting a licence will remain a matter of the Office of Water.

One of the statutory obligations of the Office of Water is ongoing monitoring of groundwater levels. This is carried out through drilling to investigate the states' groundwater resources. Currently, the Office of Water has more than 3000 monitoring bores across the State and uses computer-based groundwater modelling to simulate aquifer behaviour, estimate 'sustainable yield' and predict the effects of groundwater extraction. The models are available on the Office of Water website.

According to the *Groundwater in Australia* report (by National Centre for Groundwater Research and Training, 2014), management of groundwater is based on determination of a 'sustainable yield', which is defined in the *National Water Initiative* as *the level of water extraction from a particular system that, if exceeded, would compromise key environmental assets, or ecosystem functions and the productive base of the resource.*

Generally, methods of estimating a sustainable yield vary with the characteristics of each groundwater system. According to the classification provided under the National Groundwater Information System, rural parts of the Tweed are located within the Tweed River Alluvium groundwater management unit, and are generally characterised by high levels of groundwater development for irrigation, town supply and some industrial purposes (source: *Climate change impact on groundwater resources in Australia*, 2011).

While assessing impacts of groundwater use on the natural environment, consideration is also given to groundwater-dependant ecosystems, which require the input of groundwater to maintain their current composition and functioning. In 2012, The Office of Water assessed the risk to the ecological value and associated groundwater dependant ecosystem in the Tweed River Alluvium as low (on a low-moderate-high scale).

Overall, whilst in many inland parts of Australia major aquifers have been developed to the point where groundwater use is equivalent to the 'sustainable yield', available data appears to indicate that land subject to this planning proposal, being the rural areas of the Tweed Shire, may be a subject of sustainable development and use of groundwater resources, as long as that use continues to be monitored and licensed by the Office of Water.

1.3 Land use definitions

Prior to the gazettal of the Tweed LEP 2014 on 4 April 2014, the extraction of spring water and its associated bottling fell under the definition of a "rural industry" which was a use that was permitted with development consent under the Tweed LEP 2000 in the 1 (a) Rural and 1(b) Agricultural Protection zones. Tweed LEP 2014 contains an amended definition of 'rural industry' which is:

"rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:

- (a) agricultural produce industries,*
- (b) livestock processing industries,*
- (c) composting facilities and works (including the production of mushroom substrate),*
- (d) sawmill or log processing works,*
- (e) stock and sale yards,*
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise."*

Other definitions which are associated with agricultural, processing (light industrial) and extractive land uses include:

"agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

agriculture means any of the following:

- (a) aquaculture,
- (b) extensive agriculture,
- (c) intensive livestock agriculture,
- (d) intensive plant agriculture.

extensive agriculture means any of the following:

- (a) the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,
- (b) the grazing of livestock for commercial purposes,
- (c) bee keeping,
- (d) a dairy (pasture-based).

extractive industry means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.

extractive material means sand, soil, gravel, rock or similar substances that are not minerals within the meaning of the Mining Act 1992.

light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:

- (a) high technology industry,
- (b) home industry."

Council staff has determined that water extraction, processing and its associated bottling does not strictly fall within any of these definitions and therefore this land use has been treated as a "commercial premises". Consequently, the use of land zoned RU1 Primary Production and RU2 Rural Landscape under the Tweed LEP 2014 for this purpose is prohibited. This is considered to be an unintended consequence resulting from the change in definition of "rural industry" under the standard instrument.

2. Planning Proposal Provisions

Consultation with the NSW Department of Planning & Environment (DPE) indicated that water extraction and bottling facilities, whilst not defined directly as a standalone land use, should be considered as a type of *light industry* land use. Considering that *light industry* land use is prohibited in the rural zones, an amendment to Schedule 1 Additional Permitted Uses appears to be the preferred way of enabling this use on rural land with development consent and was exhibited this way. The proposed enabling clause has been drafted as follows:

Use of land in RU1 Primary Production and RU2 Rural Landscape zones for water extraction & bottling facilities

- (1) This clause applies to any land zoned RU1 Primary Production or RU2 Rural Landscape.
- (2) Development for the purposes of water extraction and bottling facilities is permitted with development consent.
- (3) For the purposes of this clause, water extraction and bottling facility is a light industry involving the extraction of groundwater and the handling, treating, production, processing, storage, packing and wholesale removal of groundwater for commercial purposes.

3. Public Exhibition

3.1 Timeframes and conditions imposed by the Gateway determination

On 9 September 2015, the proposal was referred to the Department of Planning and Environment (DPE) for a Gateway determination. The Gateway Determination was issued on 23 September 2015 subject to conditions, one of which required amendments to the planning proposal prior to community consultation. The amendments were required to clarify a number of matters relating to drafting of the proposal, which were to be approved by the Minister's delegate prior to exhibition.

Other conditions of the Gateway Determination required public exhibition for a minimum of 28 days and included requirements to consult with the NSW Rural Fire Service, and Department of Primary Industries - Water.

The planning proposal was amended in accordance with the Gateway Determination and approved by the Minister's delegate for community consultation on 1 October 2015.

In accordance with s.56 and s.57 of the Environmental Planning and Assessment Act 1979 (the EP&A Act), the DPE Gateway Determination, this planning proposal was publicly exhibited from Wednesday 7 October to Wednesday 4 November 2015 at the Murwillumbah Civic Centre, Tweed Heads Civic Centre and on Council's website.

3.2 Submissions received in response to the public exhibition

In accordance with the requirements of the Gateway Determination, the planning proposal was referred to:

- NSW Rural Fire Service, and
- Department of Primary Industries – Office of Water.

The Office of Water advised that following review of the planning proposal, they are satisfied that no submission is required. A submission received from NSW Rural Fire Service did not raise any objections to the proposal.

Two (2) public submissions were received which are evaluated as follows:

Summary of Issue	Planning Response
Submission 1	
<p>Issue 1: <u>Not enough information in the Planning Proposal.</u></p> <p>The planning Proposal does not make a convincing case to amend the LEP in the proposed manner. Further information should be made available to clarify how Council and NSW Government will manage the applications. It is in Tweed Shire interest to clearly state a set of principles governing the quantities of water taken from commercial extraction and bottling. Small communities expect that the outcomes of approval process are transparent and deliver sustainability. Baseline data must be developed and made publicly available, otherwise Council will need to provide strategies and principles enabling determination of cumulative impacts of water extraction.</p>	<p>The Planning Proposal seeks to re-instate water extraction as a land use, as it was under previous Local Environmental Plans 1987 and 2000. The exhibited version of the proposal focused on the incompatibility of the current land use definitions, with limited attention offered to outline the approval and licensing process. In response to this submission, and in order to provide that information, the Planning Proposal has been amended to include an overview of a licensing process and data available in resources of the NSW Office of Water.</p>
<p>Issue 2: <u>The proposal does not recognise the importance of groundwater to the Tweed community.</u></p>	<p>As above</p>
<p>Issue 3: <u>Impact on rural amenity.</u></p> <p>Development of water extraction and bottling facilities may negatively impact on amenity of rural residents who chose to move to the rural areas because of visual amenity and quiet solitude.</p>	<p>The rural zones allow many land uses other than rural housing. This is necessary for rural communities and their economic viability. Further, it is suggested that in some rural locations, it is incorrect to assume that rural lifestyle is tranquil as suggested due to agricultural and rural land uses that occur (eg. farm machinery noise from dawn, airplane spraying, rural industries, extractive industries and associated traffic, noise, vibration etc.).</p> <p>It is considered that water extraction proposals can be sited in rural locations and appropriately managed to co-exist with rural living. Of course this is dependant on the characteristics of an individual proposal and the locality itself which can be appropriately assessed with a development application.</p>

Summary of Issue	Planning Response
<p>Issue 4: <u>Questions the need for a shire-wide amendment.</u> The proposal has been prepared for all land zoned RU1 or RU2 yet there is only one application for this development.</p>	<p>This LEP applies to all RU1 and RU2 zoned land for the following reasons: The prohibition of these facilities was an unintended consequence of the change of definitions in the State-wide standard LEP template. It was not intended that this potential land use be removed as an option for land holders where water extraction for commercial purposes is demonstrated to be a suitable use. The development application process provides safeguards in determining the suitability of the proposal for each individual site. It is not considered necessary to require an amendment to the LEP for each future water extraction proposal when safeguards are available through the development application, and licensing processes.</p> <p>If individual planning proposals (LEP amendments) are required for each water extraction proposal that Council may receive, it would result in a duplication of processes and resources and lead to further delays in the process. This is not considered necessary for a land use that has been traditionally accepted in rural areas, where the development application process can adequately deal with potential issues.</p>
<p>Issue 5: <u>The approval process.</u> To what extent is Council's DA approval process subjugated by the <i>Water Management Act 2000</i>? Is Council required to approve a DA for landowner who had obtained a licence?</p>	<p>The development application approval process is governed by the requirements of the Environmental Planning and Assessment Act 1979, including the 'integrated development' provisions. The application processing requirements are set out in this legislation. Development applications for commercial water extraction development applications are assessed by both Council and relevant state government agencies prior to any consents being issued.</p> <p>Although development applications are assessed for individual properties, the impact on the wider catchment must be taken into consideration and assessed. The development application must address how the proposal impacts on groundwater quantity and quality and associated potential</p>

Summary of Issue	Planning Response
	<p>environmental impacts within the catchment.</p> <p>The applicant must supply this information which would be assessed by Council staff and relevant state government agencies. Development applications for individual proposal would also be notified and advertised in accordance with Councils DCP.</p>
<p>Issue 6: <u>Over extraction.</u> Over extraction will have a long-term and possibly a permanent impact on the groundwater availability and surface flows. Tweed Council should be in position to impose extraction limits or advise the State government of its concerns on a shire-wide basis.</p>	<p>The comments in Section 1.2 of this report address the sustainable use and management of groundwater. It is not the role of this planning proposal to establish extraction limits. Development consent can be conditioned to specify extraction limits. This would be done in consultation with relevant state government agencies as part of the licensing process. The planning proposal is simply to clarify that commercial extraction a permissible use which will give the land owners the opportunity to make an application which will contain the details necessary to make an informed decision.</p> <p>The licensing process will consider the details of the proposal including extraction rates, the nature and extent of the groundwater resource, potential impacts on other users, scale of the proposal etc.</p> <p>Each water extraction application will be unique in terms of its local environment and the proposal itself. There are adequate safeguards in place with existing legislation to ensure that each development application is fully assessed taking into consideration the precautionary principle.</p>
Submission 2	
<p>Issue 1 – Inadequate information base on which to adequately assess individual proposals.</p>	<p>Applicants for individual development applications will need to employ suitably qualified experts to provide technical information concerning impacts on groundwater which will need to be submitted with the application. If there are gaps in the information base when preparing the necessary reports then further studies by the applicant's consultant(s) will need to be undertaken to address this matter. The</p>

Summary of Issue	Planning Response
	information will be assessed by Council staff and relevant State government agencies to ensure its adequacy to make an informed decision.
Issue 2 – Potential impacts on endangered species needs to be carefully considered.	Again, suitably qualified expert advice will need to be provided with the development application addressing this potential impact which will be assessed by Council and relevant State government agency staff. As outlined in section 1.2 of this Report, the Office of Water assessed the risk to the ecological value and associated groundwater dependant ecosystem in the Tweed River Alluvium as low (on a low-moderate-high scale).
Issue 3 – Impacts of over-extraction	This issue was discussed in Submission 1 (Issue 6).
Issue 4 - Climate change will increase the likelihood of seasonal and periodic hydrological stress.	This issue will need to be addressed with any development application.

Having regard to the issues discussed above no amendments to the provisions contained in planning proposal are necessary. However, and in response to those issues raised in the submissions, the planning proposal has been amended to include an overview of the licensing process and available data resources provided by the NSW Office of Water.

The Planning Proposal (Version 3) is provided as Attachment 1 to this report, and is suitable for referral to the DPE.

OPTIONS:

1. Proceed with the planning proposal, in accordance with the recommendations within this report, and forward a request to NSW Department of Planning and Environment for the making of the proposed planning instrument.
2. Defer further consideration of the Planning Proposal and provide staff the opportunity to clarify any matters of concern at a Councillor workshop.

It is recommended that Council proceed with Option (1).

CONCLUSION:

The planning proposal was publicly exhibited for the required timeframe. Two (2) public submissions were received with the key issues being the potential impact on groundwater, lack of detail and data concerning groundwater reserves and the need to take a precautionary approach to the preservation of groundwater systems. In response to these submissions, the Planning Proposal document has been updated to provide an overview of

the licensing and monitoring processes undertaken by the NSW Office of Water to ensure sustainable use of groundwater resources.

This report has evaluated these submissions and it is considered the extraction of groundwater for commercial purposes can be satisfactorily managed as part of the development application process, and that this is a land use option that should be available for rural landowners where it can be demonstrated that impacts on the groundwater are satisfactory. It is not considered necessarily to completely prohibit this land use as in certain circumstances this can be a viable alternative use for rural land.

It is recommended that the Proposal be supported and referred to the Department of Planning and Environment requesting the plan be made.

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.

Planning Proposal PP15/0004 (ECM 3867608)

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

SUBMITTED BY: Development Assessment and Compliance

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 November 2015 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 Application has been supported where a variation in standards under SEPP1 has occurred.

DA No.	DA15/0443
Description of Development:	Two lot subdivision
Property Address:	Lot 2 DP 528642 No. 221 Terranora Road, Banora Point
Date Granted:	12/11/2015
Development Standard to be Varied:	Clause 4.1B and Clause 20(2)(a) - Minimum Lot Size 40ha
Zoning:	Part R5 - Large Lot Residential and Part RU2 - Rural Landscape and 1(a) Rural, 7(d) Environmental Protection (Scenic/Escarpment), 1(c) Rural Living
Justification:	1. The development will not result in inappropriate fragmentation of rural land; and 2. There is no public benefit in maintaining the 40ha and 1ha minimum lot size development standards for the proposed development.
Extent:	Greater than 10%
Authority:	Director-General of the Department of Planning

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.
