



TWEED
SHIRE COUNCIL

Mayor: Cr G Bagnall

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

Agenda

Planning Committee Meeting Thursday 5 February 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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SCHEDULE OF OUTSTANDING RESOLUTIONS

1 [SOR-PC] Schedule of Outstanding Resolutions - Planning Committee



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
-

CODE OF MEETING PRACTICE:

Section 2.8 Outstanding Resolutions

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

PLANNING COMMITTEE - 1 MAY 2014

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

P 48

Cr W Polglase
Cr P Youngblutt

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

Current Status: A Councillors Workshop has been held on 22 May 2014. John Fraser, Project Manager at BP, confirmed on 22 September that the additional studies requested are close to being finalised for submitting, and BP's Lawyers are working toward negotiation on the Cost Agreement relating to the planning proposal. Additional information was received by Council on 2 October 2014. Council officers are currently reviewing this information, and are aiming to submit a report back to the Planning Committee meeting early in 2015.

RECEIPT OF PETITIONS

2 [ROP-PC] Receipt of Petitions

SUBMITTED BY: Corporate Governance



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 |
| 1.2.2 | Decisions made relating to the allocation of priorities will be in the long-term interests of the community |
-

SUMMARY OF REPORT:

Under Section 1.5.4 Receipt of Petitions in the Code of Meeting Practice Version 2.4.1, *Petitions received by Councillors or forwarded to the (Acting) General Manager will be tabled as per the Order of Business, Item 11, Receipt of Petitions.*

Unless Council determines to consider it in conjunction with a report already listed on the agenda, no motion (other than a motion to receive the same) may be made on any petition until the next Ordinary Meeting after that at which it has been presented.

RECOMMENDATION:

That the following tabled Petition(s) be received and noted:

1. Petition containing 28 signatures from residents and visitors of Urliup Road (also tabled at Council Meeting on 22 January 2015) advising that :

"We the undersigned residents and visitors of Urliup Road, Oppose the development modification application DA03/0445.02 to amend development consent DA03/0445 for 477 Urliup Road to allow 6 trip daily (totalling 12 movements) of large tankers on Urliup Road which is a narrow winding one lane rural road as a danger and urgent safety issue for our school bus, cars and all Urliup Road users which is signposted: NOT SUTABLE FOR HEAVY VEHICLES.

We the undersigned residents and visitors of Urliup Road therefore request that the council refuse to approve development modification application DA03/0445.02."

REPORT:

As per Summary

OPTIONS:

That in accordance with Section 1.5.4 of the Code of Meeting Practice Version 2.4.1:

1. The tabled Petition(s) be considered in conjunction with an Item on the Agenda.
2. The tabled Petition(s) be received and noted.

CONCLUSION:

Any Petition tabled should be considered under Section 1.5.4 of the Code of Meeting Practice Version 2.4.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice Version 2.4.1.

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.

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 3 [PR-PC] Development Application DA03/0445.02 for an Amendment to Development Consent DA03/0445 for Use of an Existing Stock & Domestic Water Bore for the Purpose of a Rural Industry Comprising the Harvesting & Bottling of Mineral Water at Lot 1 DP 735658 No. 477 Urliup Road, Bilambil

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA03/0445 Pt2

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 application for an amendment to DA03/0445 for a rural industry, comprising the harvesting & bottling of mineral water off Urliup Road, Urliup. The amendment relates to the size of the truck to be utilised and the number of truck movements for the proposed development. The original application was approved via the Development Assessment Panel on 14 August 2003 with conditions relating to delivery trucks being limited to six (6) metres in length and delivery movements are restricted to two (2) trips per day. Despite the fact that the operation has since been altered and no longer undertakes bottling, the use is still considered to be a Rural Industry as approved.

There are repeated incidences of non-compliance of the approved use with the conditions of consent of DA03/04545.

The applicant has therefore requested as part of this S96 Application to modify two conditions of consent to allow a delivery truck size of 14 metres, and a maximum of 12 trips per day (6 trips in and 6 trips out of the site). The original proposal submitted was for a 16m truck however this has been reduced to 14m during the assessment process.

The modification seeks approval to amend condition 3 and 4 only which currently read as follows:

3. *Delivery trucks are limited to six (6) metres in length, unless prior written approval is obtained from Council's Director - Development Services.*
4. *Daily delivery movements are restricted to two (2) trips per day.*

[GENNS02]

During the assessment of the proposal Council Officer's have expressed concern that Urliup Road may not have the capacity to safely accommodate a 14m truck. Accordingly, extensive consultation with the applicant has occurred to investigate whether road upgrades along Urliup Road could allow the applicant to conduct his business with the requested 14m truck.

Based on the plans provided by the applicant, the following road works along Urliup Road are proposed:

Bend 1 - up to approximately 1.5m of additional batter, up to approximately 0.6m of additional bitumen for approximately 55m in length.

Bend 2 - up to approximately 1.6m of additional batter, up to approximately 0.8m of additional bitumen for approximately 57m in length.

Bend 3 - up to approximately 2.4m of additional batter, up to approximately 0.6m of additional bitumen for approximately 45m in length.

The applicant has provided only one typical cross section on the plans provided which does not show the entire extent of the cutting and battering which would be required. Additionally, the plans provided do not adequately address concerns from Council and have not been completed in accordance with Austroads Guide to Road Design, Part 3 Geometric Design Table 5.5, as outlined in this report.

In relation to the vegetation removal required within the road reserve, the plans provided have identified areas which would be required to have vegetation removed to facilitate the road works required. It is considered that the information provided is quite broad and has not adequately assessed what vegetation would be removed as part of this application. Areas proposed to be removed have been identified as being a protected riparian as outlined in Part 3 of Chapter 3 of the Water Management Act 2000 and have been identified as having a high ecological status. The plans identify that all this vegetation is to be removed with no assessment undertaken of the impacts.

Based on the information provided, Council Officers are not in a position to support the application as there are numerous items of information and technical issues which have not been addressed adequately. The amendment to the original development is therefore recommended for refusal.

RECOMMENDATION:

That:

- A. Development Application DA03/0445.02 for an amendment to Development Consent DA03/0445 for use of an existing stock & domestic water bore for the purpose of a rural industry comprising the harvesting & bottling of mineral water at Lot 1 DP 735658 No. 477 Urliup Road, Bilambil be refused on the following grounds:**

1. **The proposed modification is not considered to be substantially the same development as required by Section 96 of the Environmental Planning & Assessment Act 1979 given the extent of off site works that are required.**
 2. **Insufficient information has been provided in order to assess the impacts of the proposed amendments.**
 3. **Inadequate information has been provided in relation to works required within the road reserve.**
 4. **The information provided is not in accordance with Austroads Guide to Road Design, Part 3 Geometric Design Table 5.5**
 5. **Inadequate information has been provided for vegetation clearing within the road reserve.**
 6. **The application is not considered suitable having regard to the aims of Tweed Local Environmental Plan 2014.**
 7. **The application is not considered in the public interest.**
- B. Council engage its solicitors to take appropriate action to enforce compliance with the consent.**

REPORT:

Applicant: L Karlos
Owner: Eniflat Pty Ltd
Location: Lot 1 DP 735658; No. 477 Urliup Road Bilambil
Zoning: 1(a) - Rural
Cost: Not Applicable to S96

Background:

Site Details

The property is described as Lot 1 DP 735658, No. 477 Urliup Road, Bilambil. The land has an area of 14.41 hectares and has a frontage of approximately 110 metres to Urliup Road.

The land is relatively flat adjacent to Urliup Road, rising steeply to the south-east. An existing dwelling is sited on the lower portion of the site and is surrounded by ancillary buildings. Surrounding land uses comprise rural land holdings used primarily for cattle grazing and a small number of residences.

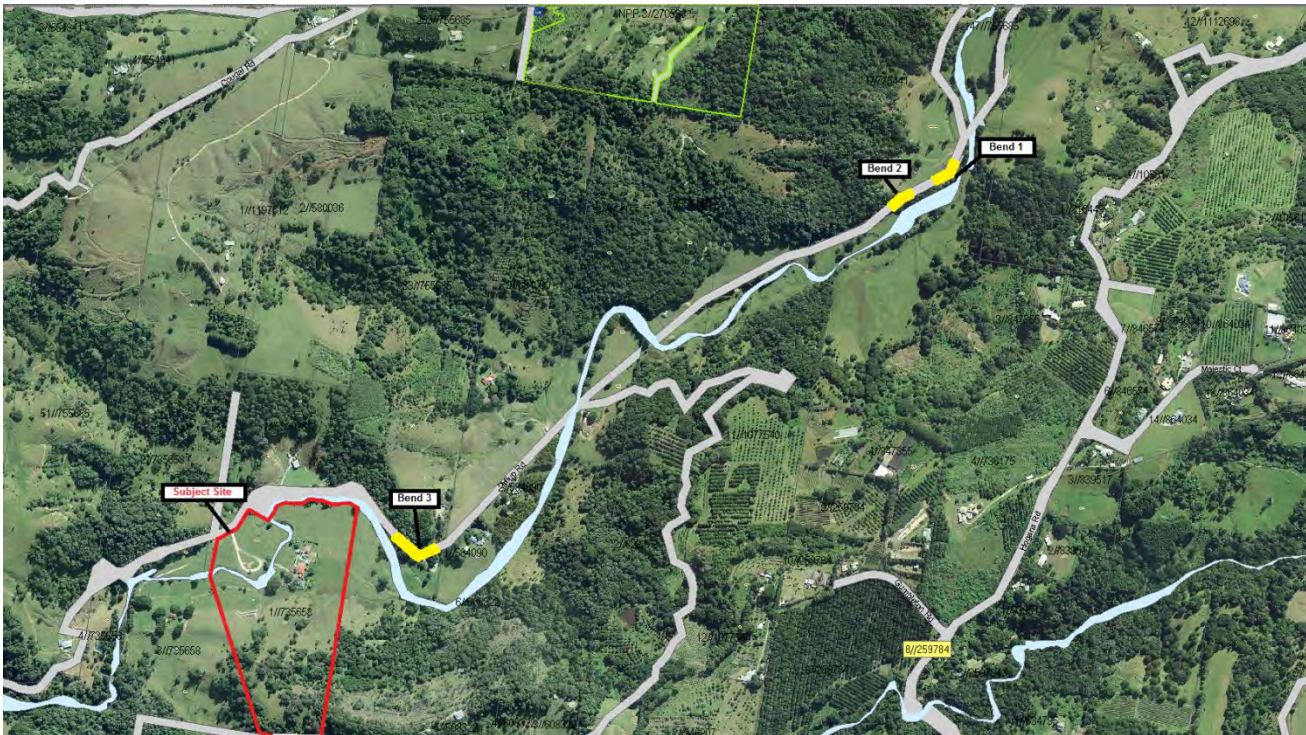
In relation to the existing water bore operation, the applicant has provided a copy of the existing license (30BL185414) from the NSW Office of Water which is valid until 3 June 2018. This license allows the applicant to extract 55 Megalitres of water in any 12 month period commencing 1st July. This will not change as a result of this application.



Subject Site

Urliup Road is located approximately 9km west of the Pacific Motorway at Tweed Heads. To get to Urliup Road a truck would generally travel west along Kennedy Drive, Golan Drive, Scenic Drive, Bilambil Road and then turn onto Urliup Road.

Urliup Road is a rural low volume road with varying seal widths, several creek crossings, tight radius curves and a 100km/h posted speed limit and has three specific sections which the applicant has identified as requiring upgrades. These are 2.4km from the Bilambil Road, Urliup Road intersection heading west to Bend 1, 2.5km to Bend 2 and 4.2km to Bend 3 as shown on the below diagram:



Proposed Road Upgrades

Proposed Amendment

The applicant has submitted this Section 96 to amend the conditions to allow a 14 metre truck and 12 trips per day. To allow the larger sized trucks there would be road works required to be undertaken by way of a separate application.

The proposed road works required are discussed further throughout this report.

The proposed development does not involve any physical changes to the subject site although it has been identified that there are a number of additional water storage tanks on the site than originally approved. Additional information in this regard may be required.

History

The original application DA03/0445 was approved on 14 August 2003 which involved the use of an existing stock & domestic water bore for the purpose of a rural industry comprising the harvesting & bottling of mineral water.

As a part of the original approval the following information was received from the applicant in relation to the road use:

- The only vehicle involved in deliveries will be the Karlos' family Toyota Landcruiser. I required a two wheel trailer (approximate length 4m) will be attached to this vehicle.
- It is expected that deliveries will only occur on a basis of one to two times a week.
- Delivery times will be co-ordinated so as to not interfere with the school bus which services Urlup Road.

As such, the following conditions were placed within the consent:

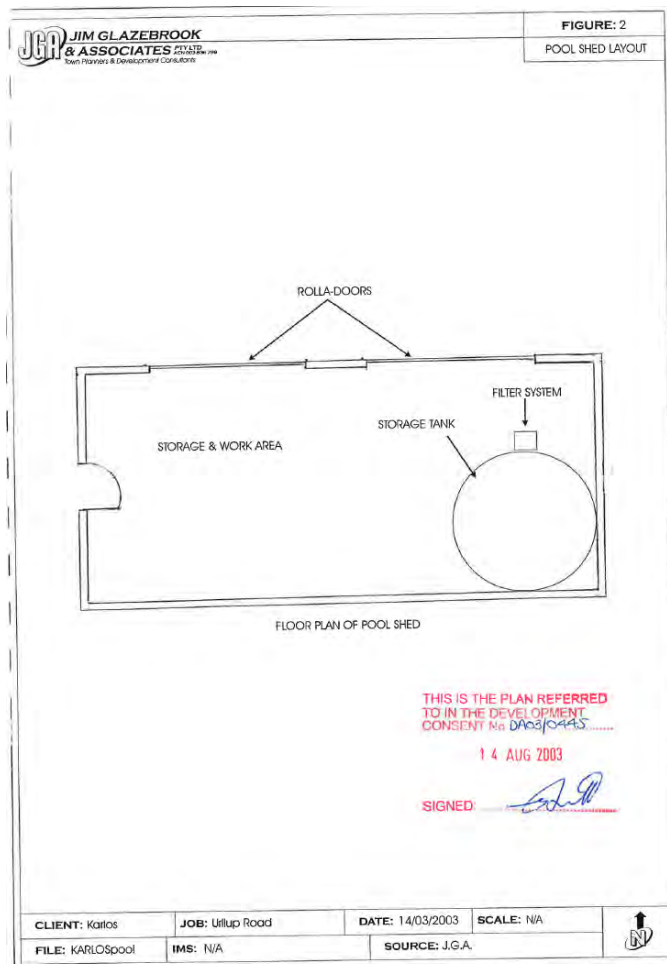
3. *Delivery trucks are limited to six (6) metres in length, unless prior written approval is obtained from Council's Director - Development Services.*

[GENNS02]

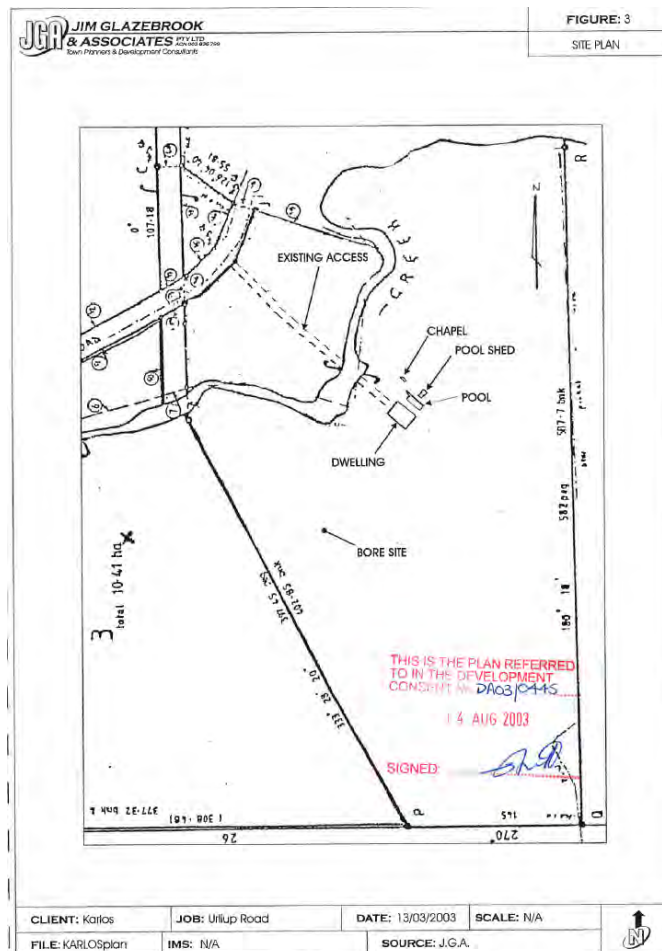
4. *Daily delivery movements are restricted to two (2) trips per day.*

[GENNS03]

The original plans approved under DA03/0445 are as follows:



Approved Storage Area



Approved Site Plan

A previous Section 96 amendment was received on 20 April 2006 to allow the subject premises to receive water via a poly pipe from a bore on the neighbouring property. This application was withdrawn on 24 August 2012 as it was determined that a Section 96 application could not include a new property within an amended consent.

Council's Development Compliance Officer was notified of a possible breach of conditions in relation to the existing approved development on 13 September 2012, in particular, conditions 3 and 4 as shown above. Council's Development Compliance officer sent a letter to the owner on 30 October 2012 in relation to additional water truck movements and the size of the water truck.

An email received on 5 November 2012 outline that a Section 96 would be submitted in order to rectify the situation.

On 25 December 2012 further complaints were made to Council in regards to the amount of water being extracted by the owner. The complainant was notified that whilst Council was the consent authority for the water extraction industry, it is the New South Wales Department of Primary Industries - Office of Water that is responsible for managing the State's groundwater and surface water resources. It was recommended that the complainant should contact the Office of Water directly to relay their concerns in relation to the over extraction of water.

The current Section 96 application was submitted on 25 November 2013.

The application was referred to Council's Traffic Engineer for assessment as the proposed amendments involve an increase in the size of the truck from 6 metres to 14 metres and an increase in the number of trips from 2 trips daily to 12 trips daily. Council's Traffic Engineer responded on 17 March 2014 with the following to be sent to the applicant:

"The applicant has requested that the s96 application be approved prior to survey and design of the proposed works.

This proposal is not acceptable as there is considerable risk to Council due to unknown property boundaries in relation to the proposed works, environmental approvals not issued and s138 approvals not provided,

Based on the provided information accompanying the application I could not recommend an approval being issued with conditions.

Whilst Uriup Road has comparatively low traffic volumes its horizontal alignment, steep batters, narrow pavement width and limited sight distances at sections render it unsuitable for the proposed length vehicle."

Based on this information received from the Traffic Engineer the applicant was requested to withdraw the application as there was not adequate information to make a decision on the proposed amendments particularly relating to any road upgrade requirements.

A meeting was held between Council Officers and the applicant on 21 March 2014 to discuss the above information. In the meeting it was determined that an official information request would be sent out outlining what would be required in order to assess the application properly. The following was requested:

"As per the meeting held on 21 March 2014, the applicant is requested to provide survey plans prepared by a suitably qualified engineer in regards to the upgrade of the road required to accommodate a truck of 16m as requested by the section 96 application."

The applicant responded to this request on 17 July 2014 with survey plans of the areas they deemed to require road upgrades to accommodate a 16m truck. These plans were referred to Council's Traffic Engineer who reviewed the information and the applicant was notified of the following:

"The swept paths indicate a 19m long articulated truck passing a standard 5.20m long car at various bends along Uriup Road. The swept paths indicate in some sections of the bend there is no clearance between the truck and car. Australian Standard AS2890 details that for two vehicles passing one another clearances shall be 300mm on both sides of both vehicles plus a further 300mm. The turning swept paths do not demonstrate sufficient clearances.

The swept paths provided does not indicate the worst case scenario. The proposed truck may require to pass larger vehicles than a standard 5.20m long car, such as vans, smaller trucks and buses. As clearances for a 19m long articulated truck passing a standard 5.20m long car are not desirable, a larger vehicle will most likely make passing impossible.

*The swept paths indicate a minimum sight stopping distance of 55m at various locations along the road bends. The sight stopping distance is a desirable 5 second gap required for stationary vehicles entering a road. **The sight stopping distance does not take into account traffic at speed in both directions, which is most likely to reduce reaction time.** In addition the sight stopping distance locations shown on bend number 3 does not take into account the full curvature of the bend. Sight distance is significantly reduced near the bend.*

The proposal does not fully satisfy truck turning as detailed in the attached engineering drawings.

The proposal is therefore not able to be supported in regards to these plans.

In addition to the above a few items to take into consideration:

- 1. The proposed works involve removal of vegetation. This has been forwarded onto our Natural Resource Management Section for assessment.*
- 2. A note on the plans "reinstate any private property fences as a result of batter regrading". Is there any owners consent provided to do any works in their property."*

Based on the information requested it was determined that a site meeting should be held to outline exactly what Council was requesting. This meeting was held on 12 August 2014 with Council Officers and the applicant's Engineers. The details above were discussed on site and amended plans were requested and owner's consent of any affected landowners was requested.

The applicant's Engineers responded with Draft amended plans on 1 October 2014 which were reviewed by Council's Engineers and Council's Design Section. Landowners' consent from any possible land adjoining the proposed road works was received on 24 October 2014. The landowners' consent however does not take into consideration the actual location of the road works. The plans provided have been determined to not adequately address the Austroads guideline and there may be additional impacts as a result of the proposed road works.

In relation to the draft amended plans, they were considered to be inadequate and a further information request was sent to the applicant on 19 November 2014 outlining the following:

- 1. Drawings should include the vehicle movements in both directions, not just east bound, and for full section from property, downhill to, 35kph corner warning sign and especially at segment with mountable kerbing.*
- 2. Some cross sections are required 20m (corner) to 50m (else ware) centres to check vehicle placement (vehicle hitting batter or rolling off the bank)*
- 3. Proposed bitumen / kerbing / shoulder / batter widening including drainage channel diversions*
- 4. Show worst case sight distance triangle longitudinal section*
- 5. Provide safe intersection sight diagram for entrance to site*

The abovementioned matters are to be satisfied within fourteen (14) days of the date of this letter, after which if an adequate response is not received then the application will be refused.

The applicant responded to this information request on 3 December 2014 with the latest set of plans outlining a 14 metre truck and three corners along Urliup Road which require upgrading to accommodate the truck. These plans have been reviewed by Council's Traffic Engineer and have stated as follows:

"Austroads Guide to Road Design, Part 3 Geometric Design Table 5.5 outlines that in relation to truck stopping distance a 55m distance is required using a 50km/h operating speed. This needs to be doubled to 110m in accordance with Section 5.5 of the Guide, 'intermediate sight distance equal to twice the stopping distance may be appropriate in some circumstances where two-way travel may occur in the same path e.g. narrow, low volume rural roads with no linemarking'. A sight distance of 110m should therefore be provided to limit the risk of head on crashes on curves where the pavement width does not allow the safe passing of the largest design vehicles.

The submitted minor civil roadworks plans provide the safe sight stopping distance of 55m, however the intermediate sight distance of 110m has not been provided and is unable to be determined from the plans as cross sections have not been provided to determine the extent and height of the proposed benching."

History of Compliance

During the operation of the existing use a number of residents have raised concerns in relation to a number of items. These objections outlined have been from various forms of communication being email, telephone and letters. Some telephone conversations may not have been recorded other than notifying Council's Compliance Officer. The main points of objections and the action taken have been outlined below:

Date	Complainant	TSC Action
26/04/2012	N/A	DA12/0167 was submitted 26/4/2012 for 447 and 483 Urliup Road for water extraction
14/05/2012	Resident	Sent to applicant in information request to address 12/07/2012
02/07/2012	Resident	Sent to applicant in information request to address 12/07/2012
20/07/2012	Resident	Sent to applicant in information request to address 12/07/2012
31/07/2012	Resident	Sent to applicant in information request to address 12/07/2012
30/10/2012	N/A	Breach of Conditions letter sent to owner
5/11/2012	N/A	Email received advising S96 would be submitted
8/11/2012	N/A	DA12/0167 withdrawn from Council
25/12/2012	Resident	Email received relating to water extraction amount
16/01/2013	N/A	Council responded to complainant advising that the New South Wales Department of Primary Industries - Office of Water is responsible for managing the State's groundwater and surface water resources. It was advised that they contact the Office of Water directly to relay their concerns in relation to the over extraction of water.
28/11/2013	Resident	Complaint received via telephone call in regards to truck movements

Date	Complainant	TSC Action
29/11/2013	N/A	Council sent letter to owner advising that a Penalty Infringement Notice (PIN) would be issued unless measures were taken to resolve the issues. However, Council's Compliance Officer was advised that the application had been submitted on 25/11/2013 to try to rectify the situation.
4/07/2014	Resident	Complaint received via telephone call in regards to truck numbers
7/07/2014	N/A	Council sent warning letter to owner advising that a Penalty Infringement Notice (PIN) would be issued if operation continued to breach conditions.
8/10/2014	Resident	Complaint received via telephone call in regards to truck numbers continuing to operate
8/10/2014	N/A	Penalty Infringement Notice Issued (\$1500) following complaints about the size of trucks and numbers of trips.
16/10/2014	Resident	Complaint received via telephone call in regards to size of truck and number of trips
10/11/2014	Resident	Complaint received in relation to water extraction and truck size
13/11/2014	N/A	Development Assessment Officer phoned Julie Kabealo in regards to S96 submitted. Advised that submissions were being taken into consideration when assessing the application. Application will go to February 2015 Planning Committee Meeting. Also advised in regards to Community Access Meeting.
26/11/2014	Resident	Complaint received in relation to size of truck and water extraction.
2/12/2014	Resident	Complaint received via telephone call in regards to truck numbers continuing to operate.
5/12/2014	N/A	Compliance Officer emailed response to complainant
11/12/2014	Resident	Photos received showing size of trucks.
11/12/2014	N/A	Penalty Infringement Notice Issued (\$1500) following complaints about the size of trucks and numbers of trips.
19/12/2014	Residents	A meeting was held between Tweed Shire Council Officers and a number of the objectors. In this meeting the residents raised their concerns in relation to the ongoing operation in breach of conditions. Council officers outlined that the objections are being taken into account and that the proposal would be reported to the February Planning Committee Meeting which would assess the proposal and take into consideration the concerns. It was also advised that Council would be monitoring the continuing use and taking appropriate action as it sees fit.
19/12/2014	Resident	Complaint received outlining size of the truck, number of trips and hours of operation and noise. Accompanied by a spreadsheet with times and instances and photos of the trucks
28/12/2014	Resident	Email received outlining disappointment in Council.
2/01/2015	Resident	Email received outlining issues with size of truck and number of trips and that the February meeting was too far away.

Date	Complainant	TSC Action
6/01/2015	N/A	Council officer telephoned objector and advised them of the meeting that Council officers had with the concerned residents held in December and that their concerns were being taken into consideration and that these concerns would go within the report that will go to Council.
12/01/2015	Resident	Email received in relation to truck size being 18 metres in length.
12/01/2015	N/A	Resident notified via email that the concerns were being taken into account and that the proposal would be reported to the February Planning Committee Meeting.
12/01/2015	Resident	Email received requesting access to documents and the time of Council Meetings
14/01/2015	N/A	Council officers advised resident of the date and time of the meeting and the process to speak at meetings.
14/01/2015	N/A	Council's Traffic Engineer met with concerned residents on site to go through issues.
14/01/2015	Resident	Resident advised that School Bus was run off the road by the water trucks.
14/01/2015	N/A	Council officers contacted Bus company and they advised that it was actually a 4x4 that ran them off the road and they had no issues with the water trucks.

Urliup Road Upgrades

As a result of these amendments a number of road upgrades would be required to safely cater for the proposal. As a result of the increased size of the truck to cater for the proposed amendment the applicant has identified three bends along Urliup Road which would need upgrading. The three bends have been identified below.

The applicant has outlined that:

'Minor regrading and extension of bitumen surface area is proposed to ensure passing of an articulated vehicle.'

Based on the plans provided by the applicant the following works are recommended.

Bend 1 - up to approximately 1.5m of additional batter, up to approximately 0.6m of additional bitumen for approximately 55m in length.

Bend 2 - up to approximately 1.6m of additional batter, up to approximately 0.8m of additional bitumen for approximately 57m in length.

Bend 3 - up to approximately 2.4m of additional batter, up to approximately 0.6m of additional bitumen for approximately 45m in length.

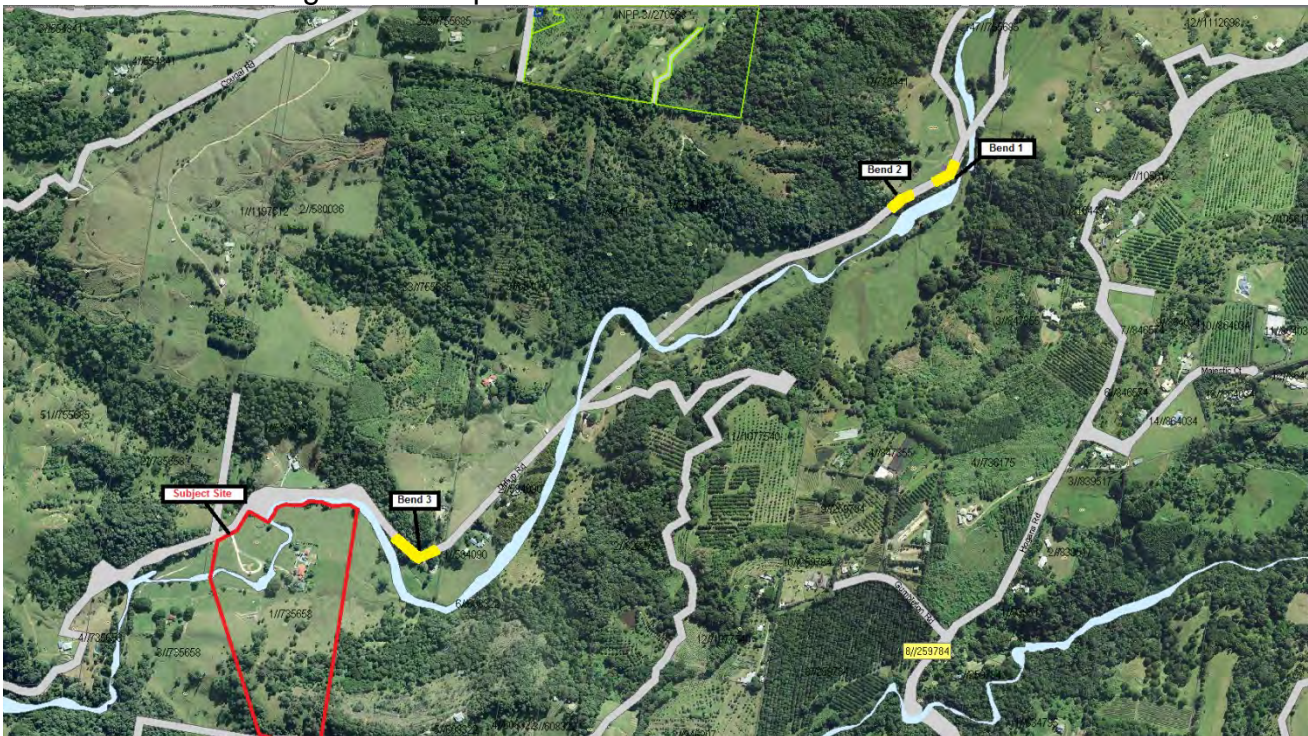
The plans of the road upgrades have been referred to Council's Engineering Section that advised:

"In response to previous correspondence and site meetings, the applicant's consultant civil engineer has submitted concept plans in an attempt to satisfy the sight/stopping distance constraints. These plans confirm that significant road upgrade works are

required. These works generally consist of shoulder widening and batter trimming at three bends on Uriup Road, in order to increase available sight distance and safe passing width. The plans however only indicate the extent of works in plan view, and do not provide cross sections (only a typical cross section is provided). These sections are necessary in order to confirm that the batter works are compatible with Council's specifications and adequately address slope stability and drainage measures."

Only one typical cross section has been provided which is insufficient in determining the required works.

Based on the information provided, Council Officers are not in a position to support the application as there are numerous items which have not been addressed adequately. The amendment to the original development is therefore recommended for refusal.



Proposed Road Upgrades

Vegetation in the Road Reserve

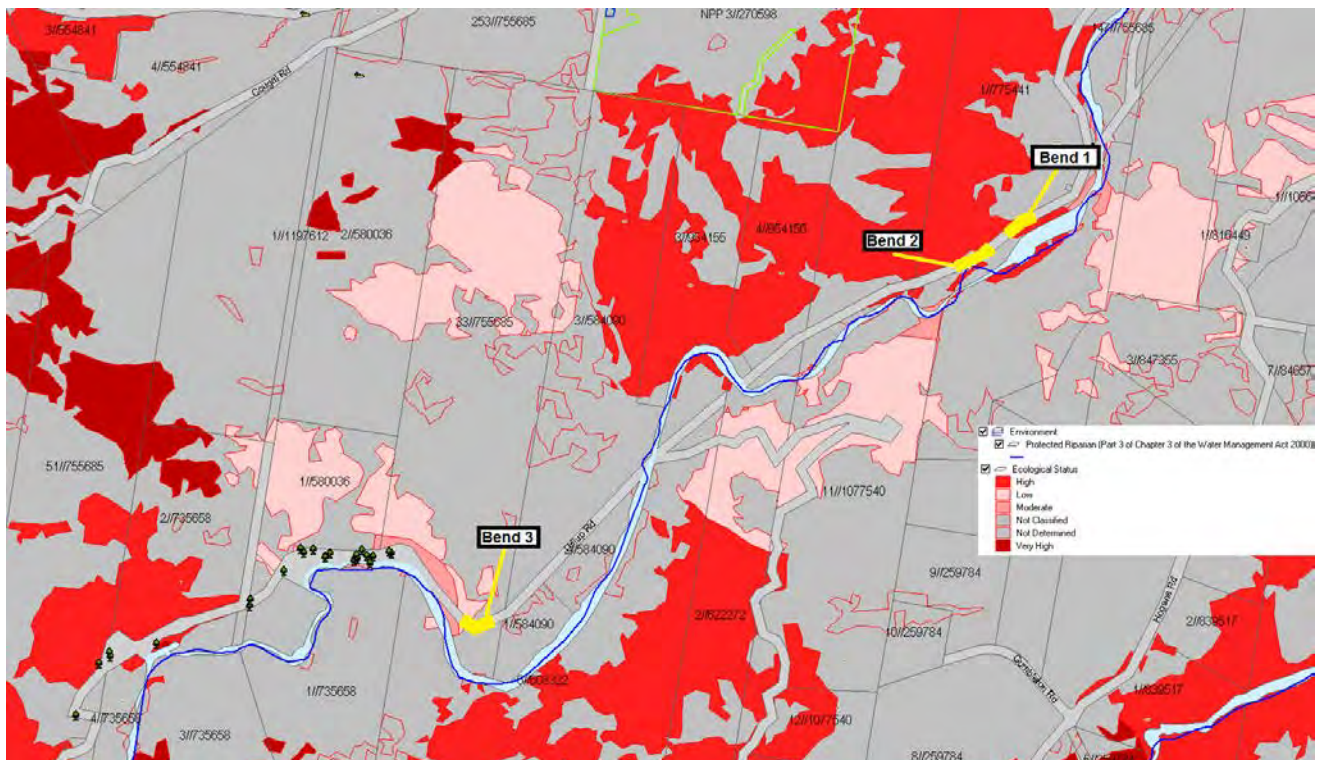
Council's Natural Resource Management Section has reviewed the location of the proposed widening of the road. A number of issues have arisen as a result of the proposed vegetation clearing identified by the applicant. The following was outlined by the NRM Section:

- A number of threatened flora species listed under the TSC Act (*Macadamia tetraphylla*, *Hicksbeachia pinnatifolia*, *Syzygium hodgkinsoniae*) were recorded within the road reserve immediately adjacent to and potentially within the works footprint as shown on the submitted engineering plans
- The proposed road upgrade works occur within an area representative of an Endangered Ecological Community (EEC -TSC Act) – Lowland rainforest in the NSW North Coast and Sydney Basin bioregions. Works to facilitate the upgrade may involve disturbance/removal of native vegetation forming a component of the EEC.

Given the occurrence of threatened species and an endangered ecological community within and proximate to the proposed works area, a seven part test of significance would be required to be prepared and submitted by the proponent to enable an assessment in accordance with section 5A of the EP&A Act. The applicant has failed to submit the required information necessary to satisfy s5A and as such NRM are not in a position to support the proposed road upgrades in the absence of this information.

The plans provided have identified areas which would be required to have vegetation removed to facilitate the road works required. The information provided is more of a broad brush approach and has not adequately assessed what would be removed as a part of this application. As shown below, the southern side of Bend 2 has been identified as being a protected riparian as outlined in Part 3 of Chapter 3 of the Water Management Act 2000 and has been identified as having a high ecological status. The plans identify that all this vegetation is to be removed with no assessment undertaken of the impacts.

Based on the inadequate information provided in terms of the impact upon the vegetation within the road reserve the proposed development is not supported in this instance.



Vegetation Mapping

Size of the Truck

A number of complaints have been received in relation to the size of the truck servicing the proposed. Objectors have claimed to have measured the trucks being 18 metres in length. Council officers have undertaken measurements of the truck servicing the proposed development and have come to the conclusion that the trucks are actually 14 metres in length in line with the applicants request for a 14 metre truck to service the operation.

It is therefore considered that submissions in relation to the size of the truck being over the 6 metre length will be taken into account, however in relation to the actual size of the truck it was determined to be 14 metres in length as shown below.



Size of Trucks measured by Council officers

Water Bore License

Council is not the governing authority for the water extraction portion of the operation however, the NSW Office of Water License (30BL185414) results in 55,000,000 litres per year or 1,057,692 litres per week. A number of complaints received in relation to the amount of water identified approximately 400,000 to 500,000 per week which is under the licensed amount. There are no issues with the water extraction portion of the operation.

Hours of Operation

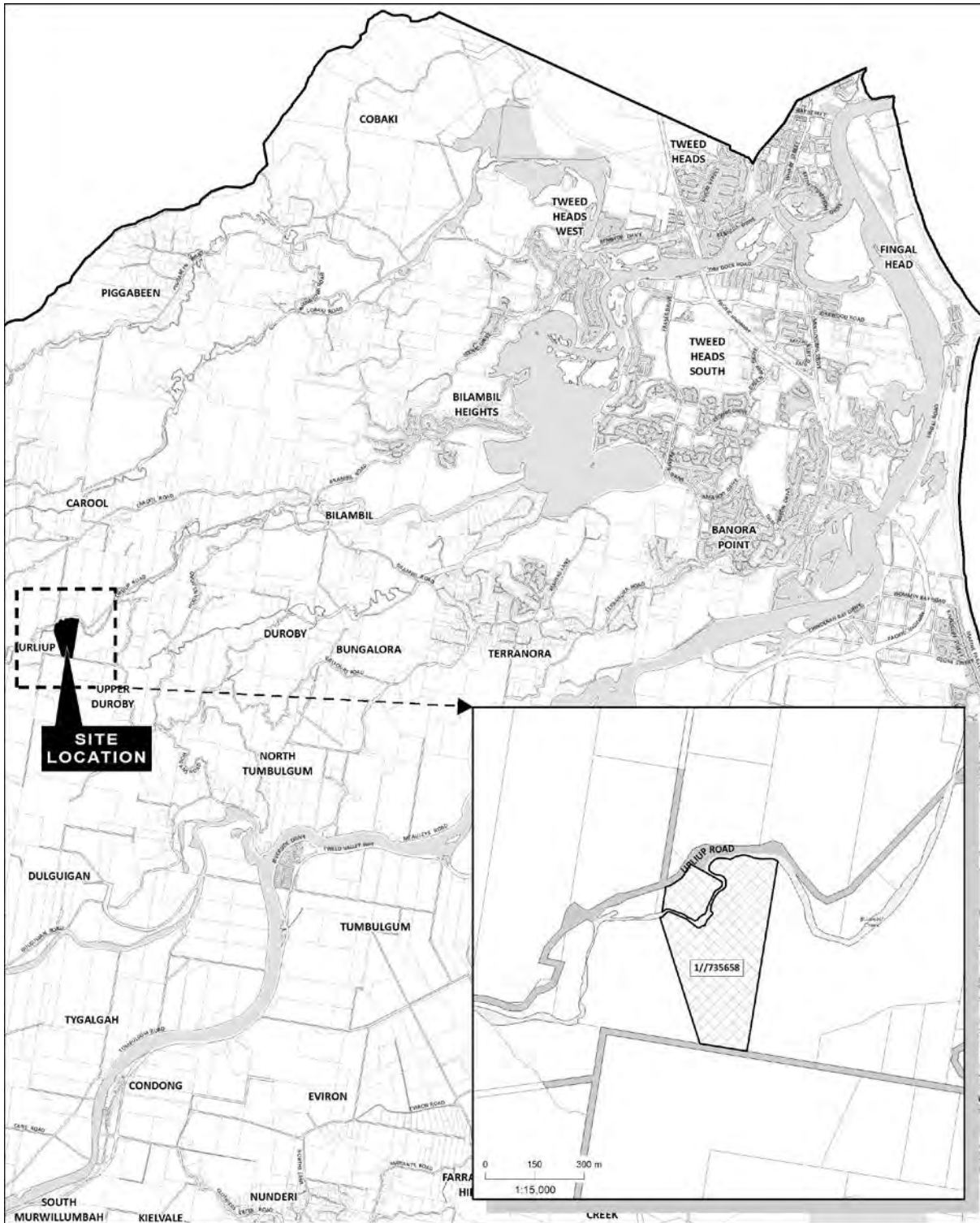
Concerns have been raised in relation to the timing of the trucks being early in the morning. The original consent had a condition:

2. Deliveries are not permitted during school bus hours of operation on Uriup Road.


[GENNS01]

Information provided by objections has identified that the development is operating within school bus hours. It is considered that if the amendment to the proposal is not supported then additional compliance action can be taken in relation to any future breaches of this condition.

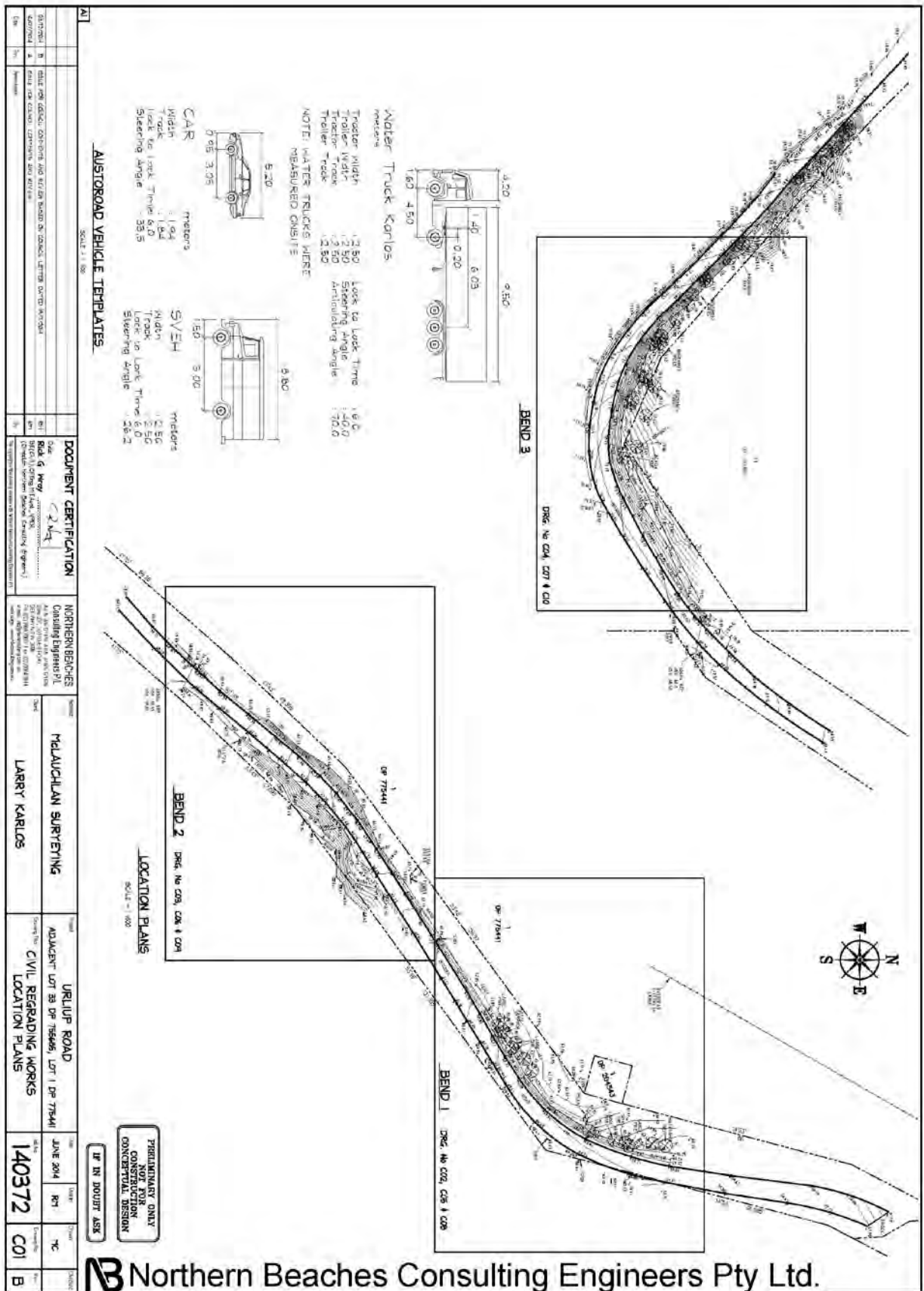
SITE DIAGRAM:

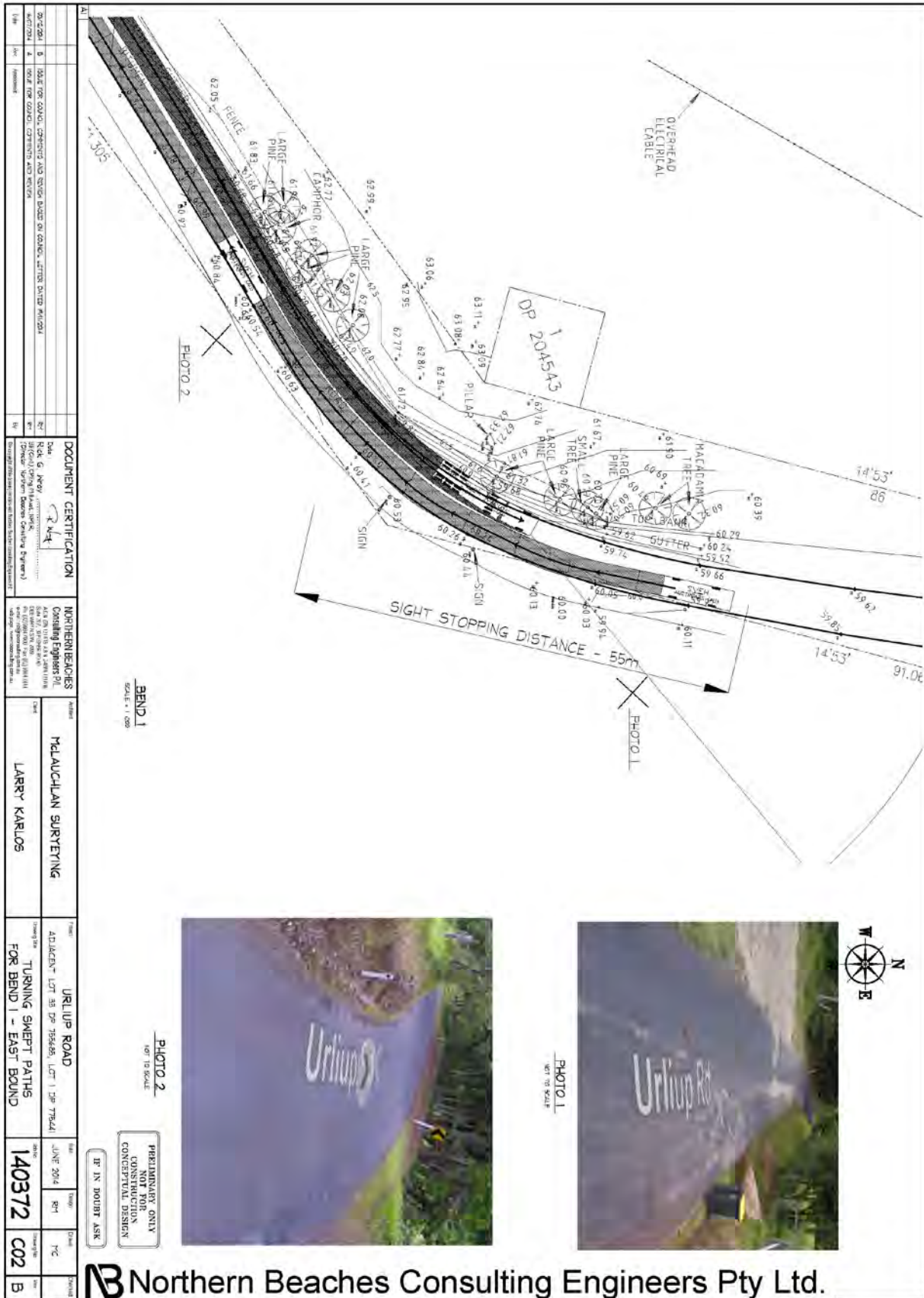


Locality Plan
 Lot 1 DP 735658
 No. 477 Uriilup Road, Uriilup

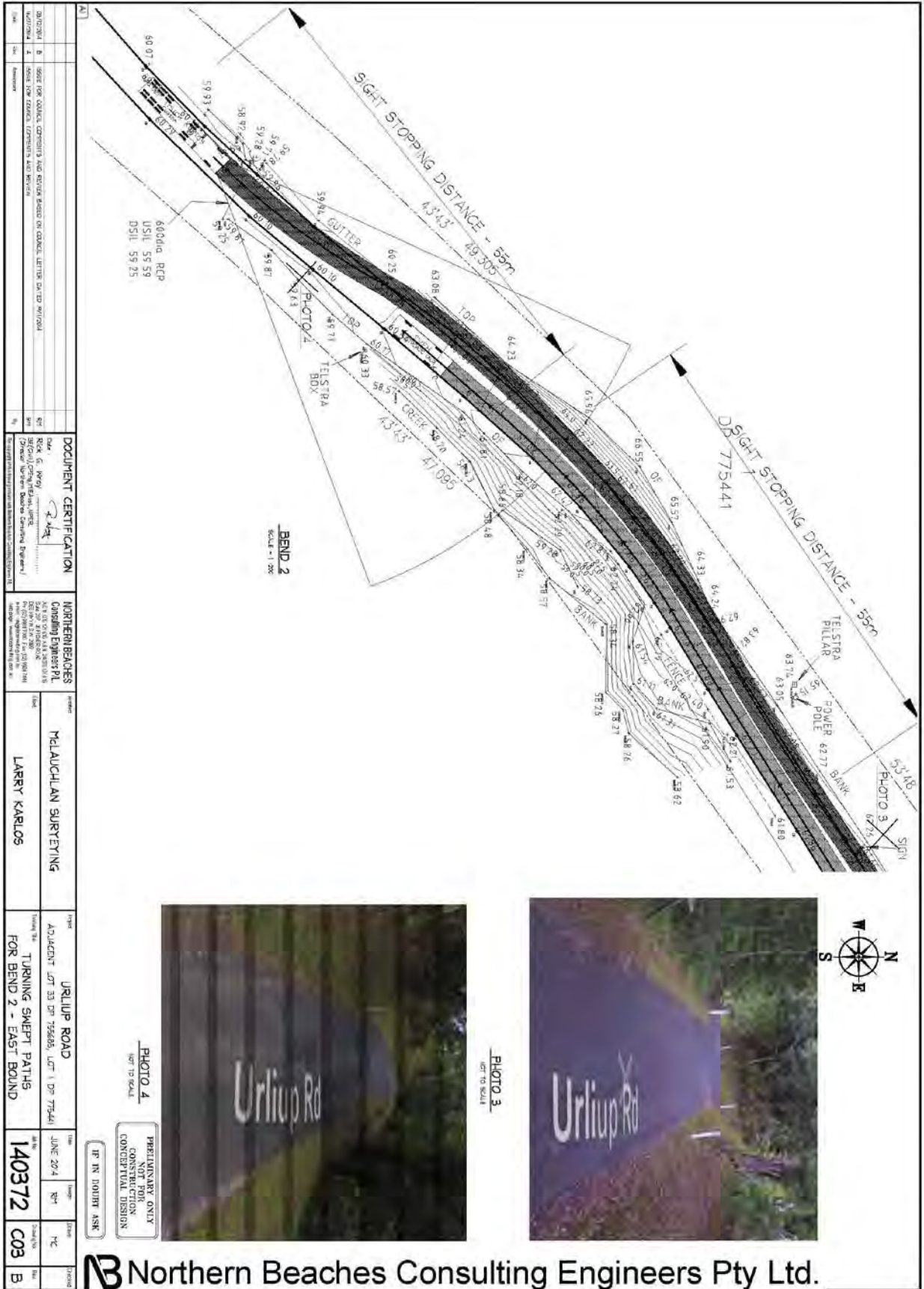
<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagnostic only. It should not be used for survey or construction purposes and prior to any transactions a "title before buy" enquiry must be made by calling 1300. This information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral 09/12/2014 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 1 2 Km 1:75,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: Universal Transverse Mercator Horizontal datum: Geocentric Datum of Australia 1954 Grid: Map Grid of Australia, Zone 56</p> <p>GDA</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murumbidgee NSW 2484 PO Box 816 Murumbidgee NSW 2484 T (02) 5670 2400 1300 292 872 F (02) 5670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	
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DEVELOPMENT/ELEVATION PLANS:





N Northern Beaches Consulting Engineers Pty Ltd.



DOCUMENT CERTIFICATION I, Richard G. Mery , a duly qualified and registered Professional Engineer in the State of Queensland, certify that the above is a true and correct copy of the original drawing as submitted to the Council.	
NORTHERN BEACHES CONSULTING ENGINEERS PTY LTD 5/110 BROADWAY NORTHERN BEACHES QLD 4211 PHONE: (07) 5599 2000 FAX: (07) 5599 2001 EMAIL: info@northernbeaches.com.au	
Project: MELAUCHLAN SURVEYING	Client: LARRY KARLOS
Location: URLUIUP ROAD ADJACENT LOT 33 DP 75685, LOT 1 DP 77544 TURNING SWEPT PATHS FOR BEND 2 - EAST BOUND	Date: JUNE 2014
Drawing No: 140372	Scale: C03
Revision: B	Status: FOR INFO ONLY NOT FOR CONSTRUCTION CONCEPTUAL DESIGN

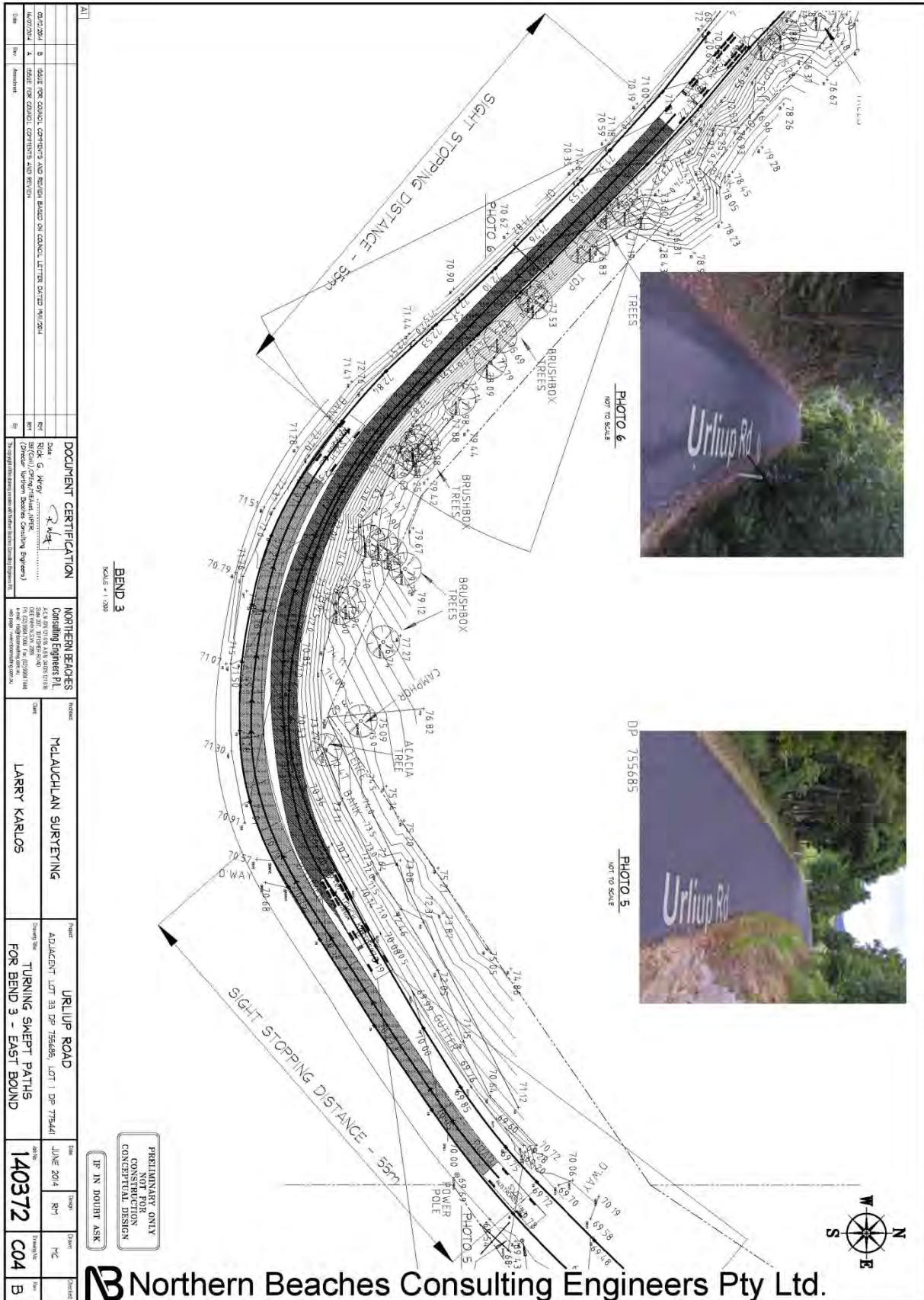


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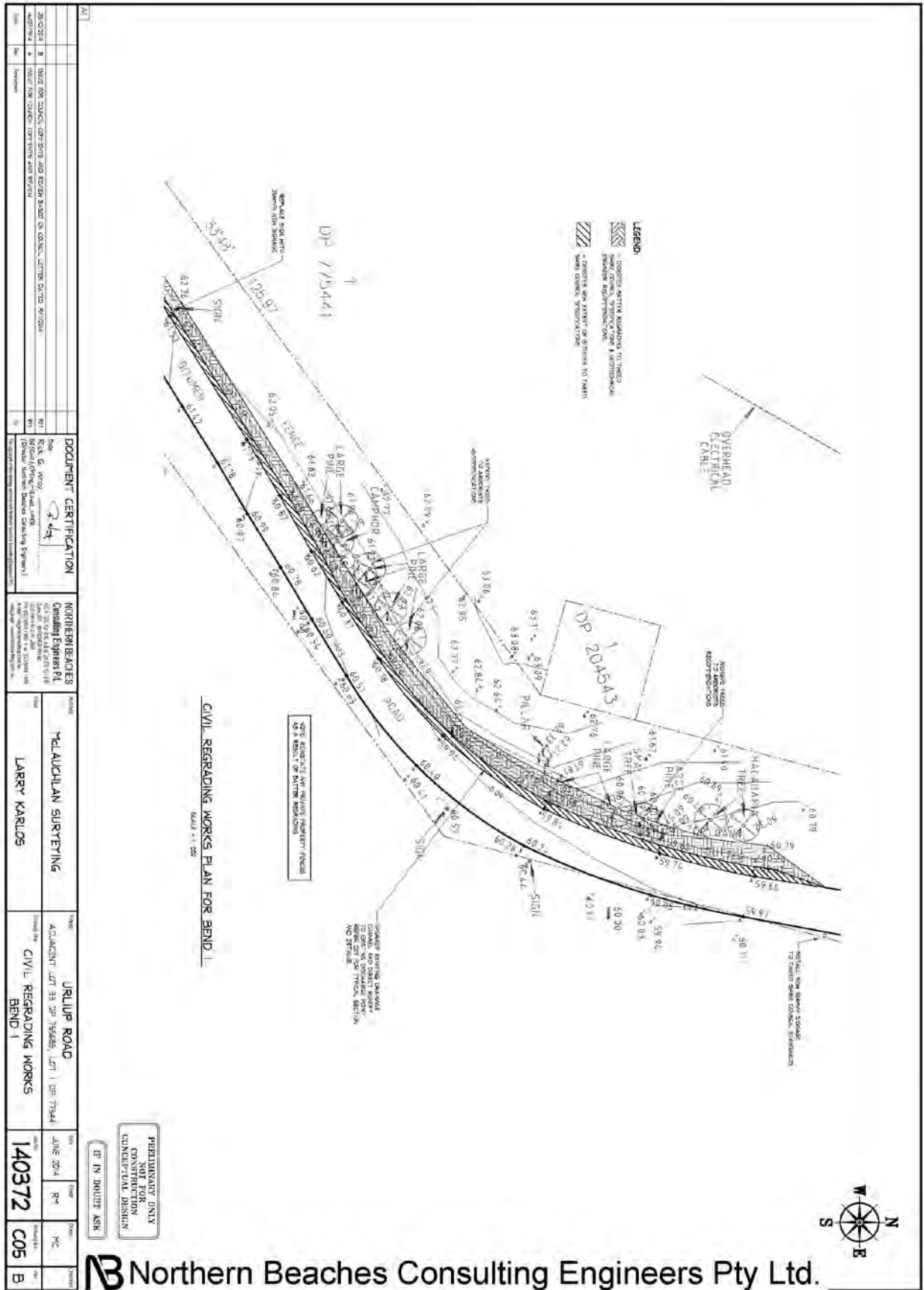


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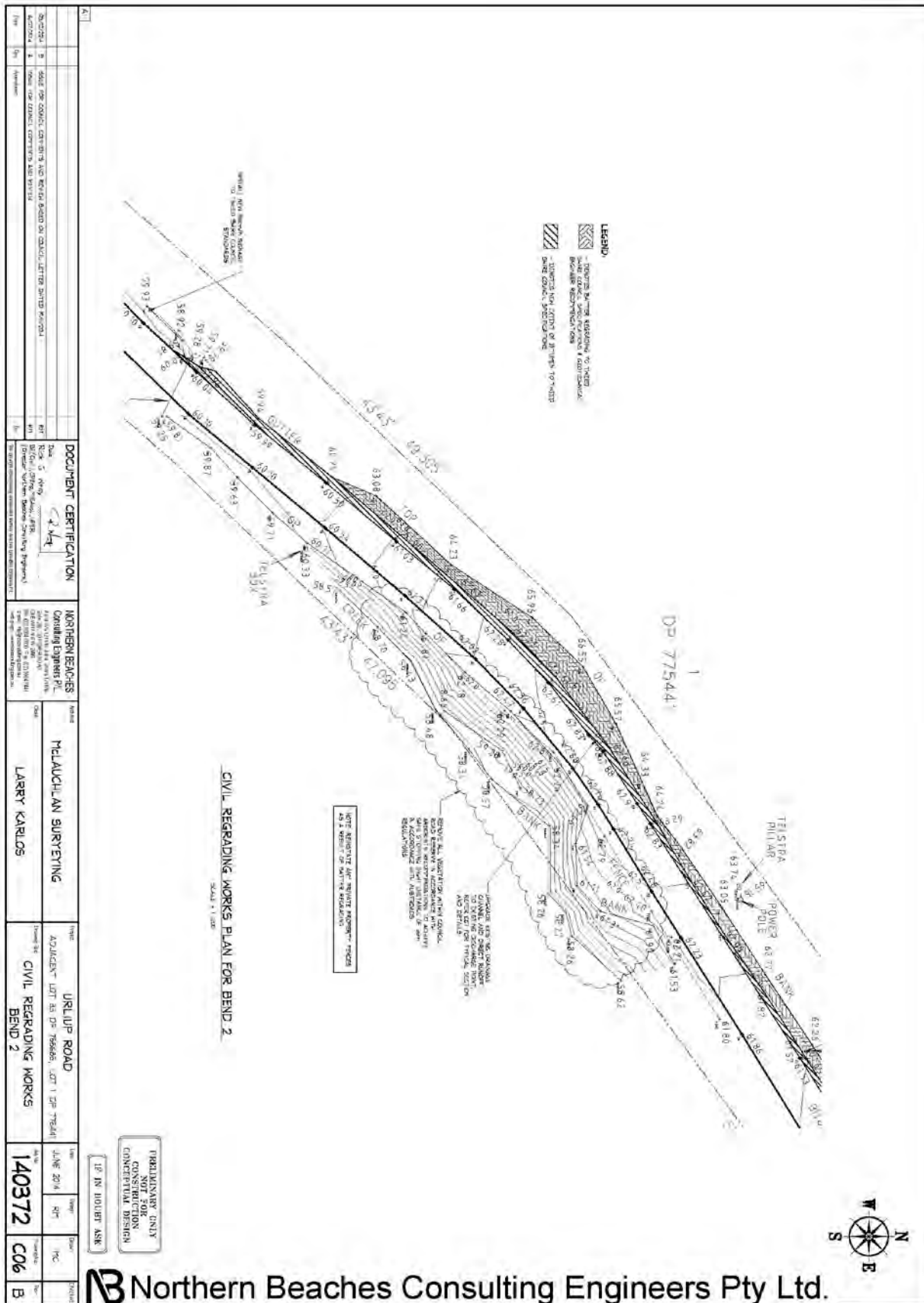
N Northern Beaches Consulting Engineers Pty Ltd.

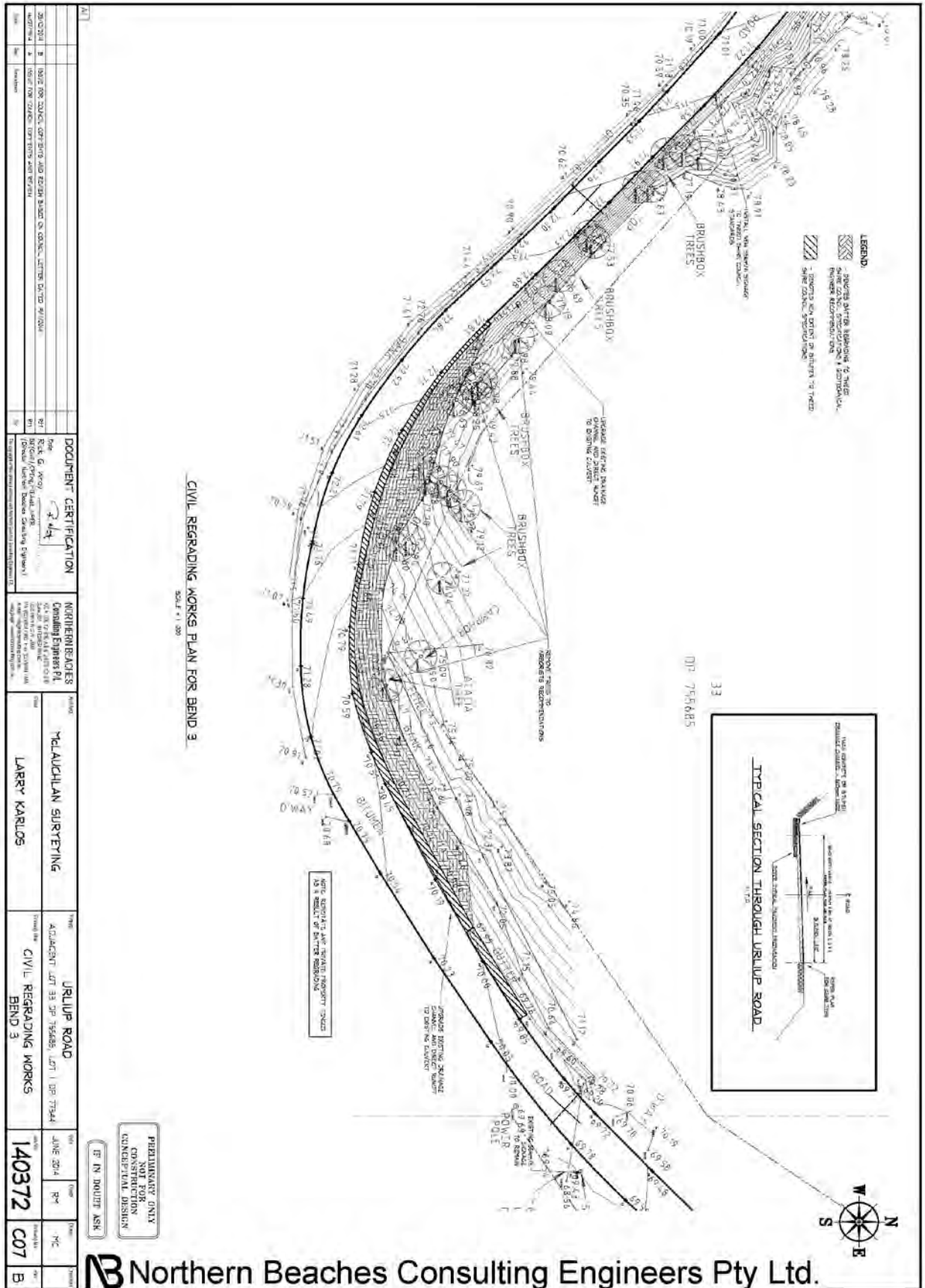


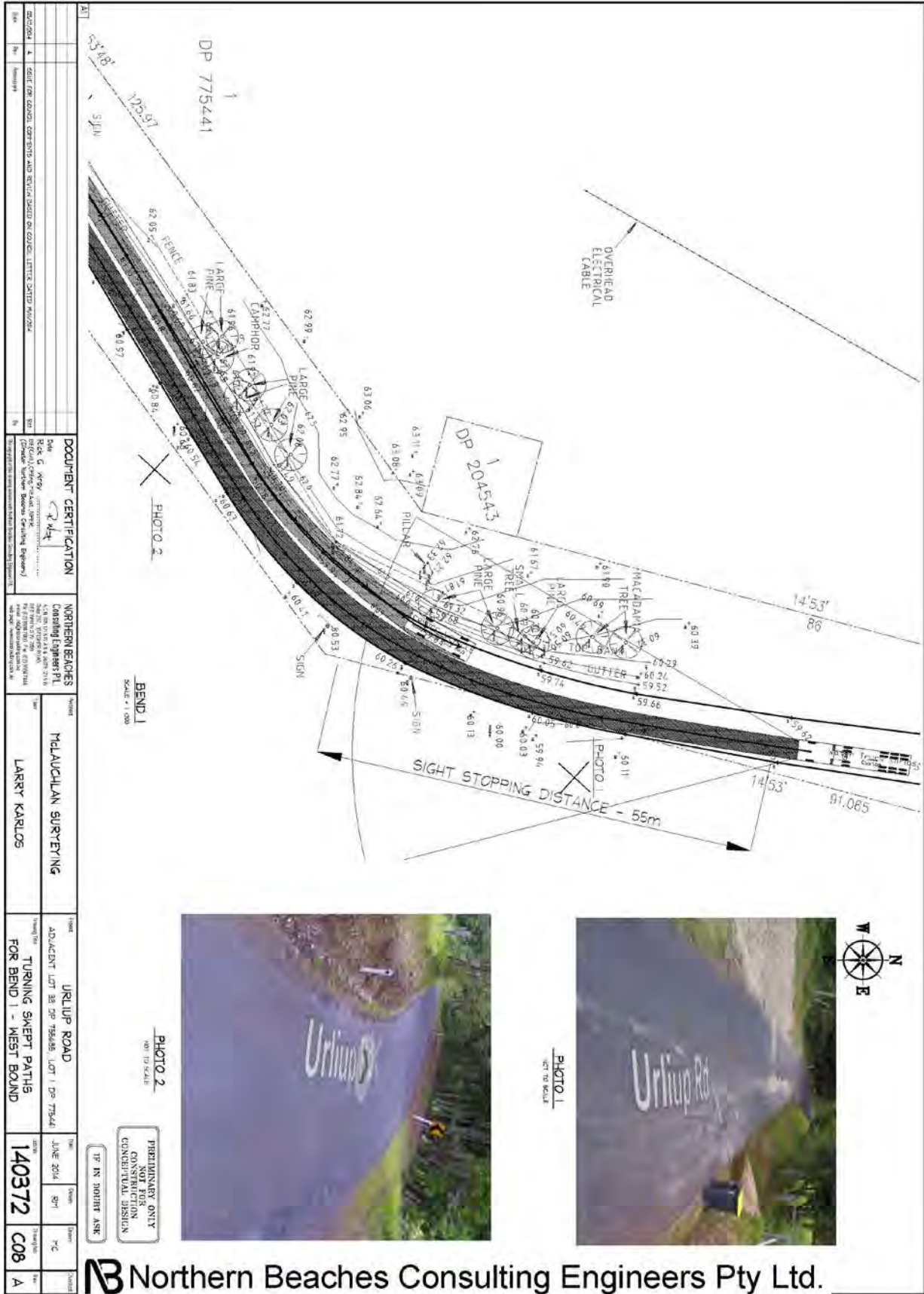
<p>DOCUMENT CERTIFICATION</p> <p>Date: _____ By: Rick G. Avey, _____ (Consulting Engineer)</p>		<p>NORTHERN BEACHES Consulting Engineers Pt. Ltd. 5/100 FIVE STAR DRIVE NORTH BEACHES NSW 1570 Tel: (02) 9371 0000 Fax: (02) 9371 0001 Email: info@nbece.com.au Website: www.nbece.com.au</p>		<p>Project: MCLAUGHLIN SURVEYING</p>		<p>Client: LARRY KARLOS</p>		<p>Project: URLUP ROAD ADJACENT LOT 3A DP 756485, LOT 1 DP 775441</p>		<p>Date: JUNE 2014</p>		<p>Scale: R41</p>		<p>Sheet: HC</p>		<p>Project: C04</p>		<p>Phase: B</p>											
<p>REVISIONS</p> <table border="1"> <tr> <th>No.</th> <th>Description</th> <th>Date</th> </tr> <tr> <td>1</td> <td>ISSUE FOR CONSULTING ENGINEER REVIEW</td> <td></td> </tr> <tr> <td>2</td> <td>ISSUE FOR CONSULTING ENGINEER REVIEW</td> <td></td> </tr> <tr> <td>3</td> <td>ISSUE FOR CONSULTING ENGINEER REVIEW</td> <td></td> </tr> </table>		No.	Description	Date	1	ISSUE FOR CONSULTING ENGINEER REVIEW		2	ISSUE FOR CONSULTING ENGINEER REVIEW		3	ISSUE FOR CONSULTING ENGINEER REVIEW		<p>DATE: 06/02/2014</p>		<p>BY: Rick G. Avey</p>		<p>DATE: 06/02/2014</p>		<p>BY: Rick G. Avey</p>		<p>DATE: 06/02/2014</p>		<p>BY: Rick G. Avey</p>		<p>DATE: 06/02/2014</p>		<p>BY: Rick G. Avey</p>	
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3	ISSUE FOR CONSULTING ENGINEER REVIEW																												



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TITLE: URRILUP ROAD ADJACENT LOT 88 DP 77544, LOT 1 DP 77544 TURNING SWEEP PATHS FOR BEND 1 - WEST BOUND		DATE: JUNE 2014 BY: SPT CHECKED: PFC APPROVED: C08
PROJECT: URRILUP ROAD ADJACENT LOT 88 DP 77544, LOT 1 DP 77544 TURNING SWEEP PATHS FOR BEND 1 - WEST BOUND		DRAWING NO: 140372 SHEET NO: C08

DOCUMENT CERTIFICATION

Date: 2 May 2014
 Drawn By: Rick G. NBY
 Checked By: [Signature]
 Approved By: [Signature]

NORTHERN BEACHES CONSULTING ENGINEERS PTY LTD.
 477 WYVERN DRIVE, WYVERN VIC 3209
 PH: (03) 9497 1400
 WWW.NORTHERNBACHESCONSULTINGENGINEERS.COM.AU

HCLAUCHLAN SURVEYING
 LARRY KARLOS

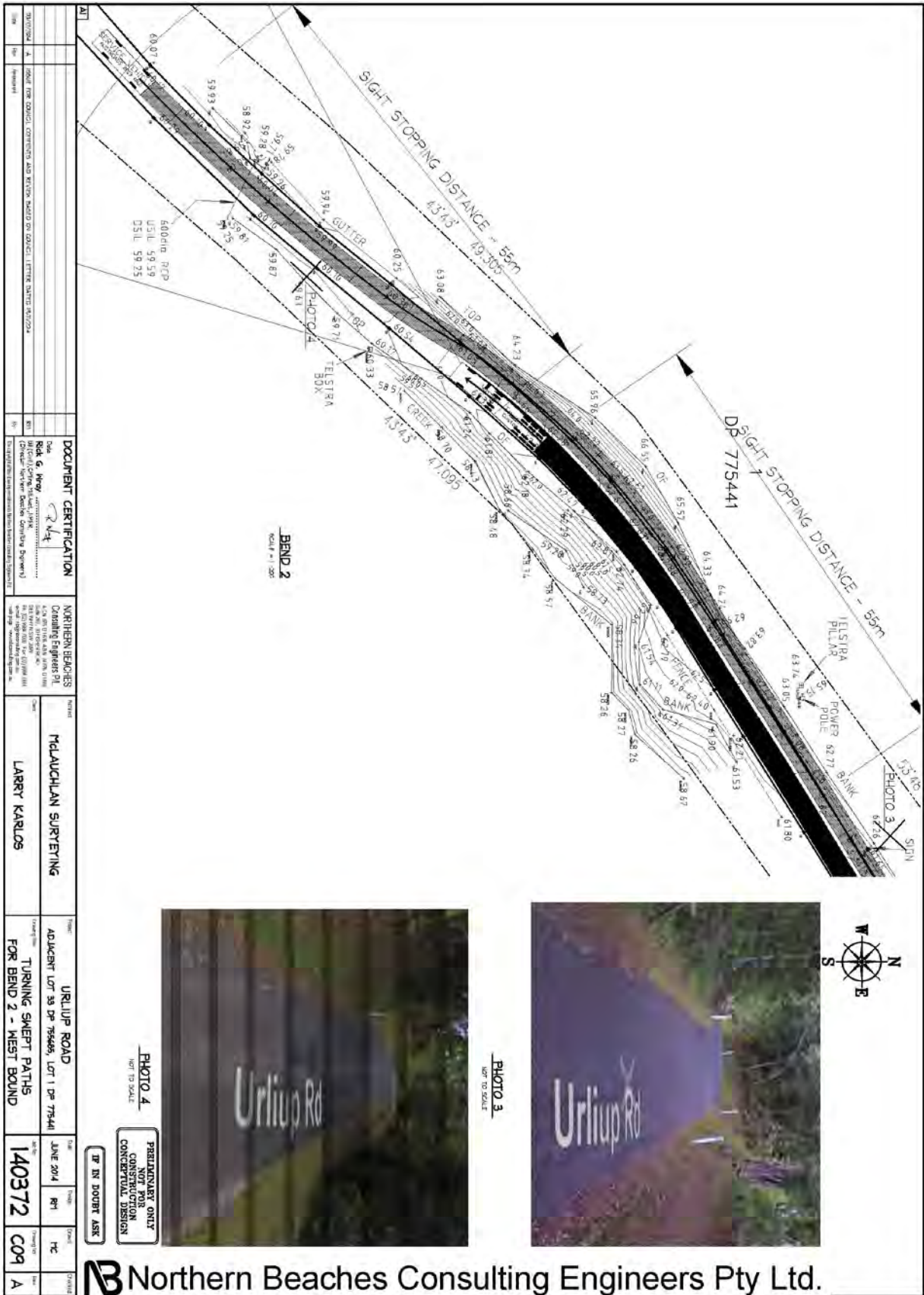
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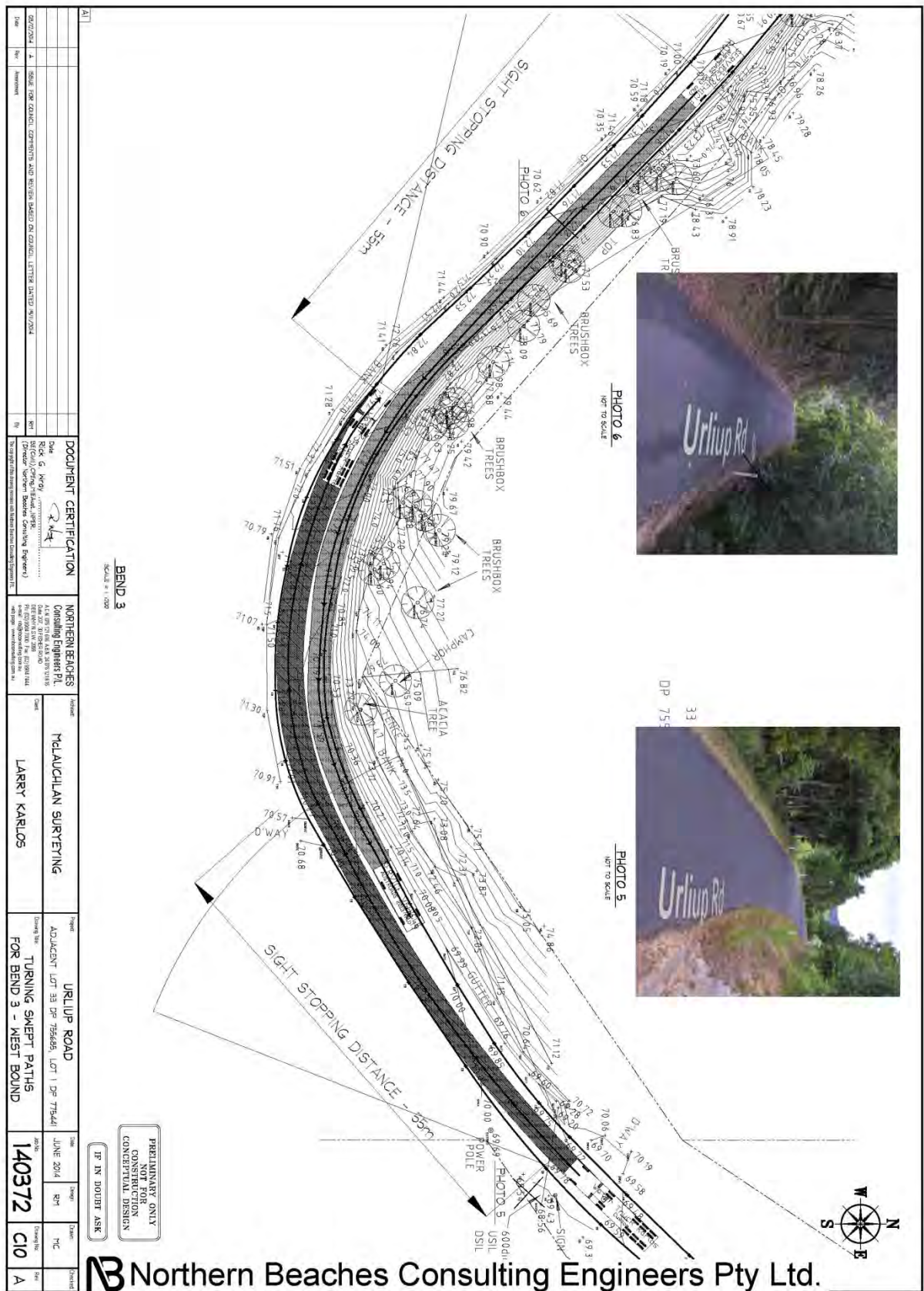
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PHOTO 2
 ACT TO SCALE

SCALE: 1:1000

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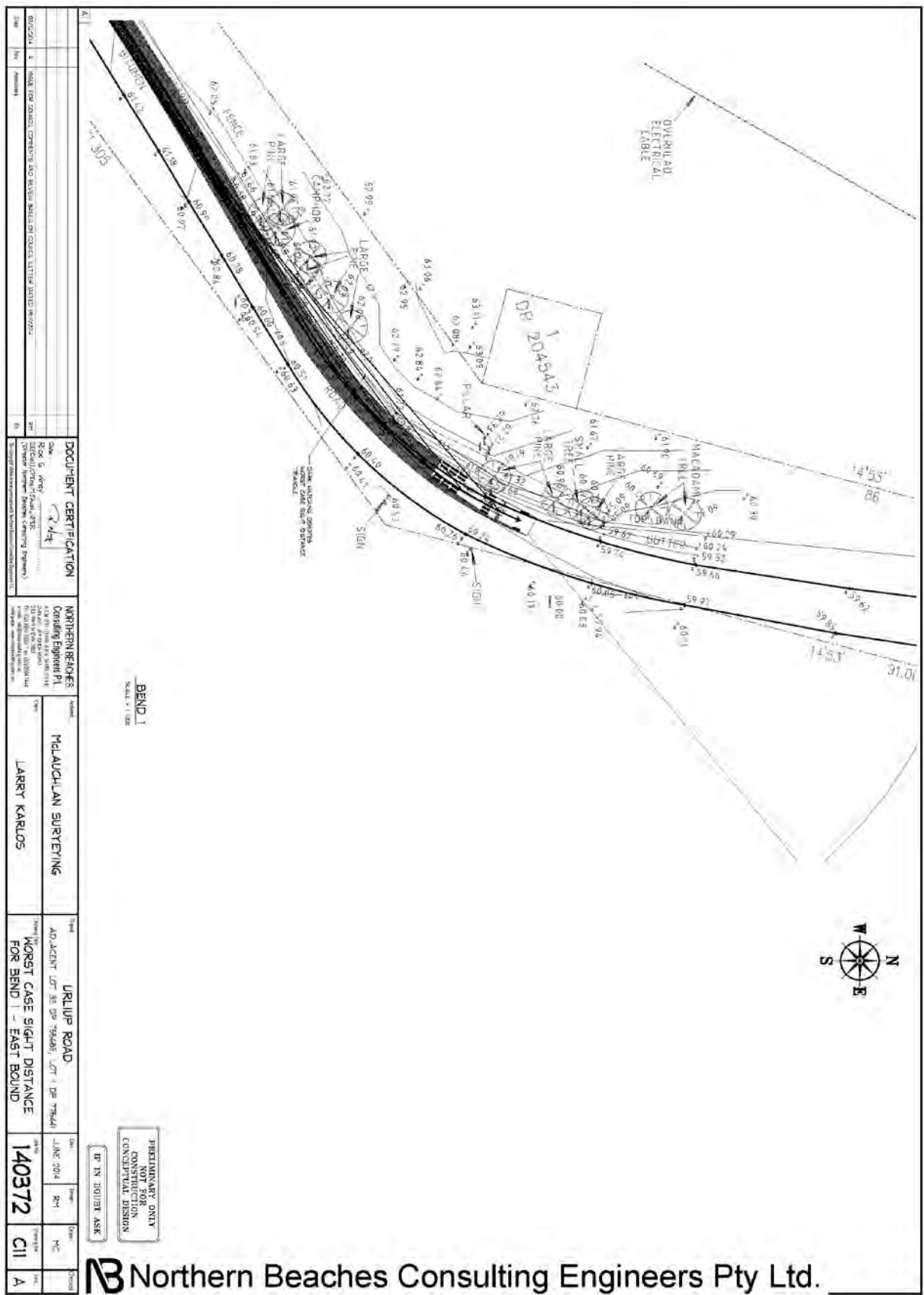
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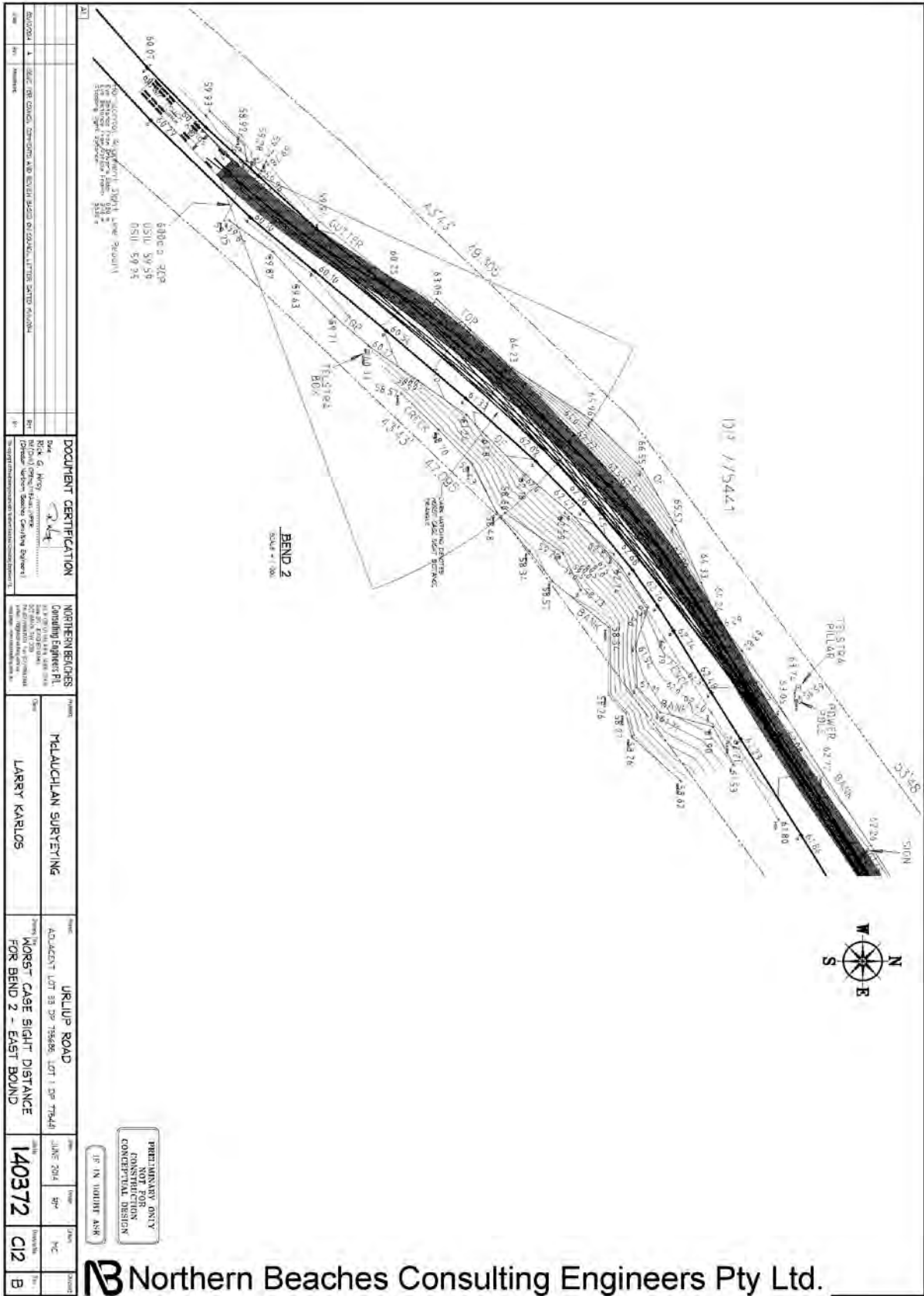


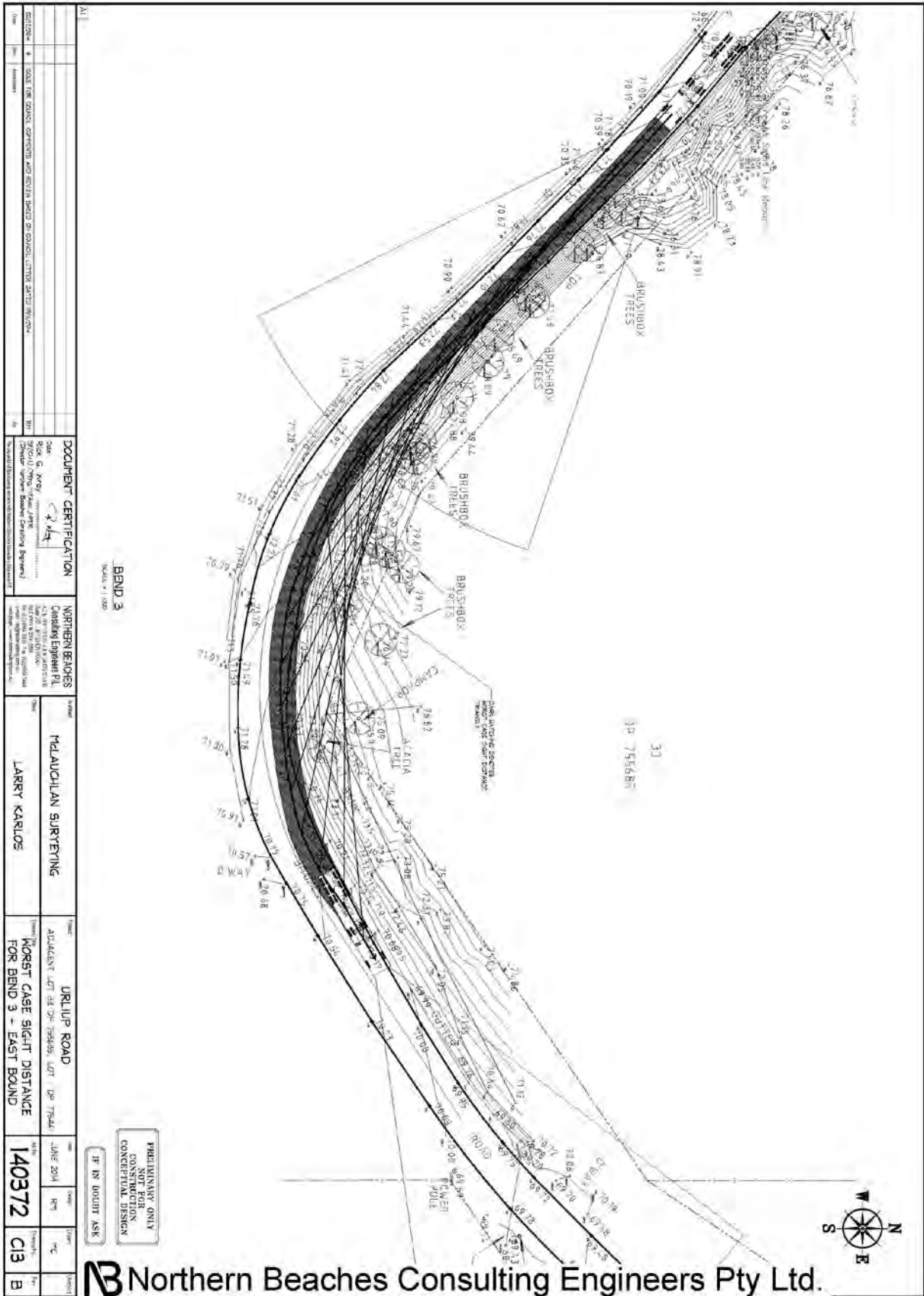
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Project: URRUP ROAD Adjacent Lot 33 DP 786485, Lot 4 DP 776441	Date: JUN 2014
Design: LARRY KARLOS	Sheet: R-1
Title: WORST CASE SIGHT DISTANCE FOR BEND 1 - EAST BOUND	Drawing No: 1A0372
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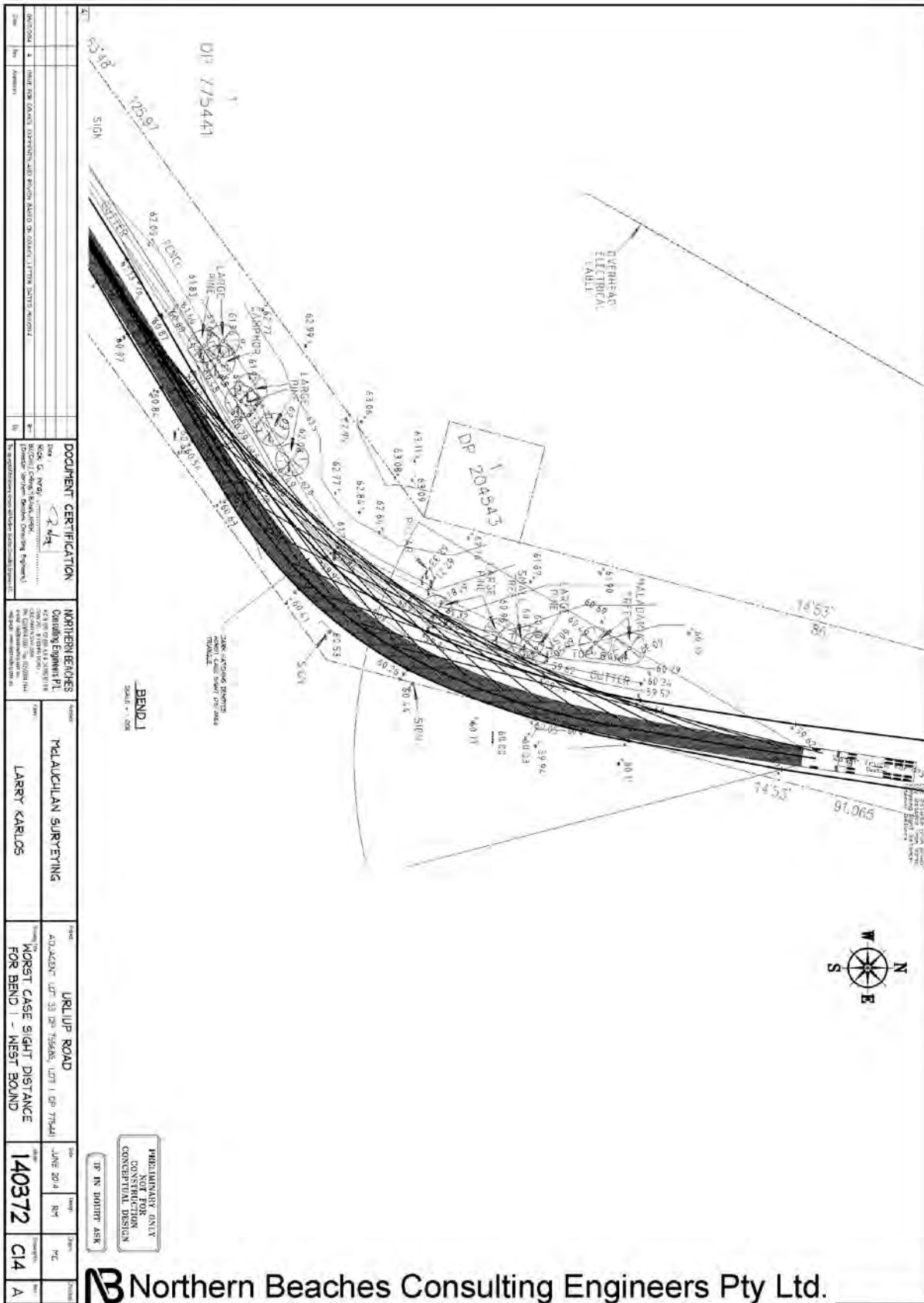
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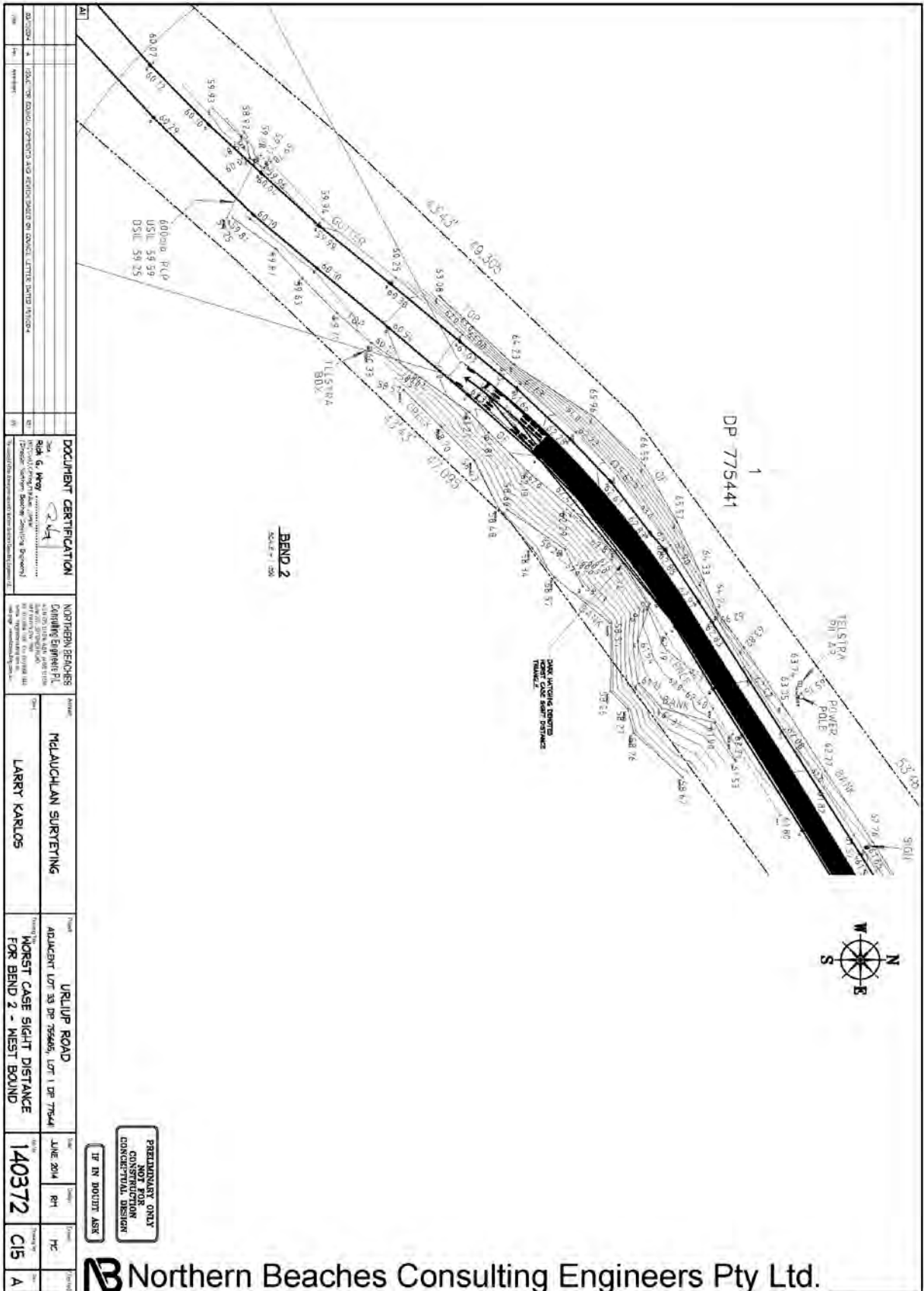




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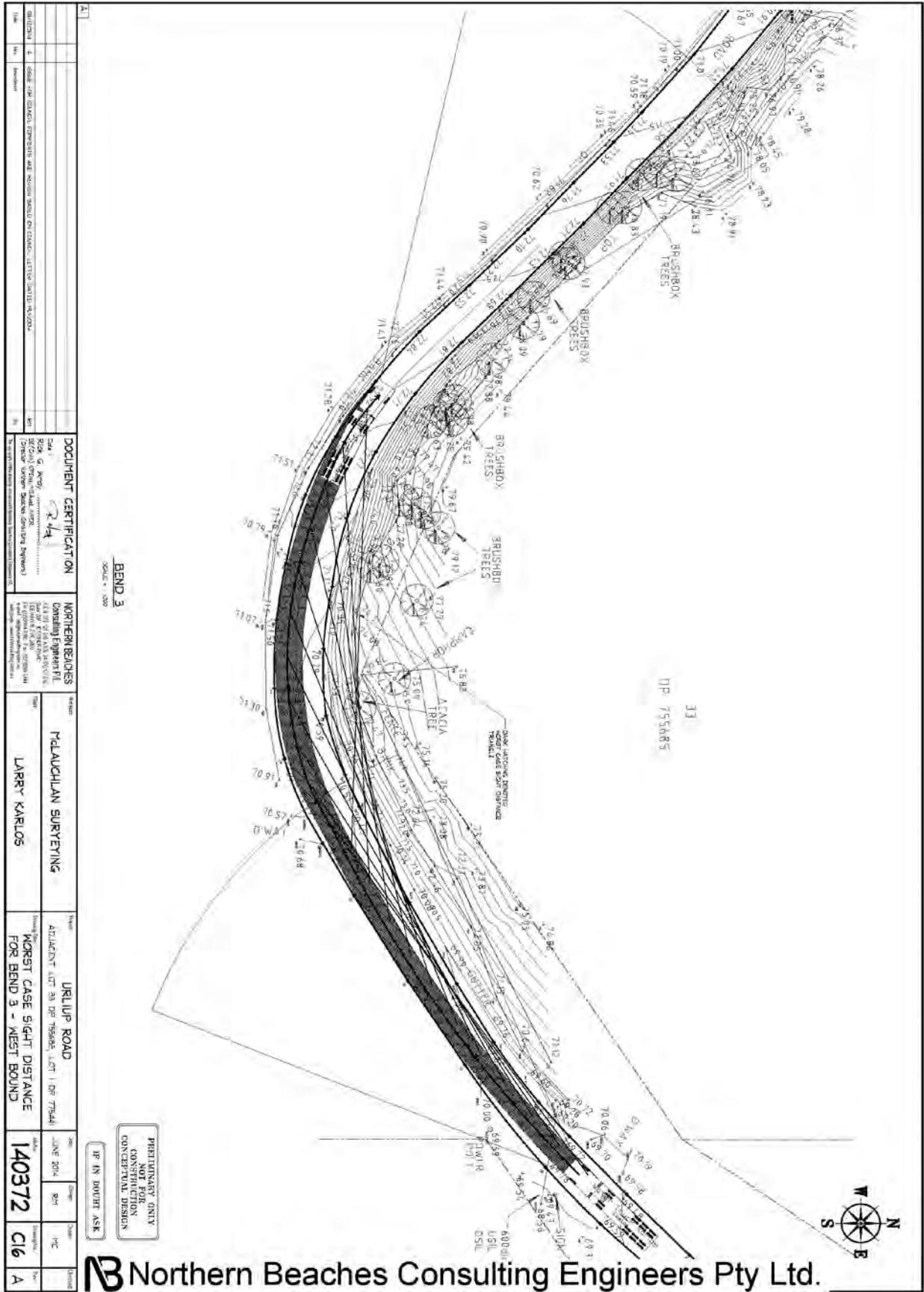
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CLIENT: MELAUCHLAN SURFETING LARRY KARLOS	PROJECT: URLIUP ROAD ADJACENT LOT 33 DP 75646, LOT 1 DP 75644 MOST CASE SIGHT DISTANCE FOR BAND 2 - WEST BOUND
DATE: JUNE 2014 SCALE: 1:40372 PROJECT NO.: C15 REVISION: A	PREPARED BY: <i>[Name]</i> CHECKED BY: <i>[Name]</i> DATE: <i>[Date]</i>

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General Permissibility & Applicable Planning Legislation

DA03/0445 was approved under Tweed Local Environmental Plan 2000 (LEP 2000) as a rural industry. The land at that time was zoned 1(a) where the rural industry was permissible with development consent.

The current Section 96 Application was lodged on 29 November 2013 (while LEP 2000 was the applicable planning instrument), yet the application is being determined in February 2015 while LEP 2014 is the applicable planning instrument.

Clause 1.8A of the Tweed LEP 2014 does have a savings provision relating to development applications which states:

"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced."

Given the Tweed LEP 2014 has been gazetted (April 2014) and commenced before determination of the modification application it would not be saved by the savings provision as the savings provision only saves Development Applications and not modification applications pursuant to Section 96. Therefore the modification application will need to be dealt with according to the law as it applies at the time of determination.

The current law applicable to the Section 96 is Tweed LEP 2014. This LEP has zoned the land RU2 - Rural Landscape which rural industries are permitted with consent. Rural Industries however have changed in definition and do not include water extraction. A rural industry is now defined as follows:

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.

Within the Tweed Local Environmental Plan 2014 the use could be defined as either a commercial premise or extractive industry. A commercial premise is prohibited within the RU2 zone and is defined as follows:

commercial premises means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises.

An extractive industry is permitted with consent within the RU2 zone although the definition may be open to interpretation as to whether water extraction could be considered an extractive industry. Extractive Industry is defined as follows:

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.

Regardless of the current definition of the use, it is considered that Section 109B of the Environmental Planning & Assessment Act 1979 applies and states that:

- (1) Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.
- (2) This section:
 - (a) applies to consents lawfully granted before or after the commencement of this Act, and
 - (b) does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and
 - (c) has effect despite anything to the contrary in section 107 or 109.
- (3) This section is taken to have commenced on the commencement of this Act.

So long as there is an existing development consent in force s109B of the EP&A Act authorises the carrying out of the development in accordance with that consent. The subject Section 96 Application would be amenable to modification in accordance with the Act under Section 96 by operation of section 109B(2)(b).

The Council (or Court on appeal) can only grant consent to the modification if certain matters are met, the main matter being satisfaction under s96(1A)(b) that:

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)

The relevant satisfaction required by s96(1A)(b) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. That is, *Council must be 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.*

The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an

appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

The following assessment undertakes this test and concludes the proposed Section 96 will result in a development which is not considered to be "essentially or materially" the same as the (currently) approved development. The information provided by the applicant is not adequate to undertake a full and proper assessment.

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

Section 96 (Modification of consents-generally) 1A

“(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.”*

Having regard to these criteria the proposed amendments are considered to be outside the scope of the S96 framework. The amendments are considered of an unknown impact upon vegetation and the road as adequate information has not been provided to assess the application.

Section 79C(1) (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 draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft 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), that apply to the land to which the development application relates,*

Comment:

Tweed Local Environmental Plan 2014

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 amendment of the approved rural industry by increasing the size of the truck used and the number of trips per day is not an opportunity to revisit the entire application but rather only consider the amendment being sought. Given the application before Council does not seek to extract additional material rather just increase the size of the truck and number of daily trips applicable, it is considered that this portion of the development is consistent with the aims of the Plan however the additional works proposed are outside of the aims.

Questions are raised in relation to the works required within the road reserve. The applicant has identified areas requiring upgrading to accommodate a 14m truck. This included vegetation removal within the road reserve. Areas have been identified as having a High Ecological Status with no information provided in relation to the impacts. It is therefore considered that the proposed development is not consistent with the aims of the Tweed LEP 2014. As such the proposed development is recommended for refusal in this instance.

Clause 2.3 – Zone objectives and Land use table

The RU2 Rural Landscape zone objectives are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

As outlined above, the definition of rural industry does not include water extraction within the Tweed LEP 2014. It was considered that the use could be defined as either a commercial premise which is prohibited or an extractive industry which is permitted with consent. Legal advice may be required to be sought for any future applications.

Despite the zone objectives his application must be assessed under Section 109B of the Environmental Planning & Assessment Act 1979 applies and states that:

- (1) *Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.*
- (2) *This section:*
 - (a) *applies to consents lawfully granted before or after the commencement of this Act, and*
 - (b) *does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and*
 - (c) *has effect despite anything to the contrary in section 107 or 109.*
- (3) *This section is taken to have commenced on the commencement of this Act.*

So long as there is an existing development consent in force s109B of the EP&A Act authorises the carrying out of the development in accordance with that consent. The subject Section 96 Application would be amenable to modification in accordance with Act under Section 96 by operation of section 109B(2)(b).

Clause 7.1 - Acid sulfate soils

The subject site is mapped as a Class 5 Acid Sulfate Soils area.

The proposed S96 Application does not seek approval for any additional works that would be within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

Clause 7.1 is considered satisfied.

Tweed Development Control Plan

A2-Site Access and Parking Code

The proposed development was referred to Council's Traffic Engineer in relation to the access. The Traffic Engineer provided:

Under s138 of the Roads Act 1993 any work within the road reserve requires approval of the road authority, in this case Council. There are concerns that the existing driveway access (within the road reserve) does not comply with Council's standards and has not been approved under s138 of the Act. This was brought to the attention of the applicant over 2 years ago and has still not been addressed adequately.

There are no sight assessment and turning path templates provided for the driveway access in the application.

It is therefore considered that additional information would be required in relation to the unauthorised works within Council road reserve at the entry to the subject site.

A11-Public Notification of Development Proposals

The proposed S96 application was not required to be advertised in accordance with this section of the Development Control Plan. However, submissions have been received in relation to the proposed amendment. These submissions are addressed later in this report.

State Environmental Planning Policies

There are no State Environmental Planning Policies which apply to the subject proposal.

Minimal Environmental Impact

The above 79C Assessment demonstrated that the proposed modification does not have adequate information to allow a proper assessment in relation to environmental impact.

Council's Natural Resource Management Section has assessed the application in relation to vegetation removal within the Uriup Road Reserve and outlined that areas having a high ecological status may be impacted upon as a result of the works. This information has not been provided in order to adequately address the required works.

Concerns were raised in relation to the water extraction currently taking place on the site. It should be noted that Council is not the governing authority for the water extraction portion of the operation. The NSW Office of Water is the relevant authority who have granted a license (30BL185414) to the owner of the land for the extraction of 55 Megalitres per year which is valid until 3 June 2018. The proposal complies with this license.

Substantially the Same Development

It was considered that the amendment cannot be supported in this instance as the actual works required within the road reserve are unknown at this stage as only limited information has been provide. It is therefore considered that the proposed amendments cannot be classified as being substantially the same development in this instance. The proposal is therefore recommended for refusal.

Submissions

The S96 Application was not required to be notified. However, due to compliance issues a number of submissions have been received throughout the process. The history of compliance in the summary of this proposal outlines the number of submissions. The following is a summary of the issues raised as a result of this application.

The issues raised in the submissions are detailed as follows:

Issue	Assessment
<p><u>Size of the truck</u> Numerous complaints have been received in relation to the size of the trucks being over the allowed 6m from the original consent.</p>	<p>The subject application involves the amendment to conditions relating to the size of the truck. As a part of the proposed development the applicant has provided engineering details for upgrades to Urliup Road which can accommodate a 14 metre truck which is the size of the truck in question. Council's Traffic Engineer has provided comments in relation to the size of the truck and the road works required. It is considered in this instance that the plans provided do not adequately address the requirements of a 14m truck as per Austroads standards. As such, the proposed development is recommended for refusal in this instance.</p>
<p><u>Number of trips</u> Numerous complaints have been received in relation to the number of trips per day being over the allowed 2 trips per day from the original consent.</p>	<p>The proposed increase in traffic movements is not considered to be of concern as Urliup Road carries very low traffic volumes and the proposed movements are not significant. There is however increased associated risk for a vehicle related crash when the road is not suitable for the proposed design vehicle. As outlined above, the proposed development is recommended for refusal in this instance.</p>
<p><u>Amount of water being extracted</u> There have been complaints regarding the amount of water being extracted and the impact that it has on the environment and surrounding water sources.</p>	<p>A bore water licence is required from the NSW Office of Water. The Office of Water is responsible for the management of groundwater and the owner has a valid license until 3 June 2018 for the extraction of 55 Megalitres in a 12 month period. The applicant is operating within the limitations of this license. This objection does not warrant refusal or amendment of the applications.</p>
<p><u>Times and noise of truck</u> There have been submissions received in relation to the time that the trucks have been operating. Particularly early in the morning.</p>	<p>Information provided by objections has identified that the development is operating within school bus hours. It is considered that if the amendment to the proposal is not supported then additional compliance action can be taken in relation to any future breaches of this condition.</p>

OPTIONS:

1. Refuse the S96 Application as per the recommendation and incorporate section B of the recommendations.
2. Refuse the S96 Application as per the recommendation.
3. Give in principle approval and conditions to be brought back to the next Planning Committee Meeting to enable further consideration of the application.

Council Officers recommend Option 1.

CONCLUSION:

The subject application seeks the amendment of an existing approved rural industry. The proposed amendment involves increasing the size of the current approved truck from 6 metres to 14 metres and the daily trips increasing from 2 to 12 trips. The proposed results in road upgrades to be undertaken via separate application to ensure the size of the truck can adequately be catered for. It is considered that insufficient information has been provided to support the application in this instance. The above assessment is considered to demonstrate that the proposal is generally unacceptable with respect to the appropriate legislative considerations.

As such, the proposed development is recommended for refusal in this instance.

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.

- 4 [PR-PC] Development Application DA10/0213 for a Sales Office and Hoardings at Lot 23 DP 776673 Bay Street Tweed Heads; Lot 2 DP 224382 No. 2 Bay Street Tweed Heads; Lot 1 Sec 5 DP 759009 No. 2 Thomson Street Tweed Heads; Lot 7 DP 224382 No. 2-6 Bay Street Tweed Heads; Lot 3 DP 224382 No. 4 Bay Street Tweed Heads; Lot 5 DP 224382 No. 5-7 Enid Street Tweed Heads; Lot 4 DP 224382 No. 6 Bay Street Tweed Heads; Lot 6 DP 224382 No. 9 Enid Street Tweed Heads

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA10/0213 Pt1

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Council approved a temporary sales office and hoardings at the subject site on 1 September 2010. The purpose of the Sales Office is to promote the approved multi-dwelling and commercial development (approved by the Department of Planning in 2006) with the associated hoarding offering signage promoting the development.

On 3 December 2014, Council officers became aware that construction had begun on the sales office. Noting that there were no records of a Construction Certificate being issued, the applicant was requested to confirm such on 4 December 2014. Council officers were provided with a brief response on 5 December that the matter had been passed onto the developer's Construction Team and that a response would be provided that day.

Despite several further messages being left with the owner/applicant (via Heran Building Group) in December 2014 and early January 2015, no further correspondence has been received to date.

As such, it is considered that Council's only option is to pursue enforcement action on the matter. If a Construction Certificate has not been issued, the construction of the Sales Office is unlawful. It also appears that the design of the building differs from that approved under DA10/0213.

RECOMMENDATION:

That, in respect of Development Application DA10/0213 for a Sales Office and Hoardings at Lot 23 DP 776673 Bay Street Tweed Heads; Lot 2 DP 224382 No. 2 Bay Street Tweed Heads; Lot 1 Sec 5 DP 759009 No. 2 Thomson Street Tweed Heads; Lot 7 DP 224382 No. 2-6 Bay Street Tweed Heads; Lot 3 DP 224382 No. 4 Bay Street

Tweed Heads; Lot 5 DP 224382 No. 5-7 Enid Street Tweed Heads; Lot 4 DP 224382 No. 6 Bay Street Tweed Heads; Lot 6 DP 224382 No. 9 Enid Street Tweed Heads, Council resolves to engage solicitors to pursue legal action with regard to any unlawful works that have been undertaken.

REPORT:

Applicant: Pacific Outlook Pty Ltd
Owner: Pacific Outlook Pty Ltd
Location: Lot 23 DP 776673 Bay Street Tweed Heads; Lot 2 DP 224382 No. 2 Bay Street Tweed Heads; Lot 1 Sec 5 DP 759009 No. 2 Thomson Street Tweed Heads; Lot 7 DP 224382 No. 2-6 Bay Street Tweed Heads; Lot 3 DP 224382 No. 4 Bay Street Tweed Heads; Lot 5 DP 224382 No. 5-7 Enid Street Tweed Heads; Lot 4 DP 224382 No. 6 Bay Street Tweed Heads; Lot 6 DP 224382 No. 9 Enid Street Tweed Heads
Zoning: B3 Commercial Core and R3 Medium Density Residential
Cost: \$15,000

Background:

The subject site presents as an L shaped configuration and is currently vacant, roughly surfaced with grassed areas with frontages to Thomson, Bay and Enid Streets, Tweed Heads.

A current development approval (DA05/0844) for a mixed use development exists for the subject site. The approval comprises the construction of three towers with buildings to a height of 16 and 10 storeys for the purpose of residential dwellings (202 units) and 10 commercial tenancies known as 'Bay Grand Apartments' was approved by the Department of Infrastructure Planning and Natural Resources (DIPNR) on 9 December 2006. Amendments to the proposal were approved by the Department in November 2009 and August 2011

In order to promote the mixed use development, the applicant sought approval for a temporary 8m x 8.5m sales office with associated hoarding, containing signage, and car parking, as noted below in Figure 1 and 2. The proposed sales office incorporated a kitchen, toilet facilities and office area. Approval was granted on 1 September 2010, subject to conditions of consent which included the requirement for a Construction Certificate to be issued prior to the commencement or work on the subject site.

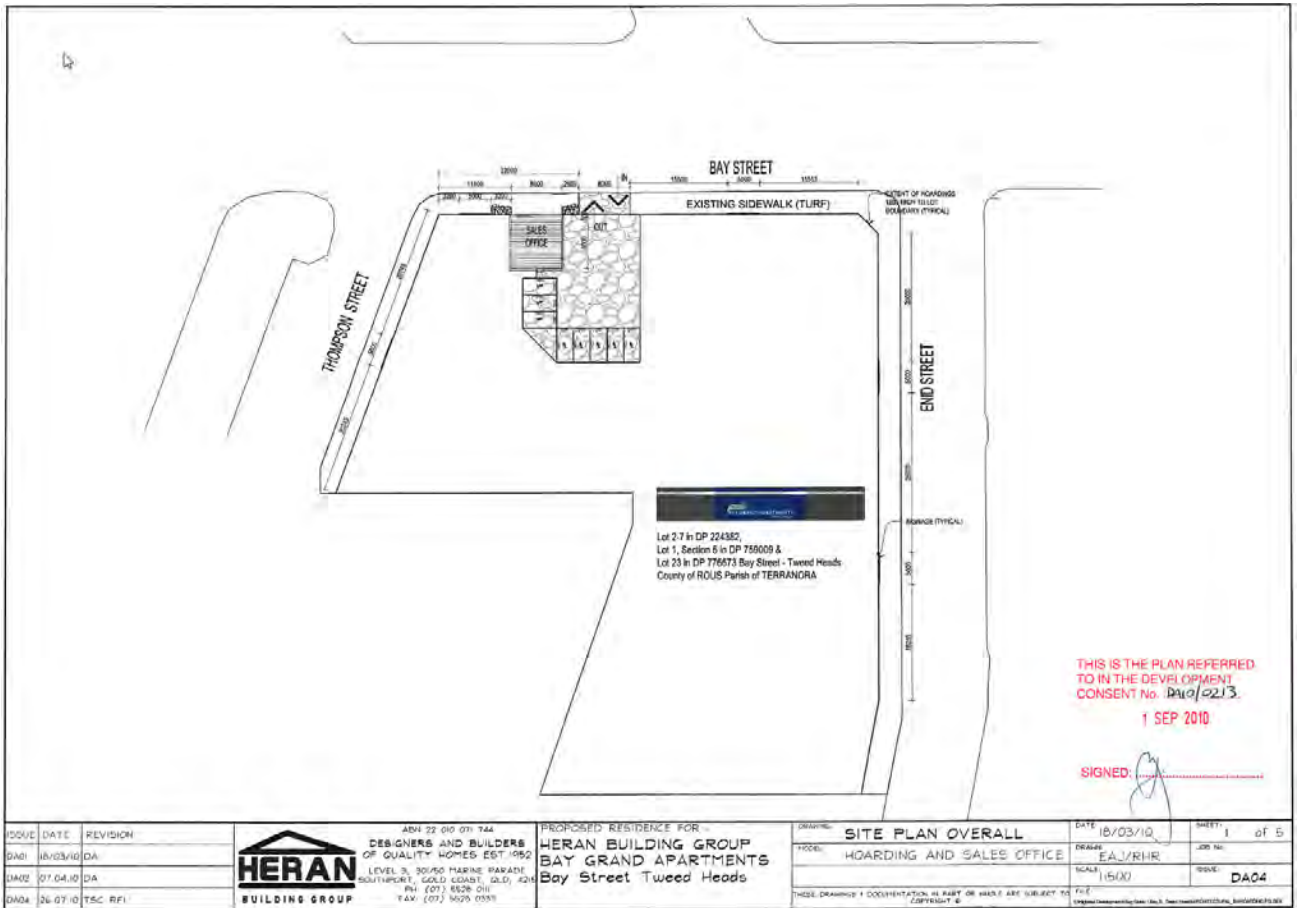


Figure 1 - Approved Site Plan

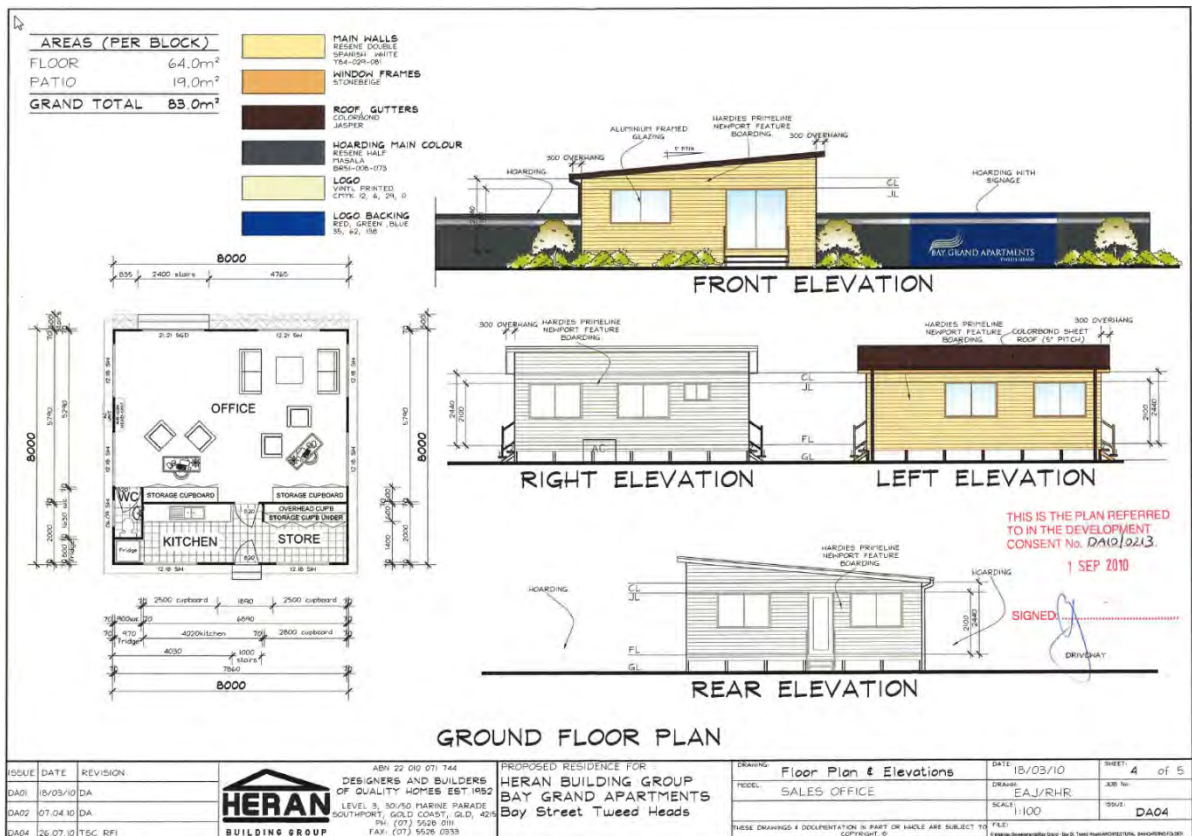


Figure 2 - Approved Floor Plan and Elevations

Council staff became aware that construction of the Sales Office had begun whilst undertaking streetscape works in Bay Street, as shown by Photo 1 below (which was taken on 20 November 2014).



Photo 1 - Construction being undertaken (20 November 2014)

The matter was forwarded to Council's Development Assessment Unit on 3 December 2013, whereby it was noted that Council had no records a Construction Certificate being issued for the development.

Following several unreturned phone calls, an email was issued to the applicant/owner (via Heran Building Group) on 4 December 2014 advising of the issue. Council officers requested confirmation as to whether a Construction Certificate had been issued for the development, noting that if a Construction Certificate has not been issued all works on the building should cease immediately as they are unlawful works. The email also requested confirmation as to whether the building had been constructed in accordance with the approved plans, as they appeared to differ.

Council officers were provided with a brief response on 5 December advising that the matter had been passed onto the 'Construction Team' and that a response would be provided that day.

Despite several further messages being left in December 2014 and early January 2015, no further correspondence has been received to date.

As noted below in Photo 2 and 3 (taken on 15 January 2015), it appears that further works have been undertaken, but it is unclear as to whether this was done prior to or after the request to stop works on 4 December 2014.



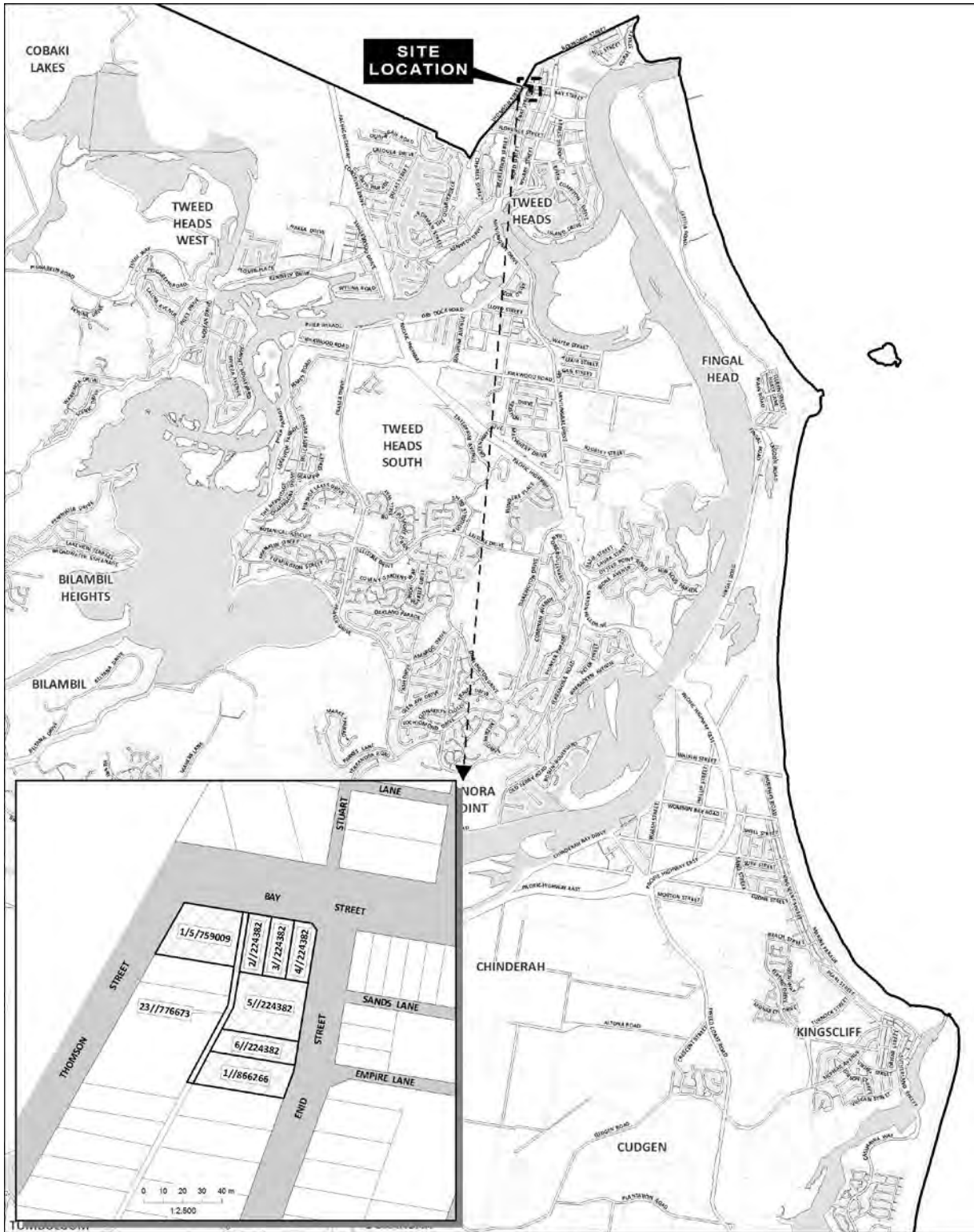
Photo 2 - Construction stage (15 January 2015)



Photo 3 - Construction stage (15 January 2015)

In light of the applicant/owner's decision to ignore Council's repeated requests for further information, it is considered that Council's has no option but to pursue enforcement action on the matter.

SITE DIAGRAM:



Locality Plan

Lot 23 DP 776673, Lot 2 DP 224382, Lot 7 DP 224382, Lot 3 DP 224382, Lot 4 DP 224382 No. 2-6 Bay Street;
 Lot 1 Sec 5 DP 759009 No. 2 Thomson Street; Lot 5 DP 224382, Lot 6 DP 224382 No. 5-9 Enid Street, Tweed Heads.

<p><small>Disclaimers: 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 interest or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and it is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any excavation a 'Call before You Dig' enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p>Cadastral 21/01/2015 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only</p>	<p>0 0.5 1 Km 1:50,000 A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> <p><small>Map Projection: Universal Transverse Mercator National Datum: Geocentric Datum of Australia 1994 Grid: Map Grid of Australia, Zone 56</small></p> <p>GDA</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murrumbidgee NSW 2484 PO Box 815 Murrumbidgee NSW 2484</p> <p>T (02) 8670 2400 1300 292 872 F (02) 8670 2429 W www.tweed.nsw.gov.au E planningrefom@tweed.nsw.gov.au</p>
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OPTIONS:

1. That Council resolves to engage solicitors to pursue legal action with regard to any unlawful works that have been undertaken.
2. That Council officers continue to liaise with the applicant / owner to determine the status of the works.

Council officers recommend Option 1.

CONCLUSION:

It is considered that the clear disregard of Council officer's requests for further information on the matter of unlawful works requires enforcement action in order to regularise the matter.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Costs will be associated with any legal action undertaken with regard to this compliance matter.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

5 [PR-PC] Development Application DA12/0170.11 for an amendment to Development Consent DA12/0170 for Alterations and Additions to Motel (Staged) at Lots 9-12 Sec 4 DP 31209 Nos. 19-25 Cypress Crescent; Lots 1 & 2 Sec 4 DP 29748 No. 26-28 Tweed Coast Road, Cabarita Beach

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA12/0170 Pt8

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 on 8 December 2014 received a Section 96 application (S96) DA12/0170.11 that applies to the Hideaway Motel, Cabarita. The S96 seeks the minor addition of an external terrace to an apartment unit and amendment of Condition 113A to remove a 'trial period' for the use of outdoor facilities. Legal advice accompanies the modification application to support removal of the trial period.

The S96 application is presented to Council for determination as the 'trial period' restriction in Condition 113A was imposed by way of a Notice of Motion (following a Notice of Rescission) in association with DA12/0170.04 at the Council meeting of 20 March 2014, not by way of Council Officer recommendation.

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, four S96 applications to modify the consent have been received and determined as follows:

- DA12/0170.01 - 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 granted 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 a number of internal and external design modifications and staging amendments which resulted in recalculation of contribution charges (approved by delegated authority on 29/12/2014).

During public exhibition of the current S96 application two submissions were received. One submission was received following conclusion of the public exhibition period. The submissions raise a number of concerns with regard to the possible impact of unacceptable noise levels, consistent with matters raised during previous assessments. The issues raised within the submissions are considered further within this report.

The Section 96 application is generally supported. Council Officers raise no objection to the removal of the 'trial period' in the second dot-point of Condition 113A.

In summary, the proposal aims to include a minor terrace addition to the development and restore Condition 113A to that approved by Council prior to the Rescission Motion of 20 March 2014. Modification to the General Terms of Approval under Section 100B of the Rural Fires Act 1997 is also required in order to reference amended plans. The proposal remains 'substantially the same development' and can be modified subject to the provisions of S96(1)(a) of the EP&A Act.

RECOMMENDATION:

That Development Application DA12/0170.11 for an amendment to Development Consent DA12/0170 for alterations and additions to motel (staged) at Lots 9-12 Section 4 DP 31209 Nos. 19-25 Cypress Crescent; Lots 1 & 2 Section 4 DP 29748 Nos 26- 28 Tweed Coast Road, Cabarita Beach be approved and the consent be amended as follows:

- 1. Delete Condition No. 1.1A and replace with Condition No. 1.1B as follows:**

1.1B. The development shall be completed in accordance with the Statement of Environmental Effects and Plans identified as:

- ***Site Plan, S96 101 Revision B, dated 28/11/2014;***
 - ***Ground Level Option 1, S96 101 Revision B, dated 28/11/2014;***
 - ***Level One, S96 102, Revision B, dated 28/11/2014;***
 - ***Level Two, S96 103, Revision B, dated 28/11/2014;***
 - ***Roof, S96 104, Revision B, dated 28/11/2014;***
 - ***Section AA, S96 200, Revision B, dated 28/11/2014;***
 - ***North and South Elevation, S96 300, Revision B, dated 28/11/2014;***
 - ***East and West Elevation, S96 310, Revision B, dated 28/11/2014.***
- All prepared by Virginia Kerridge Architect, except where varied by the conditions of this consent.***

- 2. Delete Condition No. 113A and replace with Condition No. 113B as follows:**

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.*

3. Delete the GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997 and replace it with the following:

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

1. *The motel re-development proposal is to comply with the plans; attached to the Bush Fire Safety Authority (BFSa) application, referred by Tweed Shire Council under S100B of the Rural Fires Act and received by the NSW RFS 12/12/14, along with amendments made by the attached conditions. The plans referred to (and used for this assessment) are noted as being prepared by Virginia Kerridge Architect, and are identified as:*
 - *Site Plan, S96 101 Revision B, dated 28/11/2014;*
 - *Ground Level Option 1, S96 101 Revision B, dated 28/11/2014;*
 - *Level One, S96 102, Revision B, dated 28/11/2014;*
 - *Level Two, S96 103, Revision B, dated 28/11/2014;*
 - *Roof, S96 104, Revision B, dated 28/11/2014;*
 - *Section AA, S96 200, Revision B, dated 28/11/2014;*
 - *North and South Elevation, S96 300, Revision B, dated 28/11/2014;*
 - *East and West Elevation, S96 310, Revision B, dated 28/11/2014.*

Asset Protection Zones

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

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

Water and Utilities

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

3. ***Water, electricity and gas are to comply with sections 4.1.3 and 4.2.7 of 'Planning for Bush Fire Protection 2006'***

Evacuation and Emergency Management

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

4. ***Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bushfire Protection 2006'***

Design and Construction

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

5. ***New construction shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.***
6. ***Exits are to be located away from the hazard side of the building.***
7. ***Roller doors, tilt-a-doors and other such doors shall be sealed to prevent the entry of embers into the building.***
8. ***No brushwood fencing shall be used.***
9. ***Roofing of the single storey buildings shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall be non-combustible.***

Landscaping

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

General Advice – consent authority to note

- ***The proposed timber pool fence shall be erected in accordance with the intent of the NSW RFS Fast Fact 2/06 "Dividing Fences" for BAL-12.5 development. In this regard a fence connecting with the Motel development shall be non-combustible for at least 1.0 metre with the rest of the fence constructed of either hardwood or a non-combustible material.***

Bushfire-Resisting Timber

- *The following bushfire-resisting timbers have been determined as being acceptable to withstand exposure up to BAL-29 conditions as per Australian Standard AS 3959-2009 'Construction of buildings in bush fire-prone areas' and are identified with Appendix F of the standard. These species include: Silvertop Ash, Blackbutt, River Red Gum, Spotted Gum, Red ironbark, Kwila (Merbau) and Turpentine.*

REPORT:

Applicant: Western Trust Partnership
Owner: Flaskas Bickle Pty Ltd & Wadley Bickle Pty Ltd
Location: Lots 9-12 Section 4 DP 31209 Nos. 19-23 Cypress Crescent and Lots 1-2 Section 4 DP 29748 Nos. 26-28 Tweed Coast Road, Cabarita Beach
Zoning: R2 - Low Density Residential
Cost: Not Applicable

Background:

DA12/0170

On 1 May 2012 Tweed Shire Council received Development Application DA12/0170 seeking approval for a number of alterations and additions to the existing Hideaway Motel at Cabarita Beach. DA12/0170 originally proposed a number of ancillary facilities for guests of the motel such as new 'at grade' parking facilities, restaurant, lounge room, outdoor food and beverage service area and swimming pool to be constructed in three stages.

A number of submissions were received from neighbouring residents raising concerns in relation to overlooking, overshadowing of the foreshore and residential properties, noise and disturbance in relation to the proposed modifications to the existing land use. The application was later amended seeking approval to allow the facilities to be open to the general public and the premises to be used for functions and events.

Council at the meeting of 14 February 2013, resolved to approve DA12/0170 for 'Alterations and Additions to Motel'. Council also resolved to amend Condition No. 9 of the Consent to allow the facilities (such as restaurant/dining area, lounge room and outdoor food and beverage service area) to be used by guests of the motel only, with the exception of ancillary functions and events consistent with the use of the premises as a motel and linked to guests residing on site. Conditions No. 11 and No. 12 were also amended to permit the use of the motel by members of the general public or for functions, parties or the like on an ancillary basis to the primary function of the premises as a motel. Also, Condition No. 15, that required the 'multipurpose space' to be used as storage area and games room for guests of the motel only, was deleted.

DA12/0170.01

Council on 11 July 2013 received a Section 96 application (S96) DA12/0170.01 seeking to modify the staging of contribution payments in line with the staging as approved within DA12/0170, and modifying the conditions to shift the payment of contributions from prior to issue of a construction certificate, to prior to the issue of the occupation certificate in line with Council's newly adopted policy. The application was approved on 12 September 2013.

DA12/0170.04

Council on 12 September 2013 received a Section 96 application (S96) DA12/0170.04 seeking a number of internal and external modifications to the building which generated increased contribution charges on the basis of the intensification of use of the building.

It also proposed modification to the first dot-point of Condition 113 to extend approved hours of operation of the under roof dining areas to 7am - 12 midnight seven days a week and public holidays (from 7am to 10pm Sunday to Thursday and 7am to midnight Fridays, Saturdays and Public Holidays).

Council Officers were concerned about the impact of the amendments to the hours of operation for enclosed areas in the first dot-point. Following discussions with the applicant

and receipt of amended plans, the Section 96 application was generally supported with the exception of the requested changes to the first dot-point of Condition 113. As such, Council Officers recommended no change to the hours of operation in the first dot-point.

The applicant did not propose any modification to the approved hours of operation for outdoor facilities in the second dot-point of Condition 113 (7am to 10pm seven days a week). As such, no changes to the approved hours of operation in the second dot-point were required to be considered or recommended by Council Officers.

Council approved DA12/0170.04 to this effect at the Planning Committee Meeting of 6 March 2014.

However, following a successful Notice of Rescission and an unsuccessful Notice of Motion at the Council Meeting of 20 March 2014 to extend operational hours in the first dot-point of Condition 113 in line with the applicant's proposal (7am - 12 midnight seven days a week), a Notice of Motion was carried to amend Condition 113 as follows:

113A 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. This shall be for a trial basis for a period of twelve (12) months from the commencement of use and a report be brought back to Council at the conclusion of the trial period.*

It is noted that the first dot-point of Condition 113A extends hours of operation on Thursdays, and Sundays that occur prior to a public holiday falling on a Monday, from 10pm to midnight.

The amended condition also imposes a twelve month 'trial period' from the commencement of use at the second dot-point, modification of which was not proposed by the applicant nor required to be considered by Council Officers in their assessment of the S96 application.

The application was subsequently approved on 24 March 2014.

DA12/0170.07

Council on 15 May 2014 received a Section 96 application (S96) DA12/0170.07 seeking to amend an error in the wording of Condition No. 93A clarifying the requirement for payment of S94 contributions prior to the issue of an occupation certificate in line with Council's amended policy. The application was approved on 29 May 2014.

DA12/0170.10

Council on 3 November 2014 received a Section 96 application (S96) DA12/0170.10 seeking a number of internal and external design modifications and staging amendments which resulted in recalculation of contribution charges. The application was approved on 29/12/2014.

PROPOSED DEVELOPMENT:

The current S96 application seeks a minor design amendment to the approved development and amendment of Condition 113A as follows:

- Provide an external tiled terrace associated with the Northern Apartment located on top of the approved lounge and function room outdoor roof with finishings

consistent with the that approved for the Southern Apartment. The terrace incorporates a brick balustrade and full height timber privacy screen along the northern edge and a balustrade consistent with the remainder of the motel units along the eastern edge.

- Removal of the 'trial period' for the use of the outdoor facilities within the second dot-point of Condition 113A.

The condition currently reads as follows:

113A 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. This shall be for a trial basis for a period of twelve (12) months from the commencement of use and a report be brought back to Council at the conclusion of the trial period.*

Applicant's Legal Advice

The applicant supplied legal advice dated 14 November 2014 from Storey & Gough Lawyers which is reproduced in full below.

"We have been requested to advise (sic) on the validity of a condition of development consent imposed by Tweed Shire Council ('Council') when consenting to the modification of DA12/0170 (Application No. DA12/0170.04) on 24 March 2014.

Background

On 1 May 2012 Council granted consent to development application No. DA12/0170 for "Alterations and additions to motel" ("development application"). The development application approved the erection and use of an indoor dining area and outdoor facilities including pool, BBQ, Bar and outdoor dining area. Condition No. 111 of the development consent provided:

111. Hours of operation of the business are restricted to the following hours and in accord with the recommendations of the CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012):

- * *Dining areas, not including BBQ or Outdoor Bar and Dining Areas, 7am - 10pm Sunday to Thursday, 7am - 12am Friday and Saturday and Public Holidays;*
- * *Outdoor facilities, including Pool, BBQ and Bar and Outdoor Dining Areas, 7am to 10pm Monday to Sunday.*

On 12 September 2013 an application was lodged to modify the development application pursuant to s.96 of the Environmental Planning and Assessment Act 1979 ("the Act"). The modification application form described the development as "Amendments to layout and external appearance." The modification application sought to amend condition 111 to read as follows:

- * *Dining areas including the Food and Beverage Service Area (under roof) 7am - to 12MN Monday to Sunday and Public Holidays;*

- * *Outdoor facilities, including Pool and BBQ Areas, 7am to 10pm Monday to Sunday.*

On 24 March 2014, Council consented to the modification application, deleted Condition 111 and inserted (relevantly) Condition 113A which states:

113A 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. This shall be for a trial basis for a period of twelve (12) months from the commencement of use and a report be brought back to Council at the conclusion of the trial period.*

It is the second bullet point to condition 113A which is the subject of this advice.

Validity of Condition 113A

Prior to the approval of application DA12/0170.04 on 24 March 2014, development consent was in place for the use of the pool and BBQ between 7am to 10pm Monday to Sunday in perpetuities. The effect of the second bullet point in condition 113A is to impose a trial period on the pool and BBQ area, and unless Council's subsequent approval is obtained after the expiration of 12 months, the pool and BBQ area are not to be used.

A consent authority's power to impose a condition of consent when approving a s.96 modification application is not unconstrained. The discretion to impose a condition is limited "to matters raised for consideration by the application". 1643 Pittwater Road Pty Ltd v Pittwater Council [2004] NSWLEC 685. McClelland CJ in 1643 stated at [51]:

Accordingly, when an application to modify one aspect of a development is lodged, the consent authority must consider the matters under s 79C(1) relevant to the aspects of the development to which the application relates. Accordingly, if an application is made to modify the height of a building, consideration of any matter which is either directly or indirectly related to height will arise for consideration.

In the current situation, the modification application did not seek to modify or extend the hours of operation of the pool or BBQ area. The imposition of a trial period for the use of those areas was not relevant to an aspect of development to which the applicant sought to modify. The imposition of the trial period in this instance is beyond Council's power under s.96 of the Act.

Council's action in imposing the trial period is analogous with the facts in Greenwood v Warringah Council [2012] NSWLEC 152. In that case Council attempted to impose a condition within a s96 approval that limited the duration of mining operations. The development consent imposed no end date to the operations and the modification application sought to change the types of materials that could be recycled. Sheahan J held at [178] to [179]:

...the sunset clause had the drastic and prejudicial consequence of terminating the whole of the 1987 consent, effective 1 January 2003, and the operation of

that sunset clause was not limited to the new materials nominated in the modification application...

*I am satisfied that Benalup ought **not** now be followed, but I am not satisfied of the adequacy of the "nexus" between a sunset clause on the whole consent and the subject matter of the application at hand. I, therefore, do not accept that clause 14 is a valid condition.*

We are therefore of the view that the imposition of a trial period to the second bullet point of condition No. 113A is beyond Council's power under s.96 of the Act."

Assessment

Terrace

The proposed external tiled terrace is a minor addition to the Northern Apartment and is smaller in size than that approved for the Southern Apartment. During assessment of previous modifications, the terrace associated with the Southern Apartment was reduced in size to that which was considered sufficient to mitigate concerns with regard to amenity and impact upon adjoining properties. As such, a smaller terrace, sufficiently screened from the side boundary is considered suitable in association with the Northern Apartment.

The terrace is located on Level 1, the middle level of the three level building and is oriented towards the east and the beach. It is considered to be consistent in style and design with the overall development and in particular the terrace associated with the Southern Apartment.

A visual comparison of the proposal with what has been approved recently (DA12/0170.10) follows:

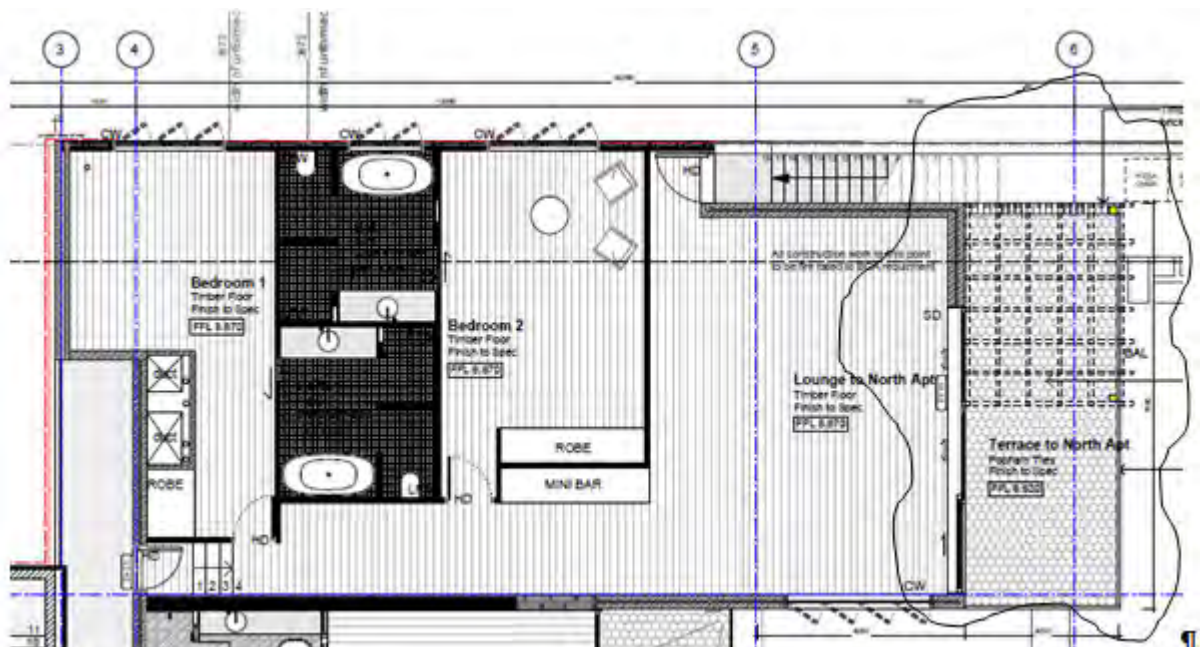


Figure 1: excerpt from proposed Level 1 floor plan (Revision B 28/11/2014)

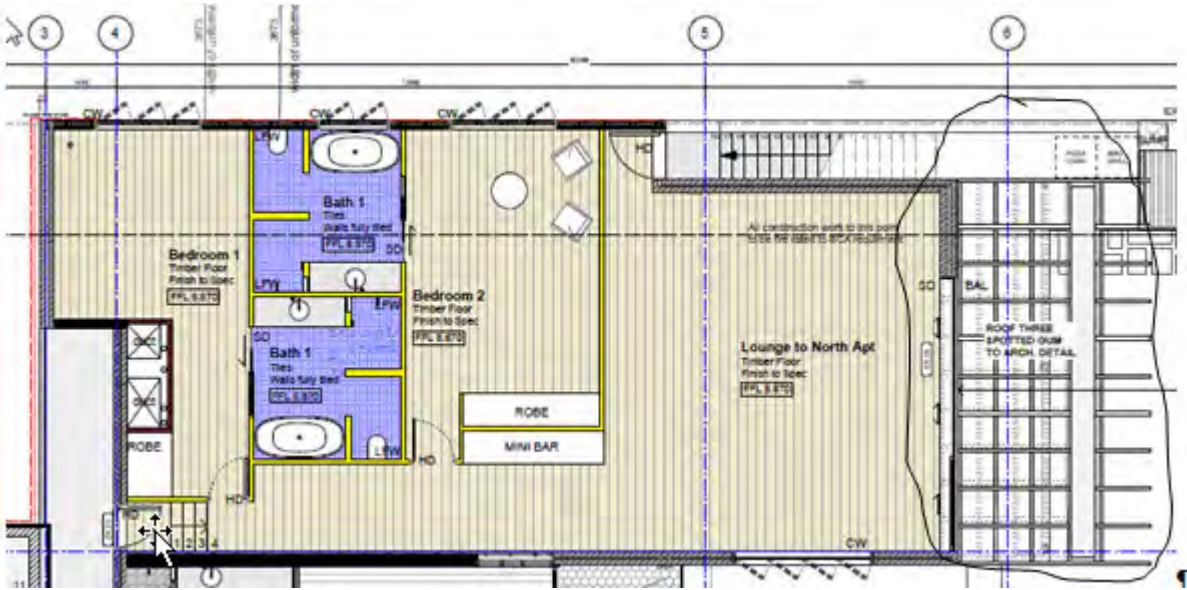


Figure 2: excerpt from approved Level 1 floor plan (Revision A 24/10/2014)

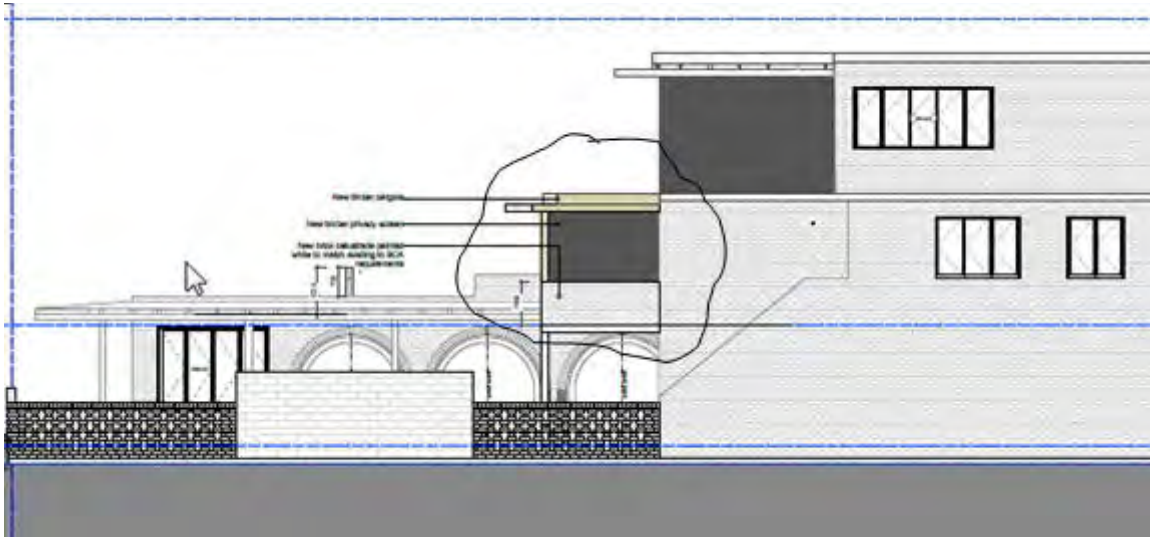


Figure 3: excerpt from proposed Northern Elevation (Revision B 28/11/2014)

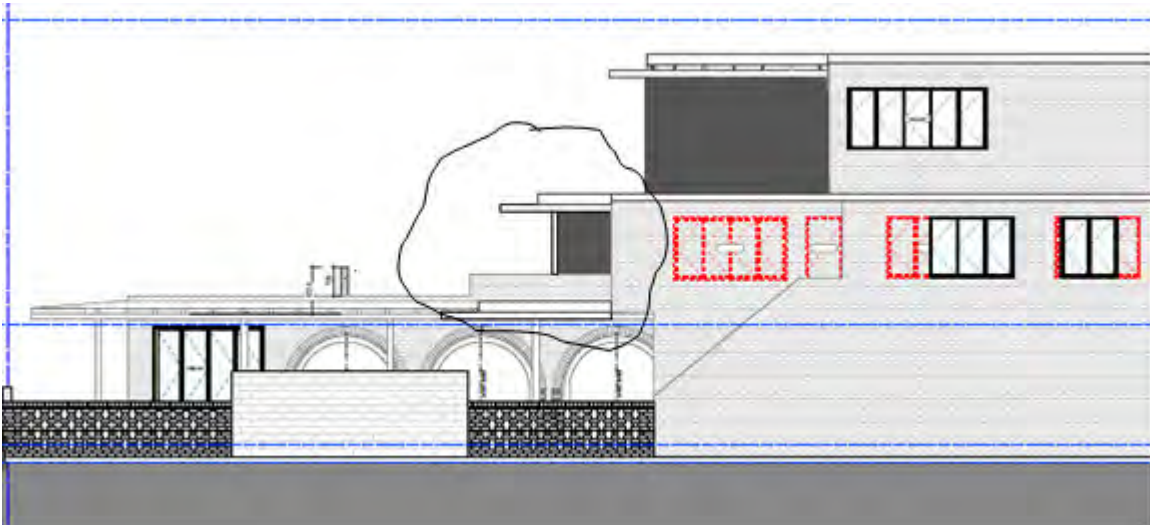


Figure 4: excerpt from approved Northern Elevation (Revision A 24/10/2014)

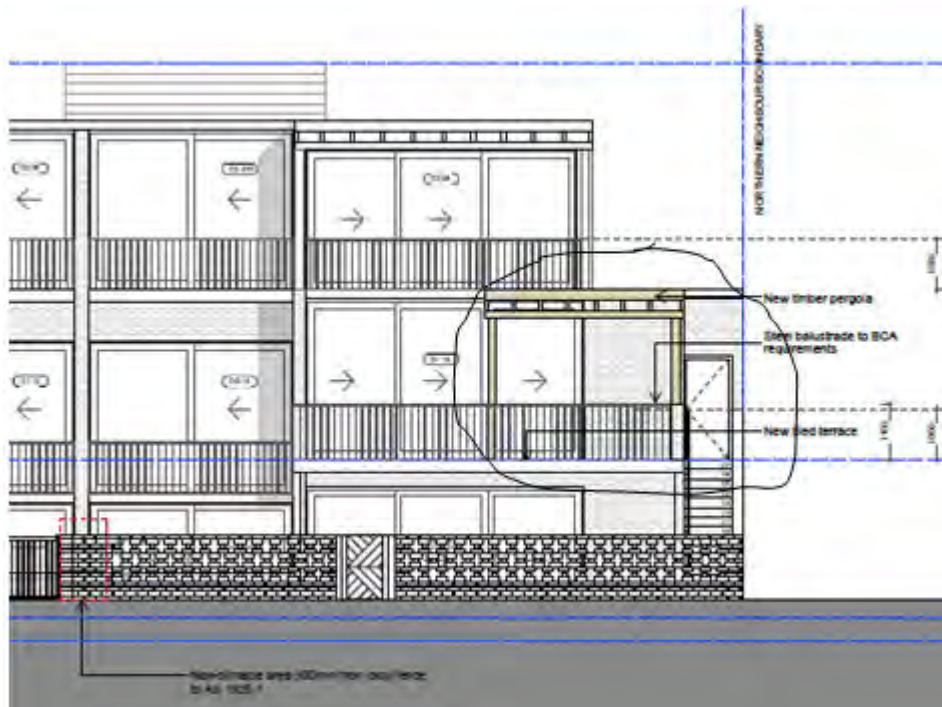


Figure 5: excerpt from proposed Eastern Elevation (Revision B 28/11/2014)

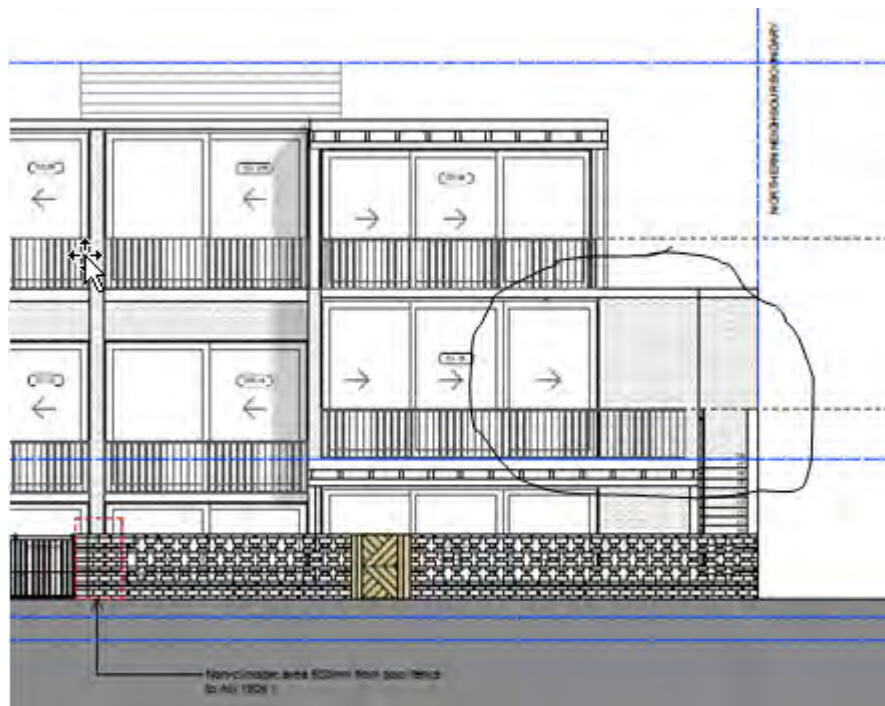


Figure 6: excerpt from approved Eastern Elevation (Revision A 24/10/2014)

Condition 113A

The applicant's Noise Impact Assessment (as part of DA12/0170 application documentation) guided wording of original Condition 111 which stated:

111. *Hours of operation of the business are restricted to the following hours and in accord with the recommendations of the CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012):*

- * *Dining areas, not including BBQ or Outdoor Bar and Dining Areas, 7am - 10pm Sunday to Thursday, 7am - 12am Friday and Saturday and Public Holidays;*
- * *Outdoor facilities, including Pool, BBQ and Bar and Outdoor Dining Areas, 7am to 10pm Monday to Sunday.*

Measurements had also been put in place with original Condition 109 (now Condition 111A and still in place as per below) to regulate noise levels emitted from the premises.

111A. The $L_{Aeq, 15 min}$ noise level emitted from the premises shall not exceed the background noise level (L_{A90}) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.

Modification application DA12/0170.04 proposed to extend operational hours to 7am - 12 midnight seven days a week and public holidays. The proposal was not supported by Council Officers. Instead, new wording of the relevant condition (113) was recommended to take into account design changes (also part of the DA12/0170.04 modification) but reference to operational hours remained unchanged. The Officers recommendation (below) within the Council report presented to the Planning Committee Meeting of 6 March 2014 referred to this amended condition as 113A.

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.*

Council resolved at Item 8 of the Planning Committee meeting of 6 March 2014 to approve DA12/0170.04 and amend the consent in accordance with the Officers recommendation (above). Subsequently, a Notice of Rescission was moved at the Council meeting of 20 March 2014. The motion was carried.

Following an unsuccessful motion at that meeting to modify the first dot-point of Condition 113A to permit operation of the enclosed areas and outdoor bar until 12 midnight, seven days a week, a successful motion extended hours of operation on Thursdays, and Sundays that occur prior to a public holiday falling on a Monday, from 10pm to midnight in the first dot-point and included modification of the second dot-point to impose a 'trial period' as reproduced below.

113A 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. This shall be for a trial basis for a period of twelve (12) months from the*

commencement of use and a report be brought back to Council at the conclusion of the trial period.

In summary, having considered the current modification proposal, the applicant's legal advice, issues raised within the submissions and Council Officers recommendations with regard to DA12/0170.04, no objection is raised to the removal of the 'trial period' in the second dot-point of Condition 113A.

MODIFICATION OF CONDITIONS

Changes are proposed to the following conditions:

Amend Condition 1.1A to reference the amended plans.

The amended plans as proposed are considered acceptable and the applicant's request to amend the condition referencing the approved plans is supported.

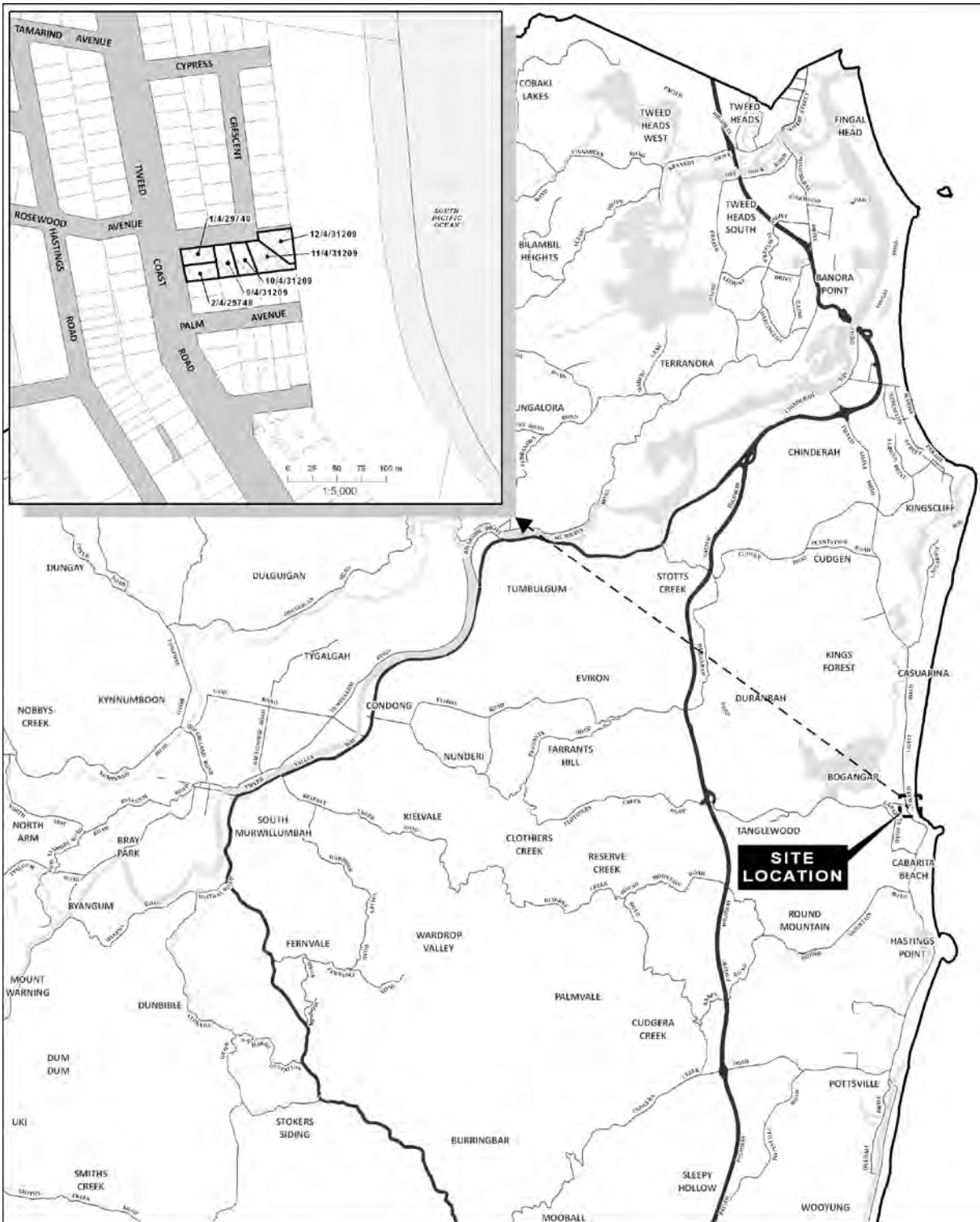
Amend Condition 113A to delete the trial period reference in point two (second sentence).

Council Officers raise no objection to the deletion of the trial period reference in point two.

Amend the General Terms of Approval (GTA's) under Section 100B of the Rural Fires Act 1997 to reference the amended plans.

The requested change to Condition 1 of the Bushfire Authority is considered acceptable as the NSW Rural Fire Service has reviewed the amended plans and provided advice to this effect by way of reissue of the GTA's.

SITE DIAGRAM:

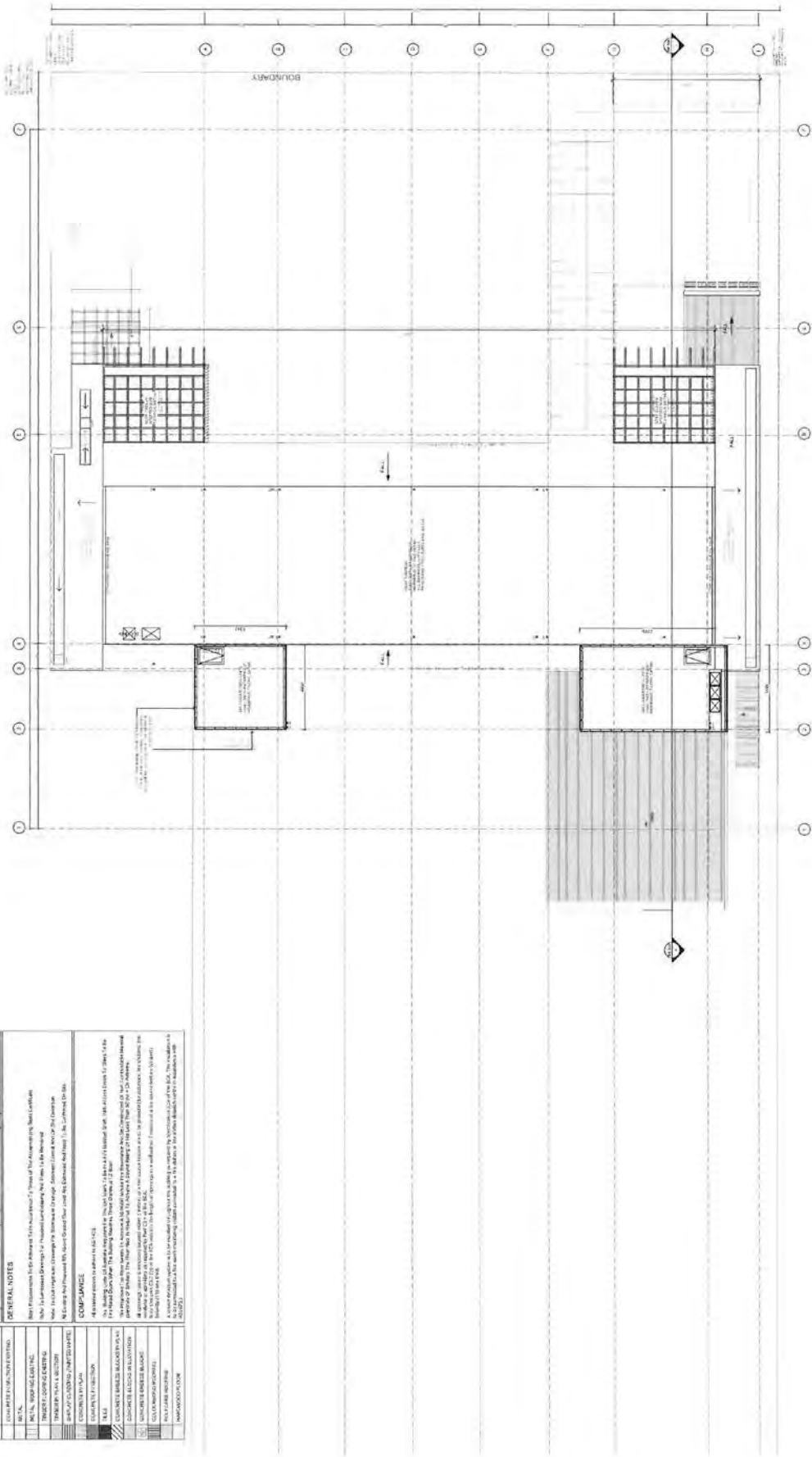


Locality Plan

Lots 9-12 Section 4 DP 31209 Nos. 19-25 Cypress Crescent, Cabarita Beach;
 Lots 1-2 Section 4 DP 29748 Nos. 26-28 Tweed Coast Road, Cabarita Beach

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SYMBOL KEY		ABBREVIATIONS	
1	PROPOSED BUILDING	16	RELEVANT LINE
2	EXISTING BUILDING	17	SPREAD BOARD
3	PROPOSED TERRACE	18	ADJUST ON SITE
4	PROPOSED TERRACE	19	FLIGHT WALKER
5	PROPOSED TERRACE	20	LANDSCAPE PLANTING
6	PROPOSED TERRACE	21	LANDSCAPE PLANTING
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83	PROPOSED TERRACE	98	LANDSCAPE PLANTING
84	PROPOSED TERRACE	99	LANDSCAPE PLANTING
85	PROPOSED TERRACE	100	LANDSCAPE PLANTING



<p>VIRGINIA KERRIDGE ARCHITECT</p> <p>50/51 WEST BUCKINGHAM STREET SYDNEY NSW 2011</p> <p>PH: 02 9699 2267 FAX: 02 9699 4628</p> <p>10/100 BALMAIN RD NSW 1500 AUSTRALIA</p>		<p>THESE DRAWINGS ARE FOR THE PURPOSES OF APPLICATION ONLY</p> <p>THESE DRAWINGS ARE NOT FOR CONSTRUCTION</p> <p>REPORT TO ARCHITECT IMMEDIATELY</p>	<p>DATE: 28 Nov 2014</p>	<p>SECTION: B</p>
			<p>PROJECT: 21 CYPRESS CRESCENT CABARITA BEACH NSW 2488</p>	<p>SCALE: 1:100 at A1</p>
<p>SECTION: NORTH APARTMENT TERRACE</p>	<p>SECTION NO: B</p>	<p>SECTION NO: S96 104</p>	<p>DATE: 28 Nov 2014</p>	<p>SECTION: B</p>



SYMBOL KEY		ADMINISTRATIVE	
1	EXISTING BUILDING	2	EXISTING DRIVE
2	EXISTING DRIVE	3	EXISTING DRIVE
3	EXISTING DRIVE	4	EXISTING DRIVE
4	EXISTING DRIVE	5	EXISTING DRIVE
5	EXISTING DRIVE	6	EXISTING DRIVE
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THESE DRAWINGS ARE FOR THE PURPOSE OF SECTION 98 APPLICATION ONLY
THESE DRAWINGS ARE NOT TO BE USED FOR CONSTRUCTION
REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY

DATE: 14/11/2014
 DRAWN BY: SECTION 98 (NORTH APARTMENT TERRACE)
 CHECKED BY: SECTION 98

DATE: 28 Nov 2014
 DRAWN BY: 1,100 Ill A1
 CHECKED BY: S96 200

SECTION AA

27 CYPRESS CRESCENT
 CABARITA BEACH NSW 2488

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

The Section 96 Modification only requests the consideration of the proposed modifications to the previously approved development application. Therefore this S96 Modification only requests reconsideration of the policies relevant to the proposed amendments.

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.

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

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

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

Tweed Local Environmental Plan 2014 (current standard instrument)

The proposed development is defined as *hotel or motel accommodation* which is a type of *tourist and visitor accommodation*. The proposal is a prohibited form of development under the TLEP 2014. However, continuing operation relies upon compliance with the definition of an *existing use* in accordance with Clause 106 of the EP&A Act and the establishment of existing use rights.

This modification is capable of determination and is assessed against s.109B(2)(b) of the EP&A Act which states that the section "*does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent...*".

Clause 1.2 – Aims of the Plan

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 EP&A Act.

The proposed development is considered consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

R2 - Low Density Residential zone

The proposed development is defined as *hotel or motel accommodation* which is a type of *tourist and visitor accommodation*. The proposal is a prohibited form of development in the R2 zone. This is consistent with prohibition of a motel use in the former 2(a) Low Density Residential zone under the TLEP 2000.

However, operation of the subject motel has relied on existing use rights (Clause 106 of the EP&A Act). As such the proposed modifications are capable of being considered within the R2 zone as they meet the provisions of s.109B of the EP&A Act.

Clause 2.7 – Demolition requires development consent

Any demolition associated with the proposal has been included in the original application.

Clause 4.3 - Height of Buildings

The current proposal does not modify building height.

Clause 4.4 – Floor Space Ratio

The subject site is affected by a maximum 0.8:1 FSR standard. The approved proposal achieves an FSR of 0.375:1 which does not exceed the standard.

Clause 5.5 – Development within the Coastal Zone

The proposal is located within the Coastal Zone (1km landward of the coastal waters of the State) and adjacent to the coastal foreshore. An assessment

against the provisions of this clause was undertaken at the time of the original assessment against the standard instrument and statutory documents in force at the time. Therefore it is considered that there will be no additional impact (beyond what has already been assessed and accepted) upon the Coastal Zone in terms of; existing access to the coastal foreshore, overshadowing, stormwater, effluent and coastal hazards.

Clause 5.9 – Preservation of Trees or Vegetation

The current modification application does not propose any removal of vegetation.

Clause 5.11 - Bush fire hazard reduction

The current modification application does not propose any bush fire hazard reduction.

Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. Class 4 (ASS) is identified on the subject site. The current proposal does not comprise any earthworks.

Clause 7.2 - Earthworks

The objective of this clause is to generally ensure that earthworks for which development consent is required will not have a detrimental impact on the locality.

The current modification application does not change the extent of any approved earthworks.

Clause 7.5 - Coastal risk planning

The current modification application does not propose any development that impacts upon current standards for Coastal Hazards.

Clause 7.6 - Stormwater Management

Stormwater management was approved at the time of the original application and relevant conditions were imposed for further detail to be supplied at construction certificate stage.

Clause 7.10 - Essential Services

All essential services are available to the site.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

In accordance with Clause 1.9 of the TLEP 2014, this SEPP no longer applies to the subject land. An assessment against the provisions in this SEPP is not required.

SEPP No. 1 - Development Standards

In accordance with Clause 1.9 of the TLEP 2014, this SEPP no longer applies to the subject land. An assessment against the provisions in this SEPP is not required. However, the shadow cast by the proposal upon the adjoining foreshore area remains consistent with the previously issued SEPP 1 objection.

SEPP No. 55 - Remediation of Land

The proposal remains consistent with the requirements of SEPP 55. Site contamination has been previously assessed by Council.

SEPP No. 64 – Advertising and Signage

The proposed amendments do not alter the signage previously proposed. This application does not seek to amend conditions of development consent relating to advertising signage.

SEPP No 71 – Coastal Protection

The proposed amendments do not impact upon the proposal's compliance with SEPP 71. In terms of visual impact, the proposal will remain generally not visible from the beach and will be obscured by the existing coastal heath vegetation within the foreshore reserve. As such, the proposal remains consistent with the intent and relevant specific provisions of SEPP 71.

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

There are no Draft Environmental Planning Instruments that apply to the proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A detailed assessment against the requirements of DCP A1 was carried out for the original application. In general, the proposed development was considered to be consistent with the provisions of DCP A1 in respect of site setbacks, landscaping provision, orientation, building design and so on.

The proposed terrace addition modification remains generally consistent with DCP A1 and does not reduce approved side setbacks.

A2-Site Access and Parking Code

There is no impact upon access and parking.

A4-Advertising Signage

The proposed amendments do not alter the signage previously proposed. This application does not seek to amend conditions of development consent relating to advertising signage.

A11-Public Notification of Development Proposals

The original Section 96 Modification application was notified from 25 September 2013 to 10 October 2013. A total of seven submissions were received all of which were objections to the proposed development.

Upon receipt of the proposed modification to the application, the application was notified in accordance with Council policy for 14 days from 17 December 2014 to 5 January 2015. During this period two submissions were received in relation to the modified details. One submission was received following conclusion of the public exhibition period.

The issues raised in submissions are detailed further within this report.

A15-Waste Minimisation and Management

The proposed amendments do not alter the previously provided preliminary waste management plan. The recommendations of the previous plan remain valid.

B19-Bogangar/Cabarita Beach Locality Plan

As detailed in the original assessment of the application, the proposed alterations and expansion to the motel will impact on the residential amenity of surrounding area in terms of noise and disturbance. It was for this reason that reasonable and relevant conditions were recommended to be applied to the original consent to ensure that amenities of the motel were to be used by guests only.

The proposal does not include any amendment to the hours of operation of the dining/lounge/bar area but requests deletion of the 'trial period' for the outdoor facilities which has been discussed elsewhere in this report.

The S96 application does not alter compliance with this DCP.

B25-Coastal Hazards

As detailed within the original assessment of the application, the existing motel is currently located forward of the 2100 Hazard Line, with proposed extensions to the motel being located forward of the 2050 Hazard Line.

The proposal sees the dining/lounge/bar area remain consistent with that previously approved. On this basis it is considered that the proposed modifications are consistent with DCP B25.

NB: Council at its meeting of 20 February 2014 approved revised Hazard Lines. It should be noted the revised 2050 Hazard Line has moved eastward therefore the impacts have been reduced.

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

Clause 92(1)(a) Government Coastal Policy

The subject modifications do not raise any significant implications in respect to Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

The subject modifications do not raise any significant implications in respect to demolition.

Clause 93 Fire Safety Considerations

The subject modifications do not raise any significant implications in respect to fire safety.

Clause 94 Buildings to be upgraded

There are no buildings to be upgraded as a consequence of the current modification application.

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

The subject modifications do not raise any significant implications in respect of any coastal zone management plan, as detailed within this report.

Tweed Shire Coastline Management Plan 2005

It was considered that the proposed alterations and additions as originally approved would be unlikely to impact on the natural environment, coastal processes, the visual amenity or scenic quality of the area.

A previous modification proposed to construct the structure housing the dining/lounge/bar area from brick and concrete so that it would be fully amalgamated with the existing building. Council Officers were of the opinion that the construction and crane removal technique for the proposed alterations to the dining/lounge/bar area were satisfactory and met the intent of the management plan.

This S96 application does not propose any further modification of the approved dining/lounge/bar area.

(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

In general it is considered that the proposed modifications will not significantly alter the general design or appearance of the previously approved building.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Residential development is located to the north and south of the subject site. The proposal is considered to be consistent with the general residential/tourist accommodation land uses within the vicinity in Cabarita Beach.

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

The S96 application was advertised for a period of 14 days from 17 December 2014 to 5 January 2015. During public exhibition two submissions were received. One submission was received following conclusion of the public exhibition period. The issues raised within these submissions are summarised below:

Submission 1

- Any increase in outdoor areas is of detriment to the surrounding community and amenity
- Use of the BBQ, pool, bar and outdoor dining areas until 10.00pm 7 days per week constitutes a loss of amenity and has the potential to create public nuisance
- It is essential that a 'trial period' be adopted.

This submission primarily objects to the already approved hours of operation of the BBQ, pool, bar and outdoor dining areas. The current proposal does not request an amendment to the approved operating hours of the outdoor areas.

Submission 2

- Impact of unacceptable noise levels
- Trial period satisfied concerns re: noise

This submission objects to the removal of the 'trial period'.

Submission 3

- No objection to terrace addition
- Construction of the roof top area appears to be designed to enable its use for entertainment whether with, or without Council permission - this area should be designated as 'non-trafficable for guests'
- Usage of outdoor areas intensifying with each modification application
- The imposition of the 'trial period' is a reasonable condition which Council has the power to impose given continued objections by local

residents, the change of use of the site and the intensity / scale of development

- The 'trial period' condition was imposed to address concerns of the local neighbourhood and directly relates to Council's attempts to ameliorate the issues arising under previous modification applications subject to objection
- The 'trial period' should be extended to include the entire site with regular acoustic readings by an independent body.

This submission raises issues regarding the historic approval process of DA12/0170 and intensification of the existing 'motel' use. It also raises debate with regard to legal precedent relied upon by the applicant to support deletion of the 'trial period'. A copy of the entire submission is attached (refer Attachment 4). The applicant's response to submission 3 is also attached (refer Attachment 5).

Council Officer Assessment of Submissions

Residential amenity

As detailed above, one of the submissions received raised general concern in relation to 'any increase in outdoor areas' impacting upon the residential amenity of neighbouring properties, which could be applied to the terrace addition.

It is noted that the size of the private terrace for the Northern Apartment is smaller than that of the Southern Apartment which was reduced (with the inclusion of a 2m high privacy screen) on previously approved plans.

The terrace addition is screened with timber above a solid brick balustrade. Use of the terrace addition and noise levels, as with other elements of the development, is regulated by Conditions 111A and 113A.

The impact of the terrace addition has been assessed by Council Officers and considered to be satisfactory.

Hours of operation

The applicant does not request any amendment to the approved hours of operation. Existing conditions are in place to regulate noise impact in perpetuity.

Use of Roof Top Area

Condition 15.1 restricts use of the roof top of the dining/lounge/bar area not forming part of the private terrace for the south apartment, to be used for trafficable purposes.

Imposition of Trial Period

As discussed previously in this report, current Condition 113A includes a 'trial period' component that was imposed on the development consent as the result of a Rescission Motion. Council Officers raise no objection to the removal of the 'trial period' in the second dot-point of Condition 113A for reasons outlined elsewhere in this report.

(e) Public interest

Approval has already been granted by Council in respect of the use of the premises by members of the general public, as well as for carrying out functions and events or the like.

The application seeks to modify the consent and proposes a minor modification to the previously approved plans (built form) which is generally supported as it is unlikely to impact on the amenity of neighbouring area.

The modification to Condition 113A is also supported. Approved hours of operation for outdoor areas were determined during the assessment of DA12/0170 and considered reasonable.

OPTIONS:

1. Approve the S96 application in accordance with the recommendations within this report; or
2. Refuse the S96 application with reasons.

The Officers recommend Option 1.

CONCLUSION:

The application seeks to modify the consent by way of a minor alteration to the previously approved plans (built form) and an amendment to a condition of development consent, both of which are generally supported and are unlikely to impact on the amenity of neighbouring area. The application is recommended for approval subject to the modification of relevant conditions as outlined in this report.

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. | Notice of Rescission - DA12/0170.04 - Council meeting of 20 March 2014 (ECM 3564447) |
| Attachment 2. | Notice of Motion - DA12/0170.04 - Council meeting of 20 March 2014 (ECM 3564459) |
| Attachment 3. | Applicant's response to submissions (ECM 3564461) |
| Attachment 4. | Submission 3 (ECM 3567649) |

Attachment 5.

Applicant's response to submission 3 (ECM 3572763)

6 [PR-PC] Section 82A Review of Determination of Development Application DA13/0673 for the Erection of Eight Boat Storage Sheds (69 Bays) at Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA13/0673 Pt1

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

At the request of the proponent, Council resolved to defer the Section 82A Review of Determination application to the 5 February 2015 Planning Committee meeting.

Council has received a request for a Section 82A Review of Determination (RoD) for the refusal of a development application for the construction of eight open storage sheds for the purpose of boat storage. The proposed storage sheds were originally for the purpose of dry storage of boats and other plant and equipment including vehicles, trailers, caravans and the like. However, the subject application was amended and sought approval for the construction of eight open storage sheds for the purpose of boat storage only (69 bays).

The Tweed LEP 2000 was the applicable planning instrument at time of lodgement. The subject land was zoned 3(d) Waterfront Enterprise, the objective of which is to *'encourage development related to waterfront and marine activities, recreation or tourism'*. Boating facilities are permissible within the 3(d) zone.

The portion of the site where the development is proposed comprises primarily of gravel hardstand surfaces which will be retained for the proposed structures. The storage sheds will be constructed with steel columns and colourbond roofing. No external enclosing walls are proposed.

Proposed hours of operation are between 6am and 9pm, seven days a week. Hours of operation would be controlled by staff combined with an electronic control at the entry and exit gates only operable during nominated hours. The business will be managed and operated by existing service station staff, supplemented by up to two additional staff when required to meet periods of peak demand.

More details regarding the operation and use of this storage facility are detailed within a latter section of the report.

Following consideration of the reasons for refusal and consultation with the Chinderah Residents Association, the proposal has been amended by the applicant as follows:

- Landscaping of the site to screen the storage areas and soften the visual impact of the development.
- The prohibition of wakeboard boat storage to minimise riverbank erosion.
- The removal of a carparking area relating to a separate development application for a boat hire business (DA13/0221) due to refusal on 5 June 2014 by Tweed Shire Council.

RoD applications can only be lodged and determined within six months of the original determination date (11 August 2014) unless a Class 1 Appeal has been lodged with the NSW Land and Environment Court within six months of the date of determination. No appeal has been lodged at the time of the preparation of this report. However, the RoD is within the required six month window.

A report was prepared and presented to the Planning Committee Meeting of 3 July 2014. This report recommended conditional approval of the application. Notwithstanding, Council resolved to refuse the development application at this meeting. A Rescission Motion was lodged in regards to this determination and the application was presented to the Council meeting of 7 August 2014. This Notice of Rescission lapsed due to the Rescission Notice lapsing. The Notice of Determination (Refusal) was sent to the applicant by letter dated 11 August 2014.

The reasons for refusal were as follows:

1. Pursuant to Section 79C (1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development is not considered to be compliant with Environmental Planning Instruments.

The proposed development does not satisfy the provisions contained within:

Environmental Planning & Assessment Act 1979 section 5(a) Objects of the Act:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,
- (iii) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
- (iv) ecologically sustainable development,

Tweed Shire Local Environment Plan 2000:

- Clause 4: Aims of this plan
- Clause 5: Ecologically sustainable development
- Clause 8(1): Consent Considerations

2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(a)(ii) - the provisions of any Draft Environmental Planning Instruments in that boat storage is prohibited within the B4 Mixed Use Business zone.
3. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(a)(ii) - the provisions of any Draft Environmental Planning Instruments in that boat storage does not satisfy the objectives of the B4 Mixed Use Business zone, and the development precludes public transport by the nature of this use requiring private vehicles.
4. Pursuant to Section 79C (1)(b) of the Environmental Planning & Assessment Act 1979, the proposed development is not considered to be compliant due to impacts on the natural and built environments, and social and economic impacts in the locality, including the additional burden placed on associated public infrastructure required to service the development, and the potential for cumulative development of this nature to indirectly exacerbate riverbank erosion and impacts on marine ecology.
5. Pursuant to the section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the site is unsuitable for the development due to the impact of storage uses in the Chinderah village, in light of the industrial nature of boat storage, considering that storage units are prohibited in the 3(d) Waterfront Enterprise zone, and given that land with industrial zoning is located in close proximity.
6. Pursuant to the section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the development is not considered to be in the public interest.

A request for a Section 82A RoD was received by Council on 17 November 2014. This request detailed the proposed amendments to the activities proposed and provided the details regarding the use of the storage sheds upon the site.

The original approval was not notified in accordance with Council DCP. However, Council has received correspondence from the Chinderah Districts Residents Association post determination in support of the application. As a result, this Association were advised of the amended proposal and offered the opportunity to make a submission in regards to the RoD. Similarly, the Kingscliff and District Chamber of Commerce offered support to the application in August 2014. This Association were also advised of the amended proposal and offered the opportunity to make a submission in regards to the RoD. No submissions were received from these Associations.

Given the original report recommended conditional approval of the application, the proposal, with the proposed amendments is also considered satisfactory and conditional development consent of the application is therefore recommended.

RECOMMENDATION:

That the Section 82A Review of Determination of Development Application DA13/0673 for the Erection of eight Boat Storage Sheds (69 Bays) at Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans titled:

- 'Proposed Storage Sheds', Ref G2853, Sheet 1 of 3;
- 'Proposed Storage Sheds - Elevations', Ref G2853, Sheet 2 of 3; and
- 'Ecological Setback/Buffer Zone', Ref G2853, Sheet 1 of 3

prepared by Gavin Duffie Contract Draftsman and dated 7 November 2013 (Sheet 1 Revised 30 October 2014, Sheet 2 Revised 12 March 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 a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.

[GEN0190]

5. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]

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

8. Water and electricity services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

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

10. Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.
11. The proposed development shall be constructed entirely of non-combustible materials.
12. Landscaping of the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.
[GENNS01]
13. The storage sheds are not to be used for the storage of any boat that incorporates a wake enhancing device or is designed to facilitate wakeboarding.
[GENNS02]
14. The storage sheds are to be used for the purposes of the storage of boats only.
15. The development shall not include boat washing facilities or the like without the approval of the General Manager or delegate officer.
[GENNS03]
16. The approved development shall not result in any clearing of native vegetation without prior approval from Council's General Manager or delegate.
17. The applicant shall establish and appropriately maintain in perpetuity the 'Ecological Setback/Buffer Zone' for conservation purposes as shown on the marked up plan being *Sheet 1 of 3 Ref. G2853 Proposed Storage Sheds Chinderah Bay Road Chinderah dated 12 March 2014 prepared by Gavin Duffie in Amended Plan of Management Land Zoned 7(a) Proposed Open Storage Sheds Chinderah Bay Road Chinderah dated March 2014 prepared by Darryl Anderson Consulting*. The following activities are not permitted within the 'Ecological Setback/Buffer Zone' unless otherwise approved by Council's General Manager or delegate.
 - a. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this approval;
 - b. Erection of any fixtures or improvements, including buildings or structures;
 - c. Construction of any trails or paths;
 - d. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the protected area.
18. No vegetation shall be disturbed during construction of any future fence-line on the common boundary between the subject site and Lot 19 in DP833570 within the nominated Ecological Setback/Buffer Zone without prior approval by Council's General Manager or delegate.
[GENNS04]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

20. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The plan of landscaping shall include details of proposed planting within the southwest corner of the site and within the verge and will include species of varying heights (trees, shrubs, groundcovers) to provide visual interest and assist in the screening of the development. Landscaping shall be carried out in accordance with the approved details and shall thereafter be retained as such.

[PCC0585]

21. Design detail shall be provided to address the flood compatibility of the proposed structures including the following specific matters:

- (a) All building materials used below Council's design flood level must not be susceptible to water damage;
- (b) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
- (c) A certificate of structural adequacy with regard to stability of the structures as a result of flooding has been submitted to Council by a suitably qualified structural / civil engineer.

[PCC0705]

22. Fencing detail is to be provided detailing a form that will either allow the free passage of flood water or be of a light construction such as timber paling that will collapse as a result of any build up of floodwater or debris.

[PCC0725]

23. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development 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 shall incorporate water sensitive design principles and where practical, integrated water cycle management.

[PCC1105]

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

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

will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
- b) Where Council is requested to issue a construction certificate for subdivision works, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

25. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase 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".

[PCC1155]

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

[PCC1195]

27. Prior to the issue of a construction certificate, the applicant is to submit to Council a detailed Flood Management Plan (FMP). This FMP is to include details of how the site and storage units (including storage goods) will be managed in the event of a flood. The FMP will also include details of how potential customers are to be advised that the site is flood prone and that the storage area is susceptible to flooding.

[PCCNS01]

28. Prior to the issue of a construction certificate the applicant is to submit to Council details (including scaled plans and elevations) of all proposed fencing, gates and integrated landscaping for approval.

[PCCNS01]

29. A landscaping plan shall be submitted and approved by Council's General Manager or delegate prior to the issue of a construction certificate for the nominated Ecological Setback/Buffer Zone. The landscaping plan shall detail the following:
- a. Planting of appropriate local native species at an average density of one (1) plant per square metre;
 - b. Environmental weed control works;
 - c. Installation of bollards along the length of the western outermost boundary of the Ecological Setback/Buffer Zone. Bollards shall be shown spaced at 1.5metre centres of approximately 150mm diameter, of durable timber or galvanised steel to extend 0.6m above natural ground level;
 - d. Ensure plantings comply with the principles of Appendix 5 of *Planning for Bush Fire Protection 2006*;
 - e. Indicate an establishment period of six (6) months.

[PCCNS02]

30. Prior to the issue of a construction certificate the applicant is to submit details (including a scaled plan, materials and wording) of proposed advertising signage for approval. The signage is not to be internally or externally illuminated.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

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

- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
- (ii) notified the principal certifying authority of any such appointment, and
- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

33. 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]

34. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

35. 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]

- 36. Temporary tree protection fencing shall be erected prior to commencement of any works along the western outermost boundary of the nominated Ecological Setback/Buffer Zone. Access within the tree protection zone shall be restricted (except where required to remove material/debris pursuant to conditions of this consent) and clear signage shall be attached to the tree protection fence indicating that vegetation is to be retained and protected. Temporary tree protection fencing shall meet the specifications detailed in the *Australian Standard AS 4970-2009 Protection of trees on development sites*.**

[PCWNS01]

DURING CONSTRUCTION

- 37. 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]

- 38. 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]

- 39. 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]

- 40. 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]

- 41. 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]

- 42. 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]

43. 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]

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

Please note timber retaining walls are not permitted.

[DUR0835]

45. 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]

46. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:

- Noise, water or air pollution.
- Dust during filling operations and also from construction vehicles.
- Material removed from the site by wind.

[DUR1005]

47. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.

[DUR1075]

48. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.

[DUR1075]

49. 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]

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

[DUR1875]

51. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains. [DUR1945]
52. 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 blow from the site. [DUR2185]
53. Any debris, and/or building materials shall be removed from the nominated Ecological Setback/Buffer Zone prior to landscape works commencing.
54. Tree protection fencing shall be erected and kept in a sound and functional condition for the duration of the construction period unless otherwise approved by Council's General Manager or delegate.
55. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans. [DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

56. 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]
57. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein). [POC0355]
58. **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 include indexation provided for in the S94 Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

(a) Tweed Road Contribution Plan:

13.8 Trips @ \$1189 per Trips \$9,844.80

(\$1,137 base rate + \$52 indexation)

(\$6,563.20 subtracted from total for commercial job creating developments)

S94 Plan No. 4

Sector6_4

(b) Extensions to Council Administration Offices

& Technical Support Facilities:

0.20499 ET @ \$1880.38 per ET \$385.46

(\$1,759.90 base rate + \$120.48 indexation)

S94 Plan No. 18

[POC0395]

59. The 3m wide aisle located between the southern boundary of the site and open storage sheds numbered 34 to 51 is to be clearly signed 'one way traffic only' prior to issue of the Occupation Certificate.

[POCNS01]

60. All landscaping work is to be completed and established in accordance with the approved plans prior to the issue of a final occupation certificate.

[POCNS01]

USE

61. 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]

62. 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]

63. Hours of operation of the business are restricted to the following hours:

- * **6am to 9pm - Seven days per week.**

[USE0185]

64. 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]

65. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.

[USE0245]

66. Boats shall not be stored on cradles or dry stacked within the storage facility.

[USE0201]

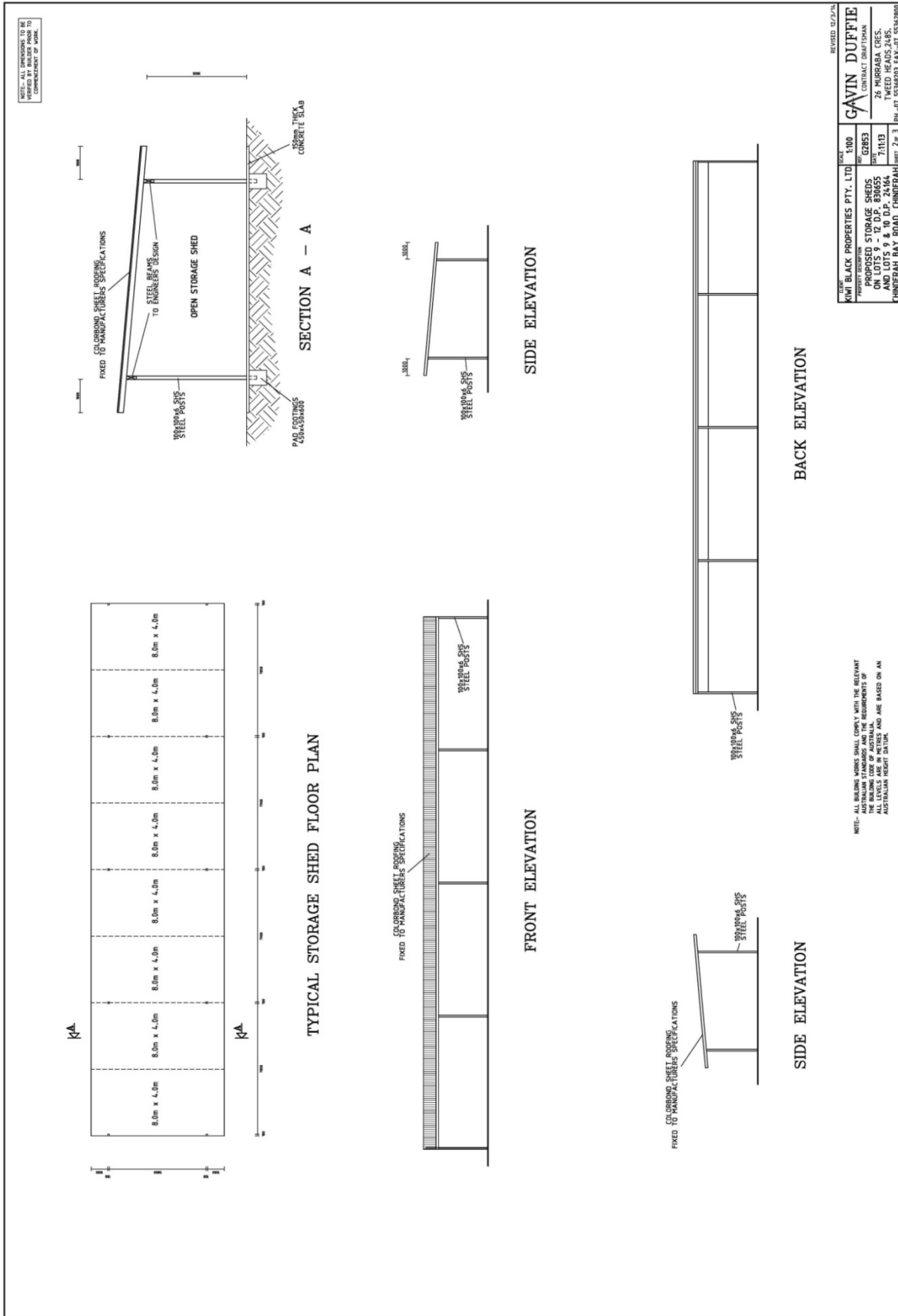
REPORT:

Applicant: Kiwi Black Properties Pty Ltd T/A BP Chinderah
Owner: Kiwi Black Properties Pty Ltd
Location: Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah
Zoning: B4 - Mixed Use
Cost: \$90,000

Background:

Council at its meeting of 3 July 2014, resolved to refuse this development application for the erection of eight boat storage sheds (69 Bays) at 2-12 Chinderah Bay Drive, Chinderah. This determination was contrary to the recommendation for conditional consent as presented to the Planning Committee Meeting.

A RoD in accordance with the provisions of Clause 82A of the Environmental Planning and Assessment Act, 1979 was lodged with Council on 17 November 2014. The timing of lodgement is compliant with the six month eligibility window pursuant to the requirements of this Clause. The development was amended during the initial assessment of the proposal and has been further amended in conjunction with this RoD.



The Use - The proposal involves the erection of eight boat storage sheds upon the land for the purpose of dry boat storage. General storage of items will not be a component of this proposal. Wakeboard boats will not be permitted to be stored within the facility by way of a condition of any consent granted.

Construction Details - The storage sheds will be constructed with steel columns and colourbond roofing. No external enclosing walls are proposed.

Hours of Operation - Proposed hours of operation are between 6am and 9pm, seven days a week. Hours of operation would be enforced by staff combined with an electronic control at the entry and exit gates only operable during nominated hours.

The Operation - The proposed boat storage units would be managed and operated by existing service station staff, supplemented by up to two additional staff when required to meet periods of peak demand.

Carparking and Aisle Widths - The storage sheds will provide sufficient car parking onsite for customers and staff. Customers will park adjacent to each unit. Staff will have access to carparking available for the existing service station.

The aisle width between the proposed sheds is shown as 9m although shed numbers 35 to 51 are located 3m from the southern boundary, which is considered acceptable for one-way traffic only. The 9m wide aisle width is considered adequate for a parked car and the passing of two vehicles. A large hardstand manoeuvring area is shown north of shed numbers 1 to 15, which is considered adequate for manoeuvring for a heavy rigid or articulated vehicle.

The majority of the site subject to the proposed development is concrete with some areas of gravel. The areas which have been designated as car parking or hardstand manoeuvring areas are generally hard stand areas with a concrete surface. A condition of consent will be applied to ensure that the 3m wide aisle is designated as one-way only.

Landscaping - The original application has been amended through the provision of landscaping onsite to screen the proposed development from Chinderah Bay Drive. While the application does not include details of this landscaping, a condition within any consent granted could readily address this amendment prior to the issue of any Construction Certificate.

Vegetation Buffer - During the processing of the original application, measures to protect the adjoining SEPP 14 wetland to the south east of the site were identified as necessary by Council and the applicant. These measures, being the creation of an ecological setback/buffer zone along the southern and south eastern boundary will be retained as a condition of any consent granted.

Subject Site



Extract Council's GIS aerial imagery showing location of subject land

The proposed development is to be undertaken upon the site known as 2-12 Chinderah Bay Drive, Chinderah. The property description of the site is Lot 9 DP 24164; No. 10 Chinderah Bay Drive Chinderah; Lot 10 DP 24164; No. 12 Chinderah Bay Drive, Chinderah; Lot 12 DP 830655; No. 2 Chinderah Bay Drive, Chinderah; Lot 11 DP 830655; No. 4 Chinderah Bay Drive, Chinderah; Lot 10 DP 830655; No. 6 Chinderah Bay Drive, Chinderah; Lot 9 DP 830655; No. 8 Chinderah Bay Drive, Chinderah.

The storage sheds will be located at the rear of the existing service station building and at the southern end of the site parallel to the southern side boundary. The sheds will be grouped into 3 buildings running east-west, with access isles separating these three groups.

Assessment

The application was the subject of a comprehensive Section 79C assessment. This assessment report was presented to the 3 July and 7 August 2014 Planning Committee meetings. The report recommended approval, however was not supported. The six reasons for refusal and an assessment of the amended proposal against these reasons is provided below:

- 1. Pursuant to Section 79C (1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development is not considered to be compliant with Environmental Planning Instruments.**

The proposed development does not satisfy the provisions contained within:

Environmental Planning & Assessment Act 1979 section 5(a) Objects of the Act:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests,**

minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

Applicant's Response

The amended proposal and the additional conditions proposed by the applicant will assist in mitigating perceived potential adverse impacts. The proposed use is appropriate for the site having regard to its location in relation to the Tweed River and physical characteristics and therefore it is submitted that the amended proposal is not inconsistent with this object of the Act.

Officers Comment

It is considered that the proposed landscaping and prohibition of the storage of wakeboard boats will mitigate any potential adverse impacts on the environment, particularly the Tweed River. The buffer proposed between the sheds and the adjoining SEPP 14 Wetland will be required in conjunction with any consent granted as discussed above. This buffer will also contribute to the conservation of the natural wetland located adjacent to the subject land.

(ii) the promotion and co-ordination of the orderly and economic use and development of land,

Applicant's Response

For the reasons discussed above and having regard to the spatial relationship between the site, the Tweed River and various boat launching ramps in the locality, it is considered that the amended proposal satisfactorily addresses this ground for refusal.

Officers Comment

It is considered that the proposal is consistent with the landuses in the locality and is consistent with the intent of these provisions. The use of an existing parcel of land containing an existing service station for the purposes of boat storage is considered appropriate and orderly development of the land. The use is both compatible with the existing commercial use, adjoining uses and the locality itself, given its proximity to the Tweed River. This provision is considered duly satisfied.

(iii) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and

Applicant's Response

The proposal does not directly impact on any native animals, threatened species or habitat areas. Precluding the storage of wakeboard boats will indirectly result in minimising further impacts on bank erosion and habitat values within the Tweed River and therefore it is considered that the amended proposal satisfactorily addresses this ground for refusal.

Officers Comment

The adjoining 7(a) Land was assessed in conjunction with the original report presented to Council. Following is an extract from this report:

"The applicant has amended the layout plan to provide for a 6m - 7.8m setback between the existing vegetation and the proposed storage sheds. The applicant has agreed to providing within the setback described above a 6m - 7.8m Ecological Setback/Buffer Zone to be taken from the rear (eastern) boundary. By establishing an Ecological Buffer/Setback Zone, it is considered that direct impact/disturbance to significant vegetation occurring onsite would be avoided and that potential indirect impacts on the adjoining wetland within Lot 19 would be adequately mitigated.

Whilst the amended plan and proposed management measures are generally supported, there do appear to be some inaccuracies regarding the site values (i.e. occurrence of vegetation on the lot). On this basis management measures will alternatively be stipulated as conditions of consent to ensure that no adverse impact to the adjacent 7(a) zone and associated vegetation occurs, as detailed further within this report."

While the revised plans do not include the buffer zone, the applicant remains committed to this mitigation measure. A requirement for the provision of the proposed buffer will be incorporated into the conditions of consent, consistent with the original recommendation.

The development will prohibit the storage of wakeboard boat onsite. While this will not prevent the Tweed River from being utilised by these boats, the applicant has made a commitment to preventing such vessels from being located within the subject storage units, given the negative impacts these boats have on a range of native animal habitats and plant communities within the Tweed River.

(iv) ecologically sustainable development,

Tweed Shire Local Environment Plan 2000:

- **Clause 4: Aims of this plan**
- **Clause 5: Ecologically sustainable development**
- **Clause 8(1): Consent Considerations**

Applicant's Response

Tweed Shire Local Environmental Plan 2000:

- Clause 4: Aims of this plan

Clause 4 of the Tweed Local Environmental Plan 2000 includes, among its aims, giving effect to the Tweed Shire 2000+ Strategic Plan, which includes the management of growth. It is submitted that the amended proposal is not inconsistent with the aims of the Plan because it balances the use of the subject land for an appropriate purpose with the need to minimise impacts on the Tweed River. In addition, the proposal will encourage sustainable economic development within the Tweed within minimal environmental impacts.

- Clause 5: Ecologically sustainable development

It is considered that the amended proposal satisfactorily addresses ESD principles in that the subject site does not contain any significant natural ecological values, an appropriate Management Plan has been provided and accepted by Council Officers to manage impacts on the adjoining environmental protection areas and the prohibition of storage of wakeboard boats will assist in minimising adverse impacts within the Tweed River habitat areas and river banks.

- Clause 8(1): Consent Considerations

The primary objective of the 3(c) zone is to encourage development relating to waterfront and marine activities, recreation or tourism. The proposed development is entirely consistent with this objective as it will provide a convenient and safe area to store water craft and ancillary facilities adjacent to the Tweed River and neighbouring boat ramps. As previously discussed, it is also considered that the proposal is consistent with the aims of the plan and given the scale and siting of the proposal and the mitigation measures proposed and contained in the Council Officer's recommended conditions, it is considered that the proposal would not have an unacceptable cumulative impact on the community, the locality or the catchment.

Officers Comment

The original report stated that in regard to the aims of the TLEP 2000 aims, that *the proposal would be consistent with this clause, with the development retaining the Shire's unique natural and developed character.* It is maintained that there will be no change in this position, given the proposal is as originally proposed, albeit with some minor amendments to reduce the impact of the development on the locality and environment, as previously discussed.

Similarly, in regards to ecologically sustainable development, the original report stated that *the site has been predominantly cleared of vegetation with the area pertaining to the development comprising a hard stand area. The proposal would therefore be unlikely to result in any significant impact on the ecological or environmental factors of the site or locality. It is considered that the proposal would be consistent with this clause.* No change to this opinion is warranted given the circumstance of the case.

In reference to consent considerations, the original report stated that *the proposed development as amended (for the purposes of boat storage only) is considered to be consistent with the primary zone objectives. Other aims and objectives of this plan are considered within the body of this report and it is considered that the proposed development would not have such an unacceptable cumulative impact on the community or the surrounding area to warrant refusal.* This opinion remains valid for the subject application.

In summary the proposed development is considered to satisfactorily address the objects of the Act.

2. **The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(a)(ii) - the provisions of any Draft Environmental Planning Instruments in that boat storage is prohibited within the B4 Mixed Use Business zone.**

Applicant's Response

Section 1.8A of Tweed Local Environmental Plan 2014 contains savings provisions relating to Development Applications lodged, but not determined, before the commencement of Tweed Local Environmental Plan 2014. DA13/0673 was lodged in November 2013 and therefore the savings provisions apply. In effect, Clause 1.8A provides that the Development Application is to be determined as if the new Plan had not commenced.

In addition, whilst the proposal is consistent with the exhibited Draft Plan, given that the B4 zone is an interim zone (it is not equivalent to the previous 3(d) Waterfront Enterprise zone) and is likely to be revised as part of any future Shire wide Local Environmental Plan review, we submit that it is reasonable, in the circumstances of this case, to approve the amended Development Application notwithstanding the provisions of the exhibited Draft Tweed Local Environmental Plan 2014.

Officers Comment

The original report advised that the subject development would be defined as a 'Marina' within the Tweed LEP 2014 as follows:

***marina** means a permanent boat storage facility (whether located wholly on land, wholly on a waterway or partly on land and partly on a waterway), and includes any of the following associated facilities:*

- (a) any facility for the construction, repair, maintenance, storage, sale or hire of boats,*
- (b) any facility for providing fuelling, sewage pump-out or other services for boats,*
- (c) any facility for launching or landing boats, such as slipways or hoists,*
- (d) any car parking or commercial, tourist or recreational or club facility that is ancillary to the boat storage facility,*
- (e) any berthing or mooring facilities.*

A marina is a prohibited form of development in the B4 Mixed Use zone, as is a service station.

However, as stated by the applicant, the Tweed LEP '*contains a savings provision at Clause 1.8A which provides that if a Development Application has been made before the commencement of the Draft Plan and the application has not been finally determined before the Plan commences, the application must be determined as if the Plan had been exhibited but had not commenced*'.

Therefore, the development application is to be determined as if the new plan had not commenced. However, an assessment against the objectives of the B4 Mixed Use zone must be undertaken. This assessment is discussed below.

3. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(a)(ii) - the provisions of any Draft Environmental Planning Instruments in that boat storage does not satisfy the objectives of the B4 Mixed Use Business zone, and the development precludes public transport by the nature of this use requiring private vehicles.

Applicant's Response

The objectives of the B4 zone include:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

It is considered that the proposed development satisfies the first zone objective in that the proposal is a compatible land use which, of necessity, needs to be sited in close proximity to the Tweed River and to boat launching ramps.

The nature of the proposed use is such that public transport patronage and encouraging walking and cycling are not relevant. Nevertheless, Chinderah Bay Drive is a bus route and the site is readily accessible by motor transport from the Pacific Highway.

Officers Comment

The permissibility and objectives of the B4 zone were taken into consideration during the original assessment of this proposal. The following is an extract from the report presented to Council on the 7 July 2014:

"In respect to the subject application, it is noted that the locality comprises a wide range of varying uses with a service station, indoor sports centre, storage units, transport depots, caravan parks and residential development being in close proximity to the subject site. It is also noted that the site is located in close proximity to the Tweed River and various boat ramps within the locality. On this basis it is considered that the proposal would provide a compatible land use, in accordance with the first primary objective of the zone.

It is also considered that the proposal will provide for 'other development' in an accessible location, being in close proximity from the Pacific Highway. Further, given the variety of land uses in the locality (such as caravan parks, service station, storage units, fitness centres and residential development), it is considered that the area currently provides for the integration of suitable business and residential uses. Therefore, it is considered that the proposal is broadly consistent with the second primary objective of the zone. Approval of the application is therefore recommended based on the consistency on the proposed development and with the objectives of the zone.

The proposed development does not raise any significant implications in respect to the provisions of the Tweed LEP 2014 that have not been considered elsewhere within this report, such as the preservation of trees and vegetation (Clause 5.9) and bushfire hazard reduction (Clause 5.11)."

Given the measures taken to mitigate against potential environmental impacts and that Council staff recommended approval of the original application, the proposal is considered consistent with the provisions and objectives of the now adopted Tweed LEP 2014 and should be supported.

4. **Pursuant to Section 79C (1)(b) of the Environmental Planning & Assessment Act 1979, the proposed development is not considered to be compliant due to impacts on the natural and built environments, and social and economic impacts in the locality, including the additional burden placed on associated public infrastructure required to service the development, and the potential for cumulative development of this nature to indirectly exacerbate riverbank erosion and impacts on marine ecology.**

Applicant's Response

There are a number of existing boat ramps at Fingal and Chinderah and further ramps at Tumbulgum and Condong to enable owners of boats who may store there vessels at the facility to safely and efficiently launch the vessels. Impacts on the natural and built environment will be negligible and social and economic impacts are likely to be positive during both the construction and operational phases. Multiplier effects from the storage of boats at the facility including fuel supplies, maintenance repairs, food and beverage, among other things are also likely to result in positive social and economic effects, particularly in relation to additional employment opportunities.

Officers Comment

As previously mentioned, the proposal will exclude the storage of wakeboard boats from the business. While this will not prevent such boats from using the Tweed River, the applicants are supporting the request by the local residents association to impose this restriction. This may assist with preventing riverbank erosion and impacts on marine ecology from wakeboard boats in the vicinity.

Consistent with the applicant's response to this reason for refusal, the existing public infrastructure will have the capacity to cater for public boating, given that the proposal is for the storage of private boats and does not relate to any commercial operation.

5. **Pursuant to the section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the site is unsuitable for the development due to the impact of storage uses in the Chinderah village, in light of the industrial nature of boat storage, considering that storage units are prohibited in the 3(d) Waterfront Enterprise zone, and given that land with industrial zoning is located in close proximity.**

Applicant's Response

The proposed development does not involve "storage units" which are prohibited in the 3(d) zone, but rather, involves the use of the land for the purposes of a boating facility. The proposal will only be used for the purpose of dry storage of boats which would be appropriately characterised as a boating facility as acknowledged in the report to Council's Meeting on 3 July 2014 which states that:

"Under the provisions of Tweed Local Environmental Plan 2000 the proposal is characterised as a boating facility. Development for the purpose of a boating facility is permissible, with consent in the 3(d) zone and in general is considered that such a facility would be consistent with the objectives of the zone."

Officers Comment

As mentioned in the applicants' response, it is considered that the proposal is characterised as a 'boating facility' pursuant to the provisions of the TLEP 2000, which is defined as follows:

"Land used for the purposes of recreational boating activities, and includes a marina, boat launching ramp, boat repair and servicing facility, wharf, jetty and any means of dry storage for boats."

The original report further stated that *'development for the purposes of a 'boating facility' is permissible with consent in the 3(d) zone and, in general, it is considered that such a facility would be consistent with the objectives of the zone, in the provision of storage for boats in association with marine activities and recreation.'*

It is considered that the use remains consistent with this previous position, given the development remains as originally proposed.

- 6. Pursuant to the section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the development is not considered to be in the public interest.**

Applicant's Response

Having regard to the response from the Chinderah District Resident's Association, the amendments to the application and given that it will lead to social and economic benefits for Chinderah generally and the Tweed Shire in a wider sense, it is considered that approval of the amended proposal would be consistent with the public interest.

Officers Comment

Having regard to the original recommendation, the matters raised in the applicants request for review and the support from the local residents association, the proposal remains worthy of support. It is considered in the public interest to grant conditional consent to this proposal.

SITE DIAGRAM:



Locality Plan

Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah;
 Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah

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 Geoid: Geoid, datum of Australia 1984
 GDA 1984 Map and of Australia, zone 56

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 W | www.tweed.nsw.gov.au
 E | planning@tweed.nsw.gov.au



Public Notification

The original application did not require Public Notification in accordance with DCP No. 11. Similarly, this review of determination was not publicly notified. However, the Chinderah District Residents Association and the Kingscliff and District Chamber of Commerce were both advised of the Review of Determination and given the opportunity to provide a comment on the development.

No submissions were received.

Section 79C Assessment

This Section 82A review only includes minor changes to the original proposal. These changes are:

- Landscaping of the site to screen the storage areas and soften the visual impact of the development.
- The prohibition of wakeboard boat storage to minimise riverbank erosion.
- The removal of a carparking area relating to a separate development application for a boat hire business (DA13/0221) due to refusal on 5 June 2014 by Tweed Shire Council.

These changes have no impact upon the original Section 79C assessment undertaken and presented to Council at its meeting of 3 July 2014. No further Section 79C assessment is required.

OPTIONS:

That Council:

1. Approves the Review of Determination subject to the nominated conditions of consent;
or
2. Rejects the Review of Determination and uphold the refusal of development consent.

Council officers recommend Option 1.

CONCLUSION:

The proposal was originally recommended for approval by Council staff when presented in July 2014. The review of determination has proposed further minor amendments to the proposal in response to the reasons for refusal issued by Council on 11 August, 2014.

The following conclusion was provided within the original report:

"The proposed development, as amended, would have been permissible in the 3(d) Waterfront Enterprise zone under the provisions of the Tweed LEP 2000. The proposal is also considered to be consistent with relevant environmental planning instruments and Council policy requirements. Whilst the proposed development is no longer permissible under the provisions of the Tweed LEP 2014, it is considered that the proposal would not be inconsistent with the objectives of the B4 Mixed Use zone.

The proposed development is considered to be appropriate for the subject site, being located in close proximity to an existing service station and other similar industrial style buildings and open storage sheds. It is also considered that the proposal would be unlikely to impact on surrounding residential amenity."

This conclusion remains valid and applicable to the development.

As such it is considered that the proposed development is acceptable, provided the development is carried out in accordance with the recommended conditions of consent.

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.

7 [PR-PC] Development Application DA14/0171 for a Change of Use of Part of the Existing Building to a General Store at Lot 1 DP 1074784 No. 136-150 Dry Dock Road, Tweed Heads South

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA14/0171 Pt1

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Updated information

At the Planning Committee Meeting held on Thursday 4 December 2014, Council resolved the following:

"that Council supports in principle and conditions be brought back to 22 January 2015 Council Meeting to enable further consideration of the application."

As such a full set of recommended conditions of consent has been provided in the Options section of this report (Option 2), should Council determine to approve this application.

Previous Report

Council is in receipt of a Development Application which seeks approval for a change of use of part of the existing building for the use of a General Store. The proposed General Store will likely comprise a small IGA or similar offering with a total Gross Floor Area of 460m². The use of the existing building has recently been approved as Tourist Facility comprising; Tavern, Function Room, Café, Restaurant, Shop, Playground and Pontoon.

The application is required to be assessed against the provisions of the Tweed Local Environmental Plan 2000 (TLEP 2000) due to the savings provisions in the Tweed Local Environmental Plan 2014 (TLEP 2014). The subject site is zoned 6(b) Recreation in accordance with TLEP 2000. In accordance with the TLEP 2000 shops are prohibited in this zone.

The subject site is zoned RE2 Private Recreation under TLEP 2014. In accordance with the TLEP 2014 shops and neighbourhood shops (limited to 300m²) are prohibited in this zone. Only kiosks (limited to 15m²), markets and food and drink premises are permissible. In accordance with the TLEP 2014 the proposal is prohibited in this zone.

The recent decision in the NSW Land and Environment Court, determined that the proposed General Store (Supermarket) at the Seagulls complex was not consistent with the objectives of the 6(b) Recreation zone.

The applicant has lodged this application as a “general store” (TLEP 2000) and has submitted legal advice to support the view that the proposal is consistent with the primary objectives of the zone. The legal advice is provided as a confidential attachment to this report.

Council has also received legal advice which is provided in full as a confidential attachment to this report. The legal advice states that the applicant has not adequately demonstrated that the proposed development's factual matrix can be distinguished from that which arose in the Seagulls court case. As such, the proposed general store is inconsistent with the primary objectives of the 6(b) Recreation zone and therefore not permitted.

This report assesses the application for a General Store on its merits having regard to the matters for consideration under the Environmental Planning and Assessment Act 1979.

The proposed development is considered not to adequately demonstrate how the proposed development:

- Satisfies the primary objective of the 6(b) Recreation zone;
- Satisfies the objectives relating to social and economic impact;
- Satisfies the zone objectives and permissibility under Draft TLEP 2014;
- Satisfies the general public interest and the impact the proposal would have on the existing commercial uses in the locality.

Accordingly the application is recommended for refusal.

RECOMMENDATION:

That:

- A. ATTACHMENT 2 and 3 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because they contain:-**
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- B. Development Application DA14/0171 for a change of use of part of the existing building to a general store at Lot 1 DP 1074784 No. 136-150 Dry Dock Road, Tweed Heads South be refused for the following reason:**
 - 1. The proposal is not permissible as the development is not consistent with the primary objectives of the 6(b) Recreation Zone required by Clause 8(1)(a) – Consent Considerations of the Tweed Local Environmental Plan 2000.**

REPORT:

Applicant: Mormatsal Investments Pty Ltd Atf Wingham Plaza Unit Trust
Owner: Mormatsal Investments Pty Ltd
Location: Lot 1 DP 1074784; No. 136-150 Dry Dock Road Tweed Heads South
Zoning: RE2 - Private Recreation
Cost: \$250,000

Background:

Council received a Development Application for a proposed Tourist Facility comprising a Tavern, Café, Restaurant, **Shop (General Store)**, Playground and Pontoon (DA13/0669) on 15 November 2013.

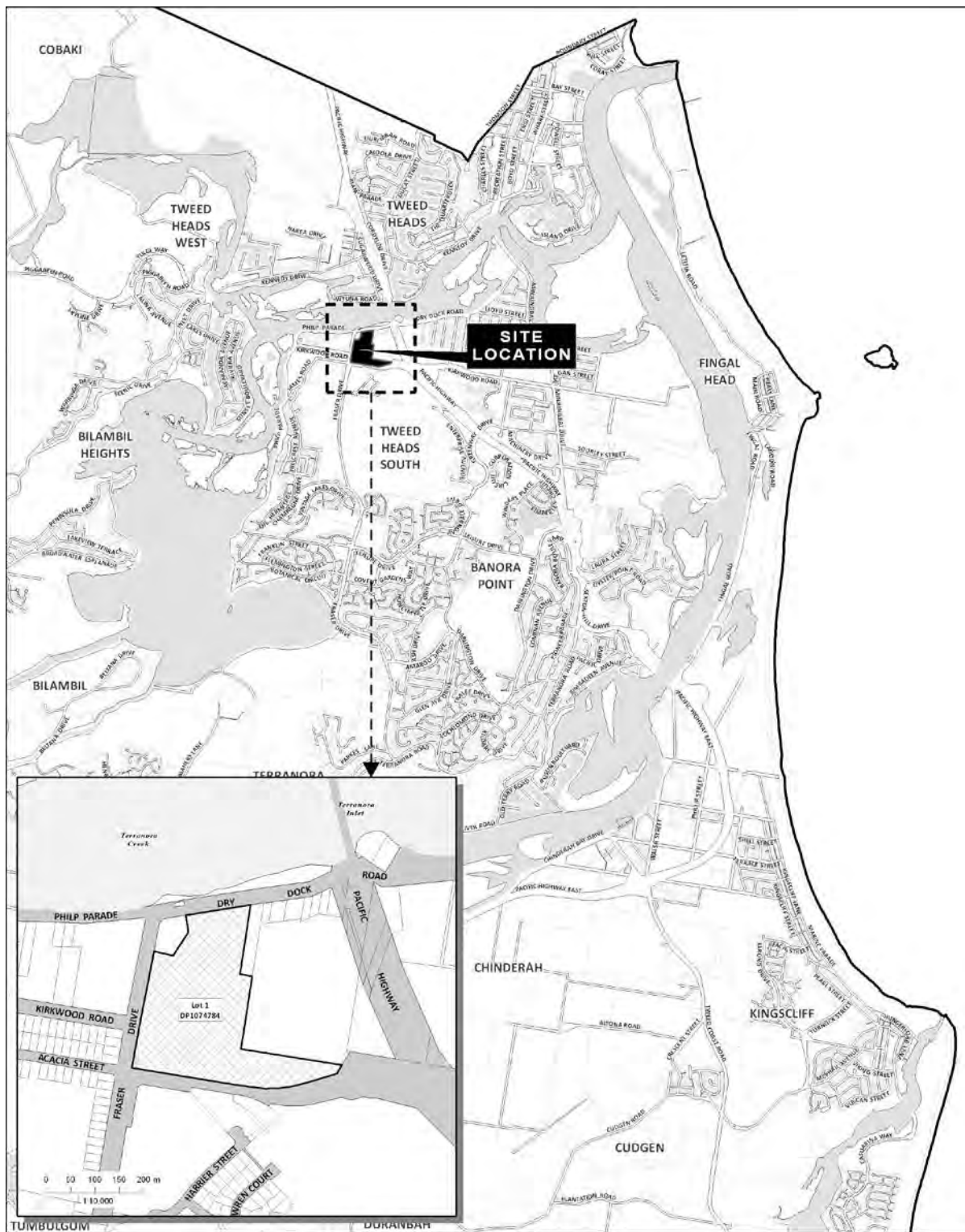
During the assessment of the application Council Officers advised the applicant that Council were not in a position to support the proposed 'General Store' component given Council's position regarding the General Store (1,965m²) application DA12/0527 at Seagulls, Tweed Heads West. At the time DA12/0527 was currently the subject of a Land and Environment Court (LEC) appeal against Council's refusal. The appeal was dismissed by the NSW Land and Environment Court in a judgment handed down on 16 July 2014.

Council Officers advised the Applicant to look at an alternate pathway that will enable DA13/0669 to be determined without significant delay. On this basis, the Applicant amended DA13/0669 to delete the 460m² General Store component of the proposal and lodged a second application (DA14/0171) that seeks to change the use of part of the existing building from Recreation Facility to the 460m² General Store.

The Development Application for a proposed Tourist Facility comprising a Tavern, Café, Restaurant, Function Room, Playground and Pontoon (DA13/0669) was granted approval on 24 October 2014.

The proposed General Store is intended to be located within the Function Room approved under DA13/0669.

SITE DIAGRAM:



Locality Plan

Lots 1 DP1074784
No.136-150 Dry Dock Road, Tweed Heads South

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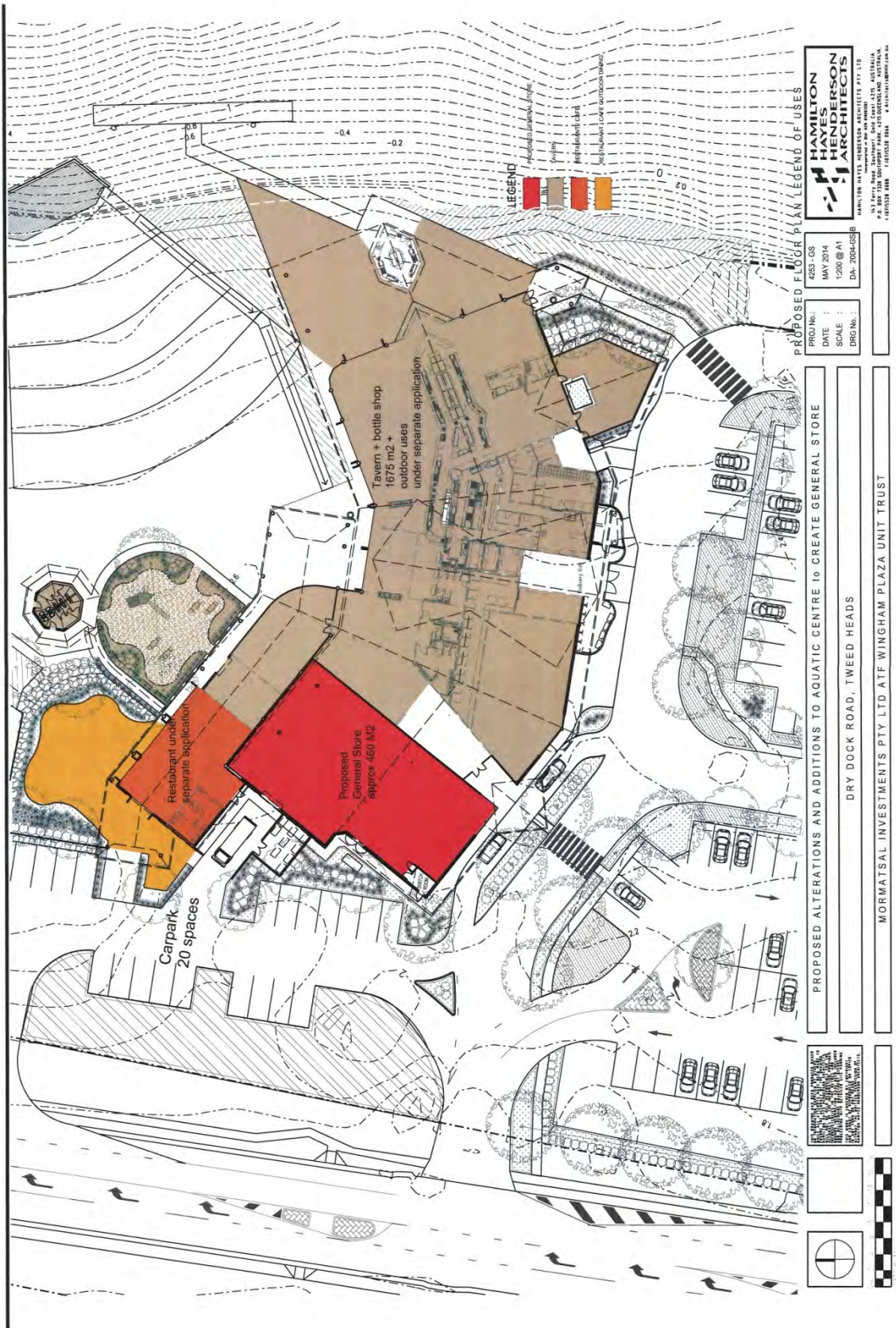
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GDA

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E planning@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:



HAMILTON HAYES PEARSON ARCHITECTS
 ARCHITECTS
 11/111 ST. MARYS ROAD, ST. MARYS, N.S.W. 2170
 PHONE: (02) 8838 1111 FAX: (02) 8838 1112
 EMAIL: hhp@hamperson.com.au www.hamperson.com.au

PROPOSED FLOOR PLAN LEGEND OF USES

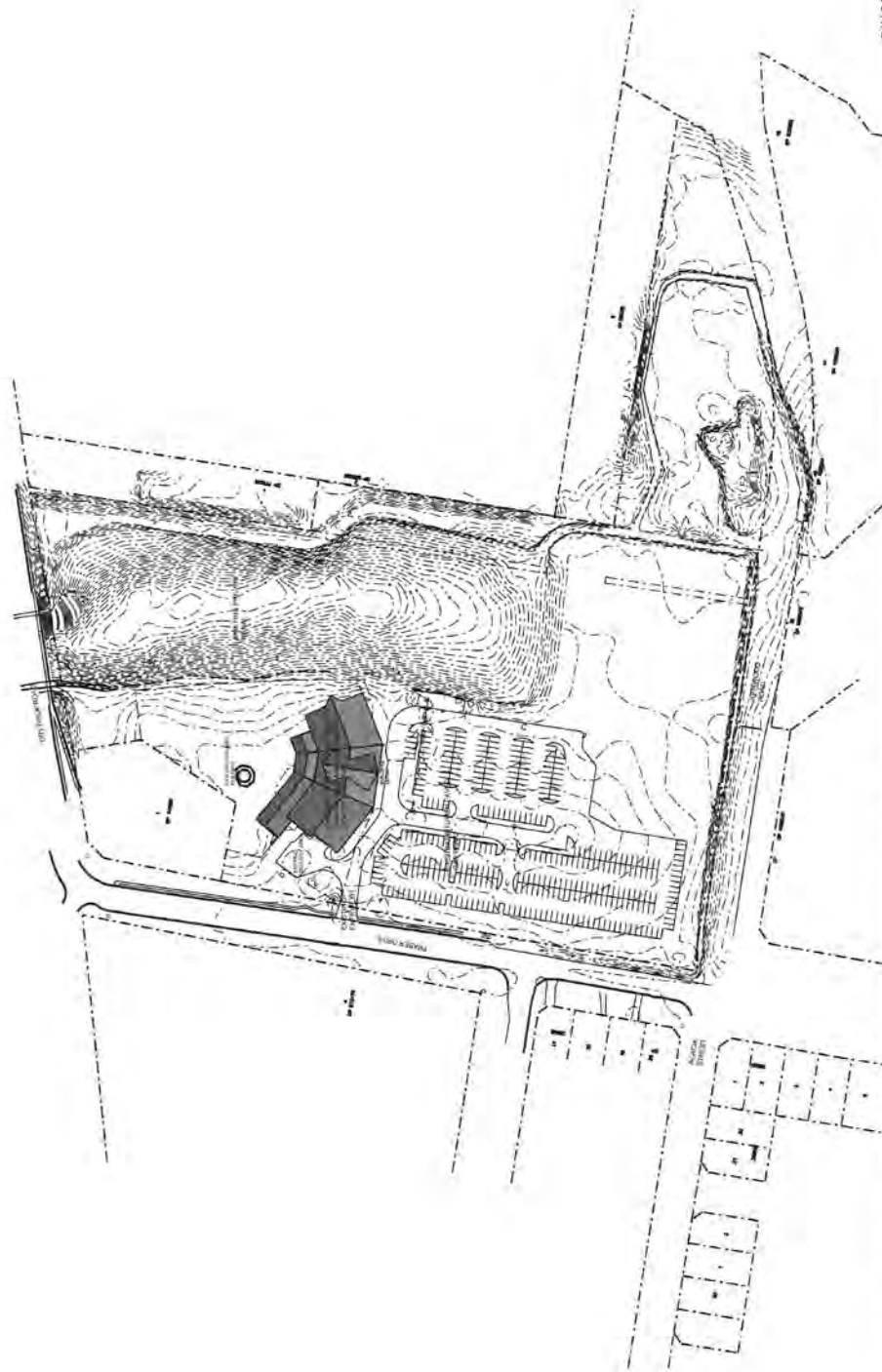
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 DRG No: DA-2004-GSB

PROPOSED ALTERATIONS AND ADDITIONS TO AQUATIC CENTRE TO CREATE GENERAL STORE

DRY DOCK ROAD, TWEED HEADS

MORMATSAL INVESTMENTS PTY LTD ATF WINGHAM PLAZA UNIT TRUST





EXISTING SITE PLAN



REGISTERED ARCHITECTS
REGISTERED ARCHITECTS
REGISTERED ARCHITECTS
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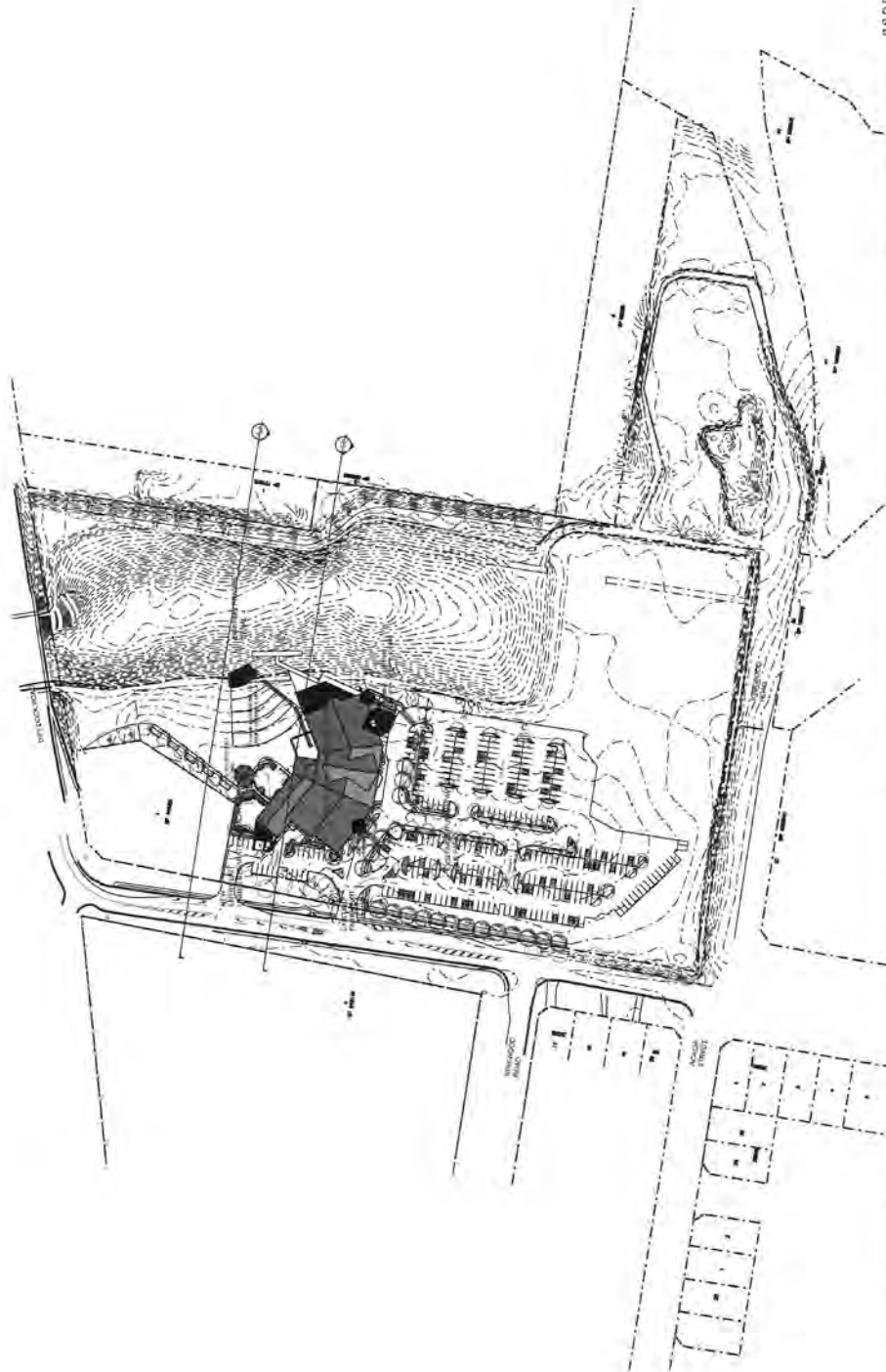
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PROPOSED ALTERATIONS AND ADDITIONS TO AQUATIC CENTRE TO CREATE GENERAL STORE

DRY DOCK ROAD, TWEED HEADS

MORMATSAL INVESTMENTS PTY LTD ATF WINGHAM PLAZA UNIT TRUST





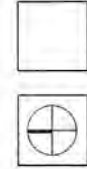
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HAMILTON HAYES PEARSON ARCHITECTS
ARCHITECTS
100/101 WINGHAM ROAD, WINGHAM VIC 3178
PH: 03 9497 1000 FAX: 03 9497 1001
WWW.HAMILTONHAYESPEARSON.COM.AU

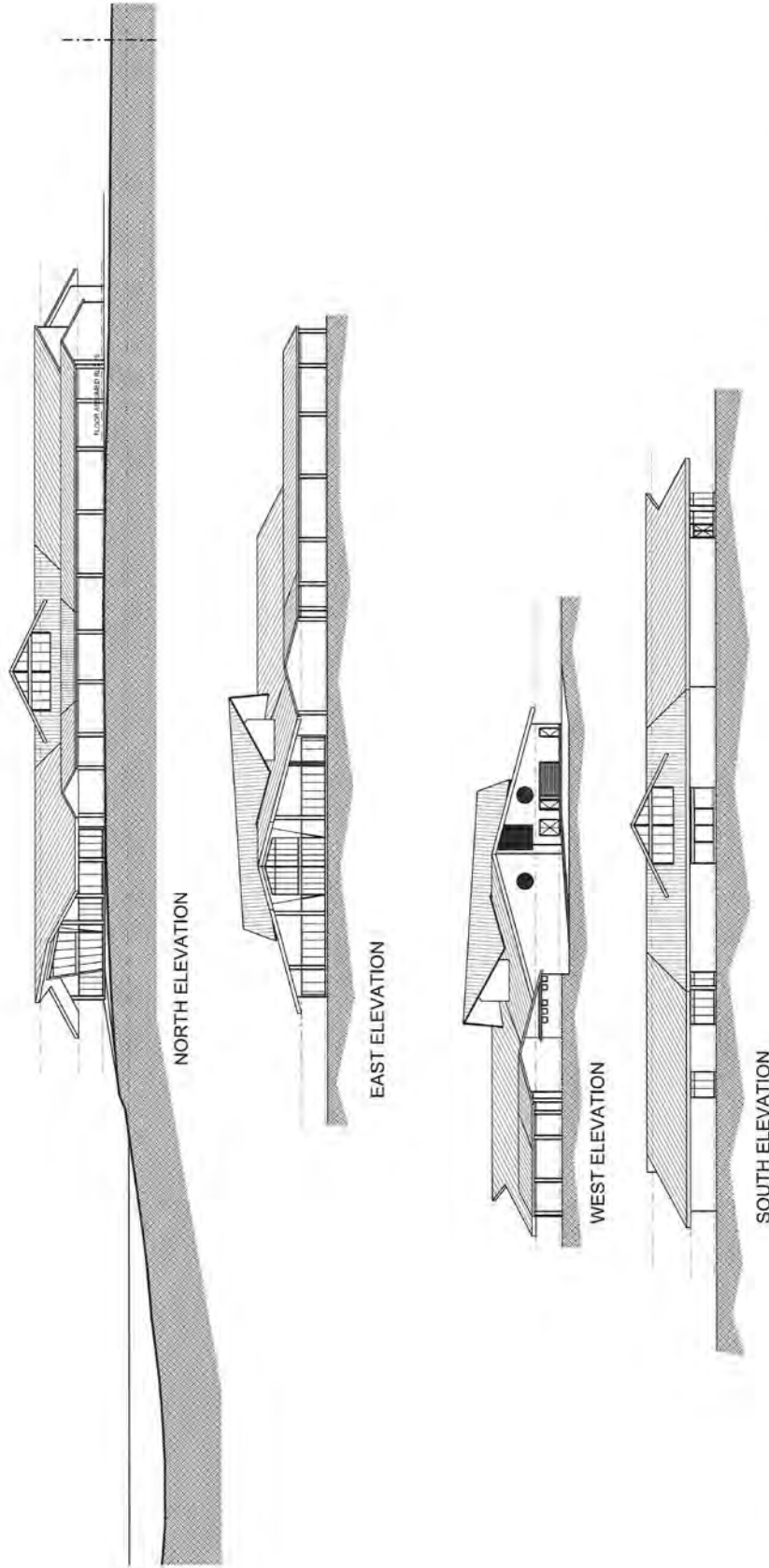
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PROPOSED ALTERATIONS AND ADDITIONS TO AQUATIC CENTRE TO CREATE GENERAL STORE
DRY DOCK ROAD, TWEED HEADS
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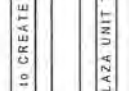


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PROJ. NO. : 4253-GB
 DATE : MAR 2014
 SCALE : 1/200 @ A1
 DRG. NO. : 104-20004-03A

PROPOSED ALTERATIONS AND ADDITIONS TO AQUATIC CENTRE TO CREATE GENERAL STORE
 DRY DOCK ROAD, TWEED HEADS

MORMATSAL INVESTMENTS PTY LTD A/E WINGHAM PLAZA UNIT TRUST



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 DRY DOCK ROAD, TWEED HEADS

MORMATSAL INVESTMENTS PTY LTD A/E WINGHAM PLAZA UNIT TRUST

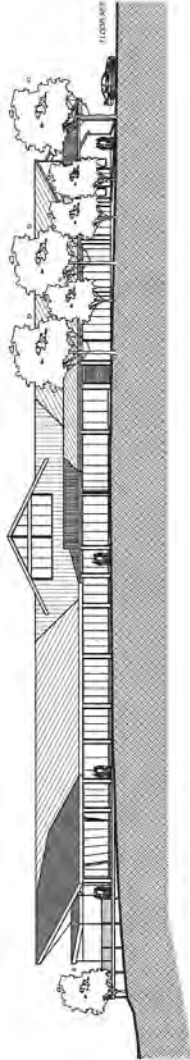


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PROPOSED ALTERATIONS AND ADDITIONS TO AQUATIC CENTRE TO CREATE GENERAL STORE
 DRY DOCK ROAD, TWEED HEADS

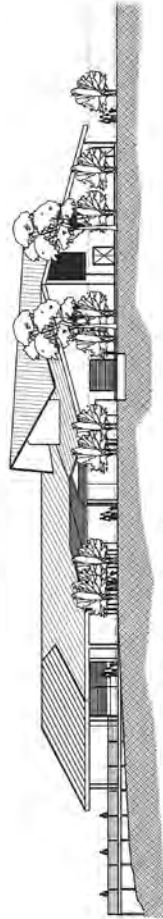
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PROPOSED ALTERATIONS AND ADDITIONS TO AQUATIC CENTRE TO CREATE GENERAL STORE
 DRY DOCK ROAD, TWEED HEADS

MORNINGSTAR INVESTMENTS PTY LTD ATF WINGHAM PLAZA UNIT TRUST

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Clause 4 of the TLEP 2000 specifies that the aims of the plan are:

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which is:*
- “The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”, and*
- (b) *to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*
- (i) *that some or all development should be restricted to certain land within a zone,*
- (ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*
- (iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*
- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*
- *Tweed Heads 2000+ Strategy*
 - *Pottsville Village Strategy, and*
- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.*

The proposal is considered not to be consistent with the aims of the plan as the proposal is not consistent with the primary objectives of the 6(b) Recreation zone and not suitable for the site.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the TLEP requires consideration of the four principals of ecologically sustainable development. The proposed development seeks a change of use to part of an existing building. The principals of ecologically sustainable development have not been comprised by this application.

Clause 8 - Consent Considerations

Clause 8 of the TLEP 2000 sets out the consent considerations when determining a development application.

8(1) The consent authority may grant consent to development (other than development specified in Item 3 of the Table to clause 11) only if:

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

To address Clause 8(1) (a) the primary objectives of the 6(b) zone states:

Primary objective

“to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.”

The proposed General Store comprises a floor area of 460m². Whether the facility is legally defined as a general store, a shop or a commercial premises it does not change the nature of the proposed use. The nature of the use is a supermarket and this use needs to be assessed against the primary objective for the 6(b) Open Space Recreation Zone.

The applicant provides the following comments:

“The proposed development seeks to use part of the existing buildings for the purposes of providing a General Store. It is important to note that the Primary Objective does provide the opportunity for uses other than recreational purposes to occur from the subject site, in this regard, the proposed General Store by virtue of its size (460m²) is considered to be subservient to other recreational uses that will occupy the site at some point in the future. Accordingly the proposal does not sterilize from being used for recreational purposes.

On this basis the proposed development is considered to be consistent with both the primary and secondary objectives of the 6(b) Recreation Zone.”

The proposed General Store is not considered to satisfy Clause 8(1)(a) of the TLEP 2000 as the primary objective of the 6(b) zone has not been met as the General Store use is retail in nature and not recreational.

Clause 8(1)(b) this report considers those other aims and objectives of this plan that are relevant to the development.

Clause 8(1)(c) it is considered that the development would have an unacceptable cumulative impact on the community, locality and catchment and accordingly cumulative impact forms one of the recommended reasons for refusal.

Clause 11 - Zone Objectives

The subject site is zoned 6(b) Recreation and has the following zone objectives which must be considered:

Primary objective:

“to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.”

Secondary objective:

“to allow for other development that is compatible with the primary function of the zone.”

As discussed above Clause 8(1)(a) states that that consent may only be granted if the development is consistent with the primary objective of the zone within which it is located. The proposed General Store in itself cannot be considered to be recreational in any way. It is a retail use that must be considered as a standalone development. Therefore the primary objective of the zone has not been satisfied. This forms one of the reasons for the recommendation for refusal of this application.

Clause 15 - Essential Services

Clause 15 of the TLEP requires Council to ensure adequacy of services prior to determining any application. All essential services are currently provided to the subject site.

Clause 16 - Height of Building

Clause 16 of the TLEP requires Council to ensure that the height and scale of development is appropriate to the site and the surrounding built and natural environment. The subject land has a maximum height limitation of 3 storeys.

The existing building is single storey in height. The proposed development represents a change of use within the existing building. The change of uses will not incorporate additional building height and therefore satisfies the three storey height limit.

Clause 17 - Social Impact Assessment

The TLEP specifies that:

“Where the consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality or in the local government area of Tweed, the consent authority may grant consent to

the proposed development only if it has considered a socio-economic impact statement in respect of the proposed development.”

Tweed DCP Section A13 – Socio-Economic Impact Assessment specifies that a Socio Economic Impact Assessment is required where a place of employment employees more than 25 people, where a club exceeds a gross floor area of 1000m², or where a retail development exceeds a gross floor area of 1500m². Given the proposed General Store has a gross floor area of 460m² the proposed development is not considered of a size or scale that requires a Socio Economic Impact Assessment. However the applicant provided a Socio-Economic Impact Assessment. Below is the applicant’s summary of their findings in regards to socio economic impact:

“The size of the proposed General Store at 460m² is not large enough to have a significant social impact hence sub clause (3) and the requirement to undertake a social impact assessment is not considered necessary.

With respect to the perceived impact of the development on the affected community which includes adjoining Palm Village Convenience Store and Bottle Shop as well the established retail hierarchy within the locality (e.g. Tweed Heights, Banora Central and Banora Point). The following conclusions have been drawn from the EIA (Economic Impact Assessment):

- > the population residing in the MTA (Main Trade Area) is currently under-serviced as far as supermarket-type facilities are concerned;*
- > the resident population of the MTA exhibits an older age profile, lower levels of mobility (as measured by car ownership) and low income levels. As such residents would significantly benefit from an improvement in local convenience retail services;*
- > there is sufficient demand in the MTA to support both the proposed supermarket and the existing convenience store in the adjacent Palms Village;*
- > the impacts of the proposed development on existing centres outside the MTA will be in the very low category of impact and thus will not pose any threat to the viability of these centres;*
- > even if as a result of competition from the proposed development the existing convenience store in the adjacent Palms Village development were to cease trading (an outcome considered most unlikely), residents of the MTA would be substantially better off in terms of their access to basic supermarket facilities; and*
- > the proposed development is consistent with the objectives of the Tweed Shire Retail Strategy as it will not pose a threat to any existing retail centre while improving basic retail facilities in an area where no centre is planned.*

In light of the above comments it is evident that the economic impacts of the proposed General Store are minimal and would not preclude Tweed Shire Council, as the consent authority, approving the development.

The report concludes significant social gain would be achieved by approval of the General Store

The applicants Economic Impact Assessment identified an estimated impact in 2016 of between -0.3% and -3.2% on local businesses and a loss of -\$1.1 million on the adjacent convenience store (Palm Village) and other centres in 2016.

Council maintains the view that the proposed development is not suited to the subject site given the sites recreational zoning and the potential impact on adjoining commercial zones.

The proposed development is considered unacceptable having regard to Clause 17 of the TLEP 2000 as the application has not adequately demonstrated that the development won't have an unacceptable social or economic impact on the locality.

Clause 22 – Designated Roads

The subject site has frontage and existing access to Fraser Drive, which, to the south-west of the site is a Council designated road. As such this clause applies to this site. This clause states that the consent authority may grant consent to development on land to which this clause applies only if the following is satisfied:

- (a) *the development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*

The proposal is not considered to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road.

- (b) *the location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*

The subject application has been reviewed by Councils Traffic Engineer who has raised no concerns with respect to the above criteria.

- (c) *the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*

The proposed development is not considered to prejudice any future road widening works. It is noted that Fraser Drive is to be upgraded to a four lane road in the future. This application has been reviewed by Council's Traffic Engineer with no concerns raised in this regard. The proposal is considered to be acceptable having regard to this objective.

- (d) *where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and*

Not applicable. The subject site is zoned 2(e) Residential Tourist and 6(b) Recreation.

- (e) *the development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and*

The proposed development is not considered to be a type which is particularly sensitive to traffic noise as outlined above. The application has been reviewed generally in terms of noise by Councils Environmental Health Unit and it is considered that the proposal is acceptable.

- (f) *the development would not detract from the scenic values of the locality, particularly from the point of view of road users, and*

The proposal is not considered to detract from the scenic values of the locality, due to the proposal mainly consisting of the use of an existing building, setback from the street boundary and existing and proposed landscaping.

- (g) *where practicable, access to the land is provided by a road other than the designated road, and*

Given the existing building and existing access of the proposed development, it is considered that the subject proposal cannot practically provide vehicular access except from the designated road.

- (h) *in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development:*

- (i) *would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and*
- (ii) *would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and*
- (iii) *would not compromise highway safety and efficiency, and*
- (iv) *would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.*

Not applicable. The subject site is zoned 2(e) Residential Tourist and 6(b) Recreation.

Having regard to the above, the proposal is considered to comply with the objectives of clause 22 and sub clause 4.

Clause 32- Aircraft noise

The subject site is located within both the 25-30 ANEF and 30-35 ANEF area as designated under the 2031 Aircraft Noise Exposure Forecast, with the existing building being located in the 25- 30 ANEF area only. The objectives of this clause are:

- *to prevent certain noise sensitive developments from locating in proximity to Coolangatta Airport and its flight paths, and*
- *to minimise the noise impact from the operation of Coolangatta Airport on development in its vicinity.*

Under this Clause, when deciding whether to grant consent to development for the purpose of a community building, place of assembly, place of public worship or retail, commercial or light industrial purposes within the 25 or higher ANEF contour the consent authority must consider Australian Standard AS 2021–1994 (*Acoustics—Aircraft noise intrusion—Building siting and construction*).

Councils Environmental Health Section reviewed the applicants Aircraft Noise Assessment Report and recommended conditions in relation to this assessment and its recommendations.

Having regard to the above comments and the submitted Aircraft Noise Assessment, the proposed development is considered to satisfy the provisions of this clause and is considered acceptable.

Clause 34 Flooding

The site is partially mapped as being affected by flooding. It is noted that the Q100 flood level for the site is RL 2.6m AHD with the existing floor level of the building being RL 2.75m AHD. The proposed change of use within an existing commercial building is suitable for the subject site and consistent with the clause.

Clause 35 - Acid Sulfate Soils

The subject site is located on land identified as Class 2 on the Acid Sulfate Soil Planning Maps. As the works are within an existing building, disturbance to ASS is not expected.

Clause 38- Future road corridors

The subject development site is located on land which is partially mapped as being a future road under the provisions of this clause. The objective of the clause is *'to cater for the alignment of, and development in proximity to, future roads.'*

This clause outlines that development, other than exempt development or agriculture, must not be carried out on land in or adjoining a future road corridor shown on the zone map, except with development consent. Furthermore, this clause requires Council to consider the effect of that development on the future alignment of the road corridor.

In this instance it is noted that the future road corridor was provided for the development of Kirkwood Road to the western side of Pacific Motorway, for which a specific alignment was approved under PTV10/0032 which is located to the south site boundary, (not within the site). The subject application has been reviewed by Council officers with respect to the Kirkwood Road upgrade with no objections raised to the proposal in relation to this. In addition the proposal seeks to use a portion of the existing building, as such, the proposed development is considered to be acceptable having regard to future road development to which this clause relates.

Clause 39 – Remediation of Contaminated Land

The objective of this clause is *'to ensure that contaminated land is adequately remediated prior to development occurring.'*

The application has been reviewed in terms of land contamination by Council's Environmental Health Unit with no issues raised with respect to the proposed development area being contaminated. The proposed development is not considered to contravene the provisions of this clause.

Clause 47 – Advertising Signs

There is no signage proposed as part of this development application. The application states, a separate application will be submitted to Council in due course in order to secure advertising rights for the development.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The subject land is designated coastal land and therefore this clause applies. The provisions of this clause state:

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
 - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development*

would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or

- (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The proposal is considered to be generally consistent with Clause 32B as it is not considered to contravene the strategic aims of the NSW Coastal Policy 1997, the Coastline Management Manual or the North Coast: Design Guidelines. Furthermore it is considered unlikely that the proposal will impede public foreshore access or result in overshadowing of adjacent open space. The proposal does not contradict the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

Clause 81: Development adjacent to the ocean or a waterway

This clause states that Council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied of the following:

- (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*

To the north of Dry Dock Road, which is the road reserve which borders the northern section of the site, it is noted that there is a portion of foreshore open space which is accessible from the public road by way of walkway. This area extends from the motorway bridge to the west and includes an area in close proximity to the north of the site. In this regard the proposal is considered to be compliant with the provisions of this control.

- (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*

It is noted that the building proposed to be used by this application is existing and located approximately 130m from the waterway, and therefore outside of the area covered by this clause (i.e. within 100m of waterway). In any event it is considered that the proposed development will not detract from the amenity of the waterway.

- (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*

The provisions of the Coastal Zone Management Plan for Cobaki and Terranora Broadwater which are applicable to the subject site are detailed elsewhere in this report. It is considered that the proposed development is consistent with the principles of this plan.

The subject application is considered to be consistent with the above clause and the provisions of the North Coast Regional Environmental Plan generally.

SEPP No 71 – Coastal Protection

The subject site is located within the coastal zone and is subject to the matters for consideration under Clause 8 of this Policy. The proposed development will be located within the footprint of the existing building and considered to be consistent with Clause 8. The application is considered to satisfy the provisions of Clause 8.

SEPP (Infrastructure) 2007

Section 104 of SEPP (Infrastructure) 2007 requires Council to consider all traffic generating developments and consult with the local Development Traffic Advisory Group to determine the accessibility of the site concerned, the efficiency of movement and any potential traffic safety, road congestion or parking implications of the development.

A traffic generating development is considered an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.

In this regard Schedule 3 of the SEPP lists different land uses and specifies a size or capacity deemed to be traffic generating. The proposed development was not required to be referred to Council's Development Traffic Advisory Group as the proposal (Shop/General Store) is not over 500m².

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

The Draft LEP 2014 proposes to change the zoning of the subject site from 6(b) Recreation to RE2 Private Recreation. It is noted that the draft Tweed Local Environmental Plan 2014 was gazetted (as amended) on 4 April 2014.

The RE2 zone has the following objectives and permissible uses

Zone RE2 Private Recreation

1 Objectives of zone

*To enable land to be used for private open space or recreational purposes.
To provide a range of recreational settings and activities and compatible land uses.
To protect and enhance the natural environment for recreational purposes.*

2 Permitted without consent

Environmental facilities; Environmental protection works

3 Permitted with consent

Biosolids treatment facilities; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Charter and tourism boating facilities; Child care centres; Community facilities; Eco-tourist facilities; Emergency services facilities; Entertainment facilities; Flood mitigation works; Food and drink premises; Forestry; Function centres; Helipads; Heliports; Industrial training facilities; Information and education facilities; Jetties; Kiosks; Marinas; Markets; Mooring pens; Moorings; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Respite day care centres; Roads; Sewage treatment plants; Signage; Tourist and visitor accommodation; Waste or resource management facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities

4 Prohibited

Any development not specified in item 2 or 3

Based on the new definitions within the Draft LEP 2014 the proposed development would be best defined as a commercial premises, which has a child definition of retail premises which has a child definition of a shop which has a child definition of a neighbourhood shop (limited to 300m²).

All of which are **prohibited** in the RE2 Private Recreation zone.

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

Tweed Development Control Plan

Section A2-Site Access and Parking Code

The subject site has approval for 289 existing car parking spaces located on the subject site (DA13/0669). In accordance with the Site Access and Parking Code Development Control Plan (DCP) the parking rate for a General Store equates to 3.5 spaces per 100m² of GFA for customers and 0.5 per 100m² of GFA for staff. On this basis the proposed development is required to provide a total of 20 car parking spaces.

The Traffic/parking Assessment – prepared by CRG Traffic for Development Application DA13/0669, recommended a minimum of 201 spaces. Therefore there is a credit of 88 spaces. It is not clearly identified how many spaces are attributed to the approved Function Room, however, regardless the 88 parking space credit easily accommodates the 20 parking spaces required by the proposed General Store.

It is also important to note that separate loading bay/waste collection area is provided that will ensure any conflicts between customer parking and refuse collection will be unlikely to occur. Minor changes to the existing car parking layout and circulation aisles are also proposed in order to permit a more functional and efficient layout. Appropriate conditions can be recommended if the application was to be approved.

Section A3-Development of Flood Liable Land

The subject site is located in a flood affected area with a defined Design Flood Level (DFL) of 2.6m AHD and a Probable Maximum Flood (PMF) level of 5.7m AHD. The application proposes to change the use of part of the existing building on the site which has been designed with a minimum floor level of 2.75m AHD, the existing development is located at approximately 150mm above the DFL. Provided the site's use (i.e. commercial) the proposed use would not be habitable during an extreme flooding event and as such Emergency Response provisions are not applicable. The site is also not located within a high flow area as noted on Council's GIS. In this regard the site is not required to adhere to any specific flooding controls and filling is permissible.

Having regard to these comments, it is considered that the proposed development is generally in accordance with the provisions of DCP A3 and is acceptable in terms of development on flood liable land.

Section A4-Advertising Signs Code

The application states:

“No advertising content is sought as part of the subject application. A separate application will be submitted to Council in due course in order to secure advertising rights for the development.”

Section A11-Public Notification of Development Proposals

The proposed development was notified to adjoining neighbours for a period of 14 days from Wednesday 9 April 2014 to Monday 28 April 2014. Following the exhibition period Council received two submissions objecting to the proposal raising issues with the possible impact on the existing Palms Village convenience store and other established retail centres. These submissions are considered in detail later in this report.

Section A13-Socio-Economic Impact Assessment

As detailed under Clause 17 of the TLEP 2000 in the above report the proposed development is not considered suitable having regard to the potential social and economic impacts as a result of the proposed development.

Section A15-Waste Minimisation and Management

This section of the DCP aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development.

A Waste Management Plan has not been prepared, however, suitable conditions can be recommended if the application were to be approved.

Section B3-Banora Point West- Tweed Heads South

The subject site is partially (36.20%) located within the area to which this DCP applies, being the southern portion of the site, which includes some of the proposed/existing car parking area. The remaining portion of the site 63.8% is not covered by the plan. The general aims of the DCP are to:

- *Present Council's objectives with regard to development of Banora Point West - Tweed Heads South;*
- *Provide more detailed provisions than that contained in the Tweed Local Environmental Plan 2000;*
- *Provide guidelines for determination of the merits of developments within Banora Point West - Tweed Heads South as required by Section 90(1)(a) of the Environmental Planning and Assessment Act, 1979; and*

- *Give detailed guidance to those wishing to develop within the Banora Point West - Tweed Heads South Area, to indicate Council's policies with respect to development, and to form a basis for negotiations should a departure from the provision of this plan be requested.*

The portion of the site that is covered by this plan is specifically located in the Special Uses (Aquatic Club) Area in Precinct 2. As the portion of the existing and proposed car parking spaces relating to the "Aquatic Club" are located within the area specifically identified for the "Aquatic Club" the proposal is consistent with the plan.

Section B3.9 Traffic and Transport outlines that distributor roads (including Kirkwood Road and Fraser Drive) are expected to carry large volumes of traffic in the future. To increase traffic safety and to avoid the need for wide road reservations, vehicular access to a distributor road may only be made by way of another road. Thus, direct access from individual private properties to a distributor road is prohibited. Furthermore it is noted that Subdivisions creating allotments adjoining distributor roads are required to prepare restrictions as to user under Section 88B of the Conveyancing Act to effectively prevent direct vehicular access to and from allotments across the distributor road.

The application proposes to use of part of the existing building, existing parking spaces and existing access from Fraser Drive. Having regard to the above, it is considered that the proposed development is generally in accordance with this section of the DCP and represents an acceptable development at this location.

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

Clause 92(a) Government Coastal Policy

The proposed development will have no negative impact on the adjoining waterway and satisfies the objectives of this Policy.

Clause 92(b) Applications for demolition

The proposed development could be appropriately conditioned to satisfy the demolition requirements.

Clause 93 Fire Safety Considerations

The proposed development could be appropriately conditioned to satisfy the fire safety requirements.

Clause 94 Buildings to be upgraded

The proposed development could be appropriately conditioned to satisfy the building code of Australia provisions.

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

Tweed Shire Coastline Management Plan 2005

The proposed development will have no negative impact on the Coastline Management Plan.

Tweed Coast Estuaries Management Plan 2004

The subject site is not located within an area that is affected by the Tweed Coast Estuaries Management Plan.

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

The proposed development will have no negative impact on the Terranora Broadwater Catchment and satisfies the objectives of this Policy.

- (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**

As detailed in the above report the proposed development would have an unacceptable economic impact on the existing commercial zones in the locality. It is unreasonable to have such an impact on these businesses when the proposed land use does not comply with the primary zone objective in which the site is located.

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

This report details that from a physical perspective the site is capable of adequately accommodating this business, however from a planning perspective the proposed development should not be approved on the subject site due to the site's recreational zoning.

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

Public Notification

The proposed development was notified to adjoining neighbours for a period of 14 days from Wednesday 9 April 2014 to Monday 28 April 2014. Following the exhibition period Council received two submissions objecting to the proposal raising issues with the possible impact on the existing Palms Village convenience store and other established retail centres. The following table summarises these objections:

Objection	Comment
<p>Objection 1</p> <p>The objector currently owns the two shops at 122 Dry Dock Road being the Palms village convenience store and Dry Dock Bottle shop.</p> <p>The objector states:</p> <p>The proposal is not in accordance with the Clause 47 of the North Coast Regional Environmental Plan, Clause 17 Social Impact Assessment of the Tweed LEP 2000. The proposal is prohibited within the RE2 zone and is considered to create significant adverse economic and social impacts.</p>	<p>The economic impact is considered to be unacceptable particularly as the proposal is not in accordance with objectives of the zone. The applicant's Economic Impact Assessment identifies an estimated impact in 2016 between -0.3% and -3.2% on local businesses and a loss of -\$1.1 million on the adjacent convenience store and other centres in 2016.</p> <p>The proposal is considered not to satisfy Clause 17 Social Impact Assessment of the Tweed LEP 2000.</p> <p>Clause 47 of the North Coast Regional Environmental Plan is considered not to be relevant to this application as the proposal does not relate to preparing a draft local environmental plan or industrial development.</p>
<p>Objection 2</p> <p>The objector currently leases the two shops at 122 Dry Dock Road being the Palms Village convenience store and Dry Dock Bottle shop. The objector states that:</p> <p><i>"these businesses have suffered substantial loss due to the arrival of COLES & BWS on Frazer Drive. The proposed development will no doubt in my mind this force us to close down with no resale value for our businesses."</i></p>	<p>As above.</p>

(e) Public interest

On review of this application it is recommended that this DA be refused as the development has failed to demonstrate suitable compliance with the relevant heads of consideration in accordance with Section 79C of the Environmental Planning & Assessment Act 1979.

OPTIONS:

That Council:

1. Refuses the application; or

2. Approves the development application with the following recommended conditions of consent.

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos DA-2002-GSB, DA-1101-GSB prepared by Hamilton Hays Henderson Architects and dated May 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 a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges. [GEN0190]
5. The development is to be carried out in accordance with Councils Development Design and Construction Specifications. [GEN0265]
6. No vehicle larger than a standard Heavy Rigid Vehicle as defined in the latest version of AS 2890.2 Parking Facilities - Off-Street Commercial Vehicle Facilities (except can be up to but not exceeding 12.5m in length) shall service the site. [GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. Any car parking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority **PRIOR** to the issue of a Construction Certificate. [PCC0055]
8. The developer shall provide car parking on a sealed, asphaltic concrete surface accommodating a minimum of 20 parking spaces for the General Store (unless agreed otherwise by the General Manager or his delegate) 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 maneuvering areas including pavement design and required rectification works (as applicable), integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of a Construction Certificate. [PCC0065]

9. Prior to the issue of a Construction Certificate for Civil Works, a Cash Bond or Bank Guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the public infrastructure works as set out in Council's fees and charges at the time of payment.

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Occupation Certificate is issued.

- [PCC0275]
10. 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]
11. Grading of the car park 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 local drainage. Detailed engineering plans of finished surface levels and associated drainage shall be submitted 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 watercourses or property.

- [PCC0675]
12. A Traffic Control Plan in accordance with AS1742 and the latest version of the NSW Government Roads and Maritime Services (RMS) publication "Traffic Control at Work Sites" shall be prepared by an RMS accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate for Civil Works. Safe public access shall be provided at all times.

- [PCC0865]
13. Prior to the issue of a **Construction Certificate** for Civil / Subdivision works, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

(a) copies of compliance certificates relied upon

(b) (4) four copies of detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include (but are not limited to) the following, unless approved otherwise by Council:

- earthworks
- roadworks/furnishings (if not already provided),

(c) Provision of two Channelised Right-turn CHR(S) treatments in general accordance with Fig 4.1 of CRG's Traffic Impact Assessment dated 15 May 2014 (designed in accordance with Austroads Part 4A Figure 7.18) to provide safe right turn movements for vehicles on Fraser Drive entering the development at the 2 proposed access locations.

(d) Provision of pedestrian facilities including pedestrian refuge across Fraser Drive to Council's requirements.

- stormwater drainage
- water supply works
- sewerage works
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure).

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

14. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application 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) It is encouraged that the stormwater and site works incorporate Water Sensitive Design Principles and where practical, integrated water cycle management, as proposed by "Water By Design", an initiative for best practice by the South East Queensland Healthy Waterways Partnership.
 - (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (a) Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any earthworks associated with the upgrade of the car park taking place.
 - (b) Runoff from all hardstand areas of the car park (including hardstand landscaping areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be located within the development property boundary and 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.
 - (c) Only GPT's endorsed by Council are acceptable.

[PCC1105]

15. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application for Civil works must include a detailed Erosion and Sediment Control Plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

- (b) Construction phase 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".
- [PCC1155]
16. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for the installation of any permanent stormwater quality control devices, prior to the issue of a Construction Certificate for Civil works.
- [PCC1195]
17. Prior to the construction certificate being issued plans drawn to a scale of 1:50 detailing the following with regards to all food related areas shall be provided to Council for assessment and approval, accompanied by a completed Application for Approval of Food Premise Fitout and the adopted fee in Council's Fees and Charges. Evidence of the plans being approved shall be provided prior to release of the construction certificate:
- Floor plan
 - Layout of kitchen (if applicable) and all equipment
 - All internal finish details including floors, wall, ceiling and lighting
 - Hydraulic design in particular method of disposal of trade waste (if applicable)
 - Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required

[PCNS01]

PRIOR TO COMMENCEMENT OF WORK

18. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.
- [PCW0005]
19. **Prior** to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-
- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
 - (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
 - (c) WorkCover Regulations 2000
- [PCW0025]
20. Any building work in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and

- (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
- [PCW0215]
21. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least **2 days** prior to work commencing.
- [PCW0225]
22. Civil work in accordance with a development consent must not be commenced until:
- (a) a Construction Certificate for the Civil work has been issued in accordance with Councils Development Construction Specification C101 by:
 - (i) the Consent Authority, or
 - (ii) an Accredited Certifier, and
 - (b) the person having the benefit of the development consent:
 - (i) has appointed a Principal Certifying Authority,
 - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) to certify the compliance of the completed works. The SWAC must be accredited in accordance with Tweed Shire Council DCP Part A5 - Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
 - C4: Accredited Certifier - Stormwater management facilities construction compliance
 - C6: Accredited Certifier - Subdivision road and drainage construction complianceThe SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to commencement of works, and

- (iii) has notified the Consent Authority and the Council (if the Council is not the Consent Authority) of the appointment,
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and SWAC is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Occupation Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the Civil work.

Note: For subdivisions creating 5 new allotments or less, OR the value of new public infrastructure is less than \$30,000, then the SWAC may be substituted for an Institute of Engineers Australia Chartered Professional Engineer (Civil College) with National Professional Engineers Register (NPER) registration.

[PCW0815]

23. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the Defects Liability Period for the Civil works.

[PCW0835]

24. 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]

25. 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]

DURING CONSTRUCTION

26. All proposed works are to be carried out in accordance with the conditions of development consent, approved Management Plans, approved Construction Certificates, drawings and specifications.

[DUR0005]

27. 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]

28. 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]

29. The development shall meet the building construction requirements of Australian Standard *AS 2021 (Acoustics - Aircraft Noise Intrusion - Building Siting and Construction)*.

[DUR0285]

30. If window systems to be used are not openable or are required to remain closed in order to satisfy the requirements of the Environmental Noise Impact Report, Proposed Commercial Development, Fraser Drive, CRG Acoustics 22 May 2014 (crgref: 13029a report rev. 4), then a system of mechanical ventilation complying with the relevant provisions of the Building Code of Australia shall be installed to service all habitable areas of the dwelling.

[DUR0295]

31. 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]

32. 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]

33. 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]

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

[DUR0815]

35. 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]

36. 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 an Occupation Certificate.

[DUR0995]

37. 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 operations and also from construction vehicles
- Material removed from the site by wind

[DUR1005]

38. All walls in the food preparation and storage areas shall be of solid construction. For this purpose walls in such areas may be of masonry or stud wall construction. If stud wall construction is used then the wall shall be lined as a **minimum** with 9mm thick high impact resistant material eg. Villaboard or Versilux lining or other suitable material(s) approved by Council's Environmental Health Officer **and** tiled to a height of at least 2 meters.

Masonry walls where not tiled may be cement rendered to provide a smooth faced impervious finish up to the underside of the ceiling.

Metal stud wall framing in lieu of timber framing shall be used in areas where the walls and floor surfaces will be subjected to high levels of moisture or alternatively as directed by Council's Environmental Health Officer.

All penetrations of the wall surface in food preparation areas shall be effectively sealed to the satisfaction of Council's Environmental Health officer.

[DUR1495]

39. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.

[DUR1505]

40. Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3.

[DUR1515]

41. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.

[DUR1545]

42. During the course of the construction and fitout of the kitchen/food premises periodic inspections must be arranged with Councils Environmental Health officer to ensure compliance with all health related conditions of approval and respective legislation. [DUR1575]
43. 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]
44. 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]
45. 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]
46. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.
- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255. [DUR1805]
47. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:
- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement. [DUR1825]
48. The proponent must not undertake any work within the public road reserve without giving Council's Engineering Division (48 hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken. [DUR1845]
49. 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 Council's Development Design and Construction Specifications prior to any use or occupation of the buildings.

[DUR1875]

50. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:

Roadworks (access upgrade)

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks / "boxing"
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Final Practical Inspection - On Maintenance
- (h) Off Maintenance inspection

Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final Practical Inspection - On Maintenance
- (i) Off Maintenance

Stormwater Quality Control Devices (other than proprietary devices)

For detail refer to Water By Design - Technical Guidelines

- (a) Earthworks and filter media
- (b) Structural components
- (c) Operational establishment
- (d) Mechanical/electrical
- (e) Commissioning - On Maintenance
- (f) Off Maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an " Accredited Certifier".

The fee for the abovementioned inspections shall be invoiced upon completion of all Civil works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'.

[DUR1895]

51. 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]

52. Any installed stormwater gully lintels intended to be dedicated as public infrastructure shall have the following notice **cast** into the top of the lintel: **'DUMP NO RUBBISH, FLOWS INTO CREEK'** or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

53. 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 the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

54. 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 Councils Engineering Division to arrange a suitable inspection.

[DUR2445]

55. 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]

56. Plumbing

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

- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

57. 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]

58. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

59. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

60. Prior to the issue of an Occupation Certificate a Defect Liability Bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the public infrastructure works approved under the Civil Works Construction Certificate and Section 68 of the Local Government Act (as set out in Councils Fees and Charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Occupation Certificate is issued.

It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[POC0165]

61. 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]

62. 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]

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

[POC0355]

64. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

65. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website www.foodnotify.nsw.gov.au or alternatively by contacting the NSW Food Authority on 1300650124.

[POC0625]

66. The premises is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.

[POC0635]

67. Upon completion of all Civil works on the site, Work as Executed plans are to be provided to Council in accordance with Council's Development Design Specification, D13 as well as a CCTV inspection of any installed stormwater pipes and sewerage system that are to be dedicated to Council as public infrastructure including joints and junctions to demonstrate that the standard of the system is acceptable to Council.

The plans are to be endorsed by a Registered Surveyor OR Consulting Engineer certifying that:

- a) The plans accurately reflect the work as executed.
- b) All stormwater lines, sewer lines, services and structures are wholly contained within the relevant easements or boundaries.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans.

[POC0765]

68. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Council's General Manager or his delegate must be issued prior to the issue of an Occupation Certificate.

[POC0865]

69. 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.

[POC0985]

70. 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]

71. Prior to the issue of an occupation certificate or commencement of use of the premise a detailed validation report prepared by a suitably qualified person shall be provided to Council to the satisfaction of the General Manager or his delegate which confirms that the premise has been constructed, and operates in accordance with the requirements of the *Environmental Noise Impact Report, Proposed Commercial Development, Fraser Drive, CRG Acoustics 22 May 2014 (crgref: 13029a report rev. 4)* as it relates to this development. In particular the validation shall address compliance with the requirements under Part 6.0 recommended acoustic treatments and Part 7.0 Conclusions, of the Report.

[POCNS01]

72. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the registration of Easements for services, Rights Of Carriageway and Restrictions As To User, as may be applicable under Section 88B of the Conveyancing Act.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the Right Of Carriageway/Easement shall make provision for maintenance of the Right Of Carriageway/Easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

[POCNS02]

USE

73. 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]
74. The $L_{Aeq, 15 \text{ min}}$ noise level emitted from the premises shall not exceed the background noise level (L_{Aeq}) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends. [USE0165]
75. 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]
76. Hours of operation of the business are restricted to 8.00am to 7.00pm seven days per week. [USE0185]
77. All deliveries to the premises are to occur only within the hours of 7am to 10pm Monday to Saturday and 8am to 10pm Sundays and Public Holidays, unless otherwise approved by Councils General Manager or his delegate. [USE0195]
78. 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]
79. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer. [USE0245]
80. The servicing of waste facilities shall be limited to between the hours of 7am to 6pm Monday to Saturday and 8am to 6pm Sundays and Public Holidays. [USE0285]
81. The servicing of waste facilities shall be limited to between the hours of 7am to 6pm Monday to Saturday and 8am to 6pm Sundays and Public Holidays. [USE0285]
82. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval. [USE0835]
83. All mechanical ventilation shall comply with AS1668.2 Ventilation Requirements if applicable. [USE0845]

84. All wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate.

[USE0875]

Council officers recommend Option 1.

CONCLUSION:

The proposed development seeks approval for a general store (460m²) within a recreational zone.

The proposed development has failed to adequately demonstrate how the proposed development:

- Satisfies the primary objective of the 6(b) Recreation zone;
- Satisfies the objectives behind social and economic impact;
- Satisfies the zone objectives and permissibility under Draft TLEP 2014;
- Satisfies the general public interest and the impact the proposal would have on the existing commercial uses in the locality.

Accordingly the application is recommended for refusal.

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. Applicant's Letter regarding Economic Impact and compliance with the zone objectives of the 6(b) Recreation zone and RE2 Private Recreation zone dated 29 September 2014 (ECM 3523811)

Attachment 2. Applicant's Socio Economic Assessment dated September 2014 (ECM 3523812)

(Confidential) Attachment 3. Confidential Attachment Applicant's Legal Advice Letter dated 9 September 2014 (ECM 3523823)

(Confidential) Attachment 4. Confidential Attachment Council's Legal Advice Letter dated 13 November 2014 (ECM 3523824)

8 [PR-PC] Development Application DA14/0345 for a Bushfire Hazard Reduction and Minor Earthworks to Establish Dwelling Envelope at Lot 21 DP 1058759 No. 66 Round Mountain Road, Round Mountain

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA14/0345 Pt 1

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 development application which seeks approval for bushfire hazard reduction works in the form of an asset protection area, earthworks for a building pad and driveway access and the approval of a nominated building pad site to accommodate a possible future dwelling which is not the subject of this application or any application currently before Council.

The development is located at Lot 21 DP 1058759; No. 66 Round Mountain Road, Round Mountain. The site is currently heavily vegetated and is within the mapped Koala Habitat Areas (Both Category A and B).

The site did have a lawful dwelling erected within 6m of Round Mountain Road, however, a fire destroyed the house in early 2013 and a recent application (DA13/0719) was approved on 19 December 2013 for the demolition of the fire damaged dwelling.

This application seeks approval for bushfire hazard reduction works to accommodate an approximately 240m long driveway access (from Round Mountain Road), a building pad site and an emergency fire trail. However, the site has no asset that currently requires protection from bushfires. Accordingly this application is considered extremely premature and potentially would result in unnecessary clearing of highly sensitive ecological area. The application is therefore recommended for refusal.

Under the Tweed LEP 2014 the site is a Deferred Matter thus reverting to Tweed LEP 2000. The site has a split zone between 7(a) Environmental Protection (Wetlands & Littoral Rainforests) and 7(l) Environmental Protection (Habitat) under the Tweed LEP 2000. The site has an area over 40ha in size and therefore benefits from a Dwelling Entitlement however the proposed location of the building envelope in this instance is not considered reasonable having regard to the site's ecological sensitivity.

Council's Natural Resource Management (NRM) Unit has reviewed the application and have concluded that the ecological impacts likely to be associated with the proposed development

cannot be avoided, minimised or managed to an acceptable level through conditions of approval. The proposed development would result in a significant effect on a threatened species being the Koala. As such the application is recommended for refusal based on the reasons provided below.

Council identified the ecological issues with the applicant and asked for an amended house site closer to Round Mountain Road. The applicant did amend the subject application bringing the proposed building pad slightly closer to Round Mountain Road but it is still 130m from Round Mountain Road and still represents an inappropriate development given the site's ecological sensitivity. Further requests for alternative sites have resulted in the application being called up for Council determination by Councillors Polglase and Youngblutt.

RECOMMENDATION:

That Development Application DA14/0345 for a bushfire hazard reduction and minor earthworks to establish dwelling envelope at Lot 21 DP 1058759; No. 66 Round Mountain Road Round Mountain be refused for the following reasons:

- 1. The proposed bushfire hazard reduction works are considered premature as there are no assets on the site requiring protection from bushfires.**
- 2. The application will result in an unacceptable loss of vegetation in a known Koala Habitat area which is contrary to the primary objectives of the 7(l) zone and therefore does not satisfy Clause 8(1)(a) of the Tweed Local Environmental Plan 2000.**
- 3. The proposal fails to adequately protect recognised Core Koala Habitat through the direct loss of approximately 0.61 ha of vegetation.**
- 4. The application is not considered suitable having regard to the applicable Planning Legislation as follows:**
 - The Federal Environment Protection Biodiversity Conservation Act 1999**
 - Threatened Species Conservation Act 1995**
 - State Environmental Planning Policy No. 44 - Koala Habitat Protection**
 - Tweed Local Environmental Plan 2000**
 - Tree Preservation Order 2004**
 - Tree Preservation Order 2011 (Koala Habitat)**
- 5. The application has not been supported by sufficient information to assess the impact of the development having regard to the proposed fire access trail.**
- 6. The proposed fire access trail is not considered to satisfy Clause 8(2) of the Tweed LEP 2000 to enable permissibility.**
- 7. The application is not considered in the public interest.**

REPORT:

Applicant: Kenmar Farms Pty Ltd
Owner: Kenmar Farms Pty Ltd
Location: Lot 21 DP 1058759; No. 66 Round Mountain Road Round Mountain
Zoning: 7(a) Environmental Protection - (Wetlands & Littoral Rainforests) and 7(l) Environmental Protection - (Habitat)
Cost: \$25,000

Background:

Subject Site

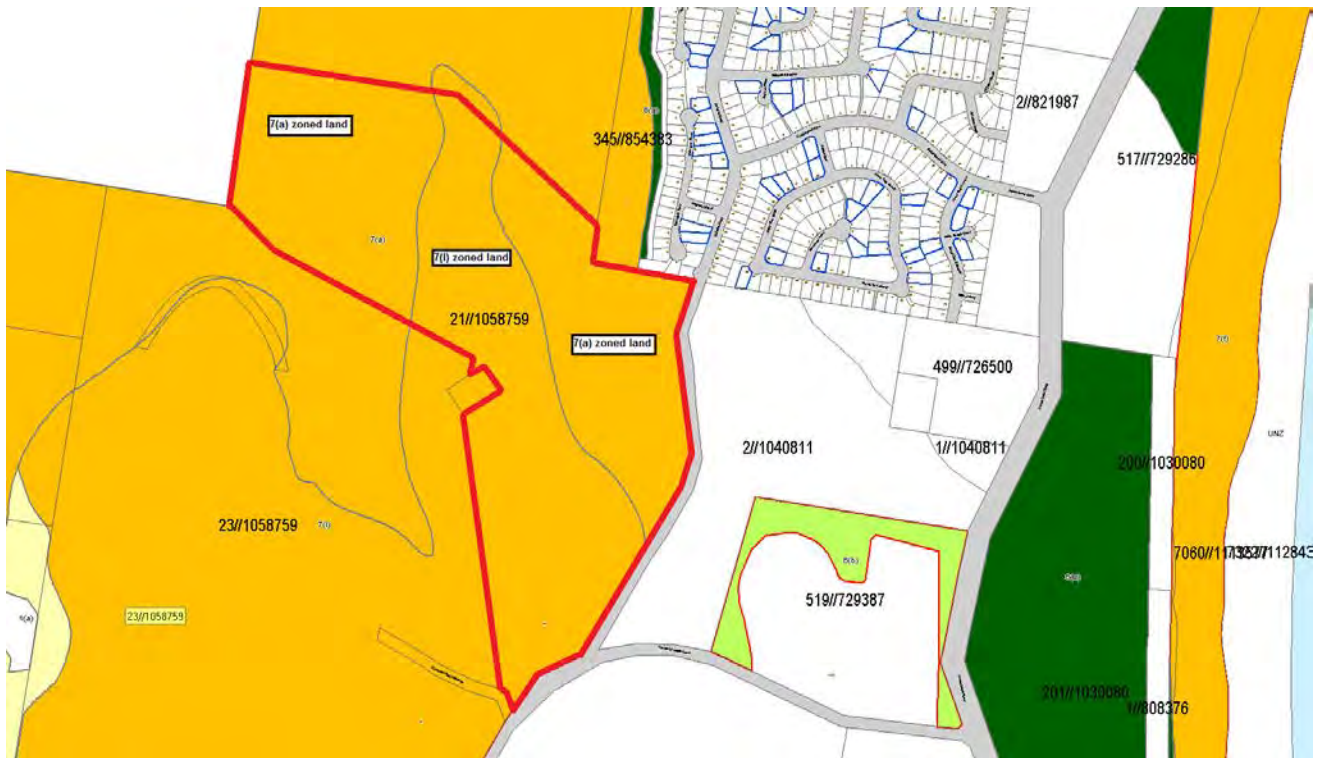
The subject site is 41.10ha in area located approximately 1km from the township of Cabarita Beach/Bogangar. It is densely vegetated and heavily constrained with regards ecological and environmental issues, flood and bushfire risk.

A single dwelling was approved on the property in 1982 under Notice No. T4/1598. This house was built and used as a dwelling until 2013 when the house was destroyed by fire. Approval for the demolition of the fire damaged dwelling was given on 19 December 2013 under DA13/0719. The dwelling was located approximately 6m off the Round Mountain Road frontage on the southern portion of the site.



Subject Site with existing and proposed locations

The subject site has a split zone between 7(a) Environmental Protection (Wetlands & Littoral Rainforests) and 7(l) Environmental Protection (Habitat). The proposed dwelling envelope is entirely within the 7(l) zoned land whilst the bushfire hazard reduction is located within both the 7(a) and 7(l) zoned land.



Zoning of Subject site

Proposed Development

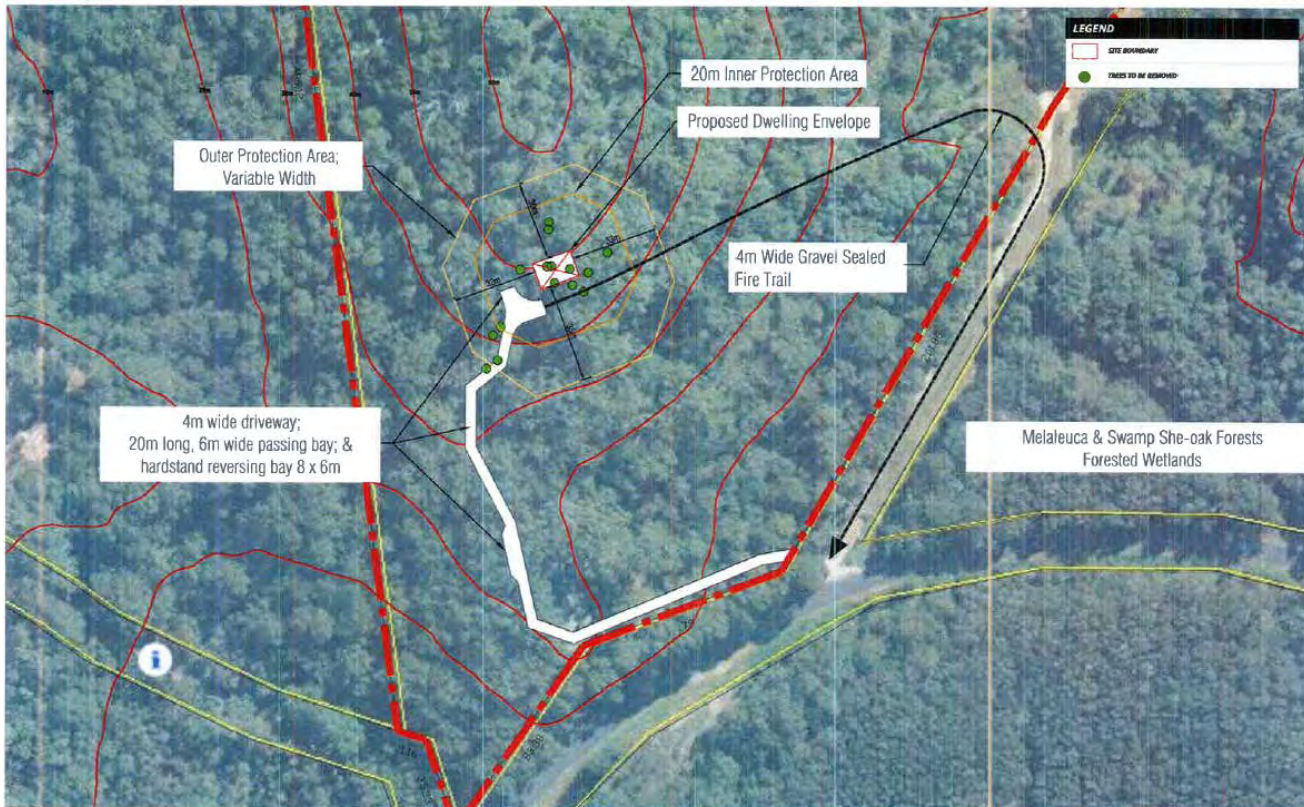
The proposed development seeks approval for bushfire hazard reduction works in the form of an asset protection area, earthworks for a building pad and driveway access and the approval of a nominated building pad site to accommodate a possible future dwelling which is not the subject of this application or any application currently before Council.

The earthworks involve creating a 4m to 6m wide driveway approximately 240 metres in length with an 8m x 6m hardstand reversing bay next to the area identified as a proposed dwelling envelope.

The proposed dwelling envelope is 10m x 15m and is positioned in an area approximately 130m north of Round Mountain Road.

A 4 metre wide gravel sealed fire trail of approximately 190 metres is also proposed from the area identified as a proposed dwelling envelope to the east to meet up with Cabarita Road. Detail on the works required for the proposed fire trail has not been provided by the applicant. It most likely involves earthworks within the 7(a) zone which is a Clause 8(2) matter under the Tweed Local Environmental Plan 2000. This Clause acts as a permissibility Clause which has not been satisfied as part of this assessment.

The bushfire hazard reduction includes the removal of vegetation within the building envelope, the Inner and Outer Protection Areas surrounding the building envelope and along the driveway access. It is anticipated that there will also be clearing of vegetation along the fire trail although this information has not been supplied sufficiently.



Proposed dwelling envelope and driveway

History

The proposed application was submitted on 30 May 2014 and was for bushfire hazard reduction, earthworks and a dwelling envelope. The proposed development was referred to the NSW Rural Fires Service and Council's Environmental Health section, Development Engineer and Natural Resource Management Unit.

As a result of these referrals the NSW Rural Fire Service and Council's Environmental Health section requested further information to undertake the assessment whilst Council's Natural Resource Management Unit advised that the proposed development would not be supported. The applicant was requested to withdraw the application on 16 July 2014 as Council would not be supporting the proposal for the following reasons:

- *The proposal involves the modification/simplification of approximately 0.7 ha of remnant vegetation to facilitate access, establish an APZ and construct a building pad. The vegetation community to be directly impacted was evaluated as:*
 - *achieving 'High' ecological significance status;*
 - *occurring within a recognised regional wildlife corridor;*
 - *offering potential Koala (*Phascolarctos cinereus*) habitat and providing opportunity for movement/dispersal of listed species;*
 - *comprising preferred Glossy Black Cockatoo (*Calyptorhynchus lathami*) feed trees and winter flowering blossom resource trees;*
 - *supporting hollow bearing trees of potential refuge and roosting/nesting resource to a suite of both threatened (in particular hollow dependent micro chiropteran bats) and common/locally significant fauna species.*
 - *providing potential habitat for hill-topping butterflies.*

- *The clearing of vegetation, loss or degradation (or both) of sites used for hill-topping by butterflies, loss of hollow bearing trees are key threatening actions listed under Schedule 3 of the TSC Act 1995.*

Given the known and high likelihood of occurrence of a number of threatened species reliant on hollows (2 known micro chiropterans) and/or preferring habitat likely to be removed/modified/adversely affected onsite, NRM consider that where the proposal were to proceed activities required during both the construction and long term operational phase of the development would pose an unacceptable risk to the local population of threatened species

- *The proposed land-use is inconsistent with the objectives of the 7(l) Environmental Protection (Habitat) and adjacent 7(a) Environmental Protection (Wetlands and Littoral Rainforests) zone designated under the LEP 2000 after taking into consideration provisions detailed in corresponding Clause 28 and Clause 25 respectively.*

The applicant was also given a copy of the NSW Rural Fire Service and Council's Environmental Health section's request for further information.

The applicant advised that an amended location would be submitted. The amended information was received by Council on 25 August 2014 and 18 September 2014 and was referred to the NSW Rural Fire Service, Council's Environmental Health section and Council's Natural Resource Management Unit. The amended location is located approximately 60 metres to the south of the original building envelope proposal as shown below.



Building envelope locations

The NSW Rural Fire Service responded on 13 October 2014 with recommended conditions to be included with any consent. These included conditions relating to further earthworks being required on slopes greater than 18 degrees. The impact of these additional works is

unknown and may involve further vegetation removal. The referred Development Application relates to a proposed building envelope however no dwelling is proposed at this stage. Any future dwelling proposal will need to be assessed under section 79BA of the Environmental Planning and Assessment Act 1979 and satisfy the relevant bushfire protection requirements applicable at that time.

Council's Environmental Health section have reviewed the amended application and provided recommended conditions of consent.

Council's Natural Resource Management Unit advised that negative ecological impacts likely to be associated with the proposed development cannot be avoided, minimised or managed to an acceptable level. As such the Council cannot support the proposed bushfire hazard reduction and minor earthworks to establish a dwelling envelope. The applicant was advised of this assessment and requested to withdraw the application on 18 November 2014.

The applicant requested the application be determined by Council and as such Councillors Youngblutt and Polglase have requested the application be determined by the Planning Committee.

SITE DIAGRAM:

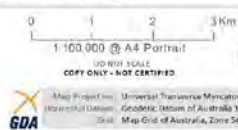


Locality Plan

Lot 21 DP 1058759
Poplar Avenue, Bogangar

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Cadastral: 09 December, 2014
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Boundaries shown should be considered approximate only.



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W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:

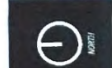
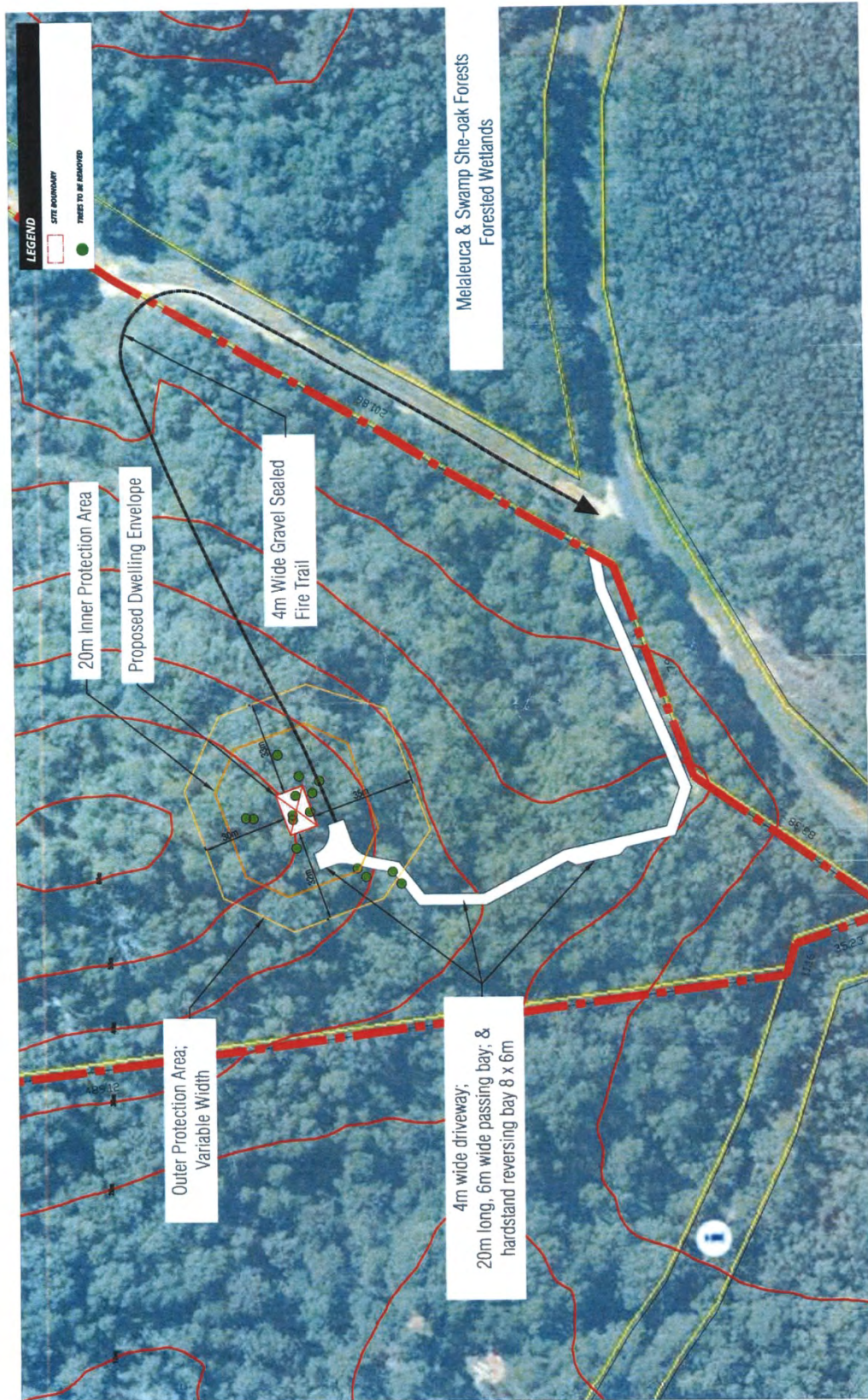


BUSHFIRE RISK ASSESSMENT & DWELLING ENVELOPE PLAN
LOT 21 DP 1058759 ROUND MOUNTAIN ROAD, ROUND MOUNTAIN

SCALE: 1:500 (A3)
DRAWN BY: 20/08/14
DATE: 02/14

CLIENT: ROUND MOUNTAIN
PROJECT: ROUND MOUNTAIN
PC: 02

 NORTH



SCALE: 1:100 @ A4
 DRAWN BY: J. SMITH
 CHECKED BY: J. SMITH
 DATE: 20/02/15

BUSHFIRE RISK ASSESSMENT & DWELLING ENVELOPE PLAN
 LOT 21 DP 1386758 ROUND MOUNTAIN ROAD, ROUND MOUNTAIN

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The aims of this plan are:

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which is:*
- “The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”, and*
- (b) *to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*
- (i) *that some or all development should be restricted to certain land within a zone,*
- (ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*
- (iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*
- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*
- *Tweed Shire 2000+ Strategy*
 - *Pottsville Village Strategy, and*
- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.*

The proposed development is not considered to be consistent with the aims of the TLEP 2000. The proposed development is not consistent with the vision of the shire “to manage growth so that the unique natural and developed character of the Tweed Shire is retained.” The proposed development is for bushfire hazard management and earthworks for a proposed building envelope which does not comply with the primary objective of the zone as seen below, and the consent considerations contained within the TLEP 2000.

The proposed development is non-compliant with the TLEP 2000 in terms of creating negative cumulative impacts being that the proposed development would result in a significant effect on a threatened species being the Koala.

It is considered not to be in keeping with the aim of the plan in particular, that all development should be restricted to certain land within a zone and that specific development requirements should apply to certain land in a zone or to a certain type of development.

Clause 5 - Ecologically Sustainable Development

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

Council's Natural Resource Management (NRM) Unit has reviewed the application in relation to the environmental impacts. To accommodate the dwelling envelope, allow for the establishment of Asset Protection Zone's and construct driveway access the applicant estimates that a total of 16 native trees (inclusive of 3 dead stags) greater than 4 m height would require removal.

Council's NRM Unit have provided the following assessment in relation to the location of the proposed works:

"Whilst the applicant anticipates that the number of trees likely to be removed to facilitate development and manage the site in the long term is to be reduced a number of considerations have been overlooked in quantifying the impact:

- *The number of saplings (taken as trees under 4.0 m height) expected to be removed have not been calculated. Adequate consideration has not been given to the potential loss of mid-storey, understorey and ground-layer vegetation currently providing habitat for a range of fauna species*
- *Detail has not been provided in regards to the extent of earthworks required to typically construct a house pad, driveway and 8 x 6m hardstand reversing bay. Given the moderately-steep topography of the site in the location of the Dwelling Location extensive earthworks would likely be required to accommodate and service a future dwelling. Information in relation to the scale and extent of earthworks is considered to be of particular importance when determining the overall impact of the development on tree health and likelihood of long term retention. In the absence of preliminary earthworks drawings and specialist arboricultural evaluation (based on such plans) it is highly likely that the number of trees to be affected has been underestimated by the applicant.*
- *The establishment of an alternative 4.0 m wide bushfire access trail and associated impacts on vegetation have not been contemplated in the revised Ecological Assessment nor shown on any preliminary earthworks plans.*
- *An arboricultural risk assessment has not been undertaken on those trees identified to be retained within the APZ. Given the height of trees occurring within the APZ, age structure, species/habit and proximity to the proposed Dwelling Location an evaluation should be made to determine the feasibility/suitability for long term retention.*

- *The habitat value of those trees proposed to be removed does not appear to have been considered in influencing the location of the Dwelling Envelope."*

It is considered that the negative ecological impacts likely to be associated with the proposed development cannot be avoided, minimised or managed to an acceptable level through conditions of approval. As such NRM recommends refusal based on the following grounds:

- *The proposal involves the removal and modification of approximately 0.61 ha of remnant vegetation recognised as Core Koala Habitat to facilitate access, establish an APZ and construct a building pad. It is noted that this estimate excludes the loss of vegetation potentially impacted as a result of alternative fire trail establishment. The vegetation community to be directly impacted was evaluated as:*
 - *Core Koala Habitat as identified in the draft Comprehensive Tweed Coast Koala Plan of Management*
 - *achieving 'High' ecological significance status;*
 - *occurring within a recognised regional wildlife corridor;*
 - *comprising preferred Glossy Black Cockatoo (*Calyptorhynchus lathami*) feed trees and winter flowering blossom resource trees for other threatened species;*
 - *supporting hollow bearing trees of potential refuge and roosting/nesting resource to a suite of both threatened (in particular hollow dependent micro chiropteran bats) and common/locally significant fauna species; and*
 - *providing potential habitat for hill-topping butterflies.*
- *The proposed development would result in a significant effect on a threatened species being the Koala*
- *The clearing of vegetation is a key threatening process listed under Schedule 3 of the TSC Act 1995.*
- *The proposed land-use is inconsistent with the objectives of the 7(l) Environmental Protection (Habitat) and adjacent 7(a) Environmental Protection (Wetlands and Littoral Rainforests) zone designated under the LEP 2000 after taking into consideration provisions detailed in corresponding Clause 28 and Clause 25 respectively.*

A more detailed assessment of environmental factors is outlined further throughout this report. It is considered that as the application being for bushfire hazard reduction and earthworks for a proposed dwelling envelope in vegetation recognised as Core Koala Habitat and the unknown impact of the earthworks in 7(a) and 7(l) zoned for the fire trail then the application should be refused in its current form. Council's NRM Unit would only be willing to offer support for the establishment of a suitably sized dwelling positioned within the location of the previous dwelling approved under Notice No. T4/1598 following merit based assessment of any such proposal.

Council's Natural Resource Management Unit have concluded that

"The negative ecological impacts likely to be associated with the proposed development cannot be avoided, minimised or managed to an acceptable level through conditions of approval."

It is therefore considered that the proposed development is not consistent with the four principles of ecologically sustainable development. The proposed development is therefore recommended for refusal.

Clause 8 - Consent Considerations

Clause 8(1)

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

- (a) *It is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*

The land is within the 7(a) and 7(l) zone and the proposed works are not consistent with the primary objective of the zones as outlined below. It is considered that there will be undue environmental impacts upon the land if this application was to be approved.

- (b) *It has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*

Other aims and objectives have been outlined throughout this report. It is considered that a number of issues arise as a result of this application and cannot be supported in its current form.

- (c) *It is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

The proposed development if approved may result in unacceptable cumulative impacts. As outlined throughout this report, the site is highly constrained by environmental factors and if approved there may be a negative cumulative impact on ecological factors.

Clause 8(2)

This clause specifies that the consent authority may grant consent to development specified in Item 3 of the table to clause 11 if the applicant demonstrates to the satisfaction of the consent authority that:

- (a) *the development is necessary for any one of the following reasons:*
- (i) *it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,*
 - (ii) *it meets an identified urgent community need,*
 - (iii) *it comprises a major employment generator, and*

It is considered that the application is permissible on the subject site although there are negative impacts due to the location of the proposed development on site. The earthworks and bushfire hazard reduction proposed included a fire trail which is located in the 7(a) zone. It is considered that this would be unnecessary if the

dwelling was located where the previously approved dwelling was located. The proposed does not meet an urgent community need or comprise a major employment generator.

- (b) *there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and*

There are more appropriate sites located on the subject site where a dwelling could be located with less of an impact upon the ecological significant vegetation located on the site.

- (c) *the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and*

The development is likely to maintain the desired and established scale and character of the locality. However, due to the environmental impacts the proposed development is recommended for refusal.

- (d) *the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

It is considered that the proposal is inconsistent with the zoning objectives of the TLEP 2000 being to protect and conserve significant wetlands and littoral rainforests. The location of the proposed development on the site results in impacts which would not be necessary if located in an appropriate location.

Clause 11 - Zone Objectives

The subject site has a split zone between 7(a) Environmental Protection (Wetlands & Littoral Rainforests) and 7(l) Environmental Protection (Habitat). The proposed dwelling envelope is entirely within the 7(l) zoned land whilst the bushfire hazard reduction and earthworks proposed are located within the 7(a) and 7(l) zoned land. The uses are defined as follows:

bushfire hazard reduction *a reduction or modification (by controlled burning, chemical, mechanical or manual means) of material that constitutes a bushfire hazard.*

earthworks *the addition or removal of any solid material on, to or from land, or any other work which will substantially alter the existing ground level or character of the surface of land.*

A dwelling envelope is proposed however as there is no definition for dwelling envelope. The proposal has been assessed in terms of the Asset Protection Zones and access to the dwelling envelope as though a future Development Application will be submitted for a dwelling.

7(a) Environmental Protection (Wetlands and Littoral Rainforests)

The primary objectives of the 7(a) zone are:

- *to identify, protect and conserve significant wetlands and littoral rainforests.*
- *to prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.*

The proposed bushfire hazard reduction is identified as being Item 2 (allowed only with consent) within the 7(a) zone. The proposed earthworks is identified as being Item 3 (allowed only with consent and must satisfy the provisions of clause 8 (2)). This has been outlined above.

It is considered that the proposed works are not consistent with the primary objectives of the zone being to protect and conserve significant wetlands and littoral rainforests. The proposed fire trail has been identified on the most recent plans although no information has been provided on the required works. The applicant suggests that this trail is already established however during a site inspection it was determined that the trail exists only as a partially formed narrow mountain bike trail which extends for only half the distance of that required to connect to the proposed "dwelling envelope".

It is therefore considered that the proposed development should not be approved in its current form and is recommended for refusal.

7(l) Environmental Protection (Habitat)

The primary objectives of the 7(l) zone are:

- *to protect areas or features which have been identified as being of particular habitat significance.*
- *to preserve the diversity of habitats for flora and fauna.*
- *to protect and enhance land that acts as a wildlife corridor.*

The proposed bushfire hazard reduction and earthworks are identified as being Item 2 (allowed only with consent) within the 7(l) zone. Based on the recommendations from Council's NRM Unit it is considered that there are areas of particular habitat significance being Koala Habitat which would be affected as a result of the location of the proposal.

The negative ecological impacts likely to be associated with the proposed development cannot be avoided, minimised or managed to an acceptable level through conditions of approval. It is therefore recommended that the proposed development should be refused in its current form.

Clause 15 - Essential Services

The subject site is not connected to town water or sewer. Even though the application is not for a dwelling, the applicant has submitted an Onsite Sewer Management (OSSM) Report. Council's Environmental Health Officers (EHO) has reviewed this report and has advised that the proposed OSSM is capable of supporting a dwelling in the proposed dwelling envelope. Conditions of consent have been recommended. Any future dwelling will be serviced by a rainwater tanks and telecommunications are available to the site.

Clause 16 - Height of Building

Not applicable as no new dwelling is proposed.

Clause 17 - Social Impact Assessment

A Social Impact Assessment was not required for the proposed development.

Clause 25 - Development in Zone 7 (a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land

The objective of clause 25 is *'to ensure that wetlands and littoral rainforests are preserved and protected in the environmental and economic interests of the area of Tweed'*. It is considered that this is not met due to the negative ecological impacts which may result from the 4m fire trail being located through the 7(a) zoned land. No information has been given on the extent of these works and it is therefore considered that the land has not been preserved and protected. The application is therefore recommended for refusal in its current location. It is considered that there are more appropriate locations on the site which will have lesser impacts upon the 7(a) zoned land.

Clause 28 - Development in Zone 7 (l) Environmental Protection (Habitat) and on adjacent land

The objective of clause 28 is *'to protect wildlife habitat from the adverse impacts of development'*. As outlined throughout this report, it is considered that the adverse impacts from the development cannot be minimised through the use of conditions. The application is therefore recommended for refusal in its current location.

Clause 34 - Flooding

Portions of the site are identified as being affected by the Q100 which has an adopted floor level of 4.0m. The proposed location of a future dwelling is outside of this area. It is considered that there will be minimal impact upon flooding as a result of this application.

Clause 35 - Acid Sulfate Soils

Class 3 and Class 5 Acid Sulfate Soils have been identified on the site. Earthworks are proposed in areas which are impacted by both Class 3 and Class 5 Acid Sulfate Soils although it is not expected that these soils will be impacted.

If the application was to be approved, it is unlikely that earthworks would be located further than 1m below the natural ground surface. Conditions would be included to ensure minimal impact upon Acid Sulfate Soils within the site.

Clause 39 - Remediation of contaminated land

The applicant has provided a suitable statutory declaration. The statutory declaration indicates no potentially contaminating activities having occurred on the site and provides adequate information in regards to the site history. It is therefore considered that this clause has been complied with.

Clause 39A - Bushfire Protection

The entire site has been identified as being bushfire prone within vegetation category 1. The proposal was referred to the NSW Rural Fire Service for comment in accordance with Section 79C of the 'Environmental Planning and Assessment Act 1979'. The NSW Rural Fire Service responded on 13 October 2014 with recommended conditions. As already outlined, the RFS have included a condition requiring additional earthworks which may result in further impacts upon the environment. It is considered that the proposed development should be refused in this instance.

Clause 54 - Tree Preservation Order

The site has been identified as having Tree Preservation Order 2004 and Tree Preservation Order 2011 (Koala Habitat) on the site. The applicant advises that the proposed development will result in the removal/modification of 0.6ha of existing vegetation from the site. This includes a total of 16 native trees. The following table was received.

SPECIES NAME	DIA. (MM)	APPROX. HEIGHT (M)	COMMENT
Corymbia intermedia	460	15	
Eucalyptus pilularis	710	25	
Eucalyptus pilularis	150	6	
Eucalyptus pilularis	280	14	
Eucalyptus pilularis	800	25	Burnt out base. Bifurc. Trunk.
DEAD	210	6	
Eucalyptus pilularis	550	25	West leaning limb prune only
DEAD	650	3	
DEAD	390	14	Minor stem + fissure hollow
Eucalyptus pilularis	530	15	
Eucalyptus pilularis	57	25	
Eucalyptus pilularis	150	6	For Driveway
Eucalyptus pilularis	150	6	For Driveway
Corymbia intermedia	410	16	For Driveway
Eucalyptus siderophloia	360	19	For Driveway
Corymbia intermedia	210	11	For Driveway

Council's NRM Unit has reviewed the information in regards to clearing of native vegetation as follows:

'As a result of clearing to facilitate access, establish APZ, construct a building pad and manage future built form the following ecological impacts would be expected:

- *Direct loss of Core Koala Habitat within the dwelling envelope (0.61ha).*
- *Disruption to the movement of fauna/interactions across the site, particularly along the prominent ridgeline already restricted further to the north by the reservoir/base tower.*
- *Improved habitat conditions for invasive species.*
 - *Noisy miner (Manorina melanocephala) displace listed species such as Little Lorikeet (Glossopsitta pusila) (high likelihood of occurrence) and other species recorded on-site such as the Rufous Whistler (Pachycephala rufiventris).*
 - *Chrysanthemoides monilifera (Bitou Bush) known to occur onsite within the location of the proposed building envelope.*
 - *Lantana camara recorded onsite.*
- *Loss of critical hollow resources that provide available habitat to an assemblage of fauna known/highly likely to utilise the site for roosting/nesting/refuge. Of those trees identified to be removed in the EA only one tree exhibited hollow features. This figure however is expected to be an underestimate of those hollow bearing trees likely to be affected in the long term given the expected extent of earthworks necessary to accommodate and gain access to a future dwelling and long term maintenance requirements to manage risk to future property and resident safety.*
- *Result in increased edge effects/fragmentation of an existing tract of vegetation recognised as a functional wildlife corridor that currently exhibits low levels of disturbance.*
- *Removal of vegetation from steep slopes (excess of 18°) such as those encountered onsite within the proposed APZ would exacerbate soil erosion.*
- *Loss of winter flowering Eucalypt species dominating the assemblage of vegetation within the building envelope known as a reliable seasonal blossom resource for species such as the Grey headed Flying Fox (Pteropus poliocephalus).*
- *Reduction in the number of semi-mature Glossy Black Cockatoo (Calyptorhynchus lathami) preferred feed trees (Allocasuarina torulosa).*
- *Impact on the health and long term viability of remaining mature vegetation occurring around the periphery of the building envelope previously offered protection from coastal winds. These trees may suffer decline, particularly more mature trees lacking vitality to adapt to new exposed conditions.*
- *The threatened plant Geodorum densiflorum was identified onsite during the survey undertaken by the consultant. The location of individuals or density was not detailed in the report. The NRM inspection coincided with the dormancy period and therefore was not able to be observed. Given that the location of the orchid has not been provided NRM cannot be confident that the proposal would avoid disturbance of this species or that an adequate buffer has been provided to ensure long term persistence.'*

It is considered that the removal of vegetation on the site where specified should not be supported in this instance. It is considered that there will be negative

adverse impacts upon the environment as a result of the proposed. The development should be refused in this instance.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

The provisions of the NCREP 1988 apply to the proposed development site. However, the NCREP 1988 does not contain any provisions that specifically relate to bushfire hazard reduction or the establishment of a dwelling envelope. As such, the proposal is considered generally compliant with the overall aims and objectives of the document.

SEPP No. 14 - Coastal Wetlands

SEPP No. 14 aims to preserve and protect coastal wetlands in the environmental and economic interest of the State. It does this by defining any development that involves clearing, draining or filling wetlands, or constructing levees on wetlands to be designated development. Whilst SEPP No. 14 lands occur on the site they are outside the proposed areas. This SEPP is considered to be complied with.

SEPP No. 44 - Koala Habitat Protection

The applicant submitted an assessment against SEPP No. 44. The report concludes that the site does not contain core koala habitat. Council's NRM Unit has assessed this report as follows:

'It is considered that the management measures proposed by the applicant are insufficient to mitigate for the proposed net loss of restricted Core Koala Habitat contributing to the decline of the local population.'

'As such it is considered that adverse impact to the local Koala population to the extent that would place the species at risk of extinction could not be avoided or minimised and managed to an acceptable level through conditions of consent.'

It is therefore considered that there may be an impact upon the Koala Habitat as the site has been identified as having Secondary (A) and Secondary (B) Koala Habitat. The proposed development cannot be conditioned to ensure this Koala Habitat is not managed to an acceptable level. As such, the proposed development is recommended for refusal.

SEPP No. 55 - Remediation of Land

The applicant has provided a suitable statutory declaration. The statutory declaration was from the land holder who has a history of the land for a period of greater than 30 years. The statutory declaration indicates no potentially contaminating activities having occurred on the site and provides adequate information in regards to the site history. The proposed development is considered to be in accordance with this SEPP.

SEPP No 71 – Coastal Protection

The northern portion of the subject allotment is located within the designated coastal zone. As such, the provisions of SEPP 71 apply. Due to the sites rural location and separation from the coastal foreshore, it is considered that no overshadowing or access impacts will result. The proposed development does not offend or compromise the aims and objectives of SEPP 71.

The proposed development is compliant with the provisions of SEPP 71.

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

There are no Draft Environmental Planning Instruments applicable to the proposed development.

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

Tweed Development Control Plan

A1 - Residential and Tourist Development Code

As the proposed is for bushfire hazard reduction and earthworks with no actual dwelling proposed it is considered that this section of the DCP is not applicable. Any future dwelling will need to be assessed against the controls of this section of the DCP.

A2 - Site Access and Parking Code

The proposed development will not impact site access and car parking. The proposed development is for bushfire hazard reduction and earthworks.

A3 - Development of Flood Liable Land

There will be no impact upon the flood liable land located on the subject site.

A16 - Preservation of Trees or Vegetation

The purpose of this Section of the DCP (Preservation of Trees or Vegetation) is to protect, insofar as it is reasonably possible, the biodiversity, amenity and cultural values of the Tweed Shire through the preservation of trees and vegetation. This DCP was not current at the time of submission and Tweed LEP 2000 Clause 54 covers the Tree Preservation Order. It is therefore considered that this section of the DCP is not applicable.

B19 - Bogangar/Cabarita Beach Locality Plan

The proposed development does not involve construction or the change of use for the subject site. The works involve bushfire hazard reduction and earthworks. It is considered that the proposed development did not require an assessment under this section of the DCP. Any future application for a dwelling would need to be assessed against this section.

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

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

The site is covered by the Government Coast Policy (The NSW Coastal Policy 1997). It is considered that the proposal would be consistent with the provisions of the NSW Coastal Policy 1997.

Clause 92(1)(b) Applications for demolition

The proposed application does not involve any demolition

Clause 93 Fire Safety Considerations

Council's Building Services Unit has assessed the proposed development and has raised no issues in regards to Clause 93 Fire Safety Considerations.

Clause 94 Buildings to be upgraded

Council's Building Services Unit has assessed the proposed development and has raised no issues in regards to Clause 94 Buildings to be upgraded.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The proposed development will have no negative impact on the Coastline Management Plan.

Tweed Coast Estuaries Management Plan 2004

The proposed development is not within the Coastal Zone Management Plan for the Tweed Coast Estuaries. This Plan is therefore not applicable to the application.

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

As the subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), this Plan is not considered relevant to the proposed development.

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

Context and Setting

As detailed in the above report the proposed development would have an

unacceptable environmental impact on the existing flora and fauna in the locality. It is unreasonable to have such an impact on the environment when the proposed land use does not comply with the primary zone objective in which the site is located.

Access, Transport and Traffic

The amended plans have included a 4 metre wide fire trail which extends approximately 190 metres. Inadequate information has been given on this section to fully assess the impact. It is considered that the proposed development should be refused in its current form.

Flora and Fauna

Council's NRM Unit has reviewed the applicants Flora and Fauna Assessment and has undertaken a key threatening processes and impact assessment on significant species. The information from Council's NRM Unit is as follows:

Section 5A Assessment of Significance – Koala (*Phascolarctos cinereus*)

A 7-Part Test was conducted on the Koala where it was determined that the proposal is likely to have a significant effect on this threatened species.

FACTOR	ASSESSMENT
<p><i>In the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction</i></p>	<p><i>The Tweed Coast Koala Habitat Study 2011 (TCKHS) indicates that the 'large areas of Eucalyptus dominated forest and/or woodland necessary to enable a sufficiently large and viable Koala meta-population to survive are now restricted to a relatively small area between Bogangar and Pottsville and it is in this area that Koala recovery and associated management actions must be focussed' (pp.6). The subject site is located within the area described above recognised as a key linkage between two Koala meta-populations (Figure 5.1 of the TCKHS). The importance of vegetation (as critical koala habitat) proposed to be removed on site is emphasised in the TCKHS whereby 'there is a need to not only recognise currently occupied area as Core Koala Habitat (as defined under the SEPP 44) and implement management accordingly but also for areas of adjoining high quality koala habitat as well as identified linkage areas to be afforded the highest importance and an equal level of protection' (pp 66.).</i></p> <p><i>In response to the TCKHS the draft TCCKPOM (off public exhibition) has been prepared. In accordance with the plan habitat onsite within the area to be cleared is recognised as Core Koala Habitat. With</i></p>

	<p>reference to the policy the following development assessment pathway (Figure 3 of the KPOM) when applied to the proposal is as follows:</p> <ul style="list-style-type: none"> • The site is located in the Round Mountain - Koala Activity Precinct (KAP) • The site supports 'Preferred Koala Habitat' (PKH) • PKH within a KAP is classified as 'Core Koala Habitat' • The proposal is not considered 'Minor Development' as the site is greater than 1 ha and development occurs within 'Preferred Koala Habitat' • The proposal would result in the removal of Core Koala Habitat • Under section 5.8.3 Retention of Koala Habitat, the removal of PKH within a KAP being Core Koala Habitat is not permitted. <p>The restriction on the removal of Core Koala Habitat has been imposed to maintain a viable local population and avoid risk of local extinction within the next 15-20 years. The proposal does not comply with the KPOM in that approximately 0.61 hectares of Core Koala Habitat is to be removed.</p> <p>Having regard to assessment under the draft TCKKPOM and TCKHS it is considered that the management measures proposed by the applicant are insufficient to mitigate for the proposed net loss of restricted Core Koala Habitat contributing to the decline of the local population.</p> <p>As such it is considered that adverse impact to the local Koala population to the extent that would place the species at risk of extinction could not be avoided or minimised and managed to an acceptable level through conditions of consent.</p>
<p><i>In the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction</i></p>	<p>The Scientific Committee, established by the Threatened Species Conservation Act 1995 (the Act), has made a Preliminary Determination to support a proposal to list a population of the Koala Phascolarctos cinereus in the Tweed Local Government Area east of the Pacific Highway as an ENDANGERED POPULATION in Part 2 of Schedule 1 of the Act. Listing of Endangered populations is provided for by Part 2 of the</p>

	<p>Act. The preliminary determination lists continued habitat loss and fragmentation (but not limited to) as a significant threat to the future of the Tweed LGA Koala population reinforces management actions adopted in the TCKPOM. The preliminary determination is currently on exhibition until the 30 January 2015.</p> <p>Whilst the Koala is not formally listed as an endangered population on the Tweed Coast due regard should be given to the preliminary determination and consideration to this factor in determining whether there is likely to be a significant impact consistent with assessment provisions detailed in Factor 1 of the 7 Part-test above.</p>
<p>In relation to the habitat of a threatened species, population or ecological community:</p> <p>(i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and</p> <p>(ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and</p> <p>(iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality</p>	<p>(i) In excess of greater than 0.61 of Core Koala Habitat' is to be removed/modified</p> <p>(ii) The clearing required to facilitate the development would contribute to fragmentation of the landscape. The extent of fragmentation however may not be considered of a scale that would create a barrier to koala movement and isolate habitat</p> <p>(ii) The habitat to be effected by the proposal described as Core Koala Habitat under the draft TCKPOM is of critical the long term viability of the local Koala population.</p>
<p>Whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan</p>	<p>NSW Approved Recovery Plan for the Koala (2008)</p> <p>The overall objective is to reverse the decline of the koala in NSW to ensure adequate protection management and restoration of koala habitat and to maintain healthy breeding population of koalas throughout their current range.</p> <p>Specific objectives relate to and seek to achieve (but are not limited to) the conservation and strategic rehabilitation of koala habitat through policy instruments (Draft TCKPOM) informed by research and analysis of koala habitat (TCKHS).</p> <p>The proposal fails to adequately protect</p>

	<p>recognised Core Koala Habitat (Draft TCKPOM) through the direct loss of approximately 0.61 ha of vegetation. This action is therefore inconsistent with the objective of the recovery plan</p> <p>National Koala Conservation & Management Strategy 2009-2014</p> <p>Reinforces similar short and long term goals reflected in the state recovery plan. The proposal is therefore inconsistent with the equivalent national recovery plan.</p>
<p>Whether the actions proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increased impact of a key threatening process</p>	<p>The proposed 'clearing of native vegetation' and loss of approximately 0.61 hectares of Core Koala Habitat is listed as a key threatening process adversely affecting the koala:</p> <p>The impacts include:</p> <ul style="list-style-type: none"> • Destruction of habitat results in loss of local populations of individual species • Fragmentation • Loss or disruption of ecological function <p>The Listing advice under the EPBC for the koala includes in the listed 'Threat Class Summary':</p> <p>Ecosystem/Community Stresses, Indirect Ecosystem Effects, Loss and/or fragmentation of habitat and/or subpopulations</p>
<p>CONCLUSION</p>	
<p>In considering all factors of the assessment of significance NRM from the view that the proposal is likely to have a significant effect on a threatened species being the Koala.</p>	

Key Threatening Process

The following Key Threatening Processes as listed under the Threatened Species Conservation Act warrant consideration in assessing the proposal:

Clearing of native vegetation

The proposal involves the removal/modification of approximately 0.61 ha of remnant vegetation. As a result of clearing to facilitate access, establish APZ, construct a building pad and manage future built form the following ecological impacts would be expected:

- Direct loss of Core Koala Habitat within the dwelling envelope (0.61ha).

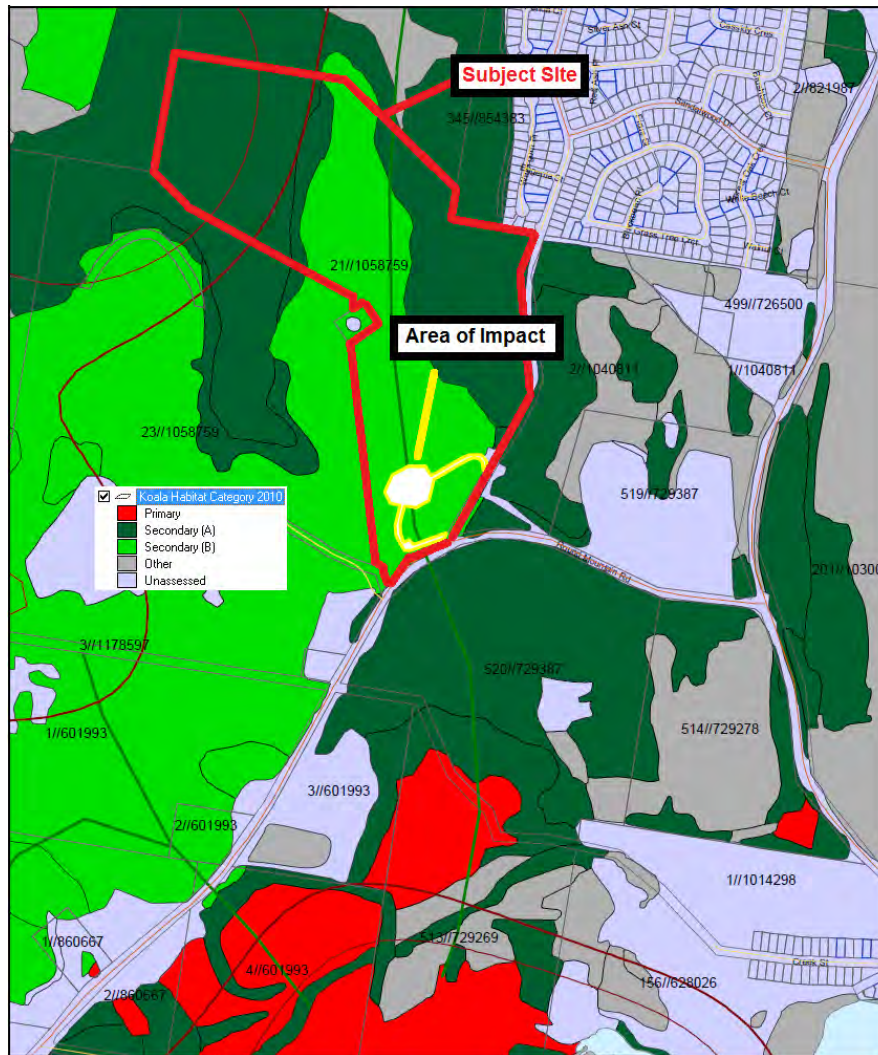
- *Disruption to the movement of fauna/interactions across the site, particularly along the prominent ridgeline already restricted further to the north by the reservoir/base tower.*
- *Improved habitat conditions for invasive species.*
 - *Noisy miner (Manorina melanocephala) displace listed species such as Little Lorikeet (Glossopsitta pusilla) (high likelihood of occurrence) and other species recorded on-site such as the Rufous Whistler (Pachycephala rufiventris).*
 - *Chrysanthemoides monilifera (Bitou Bush) known to occur onsite within the location of the proposed building envelope.*
 - *Lantana camara recorded onsite.*
- *Loss of critical hollow resources that provide available habitat to an assemblage of fauna known/highly likely to utilise the site for roosting/nesting/refuge. Of those trees identified to be removed in the EA only one tree exhibited hollow features. This figure however is expected to be an underestimate of those hollow bearing trees likely to be affected in the long term given the expected extent of earthworks necessary to accommodate and gain access to a future dwelling and long term maintenance requirements to manage risk to future property and resident safety.*
- *Result in increased edge effects/fragmentation of an existing tract of vegetation recognised as a functional wildlife corridor that currently exhibits low levels of disturbance.*
- *Removal of vegetation from steep slopes (excess of 18°) such as those encountered onsite within the proposed APZ would exacerbate soil erosion.*
- *Loss of winter flowering Eucalypt species dominating the assemblage of vegetation within the building envelope known as a reliable seasonal blossom resource for species such as the Grey headed Flying Fox (Pteropus poliocephalus).*
- *Reduction in the number of semi-mature Glossy Black Cockatoo (Calyptorhynchus lathami) preferred feed trees (Allocasuarina torulosa).*
- *Impact on the health and long term viability of remaining mature vegetation occurring around the periphery of the building envelope previously offered protection from coastal winds. These trees may suffer decline, particularly more mature trees lacking vitality to adapt to new exposed conditions.*
- *The threatened plant Geodorum densiflorum was identified onsite during the survey undertaken by the consultant. The location of individuals or density was not detailed in the report. The NRM inspection coincided with the dormancy period and therefore was not able to be observed. Given that the location of the orchid has not been provided NRM cannot be confident that the proposal would avoid disturbance of this species or that an adequate buffer has been provided to ensure long term persistence.*

Other secondary/associated listed Key Threatening Processes to be considered include:

- *Loss of hollow-bearing trees – considered significant even where relatively high numbers remain available elsewhere on site given the high conservation value of the tract of vegetation and likely indirect impacts on function suitability of remaining hollows in close proximity to the building envelope preventing occupation through increased activity. The applicant suggests that one stag/hollow bearing tree would be removed to facilitate development. As indicated previously NRM consider this figure to be an underestimate.*
- *Invasion of native plant communities by declared weed species (Bitou bush and Boneseed)*
- *Invasion, establishment and spread of Lantana camara*
- *Removal of dead wood and dead trees*
- *Loss or degradation (or both) of sites used for hill-topping by butterflies – see previous memorandum.*
- *Loss and degradation of native plant and animal habitat by invasion of escaped garden plants.*
- *Aggressive exclusion of birds by noisy miners (Manorina melanocephala)*

Edge associated effects and impediment to fauna movement

- *The site supports Core Koala Habitat and is recognised as a key linkage providing a connection, refuge and foraging opportunity between two identified meta- populations. The retention, improvement and expansion of Core Koala habitat is critical to the long term survival of the Tweed Coast koala population. Removal of core koala habitat onsite and associated indirect impacts (edge effects) would further be seen to restrict the movement of Koala particularly during either planned or stochastic fire events. The adverse affect on the koala population as a result of the proposed development is viewed as significant.*



Area of direct impact (indicative only) overlaid with TCKHS koala habitat mapping

- The proposed vegetation removal would result in the creation of a series of edges along the access road, fire trail and APZ. Abiotic effects including increased light levels, elevated soil temperatures and greater exposure to coastal winds would be expected as result of the proposed vegetation removal along the edges. Given the scale of the clearing these effects may extend between 30-50 m into adjacent vegetation. Sedimentation during the clearing phase may occur along the created edges exacerbating abiotic change. As a consequence of abiotic change, existing native biota may respond negatively affecting the behaviour/movement of fauna and result in decline in health/abundance of flora species that may be utilised as a resource by key fauna species to be replaced by more opportunistic and competitive species such as environmental weeds.*
- The extent of clearing to facilitate development primarily impacts on the TVMS Code 201 - Blackbutt Open Forest Complex positioned centrally and at a point where the remnant unit narrows and extends along the ridgeline to the north. In considering the position of clearing within the landscape the effects on the function of the corridor would likely be adversely*

exaggerated where compared to clearing along an existing edge or within a spatially broader vegetation association.

- *The loss of vegetation would result in a significant break in the line of existing vegetation along a prominent hill-slope within a recognised key corridor linkage. The ridge line further to the north has previously been interrupted and movement of fauna potentially restricted through the construction of a reservoir and mobile base tower.*
- *The establishment of the proposed building envelope would be expected to exacerbate any existing impediment to fauna movement particularly those species preferring to traverse/utilise open woodland vegetation.*

Assessment in accordance with Draft Tweed Coast Comprehensive Koala Plan of Management (TCKPOM)

In response to the TCKHS the draft TCKPOM (off public exhibition) has been prepared. With reference to the draft TCKPOM the following development assessment pathway (Figure 3 of the KPOM) applied to the proposal is as follows:

- *The site is located in the Round Mountain - Koala Activity Precinct (KAP)*
- *The site supports 'Preferred Koala Habitat' (PKH)*
- *PKH within a KAP is classified as 'Core Koala Habitat'*
- *The proposal is not considered 'Minor Development' as the site is greater than 1ha and development occurs within 'Preferred Koala Habitat'*
- *The proposal would result in the removal of approximately 0.61 ha of Core Koala Habitat*

*Under section 5.8.3 Retention of Koala Habitat, the removal of PKH within a KAP being Core Koala Habitat is **not permitted**.*

Other expected and potential impacts

- *Alterations to the physiochemical properties of overland flow through erosion, stormwater inflows (swimming pools/roof/hard stand)*
- *Increased likelihood of invasive/exotic species proliferation (garden escapees) in the surrounding habitat particularly for coloniser species immediately after earthworks.*
- *Indirect impacts on fauna movement and breeding behaviour from increased noise levels and lighting spill*
- *Longer term sediment and erosion control issues associated with the proposed access road and alternative bushfire access trail.*

Bushfire management provisions

- *The Bushfire Risk Assessment did not appear to adequately address issues of APZ slope management given that slopes exceed 18°. Whilst the report indicates that trails already exist to establish and*

carry out routine maintenance of proposed APZ the formation of trails during a site inspection was not evident. In the absence of existing trails benching may be required to meet the relevant performance criteria. This has clearly not been contemplated in the report and may involve further removal of vegetation. The requirement to provide for suitable access to and within the APZ is reiterated in the RFS GTA Conditions dated 13 October 2014 (Condition 3).

- The layout of the development envelope does not appear to have considered the positioning of water tanks (20 000L) nor adequacy of the turnaround facility. Any turnaround facility for bushfire purposes would be expected to be free of parked vehicles, no allocation has been made for a parking facility that may require extending the building envelope increasing the construction footprint and expanding the APZ if connected to the dwelling.
- Impacts associated with the construction of the alternative access track have not been considered.
- Due to the isolated location of the proposed dwelling site with limited surveillance this would pose difficulties for authorities to ensure that the extent of vegetation clearing was limited to that prescribed in the bushfire assessment report.
- The 10/50 Vegetation Clearing Code of Practice provisions established under the Rural Fires Amendment (Vegetation Clearing) Bill 2014 have not been considered by the applicant. The clearing entitlement area afforded under the 10/50 provisions significantly extends the potential impact of establishing a dwelling in this location.

Effluent disposal

Confirmation on whether the site may be serviced by Council infrastructure for effluent disposal has yet to be provided. Notwithstanding, the applicant submitted an Onsite Sewage Management Report prepared by HMC. Based on a 3 bedroom dwelling the report recommends a 600m² land application area (LAA) using a sub surface irrigation dispersal system. The potential location of the LAA is shown on Figure 8.1 of the report positioned down-slope and to the south of the DL yet within the Outer Asset Protection Zone.

The proposed LAA is positioned on a significant slope supporting remnant vegetation and the full impact on the sites ecological values has yet to be determined. Given the slope of the site, terracing to create diversion bunds and trenching to install irrigation pipe-work would likely be required potentially impacting on the roots of existing vegetation. In addition the discharge of treated yet elevated nutrient laden water into an area of vegetation adapted to low soil moisture and low nutrient conditions may lead to tree decline particularly those individual trees under cumulative stress from increased exposure and root disturbance.

It is noted that due to the nature of the application (does not involve establishment of a dwelling) TSC Environmental Health officers have not provided comment on the type or positioning of the proposed onsite effluent treatment facility.

Erosion

Contrary to claims made by the applicant during a site inspection there did not appear to be any evidence of a formed 4WD track leading to the proposed DE. The alignment of the proposed access track appears to follow the 'fall line'/spur of the slope which would expose the trail to a high degree of risk from erosion. This may have been positioned to avoid disturbance to vegetation and limit earthworks however the construction of trails along fall lines are renowned to be unsustainable in the long term and should be avoided.

In order to establish and maintain the proposed APZ the canopy and mid-storey shall be selectively removed, and understory managed exposing the steep slopes to increased raindrop impact elevating the erosion potential. During the earthworks stage this erosion potential would be significantly increased. Similar to the erosion potential of the proposed driveway access, the alternative fire trail would also be expected to be susceptible to erosion due to the steep to moderate topography in which the trail is proposed to traverse.

Appropriateness/functional value of proposed mitigation measures

- *Weed Control – the control/management of Bitou Bush (Class 1 noxious weed under the Noxious Weeds Act) is required under the legislation. This is not considered to be a benefit resulting from the development of the site as it is an existing responsibility of the landholder.*
- *The installation of fencing around the APZ further exacerbates the barrier effect to fauna movement.*
- *Similar to the regulation of clearing for bushfire, given the location of the dwelling it would be impractical and resource intensive for authorities to enforce provisions relating to cat and dog restrictions as well as ensuring vegetation is not removed for view enhancement.*
- *The replacement of hollows with artificial nest boxes should only be considered where hollow removal is unavoidable. In this situation, alternative options for the positioning of a building envelope and avoidance of hollow bearing trees is possible therefore replacing hollows with nest boxes is not considered appropriate.*
- *Similarly, the proposal to provide compensatory plantings to offset the loss of existing high quality core koala habitat should only be considered in exceptional circumstances. There would appear to be limited scope for the planting of equivalent species given the condition/integrity of the vegetation community (TVMS Code 201 - Blackbutt Open Forest Complex) occurring across the site.*
- *The exclusion of grazing is considered a benefit should the development proceed however it is noted that this type of activity 'agricultural' requires consent under the TLEP2000.*

Scope of application and relevance of any conditions of consent

Considering that the proposed development neither seeks approval of a subdivision nor detached dwelling it may be considered inappropriate to contemplate approving an APZ where no structure either exists on site nor forms a component of the subject of the application. Difficulties may also be posed in

applying certain conditions other than those proposed by the applicant due to limitation on what the condition would be directly applicable and/or of relevance to. In the absence of such conditions there would be limited confidence in ensuring subsequent development at the proposed building envelope location was constrained (manner/configuration shown on plans indicative only) particularly once works the subject of any consent had been completed modifying and potentially degrading the value of the sites ecological values.

Based on the information provided by Council's NRM Unit it is considered that there are impacts on both flora and fauna communities within the subject site and the surrounding locality. The applicant's reports do not adequately outline the impacts that all elements of the proposal will have on the flora and fauna communities.

The latest set of plans shows a 4 metre wide and approximately 190 metre long fire trail where works are proposed although the information provided is inadequate and should not be accepted. The fire trail traverses the site through 7(a) zoned land and is only permissible with consent if the proposed meets the objectives of Clause 8(2) of the Tweed LEP 2000.

It is considered that this development does not meet these objectives of the Tweed LEP and the impacts on flora and fauna cannot be overcome with the imposition of conditions. The application is therefore recommended for refusal.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposed development will not impact on surrounding development. If a future dwelling application is submitted the density will be consistent with the existing locality.

Topography

The subject site is constrained by sloping land. The applicant states that only minor earthworks will be required in order to establish the proposed driveway access and a level building pad at the chosen location. It is considered that the exact extent of earthworks required is unclear as a result of the amendments and the conditions of consent required by the NSW Rural Fire Service. The amended plans identify a fire trail with no information on the required works. Additionally, the NSW Rural Fire Service have requested conditions relating to terracing the land to ensure adequate bushfire protection can occur due to the slope of the land. It is considered that the proposal cannot be supported in this instance and is recommended for refusal.

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

NSW Rural Fire Service

The proposed development was referred to the NSW Rural Fire Service for comment as the proposal involves bushfire hazard reduction works. The Service responded on 13 October with recommended conditions relating to Asset

Protection Zones. If approved, these conditions can be placed in the recommendations.

(e) Public interest

The proposed bushfire hazard reduction and earthworks may set a harmful precedent for the continued clearing of native vegetation as outlined throughout this report. As such it is considered that the proposal is not in the public interest.

OPTIONS:

That Council:

1. Refuse this application in accordance with the recommendation for refusal; or
2. Give in principle approval and conditions be brought back to the next Planning Committee Meeting to enable further consideration of the application.

Council officers recommend Option 1.

CONCLUSION:

It is considered that the overarching purpose of the Environmental Planning and Assessment Act 1979 and its associated documents is to secure the orderly development of land. It is considered that the proposed development will negatively impact the environment on the subject site and will have impacts on surrounding environmental processes. For these reasons the application is recommended for refusal.

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.

9 [PR-PC] Development Application DA14/0480 for a Two Lot Subdivision and Two Dwellings at Lot 24 DP 1162599 No. 316 Casuarina Way, Kingscliff

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA14/0480 Pt1

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Council is in receipt of an application for a two lot subdivision and the construction of a single dwelling on each new allotment.

The site is affected by a dual zoning, one under LEP 2014 and one under LEP 2000. The land affected by the LEP 2000 zoned 7(l) Environmental Protection is less than 40 ha in size and accordingly requires a SEPP 1 Objection to the standard. Whilst Council has assumed concurrence in relation to this standard, the Department of Planning's Circular PS08-014 issued on 14 November 2008 requires all SEPP No. 1 variations greater than 10% to be determined by full Council. The clause to be varied is Clause 20(2)(a) of the Tweed LEP 2000 which imposes a 40ha standard on land zoned 7(l) Environmental Protection (Habitat). The western boundary of this allotment is burdened by a section of 7(l) zoned land and accordingly this application seeks to duplicate the existing arrangement by subdividing one allotment into two. The variation is approximately 99% due to the small amount of 7(l) zoned land on the sites. Proposed Lot 1 results in an area of approximately 100m² being located in the 7(l) zone. Proposed Lot 2 results in an area of approximately 70m² being located within the 7(l) zone.

Each allotment will have a single dwelling constructed as outlined within this report.

The subject application has been accompanied by a State Environmental Planning Policy (SEPP) No. 71 Master Plan Waiver required by Clause 18(1) has which has been accepted by NSW Planning & Environment pursuant to Clause 18 (2) of SEPP No. 71.

Accordingly Tweed Shire Council is the lawful consent authority in this instance.

The subject application was integrated under s100B of the Rural Fires Act 1997 and as such was referred to NSW Rural Fire Service (RFS) who have provided recommended conditions of consent.

The subject application was notified to surrounding properties for a period of 14 days. During this time no submissions were received.

The application generally complies with Council's provisions and is recommended for conditional approval.

RECOMMENDATION:

That Development Application DA14/0480 for a two lot subdivision and two dwellings at Lot 24 DP 1162599; No. 316 Casuarina Way Kingscliff be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos
 - 02 - Site Plan dated 3/12/2014;
 - 03 - Ground Floor Plan dated 3/12/2014;
 - 04 - First Floor Plan dated 3/12/2014;
 - 05 - East & North Elevations dated 3/12/2014
 - 06 - West & South Elevations dated 3/12/2014
 - 08 - Section CC & Driveway Crossover Section dated 3/12/2014;
 - 03 - Ground Floor Plan dated 16/01/2015;
 - 05 - First Floor Plan dated 26/11/2014;
 - 08 - East & North Elevations dated 26/11/2014;
 - 09 - West & South Elevations dated 26/11/2014; and
 - 10 - Section AA & BB dated 26/11/2014prepared by Raywells Drafting Services, except where varied by the conditions of this consent.

[GEN0005]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]
3. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

[GEN0125]
4. 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]
5. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then application shall be made to Council's Engineering Division for approval of such works.

[GEN0155]
6. The subdivision is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]
7. 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]

8. Application shall be made to Council's water unit for the provision of an independent sewer connection point for the southern allotment.

[GENNS01]

9. The rear setback dimensions nominated on plan BSAP_001 (Bushfire Safety Authority plan) and individual dwelling Site Plans, may encroach into the originally imposed building exclusion zone created by DP 1162588 via Restriction on Title.

The nominated setback dimensions are to be verified by a surveyor for compliance.

If non-compliant, then the setback dimensions are to be amended accordingly OR the original Restriction will need to be modified or released.

[GENNS02]

10. Advisory condition:

The subdivision component of this proposal requires the provision of new service connections. For water and sewer connections this is normally undertaken via the construction certificate process, however in this instance it is recommended that the applicant facilitate this work via separate Sec.68 water and sewer applications.

Nevertheless the applicant retains the option to submit a construction certificate to facilitate the required works. The conditions of consent allow for both options.

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. Prior to the issue of a Construction Certificate for Subdivision works (if required), a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works as set out in Council's fees and charges at the time of payment.

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the Subdivision Certificate is issued.

[PCC0275]

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 for each allotment. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

13. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate for Subdivision works (if required). Safe public access shall be provided at all times.

[PCC0865]

14. The proponent shall submit plans and specifications with an application for a subdivision works construction certificate (if required) for the following subdivision works, designed in accordance with Councils Development Design and Construction specifications.

OTHER: Service connections

- (a) Provision of water and sewer service connections for proposed Lot 2.

[PCC0875]

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

- (a) Vehicular access: provision of vehicular footpath crossings to each proposed lot, in conjunction with dwelling construction.

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

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

[PCC0895]

16. 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 for each building.

[PCC0945]

17. Prior to the issue of a Construction Certificate for subdivision works (if required), the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four copies of detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include but are not limited to the following:
- earthworks

- roadworks/furnishings
- stormwater drainage
- water supply works
- sewerage works
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), *as well as details and locations of any significant electrical servicing infrastructure - such as transformers and substations*

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

18. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate for each dwelling. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
 - As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (d) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (e) Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (i) All infiltration devices are to be designed to withstand loading from vehicles during construction and operation of the development.

- (j) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

19. A construction certificate (dwelling) application for works that involve any of the following:

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

will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
- b) Where Council is requested to issue a construction certificate for subdivision works, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

20. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase 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".

[PCC1155]

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

[PCC1195]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

23. Prior to the commencement of subdivision works (if applicable), the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

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

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

[PCW0215]

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

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

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

[PCW0215]

26. 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]

27. 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]

28. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on each 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]

29. Subdivision work (requiring a construction certificate) in accordance with a development consent must not be commenced until:

- (a) a Construction Certificate for the subdivision work has been issued in accordance with Councils Development Construction Specification C101 by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and
- (b) the person having the benefit of the development consent:
 - (i) has appointed a principal certifying authority,
 - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) to certify the compliance of the completed works. The SWAC must be accredited in accordance with Tweed Shire Council DCP Part A5 - Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
 - C4: Accredited Certifier - Stormwater management facilities construction compliance
 - C6: Accredited Certifier - Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to commencement of works, and

 - (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

Note: For subdivisions creating 5 new allotments or less, OR the value of new public infrastructure is less than \$30,000, then the SWAC may be substituted for an Institute of Engineers Australia Chartered Professional Engineer (Civil College) with National Professional Engineers Register (NPER) registration.

[PCW0815]

- 30. Prior to commencement of Subdivision works associated with a construction certificate (if applicable), the proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

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

[PCW0985]

32. An application to connect to Council's sewer, for each allotment, 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]

DURING CONSTRUCTION

33. 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]

34. 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]

35. 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]

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

[DUR0245]

37. 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]

38. **Building materials used in the construction of each building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.**
[DUR0395]
39. **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]
40. **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]
41. **The finished floor level of each dwelling should finish not less than 225mm above finished ground level.**
[DUR0445]
42. **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]
43. **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 a Subdivision Certificate and/or Occupation Certificate.**
[DUR0995]
44. **All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:**
- **Noise, water or air pollution.**
 - **Dust during filling operations and also from construction vehicles.**
 - **Material removed from the site by wind.**
- [DUR1005]
45. **The existing concrete footpath is to be saw cut and removed to facilitate the construction of the concrete driveway accesses.**
[DUR1745]
46. **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]

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

[DUR1875]

48. For Subdivision works associated with a construction certificate, Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:
Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Backfilling
- (e) Final Practical Inspection - on maintenance
- (f) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

The fee for the abovementioned inspections shall be invoiced upon completion of all subdivision works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'.

[DUR1895]

49. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

50. 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]

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

[DUR1945]

52. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

53. Subdivision works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

54. Swimming Pools (Building)

- (a) Each swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2012 & AS 1926.2 -2007, the Swimming Pool Act 1992 and the Swimming Pool Regulation 2008.
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) Each pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided to each pool enclosure in accordance with Part 3 of the Swimming Pool Regulations 2008.
- (e) Once the pools are complete please register it at www.swimmingpoolregister.nsw.gov.au.

[DUR2075]

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

[DUR2085]

56. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on each 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]

57. 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 the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

58. 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 Councils Engineering Division to arrange a suitable inspection.

[DUR2445]

59. 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 each building.

[DUR2485]

60. Plumbing

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

- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

61. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

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

[DUR2545]

63. 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 centers, 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 each dwelling.

[DUR2555]

64. 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]

65. Each allotment shall be provided with a separate water meter.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

66. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

67. Prior to the issue of an Occupation Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the public infrastructure works approved under Section 138 of the Roads Act and Section 68 of the Local Government Act (as set out in Councils Fees and Charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Occupation Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[POC0165]

68. 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]

69. Prior to the issue of an occupation certificate,

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

[POC0235]

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

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

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

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

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

[POC0265]

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

[POC0355]

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

[POC0435]

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

[POC0745]

74. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

75. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Councils General Manager or his delegate must be issued prior to the issue of an Occupation Certificate.

[POC0865]

76. 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.

[POC0985]

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

[POC1045]

USE

78. Swimming Pools (Building)

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

79. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE1305]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

80. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

81. 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.

The following capital contributions in addition to and physical works required to connect the development are required under Section 306 of the Water Management Act and must be paid prior to the release of the subdivision certificate.

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

Water DSP6:	1 ET @ \$12907 per ET	\$12,907
South Kingscliff Water Levy:	1 ET @ 307 per ET	\$307
Sewer Kingscliff:	1 ET @ \$6201 per ET	\$6,201
Sewer Capital Contribution:	1 ET @ \$6201 per ET:	\$6,201

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

[POC0675/PSC0165]

82. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's 'Contribution Sheet' signed by an authorised officer of Council.

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

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

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

- | | |
|--|---------|
| (a) Tweed Road Contribution Plan:
6.5 Trips @ \$1199 per Trips | \$7,794 |
| (\$1,145 base rate + \$54 indexation)
S94 Plan No. 4
Sector7_4 | |
| (b) Shirewide Library Facilities:
1 ET @ \$847 per ET | \$847 |
| (\$792 base rate + \$55 indexation)
S94 Plan No. 11 | |
| (c) Bus Shelters:
1 ET @ \$64 per ET | \$64 |
| (\$60 base rate + \$4 indexation)
S94 Plan No. 12 | |
| (d) Eviron Cemetery:
1 ET @ \$124 per ET | \$124 |
| (\$101 base rate + \$23 indexation)
S94 Plan No. 13 | |
| (e) Community Facilities (Tweed Coast - North)
1 ET @ \$1404 per ET | \$1,404 |
| (\$1,305.60 base rate + \$98.40 indexation) | |

- S94 Plan No. 15**
- (f) **Extensions to Council Administration Offices & Technical Support Facilities**
- 1 ET @ \$1880.38 per ET \$1,880.38
- (\$1,759.90 base rate + \$120.48 indexation)
- S94 Plan No. 18**
- (g) **Cycleways:**
- Plan No. 22 states \$47 per m² for 715m² of cycleway
- Therefore 1ET = \$447
- A credit of \$46,911 remains after this application
- Therefore NIL charge
- (\$447 base rate + \$0 indexation)
- S94 Plan No. 22**
- (h) **Regional Open Space (Casual)**
- 1 ET @ \$1103 per ET \$1,103
- (\$1,031 base rate + \$72 indexation)
- S94 Plan No. 26**
- (i) **Regional Open Space (Structured):**
- 1 ET @ \$3872 per ET \$3,872
- (\$3,619 base rate + \$253 indexation)
- S94 Plan No. 26**
- (j) **Seaside City Structured Open Space:**
- 1 ET @ \$4268 per ET \$4,268
- (\$3,585 base rate + \$683 indexation)
- S94 Plan No. 28**

[POC0395/PSC0175]

83. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. 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 a Subdivision Certificate.

[PSC0725]

84. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans. The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision (if applicable);
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

[PSC0735]

85. A Subdivision Certificate will not be issued by the General Manager until such time as all relevant conditions of this Development Consent have been complied with.

[PSC0825]

86. Prior to the issue of the Subdivision Certificate, certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the PCA, confirming that the subject development complies with the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent.

[PSC0830]

87. The creation of easements for services, rights of carriageway and restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.**
- (b) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006 Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.**
- (c) A Restriction As To User requiring that all roofwater from houses, buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principle Certifying Authority.**

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

[PSC0835]

88. Submit to Council's Property Officer for approval an appropriate plan indicating the street/road address number to both proposed and existing lots. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each new lot in the deposited plan.

[PSC0845]

89. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

90. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and**

application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

91. In conjunction with the application for a Subdivision Certificate, the applicant must also apply to Council (OR PCA if applicable) for a Compliance Certificate for Subdivision Works. This may require obtaining individual Compliance Certificates for various civil works components such as (but not limited to) the following:

- (a) Water Reticulation
(b) Sewerage Reticulation

Note:

1. All compliance certificate applications for Subdivision Works must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

92. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

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.

[PSC1115]

93. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed.

[PSC1165]

94. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment;

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations.

Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

95. In accordance with the Federal Government's National Broadband Network (NBN) initiatives, the Developer is required (at the Developer's expense) to install a fibre ready, pit and pipe network (including trenching, design and third party certification) to NBN CO's Specifications, to allow for the installation of Fibre To The Home (FTTH) broadband services.

[PSC1205]

96. The applicant is required to arrange for the Release of the following Positive Covenants that are still in force over the property, prior to or in conjunction with submitting an application for a Subdivision Certificate:

- Positive Covenant sixthly referred to under DP 1162588.
- Positive Covenant tenthly referred to under DP 1162599.

[PSCNS01]

97. The plan of subdivision is to include appropriate dimensions to enable determination of the existing 'Restriction on Use of Land' (building exclusion) thirdly referred to in DP 1162588, as relevant to the new boundary and lots being created by this subdivision.

[PSCNS02]

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

98. The proposed development is to comply with the Bush Fire Safety Authority Site Plan, prepared by Planit Consulting, reference BSAP_001 and dated July 2014, attached as appendix A within the Bush Fire Safety Authority report prepared by Brock Lamont of Planit Consulting and dated July 2014, except where modified by conditions of this Bush Fire Safety Authority.

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

100. At the issue of subdivision certificate a section 88B easement under the 'Conveyancing Act 1919' is to be created. The easement is to burden each proposed lot with a restriction to user, preventing the construction of a dwelling within the easement. The easement on both lots is to be 6.6m from the Western boundary and be the full width of the lot. The easement shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

101. New construction on the South, West and North elevation(s) shall comply with Sections 3 and 6 (BAL 19) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

- 102. New construction on the East elevation(s) shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.**

REPORT:

Applicant: Newline Creati7ons
Owner: Mr Luke J Bailey & Mr Shaun P Tammjar
Location: Lot 24 DP 1162599; No. 316 Casuarina Way Kingscliff
Zoning: R2 - Low Density Residential - Tweed LEP 2014;
7(I) Environmental Protection (Habitat) - Tweed LEP 2000
Cost: \$630,000

Background:

Subject Site

The subject site is a 1032m² vacant lot in the newly subdivided Seaside City estate, with primary frontage to Casuarina Way, northern boundary abutting Ocean Avenue, public reserve to the west and a similar sized residential allotment to the south. Vehicle access is via Casuarina Way. There are no topographical features or areas of native vegetation on site. A 3m to 3.5m wide easement to drain sewage runs the length of the western boundary. The western boundary additionally has an area of between 6m to 9m of a restriction on the user as an area to be maintained as an Asset Protection Zone until development occurs which removes the hazard.



Subject Site

Proposed Development

The proposed development involves a two lot subdivision and construction of two dwellings.

The proposed subdivision will result in the creation of two allotments, detailed as follows;

- Proposed Lot 1 will have an area of 516.5m² with a 12.2m frontage to Casuarina Avenue; and,
- Proposed Lot 2 will have an area of 516.5m² with a 12.2m frontage to Casuarina Avenue.

The dwelling to be constructed on proposed Lot 1 has a maximum height of 7.9m and covers a total gross floor area of 258m² over two levels. The ground floor consists of a double garage, entry, two store rooms, powder room, laundry, kitchen with open dining and living area is proposed in addition to a pool, alfresco and deck area outside. The upper level exhibits a master bedroom with ensuite and walk-in-robe, three other bedrooms, rumpus, study, bathroom and a number of decks.

The dwelling on proposed Lot 2 has a maximum height of 7.742m and displays a gross floor area of 258m². This dwelling has a ground floor which consists of a double garage, entry, two store rooms, powder room, laundry, kitchen with open dining and living area is proposed in addition to a pool, alfresco and deck area outside. The upper level exhibits a master bedroom with ensuite and walk-in-robe, three other bedrooms, rumpus, media room, bathroom and a number of decks.

SITE DIAGRAM:



Locality Plan
 Lot 24 DP 1162599
 No. 316 Casuarina Way, Kingscliff.

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavation a "Dig before You Dig" enquiry must be made by calling 1500. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastre 23/01/2015
 Land and Property Information (LPI) & Tweed Shire Council.
 Boundaries shown should be considered approximate only.

0 1 2 Km
 1:75,000 @ A4 Portrait
 COPY ONLY - NOT CERTIFIED

Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geocentric Datum of Australia 1994
 GDA94 Map Grid of Australia, Zone 56

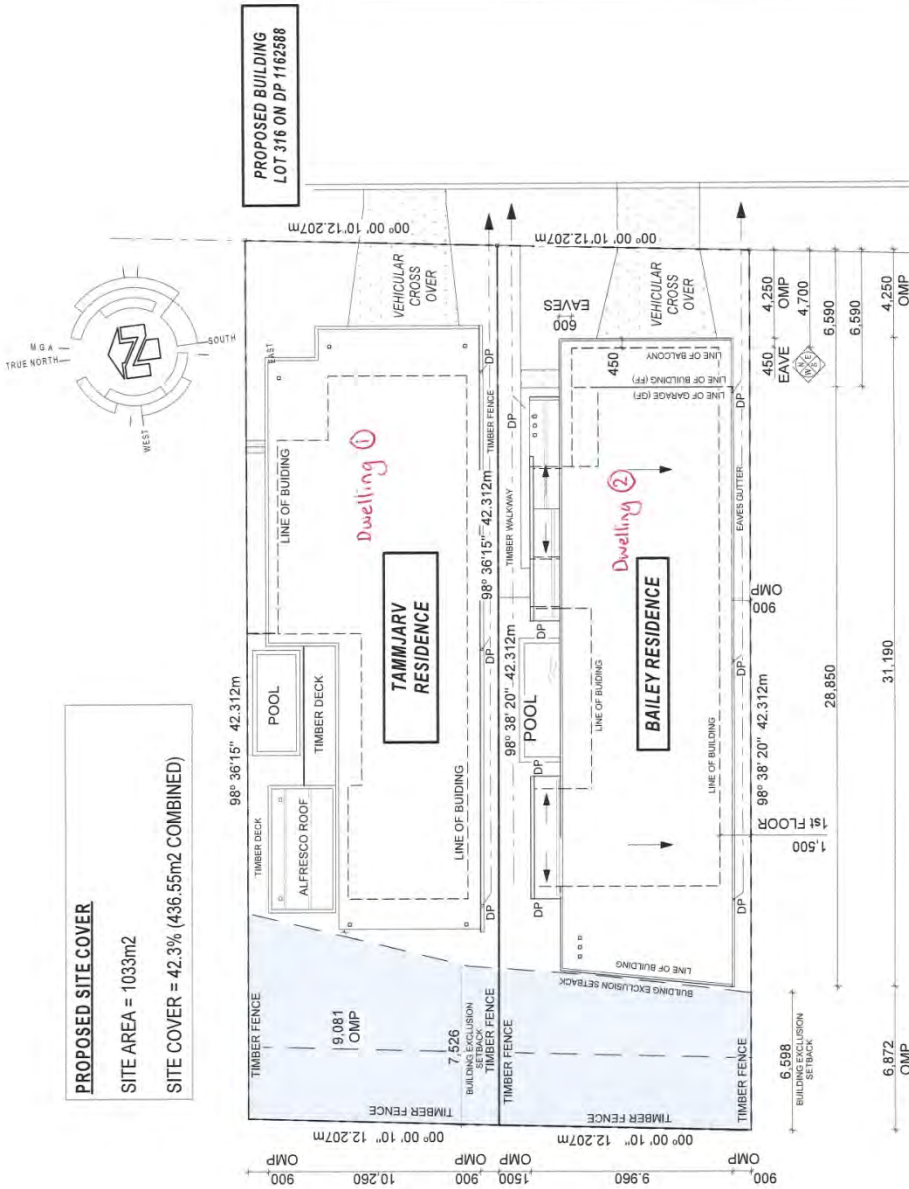
Civic and Cultural Centre
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 Murwillumbah NSW 2484
 PO Box 816
 Murwillumbah NSW 2484
 T | (02) 6670 2400 | 1300 292 872
 F | (02) 6670 2429
 W | www.tweed.nsw.gov.au
 E | planning@tweed.nsw.gov.au

DEVELOPMENT/ELEVATION PLANS:

WORKING DRAWINGS

SITE NOTES

- GROUND SURFACE WATER
- FALL GROUND 50mm MIN IN FIRST 1000mm FROM BUILDING
- THE HEIGHT OF SLABS ABOVE EXTERNAL FINISHED SURFACE TO BE NOT LESS THAN:
 - (A) 150mm ABOVE FINISHED GROUND LEVEL
 - (B) 100mm ABOVE SANDY WELL DRAINED AREAS
 - (C) 50mm ABOVE PAVED OR CONCRETE AREAS WITH FALL AWAY FROM BUILDING
- ROOF DRAINAGE
 - FACE GUTTERS TO HAVE A MIN FALL OF 1:500
 - BOX GUTTERS TO HAVE A MIN FALL OF 1:100
- CATCHMENT AREA
 - 30m²
 - 40m²
 - 50m²
 - 60m²
- GUTTER
 - 115mm D GUTTER
 - 125mm D GUTTER
 - 150mm D GUTTER
 - 150mm D GUTTER
- DOWNPIPES
 - MIN. SIZE 90mm DIAMETER
 - MAX. SPACING OF DOWNPIPES IS 12m
 - DOWNPIPES TO BE FIXED AS CLOSE AS POSSIBLE TO VALLEY GUTTERS & IF MORE THAN 1.2m FROM THE VALLEY PROVISION FOR AN OVERFLOW IS REQUIRED.
- STORMWATER
 - STORMWATER LINES FOR 2 OR MORE DOWNPIPES TO BE 100mm DIA. WITH ALL BRANCHES TO BE 90mm DIA.
 - STORMWATER LINES SHALL BE TO A MIN FALL OF 1:60 & WHERE POSSIBLE PLACED AS SHOWN.
 - 100mm COVER TO STORMWATER DRAINAGE.
 - STORMWATER & SEWER TO HYDRAULIC CONSULTANT'S INSTRUCTIONS.
 - CONTOURS & LEVELS PROVIDED BY: TREASURE & ASSOCIATES



SITE PLAN
1:200

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rev	date	description	rev	date	description
A	18/02/2014	Finalise Plans - Amendments	G	22/02/2014	Working Drawings - Amendments
B	11/02/2014	Finalise Plans - Amendments	H	20/11/2014	CPA Review
C	13/02/2014	Finalise Plans - Amendments	J	27/11/2014	Council Resolution for DA
D	13/02/2014	Finalise Plans - Amendments	K	20/01/2015	Construction File for DA
E	18/02/2014	Finalise Plans - Amendments	L	23/02/2014	Working Drawings

Client: **Luke & Rebecca Bailey**
 Project: **Bayley**
 Location: **Cassandra Way, Cavanah, NSW 2487**

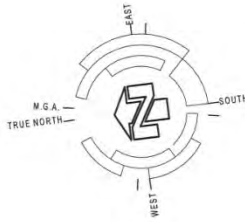
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 Drawing name: **DA**
 Scale: **1:200**
 Status: **checked**
 Drawing number: **DA**
 Drawing name: **SITE PLAN COMBINED**
 Drawing date: **23/01/2015**
 Author: **Sam Roy**

WORKING DRAWINGS

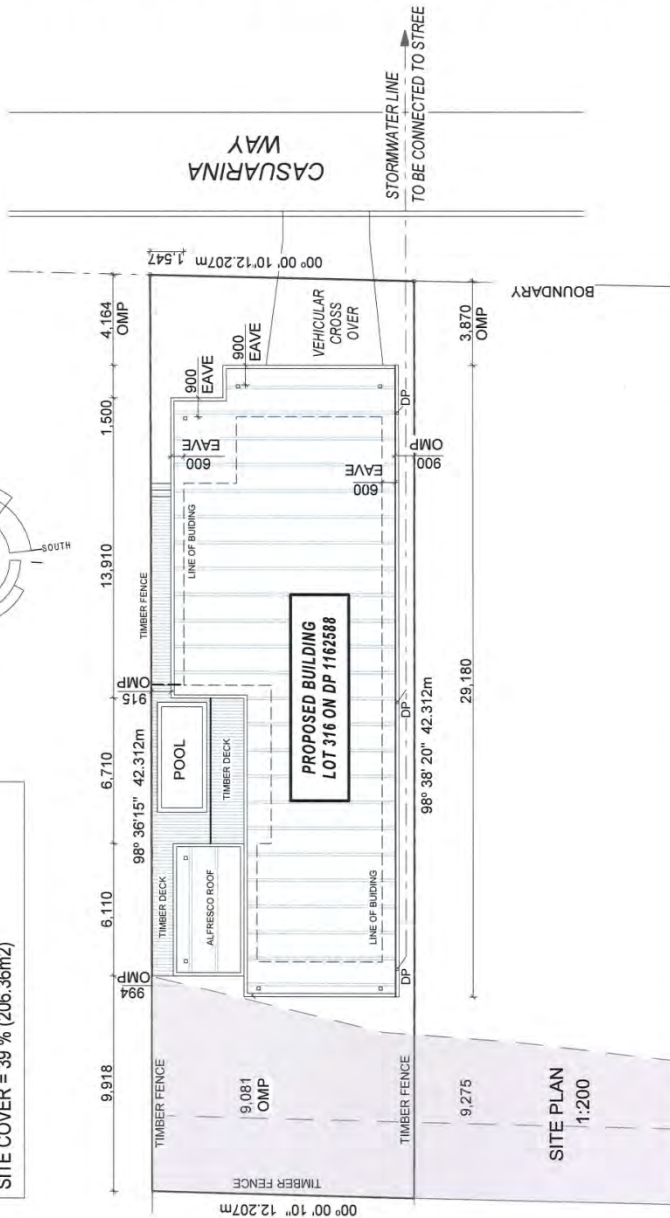
SITE NOTES

- GROUND SURFACE WATER
- FALL GROUND 50mm MIN IN FIRST 1000mm FROM BUILDING
- THE HEIGHT OF SLAB ABOVE EXTERNAL FINISHED SURFACE TO BE NOT LESS THAN:
 - (A) 150mm ABOVE FINISHED GROUND LEVEL
 - (B) 100mm ABOVE SANDY WELL DRAINED AREAS
 - (C) 50mm ABOVE PAVED OR CONCRETE AREAS WITH FALL AWAY FROM BUILDING
- ROOF DRAINAGE
 - FACE GUTTERS TO HAVE A MIN. FALL OF 1:500
 - BOX GUTTERS TO HAVE A MIN. FALL OF 1:100
- CATCHMENT AREA
 - GUTTER
 - 30m² 115mm D GUTTER
 - 40m² 125mm D GUTTER
 - 50m² 150mm D GUTTER
 - 60m² 150mm D GUTTER
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 - 100mm COVER TO STORMWATER DRAINAGE.
- STORMWATER & SEWER TO HYDRAULIC CONSULTANTS INSTRUCTIONS.
- CONTOURS & LEVELS PROVIDED BY, TREASURE & ASSOCIATES

PROPOSED SITE COVER
 SITE AREA = 516.50m²
 TOTAL AREA (GF+FF) = 396.30m²
 TOTAL (GF+FF+BALCONIES+DECK'S + PORCH) = 539.16m²
 SITE COVER = 39% (206.36m²)



JER



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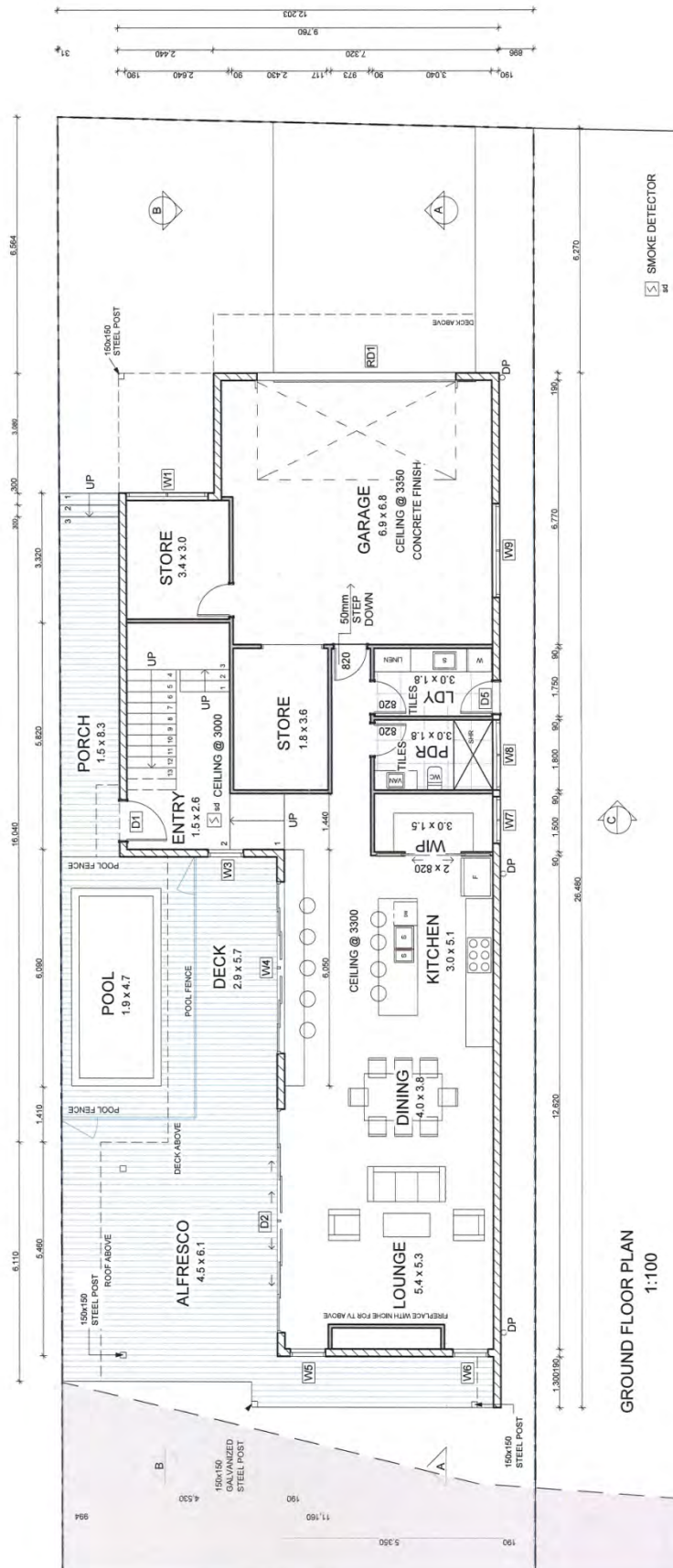


project number	0475813	drawing number	02	drawing print date	3/12/2014
client	Shoun & Jessica Tamminjan	drawing name	SITE PLAN		
project	New Residence Lot 316, Casuarina Way, Casuarina, NSW, 2487.	scale	1:200		
drawn	checked	drawn	checked		
AB	AB	AB	AB	Sam Roy	

rev.	date	description	init.	rev.	date	description	init.	client
A	04/12/2013	Preliminary Plans	AB	G	03/06/2014	Revision to base setback	AB	Shoun & Jessica Tamminjan New Residence Lot 316, Casuarina Way, Casuarina, NSW, 2487.
B	18/07/2014	Preliminary Plans - Amendments	AB	H	03/12/2014	Revision to GFA for DA Approval	AB	
C	21/07/2014	Preliminary Plans - Amendments	AB					
D	03/08/2014	Working Drawings - Amendments	AB					
E	03/08/2014	Working Drawings - Amendments	AB					
F	22/02/2014	Working Drawings - Amendments	AB					

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GROUND FLOOR GFA= 100.3m²
 FIRST FLOOR GFA= 157.7m²
 TOTAL FLOOR GFA= 258.0m²



GROUND FLOOR PLAN
 1:100

Dwelling

project number **0478813** drawing number **03** drawing name **N** drawing date **3/12/2014**

client **Shaun & Jessica Tammljov** project name **New Residence** scale **1:100** checked **H**

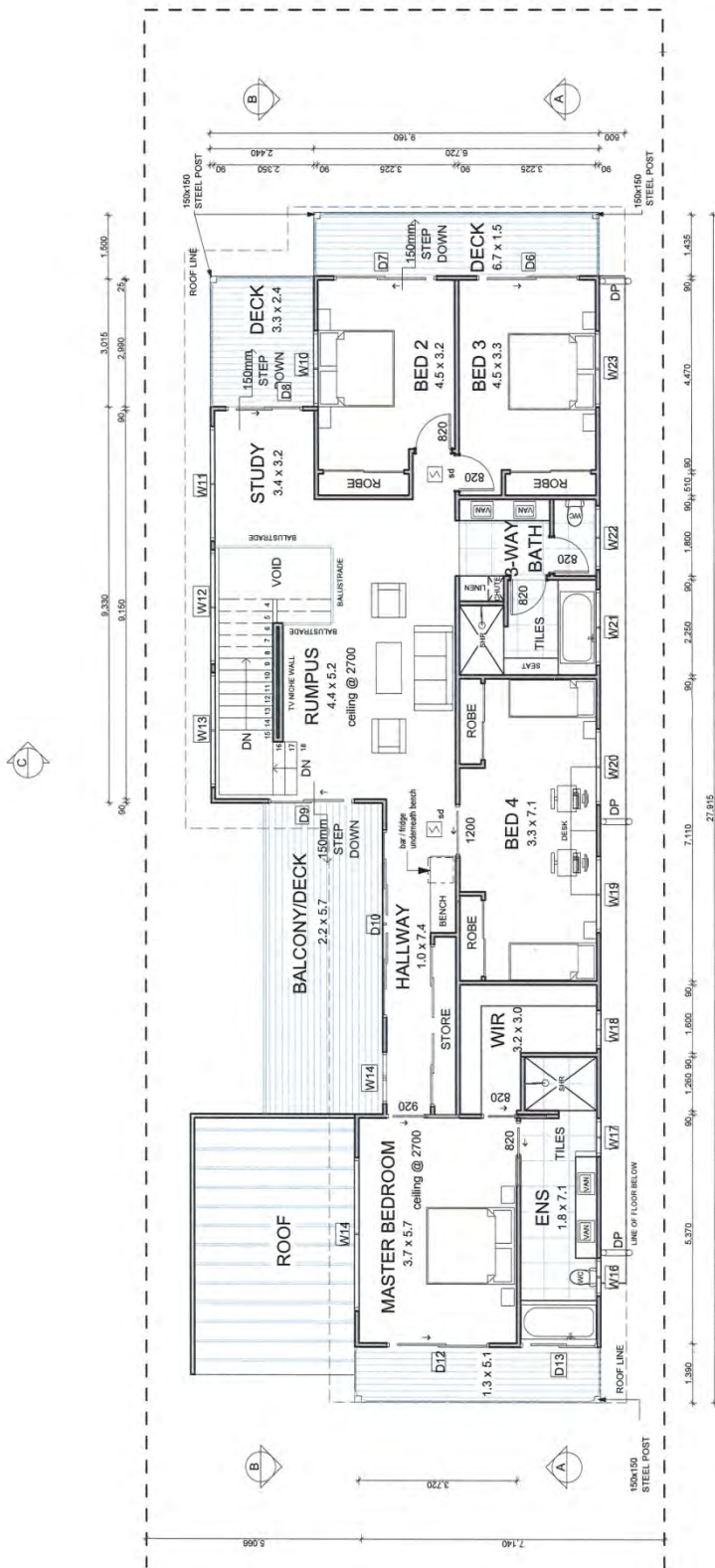
drawn **AB** checked **Sam Roy**

GROUND FLOOR PLAN

REV	DATE	DESCRIPTION	INTL	REV	DATE	DESCRIPTION
A	04/12/2013	Preliminary Plans - Amendments	A/B	G	03/02/2014	Revision To Best-Submittal
B	18/01/2014	Preliminary Plans - Amendments	A/B	H	03/12/2014	Revision To CPA for DA Approval
C	18/01/2014	Preliminary Plans - Amendments	A/B			
D	14/02/2014	Working Drawings - Amendments	A/B			
E	23/02/2014	Working Drawings - Amendments	A/B			
F	23/02/2014	Working Drawings - Amendments	A/B			

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FIRST FLOOR PLAN
1:100

SMOKE DETECTOR

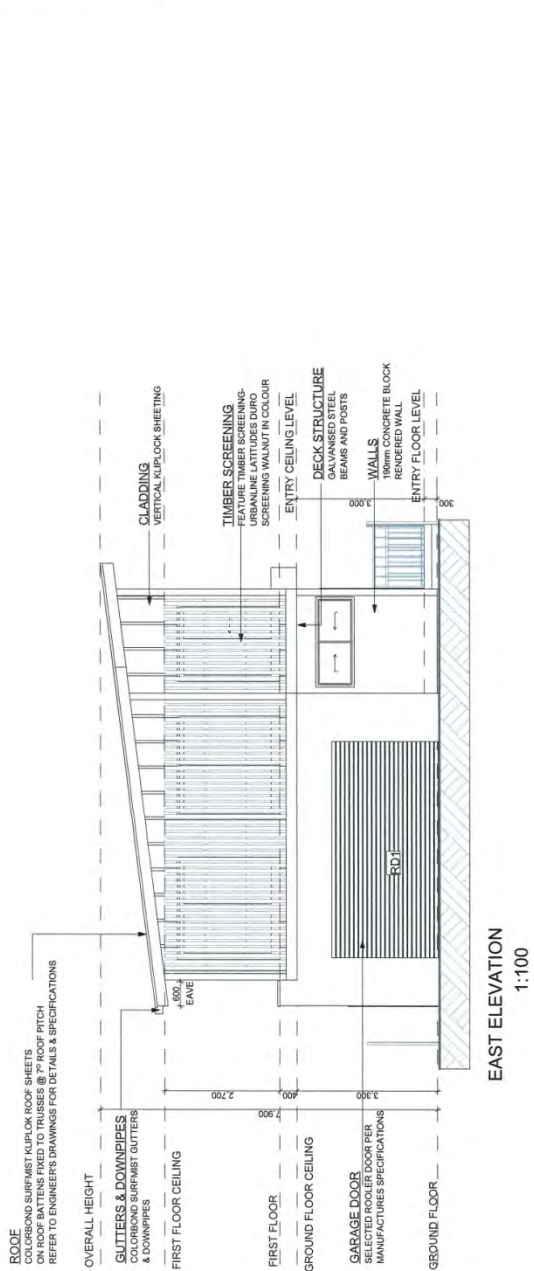


rev.	date	description	init.	rev.	date	description	init.	client	project number	drawing number	drawing print date
A	14/12/2013	Preliminary Plans	JAB	0	03/02/2014	Revision for Resubmit	JAB	Shoun & Jessica Tommjany	0478813	04	3/12/2014
B	18/01/2014	Preliminary Plans - Amendments	JAB	H	10/12/2014	Revision for DA Approval	JAB	New Residence	1:100	H	
C	21/01/2014	Preliminary Plans - Amendments	JAB					Lot 314, Casuarina Way, Casuarina, NSW, 2467.	AB	AB	
D	15/02/2014	Working Drawings - Amendments	JAB								
E	15/02/2014	Working Drawings - Amendments	JAB								
F	22/02/2014	Working Drawings - Amendments	JAB								

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FIRST FLOOR PLAN



EAST ELEVATION
1:100



NORTH ELEVATION
1:100

drawing number 05
drawing name
drawing date 3/12/2014

project number 0475813
client Shaun & Jessica Tammler
scale 1:100
drawn AB
checked Sam Roy

project name New Residence
address 1st 31 & Cassin Way
Cassino, NSW, 2487

rev.	date	description	int.	rev.	date	description	int.
A	04/12/2013	Preliminary Plans - Amendments	AB	G	03/06/2014	Revision to floor slab	AB
B	18/01/2014	Preliminary Plans - Amendments	AB	H	20/12/2014	Revision to CPA for DA Approval	SR
C	31/01/2014	Preliminary Plans - Amendments	AB				
D	14/02/2014	Working Drawings	AB				
E	20/02/2014	Working Drawings - Amendments	AB				
F	22/02/2014	Working Drawings - Amendments	AB				

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ROOF
COLORBOND SURFIMIST KLIPLOK ROOF SHEETS
ON ROOF BATTENS FIXED TO TRUSSES @ 7° ROOF PITCH
REFER TO ENGINEER'S DRAWINGS FOR DETAILS & BP

GUTTERS & DOWNPIPES
COLORBOND SURFIMIST GUTTERS
& DOWNPIPES

TIMBER SCREENING
FEATURE TIMBER SCREENING-
URBANLINE LATTITUDE DURO
SCREENING WALNUT IN COLOUR

DECK STRUCTURE
GALVANISED STEEL
BEAMS AND POSTS

WALLS
CONCRETE BLOCK
RENDERED WALL

POSTS
150x150 STEEL POST

DOORS & WINDOW
ALUMINIUM DOORS & WINDOWS
PER MANUFACTURER'S SPECIFICATIONS

POOL FENCE
UPRIGHTS WITH
TIMBER TOP RAIL

OVERALL HEIGHT

CLADDING
VERTICAL KLIPLOK SHEETING

FIRST FLOOR CEILING

JOINERY

POSTS
150x150 STEEL POSTS

BALUSTRADE
1000x ALUMINIUM UPRIGHTS
WITH TIMBER TOP RAIL

FIRST FLOOR

GROUND FLOOR CEILING

JOINERY

GROUND FLOOR

OVERALL HEIGHT

ROOF
COLORBOND SURFIMIST KLIPLOK ROOF SHEETS
ON ROOF BATTENS FIXED TO TRUSSES @ 7° ROOF PITCH
REFER TO ENGINEER'S DRAWINGS FOR DETAILS & SPECIFICATIONS

OVERALL HEIGHT

FIRST FLOOR CEILING

JOINERY

FIRST FLOOR

GROUND FLOOR CEILING

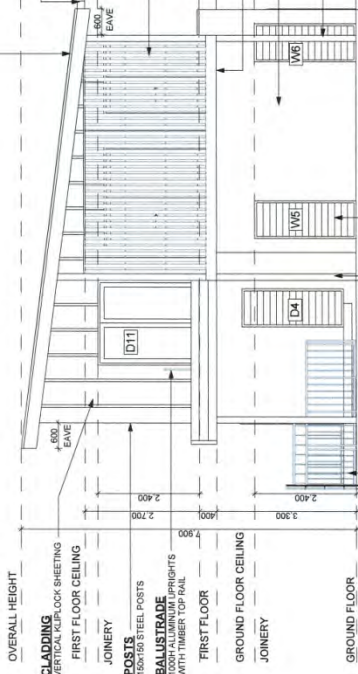
JOINERY

JOINERY

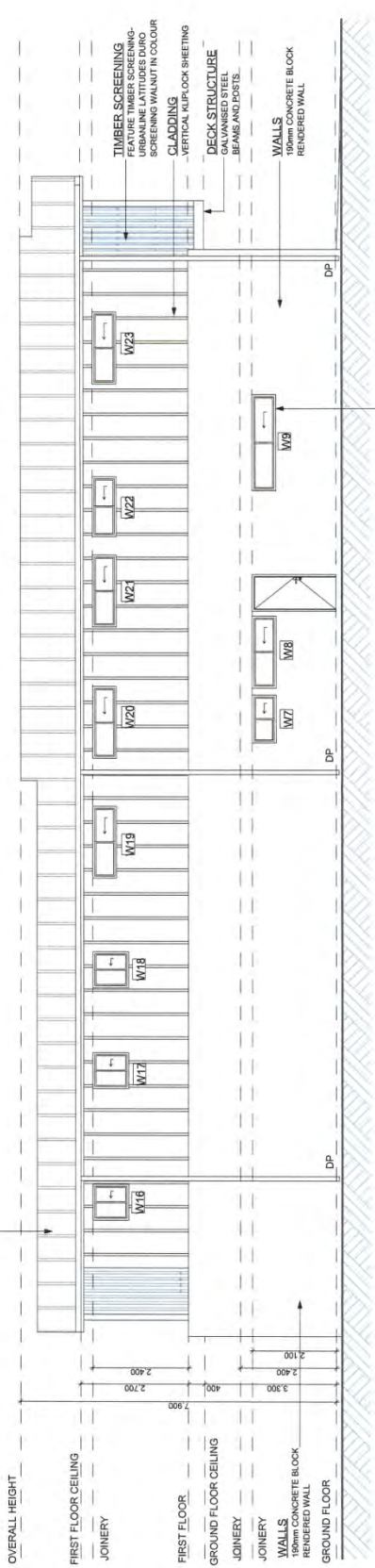
WALLS
190mm CONCRETE BLOCK
RENDERED WALL

GROUND FLOOR

OVERALL HEIGHT



WEST ELEVATION
1:100



SOUTH ELEVATION
1:100



drawing number **06**
drawing name
drawing print date **3/12/2014**

project number **0475813**
client **Shaun & Jessica Tommjav**
project **New Residence**
scale **1:100**
checked **AB**
drawn **AB**
project manager **Sam Roy**

Lot 316, Connaught Way,
Casuarina, NSW, 2407.

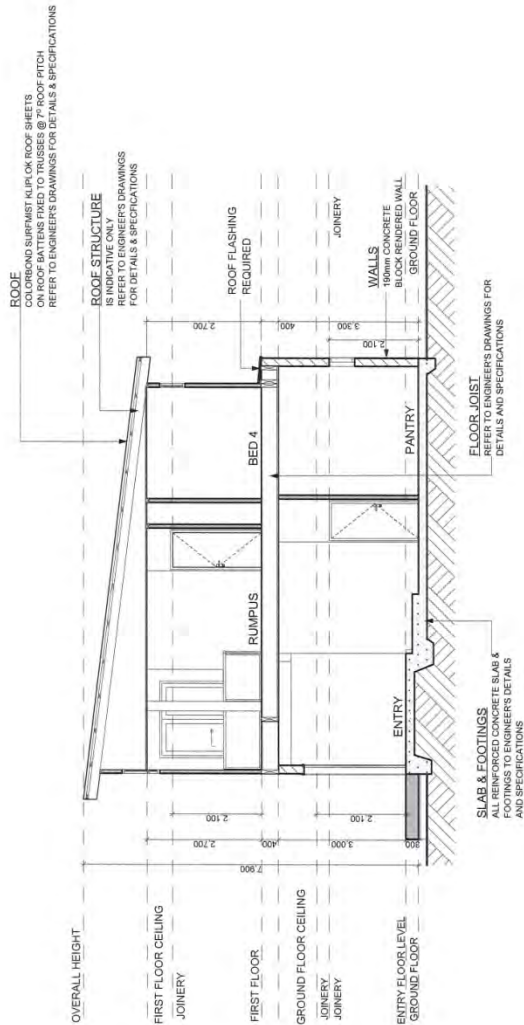
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A	16/12/2014	Final Plan - Amendments	AB	D	10/02/2014	Revision to DP for DA Approval	SA
B	17/12/2014	Final Plan - Amendments	AB	E	10/02/2014	Revision to DP for DA Approval	SA
C	31/01/2014	Final Plan - Amendments	AB				
D	14/02/2014	Working Drawings	AB				
E	03/03/2014	Working Drawings - Amendments	AB				
F	27/02/2014	Working Drawings - Amendments	AB				

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WEST & SOUTH ELEVATIONS



SECTION C
1:100

drawing number 08
drawing name SECTION CC & DRIVEWAY CROSSOVER SECTION
drawing print date 3/12/2014



project number 0478813
client Shaun & Jessica Tammojan
project New Residence
Lot 316, Casuarina Way,
Casuarina, NSW, 2487.
scale 1:100
drawn AB
checked H
drawn Sam Ray

rev.	date	description	int.	rev.	date	description	int.
A	01/12/2014	Preliminary Plans - Amendments	AB	G	03/12/2014	Revision to keep setbacks	AB
B	03/12/2014	Preliminary Plans - Amendments	AB	H	03/12/2014	Revision to GFA for DA Approval	AB
C	03/12/2014	Working Drawings - Amendments	AB				
D	03/12/2014	Working Drawings - Amendments	AB				
E	05/03/2014	Working Drawings - Amendments	AB				
F	22/03/2014	Working Drawings - Amendments	AB				

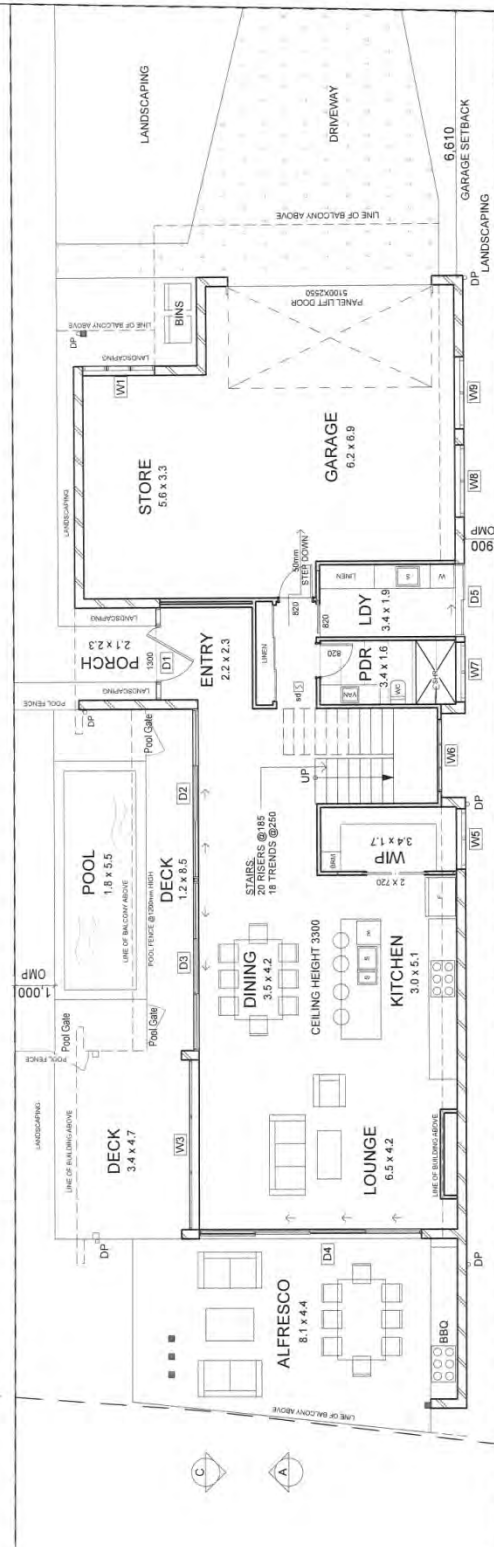
Legend

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WORKING DRAWINGS

GROUND FLOOR - 189.5M²
 GROUND FLOOR DECKS - 79.0M²
 GROUND FLOOR GFA - 97.0M²



GROUND FLOOR PLAN
 1:100



Drwelling 2

drawing number: **00**
 drawing title: **GROUND FLOOR PLAN**
 drawing date: **16/07/2015**

project number: **0475913**
 client: **Luke & Rebecca Bailey**
 scale: **1:100**
 architect: **Bailey Cousins**
 architect address: **155/157 Warrigal Street, Melbourne, VIC 3000**

rev	date	description	drawn	checked	description
1	16/07/2015	Final Floor Plan - Amendments	AB	SR	Final Floor Plan - Amendments
2	16/07/2015	Final Floor Plan - Amendments	AB	SR	Final Floor Plan - Amendments
3	16/07/2015	Final Floor Plan - Amendments	AB	SR	Final Floor Plan - Amendments
4	16/07/2015	Final Floor Plan - Amendments	AB	SR	Final Floor Plan - Amendments
5	16/07/2015	Final Floor Plan - Amendments	AB	SR	Final Floor Plan - Amendments

Legend:
 DP: DRAINAGE POINT
 W: WINDOW
 D: DOOR
 V: VALVE
 S: STAIRS
 B: BENCH
 L: LIGHT
 P: PLANT
 BMS: BINS
 F: FLOOR
 C: CEILING
 W: WALL
 G: GROUND

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WORKING DRAWINGS



FIRST FLOOR-186.4M2
 FIRST FLOOR DECKS- 64.5M2
 FIRST FLOOR GFA- 161.0M2

FIRST FLOOR PLAN
 1:100



project number 047913
 drawing number 05
 drawing date 26/11/2014
 client Luke & Rebecca Bailey
 architect Bailey Way, Cammerlang, NSW 2487.
 scale 1:100
 drawn AB
 checked Sam Ray
 title FIRST FLOOR PLAN

Dwelling 2

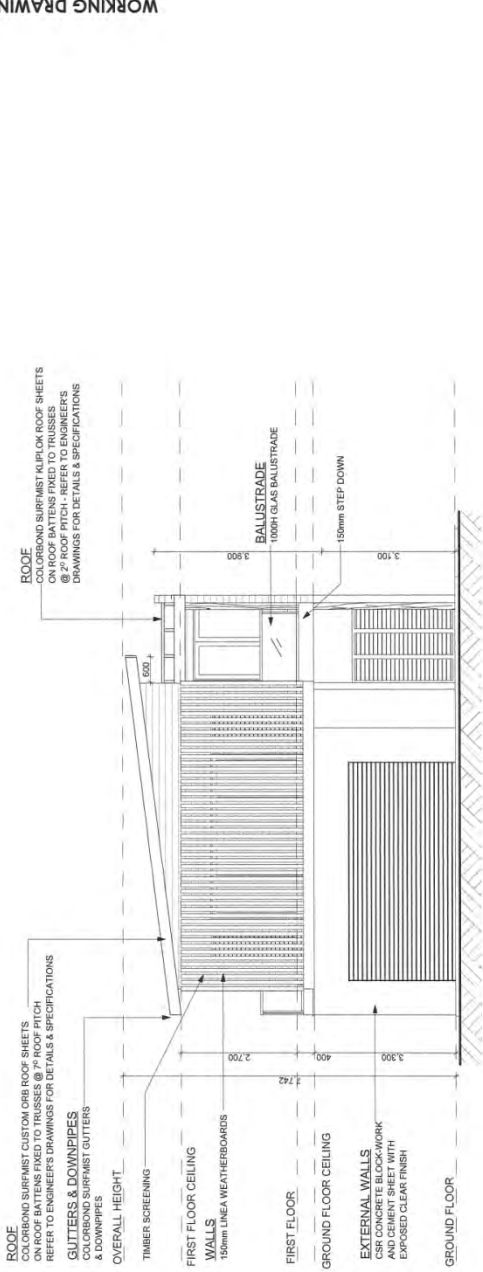
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A	15/02/2014	Preliminary Plans - Amendments	AB	22/04/2014	Working Drawings - Amendments	AB
B	11/02/2014	Preliminary Plans - Amendments	AB	20/11/2014	GFA Revisions	SR
C	13/02/2014	Preliminary Plans - Amendments	AB	1/27/11/2014	Council Revisions for DA	SR
D	09/02/2014	Preliminary Locations & SPS	AB			
E	14/02/2014	Preliminary Locations amendments	AB			
F	24/02/2014	Working Drawings	AB			

Legend

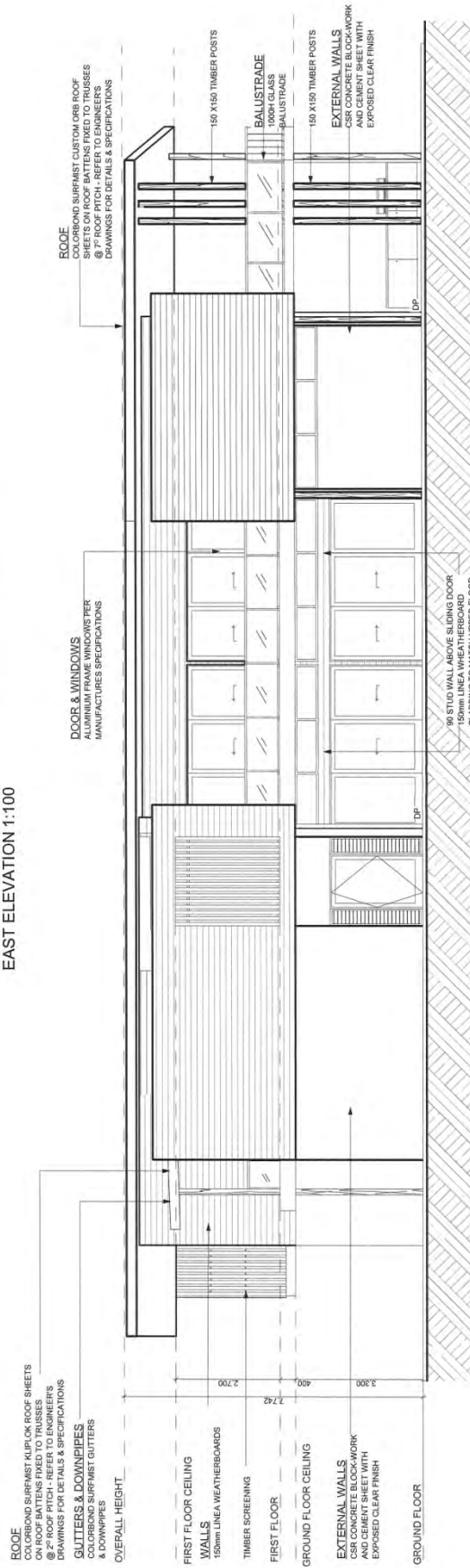
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EAST ELEVATION 1:100



NORTH ELEVATION:100

Dwelling 2

rev.	date	description	init.	rev.	date	description	init.	client	project number	drawing number	drawing path date
A	05/02/2014	Preliminary Plans - Attachments	AB	D	23/02/2014	Working Drawings - Attachments	AB	Luke & Rebecca Bailey	0475913	08	26/11/2014
B	10/02/2014	Preliminary Plans - Attachments	AB	E	14/02/2014	Preliminary Elevations & 3D's	AB	Bailey	1:100	G	
C	10/02/2014	Preliminary Plans - Attachments	AB	F	24/02/2014	Working Drawings	AB	Casuarina Way, Casuarina, NSW 2467,	AB	Sam Ray	
D	08/02/2014	Preliminary Elevations & 3D's	AB								
E	14/02/2014	Preliminary Elevations & 3D's	AB								
F	24/02/2014	Working Drawings	AB								

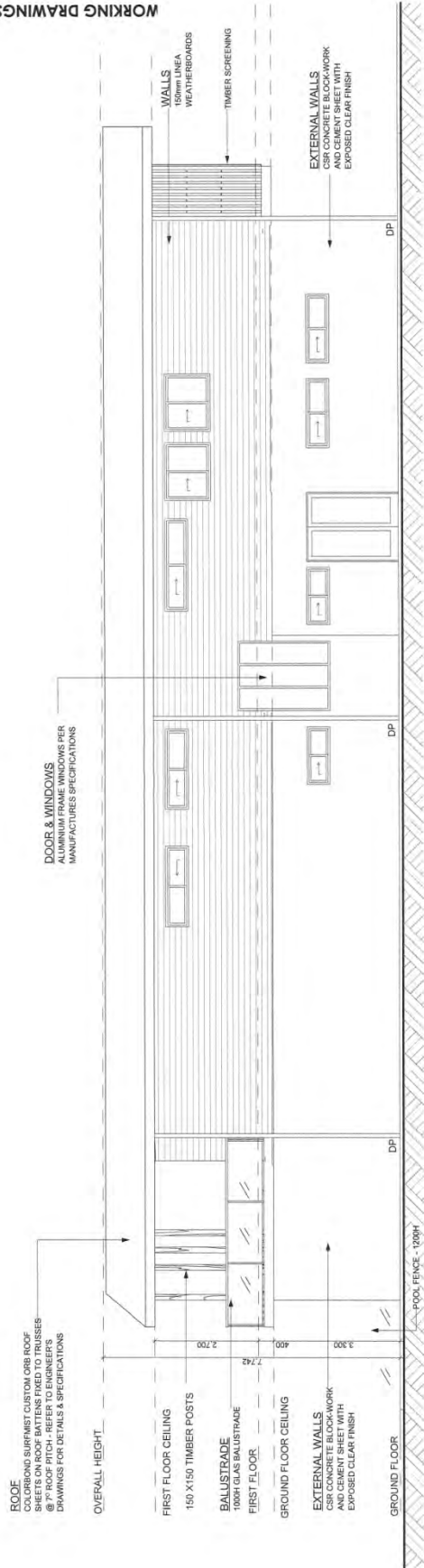


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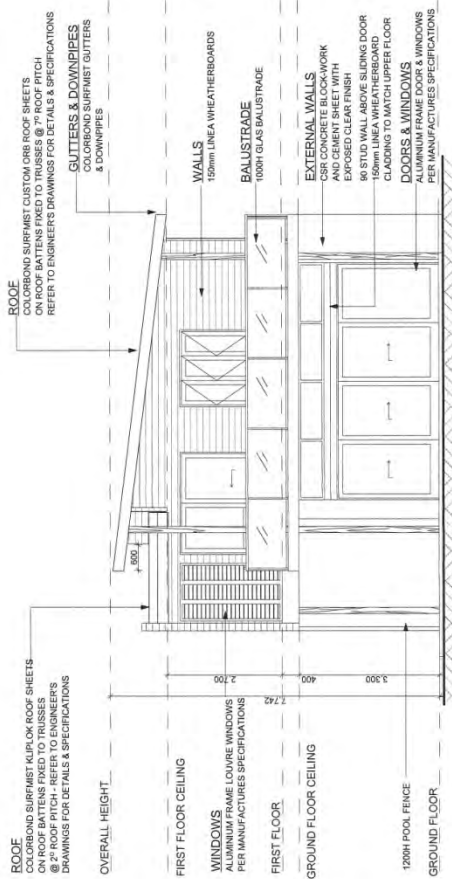
 07 5520 2827

EAST & NORTH ELEVATIONS

WORKING DRAWINGS



SOUTH ELEVATION: 1:100



WEST ELEVATION: 1:100

Dwelling 2

REV.	DATE	DESCRIPTION	INTL.	REV.	DATE	DESCRIPTION	INTL.
A	05/02/2014	Preliminary Plans - Amendments	AB	G	22/02/2014	Working Drawings - Amendments	AB
B	11/02/2014	Preliminary Plans - Amendments	AB	H	26/11/2014	DPA Revisions	AB
C	13/02/2014	Preliminary Plans - Amendments	AB	I	27/11/2014	Council Revisions for DA	AB
D	18/02/2014	Preliminary Plans - Amendments	AB	J	27/11/2014	Final Revisions for DA	AB
E	18/02/2014	Preliminary Plans - Amendments	AB	K	24/02/2014	Working Drawings	AB

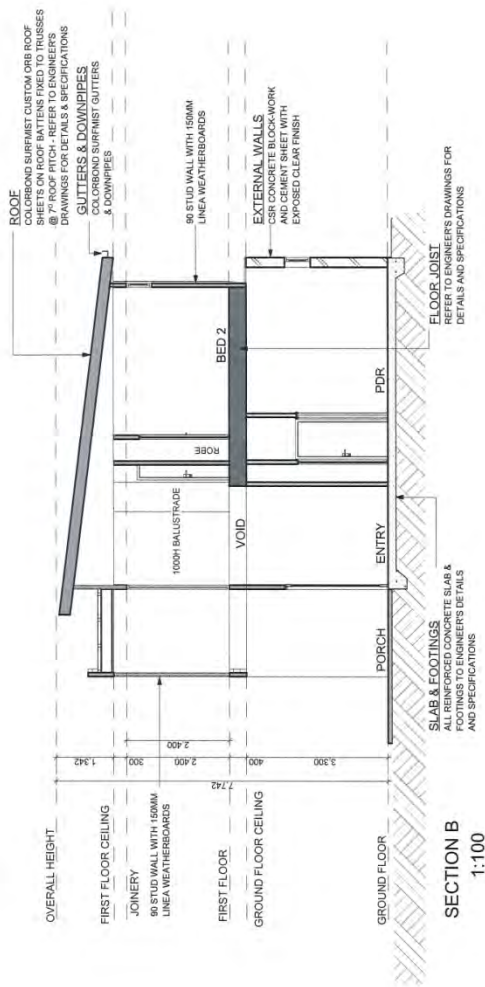
legend: AB - Architectural, DA - Drafting, DP - Drafting, G - General, H - Hatching, I - Interior, J - Joinery, K - Kitchen, L - Landscape, M - Mechanical, N - North, O - Other, P - Plumbing, Q - Quantity, R - Roof, S - Structural, T - Timber, U - Utilities, V - Vertical, W - Windows, X - X-section, Y - Y-section, Z - Z-section.

project number: 0475913
 client: Luke & Rebecca Bailey
 project: Bailey
 location: Casuarina Way, Casuarina, NSW 2487.
 scale: 1:100
 drawn: Sam Ray
 checked: Sam Ray
 drawing number: 09
 drawing name: WEST & SOUTH ELEVATIONS
 drawing print date: 26/11/2014

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WORKING DRAWINGS



Dwelling 2

project number: **0475913**

drawing number: **10**

drawing name: **SECTION AA & BB**

drawing print date: **26/11/2014**

client: **Luke & Rebecca Bailey**

scale: **1:100**

drawn: **AB**

checked: **Sam Kay**

drawn by: **Sam Kay**

location: **Bailey NSW 2487**

rev.	date	description	scale	rev.	date	description	scale
A	20/02/2014	Preliminary Plans	AB	G	22/02/2014	Working Drawings - Amendments	AB
B	11/02/2014	Preliminary Plans - Amendments	AB	H	20/11/2014	OFA Revisions	AB
C	18/02/2014	Preliminary Plans - Amendments	AB	I	27/11/2014	Conced Revisions For DA	AB
D	08/03/2014	Preliminary Specifications & SD's	AB				
E	14/03/2014	Preliminary Specification amendments	AB				
F	24/03/2014	Working Drawings	AB				

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

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

The subject site is zoned R2 - Low Density Residential under the Tweed Local Environmental Plan 2014 and 7(l) - Habitat Protection under the Tweed Local Environmental Plan 2000. As such, both LEP's are applicable to the proposed development.

The proposed dwellings are located entirely within the R2 zone of the Tweed LEP 2014 and it is therefore considered that the dwellings will be assessed under Tweed LEP 2014.

The proposed subdivision is located within the R2 and 7(l) zone and as such the subdivision component will be assessed against both LEP's.

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The aim of the Tweed Local Environmental Plan (TLEP) is to *“manage growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”*.

The proposed subdivision forms part of a larger master plan (now reflected in the Seaside City DCP) which have undergone extensive assessment and provided a framework for future development of the area.

The proposal is consistent with the land uses approved in the DCP as well as the intent of the subject zoning. Given the extensive planning that has previously occurred for the site, potential impacts on the environment and residential amenity have been adequately considered and the proposal is not considered to compromise the aims of the TLEP.

Clause 5 - Ecologically Sustainable Development

The proposal is not considered to contravene the principles of ecological sustainable development, which were considered as part of the DCP. Previous approvals have required the necessary land dedications along the creek and foreshore to ensure protection of the environment.

The constraints of the site have been considered in greater detail below, and conditions of approval recommend limiting potential impacts on the environment.

Clause 8 - Consent Considerations

The development is consistent with the primary objective of the zone within which it is located, and the proposed residential development is considered to be consistent with all other relevant aims and objectives of the Tweed Local Environmental Plan 2000.

Council officers are satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.

Clause 11 - Zone Objectives

The subject site is partly zoned R2 - Low Density Residential under the Tweed LEP 2014, and partially 7 (l) Environmental Protection (Habitat) under the Tweed LEP 2000.

Notwithstanding the proposed development is permissible by virtue of Clause 53C "Seaside City" of the Tweed LEP 2000 not Clause 11. Clause 53C is addressed later in this report.

7 (l) Environmental Protection (Habitat)

Land adjacent to the site at the west is zoned 7 (l) Environmental Protection (Habitat).

No works are proposed as part of this application in this 7(l) portion of the site.

The primary objective of the 7 (l) zone is *"to protect areas or features which have been identified as being of particular habitat significance, to preserve the diversity of habitats for flora and fauna, to protect and enhance land that acts as a wildlife corridor". The secondary objective is to "protect areas of scenic value and to allow for other development that is compatible with the primary function of the zone"*.

The proposed subdivision is considered to satisfy these zone objectives as previous and proposed conditions of consent will be enforced to ensure the land zoned 7(l) remains free from structures. Planting in this area will need to be limited as this area has to act as a dual riparian and asset protection zone. However, this arrangement was all set up with the approval of DA05/1464. This arrangement is still considered to satisfy the zone objectives.

Clause 15 - Essential Services

Clause 15 requires that development does not occur without a water supply, facilities for treatment of sewer and adequate drainage.

The development proposal includes provision for sewer, water and drainage. Council's Engineers have assessed the proposed infrastructure and it is deemed adequate subject to conditions.

Clause 16 - Height of Building

The height of the buildings has been addressed under Tweed Local Environmental Plan 2014 as no buildings are located within the 7(l) zoned land.

Clause 17 - Social Impact Assessment

Clause 17 requires that Council considers a socio economic impact statement (in certain circumstances). The socio-economic impact must identify the likely future

impacts of the development on the affected community and analysis the impacts in terms of magnitude, significance, duration, effect on current and future conditions and community services. The socio economic impact assessment must also determine if impacts will cause a loss of amenity within the locality due to reduction in community services and facilities, as well as assess possible measure for the management or mitigation of likely impacts.

A socio-economic impact assessment is not required (by Council's DCP) as not more than 50 residential lots are proposed.

Clause 20 – Subdivision in Zones 1 (a), 1 (b), 7 (a), 7 (d) and 7 (l)

The purpose of clause 20 is to prevent fragmentation and to protect ecological or scenic values of the land. The clause requires that the minimum lot size in the 7 (l) zone is 40 hectares.

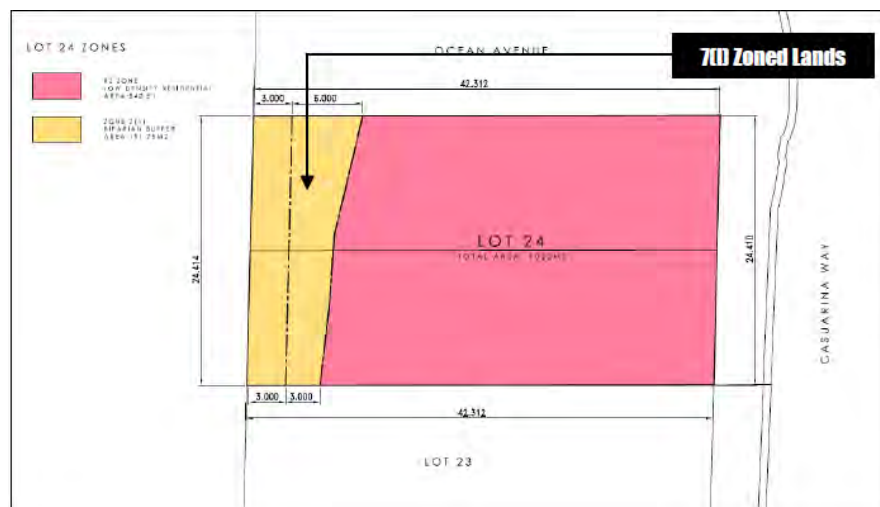
A SEPP 1 Objection is required for the proposed lots as the rear portion of these lots are partially zoned 7 (l) Environmental Protection (habitat).

The applicant lodged a SEPP 1 objection which stated:

“EXTENT OF STATUTORY VARIATION

Below are diagrams depicting the extent of Lot 24 in DP1162599 that is zoned 7(l) Environmental Protection. Specifically, this request relates to a small portion of the site adjacent to the western boundary. As stated by Clause 20(2):

- (2) Consent may only be granted to the subdivision of land:*
- (a) within Zone 1 (a), 1 (b2), 7 (a), 7 (d) or 7 (l) if the area of each allotment created is at least 40 hectares, or*
- (b) within Zone 1 (b1) if the area of each allotment created is at least 10 hectares.*



As shown in yellow the 7(l) zoned portion of the allotment is caught by the requirement for a minimum lot size of 40 hectares. It is proposed as part of the subdivision to include a small portion of 7(l) zoned lands within proposed

lots 1 & 2. Having regard to the allotment size of allotment 1032.3m², the 7(l) zoned area at 191.79m² represents approximately 18.57% of the site.

Whilst justification for the variation sought is discussed later in this submission, Council's attention is specifically directed to the established subdivision pattern and existing controls and covenants which dictate management of 7(l) zoned properties within Seaside City. The proposal has been designed to be consistent with this existing situation.

It is also noted the finding of the review of environmental zones in the Far North Coast has recommended that land subject to environmental zones where it does not demonstrate any ecological features or values should be zoned pursuant to its predominate land use. In this instance this would be for residential use and it is anticipated that the 7(l) zone portion of the site would be zoned R2 consistent with the rest of the site.

ASSESSMENT OF APPLICATION FOR VARIATION

Assessment of the application for variation in accordance with the 5 part test outlined by Chief Justice Preston in the decision *Wehbe v Pittwater Council* (2007) NSW LEC 827 follows. Preston rephrased the assessment process as follows:

1. The applicant must satisfy the consent authority that "the objection is well founded" and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted.

The objective providing foundation for the lot size within the 7(l) zone states, *inter alia*:-

(1) Objectives

- to prevent the potential for fragmentation of ownership of rural land that would:
 - (i) adversely affect the continuance or aggregation of sustainable agricultural units, or
 - (ii) generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.
- to protect the ecological or scenic values of the land.
- to protect the area of Tweed's water supply quality.

As discussed above and confirmed by judgments supported by the Land & Environment Court, the ability of a proposal to attain the objective of the standard and its intent are fundamental to the appropriateness of applying the standard in the first instance. Specifically the objective of Clause 20 seeks to protect the ecological or scenic values of the lands and prevent isolated residential development.

With reference to the above objective, it is noted that the site is located within Seaside City. The proposed subdivision has been designed to replicate the existing layout with regard to the 'creek front' allotments and is clearly representative of the established subdivision pattern.

In this regard the established subdivision pattern provides 'creek front' residential allotments (inclusive of the subject site) which incorporate a part R2/7(l) zoning. This configuration sees all 7(l) zoned land within the existing residential allotments provide areas less than 40 hectares.

Despite the lot size variation all existing 'creek front' allotments within Seaside City achieve land uses generally in accord with the objectives for the 7(l) zone. This is achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B11 and 88b Covenants which enforce no development and strict landscaping standards (native coastal species) in these areas.

By virtue of the proposal applying these existing controls the subdivision will effectively duplicate the established environmental and scenic characteristics of both the adjoining 'creek front' allotments and that of the subject property. No adverse impacts will result to the established environmental character nor will development be permit on land subject to coastal erosion hazard.

The proposal meets the objectives of the development standard notwithstanding the non compliance with minimum lot size.

2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979; and

The objectives specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and the protection, provision and co-ordination of communication and utility services.

It is noted that the variation requested is done so with particular reference to the content and wording of the objective to the standard. Accordingly, we have broken down the request for variation in to three (3) specific headings, each of which is identified within the objective proper.

An analysis in this context has been carried out as follows:-

Is the development appropriate to its location and surrounding development?

It is contended that the development responds in the positive in relation to this question. In this regard, the key elements to consider are defined as follows:-

1. *What is the character of the locality;*
2. *What elements form or shape development in the locality;*
3. *Will the development appear out of character with surrounding development; and*
4. *Will the development translate into excessive or avoidable impacts?*

With reference to the above objective, it is noted that the subdivision pattern of part R2/7(l) zoned allotments is well established within this area of Seaside City. The intent objectives of the 7(l) zone as it relates to the Seaside City Estate has been achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B11 and 88b Covenants which enforce no development and strict landscaping standards (native coastal species) in these areas. The proposal will not alter this approach and will emulate the existing character of the locality.

Is the development appropriate to the environmental characteristics of the land?

Despite the lot size variation all existing 'creek front' allotments within Seaside City achieve land uses generally in accord with the objectives for the 7(l) zone. This is achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B11 and 88B Covenants which enforce no development and strict landscaping standards (native coastal species) in these areas.

By virtue of the proposal applying these existing controls the subdivision will effectively duplicate the established environmental and scenic characteristics of both the adjoining 'creek front' allotments and that of the subject property. No adverse impacts will result to the established environmental character.

The SEPP No.1 Objection is considered to warrant support in that flexibility in planning controls is achieved and imposing compliance with the development standard is clearly a hindrance to the objects as listed in s 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979.

3. *It is also important to consider:*
 - a. *Whether non-compliance with the development standard raises any matter of significance for State or regional planning; and*
 - b. *The public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

The proposed non compliance raises no matters of significance for State or Regional Planning and no public benefit results from maintaining the development standard in this particular case. In this regard, the proposals extent of compliance with all other requirements of the TLEP 2000 is noted. To require compliance with the standard would be unreasonable and unnecessary in the circumstances of the case.

Indeed, given the overwhelming character of the general locality, the application of variation to the standard would be unlikely to have adverse impacts on the continued application of the control in other instances.

It is also noted the finding of the review of environmental zones in the Far North Coast has recommended that land subject to environmental zones where it does not demonstrate any ecological features or values should be zoned pursuant to its predominate land use. In this instance this would be for residential use and it is anticipated that the 7(l) zone portion of the site would be zoned R2 consistent with the rest of the site, albeit with restrictions and covenants remaining in place."

The SEPP 1 application was referred to the NSW Department of Planning for concurrence which was subsequently granted. The Department of Planning stated that:

*"Concurrence was granted in this instance for the following reasons:
1) Non-compliance with the development standard does not raise any matter of significance for State or regional environmental planning; and
2) There is no public benefit in upholding the development standard."*

Having regard to the applicant's argument above, and the concurrence issued by the Department of Planning compliance with Clause 20(2)(a) in this instance is therefore considered unreasonable and unnecessary. The SEPP 1 Objection is considered suitable and reasonable in the circumstances.

Clause 28- Development in Zone 7 (l) Environmental Protection (Habitat) and on adjacent land

The purpose of this clause is to protect wildlife habitat from the adverse impacts of development. As discussed above no works are proposed in the 7 (l) zone. The recommended conditions of consent incorporate restrictions as to user to ensure no structures are erected in this area.

Clause 35 - Acid Sulfate Soils

The subject site is indicated as Class 4 acid sulfate potential on Council's mapping. This clause requires that an acid sulfate soil (ASS) management plan is provided for works below 2 metres below the natural ground level.

An acid sulfate soil management plan was submitted and considered satisfactory for the parent consent DA05/1464.

No further assessment is required in this regard.

Clause 39A – Bushfire Protection

It is noted that the subject development site is partially mapped as being bushfire prone by virtue of being located within the 30m and 100m vegetation buffer.

The subject application is integrated under s100B of the Rural Fires Act 1997 and as such was referred to NSW Rural Fire Service who have provided a bushfire safety authority and conditions of consent to include in any approval.

Having regard to the comments received from NSW RFS, the proposal is considered to be acceptable with respect to bushfire considerations.

Clause 53C

Clause 53 aims

- (a) *to ensure that development of the land to which this clause applies is undertaken within an appropriate planning framework, and*
- (b) *to ensure that relevant environmental issues are considered before consent is granted to development of the land, and*
- (c) *to facilitate the development of the land having regard to the subdivision and ownership patterns of the land.*

The Clause states that development must not be carried out on land to which this clause applies unless a development control plan has been prepared for the land.

A DCP has been created (Tweed DCP Section B11 Seaside City) and the proposed development generally conforms to the provisions contained therein.

The proposed subdivision has been created with all relevant environmental issues considered, including the Riparian Buffer Zone, erosion and sediment control, stormwater management and bushfire management.

The application satisfies the provisions of Clause 53C.

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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.

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 and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,*
- (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, 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 and geological and ecological integrity of 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 for a two lot subdivision and two single dwelling houses within the R2 - Low Density Residential Zoning. The proposed development is consistent with the R2 zoning and the development is considered to be sustainable development. Accordingly, the proposed two lot subdivision and two dwelling houses are considered consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The proposed development area is zoned as R2 Low Density Residential zone under the provisions of this plan.

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

The objectives of this clause are as follows:

- (a) *to ensure minimum lot sizes are appropriate for the zones to which they apply and for the land uses permitted in those zones,*
- (b) *to minimise unplanned rural residential development.*

This clause goes on to outline that it is applicable to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan. Based on this the application is subject to the provisions of this clause which requires *'The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.'*

In this instance the subject site is mapped as having a minimum lot size of 450m² (Control G) with the proposed lot configuration as follows;

Proposed Lot 1: 516.5m²
Proposed Lot 2: 516.5m²

Having regard to the above, the proposal meets the minimum lot size for both proposed allotments and is therefore compliant with this clause. A SEPP No. 1 objection has been received in regards to the LEP 2000 controls as outlined above.

Clause 4.3 - Height of Buildings

The objectives of this clause include provisions to establish the maximum height for which a building can be designed and ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity.

This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. In this instance the proposed development site is identified as having a maximum building height of 9m (Control J), as identified on the building height map. Both dwellings are below this maximum being 7.9m and 7.742m high.

The proposed development is considered acceptable and the proposal does not contravene the provisions of this Clause.

Clause 4.4 – Floor Space Ratio

The objectives of this clause are as follows:

- (a) *to define the allowable development density of a site and for particular classes of development,*
- (b) *to enable an alignment of building scale with the size of a site,*
- (c) *to provide flexibility for high quality and innovative building design,*
- (d) *to limit the impact of new development on the existing and planned natural and built environment,*
- (e) *to encourage increased building height and site amalgamation at key locations in Tweed.*

This clause goes on to further state that the maximum floor space ratio (FSR) for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area. In this instance the applicable floor space ratio is 0.5:1 (Control D) over the entire site.

The subject development will result in two torrens title allotments, each with a proposed dwelling. Proposed Lot 1 is to have an area of 516.5m² and the proposed dwelling a gross floor area of 258m², equating to a FSR of 0.49:1.

Proposed Lot 2 is to have an area of 516.5m² and the proposed dwelling a gross floor area of 258m², also equating to a FSR of 0.49:1.

The proposal is compliant with the floor space ratios for both proposed allotments and is considered to be acceptable having regard to this clause.

Clause 4.6 - Exception to development standards

It is noted that the application as originally submitted required consideration under this clause, as the Floor Space Ratio was exceeding that allowable under clause 4.4 (above) was proposed. Subsequent to this it is noted that updated information has been provided with a lower floor space ratio proposed which now negates the need for this application to be considered under this clause.

Clause 5.5 – Development within the Coastal Zone

This clause of the LEP states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the following;

- (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*
 - (i) *maintaining existing public access and, where possible, improving that access, and*
 - (ii) *identifying opportunities for new public access, and*

The subject site does not impact on the provision of any public access to coastal lands nor is considered to represent an opportunity for a new public access given there is no through link from the site to public open space.

- (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*
 - (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
 - (ii) *the location, and*
 - (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

The proposed development is permissible on the subject site and meets Councils requirements with respect to appropriate building design. As such the proposal is considered to be acceptable at this location and is appropriate with respect to the above criteria.

- (c) *the impact of the proposed development on the amenity of the coastal foreshore including:*
 - (i) *any significant overshadowing of the coastal foreshore, and*
 - (ii) *any loss of views from a public place to the coastal foreshore,*

The proposed development is not considered to impact on any of the above, by virtue of its location, away from the coastal foreshore. As such, the proposal will not result in any detrimental impact on the amenity of the coastal foreshore,

- (d) *how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and*

The proposed development is not considered to compromise the scenic qualities of the coast as it represents and acceptable development on appropriately zoned land. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast.

- (e) *how biodiversity and ecosystems, including:*
 - (i) *native coastal vegetation and existing wildlife corridors, and*
 - (ii) *rock platforms, and*

- (iii) water quality of coastal waterbodies, and*
- (iv) native fauna and native flora, and their habitats, can be conserved, and*

The proposed development is to be undertaken on a site which is currently approved for residential purposes and is located within an established developed area. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems.

- (f) the cumulative impacts of the proposed development and other development on the coastal catchment.*

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the sites zoning and the permissibility of the development at this location.

This clause goes on to further state;

- (3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
 - (a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

As outlined elsewhere in this report, the proposal will not impede or diminish the right of access of the public either to or along the public foreshore.

- (b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

The proposed development does not propose a non-reticulated sewerage system as Council's sewerage infrastructure is available to the site.

- (c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

The subject application has been reviewed by Council's Development Engineering Unit with respect to stormwater disposal who has raised no concerns with stormwater drainage on this site provided that infiltration was utilised. In this regard it is noted that recommended conditions have been provided to apply in the event of approval of this application. The proposal is considered acceptable in this regard.

- (d) the proposed development will not:*
 - (i) be significantly affected by coastal hazards, or*
 - (ii) have a significant impact on coastal hazards, or*

- (iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above.

Clause 5.9 – Preservation of Trees or Vegetation

A small portion of the site is located within the Tree Preservation Order 1999 and the Tree Preservation Order 2011 (Koala Habitat). No vegetation is proposed to be removed as a part of this application. This clause is considered to be complied with.

Clause 5.10 - Heritage Conservation

The objectives of this clause are as follows:

- (a) *to conserve the environmental heritage of Tweed,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

There are no known Aboriginal sites recorded or Aboriginal places declared at or near the proposed development site. In this regard the proposal is not considered to impact negatively on the provisions of this clause.

Clause 5.11 - Bush fire hazard reduction

This clause outlines that, *'Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent.'*

It is noted that the subject development site is partially mapped as being bushfire prone by virtue of being located within the 30m and 100m vegetation buffer.

The subject application was nominated integrated under s100B of the Rural Fires Act 1997 and as such was referred to NSW Rural Fire Service who have provided a bushfire safety authority and conditions of consent to include in any approval.

Having regard to the comments received from NSW RFS, the proposal is considered to be acceptable with respect to bushfire considerations.

Clause 7.1 – Acid Sulfate Soils

The subject site is indicated as Class 4 acid sulfate potential on Council's mapping. This clause requires that an acid sulfate soil (ASS) management plan is provided for works below 2 metres below the natural ground level.

An acid sulfate soil management plan was submitted and considered satisfactory for the parent consent DA05/1464.

No further assessment is required in this regard.

Clause 7.2 - Earthworks

The site predominantly falls to Casuarina Way, with only a small portion of the rear of the site falling the other way.

No significant earthworks are proposed (apart from excavation for the swimming pools), and only very minor regrading of the site for slab-on-ground construction will be required.

No concerns are raised in relation to the proposed earthworks.

Clause 7.6 - Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.

This clause outlines that 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.*

As outlined elsewhere in this report, the subject application has been reviewed by Council's Development Engineering Unit with respect to stormwater disposal who has raised no concerns with stormwater drainage on this site. In this regard it is noted that recommended conditions have been provided to apply in the event of approval of this application. The proposal is considered to be acceptable with respect to the requirements of this clause.

Clause 7.10 - Essential Services

The subject site is located within an established residential area with all requisite essential services considered to be available. These include water and sewer reticulation, stormwater drainage, electricity and adequate vehicular access. Where required, appropriate conditions of consent would be applied to ensure that development is undertaken in accordance with Council requirements. The proposal does not negatively impact upon the provisions of this Clause.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988 (for that part of the site zoned 7(l))

Clause 32B: Coastal Lands

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
 - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*
 - (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The application is considered to comply with Clause 32b. Public access through the adjoining Lot 410 DP1162588 will be maintained via a formed cycleway which will be managed in accordance with an approved management plan to ensure ecological values are protected.

The proposal will not result in any overshadowing of foreshore areas and provides a suitable buffer to the Cudgen Creek to limit impacts upon the adjoining habitat.

Clause 43: Residential development

- (1) *The council shall not grant consent to development for residential purposes unless:*
 - (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
 - (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
 - (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
 - (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
 - (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

The proposal is considered to be an acceptable outcome with regard to this clause. It is consistent with the previously adopted DCP for the site.

The proposed development is not considered to adversely affect environmental features of the site or generate any unreasonable burden onto the local road network. Density has been maximised whilst ensuring measures are in place to protect the adjoining reserve and will not result in the creation of any adverse physical impacts upon the locality.

Clause 81: Development adjacent to the ocean or a waterway

- (1) *The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:*
 - (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
 - (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
 - (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*
- (2) *Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.*

As identified above the proposed subdivision does not further encroach on the previously established riparian corridor. It is considered that public access through Lot 410 DP1162588 should be controlled, given the ecological values and zoning of this land. Such measures have been established within previous approval and do not directly relate to the subject application.

SEPP No. 1 - Development Standards

The application required a SEPP 1 objection in relation to the 7(l) zone to the west of the subject allotments. This SEPP 1 has been addressed above and concurrence from the Department of Planning has been granted.

SEPP No. 44 - Koala Habitat Protection

The subject site does not comprise any vegetation on the site and therefore does not comprise potential Koala habitat.

SEPP No. 55 - Remediation of Land

As identified above previous approvals have addressed site contamination and appropriate conditions have been imposed on this consent to ensure consistency.

SEPP No 71 – Coastal Protection

Clause 18(2) requires a master plan if subdivision of land is proposed within the sensitive coastal zone. The site is partly identified as being sensitive coastal land and the applicant has provided correspondence from the Department of Planning (dated 17 September 2014) identifying that the master plan requirement can be waived.

The applicant has provided information addressing the matters in clause 8 of SEPP 71 and considers the proposal to be consistent with the aims of this policy.

The proposed subdivision will not have any impact on the coastal foreshore or scenic qualities of the NSW coast. It is consistent with the form of housing that exists in this area.

Land dedication along the Creek and foreshore have previously been provided in relation to maintaining riparian and foreshore buffers. Cultural matters have been assessed and cumulative impacts were taken into consideration in the original Court approval for Seaside City.

The application is considered suitable having regard to SEPP 71.

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

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

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The development contains minor variations to DCP A1 in relation to the pool setback for the northern allotment.

Section 6.3 control C1 states:

C1. The outer edge of the pool concourse or coping shall set back a minimum of 1 metre from the side or rear boundaries.

The proposed development results in the pool being located approximately 0.1 metres from the side boundary.

Council's Building Services has reviewed the application and has accepted the reduction in setback for the pool on the northern boundary. This has been accepted due to the property adjoining the Ocean Avenue Road Reserve and it is unlikely to create any undue impacts.

As such, it is considered that the development is well designed and the proposed variations are worthy of support.

A2-Site Access and Parking Code

Road design and street networks are discussed in subsection A5 – Subdivision Manual below.

The proposal being for two lot subdivision and two dwellings will require two parking spaces per dwelling which has been accommodated for with the provision of double garages for each house.

A5-Subdivision Manual

The proposed subdivision has been assessed against section A5 and is generally compliant. Relevant sections of A5 are addressed in more detail below.

A5.4.3 Physical Constraints

The Subdivision Manual (A5) requires that master planning of the site is undertaken to identify physical constraints, including environmental constraints on the development site or adjacent land. The intent is that urban form responds to the natural landform and drainage system, topographical features and environmental constraints. The proposal is consistent with the approved DCP for the site.

A5.4. Environmental Constraints

A5 also requires that site constraints are identified including contaminated land, landslip, bushfire threatened species, ecological communities, coastal lands, significant vegetation, landscape character, acid sulfate soils, heritage or cultural items.

These matters have been addressed in this report and it is considered that applicable constraints can be effectively managed by way of conditions of consent.

A5.4.7 Storm water Runoff, Drainage, Waterways and Flooding

Council's Development Engineer has provided the following information:

"Infiltration is a standard requirement for Casuarina, and has been nominated as a Positive Covenant requirement.

While written statements within the SEE refer to stormwater being infiltrated, the submitted dwelling plans contradict this by showing stormwater discharge lines being directed to the street. Appropriate consent conditions will be imposed to reinforce the infiltration requirements."

In addition in regards to waterways the DCP stipulates requirements for riparian buffers. In this regard the buffers at Seaside City have been predetermined by the original subdivision pattern and DA05/1464. This development does not reduce these buffers but does increase the intensity of development by 1 additional dwelling. As detailed in this report this is considered reasonable subject to the conditions of consent.

A5.4.8 Urban Structure

The Subdivision Manual seeks to ensure neighbourhood design is walkable, connected and includes an interconnected street network. It is also considered that a network of well distributed parks should be provided, as well as neighbourhood centres that act as a community focus and surrounded by higher density.

The urban structure has been dictated by the approved Tweed DCP Part B11. The urban structure is considered suitable.

A5.4.10 Movement Network

This section of the Subdivision Manual seeks to ensure adequate street network and intersection design.

Council's Engineer has provided the following comments in this regard:

"The site has two road frontages, although only one of these is constructed as road. The northern frontage to Ocean Avenue is not for vehicular access and contains significant landscaping and a dual use path.

The main frontage to Casuarina Way is fully constructed, and has a straight, flat alignment. No concerns regarding access to Casuarina Way."

A5.4.11 Open Space Network

All park requirements for Seaside City have been approved as part of DA05/1464. The proposed additional allotments do not generate the need for additional parks as the approved parks were based on an ultimate population which this development contributes to.

Table A5-9.4 – Land in Zone 2 (e) Residential Tourist (Now R2 - Low Density Residential under Tweed LEP 2014

The proposal complies with the minimum lot size for dwelling houses of 450m².

The subdivision will result in two 12.2m frontages which has been accepted by Council's Development Assessment Engineer with no concerns raised.

All lots have a long axis which runs east west providing adequate solar access opportunities.

The application is considered to achieve compliance with DCP Section A5.

A11-Public Notification of Development Proposals

The proposed development was notified for 14 days in accordance with Section A11 of Tweed Council's DCP 2008. During the notification period there was no submissions received.

A15-Waste Minimisation and Management

The applicant has provided a Preliminary Waste Management Plan in accordance with Section A15. It is considered that the proposed development can adequately catered for by Council's existing waste serviced.

B9-Tweed Coast Strategy

Section B9 provides a broad overview of major strategic planning issues relevant to the Tweed Coast generally.

The proposal is generally consistent with B9 and does not contravene the intended urban structure, centres hierarchy or design principles relating to the Tweed Coast.

Section B9 includes specific provisions relating to riparian buffers in TSC.7.9. It states that riparian buffers should be 50 metres wide, however where the buffer adjoins an environmental protection zone, the buffer need only have a minimum width of 20 metres (from the edge of the environmental protection zone).

Control TSC.7.10 states that the riparian buffer zone should incorporate two components, being a 20 metre core buffer (adjoining the mean high water mark) and a 30 metre outer buffer, adjacent to any section of the core buffer that adjoins Cudgen Creek. It is not required where the core buffer adjoins an environmental protection zone. The outer buffer does not need to be dedicated to Council.

As detailed above, the buffers at Seaside City have been predetermined by the original subdivision pattern and DA05/1464. This development does not reduce these buffers but does increase the intensity of development by an additional dwelling. As detailed in this report this is considered reasonable subject to the conditions of consent.

B11-Seaside City

The subject site is located within the locality pertaining to Plan No B11 – Seaside City. This Plan sets out a planning framework for the locality and seeks to, amongst other things, reflect and enhance the relaxed coastal character; encourage development that is sympathetic to the character of the Far North Coast; protect and enhance environmental values and provide residential accommodation that makes good use of available and sought after land.

Structure Plan

The document also provides a desired future character and structure of the locality and nominates the subject site as 'Coastal Housing' within the Structure Plan for Seaside City.

Addressing the street

In respect of specific design criteria, it is considered that the proposal will adequately address the street with both dwellings fronting the street (including from upper level decks) and providing casual surveillance of the street as well as avoiding continuous garages.

Building siting

Building siting is considered to be satisfactory, with external living areas oriented to the north and north west where possible.

Privacy

Private areas for both dwellings are located on the side facing north and to the rear of the dwellings which is satisfactory. The location of the private open space areas

for the adjoining site to the north is also on the northern boundary and also the Ocean Avenue Road Reserve. As such there will be no conflicts with the subject private open space.

Deep soil zones

Adequate DSZs are provided for both dwelling 1 and dwelling 2 as per DCP A1 requirements. A condition will be applied to ensure that no additional hard surfaces are constructed on the subject site to ensure adequate site coverage.

Setbacks

B11 provides 3 options for setbacks. The SEE has not provided any specific details in respect to which category the proposed development falls into. However, it is considered that the proposal closely aligns to Option 1 being as follows:

Front - minimum 6m

Side - minimum 900mm and 1.5m for two storey

Rear - minimum 6m

Reduced front and rear setbacks will be considered but only where additional north-side setbacks are provided.

The following setbacks are provided:

Front

Dwelling 1

6.5m to front elevation of dwelling. There are support posts for the upper level deck and the upper level deck located within the 6m setback zone, however DCP B11 allows encroachments for balconies of open design (and similar structures) 3m into the setback zone if they are no more than 50% of the main building façade. The deck and support structures are considered to fall into this category and thus the encroachment is acceptable.

Dwelling 2

Same as Dwelling 1 however the setback is slightly increased to 6.6m. Upper level deck and support encroachments are considered acceptable.

Side

Both dwellings have a minimum of 900mm setbacks at ground level and 1.5m at first floor.

Rear

There is a 9.9m setback from the rear setback. This is considered to be sufficient, particularly given the deep soil zone and landscaping provisions are met.

It is therefore generally considered that the proposal generally complies with the setback provisions as listed within DCP B11 and where there are variations proposed, these have been adequately justified.

Fencing

B11 states that front fencing may be a total height of 1.2m with a maximum of 75% solid construction that is to be softened through the use of landscaping. Front return fencing is also to be a maximum of 1.2m from the street front boundary line

to the dwelling. Conditions will be applied with regard to the front fencing panels meeting these requirements.

Maximum height of side boundary fencing is 1.8m with a maximum of 1.2m in the 7(l) zone. Conditions will be applied with regard to the fencing within the 7(l) zone meeting these requirements. The proposal includes 1.8m high timber fencing between dwellings and to the side boundaries.

Building form controls

Coastal housing should be no more than 9m in height (ridge); the proposal complies with this control at 7.9m and 7.742m. Maximum building site coverage (based on land area) should be no more than 50%; the proposal is 39% for Proposed Lot 1 and 45.4% for Proposed Lot 2 and therefore complies with this control. Minimum landscaped area is 30%; the proposal comprises approximately 36% landscaped area on Proposed Lot 1 and 32% landscaped area on proposed Lot 2 and therefore complies. Planting areas will feature a diverse mix of groundcovers, shrubs and trees. Planting and species to be in accordance with the Plan of Management for the 7(l) zone.

Design criteria - low density housing

The proposal comprises skillion roofs and the use of lightweight cladding and rendered brickwork that is in keeping with the general desire of built development in the locality. The FSR is approximately 0.49:1 which is compliant with the B11 requirement of 0.5:1.

In general it is considered that the proposed development accords with the objectives of B11 and will be in keeping with the general desired character of built development within the Seaside City locality.

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

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

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises a residential development on an appropriately zoned site. The development will not restrict access to any foreshore areas is considered acceptable in this regard.

Clause 92(1)(b) Applications for demolition

The proposed development does not involve demolition.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline including: recreation; water quality; heritage; land use and development potential; coastal ecology and, social and economic demand.

Under this plan, the subject site is not identified as having any key management actions or specific management strategies. The proposal is assessed as being consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is not located in close proximity to any of these creeks and as such this management plan does not apply to the subject application.

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

As the subject site is not located in proximity to either the Cobaki or Terranora Broadwater to which this plan relates, this Plan is not considered relevant to the proposed development.

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

Context and Setting

The proposed development is not considered to have any significant impact upon the residential amenity of the occupants of adjoining properties. The proposal is considered reasonable and appropriate, given the site is located within an urban area zoned for residential use. The proposal does not compromise the existing character of the area, and is consistent with developments of a similar nature within the locality.

Access, Transport and Traffic

The proposal is not considered likely to generate significant volumes of traffic so as to be detrimental to the character of the area. The subject site is considered to be able to accommodate the additional traffic and parking requirements generated by this proposed development, as determined by Council's Development Engineering Unit.

Overshadowing

The dwellings have proposed lengths of approximately 28m and 30m along the southern boundary. The dwellings have been amended to show compliance with a 900mm setback for the ground floor level and a 1500mm setback for the first floor level. By stepping the dwellings in for the second storey it has reduced the perceived bulkiness of the proposal and has reduced the overshadowing of allotments to the south.

It should be noted that the proposed development complies with the setbacks and has a building height which is under the maximum allowed. Additionally, the proposed development has provided for varying architectural features along the southern boundaries which include varied materials and colours, roof lines and size of windows.

The dwelling to the south of the proposed development is located setback between 2.5m and 3.3m from the boundary with landscaping provided along the northern boundary.

It is therefore considered that there is adequate distance between the properties and the overshadowing as a result of the proposed development will not significantly alter the amenity of the existing residents.

Construction

The construction of the proposed development will be subject to standard conditions being included on any consent issued. It is noted that Council's Building Unit have reviewed the application and had no objection to its development subject to conditions. The development phase of the proposal will present some interruption to the ambience of the surrounding area but this is only temporary in nature and it is considered that potential amenity impacts can be adequately ameliorated through appropriate conditions of consent.

Infrastructure Charges

The subject site was originally owned by Richtech who re-subdivided the block in 2008 (DA08/0755). Accordingly the subject site is now connected to water and sewer however the proposed new lot needs to be charged for one additional ET for all applicable S64 and S94 contributions as listed below:

- Water - DSP 6
- Water - South Kingscliff Levy
- Sewer - Kingscliff STP
- Plan No. 4 - TRCP (Sector 7)
- Plan No. 5 - Not applicable local open space provided within Seaside City and structured charged under Plan No 28 see below.
- Plan No. 11 - Libraries
- Plan No. 12 - Bus Shelters
- Plan No. 13 - Eviron Cemetery
- Plan No. 15 - Community Facilities
- Plan No. 18 - Council Admin
- Plan No. 22 - Cycleways - No charge works in kind credit still applicable
- Plan No. 26 - Regional Open Space
- Plan No. 28 - Seaside City (structured open space only)

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is located within an existing residential area. The bulk and form of the proposed dwellings are considered acceptable and generally in keeping with surrounding development, being a low density residential development in an

area zoned for such development. It is considered that the proposed development would not be out of character with the residential development in the area.

Topography

All required bulk earthworks will occur as part of DA05/1464. The previously approved earthworks are compliant with Council's policies.

Site Orientation

The configuration of the site allows for the long axis of the proposed lots to be provided on an east /west orientation to allow for increased solar access.

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

Public Submissions

The application was notified and advertised from Friday 8 August 2014 to Friday 22 August 2014.

During this time, no submissions were received.

NSW Rural Fire Service

The subject application was nominated integrated under s100B of the Rural Fires Act 1997 and as such was referred to NSW Rural Fire Service (RFS).

The RFS have provided a bushfire safety authority and conditions of consent to which will be included on any consent in the event of approval of the application.

NSW Planning & Environment

SEPP No. 1 - Objection

The application required a SEPP 1 objection in relation to the 7(l) zone to the west of the subject allotments. This SEPP No. 1 has been addressed in this report and concurrence from the NSW Department of Planning & Environment has been granted as show in the letter dated 17 September 2014.

SEPP No. 71 - Master Plan Waiver

Clause 18(2) requires a master plan if subdivision of land is proposed within the sensitive coastal zone. The site is partly identified as being sensitive coastal land and the applicant has provided correspondence from the Department of Planning in a letter dated 17 September 2014, identifying that the master plan requirement can be waived.

(e) Public interest

The proposed development is considered suitable for the site as it is a permissible form of development and the relevant planning considerations have been taken into account in the assessment of the application. The proposed development does not present any issues that are considered to be contrary to the public interest and generally aligns with the applicable development legislation, as outlined in this assessment report.

OPTIONS:

1. Approve the application as per the recommendations.
2. Refuse the application providing reasons.

Council officers recommend option 1.

CONCLUSION:

Council is in receipt of a subdivision application for the north-west precinct of Seaside City. The proposed subdivision is generally consistent with the site specific DCP and the intent of the primary R2 - Low Density Residential zone under Tweed LEP 2014 and Clause 53C of the Tweed LEP 2000.

The proposal is recommended for approval, subject to conditions to limit and manage potential impacts arising from the development.

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.

10 [PR-PC] Development Application DA14/0582 for Alterations and Additions to Existing Service Station, Demolition of Existing Workshop and Addition of Fast Food Restaurant and Drive through at Lot 1 DP 866266; No. 53-57 Darlington Drive Banora Point

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA14/0582 Pt2

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 development application seeking approval for works to the Caltex Service Station and car workshop at 53-57 Darlington Drive, Banora Point. Specifically the application seeks consent for alterations and additions to the existing service station, demolition of the existing workshop and addition of fast food restaurant and drive through facility (to cater for the McDonalds food chain).

The McDonald's component includes: a McCafe; Children's Playland and Terrace; drive through facility; and associated signage. The proposed hours of operation of the takeaway restaurant are the same as the existing service station being 5.00 am to 11.00 pm. There will be a total of 80-100 staff employed within the newly created fast food restaurant. Please note the proposed signage plans incorrectly reference 24 hour operation but this is not sought and if the application is approved those incorrect plans will be marked up to delete reference to any 24 hour operation.

The service station component results in an additional 31.7m² of storage area.

It should be noted that the subject site already has the benefit of a active development consent (DA10/0746 approved on 27/05/2011) for alterations and additions to the existing building for a new retail and fast food outlet (the actual fast food outlet was not nominated), demolition of existing workshop and construction of restaurant and drive through takeaway. The subject development application alters minor parts of this previous approval however was submitted as a new development application rather than a S96 Modification. If Council were to approve the subject application there is a condition recommended requiring the surrender of DA10/0746. If Council are to refuse the subject application the applicant could proceed with DA10/0746 which forms an attachment to this report.

The subject Development Application received two objections during the advertising period. The main issues raised were traffic, noise impacts and lighting issues which have been addressed further on in this report.

The application has been forwarded to Council for determination as a result of Cr Polglase and Cr Byrne requesting the application be determined by Council. The application is recommended for approval, subject to the attached conditions.

RECOMMENDATION:

That Development Application DA14/0582 for alterations and additions to existing service station, demolition of existing workshop and addition of fast food restaurant and drive through at Lot 1 DP 866266; No. 53-57 Darlington Drive Banora Point be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:

- 01 - Existing Site Survey, Existing Floor and Demolition Plan dated 21/08/14;
- 02 - Proposed Site Plan dated 16/12/14;
- 03 - Existing Building Plans dated 21/08/14;
- 04 - New Floor Plans dated 16/12/14;
- 05 - Elevations dated 21/08/14;
- 06 - Landscape Plan dated 21/08/14.

prepared by PRG architects and Plan Nos:

- SK-A004 rev I - Proposed Site Plan dated 22/05/14;
- SK-A100 rev F - Proposed Floor Plan dated 28/02/14;
- SK-A201 rev B - South & West Elevations dated 22/05/14;
- SK-A202 rev B - North & East Elevations dated 22/05/14;
- SK-A801 rev A - Site Signage Plan dated 22/05/14;
- SK-A805 (as amended in red) - Signage Details 1 dated 22/05/14;
- SK-A806 - Signage Details 2 dated 22/05/14;
- SK-A807 - Signage Details 3 dated 22/05/14.

prepared by McDonalds National Development Group and Plan Nos:

- 28355-A200AG rev B dated 22/07/14;
- 28355-A199AG rev A dated 22/07/14

prepared by Caltex, except where varied by the conditions of this consent.

[GEN0005]

2. All signage is to be fitted with necessary devices capable of permitting the change in intensity of illumination of the sign in order to regulate glare or other like impacts.

[GEN0075]

3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

4. 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]

5. Two Sewer manhole are present on this site. This manhole is not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then application shall be made to Council's Water Manager for approval of such works.

[GEN0155]

6. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.
[GEN0190]
7. 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]
8. Any air-handling system, hot water system, humidifying system, warm-water system, water-cooling system or any other 'regulated system' as defined in Section 26 of the Public Health Act 2010 shall be installed in accordance with the relevant requirements of Part 2 Clause 6 of the Public Health Regulation 2012.
[GEN0315]
9. Prior to demolition work commencing a sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm by 300mm shall be erected in a prominent visible location on the site. The sign shall remain in place until all asbestos has been removed from the site.
[GEN0345]
10. Prior to the commencement of construction of the new structure or use of the site if asbestos containing material has been identified and removed from the site a 'clearance inspection' shall be conducted for the site and a 'clearance certificate' issued by a licensed asbestos assessor or competent person which states that the site 'does not pose a risk to health and safety from exposure to asbestos' in accordance with Clause 474 of the Work Health and Safety Regulation 2011. A copy of this certificate shall be forwarded to the Principal Certifying Authority and Council within 7 days of completion of the 'clearance inspection'.
[GEN0350]
11. All illuminated signs are to be utilised during approved business operation hours only. Outside of approved business operation hours all illuminated signs are to be turned off.
[GENNS01]
12. The applicant shall comply with all recommendations of the contamination assessment reports carried out by Cavanna consulting Ref: 11027L01-Lyst01 and dated 21 September 2010 and Ref: 14019 R02 and dated 14 August 2014.
[GENNS02]
13. A noise level assessment is to be carried out by a suitably qualified acoustic consultant once full equipment selections are determined in relation to all mechanical plant equipment and a Noise Assessment Report shall be provided to Council's Environmental Health Officer for review and approval. Any recommendations as contained within the Noise Assessment Report shall be implemented to the satisfaction of council's General Manager or Delegate within 60 days of the date of the Noise Assessment Report or other period as determined by council's General Manager or Delegate.
[GENNS03]

[GENNS03]

14. Pursuant to Section 80A(1)(b) of the Environmental Planning and Assessment Act, 1979 (As amended) and Clause 97 of the Environmental Planning and Assessment Regulations, 2000 Development Consent No. DA10/0746 dated 27/05/2011 shall be surrendered by lodgement of the prescribed information, suitably executed, PRIOR to the issue of an Occupation Certificate in regards to DA14/0582.

[GENNS04]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

15. Details of the kitchen exhaust system are to be provided and approved prior to release of the Construction Certificate if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle of filters. The system shall comply with AS1668.2 - Ventilation Requirements.

[PCC0735]

16. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

17. 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]

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

[PCC1195]

19. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[PCC1235]

20. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate to discharge to Councils sewerage system.

[PCC1255]

21. Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. Oil/grease traps, separators, etc) shall be installed in accordance with Tweed Shire Councils Trade Waste Policy. Submission of detailed hydraulic plans and specifications indicating size, type, location and drainage installations in accordance with AS 3500 shall be submitted to Council for approval.

[PCC1265]

22. Three copies of detailed hydraulic plans shall be submitted with all trade waste applications which indicate size, type and location of pre-treatment devices. All plumbing and drainage installations to these devices shall comply with AS3500.

[PCC1275]

23. Prior to the issue of a construction certificate a separate Section 138 application is to be applied for to allow the installation of a centre median on Leisure Drive from the roundabout splitter island at the Darlington Drive round-a-bout to 15 metres west.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

25. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.

[PCW0125]

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

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

[PCW0215]

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

[PCW0225]

28. 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]

29. 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]

30. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

31. 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]

32. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected

to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

DURING CONSTRUCTION

33. 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]

34. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

35. All works shall comply with AS2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2011.

[DUR0165]

36. 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]

37. 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]

38. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0225]

39. All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Councils General Manager or his

delegate to neutralise any offensive odours. The point of discharge shall be approved by Councils General Manager or his delegate prior to installation and shall include a water sampling outlet.

[DUR0235]

40. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.

[DUR0255]

41. The development shall meet the building construction requirements of Australian Standard AS 2021 (*Acoustics - Aircraft Noise Intrusion - Building Siting and Construction*).

[DUR0285]

42. Prior to demolition of the structure is commenced all asbestos material shall be identified and removed from the site by an asbestos removalist who is licensed to carry out the work by WorkCover NSW. All asbestos waste shall be disposed at a facility that is licensed to receive asbestos waste (all receipts related to disposal must be kept on site and provided to a Council Authorised Officer upon request).

[DUR0335]

43. 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]

44. 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]

45. 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]

46. 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]

47. Excavation

(a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.

(b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

48. The finished floor level of the fast food restaurant building should finish not less than 225mm above finished ground level.

[DUR0445]

49. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011.

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]

50. 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]

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

[DUR0815]

52. 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 a Subdivision Certificate/Occupation Certificate.

[DUR0995]

53. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:

- Noise, water or air pollution.
- Dust during filling operations and also from construction vehicles.
- Material removed from the site by wind.

[DUR1005]

54. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.

[DUR1075]

55. Fire hose reels shall be installed in accordance with the provisions of Part E1.4 of the Building Code of Australia and comply with Australian Standard AS1221 and AS2441. Alternatively the service station and fast food restaurant are to be fire separated in accordance with Part C of the NCC (BCA).

However, they shall not be installed until the PCA has been furnished with a certificate, signed by a Hydraulics Engineer stating that the design and proposed manner of installation complies with the relevant standards.

[DUR1255]

56. All walls in the food preparation and storage areas shall be of solid construction. For this purpose walls in such areas may be of masonry or stud wall construction. If stud wall construction is used then the wall shall be lined as a minimum with 9mm thick high impact resistant material eg. Villaboard or Versilux lining or other suitable material(s) approved by Council's Environmental Health Officer and tiled to a height of at least 2 meters.

Masonry walls where not tiled may be cement rendered to provide a smooth faced impervious finish up to the underside of the ceiling.

Metal stud wall framing in lieu of timber framing shall be used in areas where the walls and floor surfaces will be subjected to high levels of moisture or alternatively as directed by Council's Environmental Health Officer.

All penetrations of the wall surface in food preparation areas shall be effectively sealed to the satisfaction of Council's Environmental Health officer.

[DUR1495]

57. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.

[DUR1505]

58. Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3.

[DUR1515]

59. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.

[DUR1545]

60. A floor waste connected to the drainage system shall be provided within 1.5 metres of the opening of the cool room.

[DUR1565]

61. During the course of the construction and fitout of the kitchen/food premises periodic inspections must be arranged with Councils Environmental Health officer to ensure compliance with all health related conditions of approval and respective legislation.

[DUR1575]

62. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned.

[DUR1605]

63. The walls and floors of the premises must be lined, sealed or sheeted with an approved smooth impervious material capable of being easily cleaned.

[DUR1615]

64. The walls immediately behind any basin shall be provided with an impervious splashback to a height of 450mm and at least 150mm either side of the basin.

[DUR1625]

65. All hazardous and/or dangerous goods shall be handled and stored in a designated area away from stormwater drains. The designated area is to be:

- (a) Roofed;
- (b) Provided with a sealed floor; and

Bunded so as to hold 110% of the total quantity of goods stored. Bunded area(s) shall not be flood-labile and shall be provided with pump out facilities.

[DUR1635]

66. 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]
67. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428. [DUR1695]
68. 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]
69. 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]
70. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times. [DUR2015]
71. 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]
72. A garbage storage area shall be provided in accordance with Council's "Development Control Plan Section A15 - Waste Minimisation and Management". [DUR2195]
73. 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]
74. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed. [DUR2245]
75. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request. [DUR2435]
76. 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]

77. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

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

[DUR2525]

79. 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]

80. 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]

81. 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]

82. House drainage lines affected by the proposal are to be relocated to Council's satisfaction. Prior to the relocation of any plumbing and drainage lines, a plumbing permit and the relevant plumbing permit fee is to be submitted to Council. Inspection of drainage works prior to covering is required

[DUR2565]

83. A trade waste agreement will be issued and a permit number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement

[DUR2685]

84. Written notice shall be provided to the 'regulator' at least 5 days before the removalist commences licensed asbestos removal work in accordance with Clause 466 of the Work Health and Safety Regulation 2011.

[DUR2840]

85. Only one service per lot shall be connected to the Council Water meter. Where two (2) or more tenancies are connected by means of a single water service pipe, individual water meters shall be installed to each tenancy beyond the single Council water meter. Should hydraulic analyses undertaken by the developer indicate that a larger Council water meter is required for the development; the developer shall apply to Council using the Water Service Connection form for an upgrade to their existing meter.

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

86. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

87. 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]

88. 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]

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

[POC0355]

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

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

- (a) **Tweed Road Contribution Plan:**
193.905 Trips @ \$1380 per Trips **\$267,589**
(\$1,318 base rate + \$62 indexation)
S94 Plan No. 4
Sector2_4

[POC0395/PSC0175]

91. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website www.foodnotify.nsw.gov.au or alternatively by contacting the NSW Food Authority on 1300650124.

[POC0625]

92. The premises is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.

[POC0635]

93. 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:	11.382 ET @ \$12907	\$146,907.47
Sewer:	18.300 ET @ \$6201	\$113,478.30

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.

[POC0675]

94. 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]
95. Prior to the issue of an occupation certificate, the works required by the Section 138 application in relation to a centre median on Leisure Drive are to be complete.
[POCNS01]
96. Prior to the issue of an Occupation Certificate, the acoustic barrier along the northern and western boundary must be constructed to a minimum of 2.2m high relative to finished level of the site.
[POCNS02]
97. Prior to the issue of an Occupation Certificate, the acoustic barriers shall be constructed using a material with a surface mass greater than 12.5kg/m². Suitable materials include (but not limited to) lapped timber palings, plywood, compressed fibre cement, Perspex, glass, concrete or masonry. A combination of materials may be used if desired. No gaps or holes shall exist in the barrier at ground level.
98. Prior to the issue of an Occupation Certificate, a bond of \$10,000 (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond is for the purpose of a future centre median extension on Leisure Drive to prohibit right turn access into the Development if further works are considered by Council to be necessary.

The bond will be held by Council for a period of 12 months from the date on which the Occupation Certificate is issued. It is the responsibility of the proponent to apply for refund following the 12 month period.

[POCNS03]

USE

99. 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]
100. 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]
101. Hours of operation of the business are restricted to the following hours:
- * 5.00am to 11.00pm - Seven days per week
[USE0185]
102. All deliveries to the premises are to be in accordance with the provisions of the Environmental Noise Assessment Report prepared by TTM Soundmatters Ref: 14GCA0053R01-1 dated 20 August 2014 except where varied by conditions of this consent or unless otherwise approved by Councils General Manager or his delegate. Urgent or medical related deliveries exempted.

115. Surface finish for grade must be low-squeal.

[USENS04]

116. Any grates or other protective covers in the car parks and access driveways must be rigidly fixed in position to eliminate clanging, and be maintained.

117. The ordering point is to be located as far from neighbouring properties as practical.

118. Use of directional speakers and specific aiming configuration of loudspeakers is required.

119. A sound limiting device shall be installed for all loudspeakers.

120. The use is to minimise the volume of the speakers where practical.

121. Orders are only to be placed at the window after 10pm.

[USENS05]

REPORT:

Applicant: Gemspark Pty Ltd
Owner: Gemspark Pty Ltd
Location: Lot 1 DP 866266; No. 53-57 Darlington Drive Banora Point
Zoning: B2 - Local Centre
Cost: \$1,600,000

Background:

Subject Site

The site has a total area of 3,845m². The site is of an irregular rectangular shape with a curved frontage at the Leisure Drive/Darlington Drive intersection. The site is bound by Darlington Drive to the east, Leisure Drive to the south, two storey brick retirement village units to the north and single storey brick retirement village units to the west. On the opposite side of Leisure Drive is the Banora Point Shopping Centre and on the opposite side of Darlington Drive are single storey residential dwellings. The site is relatively flat in nature with landscaping provided along the boundaries of the development.

Existing improvements on the site include:

- service station/convenience store building;
- canopy over the service station forecourt;
- four (4) refuelling bowsers;
- a car repair workshop in a separate building;
- car parking for 17 vehicles; and
- advertising signage.



Subject Site

The existing development comprises a service station with two lubrication bays and a convenience store approved as Development Consent D92/0287 on 28/10/1992.

DA03/0745 was approved on 4/08/2003 for the removal and replacement of a number of signs and the erection of three additional signs for the Caltex Service Station.

Alterations and additions to the service station/convenience store via DA03/1435 were approved on 31/10/2003.

The most recent application was an approval being DA10/0746 on 27/05/2011 for alterations and additions to the existing building for a new retail and fast food outlet (the actual fast food outlet was not nominated) demolition of existing workshop and construction of restaurant and drive through takeaway. The new development application alters minor parts of this approval however was submitted as a new development application rather than a S96 Modification.

Proposed Development

The proposal is to undertake alterations and additions to the existing service station to demolish the existing workshop and construct a takeaway restaurant. Specifically, the proposal involves:

- demolition of the existing workshop and construction of a fast food restaurant with a gross floor area (GFA) of 283m² (restaurant), 36.7m² terrace and 23.7m² play-land;
- alterations to the service station shop including the relocation of the northern wall to accommodate the driveway for the drive through facility and the provision of an additional 31.7m² floor area which contains additional storage area;
- removal of the part of the existing canopy between the refuelling area and the convenience store;
- provision of an additional 16 onsite parking spaces, making a total in all of 33 parking spaces plus the spaces in the refuelling area;
- McDonalds corporate signage including a 8.5 metre high pylon sign along the Leisure Drive frontage and 2 x 8.5m high flagpoles;
- alteration of the Darlington Drive access driveway to accommodate the drive through facility; and
- construction of acoustic fences along the northern and western boundaries.

The proposed drive through takeaway restaurant is single storey with a maximum height of 5m to the top of the parapet, 6.2m to the air conditioning screen and 7.45m to a small blade wall.

In terms of staff numbers, the McDonald's operation anticipates that 6-10 employees will be utilised for any one shift, with a total of 80-100 staff employed on the site.

Landscaping is proposed for the site along the frontage of Leisure Drive and Darlington Drive and throughout the car parking area and drive-thru area.

The proposed advertising signs consist of wall/fascia signs and a pylon sign. There are also a number of directional signs all of which have been discussed later in the report.

The proposed hours of operation of the takeaway restaurant are the same as the existing service station being 5.00am to 11.00pm.

SITE DIAGRAM:



Locality Plan

Lot 1 DP 866266
No. 53-57 Darlington Drive, Banora Point

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, as to the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations or "dig before you dig" enquiry must be made by calling 1200. The information contained on this document remains valid for 30 days, only from the date of supply.

Cadastral 09/12/2014
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Boundaries shown should be considered approximate only.

0 0.5 1 Km
1:50,000 @ A4 Portrait
00 NPT SCALE
COPY ONLY - NOT CERTIFIED



Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484

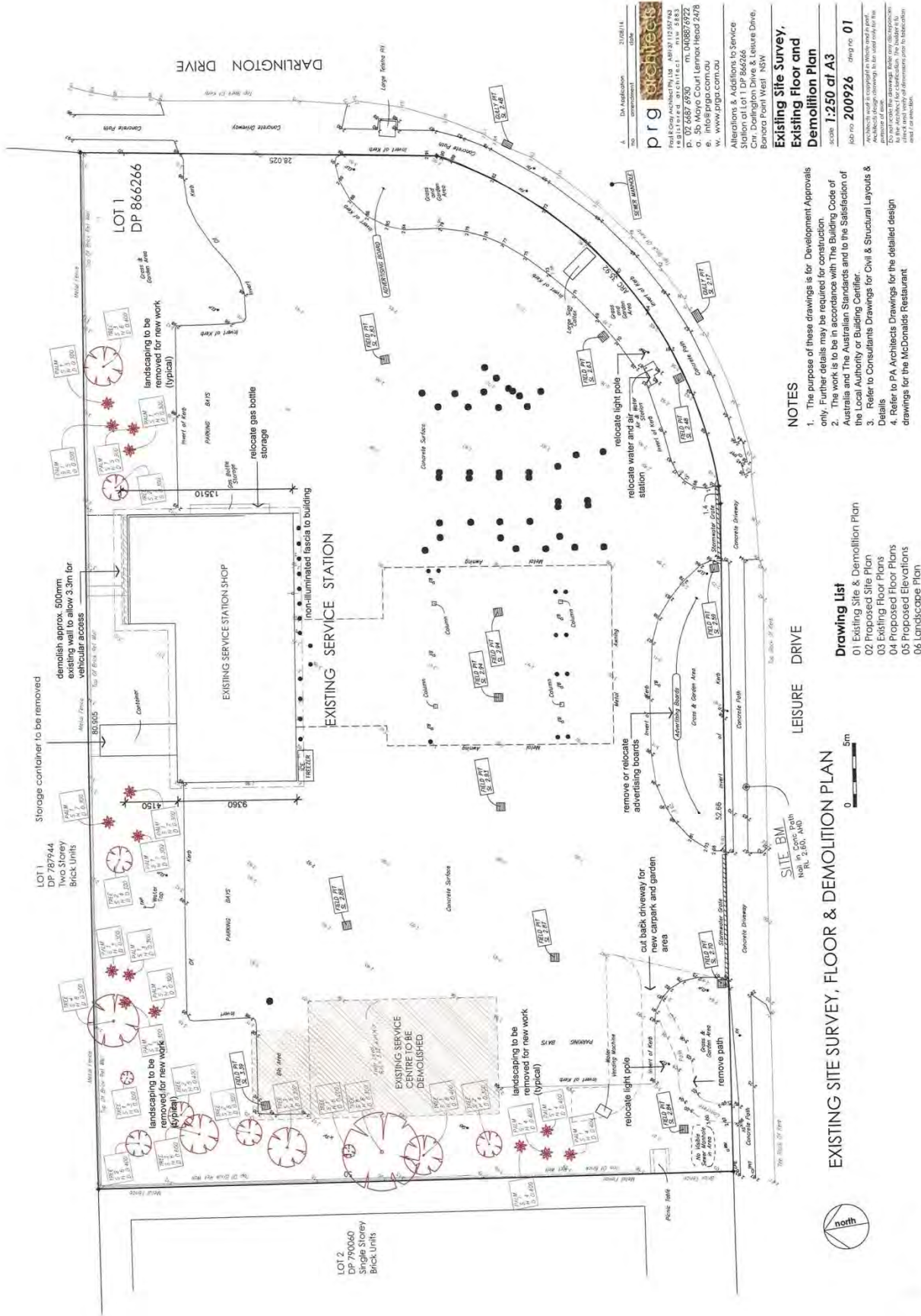


TWEED
SHIRE COUNCIL

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F | (02) 6670 2429
W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au

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DEVELOPMENT/ELEVATION PLANS:



DA Application No. 2108/14
 No. 02/2487/8530
 PRG architects
 Level 6 City Architects Pty Ltd, 6/111 Sturt Street, Adelaide SA 5000
 P. 02 6487 8530 M. 040887 7922
 F. 08 8392 1111
 a. 5b Mayo Court Lennox Head 2478
 e. info@prg.com.au
 w. www.prg.com.au

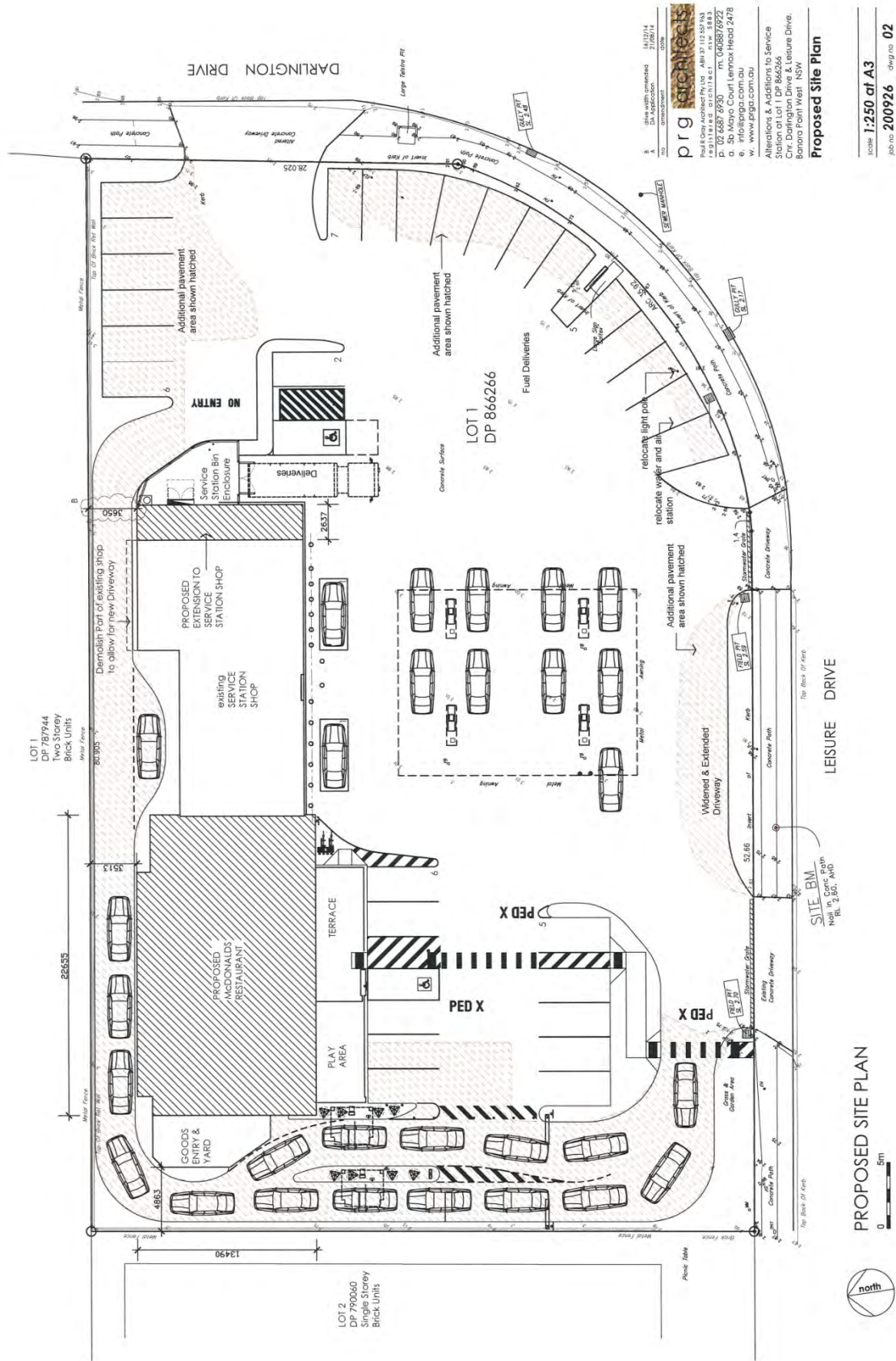
Alterations & Additions to Service Station at Lot 1 DP 866266
 Cnr. Darlington Drive, Leisure Drive, General Post Office, RSA
Existing Site Survey, Existing Floor and Demolition Plan
 Scale: 1:250 of A3
 Job no. 200926 dwg no. 01

- NOTES**
- The purpose of these drawings is for Development Approvals only. Further details may be required for construction.
 - The work is to be in accordance with The Building Code of Australia and The Australian Standards and to the Satisfaction of the Local Authority or Building Certifier.
 - Refer to Consultants Drawings for Civil & Structural Layouts & Details.
 - Refer to PA Architects Drawings for the detailed design drawings for the McDonalds Restaurant

- Drawing List**
- 01 Existing Site & Demolition Plan
 - 02 Proposed Site Plan
 - 03 Existing Floor Plans
 - 04 Proposed Floor Plans
 - 05 Proposed Elevations
 - 06 Landscape Plan



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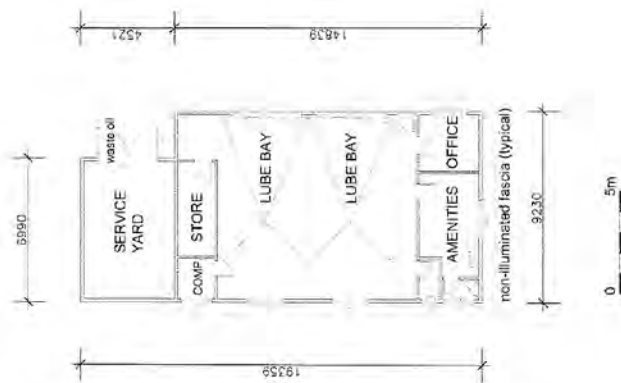


A Site with amended 16/12/14
 DA Application 2/182/14
 DATE OF COMMITMENT
prg architects
 Paul & Cathy Architects Pty Ltd ABN 37 112 557 963
 1/157-159 St Leonards Rd, St Leonards NSW 1585
 Tel: 02 9437 2929 Fax: 02 9438 6927
 a. 157 St Leonards Rd, St Leonards NSW 1585
 b. 55 Mayo Court Lemnos Head 2478
 c. 157 St Leonards Rd, St Leonards NSW 1585
 d. info@prga.com.au
 e. www.prga.com.au
 Alterations & Additions to Service
 Station at Lot 1 DP 866266
 Cnr. Darlington Drive & Leisure Drive,
 Banana Point West NSW

Proposed Site Plan

Scale: **1:250 at A3**
 Job No: **200926** Sheet No: **02**
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 checked and verify all dimensions prior to fabrication
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16/12/2014 9:52:59 AM



EXISTING FLOOR PLANS OF WORKSHOP AND SHOP

prg
 PROJECT REGISTRATION
 PROJECT REGISTRATION (PRG) IS THE KEY TO SUCCESS
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 REGISTERED PROJECT REGISTRATION (PRG) NUMBER
 0. 335 Moore Court Hemlock (BC) V4V 1R6
 BC. CANADA
 TEL: 604.666.0000
 FAX: 604.666.0001
 WWW.PRG.CO.BI

AltaScholar & Associates II Service
 Station Ltd. Ltd. #6226
 Chr. Durlingour Drive & Jensen Drive
 Surrey Point West: B5W

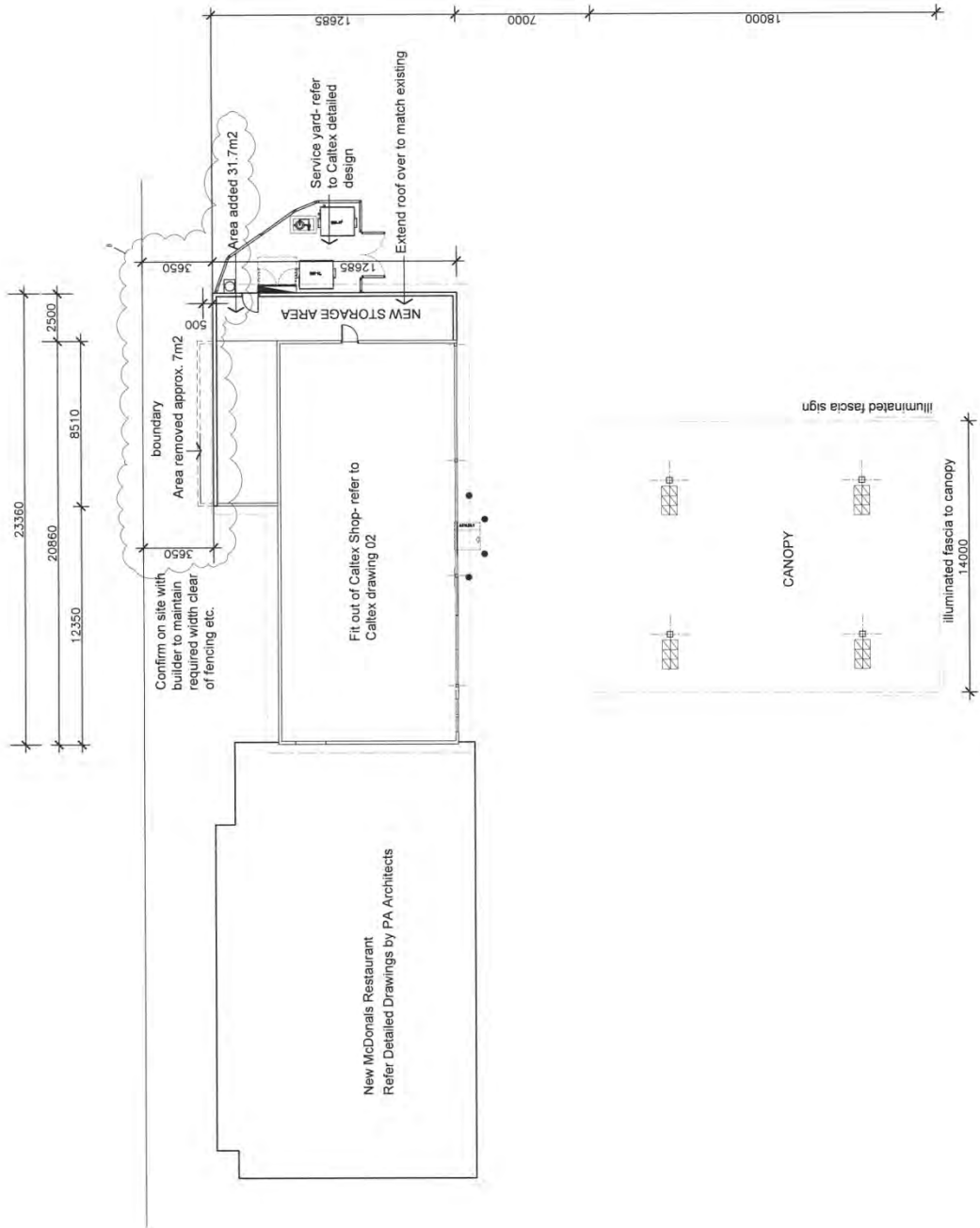
Existing Building Plans

Scale: 1:200 of A3
 Drawing: 03
 200926

Project: 1:200 of A3
 Drawing: 03
 200926

Project: 1:200 of A3
 Drawing: 03
 200926

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NEW FLOOR PLAN OF SERVICE STATION SHOP

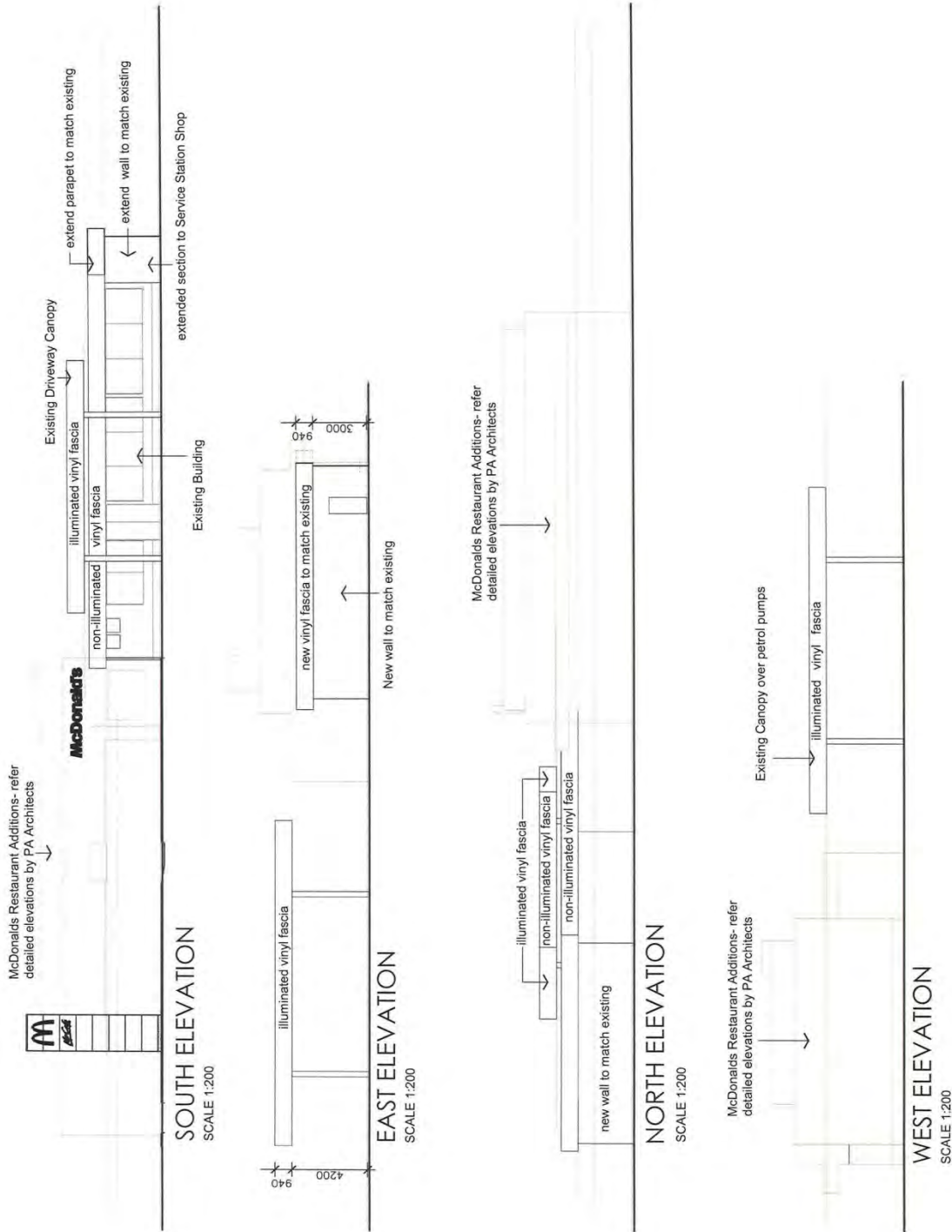


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A. Site: 14/07/14
 B. Drawn: 21/08/14
 C. Date: 02/08/14
 D. Scale: 1:200
 E. Title: NEW FLOOR PLAN OF SERVICE STATION SHOP
 F. Client: PA ARCHITECTS
 G. Project: 200926
 H. Drawing: 04
 I. Date: 16/12/2014
 J. Time: 9:51:31 AM

PA ARCHITECTS
 Paul & Cheryl Archibald Pty Ltd
 50 Moyro Court Lennock Head 2478
 SA 5015
 Australia
 Tel: 08 8668 7922
 Fax: 08 8668 7923
 Email: info@pa.com.au
 Web: www.pa.com.au

New Floor Plans
 Scale: 1:200 of A3
 Job No: 200926
 Drawing No: 04
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A. DA Application No. 2/08/14



Paul & Gray Architects Pty Ltd ABN 37 112 557 848
 10/115 Sturt Street, Adelaide SA 5000
 G. 08 2487 6930 F. 08 2487 6931 M. 0408872922
 O. 50 Mayo Court Lennox Head 2478
 E. info@prg.com.au W. www.prg.com.au

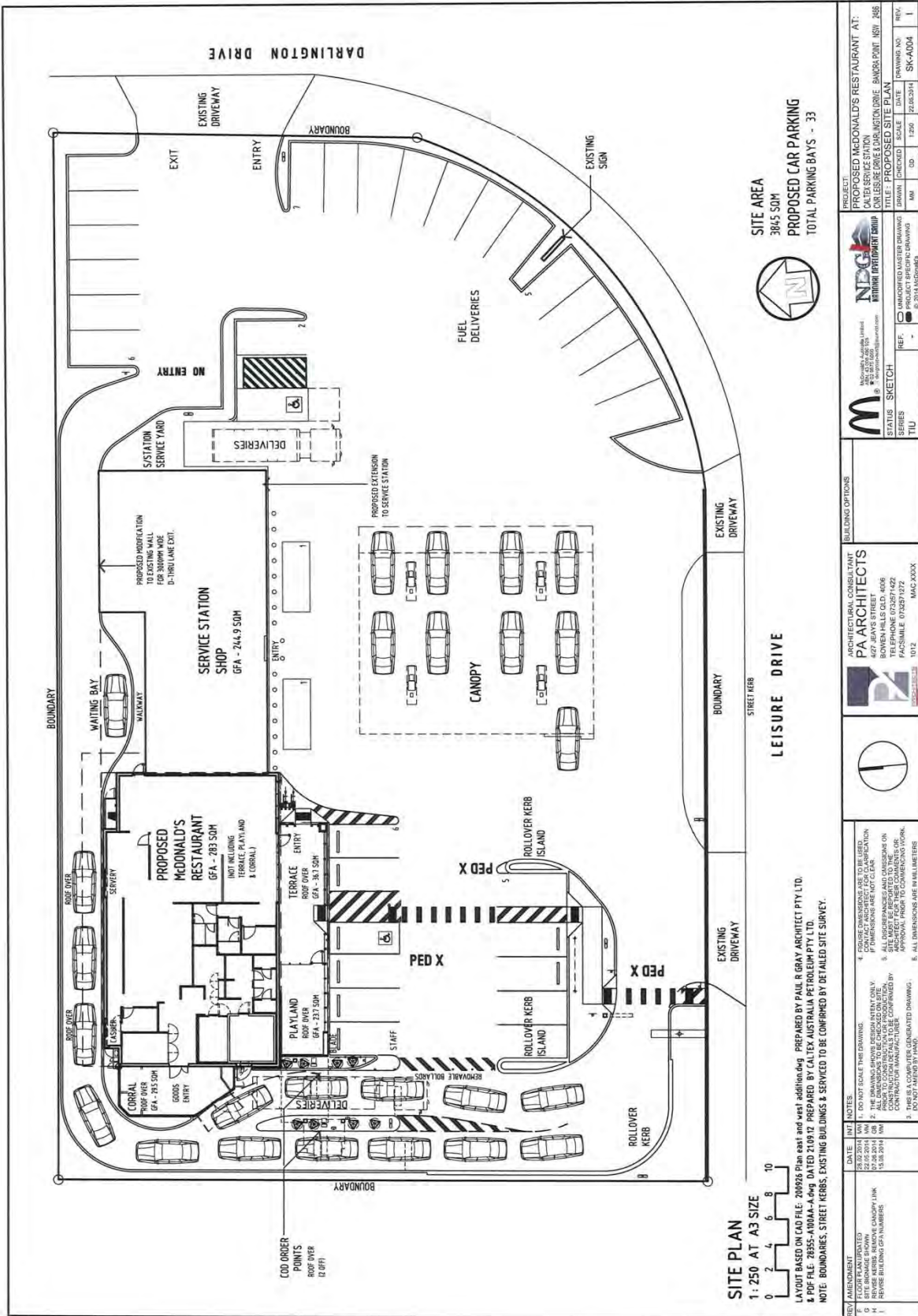
Alterations & Additions to Service Station at Lot 1 DP 846246
 Cnr. Darlington Drive & Leisure Drive,
 Bonnor Park West NSW

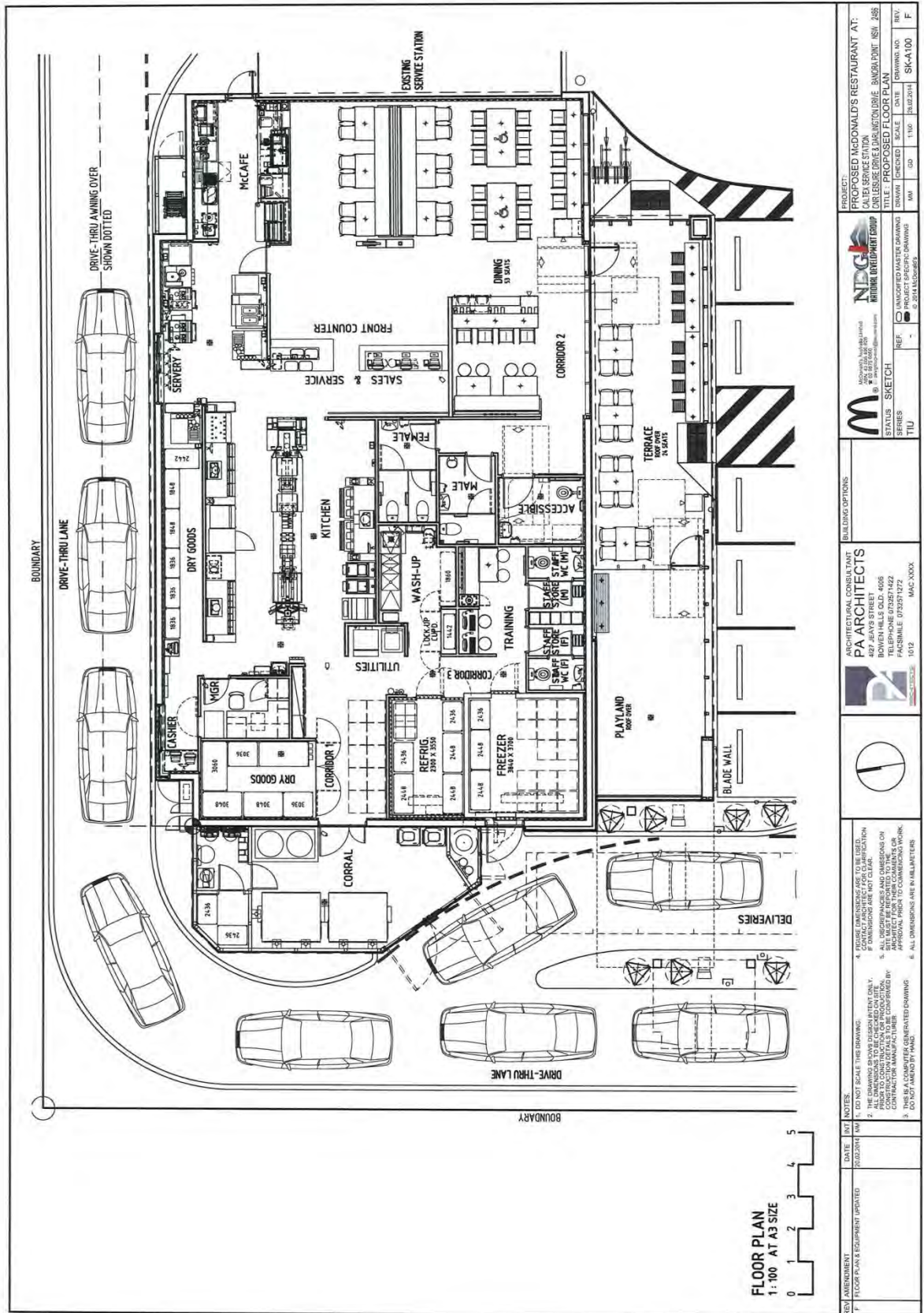
Elevations

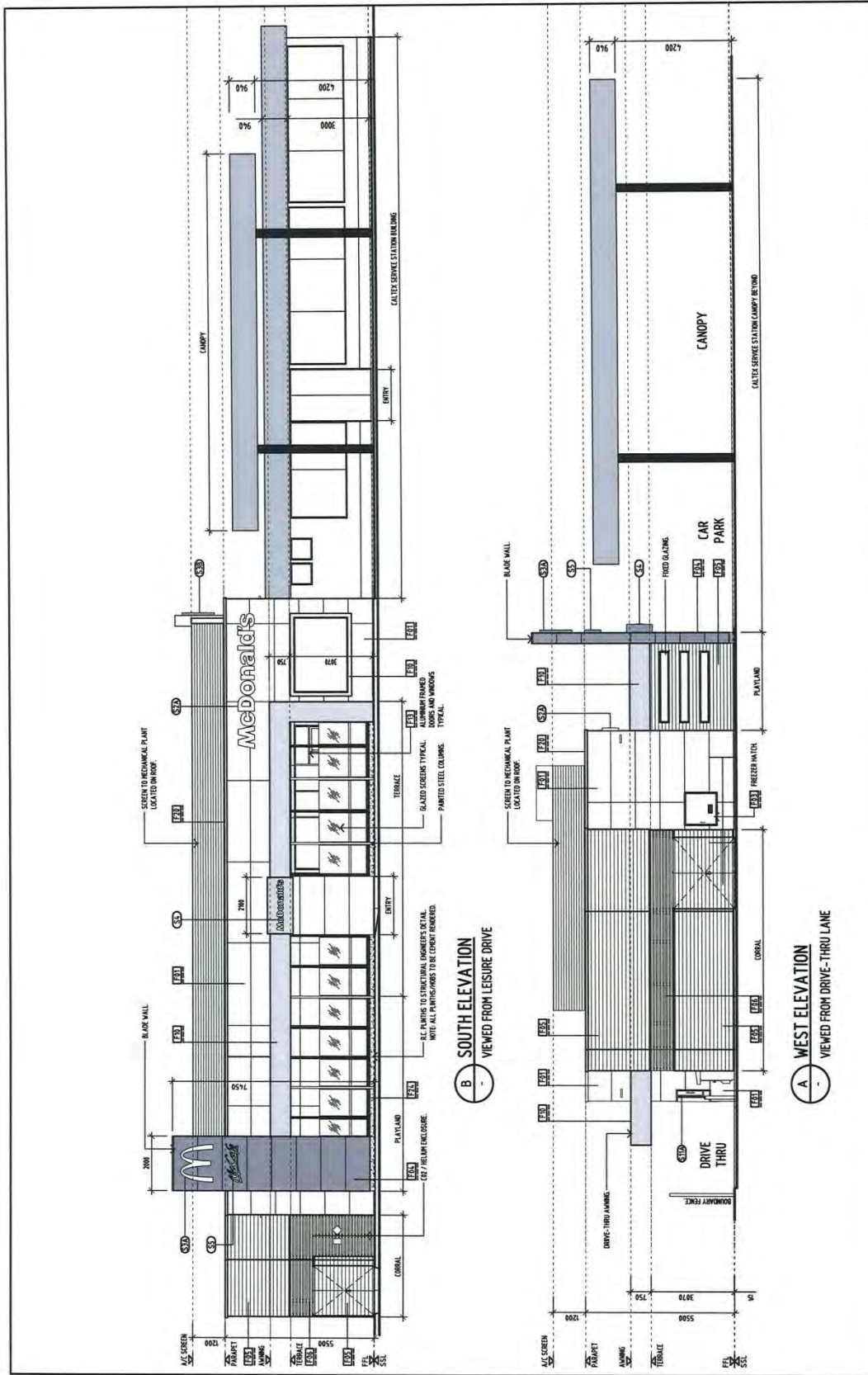
Scale: **1:200 at A3**
 Job No: **200926** dwg no: **05**

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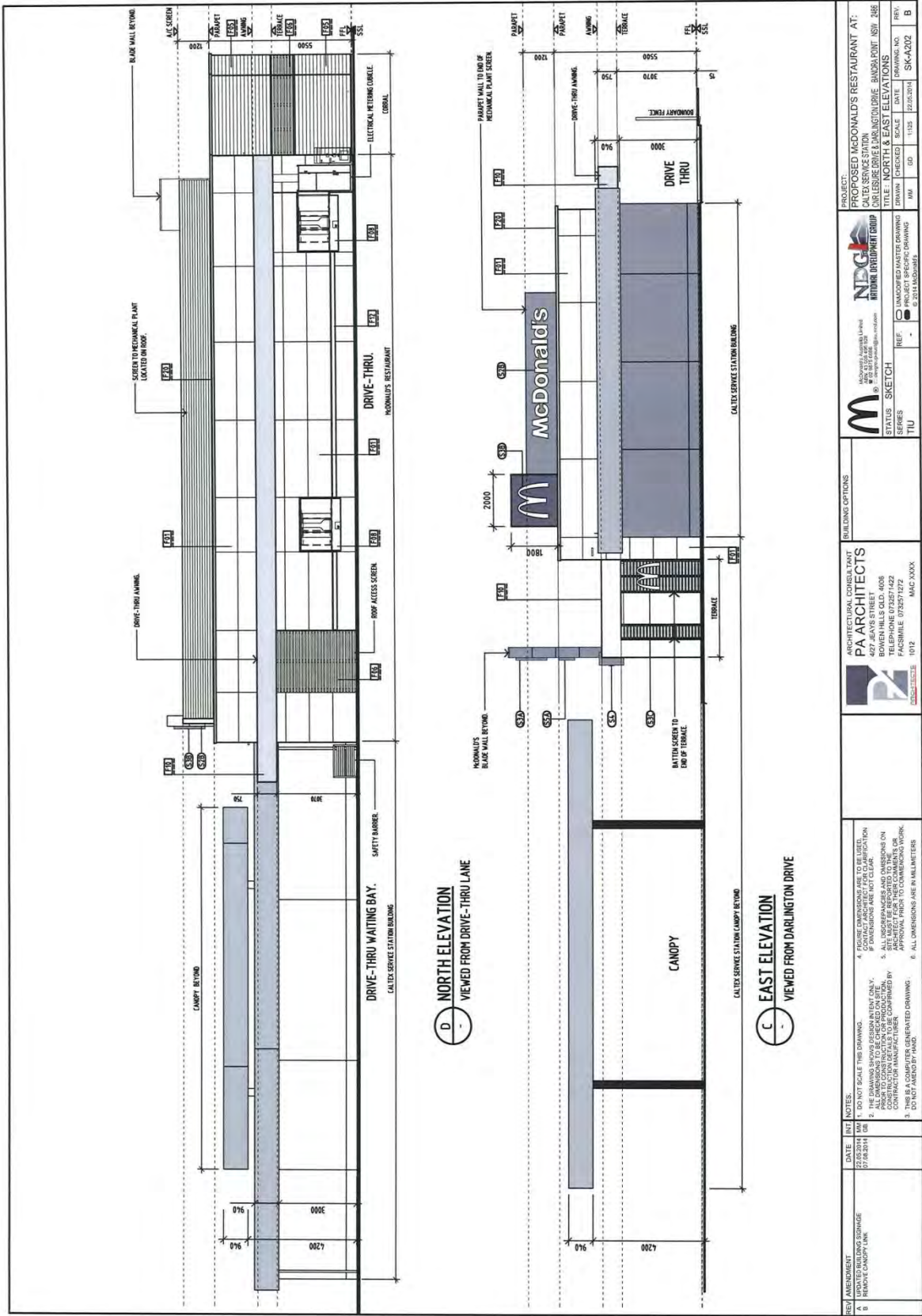




B SOUTH ELEVATION
VIEWED FROM LEISURE DRIVE

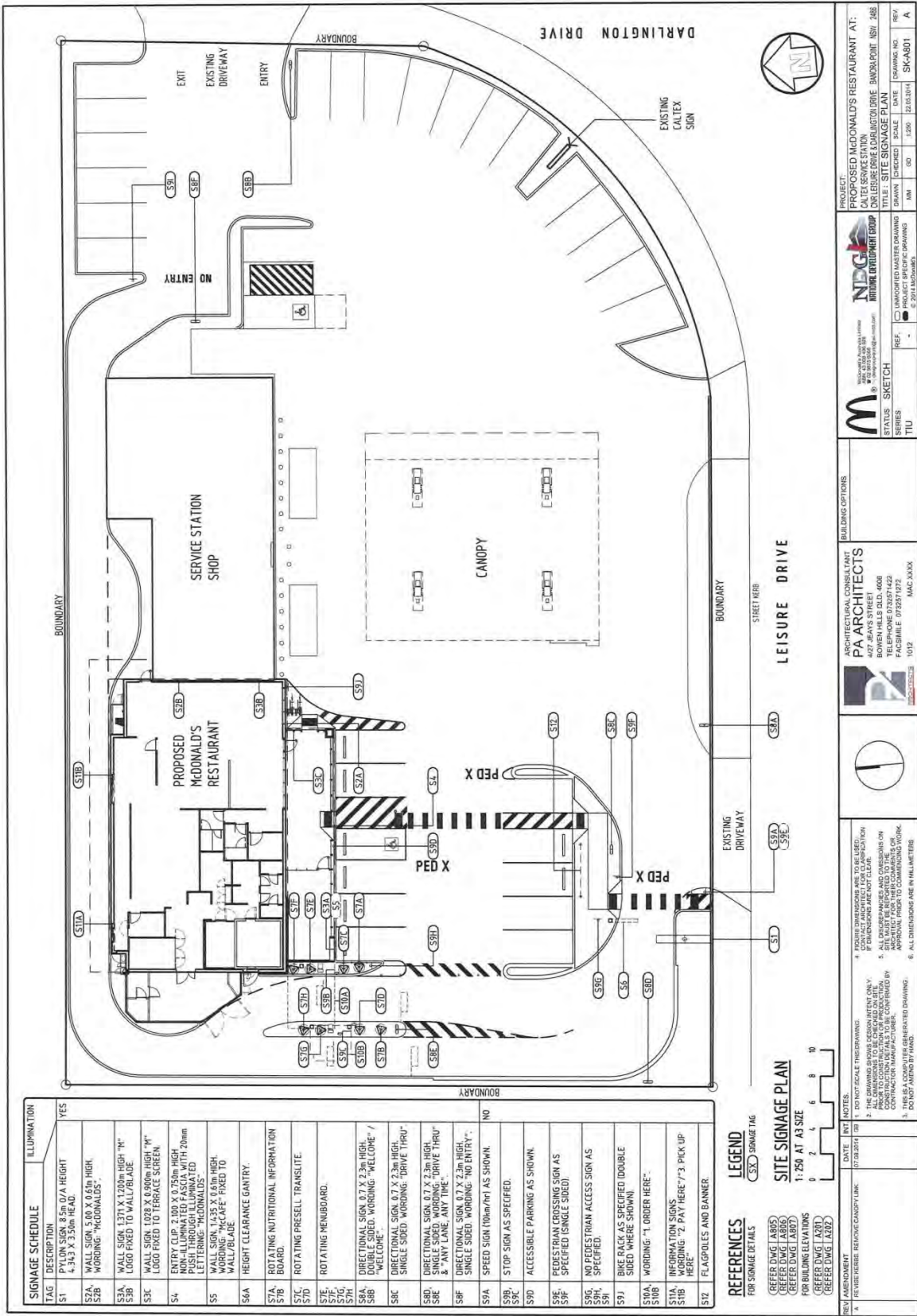
A WEST ELEVATION
VIEWED FROM DRIVE-THRU LANE

REV/AMENDMENT A 1 15.05.2014 REVISIONS AND DRAWN BY: P. M. O'BRIEN	DATE	INT	NOTES:
	22.05.2014 08.05.2014	DM	<p>1. DO NOT SCALE THIS DRAWING.</p> <p>2. ALL DIMENSIONS ARE TO BE CHECKED ENTIRELY.</p> <p>3. ALL DIMENSIONS ARE TO BE CHECKED ENTIRELY.</p> <p>4. FOUR (4) DIMENSIONS PER TO BE CHECKED ON EACH DRAWING.</p> <p>5. SITE MUST BE REFERENCED TO THE CONSTRUCTION DETAILS TO BE COMPARED BY APPROVAL PRIOR TO COMMENCING WORK.</p> <p>6. ALL DIMENSIONS ARE IN MILLIMETERS.</p>
<p>PROJECT: PROPOSED MCDONALD'S RESTAURANT AT: CATER SERVICE STATION, CORKS LEISURE DRIVE & DUBLIN LANE, BANGOR POINT, NSU, 298 TITLE: SOUTH & WEST ELEVATIONS</p> <p>ARCHITECTURAL CONSULTANT PA ARCHITECTS BOWEN ROAD, BOYNE PARK, WOLFEATHLET, WEXFORD, CO. WEX., IRELAND. PH: 053 9327 422 FAX: 053 9327 422 MAC XXXX</p>			
<p>STATUS: SKETCH SERIES: TIU DRAWN: (CHECKED) I DATE: 22.05.2014 SCALE: 1:125 CHECKED: GD DATE: 22.05.2014 SCALE: SCA200</p>			



REV	AMENDMENT	DATE	INT	NOTES
A	UNDATED BUILDING/SHARPE	22.05.2014	MM	1. DO NOT SCALE THIS DRAWING.
B	HUGHES CANOPY PLAN	17.05.2014	GM	2. THE DRAWING SHOULD BE USED AS A GUIDE ONLY. IT IS NOT TO BE USED FOR CONSTRUCTION OR PRODUCTION OF ANY KIND WITHOUT THE WRITTEN APPROVAL OF THE ARCHITECTURAL CONSULTANT.
				3. THIS IS A COMPUTER GENERATED DRAWING. ALL DIMENSIONS ARE IN MILLIMETERS.
				4. FIGURE DIMENSIONS ARE TO BE BELIEVED UNLESS OTHERWISE SPECIFIED. DIMENSIONS ARE NOT CLEAR.
				5. ALL DIMENSIONS AND COORDINATES ON THIS DRAWING ARE TO BE BASED ON THE DATUM POINT PROVIDED BY THE ARCHITECTURAL CONSULTANT.
				6. ALL DIMENSIONS ARE IN MILLIMETERS.

<p>ARCHITECTURAL CONSULTANT PA ARCHITECTS 427 JEAN STREET BOWEN HILLS QLD 4008 AUSTRALIA TEL: 07 557 2222 FACSIMILE: 07 557 2272 MAC XXXX 1912</p>	<p>BUILDING OPTIONS</p>	<p>PROJECT: PROPOSED MCDONALD'S RESTAURANT AT: 10/100 DARLINGTON DRIVE BOWEN HILLS QLD 4008 TITLE: NORTH & EAST ELEVATIONS DRAWN: [] CHECKED: [] SCALE: [] DATE: [] SERIES: SKETCH STATUS: [] UNAMENDED MASTER DRAWING [] PROJECT SPECIFIC DRAWING [] REV: [] DRAWING NO: SKA202 REV: [] DATE: 22/05/2014</p>
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TAG	DESCRIPTION	ILLUMINATION
S1	PYLON SIGN, 8.5m O/A HEIGHT 4.342 X 3.33m WEA.	YES
S2A	WALL SIGN, 5.00 X 0.61m HIGH, WORDING "MCDONALD'S".	
S3A	WALL SIGN, 1.371 X 1.200m HIGH "M" LOGO FIXED TO WALL/BLADE	
S3B	WALL SIGN, 1.029 X 0.900m HIGH "M" LOGO FIXED TO TERRACE SCREEN.	
S4	ENTRY CLIP, 2.100 X 0.725m HIGH DUAL LUMINA, 1.100 X 0.200m HIGH PUSH THROUGH ILLUMINATED LETTERING "MCDONALD'S"	
S5	WALL SIGN, 1.235 X 0.61m HIGH WORDING "WELCOME" FIXED TO WALL/BLADE	
S6A	HEIGHT CLEARANCE GANTRY.	
S7A	ROTATING NUTRITIONAL INFORMATION BOARD.	
S7B	ROTATING PRESELL TRANSLITE.	
S7C	ROTATING MENUBOARD.	
S7D	ROTATING MENUBOARD.	
S7E	ROTATING MENUBOARD.	
S7F	ROTATING MENUBOARD.	
S7G	ROTATING MENUBOARD.	
S7H	ROTATING MENUBOARD.	
S7I	ROTATING MENUBOARD.	
S7J	ROTATING MENUBOARD.	
S7K	ROTATING MENUBOARD.	
S7L	ROTATING MENUBOARD.	
S7M	ROTATING MENUBOARD.	
S7N	ROTATING MENUBOARD.	
S7O	ROTATING MENUBOARD.	
S7P	ROTATING MENUBOARD.	
S7Q	ROTATING MENUBOARD.	
S7R	ROTATING MENUBOARD.	
S7S	ROTATING MENUBOARD.	
S7T	ROTATING MENUBOARD.	
S7U	ROTATING MENUBOARD.	
S7V	ROTATING MENUBOARD.	
S7W	ROTATING MENUBOARD.	
S7X	ROTATING MENUBOARD.	
S7Y	ROTATING MENUBOARD.	
S7Z	ROTATING MENUBOARD.	

REV	AMENDMENT	DATE	INT	NOTES
1	ISSUED FOR PERMITTING	07/03/2014	02	1. DO NOT SCALE FROM DRAWING 2. ALL DIMENSIONS TO BE CHECKED ON SITE 3. CONTRACTOR TO VERIFY ALL DIMENSIONS 4. CONTRACTOR TO VERIFY ALL DIMENSIONS 5. CONTRACTOR TO VERIFY ALL DIMENSIONS 6. CONTRACTOR TO VERIFY ALL DIMENSIONS

REV	AMENDMENT	DATE	INT	NOTES
1	ISSUED FOR PERMITTING	07/03/2014	02	1. DO NOT SCALE FROM DRAWING 2. ALL DIMENSIONS TO BE CHECKED ON SITE 3. CONTRACTOR TO VERIFY ALL DIMENSIONS 4. CONTRACTOR TO VERIFY ALL DIMENSIONS 5. CONTRACTOR TO VERIFY ALL DIMENSIONS 6. CONTRACTOR TO VERIFY ALL DIMENSIONS

1:250 AT A3 SIZE

LEGEND
S3C SIGNAGE TAG

ARCHITECTURAL CONSULTANTS
PA ARCHITECTS
407 BEAVS STREET
SYDNEY NSW 1588
TELEPHONE 02 9257 1429
FACSIMILE 02 9257 1722
MAC 0000

UNMODIFIED MASTER DRAWING
DRAWN (CHECKED) DATE
SCALE
DATE
DRAWING NO.
REV
REV
REV

PROJECT: PROPOSED MCDONALD'S RESTAURANT AT CALVEE SERVICE STATION ON LEISURE DRIVE & DARLINGTON DRIVE BUNDAPOIN NSW 2488
TITLE: SITE SIGNAGE PLAN
DRAWN (CHECKED) DATE
SCALE
DATE
DRAWING NO.
REV
REV
REV

UNMODIFIED MASTER DRAWING
DRAWN (CHECKED) DATE
SCALE
DATE
DRAWING NO.
REV
REV
REV

REV/ AMENDMENT

DATE

INT

NOTES:

1. DO NOT SCALE THIS DRAWING.
2. THE DRAWING SHOWS DESIGN INTENT ONLY. IT IS THE RESPONSIBILITY OF THE PRODUCER TO VERIFY DIMENSIONS AND TO PROVIDE DIMENSIONS TO THE CONTRACTOR MANUFACTURER.
3. THIS IS AN UNCORRECTED UNFINISHED DRAWING.
4. FIGURE DIMENSIONS ARE TO BE USED. DIMENSIONS ARE NOT CLEAR.
5. ALL DIMENSIONS AND DISTANCES ON THIS DRAWING ARE TO BE MEASURED FROM THE FACE OF THE PANEL UNLESS SPECIFIED OTHERWISE.
6. ALL DIMENSIONS ARE IN MILLIMETERS.

ARCHITECTURAL CONSULTANT

PA ARCHITECTS
 4/27 BEAUS STREET
 BOWEN HILLS QLD 4006
 PHONE: 07 3251 7172
 FACSIMILE: 07 3251 7173
 1012 MAC XXXX

BUILDING OPTIONS

PROJECT: PROPOSED McDONALD'S RESTAURANT AT:
 125-127 STANTON DRIVE, BANGORA POINT NSW 2486

PROJECT GROUP: NEDGI NATIONAL DEVELOPMENT GROUP
 182/184 BROADWAY, SYDNEY NSW 2010

STATUS: SKETCH

TITLE: SIGNAGE DETAILS 1

REF.	DATE	SCALE	DATE	DRAWING NO.	REV.
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

TITLE: SIGNAGE DETAILS 1

DRAWN: MM
CHECKED: MM
DATE: 15 JUN 13
SCALE: 1:10
DRAWING NO.: SK-A805

S2A WALL SIGN
A801
INDIVIDUAL POLYCARBONATE LETTERING INTERNALLY ILLUMINATED. WHITE LETTERS.

S3A WALL SIGN
A801
2600 BLADE
1710
1200

S3B WALL SIGN
A801
2600 BLADE
1710
1200

S3C WALL SIGN
A801
YELLOW FLAT FACE POLYCARBONATE LOGO INTERNALLY ILLUMINATED. YELLOW LOGO ON SOLID RED BACKGROUND.

S4 ENTRY CLIP
A801
7100
350
95
155
95
35
35
200
TERRACE OFFSET
SIDE

S5 BLADE SIGN
A801
2800 BLADE
1435
90

NOTE
S5S S4 & S5 WILL REQUIRE WHITE TRANSFORMER. TRANSFORMERS SHALL BE CONCEALED AND ACCESSIBLE TO SERVICEABLE AS LOCATED OR SELECTED FOR SIGN.

S7 ROTATING MENUBOARD / TRANSLITE
A801
1737
532
1264
400

S8 DIRECTIONAL SIGN
A801
1900
700
1655
500
50
2900
200
350
698
SIDE
FRONT

ALTERNATIVE WORDING
FALL IN TITLE CASE:
"DRIVE THRU"
"WELCOME"
"NO ENTRY"
"NOW OPEN"
"ANY TIME, ANY DAY"
OPTIONAL ARROW WHERE REQUIRED

COD UNIT BASE PLATE DETAIL
SCALE 1/10
95 95
35 35
95 95
95 95
FRONT OF COD UNIT.
WIRING CONDUITS SHALL BE 100MM DIA TYPE SUPPLIED AND INSTALLED BY THE COD CONTRACTOR AFTER FOOTING IS POURED BY BUILDER.
REFER ELECTRICAL DETAILS FOR CONDUIT SPECIFICATIONS.
1 X 32 O/A CONDUIT RUNNING TO VEHICLE DETECTOR LOOP BY BUILDER. THIS CONDUIT CAN BE OMITTED IF A DETECTOR LOOP IS BEING SAWN OUT AND AN EXISTING PAVEMENT AND/OR SURFACE FINISHING CONTRACTOR TO TAKE THE BASE OF THE COD UNIT LOGO UNIT FOOTING MUST BUTT HARD AGAINST BACK OF KERB.

DATE	REV	NOTES
		1. DESIGN OF THE SIGNAGE
		2. THE SIGNAGE SHALL BE MANUFACTURED BY THE SIGNAGE CONTRACTOR IN ACCORDANCE WITH THE SIGNAGE CONTRACTOR'S SPECIFICATIONS AND THE SIGNAGE CONTRACTOR'S DRAWINGS. THE SIGNAGE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.
		3. THE SIGNAGE SHALL BE MANUFACTURED FROM POLYCARBONATE WITH A SOLID RED BACKGROUND AND WHITE LETTERS AND LOGO.
		4. THE SIGNAGE SHALL BE MANUFACTURED FROM POLYCARBONATE WITH A SOLID RED BACKGROUND AND YELLOW LETTERS AND LOGO.
		5. THE SIGNAGE SHALL BE MANUFACTURED FROM POLYCARBONATE WITH A SOLID RED BACKGROUND AND YELLOW LETTERS AND LOGO ON A SOLID RED BACKGROUND.
		6. THE SIGNAGE SHALL BE MANUFACTURED FROM POLYCARBONATE WITH A SOLID RED BACKGROUND AND YELLOW LETTERS AND LOGO ON A SOLID RED BACKGROUND.
		7. THE SIGNAGE SHALL BE MANUFACTURED FROM POLYCARBONATE WITH A SOLID RED BACKGROUND AND YELLOW LETTERS AND LOGO ON A SOLID RED BACKGROUND.
		8. THE SIGNAGE SHALL BE MANUFACTURED FROM POLYCARBONATE WITH A SOLID RED BACKGROUND AND YELLOW LETTERS AND LOGO ON A SOLID RED BACKGROUND.
		9. THE SIGNAGE SHALL BE MANUFACTURED FROM POLYCARBONATE WITH A SOLID RED BACKGROUND AND YELLOW LETTERS AND LOGO ON A SOLID RED BACKGROUND.
		10. THE SIGNAGE SHALL BE MANUFACTURED FROM POLYCARBONATE WITH A SOLID RED BACKGROUND AND YELLOW LETTERS AND LOGO ON A SOLID RED BACKGROUND.

S9 CAR PARK SIGNAGE

NON-ILLUMINATED ALUMINIUM REFLECTIVE SIGN ON GALVANISED STEEL POLE TYPICAL.

SCALE 1:10

2300 HIGH POLE (CONFORM ON SITE)

2300 HIGH POLE (CONFORM ON SITE)

2300 HIGH POLE (CONFORM ON SITE)

2300 HIGH POLE (CONFORM ON SITE)

2300 HIGH POLE (CONFORM ON SITE)

2300 HIGH POLE (CONFORM ON SITE)

S11 WALL SIGN

SCALE 1/20

OPAQUE WHITE VINYL

OPAQUE GREEN VINYL

OPAQUE VINYL

CHARCOAL GREEN PAINTED AND THK ALUMINIUM PANEL

S12 FLAG POLES

SCALE 1/100

YELLOW LED ON RED BACKGROUND

S6 HEIGHT CLEARANCE GANTRY

SCALE 1/50

DRIVE THRU

CHECK ON SITE

THE SIGNAGE CONTRACTOR SHALL BE RESPONSIBLE FOR CHECKING THE SIGNAGE IS AVAILABLE ALONG THE DRIVE THRU LANE INCLUDING COO AWNING AND BOOTH CANOPIES. THE CLEARANCE BAR SHALL BE SET NOMINALLY 80mm BELOW THIS LEVEL AND CLEARANCE HEIGHT LETTERING NOMINATED ACCORDINGLY.

S8 CAR PARK SIGNAGE

NON-ILLUMINATED ALUMINIUM REFLECTIVE SIGN ON GALVANISED STEEL POLE TYPICAL.

SCALE 1:10

DATE: / /

NOTE:

- TO VERIFY THE FINISHING
- TO VERIFY THE FINISHING
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- TO VERIFY THE FINISHING
- TO VERIFY THE FINISHING
- TO VERIFY THE FINISHING
- TO VERIFY THE FINISHING
- TO VERIFY THE FINISHING

PA ARCHITECTS

100-100-100-100-100-100

100-100-100-100-100-100

100-100-100-100-100-100

MCDONALD'S

100-100-100-100-100-100

100-100-100-100-100-100

100-100-100-100-100-100

PROPOSED MCDONALD'S RESTAURANT AT

100-100-100-100-100-100

100-100-100-100-100-100

100-100-100-100-100-100

DATE: / /

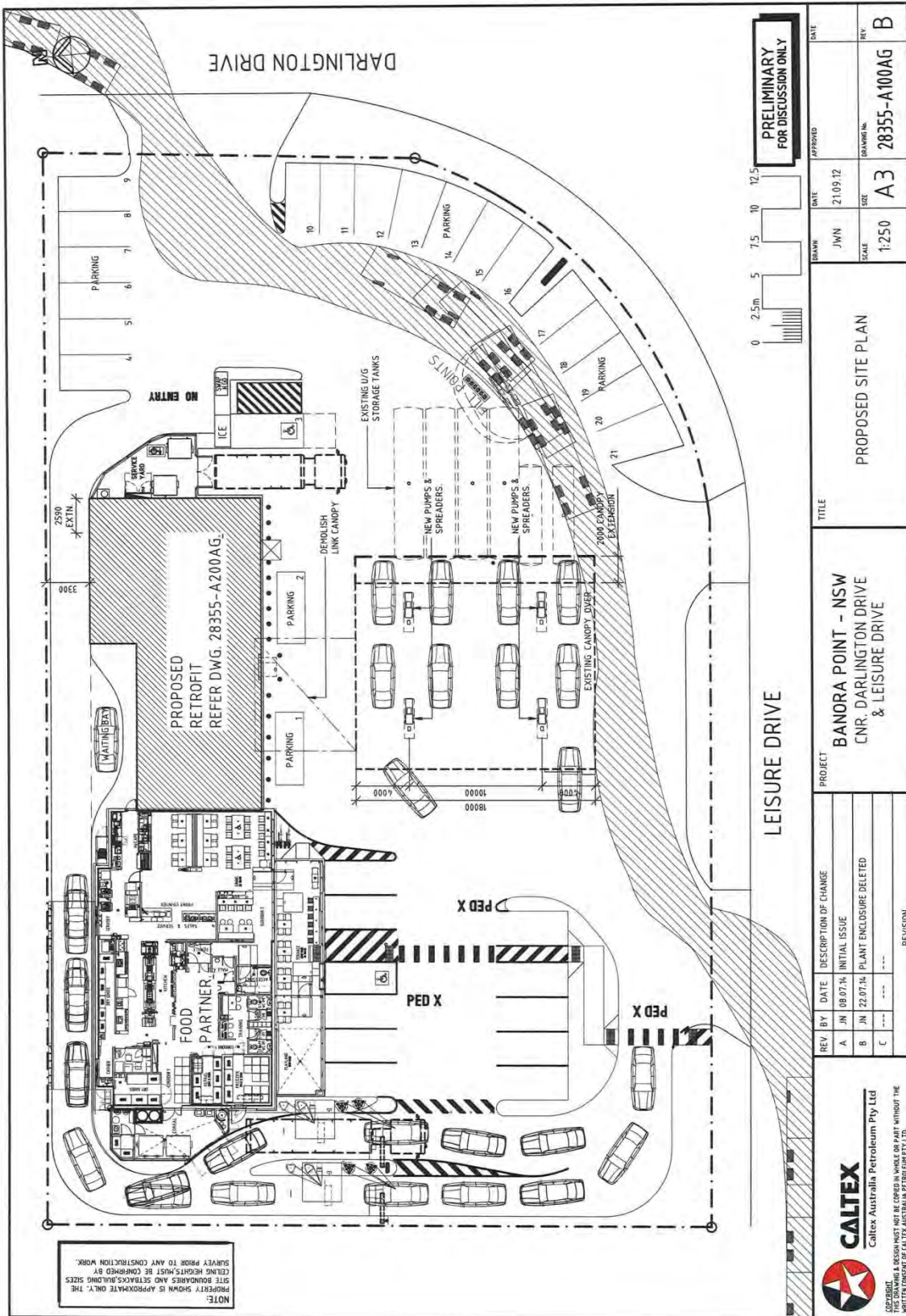
NOTE:

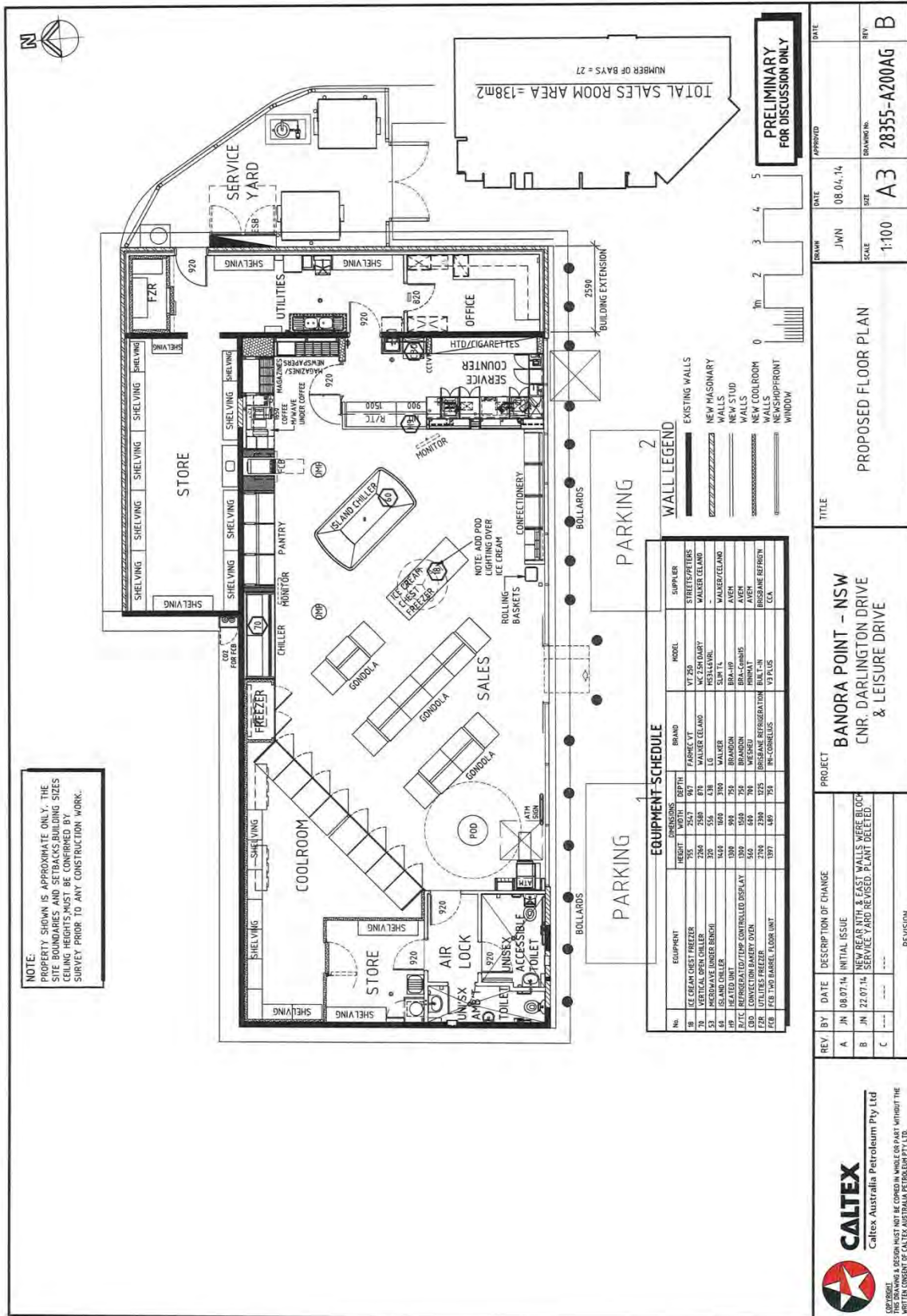
DATE: / /

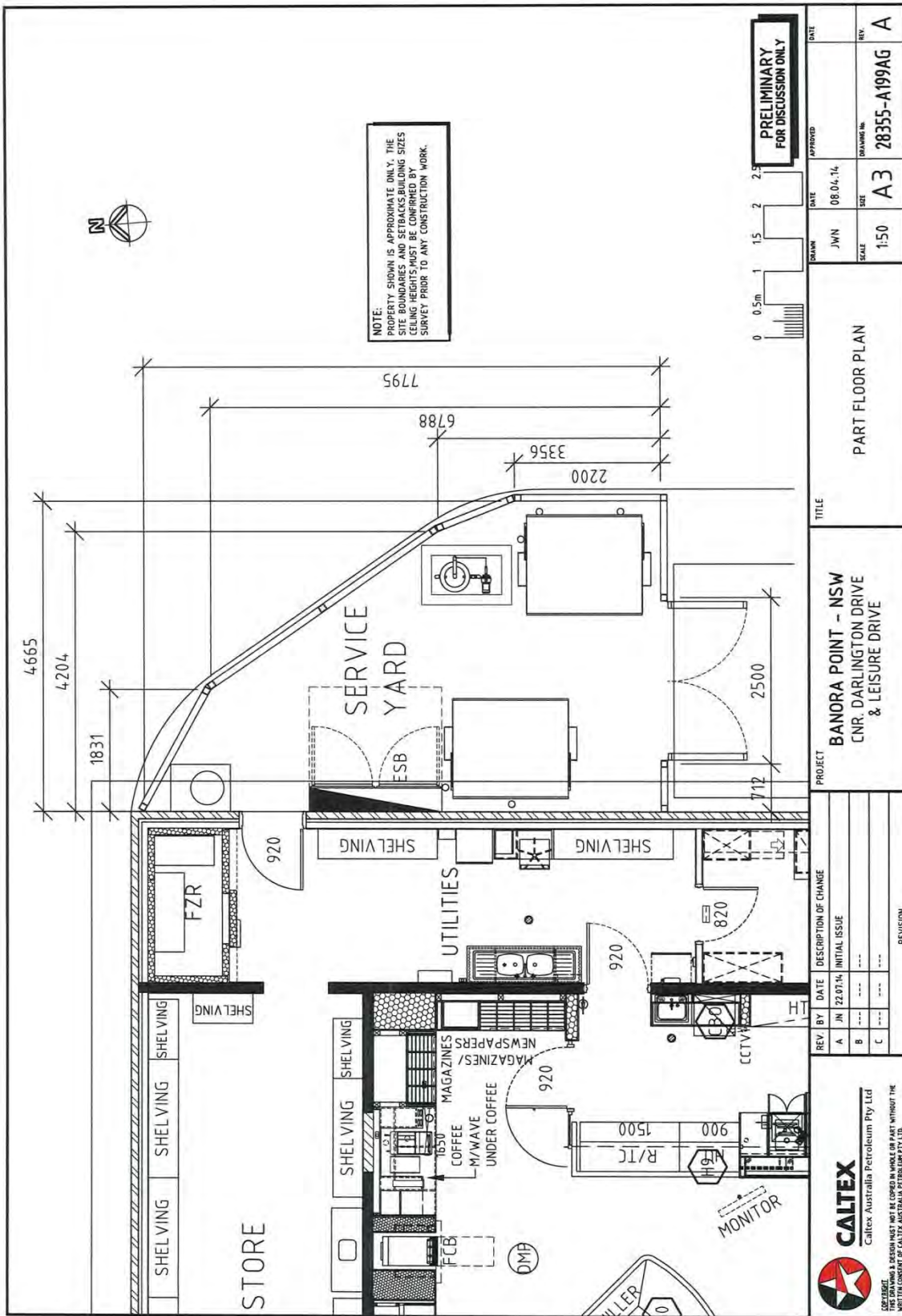
NOTE:

DATE: / /

NOTE:









villa & villa
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LEVEL 3, 201 WOODSIDE ROAD, MALDEN POINT NORTH MELB.
VIC 3167
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FAX: 03 9594 7300
WWW.VILLAANDVILLA.COM.AU

MCDONALD'S MOD 514 OPTION 1 REV. B

EXTERNAL PERSPECTIVE 1

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MCDONALD'S MOD 514 OPTION 1 REV. B
EXTERNAL PERSPECTIVE 6

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MCDONALD'S MOD 514 OPTION 1 REV. B
EXTERNAL PERSPECTIVE 5
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MCDONALD'S MOD 514 OPTION 1 REV. B
EXTERNAL PERSPECTIVE 4

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EXTERNAL PERSPECTIVE 3
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MCDONALD'S MOD 514 OPTION 1 REV. B
EXTERNAL PERSPECTIVE 2

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architecture interiors graphics
15/100 L. J. ROAD/55/50/54/55/56/57/58/59/60/61/62/63/64/65/66/67/68/69/70/71/72/73/74/75/76/77/78/79/80/81/82/83/84/85/86/87/88/89/90/91/92/93/94/95/96/97/98/99/100
11/11/12/13/14/15/16/17/18/19/20/21/22/23/24/25/26/27/28/29/30/31/32/33/34/35/36/37/38/39/40/41/42/43/44/45/46/47/48/49/50/51/52/53/54/55/56/57/58/59/60/61/62/63/64/65/66/67/68/69/70/71/72/73/74/75/76/77/78/79/80/81/82/83/84/85/86/87/88/89/90/91/92/93/94/95/96/97/98/99/100
11/11/12/13/14/15/16/17/18/19/20/21/22/23/24/25/26/27/28/29/30/31/32/33/34/35/36/37/38/39/40/41/42/43/44/45/46/47/48/49/50/51/52/53/54/55/56/57/58/59/60/61/62/63/64/65/66/67/68/69/70/71/72/73/74/75/76/77/78/79/80/81/82/83/84/85/86/87/88/89/90/91/92/93/94/95/96/97/98/99/100
www.villandvilla.com.au

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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

This plans aims to make local environmental provisions for land within the Tweed Heads area in accordance with the relevant standard environmental planning instrument under Section 33A of the Act.

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 and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,*
- c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, 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 and geological and ecological integrity of 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.*

It is considered that the proposal would be consistent with the aims of the plan; the proposed development is not considered to have any adverse impacts on environmentally sensitive areas and has the potential to generate employment opportunities.

Clause 2.3 – Zone objectives and Land use table

The subject site is located within the B2 Local Centre Zone. The objectives of the zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for tourism and residential opportunities that contribute to the vitality of the local centre*

The proposed development involves the alterations and additions to a service station and the construction of a fast food restaurant.

A service station is defined as follows:

***"service station"** means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:*

- (a) the ancillary sale by retail of spare parts and accessories for motor vehicles,*
- (b) the cleaning of motor vehicles,*
- (c) installation of accessories,*
- (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),*
- (e) the ancillary retail selling or hiring of general merchandise or services or both."*

A fast food restaurant is defined as a food and drink premises:

***"food and drink premises"** means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:*

- (a) a restaurant or cafe,*
- (b) take away food and drink premises,*
- (c) a pub,*
- (d) a small bar.*

***Note.** Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary."*

Both uses being a service station and food and drink premises are permissible forms of development within the B2 zone.

It is considered that the proposed development is consistent with the objectives of the zone, providing a use that serves the needs of people who live and work in the area, encouraging employment opportunities and given its location and direct proximity to active transport options is also considered to maximise the use of public transport, walking and cycling.

Clause 4.3 - Height of Buildings

The subject site is mapped as having a building height limit of 13.6m. The proposed development incorporates a maximum building height of 6.7m which complies with this control.

Clause 4.4 – Floor Space Ratio

The subject site is mapped as having a FSR of 2:1. The proposed development results in a Floor Space Ratio of approximately 0.15:1 which therefore complies with this control.

Clause 5.5 – Development within the Coastal Zone

The objectives of clause 5.5 are to ensure the protection of the coastal environment by promoting ecologically sustainable development and to implement the principles of the NSW Coastal Policy.

The principles of the NSW Coastal policy 1997 essentially aim to protect, recognise and preserve the coastal environment, including aboriginal cultural places and places of heritage, archaeological and historical significance and to ensure that the bulk and scale of development is appropriate for the location.

It is not considered that there will be any impact on the coastal environment, nor will there be any obstruction to public foreshore access or overshadowing as a result of the proposed development.

The proposed development is considered compliant with Clause 5.5.

Clause 7.1 – Acid Sulfate Soils

The site is classified as being Class 2 ASS on Council's Acid Sulphate Soils Planning Map. A previous Preliminary ASS Investigation was carried out by Bordertech Ref: BT20146-A and dated August 2010.

This assessment contained the following conclusion:

"The results of the investigation suggest that acid sulphate soils are not present at the subject site to 2.0m below existing surface level."

The proposal was referred to Council's Environmental Health Unit (EHU) for review and they have responded as follows:

"The proposed removal of the waste oil tank will necessitate excavation to approximately 2.2m depth below surface level and therefore there is a possibility that ASS may be intercepted. However given that the volume of excavated material is unlikely to exceed 10m³ it is considered that Council's Minor Works ASS Management Plan would be appropriate."

It is therefore considered that an appropriate condition can be included to ensure adequate management of acid sulfate soils can be undertaken.

Clause 7.2 - Earthworks

The proposed development was referred to Council's Development Assessment Engineers who have reviewed the application in relation to earthworks. It was determined that only minor site works will be required for the parking areas, the removal of the waste oil tank and to ensure fall to stormwater pits. It is therefore considered that there will be minimal impact upon the site and surrounds as a result of the proposed development. This clause is considered to be complied with.

Clause 7.3 – Flood Planning

The site has been identified as an area within the level of Probably Maximum Flood. Council's Stormwater and Flooding Engineer has reviewed the application and has advised that the proposed changes are fairly minor with little or no impact from a flood perspective. It is therefore considered that the proposal will have minimal impact upon the severity of flooding in the locality.

Clause 7.4 - Floodplain risk management

Based on the information above, it is considered that there will be minimal impact upon flooding in the locality. The proposal is for a commercial premise which will not significantly alter the floodplain. This clause is considered to be complied with.

Clause 7.5 - Coastal risk planning

The site has not been identified on the Coastal Risk Planning Map. As such this clause is not applicable.

Clause 7.6 - Stormwater Management

Council's Flooding & Stormwater Engineer has reviewed the proposed development and has provided the following:

"Given the proposed changes are fairly minor with little or no impact from a flood and storm water perspective."

Based on this information a number of conditions have been recommended. It is considered that the proposed development will have minimal impact upon stormwater provided the recommended conditions are implemented.

Clause 7.8 – Airspace operations

The proposed development will not impact airspace operations. This condition is considered to be not applicable.

Clause 7.9 - Development in areas subject to aircraft noise

The site is located within the 20-25 2031 ANEF Contour for operations associated with Gold Coast Airport.

As the site is within the 20-25 ANEF Contour the provisions of Clause 7.9 apply.

Clause 7.9 states:

"7.9 Development in areas subject to aircraft noise

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

(a) to prevent certain noise sensitive developments from being located near the Gold Coast Airport and its flight paths,

(b) to assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings,

(c) to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport.

(2) This clause applies to development that:

(a) is on land that:

(i) is near the Gold Coast Airport, and

(ii) is in an ANEF contour of 20 or greater, and

(b) the consent authority considers is likely to be adversely affected by aircraft noise.

(3) Before determining a development application for development to which this clause applies, the consent authority:

(a) must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and

(b) must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2000, and

(c) must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021—2000.

(4) In this clause:

ANEF contour means a noise exposure contour shown as an ANEF contour on the Noise Exposure Forecast Contour Map for the Gold Coast Airport prepared by the Department of the Commonwealth responsible for airports.

AS 2021—2000 means AS 2021—2000, Acoustics—Aircraft noise intrusion—Building siting and construction."

An Aircraft Noise Impact Assessment was requested to be carried out by a suitably qualified acoustic consultant with experience in aircraft noise investigation and assessment. This assessment was submitted to Council's Environmental Health Officer who reviewed the information as follows:

"In response to these comments, the applicant has provided an assessment from ttm Soundmatters, Ref. 14GCA0053 L01 A and dated 6 November 2014 which confirms that in respect to the provisions of Council's request regarding Clause 7.9 (3) (c) relating to Table 3.3 of AS2021, that standard building construction will achieve compliance with the indoor 75 dB(A) design criteria for shops."

It is therefore considered that an appropriate condition can be placed within the recommended conditions to ensure compliance with the relevant design criteria for shops. It is considered that this clause has been complied with.

Clause 7.10 - Essential Services

All services including water, sewer, drainage, electricity and telecommunications are available and adequate for the development. This condition has been complied with.

State Environmental Planning Policies

SEPP 33 - Hazardous and Offensive Development

No new fuel storage tanks are proposed to be installed and there is no change to the location of fuelling bays. As such, this SEPP does not apply.

SEPP 55 - Remediation of Land

A previous contamination assessment of the site was carried out by Cavannba Consulting Ref: 11027L01-Lyst01 and dated 21 September 2010.

An additional limited contamination investigation was carried out in relation to a waste oil tank that is to be removed from the site in conjunction to the proposed site works. This limited investigation was carried out by Cavannba Consulting Ref: 14019 R02 and dated 14 August 2014.

These reports were reviewed by Council's Environmental Health Unit who has advised that appropriate conditions are to be placed within the recommendations to ensure compliance with the recommendations of the limited contamination investigation.

The site is considered suitable for the proposed use having regard to the applicable legislation governing land contamination.

SEPP 64 - Advertising and Signage

The applicant has provided an assessment of the proposed signage against the provisions of SEPP 64:

ASSESSMENT CRITERIA	COMMENTS
<p>1. Character of the area</p> <ul style="list-style-type: none"> • Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? • Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? 	<p>The area is characterised by existing commercial development on the site and in the immediate vicinity (Caltex, Banora Point Shopping Village). These commercial developments are located in an area surrounded by mixed density residential development. The proposed signage is located and designed to ensure it is compatible to the existing commercial development in the locality, whilst respecting the broader residential environment in terms of potential amenity impacts.</p> <p>There is no specific theme for outdoor advertising in the area. There are numerous examples of both nationally recognised company signage in the area in addition to individual signage design.</p>
<p>2. Special areas</p> <ul style="list-style-type: none"> • Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? 	<p>The site is not located in an environmentally sensitive area, heritage area, natural or other conservation area, open space, waterway, rural landscape or residential area.</p>
<p>3. Views and vistas</p> <ul style="list-style-type: none"> • Does the proposal obscure or compromise important views? • Does the proposal dominate the skyline and reduce the quality of vistas? • Does the proposal respect the viewing rights of other advertisers? 	<p>The site is located in a relatively flat, low lying urban environment. It is not visually prominent. The proposed signs would not adversely impact any view or vista, or other signage.</p>
<p>4. Streetscape, setting or landscape</p> <ul style="list-style-type: none"> • Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? • Does the proposal contribute to the visual interest of the streetscape, setting or landscape? • Does the proposal reduce clutter by rationalising and simplifying existing advertising? • Does the proposal screen unsightliness? • Does the proposal protrude above buildings, structures or tree canopies in the area or locality? • Does the proposal require ongoing vegetation management? 	<p>The proposed signage is a well known corporate theme for the restaurant. The signs are designed to integrate with the building elevations in a nationally recognised accepted format. Given the nature and scale of the commercial development in the locality, the scale, proportion and form of the signage is considered appropriate and compatible with the established streetscape.</p>
<p>5. Site and building</p> <ul style="list-style-type: none"> • Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? • Does the proposal respect important features of the site or building, or both? • Does the proposal show innovation and imagination in its relationship to the site or building, or both? 	<p>The proposed signage is compatible with the scale, proportion and style of the existing Caltex building and proposed new restaurant addition. Given the size and design elements of each elevation/façade, the proposed signage does not dominate.</p> <p>The signage and building design are consistent with the relevant corporate colour scheme.</p>
<p>6. Associated devices and logos with advertisements and advertising structures</p> <ul style="list-style-type: none"> • Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? 	<p>All lighting and required safety devices are to be concealed within the sign structures.</p>

<p>7. Illumination</p> <ul style="list-style-type: none"> • Would illumination result in unacceptable glare? • Would illumination affect safety for pedestrians, vehicles or aircraft? • Would illumination detract from the amenity of any residence or other form of accommodation? • Can the intensity of the illumination be adjusted, if necessary? • Is the illumination subject to a curfew? 	<p>Sign illumination is designed and would be installed to ensure compliance with relevant standards and to ensure that there will be no unacceptable glare to residential developments in the area.</p> <p>It is expected that Council would impose appropriate consent conditions in that regard.</p>
<p>8. Safety</p> <ul style="list-style-type: none"> • Would the proposal reduce the safety for any public road? • Would the proposal reduce the safety for pedestrians or bicyclists? • Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? 	<p>The proposed signs do not overhang footpaths or the public road. They do not interfere with pedestrians or vehicular sightlines. The internal directional and safety signage is designed and located to ensure efficient pedestrian and traffic movement on the site.</p> <p>The signage would not distract motorists as they are to be internally illuminated so as not to produce unacceptable glare, do not flash, and have no moving parts.</p>

The applicant proposes the following signs:

- 1 x freestanding 8.5m high Pylon sign, with a 4.343m x 3.5m head incorporating large “M” logo, “McCafe” wording (1.2m x 1.2m high) and “Open 24 hours” wording (3.4m x 0.7m high) located on the Leisure Drive frontage;
- 1 x wall sign (5.0m x 0.61m high) with “McDonald’s” wording;
- 1 x wall sign (1.371m x 1.2m high) with “M” logo on blade wall and building parapet;
- 1 x wall sign (1.028m x 0.9m high) with “M” logo on terrace screen
- 1 x wall sign (1.435m x 0.75m high) with “McCafe” wording;
- 1 x Double sided sign (0.7m x 2.3m high) with “Welcome” wording;
- 1 x removable 3.6m x 0.9m high McDonald’s banner between 2 x 8.5m high flagpoles; and
- Numerous directional signs at various locations within the car parking and drive through areas.

All proposed signage has been assessed under State Environmental Planning Policy No 64 demonstrating general compliance with SEPP 64.

It is considered that the applicant will be requested to remove the "Open 24 hours" wording from the signage as the hours of operation does not correspond with this sign.

The proposed signs are located mainly along the Leisure Drive frontage which faces an existing commercial premise being the Banora Point Village.



Existing signage on Leisure Drive



Existing signage on subject site and Darlington Drive

With respect to the matters for consideration in Schedule 1 of the policy, it is considered that:

- the signs would not detract from the amenity of the locality, nor result in the loss of any important views or vistas due to the orientation of the site towards other commercial premises being Banora Point Village;
- the signs would be consistent with the scale and design of existing outdoor advertising on the site in association with the Service Station;
- it is considered that the illumination not cause unacceptable glare because it would be sufficiently separated from residential uses in the locality; and
- the signs would not affect pedestrian, vehicular or bicycle safety.

Council's Environmental Health Unit have assessed the signs in terms of illumination as follows:

"According to the plans submitted with the application, lighting associated with the proposed McDonald's food premises will be situated on the southern elevation facing Leisure Drive. From the site inspection, an existing Caltex pylon sign is situated on the Leisure Drive Darlington Drive corner. This sign is indicated in approximately the same location on the proposed site plan. Therefore illuminated advertising signage associated with the proposed development is not likely to pose additional impact on the amenity of neighbouring residential receivers including No 58 Darlington Drive."

Based on the site inspection undertaken there are currently a number of security lights along the road frontage. There is currently an eastern facing security light which is located approximately where the proposed pylon sign is to be located.

It is considered that the illumination of the pylon sign will have minimal impact on the surrounding residents based on the location of the existing lighting on the site. It is also thought that the existing Caltex pylon sign will be located between the existing residential properties along Darlington Drive and the proposed McDonald's pylon sign. Regardless, appropriate conditions have been recommended to insure illumination of the signs is to be within the approved hours of operation only.

It is therefore considered that the proposed signage is consistent with the matters for consideration within SEPP 64.

SEPP No. 71 - Coastal Protection

The site is located within the area to which the policy applies. The subject site is not contained within a sensitive coastal location or within 100m below the mean high water mark of the Tweed River and as such, the proposal was not referred to the Department of Planning for comment.

The proposal is therefore considered not to adversely affect the access to and along the coastal foreshore, limit overshadowing of foreshore areas and that the type, bulk, scale and size of the development is appropriate within the SEPP 71 zone.

This SEPP is considered to be satisfied.

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

There are no Draft Environmental Planning Instruments applicable to the subject proposal.

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

Tweed Development Control Plan

Section A2 – Site Access and Parking Code

Site access is currently provided via two (2) crossovers from Leisure Drive and one (1) from Darlington Drive. Existing access arrangements would be maintained as part of the site redevelopment.

The applicant has provided the following car parking assessment for the proposed development:

"The Traffic Impact Assessment Addendum examines the proposal with respect to the car parking rates required by Tweed DCP Section A2 and the RTA's Guide to Traffic Generating Developments. This is in accordance with the methodology used for the Traffic Impact Assessment prepared for

the previous development application (DA 10/0746) and accepted by Council.

USE	PARKING RATE	FLOOR AREA (sqm) /NO. OF SEATS	PARKING REQUIREMENT
Service station with convenience store no workshop	1 space per staff + 2.8 spaces per 100m ² convenience store (Council DCP)	138m ² (convenience store only)	4 spaces
Drive-in take-away food outlet (with drive-through)	1 space for 3 seats (indoor & outdoor) + queuing area for 5-12 cars	77 seats	26 spaces
		TOTAL	30 spaces

This table shows that the proposed development is required to provide 30 car parking spaces. A total of 33 spaces are proposed. The Traffic Impact Assessment Addendum demonstrates that there would also be 'cross-utilisation' between the facilities on the site and a reduction in on-site parking numbers is appropriate given the multi-use nature of the site. Consequently, it concludes that the parking supplied for the proposed development is expected to be sufficient for the anticipated parking demand."

Based on Council's Development Control Plan Section A2, the alterations and additions to the existing service station and the construction of a take-away food & drink premise would have the following car parking requirements:

USE	Parking Rate	Gross Floor Area and staff numbers	Parking Requirement
Take-away food & drink premises	3.5/100m ² GFA 1/staff	443.4m ² (including outdoor areas) 10 staff	15.519 customer 10 staff
Service Station	3.2/work bay + 2.8/100m ² convenience or retail store 1/staff	138m ² GFA (does not include storage area) 2 staff	3.864 customer 2 staff
TOTAL			31.383

The applicant has provided a total of 33 car parking spaces which is more than the required 31.383. It is considered that this has adequately serviced the site in relation to car parking spaces required.

The applicant has utilised the RTA's Guide to Traffic Generating Developments which ultimately results in a similar final number required. It is considered that the proposed development adequately caters for car parking on the subject site.

The Traffic Impact Assessment demonstrates that there would be 'cross-utilisation' between the facilities on the site and a reduction in on-site parking numbers is appropriate given the multi-use nature of the site. Consequently, it

concludes that the parking supplied for the proposed development represents a surplus with regard to expected peak demand.

Car Parking Layout

There has been eleven (11) car spaces provided in front of the McDonalds with pedestrian crossing through that section of the site to reduce the potential conflict with customers having to cross areas of high vehicle movement. Additional car parking spaces have been provided on the western portion of the site to cater for both uses. It is considered that the car parking layout has been provided in accordance with this section of the DCP.

Drive Through

The McDonald's component of the proposed development incorporates seventeen (17) spaces at the drive through facility and one (1) waiting space, which is considered to be adequate to cater for the proposed development.

Bicycle Parking

In terms of bicycle parking, the proposed development complies with DCP A2, with the McDonald's component providing a minimum of four (4) bike racks. It is considered that there is adequate space surrounding the existing Caltex to cater for current bicycle parking requirements.

Delivery, Service Vehicle Parking

The applicant's Traffic Impact Assessment includes details on the proposed servicing of the development by one (1) Heavy Rigid Vehicle (HRV) and a refuse collection vehicle.

Bitzios have demonstrated that an AV and HRV are able to transverse the site and leave in a forward direction. Council's Development Assessment Engineer has accepted that this is adequate to cater for the proposed.

As such, the proposed development is considered to satisfy the provisions of DCP A2, subject to conditions of consent.

Section A3 – Development of Flood Liable Land

The minor nature of the proposed works are not expected to increase the risk or severity of flooding of land in the vicinity. Council's Stormwater and Flooding Engineer have not raised any issues with the proposed. As such, the proposed development is considered to be consistent with the relevant provisions of the DCP.

Section A4 – Advertising Signs Code

The proposed development includes a number of advertising signs within the proposal.

The applicant proposes the following signs:

- 1 x freestanding 8.5m high Pylon sign, with a 4.343m x 3.5m head incorporating large "M" logo, "McCafe" wording (1.2m x 1.2m high) and "Open 24 hours" wording (3.4m x 0.7m high) on the Leisure Drive frontage;

- 1 x wall sign (5.0m x 0.61m high) with “McDonald’s” wording;
- 1 x wall sign (1.371m x 1.2m high) with “M” logo on blade wall and building parapet;
- 1 x wall sign (1.028m x 0.9m high) with “M” logo on terrace screen
- 1 x wall sign (1.435m x 0.75m high) with “McCafe” wording;
- 1 x Double sided sign (0.7m x 2.3m high) with “Welcome” wording;
- 1 x removable 3.6m x 0.9m high McDonald’s banner between 2 x 8.5m high flagpoles; and
- Numerous directional signs at various locations within the car parking and drive through areas.

All types of signage are permissible within the DCP.

Number of Signs & Signage Area

The DCP limits the maximum number of signs to five (5) per business. In addition, the maximum area per business for all signs shall not exceed the area (calculated by multiplying the first 10m of the frontage of the premises by 1 and each metre thereafter by 0.5m). Pole signs are permitted, with a maximum of one (1) per business, an area not exceeding 44m² and a height not exceeding 15m.

The McDonalds proposes eight advertising signs as described above. The signs include "Open 24 hours" which will be removed from the proposal as this does not correlate to the proposed operational hours.

The directional signs have not been included within this number.

The development is located within a complex will result in two commercial tenancies where 10 signs would be permissible. There are currently eight signs approved via DA03/0745 however with the removal of the service centre and a number of the signs being directional signs, there are a total of five business identification signs. With the seven proposed and the five existing there are a total of 12 signs which exceeds the maximum allowable for the site by two signs. It is considered that this variation should be accepted in this instance as the majority of the signs front the Leisure Drive frontage which is opposite another commercial development.

It was also considered that, due to the location of the site and the existing signage pattern within the locality, the proposal would not be unnecessarily obtrusive and would not affect the appearance and character of the area. It was therefore determined that even though there are more signs than allowed on the site, any undue affects would be minimal and is therefore warranted for approval in this instance as no significant adverse effects are anticipated as a result of the installation of the sign.

Based on the frontage of approximately 118m to Leisure Drive and Darlington Drive this would result in a total area of approximately 64m² for all business signs on the site.

The total area for all the McDonalds signs is 28.18m² whilst the total area of all the existing Caltex signs is approximately 20.61m². Therefore the total size of signs being 48.79m² is below the maximum allowable size.

It is considered that the above minor variation in the number of signs should be accepted in this instance as there will be no significant impact. Based on this, the proposal is considered to be generally in accordance with this section of the DCP.

Section A11 - Public Notification of Development Proposals

The proposed development was advertised for a period of fourteen (14) days from Wednesday 10 September 2014 to Wednesday 24 September 2014. During this period there was two submissions received.

The main issues raised by these submissions were traffic, noise and lighting issues. The issues raised by the submissions are discussed later in this report.

Section A15-Waste Minimisation and Management

This section of the DCP aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development.

A Waste Management Plan has been prepared by the applicant and reviewed by Council's Waste Management Unit. The Waste Management Unit has advised that the plan submitted is *comprehensive and demonstrates compliance with Section 15 of Tweed Shire Council DCP*. No conditions were required.

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

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

The proposed development will have no negative impact on the adjoining waterway and satisfies the objectives of this Policy.

Clause 92(1)(b) Applications for demolition

Council's Health Services Unit has assessed the application and has stated that asbestos containing material may have been present in the construction of the existing building. Therefore it is considered prudent to apply specific conditions in relation to asbestos removal associated with the buildings proposed for demolition. These conditions have been applied within the recommendations.

Clause 93 Fire Safety Considerations

The proposal was assessed by Councils Building Services Unit who have provided recommended conditions of consent.

Clause 94 Buildings to be upgraded

Council's Building Unit has noted that the building complies with the BCA. No issues have been raised subject to the recommended conditions of consent.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown land. The Tweed Shire Coastline Management Plan 2005 is not applicable to the proposed development.

Tweed Coast Estuaries Management Plan 2004

This Plan relates to the Cudgen, Cudgera and Mooball Creeks and is therefore not applicable to the proposed development.

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

This plan relates to the Cobaki and Terranora Broadwater and is therefore not applicable to the proposed development.

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

Context and Setting

The subject site is bound by retirement village units to the north and west. To the north are two (2) storey brick units which have varying setbacks to the site.

The development to the south is one (1) storey commercial development known as Banora Point Village and to the east of the site is characterised by low density residential dwellings. The potential amenity considerations therefore relate to visual impacts from lighting, noise and traffic which have been addressed throughout this report.

It is considered that with the implementation of recommended conditions that there will be minimal impact upon the surrounding locality as a result of the development. The proposal is in keeping with the context and setting of the existing area.

Access, Transport and Traffic

A detailed Traffic Impact Assessment has been prepared by Bitzos which Council's Traffic Engineer has reviewed as follows:

"The report concluded that the roundabout at the intersection of Leisure Drive and Darlington Drive would continue to function at acceptable operating levels without upgrading required.

The report recommended that the centre median be extended by 15m on Leisure Drive to prevent right turns into and out of the eastern driveway crossover. It also recommends that pavement arrows be placed on Leisure Drive to address potential rear end crashes for vehicles enter the site at the western crossover.

No assessment was provided to indicate that right turning movements from Leisure Drive into the western driveway crossover (40m west of the roundabout) would result in queuing on Leisure Drive, and ultimately the roundabout, which is a significant road within Council's network. Council in recent times prohibited right turn movements into the service station from Darlington Drive due to safety concerns.

Subsequently, as this movement has been identified as a potential safety concern and there is no evidence that queuing will not impact on the functionality of the road, it is recommend that the centre median on Leisure Drive be extended from the roundabout to approximately 45m west to prevent right turns into and out of the development.

Motorists wishing to turn into the development from Darlington Drive would need enter through the Darlington Drive access after completing a U-turn at the roundabout.

Therefore, a recommended non-standard condition shall be applied to install a centre median on Leisure Drive to restrict right hand turn in and right hand turn out of the subject site."

Existing access arrangements to the site are from Leisure Drive (two (2) crossovers) and Darlington Drive. These access points are proposed to be retained.

A total of 33 car parking spaces are proposed to be provided in total for the development. This has been assessed against the relevant parking rates and is considered to meet the anticipated demand. Council's Development Engineer has provided conditions for access and car parking.

Noise

The application was submitted with an Environmental Noise Assessment Report by TTM Soundmatters dated 20 August 2014. The recommendations within the report are as follows:

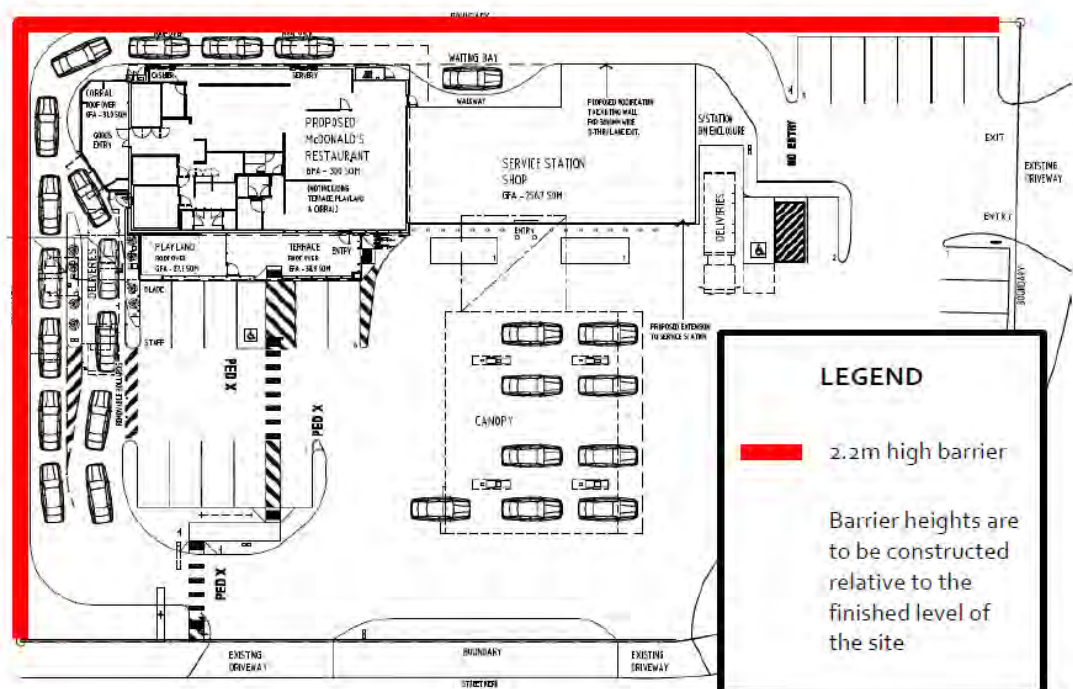
"Acoustic Barriers

Acoustic barriers along the northern and western boundaries would be needed in order to reduce noise at the surrounding noise sensitive properties. The location of the barriers is shown in Figure 4 below.

The details of the recommended acoustic barriers are as follows;

- a. The acoustic barrier along the northern and western boundary must be minimum 2.2m high relative to finished level of the site;
- b. The acoustic barriers should be of a material with a surface mass greater than 12.5kg/m². Suitable materials include (but not limited to) lapped timber palings, plywood, compressed fibre cement, Perspex, glass, concrete or masonry. A combination of materials may be used if desired. Care should be taken to ensure there are no gaps or holes in the barrier or at ground level;
- c. It is expected that the construction of the acoustic fences would occur prior to operation of the one-way boundary driveway.

Figure 4: Recommended Acoustic Barriers



Management Strategies

The following management strategies should be implemented in order to reduce noise:

- a. Fuel deliveries should occur between the hours of 7am – 10pm, where possible;
- b. Fast food outlet deliveries should occur between the hours of 7am - 6pm;
- c. Waste removal should occur between the hours of 7am - 6pm;
- d. Surface finish for grade must be low-squeal i.e. no polished or painted concrete etc.;

e. Any grates or other protective covers in the car parks and access driveways must be rigidly fixed in position to eliminate clanging, and be maintained.

Audio System

This section refers to potential audio systems associated with the ordering points of the fast food outlet, and PA systems of the service station.

To maintain acceptable noise levels at the nearest noise sensitive locations, one or more of the following may be required;

- Locate the ordering point as far from neighbouring properties as practical;
- Use of directional speakers, and specific aiming configuration of loudspeakers;
- Install a sound limiting device;
- Minimise the volume of the speakers;
- Place orders at the window after 10pm.

Previous experience indicates that customers tend towards using elevated speech levels when ordering remotely (i.e. speaking at microphone ordering point) when compared to ordering 'face-to-face'. Also, the volume level of the remote speaker point can be louder than the volume of unassisted speech.

Given the proximity of the nearest residential properties it would be preferable to use direct ordering at the service window after 10pm.

Plant Noise

Plant selections are not available. Therefore it is not possible to carry out detailed examination of any measures that may be required to achieve compliance with the noise targets. Plant and equipment must be acoustically treated to prevent noise emissions from adversely impacting the receiver. This may include selecting the quietest plant possible, inclusion of soft-start capability, enclosures, barriers, duct lining, attenuators, etc if required to comply with the assessment criteria.

Experience with similar projects indicates that it is possible to achieve the criteria with appropriate acoustic design. This treatment would be determined by Building Approval/Construction Certificate stage as the mechanical design is developed.

Noise from new mechanical equipment should be designed to achieve compliance with the criteria outlined in this report for all plant as a combined noise level. We recommend that an assessment is carried out by a suitably qualified acoustic consultant once full equipment selections are determined.

Absorptive Treatment

Acoustic treatment may be required in order to provide absorption of reverberant and reflective noise around the drive-through areas. This refers

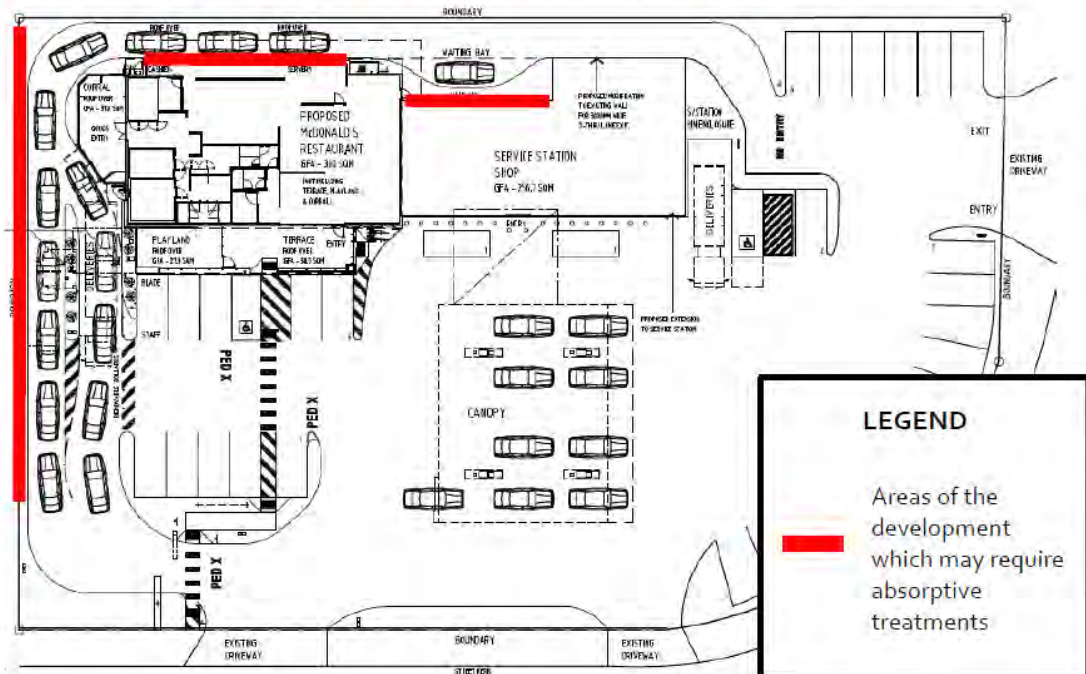
to vehicle and patron noise reflecting from building and fence surfaces. We recommend this is considered after Development Approval.

Absorptive treatment must be suitable for outdoor use. Providers of such products include Autex and Pyrotek noise control.

The areas of the development likely to require treatment include the northern facade of the buildings and the top section of the western acoustic barrier, as shown in Figure 5.

Any treatment, if required, would not have to cover the entire surface area of structures, but would be proportional to the area of adjacent hard surfaces. For example fence/ driveway/building structures adjacent to each other may require more treatment than fence/ car park structures."

Figure 5: Areas of the development which may require absorptive treatment



Council's Health Services Unit has assessed the application in relation to the noise assessment submitted and have provided the following:

"An Environmental Noise Assessment Report prepared by TTM Soundmatters Ref: 14GCA0053R01-1 and dated 20 August 2014 has been submitted with the application.

This report has been prepared utilising 2010 noise measurements from a previous TTM Noise assessment that was provided in support of DA10/0746 which was approved for a previous development proposed for the site.

A discussion with the Report's author, on 23 September 2014 resulted in the following e-mail being received in relation to the relevance of the noise measurements used from the 2010 TTM Report in relation to this application.

'It is our professional opinion that the ambient noise measurements performed in August 2010 are still representative and applicable for assessment of the proposed development.

There is no reason that the ambient noise levels would have decreased as the surrounds are the same now as in 2010. We note there is now an additional development been constructed across Darlington Drive to the east.'

The Noise Assessment Report also considered the proximity of the residences across Darlington Drive as being sensitive noise receivers for the proposed development specifically No 56 Darlington Drive.

A review of the plans supplied in relation to DA10/0746 revealed that under that application the retail food premises was to be located on the eastern side of the site facing Darlington Drive whereas under the current application it is located on the western side of the site.

The TTM Report contains a number of recommendations in relation to noise attenuation measures to be applied at the development site including the construction of acoustic barriers. (A minor error was noted in the review of the Noise Assessment Report contained in Section 7.3.1 in relation to the project design criteria for night time being referred to as 43 dB as opposed to 39 dB. This was also discussed with the author of the report, however the error will not affect the recommendations of the Report).

The Noise Assessment Report is considered satisfactory."

The site currently has between a 1.1m high and 1.8m high colour-bond fence and brick wall surrounding the north and west of the subject site. It is considered the removal of the existing fence and the addition of a 2.2 metre acoustic barrier to replace the fence will have minimal impact upon the surrounding neighbours. There are no views or vistas impacted upon and the barrier is between approximately 0.6m to 1.1m higher than located on the northern boundary and 0.4m to 0.6m higher on the western boundary. Existing landscaping exists on the adjoining allotment to the north which will not be impacted upon. There is minimal vegetation on the adjoining allotment to the west although due to the current height of the fence and the height of the barrier proposed being a slight increase to that height it will have minimal impact in this instance.



Western Boundary



Northern Boundary

Additional absorptive treatment is proposed for sections of the building and the acoustic barrier. These treatments may include additional insulation designed to meet the standard industry weight based requirements. Information on the specific type of absorptive treatment would be supplied at the construction certificate stage of the development.

An additional condition has been placed within the recommendations to ensure an additional noise impact report is received once full equipment selections are determined in relation to all mechanical plant equipment.

Based on the information provided by the applicant, and the assessment by Council's Environmental Health Unit, it is considered that the proposed development will have minimal impact upon the surrounding locality in relation to noise. Conditions are to be applied requiring compliance with all recommendations as contained in the submitted noise impact assessment.

Food Preparation

The application proposes to establish a McDonald's restaurant on the site incorporating a drive through service which with operating hours the same as the existing service station. Convenience store type operations associated with the existing service station will continue.

Construction fit out details for the McDonalds operation and alterations to the existing service station convenience areas have been submitted with the application. Council's Environmental Health Unit have reviewed the plans and have provided recommended conditions of consent.

Waste Management

The proposed development was accompanied by a Waste Management Plan for the McDonald's operation. Council's Waste Management Unit assessed the plan, noting that it was generally satisfactory (in relation to the McDonalds Restaurant). The Waste Management Unit did not require any special conditions.

Trade Waste

Council's Systems Engineer has assessed the proposed development in terms of Trade Waste. The Engineer has provided conditions of consent requiring Trade Waste Hydraulic plans to be submitted pursuant to Section 68 of the Local Government Act 1993.

Lighting

The plans submitted with the application identify the lighting associated with the proposed McDonald's food premises being situated on the southern elevation facing Leisure Drive.

The applicant has provided the following in relation to proposed lighting for the site:

"A development of this nature requires the provision of lighting for safety and security to car parking areas, loading areas and various locations around the buildings.

Lighting would include pole mounted, bollard and wall mounted fixtures. It is proposed that lighting be located to serve its operational objectives, but minimise light spill to adjoining properties, particularly neighbouring residential properties.

In that regard, there are numerous products available which are designed to ensure that lighting is contained to specific zones, thereby avoiding undesirable light spill. It is expected that Council would condition any consent to ensure that there is no unacceptable light spill onto adjoining properties.

Potential impacts may also arise from motor vehicle lights. In that regard, various other environmental management measures such as acoustic structures would mitigate adverse light spill to the nearest dwellings."

Council's Environmental Health Unit has assessed the proposed lighting as follows:

"It is noted that a new service bay is to be located on the eastern side of the existing Caltex service station and that it would not be unreasonable to assume that some form of extra security lighting in conjunction with this service bay may be installed. A similar facility is proposed associated with the McDonalds premises together with a proposed children's play area. In addition the drive thru access and egress area will also be likely to incorporate security lighting.

It is also noted that additional parking spaces will be provided along the northern boundary and the Leisure Drive and Darlington Drive frontage. It is therefore likely that this area will have some form of security lighting installed.

There is also the possibility of car lights affecting the amenity of the residences located in Darlington Drive associated with the provision of the new parking spaces on the Leisure Drive and Darlington Drive frontages, however from the site inspection it was evident that these residential premises either have existing front walls or are in the process of constructing front walls or have landscaping with sufficient height to screen car lights. In addition some of these residences would also be affected by lights from vehicles heading south along Leisure Drive at night so the effects of lights from vehicles parked in the proposed new parking spaces is considered to be minimal. Vehicle lights from vehicles using the proposed new parking spaces along the northern boundary would not likely impact upon the amenity of residences along this boundary due the incorporation of a proposed 2.2m high acoustic barrier along this boundary.

From the site inspection vehicles exiting the site on Darlington Drive will need to turn left due to a traffic island dividing the road in this location and as the location of this exit will be essentially the same there is likely to be no additional adverse impact to lighting amenity for residences in Darlington Drive though more vehicle traffic associated with the proposed development will occur."

Based on the site inspection undertaken there are currently a number of security lights along the road frontage. There is currently an eastern facing security light which is located approximately where the proposed pylon sign is to be located.

It is considered that the illumination of the pylon sign will have minimal impact on the surrounding residents based on the location of the existing lighting on the site. It is also thought that the existing Caltex pylon sign will be located between the existing residential properties along Darlington Drive and the proposed McDonald's pylon sign. Regardless, appropriate conditions have been recommended to insure illumination of the signs is to be within the approved hours of operation only.

Additionally, a condition has been included to ensure that all externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager. This has been done to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

Based on the above, it is considered that lighting for the proposed development will have minimal impact upon the surrounding locality.

Council Infrastructure Charges

The proposed development will attract both Section 64 and Section 94 Infrastructure Charges. It is considered that the following charges are applicable.

As the service station is adding approximately 31m² of storage area with no additional water or sewer connections then this is not subject to additional S64 or S94 charges.

The fast food restaurant has a total Gross Leasable Area of 343m² including the terrace and play areas. Fast Food outlets with drive through facility are subject to a modification factor of 0.65 as identified within Table 3.6.1B of Section 94 Plan No. 4. RTA's *Guide to Traffic Generating Development* outlines that Gross Leasable Area (GLA) can be calculated at approximately 75% of Gross Floor Area (GFA).

Section 94 - Plan No. 4 Rates

Fast Food	= 200 trips per 100m ² GLA
	= GLA is approximately 75% of GFA which is 343m ²
	= 343 x 75% = 257.25
	= 257.25/100 x 200 = 514.5 trips
Modification factor	= 0.65 x 514.5 trips
	= 334.425
Total Trips	= 334.425 trips - 40% employment generating development

= 200.655 trips

Credit for workshop = 5 trips per 100m²
 = 135/100 x 5
 = 6.75 trips

Therefore total Trips applicable for the fast food portion of the site is
 = 200.665 trips - 6.75 (credit)
 = **193.905 trips**

Plan No. 18 not applicable as 1 commercial unit being demolished and 1 commercial unit being created

Section 64 - Water and Sewer Rates

The proposed development was referred to Council's Planning & Systems who has assessed the applicant's calculations in relation to Section 64 Water and Sewer Charges as follows:

"Based on the fact that the original Civil Engineering report was completed in 2010, some of the references to the TSC Specifications are out of date - specifically the ET/ EP value of 3.2 which is now adopted as 2.8.

It does not appear that the proposed works will impact existing water and sewerage infrastructure and the development zone is away from existing pipelines. The main impact of the development will be loading and demand from the systems.

S64 contributions

The following information is from the SEE Report Appendix F - Engineering Impact Assessment 2010.

SEWER

Table 8.1 – Existing & Proposed Sewer Flows

Component	Quantity (Unit)	Equivalent Tenement per unit (ET)	ET per component
Existing Service Centre (m2)	137	0.006	0.8
Existing Service Station (Lanes)	4	0.9	3.6
Total			4.4

Table 8.2 – Total Proposed Sewer Flows

Component	Quantity (Unit)	Equivalent Tenement per unit (ET)	ET per component
Existing Service Station (Lanes)	4	0.9	3.6
Proposed Fast Food Restaurant A (m2)	316	0.048	15.2
Proposed Fast Food Restaurant B (m2)	75	0.048	3.6
Proposed Retail Outlet (m2)	50	0.006	0.3
Total			22.7

WATER

Table 9.1 –Existing Water Reticulation Demands

Component	Quantity (Unit)	Equivalent Tenement per unit (ET)	ET per component
Existing Service Centre (m2)	137	0.004	0.548
Existing Service Station (Lanes)	4	0.6	2.4
Total			2.948

Table 9.2 –Proposed Water Reticulation Demands

Component	Quantity (Unit)	Equivalent Tenement per unit (ET)	ET per component
Existing Service Station (Lanes)	4	0.6	2.4
Proposed Fast Food Restaurant A (m2)	316	0.03	9.48
Proposed Fast Food Restaurant B (m2)	75	0.03	2.25
Proposed Retail Outlet (m2)	50	0.004	0.2
Total			14.33

Therefore the proposed S64 charges for the development are:

- 18.3 ET (22.7-4.4) for sewer and
- 11.382 ET (14.33-2.948) for water"

Therefore, based on the applicant's calculations, Council's Planning & Systems Engineer has accepted these figures and as such will be charged accordingly.

(c) Suitability of the site for the development

The site and land to the south is zoned B2 - Local Centre where the proposed use is permitted. The land surrounding the development to the north, east and west are zoned R3 - Medium Density Residential. It is considered that the proposed use will be compatible with the surrounding locality being that it will provide a service for the existing locality on a site which is suitably zoned. It is therefore considered that the site is suitable for the proposed development, subject to the deferred commencement conditions being met, along with all other conditions of consent applied.

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

The proposed development was placed on public exhibition for a period of 14 days, during which two submissions were received against the application.

The issues raised by the submissions against the proposed development are noted in the table below.

Objection	Response
Traffic Density	Council's Traffic Engineer has assessed the proposed development with no objections, subject to conditions of consent. The proposed development can adequately be catered for by the existing road network. This objection therefore does not warrant refusal in this instance.
Operational Noise	The applicant has provided an acoustic report which assessed a number of noise sources for the entire development. The report recommended a number of noise mitigation measures for the proposed development, including the construction of acoustic barriers. Council's Environmental Health Unit has assessed the acoustic report and has applied application conditions of consent with regard to noise.
Traffic Noise	The applicant has provided an acoustic report which assessed a number of noise sources for the entire development. The report recommended a number of noise mitigation measures for the proposed development, including the construction of acoustic barriers. Council's Environmental Health Unit has assessed the acoustic report and has applied application conditions of consent with regard to noise.
Lighting	Council's Environmental Health Unit has assessed the lighting report with no objections and has applied application conditions of consent.

(e) Public interest

It is considered that the proposed development does not compromise the public interest. The proposal is generally considered to reflect the provisions of all applicable development control plans and intended development for the locality, subject to conditions of consent.

OPTIONS:

1. Approve the application, subject to the recommended conditions of consent.
2. Refuse the application with reasons.

Council Officers recommend Option 1.

CONCLUSION:

The proposed development provides an opportunity to revitalise the existing commercial site and provide employment during construction and operational phases. With the implementation of a number of operational conditions it is considered that there will be minimal impact in the locality. Therefore, recommended conditions of consent have been provided for the proposed alterations and additions to the existing service station, demolition of the existing workshop and addition of a fast food restaurant and drive through.

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. Determination Notice DA10/0746 (ECM 3571112)

Attachment 2. Approved Plans DA10/0746 (ECM 3571115)

11 [PR-PC] Development Application DA14/0788 for a Mixed Use Development Comprising Community Facility, Public Administration Building and Commercial Premises (Offices) at Lot 2 DP 1019196 No. 21 Brett Street, Tweed Heads

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA14/0788 Pt1

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Council is in receipt of a development application for a mixed use development comprising a community facility, public administration building and commercial premises (offices). The building is currently vacant and was originally approved as an educational establishment operated by Southern Cross University for the purposes of providing tertiary education.

The existing building is three storeys in height (ground, first, second floor) and is located adjacent to Tweed Shire Civic Centre. It is proposed to utilise the ground and first floors for public administration purposes (Tweed Shire Council). It is also proposed to utilise the existing lecture room on the first floor for Council Chambers and community use. The ground floor of this lecture room space will also be utilised for community and cultural displays. The second floor will be utilised for commercial premises. This application does not include any external works or signage.

The subject lot contains 117 on-site carparking while the adjoining Lot 1 contains 65 on-site carparking spaces. A monetary contribution in lieu of 40 offsite carparking spaces was also made in conjunction with the 1999 application for the tertiary education establishment.

The subject site is located within the B4 Mixed Use zone under the Tweed Local Environmental Plan 2012. The proposed use is permissible with consent and satisfies all the applicable planning provisions, with the exception of Clause 6.8 of the Tweed LEP 2012. This Clause relates to the use of the ground floor and first floor of buildings within certain zones, including the B4 Mixed Use zone. The proposal is inconsistent with this clause in that change of use will not have an active street frontage consistent with the definition within the TCCLEP 2012. Accordingly, the proposal requires concurrence for the variation to this Clause in accordance with Clause 4.6 (Exceptions to Development Standards) of the TLEP 2014. Council has assumed concurrence for this variation. This report will detail the reasons why a variation to this Clause is considered reasonable due to the circumstances of the case. It is this proposed variation of Clause 6.8 that requires the application to be reported to Council for determination.

This report will demonstrate that the proposal is considered worthy of support, subject to conditions.

It should be noted that the application did not require public notification and no submissions have been received. The application did not require any referrals to government authorities. Council officer comments on the application will be detailed within this report.

RECOMMENDATION:

That:

- A. An exception to the development standard identified as Clause 6.8 of Tweed City Centre Local Environmental Plan 2012, regarding ground floor development in a Business Zone, is supported in accordance with Clause 4.6 of this instrument and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed.**
- B. Development Application DA14/0788 for a mixed use development comprising community facility, public administration building and commercial premises (offices) at Lot 2 DP 1019196 No. 21 Brett Street, Tweed Heads be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:**
 - **BLG22-01**
 - **BLG22-02**
 - **BLG22-03**
 - **BLG22-04**

prepared by Tweed Shire Council and dated 19.11.14, except where varied by the conditions of this consent.

[GEN0005]
- 2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).**

[GEN0065]
- 3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**

[GEN0115]
- 4. The following works are to be undertaken to ensure that the building is provided with a satisfactory level of fire safety and amenity;**
 - i) The exit door to the ground floor administration/community meeting space is to be re-swung in order to swing in the direction of egress in accordance with Part D 2.20 of the NCC (BCA) 2014.**
 - ii) The main stairway located in the foyer is to be modified to ensure that any gap in the balustrade is not greater than 125mm and is to be provided with opaque risers.**
 - iii) The main stairway is to be provided with tactile indicators in accordance with Clause 2.4 of AS/NZS 1428.4.1:2009.**
 - iv) All external stairs are to have contrasting nosing strips.**

- v) Provide compliant handrails to external egress stairs discharging from the building.
- vi) Cabinets with side mounted hose reels are to be provided with instructions visible when the hose reel is both in the stored and operational position.
- vii) All penetrations through suspended reinforced concrete floor slabs and ceilings are to be protected in accordance with C3.12 & C3.15 of the NCC(BCA) 2014.
- viii) An illuminated exit sign is to be installed above the exit door of the ground floor administration/community meeting space in accordance with Part E of the NCC (BCA) 2014.
- ix) The threshold of the exit door (which serves the proposed Council Chambers) located in the southern elevation and adjacent to the ground floor administration/community meeting space is to be modified in order to comply with Part D2.15 of the NCC (BCA) 2014.
- x) The Annual Fire Safety Statement is to be amended to include the existing *Automatic Fire Suppression Systems - General (NCC - (BCA) Spec. E1.5 & AS 2118.1 - 1995*.

(GENNS01)

PRIOR TO COMMENCEMENT OF WORK

5. The works associated with fire upgrading required by this 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.

6. 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]

7. 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: [PCW0225]
- (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.

8. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design. [PCW0255]

[PCW0665]

DURING CONSTRUCTION

9. 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.

10. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: [DUR0005]

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]

11. 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]
12. 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]
13. 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]
14. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011.

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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

15. 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]
16. 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]
17. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).
[POC0355]
18. 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:

Sewer Banora: 0.73 ET @ \$6201 per ET \$4,526.70

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

[POC0675]

USE

19. 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]

20. 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]

21. 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]

22. Any use of the building shall be consistent with those nominated by this development consent.

[USENS01]

REPORT:

Applicant: Tweed Shire Council
Owner: Southern Cross University
Location: Lot 2 DP 1019196; No. 21 Brett Street Tweed Heads
Zoning: B4 Mixed Use
Cost: \$0.01

Background:

Site Details

The site has an area of 8505.5m² and a street frontage of approximately 142m to Brett Street, Tweed Heads. The site is generally flat and is serviced by a two way public road that intersects with Wharf Street. The Tweed Shire Council Tweed Civic Centre is located to the north west of the existing building and the Tweed Bowling Club shares a common boundary with the site to the north. The northern extremity of Terranora Inlet is located opposite the subject site, on the southern side of Brett Street. The site also contains 117 onsite carparking spaces and well established associated landscaping and pedestrian access paths.



Figure 1 Subject Site

The site is currently approved for an educational establishment pursuant to Development Consent K99/1151. This consent included a two lot subdivision that created the subject Lot 2.

Proposed

It is proposed to undertake a change of use within the confines of the existing building. Tweed Shire Council is proposing to 'expand the existing offices to this building, in conjunction with the existing offices in the adjoining administration centre.

The existing building is proposed to accommodate a mix of uses including leased commercial space, Council office accommodation and shared community and council meeting spaces as part of a wider project that would increase provision of library, community and Council meeting space within the subject site and the adjoining Lot 1(Tweed Heads Civic Centre) for the population of Tweed Heads.'

The change of use for the site can be summarised in the following table:

Floor	Proposed Uses	Landuse Definition
<i>Ground Floor</i>	<ul style="list-style-type: none">• Tweed Shire Council operated meeting rooms and community and cultural displays including ancillary use by community groups and the general public	Public Administration building/community facility
<i>First Floor</i>	<ul style="list-style-type: none">• Tweed Shire Council staff use• Existing lecture theatre to be used primarily for Tweed Shire Council Meetings as well as being available for hire by community groups and members of the public	Public Administration building
<i>Second Floor</i>	<ul style="list-style-type: none">• Offices for separate leasing	Commercial premises

No building work or advertising signage requiring development consent is proposed in conjunction with this application.

The building will continue to utilise the existing 117 carparking sites upon the site. The ordinary use will operate between 8am and 5pm weekdays. However, use of the building may also occur outside these hours, seven days a week as required by staff undertaking various duties.

SITE DIAGRAM:



Locality Plan

Lot 2 DP 1019196
No. 21 Brett Street, Tweed Heads

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

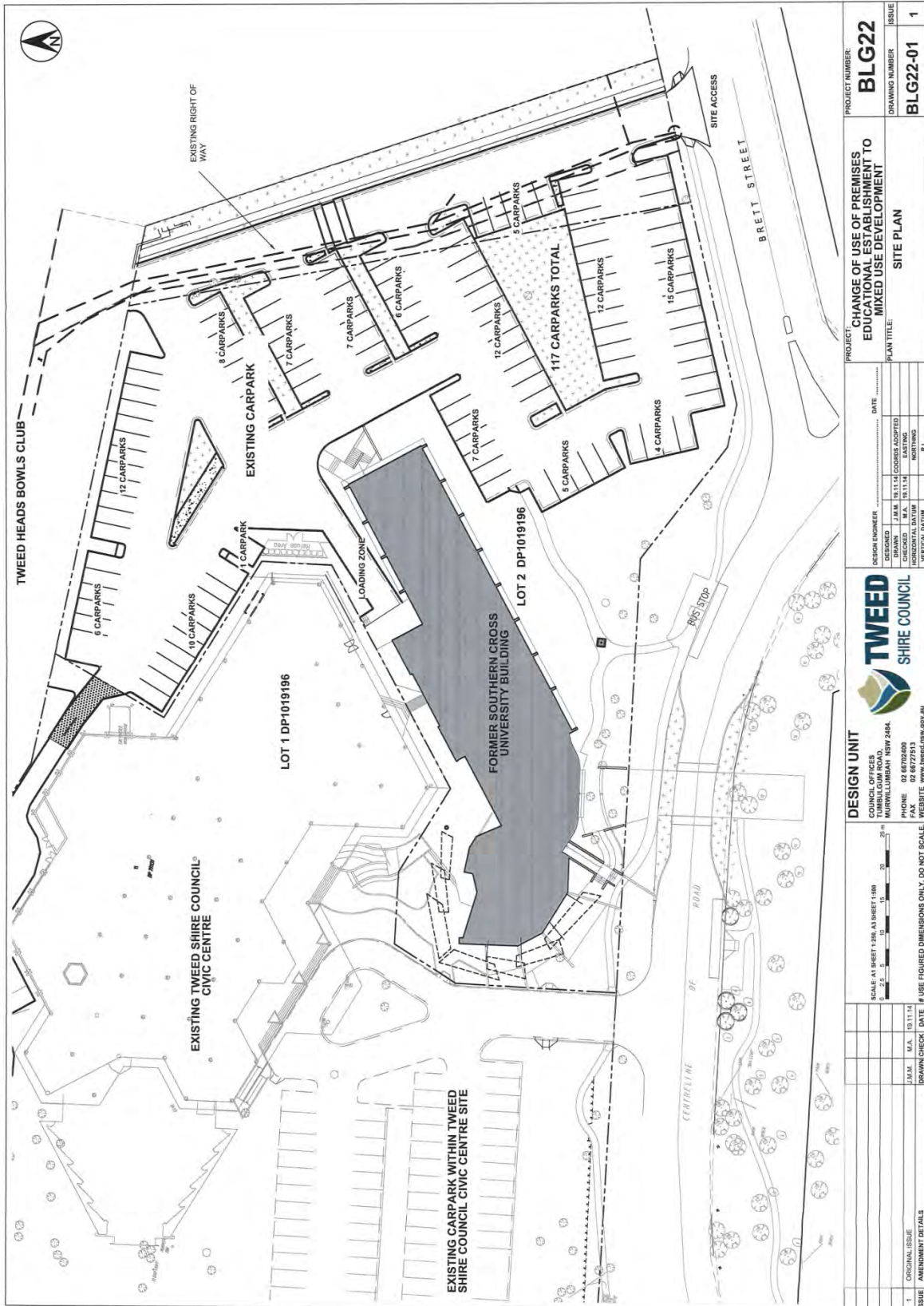
Cadastre 07/01/2015
© Land and Property Information (LPI) & Tweed Shire Council.
Boundaries shown should be considered approximate only.

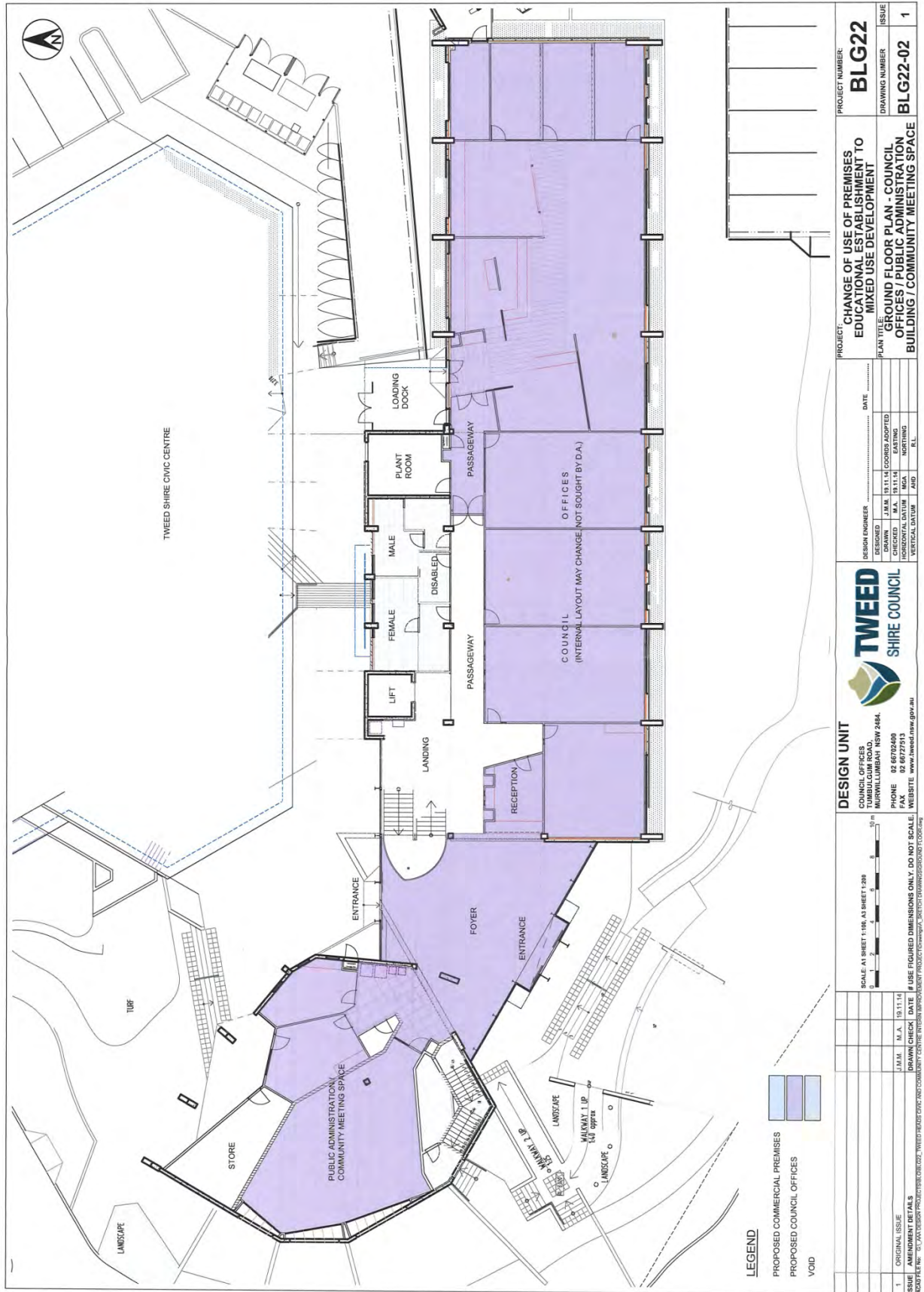
0 0.5 1 Km
1:50,000 @ A4 Portrait
NO NOT SCALE
COPY ONLY - NOT CERTIFIED
Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1994
Map Grid of Australia, Zone 56
GDA

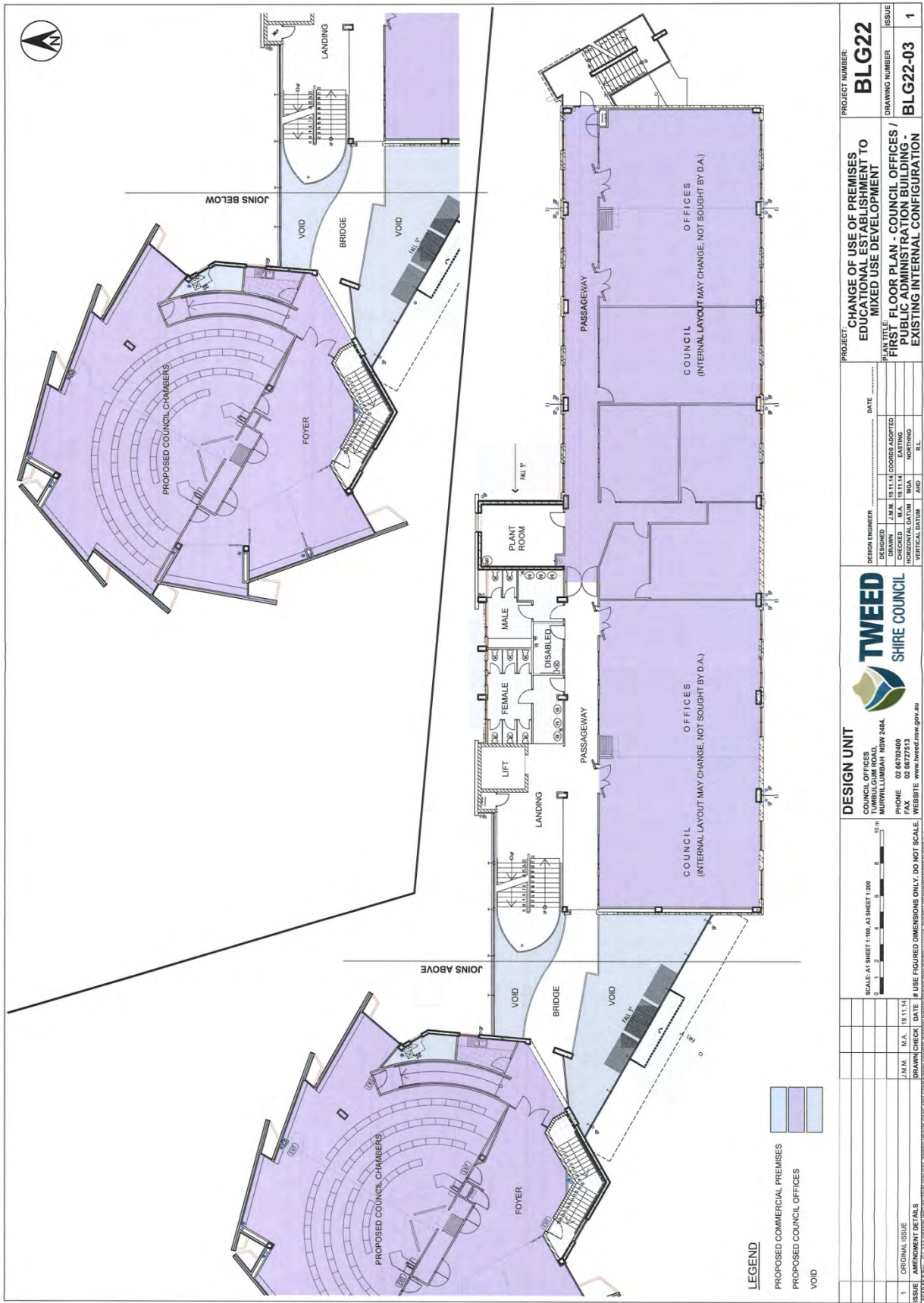
Civic and Cultural Centre
3 Tamburlain Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484
T (02) 6570 2400 | 1300 292 872
F (02) 6570 2423
W www.tweed.nsw.gov.au
E planning@tweed.nsw.gov.au



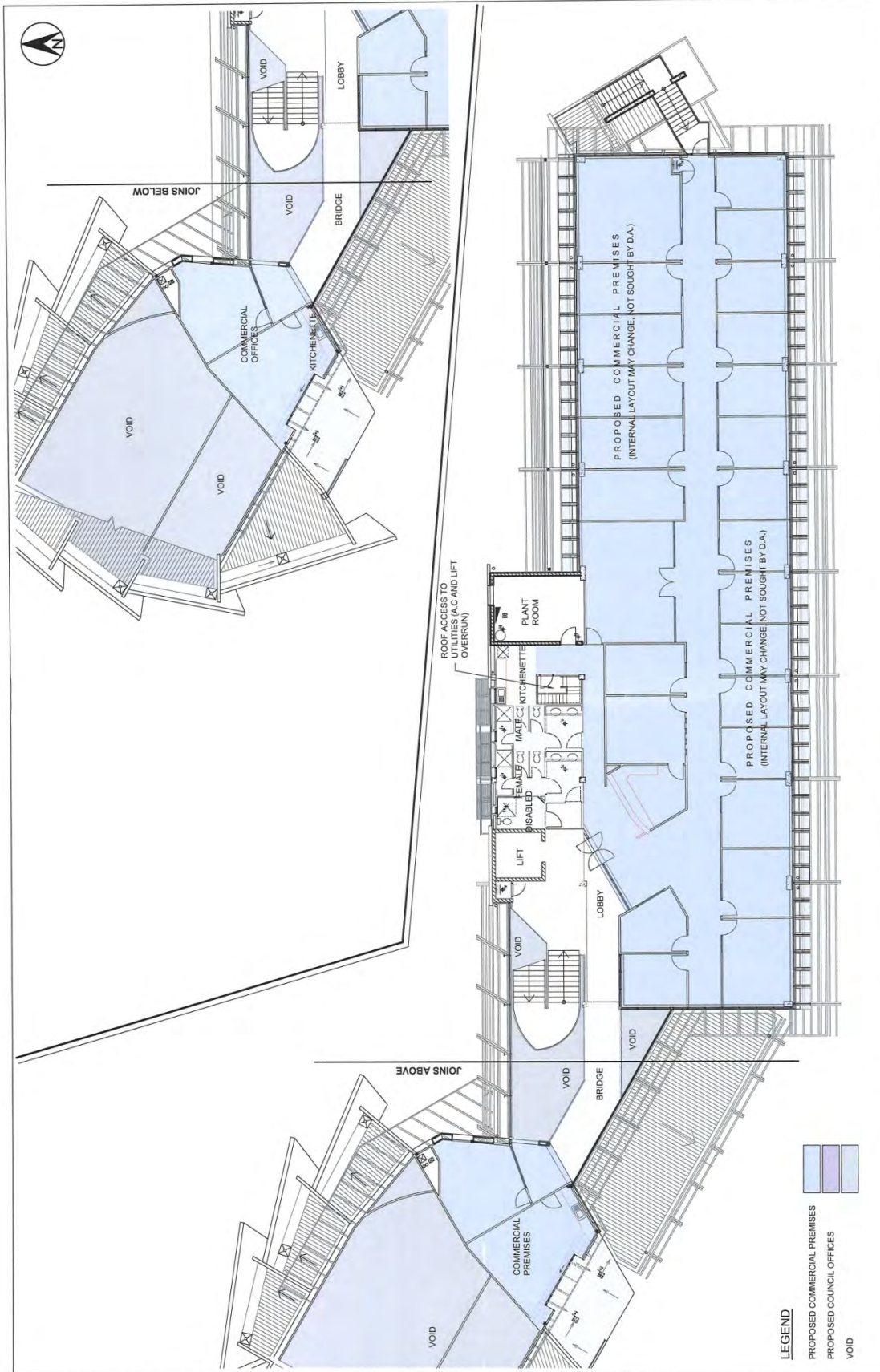
DEVELOPMENT/ELEVATION PLANS:







<p>PROJECT: CHANGE OF USE OF PREMISES OF EDUCATIONAL ESTABLISHMENT TO EDUCATIONAL ESTABLISHMENT TO MIXED USE DEVELOPMENT</p> <p>PROJECT NUMBER: BLG22</p>	
<p>PLAN TITLE: FIRST FLOOR PLAN - COUNCIL OFFICES / PUBLIC ADMINISTRATION BUILDING - EXISTING INTERNAL CONFIGURATION</p> <p>DRAWING NUMBER: BLG22-03</p> <p>ISSUE: 1</p>	
DESIGN ENGINEER	DATE
DESIGNED: J.M.M. 19.11.14	
DRAWN: J.M.M. 19.11.14	
CHECKED: M.A. 19.11.14	
APPROVED: M.A. 19.11.14	
VERTICAL DATUM	R.L.
<p>DESIGN UNIT: COMMERCIAL PREMISES, COUNCIL OFFICES, MURWILLUMBAH NSW 2484.</p> <p>PHONE: 02 66702400</p> <p>FAX: 02 66727513</p> <p>WEBSITE: www.tweed.nsw.gov.au</p>	
<p>SCALE: A1 SHEET 1:100, A3 SHEET 1:200</p> <p>0 1 2 3 4 5 6 7 8 9 10 m</p>	
<p>ISSUE: ORIGINAL ISSUE</p> <p>ISSUE: AMENDMENT DETAILS</p> <p>DATE: 19.11.14</p> <p>DATE: 19.11.14</p> <p>DATE: 19.11.14</p> <p>DATE: 19.11.14</p>	



LEGEND

- PROPOSED COMMERCIAL PREMISES
- PROPOSED COUNCIL OFFICES
- VOID

<p>DESIGN UNIT COUNCIL OFFICES 100 MURWILLUMBAH NSW 2484. PHONE 02 66726000 FAX 02 66727513 WEBSITE www.tweed.nsw.gov.au</p>		<p>TWEED SHIRE COUNCIL</p>		<p>DESIGN ENGINEER DESIGNED J.M.M. 19.11.14 DRAWN J.M.M. 19.11.14 CHECKED M.A. 19.11.14 DATE 19.11.14</p>		<p>PROJECT NUMBER: BLG22</p>	
<p>SCALE: A1 SHEET 1:100, A3 SHEET 1:200</p>		<p>DATE</p>		<p>PROJECT TITLE: CHANGE OF USE OF PREMISES EDUCATIONAL ESTABLISHMENT TO MIXED USE DEVELOPMENT</p>		<p>DRAWING NUMBER: BLG22-04</p>	
<p>ISSUE / AMENDMENT DETAILS</p>		<p>DATE</p>		<p>PLAN TITLE: SECOND FLOOR PLAN - PROPOSED COMMERCIAL PREMISES - EXISTING INTERNAL CONFIGURATION</p>		<p>ISSUE: 1</p>	
<p>1 ORIGINAL ISSUE</p>		<p>DATE</p>		<p>PROPOSED COMMERCIAL PREMISES (INTERNAL LAYOUT MAY CHANGE, NOT SOUGHT BY D.A.)</p>		<p>ISSUE NUMBER: 1</p>	

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

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

Tweed City Centre Local Environmental Plan 2012 (TCCLEP 2012)

Clause 1.2 – Aims of the Plan

Clause 1.2 illustrates that the aims of the TCCLEP 2012 are to give effect to the desired outcomes, strategic principles and actions contained in the Council's adopted strategic planning documents. It is intended that the Tweed City Centre is strengthened as a multi functional and innovative regional centre that encourages employments and economic growth.

The subject development application is considered suitably in keeping with the these aims as it will provide office space for Tweed Shire Council employees in addition to community space for compatible uses, as required. The second floor commercial space will also provide additional floor areas for business operations not currently available, with good access to Tweed Shire Council and appropriate access to carparking onsite for staff and customers. This change of use is a good outcome for Tweed Heads as the building is currently vacant. It is considered a positive economic outcome for Tweed Heads as the site will attract a variety of users likely to also patronise the nearby commercial centre.

Clause 2.3 – Zone objectives and Land use table

The subject site is located within the B4 - Mixed Use zone. The primary objectives of the zone are;

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

It is submitted that the proposal is a type of commercial and public administrative use, both compatible with one another within the B4 zone. The proposed uses upon the site will integrate with the existing surrounding uses, being Tweed Shire Council and the Tweed Heads Bowls Club while providing additional floor area that has good access to public transport. Given the site is within an existing outer business district and characterised by flat terrain, cycling and walking to the site will be feasible and likely.

It is therefore considered that the proposed use meets the objectives and is considered unlikely to cause any adverse impacts on the character and amenity of the area.

Clause 4.3 - Height of Buildings

The site has a building height limit of 13.6m. The existing building height will be retained as a result of this change of use. While the existing building height exceeds this limitation, being 15.2m, no changes to the external building are

proposed. Therefore, the building being an approved structure with no external changes is considered acceptable in the circumstances.

Clause 4.4 – Floor Space Ratio

The site has a nominated FSR of 2:1. The existing footprint and GFA of the building will not change. The current GFA of the building is 3455m². The site area of the subject lot is 8505.5m². Accordingly, the FSR of the building is 0.406:1. This FSR will not be amended as a result of this proposal, therefore the proposal is consistent with this Clause, being well under the 2:1 maximum.

Clause 4.6 - Exceptions to development standards

The proposal is not consistent with the provisions of Clause 6.8 of the TCCLEP 2012 in that the ground floor of the development does not have an active street frontage as a result of the proposed change of use.

Therefore, a written request to vary this development standard has been provided by the applicant.

In this clause, a building has an **active street frontage** if all premises on the ground floor of the building facing the street (that is not a service lane) are used for the purposes of business premises or retail premises. However, this active street frontage does not apply to any part of the building that is used for entrances and lobbies, including those used for a mixed use development.

The proposal is contrary to this Clause as the ground floor of the building, being located within a B4 Mixed use zone will not be used for business or retail premises. It is proposed that the ground floor will be used for public administration purposes.

Clause 6.8(4) states that the active street frontage provisions do not apply to buildings that have entrances and lobbies in association with a mixed use development. It is noted that the building does feature a foyer and entrance to the Brett Street frontage. As the building may be defined as a mixed use being a commercial and public administration building, this section of the building is not subject to the provisions of this Clause.

However, the circular portion of the building and rectangular portion of the building do not have an active street frontage in accordance with this provision.

There are a number of circumstances relevant to this application that supports the exception to the development standard. The existing building is located on a large lot immediately adjoining the Tweed Heads Civic Centre and large associated carpark. As can be seen in Photo 2 below, the building itself occupies approximately one third of the subject lots' street frontage to Brett Street. The large rectangular portion of the building is actually spatially separated from the street by landscaping and carparking due the orientation of the building onsite.

A significant portion of the building fronting Brett Street is identified as main entrance and foyer of the building and adjoining public administration/ community meeting space. This portion of the building is exempt from compliance with this Clause in accordance with 6.8(4)(a).

Therefore, the section of the building that requires a variation from the clause is in fact the circular section of the building in the south western corner of the site and the rectangular section to the east of the building identified as the entrance and foyer.

The application has addressed Clause 4.6 with the following statements:

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

Applicant's Response

The proposal will not alter the internal or external elements of the building. Pedestrian linkages including footpaths between public transport, bicycle and vehicle parking within the site will remain and continue.

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

Applicant's Response

The proposal would promote an active street frontage with the combination glazed entries, active office uses such as reception visible from the street. It is not considered to be a public benefit in maintaining Clause 6.8 in this instance as the proposal will still attract significant pedestrian activity comparable to a typical commercial activity.

Conclusion

Having considered the circumstances of the case and the matters presented by the applicant, it is considered that a variation to the development standard is warranted in this instance and the development should be supported. The proposal is for a change of use to any existing building that is located upon a large lot but occupies a relatively small street frontage. The building sits well within the lot and the site creates an attractive pedestrian thoroughfare given existing landscaping that creates areas of shade for pedestrians and bike riders.

The variation to the development standard is considered in the public interest. The proposal is considered to remain consistent with the objectives of the zone, despite this variation.

Clause 5.4 - Controls relating to miscellaneous permissible uses

This Clause is not applicable to the subject site or proposed change of use.

Clause 5.5 – Development within the Coastal Zone

The subject site is located within the coastal zone as defined by the Coastal Policy.

This policy implements the principles of the NSW Coastal Policy as;

1. *No earthworks or changes to the building are proposed, therefore the risk to the associated ecosystems and water quality is considered low*
2. *The attributes of the adjoining Terranora Inlet will be protected as no works to the building will take place in conjunction with this application*

3. *The building is spatially separated from the coastal foreshore therefore will not impact on public access, nor will the building or site be impacted by coastal processes or climate change*
4. *No change to the amenity and scenic quality of the locality is anticipated given the existing established vegetation onsite and retention of the existing building.*
5. *Given the proposal is for a change of use of the existing building only with no alterations to the surrounding car parking or landscaping, the proposal is anticipated to have no impacts on any marine environment and is appropriate to the location, given the zoning of the area and existing developments surrounding.*

Having regards to the circumstances of the case, it is considered that the proposal satisfies the provisions of this clause and can be supported.

Clause 5.9 – Preservation of Trees or Vegetation

The proposal is a change of use of an existing building. The site contains extensive well established landscaping that will be retained in conjunction with this proposal.

Clause 5.10 - Heritage Conservation

This Clause is not applicable to the subject site.

Clause 5.11 - Bush fire hazard reduction

The land is not bushfire prone

Clause 6.1 – Acid Sulfate Soils

The site is Class 2 Acid Sulfate soils. However, the proposal, being a change of use of an existing building will not require any soil disturbance. Accordingly, the potential for exposure of acid sulfate soils in association with the proposal is removed.

Clause 6.2 – Flood Planning

The site is partially impacted by the design flood inundation area. However, the building itself is outside flood inundation area.

The proposal is for a change of use of an existing multi storey building. Sufficient flood free storage areas are available within the existing building

Clause 6.3 - Floodplain risk management

As no change to the existing building footprint will result from this proposal, this condition is considered duly satisfied.

Clause 6.4 - Terrestrial biodiversity

The subject site is not identified as bushland within the TCCLEP 2012 mapping. Therefore, this Clause is not applicable to the subject site.

Clause 6.6 – Minimum building street frontage

The site has an irregular frontage to Brett Street. The frontage of approximately 148m is consistent with the minimum street frontage of 20m, as required by this clause.

Clause 6.8 – Ground floor and first floor development in certain business zones

This clause is applicable to the subject site. The objective of this clause is to *'promote uses that attract pedestrian traffic along certain ground floor street frontages in certain business zones.'*



Photo 1 - View looking east along Brett Street of existing Building



Photo 2 - Aerial View of Existing Building

The proposal is contrary to this Clause as the ground floor of the building, being located within a B4 Mixed use zone will not be used for commercial purposes. It is proposed that the ground floor will be used for public administration purposes.

Clause 6.8(4) states that the active street frontage provisions do not apply to buildings that have entrances and lobbies in association with a mixed use development. It is noted that the building does feature a foyer and entrance to the Brett Street frontage. As the building may be defined as a mixed use being a commercial and public administration building, this section of the building is not subject to the provisions of this Clause.

However, the circular portion of the building does not have an active street frontage in accordance with this provision.

There are a number of circumstances relevant to this application that can justify the lack of an active street frontage for the subject building. The existing building is located on a large lot immediately adjoining the Tweed Heads Civic Centre and large associated carpark. As can be seen in Photo 2, the building itself occupies approximately one third of the subject lots street frontage to Brett Street. The large rectangular portion of the building is actually spatially separated from the street by landscaping and caparking due the angle of the building onsite.

The portion of the building fronting Brett Street is identified as main entrance and foyer of the building and adjoining public administration/ community meeting space and rectangular portion of the building with a north eastern orientation.

The application has provided a request to vary this development standard in accordance with Clause 4.6 of the TLEP. The reasons for this variation have been outlined in a previous section of this report. This discussion has concluded that a variation to the standard should be supported in this instance given the circumstances of the case.

Clause 6.9 - Airspace operations

The development will not impact the Gold Coast Airport, given the existing and proposed height will not change and the spatial distance between the two sites.

Clause 6.10 – Design excellence

As the external appearance of this building will not alter, rather only the proposed use, this clause is not applicable to the subject development.

State Environmental Planning Policies

SEPP No. 64 – Advertising and Signage

No advertising signage requiring development consent is sought by the development application. No elevations or details in regards to signage have been provided within the application.

SEPP No 71 – Coastal Protection

The site is also identified as being located within a sensitive coastal location as defined by SEPP 71.

Given the proposal is for a change of use to an existing building and no works will be required, the development is considered to be consistent with the provision Clause 8 in that:

- The proposal will in no way alter or generate additional use of the existing public access to the adjacent waterway.
- The proposal does not incorporate any elements which will generate additional demand for access to the adjacent Terranora Inlet given the separation by Brett Street.
- The proposal will in no way have a detrimental impact upon the scenic quality of the NSW coast.
- The proposal will not create any adverse impacts upon the water quality of the nearby Terranora Inlet. No change to stormwater runoff will occur.
- The proposal will not result in any change to the existing shadow cast by the existing building as no alterations are proposed to the external structure.

SEPP (Infrastructure) 2007

Public administration buildings are permissible with consent within the B4 Mixed Use zone. While certain works are permissible without consent upon public administration buildings, the subject change of use does require development consent, pursuant to the provisions of this policy.

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

None applicable to the land or proposed development.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The SEE states that no change to the existing configuration of pedestrian and vehicle access to the site is proposed. The site and surrounds have a well established pedestrian network while vehicle access will remain via the entry at the eastern end of the site from Brett Street.

In accordance with the provisions of Tweed DCP 2008 - Section B2 - Tweed Heads, the provisions of this Section prevail over A2 in regards to carparking requirements for the site. These requirements and an assessment of the proposal against such are outlined below.

A3-Development of Flood Liable Land

The site is partially flood prone, however, no changes to the existing building are required and the existing building is located clear of the inundation area

A4-Advertising Signs Code

As mentioned previously, no advertising structures are proposed in conjunction with this application, therefore no assessment is necessary.

A11-Public Notification of Development Proposals

In accordance with this Policy document, the application did not require public notification.

A13-Socio-Economic Impact Assessment

In accordance with the provisions of this Policy, a socio- economic assessment was not required to be provided for this development type.

A15-Waste Minimisation and Management

Existing arrangements for the disposal of waste onsite in accordance with Tweed Shire Council's Waste Management protocols will be adopted for the building.

A16-Preservation of Trees or Vegetation

No tree removal proposed or required in conjunction with this application

B2-Tweed City Centre

This Policy is applicable to the subject site.

The site is located within the Civic/Campus Precinct. The Policy proposes that the future intent of *'the precinct largely maintains the existing civic character', 'with a network of landscaped pedestrian through links and new public squares linking the Tweed river to Wharf Street.* The proposal is considered consistent with the future vision given the proposed use and existing pedestrian walkways onsite intertwined through well established landscaping.

The sections of this policy relating to building form and residential development controls are not applicable to the subject application.

This Plan has controls and objectives in regards to pedestrian amenity. As previously mentioned, no works to the external building or grounds are proposed. The site and adjoining public land does contain well established vegetation and pedestrian access paths linking the site with adjoining public and private buildings. Therefore, the existing development is considered satisfactory and does not warrant further works in this regard. This aspect of the policy is considered duly satisfied.

Access, Parking and Servicing

The existing pedestrian access to the site and building will remain as existing for the site.

Vehicle access will remain via the driveway on the eastern boundary of the site.

In accordance with the provision of this Policy, 1 space per 40m² of gross floor area is required. The building has a GFA of 3455m², therefore will require 87 spaces onsite. The site currently contains 117 spaces and is therefore compliant in this regard. The proposal as approved in 1999 also paid an offsite contribution

for the provision of 40 carparking spaces, resulting in an overall surplus of 70 carparking spaces (30 onsite and 40 from offsite contributions). The proposal is considered to be consistent with the parking requirements of this Policy.

In regards to bicycle parking, the site contains an existing bike rack adjoining the disabled carparking area on the southern side of the building.

Given the excess in parking provided onsite, motorcycle parking will be readily available.

The layout and screening of the carparking is considered satisfactory and no additional requirements are considered necessary.

Environmental Management

The policy has specified controls in regards to environmental management. While the building is existing and the application is for a change of use only, the applicants have responded to this provision as follows.

As the application seeks a change of use and no building works are proposed there are considered to be little opportunities to address improved pedestrian linkages or environmental management/waste minimisation as part of the proposed development.

However, the applicant has advised that Tweed Shire Council has engaged an architect to design a refurbishment of both the existing civic centre and former SCU building. The process being performed by the architect may provide opportunities to address these matters across both sites. Having regard to the scope of the current application, further assessment of the buildings compliance with these aspects of the Plan is considered appropriate with the next stage of the development. This will be the subject of a separate application.

Energy Efficiency and Conservation, Water Conservation, Climate Change and Floodplain Management

The Policy requires Classes 5-9 (The building is Class 5) of development to be compliant with the Building Code of Australia energy efficiency provisions. Consideration is also required for various other matters in relation to environmental factors such as climate changes and water conservation

As mentioned above, these aspects of the building in its current form should be considered in conjunction with the next phase of the development, given the proposal is for a change of use only.

Waste and Recycling

Details in regards to waste management within the building following the change of use have not been provided. A condition will be applied to any consent granted requiring all wastes to be collected, stored and disposed of in accordance with Development Control Plan Section A15 - Waste Minimisation and Management. These details are usually required prior to the determination of an application, subject to site specific circumstances. As the proposal is for a

change of use for an existing building, a condition of consent is considered satisfactory in this instance.

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

Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

Clause 92(b) Applications for demolition

No demolition proposed.

Clause 93 Fire Safety Considerations

Council's Building Unit has assessed the proposed development with regard to fire safety considerations. Applicable conditions of consent have been applied.

Clause 94 Buildings to be upgraded

Council's Building Unit has assessed the proposed development in terms of Clause 94. This assessment concluded that the requirements of clause 94 are not required to be considered as there is no rebuilding and alterations.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown land. The Tweed Shire Coastline Management Plan 2005 is not applicable to the proposed development.

Tweed Coast Estuaries Management Plan 2004

This Plan relates to the Cudgen, Cudgera and Mooball Creeks. This management plan is not applicable to the site or adjoining lands.

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

This plan relates to the Cobaki and Terranora Broadwater. While the proposal is located adjacent to the Terranora Inlet, it is at the northern extremity of the inlet and spatially separated by Brett Street. Further, the proposal does not include any alteration to the external building or site. Therefore, the proposal is not inconsistent with any of the provisions identified within this plan.

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

Context and Setting

The current approved use of the building is an educational establishment which was operated by Southern Cross University (SCU) for the purposes of tertiary education. The building is now vacant as SCU have relocated their operations elsewhere. The site is currently occupied by a three storey building and

associated vehicle parking for 117 vehicles, loading zone, waste storage area and landscaping.

The 12 year old building is comprised of the following:

Ground floor

- Entry and lobby area
- Reception and offices
- 11 x portioned rooms
- Storerooms and plant rooms
- Male and female amenities

First Floor

- 12 x rooms
- Lecture theatre
- Plant room
- Male and female amenities

Second Floor

- 28 x offices
- Meeting room
- Staff amenities including enclosed terrace
- Plant room
- Male and female amenities

The building is equipped with ducted air conditioning and a fire sprinkler system. The site adjoins the Tweed Shire Council Civic Centre and also adjoins Tweed Bowling Club.

Access, Transport and Traffic

An assessment of the carparking requirements and existing provisions onsite has been outlined with the DCP B2 Section above. The proposal will provide an excess of parking onsite, having regard to the requirements for the educational establishment consent of 1999. Contributions were also made for offsite parking equivalent to 40 vehicles.

Flora and Fauna

No alteration to the existing site is proposed in the form of structures or carparking. All existing landscaping will be retained and no impact on flora or fauna is anticipated.

Developer Contributions

Section 94 - Tweed Road Contribution Plan (TRCP)

The original Development Application, K99/1151 was calculated to generate 389 trips/day based upon 500 students and 30 staff.

The current application is defined as a major commercial office with a GLA of 2591.25m². Major commercial offices generate 12 trips per 100m² of GLA. Therefore, the current application generates 310.95 trips per day. As the proposed development has a lower daily trip rate than the original Tertiary

Education Establishment (389 trips/day), no TRCP contributions will be applied to the application.

Section 94 - Council Administration Facilities

The original application for the Tertiary Education Establishment was charged Section 94 fees according to the floor area of the building (1ET/300m²).

Given the floor area of the building is not changing and the rate remains the same as that used within the 1999 assessment, no additional charges for this Plan are applicable.

Section 64 Water

The original Development Application K99/1151 had a 20ET demand for water in accordance with the applicable rate at the time of assessment.

The proposed commercial use generates a demand of 13.8ET, in accordance with current rates. Accordingly, no additional charges for water supply are applicable to this application.

Section 64 Sewer.

The original Development Application K99/1151 had a 20ET demand for sewer in accordance with the applicable rate at the time of assessment.

The proposed commercial development generates an equivalent tenement of 20.73ET, based on Council's current Section 64 Contributions Plan. Therefore, this application will be charged 0.73ET for the difference between the previous and current application. A condition of consent will be included within the proposed conditions of development consent.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The site is within a precinct characterised by compatible uses such as the Tweed Shire Council Civic Centre and the Tweed Heads Bowls Club.

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

The proposed development did not require public notification. Consequently, no submissions have been received.

(e) Public interest

It is considered that the proposed development does not compromise the public interest. The proposal is generally considered to reflect the provisions of all applicable development control plans and intended development for the locality, subject to compliance with conditions of consent.

OPTIONS:

That Council:

1. Approves the application, subject to the recommended conditions of consent; or
2. Refuses the application, providing reasons.

Council officers recommend Option 1.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. Given the existing approvals over the site for an education establishment, the proposed development is not considered to result in adverse cumulative impacts, subject to compliance with conditions of consent. It is therefore considered the site suitable for the development and warrants approval.

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.

12 [PR-PC] PP10/0002 Marana Street, Bilambil Heights Planning Proposal - Report on the Planning Proposal Public Exhibition and Update on Compliance Issues - Draft Tweed Local Environmental Plan 2014 Amendment No. 9

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: PP10/0002 Pt5

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
- 1.5.1 Sustainable management of the population in accordance with strategic decisions of previous councils, the NSW and Commonwealth Governments and the Far North Coast Regional Strategy, including provision of amenities, infrastructure and services

SUMMARY OF REPORT:

This report provides a summary of the public consultation undertaken with regard to the Planning Proposal PP10/0002 for 61 Marana Street, Bilambil Heights, facilitating the rezoning of the site to a general residential zone. It also seeks Council's approval to forward the proposal to the NSW Department of Planning and Environment requesting that it be made, as Tweed Local Environmental Plan 2014 Amendment No. 9.

The key issue raised by both council staff and submissions through the public exhibition relates to the prevailing traffic capacity limitation of the local road network. The future development of the site relies on access to Kennedy Drive, where the constraint exists. To overcome the immediate issue and to allow the proposal to proceed it is recommended that the development be staged, and that traffic generation be capped by way of a new site specific provision being incorporated into the Tweed Development Control Plan, consistent with Council's resolution of 15 February 2011.

The proposal and corresponding draft local environmental plan represent a logical infill extension of the Bilambil Heights area and is within the urban boundary identified in the *Far North Coast Regional Strategy 2006*. Future use of the land for residential development is consistent with the surrounding land-uses and the Bilambil urban release area, as part approved under a Part 3 application by NSW Planning and Environment for the development known as the "Rise".

This report recommends that the proposal and draft local environmental plan be referred to the Department of Planning and Environment for the plan to be made.

RECOMMENDATION:

That:

- 1. Planning Proposal Version 3 PP10/0002 for 61 Marana Street, Bilambil Heights, being *Tweed Local Environmental Plan 2014 Amendment No. 9*, be forwarded to NSW Planning and Environment requesting the making of the plan under s.59 of the *Environmental Planning and Assessment Act 1979*, but only following the entering of a Costs Agreement with the Landowner for the preparation of the associated amendment to the Tweed Development Control Plan 2008, as discussed in this report;**
- 2. The Minister for Planning and Environment be advised that delegation of the Plan making functions is not sought;**
- 3. The site be included on the Key Sites Map of the Tweed Local Environmental Plan 2014 and subject to Clause 7.13 requiring the preparation of a development control plan;**
- 4. A site specific development control plan (DCP) be prepared for the site to address a number of matters, including but not limited to:**
 - a) Structure, urban design and staging, including consideration of the traffic capacity constraints;**
 - b) infrastructure requirements/objectives;**
 - c) asset protection zone objectives;**
 - d) drainage easement objectives/restriction on use;**
 - e) building typology;**
- 5. The costs for the preparation of the DCP be borne by the applicant on a cost recovery basis as provided by Council's adopted Fees and Charges Schedule and**
- 6. The draft DCP be exhibited for a minimum of 28 days.**

REPORT:

Background

The Marana Street Planning Proposal PP10/0002 (the Proposal), as shown in Figure 1, seeking the rezoning of the site for residential purposes, was lodged with Council in May 2010 and initially reported to Council 20 July 2010, at which time Council resolved:

- "1. Planning Proposal PP10/0002 for Lot 30 DP 850230 No. 61 Marana Street, Bilambil Heights not be referred to the Department of Planning for a gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 based on insufficient capacity within the Kennedy Drive catchment to accommodate urban growth exceeding that which already has potential under existing Local Environmental Plan 2000 zonings west of Cobaki Bridge.*
- 2. The proponent be advised that additional traffic assessment is required and should be submitted as an addendum to the planning proposal that clearly demonstrates the capacity of the catchment. Any addendum information requiring reassessment is to be subject to the draft fees and charges recommended in Planning Reforms Work Program report listed in the Council agenda of 20 July 2010."*

Subsequently the proponent prepared the additional traffic assessment and the proposal was reported to Council on 15 February 2011, at which it was resolved:

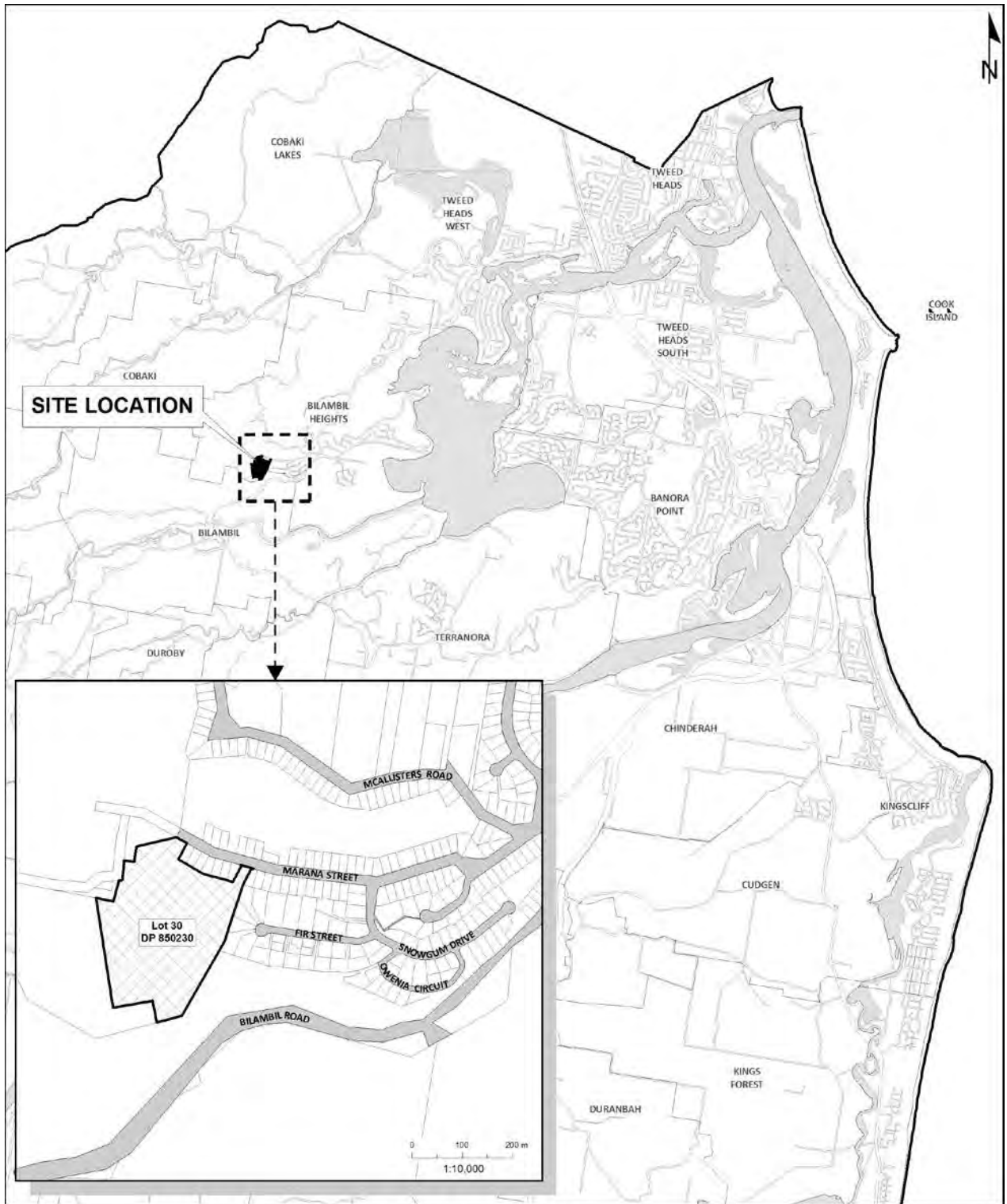
- "1. Council notes the revision to the Tweed Planning Proposal Assessment Process.*
- 2. Council proceeds with the Planning Proposal PP10/0002 – Lot 30 DP 850230 No. 61 Marana Street, Bilambil Heights (Royal Terranora Resort), to seek additional studies as required to support and inform the amended planning proposal, and that the planning proposal be linked to the preparation of a Development Control Plan for the subject site.*
- 3. Any Development Control Plan for the subject site provide a staging strategy for the redevelopment and ensure future redevelopment of the site is capped at the equivalent traffic generation as would currently and reasonably be permitted under the 6(b) zone, until such time as the Kennedy Drive bypass (consisting of dedication and construction of the full length of Cobaki Parkway, the new bridge over Cobaki Creek and the Scenic Drive Deviation) is completed and dedicated to Council.*
- 4. The amended planning proposal and supporting studies be subject to a subsequent report to Council seeking resolution to refer the Planning Proposal to the Department of Planning for a gateway determination."*

A Memorandum of Understanding (MOU) outlining the required studies and their scope of assessment was signed by the Applicant in September 2011.

Following identification of an unlawful use of the land, the matters was again considered by Council at the meeting of 1 May 2014, where Council resolved:

- "1. Planning Proposal PP10/0002 be referred to NSW Planning and Infrastructure for a Gateway Determination in accordance with s56 of the Environmental Planning and Assessment Act, 1979, following the completion of all remaining studies;*
- 2. The Minister for Planning and Infrastructure be advised that delegation of the Plan making functions will be sought in this instance;*
- 3. The Planning Proposal be publicly exhibited, where required, in accordance with the requirements of the Gateway Determination; and*
- 4. Enforcement action arising from the unlawful use of the site be held in abeyance subject to:*
 - A Building Safety Audit be undertaken and completed within 14 days of Council's Resolution on this Item. The scope of the audit to be discussed with Council Officers prior to commencement and a copy to be provided to Council when completed. Complete required works identified as part of the Building Safety Audit within three months of Council's resolution;*
 - The resolution of Council to refer the Planning Proposal to NSW Planning and Infrastructure for a Gateway Determination;*
 - Completion of the Planning Proposal in accordance with the timeframe included within this report; and*
 - Lodgement of a Development Application upon gazettal of the draft Local Environmental Plan (Planning Proposal) for a change of use to regularise the residential use of the premises.*
- 5. In the event that satisfactory progress on the above actions in Part 4 are not achieved and that any further enforcement action by Council is required, Council shall take into account the well being and capacity to relocate the existing residents, prior to taking any definitive action."*

Resolution (2) of the Council which purports to seek the delegated plan making functions of Minister in respect of this proposal cannot be pursued at this time. The structural policy framework for this process and procedure is not endorsed by either the Council or the Minister for Planning and Environment, as required. It is envisaged that a report on the plan making delegations will be reported to Council by April with a recommendation as to the benefit or otherwise of adopting that process.



LOCALITY PLAN

Lot 30 DP 850230
No. 61 Marana Street, Bilambil

0 1 2 Km
1:75,000

Filename: z:\esri\planning\mxd\A4P_B&W SitePlan.mxd	Author: J.Batchelor - Planning Reforms Unit	Date Printed: 24 June, 2010
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		 <p>TWEED SHIRE COUNCIL</p>

Figure 1 Locality Plan showing the Marana Street Planning Proposal site

Planning Proposal - Public Exhibition

The Proposal was referred to the Department of Planning and Environment (DP&E), (formerly Planning and Infrastructure) for a Gateway Determination, and that was later issued on 1 October 2014, subject to:

- A minimum 28 days public exhibition;
- Consultation with the Rural Fire Service (RFS);
- A public hearing is not required; and
- The time frame for completion is 9 months following the Gateway Determination (1 July 2015).

The Proposal is a Priority 2 on the Strategic Planning and Urban Design (SP&UD) adopted Work-plan 2014-15, endorsed by Council 19 June 2014. Whilst this level of priority draws limited internal resources, the compliance issues and the timeframe placed on the completion of the Proposal by the Gateway Determination and Council have required a higher level of internal resourcing. The resourcing of the project is consistent with the transition period required to shift the Unit's resource allocation from a first-in-time work program to the more recent work priorities plan.

Public Exhibition

In accordance with s.56 and s.57 of the *Environmental Planning and Assessment Act 1979* (the Act), the DP&E Gateway Determination and the resolution of Council, the Proposal was publicly exhibited from 14 October to 14 November 2014 (minimum 28 Days) at the Murwillumbah Civic Centre, Tweed Heads Civic Centre and on Council's website.

Direct mail notification was sent to adjoining neighbours and the Proposal was advertised in the Tweed Link on 14 October 2014.

The exhibition included the following supporting information:

- The Gateway Determination, October 2014
- Council reports of 20 July 2010 and 1 May 2014
- Structure and Staging Plan (Planit) dated August 2014
- Aboriginal Cultural Heritage Due Diligence (Everick Heritage Consultants) Nov 2013
- Flora and Fauna Assessment (Planit Consulting) June 2014
- Bushfire Assessment (Planit) November 2013
- Traffic Assessment (CRG) August 2014
- Geotechnical, Conceptual Services and Earthworks (Wood and Grieve Engineers) June 2014
- Stormwater (Wood and Grieve Engineers) August 2014
- Site Contamination Assessment (HMC) June 2014 and Statutory Declaration

Three public submissions were received in response to the public exhibition. These are provided in Attachment 1, all relate to traffic issues and are summarised as follows:

Traffic

Submission summary (two submissions):

Concern there is only 144 available trip credits for Kennedy Drive and that the site should only have a credit of 119 trips (based on 48 units @2.48 trips per unit). Query why and whether allocating any trips to a planning proposal, which is not 'development', is equitable.

Planning Comment:

The traffic capacity calculations in association with the Kennedy Drive constraints is an internal check, which allows Council to track the growth in traffic on Kennedy Drive in association with future and approved development in order to better manage the impacts.

There are a limited number of trips available to further development in the contributing catchment, of which this submission is aware. These trips have been applied on a "first come first served" basis, and allocation of these trips to the subject planning proposal may prevent new development elsewhere in the catchment from occurring.

Whilst it is acknowledged that a planning proposal is not "development" per se, it is nonetheless a critical and essential element of development in a more global and practical sense. Given the time and resources expended to complete a planning proposal there needs to be a level of confidence that future development is actually achievable. This is also balanced, in this instance, with the capacity constraints, as highlighted throughout the process. Ultimately, it is for the Council to determine how best to allocate the use of public infrastructure, so as to ensure its best and highest use, and to capture benefits to the Shire as a whole. This often requires a balancing of competing interests and such decisions about allocation for those projects with longer timeframes.

On this basis the proposal has proceeded with a maximum of 363 vehicle trips based on an equivalency of trip generation that may be permitted under the current uses until such time as the Kennedy Drive bypass is completed. This figure has been derived from assessment of the baseline traffic generation (current use) and baseline traffic generation arising from a reasonable expansion of the use of the site consistent with the current, at that time, zoning (6(b) Recreation), now RE2.

An audit of the Kennedy Drive capacity is currently being undertaken to update the available trips remaining. This may allow for the full allocation of 363 trips, due to previous allocations to other development not being taken up, or alternately may limit the development to its initial stages until either additional trips become available, or road network improvements eliminate or reduce this capacity constraint. The outcome of the traffic audit will be used to inform the site specific development control plan (DCP).

Planning Recommendation:

The planning proposal proceed and that the traffic capacity constraints be addressed in the site DCP and subject to further assessment at future DA stages. It is noted that this may mean that development could be limited to the Stage 1 conversion of the timeshare apartments in the short-term and further development of the site may not be achieved prior to the completion of the Kennedy Drive bypass. The Applicant is fully aware of these constraints and of the recommended DCP provisions.

Submission summary:

The concern is that the traffic assessment, in their view, does not adequately consider the topography at the intersection of Bilambil Rd/Scenic Dr/McAllisters Rd/Simpsons Road,

providing a flat image which is not a true representation. It was suggested that a roundabout should be built instead, due to the apparent visibility issues at this location.

Planning Comment:

The planning proposal process is to provide sufficient detail to enable Council a relative degree of confidence that the proposal may be able to be suitably accommodated and that constraints are addressed. Detail design and traffic resolution will be required at a future DA stage. The suitability of a roundabout or otherwise would be considered at that stage.

Planning Recommendation:

Noted, however no amendment required.

Agency submissions

In addition, the Gateway Determination required referral of the Proposal to the Rural Fire Service (RFS). The RFS were advised in writing on 14 October 2014.

In response, the RFS has indicated no objection to the planning proposal and provides the following advice:

1. *Any future subdivision development application will be required to comply with the 'specifications and requirements' of Planning for Bushfire Protection, 2006, and*
2. *The RFS advice does not endorse the concept residential subdivision plan that accompanied the Planning Proposal.*

The concept residential subdivision plan will not be approved through its incorporation into the DCP. This level of plan is purely indicative and is an aid for determining the likely infrastructure and environmental impact of development. The site will be the subject of a detailed subdivision plan in a future DA, which will be guided by the issues arising through this process.

No submissions were received from Members of Parliament.

Mapping corrections

In reviewing the submissions and updating the *Planning Proposal Version 3* for submission to the DP&E for making an inconsistency with the text and the amendment maps was found.

The explanation of the proposed LEP amendment is described in Part 2 of the attached *Planning Proposal Version 3* as:

Tweed LEP 2014			
R1 General Residential	Lot size	450sqm	
	Building height	Northern part of the site "N2" 13.6m Southern part of the site "K" 10m	
	Floor space ratio (FSR)	Northern part of the site "T" 2:0 Southern part of the site "J" 0.8:1	

This is the intent of the rezoning as submitted by the applicant and supported by the additional studies. However, the mapping in Part 4 incorrectly showed the whole site with a building height of 13.6m and the floor space ratio of 2:0.

The higher building height and FSR applying to the northern section of the site reflects the existing medium density form of the former time share apartment development and allows adaptive reuse of this existing development. The intent of the southern section of the site is for a lower scale detached housing form of development, consistent with the adjoining land uses to the east.

The LEP amendment maps in Part 4 have since been corrected to show the dual height and floor space ratio development standards.

Unlawful use and enforcement action

An update on the actions required, under Item 4 of the Council resolution of 1 May 2015, to address the unlawful use of the site will be the subject of a separate report by Development Assessment and Compliance.

It is noted that proceeding with the planning proposal and the making of the LEP 2014 Amendment No. 9 will apply a residential zoning to the site and enable the regularisation of the permanent residential use, subject to a future development application.

It is expected that a development application for the permanent residential use of the existing time share apartments would be a priority to keep the unlawful use actions in abeyance and to secure the lawful tenure of the tenants.

Development Control Plan

The Council resolution of 15 February 2011 seeks the preparation of a Development Control Plan (DCP) to provide a staging strategy to ensure the future development of the site is capped at the equivalent traffic generation as would currently and reasonably be permitted under the 6(b) zone (at that time, now RE2), until such time as the Kennedy Drive bypass is completed and dedicated to the Council.

The future residential development of the site will ordinarily be guided by the *Tweed Development Control Plan (DCP) 2008 Section A1 Residential and Tourist Development Code*.

Although the staging and structure plan is not endorsed as part of this process it nonetheless provides a guide as to the assessment of likely impacts of future development, particularly regarding the traffic capacity, identifying the building form and typology, land reforming and those other constraints including: asset protection zones; infrastructure requirements, and the drainage easement / restriction on use of the land.

In order to ensure that the opportunities and constraints identified through the planning proposal process are therefore captured and flow through to the development application stages, it is considered appropriate to include suitable provisions within a site specific DCP chapter.

The Tweed LEP 2014 Clause 7.13 identifies development requiring the preparation of a development control plan prior to the granting of development consent on key sites. These sites are mapped on the "Key Sites" mapping layer. It is recommended that this site be included on the "Key Sites" map and subject to the provisions of Clause 7.13.

The DCP for Marana Street is part of the planning proposal process, is a very minor inclusion and will not require significant resources to complete. It is therefore envisaged that the DCP would commence at the earliest convenience.

It is recommended that the DCP chapter be commenced under a cost recovery basis as provided for in Council's adopted Fees and Charges Schedule. To ensure that this occurs it is also recommend that the Applicant execute the agreement with Council prior to the plan being forward to the DP&E.

OPTIONS:

1. Council endorse proceeding with the planning proposal, forward a request to NSW Department of Planning and Environment for the making of the plan and that a DCP chapter be prepared for public exhibition.
2. Council not proceed with the planning proposal and that the Applicant and the NSW Department of Planning and Environment be notified of this resolution and the reasons given.
3. Council defer the matter for further consideration at a Councillor workshop.

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

CONCLUSION:

The planning proposal was publicly exhibited for the required timeframe. Four submissions were received in response with the key issue being traffic. A maximum vehicle trip rate of 363 has been used for the staging of the future development until such time as the Kennedy Drive bypass is completed and dedicated to Council. Development of the site specific DCP will be informed by the updated traffic audit to outline the structure and staging of future development. Notwithstanding, future development applications will be assessed within the context of the traffic capacity current at the time.

Traffic capacity constraints and a number of other considerations, such as asset protection zones, infrastructure requirements and the drainage easement/restriction on use may be guided through a site specific development control plan chapter. It is recommended that a site specific development control plan be prepared for public exhibition.

The planning proposal represents a logical infill expansion of the Bilambil Heights area within the urban footprint as identified within the Far North Coast Regional Strategy. The proposed future residential use of the site is consistent with the surrounding existing residential uses and the adjoining "Rise" urban release area development.

It is therefore recommended that the Proposal be 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:

There are no budget implications arising from this planning proposal

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. Summary of Submissions (ECM 3565052)

Attachment 2. Planning Proposal Version 3 (for making) (ECM 3567217)

13 [PR-PC] Planning Proposal PP14/0002 Lots 1 and 2 DP 1117599 Casuarina Way, Kingscliff

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: PP14/0002 Pt1

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

This report provides a status update on the planning proposal for Lots 1 and 2 DP 1117599 Kingscliff (formerly, but commonly known as Lot 490), which seeks a rezoning of the site from SP3 Tourism to E2 Environmental Conservation in accordance with the resolution of Council.

The Department of Planning and Environment has advised that the site cannot be rezoned to E2 Environmental Conservation until its E-Zone Review is completed, and the criteria for establishing the zones are published by way of a Ministerial s. 117 Direction.

In the meantime the Department has advised that should Council wish to continue with a rezoning at this stage it must choose an appropriate alternative zone.

As there are no appropriate alternative zones to achieve Council's ultimate objectives, and noting that any alternate would require a further rezoning, this report recommends that planning proposal be held in abeyance pending the publication of the Ministerial Direction.

RECOMMENDATION:

That:

- 1. this Report be received and noted; and**
 - 2. the Planning Proposal for Lots 1 and 2 DP 1117599 Kingscliff (formerly Lot 490) being PP14/0002 be held in abeyance until the Minister for Planning and Environment or their delegate issues a s.117 Direction pursuant to the *Environmental Planning and Assessment Act 1979*, or by any other means, that provides direction for the implementation and use of 'environmental zones' under the Standard Instrument (Local Environmental Plans) Order 2006.**
-

REPORT:

In accordance with Council's standing resolution of 4 September 2014 a planning proposal over Lots 1 and 2 DP 1117599 Kingscliff (herein referred to as "Lot 490") has been prepared and forwarded to the Department of Planning and Environment (DP&E). The proposal sought a rezoning of the site from SP3 Tourist to E2 Environmental Conservation under *Tweed Local Environmental Plan 2014* (Tweed LEP).

Progression of the planning proposal has been delayed pending the finalisation of DP&E's review of the use and application of environmental zones on the Far North Coast. Until the review is complete the Department has advised that no standard instrument template environmental zones can be included in an LEP, the only exception being the application of the E1 National Parks and Nature Reserves, which has not been the subject of any public conjecture. In the intervening period, those areas that were already zoned or that were proposed to be zoned environmental protection in the publically exhibited version of Tweed LEP 2014 were declared 'Deferred Matter' areas. In those areas the LEP 2000 remains current for those lands.

On 26 September 2014 advice was received from the DP&E that Council's request to rezone the site to E2 Environmental Conservation could not be considered. It was further advised that should if Council wished to progress the rezoning of Lot 490 it must do so on the basis of an appropriate alternative zoning.

While alternative zones may in-part satisfy the Council's objectives for the site, the E2 Environmental Conservation zone is considered the most appropriate zone. It is the only zone that can limit land-uses may otherwise conflict with the Council's objectives for the land.

An appropriate alternative interim zoning?

While it is possible that an 'alternative interim' zone such as RE1 Public Recreation could be applied it must be understood that it is a 'generic' based zone that applies to all land of that zoning and as such the range of 'Permitted with consent' land-uses within this zone is quite broad. Whether it would serve the desired objective is questionable and given that a further rezoning would be required to do so it may be prudent under these circumstances to maintain the status quo and wait for the Ministerial Directions.

Ultimately what the Council is seeking to achieve is the protection of key environmental areas of the land and remainder for public recreation uses. The land is in public ownership and is unlikely to be subject to the type of development pressure that might otherwise be attributable to private lands. In addition, and because of the lands 'Crown Land' ownership, an Aboriginal Land Claim is able, and is currently being sought over this site. Land claim applications often take many years to determine, and during their currency the State Government is highly constrained by what it can do with the land, for example it will not be able to approve significant development or divest itself of the land. In essence, the site is already in a holding pattern and for the time being is largely unaffected by whatever zoning it has.

Whilst it is possible to elect an alternative interim zoning it is the Officer's view that, given the need for a further rezoning and the limited ability of the State Government to take action on the land so long as the Land Claim exists, this approach is not justified and the better alternative is to wait for finalisation of the E-Zone review.

OPTIONS:

1. Await finalisation of the E Zone Review by the Department of Planning and Environment before lodging a planning proposal for the preferred environmental protection zone; or
2. Lodge a planning proposal which nominates an 'alternative interim' zone and rezone to the preferred environmental zone once the E Zone Review is finalised.

Council officers consider that Option 1 is the preferred action.

CONCLUSION:

Council's resolution to seek a rezoning of Lots 1 and 2 DP 1117599 Kingscliff to incorporate an E2 Environmental Conservation zoning has been presented to the DP&E by way of a planning proposal.

The Department has advised that the planning proposal cannot proceed on the basis of the proposed zoning as the environmental zones have been deferred from use on the Far North Coast pending the conclusion of a review of their application and usage. In the meantime the DP&E have recommended that an appropriate alternative zone be used.

As there is no 'appropriate' alternative zone to achieve the objective of Council and that a further rezoning would be required this report recommends that the planning proposal be deferred pending the finalisation of the E-Zone review by the DP&E.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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

SUBMITTED BY: Building and Environmental Health

Valid



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

This report provides a further update to the previous reports submitted to Council on this matter.

The most recent report was submitted to the 4 December 2014 Planning Committee Meeting and included the following recommendation:

"That:

- A. *ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*
- B. *Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek, endorses the following:*
 - 1. *Receives and notes the progress of the owner's response to Council's most recent Clean-Up Notice; and*
 - 2. *Determines whether or not to continue with Class 5 proceedings in the NSW Land and Environment Court against the site owner."*

Council resolved at the meeting to defer the matter until further advice is received from the Environmental Protection Authority.

Given the ongoing concerns raised by an adjoining owner for continuing erosion and sediment pollution impacts upon Hopping Dicks Creek, and the emerging wet season, priority has been given by Council officers to working with the site owner and relevant government agencies to seek the completion of appropriate remediation works.

In respect of the site owners' response to the Clean-Up Notice previously issued by Council, there have been a number of delays in completing the required works created by a range of factors, including periods of wet weather, as well as the owners' failure at various stages to commit sufficient resources and expertise, and to meet agreed timelines for completing the works. Officers have been working with the NSW Environment Protection Authority (EPA), Office of Water, Office of Environment and Heritage, Crown Lands and the site owner to seek compliance with the Clean-Up Notice.

In December the EPA (the relevant compliance authority) sought a specific response from the site owner to the failing of previous remediation works relating to the unauthorised works within the Crown Reserve. The owner has re-engaged the Soil Conservation Service to conduct further works investigations into the engineering and related sedimentation controls of these Crown Reserve works. Council is awaiting further advice from the EPA on the adequacy of these works. Once this advice is received, Council should then be in a position to complete a determination on its Clean Up Notice.

In respect of the previous recommendation that Council discontinue Class 5 proceedings in the Land and Environment Court against the site owner, the officers were requested by the Councillors to provide a response to a series of questions posed in a legal opinion received from Council's solicitors. The officers' response to these questions is provided in a confidential attachment to this report. On the basis of this additional information, it is recommended that Council determines whether or not to proceed with the Class 5 proceedings against the owners.

RECOMMENDATION:

That:

- A. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**

- B. Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek, endorses the following:**
 - 1. Receives and notes the progress of the owner's response to Council's most recent Clean-Up Notice; and**

 - 2. Determines whether or not to continue with Class 5 proceedings in the NSW Land and Environment Court against the site owner.**

REPORT:

Previous Council Resolutions

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

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

A further report was submitted on this matter to 6 November 2014 Planning Committee Meeting and included the following recommendation:

"That:

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

Council resolved at that meeting the following:

"That:

- A. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.
- B. This item be deferred to 4 December 2014 Planning Committee meeting with an update on compliance activity on the site."**

Update provided to 4 December Planning Committee Meeting

In respect of the recommendation that Council discontinue Class 5 proceedings in the Land and Environment Court against the site owner, the officers were requested by the Councillors to provide a response to a series of questions posed in a legal opinion received from Council's solicitors. The officers' response to these questions is provided in a confidential attachment to this report. On the basis of this additional information, it is recommended that Council determines whether or not to proceed with the Class 5 proceedings against the owners.

In respect of the site owners' response to the Clean-Up Notice issued by Council, there have been a number of delays in completing the required works created by a range of factors, including periods of wet weather, as well as the owners' failure at various stages to commit sufficient resources and expertise, and to meet agreed timelines for completing the works. Officers have been working with the NSW Environment Protection Authority (EPA), Office of Water, Office of Environment and Heritage, Crown Lands and the site owner to seek compliance with the Clean-Up Notice. When clean-up works are completed final certification of the works will be required by NSW Soil Conservation Services.

Council officers have also been pro-active in seeking the assistance of relevant State Government agencies, such as the Office of Environment and Heritage, Crown Lands, the Environment Protection Authority and the Office of Water in responding to further complaints received from members of the public regarding the adequacy of the recently completed remediation works on the Crown Reserve which runs through the subject property, and sedimentation erosion controls on other parts, in response to another incident of sediment run-off from the site into the adjoining Hopping Dicks Creek. These impacts are the subject of a further investigation to be carried out by Crown Lands and the Soil Conservation Service.

A summary of recent site inspections is summarised below.

- Site inspection undertaken with the Office of Water on 7 November 2014 to ensure adequate protective measure were being utilised during clean-up activities as part of the Clean-Up Notice. The Office of Water advised that they considered the protective measure being utilised to be satisfactory. The inspection also revealed that sediment and erosion control located on Lots 127 DP755724 and the Crown Road reserve were not being maintained in a satisfactory condition. The site owners were requested to undertake maintenance works to ensure their

ongoing effectiveness. Subsequent to the request to maintain existing control this work had been completed by the site owner.

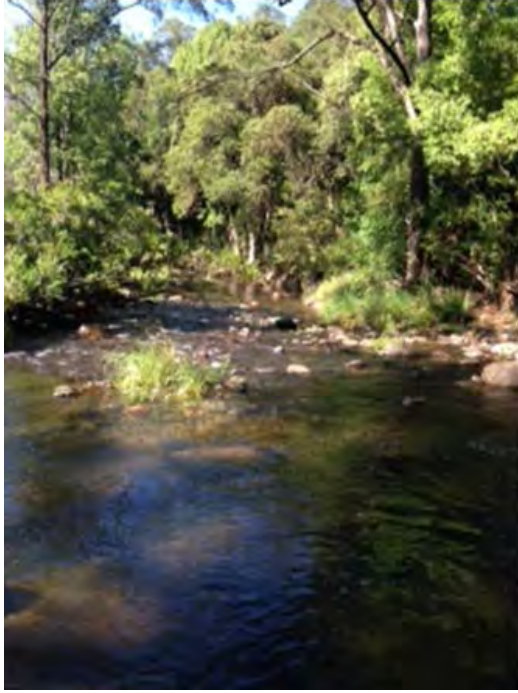
- Site Inspection undertaken on 20 November 2014 by Council Officers in response to the rain event on the evening of 19 November 2014. Approximately 32mm of rain was received during the rain event. The inspection revealed that there was no visual evidence of sediments having been deposited within Hopping Dicks Creek as a result of the rain event. The existing sediment and erosion controls were observed to be maintained in a good condition. No new sediments were observed to be deposited with areas previously cleaned as part of the Clean-Up Notice. Photos provided below.



Photograph 1 - Existing sediment and erosion controls maintained. Build up of sediments from previous rain event have been removed. Significant grass cover has established on previously exposed batters.



Photograph 2 - Hopping Dicks Creek upstream. No visual sediments



Photograph 3 - Hopping Dicks Creek downstream. No visual sediments



Photograph 4 - Areas previously cleaned on Lot 127 showed no new deposition of sediments



Photograph 5 - Areas previously cleaned on adjacent property showed no new deposition of sediment

On a broader level, the recent compliance issues generated by works on the subject site and an adjoining property, No. 239 Zara Road, Chillingham, have highlighted the need for a more coordinated approach among multiple State agencies and Council to complaints from the public for unauthorised works in rural and outlying areas. In this regard, Council's General Manager has written to the Regional Manager of the North-East Region, NSW Office of Environment and Heritage requesting that he coordinate a meeting to discuss these issues with the relevant parties.

A further report was submitted on this matter to 4 December 2014 Planning Committee Meeting and Council resolved at that meeting the following:

"That Council defers the matter until further advice is received from the Environmental Protection Authority."

Actions Taken Since the 4 December 2014 Planning Committee Meeting.

The following timeline of events summarises events and advice received from the NSW EPA since the 4 December Planning Committee Meeting.

- A joint site inspection was undertaken on the 5 December 2014 between the NSW EPA and Tweed Shire Council Officers;
- The NSW EPA considered the erosion and sediment controls installed on the Crown Road to be inadequate and poorly maintained;
- The NSW EPA are the Appropriate Regulatory Authority relating to pollution issues arising from the Crown Land;
- Subsequently the NSW EPA requested NSW Crown Lands on the 8 December 2014 to arrange for a review of the sediment and erosion control design and maintenance to be undertaken;
- NSW Soil Conservation Service undertook a site inspection on behalf of NSW Crown Lands and the site owner on the 11 December 2014;

- NSW Soil Conservation Service provided NSW Crown Lands and the site owner with an Inspection Report dated 11 December 2014 that detailed a series of recommendations to improve sediment and erosion controls;
- Tweed Shire Council requested the NSW EPA on the 5 January 2015 to provide an update of actions undertaken to address the recommendation of the Inspection Report;
- The NSW EPA provided a series of photos on the 9 January 2015 (Photos 6-13). The photos were taken by the site owner and sent to NSW Crown Lands demonstrating works have been undertaken as requested;
- Photos provided by the site owner indicate that the laying of turf in bare areas near the entry gate and within the house pad drainage channel has been completed. The site owner advised Crown Lands that this work was completed on the 23 December 2014;
- The photos do not provide evidence that the other measure have been completed as recommended by the Inspection Report, NSW Soil Conservation Services, 11 December 2014;
- Correspondence has not been received from the NSW EPA confirming that the measures outlines in the Inspection Report, NSW Soil Conservation Services, 11 December 2014 have been completed to their satisfaction; and
- The NSW EPA has given an undertaking that they will continue to keep Tweed Shire Council informed of further progress.



Photograph 6 - Provided by site owner to NSW Crown Lands 5 January 2015. Indicates turf has been laid near the entry gate.



Photograph 7 - Provided by site owner to NSW Crown Lands 5 January 2015. Indicates turf has been laid near the entry gate.



Photograph 8 - Provided by site owner to NSW Crown Lands 5 January 2015. Indicates top soil being installed prior to laying of turf near the entry gate.



Photograph 9 - Provided by site owner to NSW Crown Lands 5 January 2015. Indicates turf has been laid along the house pad drainage channel.



Photograph 10 - Provided by site owner to NSW Crown Lands 5 January 2015. Indicates turf has been laid along the house pad drainage channel.



Photograph 11 - Provided by site owner to NSW Crown Lands 5 January 2015. The photo was provided to support the claim that water quality was of good quality and no discolouration after recent storm events.



Photograph 12 - Provided by site owner to NSW Crown Lands 5 January 2015. The photo was provided to support the claim that water quality was of good quality and no discolouration after recent storm events.



Photograph 13 - Provided by site owner to NSW Crown Lands 5 January 2015. No commentary provided with this photos. The photo demonstrates good grass coverage on previously exposed batters.

OPTIONS:

Option 1

That Council resolves to continue with Class 5 proceedings in the NSW Land and Environment Court against the site owner.

Or

Option 2

That Council resolves to discontinue with Class 5 proceedings in the NSW Land and Environment Court against the site owner.

Council's determination of these Options is sought.

CONCLUSION:

Council officers have been pro-active in the monitoring and liaison with the site owner and various government agencies in seeking to complete remediation works required under a Clean-Up Notice, and to maintain sediment erosion control measures across the site. Council's determination is now sought as to whether or not to continue with Class 5 proceedings in the NSW Land and Environment Court against the site owner.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Further costs will be incurred for any legal proceedings

c. Legal:

In respect of the previous recommendation that Council discontinue Class 5 proceedings in the Land and Environment Court against the site owner, the officers were requested by the Councillors to provide a response to a series of questions posed in a legal opinion received from Council's solicitors. The officers' response to these questions is provided in a confidential attachment to this report. On the basis of this additional information, it is recommended that Council determines whether or not to proceed with the Class 5 proceedings against the owners.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Confidential Attachment a copy of the officers' response to series of questions contained within the legal advice provided by Marsdens solicitors dated 16 October 2014 (ECM 3523087)

15 [PR-PC] Alleged Unauthorised Works at Lot 301 DP 1053375 and Lot 2 DP 1190805 No. 239 Zara Road, Chillingham

SUBMITTED BY: Building and Environmental Health

Valid



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

On the basis of a complaint received from an adjoining owner regarding alleged logging, unauthorised works and alleged pollution incidents from the subject site, Council officers have conducted a series of investigations. A site inspection undertaken on 14 November 2014 revealed the works primarily involved vegetation removal and earth movement, on part Lot 301 DP 1053375 and Lot 2 DP 1190805 (the subject site), as part of a road construction. The subject site has an approved Private Forestry Agreement (PFA) on both Lots issued by the NSW Environmental Protection Authority (EPA). The inspection focused on the north-east corner of the site, fronting Zara Road, for which the EPA has advised does not form part of the PFA area.

Consultation with multiple NSW State Government Agencies has been undertaken as a variety of aspects and legislative triggers were identified during the investigation. A summary of the individual aspect under investigation are summarised below.

Land Clearing Activity - There have been recent works undertaken to clear approximately 100m x 10m of vegetation within the subject site for an internal access road. The EPA has advised that the works do not fall within the PFA. The EPA further advised that the NSW Office of Environment and Heritage (OEH) is the Appropriate Regulatory Authority (ARA) for land clearing activities outside of a PFA under the Native Vegetation Act 2003. The OEH was notified of the incident on 17 November 2014. A response from OEH was received on 19 November 2014 and is detailed below.

"Taking into account the scale of the clearing and that much of it could be claimed as a "routine agricultural management activity" (RAMA) under the Native Vegetation Act (for the purpose of constructing an internal access track) we do not propose to undertake further investigations at this time."

The land clearing activity also presents a potential for water pollution and the site owner was requested to install appropriate sediment and erosion controls. The site owner remains cooperative and the works to install sediment and erosion controls have commenced. Council officers propose to undertake further inspections to ensure works are completed in appropriate timeframes.

The land clearing activity does not require development consent under the Environmental Planning and Assessment Act 1979 as the activity has been undertaken as a RAMA under the Native Vegetation Act 2003.

General Property Maintenance - The site inspection undertaken on 14 November 2014 revealed that there is a land management issue relating to the adjacent water course that flows towards Jackson Creek. The land appears to have been heavily grazed in areas and erosion channels have formed. The land owner was requested to install sediment and erosion controls to ensure the potential for water pollution is minimised. The site owner remains cooperative and the works to install sediment and erosion controls have commenced. Council officers propose to undertake further inspections to ensure works are completed in appropriate timeframes.

The land owner is currently working with the NSW Office of Water (OW) to address issues relating to an old road culvert in the adjacent water course. The road was washed away during the 2012 floods and the OW required rectification works to be undertaken. Council officers contacted OW and they confirmed on 19 November 2014 that they will continue carriage of the issue.

Alleged Logging - The subject site has an approved PFA granted by the EPA. The EPA is the ARA relating to this matter. The EPA was advised of alleged logging concerns on 10 November 2014 and subsequently undertook a compliance inspection on 12 November 2014 and activities appear to be within scope of their approval.

The purpose of this report is to inform and update Council on the compliance actions taken by Council officers to date.

Compliance Update - Inspection undertaken on the 3 December 2014 revealed that the site owner has installed sediment and erosion controls as summarised below:

- Sediment and erosion controls including sediment fencing, drainage lines and hay bales were installed along exposed surfaces. This included exposed surfaces along the water course and the access track;
- The controls appeared to have been installed in an effective manner; and
- All exposed surfaces have been seeded. Specific areas have been fenced off to protect from grazing.

A follow up inspection was undertaken on Friday 9 December 2015 with the site owner to assess the performance of sediment and erosion controls since the recent rain events. The sediment and erosion controls appear to be maintained in an effective manner. The land previously cleared has been re-established with grass and isolated to protect from animal grazing. No further land clearing activities observed.

The site owner has remained cooperative with all recommended works being completed and maintained appropriately. No enforcement action under the provision of the Protection of the Environmental and Operations Act 1997 is proposed.

The site owner has lodged a development application for the relocation of a dwelling house and is currently being assessed by the Building Services Unit.

RECOMMENDATION:

That Council receives and notes this report on the alleged unauthorised works on the site and the rectification actions being taken by the site owner at Lot 301 DP 1053375 and Lot 2 DP1190805 No. 239 Zara Road, Chillingham.

REPORT:

Description of the Subject Site

The subject site comprises two allotments, known as Lot 301 DP 1053375 and Lot 2 DP1190805. The site is accessed from Zara Road.

The site is predominantly rural in its use and character, with a combination of large stands of vegetation, and cleared areas currently used for cattle grazing and other agricultural activities. The topography varies from more gently undulating, to steeper, hill forms, with various frontages to a water course that flows to Jacksons Creek.

The site is generally surrounded by rural holdings, rural residential and agricultural uses.

Zoning of the Site

Tweed Local Environmental Plan 2014 was recently gazetted and took effect on 4 April 2014. Under the plan, part of the former 1(a) Rural zoned land under Tweed Local Environmental Plan (TLEP) 2000 has been rezoned to RU2 Rural Landscape.

SITE DIAGRAM:



Locality Plan
 Lot 301 DP 1053375 and Lot 2 DP 1190805
 No. 239 Zara Road, Chillingham

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Dig before You Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p><small>Cadastral: 23 November, 2014 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p><small>0 1 2 km 1:100,000 @ A4 Portrait DO NOT SCALE COPIES ONLY - NOT CERTIFIED</small></p> <p><small>Map Projection: Universal Transverse Mercator Geodetic Datum of Australia 1994 Map Grid of Australia, Zone 56</small></p>	<p><small>Civic and Cultural Centre 3 Turrubulgun Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400 1300 282 872 F (02) 6670 2423 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</small></p>	
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Summary of Complaints and Council Response

On the basis of a complaint received from an adjoining owner regarding alleged logging, unauthorised works and alleged pollution incidents from the subject site, Council officers have conducted a series of investigations. A site inspection undertaken on 14 November 2014 revealed the works primarily involved vegetation removal and earth movement, on part Lot 301 DP 1053375 and Lot 2 DP 1190805 (the subject site), as part of an internal access road construction. The subject site has an approved PFA issued by the NSW EPA. The inspection focused on the north-east corner of the site, fronting Zara Road, for which the EPA has advised does not form part of the PFA area.

Consultation with multiple NSW State Government Agencies has been undertaken as a variety of aspects and legislative triggers were identified during the investigation. A summary of the individual aspect under investigation are summarised below.

Land Clearing - There have been recent works undertaken to clear approximately 100m x 10m of vegetation within Lot 301 DP 1053375 for an internal access road (Photo 1).



Photo 1 - Approximately 100m of regrowth vegetation has been cleared.

The EPA has advised that the works do not fall within the PFA. The EPA further advised that the OEH is the ARA for land clearing activities outside of a PFA under the Native Vegetation Act 2003. The OEH was notified of the incident on 17 November 2014. A response from OEH was received on 19 November 2014 and is detailed below.

"Taking into account the scale of the clearing and that much of it could be claimed as a "routine agricultural management activity" (RAMA) under the Native Vegetation Act (for the purpose of constructing an internal access track) we do not propose to undertake further investigations at this time."

The land clearing activity also presents a potential for water pollution and the site owner was requested to install appropriate sediment and erosion controls. The site owner remains cooperative and the works to install sediment and erosion controls have commenced. Council officers propose to undertake further inspections to ensure works are completed in appropriate timeframes.

The land clearing activity does not require development consent under the Environmental Planning and Assessment Act 1979 as the activity has been undertaken as RAMA under the Native Vegetation Act 2003.

General Property Maintenance - The site inspection undertaken on 14 November 2014 revealed that there is a land management issue relating to the adjacent water course that flows towards Jackson Creek. The land appears to have been heavily grazed in areas and erosion channels have formed (Photo 2). The land owner was requested to install sediment and erosion controls to ensure the potential for water pollution is minimised. The site owner remains cooperative and the works to install sediment and erosion controls have commenced. Council officers propose to undertake further inspections to ensure works are completed in appropriate timeframes.



Photo 2 - Drainage line adjacent to water course that improved sediment and erosion control practices were identified to be established.

The land owner is currently working with OW to address issues relating to an old road culvert in the adjacent water course. The road was washed away during the 2012 floods and OW required rectification works to be undertaken. Council officers have contacted OW and they confirmed on 19 November 2014 that they will continue carriage of the issue.

Alleged Logging - The subject site has an approved PFA granted by the EPA. The EPA is the ARA relating to this matter. The EPA was advised of alleged logging concerns on Monday 10 November 2014 and subsequently undertook a compliance inspection on 12 November 2014. The EPA has advised they will provide Council officers with a written summary of their investigation when available.

In terms of the recent works the site owner has been cooperative with Council and various government agencies and has commenced works to mitigate any potential water pollution. No enforcement action is recommended at this stage whilst the site owner continues to cooperate with the relevant compliance authorities. In the event that cooperation is no

longer forthcoming from the site owner, the following enforcement actions are available to Council.

- **Prevention Notice** issued under the Protection of the Environment Operations Act 1997 requiring the site owner to undertake preventative measures to ensure activities are carried out in an environmentally satisfactory manner. The Administration Fee for this Notice is \$492; or
- **Penalty Infringement Notice** issued under the Protection of the Environment Operations Act 1997 where an incident or set of circumstances is likely to result in water pollution. The current individual penalty is \$4000 (recently increased by the State Government).

The land clearing activity does not require development consent under the Environmental Planning and Assessment Act 1979 as the activity has been undertaken as a RAMA under the Native Vegetation Act 2003. Therefore a Penalty Infringement Notice or Class 4 and 5 proceedings under the Environmental Planning and Assessment Act 1979 are not available.

Compliance Update - An inspection undertaken on the 3 December 2014 revealed that the site owner has installed sediment and erosion controls as summarised below:

- Sediment and erosion controls including sediment fencing, drainage lines and hay bales were installed along exposed surfaces. This included exposed surfaces along the water course and the access track;
- The controls appeared to have been installed in an effective manner; and
- All exposed surfaces have been seeded. Specific areas have been fenced off to protect from grazing.

A follow up inspection was undertaken on Friday 9 December 2015 with the site owner to assess the performance of sediment and erosion controls since the recent rain events. The sediment and erosion controls appear to be maintained in an effective manner. The land previously cleared has been re-established with grass and isolated to protect from animal grazing. No further land clearing activities were observed.



Photo 3 - Indicates seeding has been effective in preventing erosion and sediment loss from the property. The area has been fenced off to eliminate animal grazing.



Photo 4 - Demonstrates sediment and erosion controls have been installed along the exposed slope adjacent to the tributary that ultimately flows to Jacksons Creek.

The site owner has remained cooperative with all recommended works being completed and maintained appropriately. No enforcement action under the provision of the Protection of the Environmental and Operations Act 1997 is proposed.

The site owner has lodged a development application for the relocation of a dwelling house and is currently being assessed by the Building Services Unit.

OPTIONS:

Option 1

That Council receives and notes this report on the alleged unauthorised works on the site and the rectification actions being taken by the site owner at Lot 301 DP 1053375 and Lot 2 DP1190805 No. 239 Zara Road, Chillingham; or

Option 2

Council resolves to seek a further report on the options for more stringent enforcement.

The Council officers recommend Option 1.

CONCLUSION:

To date the site owner has been cooperative with Council and relevant government agencies and has completed works to mitigate any potential water pollution. No enforcement action is recommended.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Costs will be incurred if legal representatives are engaged to commence legal action against the owner.

c. Legal:

Compliance action may be required to be undertaken in the Land and Environment Court in respect to Pollution of Water under the POEO Act 1987.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

16 [PR-PC] Roadworks at Lot 11 DP 1192473 No. 389 Dulguigan Road, Dulguigan

SUBMITTED BY: Development Assessment and Compliance

Valid



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Council received an enquiry in October 2014 regarding a possible race track located on land described as Lot 11 DP 1192473 and situated at 389 Dulguigan Road, Dulguigan.

A site inspection revealed that the road appears to be a race track and a search of Council's files has revealed that no approval has been granted for such at the abovementioned property. To enable Council officers' to determine whether or not a Development Application would be required for the road, correspondence was forwarded to the owner of the property on 1 October 2014 seeking further clarification of its intended use. It should be noted that the road is 10m wide, 2.4km in length and is configured in a closed loop similar to a race track. Correspondence received from Daryl Anderson Consulting dated 17 November 2014 (See Attachment 1) on behalf of the property owner advised that the subject road is a 'farm road' and has been undertaken as part of development for the purpose of extensive agriculture and such can be undertake without any Council approvals.

An email was received from Darryl Anderson Consulting on 14 January 2015 advising that given "*Council's primary concern is that the farm road is looped.and.they wish to formally amend their submission dated 17 November 2014 to remove approximately 100m of the looped road at the northern end and instead provide connections to the shed and other internal road.*"

Given the advice received and the fact that Council has not received a complaint or observed the farm road being used as a race track, it is recommended that Council respond to the owner's submission as follows:

- Council notes the correspondence submitted by Darryl Anderson Consulting dated 17 November 2014 on behalf of the property owner;
- Council acknowledges the farm road has been constructed as part of development for the purpose of extensive agriculture; and
- Council will engage its solicitors should any complaints be received or Council officers' observe the farm road being use as a race track or for any other purpose than

extensive agriculture or any other purpose that is not ordinarily ancillary to extensive agriculture.

RECOMMENDATION:

That Council, in respect of the road works (farm road) being undertaken on land described as Lot 11 DP 1192473 and situated at 389 Dulguigan Road, Dulguigan endorse as follows:

- 1. Council notes the submission lodged by Daryl Anderson Consulting dated 17 November 2014 on behalf of the property owner;**
- 2. Council acknowledges the farm road has been constructed as part of development for the purpose of extensive agriculture; and**
- 3. Council will engage its solicitors should any complaints be received or Council officers' observe the farm road being use as a race track or for any other purpose than extensive agriculture or any other purpose that is not ordinarily ancillary to extensive agriculture.**

REPORT:

Council received an enquiry in October 2014 regarding a possible race track located on land described as Lot 11 DP 1192473 and situated at 389 Dulguigan Road, Dulguigan.

A site inspection revealed that the road appears to be a race track and a search of Council's files has revealed that no approval has been granted for a race track at the abovementioned property. The constructed road has also been investigated in light of it potentially interrupting the overland flow of water. The owner has advised Council officers that laser levels have confirmed that the height of the constructed road is below the existing road on the subject site and roads in the local area.

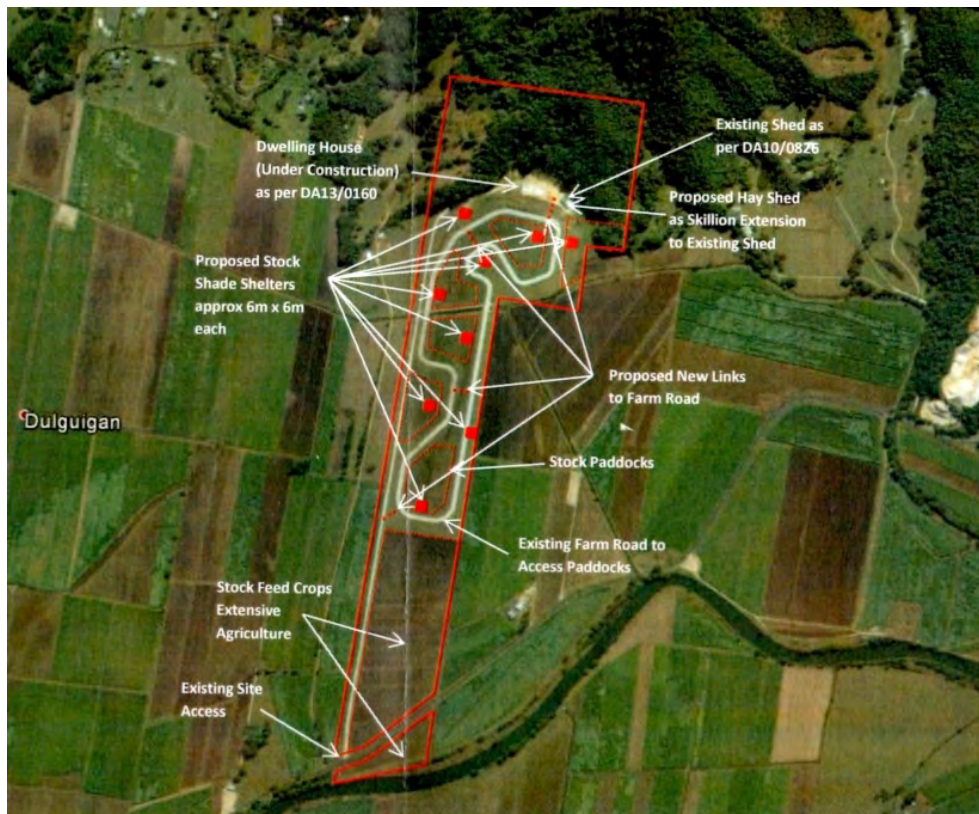
To enable Council officers' to determine whether or not a Development Application would be required for the road, correspondence was forwarded to the owner of the property on 1 October 2014 seeking further clarification of its intended use. Correspondence received from Daryl Anderson Consulting dated 17 November 2014 on behalf of the property owner states *the subject road works have been undertaken as part of development for the purpose of extensive agriculture and such can be undertake without any Council approvals. The farm road allows for the movement of farm machinery and equipment to the various parts of the property.* It should be noted that the farm road is 10m wide, 2.4km in length and is configured in a closed loop similar to a race track.

Below is an image from **Google earth** dated 2015, which clearly indicates the extent of the road works (farm road) undertaken by the owner and the configuration of such.



It should be noted Council to date has not received any complaints or Council officers have not observed the farm road being used as a race track.

The owner has provided the below concept plan indicating the scope of works proposed for the site.



Site Concept Plan

Correspondence received from the owner's planning consultant Darryl Anderson Consulting acknowledges that if the farm road was to be used for purposes other than agriculture, then a Development Application would be required for that use.

However, given there is concern regarding the future use of the farm road, an email was received from Darryl Anderson Consulting on 14 January 2015 advising that given *"Council's primary concern is that the farm road is looped and they wish to formally amend their submission dated 17 November 2014 to remove approximately 100m of the looped road at the northern end and instead provide connections to the shed and other internal road."*

In light of the above, there is still potential for the farm road to be used for non-extensive agricultural uses. It is therefore considered reasonable that Council advises the owner immediate legal action will be initiated should any complaints be received or Council officers' observe the farm road being used as an unlawful race track.

OPTIONS:

That Council:

1. Supports the officer's recommendation.
2. Council commences legal action for the use of the farm track as an unlawful race track.
3. Not support the officer's recommendation.

The officers recommend Option 1

CONCLUSION:

Given the advice received from the owner of the property and the fact that Council has not received a complaint or Council officers have not observed the farm road being used as a race track, it is recommended that Council respond to the owner's submission as follows:

- Council notes the submission lodged by Daryl Anderson Consulting dated 17 November 2014 on behalf of the property owner;
- Council acknowledges the farm road has been constructed as part of development for the purpose of extensive agriculture; and
- Council will engage its solicitors should any complaints be received or Council officers' observe the farm road being use as a race track or for any other purpose than extensive agriculture or any other purpose that is not ordinarily ancillary to extensive agriculture.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Potential legal costs to carry out enforcement action if required.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- | | |
|---------------|--|
| Attachment 1. | Submission from Daryl Anderson Consulting dated 17 November 2014 (ECM 3565316) |
| Attachment 2. | Email from Darryl Anderson Consulting dated 14 January 2015 (ECM 3567028) |
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17 [PR-PC] Electoral Signage

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 appointed date for the upcoming NSW State Government elections is 28 March 2015.

There are a variety of state and local statutory provisions which govern permissibility of related signage for the electoral candidates in the lead up to, during and after the NSW state election process.

As a means of providing clarity for interpreting the permissibility and compliance of signage for the 2013 local government elections, Council resolved the following at its meeting of 16 May, 2013:

“RESOLVED that:

1. *The two instances of electoral signage noted in this report are unauthorised and require removal until such time that development consent is obtained. The owners of the gates and shop are to be advised accordingly.*
2. *Communication is to be developed in order to highlight all statutory requirements in relation to signage for all upcoming elections.*
3. *No signs allowed in Council's road reserves, either freestanding pole signs, or those affixed to trees or street furniture.*
4. *Signs will be permitted (a maximum of one sign per property) without Council development consent on a temporary basis, provided that they are no greater in area than 8,000 square centimetres, are located on private property, are non-illuminated or flashing, and are erected within 28 days before, and removed 14 days after the day of a Federal, State or Local Government Election.*
5. *All other promotional activities of candidates on Council controlled land are to comply with the Parliamentary Electorate and Election Act 1912.*
6. *Any signs that do not comply with the above rules will be impounded by Council officers and will be the subject of a Council fee for retrieval.”*

It became evident during the 2013 election period that there were some inconsistencies with this resolution and relevant State Environmental Planning Policies.

In light of the inconsistencies it is therefore considered necessary to seek a rescission of the previous resolution and incorporate updated direction on electoral signage for the upcoming NSW State Government elections in accordance with the *State Environmental Planning Policy (Exempt and Complying development Codes) 2008 Subdivision 13 - Election signs*

RECOMMENDATION:

That:

A. Council rescind the resolution (Minute No. 294) made at its meeting of 16 May, 2013 as follows:

- "1. The two instances of electoral signage noted in this report are unauthorised and require removal until such time that development consent is obtained. The owners of the gates and shop are to be advised accordingly.***
- 2. Communication is to be developed in order to highlight all statutory requirements in relation to signage for all upcoming elections.***
- 3. No signs allowed in Council's road reserves, either freestanding pole signs, or those affixed to trees or street furniture.***
- 4. Signs will be permitted (a maximum of one sign per property) without Council development consent on a temporary basis, provided that they are no greater in area than 8,000 square centimetres, are located on private property, are non-illuminated or flashing, and are erected within 28 days before, and removed 14 days after the day of a Federal, State or Local Government Election.***
- 5. All other promotional activities of candidates on Council controlled land are to comply with the Parliamentary Electorate and Election Act 1912.***
- 6. Any signs that do not comply with the above rules will be impounded by Council officers and will be the subject of a Council fee for retrieval."***

B. Council adopt the following for Electoral Signage:

- 1. The display of any poster that contains electoral matter in relation to an election must comply with the State Environmental Planning Policy (Exempt and Complying development Codes) 2008 Subdivision 13 - Election signs**
- 2. No signs allowed in Council's road reserves, either freestanding pole signs, or those affixed to trees or street furniture.**
- 3. All other promotional activities of candidates on Council controlled land are to comply with the Parliamentary Electorate and Election Act 1912.**

- 4. Any signs that do not comply with the above rules will be impounded by Council officers and will be the subject of a Council fee for retrieval.**
- C. Official Candidates for the 2015 NSW State Election for the Tweed and Lismore electorates be notified of the Items in 'B' above.**

REPORT:

The appointed date for the upcoming NSW State Government elections is 28 March 2015 and to ensure there is no confusion it is proposed that direction be provided on electoral signage to minimise any confusion.

In the past there has been a variety of state and local statutory provisions which govern permissibility of related signage for the electoral candidates in the lead up to, during and after the NSW state election process. As a means of providing clarity for interpreting the permissibility and compliance of signage for the 2013 local government elections, Council resolved the following at its meeting of 16 May, 2013:

- "1. The two instances of electoral signage noted in this report are unauthorised and require removal until such time that development consent is obtained. The owners of the gates and shop are to be advised accordingly.*
- 2. Communication is to be developed in order to highlight all statutory requirements in relation to signage for all upcoming elections.*
- 3. No signs allowed in Council's road reserves, either freestanding pole signs, or those affixed to trees or street furniture.*
- 4. Signs will be permitted (a maximum of one sign per property) without Council development consent on a temporary basis, provided that they are no greater in area than 8,000 square centimetres, are located on private property, are non-illuminated or flashing, and are erected within 28 days before, and removed 14 days after the day of a Federal, State or Local Government Election.*
- 5. All other promotional activities of candidates on Council controlled land are to comply with the Parliamentary Electorate and Election Act 1912.*
- 6. Any signs that do not comply with the above rules will be impounded by Council officers and will be the subject of a Council fee for retrieval."*

It became evident during the 2013 election period that there were some inconsistencies between the above resolution and relevant State Environmental Planning Policies. In light of such it is therefore considered necessary to seek a rescission of the previous resolution and incorporate updated direction on electoral signage for the upcoming NSW State Government elections in accordance with the *State Environmental Planning Policy (Exempt and Complying development Codes) 2008 Subdivision 13 - Election signs*

The *State Environmental Planning Policy (Exempt and Complying development Codes) 2008 Subdivision 13 - Election signs* reads as follows:

"STATE ENVIRONMENTAL PLANNING POLICY (EXEMPT AND COMPLYING DEVELOPMENT CODES) 2008

2.106 Specified development

- (1) The display of any poster that contains electoral matter in relation to an election held under the Commonwealth Electoral Act 1918 of the Commonwealth, the*

Parliamentary Electorates and Elections Act 1912 or the Local Government Act 1993 is development specified for the purposes of this code.

(2) *In this clause, "electoral matter" means:*

- (a) *any matter that is intended or calculated or likely to affect or is capable of affecting the result of an election or that is intended or calculated or likely to influence or is capable of influencing an elector in relation to the casting of his or her vote at an election, or*
- (b) *the name of a candidate at an election, the name of the party of any such candidate and the picture of any such candidate (including any photograph of the candidate and any drawing or printed matter that purports to depict any such candidate or to be a likeness or representation of any such candidate).*

2.107 Development standards

The standards specified for that development are that the development must:

- (a) *not be more than 0.8m² in area, and*
- (b) *if on the site of a heritage item or draft heritage item-not be attached to a building, and*
- (c) *be displayed by or on behalf of a candidate at an election referred to in clause 2.106 or the party (if any) of any such candidate, and*
- (d) *be displayed in accordance with any relevant requirements of the Act under which the election is held, and*
- (e) *be displayed only during the following periods:*
 - (i) *5 weeks immediately preceding the day on which the election is held,*
 - (ii) *the day on which the election is held,*
 - (iii) *1 week immediately following the day on which the election is held."*

To minimise any confusion it is also proposed correspondence be forwarded to all candidates for the Tweed and Lismore electorates once nominations close to ensure they are familiar with State legislation and local planning controls.

OPTIONS:

1. That Council support the recommendation to undertake a rescission of the resolution made at its meeting of 16 May, 2013 and to adopt other conditions to ensure compliance with the *State Environmental Planning Policy (Exempt and Complying development Codes) 2008 Subdivision 13 - Election signs*.
2. Some other identified action.

The officers recommend Option 1

CONCLUSION:

Council at its meeting of 16 May 2013 resolved to adopt points regarding the permissibility and compliance of signage for the 2013 local government elections. It became evident during the 2013 election period that there were some inconsistencies between the resolution

and relevant State Environmental Planning Policies. The proposed changes address the inconsistencies and ensure compliance with State legislation and local planning controls

COUNCIL IMPLICATIONS:

a. Policy:

Incorporated within State Legislation and local Planning Controls

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

There are relevant regulations for any required compliance and enforcement actions.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

18 [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 that there are no variations for the months of December 2014 and January 2015 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, the following Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

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.

ORDERS OF THE DAY



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2.1 Council will be underpinned by good governance and transparency in its decision making processes
-

19 [NOR-PC] Development Application DA14/0164 for Dual Use of Existing Tourist Accommodation - Residential and Tourist Accommodation at Lots 1-41 SP 76023 Nos. 1-41/27-37 Bells Boulevard, Kingscliff

NOTICE OF RESCISSION:

Councillor W Polglase, hereby gives notice that at the next Ordinary Planning Committee meeting he will move that the resolution from the meeting held on 4 September 2014 at Minute No 518 Item No 5 being:

"... that Development Application DA14/0164 for dual use of existing tourist accommodation - residential and tourist accommodation at Lots 1-41 SP 76023 Nos. 1-41/27-37 Bells Boulevard, Kingscliff be refused for the following reasons:

- 1. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(i) – the provisions of any Environmental Planning Instruments in that the application has not considered SEPP 65 – The Design Quality of Residential Flat Development.*
- 2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – the provisions of any Draft Environmental Planning Instruments in that the development is prohibited within the SP3 Tourist zone.*
- 3. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – the provisions of any Draft Environmental Planning Instruments in that the development is inconsistent with the objectives of the SP3 Tourist zone.*
- 4. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(iii) – the provisions of any Development Control Plan in that the development is inconsistent with the Development Control Plan Section A1 – Residential Development Code.*

5. *The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(e) - the public interest in that the development is not considered to be in the public interest."*

be rescinded.

- 20 [NOM-PC] Development Application DA14/0164 for Dual Use of Existing Tourist Accommodation - Residential and Tourist Accommodation at Lots 1-41 SP 76023 Nos. 1-41/27-37 Bells Boulevard, Kingscliff

NOTICE OF MOTION:

Councillor W Polglase moves that:

1. Development Application DA14/0164 for Dual Use of Existing Tourist Accommodation - Residential and Tourist Accommodation at Lots 1-41 SP 76023 Nos. 1-41/27-37 Bells Boulevard, Kingscliff, be approved subject to the following conditions:

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 6 months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 95 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

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

- A. The applicant shall submit a design verification from a qualified designer in accordance with the provisions of State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development.

SCHEDULE B

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

GENERAL

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

Drawing	Prepared by	Dated
Site Location Plan/Site Plan Overall (as highlighted)	ML Design	December 2003
Building 1 Basement 1 - Sheet 1 General Arrangement	ML Design	December 2003
Building 1 Basement 1 - Sheet 2 General Arrangement	ML Design	December 2003

Building 1 Ground 1 - Sheet 1 General Arrangement	ML Design	December 2003
Building 1 Ground 1 - Sheet 2 General Arrangement	ML Design	December 2003
Building 1 Level 1 - Sheet 1 General Arrangement	ML Design	December 2003
Building 1 Level 1 - Sheet 2 General Arrangement	ML Design	December 2003
Building 1 Level 2 - Sheet 1 General Arrangement	ML Design	December 2003
Building 1 Level 2 - Sheet 2 General Arrangement	ML Design	December 2003
Building 1 Roof 1 - Sheet 1 General Arrangement	ML Design	December 2003
Building 1 Roof 1 - Sheet 2 General Arrangement	ML Design	December 2003
Building 1 North and East Elevations (Sheet 1)	ML Design	December 2003
Building 1 South and West Elevations (Sheet 2)	ML Design	December 2003

[GEN0005]

USE

2. 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]

3. 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]

4. 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]
5. The public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012.
[USE0985]
6. Prior to commencement of the residential use, a plan shall be provided for review by Council's General Manager or delegate of the basement car parking allocation, including visitor parking.
7. Visitor parking spaces for the residential use shall be clearly marked on site.
8. Council shall be notified in writing of the commencement date for the residential use, prior to commencement of residential use.
9. This development consent authorises a change of use of the existing structure on site (Building 1 as per the submitted plans) from 100% tourist use to a dual use for either short term tourist accommodation or residential use.
10. The development must be utilised for tourist accommodation for a minimum of six months of the year.
[USENS01]
11. 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. All contributions must be paid in full at least one month prior to commencement of the residential use.
Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP6:	13.067 ET @ \$12907 per ET	\$168,655.80
South Kingscliff Water Levy:	13.067 ET @ 307 per ET	\$4,012
Sewer Kingscliff:	19.867 ET @ \$6201 per ET	\$123,195.30

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

[USENS02]

12. Section 94 Contributions

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

All contributions must be paid in full at least one month prior to commencement of the residential use.

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

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

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

- | | |
|---|-------------|
| (a) Tweed Road Contribution Plan:
58.22 Trips @ \$1199 per Trips
(\$1,145 base rate + \$54 indexation)
S94 Plan No. 4
Sector7_4 | \$69,806 |
| (b) Shirewide Library Facilities:
31.20833 ET @ \$847 per ET
(\$792 base rate + \$55 indexation)
S94 Plan No. 11 | \$26,433 |
| (c) Bus Shelters:
31.20833 ET @ \$64 per ET
(\$60 base rate + \$4 indexation)
S94 Plan No. 12 | \$1,997 |
| (d) Eviron Cemetery:
31.20833 ET @ \$124 per ET
(\$101 base rate + \$23 indexation)
S94 Plan No. 13 | \$3,870 |
| (e) Community Facilities (Tweed Coast - North)
31.20833 ET @ \$1404 per ET
(\$1,305.60 base rate + \$98.40 indexation)
S94 Plan No. 15 | \$43,816 |
| (f) SALT Open Space and Associated Car Parking
31.2083 ET @ \$2330 per ET
(\$1,350 base rate + \$980 indexation)
S94 Plan No. 25 | \$72,715.34 |

- (g) **Regional Open Space (Structured):**
31.2083 ET @ \$3872 per ET **\$120,839**
(\$3,619 base rate + \$253 indexation)
S94 Plan No. 26

[USENS03]

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

1. The public reserve located to the immediate east of the development site shall continue to be maintained to Inner Protection Area standards as outlined in Section 4.2.2 of *Planning for Bushfire Protection: A Guide for Councils, Planners, Fire Authorities, Developers and Home Owners (2001)*.
 2. At the commencement of the dual use (residential and tourist accommodation) and in perpetuity, the entire property shall be managed as an inner protection area (IPA) as outlined within Section 4.1.3 and Appendix 5 of *Planning for Bushfire Protection 2006* and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.
 3. An emergency and evacuation plan, addressing Section 4.2.4 of 'Planning for Bush Fire Protection 2006' shall be prepared for the proposed dual use of the existing tourist accommodation to become residential and tourist accommodation, or the existing plan is to be amended to include considerations pertaining to the proposed new dual use of the existing development. A copy of the plan shall be provided to the consent authority prior to commencement of the residential use of the development.
2. **ATTACHMENT 1 is CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following;
- (g) *advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege*

Councillor's Background Notes

Recommended Priority:

Nil

Description of Project:

Nil

Management Comments:

Delivery Program:



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
-

Budget/Long Term Financial Plan:

Not Applicable

Legal Implications:

Legal advice has been received and forms a Confidential Attachment to this report. This attachment is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following:

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

Policy Implications:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Legal advice from Maddocks (ECM 3573952)
