

**TWEED SHIRE COUNCIL
MEETING TASK SHEET**

User Instructions

If necessary to view the original Report, double-click on the 'Agenda Report' blue hyperlink above.

**Action Item - PLANNING COMMITTEE MEETING Thursday, 5 November
2015**

Action is required for Item 2 as per the Planning Committee Recommendation outlined below.

ATTENTION:

PLEASE NOTE THE ADOPTION OF THE COMMITTEE RECOMMENDATIONS BY COUNCIL AT ITS MEETING HELD Thursday, 5 November 2015 (Minute No 589 Refers)

TITLE: [PR-PC] Development Application DA15/0742 for Conversion of Boathouse to a Combined Boathouse and Dwelling at Lot 602 DP 1098619 Point Break Circuit, Kingscliff

**Cr C Byrne
Cr P Youngblutt**

RECOMMENDED that Development Application DA15/0742 for conversion of a boathouse to a combined boathouse and dwelling at Lot 602 DP 1098619 Point Break Circuit, Kingscliff be refused for the following reasons:

1. The application fails to satisfy the principal aim of the Tweed Local Environmental Plan 2000 (Clause 4) which is to ensure "The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced." The proposed development fails to adequately consider the sites' importance in regard to public amenity and foreshore access and would result in a development which does not respond to the existing character of the area.
2. The development as proposed is not considered to have adequate regard for the Ecologically Sustainable Development provisions as outlined in Clause 5 the Tweed Local Environmental Plan 2000.
3. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(i) - any environmental planning instrument. The proposal is not considered to be consistent with the objectives of the Tweed Local Environmental Plan 2000.

4. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(i) - any environmental planning instrument. The proposal is not considered to be consistent with State Environmental Planning Policy No. 71 - Coastal Protection.
5. The development as proposed does not satisfy Clause 8(1) of the Tweed Local Environmental Plan 2000 as the development does not satisfy the 2(f) Tourism zone objectives, and is considered to have an unacceptable impact in regards to public amenity and safety matters
6. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(v) - any coastal zone management plan namely the Tweed Coast Estuaries Management Plan 2012, given the adverse impact upon public access to the Cudgen Creek foreshore.
7. The development as proposed does not satisfy Clause 39A of the Tweed Local Environmental Plan 2000 in regards to bushfire protection. The development as proposed does not provide sufficient Asset Protection Zones upon the subject land to satisfy the Planning for Bushfire Protection Guidelines 2006.
8. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(e) - the public and has failed to adequately address the concerns raised in the public submissions received following public notification of the proposal.

The Motion was **Carried**

FOR VOTE - Unanimous

TITLE: [PR-PC] Development Application DA15/0742 for Conversion of Boathouse to a Combined Boathouse and Dwelling at Lot 602 DP 1098619 Point Break Circuit, Kingscliff

SUBMITTED BY: Development Assessment and Compliance

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Consent is sought for the conversion of a boathouse to a combined boathouse and dwelling at Lot 602 DP 1098619 Point Break Circuit, Kingscliff.

The site is located on the foreshore of Cudgen Creek, to the west of Snapper Avenue within the Salt residential precinct. The site is land locked as it does not front any legal road. The site is currently accessed via Tweed Shire Council community land identified as Lot 221 DP 1069887, from Point Break Circuit. The application has requested vehicle access over this community land.

The boathouse and adjoining amenities including BBQ area, covered picnic tables and jetty were approved in conjunction with DA05/0028 in August 2005. This 2005 approval facilitated the construction of the boathouse with room for boat storage, office and amenities. Boats stored onsite are non-motorised and are used in conjunction with a hiring business operating from the site.

It is proposed to undertake alterations to the existing boathouse to convert the building from a boat house to a combined boat house and dwelling. It is proposed to erect a 1.2m high fence along the southern and eastern boundary of the site, delineating the lot from the adjoining public amenities and provide a garage onsite for vehicles.

The site is zoned 2(f) Tourism. Dwellings are prohibited in the 2(f) Tourist zoning pursuant to the provisions of Tweed Local Environment Plan 2000, unless the dwelling is for the purposes of a caretaker.

The site is burdened by a Section 88B Title restriction, providing Tweed Shire Council with a public footway to a boat ramp into Cudgen Creek, partially located upon the subject site. Tweed Shire Council holds the Crown Licence for this boat ramp.

The Statement of Environmental Effects indicates that the primary reason for this proposed conversion is the need to ensure protection of the boathouse due to increase instances of vandalism and damage to the structure in the evenings and during parties being held within the adjoining reserve area and shelter. It is stated that the conversion will enable the

resident to monitor the site at all times and prevent damage to the property that has occurred in the past. Little information is provided in regards to justifying a caretaker to manage the intended commercial component of the site, namely the hiring of non-motorised water craft.

The use of the site for a permanent dwelling, albeit for a caretaker, has not been satisfactorily justified and is not supported. The use of the building for residential purposes will have adverse impacts upon the accessibility of the boat ramp on site. The use of the adjoining community land for regular permanent vehicle access is not supported for safety reasons.

The application was notified to adjoining owners for a 14 day period. During this time 29 submissions were received, all objecting to the proposed use for reasons associated with public safety and amenity. Many of the reasons for objecting to the proposal are considered valid.

The subject application was called up to Council for determination. Given the level of public interest in this Development Application, it was also considered appropriate for this matter to be reported to Council.

It is recommended that the application be refused.

RECOMMENDATION:

That Development Application DA15/0742 for conversion of a boathouse to a combined boathouse and dwelling at Lot 602 DP 1098619 Point Break Circuit, Kingscliff be refused for the following reasons:

- 1. The application fails to satisfy the principal aim of the Tweed Local Environmental Plan 2000 (Clause 4) which is to ensure “The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.” The proposed development fails to adequately consider the sites' importance in regard to public amenity and foreshore access and would result in a development which does not respond to the existing character of the area.**
- 2. The development as proposed is not considered to have adequate regard for the Ecologically Sustainable Development provisions as outlined in Clause 5 the Tweed Local Environmental Plan 2000.**
- 3. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(i) - any environmental planning instrument. The proposal is not considered to be consistent with the objectives of the Tweed Local Environmental Plan 2000.**
- 4. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(i) - any environmental planning instrument. The proposal is not considered to be consistent with State Environmental Planning Policy No. 71 - Coastal Protection.**
- 5. The development as proposed does not satisfy Clause 8(1) of the Tweed Local Environmental Plan 2000 as the development does not satisfy the 2(f) Tourism zone objectives, and is considered to have an unacceptable impact in regards to public amenity and safety matters**

- 6. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(v) - any coastal zone management plan namely the Tweed Coast Estuaries Management Plan 2012, given the adverse impact upon public access to the Cudgen Creek foreshore.**
- 7. The development as proposed does not satisfy Clause 39A of the Tweed Local Environmental Plan 2000 in regards to bushfire protection. The development as proposed does not provide sufficient Asset Protection Zones upon the subject land to satisfy the Planning for Bushfire Protection Guidelines 2006.**
- 8. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(e) - the public and has failed to adequately address the concerns raised in the public submissions received following public notification of the proposal.**

REPORT:

Applicant: Consolidated Properties
Owner: Lindstro Pty Ltd
Location: Lot 602 DP 1098619 Point Break Circuit, Kingscliff
Zoning: 2(f) Tourism
Cost: \$75,000

Background:

Consent is sought for the conversion of a boathouse to a combined boathouse and dwelling at Lot 602 DP 1098619 Point Break Circuit, Kingscliff.

It is proposed to undertake alterations to the existing boathouse to provide a habitable space and seek approval for part of the boathouse as a dwelling. The Statement of Environmental Effects indicates that the primary reason for this proposed conversion is the need to ensure protection of the boathouse with the provision of a caretaker onsite due to increase instances of vandalism and damage to the structure in the evenings and during parties being held within the adjoining reserve area and shelter. It is claimed that the conversion will enable the resident to monitor the site at all times and prevent damage to the property that has occurred in the past.

The site is located on the frontage to Cudgen Creek surrounded by community land adjoining Snapper Avenue, Kingscliff. The site is accessed from Point Break Circuit over Tweed Shire Council community land identified as Lot 221 DP 1069887. The application has requested vehicle access over the subject community land for the resident and visitor vehicles. Separate consent from the prescribed authority, Tweed Shire Council has not been sought, nor granted to permit vehicle access over this community land.

The subject site is shown below:



The approved Salt Master plan identifies the subject site as being the location of a boathouse. Condition 5 of the 2002 Salt development consent required the submission of a separate application for the development of this boathouse, jetty and boat ramp. The boathouse and adjoining amenities including BBQ area, covered picnic tables and jetty were approved in conjunction with DA05/0028 in August 2005. This 2005 approval facilitated the construction of the boathouse with room for boat storage, office and amenities. Boats stored onsite are restricted to non-motorised craft and are used in conjunction with a hiring business operating from the site.

It is noted that the boathouse building itself is in private ownership upon private land, however the boat ramp is under Councils Licence with the Crown Number LI379377 as of 20 March 2014. This licence includes the adjoining jetty.

The site is burdened by a Section 88B instrument benefitting Tweed Shire Council for the purposes of a footway from adjoining public land to the boat ramp upon the subject site. This footway is located on the southern side of the existing building and includes the southern deck area. This footway will be impacted by the construction of a 1.2m high fence along the southern and eastern boundary, severely restricting access to this easement and the adjoining boat ramp. Council's Legal Services Unit has advised that no consultation or application has been received to vary the current Section 88B instrument.

The land at the rear of the site containing the walkway to the carpark adjoining Point Break Circuit is community land. No other land access is available to the site and as this community land has no associated Plan of Management, any change to the use of the land would be subject to a lengthy public consultation process prior to approval.

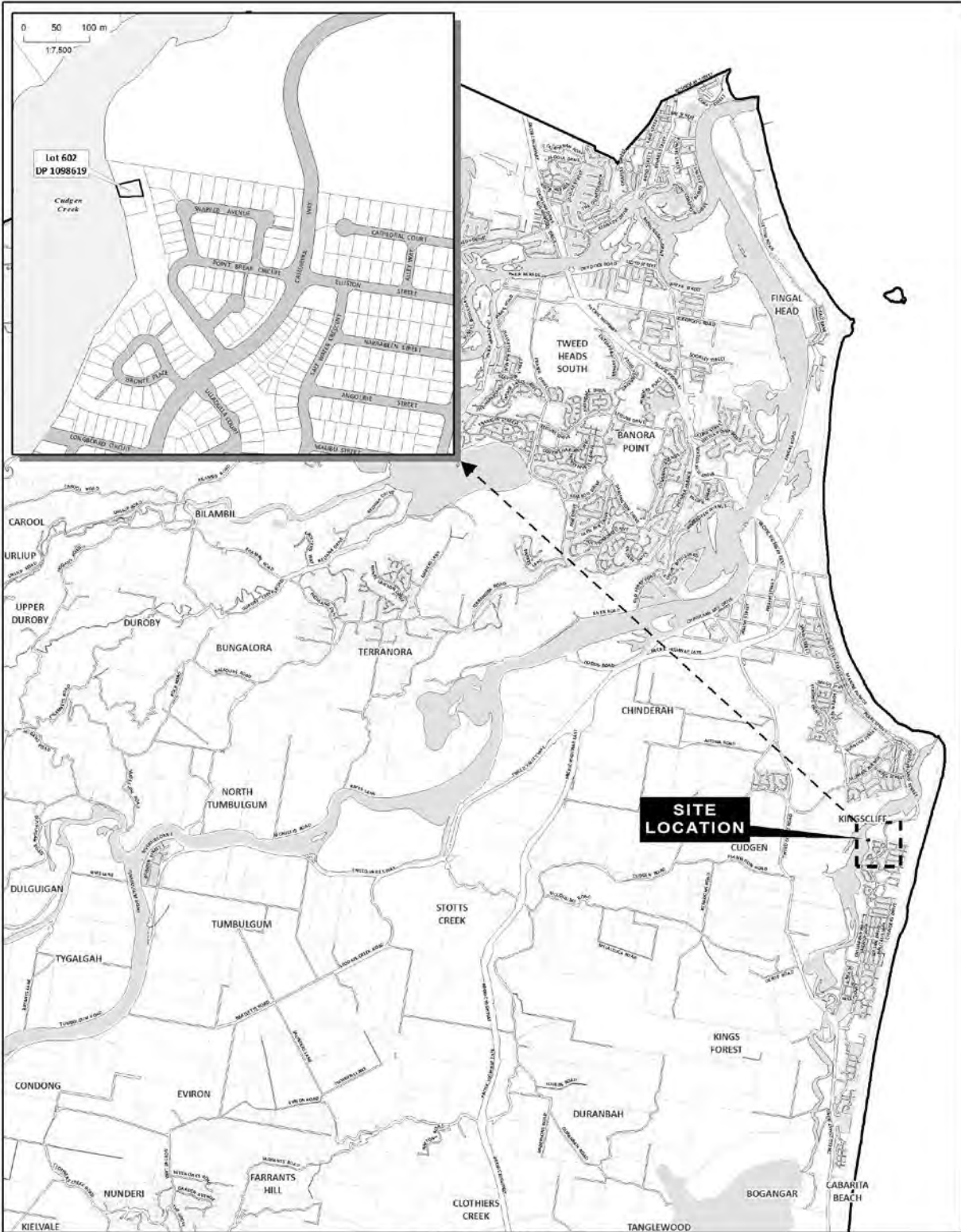
The fundamental issue with regard to the subject application relates to the impacts of the building conversion upon the locality in terms of public amenity and safety. The documentation submitted in support of the application does not sufficiently justify the need for a caretaker onsite. The impacts of having a permanent caretaker onsite adjoining a recreational space is not considered conducive to the use of the locality, nor is the regular use of the public footpath considered to be acceptable for vehicle access to the site. The potential land use conflicts associated with the proposed conversion is considered to sufficiently outweigh the perceived need for a caretaker onsite.

The development application was notified for a period of 14 days, from Wednesday 16 September 2015 to Wednesday 30 September 2015. During this period 29 submissions were received raising objection to the proposal. A further objection was received after the closing date. The matters raised in all submissions are addressed later in this report.

The subject application was called up to Council for determination. Given the level of public interest in this Development Application, it was also considered appropriate for this matter to be reported to Council.

It is recommended that the application be refused.

SITE DIAGRAM:



Locality Plan

Lot 602 DP 1098619
Point Break Circuit, 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 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 excavations a 'Call before You Dig' enquiry must be made by calling 1000. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral 14/10/2015
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Boundaries shown should be considered approximate only.



Map Projection: Universal Transverse Mercator
Horizontal Datum: Geosidic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

0 0.5 1 1.5 Km
1:75,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED

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Filepath: J:\2015\10\14\1098619\1098619\LocalityPlan\1098619_LPI.mxd

Author: Matthew Greenway Planning & Urban Design Unit

John Foster, JJ Foster, JP15

DEVELOPMENT/ELEVATION PLANS:



NOTES:
 DO NOT SCALE OFF DRAWINGS
 Verify all dimensions on site prior to commencement where situation to be changed is certified by structural engineering to decrease speed of travel and maintain safe road conditions
 All construction shall be in accordance with the Australian Standards AS/NZS 1170:2002 and AS/NZS 1170:2004
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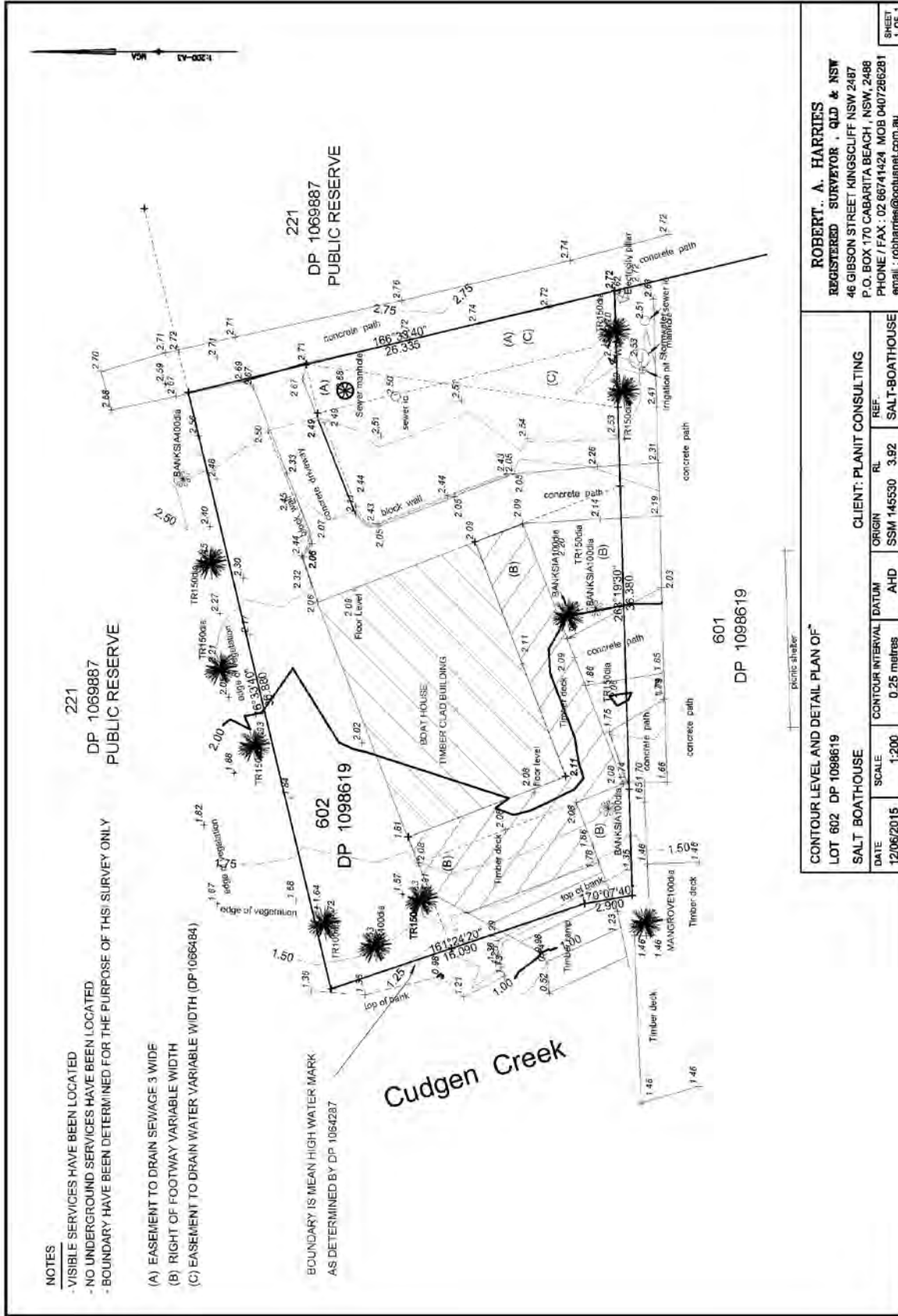
ISSUE	DATE	DISTRIBUTION
A	19/06/15	Plan
B	13/07/15	Schematic Design
C	04/08/15	Development Application

O'ROURKE - SALT BOATHOUSE
LOT 602 SALT
CONTEXT PLAN

DATE: JUNE 2015 JOB No: 1626
 SCALE: 1:100(A3), 1:50(A1) DWG No: SA-01

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 4th Floor, 4th Floor
 4th Floor, 4th Floor
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SCOTT CORPORATE INTERIOR



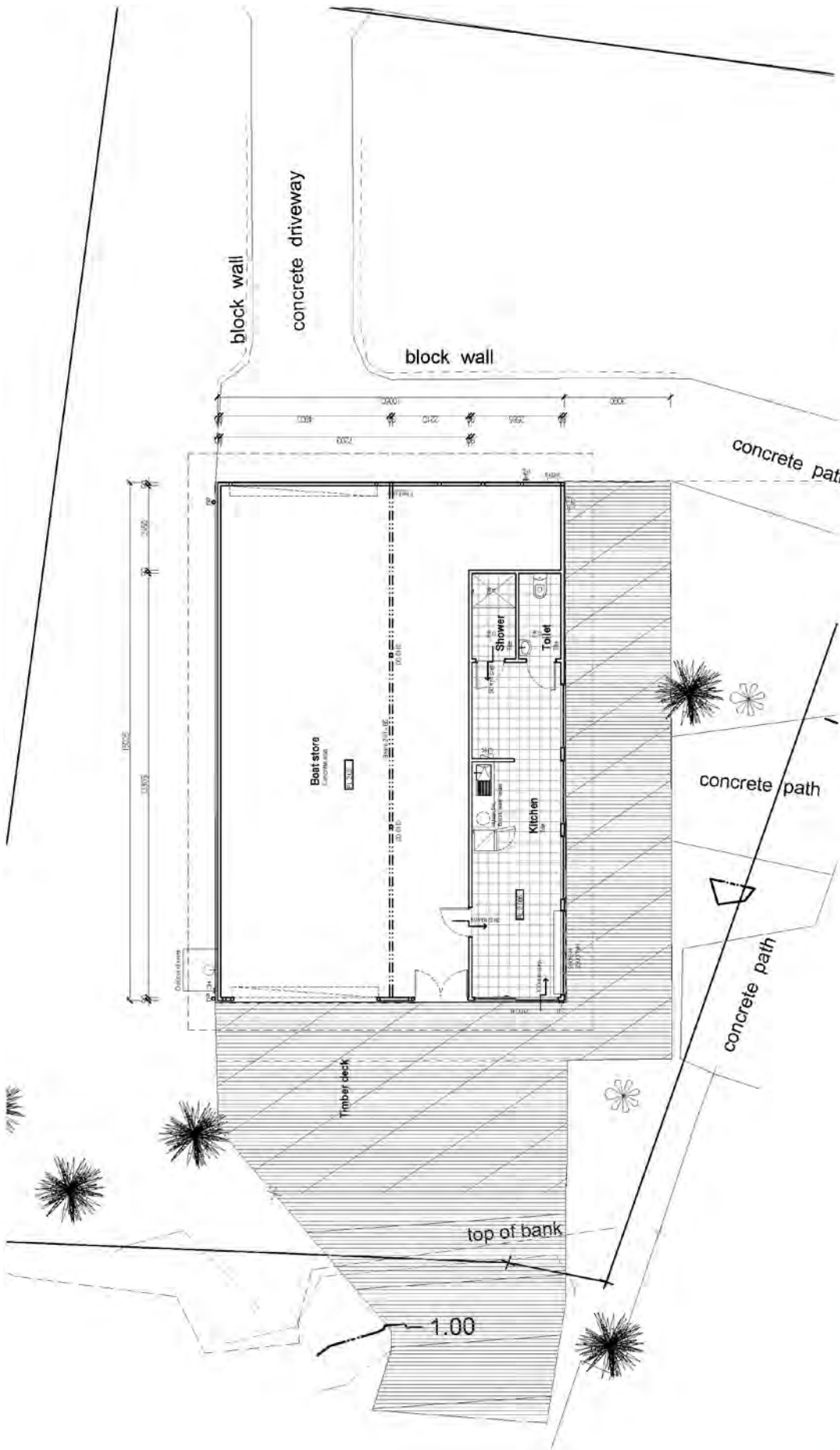
ROBERT.. A. HARRIES
REGISTERED SURVEYOR , QLD & NSW
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P.O. BOX 170 CABARITA BEACH, NSW, 2488
PHONE / FAX : 02 66741424 MOB 0407265281
email : robharris@optunet.com.au

CLIENT: PLANT CONSULTING

DATE	SCALE	CONTOUR INTERVAL	DATUM	AHD	ORIGIN	RL	REF.
12/06/2015	1:200	0.25 metres			SSM 145530	3.82	SALT-BOATHOUSE

CONTOUR LEVEL AND DETAIL PLAN OF
LOT 602 DP 1098619
SALT BOATHOUSE

SHEET 1 OF 1



O'ROURKE - SALT BOATHOUSE
LOT 602 SALT
EXISTING GROUND FLOOR PLAN

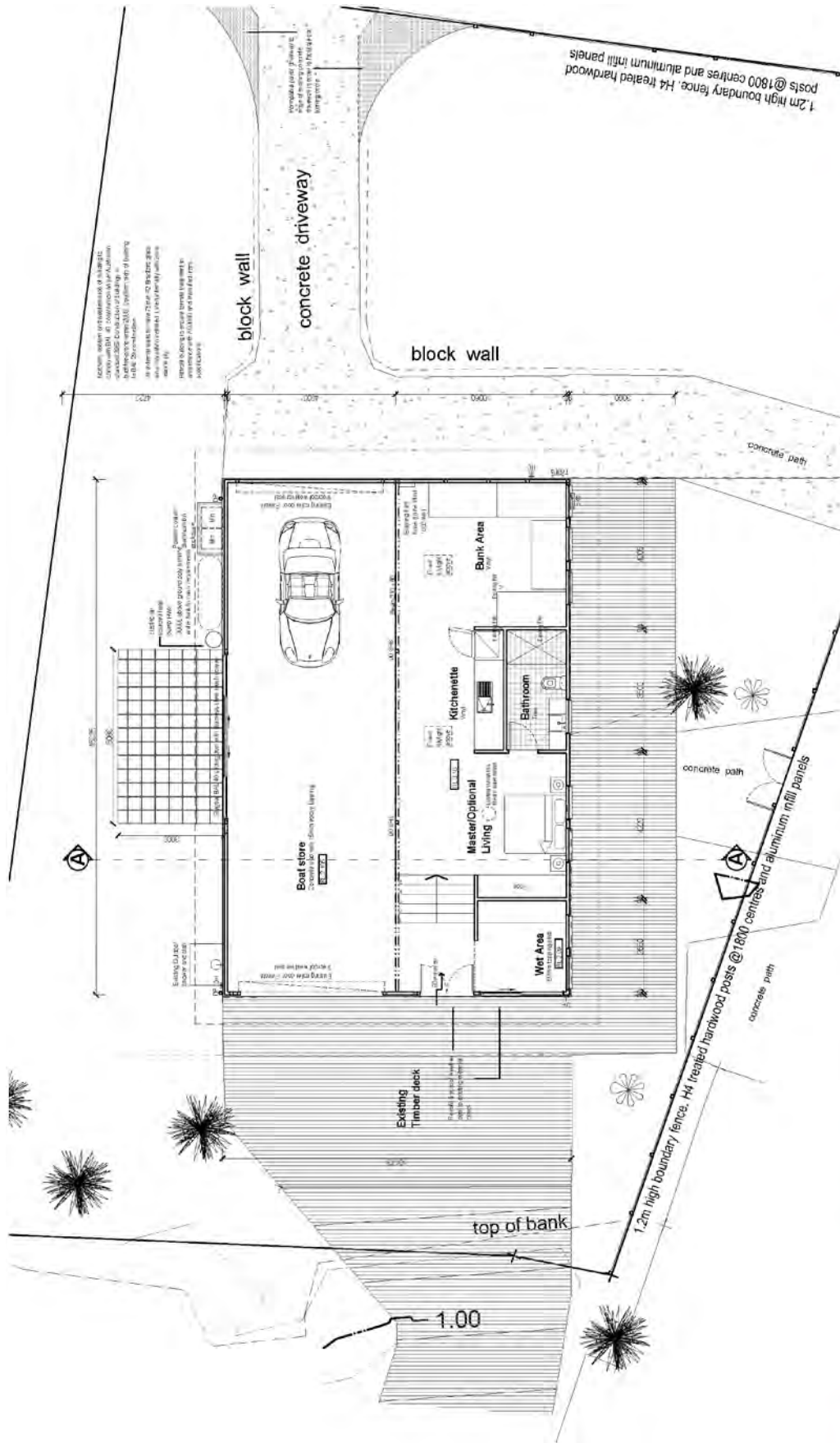
DATE: JUNE 2015
 SCALE: 1:100(A3), 1:50(A1)
 JOB No: 1525
 DWG No: DA-02

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 AIA No: 23751
 NSW County Division



ISSUE	DATE	DISTRIBUTION
A	19/06/15	Plan
B	13/07/15	Schematic Design
C	04/08/15	Development Application

NOTES:
 DO NOT SCALE OFF DRAWING.
 Verify all dimensions on site prior to commencement of work. Structures to be designed specifically must be engineered. All dimensions are in millimetres unless otherwise stated. All dimensions are to the face of the work unless otherwise stated. All dimensions are to be confirmed on site prior to commencement of work. The purpose of this document is to provide information to the client. It is not intended to be used for construction. All dimensions are to be confirmed on site prior to commencement of work. All dimensions are to be confirmed on site prior to commencement of work.



PROPOSED FLOOR PLAN
 1:100 (A3), 1:50 (A1)
 DATE: JUNE 2015
 SCALE: 1:100(A3), 1:50(A1)
 JOB NO: 1525
 DWG NO: DA-03

O'ROURKE - SALT BATHHOUSE
LOT 602 SALT
PROPOSED FLOOR PLAN

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 A/N.S. No. 12721
 NSW Country Division



ISSUE	DATE	DISTRIBUTION
A	15 / 06 / 15	Plan
B	15 / 07 / 15	Schematic Design
C	04 / 08 / 15	Development Application

NOTES:
 1. ALL SCALE OF DRAWINGS.
 2. ALL DIMENSIONS ON THIS PLAN TO COMMENCEMENT OF WORK.
 3. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS.
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1 North Elevation

1 : 100



2 East Elevation

1 : 100

NOTES:
 DO NOT SCALE OFF DRAWINGS
 Verify all dimensions prior to commencement of work. Structure to be designed & certified by structural engineer. Manufacturers specifications and details take precedence over these drawings. Contractor to ensure all materials and installation methods used comply with all Australian Standards, BCA and manufacturers specifications and details. Contractor to ensure all materials used are suitable in regards to proximity to the ocean. The purpose of these architects details is to communicate design intent. Contractor to notify any discrepancies between these details and or Australian Standards, BCA and manufacturers specifications to the Architect prior to commencement of work.

ISSUE	DATE	DISTRIBUTION
A	19 / 06 / 15	Plan
B	14 / 07 / 15	Schematic Design
C	04 / 08 / 15	Development Application

scott carpenter
ARCHITECTS

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O'Rourke - Salt Boathouse
 Lot 602 Salt
 N&E Elevations
 DATE: June 2015 JOB No: 1525
 SCALE: 1 : 100 DWG No: DA-04



1 South Elevation

1 : 100



2 West Elevation

1 : 100

NOTES:

DO NOT SCALE OFF DRAWINGS
Verify all dimensions on site prior to commencement of work. Structure to be designed & certified by structural engineer. Manufacturers specifications and details take precedence over those of architect. All materials to be sourced from Australia. Contractor to ensure all materials used are suitable in regards to proximity to the ocean. The purpose of these architect's details is to communicate design intent. Contractor to notify any discrepancies between these details and or Australian Standards, BCA and manufacturers specifications to the Architect prior to commencement of work.

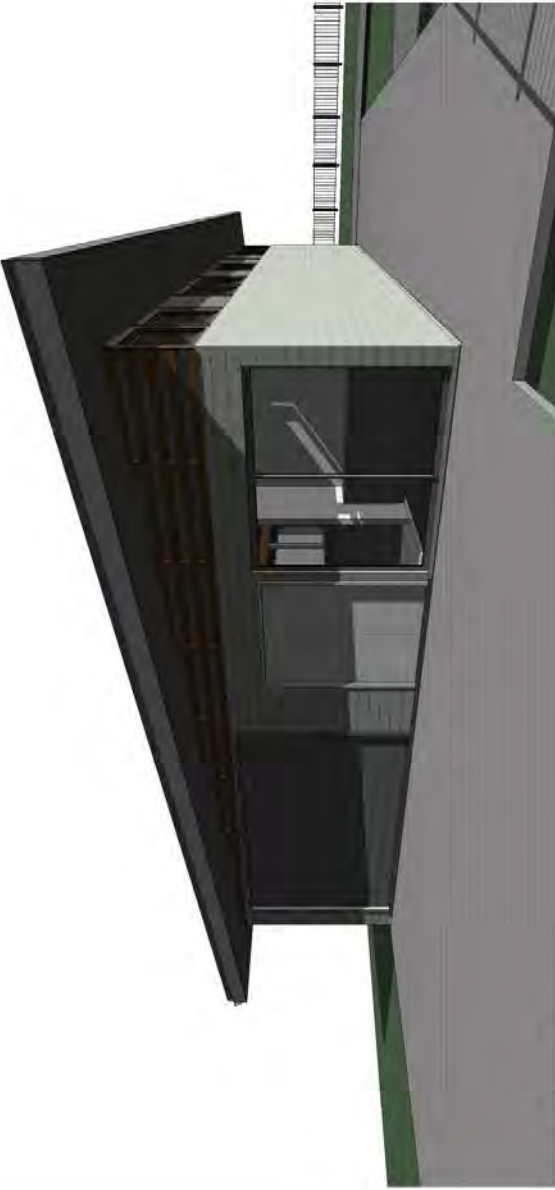
ISSUE	DATE	DISTRIBUTION
A	19 / 06 / 15	Plan
B	14 / 07 / 15	Scientific Design
C	04 / 08 / 15	Development Application



PC
01
02
03
04

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ABA No. 21723 RPA County Division

O'Rourke - Salt Boathouse
Lot 602 Salt
S&W Elevation
DATE: June 2015
SCALE: 1 : 100
JOB No: 1525
DWG No: DA-05



1 View 1



2 View 2

NOTES:

DO NOT SCALE OFF DRAWINGS
 Responsibility for the interpretation of work, scheduling to be designed & certified by structural engineer. Manufacturer's specifications and details take precedence over these drawings. Contractor to ensure all materials and installation methods used comply with all Australian Standards, BCA and manufacturer's specifications and details. Contractor to ensure all materials used are suitable in regards to proximity to the ocean. The purpose of these architects details is to communicate design intent. Contractor to notify any discrepancies between these details to the architect prior to commencement of work. Contractor to notify any discrepancies between these details to the architect prior to commencement of work.

ISSUE DATE DISTRIBUTION

ISSUE	DATE	DISTRIBUTION
A	19 / 06 / 15	Plan
B	14 / 07 / 15	Schematic Design
C	04 / 08 / 15	Development Application



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O'Rourke - Salt Boathouse

Lot 602 Salt

Perspectives

DATE: June 2015

JOB No: 1525

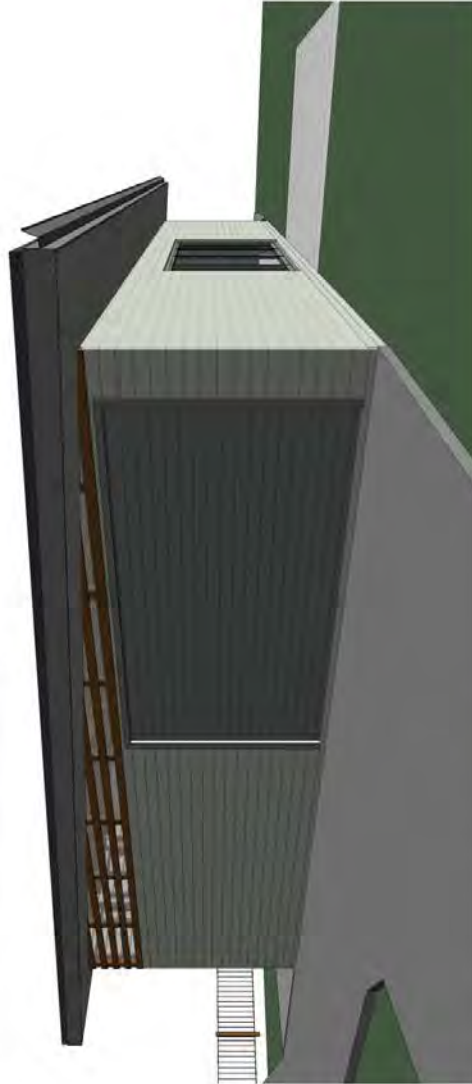
SCALE:

DWG No: DA-07



View 3

1



View 4

2

NOTES:
 DO NOT SCALE OFF DRAWINGS
 Verify all dimensions on site prior to commencement of work. Structure to be designed & certified by structural engineer. Manufacturers specifications and details take precedence over these drawings. Contractor to ensure all materials and installation methods used comply with all relevant standards. Contractor to ensure all materials used are suitable in regards to proximity to the coast. The purpose of these architectural details is to communicate design intent. Contractor to notify any discrepancies between these details and or Australian Standards, BCA and manufacturers specifications to the Architect prior to commencement of work.

ISSUE	DATE	DISTRIBUTION
A	19/06/15	Plan
B	14/07/15	Schematic Design
C	04/08/15	Development Application



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O'Rourke - Salt Boathouse
 Lot 602 Salt
 Perspectives
 DATE: June 2015
 JOB No: 1525
 SCALE: DWG No: DA-08

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development is considered to be inconsistent with the aims of the TLEP 2000 being in conflict with the local planning policies for the subject site and surrounding locality.

The proposed development fails to adequately consider the sites' importance in regard to public amenity and foreshore access and would result in a development which does not respond to the existing character of the area.

Clause 5 - Ecologically Sustainable Development

The subject development application is considered inconsistent with the four principles of ESD, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms* as it has the potential to result in land use conflicts in the immediate vicinity of the subject site.

Clause 8 - Consent Considerations

The consent authority may grant consent to development only if:

- a) it is satisfied that the development is consistent with the primary objectives of the zone within which it is located, and
- b) it has considered those 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.

In this instance, the site located is within a 2(f) tourism zone. Vehicle access to the site is located within a RE1 Public Recreation zone pursuant to TLEP 2014. The zone objectives are discussed in detail below but for the purposes of Clause 8 it is considered that the development is inconsistent with the primary objective of the 2(f) zone as the residential use proposed is not considered justified for the purposes of tourist development.

The proposal is considered to be inconsistent with the aims and objectives of the TLEP 2000 as it will not maintain the existing use of the land being a facility associated with recreation for the residential and tourist community of the Salt precinct. The subject proposal is considered to result in an unacceptable cumulative impact on the community, locality, catchment or Tweed Shire as a whole due to its impact upon residents and visitors to the site.

The proposal is considered to be inconsistent with Clause 8.

Clause 11 - Zone Objectives and permissibility

It is proposed to undertake alterations to the existing boathouse to provide a habitable space and seek approval for part of the boathouse as a dwelling. The site is zoned 2(f) Tourism. Dwellings are prohibited in the 2(f) Tourist zoning pursuant to the provisions of Tweed Local Environment Plan 2000, unless the dwelling is for the purposes of a caretaker.

The Statement of Environmental Effects indicates that the primary reason for this proposed conversion is the need to ensure protection of the boathouse due to increase instances of vandalism and damage to the structure in the evenings and during parties being held within the adjoining reserve area and shelter. It is stated that the conversion will enable the resident to monitor the site at all times and prevent damage to the property that has occurred in the past. Little information is provided to justify the need for a caretaker to manage the intended commercial component of the site, namely the hiring of non-motorised water craft.

The objectives of the 2(f) Tourism zone are as follows:

Primary objectives

- *to encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *to ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Secondary objective

- *to permit high quality residential development as being integral and supportive of the primary intent of this zone (tourist orientated development) in terms of design and management structure and only at a scale which enhances the proposed tourist resort character.*

The existing boathouse was a result of a condition of the original Salt DA02/1422 development consent. Condition 5 of this consent required a separate development application for the erection of the boatshed, jetty or viewing platform. The boat shed was subsequently approved in accordance with DA05/0028 for a boathouse and amenities.

The development in its current form is considered to be consistent with the objectives of the zone being an ancillary development for the tourist uses in the locality. Insufficient justification has been forthcoming regarding the need for a caretaker's residence in conjunction with the commercial hire business.

The proposed conversion is not considered to be consistent with these objectives as it will result in a landuse that conflicts with the ancillary uses of the locality associated with the tourist zone. The public enjoyment of the adjoining community land will be adversely affected by a permanent resident within the boat house in regards to access to the boat ramp and enjoyment of the adjoining public facilities.

Clause 15 - Essential Services

The site is located in an established urban area and has connection to all required infrastructure.

Clause 16 - Height of Building

The site is located within a two storey area consistent with Clause 53B of the Tweed LEP. The proposal does not seek to increase the height of the single storey structure.

Clause 17 - Social Impact Assessment

The application is not required to provide a Social Impact Assessment.

Clause 19 – Subdivision

No subdivision proposed.

Clause 31 – Development Adjoining Water bodies

The development does adjoin the Cudgen Creek waterbody. The objectives of this clause are as follows:

- *to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors.*
- *to provide adequate public access to waterways.*
- *to minimise the impact on development from known biting midge and mosquito breeding areas.*

The 2004 - 2008 Tweed Coast Estuaries Management Plan (TCEMP) included the provision of Canoe Launching facilities along Cudgen Creek. The original proposal was required in response to this action and was to be restricted to non-motorised craft.

This proposal was deemed to improve public access to the foreshore through the provision of a boat ramp that visitors could utilise.

If a caretaker's residence was to be approved as part of this boat house, the original intent of the building and adjoining ramp may be compromised as a means of gaining access to Cudgen Creek. While the boathouse is on private land, a condition of the 2005 consent provides that public access to the boat ramp is not to be hindered or restricted. This condition was confirmed with the imposition of a Section 88B instrument over the land maintaining a public footway over the subject lot. This footway will be severely restricted by the erection of a 1.2m high fence on the southern and eastern boundary.

It is also considered that the presence of permanent residents may intimidate visitors to an extent that the use of the boat ramp is not freely undertaken as is the intent. Accordingly this use of the boathouse as a residence is considered contrary to the objectives of this Clause.

Clause 35 - Acid Sulfate Soils (ASS)

The site is classified on Council's database as Class 3 ASS, and works beyond 1m below the natural ground surface or that will lower the water-table below 1m would trigger the need for an acid sulfate soil assessment and management plan.

Minor earthworks are proposed to create additional footings for an expanded deck, fence and concrete footings to the proposed enlarged driveway.

ASS will not be disturbed during the construction as proposed, and no further information or consideration is required.

Clause 39A – Bushfire Protection

The subject parcel is located within a deemed bushfire protection area. A bushfire risk assessment was provided by the applicant. This assessment has made the following conclusions:

- Building being upgraded on the North, west and east to BAL 40
- Building upgraded on the southern boundary to BAL 29
- A 7m separation between the existing building and the adjoining rainforest vegetation be maintained as defendable space

A 79C assessment has confirmed that a BAL of 40 would require an APZ of between 6-9m in width. The building is located 4m from the northern boundary and while this area is clear of vegetation, the maintenance of a 7m wide APZ as nominated by the bushfire risk assessment submitted with the application is outside the property boundary. The land to the north is Council owned land. Council will not support APZs on this land.

The application is not considered acceptable in this regard.

Despite the above assessment, if Council was to support the proposal, including the provision of an APZ on Council land, the application would be forwarded to the Rural Fire Service for consideration due to the BAL 40 requirements.

Clause 53 – Development of Specific Sites

The site is subject to the provisions of this Clause. Specifically the parent lot of the subject site (Portion 312, Kings Beach, South Kingscliff) was one of three parcels covering the entire Salt precinct. These parcels are listed in Schedule 3, with additional development permitted with development consent as follows:

“Development for the purpose of dwelling houses and a hotel, motel or tourist resort (or any combination of them).”

Notwithstanding of this Clause, the application has stated that the dwelling will be for the purposes of a caretaker, which is permissible in the zone. The use for the purposes of a dwelling either as a caretaker or residence is not supported for various reasons outlined elsewhere in this report.

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 development is not considered to be generally in accordance with the aims of this plan having regard to its nature and permissibility at this location.

The proposal is considered to be inconsistent with the aims as it will not maintain the existing use of the land being a facility associated with recreation for the residential and tourist community of the Salt precinct.

Clause 2.3 – Zone objectives and Land use table

The RE1 zone (Green) adjoins the subject site as follows:



The objectives of the RE1 Public Recreation Zone are:

- *To enable land to be used for public 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.*

The use of an existing footpath upon community land for the purposes of a sole permanent vehicle access for a dwelling is not considered consistent with these objectives as this use will clearly conflict with the intended use as public open space for passive recreation.

The permissibility of the use of the adjoining community land for the purposes of a permanent vehicle access for the subject building is unclear. However, any such use would be the subject of a process by Council as the land owner to alter the parameters regarding the community use of this land. It is likely that this process will result in significant community objection, resulting in Council as the land owner not supporting the use of the land for permanent vehicle access.

The subject RE1 land is the only means of land access to this land locked site.

Clause 5.5 – Development within the Coastal Zone

This clause 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:

2. (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 proposal will adversely impact existing public access to Cudgen Creek over the existing boat ramp through the erection of a fence along the southern and eastern boundaries of the site. The use of the building for permanent residency and expansion of an existing deck will also have an adverse impact on the perceived public accessibility to the boat ramp, in that visitors may be intimidated by the occupancy of the boathouse rather than its use as a hire facility only.

- (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 will result in a visual change to the existing natural scenic quality. The construction of a deck and fence is considered to be detrimental to the existing public recreation space given the existing and intended uses of the surrounding public land and adjoining boat ramp.

- (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 will not result in any overshadowing. However, the 1.2m high fence will impact upon the views from the adjoining public amenities, contrary to this Clause.

- (d) *how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and*

The proposed development will compromise the scenic qualities of the immediate locality through the construction of a fence on the southern and eastern property boundaries.

- (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

No vegetation will be removed however the permanent use of the boathouse for residential purposes for up to 5 people does have the potential to increase pollution risks of this sensitive coastal location.

(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.

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

The proposal will impede and diminish the right of access of the public to the existing boat ramp and adjoining 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 has an existing connection to reticulated sewer. The existing connection will be satisfactory for the proposed conversion.

(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

No change to the existing stormwater disposal is proposed in conjunction with this application.

(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 conversion will not be affected by coastal hazards.

In summary, the proposed development is considered contrary to the provisions of this Clause as it will have an adverse impact upon existing access

opportunities to the Cudgen Creek foreshore and will be detrimental to the visual amenity of the locality.

Clause 5.9 – Preservation of Trees or Vegetation

No vegetation will be disturbed in conjunction with the conversion. However, the application requires the creation of a 7m wide APZ that will encroach Council land to the north, resulting in revegetation in the APZ being severely restricted. Council does not support the use of community land for this APZ, nor the management of natural vegetation areas for private APZ's.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15: Wetlands or Fishery Habitats

The application is not considered consistent with this Clause for the following reasons:

- The permanent use of the building for the purposes of a residence for up to 5 persons on the foreshore of Cudgen Creek within the buffer of a nominated will increase the potential for pollution from this building into the adjoining creek.
- The proposed works ancillary to the conversion of the boathouse to a caretakers dwelling and boathouse will adversely impact the public access to the boat ramp on the foreshore of Cudgen Creek. These works include the construction of a deck on the northern side of the building and 1.2m high fence along the southern and eastern boundaries adjacent to the existing public facilities and jetty.

Clause 32B: Coastal Lands

As will be detailed elsewhere in this report, the development will impede existing public access to the foreshore, namely the boat ramp adjoining the subject site.

Clause 81: Development adjacent to the ocean or a waterway

The subject building is within 100m of the Cudgen Creek waterway. This proposal is considered contrary to this Clause as the use of the building for a caretakers residence is contrary to sub-Clause (a) referring to sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development. The conversion and associated fence and deck will be in conflict with this Clause making the existing boat ramp difficult to access and potentially deter visitors to the site that are not aware of the land tenure of the site and adjoining foreshore.

SEPP No. 14 - Coastal Wetlands

As mentioned previously the conversion of the building for permanent residential accommodation, albeit a caretaker will increase the potential for pollution of the adjoining wetland.

SEPP No. 55 - Remediation of Land

The original application for the boathouse stated that DA02/1422 thoroughly dealt with soil contamination issues. This was accepted in conjunction with this application. The current application has been assessed by Council's Environmental Health Unit against the provisions of SEPP 55. The following response was provided:

"The property was previously subject to sand-mining operations. As there has been no state-wide systematic approach to regulating NORM wastes in Northern NSW, development applications relating to areas subject to previous sand-mining activity have been approved with conditions requiring further investigation, remediation and validation (to demonstrate suitability for the proposed occupation and/ or activity)."

A suitable condition would be applied if the proposed development being recommended for approval.

SEPP No. 71 – Coastal Protection

The site is located within the coastal zone. The site is directly adjoining Cudgen Creek and is identified as a sensitive coastal location.

An assessment of the proposed development against the provisions of Clause 8 of this Policy is provided below:

(a) *the aims of this Policy set out in clause 2,*

The proposal is not considered in accordance with the aims of this policy.

(b) *existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,*

The proposal will adversely impact on public access along the Cudgen Creek foreshore, given the existing situation of a public boat ramp partially located upon the subject lot and the proposed erection of a fence on the southern and eastern property boundaries, severely hindering access to this boat ramp.

(c) *opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*

No new opportunities for public access to the foreshore will be created by this development and the existing access will be hampered through the erection of a fence along the southern boundary, contrary to this Clause.

(d) *the suitability of development given its type, location and design and its relationship with the surrounding area,*

The proposal is not considered suitable, having regard to its impact upon this location.

- (e) *any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*

The proposed development will not result in any overshadowing as the existing structure will not change. However, the 1.2m high fence will impact upon the views from the adjoining public amenities, contrary to this Clause.

- (f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*

The proposed development will compromise the scenic qualities of the immediate locality through the construction of a fence on the southern and eastern property boundaries.

- (g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,*

Given the limited works required for the conversion it is considered that the proposal would not impact negatively any animals or their habitats.

- (h) *measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats.*

The proposal will have negligible impact upon marine environments or habitats, due to the lack of disturbance of existing vegetation onsite.

- (i) *existing wildlife corridors and the impact of development on these corridors,*

There are no wildlife corridors impacted by the proposed development.

- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*

The proposed development is not considered to have any significant impact on coastal processes and coastal hazards due to location and scale.

- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities,*

The proposed permanent residential use of the boat house has the potential to cause conflict between land-based and water-based activities.

- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*

The subject development is not considered to impact on any traditional Aboriginal cultural values.

- (m) *likely impacts of development on the water quality of coastal water bodies,*

The subject application does have some potential to increase the risk of pollution of Cudgen Creek due to the proximity of the building to Cudgen Creek which is proposed to become a permanent place of residence for a caretaker.

- (n) *the conservation and preservation of items of heritage, archaeological or historic significance,*

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items.

- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,*

Not applicable to the subject application.

- (p) *only in cases in which a development application in relation to proposed development is determined:*

- (i) *the cumulative impacts of the proposed development on the environment, and*

This development is considered to potentially have a negative cumulative impact on the environment.

- (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

The proposed development application will not compromise water and energy efficiency.

In summary, the proposed development is considered contrary to the provisions of this Clause as it will have an adverse impact upon existing access opportunities to the Cudgen Creek foreshore and will be detrimental to the visual amenity of the locality.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been prepared and submitted with the subject application.

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

There are no draft Planning Instruments applicable to the subject site.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A brief assessment of the proposal in regard to this DCP is provided below, being the conversion of an existing building currently used for a boat house for the purposes of a caretakers dwelling

Control	Comment
General Controls	
<i>Scale and Character of the Dwelling in regards to surrounding dwellings</i>	<i>The building itself is considered of a smaller scale than surrounding dwellings</i>
Site Design	
<i>Earthworks</i>	<i>Minor earthworks proposed for the construction of the proposed deck and fence</i>
Landscaping	
<i>35% of the site shall be landscaped</i>	<i>The site will retain 46% of the land area for landscaping</i>
<i>Setbacks</i>	<i>Given the proposed development will not change the existing footprint, no assessment of building lines and setbacks is considered relevant</i>
<i>Building Height – Maximum 9m</i>	<i>The internal works to convert the building to a caretakers dwelling will not increase the height of the building. The existing height of 7m remains compliant with this maximum.</i>
<i>Site Coverage – Maximum of 50% for the subject lot size.</i>	<i>Site coverage of 46% is compliant with this control</i>
Building Design	
<i>Passive Design</i>	<i>Due to the adaptation of the building from a boat house to a caretakers dwelling, the passive design of the building is considered relatively poor. Windows will be restricted to highlight louvres along the southern boundary and two doors along the western frontage. The eastern elevation will contain louvers and the northern elevation will have a doorway onto a deck, however such will be separated from the living area by the proposed internal garage. Residential amenity for the proposal in regards to access to natural sunlight and ventilation is considered poor.</i>
Solar Access and Natural Ventilation	
<i>Private Open space requirements and access to natural light</i>	<i>The proposal will have access to private open space on the northern side of the building; however such will be accessed through the proposed garage. Open space areas adjoining the boat ramp and on the southern side of the building are not considered private, given the proximity to the public</i>

Control	Comment
	<p>open space areas.</p> <p><i>External Living areas will have access to sunlight.</i></p>
Building Form	
<i>Height, Scale, Roof form</i>	<i>No changes to existing- no objections</i>
<i>Visual and Acoustic Privacy- Decks within 4m of a side boundary require screening</i>	<i>The proposal is unique in that the existing deck on the southern elevation is existing and will not be bordered by any dwellings. The southern boundary is shared however with the community facilities featuring sheltered picnic tables and BBQs. A 1.2m high fence is proposed along this southern boundary. The new deck on the northern boundary will have good amenity externally due to its separation from adjoining dwellings, however does not really serve the residence in an appropriate manner being indirectly accessed across the boat storage area.</i>
<i>Roofs, doormers, attics and skylights</i>	<i>No change to the roof is proposed, Skylights are proposed due to the lack of windows external to the building</i>
<i>Garages, driveways and carparking</i>	<i>The application proposes an internal garage and a tandem space in the driveway. This is compliant with the provisions. The access to these two spaces is however a major issue. This will be discussed in a latter section of this report.</i>
<i>Waste Management</i>	<i>Any approval would require an amendment to the existing waste services provided for the commercial component of the business. Any consent granted would require waste management during construction works. The existing amenities have an existing reticulated sewer connection</i>
<i>Fences and Walls</i>	<i>The proposal is unique in that the proposed fence will inhibit access to an existing boat ramp onsite that is required to remain available for public use, pursuant to DA05/0028 and 88B instrument. The fence is 1.2m high and does have a 60% openness ratio; however, the erection of this fence will significantly impact the nature of the public facilities in the immediate locality. This will be discussed in a separate section of this report.</i>

A2-Site Access and Parking Code

The proposal does make provision for sufficient vehicles onsite, being a single garage and one tandem space. The access to the site is however an issue that will be discussed in a latter section of this report.

A3-Development of Flood Liable Land

The site is flood prone and is within a 1 in 100 year affected area. The DCP nominates a design flood level of 2.6m AHD and as such a 500mm freeboard has been provided to show habitable areas at 3.1m AHD.

A6-Biting Midge and Mosquito Control

The lot is immediately adjacent to Cudgen Creek which is identified as a mosquito and midge breeding area. Outdoor areas will be affected by these species. Any positive determination would require additional information regarding how the caretakers dwelling would be afforded some level of protection from these insects, given the openness of the internal area, garage openings and external open space areas.

A9-Energy Smart Homes Policy

A BASIX certificate has been submitted with the application.

A11-Public Notification of Development Proposals

The development application was notified for a period of 14 days, from Wednesday 16 September 2015 to Wednesday 30 September 2015. During this period 29 submissions were received raising objection to the proposal. A further objection was received after the closing date. A petition was also submitted objecting to the proposal containing 24 names. It is noted that many of the names on the petition also submitted an individual submission objecting to the proposal.

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

Issue	Comment
The use of the footpath as a vehicle access for a permanent resident at the boathouse is unsafe for the public. The footway is neither designed nor suitable for ongoing regular vehicle access.	This is considered a valid reason for objection and is concurred with. The use of the footpath for ongoing vehicle traffic will conflict with its intended use as a footpath for all members of the public including children, cyclists and the elderly.
The public will feel intimidated when using the boat ramp if the building becomes a place of residence. The existing public amenity will be reduced if this building was to be used as a residence. A community asset should not be used for private purposes	This is considered a valid reason for objection and is concurred with. While the building itself is privately owned, the land is burdened by an 88B instrument permitting public footway access to the boat ramp over the subject land. Council has a Crown Land License for this boat ramp.

<p>The primary justification for the use of the building as a permanent residency appears to be vandalism. However, many of the objections have stated that there has been no evidence of vandalism over the years.</p> <p>The surrounding dwellings offer sufficient passive surveillance to prevent vandalism from occurring on this public space.</p> <p>Other methods to reduce vandalism should be used such as CCTV or security lighting</p>	<p>Council's Recreation Services Unit has advised that the public facilities in the vicinity have been subject to minimal and infrequent vandalism over the last few years.</p> <p>This would confirm the statements by these submissions that vandalism is not a problem in the area.</p> <p>Accordingly, vandalism of the existing building is not considered a valid reason for the conversion application.</p>
<p>The plans submitted with the DA indicate a motorised vessel will be stored onsite.</p>	<p>The original approval for the boathouse permitted the hiring of non-motorised craft only and no use of the boat ramp by motorised craft, with the exception of retrieval and rescue craft. This included all personal craft. This condition will be maintained.</p>
<p>The boathouse has been used recently for overnight accommodation by groups resulting in excess noise and fires in garbage bins.</p>	<p>This is a compliance matter as no accommodation is permitted with the current approval.</p>
<p>The use of the waterfront building as a private residence will adversely impact the ability of the public to move freely about the public facilities including boat ramp.</p>	<p>This reason for concern is concurred with and is considered a valid reason for refusal.</p>
<p>The current zoning does not permit residential usage. The use is inconsistent with the 2(f) zoning.</p>	<p>The 2(f) zoning does permit a caretakers residence. The need for a caretaker onsite is, however, not considered justified in the circumstances.</p>
<p>No evidence is provided within the SEE that the commercial usage will continue and the area for storage will be substantially reduced to accommodate the residential component.</p>	<p>The boat storage area will be reduced from over 100m² to 50m² to accommodate the residential component and vehicle. It is recognised that the ongoing use of the building for the hiring of water craft would be compromised by this use as income from the building will be assured through the residential component rather than rent for a commercial business</p>
<p>The erection of the fence will hinder the use of the boat ramp and reduce the area available for public recreation.</p>	<p>The erection of a fence on the southern and eastern boundaries is not supported and will significantly impact upon the public's accessibility to the boat ramp and surrounding public space.</p>

The boathouse was never intended to be used as a residence and is contrary to the original development.	A caretaker's residence is permissible within the zone if justified. However, the use is not considered justified nor suitable for the subject site in this instance.
Approval of this residential building will open the door for future applications to increase the floor area and height.	Approval is not recommended. However, any further expansion if this application was approved would be the subject of a further merit assessment.
The conversion of the building for residential purposes will have an adverse impact on surrounding property values.	No evidence is provided to support this. This is not a matter for the 79C assessment.
If the building is only to be used for a caretaker, why are there bunks included within the plan and why is a fence being proposed.	It is concurred that bunk beds are not necessary for such a use, nor is the erection of fencing.
The removal of bollards on a regular basis for vehicle access will compromise security of the public space and likely provide opportunities for other vehicles to access the community land.	This issue is considered a valid concern. The use of the footpath for regular vehicle access is not supported.
The separation distance between the building and vegetation to the north is only 5m not 7m, as stated in the application.	It is concurred that the APZ required for the building is not completely contained within the subject lot. Council land will be required to partially accommodate the necessary APZ. The use of council land is not supported for this purpose. This objection is considered valid.
The site is flood prone and is not suitable for residential accommodation	The floor level of the building can be raised to a sufficient height to provide flood free habitable areas.

A16-Preservation of Trees or Vegetation

The development will not require the removal of any vegetation. It is however proposed to maintain an asset protection zone beyond the site boundary to the north within Council land, preventing any further regeneration of native vegetation. This is not supported.

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

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

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is considered that the proposed development contradicts the objectives of the Government Coastal Policy, given its impact upon the immediate locality in regards to public amenity, safety and access to the foreshore.

Clause 92(1)(b) Applications for demolition

Minor internal demolition is proposed to facilitate the internal changes to the building. This will only occur in the instance of a positive determination.

Clause 93 Fire Safety Considerations

The proposed building will be required to comply with the Building Code of Australia.

Clause 94 Buildings to be upgraded

The building will require upgrading for bushfire protection and building Class 1a if granted development consent, which is not recommended.

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

The objects of this Act are to provide for the protection of the coastal environment of the State for the benefit of both present and future generations and, in particular (extracts of these objects):

- (a) to protect, enhance, maintain and restore the environment of the coastal region, its associated ecosystems, ecological processes and biological diversity, and its water quality, and*
- (b) to encourage, promote and secure the orderly and balanced utilisation and conservation of the coastal region and its natural and man-made resources, having regard to the principles of ecologically sustainable development, and*
- (c) to recognise and foster the significant social and economic benefits to the State that result from a sustainable coastal environment,*
- (d) to promote public pedestrian access to the coastal region and recognise the public's right to access*

The proposal is not considered to be consistent with the objects of this Act for the following reasons:

- The use of the boathouse for residential purposes will not enhance the environment of the coastal region in anyway and may be detrimental to the associated ecosystems that have been restored since the development of the Salt precinct;
- The orderly development that has occurred since the approval of the Salt precinct will not be enhanced by the approval of this conversion. The use of the building for a permanent residence, albeit for the purposes of a caretaker, is not considered sustainable having regard to the sensitivity of the immediate foreshore and surrounding vegetation;
- The social benefits associated with the public land and associated amenities provided in the immediate vicinity of the boathouse and the boat ramp upon the subject land will be compromised by the use of this building as a permanent residence; and

- Public access to the foreshore will be significantly compromised by the construction of a fence on the southern and eastern boundaries of this lot immediately adjoining the land identified as being a public footway for access to the boat ramp. The use of the adjoining footpath for vehicles on a regular basis for the residence will result in safety issues for any members of the public wishing to access Cudgen Creek.

Tweed Shire Coastline Management Plan 2005

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. This document primarily pertains to matters surrounding the entrance to Cudgen Creek and the requirement that management of the Creek in accordance with the adopted Estuary Plan. An assessment of the proposal against the provision of the estuary management plan is provided below.

Tweed Coast Estuaries Management Plan 2012

This document states that:

Public access to estuarine foreshore areas is highly valued by the community. One of the aims of the NSW Coastal Policy is to ensure the provision of public access to foreshores where feasible and environmentally sustainable. Whilst providing and maintaining access to public lands in coastal environments is important, access and use must be balanced by protection of the environment and the maintenance of public safety.

TSC recognises that:

- *Access to and sympathetic use of publicly owned coastal lands is desirable where it does not conflict with environmental management objectives;*
- *Uncontrolled public access has the potential to irreparably damage fragile coastal environments; and*
- *Human safety is a prime consideration when planning access.*

The existing recreation area provides managed public access points to Cudgen Creek. These access points are the boat ramp on the land the subject of this application, the adjoining jetty and sandy beach to the south of the existing jetty.

This application has the potential to adversely impact public access to the boat ramp, despite the approval for the boat ramp requiring public access to be maintained and a Section 88B instrument.

The use of the adjoining building for a full time caretaker will not be conducive to maintaining the unrestricted access to the boat ramp. Visitors will likely feel intimidated by persons occupying the building on a permanent basis and may not be aware of the public access status of the boat ramp. This accessibility will be exacerbated by the erection of a fence on the southern and eastern property boundaries making access to the ramp difficult, particularly if non-motorised craft are being manoeuvred to this ramp.

This situation has the potential to put increased pressure on other areas of the

foreshore if access to the boat ramp is not freely available to all, increasing the potential for vegetation damage and bank erosion in the vicinity of the public spaces.

This is not considered to be consistent with the aims of this plan in regards to the control of public access, maintenance and protection of riparian vegetation and control of bank erosion in estuaries.

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

The subject site is not located within an area that is affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater.

(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

It is proposed to undertake alterations and additions to the existing boathouse located immediately adjacent to Cudgen Creek for the purposes of a residence within the existing boat house. The subject land is privately owned however is surrounded and land locked by surrounding parcels owned by Tweed Shire Council. The subject land is burdened by a right of footway over the subject lot for public access to the boat ramp partially contained within the subject site, providing access for non-motorised water craft to Cudgen Creek.

The current status of the commercial boat hire operation is unknown however public submissions and site visits have indicated that this boat hire business is not regularly or currently operating from the site.

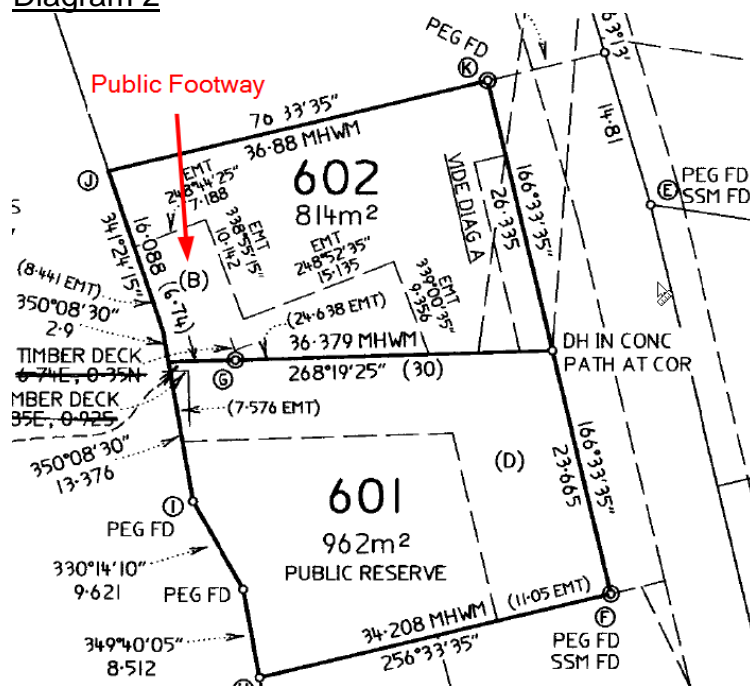
Tweed Shire Council holds the Crown Licence over the timber wharf and ramp for public access to Cudgen Creek. The Licence number is LI379377 and expires 23 April 2024. The Diagram 1 below shows the Licence area (Site 2).

Council's Natural Resource Management Unit (NRM) has indicated that any development which impedes or deters public access to this public facility (boat ramp) is not supported. It is considered that given the proposal includes the erection of a fence on the southern and eastern property boundaries adjacent to the nominated public footway (See Diagram 2 below), access to the boat ramp will be impeded. Hence, the proposal is not supported by Councils NRM Unit.

Diagram 1



Diagram 2



Access, Transport and Traffic

The application includes the provision of two car parking spaces for the proposed development located within a garage and behind the driveway access to the garage. Access to these spaces can only occur over community land identified as Lot 221 DP 1069887.

Council's Legal Services Unit has advised that the adjoining community land does not have an applicable Plan of Management. As a consequence, any use of this land in addition to the existing uses for passive recreation ie a footpath and public open space would require approval by Tweed Shire Council following a comprehensive public consultation process. This process would apply to the use of the land for permanent and vehicle access for the boat house. Council's Legal Services Unit have advised that given the level of public objection to the proposal, approval for the use of the land for regular vehicle access is considered unlikely based on the information provided to date and public response to the application. Similarly, this Unit also provided advice in regards to the public footway located upon the subject site for access to the boat ramp.

"The Right of Footway benefits Council as an authority, for the benefit of the public. Council is also granted the right to consent to the variation, release or modification of this Right of Footway. This right is to be considered separately to Council's obligations and considerations of the DA as a consent authority.

No application for the variation or modification of the Right of Footway was received prior to the lodgement of the DA."

The application effectively seeks a modification to the right of footway through the erection of a fence on the southern and eastern boundaries. The fencing will significantly hinder members of the public from accessing the boat ramp via the public footway. This is not supported by Council as a landowner, nor supported having regard to the provisions of Clause 79C of the Environmental Planning and Assessment Act 1979.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The public facilities (boat ramp, viewing deck and shelter shed) are located approximately 10 metres from the proposed residence, while the boat ramp adjoins the private land on its western boundary. All these facilities are available to the public 24 hours per day.

Council's Open Space Officer has advised that it is Council's experience that park furniture adjacent to private residences increases the disturbance such residents experience from late night or noisy use. The proximity of the proposed residence with the public facilities is not considered appropriate and has the potential to result in adverse amenity issues for the occupants of this boat house.

Council further advised that sufficient passive surveillance of the public facilities occurs from the adjoining properties located approximately 30m away. Therefore, justification for the conversion for the purposes of surveillance is not considered valid.

Flora and Fauna

No direct or indirect impacts to significant ecological values resulting from the conversion of the boathouse to a residential dwelling are anticipated based on consideration of the development application materials. No vegetation is proposed to be removed and all construction and operational activities are to occur within the existing footprint.

The bushfire assessment report prepared by Planit Consulting (August 2015) states that all requirements of Planning for Bushfire Protection 2006 can be met without removal of vegetation and through upgrading the building construction standard to BAL 40. The separation distance of 7m is an issue based on desktop assessment and noting that the existing building is 4.7m from the property boundary at its closest point in the NE corner (*O-Rourke – Salt Boathouse Site Plan June 2015; DWG No. DA-01*). Maintaining the separation distance as required by the bushfire risk assessment is therefore dependant on the agreement of the adjoining landholder (Council) to maintain this area free of vegetation. Based on the tree species present as documented in *Appendix C – Bushfire Impact Assessment Plan*, this will require significant ongoing vegetation management.

Council does not support the use of the adjoining land for the purposes of this Asset Protection Zone.

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

The application was publicly notified between Wednesday 16 September 2015 and Wednesday 30 September 2015. The outcomes of this public notification period are outlined in a previous section of this report.

(e) Public interest

The proposed development is not considered to be appropriate outcome for the site, nor is it considered to be in the public interest.

OPTIONS:

1. Refuse the application for specified reasons; or
2. Approve the application in principle, subject to Tweed Shire Council approval for access over community land and favourable support from the Rural Fire Service, and a further report be brought back to Council with recommended conditions of approval.

Council Officers recommend Option 1.

CONCLUSION:

The proposed development is considered not suitable for the site and is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
