



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

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

Agenda

Planning Committee Meeting Thursday 3 March 2016

held at Murwillumbah Cultural and Civic Centre
commencing at 5.00pm

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

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

(a) the provisions of:

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

that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

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

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

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

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

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

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

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

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

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

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Items for Consideration of Council:

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REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA15/0711 for Additions and Alterations to an Existing Dwelling to Create an Attached Dual Occupancy at Lot 337 DP 755740 No. 19 Queen Street, Fingal Head

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 additions and alterations to an existing two storey dwelling to create an attached dual occupancy including a 51sqm roof deck (including access) and filling of the site within the proposed building envelope to 5.0m RL.

The fundamental issues with regard to the subject application are:

- Variation to the mapped height limit of in excess of 1.0m
- The bulk and scale of the development, given its location, surrounding development and mapped height limit.
- The visual impacts, (again due to the bulk and scale and height variation) from the surrounding areas, including overlooking, overshadowing and loss of views between properties.

In 2014 Development Application DA14/0717 sought consent for additions and alterations to an existing dual occupancy on the subject site; however no consent for the use of the dwelling as a dual occupancy could be located. The applicants did not wish to amend the application. Accordingly, Council could not support the subject application.

The subject application essentially proposes the same development as was considered under DA14/0717 (excluding the proposed roof deck under DA15/0711). Council advised that should the roof deck be removed from the subject application; a conditional approval could be issued. The applicant has advised that they wish to proceed with the application including the roof deck.

The applicant was sent multiple requests to amend the design or remove the proposed roof deck.

A meeting was held with Council staff, including the Director Planning and Regulation, owners and a member of the elected Council to discuss the application. Following this, a site meeting was conducted with the Director Planning and Regulation and assessing officer.

The subject application is being reported to Council for determination as the proposed variation to the 9.0m maximum height of the building as under Clause 4.3 of the Tweed Local Environmental Plan 2014 exceeds 10%.

The subject application was also called up to Council for determination by Councillors Polglase and Youngblutt.

The officers' recommendation is for refusal.

RECOMMENDATION:

That Development Application DA15/0711 for additions and alterations to an existing dwelling to create an attached dual occupancy at Lot 337 DP 755740; No. 19 Queen Street Fingal Head and refuse the application for the following reasons:

- 1. The development does not satisfy Clause 4.3 Height of Buildings of the Tweed Local Environmental Plan 2014 in that the development seeks a variation to the mapped height of 9.0m.**
- 2. The development does not satisfy Clause 4.6 Exceptions to development standards of the Tweed Local Environmental Plan 2014 in that the development does not successfully justify that the development standard of a 9.0m height limit is unreasonable or unnecessary in this circumstance.**
- 3. 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.**

REPORT:

Applicant: Coorparoo Constructions Pty Ltd
Owner: Coorparoo Constructions Pty Ltd
Location: Lot 337 DP 755740; No. 19 Queen Street Fingal Head
Zoning: R2 - Low Density Residential
Cost: \$320,000

History:

DA14/0717

With regard to the background of the subject application, the following is advised:

In 2014 Development Application DA14/0717 sought consent for additions and alterations to an existing dual occupancy, however after a review of Councils records no consent for the use of the dwelling as a dual occupancy could be located. As the applicant did not wish to amend the application to seek consent for additions and alterations to an existing dwelling to create a dual occupancy Council could not support the subject application.

The subject application essentially proposes the same development as was considered under DA14/0717, with the exception of the roof deck proposed under the subject application. Given the history of DA14/0717, Council has previously advised the applicant and owners that should the roof deck be removed from the subject application, a conditional approval could be issued for the dual occupancy development. The applicant has advised that they wish to proceed with the application including the roof deck.

DA15/0711

A request for further information was sent to the applicant 26 October 2015.

Council advised that there was opportunity for the proposed roof deck to be integrated with the building in terms of roof line, materials and detailing and a reduction in size (the overall size of the roof deck could be reduced).

It was suggested to the applicant that an overall reduction to one structural bay would also significantly reduce the visual impact of the proposed deck and the following was suggested to successfully 'integrate' the proposed deck:

- Design a complimentary roof over the deck so that the overall building form reads as a single identity.
This would require integrating the deck into the existing roof, to achieve compliance with the maximum building height map under clause 4.3 Height of Buildings of the Tweed Local Environmental Plan 2014; and
- Substantially reduce the proposed roof structure (or part roof structure) was complimentary to the main building.

A response including amended plans was received by Council 13 November 2015.

The applicant's response advised that consideration was given to Councils suggestion to recess the proposed roof deck; however was not determined to be a desirable option. The amended plans included the provision of cladding to each side of the roof deck.

A second request for further information was sent to the applicant 20 November 2015.

Council advised that after a review of further information submitted 13 November 2015 that the amended plans did not incorporate Councils suggested amendments; and the proposed amendments were not considered acceptable for a favourable determination.

The following reasons were provided to the applicant:

- There has been no reduction in the size of the proposed roof deck;
- The deck has not been integrated into the existing building/roof line;
- The introduction of cladding, whilst consistent with the colour scheme of the existing dwelling is considered to increase the bulk of the proposed deck;
- The access stairs are not integrated into the building

The applicant was requested to:

1. Amend their application to comply with the abovementioned; or
2. Advise Council in writing that the application be determined excluding the roof top deck; or
3. Withdraw their application.

The applicant requested and was granted an extension to respond to Councils request for further information of 20 November 2015.

A meeting was held Monday 21 November 2015 at the Murwillumbah Council Chambers between the contracted builder (on behalf of the owners), the assessing officer and Councils Urban Designer in relation to the amended plans to be submitted to Council. At this meeting the builder was advised that the proposed plans were still not considered to satisfy the issues previously raised by Council and now also included a variation to mapped 9.0m height limit for the subject site.

Amended plans as discussed at the meeting of 21 November 2015 were received by Council 4 January 2016.

The applicant was emailed 19 January 2016 advising that an assessment against Clause 4.6 Exceptions to development standards of the Tweed Local Environmental Plan 2014 was required for Council to consider the proposed height variation. The assessing officer also suggested organising a meeting with the owners to discuss a way forward for the application.

A meeting was held 22 January 2016 with the Director Planning and Regulation, Manager Development Assessment and Compliance, Team Leader Development Assessment, the assessing officer, the owners and a member of the elected Council. At the meeting the proposed design and variation to the mapped height limit was discussed and it was agreed that a site meeting with the assessing officer, Director Planning and Regulation, owners and the contracted builder would be undertaken.

A site meeting was conducted 29 January 2016 with the abovementioned parties. The owners advised Council officers at this meeting of their plans to formally amend the application to a maximum height of 13.92m RL, if Council could confirm that this would reduce the proposed height variation to less than 10%. Council advised a further review of the plans would be required to confirm this.

A further review of the submitted plans has detailed that the existing ground level within the envelope of the proposed roof deck ranges from 3.89m RL to 4.00m RL. Considering the applicants suggestion for the roof deck to have a maximum height of 13.92m RL, the maximum height of the proposed building would be 10.03m. Accordingly, the proposed

development would exceed the 9.0m height limit by 1.03m, requiring the application to be determined by Council.

The applicant was advised 2 February 2016 that unless the roof deck was removed from the proposed application, it would be reported to Council.

Background:

Consent is sought for the additions and alterations to an existing two storey dwelling to create an attached dual occupancy including a 51sqm roof deck (including access).

The proposed development includes filling the site within the proposed building envelope to 5.0m RL. The site plan details that the existing ground level ranges from 3.78m RL to 4.07m RL. Accordingly, the proposed depth of fill will vary from 1.0m to 1.22m.

The existing ground level within the envelope of the proposed roof deck ranges from 3.89m RL to 4.00m RL. Considering the applicants suggestion for the roof deck to have a maximum height of 13.92m RL, the maximum height of the proposed building would be 10.03m. Accordingly, the proposed development would exceed the 9.0m height limit by 1.03m, requiring the application to be reported to Council for determination.

The subject site is shown below.



The subject site with proposed additions is shown below.



The development proposes to raise the existing two storey dwelling by up to 1.22m and undertake additions and alterations to create two dwellings and a roof deck which is covered and partially enclosed. The roof deck is above the mapped 9.0m height limit and essentially presents as a partial third storey. The particulars of each dwelling are further described below.

Dwelling 1 - an extension to include enlargement and reconfiguration of the ground floor bedrooms and living area and the addition of an entrance porch and rear patio. The extension to the upper level of Unit 1 includes an enlargement of the kitchen and living areas and the addition of an ensuite and deck adjacent to the main bedroom and a roof top deck.

Dwelling 2 - The lower level to Unit 2 includes the addition of an internal entry stairwell. The upper level configuration of Unit 2 remains unchanged.

The proposal also includes conversion of the carport into a four car garage with front and rear access and reconfiguration of the shared laundry and two storerooms. The roof at the rear of the house is to be extended to cover the enlarged verandah.

The fundamental issues with regard to the subject application are:

- Variation to the mapped height limit of in excess of 1.0m
- The bulk and scale of the development, given its location, surrounding development and mapped height limit.
- The visual impacts, (again due to the bulk and scale and height variation) from the surrounding areas, including overlooking, overshadowing and loss of views between properties.

The development application was notified for a period of 14 days, from Wednesday 9 September 2015 to Wednesday 23 September 2015.

During this period a total of one submission (objection) was received.

A further submission (objection) was received by Council in relation to the amended plans.

The matters raised in the submissions are addressed later in this report.

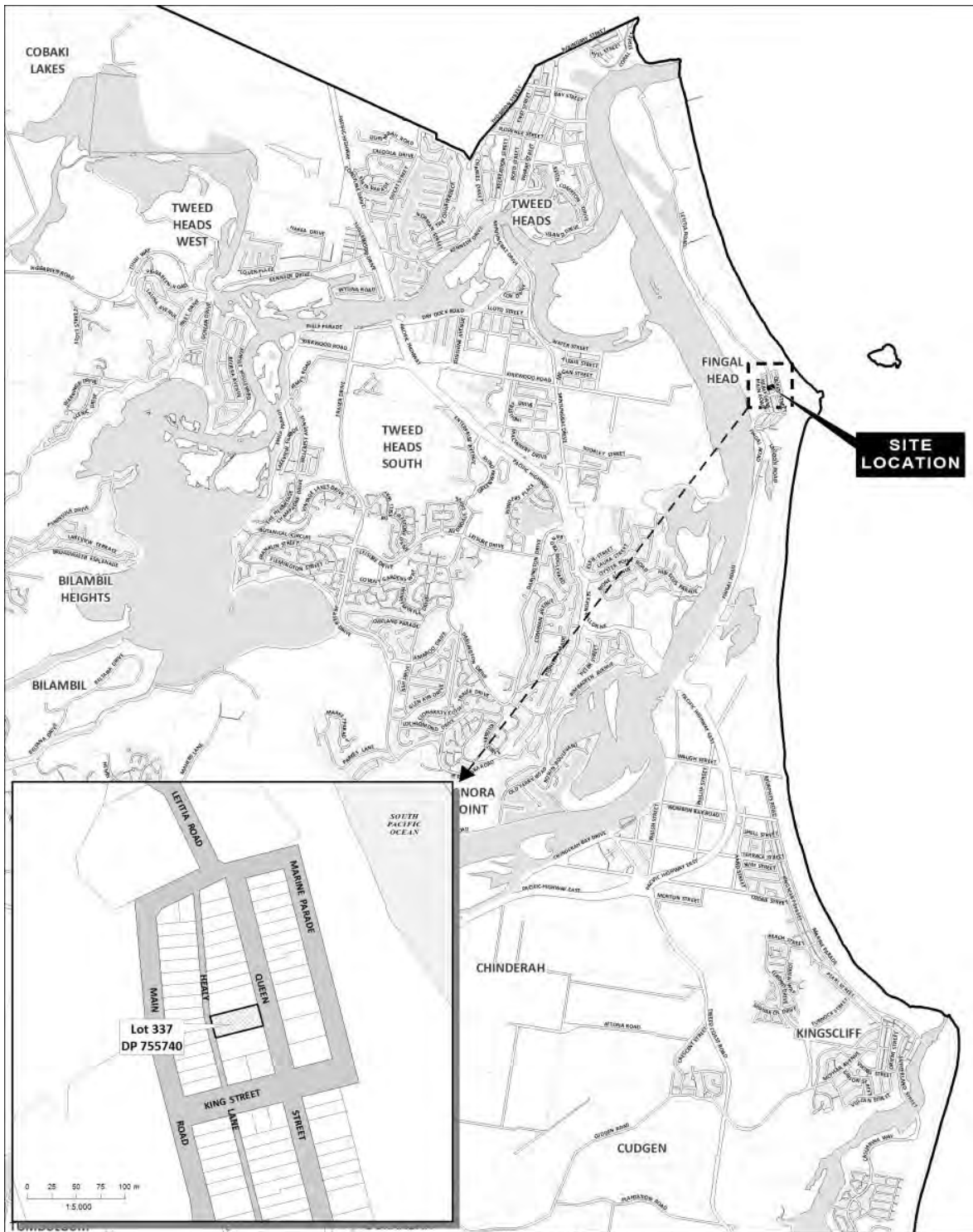
The subject application is being reported to Council for determination as the application seeks a greater than 10% variation to the 9.0m maximum height limit as under Clause 4.3 of the Tweed Local Environmental Plan 2014.

The subject application was also called up to Council for determination by Councillors Polglase and Youngblutt.

The following assessment has been undertaken based on the most recent plans submitted to Council.

It is recommended that the application be refused.

SITE DIAGRAM:



Locality Plan

Lot 337 DP 755740
No. 19 Queen Street, Fingal Head

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, 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 damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before You Dig" enquiry must be made by calling 1100. This information contained on this document remains valid for 10 days only from the date of supply.

Calotstre 21/06/2015
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Boundaries shown should be considered approximate only.

0 0.5 1 Km
1:50,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED

GDA Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1984
Grid: Map Grid of Australia, Zone 56

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

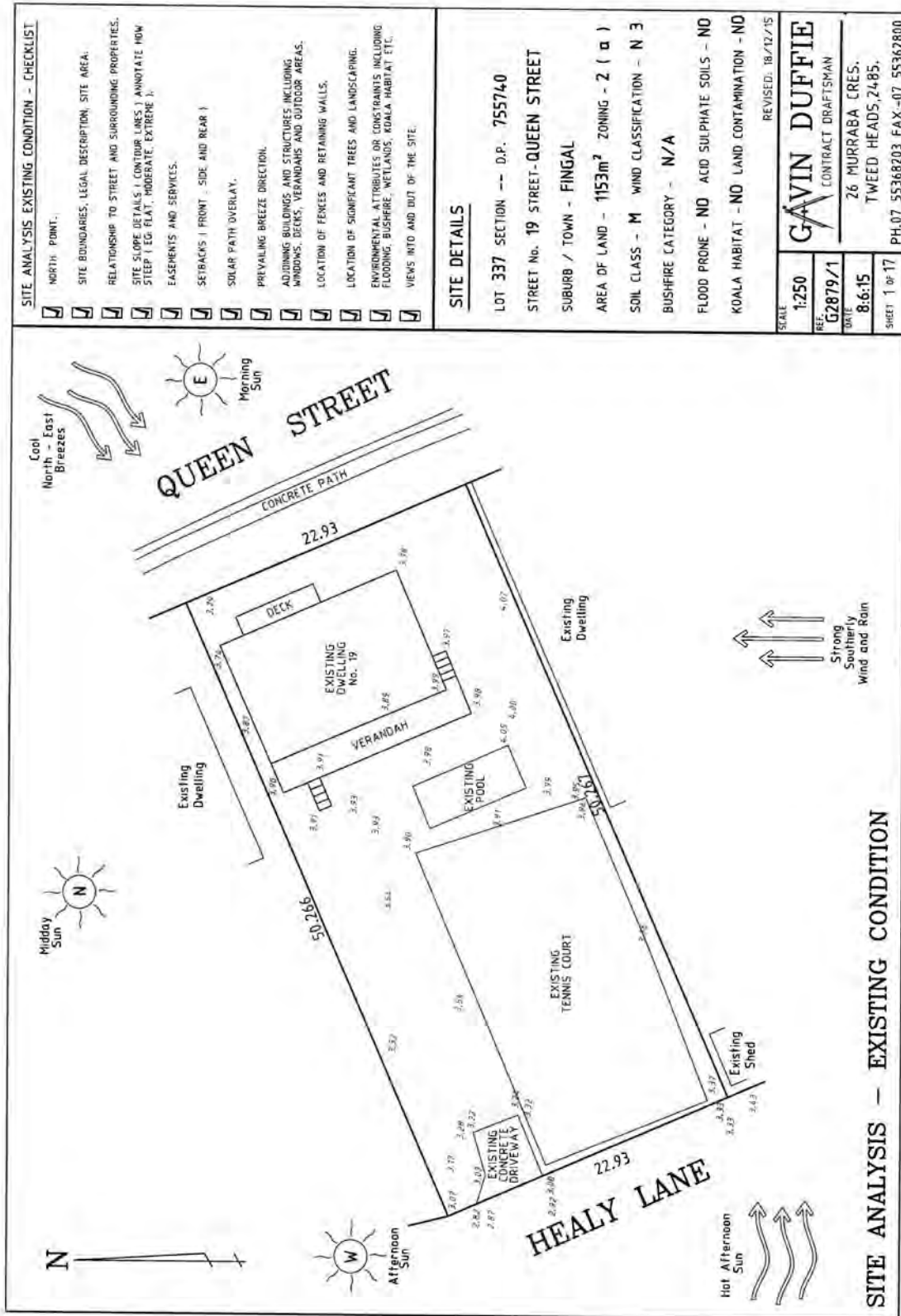


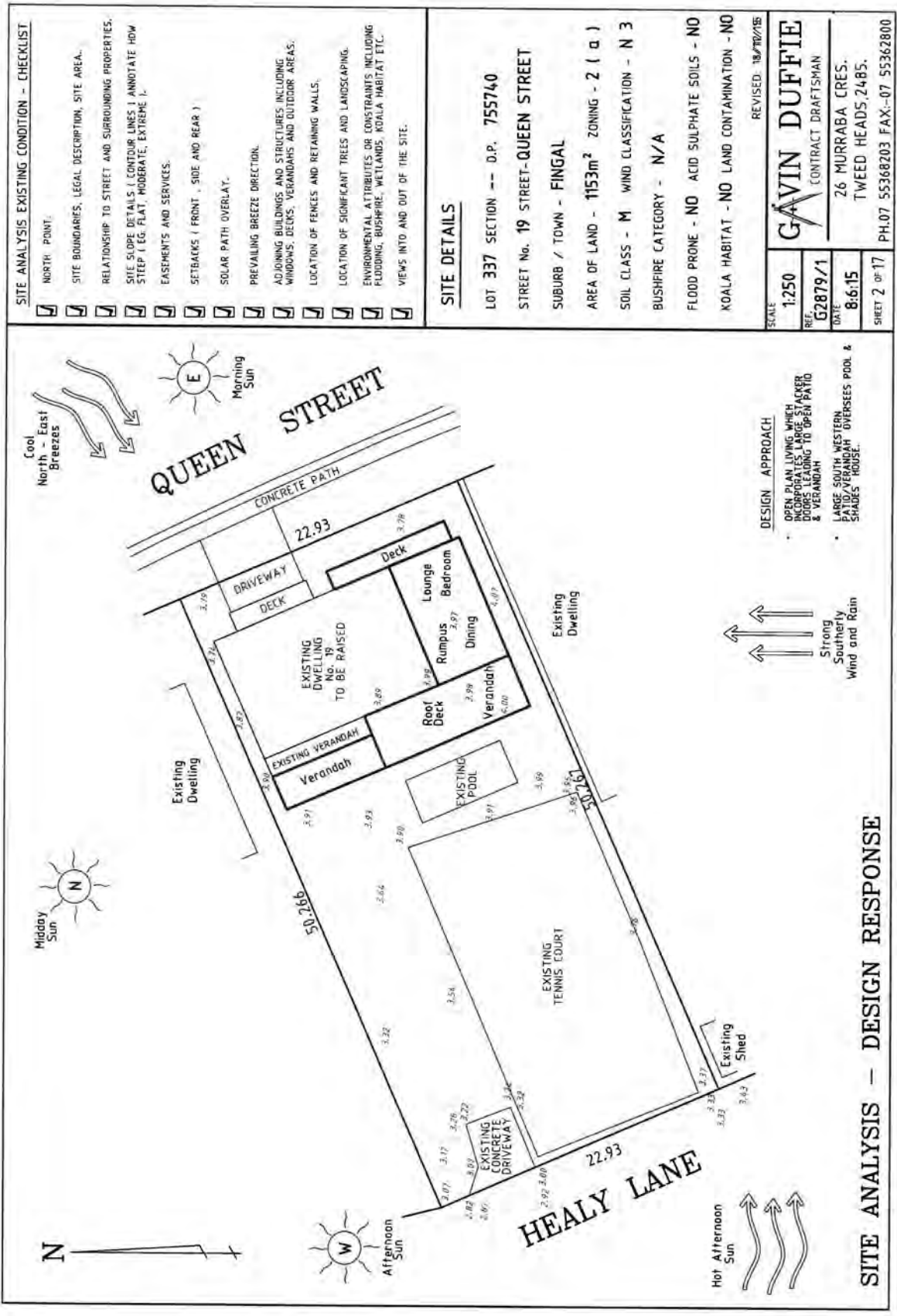
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Author: [Redacted] - Streets/Planning @ Urban Design 1:100

Date: [Redacted] 15/06/2015

DEVELOPMENT/ELEVATION PLANS:





- SITE ANALYSIS EXISTING CONDITION - CHECKLIST**
- NORTH POINT
 - SITE BOUNDARIES, LEGAL DESCRIPTION, SITE AREA.
 - RELATIONSHIP TO STREET AND SURROUNDING PROPERTIES.
 - SITE SLOPE DETAILS (CONTOUR LINES) ANNOTATE HOW STEP (EG. FLAT, MODERATE, EXTREME).
 - EASEMENTS AND SERVICES.
 - SETBACKS (FRONT, SIDE AND REAR)
 - SOLAR PATH OVERLAY.
 - PREVAILING BREEZE DIRECTION.
 - ADJOINING BUILDINGS AND STRUCTURES INCLUDING WINDOWS, DECKS, VERANDAHS AND OUTDOOR AREAS.
 - LOCATION OF FENCES AND RETAINING WALLS.
 - LOCATION OF SIGNIFICANT TREES AND LANDSCAPING.
 - ENVIRONMENTAL ATTRIBUTES OR CONSTRAINTS INCLUDING FLOODING, BUSHFIRE, WETLANDS, KOALA HABITAT ETC.
 - VIEWS INTO AND OUT OF THE SITE.

SITE DETAILS

LOT 337 SECTION -- D.P. 755740

STREET No. 19 STREET-QUEEN STREET

SUBURB / TOWN - FINGAL

AREA OF LAND - 1153m² ZONING - 2 (a)

SOIL CLASS - M WIND CLASSIFICATION - N 3

BUSHFIRE CATEGORY - N/A

FLOOD PRONE - NO ACID SULPHATE SOILS - NO

KOALA HABITAT - NO LAND CONTAMINATION - NO

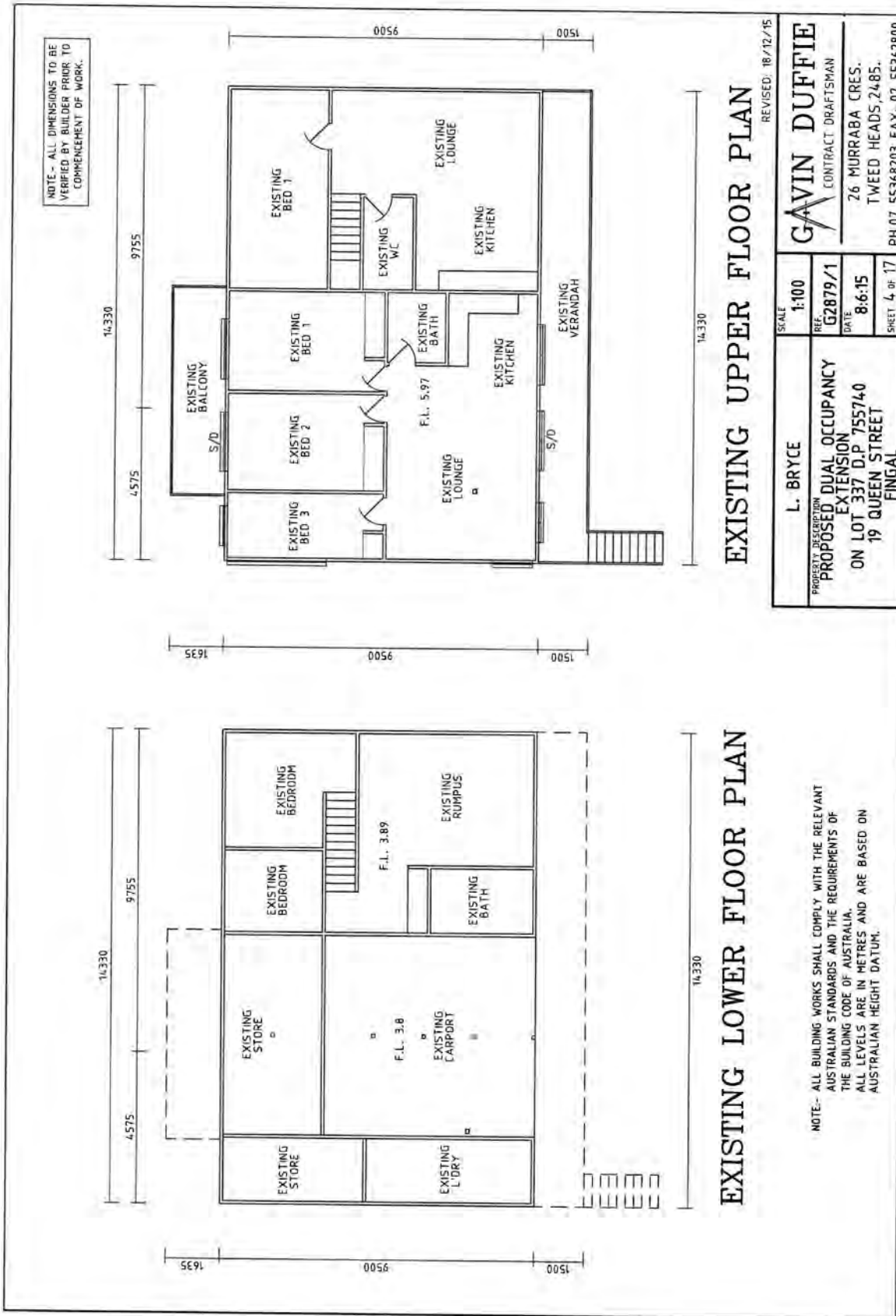
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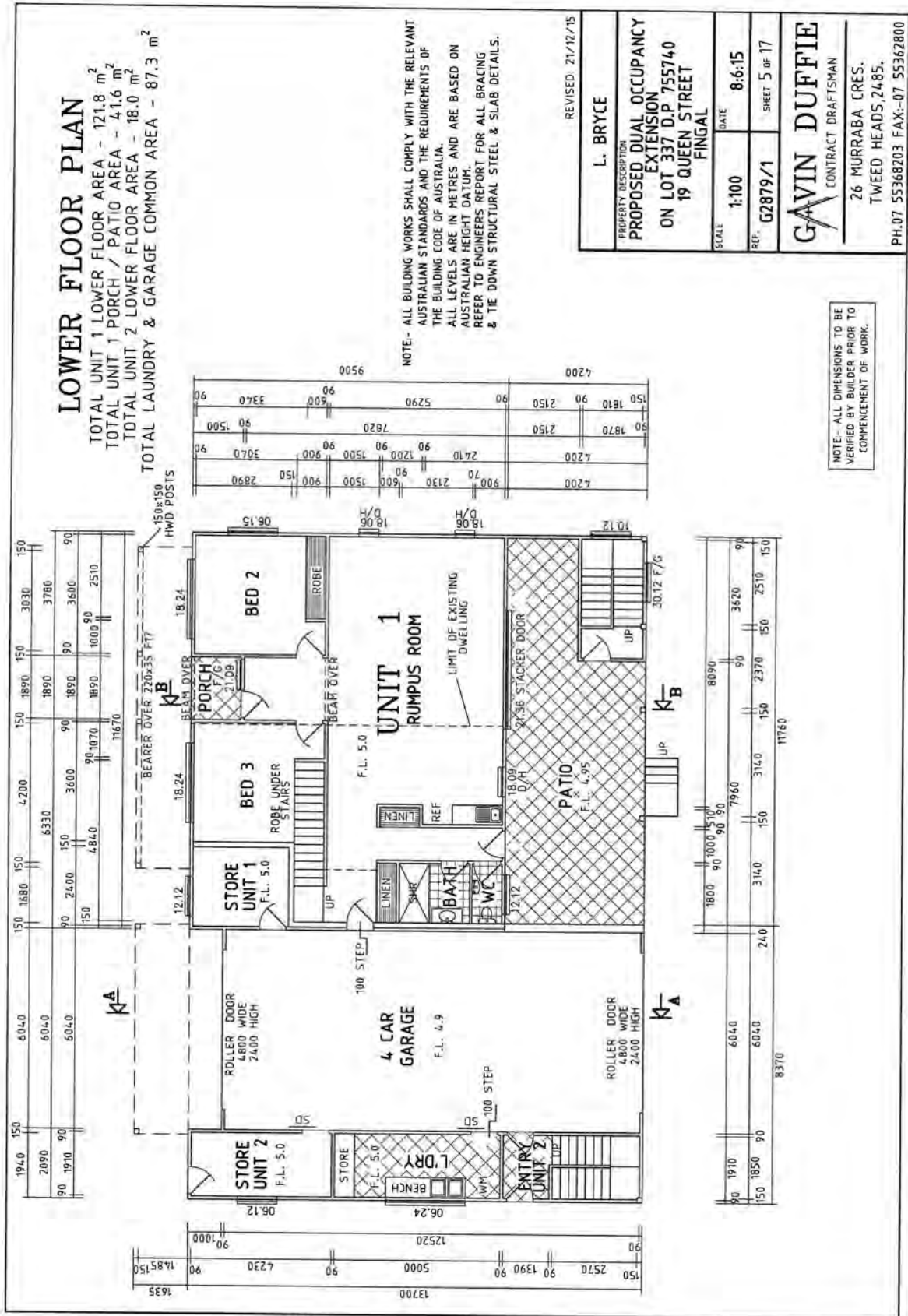
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REF.	G2879/1
DATE	8.6.15
SHEET 2 OF 17	

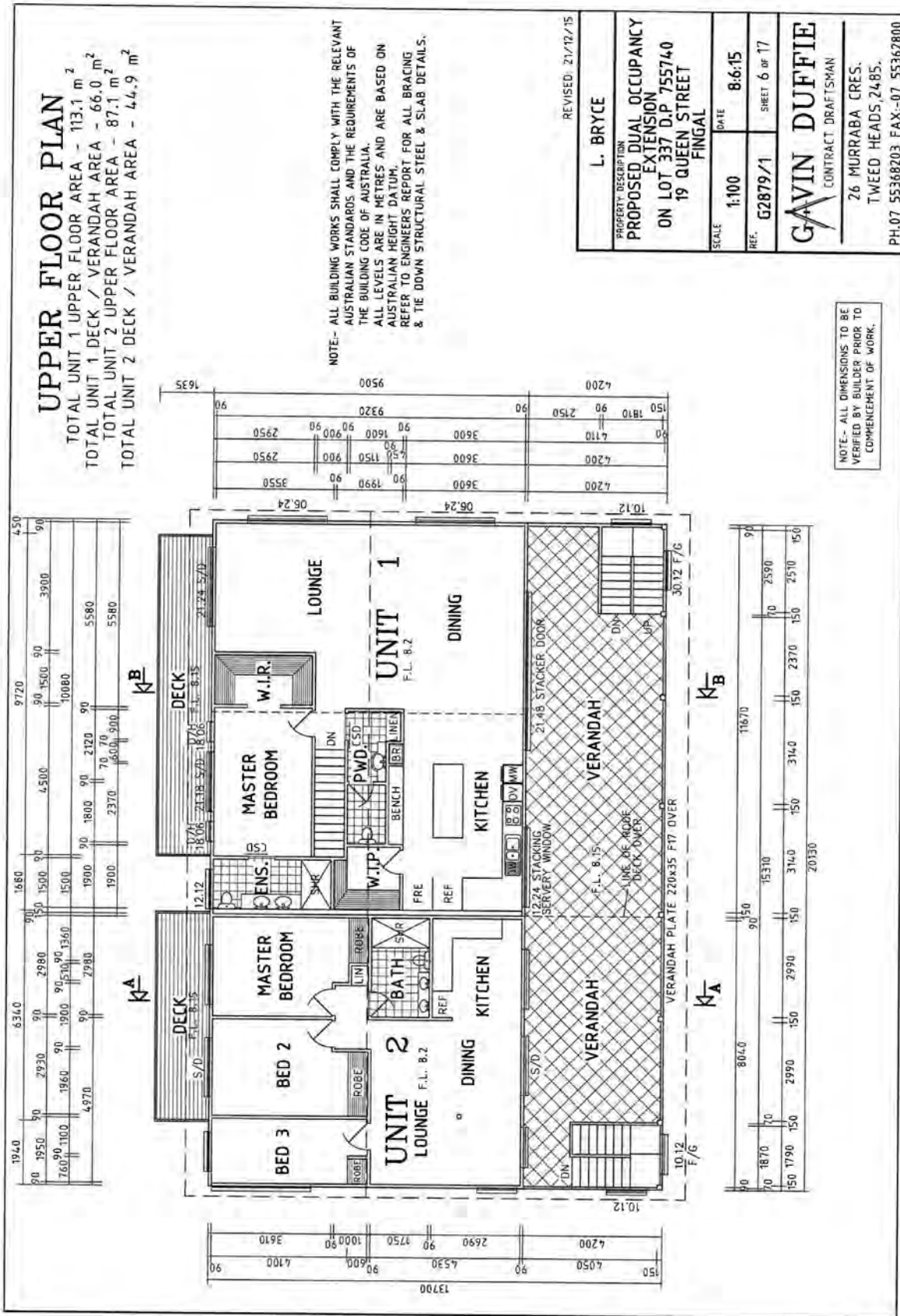
GAVIN DUFFIE
CONTRACT DRAFTSMAN

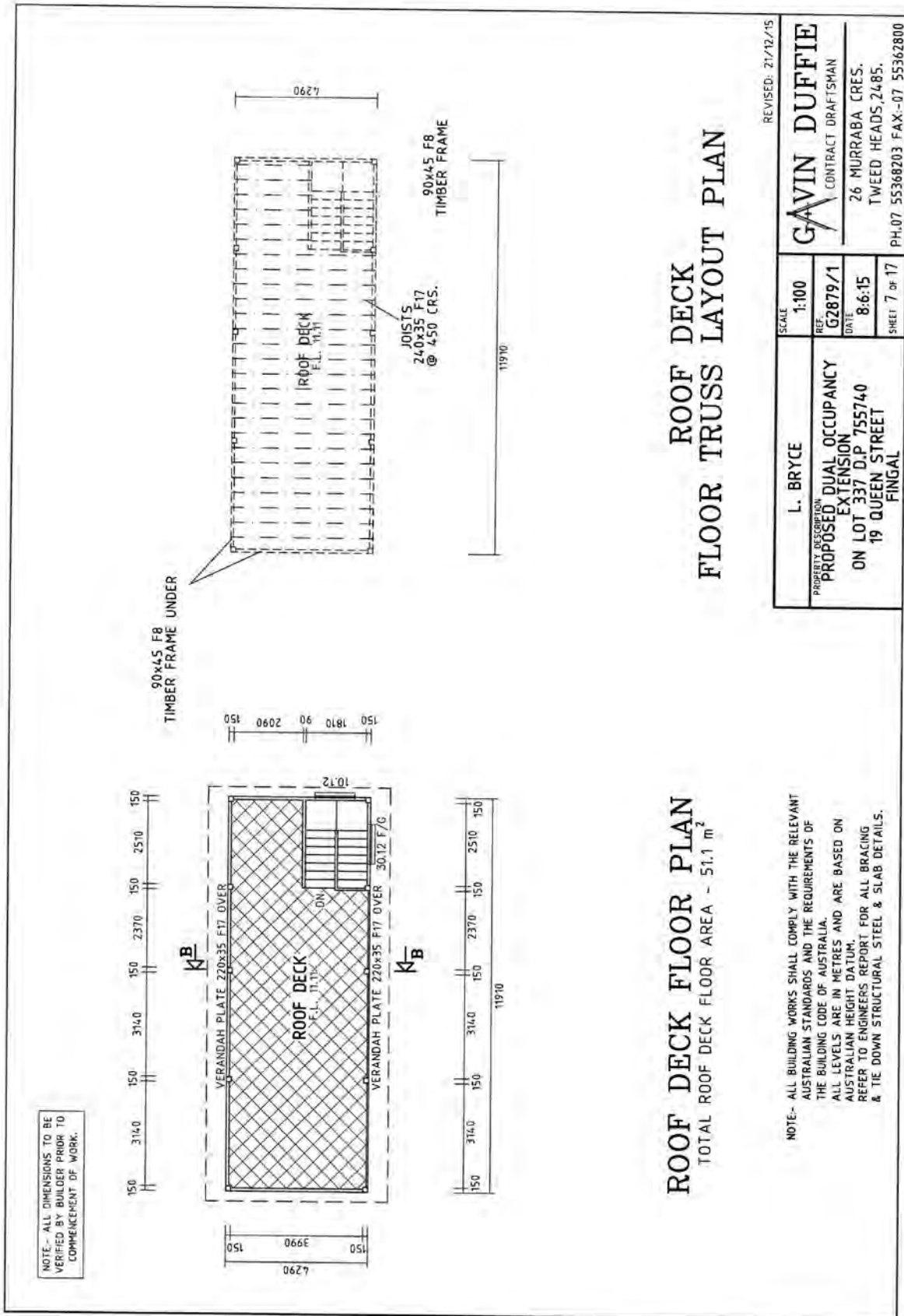
26 MURRABA CRES.
TWEED HEADS, 2485.
PH.07 55368203 FAX:-07 55362800

SITE ANALYSIS - DESIGN RESPONSE









ROOF DECK FLOOR PLAN
TOTAL ROOF DECK FLOOR AREA - 51.1 m²

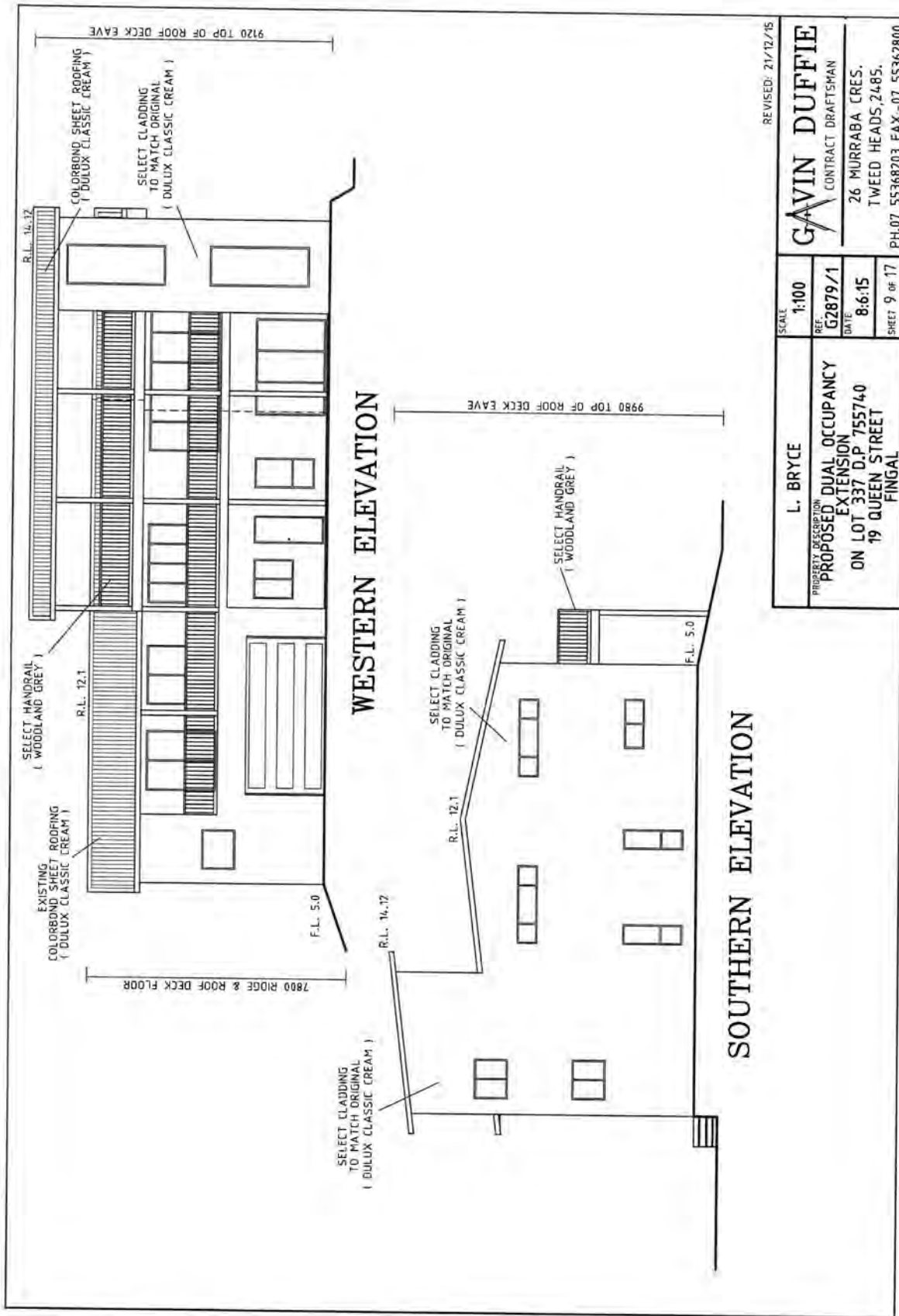
ROOF TRUSS LAYOUT PLAN

L. BRYCE		SCALE	1:100
PROPERTY DESCRIPTION PROPOSED DUAL OCCUPANCY EXTENSION		REF.	G2879/1
ON LOT 337 D.P. 755740		DATE	8:6:15
19 QUEEN STREET FINGAL		SHEET	7 of 17

REVISED: 21/12/15

GAVIN DUFFIE CONTRACT DRAFTSMAN
26 MURRABA CRES. TWEED HEADS, 2485.
PH.07 55368203 FAX.-07 55362800

NOTE - ALL BUILDING WORKS SHALL COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS AND THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA.
ALL LEVELS ARE IN METRES AND ARE BASED ON AUSTRALIAN HEIGHT DATUM.
REFER TO ENGINEERS REPORT FOR ALL BRACING & TIE DOWN STRUCTURAL STEEL & SLAB DETAILS.



REVISED: 21/12/15

SCALE	1:100
REF.	G2879/1
DATE	8.6.15
SHEET	9 OF 17

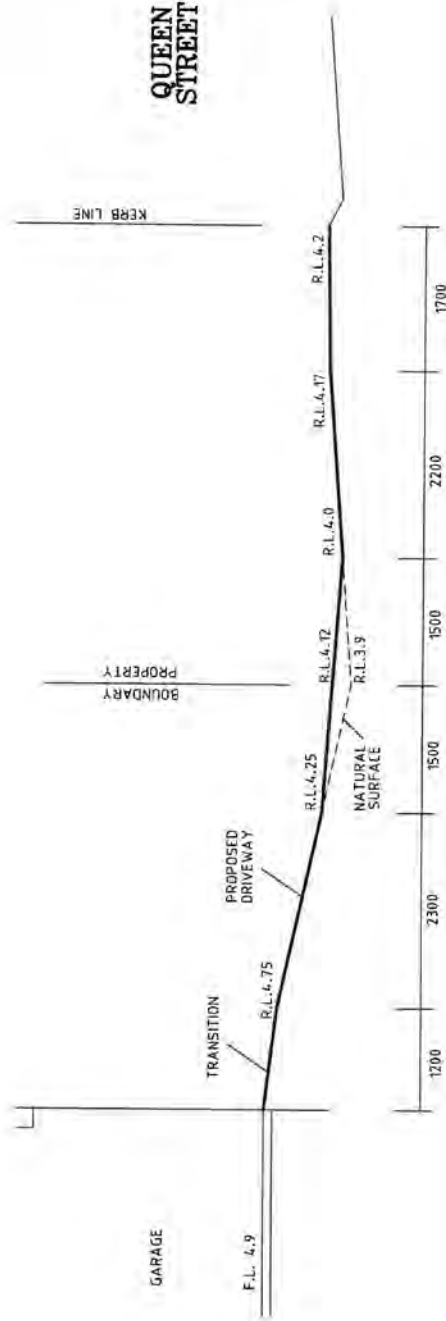
L. BRYCE

PROPERTY DESCRIPTION
PROPOSED DUAL OCCUPANCY EXTENSION
 ON LOT 337 D.P. 755740
 19 QUEEN STREET
 FINGAL

GAVIN DUFFIE
 CONTRACT DRAFTSMAN

26 MURRABA CRES.
 TWEED HEADS, 2485.
 PH.07 55368203 FAX.-07 55362800

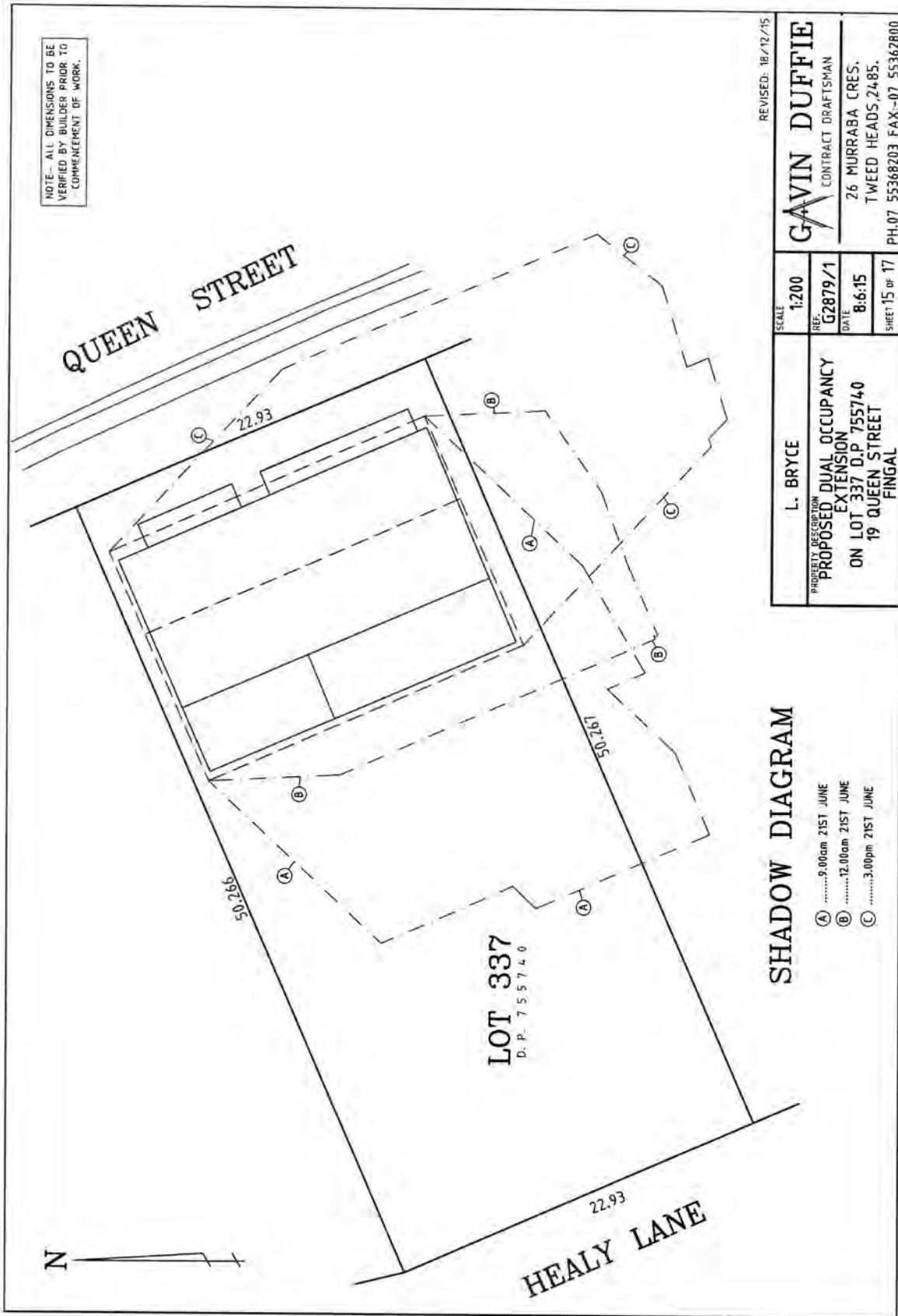
NOTE - ALL DIMENSIONS TO BE VERIFIED BY BUILDER PRIOR TO COMMENCEMENT OF WORK.

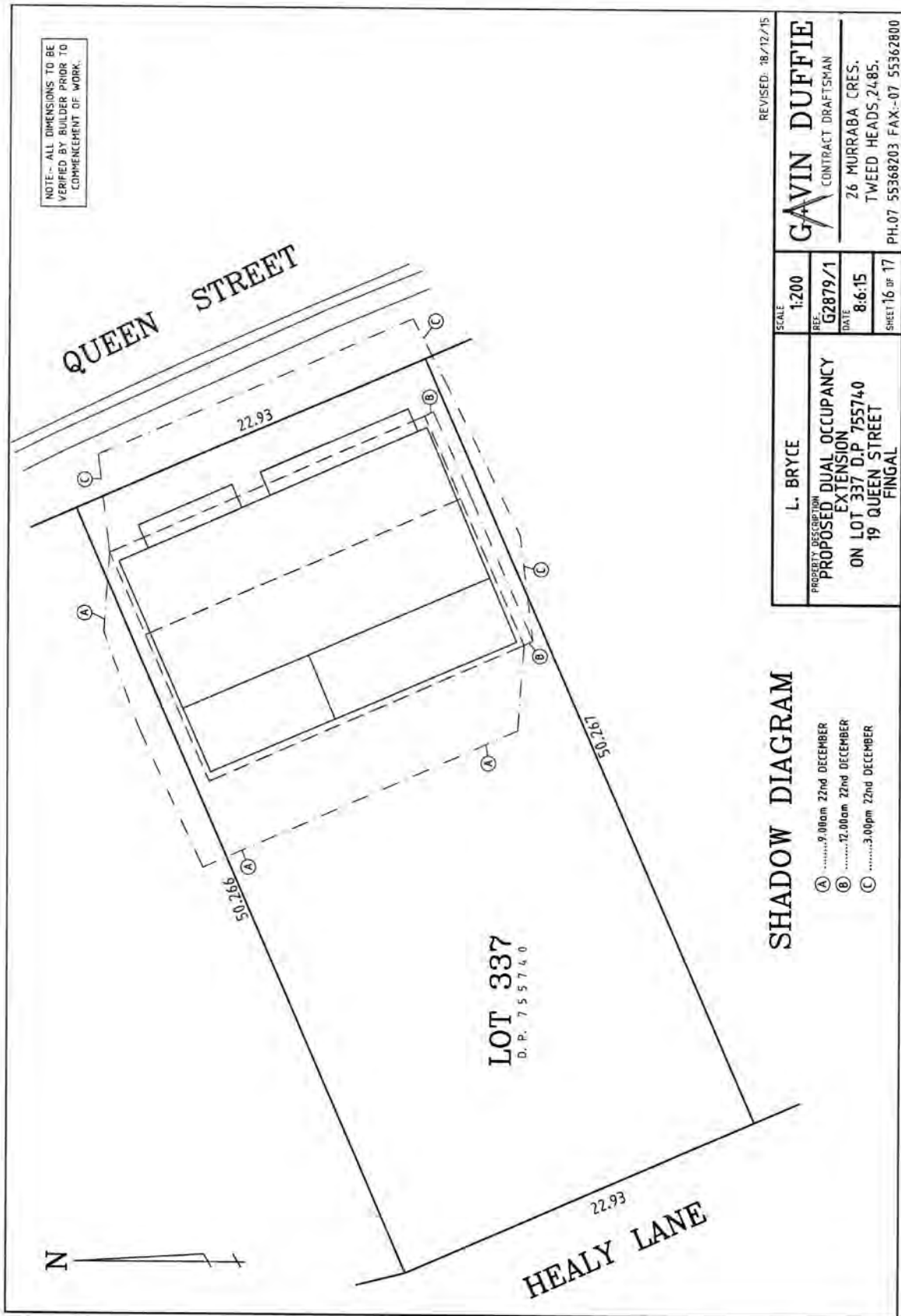


DRIVEWAY SECTION

REVISED: 18/12/15

L. BRYCE		SCALE	1:50
PROPERTY DESCRIPTION		REF.	G2879/1
PROPOSED DUAL OCCUPANCY EXTENSION		DATE	8.6.15
ON LOT 337 D.P. 755740		SHEET	13 OF 17
19 QUEEN STREET FINGAL		GAVIN DUFFIE CONTRACT DRAFTSMAN 26 MURRABA CRES. TWEED HEADS, 2485. PH.07 55368203 FAX.-07 55362800	





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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

- (1) *This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) *The particular aims of this Plan are as follows:*
 - (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
 - (b) *to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,*
 - (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,*
 - (d) *to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
 - (e) *to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
 - (f) *to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
 - (g) *to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,*
 - (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
 - (i) *to conserve or enhance areas of defined high ecological value,*
 - (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, and the fact that the land use is permissible in the subject zone.

Clause 2.3 – Zone objectives and Land use table

The objectives of the R2 Low Density Residential zone are:

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

In this zone, dual occupancies are permissible with consent on lots with a minimum area of 900m². Furthermore, the proposed development is considered to be consistent with the objectives of the zone, by virtue of providing for the housing needs of the community. The proposed roof deck is considered to be excessive in height taking into account the characteristics of the area and the height limit imposed for the site.

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

Not applicable as no subdivision is proposed.

Clause 4.3 - Height of Buildings

The objectives of this clause are as follows:

- (a) *to establish the maximum height for which a building can be designed,*
- (b) *to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- (c) *to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- (d) *to encourage greater population density in less car-dependant urban areas,*
- (e) *to enable a transition in building heights between urban areas comprised of different characteristics,*
- (f) *to limit the impact of the height of a building on the existing natural and built environment,*
- (g) *to prevent gross overshadowing impacts on the natural and built environment.*

This clause goes on further to advise 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.

The proposed development includes a roof deck with a height limit of 14.12m RL. The existing ground level within the envelope of the proposed roof deck (as detailed on the submitted plans) ranges from 3.89m RL to 4.00m RL. Accordingly the height of the development from the existing ground level at the highest point is approximately 10.23m.

The site is mapped on the *Height of Buildings Map* associated with Clause 4.3 as having a maximum height limit of 9.0m. Accordingly, the proposed development seeks a variation of in excess of 1.0m.

The proposed height of the building is not considered in keeping with the objectives of clause 4.3 for the following reasons:

- The development is considered to have impacts on the amenity of the neighbours adjoining the site to the south;
- The development does not encourage greater population density (the variation sought to the maximum height of building is solely for the roof deck); and
- The development and will cause overshadowing on the adjoining property to the South.

The proposed height variation is discussed further within this report under the heading *Clause 4.6 – exception to development standards*.

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 0.8:1 (Control J) over the entire site.

The gross floor area of the structure is approximately 372m² equating to a FSR of 0.323:1 which complies with this clause.

Clause 4.6 - Exception to development standards

The objectives of this clause are as follows:

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

Clause 4.6 advises that development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

In accordance with the provisions of Clause 4.6(3) development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6 also advised that development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

The subject application contravenes the mapped height limit of 9m under Clause 4.3 of the Tweed Local Environmental Plan 2014.

In accordance with this clause the applicant provided the following written request to Council.

"The Height of Buildings Map has a 9m building height restriction for the subject site and locality. With the inclusion of the roof over the deck the maximum height is now 9.98m. This exceeds the 9m height limit prescribed by Clause 4.3 of the Tweed Local Environmental Plan 2014 a request is sought for the contravention to this development standard.

It is submitted that the development standard is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- *The variation is only to that portion of the roof over the roof top deck. This calculates to be approximately 16.7% of the entire building footprint.*
- *The variation is not likely to significantly contribute to excessive building height, scale or mass. This is achieved by having the structure largely of an open design, whilst incorporating design features or a wall to preserve privacy to the south. The roof pitch is also consistent with the main roof to the buildings. Materials and colours will also match the main building.*
- *The inclusion of the roof over the roof top deck is an important design feature so that the overall building form reads as a single identity. The deck has also been integrated into the existing roof to achieve this.*
- *The roof over the roof top deck is positioned to the rear of the building so is not likely to be overbearing to the street and unlikely to have an adverse impact on the streetscape.*

It is considered that the variation also achieves a consistency with the objectives of the development standard, where relevant. The design of the roof top deck also achieves consistency with the objectives of the development standard, where relevant. The design of the roof top deck has been satisfactorily integrated into the building with materials and design that are also consistent with the main building. The portion of the roof top deck in comparison to the main building is minimal. This should ensure that the proposal is likely to be consistent with the established and desired built form and character of this residential locality and preserve the residential amenity. As such these are sufficient environmental planning grounds that justify contravening the development standard.

The shadow diagrams on the submitted plans demonstrate shadowing over the neighbouring site to the south. During summer this will be negligible. During winter there is shadowing but this is not likely to be gross overshadowing.

Consideration also needs to be given to the objectives of the zone.

The objectives of the R2 Low Density Residential zone are as follows:

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

It is considered that the variation to the development standard is not appropriated in the circumstances of this case. It has been reasonable demonstrated that he proposed variation to the development standard is unreasonable and unnecessary and achieves consistency with the objectives of the zone. As such it is likely that the proposed variation to the development standard will be in the public interest.”

Planning Officer Assessment:

In accordance with the provisions of Clause 4.6; consent must not be granted to the proposed height variation unless the following it is considered satisfied:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- that there are sufficient environmental planning grounds to justify contravening the development standard.*
- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

The Fingal area is mapped as having a maximum height limit 9.0m. Council has endorsed a review of the existing Fingal height, including the appropriateness of an a 8.0m height limit. Council is currently preparing for a program of community consultation to examine height issues in Fingal.

The proposed development seeks a maximum height of 10.23m for the roof top deck. This is in excess of 1.0m the mapped height limit for a length of 11.91m, or approximately 60% of the buildings western elevation to Healy Lane and is partially visible from the eastern/Queen Street elevation.

The proposed development will be visible from surrounding residential areas. The bulk of the development will be seen from sites adjoining the site to the west (rear) which also adjoin Healy Lane (see figures 1 and 2, below) and the Queen Street road reserve, predominantly when approaching the site from the south (see figures 3 and 4, below).



Figure 1: Western Elevation (Healy Lane) depicting existing ground level, proposed additions and 9.0m height limit



Figure 2: View of subject site from Healy Lane (indicative works in red)



Figure 3: View of Site approaching from the south (Queen Street), the DA proposes to raise the existing dwelling on average 1.0m above that shown in this image and includes a roof deck some 2.02m above this (indicative works shown in red)

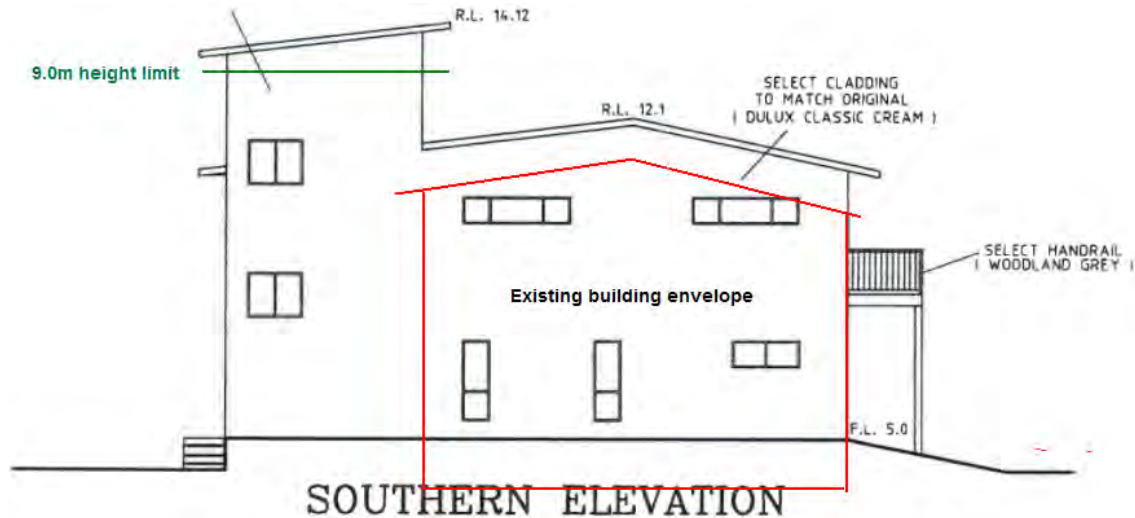


Figure 4: Southern Elevation depicting existing envelope, proposed additions and 9.0m height limit

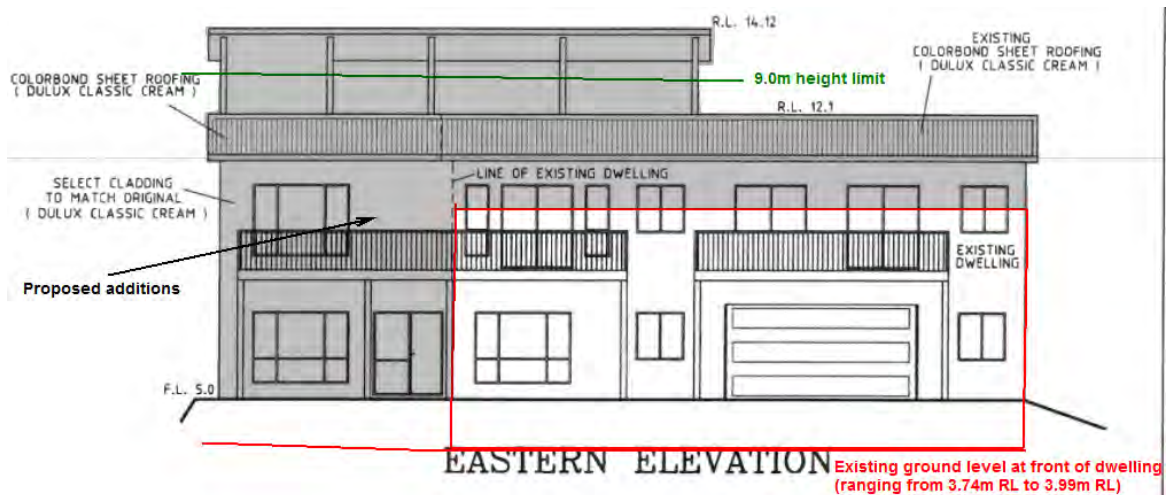


Figure 5: Eastern Elevation (Queen) depicting existing ground level, proposed additions and 9.0m height limit

The character of the surrounding area is predominately comprised of one and two storey residential developments, consistent with the 9m height limit. The proposed roof deck, at a maximum height of approximately 10.23m, presents as a partial third storey and is visible from the surrounding areas.

The site is zoned R2 Low Density Residential. The proposed development for a dual occupancy is permissible with Council consent and satisfies the zone objectives. Notwithstanding this, the area non-conformance is solely for the ancillary deck. This component of the application has potential amenity impacts such as overlooking and overshadowing (See image below).



Figure 6: Shadow Diagram/Aerial image - 21 June

Considering the above, the mapped 9m height limit is not deemed to be unreasonable or unnecessary in the circumstances of the case. There are not sufficient environmental planning grounds to justify the variation, nor is the development considered to be in the interest of the public. Accordingly, the proposed exception to the 9.0m height limit (Clause 4.3, TLEP 2014) is not supported.

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 it 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 is generally consistent with the prescribed development requirements as outlined throughout this report. As such the proposal is considered to be acceptable at this location.

- (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 an 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 developed for residential purposes (albeit at a less intensive level than that proposed) and is located within an established developed area. It is therefore 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 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

The subject site is not subject to a TPO and comprises limited vegetation. It is considered that the proposal raises no major implications in respect of this clause.

Clause 5.10 - Heritage Conservation

The subject site is not mapped as being within a Heritage Conservation area.

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 mapped as being bushfire prone by virtue of being located within the 30m and 100m vegetation buffer. Appropriate conditions of consent could be imposed if an approval is issued.

Clause 7.1 – Acid Sulfate Soils

Class 5 Acid Sulfate Soils are identified on the subject site.

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

Council's Environmental Health Officer has reviewed this aspect of the proposed development and has not returned any objections on this basis. As such, the proposed development is considered to be acceptable having regard to Acid Sulfate Soils.

Clause 7.2 - Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposed development application includes filling the building envelope on average 1.0m. The proposed earthworks are consistent with the objectives of Clause 7.2. General conditions would apply.

Clause 7.3 – Flood Planning

The objectives of this clause are as follows:

- (a) *to minimise the flood risk to life and property associated with the use of land,*
- (b) *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- (c) *to avoid significant adverse impacts on flood behaviour and the environment.*

The site is mapped as being affected by PMF.

The existing floor level of ground floor habitable rooms of Unit 1 are 3.89 AHD.

The proposed height of the ground floor habitable rooms is 5.0 AHD.

The development therefore complies with this clause.

Clause 7.4 - Floodplain risk management

The proposed development is for a dual occupancy and does not require a floodplain risk management plan. This clause is considered not applicable.

Clause 7.5 - Coastal risk planning

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

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.*

The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties.

It is noted that the application has been reviewed by Council's Engineering Unit with respect to stormwater, who raised no concerns in relation to stormwater management subject to conditions being applied.

Clause 7.8 – Airspace operations

The development will not impact on airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

The development is not located in an area subject to aircraft noise.

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.

Other Specific Clauses

There are no other specific clauses applicable to the subject application.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

In accordance with Clause 1.9 Application of SEPPs of the Tweed Local Environmental Plan 2014 the North Coast Regional Environmental Plan does not apply to the subject site.

Clause 1.9 Application of SEPPs (TLEP 2014)

- (1) This Plan is subject to the provisions of any State environmental planning policy that prevails over this Plan as provided by section 36 of the Act.
- (2) The following State environmental planning policies (or provisions) do not apply to the land to which this Plan applies:
 - *State Environmental Planning Policy No 1—Development Standards*
 - *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development* (clause 6 and Parts 3 and 4)
 - *State Environmental Planning Policy No 60—Exempt and Complying Development*
 - *North Coast Regional Environmental Plan*

SEPP No 71 – Coastal Protection

SEPP 71 applies as the site is located in the coastal zone, though it is not in proximity to the coastal foreshore (and not within a sensitive coastal location).

- (a) *The aims of this Policy set out in Clause 2:*

The proposed development is considered to be consistent with the aims of the policy as set out in clause 2.

- (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 proposed development will not alter or restrict the public's access to the foreshore reserve areas located adjacent to the Pacific Ocean.

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

The proposal does not generate any additional opportunities to improve public access to foreshore reserve areas and the like, nor are there any physical opportunities to do so given the spatial separation between the site and foreshore reserve.

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

Whilst the proposed development is sited and designed in general accord with the relevant Council controls, there are variations sought to the controls to the maximum mapped height limit and visual impacts from the adjoining residential areas. Accordingly, the development is considered likely to have an adverse imposition upon the immediate area in terms of size and scale.

- (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 proposal is not considered to generate any detrimental impact on the public foreshore, given its spatial separation.

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

The proposal is unlikely to impact upon the scenic quality of the NSW coast, with the development being spatially separated from the Beach and Ocean. The proposal is consistent with the built environment of the Tweed Heads area and the general desire for future built development in the locality.

- (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;*

The proposal will not have an adverse impact upon threatened species. The subject site has been developed over time for urban purposes and contains minimal vegetation or native habitat.

- (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 Act), and their habitats.*

The proposal is unlikely to have an adverse impact upon marine environments or habitats.

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

The proposal will not have an adverse impact upon wildlife corridors or the like.

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

The subject site is not located within an area affected by Coastal Erosion (WBM Coastline Hazard Definition Study), and is inland of the defined Coastal Erosion Zones. The development is unlikely to have an adverse impact upon Coastal Processes or be affected by Coastal Processes.

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

Not applicable.

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

The subject site is not identified as a cultural place or similar.

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

The proposal is unlikely to adversely impact upon the water quality of nearby waterways. Appropriate erosion and sediment controls will be put in place to ensure no sediment impacts on the surrounding area.

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

The subject site is not identified as land containing items of heritage, archaeological or historical significance.

- (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.

- (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*

No cumulative impacts are likely as a result of the proposed development.

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

A BASIX certificate has been prepared as part of this application which demonstrates the proposal would be acceptable having regard to the above.

The proposal is considered to be consistent with the matters for consideration within clause 8. The proposal will have no impact on access to and along the foreshore and will not result in overshadowing of the foreshore. It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

SEPP (Building Sustainability Index: BASIX) 2004

The propose development comprises ‘dwellings’ and accordingly the proposal is a “BASIX affected development”. A BASIX certificate has been obtained and was lodged with the subject application.

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

Nil Applicable.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A full Section A1 assessment has been undertaken and is on file.

The subject application is generally consistent with the requirements of Section A1, with exception to the following variations sought:

Variation to Control 2.2 - Landscaping, deep soil zones and external living areas, Control

C1. A lot must include a total landscaped area comprising of the following:

Landscaping controls	
Lot size	Landscaped area and deep soil zone (Areas less than 1.0m wide can not be included in the calculation)
at least 200m ² but less than 300m ²	15% of the site including at least two deep soil zones measuring a minimum of 2m in any direction
at least 300m ² but less than 450m ²	20% of the site including at least two deep soil zones measuring a minimum of 2.4m in any direction
at least 450m ² but less than 600m ²	30% of the site including at least two deep soil zones measuring a minimum of 3m in any direction
at least 600m ² but less than 900m ²	35% of the site including at least two deep soil zones measuring a minimum of 4m in any direction
at least 900m ² but less than 1500m ²	40% of the site including at least two deep soil zones measuring a minimum of 5m in any direction
more than 1500m ²	45% of the site including at least two deep soil zones measuring a minimum of 6m in any direction
all urban lot sizes	at least 50% of the landscaped area is to be behind the building line of the primary road frontage.
Non-urban (rural land) >1500m ²	No specific requirement

Council Officer Assessment

The front DSZ measures 3.9m x 7.0m, accordingly does not comply with the 5m x 5m requirements and seeks a variation of 1.1m in depth. In considering the variation the following has been noted the total area of the proposed front Deep Soil Zone exceeds the 25m² area a 5m x 5m Deep Soil Zone would offer, the building is existing, does not propose any development between the existing building line and the front boundary, is consistent with the streets existing building line and the site still manages to comply with 40% landscaped area requirement. Accordingly, the variation to the required dimensions for a Deep Soil Zone is supported in this instance.

Variation to Control 3.1 – Setbacks, Control C3

C3. An articulation zone may permit some elements of a buildings front façade to intrude within the front setback to a maximum of 1.5 metres and not exceeding 25% of the frontage width.

Council Officer Assessment

A variation is sought with respect to the front setback and articulation zone. The additions are consistent with the existing structure in relation to the set back and articulation zone. The existing dwelling is currently setback from the front boundary approximately 3.9m to the wall and 2.45m to an existing deck. The proposed setback of the building line is approx. 3.9 metres with the minimum setback for the front upper level deck being 2.39m. It is therefore considered that there is an approximate encroachment of 60mm from the current setback onsite. The variation is supported in this instance.

Variation to Control 3.1 - Setbacks, Control 13

C13. A two storey dwelling, or the second storey component of building, is to be setback a minimum of 1.5m from the side boundary line to the wall of the building. Guttering, eaves, hoods and other similar structures may be constructed within the side setback but not closer than 900mm from the boundary.

Council Officer Assessment

The proposed development includes a variation to the control for the northern setback to 1.14m. The side setback will be consistent with the existing building onsite. It is considered that compliance with this control is not appropriate in this instance due to the current setbacks. The proposal will not significantly alter the current arrangement.

It is considered that the proposed development will not significantly alter the current arrangement onsite and the request for the above variations to Section A1 should be accepted in this instance.

A2-Site Access and Parking Code

DCP A2 provides for the consideration of on-site access and vehicle and bicycle parking, to ensure that sufficient facilities are provided and the road network is not compromised, whilst ensuring consistency with ESD principles.

Access

An additional driveway access is proposed from Queen Street to access the proposed ground level garage. The proposed garage will also be accessible via the existing driveway access from Healy Lane adjacent to the rear of the site.

Parking

Table 2 of Section A2 requires carparking at the following rates:

1 space per dwelling plus provision for driveway parking of another vehicle (2 spaces per dwelling)

The proposal complies with this control via the provision of four car spaces in a stacked arrangement within the garage. However it is noted that the garage has

dual front and rear access which allows for driveway access for all parking spaces.

A3-Development of Flood Liable Land

The site is mapped as being affected by PMF. Clause A3.2.4 - *Design Flood Level* of the Development on Flood Liable Land Code applies to this development.

The subject site is not mapped as being within the coloured area for Design Flood Levels.

The existing floor level of ground floor habitable rooms are 3.89 AHD. The proposed height of the ground floor habitable rooms is to be raised by way of fill to 5.0 AHD.

A11-Public Notification of Development Proposals

In accordance with Section A11, The development application was notified for a period of 14 days, from Wednesday 9 September 2015 to Wednesday 23 September 2015.

During this period a total of one submission (objection) was received.

A further submission (objection) was received by Council in relation to the amended plans.

A15-Waste Minimisation and Management

Council's DCP Section A15 aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development. It is considered appropriate that a standard condition be applied requiring that all waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section A15 - Waste Minimisation and Management. As such, the proposal is considered to be acceptable having regard to waste management and the provisions of this Section of the DCP.

(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

Not applicable as no demolition is proposed.

Clause 93 Fire Safety Considerations

Council's Building Services Unit has assessed the proposed development and have provided appropriate conditions of consent if required.

Clause 94 Buildings to be upgraded

Council's Building Services Unit has assessed the proposed development and have provided appropriate conditions of consent if required.

- (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 (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology and, social and economic demand.

The subject site is located within the Point Danger- Fingal Head Area identified under the Plan at Clause 3.1.3. The subject site is not identified for specific development or issues within this plan and it is not considered to be directly impacted upon by the issues identified for that area. In close proximity to the subject application there are objectives to 'Improve management of lighthouse access path' and to 'increase level of significance of Lighthouse.' The proposed development is not considered to impact on these area specific objectives.

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 dual occupancy is generally considered to be consistent with the surrounding residential context of the area. Notwithstanding this, the proposed roof top deck component of the development is considered to have impacts upon the residential amenity (overshadowing and overlooking) of the occupants of adjoining properties, in particular the site to the south. The roof deck exceeds the 9m mapped height limit by on average 1m and essentially presents as a third storey.

Whilst it is acknowledged that the applicant has made attempts to integrate the roof deck with the building, it is not considered that the roof deck achieves consistency with the context of the site or the Fingal area, given the height and bulk of the development.

Bulk and Scale

The subject application seeks to fill the proposed building envelope, raising the existing building by up to 1.22m (resulting in a height of 12.1m RL) and provide a partially enclosed third storey roof deck with a height of 14.12m RL, approximately 2.02m above the proposed height of the building (see figures 7 and 9-11 below).

The site is adjoined by a single storey residential dwelling to the south and a two storey dual occupancy development to the north.

The proposed development is visible from surrounding residential areas. The bulk of the development is visible from land parcels adjacent the subject site to the rear and Healy Lane (see figures 7 and 8, below) and the Queen Street road reserve, when approaching the site from the south (see figures 9-10, below).

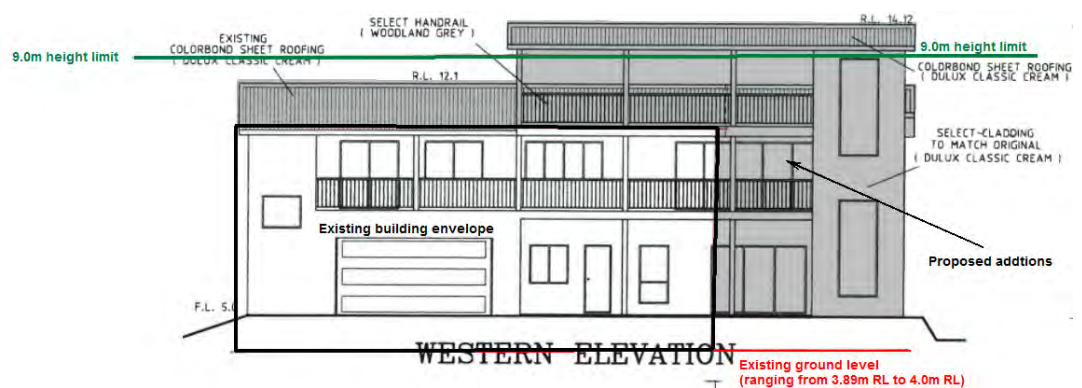


Figure 1: Western Elevation (Healy Lane) depicting existing ground level, proposed additions and 9.0m height limit



Figure 2: View of subject site from Healy Lane (indicative works in red)



Figure 3: View of Site approaching from the south (Queen Street), the DA proposes to raise the existing dwelling on average 1.0m above that shown in this image and includes a roof deck some 2.02m above this (indicative image only)

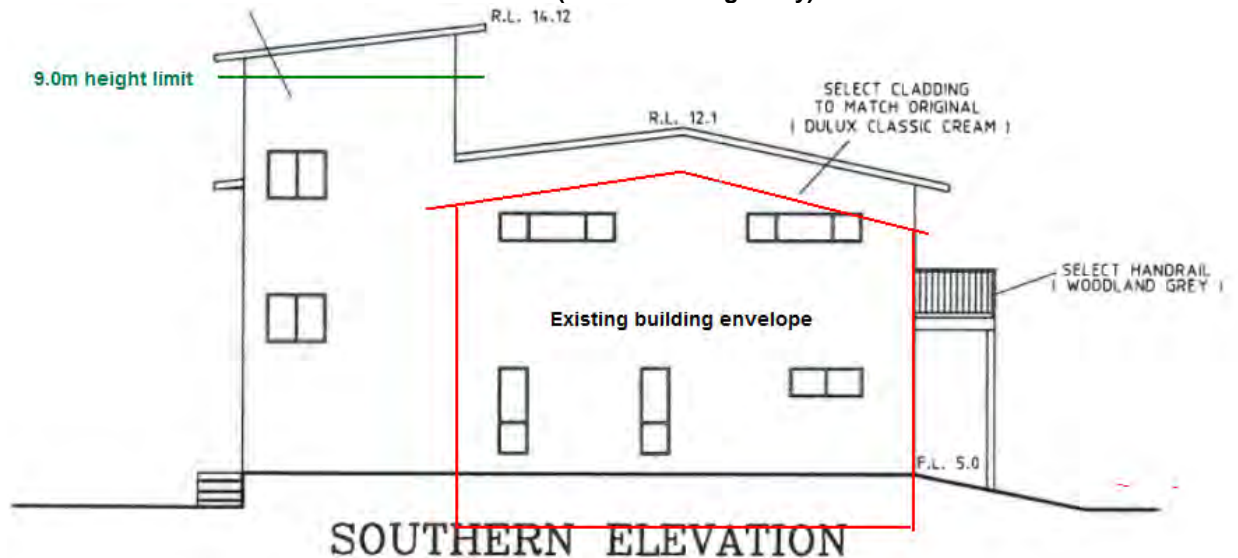


Figure 4: Southern Elevation depicting existing envelope, proposed additions and 9.0m height limit

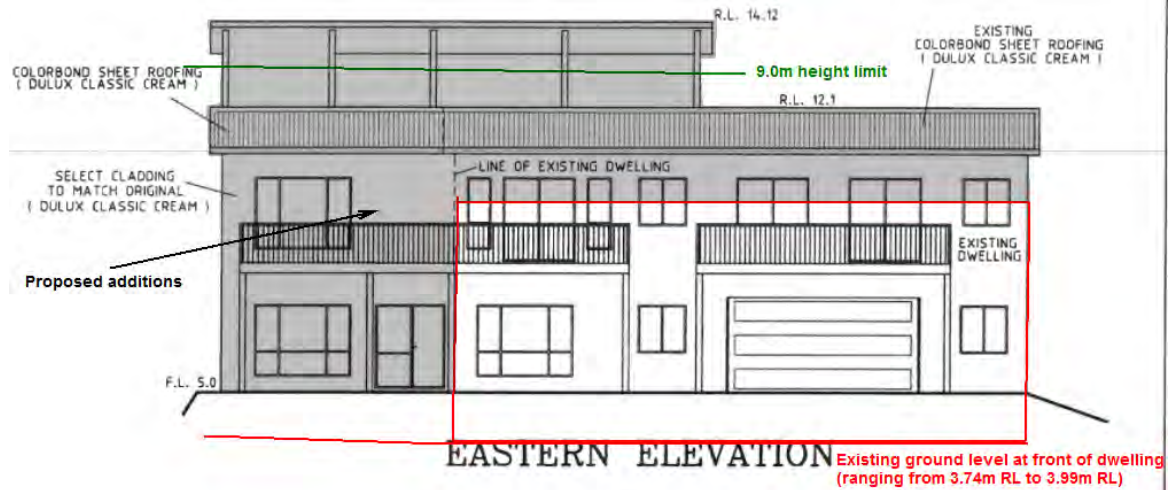


Figure 5: Eastern Elevation (Queen) depicting existing ground level, proposed additions and 9.0m height limit

The proposed roof top deck is:

- At the highest point 10.23m above ground level
- inconsistent with the mapped 9.0m height limit
- partially enclosed
- roofed
- approximately 51sqm
- approximately 60% of the buildings western elevation
- approximately 2.0m above the highest pitch of the main roof
- considered out of character with the surrounding one and two storey residential developments
- visible from surrounding areas

The character of a roof deck should be integrated into the dwelling, not dominate the roof form, smaller in scale and not a dominate visual. The subject development which includes the roof is not considered to achieve this.

Privacy/Overlooking

The proposed roof deck is located approximately 1.67m from the southern boundary and presents as a third storey.

The existing building to the south is single storey.

The location of the deck is approximately 10m from the private open space area of the adjoining dwelling, including a swimming pool area.

Whilst it is acknowledged that the applicants partially enclosed the southern end of the roof deck in an effort to alleviate some of the overlooking, the location and height of the roof deck is still considered to have the potential for overlooking.

Access, Transport and Traffic

The proposed development includes a new crossover from Queen Street, in addition to the existing access from the rear of the site off Healy Lane. Upon review of the site it was noted that there is an existing crossover on Queen Street.

The existing cross over is not intended to be used to provide access to the site as the proposed development expands in this area and is comprised of living area.

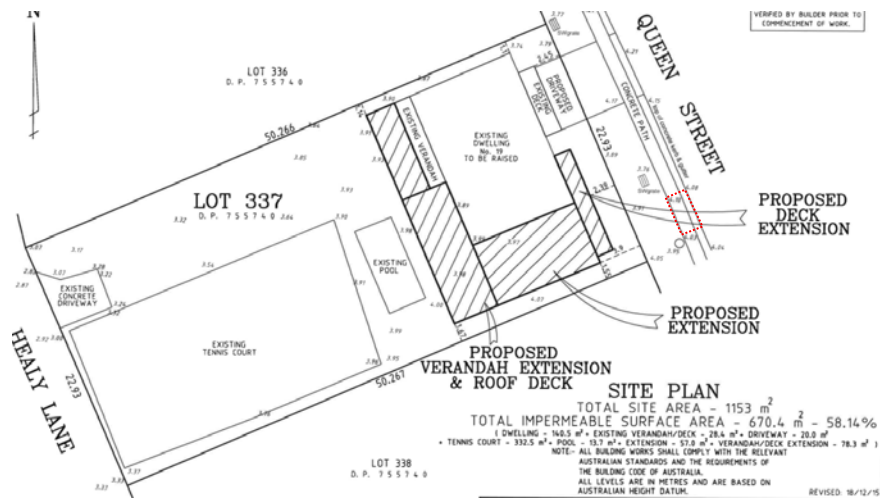


Figure 6: Indicative location of existing crossover (highlighted in red)

Accordingly, should the proposed development be granted consent the existing cross over is to be removed. The following condition would be applied:

The existing crossover situated along Queen Street shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications. The crossover is required to be removed prior to the approval of a s138 application for the required crossover along Queen Street, which will provide access to the proposed double car garage.

Further to the above, 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.

Construction

The development phase of the proposal will present some interruption to the ambience of the surrounding area however the construction phase is only temporary in nature. Accordingly, it is considered that potential amenity impacts associated with the building works can be adequately ameliorated through appropriate conditions of consent.

Further to the above, concerns have been raised in relation to the building potentially containing asbestos. This has been considered by Council with the following condition being applied:

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.

The construction of the proposed development will be subject to standard conditions being included on any consent issued.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is located within an existing residential area, comprised predominately of single and two storey residential developments. The bulk, form and height of the roof top deck (partial third storey) component of the subject application is not considered acceptable or generally in keeping with surrounding development.

Accordingly, it is considered that the roof top deck component of the subject application would be out of character with the established residential development in the area.

Availability of Utilities and Services

The subject site is serviced by Council's water and sewer infrastructure which are available to the proposal within Queen Street. As such the proposal is considered to be acceptable in this regard.

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

The proposed development was notified to adjoining properties for a period of 14 days. During this time one submission was received.

Following the notification period a further submission was received in relation to the amended plans.

The issues raised are outlined below:

<p><i>Increase in height including overshadowing and privacy, and roof deck</i></p>	<p>The proposed development site is identified as having a maximum building height of 9m, as identified on the building height map, associated with Clause 4.3 of the Tweed Local Environmental Plan 2014.</p> <p>The proposed development has a maximum height of approximately 10.23m, exceeding the mapped 9.0m height limit.</p> <p>The character of the surrounding area is predominately one and two storey residential developments, compliant with the mapped 9m height limit. It is also noted that a review is currently underway which will possibly see the existing height limit reduced to 8.0m.</p> <p>The mapped 9m height limit is not deemed to be unreasonable or unnecessary in the circumstances of the case. There are not sufficient environmental planning grounds to justify the variation, nor is the development considered to be in the interest of the public. Accordingly, the proposed exception to the</p>
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	9.0m height limit (Clause 4.3, TLEP 2014) is not supported.
<i>Extension to the southern boundary including rear verandah, variation on the setback for the verandah and the location of the external stairs to unit 1</i>	The proposed development complies with the 1.5m setback for a side boundary. Amended plans have seen the external access stairs be partially enclosed to improve privacy between dwellings.
<i>Asbestos</i>	Suitable conditions can be included if approved as follows: <i>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.</i> <i>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.</i> It is therefore considered that the proposed development can comply with working with asbestos guidelines.
<i>Bulk of roof deck/third storey</i>	The proposed roof development component of the development is considered to have a negative impact in terms of the bulk and scale. The proposed roof top deck is: <ul style="list-style-type: none"> • partially enclosed, • roofed, • approximately 51sqm, • approximately 60% of the buildings western elevation; and • approximately 2.0m above the highest pitch of the main roof. The character of a roof deck should be integrated into the dwelling, not dominate the roof form, smaller in scale and not a dominate visual. The subject development which includes the roof is not considered to achieve this.

(e) Public interest

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

OPTIONS:

That Council:

1. Refuses the application for specified reasons; or
2. Give in-principle support for the application excluding the roof deck, and brings back amended plans and recommended conditions of consent to the April Planning Committee Meeting.

3. Request recommended conditions for DA15/0711 (including assumed concurrence, in relation to the height variation to Clause 4.3) be brought to the April Planning Committee Meeting.

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:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- | | |
|---------------|--|
| Attachment 1. | Council request for further information – dated 26/10/2015 (ECM 3961291) |
| Attachment 2. | Council request for further information – dated 20/11/2015 (ECM 3961312) |
| Attachment 3. | Council advice regarding Clause 4.6 and request for meeting – dated 19/01/2015 (ECM 3961315) |
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2 [PR-PC] Development Application DA15/0716 for the Demolition of an Existing Dwelling and Construction of a Residential Flat Building at Lot 5 DP 1104481 No. 4 Hungerford Lane, 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:

The subject site is located at No. 4 Hungerford Lane in Kingscliff, described as Lot 5 in DP1104481. The site is currently occupied by a single storey detached dwelling.

The site has a frontage of approximately 12m to Hungerford Lane and 25m to Moss Street.

An aerial photograph below illustrates the location of the subject site.



The applicant seeks Council consent to construct a partial three storey Residential Flat Building containing 4 Units on the subject site in accordance with the Concept Plans by Refresh Design.

The Residential Flat Building consists of one level of ground level car parking (cut into the site) and two levels of 3 bedroom apartments:

The application has been called up to Council by Councillors Byrne and Polglase. There was objection to the development by adjoining neighbours primarily on the basis of view loss and amenity. The development seeks a variation to Council's Local Environmental Plan (Clause 4.3 – Building Height, seeking a maximum height of 9.6m in an area identified with a maximum limit of 9m). There are also variations sought to Development Control Plan Section A1 – Residential Development Code (Part C).

The recommendation is for approval with conditions. The applicant has reviewed a copy of draft conditions of consent and advises that the conditions are accepted.

RECOMMENDATION:

That Council assume the Concurrence of the Director General in relation to the Clause 4.6 Variation (Building Height) and Development Application DA15/0716 for the demolition of an existing dwelling and construction of a residential flat building at Lot 5 DP 1104481 No. 4 Hungerford Lane, Kingscliff be approved subject to the following conditions:

GENERAL

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

Title	Prepared by	Dated
Site Plan (DA001/2)	Refresh Design	17/11/15
Floor Plans 1 (DA003/2)	Refresh Design	17/11/15
Floor Plans 2 (DA004/2)	Refresh Design	17/11/15
Elevations (DA005/2)	Refresh Design	17/11/15
Sections (DA006/2)	Refresh Design	17/11/15

[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.**

- 4. Sewer manholes are present on this site. Manholes are not to be covered with soil or other material. Should adjustments be required to the sewer manhole, then applications for these works must be submitted on Council's standard Section 68 Application to Alter Councils Water or Sewer Infrastructure application form accompanied by the required attachments and the prescribed fee. 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.**

5. 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.

6. Geotechnical investigations and assessment of the subject site shall be in accordance with the recommendations and requirements as specified in the report by Geotechniques Foundation Engineering dated 20 October 2014, except where varied by the conditions of this consent. In addition a slope stability geotechnical report shall be completed on site prior to issue of a Construction Certificate approval and provide recommendations for construction. All individual house sites are subject to further geotechnical testing at time of building approval.

[GEN0300]

[GENNS01]

7. 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 or drainage works (including connection of a private stormwater drain to a public stormwater drain or installation of erosion and sediment control works).

There is an existing rock retaining wall located in Moss Street road reserve. As part of the S68 application a qualified structural engineer shall provide detailed design and corresponding certificate of approval that the existing retaining wall will not be impacted as part of the proposed drainage works. Any damage to the existing retaining wall shall be fixed at full cost by the developer.

[GENNS02]

8. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on the road reserve. Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

9. A concrete footpath shall be provided on the entire frontage of the site in Hungerford Lane. Design of the footpath shall be submitted as part of a S138 application to Council.

10. No access shall be permitted to Moss Street from the rear of the property.

[GENNS03]

11. Where easements in favour of Council are provided through private property no structures or part thereof may encroach into the easement. This includes (but is not limited to) awnings or eaves on the multi-level building and fences / retaining walls.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

12. Prior to issue of Construction Certificate the applicant is to submit to Council's General Manager or his delegate a list of the finished building materials and colours (including colour product photo images) for approval.

[PCC0175]

13. 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]

14. **All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.**

[PCC0465]

15. **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.**

[PCC0585]

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. The proposed works must conform to the requirements identified in Council's *Sewers - Work in Proximity Policy*.**

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

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

[PCC1065]

18. **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]

19. **Medium density/integrated developments, excluding developments containing less than four attached or detached dwellings and having a Building Code classification of 1a, will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority**

detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements. 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.

20. If the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first.

The arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the applicant/developer.

21. In respect to slab on ground structures (garage to existing premises) erected prior to July 1995, where chemical treatment of the soil may have been carried out as a barrier to termites, a pre-demolition under-slab soil contamination investigation is to be carried out in accordance with Councils guideline for pre-demolition testing. A report, including the details of the laboratory analysis and site remediation action plan, is to be submitted to Council for consideration and approval prior to the commencement of demolition work. [PCC1325]

22. Prior to issue of construction certificate, full design details of any proposed front fence and external building screening (including boundary fencing if proposed) is to be submitted to Council for approval.

23. Prior to issue of construction certificate, a detailed plan clearly showing internal building storage (within the subject units) is to be submitted to Council for approval. [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.

25. An application is to be made to Council to disconnect the existing building from Council's sewerage system, prior to any demolition work commencing.

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.
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. [PCW0215]
- [PCW0225]
28. 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]

29. 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]

30. 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]

31. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land or is likely to effect the integrity of the adjoining land, the person causing the excavation to be made must comply with the following:

- (a) The person must, at the person's own expense:
 - (i) preserve and protect the building / property from damage; and
 - (ii) if necessary, underpin and support the building in an approved manner.
- (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

32. 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]

33. 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]

34. 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 prior to commencing any building works.

DURING CONSTRUCTION

35. 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]

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. 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]

39. 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]

40. 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]

41. 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]

42. 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]

43. If the work involved in the erection or demolition of a building:

(a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or

(b) building involves the enclosure of a public place,

a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.

Where necessary the provision for lighting in accordance with AS 1158 - Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.

Any such hoarding, fence or awning is to be removed prior to the issue of an occupation certificate/subdivision certificate.

Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Councils road reserve.

[DUR0435]

44. 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]

45. 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.

46. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

47. 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]

48. 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]

49. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

[DUR1015]

50. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

51. 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.

52. 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 in accordance with Council's Development Control Plan Section A15 - Waste Minimisation and Management.

[DUR2205]

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

[DUR2215]

54. 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]

55. 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]

56. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

57. 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]

58. 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]

59. 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]

60. The Applicant shall submit the bulk water meter 'Application for Water Service Connection' to Council's Water Unit to facilitate a property service water connection for the Lot, from the existing water main in Hungerford Lane. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.
61. 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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

62. 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]

63. 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 75-100mm 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]

64. **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:**
9.1 Trips @ \$1195 per Trips \$10,875
((\$1,137 base rate + \$58 indexation)
S94 Plan No. 4
Sector6_4
- (b) **Open Space (Casual):**
2.5 ET @ \$552 per ET \$1,380
((\$502 base rate + \$50 indexation)
S94 Plan No. 5
- (c) **Open Space (Structured):**
2.5 ET @ \$632 per ET \$1,580
((\$575 base rate + \$57 indexation)
S94 Plan No. 5
- (d) **Shirewide Library Facilities:**
2.5 ET @ \$851 per ET \$2,128
((\$792 base rate + \$59 indexation)
S94 Plan No. 11
- (e) **Bus Shelters:**
2.5 ET @ \$66 per ET \$165
((\$60 base rate + \$6 indexation)
S94 Plan No. 12
- (f) **Eviron Cemetery:**
2.5 ET @ \$124 per ET \$310
((\$101 base rate + \$23 indexation)
S94 Plan No. 13
- (g) **Community Facilities (Tweed Coast - North)**
2.5 ET @ \$1411 per ET \$3,528
((\$1,305.60 base rate + \$105.40 indexation)
S94 Plan No. 15
- (h) **Extensions to Council Administration Offices
& Technical Support Facilities**
2.5 ET @ \$1888.66 per ET \$4,721.65
((\$1,759.90 base rate + \$128.76 indexation)
S94 Plan No. 18

- (i) **Cycleways:**
 2.5 ET @ \$480 per ET \$1,200
 (\$447 base rate + \$33 indexation)
 S94 Plan No. 22
- (j) **Regional Open Space (Casual)**
 2.5 ET @ \$1108 per ET \$2,770
 (\$1,031 base rate + \$77 indexation)
 S94 Plan No. 26
- (k) **Regional Open Space (Structured):**
 2.5 ET @ \$3890 per ET \$9,725
 (\$3,619 base rate + \$271 indexation)
 S94 Plan No. 26

65. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with. [POC0395]

66. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council prior to the occupation of the building or issue of Interim or Final Occupation Certificate (whichever comes first) to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council. [POC0435]

Council advises that to obtain a Certificate of Compliance for water and/or sewer works, Council will require payment of Developer Charges in accordance with Section 64 of the Local Government Act, 1993, which applies Section 306 of the Water Management Act, 2000.

Water:	2.2 ETs @ \$13,128	\$28,881.60
Sewer:	3 ETs @ \$6,307	\$18,921.00

67. 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

68. 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]

69. 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]

70. 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]

71. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.

[USE0435]

72. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[USE0735]

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

[USE0875]

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

[USE1510]

REPORT:

Applicant: Bplanned Pty Ltd
Owner: Mr Christopher J Fairon
Location: Lot 5 DP 1104481 No. 4 Hungerford Lane, Kingscliff
Zoning: R3 - Medium Density Residential
Cost: \$1,200,000

Background:

The site has historically contained a small, single story dwelling as shown below:



Hungerford Lane is an area undergoing transition from traditional 'surf shack' type development to more upscale residential flat buildings provided for by the R3 Medium Density zoning.

The site is surrounded by existing higher density development (as can also be seen in the figure above) as follows:

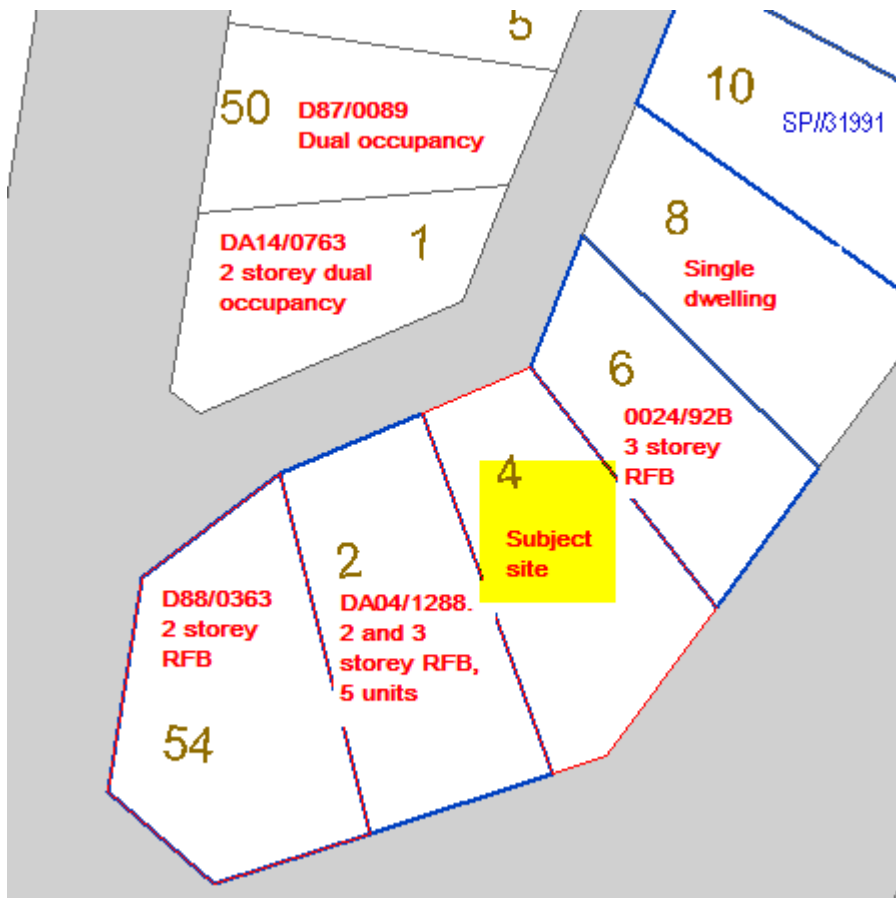
North: 1 Hungerford Lane. Two storey dual occupancy development currently under construction, approved under DA14/0763. The owner has expressed view loss concerns.

South: The Moss Street Road Reserve is located immediately to the south of the site and forms the rear boundary.

East: 6 Hungerford Lane. 3 storey residential flat building approved in 1992 under 0024/92B. Some occupiers of these units have raised view loss and privacy concerns.

West: 2 Hungerford Lane. Multi dwelling Housing comprising 5 dwellings in a part 2 and part 3 storey configuration, approved under DA04/1288. Note that this application contained a

height variation similar to the subject application and is a similar 2/3 storey configuration down the slope. Some occupiers of these units have raised view loss and privacy concerns.



Front Elevation of proposed development (from Hungerford Lane).



Rear Elevation of proposed development (from Moss Street though in reality there is significant vegetation within Council's Road Reserve in this location which would screen the development).

DEVELOPMENT/ELEVATION PLANS:

DEVELOPMENT APPLICATION



SCALE 1:200



SITE PLAN

DA-001 21

KINGSCLEAF APARTMENTS # 1433
4 HUNGERFORD LANE HUNTERVILLE
PROJECT

CHRIS FALLEN
CLIENT

ARCHITECTURE
DATE 17/11/15
DRAWN BY
DATE 19/02/16

DATE 17/11/15
DRAWN BY
DATE 19/02/16

DATE 17/11/15
DRAWN BY
DATE 19/02/16



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DEVELOPMENT APPLICATION



FLOOR PLANS 1

DA-003 21
DATE: 17/01/2015

KINGSCLIFF APARTMENTS a_1433
4 HUNGERFORD LANE MISSISSIPPI MISSISSIPPI

CHRIS PARSON
CLIENT

DATE: 21/01/15
DATE: 21/01/15
DATE: 19/01/15
DATE: 19/01/15

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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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

The proposed residential flat building is considered to be consistent with the aims of the plan by providing housing on an appropriately zoned allotment in close proximity to the Kingscliff Town Centre.

Clause 2.3 – Zone objectives and Land use table

A residential flat building is permissible with consent in the R3 zone. The proposed development is considered to satisfy the objectives of the zone as it provides for medium density housing and contributes to the provision of a variety of housing types within the area.

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

No subdivision is sought at this stage though it is envisaged that future strata subdivision may occur.

Clause 4.3 - Height of Buildings

The objectives of this clause are as follows:

- (a) *to establish the maximum height for which a building can be designed,*
- (b) *to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- (c) *to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- (d) *to encourage greater population density in less car-dependant urban areas,*
- (e) *to enable a transition in building heights between urban areas comprised of different characteristics,*
- (f) *to limit the impact of the height of a building on the existing natural and built environment,*
- (g) *to prevent gross overshadowing impacts on the natural and built environment.*

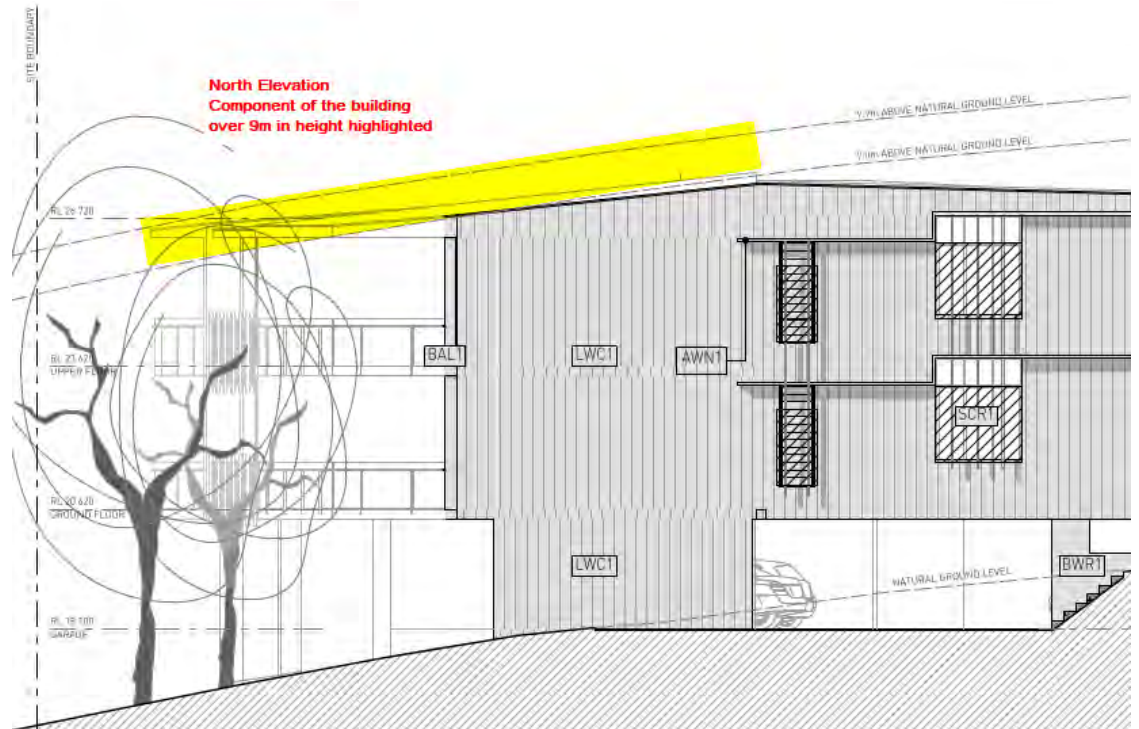
This clause also provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The building height map prescribes a maximum building height of 9m for this site.

The proposed building as originally submitted had a maximum height of 9.9m (towards the southwest of the site where it steps down the hill and becomes 3 storeys). In response to objections based on the building height variation, the applicant reduced the height of the building by 300mm to have a maximum height

of 9.6m above natural ground in the same location. Accordingly, a variation of 600mm is sought.

The height limit is exceeded as per the following figures by the second floor roofing structure in the south west corner of the site:



By way of justification, the applicant advises that *'the proposed development has only exceeded the height requirement by 6.66% and that the building has provided a stepped design which conforms to the contours of the site. Given the site has a significant slope towards the rear boundary, combined with the requirements set for maximum access driveway grades, it has been determined that reducing the level of the car parking area (to further set the building into the hill) would not be feasible. By lowering the car parking level further, the slope of the driveway would be too significant resulting in an unsafe access arrangement for future residents'*.

The applicant also notes that the proposed building meets the building height controls prescribed by Development Control Plan Section A1. Section A1 allows a maximum wall plate height of 9.6m with a maximum roof height of 12.2m.

The variation of this control is discussed further under Clause 4.6 below which provides the mechanism for seeking an exception to a development standard.

In relation to the objectives of Clause 4.3, it is considered that the proposed height relates to existing buildings in the locality. The variation is not considered unreasonable when considering the constraints of the site, being small in size, irregularly shaped and heavily constrained by the sewer easement at the rear. In support for the variation, the applicant submitted shadow diagrams which compared a compliant development to the proposed development. The shadow diagrams (attached at Appendix 1) demonstrate negligible change in overshadowing impacts as a result of the proposed variation. It is considered that a compliant building would result in a loss of amenity for future residents by either reducing balcony size or reducing its useability if it were unroofed. Further excavation into the site would result in a non-compliant driveway. Based on the above, and informed by Clause 4.6 assessment below, it is considered that the proposed variation complies with the objectives of Clause 4.3.

Clause 4.4 – Floor Space Ratio

The floor space map provides a maximum floor space ratio for the site of 2:1. The proposed building has a total floor area of 686.982m² on a site area of 674.6m². As such, the corresponding FSR is 1.02:1 which is below the desired maximum.

Clause 4.6 - Exception to development standards

The applicant seeks a variation to the 9m height limit prescribed by the building heights mapping under LEP 2014. Clause 4.6 provides that a development standard may be varied with consent subject to the requirements of the Clause.

The objectives of this clause are as follows:

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

Clause 4.6 provides that development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

In accordance with the provisions of Clause 4.6(3) development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

Clause 4.6 also provides that development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

In accordance with this clause the applicant provided a lengthy written request to Council which is contained in this report at Appendix 2.

A summary of this assessment is provided as follows:

With respect to the height of building standard applied in Clause 4.3 of the Tweed LEP 2014, the application of a pure numerical development standard is unreasonable and unnecessary in the circumstance of this case.

As outlined within the proposed variation for Clause 4.3, strict compliance with the Height of Building standard would be unreasonable or unnecessary in the case of the development at NO.4 Hungerford Lane, Kingscliff. The subject site has a significant grade which sees the site sloping down towards the rear boundary. The proposed development has been appropriately designed to conform to slope of the land by implementing a stepped design. Furthermore, the proposed access driveway servicing the proposed development has been designed to generally comply with the maximum grades set by AS2890.1.

It has been determined that achieving a development under the 9.0m building height standard would require an increase in the current proposed grade of the driveway. Requiring this would in turn result in an impractical access arrangement which has the potential to jeopardise the safety of future residents of the subject site.

As part of our response to the further issues letter to Council, it has been demonstrated in the concept plans by Refresh Design that despite exceeding the height of building standards, the proposed development will not result in an unreasonable level of overshadowing compared to that of a fully compliant building.

The proposed development has been designed to present as being a two storey building which is well under the 9.0m height of building requirement when viewed from Hungerford Lane which reflects the prevailing building form and scale in the area.

The view to the small portion of the building encroaching above the overall height requirement is positioned at the rear of the site and will therefore have no impact on the streetscape character prevailing in the street.

It is our position that there are sufficient environmental planning grounds to justify the proposed development in its current form.

It has been outlined by Preston CJ in Wehbe v Pittwater Council [2007] NSWLEC 827, that there are 5 different ways in which an object may be well founded and that approval of the objection may be consistent with the aims of the policy. The following provides an assessment against these tests:

1. The objectives of the standard are achieved notwithstanding noncompliance with the standard;

As demonstrated in the above assessment, the proposed development will meet the objectives set for the Height of Building, as well as for the R3 - Medium Density Residential Zone.

2. The underlying objective of purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

It is assessed that the Height of Buildings standards outlined in Part 4 - Clause 4.3 are relevant to the proposed development. With that said, it is our position that the extent of the variation sought is considered minimal in the context of the proposed development.

3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

As previously mentioned, we have determined that achieving a development under the 9.0m height of building standard would require an increase in the current grade of the proposed driveway. Requiring this would in turn result in an impractical access arrangement which has the potential to jeopardise the safety of future residents of the subject site.

Based on this fact, it is assessed that lowering the height of the building would defeat and thwart the objectives set by the Tweed LEP 2014 and the Tweed DCP 2008 as the above development scenario would create a worse outcomes for the site.

4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The proposed development does not rely on recently approved applications which have received consent that have abandoned the height of building development standard.

5. The compliance with development standard is unreasonable or in appropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

This is not applicable. Given the proximity of the subject site to the centre activities along Marine Parade, it is submitted that the R3 - Medium Density Residential Zoning is appropriate for the site.

Planning Assessment:

It is considered that the applicant's foregoing assessment demonstrates that strict application of the 9m height limit is both unreasonable and unnecessary. It is considered that there are sufficient environmental planning grounds, including the slope, small size and location of the sewer easement to support the proposed variation of the standard in this instance.

Further, planning staff are satisfied that the applicant's written request has addressed all relevant matters. In relation to public interest, it is evident that surrounding development in the vicinity has often had to rely on minor building height variations in order to achieve appropriate driveway grades, yield and building amenity for residents. The public interest is considered to be satisfied in this regard.

In relation to Clause 4.6(5) Council has assumed concurrence to determine the variation to Clause 4.3 of the Tweed Local Environmental Plan 2014. No referral to the Director General was required with this regard.

With respect to the nature and extent of the proposed variation, it is considered that it is appropriate to support the application inclusive of the Clause 4.6 variation and accept a 600mm height variation for a small portion of the building.

Clause 5.5 – Development within the Coastal Zone

The proposed development is not seen to conflict with the matters for consideration in relation to the coastal zone prescribed by Clause 5.5 because:

- The proposed development does not contravene ecologically sustainable development provisions.
- The proposed development does not contravene the NSW Coastal Policy, nor will it impact adversely on the quality of the nearby coastal environment (noting that the development is physically separated by residential development and a road from Cudgen Creek).
- The proposed development will not impact upon access to the foreshore.
- The proposed development will not result in overshadowing of the coastal foreshore
- The proposed development will not impact on coastal amenity being removed from the immediate coastal environment.
- Subject to conditions, the development will not impact on flora or fauna.
- Subject to conditions, the development will not impact upon water quality or quantity in Cudgen Creek.

Clause 5.9 – Preservation of Trees or Vegetation

Vegetation removal is not required to facilitate the proposed development.

Clause 5.11 - Bush fire hazard reduction

The site is not located on bushfire prone land.

Clause 7.1 – Acid Sulfate Soils

The site is identified as being located upon Class 5 ASS. Council's Environmental Health Officer has not raised any concerns in this regard.

Clause 7.2 - Earthworks

Earthworks are required to facilitate the proposed car park area within the building footprint. Clause 7.2 requires that consent is required for earthworks. It also requires that the impact of earthworks on the environment be considered. In this instance, standard conditions have been applied with regard to excavation, filling and retaining walls. Subject to these conditions and compliance with the submitted Geotechnical Report, adverse environmental impacts are not anticipated.

Clause 7.3 – Flood Planning

The site is not flood prone.

Clause 7.4 - Floodplain risk management

The site is not on the flood plain.

Clause 7.5 - Coastal risk planning

The site is not identified on the coastal risk planning map.

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.

It is noted that the application has been reviewed by Council's Engineering Unit with respect to stormwater, who raised no concerns. The following detail is noted:

"The lawful point of discharge is the kerb of Hungerford Lane and Moss Street road reserves. A Stormwater Management Plan indicates that stormwater will be discharged from the site into an existing gully pit located in Moss Street. Conditions have been applied that a section S68 application shall be submitted for the proposed connection providing detailed engineering design. This method is consistent with what is accepted for similar developments across the shire. In relation to permeable area, it is considered that this has been maximised as much as possible given the constraints of the site. Subject to conditions, it is not considered that the proposed development would result in adverse stormwater impacts".

Clause 7.8 – Airspace operations

The site is not in proximity to the airport and the development will not penetrate the limitations or operations surface.

Clause 7.9 - Development in areas subject to aircraft noise

The site is not affected by aircraft noise.

Clause 7.10 - Essential Services

Services are connected at the site.

Other Specific Clauses

There are no other specific clauses.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

With regard to this Clause, the proposed residential development, which is removed from the coast, is not considered to contravene the NSW Coastal Policy, the Coastline Management Manual or the North Coast Design Guidelines. The proposal would not restrict access to the foreshore nor cause any overshadowing of such area.

The proposal is not considered to contravene Clause 32B.

Clause 43: Residential development

This clause provides that density must be maximised without impact on the environmental features of the land. Road widths must not be excessive and reliance on motor vehicles should be reduced. Site erosion must be minimised.

With regard to the above, the proposed development is considered to achieve an acceptable density for the small and constrained nature of the site. The development responds well to the site and it is not considered that it contravenes any environmental features of the area. There are no new roads proposed and whilst vehicle dominance has been reduced as much as possible, the development is required to comply with Council's Development Control Plan Section A2 for the provision of onsite car parking. Standard conditions will control sediment and erosion and the proposal is considered to be consistent with Clause 43.

SEPP No. 1 - Development Standards

This SEPP does not apply to variations sought under LEP 2014. Please refer to assessment provided under Clause 4.6 of LEP 2014 above.

SEPP No. 65 - Design Quality of Residential Flat Development

SEPP 65 provides the following:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

(a) the advice (if any) obtained from the design review panel, and

(b) the design quality of the development when evaluated in accordance with the design quality principles, and

(c) the Apartment Design Guide.

The applicant supplied a SEPP 65 Schedule 1 assessment and a response to the Apartment Design Guide. It is noted there is no relevant Design Review Panel.

In relation to the Design Principles, the proposal has been found to be generally sufficient. The proposed building is generally in keeping with the surrounding character, built form and scale. The density is appropriate having regard to the zone objectives. Excellent amenity has been provided for future residents with large floor space and balconies with views.

In relation to the Apartment Design Guide, the application is found to be generally sufficient notwithstanding the following:

- The deep soil zone meets the required criteria however is located over Council's sewer easement at the rear of the property and thus is not truly functional for deep soil planting. This variation has been accepted under DCP Section A1 based on the constraints of the site. The same justification is considered reasonable under SEPP 65.
- The separation distances are less than those prescribed (6m for habitable rooms and balconies and 3m for non-habitable rooms). The development provides 3.8m to the RFB to the north/east and 4.5m to the RFB to the south west. In support, the applicant provides the following:

"Although the separation distances are less than those outlined in the design criteria, due to the constraints imposed by the size and dimension of the subject site, along with the side boundary setbacks of adjoining development, it is not practicable to achieve the maximum separation distances between habitable rooms. To minimise potential adverse impacts associated with separation distance, appropriate measures have been incorporated into the design of the building. These include orientation of the apartments to the front and rear of the site and use of fixed external privacy screening to windows on the side elevations. Through implementation of such measures, the proposed development is able to maintain a high level of residential amenity and privacy for residents, and restrict the potential for overlooking into habitable rooms of adjoining development.

The private recreation areas of all dwellings within the proposed development have been oriented to the rear of the site, and have a

combination of solid walls to the southern elevation and partially open walls to the northern elevation of the balconies to further restrict potential overlooking to habitable rooms and private recreation areas of adjoining development, whilst still allowing access to breezes, and good solar access”.

This is considered reasonable.

- Storage areas are required to be provided to 10m³ for 3 bedroom units, with 50% provided within the subject units. The submitted plans show dedicated storage spaces within the garage area with around 8.9m³ of storage area per unit. Dedicated storage areas are not shown on the DA plans for the units themselves though generous robe spaces are provided. With the inclusion of the robes, it would appear that the 10m³ per unit is met for each unit, however at present the plans do not demonstrate that the 50% storage provision within the unit has been provided.
- The apartment mix is not varied, with 4 x 3 bedroom units provided. The high number of bedrooms does provide for variation for residents with the second/third bedroom able to be used as a spare/study etc. The applicant advises that the configuration will meet market demand.

In relation to storage, given it is highly likely that the proposal can comply, a condition has been applied requiring the submission of a plan prior to issue of construction certificate.

In relation to the wider principles of SEPP 65, the proposed development is considered appropriate.

SEPP No 71 – Coastal Protection

SEPP 71 applies as the site is located in the coastal zone, though it is not in proximity to the coastal foreshore (and not within a sensitive coastal location).

(a) *The aims of this Policy set out in Clause 2:*

The proposed development is considered to be consistent with the aims of the policy as set out in clause 2.

(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 proposed development will not alter or restrict the public's access to the foreshore reserve areas located adjacent to the Pacific Ocean.

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

The proposal does not generate any additional opportunities to improve public access to foreshore reserve areas and the like, nor are there any

physical opportunities to do so given the spatial separation between the site and foreshore reserve.

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

Whilst the proposed development is sited and designed in general accord with the relevant Council controls, there are variations sought to the controls to the maximum mapped height limit and residential development code which are addressed in detail below. Subject to conditions, the proposed development is considered to be suitable for the site.

- (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 proposal is not considered to result in any detrimental impact on the public foreshore, given its spatial separation.

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

The proposal is unlikely to impact upon the scenic quality of the NSW coast, with the development being spatially separated from the beach and ocean. The proposal is consistent with the built environment of the Kingscliff area and the general desire for future built development in the locality.

- (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;*

The proposal will not have an adverse impact upon threatened species. The subject site has been developed over time for urban purposes and contains minimal vegetation or native habitat.

- (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 Act), and their habitats.*

The proposal is unlikely to have an adverse impact upon marine environments or habitats.

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

The proposal will not have an adverse impact upon wildlife corridors or the like.

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

The subject site is not located within an area affected by Coastal Erosion (WBM Coastline Hazard Definition Study), and is inland of the defined Coastal Erosion Zones. The development is unlikely to have an adverse impact upon Coastal Processes or be affected by Coastal Processes.

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

Not applicable.

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

The subject site is not identified as a cultural place or similar.

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

The proposal is unlikely to adversely impact upon the water quality of nearby waterways. Appropriate erosion and sediment controls will be put in place to ensure no sediment impacts on the surrounding area.

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

The subject site is not identified as land containing items of heritage, archaeological or historical significance.

- (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.

- (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*

No cumulative impacts are likely as a result of the proposed development.

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

A BASIX certificate has been prepared as part of this application which demonstrates the proposal would be acceptable having regard to the above.

The proposal is considered to be consistent with the matters for consideration within clause 8. The proposal will have no impact on access to and along the foreshore and will not result in overshadowing of the foreshore. It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

SEPP (Building Sustainability Index: BASIX) 2004

The proposed development comprises 'dwellings' and accordingly the proposal is a "BASIX affected development". A BASIX certificate has been obtained and was lodged with the subject application.

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

There are no draft EPIs which require consideration.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A detailed Development Control Plan Section A1 assessment is available on file. The proposed development originally contained a number of variations to this section of Council's DCP. Revised plans were submitted which reduced some of the variations however the following are still sought:

- Design Control 2 - Site Configuration - Deep Soil Zones - Control c.
- Design Control 2 - Site Configuration - Deep Soil Zones - Control e.
- Design Control 2 - Site Configuration - Topography, Cut and Fill: Control h. and m.
- Design Control 3 - Setbacks - Front Setbacks (Building Lines): Control h.
- Design Control 3 - Setbacks - Side Setbacks: Control b.
- Design Control 3 - Setbacks - Rear Setbacks: Control a.
- Design Control 4 - Car parking and Access: Control d. and h.
- Design Control 5 - Building Footprint and Attics, Orientation and Separation - Building Separation: Control h.

In relation to Design Control 2 - Site Configuration - Deep Soil Zones – Controls c and e, based on the length and width of the site, the following is required for the rear deep soil zone:

Minimum width – 8m

Minimum depth – 6.4m

Notwithstanding the location of the proposed rear DSZ over the sewer easement, the revised plans (which increased the building setback) are considered to be generally acceptable with regard to the rear DSZ, with the entire rear setback generally available.

In relation to this variation, the applicant has submitted a detailed request for a variation as per below:

"2.1 Section A1 - Part C - Design Control 2 - Site Configuration - Deep Soil Zones: Control c

Control c. states:

- c. Rear Deep Soil Zones are to have a minimum width of 8m or 30% of the average width of the site whichever is the greater and a minimum depth of 18% of the length of the site up to 8m but not less than 4m. Greater than 8m may be provided if desirable.*

Objectives

- To ensure that land retains its ability to permeate water.*
- To ensure that each building lot has a deep soil zone of adequate area and dimension.*
- To retain and enhance fauna and flora corridors throughout suburban areas.*
- To provide space for mature tree growth and vegetation.*
- To retain existing mature vegetation.*

Response:

We have identified several factors which warrant the reduction in the rear deep soil zone. These are as follows:

- The sewer easement running through the site significantly reduces the available land for deep planting along rear boundary setback. With that said, there is still sufficient room to establish large landscaping trees within this area. An amended landscaping plan will be provided subsequent to submission of this response.*
- The subject site has provided a rear deep soil zone generally in accordance with that provided at the adjoining development at 2 Hungerford Lane.*
- The subject site backs on to a large Council owned reserve which is characterised by a very steep embankment which drops down towards Moss Street. A significant amount of mature vegetation exists within this reserve (refer to Figure 1). Given the slope of the site, it is likely that this area will be retained as a landscaping corridor. As such, this area will provide an excellent opportunity to achieve Council's objective to retain and enhance fauna and flora corridors.*



2.2 Section A1 - Part C - Design Control 2 - Site Configuration - Deep Soil Zones: Control e

Control e. states:

e. Front Deep Soil Zones are to be the width of the site boundary minus the driveway width and the pathway width by the front setback depth.

Objectives

- *To ensure that land retains its ability to permeate water.*
- *To ensure that each building lot has a deep soil zone of adequate area and dimension.*
- *To retain and enhance fauna and flora corridors throughout suburban areas.*
- *To provide space for mature tree growth and vegetation.*
- *To retain existing mature vegetation.*

Response

Given the requirement for visitor carparking associated with the proposed development and the constraints facing the site, the proposed visitor car park will be provided at the front of the proposed development. As such, the deep soil zone of the proposed development will be kept to the northern corner of the site.

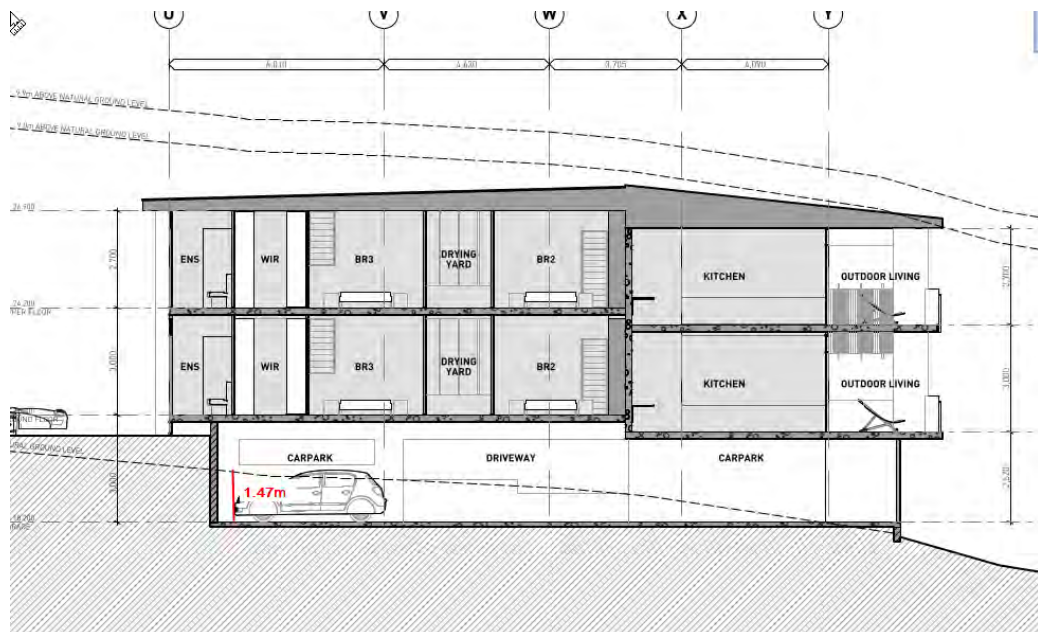
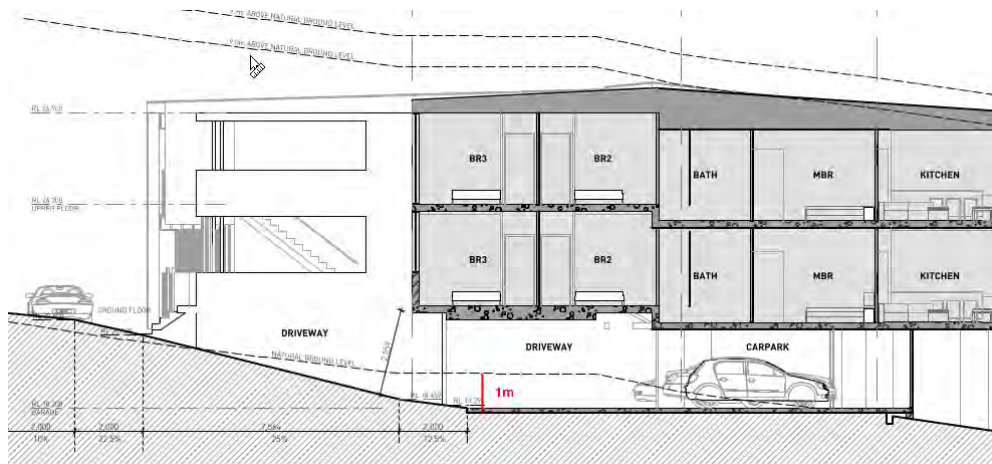
*As per the Landscaping concept plan by Mark Baldock, the proposed development will be provided with appropriate landscaping along the front boundary with a medium sized feature tree provided, being a *Tristaniopsis Laurina*, and a large garden bed provided in front of the proposed building. These landscape areas are all capable of containing deep planting, and the landscaping choices will be sufficient to break up the built form and reduce the perceived bulk of the proposed building when viewed from Hungerford Lane.*

Furthermore, the Landscaping Concept Plan has provided permeable pavers will to the driveway and visitor car parking areas to ensure that land retains its ability permeate water in accordance with the objectives of this provision."

It is considered that the above justification is appropriate with regard to the objectives of the rear deep soil zone control. The reality is that the sewer easement severely restricts the ability of the site to have a compliant rear DSZ without entirely compromising development overall. It is noted that development

on adjoining lots the south do not maintain a compliant rear DSZ (as per current controls) and compared to these properties the proposed development would represent an improvement in this regard. The properties to the north show a greater rear DSZ with approximately 5.8-6.3m of area available. Notwithstanding the existence of the sewer easement, the proposed development would exhibit a rear DSZ/rear setback more commensurate with these properties. Overall, no objection is considered to be raised to the proposal with regard to the rear DSZ, the applicant is considered to have appropriately addressed the objectives of the control in the revised submission.

In relation to **Design Control 2 - Site Configuration - Topography, Cut and Fill: Control h. and m**, it is relevant that the building utilises suspended floors to minimise earthworks. There is up to 1.4m of cut proposed as shown below:



It is permitted to have excavation in excess of 1m within the confines of the building footprint to allow for basement parking. As such, there is no objection to the proposed 1.47m cut within the partial basement.

The applicant proposes two variations to this control in relation to the setbacks of retaining walls to the side boundaries. The development incorporates retaining

walls on the western side boundary and within 310mm of the northern boundary. Each wall forms part of the building.

The following is provided within the applicant's variation report with respect to retaining walls:

"Control h. states:

h. Cut areas are to be set back from the boundaries at least 900mm; fill areas are to be setback from the boundary a minimum of 1.5m.

Control m. states:

m. The top of any battered cut (or retaining wall) and the toe of any battered fill (or retaining wall) is not to be closer than 900mm to any property boundary, where the overall height at any point exceeds 500mm.

The proposed building has been designed so as to minimise the amount of excavation required to facilitate the proposed development to the full extent possible. With that said, a small amount of excavation will be required along the side boundaries to facilitate the proposed access and car parking area associated with the proposed Residential Flat Building.

It has been determined that the small amount of earthworks required will not have any adverse impacts on the adjoining developments. It has been identified that a retaining wall exists along the side boundary shared with 2 Hungerford Lane, Kingscliff which has been provided to facilitate the access driveway with this development. The proposed earthworks will be of a similar proportion to those which have been undertaken on this adjoining site. Furthermore, the proposed earthworks along the north east boundary will be minimal and have no negative impacts on the adjoining units on this site. The proposed earthworks have appropriately responded to the topography of the site to ensure that the building is of an appropriate height. All required retaining walls will be appropriately designed at the necessary time"

Council's Development Assessment Engineer has not objected to the proposed walls and it is considered that the proposed variation to the wall setbacks is appropriate in this instance and generally commensurate with development on adjoining lots. The variation is still considered to meet the intent of the objectives of this control.

In relation to **Design Control 3 - Setbacks - Front Setbacks (Building Lines): Control h**, the application seeks a variation in that it proposes the visitor parking space within the front setback at ground level. The relevant control provides that at grade parking must be located a minimum of 6m behind the front elevation of the building or to the rear of the site.

The applicant provides the following:

"Given the dimensions of the subject site, the maximum amount of car parking spaces have been provided at the ground floor level. As such, we have been required to provide one visitor car parking space within the front boundary setback. Whilst this does meet the abovementioned control, we feel that the proposed arrangement will be appropriate.

*As per the Landscape Concept Plan by Mark Baldock, the proposed development has been provided with ample landscaping treatments along the frontage of the site. The proposed landscaping will be sufficient to ensure that the proposed development has a balance between hard built form features and soft landscaping treatments. The proposed landscaping will break up the form of the building to promote an attractive street scape along Hungerford Lane. Furthermore, it is proposed that a suitably designed front boundary fence will be provided to ensure that the view to the proposed car parking space will be minimised to the full extent possible when viewed from Hungerford Lane. ***Note that the applicant was requested to provide details of front fencing however opted to have submission of this detail applied as a condition instead.***

Finally, we have assessed that the majority of developments along Hungerford Lane have been provided with car parking within the front boundary. As such, it is our assessment that the proposed development will be in keeping with the prevailing built form within the immediate vicinity of the subject site, and will therefore have no negative impact on the streetscape character which is currently present in the area”

Planning assessment concurs with the above. The proposed visitor’s space will be consistent with others in the vicinity and is necessary due to the constraints of the site. The design merits of the front façade will ensure that the proposal still achieves the objectives of this control.

Design Control 3 - Setbacks - Side Setbacks: Control b provides that a residential flat building can have side setbacks of a minimum of 1.5m.

The application varies this for the basement/garage level and has screening devices at the upper levels protruding into this area.

The applicant has addressed this as follows:

- "1. Partial built to boundary wall along the western boundary;
 - a. The wall will have a total length of approximately 4.4m;
 - b. The wall will have an overall height of approximately 2.7m;
 - c. The wall will have an overall height of between approximately 1.5m and 1.8m from the natural ground level.*
- 2. A wall at garage level adjacent to car parking space 8 has been set back 1m from the western boundary:
 - a. The wall will have a total length of approximately 7.8m;
 - b. The wall will have an overall height of between approximately 2.4m and 2.6m.*
- 3. The screening devices and awnings along the site elevations at the ground and upper levels will protrude into the side boundary setbacks."*



Figure 2: Image illustrating garage level walls within side boundary setback



Figure 3: Image illustrating garage level walls within side boundary setback

The applicant provides the following justification for the side setback encroachments:

“We have identified several factors which warrant the reduction in the side boundary setback which are specific to the garage level walls. These are as follows:

The proposed built to boundary wall will be positioned adjacent to the driveway area associated with the development at 2 Hungerford Lane, Kingscliff (refer to Figure 4).

Furthermore, the wall adjacent to car parking space 8 will be positioned next to a blank wall forming part of the entrance to Unit 5/2 Hungerford Lane, Kingscliff. As such, we have determined that the proposed walls within the side boundary setback will have no negative impacts with respect to overshadowing of habitable rooms or spaces.

The proposed walls at the basement level have been provided to mitigate any negative impacts associated with vehicle movements from the basement level car parking area. As such, although the walls will protrude into the side boundary setback, these will ultimately work to enhance residential amenity by minimising potential nuisance caused by noise and light impacts from vehicle movements within the proposed ground level car parking area.

It is proposed that these walls will be constructed of high quality, low maintenance building materials to minimise the visual impact of the structure on the adjoining landowners.

We have identified several factors which warrant the reduction in the side boundary setback which are specific to the screening devices and awnings along the side elevations at the ground and upper levels. These are as follows:

It is proposed that the screening and awning structures along the side elevations will be constructed of lightweight building materials. It has been determined that these building elements will not contribute to the bulk of the building and therefore do not create any negative impacts with respect to overshadowing of adjoining units. The screening devices within the side boundary setback have been provided to ensure that the proposed development will not result in any overlooking to habitable rooms and recreation areas. The proposed development has been designed to ensure that a high level of privacy will be created”.

The setback encroachments are considered reasonable for the reasons listed above.

In relation to **Design Control 3 - Setbacks - Rear Setbacks: Control a**, an 8m rear setback, or the deep soil zone whichever is the greater is required. The application seeks to vary the rear deep soil zone to a minimum width of 6m. This is the greatest distance available for the rear setback and as such the proposal does not comply.

In support of the variation, the applicant provides:

Response:

The proposed development has achieved the following rear boundary setbacks (refer to Figure 5):

- *Garage Level - approximately 7m at the shortest point to the south east corner;*
- *Units 1 & 3 -*
 - o *To balcony - 6m;*
 - o *To wall*
 - *Between approximately 8.9m & 10.8m;*
- *Units 2 & 4 -*
 - o *To balcony:*
 - *South-west boundary - 6.7m to balcony;*
 - *Southern boundary - 6m.*
 - o *To Wall:*
 - *Between approximately 7.4m and 10.7m.*



Figure 5: Image illustrating proposed rear boundary setbacks

We have identified several factors which warrant the reduction in the rear boundary setback. These are as follows:

- *It is firstly important to consider that the rear boundary adjoins a large Council reserve which is above Moss Street. This reserve area is very steep and forms a near vertical drop towards the Moss Street 'frontage' (refer to Figure 6). It is also important to consider that this area contains a significant amount of vegetation. As such, the proposed rear boundary setback will have no negative impacts on the streetscape amenity from Moss Street, as it will not be visible.*



Figure 6: Photograph illustrating looking west along Moss Street.

- *The component of the building projecting into the rear boundary setback will be open balconies (refer to Figure 7). As such, the rear elevation does not present bulky structure when viewed from the south. The main wall along the rear portion of the building has achieved a suitable rear boundary setback generally in accordance with the requirements of the control.*



Figure 7: Photograph illustrating perspective of the proposed development.

- *It has been determined that the adjoining unit at 5/No. 2 Hungerford Lane has provided an open balcony within the rear boundary setback. This balcony has achieved a rear boundary setback of approximately 5m (refer to Figures 8 & 9). Given the proposed development has achieved a minimum rear setback of 6m to the proposed balconies, the proposed development is assessed to be in accordance with the rear boundary setbacks prevailing within area. The proposed development will be of a form which is commensurate to that on the adjoining dwelling."*

Based on the information supplied above, it is considered that the rear setback variation is appropriate. The rear setback will be commensurate with those on adjoining lots.

In relation to **Design Control 4 - Car parking and Access: Control d. and h**, the controls provide that car parking cannot be located within the front setback and at grade parking cannot occur within 12m of the primary street frontage.

For reasons identified above under Front Setbacks, the proposed location of one visitors space within the front setback zone is considered to be appropriate and this variation is considered to be worthy of support..

In relation to **Design Control 5 - Building Footprint and Attics, Orientation and Separation - Building Separation: Control h**, 3m separation is required between walls containing primary windows/doors of sleeping rooms (at ground level only) to shared driveways, carports and garages.

It has been identified that bedrooms 2 & 3 will be positioned alongside the proposed driveway area of the proposed building, as well as the existing driveway providing access to the units on the adjoining site at 2 Hungerford Lane, Kingscliff. The windows of these bedrooms have been provided with appropriate screening devices to ensure that there will be no nuisance to future residents of the units from vehicle movements accessing the adjoining development. These windows have been positioned away from the adjoining site and will therefore ensure the privacy of future residents.

This variation is considered to be acceptable.

Overall, it is considered that the development responds well to the highly constrained site and the nature of existing development in the locality. The proposed floor space is well below the maximum prescribed by both DCP Section A1 and LEP 2014 and the development is thus not considered to be an overdevelopment of the site on this basis. Whilst the proposed development exhibits a number of minor variations to DCP A1, overall the objectives of the policy are considered to be maintained and the development is considered worthy of support.

A2-Site Access and Parking Code

Development Control Plan A2 – Site access and parking code requires that the following parking is to be provided:

Use	No.	Rate	Total to be provided
3 bedroom dwellings	4 Units	2 spaces for 3 or more bedroom units. In addition visitor parking at 1 per 4 units.	8 car parks for units and 1 visitor car park.

The proposal provides 8 basement car parks and 1 visitor car park on ground level and as such, sufficient parking is provided.

It is noted that the applicant seeks a relaxation to Council's maximum permitted driveway grade which has been accepted by Council's Engineers. The proposed access and parking arrangements are considered appropriate.

A3-Development of Flood Liable Land

The site is not flood prone.

A11-Public Notification of Development Proposals

In accordance with Section A11, The development application was notified for a period of 14 days, from Wednesday 9 September 2015 to Wednesday 23 September 2015.

During this period a total of five submissions (objections) were received.

A further submission (objection) was received by Council in relation to the amended plans.

The matters raised within are addressed under 'Public Submissions' below.

A15-Waste Minimisation and Management

Council's DCP Section A15 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 standard condition will be applied requiring that all waste shall be collected,

stored and disposed of in accordance with this section of the DCP. As such, the proposal is considered to be acceptable having regard to waste management and the provisions of this Section of the DCP.

B9-Tweed Coast Strategy

The proposed development does not contravene the Tweed Coast Strategy, being located within a designated medium density residential zone, outside of immediate proximity to the coastal environment.

(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

Appropriate conditions with regard to demolition of the existing dwelling on site have been applied.

Clause 93 Fire Safety Considerations

Council's Building Services Unit has assessed the proposed development and has provided appropriate conditions in relation to fire safety.

Clause 94 Buildings to be upgraded

There are no building upgrade works proposed. Clause 94 is not relevant to the proposed development.

(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 (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology and, social and economic demand.

Tweed Coast Estuaries Management Plan 2004

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is located close to Cudgen Creek however subject to conditions of consent will not impact on the coastal environment or water quality. It is considered that the proposal complies with 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 site is not located in proximity to either the Cobaki or Terranora Broadwater and as such 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

View Sharing/View Loss

A number of submissions raised concerns in relation to view loss which are addressed in detail under public submissions further in this report.

To address the concerns raised in public submissions, the applicant submitted a detailed view corridor analysis which is based on the principles of view sharing set down by Roseth SC in *Tenacity Consulting v Warringah Council* (2004) NSWLEC 140. This case set down the following 4 assessment criteria:

Assessment Criteria 1: An assessment of the value of views to be affected by reference to their nature, extent and completeness.

Assessment Criteria 2: A consideration of how views are obtained and what part of the property the views are obtained from.

Assessment Criteria 3: A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible minor, moderate, severe or devastating.

Assessment Criteria 4: An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result.

The submitted view analysis assesses the likely impacts on views from the following sites:

- 1 Hungerford Lane
- Unit 3/2 Hungerford Lane
- Unit 5/2 Hungerford Lane
- Upper level units at 2 Hungerford Lane
- Number 6 Hungerford Lane (various units).

In relation to **1 Hungerford Lane**, the site currently has substantial ocean views over the subject site as per below:



Figure 2: Photograph illustrating existing Dwelling on No. 1 Hungerford Lane.

In relation to assessment criteria 1, the existing view is not complete, having been obscured already by three storey development at 2 and 6 Hungerford Lane. The existing view is only provided by virtue of the undeveloped nature of the subject site.

In relation to Criteria 2, review of the plans for the approved dual occupancy currently under construction on 1 Hungerford Lane indicates that the views would be available in the absence of development of 4 Hungerford Lane from the upper level kitchen, lounge, dining and deck spaces. There could be a view also from the angled Bedroom 1 window.



In relation to Criteria 3, it is considered (as identified in the view analysis) that the view loss impacts to 1 Hungerford Lane could be classified as severe, noting that the existing view is only available because of the undeveloped nature of the subject site.

In relation to Criteria 4, the building has been designed as 2 storey fronting the street, increasing to 3 storey as it approaches the rear of the site. The majority of the building complies with the 9m height limit with the exception of the south

western corner. It is considered that any building on the subject site with a height exceeding the existing single storey dwelling would dramatically decrease views currently available from 1 Hungerford Lane. Thus though the view loss impacts can be seen to be severe (using the terminology as prescribed by *Tenacity*) the view loss itself is not considered unreasonable given the location of the site and the prescribed medium density zoning, complete with a 9m height limit. A building built to the height limit at the street frontage would impact more substantially on available views than the subject development.



Photograph taken from upper level of dual occupancy currently under construction at 1 Hungerford Lane.

The applicant contends that the building will be commensurate in scale with those buildings either side and planning assessment concurs with this viewpoint.

With regard to impacts from various units at **2 Hungerford Lane**, the following is provided:

2 Hungerford Lane contains a residential flat building of 5 units. This development itself contained a variation to the building height controls applicable at the time.

Concerns were raised by the owner of Unit 3 which is a ground level unit toward the western boundary. The submitted view analysis identifies that this unit does not currently receive ocean views by virtue of its ground level location and dense planting at the rear of the site. There is considered to be no impact on views for this unit as a result of the proposed development

In relation to Unit 5/2 Hungerford Lane, the submitted view analysis provides that views are available from both levels of the unit. In relation to Criteria 1, at the lower level, there is a restricted ocean view to the east through a small clearing in existing vegetation within the adjoining Moss Street road reserve. Additionally, there is dense screening vegetation along the boundary which restricts further views, similar to adjoining Unit 3 in this location. The current view from the lower level terrace is shown below:



This view is not complete and is only available due to a gap in the vegetation within the road reserve. This view could disappear at any time as the vegetation matures.

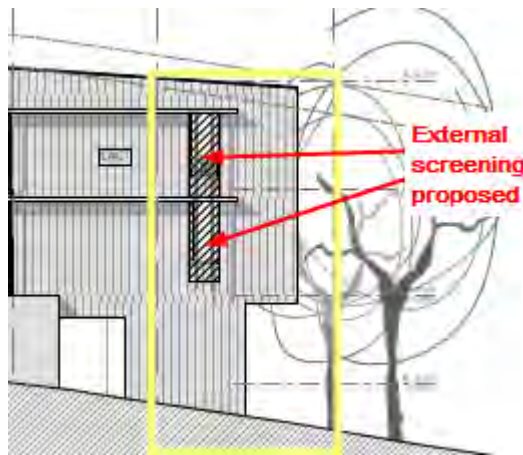
At the upper level, there is an unrestricted view to the ocean and Cudgen Creek as per below:



In relation to Criteria 2, at the lower level, the views are obtained from the main living area and terrace. At the upper level, the view is obtained from the balcony.

The view analysis determines that the view loss from the lower level is likely to be negligible. It does not appear that the proposed building will impact on ocean views obtained from the lower level of the building.

It is noted that the open terrace (at ground level) will be in proximity to the proposed building. In this location there is no floor space at ground level however the elevations demonstrate the existence of the supporting wall for the upper level units in this location, 1.5m off the boundary. At a higher level, there are small windows to the Unit 2 and Unit 4 outdoor living areas as shown below which the applicant proposes to screen (and seeks application of a condition in this regard). It is not considered that this is unreasonable given the higher density sought for the site under the zoning controls. Privacy screening could also be erected at ground level by the owner of Unit 3.



In relation to the upper level, the view analysis identifies a reduction on the view corridor from around 134 degrees to around 104 degrees, noting that the single dwelling house currently on the lot contributes to the expansive views currently afforded to the unit. Accordingly, the view analysis attaches a minor view loss impact to the upper level of Unit 5.

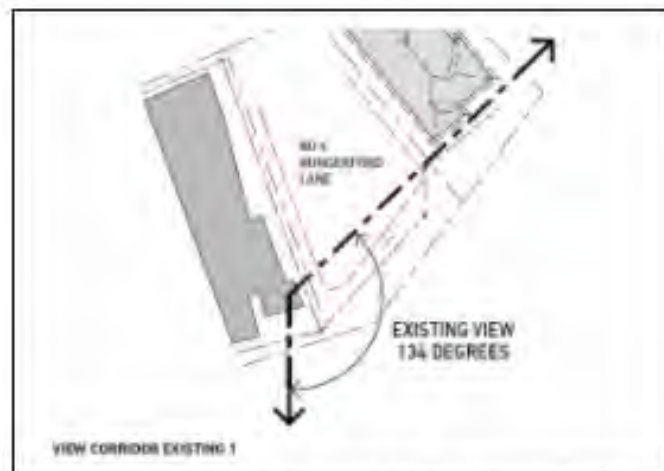


Figure 18: View corridor from Unit 5 / No. 2 Hungerford Lane.

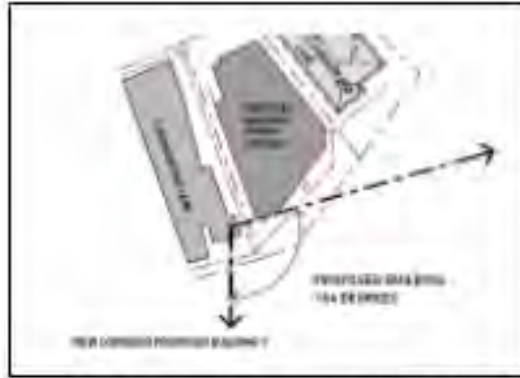


Figure 19: View Corridor Analysis – Upper Level Unit 5 / No. 2 Hungerford Lane,

In relation to Criteria 4, the proposed variation to the height limit and rear setback do impact on the views afforded to Unit 5. The applicant poses that the constraints of the site are such that further reducing the rear setback impacts on the ability of the proposal to provide car parking and further setting of the building into the site impacts on the available driveway grades. The applicant further notes that the rear setback is consistent with that achieved by the development at 2 Hungerford Lane.

The applicant provides the following with respect to the upper level balcony:

With respect to the upper level balcony, the views afforded from this area are quite extensive and offer a significant view corridor between the east and south encompassing views towards the Pacific Ocean and Cudgen Creek. It is assessed that from a standing position, these views increase towards the south west. It has been determined that whilst the proposed building will have some degree of impact on the views available from the upper level balcony, these are considered to be negligible given these areas will still have a substantial view corridor to the significant landscape features, i.e. greater than 90 degrees. The views towards the Pacific Ocean and Cudgen Creek will still be available to the site. Finally, despite the proposed development seeking variations with respect to building height and rear boundary setbacks, the scale and form of the building is considered to be in accordance with the built form in the area, and these areas of non-compliance are not likely to cause an unreasonable level of view loss.

Planning assessment concurs with this viewpoint.

Upper Level Units/2 Hungerford Lane

In relation to the above units at 2 Hungerford Lane, the building design affords expansive, unrestricted views to the upper level living spaces and balconies.

The views comprise outlooks to the Pacific Ocean and Cudgen Creek:



View from Unit 1 Balcony



View from Unit 1 Balcony



View from Unit 1 Balcony

In relation to Criteria 1, these views are from the extensive upper level balconies associated with the upper level units.

In relation to Criteria 2, the views are obtained from the primary recreation areas associated with these units and will be obtained from a sitting or standing position.

In relation to Criteria 3, the applicant provides that:

It has been determined that the proposed development will result in a degree of view loss from the upper level balcony. Figure 24 below provides a visual representation of the views which will be available from these areas as a result of the proposed development. These are likely to be in excess of 90 degrees. It is worth noting that this would be from a seated position from an outdoor setting positioned on the balcony; when standing on edge of the balcony, views towards the south west are likely to increase. It is assessed that the upper level balcony will still achieve extensive and unrestricted views towards the Pacific Ocean and Cudgen Creek, and as such, the level of view loss resulting from the proposed development is considered to be negligible/minor.

The relevant figures are shown below:

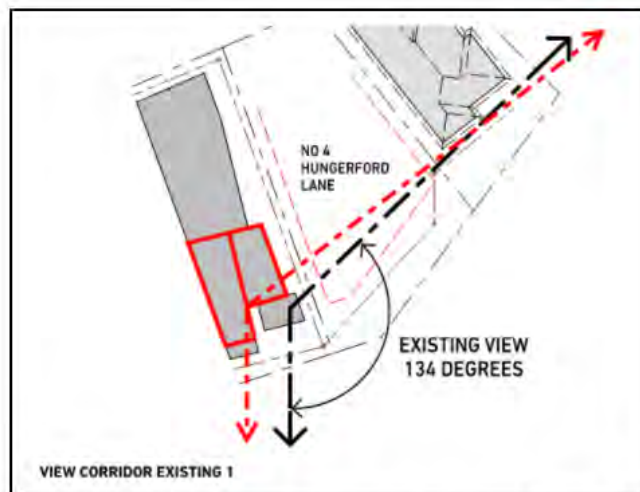


Figure 23: Current view corridor from upper level units of No. 2 Hungerford Lane.

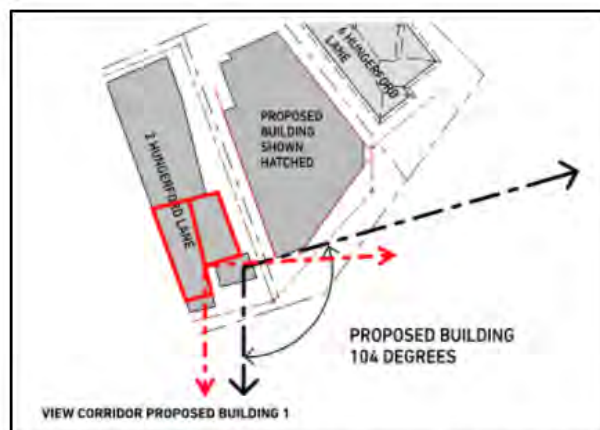


Figure 24: Proposed view corridor from upper level units of No. 2 Hungerford Lane.

Planning assessment concurs with the applicant's position. Considerable views will remain for both upper level units notwithstanding the building height and rear setback variation. Potential for overlooking of the upper level balcony areas will be mitigated by the balcony walls for the proposed development and external screening on the proposed side facing minor windows to this area. Whilst a greater rear setback would have minimised impacts on view loss for the upper level balconies, in particular that of Unit 1, it is considered that substantial views remain available to this Unit.

6 Hungerford Lane

Both levels of units at 6 Hungerford Lane have balconies which overlook expansive ocean and Cudgen Creek views. In relation to Assessment Criteria 1, these views are from the rear balconies and are between north east and south west as per the following:



Figure 27: Current view corridor analysis from No. 6 Hungerford Lane.

In relation to Criteria 2, these areas would be the principle recreation spaces associated with these units and would be obtained from a seated or standing position.

In relation to Criteria 3, the submitted view analysis demonstrates that the existing view of around 164 degrees would be reduced as a result of the proposed development to around 111 degrees:

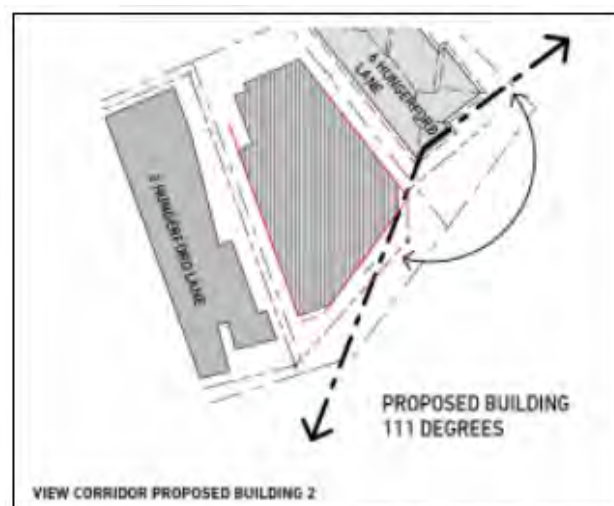


Figure 29: Proposed view corridor from No. 6 Hungerford Lane.

The resulting impact is considered to be minor.

In relation to Criteria 4, because of the orientation of the subject site, it is considered that a compliant development would not result in a considerable change in impact to views available from the balconies of 6 Hungerford Lane. The 6m rear setback of the subject development preserves much of the existing view corridor for 6 Hungerford Lane along Cudgen Creek. The building does not impact at all on existing ocean views from 6 Hungerford Lane.

Overall, in an area set aside for medium density housing, it is considered that impacts to existing views as a result of development are unavoidable in some respects. In this instance, substantial views remain available to most surrounding properties. The extent of view loss has been quantified by the applicant and reviewed by Council planning staff. It is further noted that recent legal opinion clarifies that Tenacity does not provide that anyone has a proprietary right to retain all or part of the views enjoyed (or capable of enjoyment) from their land.

Specifically, as provided by Lindsay Taylor Lawyers (dated 19 November 2015, general commentary in 'Focus' newsletter):

"A 'planning principle' is not binding law. It is described by the Court as a statement of a desirable outcome from a chain of reasoning aimed at reaching a planning decision, or a list of appropriate matters to be considered in making a planning decision. Although a planning principle is not binding on a decision maker, the Court will try to apply the principle consistently in appeals before it, unless it is inconsistent with the council's applicable controls. If a planning principle is observed by the Council when assessing a development, the planning decision is more likely to be sound in the eyes of the Court.

In other words, if an application is made to a council for development which has the potential to impact on neighbouring views, then it is desirable that the council assess the impact on views in accordance with the 4 step process set out in Tenacity, including determining whether the impact is negligible, minor, moderate, severe or devastating.

However, Tenacity does not provide that anyone has a proprietary right to retain all or part of the views enjoyed (or capable of enjoyment) from their land. The Court specifically acknowledges that entire loss of a view in some cases (although a devastating impact) could be reasonable in the circumstances). Also the case is merely concerned with the planning decision, and does not deal with whether a landowner can enforce any right to a view against another landowner.

No ownership of a View

That issue was dealt with by the High Court in Victoria Park Racing & Recreation Grounds Co Ltd v Taylor [1937] HCA 45, which remains good law today. The High Court held that a property owner does not own the views (spectacles) from his or her land. Justice Dixon stated: "I find difficulty

in attaching any precise meaning to the phrase 'property in a spectacle'. A "spectacle" cannot be "owned" in any ordinary sense of that word."

This position has been reinforced in several subsequent decisions of the Court and, as a legal principle, remains relatively unchanged. In Robson v Leischke [2008] NSWLEC 152, His Honour, Preston CJ, summarised the limited powers available to an aggrieved land owner when, at paragraph [86] of his judgment, he stated:

...a defendant may erect a building or other structure such as a fence, or plant a tree on his or her land which interferes with the neighbour's enjoyment of their land. The building, structure or tree may...spoil the neighbour's view ...yet such interferences are not actionable as a nuisance".

It is thus considered that planning staff have appropriately addressed the 4 principles as prescribed by *Tenacity* and that the resultant assessment demonstrates that the development should not be refused on the basis of impact on the views available from (and continuing to be available from) adjoining properties.

Geotechnical/Earthworks/Landforming

A geotechnical report is provided by Geotechniques Foundation Engineering. The report indicates that the site is classified as "P" in accordance with AS2870 – 2011 with reactivity of an "S" site. The recommendation of the geotechnical report is that the foundations for the proposed dwelling are piered to rock and designed with due consideration of the sites characteristics. Further, the geotechnical report specifically does not address slope stability of the site. Given the steep nature of the site it is recommended that a slope stability geotechnical report be provided prior to issue of a construction certificate. Appropriate conditions have been applied.

Access

Access is proposed off Hungerford Lane and grades down into a basement car park. The gradients of the proposal do not meet the required 6m length of 5% grade as stipulated in AS2890.1 section 3.3 a). A letter of relaxation has been submitted from Westra Partners Consulting Structural and Civil Engineers with the following justification:

- The site achieves approximately 100mm from lip of kerb to driveway level at the property boundary line convey stormwater flow within the kerb & channel and street verge,
- There is no pedestrian footpath between the road and property boundary. This minimises the potential risk of collision/accident between pedestrian & vehicle by reducing the likelihood of pedestrian interaction,
- Hungerford lane is a one way street. This minimises the potential risk of collision between vehicles entering & exiting the site by the nature of a one-way street,

- The proposed driveway has incorporated 2.0m long transition areas to allow maximum changes in grade in accordance with AS2890.1 section 2.5.3 d).

In addition to the above the adjacent building has a driveway which also does not meet the required 6m length of 5% grade (view adjacent driveway in photograph below).

Council's Traffic Engineer has accepted the proposed variation and standard conditions have been applied.

No access is to be permitted to Moss Street from the rear of the property due to safety concerns.

A footpath will be required to be provided along the Hungerford Lane property frontage.

(c) Suitability of the site for the development

Surrounding Land uses/Development

Notwithstanding the matters raised in submissions, the proposed development is considered to be consistent with the desired and emerging medium density character of the area prescribed by the R3 zoning.

Site Orientation

The site has expansive views to the south east and south west. The building orientation has maximised access to these views and ensured view sharing between adjoining properties as much as possible.

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

During the notification period, a total of five submissions (objections) were received.

A further submission (objection) was received by Council in relation to the amended plans.


The matters raised in submissions are addressed below with relevant assessment comments provided.

Issue	Assessment Response
<p>The area has a 2 storey height limit with buildings not to exceed 9m. The applicant's proposal is 3 storey and in excess of 9m.</p>	<p>The site has a 9m height limit under LEP 2014. The applicant's proposal exceeds the height limit for a small portion of the building at the rear south western corner. The applicant has sought a variation to LEP 2014 for this which has been addressed above. This issue does not warrant refusal of the application.</p>

<p>The floor space is too high and the proposal is an overdevelopment of the site</p>	<p>The floor space is actually approximately half of what is permitted by LEP 2014 for this site within the Medium Density residential zone. The development is not considered to be an overdevelopment on this basis. This issue does not warrant refusal of the application.</p>
<p>Future buildings on the low side should step up from Moss Street using the grade of the land within the 2 storey height limit.</p>	<p>The land has a 9m height limit with which the development is predominantly consistent. The location of the sewer easement limits the ability of the development to further nestle into the site whilst still achieving appropriate driveway grades. This issue does not warrant refusal of the application.</p>
<p>The development will limit our views and our ocean breeze and subsequently devalue our property.</p>	<p>A detailed view sharing assessment has been undertaken above. In relation to 1 Hungerford Lane (from which this point was raised), there will be substantial loss of views however this is considered to be reasonable given the view has only historically been available based on the undeveloped nature of the subject site. The area is zoned for medium density development with a 9m height limit. These factors should be considered when developing in the area. This issue does not warrant refusal of the application.</p>
<p>The property has unobscured water views and does not warrant the proposed height and width.</p>	<p>The proposed bulk and scale of the development is considered to be sufficient. In dealing with the constraints of the site but still providing for a reasonable yield, it is considered that the proposed design is appropriate and maximises the development capacity of the site as much as possible without significant environmental impacts. This issue does not warrant refusal of the application.</p>
<p>The development proposed is above the maximum height. This will cause overshadowing, loss of aesthetics and loss of amenity to adjoining dwellings</p>	<p>The applicant has submitted a variation to Clause 4.3 of LEP 2014 with respect to the building height. Submission of overshadowing plans demonstrates that the proposed impacts of the variation are negligible with respect to overshadowing of adjoining properties. In relation to loss of amenity, it is considered that the small portion of the building that exceeds the height limit will not significantly alter the amenity</p>

	<p>currently obtained for any surrounding unit given the location of solid walls separating the proposed balcony areas. There are small openings in these walls with external screening proposed. Because of the shape of the allotment and the siting of existing development on either side, it is not considered that a fully compliant building would dramatically improve the outcome in terms of amenity for surrounding development. This issue does not warrant refusal of the application.</p>
<p>The building is too large and forms a solid block. It is not sympathetic to the contour of the hill. When looking at the hill-scape of Hungerford Lane from the rear or the building (e.g. from the Cudgen Creek area) the proposed building will form a solid block. The building should be tiered down the hill as has been achieved with the units at 2 Hungerford Lane.</p>	<p>The constraints of the site (slope, sewer easement and constrained size and shape) mean that further setting of the building into the hillside is not possible without resultant impacts and further non-compliance with Council's controls. When viewing the site from Cudgen Creek, it is considered that the proposed development would be in keeping with surrounding development, particularly with regard to building height. This issue does not warrant refusal of the application.</p>
<p>The proposed building separation between 4 Hungerford Lane and 2 Hungerford Lane is not sufficient. It will negatively impact on building amenity for adjoining dwellings, including shadowing, extensive loss of view and acoustic privacy</p>	<p>The proposed building separation is consistent with Council's controls with the exception of minor encroachments at the upper levels for screening to the side boundaries. Overshadowing and view loss impacts have been addressed above. In relation to acoustic privacy, it is evident that every side facing window will have a fixed external privacy screen. In fact, the dwellings have been oriented to the front and rear of the allotment rather than to the side boundaries to minimise overlooking, visual and acoustic privacy impacts. It is considered that screening devices are an appropriate response. This issue does not warrant refusal of the application.</p>
<p>The design does not take into account the sole private outdoor spaces of adjoining dwellings. The POS of adjoining dwellings will become entirely non-existent with the planned concept.</p>	<p>It is not considered that the proposed development would sterilise the use of any POS on adjoining sites. The subject outdoor living areas are all oriented to the rear of the allotments to maximise access to views and solar access. Screening to the minor openings in the balcony walls will serve to mitigate</p>

	<p>impacts to 2 Hungerford Lane. With regard to 6 Hungerford Lane, the rear balcony tapers in as it approaches the relevant side boundary. The widest and most useable part is located centrally within the balcony floor plate and oriented toward the rear. It is considered that impacts on the existing balconies at 6 Hungerford Lane will be no more severe than those usually achieved in similar situations where view sharing is sought. This issue does not warrant refusal of the application.</p>
<p>There will be a significant loss of natural sunlight to the units in 2 Hungerford Lane, especially mid-winter sunlight to their principal private open spaces and to the windows of indoor spaces. Morning sunlight to 2 Hungerford Lane will disappear.</p>	<p>In relation to overshadowing impacts, the submitted plans demonstrate negligible impact in this regard. All principle private open spaces for development for either adjoining lot are located toward the rear of the site to maximise view access. Whilst the development will represent a significant change to the status quo for both 2 and 6 Hungerford Lane, review of the submitted plans does indicate that at 9am mid-winter, there will be shadow cast on the east facing elevation of the development at 2 Hungerford Lane. This shadow is gone by 12pm. The shadow diagrams demonstrate that a compliant development would also result in the same impacts and that the shadow is lengthened by the existing development at 6 Hungerford Lane which will shadow 4 Hungerford Lane in the same way. The external living areas of 2 Hungerford Lane are entirely free from shadow from the subject building from 12 onwards in midwinter. The orientation of the lots in an east/west fashion unfortunately means that it is very difficult to avoid shadow in a medium density area. This issue does not warrant refusal of the application.</p>
<p>The proposed design and height of the development will completely obstruct views to the east for residents of 2 Hungerford Lane. The design will result in a reduction of views by well over 50%. The views for numbers 6 and 1 Hungerford Lane will also be significantly affected.</p>	<p>A detailed view analysis was undertaken by the applicant and reviewed by planning staff. It is not accepted that view loss is a reason for refusal of the application.</p>

<p>The proposed car park entrance, residence entrances, waste disposal bin, bedroom and living area locations of the units on the western side will significantly impact on noise to units on the eastern side of 2 Hungerford Lane. It appears that no provision has been made for a wall between the 2 properties to block out noise.</p>	<p>Standard conditions have been applied in relation to impacts from ancillary building features such as these. This is considered sufficient to regulate impacts. Notably the bin store is within the partial basement and access to the units is centrally obtained. This matter does not warrant refusal of the application.</p>
<p>The southern building line should be inside the projection of the two existing dwellings at 2 and 6 Hungerford Lane and the entire building moved closer to Hungerford Lane itself affording all residents equal views and sunlight.</p>	<p>Review of the amended plans indicates that the proposed building is actually generally in line with the building lines of surrounding development:</p>  <p>This issue does not warrant refusal of the application.</p>
<p>The building height should be no higher than the existing building at 2 Hungerford Lane.</p>	<p>Review of the assessment report indicates that the building at 2 Hungerford Lane was actually approved with a height variation with a maximum height of 10.5m. The subject building has a maximum height of 9.6m. This issue does not warrant refusal of the application.</p>

*Note that copies of the above submissions were forwarded to the applicant for review and comment. Upon review, the applicant modified to proposed development plans to reduce the height of the building by 300mm, pull it back from the sewer easement and provide additional information and justification in relation to view loss and overshadowing impacts. The revised plans were made available to the public and the following further submission was received in relation to the amendments:

Submission 6 (combined response to amended plans)

- The alterations are so small that they have made little or no impact to the original development concept and therefore to the issues raised previously.
- The amended proposal continues to be above the building height. The building does not provide a stepped design at the rear of the site and forms a three storey solid bulk design. It will impact negatively on streetscape character from Moss Street, Cudgen Headland and Cudgen Creek. It continues to negatively impact on adjoining properties.
- The developer's photo representation is inaccurate. It appears this photo is taken at the Moss Street frontage of numbers 10 and 12 Hungerford Lane, not 4 Hungerford Lane.
- The precedents cited of 6 and 1 Hungerford Lane are inaccurate. Number 1 (currently under construction) is well within height limits and considerable consultation has occurred between neighbours. The streetscape has been taken into account and the building is of a scale and bulk which is appropriate.
- There will be impacts on residential character and amenity for adjoining dwellings and loss of private outdoor space.
- Rear setbacks continue to not comply which impacts on privacy of adjoining dwellings and does not allow for private outdoor recreation,
- We believe the loss of view from current private outdoor spaces will be considerably greater than indicated in the developer's response. The minor amendments have made little impact to the original plans and the loss of view continues to be significant and unreasonable.
- The line at which the view analysis of Unit 1 / 2 Hungerford Lane is not a reality. Unit 1 is an upper unit on the eastern side of 2 Hungerford Lane. The view corridors presented were drawn from the very southern tip of the balcony. As can be seen in Figures 23 and 24 in the developers view corridor analysis, this part of the balcony is not a private outdoor space for Unit 1 (or for Unit 2). This portion of the balcony is in full view and in full sun, wind and rain, has no roofing, walls or screening (as a consideration to adjoining dwellings view corridors). It is not possible to utilise this area as a private outdoor space or recreation area. Furthermore, in respect to the privacy of the lower units the southern portion of the balconies on the upper level are rarely used as an outdoor living space.
- We also note that the current owner of 4 Hungerford Lane was in fact the person responsible for the design and build of 2 Hungerford Lane, so should be well aware of the balcony configuration of 2 Hungerford Lane and the impact of the proposed development. A similar design for 4 Hungerford Lane would be much more in keeping with the residential character and amenity consideration of neighbouring dwellings.
- Unit 1 will have no POS whatsoever under the proposed development.
- We disagree that the level of noise and privacy is minimal. The side boundary setbacks which continue to not comply will impact on adjoining dwellings.
- The proposed development will mean that there will be 20 bedrooms adjacent to each other across the neighbouring properties.

Planning Comment in relation to Submission 6

Planning staff met with a number of objectors on site to ascertain an appreciation of the above purported impacts on properties at 1, 2 and 6 Hungerford Lane.

The discussion on site centred on view loss and amenity and as such, this report has focused on those matters. In relation to the further matters raised by submitters, the foregoing assessment is considered to appropriately respond. The site is constrained and whilst there are a number of variations to Council's adopted controls, the merits of the proposed development are considered to be sound.

(e) Public interest

Subject to the recommended conditions of consent, and informed by the above assessment in relation to the principles of view sharing, it is considered that the proposed development, which is in line with Council's desired intent for the subject area is in the public interest.

OPTIONS:

1. Approve the application
2. Refuse the application with reasons.

Council officers recommend Option 1.

CONCLUSION:

Overall, the proposed development, inclusive of the Clause 4.6 variation to Clause 4.3 of Tweed Local Environmental Plan 2014 in relation to building height is considered to be appropriate for the site and locality, and suitable for approval with conditions.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Shadow diagrams 'Sun Study' Compliant Development and Proposed Development, DA0009 2 and DA010 2 within 'Amended Concept Plans' (ECM 3962656)
- Attachment 2. Variations Report – Tweed Local Environmental Plan 2014 (ECM 3962657)
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3 [PR-PC] Class 1 Appeal Development Application DA15/0742 for the Conversion of a 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:

Tweed Shire Council has been served with a Class 1 Appeal for the refusal of Development Application DA15/0742. The matter is listed for a Telephone Directions Hearing which is to take place at 9.50am on Monday, 14 March 2016.

The Development Application was lodged with Council on 8 September 2015 and seeks approval for the conversion of a boathouse to a combined boathouse and dwelling at Lot 602 DP 1098619; Point Break Circuit Kingscliff (within SALT).

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 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.

A report was presented to Council on Thursday, 5 November 2015. This report recommended refusal of the subject application 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 for the recommendation was carried and supported unanimously.

This report seeks a Council resolution to engage Council's solicitors to defend the appeal.

RECOMMENDATION:

That Council's solicitors be engaged to defend the appeal for Development Application DA15/0742 for the conversion of a boathouse to a combined boathouse and dwelling at Lot 602 DP 1098619; Point Break Circuit Kingscliff

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:

Tweed Shire Council has been served with a Class 1 Appeal for the refusal of Development Application DA15/0742.

The Development Application was lodged with Council on 8 September 2015 and seeks approval for the conversion of a boathouse to a combined boathouse and dwelling at Lot 602 DP 1098619; Point Break Circuit Kingscliff.

The application 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 indicated that the primary reason for this proposed conversion was the need to ensure protection of the boathouse with the provision of a caretaker onsite due to increase instances of vandalism, 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 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 application was deemed inappropriate for several reasons, including inconsistency with the Tweed Local Environmental Plan (TLEP) 2000 and the applicable 2(f) Tourism zone objectives, SEPP 71 – Coastal Protection, the Tweed Coast Estuaries Management Plan 2012, Clause 39A of the TLEP 2000 in regards to Bushfire protection and the inadequate response to submissions made by the public objecting to the proposal.

In addition to these reasons for refusal, vehicular access to the site is considered a significant issue.

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.

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 i.e. 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 boathouse. 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.”

It is considered that the issue of vehicular access to the site may be considered separately as a pretext to the preparation of the Statement of Facts and Contentions for the Class1 Appeal, given the legal status of the adjoining community land and restrictions imposed upon the use of such land.

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.

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 and it is advised that no consultation or application has been received to vary the current Section 88B instrument.

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

The site is within a mapped bushfire prone area, however due to the recommended refusal, the application was not referred to the Rural Fire Service (RFS) during the assessment process. This appeal will now require Council to liaise with the RFS. If the Service is not prepared to assist with the defence of the refusal, Council will require the engagement of a suitable Bushfire consultant.

The applicant seeks the following orders from the Court:

1. The appeal is allowed.
2. Development application DA15/0742 dated 31 August 2015 for conversion of an existing boathouse to a combined boathouse and dwelling at Lot 602 DP 1098619 is approved.
3. Such further or other orders as the Court sees fit.

There are no circumstances relevant to the proposed development, subject land or surrounding community land that may give cause to Council to reconsider the reasons for determination of this application in November 2015. Accordingly, having regard to the attached Council report and associated reasons for refusal, it is considered the appeal should be defended.

The recommended option below includes the appointment of consultants to assist with the preparation of the Statement of Evidence as deemed necessary by Council's legal representation. It is anticipated that this will be limited to a bushfire consultant if the RFS are not prepared to formally assist Council with this documentation.

OPTIONS:

1. Engage Council's solicitors to defend the appeal and appoint consultants as necessary; or
2. Engage Council's solicitors to negotiate consents orders or a Section 34 Agreement for DA15/0742.

Council officers recommend Option 1.

CONCLUSION:

It is recommended that Council defends the appeal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Council will incur expenses as a result of the appeal.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Report and Resolution from the 5 November 2015 Planning Committee meeting for DA15/0742 (ECM 3961009)

4 [PR-PC] Schedule 1, Additional Permitted Uses - LEP Amendment No.22, for a 'Dwelling House' on Lot 8 DP 12676 at Eviron Road, Eviron

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: PP16/0001

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:

Council has received a Landowner request for the preparation of a Planning Proposal and a Cost Agreement in accordance with Council's adopted Fees and Charges, has been executed with the Landowners, to cover the cost of preparing the planning proposal and LEP amendment.

The planning request seeks the inclusion of 'Dwelling-house' within the Additional Permitted Uses schedule of the Tweed Local Environmental Plan 2014, for land known as Lot 8 DP 12676 at Eviron Road, Eviron.

The allotment was created by plan of subdivision in 1923 and is one of several lots of comparative size that have the hallmarks of an early rural-residential style subdivision. It would appear that owing to a change in planning law under Interim Development Order No.2 of 1966 that this allotment has, most likely unintentionally, been deprived of a dwelling entitlement. The effect is that the neighbouring lots created under the same plan of subdivision have been subsequently developed for rural residential purposes, with exception to this allotment.

The site has a dual zoning of RU2 Rural Living and a small area of RU1 Primary Production. Preliminary evaluation of the land indicates that there is no apparent constraint that would prevent its use for a dwelling house, other than the Local Environmental Plan (LEP) prohibition. There is however some level of site constraint that warrants identification, these are addressed below.

For the reasons discussed within the report it is recommended that a Planning Proposal be forwarded to the NSW Department of Planning and Environment for a Gateway determination.

This is considered to a minor project and will not have an adverse impact of the Strategic Planning & Urban Design Unit's adopted Work Priorities Plan 2015/16.

RECOMMENDATION:

That:

- 1. A planning proposal pursuant to s.55 of the *Environmental Planning and Assessment Act 1979*, seeking to facilitate development of a dwelling house on Lot 8 DP 12676, at Eviron Road, Eviron be prepared and submitted for a Gateway Determination, as administered by the NSW Department of Planning & Environment;**
- 2. The Minister for Planning or their Delegate be advised that Tweed Council is not seeking plan making delegations for the planning proposal;**
- 3. The Minister for Planning or their Delegate be advised that the minimum exhibition period for this Planning Proposal should be 14 days;**
- 4. On receipt of the Minister's Gateway Determination Notice to proceed any 'conditional' requirements of the Minister and any other study or work required by Council for the purpose of making a determination of the lands suitability are to be completed, and included within the public exhibition material;**
- 5. That the planning proposal be publicly exhibited in accordance with the Gateway Determination; and**
- 6. Following public exhibition of the Planning Proposal a report is to be submitted to Council detailing the content of submissions received and any proposed amendment(s).**

REPORT:

Council has received a Landowner request for the preparation of a Planning Proposal that seeks the inclusion of 'Dwelling-house' within the Additional Permitted Uses schedule of the Tweed Local Environmental Plan 2014, for land known as Lot 8 DP 12676 at Eviron Road, Eviron.

The allotment was created by plan of subdivision in 1923, which appears to have been endorsed by a Shire Registrar. It is one of several lots of comparative size that have the hallmarks of an early rural-residential style subdivision, a development pattern that has since emerged with neighbouring lots in the area supporting dwelling houses. It would appear that owing to a change in planning law, under Interim Development Order No.2 of 1966, this allotment has been deprived of a dwelling entitlement by virtue of that change, rather than by the original subdivision or a later landowner.

Preliminary evaluation of the planning request included identification and assessment of constraints affecting subject land, as summarised in the following sections of this report indicates that there is no apparent constraint that would prevent its use for a dwelling house.



SOURCE:
Aerial imagery was captured April 2015 © AAM Pty Ltd and NSW LPI

Cadastre: 02 February, 2016
© Land and Property Information (LPI) and Tweed Shire Council
Boundaries shown should be considered approximate only.

1:2,000 A4 Portrait
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TWEED
PO Box 816
Woolumbidgee NSW 2484
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E planning@tweed.nsw.gov.au

Tweed Local Environmental Plan 2014
Planning Proposal
AERIAL IMAGERY - 2015
Affected Properties: Lot 8 DP 12676
Eviron Road, Eviron

Council File [PP16/0001]
revised [02/02/2016]

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Fig. 1 Aerial photo of the subject site

Key Identified Site Constraints

Reticulated Sewer

Council's Engineering and Environmental Health Staff have each provided advice on the proposal. Reticulated sewer services are not available and any future residential use of the land will need to rely on an on-site sewer management system.

Farmland Protection & Zoning

Lot 8 DP 12676 is zoned predominantly RU2 Rural Landscape and has a small area of RU1 Primary Production. This latter zoned area is also mapped as Regionally Significant Farmland. This part of land is excluded from this Planning Proposal, as outlined on figures 3 and 4 below.

The farmland / RU1 zoning is largely anomalous in that the land mapped has no continuity or real connection with the larger neighbouring similarly zoned land, which is used for the farming of sugar cane. Its bisection by Eviron Road, its very small land area, and proximity to surrounding residential properties, makes for an extremely unlikely case of aggregation for farming purposes.

The remaining larger area of the site, mapped RU2 Rural Landscape, is identified as unsuitable for cultivation, and being more suited to grazing. At less than 2.8ha this land has no to very limited potential for commercial grazing enterprise.

Given the above, and the proposed siting of a future dwelling house, there will be no significant impact on the land's 'productive use' in a farming / rural industry sense. Utilising the land, as neighbouring properties have done, for rural residential /hobby farm is seen to be a justified and reasonable use of the land.

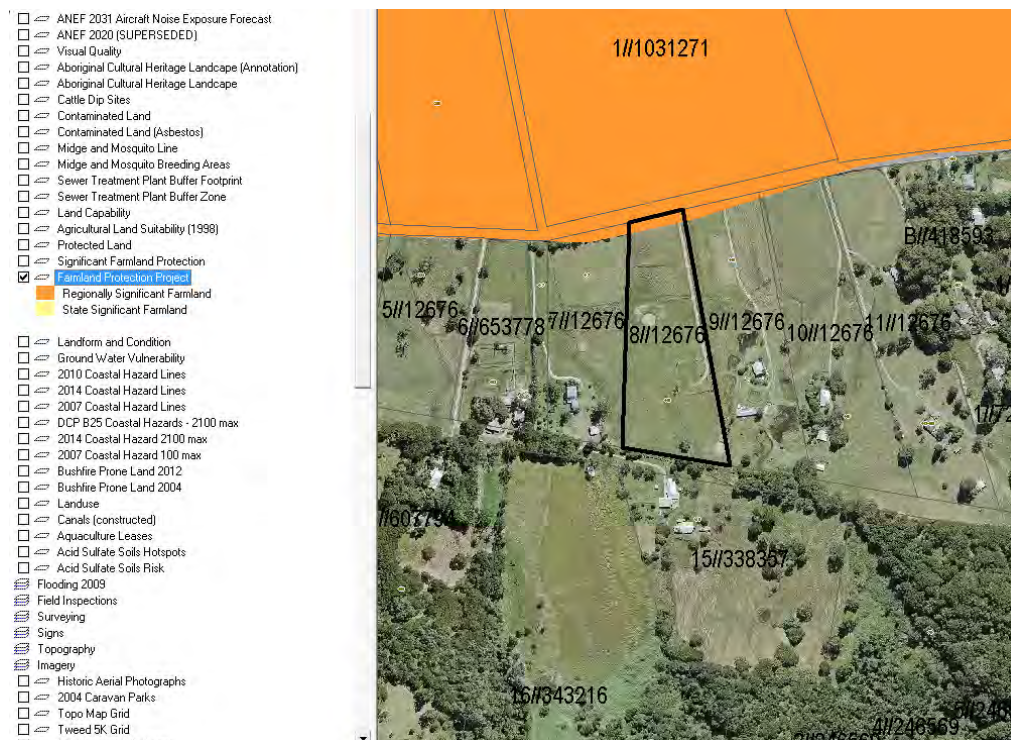


Fig 3 Regionally Significant Farmland

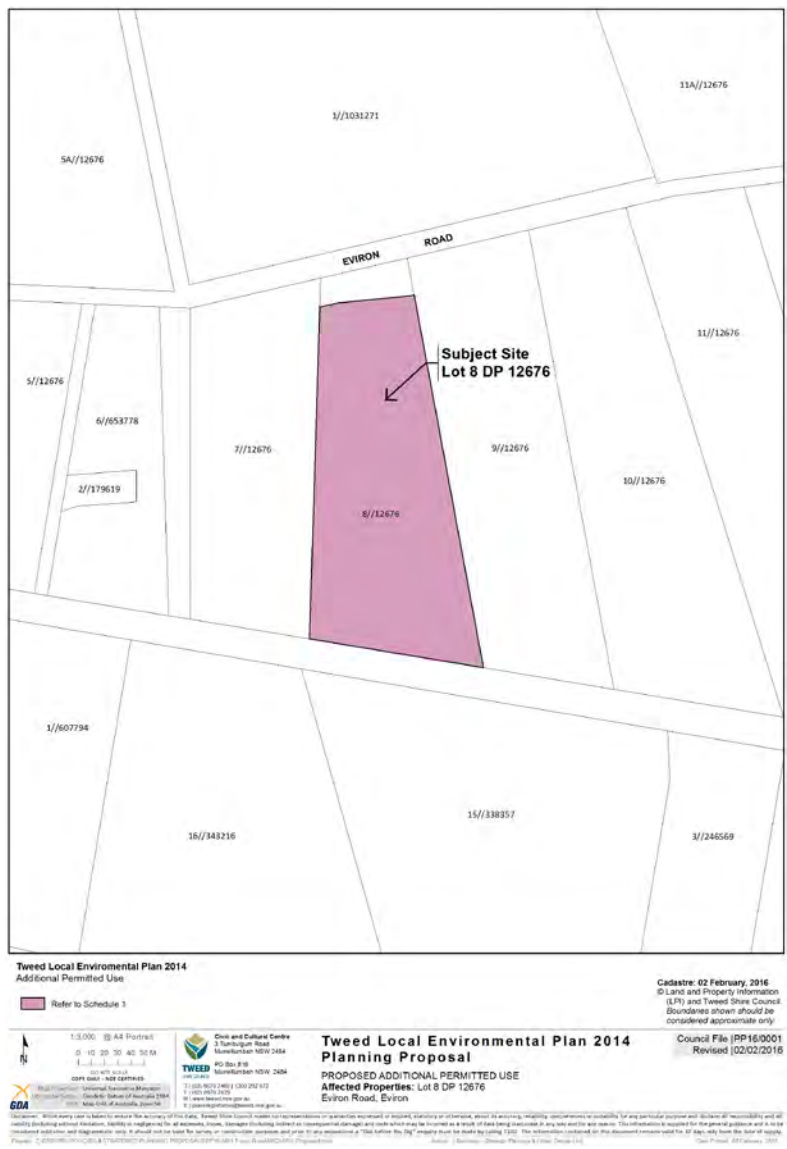


Fig 4 Land affected by this Planning Proposal (excludes areas of RU1)

Flooding

The majority of the site is located outside of an ARI 100 year flood area, however part of the southern portion of the lot, including the proposed site of the dwelling house, is identified within Council’s mapping as being subject to flooding under a Probable Maximum Flood (PMF).

Whilst there is a minor inconsistency with the Ministerial Directions it is justified as Section 1.5 of Council’s ‘Policy – Flood Risk Management’, developed in accordance with the NSW Floodplain Development Manual, identifies that residents within flood-prone areas can relocate to flood free areas as a result of the natural topography of the site, and is therefore compliant with the Council’s policy. On these grounds Council’s Engineers have considered the proposal suitable for the proposed use, subject to further evaluation at the development approval stage.

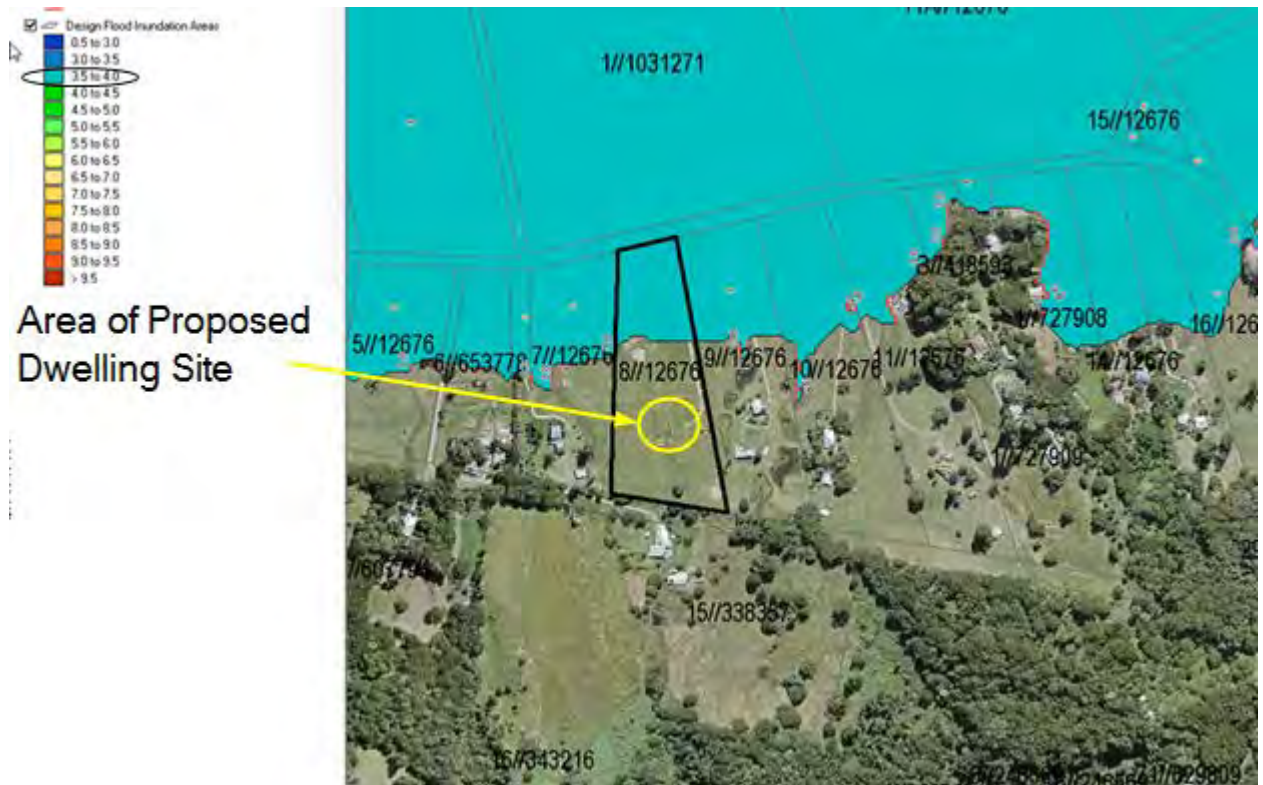


Fig 5 Design Flood Inundation Areas

Acid Sulfate Soils

The site has been identified on the Tweed LEP 2014 Acid Sulfate Soils Map as containing Class 2 and Class 5 Acid Sulfate Soils. The proposed dwelling area is to be located on land mapped as class 5.

Erecting a future dwelling house is not considered likely to cause significant disturbance of acid sulfate soils, and will need to be further assessed at the development approval stage when details of construction methods (e.g., footings) and the like are known.

Planning for Bushfire

A small portion of the land is mapped as vegetation buffer of 100m from Vegetation Category 1. To satisfy requirements of Ministerial Directions provided under Section 117 of the *Environmental Planning & Assessment Act 1979*, this Planning Proposal will be further consulted with NSW Rural Fire Service, to assess its consistency with *Planning for Bushfire Protection 2006* guidelines.

Soil Contamination

There is no known prior use of the land that would ordinarily give rise to a concern of land contamination. Nevertheless, the age of the subdivision evidences occupation of the land in one capacity or other and much of which is not known.

There is a requirement under State Environmental Planning Policy 55 - Remediation of Land that a council must be satisfied as to the contamination of land for the intended purpose when preparing an LEP, and as such it is recommended that should the planning be proceed with that a preliminary contamination assessment be commissioned once a Gateway approval has been issued. This matter will also be raised with the DP&E at the time of the Gateway referral.

OPTIONS:

1. Proceed with the recommendations provided within this report and forward a planning proposal to the NSW Department of Planning and Environment for a Gateway Determination.
2. Defer consideration of this report and seek for information from Council staff or the Landowner(s).
3. Resolve not to act on the Landowner(s) request. In this event it recommended that reasons for not doing so be provided. This would assist any consideration by the Department of Planning and Environment should the Landowner seek an administrative review.

Officers recommend Option 1.

CONCLUSION:

This report has highlighted a unique, but not isolated, situation where a change in planning law has had what is arguably an unintended consequence by depriving this property of its dwelling entitlement.

Not all changes in planning laws can be said to operate negatively by later preventing development that was otherwise permitted, as circumstances, demand, and expectation for land use can change significantly over such long periods of time. The subject subdivision was approved in 1923 and is seemingly an exception, as evidence by the long established use of the neighbouring lands for rural (small lot) residential use, which is a key characteristic of the immediate locality.

This report highlighted several constraints on the use and development of the land, and key areas requiring additional evaluation should the proposal be approved at the Gateway, but none that are considered prohibitive of a dwelling house use as proposed.

It is recommended that the planning proposal be referred to the NSW Department of Planning and Environment for a Gateway Determination.

COUNCIL IMPLICATIONS:

a. Policy:

The proposal is consistent with Council's policy on sustainable and economic use of rural land.

b. Budget/Long Term Financial Plan:

NIL

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. PP16/0001 Gateway Planning Proposal Version 1 (ECM
3959814)

5 [PR-PC] Tweed Development Control Plan 2008 - Section A1 Residential and Tourist Development Code (Part B Additional Site Specific Controls - Seaside City)

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: GT1/DCP/B11

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:

The purpose of this report is to detail the public exhibition process for development controls relating to Seaside City and seek Council's endorsement to finalise this planning process.

In November 2015, Council endorsed the drafting of a new Part (Part D) of Tweed Development Control Plan Section A1, to include site specific controls for Seaside City and to undertake a formal public exhibition process. These amendments were drafted and exhibited from 2 December 2015 to 22 January 2016 at Council's Tweed Heads and Murwillumbah offices, as well as on Council's website.

At the close of the submission period a total of 4 submissions were received, 2 objecting to the prescribed density provisions, 1 objecting to the Cylinders Drive South-East precinct provisions and 1 objecting to variations to Council's DCP framework. This report does not recommend further amendment to the residential density provisions, however does propose minor amendment to the Cylinders Drive South-East precinct controls on the basis of the submission received. The details of these further amendments are discussed in the Report.

Council officers recommend the adoption and implementation of the amended planning framework for Seaside City, which will assist in guiding the development of the residual area, which is predominately for medium density housing. Specifically, the adoption of the planning framework will respond directly to Council's resolved intention to enable subdivision development applications; DA15/0079, DA15/0080, DA15/0081 and DA15/0082, to be determined once the new density controls take effect; these were the catalyst upon which Council resolved to make amendment to the DCP.

It is further recommended that Section B11 'Seaside City' of the DCP be repealed as the relevant provisions will take effect in Section A1; its retention will create inconsistency between the Plans, and it will essentially have no other positive work to do.

RECOMMENDATION:

That :

- 1. Draft Tweed Development Control Plan Section A1 – Residential and Tourist Development Code, as provided with Attachment 2 of this report, is adopted, and**
- 2. The Tweed Development Control Plan as amended is to be publicly notified in accordance with Regulation 21 of the *Environmental Planning and Assessment Regulation 2000*, and is take effect from the first day of publication.**
- 3. Public notice of Council’s intention to repeal Tweed Development Control Plan, Section B11 – Seaside City, it to be given in accordance with *Regulations 22(2) and 23 of the Environmental Planning and Assessment Regulation 2000*, and**
- 4. Should a public submission be received during the notice of intention to repeal (s.22(2)) the Director Planning and Regulation is to make a determination about whether the submission raises a new issue not previously reported to Council and must report the issue to a meeting of the Planning Committee if that determination is affirmative of the issue raised, but otherwise is to publish the notice of repeal (s.23).**
- 5. A copy of the amended Tweed Development Control Plan Section A1 – Residential and Tourist Development Code is to be forwarded to the Secretary of the NSW Department of Planning and Environment in accordance with Regulation 25AB of the *Environmental Planning and Assessment Regulation 2000*.**

REPORT:

At its meeting of 5 November 2015, Council considered a report (Attachment 1) regarding a request to amend the Tweed Development Control Plan – Section B11 Seaside City (DCP B11).

The report detailed the amendments sought by the Proponent, Seaside Living Pty Ltd, who are also the primary landowner of the remaining medium density allotments. It was resolved to revise Section A1 of the Tweed Development Control Plan to include Additional Site Specific Controls – Seaside City (draft DCP) and publicly exhibit the draft DCP for a minimum period of 28 days. The public exhibition occurred between 2 December 2015 and 22 January 2016 with 4 submissions received. The detail of this consultation appears later in this report.

Background

Seaside City has a long history dating back to the 1920s when the subdivision was originally created, however it has only been within the past 5 years Seaside City has genuinely become subject to development. The majority of lots within the estate now have applications before Council, approvals in place, or have been developed. The remaining lots without approvals in place are predominately beachfront dwellings and portions of the medium density precinct. It is generally regarded as one the most desirable property markets / areas on the Tweed Coast, fuelled in part by its natural surroundings, but in the main by the diversity of housing offered and the lower price point relative to other established coastal areas.

The request sought by the proponent was primarily intended to facilitate Development Applications DA15/0079 – DA15/0082, which in effect required a reduction of the minimum density provisions and better clarity of design controls for small lot housing product, which has emerged as the dominant housing product within the estate.

Whilst the amendment was not technically required owing to the status prescribed to DCPs under the legislation, Council properly recognised the importance of maintaining the integrity of its planning policy, the need for transparency and public consultation, correctly elected to do so. These amendments will provide both Council and Landowners with the certainty of decision making in relation to those and future development applications, thus enabling current housing market demand for this housing product to be delivered now.

Public Exhibition

The draft DCP was publically exhibited for a total of 51 days, from 2 December 2015 to 22 January 2016, with 4 submissions received.

Copies of the draft DCP, the current DCP B11, and the Report to the 5 November 2015 Planning Committee Meeting were made available on Council's website as well as at the Murwillumbah and Tweed Civic Centres. In addition, advertisements were placed within the Tweed Link issues of 1 December 2015 and 12 January 2016 and all landowners within Seaside City were notified by mail.

Details of the issues raised within the submission period, along with a planning response and recommended action, are provided below:

Submission Issue: Objection to Medium Density Housing

By incorporating the significant number of medium density housing developments along the entire length of Cylinders Drive and parts of Sailfish and Seaside Drive the value of investment and the level of amenity (quiet retirement area) will be significantly compromised. Further, not only will this have a big impact on local traffic but also to long term noise levels (tourists very obviously have a very different lifestyle to residents).

As the estate was originally designed for larger type blocks by reducing the size of the blocks and increasing the height regulation this will impose a greater strain on the following:

All services will have to be upgraded, footpaths, open space, electricity, water, gas and waste. The roads at present do not allow for a car to be parked on either side of the road and still allow other cars or emergency services to pass. Even if a cars are parked on one side even the garbage truck would struggle to pass safely.

Planning Comment:

The DCP amendment does not propose an increase in density within Cylinders, Sailfish or Seaside Drive, rather reduces the minimum density from 1 dwelling/unit per 220m² to 1 dwelling/unit per 360m², almost halving the density prescribed. This amendment follows an amendment in 2013 which also reduced the density of Seaside City. In this regard, Seaside has not been designed for larger lots/lower densities and the infrastructure can accommodate a significantly higher population than now anticipated.

Action:

No amendments are recommended in relation to these matters.

Submission Issue: Height of Building

If the buildings opposite were allowed to reach heights of 10 metres this will reduced the amount of sun to our block and give the impression of crowding.

Planning Comment:

The DCP amendment does not propose any amendment to the maximum building heights, which are established in the Tweed LEP 2014 and have been in place since the original Seaside City DCP provisions were introduced in 2005.

Action:

No amendments are recommended in relation to these matters.

Submission Issue: Cylinders Drive, South-East

Our major concerns relate to 3 reduced restrictions from the original Specific Requirements (Section B11, 5.2) listed below that have been excluded from the new Site Specific Controls (Section A1, Part D, 1.6):

- *"For this area of Cylinders Drive, a maximum of 50% of the frontage of each lot may have a minimum setback of 1.5 m from the front boundary".*
- *"A first floor cantilever is permissible for 4m into the 7f zone".*
- *"No side setbacks are required for buildings to within 3m of the front boundary".*

Requested amendments:

- *Change C3 to: "A maximum of 50% of the frontage of each lot may have a minimum setback of 1.5 m from the front boundary."*
- *Change C7 to: remove the word "verandah" as original control allowed both general cantilever for habitable rooms and a cantilever for verandahs.*
- *Add C8: "No side setbacks are required for buildings to within 3m of the front boundary."*

Planning Comment:

The concerns raised within the submission relating to the clarity of controls and ensuring a preservation of suitable building footprint are concurred. Of the requested amendments, they have been specifically incorporated into Controls 2, 7 and 3 respectively as detailed below.

Action:

Amend the provisions of 1.6 Cylinders Drive South-East – Specific Requirements to read as follows:

1. The front building line setback for the Cylinders Drive South-East Precinct is to be a minimum of 3 metres.
2. Enclosed spaces are permitted to have a minimum front building line setback of 1.5m for a maximum of 50% of the frontage width.
3. Design elements such as verandas, balconies, sun structures, entrances and the like, constructed of open design and occupying no greater than 50% of the frontage may be built up to and adjoining the front boundary.
4. No side setbacks are prescribed for development within 3m of the front boundary, however no visual obstruction is to be located within a 3m by 3m triangle of all lot corners on street frontages.
5. Building within the 3m setback is to be well articulated to ensure a high quality of streetscape.
6. Through design means other than fencing, clearly delineate the extents of public and private domain.
7. A cantilevered first floor within the environmental zone will be considered to a maximum of 4m as measured perpendicular to the urban/environmental zoning interface.

Submission Issue: Administration of Planning Variations – Compliance & Public Notification

I am of the opinion that Council has an equal responsibility to each individual property owner to ensure that any development in the area of their property that they are advised of any variation to Councils Design plan.

The current system requires people who may have restricted knowledge of the process to read and comprehend a development application and associated plans and then make a decision as to whether or not they should object to the application. This in my opinion is an unrealistic expectation on the property owner. (Not fair).

To improve this process I am suggesting that developers are encouraged to stay within the design control plan established by Council. However should they request any variation then the Council writes to all property owners advising them of the, for and against issues, to their property, that will occur if such variation is approved. I believe that the Council has a duty of care to the rate payers to ensure that they fully understand what is being proposed. The letter should also include an outline of an objection sheet for the property owner to submit to council in a nominated time frame. I acknowledge that this will slow the process down some however if all proposals are submitted in accordance with the standard control design plan then it will in fact speed the system up. It becomes the responsibility of the developer to ensure their design and subsequent submissions comply.

Council's staffs are very professional and capable of developing the necessary design control plans for the various areas of the Council. Once they are developed they should not be changed or variations approved to ensure the prospective buyer can purchase in the full confidence that nothing outside such design control will affect the conditional environment that they are buying in. (Peace of Mind).

Such design controls are considered adequate by Council and developers are urged to ensure that their proposal meets the criteria specified for the particular proposed project. Developers are advised that any request for variation will delay the process as Council has to advise all property owners in the vicinity of the development explaining the for and against that such variations will impose on their property if approved.

The existing ground level is defined as the level of the ground in a particular point on the block that was established at the time of the subdivision. Should such a level not be recorded then it is the level at a particular point on the block measured before the commencement of any cut or fill processes required due to the proposed design.

I suggest that this be added as there appears to be some confusion made in this area of the

control design in recent development in my area. I feel that firming of the definition of the starting point will remove any issue associated with the building height.

Landscaping Trees etc. I am lead to believe that there is little mention of trees and hedges to assist with privacy issue that can occur. I believe that property owners should be encouraged to use hedges on fence lines however there needs to be a control design that limits the height of the hedge and indeed the species of plant used. Hedges should be limited to the fence height regulation and such must be enforced as it can or will affect the topography effect of the streetscape.

Further property owners should be encouraged to plant shade tree in appropriate area of the landscaping plan however once again the should be a height limit placed on such trees. In my opinion the shade tree should not be allowed to be above the building height. If they allowed growing higher they once again will encroach on the topography effect of the street scape.

I feel that this issue is important to maintain the desired street scape and environmental backdrop to the buildings location in the areas.

This I cannot support and suggest that it be left as is ensuring that any development in the area complies with the current design control.

I say once again that people have purchased property in this area on the understanding that any adjoining property of property in the area will be subjected to a set of design control plans. These design controls are the only control that adjoining or property owners in the area have ensure the area environment is developed as was originally proposed. To adopt the proposed section D would most certainly change the environment.

Planning Comment

The majority of the comments made are relevant to the whole-application of Section A1 of the Tweed DCP, as opposed to specifically relating to the amendments sought. Nonetheless the following comments are made in relation to themes raised.

Compliance with Development Controls:

Within the Environmental Planning and Assessment Act 1979, section 79C establishes the heads of consideration for applications, including (1)(a)(iii) *any development control plan*. Notwithstanding the need to consider any development control plan, section 79C(3A)(b) states:

if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards— (Council) is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development

These provisions, in effect, acknowledge that DCP provisions are drafted to apply to a wide variety of applications, which will themselves have a variety of site and contextual influences. Accordingly, a DCP cannot reflect every scenario and opportunity and assessing officers need to be open-minded to alternative solutions that result in satisfactory outcomes, as well as acknowledge that compliance with the DCP does not guarantee satisfactory development.

Whilst Council officers regularly encourage proponents to address the provisions of the DCP, specifically notifying all applications that seek an alternative method or response to a prescriptive control would add to development costs and assessment timelines without a nexus to achieving a better outcome, or reducing any impacts external to the site.

Definition of Building Height:

The definition used to measure building height is primarily contained within the Tweed LEP 2014 and is a prescribed definition from the Standard Instrument (Local Environmental Plans) Order 2006. Any modification to this definition within the Tweed DCP would be overridden by the LEP provision and as such provide no benefit.

Landscaping:

Section A1 of the Tweed DCP does include provisions regarding landscaping and the need for 'deep soil zones', however does not mandate vegetation types or heights. Section A1, as well as other Council initiated fact sheets and the like do provide guidance on suitable plantings in order to improve energy and solar efficiency and microclimate of private open spaces.

Part D:

The controls contained within Part D will change the environment from that originally planned, predominately by way of less residential density and of smaller, but more frequent building product in the medium density footprint. As the planning amendments will likely result in a notable change the housing product forecast, thorough public exhibition was undertaken, including individual letters to property owners within Seaside City. In response, only 2 objections to those changes have been received by Council. This outcome is in-keeping with the likelihood that the changes will likely reduce any impacts at the interface of the medium density and low density areas.

Action:

No amendments are recommended in relation to these matters.

Tweed DCP, Section B11 – Seaside City

The Council officer's evaluation of DCP B11 is that many of the current controls have served their intended purpose, or have been subsequently replicated elsewhere within Council's planning policies. As such, many of the controls within B11 are no longer required, and if unattended may operate to cause confusion and inconsistency with the more contemporary planning adopted by Council. Those controls that still have a purpose to serve are to be preserved within the amended Section A1, and will continue to ensure that the adopted vision and character for Seaside City is achieved.

It is recommended therefore, in conjunction with adoption of the amended Section A1, that B11 be concurrently repealed.

OPTIONS:

1. Resolve in accordance with the recommendations provided within this report; adoption of the amended Section A1, Tweed Development Control Plan 2008, and repeal of Section B11.
2. Defer consideration of the Report pending clarification on any matter of concern.

Council officers recommend Option 1.

CONCLUSION:

A request to amend Section B11 Seaside City of the Tweed DCP has been submitted to facilitate a small-lot housing subdivision and development, as depicted in Development Applications DA15/0079 – DA15/0082. The request comes on the back of Council's resolution of 4 June 2015, which is in the following terms:

3. *The proponent fund an amendment to the Development Control Plan consistent with the proposed development applications and that this be processed concurrent with the submitted development applications.*
4. *The proposals and amended Development Control Plan be reported back to Council for determination at the appropriate time.*

The Applicant subsequently entered into a Cost Agreement with Council to fund the review of the DCP, and Council further resolved to amend Section A1 of the Tweed DCP to include a new 'Part D - Additional Site Specific Controls'. This new part would streamline the planning policy for Seaside City by incorporating relevant provisions from Section B11 and

tailoring the density controls to reflect Council's satisfaction with the density yields proposed by the Applicant's development applications, subject to public scrutiny by way of exhibition of the proposed amendments.

The draft DCP was publically exhibited for a period of 51 days and attracted 4 submissions. The content of the submissions have been addressed in this report and where appropriate further refinement of the controls has been proposed.

Council officers are now satisfied that the draft DCP is suitable for adoption and will provide an adequate framework for the remainder of development in Seaside City. A copy of the draft DCP, as further amended, has also been forwarded to the Applicant, who has raised no objection.

In light of the above, it is concluded that the amendments should be adopted and Section B11 – Seaside City be repealed, as its original purpose will be superseded.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The amendment to the DCP is subject to a Cost Agreement, which operates on a cost recovery basis to Council.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Planning Committee report and resolution of 5 November 2015 (ECM 3959235)

Attachment 2. Tweed Development Control Plan 2008 – Section A1 v2.0 (ECM 3959236)

6 [PR-PC] Draft Tweed Development Control Plan Section A18 - Heritage

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: GT1/DCP/A18

Valid



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Supporting Community Life
2.1	Foster strong, cohesive, cooperative, healthy and safe communities
2.1.2	Preserve Indigenous and Non-Indigenous cultural places and values
2	Supporting Community Life
2.3	Provide well service neighbourhoods
2.3.7	Preserve the character and heritage and enhance the amenity of existing towns and villages

SUMMARY OF REPORT:

This Report seeks Council's endorsement of the draft Tweed Development Control Plan (DCP), Section A18 – Heritage, for public exhibition. It also provides a progress report on the implementation of the Tweed Community Based Heritage Study (CBHS).

Adopted in 2012 the CBHS brought about an amendment to the Tweed Local Environmental Plan (LEP) 2014 that increased the number of heritage conservation precincts to six and scheduled heritage items to about 130. This body of work, along with the Local Heritage Assistance Fund, which is now in its second year, the Murwillumbah Main Street heritage project, and growing heritage information resource on Council's web-site, has had the desired effect of raising the profile and community awareness of the Shire's heritage.

Ensuring the Shire's heritage is seen or perceived in the most positive light and is reasonably well understood, particularly by property owners or developers, is essential to the successful long-term conservation of these areas and items. Whilst the new Plan, which has been developed on the Principles of the Burra Charter and in collaboration with Council's heritage architect consultancy, is aimed at providing the assessment framework for development that requires consent, it also serves as a significant general resource for property owners considering other works or maintenance. The general community will also benefit from the information provided within this Plan.

Central to understanding of what is or is not of importance is proper identification of the 'significance' of the place or item, or part thereof. This Plan, along with the other resources prepared by Council and NSW Heritage Office, provide the necessary tools and explanation for ascertaining what is significant and consequently how to approach new works or maintenance.

The Plan will strengthen Council's commitment and ongoing work to conserve and manage the Shire's heritage and is recommended for public exhibition and engagement.

RECOMMENDATION:

That:

- 1. Draft Tweed Development Control Plan, Section A18 – Heritage, is to be publically exhibited for a minimum period of 28 days, in accordance with Section 18 of the *Environmental Planning Assessment Regulation 2000*;**
- 2. During the public exhibition a minimum of two public engagement forums are to be conducted by staff at a suitable location(s) reasonably accessible to Landowners of heritage items or that are within a heritage conservation area; and**
- 3. Following public exhibition a further report is to be submitted to Council detailing the content and response of submissions received.**

REPORT:

Background

At its meeting of 21 August 2012 Council resolved to adopt the Community Based Heritage Study (CBHS). The CBHS identified and recommended approximately 130 heritage items and six heritage conservation areas (HCAs). The heritage items and conservation areas as resolved have been incorporated into Schedule 5 of the *Tweed Local Environmental Plan (LEP) 2014*, with the exception of a small number (four) items requiring amendment to the *Tweed City Centre LEP 2012*.

The CBHS made a number of recommendations regarding the management of the heritage items and areas, including the implementation of a Heritage Development Control Plan (DCP) (Recommendation 9.14). A new section of the *Tweed DCP*, *Section A18 – Heritage* (the draft DCP), has been prepared to meet this recommendation.

Development applications in association with a heritage item or HCA are now responding to the requirements for assessment of potential impact on heritage significance by submitting a Statement of Heritage Impact (SOHI) as required by the applicable LEP clause 5.10(5). The development of the draft DCP provides greater clarity to why a conservation area is significant and how development should respond to this significance and should assist applicants in preparing a SOHI.

Draft DCP Section A18 - Heritage

The management of heritage is guided by the objectives of the applicable *LEP Clause 5.10* which are:

- *To conserve the environmental heritage of the Tweed,*
- *To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views'*
- *To conserve archaeological sites,*
- *To conserve Aboriginal objects and Aboriginal places of heritage significance.*

The process of conservation and heritage management is guided by the principles of the *Burra Charter*, which includes:

- *retain what is important about a place,*
- *provide for current and future maintenance,*
- *respect original fabric, past uses, associations and meanings,*
- *understand and retain evidence of changes which are part of the history,*
- *understand the place before making decisions,*
- *use traditional techniques and materials to conserve original materials,*
- *retain the use of a place if it is important, or ensure a compatible new use,*
- *involve minimal change to allow new uses, respect the original fabric, associations and uses,*
- *retain an appropriate visual setting for heritage places,*
- *keep a building, work or other component in its historical location, because the physical location of a heritage item or place is part of its cultural significance. Do not relocate unless this is the only practical means of ensuring its survival,*

- *keep contents, fixtures and objects which are part of a place's cultural significance at that place,*
- *retain related buildings and objects as they are also important, and*
- *enable people who have special associations and meanings with a place in its care and future management to be involved.*

The draft DCP has been developed based on the above guiding principles. The draft DCP applies to all land within a HCA or which is subject to listing as a heritage item. The draft DCP may also be used to guide development within the "vicinity" (immediately adjacent or opposite) of a heritage item in order to minimise any impact on the item.

The draft DCP provided in Attachment 1 is constructed in three parts, as follows:

- The first part is the Introduction and Context which addresses the legislative requirements of the plan, provides an acknowledgement of Aboriginal heritage and outlines the Principles of the Burra Charter. The inclusion of the Burra Charter Principles addresses *CBHS Recommendation 9.1 Adoption of the Burra Charter* and is a framework for best practice heritage management. The Acknowledgement of Aboriginal cultural heritage introduces historic and contemporary Aboriginal cultural heritage that is a key part of the Tweed Shire, and which is to be further managed through the Aboriginal Cultural Heritage Management Plan (ACHMP), currently being prepared.
- Part B provides an outline of the significance of the six HCAs, being Condong, Hartigans Hill, Murwillumbah Main Street, Tyalgum, Tumbulgum and Uki. This part outlines why the areas are significant, key features, contributory buildings, views and landscapes and sets out the objectives for development within the HCAs.
- Part C provides the design guidelines for all development in association with a heritage item or HCA to ensure the protection and conservation and to minimise any potential impacts on the significance of the Tweed's heritage. The controls in Part C are to be read within the context of the significance statements of Part B for HCAs.

Consultation

In addition to the ordinary public exhibition requirements it is also proposed to hold at least two general public information sessions, which could occur at any or all of: Murwillumbah, Uki, Tyalgum, Tumbulgum or Tweed Heads.

It is further proposed that Council's heritage adviser will be available for one day during the exhibition period to allow property owners to discuss specific issues by prior appointment.

Supporting information

The introduction of the additional heritage items and conservation areas has brought about a significant increase in awareness of heritage within the Tweed Shire. Information to support heritage understanding has been updated on the website, through fact sheets and the heritage advisor.

The Tweed website has been updated to include information on the:

- Details on the Local Heritage Assistance Fund (LHAF) Program and the Heritage Adviser
- A record of past projects funded through the LHAF
- Details on how to find out if a property is heritage listed
- A suite of heritage fact sheets
- Background information on the Community Based Heritage Study 2012 and the heritage inventory sheets (site cards)
- Linkages to relevant information and publications
- Linkages to the Tweed Regional Museum website

Fact sheets provide information on:

- Understanding heritage
- Quick facts about heritage
- Heritage legislation
- When Do I need a DA?
- Maintenance and Minor Development
- Understanding Galvanised and Colourbond roofs
- Preparing a Statement of Heritage Significance (SOHI)
- How Do I Commence a Heritage Listing?

Heritage Adviser and LHAF

Tweed Shire Council has commenced our second year of the Heritage Adviser service and the LHAF.

The Heritage Adviser provides a crucial technical role which:

- attends Council 1-2 days per month;
- is available to owners of heritage properties to provide guidance at no charge;
- provides a role in reviewing DAs and SOHIs in association with development applications;
- provides assistance with policy development and educative information;
- assists with grant reporting to the OEH; and
- assists with the management of the LHAF and other Council heritage related projects, such as the LOOK UP project.

In 2014-15 Council provided inaugural grant funding to six heritage items. The current 2015-16 LHAF program is funding seven properties from a pool of 16 applications, indicating how well the program is being received.

Update on the CBHS Recommendations

The following table provides an update on the progress and implementation of the recommendations of the CBHS 2012.

Item	Recommendation	Actions	Status
9.1	Adoption of the Burra Charter	The principles of the Burra Charter have been incorporated into the Introduction of the draft DCP. They have also guided the controls within the DCP.	Achieved - DCP Section A18 Heritage
9.2	Use of Best Practice Guidelines	The draft DCP Section A18 - Heritage, support information and Fact Sheets has been based on and refer to the OEH publications and best practice guidelines.	Achieved
9.3	Training of Tweed Council Staff	Heritage legislation and requirements training was undertaken with relevant development and planning staff at the commencement of the Tweed LEP 2014 and will continue as heritage information is developed.	Achieved / ongoing
9.4	Implementation of a Community Heritage Grants' Scheme	Council was successful in OEH grant funding to commence the heritage grants scheme, which commenced the 2014/15 financial year and is ongoing.	Achieved / ongoing
9.5	Appointment of a Council Heritage Advisor	Council was successful in OEH grant funding to employ a Heritage Advisor, which commenced the 2014/15 financial year and is ongoing. The heritage advisor attends at Council 1-2 days per month.	Achieved / ongoing
9.6	Management of Archaeological Sites and Resources	Heritage legislation applies. In addition the Tweed LEP 2014 Clause 5.10(7) has requirements for archaeological sites. Further educative information may be developed to improve awareness of archaeological site requirements and management.	Further information to be developed.
9.7	Unexpected Discovery of Archaeological Items in the Tweed Shire	The principle of "Stop Work" upon unexpected discovery of archaeological items is to be incorporated into the fact sheets to articulate legislative and management requirements.	Further information to be developed.
9.8	Adoption of a Standard Response for all Heritage DA Applications	There is ongoing development of internal processes, including referrals, minor and maintenance requests all with standard forms. Further work is to be undertaken to develop standard conditions of consent as appropriate.	In progress
9.9	Lodgement of all Heritage Reports with Local Archives	Procedures being developed	In progress

Item	Recommendation	Actions	Status
9.10	Incorporation of Listed Properties into the LEP	The majority of items are located within the applicable area of the Tweed LEP 2014 and have been included within Schedule 5 of the Tweed LEP 2014. Four items are located within the applicable area of the Tweed City LEP 2012 and require amendment to this LEP. This is to be picked up in housekeeping amendment to the Tweed City Centre LEP 2012.	Achieved / ongoing
9.11	Identifying Future Items and Areas for Listing	A database is maintained for assessment of future items. Current efforts have been directed to improving the processes and management of the listed items. A fact sheet "How do I commence Heritage Listing" has been prepared and is available on Council's website.	In progress
9.12	Adding of Future Items and Conservation Areas to LEP	As above	Yet to commence
9.13	Management for Specific Heritage Conservation Areas	The draft DCP Section A18 heritage provides the outlines why the HCAs are significant, key features, contributory buildings to assist in the appropriate design response of alterations, additions and infill development within HCAs.	In progress – DCP Section A18 Heritage
9.14	Implementation of a Heritage DCP for the Tweed Shire	Draft DCP Section A18 is now drafted for public exhibition.	In progress – DCP Section A18 Heritage
9.15	Heritage Management as Part of Future Tourism	Opportunity to develop a suite of heritage tourism maps in association with Destination Tweed and subject to resources.	Yet to commence
9.16	Access to Heritage Information	The Tweed website has been updated to provide a wider range of information, useful linkages to other sites and a range of fact sheets to assist owners of heritage properties. http://www.tweed.nsw.gov.au/Heritage	Achieved / ongoing
9.17	Undertake an Aboriginal Cultural Heritage Management Plan	The Aboriginal Cultural Heritage Management Plan (ACHMP) has been in progress for some time. Mapping is currently being reviewed and updated and the management plan finalised for reporting to Council and public exhibition.	In progress

OPTIONS:

1. Endorse the public exhibition of the draft DCP; or

2. Postpone further consideration of this report and allow opportunity for staff to address a Councillor workshop.

Council officers recommend Option 1.

CONCLUSION:

The preparation of the Tweed DCP Section A18 – Heritage meets the recommendations of the CBHS 2012. The provisions have been developed based on the guiding principles of the LEP 2014 and the Burra Charter.

The Draft DCP provides a strong framework to support the understanding of heritage significance and provides development controls which seek to conserve the heritage of the Tweed and minimise the potential impacts on heritage significance.

It is now considered appropriate to place the Draft DCP on public exhibition and consult with the community.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

There is no impact on Council's adopted and future budget estimates.

c. Legal:

There is no legal issue arising at this time.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Draft DCP Section A18 - Heritage (ECM 3959694)

7 [PR-PC] Rural Land Strategy - Policy Directions Paper Stage 3 Options Paper & Public Submission Review

SUBMITTED BY: Strategic Planning and Urban Design

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

This report provides an update on the public exhibition of the Stage 3 Options Paper for the Rural Lands Strategy, as prepared by Council's consultant, GHD Pty, and an overview of the next process which includes a 'Policy Directions Paper'.

The purpose and intent of the Options Paper was to stimulate and direct community debate of the issues identified in the preceding Stage 2 Issues Analysis, and to provide a preferred suite of options to give the community an insight as to what a policy might look like, and aim to achieve. It served this purpose very well, but is not a policy for adoption as a Strategy.

The Options Paper was publically exhibited during the period 7 July 2015 – 4 September 2015. A total of 29 submissions were considered following public exhibition; a summary of submissions, planning response and recommendation are presented in an attachment to this report.

The range of matters raised in these submissions varied considerably, but were typical of those issues identified within the prior Stage 2 'Issues Analysis' of the project.

While the Options Paper was a valuable resource for focusing and facilitating public discussion of the issues, the need to establish a clear policy direction to guide the development of the final stage consisting of the Strategy is seen to be critical. The development and selection of actions, which will form an integral part of the Strategy will be guided by the policy direction Council resolves to take, and these will be influenced by social, economic and environmental factors, as well as what the community has said.

To assist Council and the community with this important process a Policy Directions Paper is being prepared for Council's consideration. Utilising the resource information collected throughout the 3 Stages of the project the broad policy directions will be formulated and supported by a discussion of will and will not be achieved.

It is expected that a Draft Policy Directions Paper will be reported to Council at the April 2016 Planning Committee Meeting. In the meantime it is recommended that Council receive and note this report.

RECOMMENDATION:

That this report on the public exhibition of the Rural Land Strategy Stage 3 Options Paper be received and noted.

REPORT:

This report provides an update on the public exhibition of the Options Paper prepared by GHD Pty (GHD) and advises on the next stage of project, which is the development of a Draft Policy Directions Paper to guide drafting of the final Stage 4 Strategy.

Public exhibition

The Stage 3 Options Paper was placed on public exhibition during the period 7 July 2015 – 4 September 2015 at eight locations across the Tweed, including:

- Murwillumbah Civic and Cultural Centre;
- Uki Post Office;
- Tyalgum General Store;
- Chillingham Village Store;
- Pottsville Beach Neighbourhood Centre;
- Tweed Heads Civic Centre
- Kingscliff Library;
- Burringbar General Store, and
- Council's website.

Presentations were made by GHD at a Councillor Workshop (23 April 2015), to the Executive Management Team, and to the Reference Panel (21 April 2015) prior to public exhibition. The Options Paper was also circulated to the Reference Panel for review and response prior to exhibition.

Four community Information Sessions were conducted by GHD and Council officers on 27 and 28 July 2015 at Piggabeen, Tyalgum, Burringbar and Murwillumbah, at which 33 members of the local community attended.

A total of 29 submissions were received, as itemised below:

- Private submissions received after the close of Stage 2 and carried forward into this stage, received prior to the exhibition period = 5;
- Private submissions received during the exhibition period = 14;
- Government agencies = 7;
- Community organisations = 2, and
- Local government = 1.

A summary of submissions received, planning response, and recommendations can be seen in Attachment 1 to this report. The range of matters raised in submissions varied considerably but included in part the following:

- Protection of agricultural land;
- Need for buffers between land used for agriculture and other land;
- Subdivision,
- Dual occupancies and secondary dwellings;
- Dwelling entitlement on under-sized allotments;
- Governance and the role of Council;
- Focus of, and procedures relating to the preparation of the Strategy, and
- Tourism opportunities.

No new issues have been raised during public exhibition of the Options Paper, with submissions and feedback received during the community consultation sessions predominantly supportive of the options presented by GHD.

While submissions raised an array of matters, the following discussion addresses the common themes listed above; however, until Council resolves on policy directions for the Rural Land Strategy, a definitive response to some of the issues discussed below cannot currently be reported on.

Protection of agricultural land

Protection of agricultural land was a theme strongly supported during Stage 2 of the project and raised again in Stage 3 with concerns expressed about any proposed development on prime agricultural land, and the loss of productive agricultural land to rural residential development for lifestyle uses.

The Options Paper identifies prime agricultural land as being protected under state or local legislation from development for other than agricultural purposes, and identifies the alienation of agricultural land as an issue.

The Options paper proposes establishment of a buffers policy as discussed below and retention of the existing minimum lot size in rural zoned land in an attempt to restrict further subdivision of this land for non-agricultural purposes. This is being looked at as a potential action within the final Strategy.

Buffers between land used for agriculture and other land

Both the New South Wales Cane Growers' Association and Combined Tweed Rural Industries Assoc. Inc. support the need for buffers to ensure that productive agricultural land is protected.

The Options Paper proposes a new section in Tweed DCP 2008 addressing the need for buffers which should apply to all rural and environmental zoned land.

Subdivision

The Options Paper recommended retention of the existing minimum lot size, which would mean no further subdivision of rural land for residential purposes without a supporting strategy.

The Options Paper discusses provision of housing alternatives including rural landsharing communities and community title development, and proposes development of a Rural Residential Strategy that investigates the supply and demand for rural residential land, including preferred lot size and characteristics, preferred localities and service level preferences.

Subdivision of rural land was a common theme arising from submissions, as reflected in the following sample of comments:

- Sought the ability to cut off a part of the property;

- Provision of small area hobby farming opportunities on 'non-prime' agricultural land and all steep and vegetated land;
- Reduced financial viability of small area farms was cited as a reason for further subdivision;
- Subdivision of land containing Rural Workers' Dwellings was proposed;
- Use of 'one-size-fits-all' provisions for all rural land was opposed;
- Opportunity to implement merit-based assessment was proposed;
- Objections to the 40 hectare rule, and
- Need to consider alternative subdivision types were all raised in submissions.

Indiscriminate subdivision of small parcels from existing allotments is not supported by the Far North Coast Regional Strategy 2006, unless supported by a strategy or in a review negotiated with the Department of Planning and Environment. Concessional allotment type subdivision is not supported by the State Environmental Planning Policy (Rural Lands) 2008.

The Options Paper points out that under Tweed LEP 2014 clause 4.2 a rural property can currently be subdivided to less than the minimum lot size, so long as the sale is for agricultural purposes, and that no house exists on the property created and no house will be built on it. This provides landowners with the opportunity to sell off part of the property, albeit without the escalated value that having a house on it would generate.

The Options Paper also points out that under Tweed LEP 2014 clause 4.6 currently provides the opportunity on an allotment less than the minimum lot size to request development consent for a dwelling; however, such a request would need to satisfy stringent assessment criteria, some of which are yet to be prepared, but are recommendations of the Options paper. This clause has not been tested in the Tweed.

Dual occupancies and secondary dwellings

The Options Paper proposes an amendment to the LEP to make Dual Occupancy (detached), and Secondary Dwellings permissible with consent in the RU1 Primary Production and RU2 Rural Landscape zones.

The opportunity to provide additional housing was supported by the majority of submissions, and related to:

- the ability to provide accommodation for extended family;
- Provide rental income;
- Support a part-time worker to care for the property as the owners aged, and
- Support additional workers residences without the need to comply with existing requirements.

The Department of Primary Industries was not supportive of the provision of Dual Occupancy (detached), and Secondary Dwellings based upon provision of housing that is not related to agricultural outcomes, with cumulative impacts affecting the productive capacity of agricultural industries, a reduced availability of agricultural resources, risks for emergency management, increased likelihood of landuse conflict, and inflated property prices preventing property amalgamation.

The Department did however reiterate the need for a rural residential strategy to ensure that any further residential use of rural land does not give rise to further alienation of agricultural land.

Should Council support inclusion of Dual Occupancy (detached), and Secondary Dwellings as permissible with consent, a range of potentially negative impacts will require consideration in developing guidelines and planning provisions, including:

- Escalation of land values;
- Potential for landuse conflicts;
- Pressure for further subdivision;
- Scenic amenity impacts, and
- Environmental impacts.

Dwelling entitlement on under-sized allotments

As discussed above, the Options Paper advises that under Tweed LEP clause 4.6 it is possible for a landowner to apply for construction of a dwelling on an allotment less than the minimum lot size, where there is no dwelling entitlement. This requires both a substantive and reasoned planning justification, demonstrating among other things that the proposed development is consistent with the objectives of Clause 4.2B and the lands zoning. It is generally recognised as a challenging and uncertain test, and one that is only likely to succeed where the exceptional circumstances are made out.

The Options Paper also proposes that the concept of ‘dwelling entitlements’ be phased out, using a ‘Dwelling Opportunity Map’ which displays properties with known entitlement, and a new section to the Tweed DCP 2008 being created which contains appropriate criteria for assessment of requests for dwellings on these allotments.

The ability to lodge a development application for a dwelling on an existing under-sized allotment was a common issue raised in submissions. In most cases the argument was presented that the adjoining properties were of a similar size and configuration but due perhaps some past planning provision an allotment was created without an entitlement.

Identifying whether an existing property less than the minimum lot size has a dwelling entitlement has been an ongoing and contentious matter for landowners and time consuming for Council. The following table summarises the outcome of dwelling entitlement requests in recent years; a ‘yes’ indicating that the landowner can lodge a development application for a dwelling, the outcome of which will be considered on merit. ‘Other’ refers to withdrawn requests or requests requiring further information.

Year	Yes	No	Other	Total
2013	70	10	7	87
2014	75	7	12	94
2015	55	10	8	73

Investigations suggest that in the RU2 Rural Landscape zone, there are about 200 single allotment properties that are less than the minimum lot size that may be affected by this option, and about 30 multiple lot properties.

Governance and the role of Council

Council is seen as having a critical role to play in the way rural Tweed is managed now and developed into the future. Council is seen by the community as being responsible for the majority of decisions which affect rural land use planning and management, regardless of whether the controls originate from local, regional or state legislation.

Comments in submissions relating to the role of Council, impact of procedures and costs of doing business with Council included:

- Council has had an obstructionist philosophy;
- Blanket planning rules should be changed to merit-based assessment;
- DAs are too complicated for ordinary people to understand;
- No local knowledge was taken into account when assessing the DA;
- Requirements changed as the assessment proceeded;
- Cost of implementing Council's requirements was excessive;
- Breakdown in communication with Council officers during assessment of the DA;
- Council should provide a 'rural planner', and
- Inflexible rural subdivision policies.

The Options Paper proposes an annual review of planning requirements and systems in response to public and applicant feedback on the processes and outcomes. While the concept of a review is supported, a bi-annual review is seen as an appropriate timeframe.

The Options Paper also proposes a change to meeting procedures which ensures that more detail is provided at the early stages of project development and recommends the use of 'without prejudice meetings with applicants', and planning charrettes or facilitated workshops to explore and if possible resolve complex issues for larger rural projects or proposals.

These options are generally supported and will be further developed in the Draft Strategy.

Procedures relating to the preparation of the Strategy

Submissions were received relating to the focus of the document and procedural matters, and included comments such as:

- Concerned that the Terms of Reference for the Rural Land Strategy are too restrictive and were designed to procure a pre-determined outcome;
- Supports the objectives; noting that clarity around use of rural land and protection of high quality land is critical;
- It appears as if Section 117 Direction 1.5 Rural Lands, and SEPP (Rural Lands) 2008 have not been complied with, and urges Council to strictly apply conditions relating to subdivision of rural land;
- Was hoping for a 'stand-alone' document that recognised the variability of agricultural potential;
- That the meaning of the Executive Summary which states that "the Strategy will establish a contemporary policy and action plan" really means that nothing will happen until more expensive and time consuming studies are done.
- The community has replaced the landowner as the major player, and the landowner should have a major say in what happens to their land.

The Rural Land Strategy project has undertaken extensive community engagement at locations across the Tweed to provide landowners with opportunity to meet with the authors of the document and Council staff.

Council has been committed to engaging with the community and has devised a wide range of mechanism through which landowners and the broader community can make comments on these documents.

Advice received has provided valuable input into understanding the issues affecting rural land and options to better manage rural land into the future.

Rural landowners are key stakeholders and have been well represented throughout engagement with the community up to this time.

Further detailed engagement will occur when the draft Strategy is placed on public exhibition.

Tourism opportunities

While the Options Paper has proposed support for the establishment of the Northern Rivers Rail Trail, the Rural Land Strategy is not an economic development strategy; however, the draft Strategy will support value-adding and diversification of rural enterprises, and will propose a range of additional actions when the Draft Strategy is prepared in Stage 4.

Submissions from Government agencies

Seven Government agencies provided submissions, namely:

- Office of Environment and Heritage (Regional Operations);
- Office of Environment and Heritage (Land and Soil Assessment);
- Rural Fire Service;
- Department of Primary Industries (Land Use Planning);
- Department of Primary Industries (Resources & Energy);
- Department of Primary Industries (Education & Regional Services), and
- Department of Planning & Environment.

Details of each submission, planning response, and recommendations can be seen in Attachment 1, and are summarised below. The dot points under each heading summarise the major themes in the submission.

Office of Environment and Heritage (Regional Operations)

- Recommends that the Rural Land Strategy accords with the Far North Coast Regional Conservation Plan 2010;
- Supports the use of planning controls for culturally significant lands identified within a validated spatial dataset;
- Supports the use of appropriate criteria to apply environmental zones;
- Does not support the use of environmental overlays and Development Control plans;
- Agricultural land is a limited resource and needs to remain capable of production even if the current use of that land may be economically unviable;

- Recommends that development be undertaken in a sensitive manner in consultation with the local Aboriginal community and National Parks and Wildlife Service;
- Supports awareness which creates preparedness for weather related events such as fires, floods, and storms;
- Supports maintaining the 40 hectare Minimum Lot Size, and
- Would only support the expansion and subdivision of Future Urban and Village land only if these lands were identified in an endorsed Growth Management Strategy.

Office of Environment and Heritage (Land and Soil Assessment)

- Requests that a timeframe be established for the completion of the Sustainable Agriculture Strategy;
- Requests clarification be made of footnote on page 31, that land and soil capability is not suitability;
- Requests clarification be made of term on page 64, that while erosion is a natural process, accelerated erosion associated with land degradation including streambank erosion is not a natural process.

Rural Fire Service

- The Rural Fire Services have no objections

Department of Primary Industries (Land Use Planning)

- Subdivision places pressure on water resources. Preference for use of reticulated water supply in preference to accessing surface or groundwater;
- Concerned about the proliferation of Basic Landholder Rights to access water without the requirement to obtain a water access licence under the *Water Management Act 2000*;
- Potential future subdivision of rural land requires a strategic understanding of the water needs of allotments by size and location, access to sustainable and adequate water supply should be considered;
- Potential for groundwater contamination from onsite sewerage disposal with setbacks listed, and
- Need for riparian buffers where subdivision impacts riparian areas.

Department of Primary Industries (Education & Regional Services)

- The NSW Government strongly supports agricultural industry development as seen in the Agriculture Industry Action Plan, and is seeking long term sustainable access to these resources and to minimise conflict with adjoining lands;
- The document is well structured and allows clear understanding of background, community concerns and discussion of advantages and disadvantages;
- Supports retention of the 40 and 10 hectare minimum lot size; but concerned that the option to reduce lot size in secondary rural lands potentially restricts agricultural resource access and increases the risk of land use conflict;
- Agriculture continues to evolve with new research and innovative practices which are less reliant on biophysical requirements;

- Recommends that an investigation be undertaken into the supply and demand for rural residential land to confirm the assumption of undersupply of small lots;
- A Rural Residential Strategy would provide a more strategic approach rather than the ad-hoc dispersed development;
- Strongly discourages permitting detached dual occupancy and secondary dwellings in the RU1 and RU2 zones;
- Loss of productive agricultural land is in the most part irreversible, and
- Supports protection of scenic landscapes as proposed.

Department of Planning & Environment

- Ensure consistency with State Environmental Planning Policies (SEPP), Far North Coast Regional Strategy, Settlement Planning Guidelines (Mid and Far North Coast Regional Strategies - August 2007), and in particular SEPP (Rural Lands) 2008;
- Council should be mindful of any constraints applying to these lands such as State and Regionally Significant Farmland and flooding which may make the land unsuitable for rezoning. State or Regionally significant farmland mapping identified under the Far North Coast and Mid North Coast Farmland Mapping Projects is not available for urban or rural residential purposes;
- Regarding the option of permitting community title subdivision of rural landsharing communities in certain areas, Council should be mindful of the potential for generation of rural land use conflict and demand for infrastructure in more remote locations;
- The interim guidelines developed from the preparation of the Northern Councils E Zone Review states that the use of overlays to manage scenic protection areas and terrestrial biodiversity is not supported, and
- When the draft North Coast Regional Plan is placed on public exhibition in late 2015 there will be opportunity to highlight any issues that may arise from the current strategy process.

Establishing policy directions for rural Tweed

While the Options Paper prepared by GHD provided valuable guidance in focusing and facilitating discussion around the range of possible policy directions, further consideration of submissions and investigations has identified the need for a clear and endorsed statement on the policy directions the Rural Land Strategy should embark on in preparation of the Draft Strategy in Stage 4.

A Draft Policy Positions Paper is being prepared which proposes policy directions for key themes identified during earlier stages of the project.

The Draft Policy Positions Paper is expected to be reported to the April 2016 Planning Committee meeting seeking endorsement to place the Paper on public exhibition

OPTIONS:

1. Receive and note this report., or
2. Defer consideration of this report pending clarification of specific issues raised or for a Councillor Workshop.

Council staff recommend Option 1.

CONCLUSION:

The purpose and intent of the Options Paper was to stimulate and direct community debate of the issues identified in the preceding Stage 2 Issue Analysis, and to provide a preferred suite of options based on the information available. It served this purpose well, and has provided a very broad range of issues and views for the Council to consider when deciding on its response through the development of the final Strategy.

29 submissions considered following public exhibition of the Stage 3 Options Paper prepared by GHD.

Seven submissions were received from government agencies, one from the Combined Tweed Rural Industries Assoc. Inc., one from the NSW Cane Growers' Association Tweed River Branch and 19 private submissions, five of which were received after the close of Stage 2 and carried forward for consideration in this Stage.

Issues raised reflected those previously identified during the preparation of the Issues Analysis in Stage 2 of the project; however, a planning response to all submissions received can be viewed in the attachment to this report.

This now brings Stage 3 of the RLS to a close.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Empower-We will give the community greater opportunity to participate in a transparent flow of information and feedback to Councillors who have been empowered as the Community representatives to make decisions in accordance with the Local Government Act 1993.

Involve/Collaborate-We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Options Paper - Submissions Summary, Planning Response and Recommendations (ECM 3962610)

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

SUBMITTED BY: Director

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes there are no variations for the month of February 2016 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, no 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.
