



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

Councillors: P Allsop
R Byrnes
C Cherry (Deputy Mayor)
R Cooper
J Owen
W Polglase

Agenda

Planning Committee Meeting Thursday 7 September 2017

held at
Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads
commencing at 5.30pm

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 THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA16/0178 for the Use of Illegal Additions to Two Existing Dwellings and Shed at Lot 2 DP 348945 No. 54 Phillip Street, Chinderah

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together



People, places and moving around
Who we are and how we live

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- | | |
|-------|--|
| 2 | Making decisions with you |
| 2.1 | Built Environment |
| 2.1.2 | Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process. |
| 3 | People, places and moving around |
| 3.1 | People |
| 3.1.4 | Compliance Services - To support a safe and healthy built and natural environment through the enforcement of local government rules and regulations. |

ROLE: **Provider**

SUMMARY OF REPORT:

Council is in receipt of a Development Application for the use of illegal additions to two existing dwellings and shed at the subject site. Building Certificates BC16/0036 and BC16/0113 accompany the application.

The subject Development Application has been lodged to address a compliance matter that has been ongoing for many years involving works conducted without approval. Three buildings exist on the subject site and a search of Council records did not reveal any development consents or building certificates in relation to any of the buildings.



The subject site is zoned RU2 Rural Landscape under Tweed Local Environmental Plan (TLEP) 2014 where detached dual occupancies are prohibited development. Sufficient evidence has been provided to determine that both dwellings existed at the site prior to 1964 and therefore each dwelling benefits from continuing use rights in accordance with Part 4 Division 10 of the Environmental Planning and Assessment Act 1979 (the Act).

However, the Act states that approval is still required for any alteration, extension or rebuilding of the use. Given the substantial increase in size and varied roof lines of the buildings noted in Council's historic aerial photography, in addition to several complaints reporting works occurring at the site, it is considered that additions to both houses require approval and as such a merit assessment was conducted on the additions to Houses 1 and 2 and the shed in accordance with Section 79C of the Act.

The subject site is mapped as bushfire prone and after preliminary assessment of the development against the provisions of *Planning for Bushfire Protection 2006*, it was considered that the structures could have a high Bushfire Attack Level (BAL) rating of 40. A bushfire hazard report was requested and not provided by the applicant. Subsequently, the application has not been referred to the NSW Rural Fire Service as required due to a lack of information needed for proper assessment and therefore the development does not satisfy Section 79BA of the Act.

Further, the subject site is flood prone and the application was referred to Council's Flooding Engineer who advised that new developments of this nature in flood prone locations are not considered acceptable development on the basis of limiting flood risk exposure to humans. However as continuing use rights have been established, the assessment of the application was limited to the additions to the dwellings where it was noted that the lower level of House 1 and House 2 do not meet the minimum habitable floor level requirements by 0.8m – 1m.

In this instance, under Tweed Development Control Plan (TDCP) 2008, only minor extension/expansion of existing dwellings are permitted which is limited to 35m² of the original structure. As House 2 has more than doubled in size from the original structure with approximately 80m² being added without the required approvals, Council's Flooding

Engineer recommended two bedrooms be removed from the floor plan or alternatively, House 2 be raised to the minimum habitable floor level of RL 3.6m AHD to comply. Additionally, the lower level of House 1 is not to be used as habitable space given it is well below (1m) the Design Flood Level. Amended plans were requested however, were not provided. Therefore the development as proposed is not considered to be acceptable with regard to Clause 7.3 of TLEP 2014 and Section A3 TDCP 2008 in addressing the flooding hazard of the subject site.

Building Certificate applications BC16/0036 and BC16/0113 have been lodged for the development. Council officers have concurrently assessed these applications and require the completion of a significant number of works in order to achieve compliance with the Building Code of Australia (BCA) prior to certificate issue. These matters remain outstanding.

As outlined in this report, the landowner has had ample opportunity to remedy the situation and/or provide the required information and given the known flooding and bushfire hazards and non-compliances of the subject development, the additions cannot be supported by Council officers and as such the application is recommended for refusal which results in an outstanding compliance matter. It is further recommended that the matter be forwarded to Council's legal representatives to rectify the situation.

By email dated 27 August 2017, the owner of the subject site requested that this report be deferred to the November Planning Committee meeting to enable further time to address Council's concerns. Given the extensive timeframe provided to date to the owner to address a variety of planning and compliance issues, there is considered to be insufficient justification for Council to further defer the determination of the development application and quite significant instances of non-compliance.

RECOMMENDATION:

That:

- 1. Development Application DA16/0178 for the use of illegal additions to two existing dwellings at Lot 2 DP 348945 No. 54 Phillip Street, Chinderah be refused for the following reasons:**
 - a. The development does not satisfy Section 79BA of the Environmental Planning and Assessment Act 1979. It is not considered that the development conforms to the requirements of *Planning for Bush Fire Protection 2006* by the NSW Rural Fire Service nor has a certificate been provided from a suitably qualified bush fire risk consultant stating that the development conforms to the relevant specifications and requirements.**
 - b. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(a). The proposed development is not considered to be in accordance with Tweed Local Environmental Plan 2014 – Clause 7.3 Flood Planning.**
 - c. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(a). The proposed development is not considered to be in accordance with Tweed**

Development Control Plan 2008 - Section A3 Development of Flood Liable Land.

- d. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(b) and the likely bushfire and flooding impacts to the development and residents.**
 - e. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(e) the public interest. The development is not considered to be in the public interest given the development is not in accordance with the relevant controls and potentially contributing to people being exposed to bushfire and flooding hazards.**
- 2. The matter be referred to Council's solicitors for advice regarding appropriate compliance action.**
 - 3. Compliance action be undertaken in accordance with the advice provided in Point 2 above.**

REPORT:

Applicant: Parameter Designs
Owner: Mr Deon C Irving & Ms Melinda J Irving
Location: Lot 2 DP 348945 No. 54 Phillip Street, Chinderah
Zoning: RU2 - Rural Landscape
Cost: \$6,000

Background:

Council is in receipt of a Development Application for the use of illegal additions to two existing dwellings at the subject site. Building Certificates BC16/0036 and BC16/0113 accompany the application.

The subject Development Application has been lodged to address a compliance matter involving works conducted without approval. Three buildings exist on the subject site and a search of Council records did not reveal any development consents or building certificates in relation to any of the buildings.



House 1 is a timber two storey house featuring five bedrooms, 2 bathrooms with laundry, storage and garage on the lower level. The plans state the floor area is 357m².

House 2 is a two bedroom dwelling with fibre cement cladding approximately 158m² in area that features a carport on the northern side.

The application also seeks approval for a metal clad shed that exists on the site that is approximately 203m² in area.

The detail of the additions subject to this application are unclear however potentially include to House 1; reconstruction and extension of the roof, a 35m² first floor rear deck, partial enclosure of the lower level and a substantial increase in upstairs floor area, whilst House 2 involves a doubling in floor area.

The subject site is zoned RU2 Rural Landscape under Tweed Local Environmental Plan (TLEP) 2014 where detached dual occupancies are prohibited development.

Existing Use Rights

The subject buildings were considered against the Existing Use Rights provisions within Part 4 Division 10 Existing Uses of the Environmental Planning and Assessment Act 1979.

Section 106 defines existing use as:

- (a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4 of this Part, have the effect of prohibiting that use, and*
- (b) *the use of a building, work or land:*
 - (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
 - (ii) *that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

Further, Section 107 states:

- (1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- (2) *Nothing in subsection (1) authorises:*
 - (a) *any alteration or extension to or rebuilding of a building or work, or*
 - (b) *any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - (c) *without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
 - (d) *the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 80A (1) (b), or*
 - (e) *the continuance of the use therein mentioned where that use is abandoned.*

A detached dual occupancy development is prohibited at the RU2 zoned site under TLEP 2014 and therefore the development could meet the above existing use definition. However when considering definitions of previous environmental planning instruments, Houses 1 & 2 individually could be defined as dwellings which are permissible within consent in the RU2 zone. Taking this approach, Section 109 of the Act provides Continuing Use Rights, where

similarly, the use can continue without further approval, cannot be abandoned and approval is required for any alteration or extension, rebuilding or intensification of the use.

Therefore, the following needs to be established:

1. If the dwellings are capable of meeting the Existing or Continuing Use provisions;
2. If any alterations or extensions made to the dwellings required approval in accordance with the legislation that was in place at the time of the works; and
3. If so, conduct a merit assessment for approval of the ongoing use of the additions.

Site History

This site has been the subject of ongoing dispute with the neighbour to the west at 51 Phillip Street, both parties accusing each other of illegal works or land use and the subject Development Application has been lodged to address a compliance matter involving works conducted without approval.

Buildings existed at the subject site prior to the introduction of Interim Development Order No. 1 on 29 May 1964. As shown in the 1962 aerial photograph below, the western dwelling (House 1) was approximately 10m x 10m whilst the rear building (House 2) was approximately 5m x 5m in size.



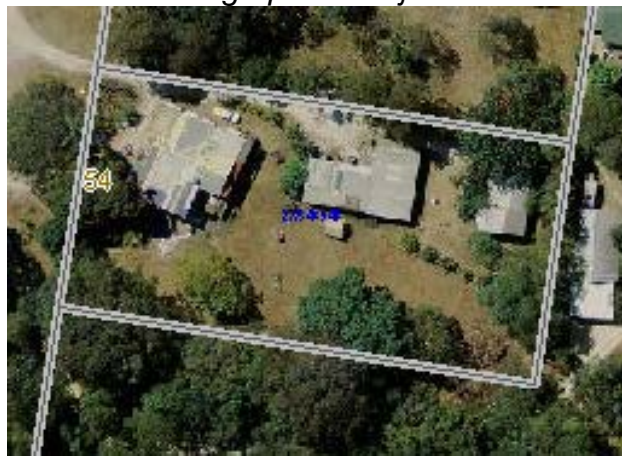
Aerial Photograph of subject site 1962

However, aerial photography shows that House 2 more than doubled in size between 1976 and 1987. Interim Development Order No 2 was in place at the time requiring consent. No consent for the works could be located within Council records.

The following aerial photographs were taken in 2001, 2009 then 2012 highlighting further unapproved expansion of both House 1 and House 2 within that time; House 1 extended to the south and east and House 2 extended to the south. Additionally another unapproved building to the south was demolished between 2001 and 2009.



Aerial Photograph of subject site 2001



Aerial Photograph of subject site 2009



Aerial Photograph of subject site 2012

Compliance matter summary

November 2000 – The landowners, who had purchased the property in November 1999, were met onsite, regarding construction works without approval.

December 2014 – The landowners were contacted following a complaint regarding unauthorised building work and an inspection was conducted.

February 2015 – Following the inspection, the owners were requested in writing to show cause of the lawfulness of the structures at the site particularly regarding extensions to the main dwelling (house 1) and the existence of the rear dwelling (House 2).

April 2015 - The owners responded stating the dwellings existed from 1940s, naming various locals who remember the buildings, also stating House 2 was used for workers. A Statutory Declaration was provided stating "can recall House 2 existing 70 years ago (1940s)" and provided a photograph. Further, the owners explained the building work on House 1 was the removal of asbestos and replacing other materials due to deterioration also stating 'the only extension has been to install eaves'.

August 2015 - Council acknowledged House 2 as a rural workers cottage existing prior to 1964. However, further explained that '*Council is unable to allow the second dwelling on the property that you have stated was used for workers to be adapted or used or rented out for habitable occupation*' and as such, decommissioning of House 2 was requested within sixty (60) days. Further, Council advised that aerial photography revealed that the building footprint of House 1 had increased since the current owners obtained ownership and further information was required regarding the work undertaken.

October 2015 - Council requested that the owner submit Development Application '*for the use together with a Building Certificate Application*' for unauthorised works on House 1 specifically citing recent roof extensions. It was also advised that any other building work on the site that may require approval should be included in the application.

9 November 2015 - An additional Statutory Declaration was provided to Council stating "he rented House 2 1962 to 1974 whilst working in the construction industry in the area".

16 November 2015 - Subsequently, Council acknowledged the existence of House 2 as a dwelling prior to 1964 and advised the owner that no further action will be taken with regard to the decommissioning requested August 2015.

Assessment History

The landowners utilised the services of Parameter Designs to compile the subject application who were also nominated as the applicant. The subject Development Application under assessment was lodged 29 February 2016, originally solely for use of the unapproved additions to House 1.

Given the compliance history of the site, 26 May 2016 Council requested that the unapproved works at House 2 and large shed structure also be addressed under this approval and requested formal evidence for the establishment of existing use rights for House 1.

Further information was requested 21 September 2016 requiring a bushfire assessment report for both dwellings. It was also advised that the subject site is flood prone with a Q100 (1 in 100 year floor) level of RL 3.2 AHD which therefore requires the habitable floor level to be RL 3.7 AHD under Section A3 of Council's Development Control Plan 2008. The existing floor level of House 2 is RL 2.83 AHD and as such, the cumulative additions to House 2 could not be supported by Council officers from a flood hazard perspective. As such, amended plans were requested removing the additional bedrooms to the south of the dwelling.

On 4 October 2016, the applicant requested for the application to be withdrawn as recommended by a newly appointed consultant town planner. Council's assessing officer discussed the matter with the applicant and town planner and the options for the ongoing compliance matter where the withdrawal was revoked before Council formally had acted on the request.

The landowner advised that amended plans for House 2 would not be provided and further requested House 2 be removed from the application on the grounds of Council's letter dated 16 November 2015. Council advised the applicant that the application will be reported to elected Council for determination and if the dwelling to the rear is not part of this application, this will be reported to Council instead as a compliance matter concurrently.

7 October 2016, the applicant advised Council a bushfire report had been commissioned and expected late October 2016. This was followed up by Council officers on several occasions until 17 March 2017 it was advised that a different bushfire consultant had been appointed with a report pending. A bushfire report has not been received by Council at the date of writing this report.

As reflected in the history, Council officers have given the owners ample opportunity to rectify the situation and provide the required reports for assessment.

Assessment

As outlined above, as dual occupancies (detached) are prohibited development under TLEP 2014; the following needs to be established:

1. If the dwellings are capable of meeting the provisions for existing or continuing use;
2. If any alterations or extensions made to the dwellings required approval in accordance with the legislation that was in place at the time of the works; and
3. If so, conduct a merit assessment for approval of the ongoing use of the additions.

It is considered that the landowner has provided sufficient evidence to establish that both Houses 1 and 2 existed as dwellings prior to 29 May 1964 with the introduction of Interim Development Order No 1 and that both dwellings have not abandoned the residential use till this day. As such, Houses 1 and 2 individually are considered to meet the Continuing Use provisions of Part 4 Division 10 of the Act. The documentary evidence and summary are detailed on file.

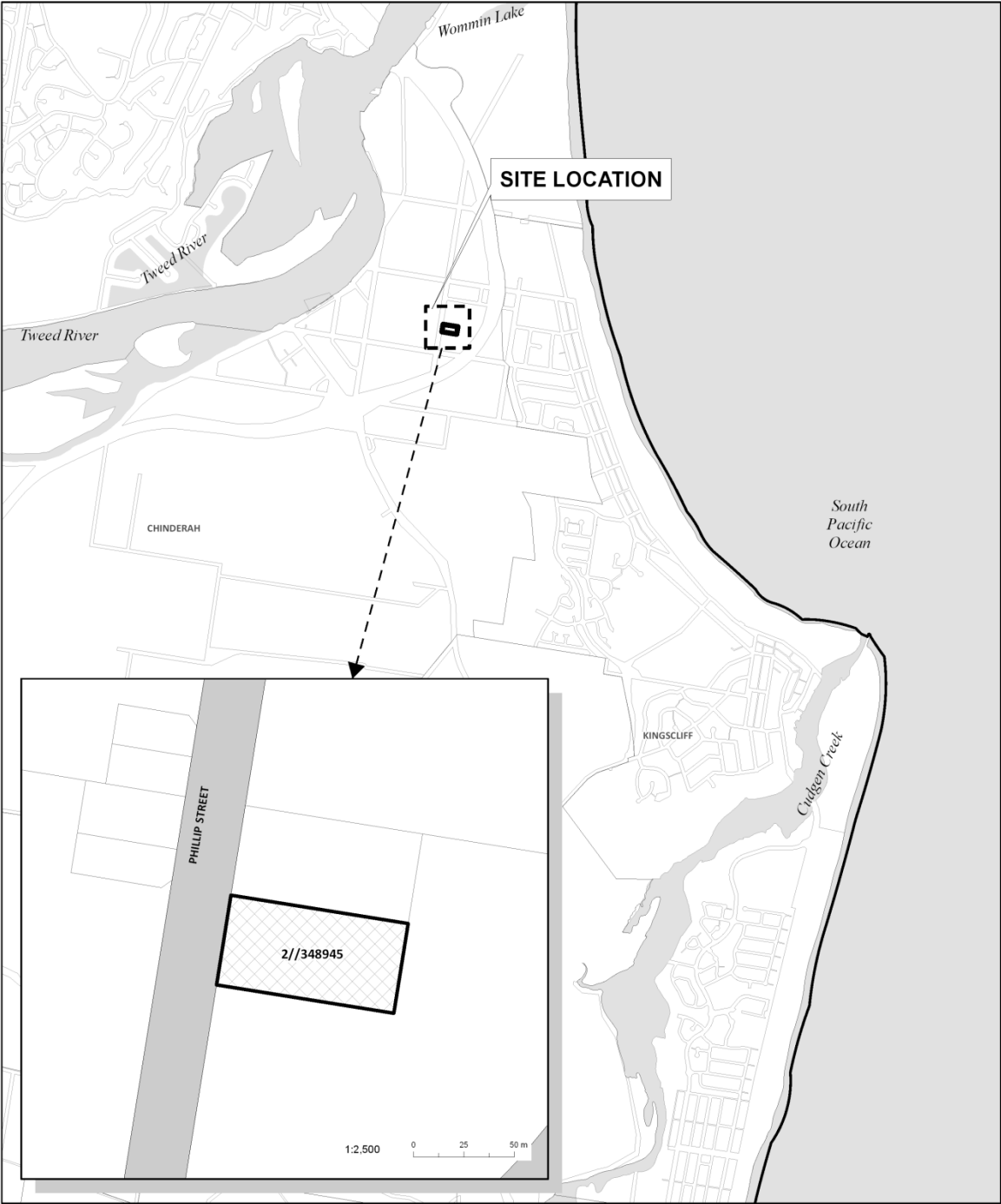
However, Section 109 of the Act states continuing use right provisions do not authorise any alteration or extension to or rebuilding of a building or work associated with the continuing use. Given the substantial increase in size and varied roof lines noted in Council's historic aerial photography, in addition to several complaints reporting works occurring at the site, it is considered that additions to both houses occurred after 1964 and therefore required approval.

It is noted that the landowner and applicant continued to reference Council's letter dated 16 November 2015 implying Council has approved the development and no further action is required. The following was sent to the applicant in this regard:

"Please note that Council correspondence dated 16 November 2015 does not constitute approval under the Environmental Planning and Assessment Act 1979. In the context of correspondence between the landowner and Council during this time, this letter does not state approval is not required for the additions. In correspondence dated 22 October 2015 Council acknowledged that Mr Irving had engaged your services to assist in the preparation of the required Development Application which would address the front dwelling and any other work that requires approval i.e. the rear dwelling and shed."

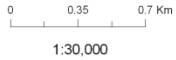
Following is a merit assessment of the additions to the dwellings in accordance with Section 79C of the Act.

SITE DIAGRAM:



Site Plan

Lot 2 DP 348945
No. 54 Phillip Street, Chinderah



1:30,000



Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaim 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 "Dial before You Dig" enquiry must be made by calling 3100. The information contained on this document remains valid for 30 days only from the date of supply.

GDA Cadastre: 8 August 2017
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Coordinate System - MGA Zone 56
Datum - GDA 94

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Murwillumbah NSW 2484
PO Box 816
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W: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au



Date Printed: 08 August, 2017

DEVELOPMENT/ELEVATION PLANS:

SITE COVER CALCULATIONS

DESCRIPTION	AREA (m ²)
HIGHSET RESIDENCE	231.75
SINGLE STOREY RESIDENCE	123.25
METAL SHED	203.26
TOTAL SITE AREA	4047.0

SITE COVER % = 588.26m²/4047.0m² X 100 = 13.79%
 SITE COVER FOR ALLOTMENTS GREATER THAN 1500m² 30% IS ACCEPTABLE
 LANDSCAPE AREAS FOR ALLOTMENTS GREATER THAN 1500m² 45% OF THE SITE INCLUDING AT LEAST TWO DEEP SOIL ZONES MEASURING A MINIMUM OF 6m IN ANY DIRECTIONS
 LOT SIZE: 4047.0m² X 45% = 1821.15m² LANDSCAPE AREA
 TOTAL AREA: = 2257.64m²

FLOOR SPACE RATIO (FSR) CALCULATIONS

DESCRIPTION	AREA (m ²)
HIGHSET RESIDENCE	288.92
SINGLE STOREY RESIDENCE	118.86
TOTAL SITE AREA	4047.0

SITE AREA: 4047.0m²X0.8 = 3237.6m²
 RESIDENCE: 408.78m²/4047.0m² = 0.1:1

PROPOSED DEVELOPMENT
 TOTAL EXISTING RESIDENCE FLOOR AREA (& ASSOCIATED VERANDAS & LOWER FLOOR) 357.74m²
 TOTAL EXISTING SHED FLOOR AREA: 203.26m²
 TOTAL EXISTING GRANNY FLAT AREA (& ASSOCIATED DECK & CARPORT) 158.30m²

NOTE:
 ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. DEVELOPER TO VERIFY ALL DIMENSIONS BY BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF PRACTICE AS APPROVED BY THE CITY OF MELBOURNE AND AUSTRALIAN STANDARDS AND COUNCIL.

STRONG SOUTHERLY WIND & MAIN

54 PHILLIP STREET
 CHINDERAH
 LOT 2 DP 348945
 DP 348945 EP 044723

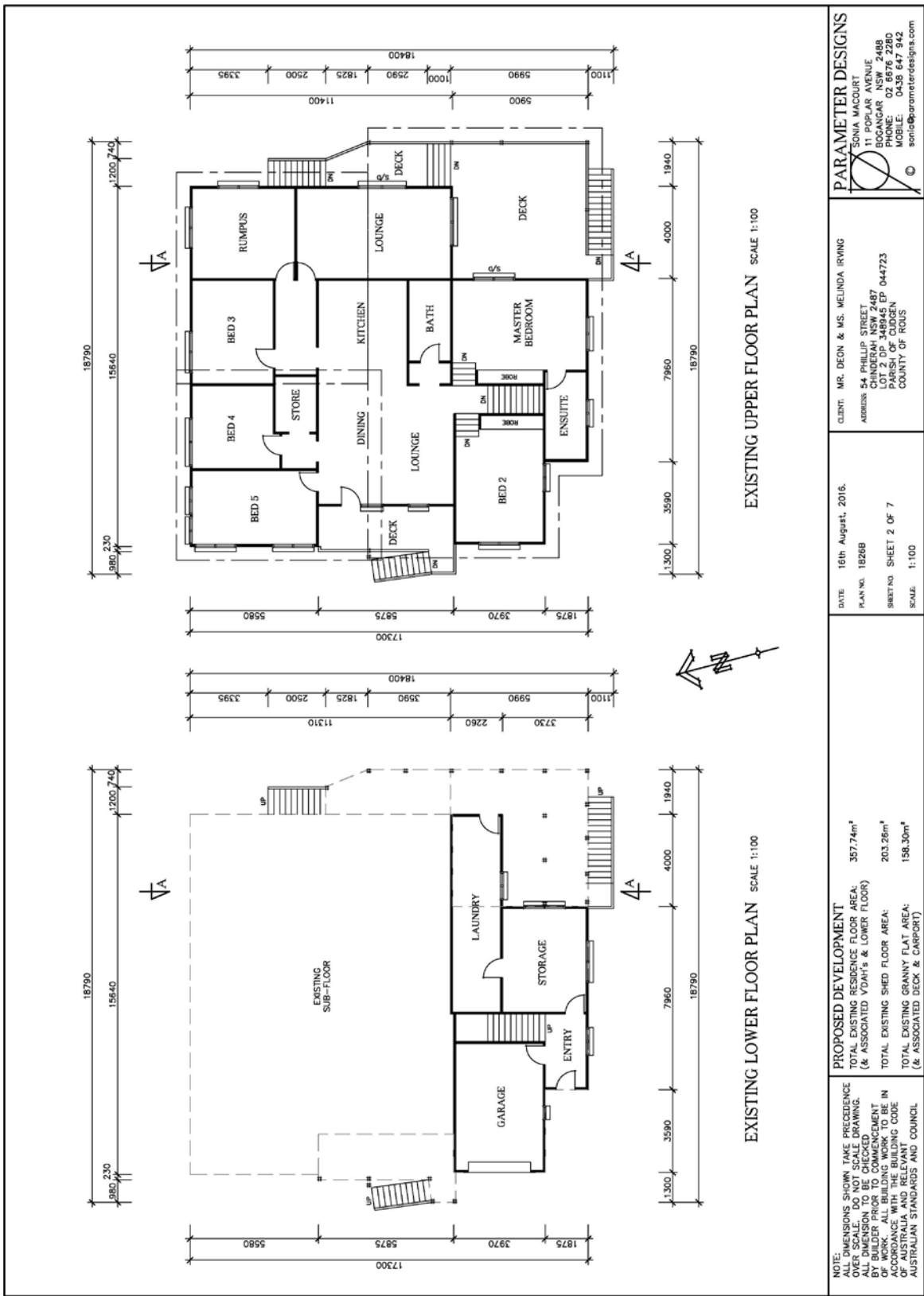
AREA: 4047.0m²
 ZONING: 201.0 DENSITY RESIDENTIAL
 ACID SULFATE CLASS 3
 HEIGHT: 1-8m
 BUSH FIRE P/F: YES
 BUSH FIRE P/F: YES—VEGETATION BUFFER
 FLOODING PMF: INUNDATION 1-5m

SITE PLAN & SITE ANALYSIS SCALE 1:400

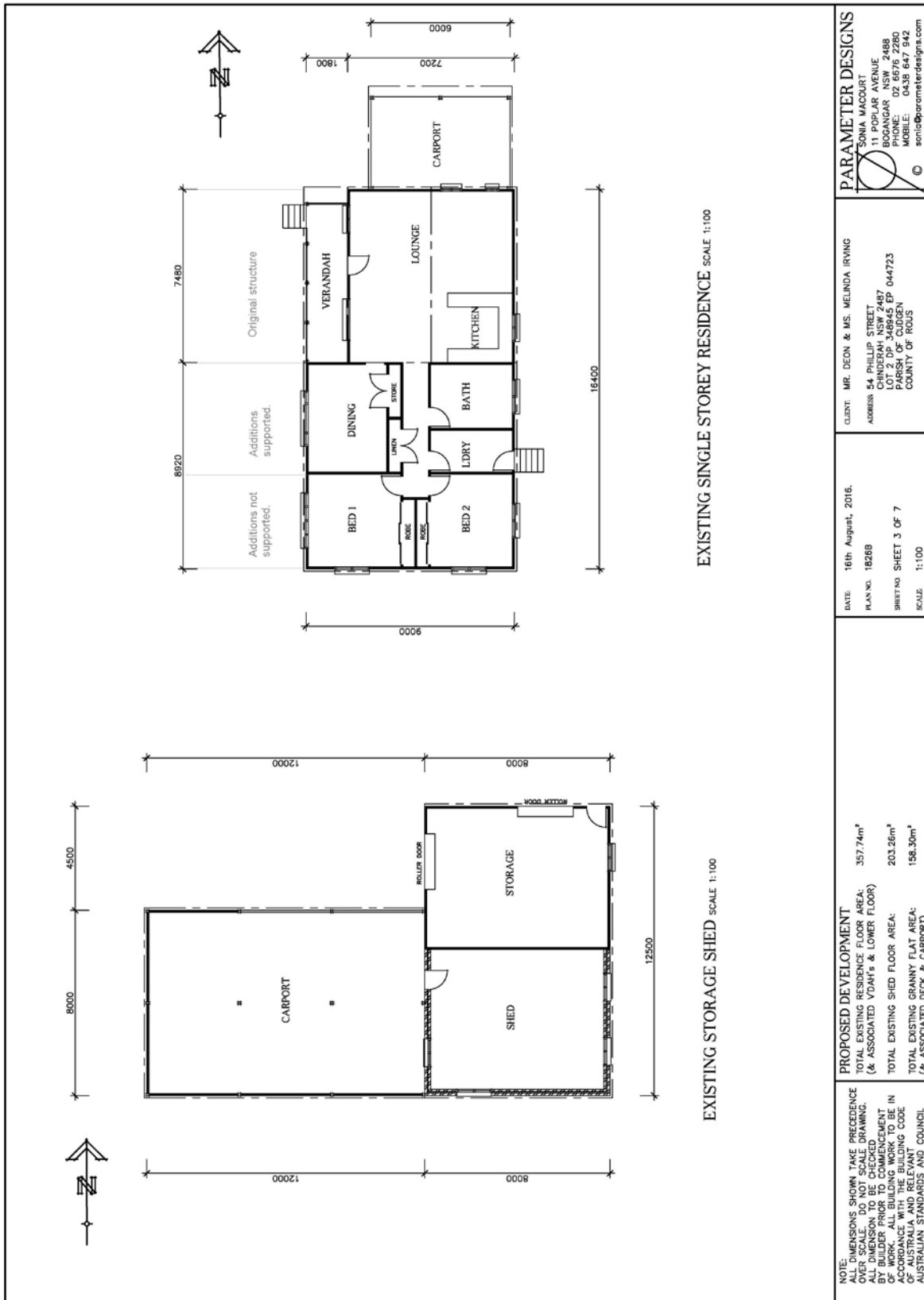
DATE: 16th August, 2016.
 PLAN NO. 1826B
 SHEET NO. SHEET 1 OF 7
 SCALE: 1:400

PARAMETER DESIGNS
 SONIA MACCOURT
 11 POPULAR AVENUE
 CHINDERAH NSW 2487
 PHONE: 02 6676 2280
 MOBILE: 0438 647 942
 sonia@parameterdesigns.com

CLIENT: MR. DEON & MS. MELINDA IRVING
 ADDRESS: 54 PHILLIP STREET
 LOT 2 DP 348945 EP 044723
 CHINDERAH NSW 2487
 COUNTY OF ROUS



<p>PARAMETER DESIGNS SONIA MACCORT 10 POPULAR AVENUE CHANDLER NSW 2188 PHONE: 02 8676 2280 MOBILE: 0438 647 942 sonia@parameterdesigns.com</p>	<p>CLIENT: MR. DEON & MS. MELINDA IRVING ADDRESS 54 PHILLIP STREET CHANDLER NSW 2188 LOT 2 DP 348945 EP CHANDLER NSW COUNTY OF ROUS</p>	<p>DATE: 16th August, 2016. PLAN NO. 18268 SHEET NO. SHEET 2 OF 7 SCALE: 1:100</p>	<p>PROPOSED DEVELOPMENT: TOTAL EXISTING RESIDENCE FLOOR AREA: (& ASSOCIATED VDAH'S & LOWER FLOOR) 357.74m² TOTAL EXISTING SHED FLOOR AREA: 203.26m² TOTAL EXISTING GRANNY FLAT AREA: (& ASSOCIATED DECK & CARPORT) 158.30m²</p>	<p>NOTE: ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER ANY DIMENSIONS SHOWN ON THE DRAWING. ALL DIMENSIONS TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND THE BUILDING CODE AUSTRALIAN STANDARDS AND COUNCIL</p>
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EXISTING SINGLE STOREY RESIDENCE SCALE 1:100

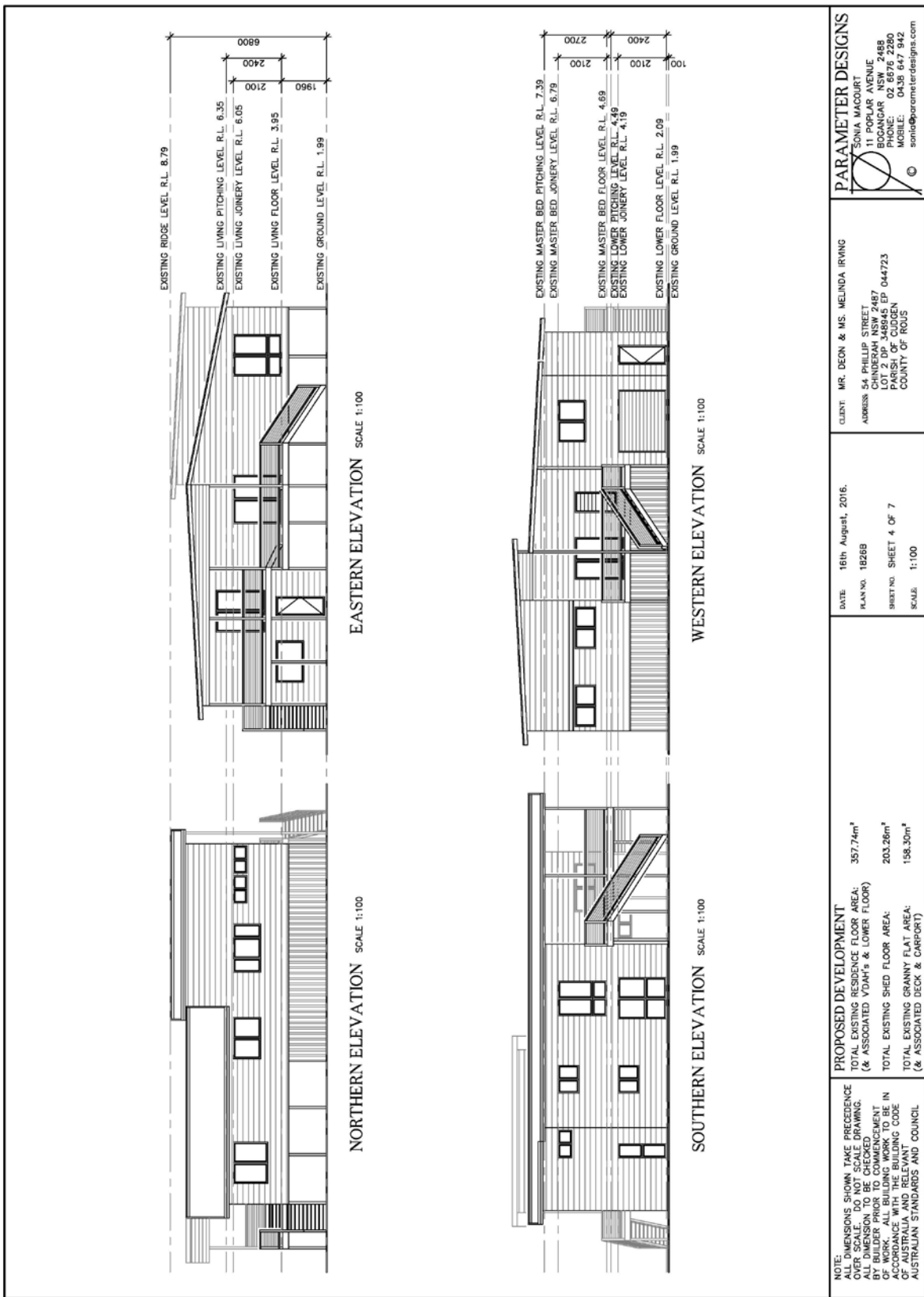
EXISTING STORAGE SHED SCALE 1:100

PARAMETER DESIGNS
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 TEL: 08 9477 5222
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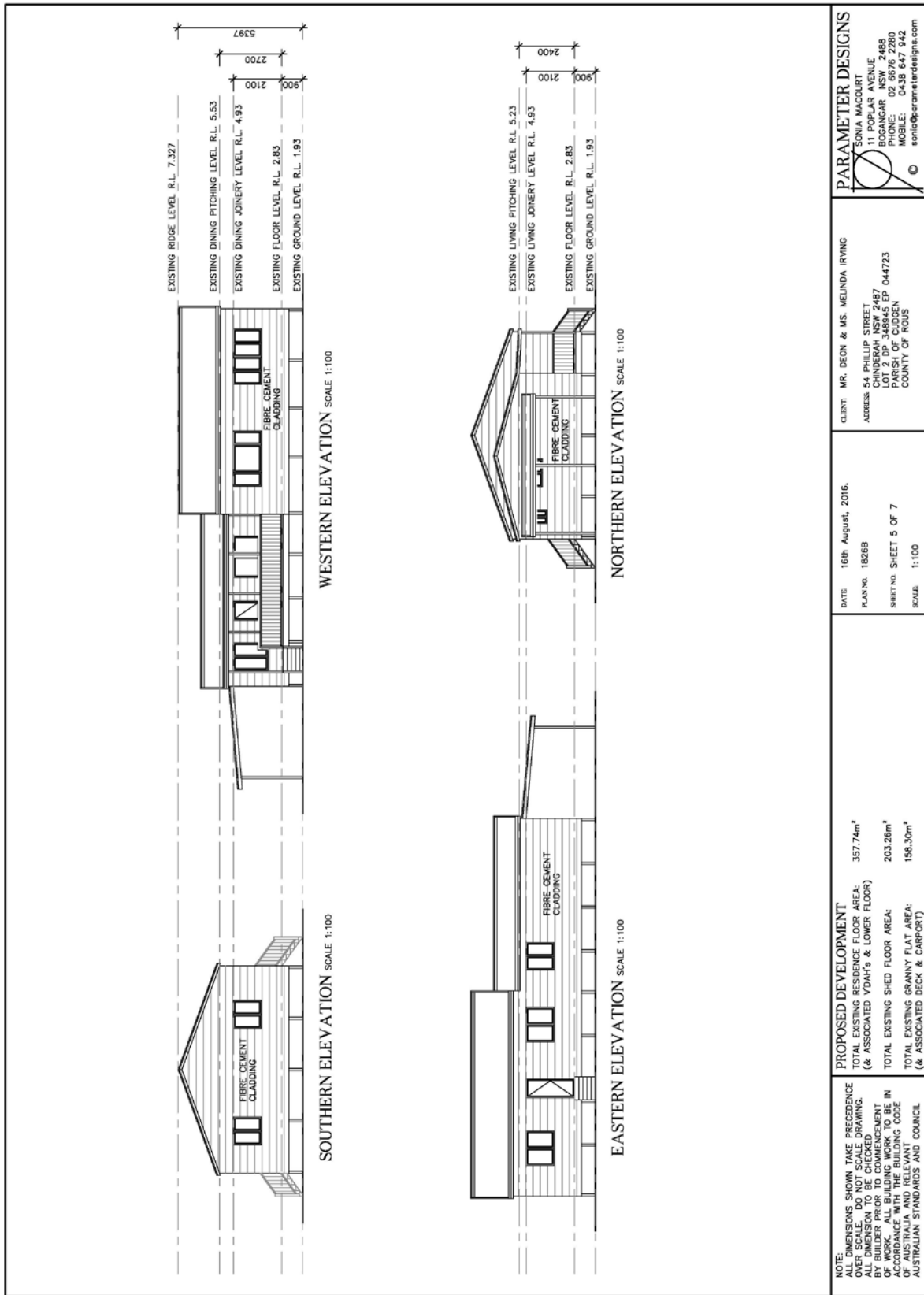
CLIENT: MR. DEON & MS. MELINDA IRVING
 ADDRESS: 64 PHILLIP STREET
 CHINDERAH NSW 2487
 LOT 2 DP 248845 EP 044723
 PARISH OF CUDGEN
 COUNTY OF ROUS

DATE: 16th August, 2016.
 PLAN NO. 18268
 SHEETING SHEET 3 OF 7
 SCALE: 1:100

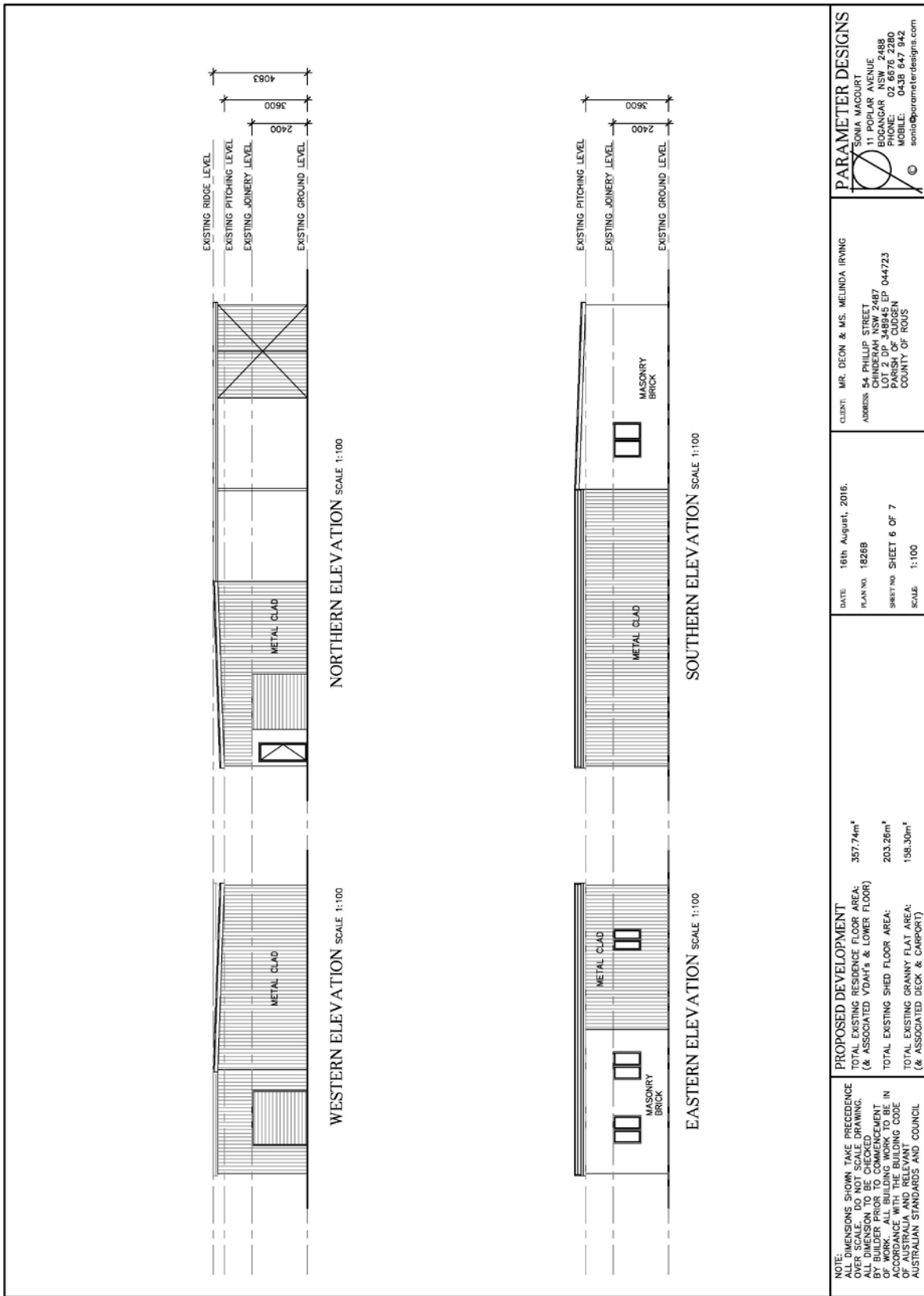
NOTE:
 ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING.
 ALL DIMENSIONS TO BE CHECKED BY THE BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL

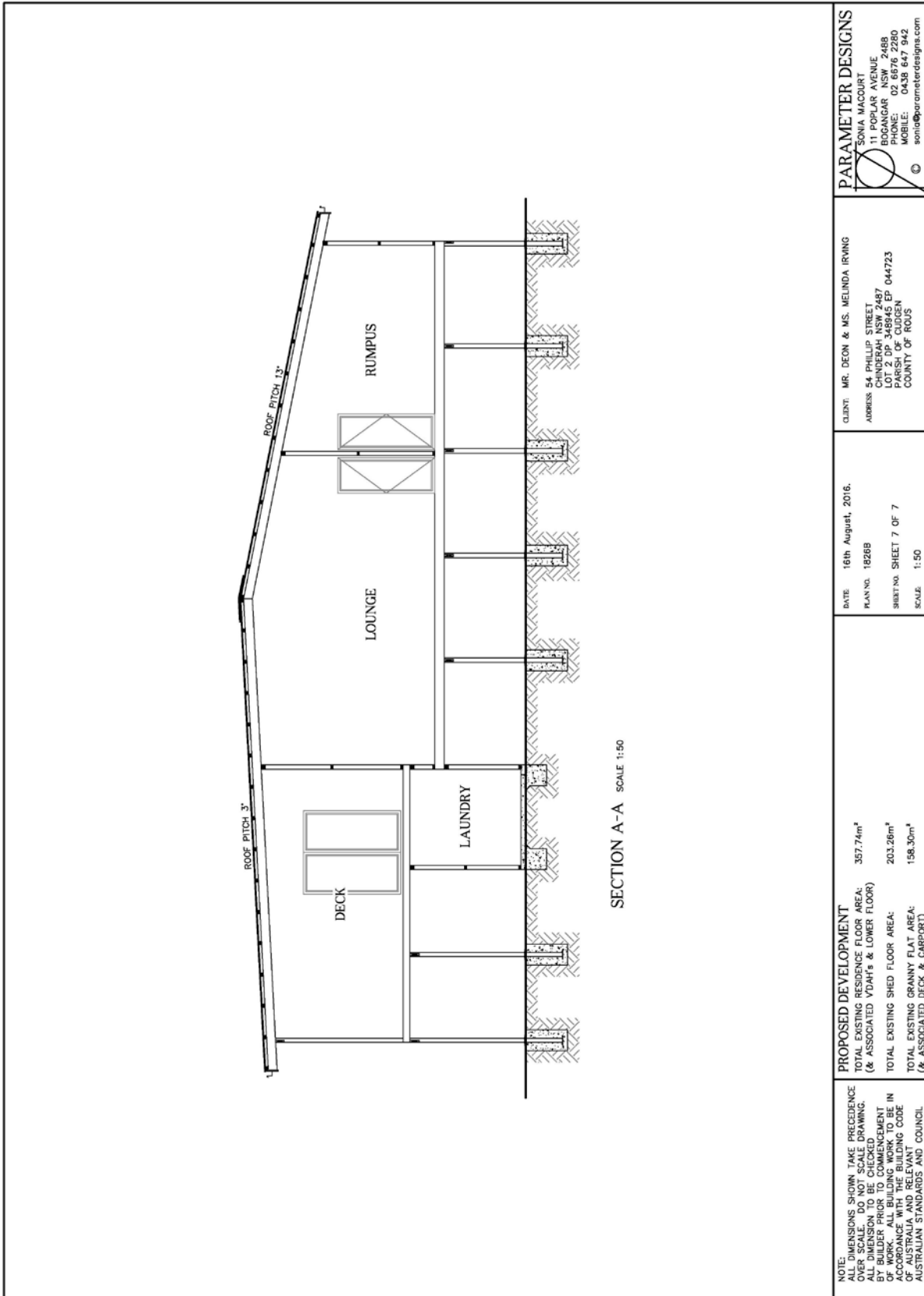


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<p>NOTE: DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. ALL DIMENSION TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORKS. DRAWING TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL</p>	<p>PROPOSED DEVELOPMENT TOTAL EXISTING RESIDENCE FLOOR AREA: 357.74m² (& ASSOCIATED YDHA'S & LOWER FLOOR) TOTAL EXISTING SHED FLOOR AREA: 203.26m² TOTAL EXISTING GRANNY FLAT AREA: 158.30m² (& ASSOCIATED DECK & CARPORT)</p>	<p>DATE: 16th August, 2016. PLAN NO. 1928B SHEET NO. SHEET 5 OF 7 SCALE 1:100</p>	<p>CLIENT: MR. DEON & MS. MELINDA IRVING ADDRESS: 54 PHILLIP STREET CHINDEN, NSW 2467 PHONE: 02 6676 2280 PARISH OF CUDGEN COUNTY OF ROUS</p>	<p>PARAMETER DESIGNS SONIA MACCOURT 11 POPLAR AVENUE BOGANGAR, NSW, 2488 PHONE: 02 6676 2280 MOBILE: 0438 647 942 sonia@parameterdesigns.com</p>
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PROPOSED DEVELOPMENT
 TOTAL EXISTING RESIDENCE FLOOR AREA: 357.74m²
 (& ASSOCIATED V'DAH'S & LOWER FLOOR)
 TOTAL EXISTING SHED FLOOR AREA: 203.28m²
 TOTAL EXISTING GRANNY FLAT AREA: 158.30m²
 (& ASSOCIATED DECK & CARPORT)

DATE: 16th August, 2016.
 PLAN NO: 1828B
 SHEET NO SHEET 7 OF 7
 SCALE: 1:50

CLIENT: MR. DEON & MS. MELINDA IRVING
 ADDRESS: 54 PHILLIP STREET
 CHINDENAH NSW 2487
 PARISH OF CHINDENAH
 COUNTY OF ROUS

SONIA MACCOURT
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 AUSTRALIA
 PHONE: 02 6576 2280
 MOBILE: 0438 647 942
 sonia@parameterdesigns.com

PARAMETER DESIGNS

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 subject development is considered to be generally in accordance with the aims of this plan having regard to residential development being permissible at this location.

Clause 2.3 – Zone objectives and Land use table

The objectives of the RU2 Rural Landscape zone are:

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

In this zone, the residential use of the site, although prohibited in this delivery, are considered to be generally consistent with the objectives by way of providing for a range of compatible land uses, considered to be compatible as they are permitted with consent in this zone. The residential use of the site is considered to be generally consistent with the objectives of the zone.

Clause 4.2B - Erection of dwelling houses and dual occupancies on land in certain rural and residential zones

The objectives of this clause are as follows:

- (a) *to minimise unplanned rural residential development,*
- (b) *to enable the replacement of lawfully erected dwelling houses and dual occupancies in rural and residential zones.*

As outlined elsewhere in this report, the dwellings rely on continuing or existing use rights and the assessment is limited to the additions to the dwellings rather than the construction of dwelling houses to which this clause relates.

The subject lot was created in 1944. If the subject site was to be assessed against Clause 4.2B TLEP 2014 and a dwelling entitlement search is to be carried out, a 12(d) test under Interim Development Order No. 2 is required and ownership of the subject lot and adjacent lots at September 1966 needs to be determined via a historic search. This was not conducted being out of the scope of the assessment required.

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

This clause is not applicable as subdivision does not form part of this application.

Clause 4.3 - Height of Buildings

The subject site has a maximum building height mapped as 10m. House 1 has a building height of 6.8m, House 2 has a building height of 5.4m whilst the shed has a maximum height of 4.08m and as such, the site complies with Clause 4.3.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Secondary dwellings are a listed miscellaneous use within this clause. House 1 and 2 are considered to benefit from Continuing Use rights under the Act and as such, House 2 is not defined as a secondary dwelling. Therefore Clause 5.4 does not apply.

Clause 5.5 – Development within the Coastal Zone

This clause states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the following:

- (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 application does not propose any amendments to existing public access to or along the coastal foreshore.

- (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 design of subject development is not considered unsuitable taking into account the built form within the residential surrounding area with minimal impact on the natural scenic quality and as such the proposal is considered to be acceptable in this regard.

(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,*

Given that the subject site is 800m from the foreshore, the development is not considered to impact on the amenity of the foreshore by virtue of overshadowing or a loss of views from a public place given the topography. The subject application is considered to be acceptable having regard to the above considerations.

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

The subject development is not considered to compromise the scenic qualities of the coast as it represents a residential 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 due to its location and scale.

(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 subject site is already developed. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard.

(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 residential 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 subject development does not propose to dispose effluent by non-reticulated system.

- (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*

It is noted that the application has been reviewed by Council's Building Services Unit with respect to stormwater, who has raised no concerns with respect to stormwater subject to conditions of consent. It is considered that the subject application would be in accordance with the above controls, with no untreated stormwater being discharged to the sea, beach or the like.

- (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 due to its nature and the spatial separation between the site and coastal hazards at this location.

Having regard to the above assessment the proposal is considered to be acceptable with respect to the provisions of Clause 5.5.

Clause 5.9 – Preservation of Trees or Vegetation

As proposed, no vegetation is proposed for removal as part of this application. A bushfire report was not provided for assessment as requested and as such, no details were provided as to required asset protection zones or tree removal.

Clause 5.10 - Heritage Conservation

The subject site is not mapped as a Heritage Item nor within a heritage conservation area. The structures that this application seeks approval for are not considered to impact Aboriginal objects and Aboriginal places of heritage significance and as such, this clause is considered satisfied.

Clause 5.11 - Bush fire hazard reduction

Clause 5.11 states that bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent.

A bushfire assessment report was requested from the applicant as the site is bushfire prone and it was considered after preliminary assessment that the structures could have a BAL rating of 40 and as such, the application required referral to the NSW Rural Fire Service in accordance with Section 79BA of the Environmental Planning and Assessment Act 1979 and Planning for Bushfire Protection 2006. This report was not provided to Council for consideration and as such, the development is considered to be unacceptable in this regard.

Clause 7.1 – Acid Sulfate Soils

The subject site is mapped as having Class 3 acid sulfate soils. As no earthworks are proposed as part of this application, this clause requires no further consideration.

Clause 7.3 – Flood Planning

The subject site is mapped as flood prone and as such this Clause requires consideration. 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.*

Clause 7.3 states development consent must not be granted to development on land at or below the flood planning level unless the consent authority is satisfied that the development:

- (a) *is compatible with the flood hazard of the land, and*
- (b) *will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *incorporates appropriate measures to manage risk to life from flood,*
and
- (d) *will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

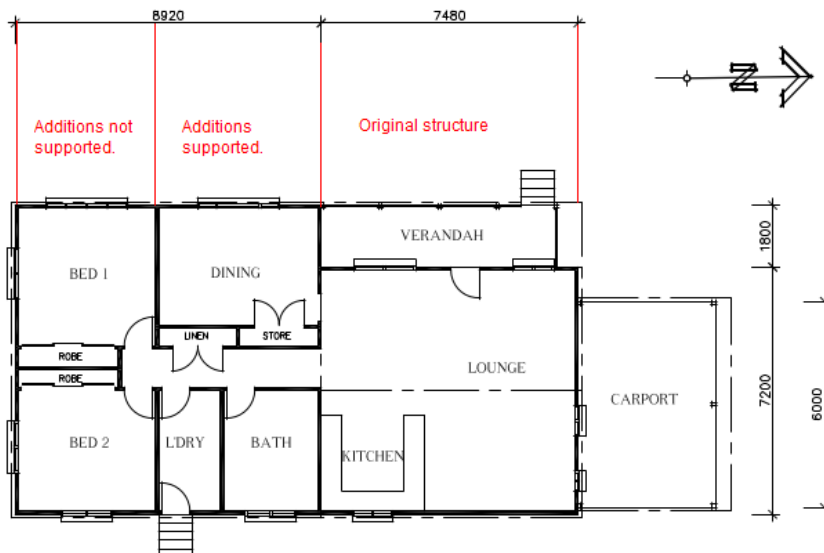
As detailed elsewhere in this report, the application was referred to Council's Flooding Engineer who provided an assessment of the proposal.

Council's Flooding Engineer advised that in flood prone locations such as this site Council would consider dual occupancy and granny flats as inappropriate development (Section A3.4.5 TDCP 2008) on the basis of limiting flood risk exposure to humans. However Continuing Use rights have been established for

two dwellings onsite and the assessment of this development is limited to the additions to the dwellings.

On that basis it is important to mitigate the impact of flooding on existing and future occupants of both these structures. Based on the plans provided, the lower level of House 1 and House 2 do not meet the minimum habitable floor level requirements by 0.8m – 1m.

Generally only minor extension/expansion of existing dwellings are permitted which is limited to 35m² of the original structure as defined by Section A3 of TDCP 2008. In this instance the original structure of House 2 has more than doubled in size with approximately 80m² being added to the structure without the required approvals. Council's Flooding Engineer recommended two bedrooms be removed from the floor plan of House 2 (as outlined below) or alternatively the existing structure can be raised to the minimum habitable floor level of RL 3.6m AHD to comply.



It was further recommended that the lower level of House 1 including the store room adjacent to the laundry not be converted to a habitable space given it is well below (1m) the Design Flood Level.

The applicant was advised of the above assessment and amended plans were requested however, were not provided. Therefore the development as proposed is not considered to satisfy Clause 7.3.

Clause 7.4 - Floodplain risk management

Although the subject site is mapped as flood prone and therefore consideration of this clause is warranted, dwelling houses or dual occupancies are not a listed land use within Clause 7.4(3) that are restricted by this provision and as such, this clause is considered satisfied.

Clause 7.5 - Coastal risk planning

The subject site is not identified as being within a coastal risk area on Council's Coastal Risk Planning Map on land to which this clause relates.

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*. Council's Building Services Unit have assessed the development with respect to Building Certificates BC16/0036 and BC16/0113 concurrently applied for and have advised that stormwater at present is not adequately dealt with. However, this matter could be reasonably addressed by way of condition of consent.

Clause 7.8 – Airspace operations

The subject development is not considered to impact the operations of Gold Coast Airport and as such Clause 7.8 is considered satisfied.

Clause 7.9 - Development in areas subject to aircraft noise

The subject development is not mapped as subject to aircraft noise and as such Clause 7.9 does not apply.

Clause 7.10 - Essential Services

Water, electricity, sewage disposal and suitable vehicular access is acceptably established at the site however, as noted as outstanding items related to associated Building Certificates BC16/0036 and BC16/0113, adequate connection of the structures to stormwater drainage is noted as requiring further action. If this application is approved, this unresolved matter could be addressed by way of condition of consent.

State Environmental Planning Policies

SEPP No 71 – Coastal Protection

The proposal is consistent with the aims of the plan in that the development is 600m of a waterway or coastal foreshore. Therefore the subject development does not have a significant impact to public access to and along coastal foreshores. Nor does the subject development have a significant impact on the visual amenity of the coast, scenic quality of the area, water quality or the beach environment.

The bulk scale and size of the subject development is appropriate for the surrounding area and does not negatively impact the conservation and preservation of items of heritage, archaeological or historic significance.

It is considered the subject development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection

SEPP (Building Sustainability Index: BASIX) 2004

As defined under the Environmental Planning and Assessment Regulation, the development under assessment involves the additions to two dwellings which had a nominated cost of works of less than \$50,000 and therefore the proposal is not considered to be a BASIX affected development.

SEPP (Exempt and Complying Development Codes) 2008

This Policy aims to provide streamlined assessment processes for development that complies with specified development standards by identifying, in the exempt development codes, types of development that are of minimal environmental impact that may be carried out without the need for development consent. It is not considered that the additions and alterations to two dwellings nor construction of the shed meet the exempt provisions of this Policy and as such, approval is required. Further, as Complying Development certificates cannot be issued for works retrospectively, approval for the subject development cannot be granted under this Policy by way of Complying Development.

SEPP (Affordable Rental Housing) 2009

The aim of this Policy is to provide a consistent planning regime for the provision of affordable rental housing. Under the Policy, secondary dwellings are permissible with consent within nominated Residential zones. As the subject site is zoned RU2 Rural Landscape, this Policy with regard to secondary dwellings does not apply.

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

None of the draft environmental planning instruments are considered to be relevant to this application.

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

Tweed Development Control Plan

Section A1-Residential and Tourist Development Code

The assessment is limited to the additions to the dwellings and the shed.

A detailed assessment is available on file however the additions were not considered to be inconsistent with Section A1.

House 1 appropriately addresses the street however sheltered by established vegetation. The scale, character, most setbacks and building height of the dwellings are not inconsistent with the surrounding developments. No overshadowing nor view impacts are created from the additions. House 2 is setback 6m from the rear boundary rather than the required 10m however as the additions do not exacerbate this variation which was established lawfully, this is

considered acceptable. The site is zoned RU2 and is 4047m² in area and as such landscaped area, deep soil zones and site coverage is acceptable.

Neither house is considered to have been designed with passive design in mind given the additions are within the constraints of the existing dwellings constructed over 70 years ago. However, both houses allow for sufficient cross ventilation with appropriate openings and are overall considered acceptable in this regard.

Therefore the additions to the dwellings are considered acceptable when assessed against the provisions of Section A1.

With regard to the shed, the single storey structure 203m² in size, is located behind House 1 and not within deep soil areas. No amenity impacts are noted regarding the shed. The shed is 4.1m in height and as the subject site is zoned RU2 no further controls apply and as such the shed is considered to be consistent with Section A1.

Section A2-Site Access and Parking Code

The aim of Section A2 is ensure developments provide off street car parking facilities that satisfy the demand of residents and visitors whilst considering visual amenity. The Code requires 1 space per dwelling plus provision for driveway parking of another vehicle. The subject site includes a carport attached to House 2 and covered spaces available within the shed in addition to along the 70m driveway. Access is established from Phillip Street which is acceptable. As such, Section A1 is considered satisfied.

Section A3-Development of Flood Liable Land

The aim of this Section is to set detailed standards for land development in order to minimise the adverse effect of flooding on the community as part of Council's flood mitigation strategy.

As previously mentioned, the subject site is flood liable and therefore, Section A3 requires consideration. The application was referred to Council's Flooding Engineer who provided the following assessment comments:

"The Flood Characteristics of the Property are:

- *Design Flood Level = RL 3.1m Australian Height Datum (AHD)*
- *Minimum habitable Floor level = RL 3.6m AHD*
- *Probable Maximum Flood (PMF) = RL 7.9m AHD*
- *Property located in a Low Flow region*
- *Natural Ground Level - approximately RL 2m AHD - based on Council's GIS and subject to detailed site survey by a registered surveyor.*

The site and surrounding road network is inundated in small to medium flood events, based on the Tweed Valley Flood Model, the 20% AEP (5 year) and 5% AEP (20 year) flood event.

During the Design flood Event the locality will be inundated up to 1m in depth with has disrupted flood access to higher land approximately 700m to the east of the adjacent Motorway in Wommin Bay Road. Based on the topography and Flood depth the Hazard Vulnerability Classification for this region is a H3. This classification is considered Unsafe for vehicles, children and the elderly - taken from Fig 6 - General Flood hazard Vulnerability Curves within the Australian Government - Australian Emergency Management Handbook Series - Technical Flood Risk Management Guideline: Flood Hazard."

The Proposal Summary

- House 1 has an existing lower floor plan set at RL 2.09, consisting of an enclosed garage/entry and storage room adjacent a laundry.*
- House 2 consists of enclosed 2 bedrooms/dining, laundry/bathroom/lounge and kitchen with an open veranda. The floor level shown is shown at RL 2.83m.*
- It is unclear that the floor levels have been confirmed by detailed survey to Australian Height Datum (AHD) by a registered Land Surveyor. This would need to be confirmed with the applicant. For the purposes of the assessment I am assuming the above floor levels are to AHD.*

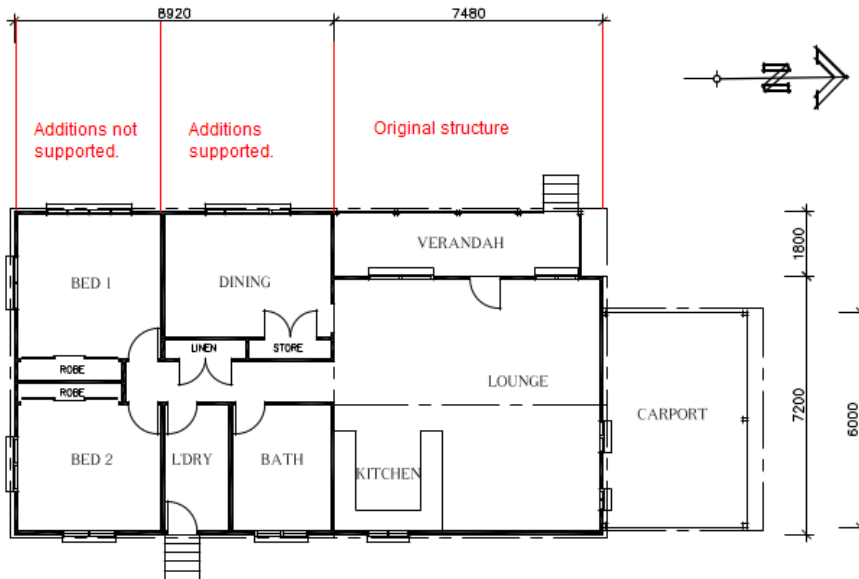
Proposal Assessment & Recommendations

In flood prone locations such this site the flood DCP would consider Dual occupancy and Granny Flats as inappropriate development (Section A3.4.5) on the basis of limiting flood risk exposure to humans. However it has been established through Council's Planning & Regulation department that the site has historical use rights for two dwellings onsite.

On that basis it is important to mitigate the impact of flooding on existing and future occupants of both these structures. On that basis recommend that following:

- House 1 - That the store room adjacent the laundry shall not be converted to a habitable space given it is well below (1m) the Design Flood Level.*
- House 2 - That a minor extension/expansion of the original structure is permissible for approximately 35m². In this instance the two bedrooms shall be removed from the floor plan on the Parameter Designs documentation. Alternatively the existing structure can be raised to the minimum habitable floor level of RL 3.6m AHD to comply with the DCP.*

The following highlights the recommendations from Council's Flooding Engineer regarding the additions to House 2 which is below the minimum habitable floor level.



The applicant was advised of the above assessment and amended plans were requested however, were not provided. Therefore the development as proposed is not considered to satisfy Section A3 of TDCP 2008.

Section A11-Public Notification of Development Proposals

The application was not considered to be notified development in accordance with Section A11.

Section A16-Preservation of Trees or Vegetation

Although tree removal does not form part of the proposal, it is noted that bushfire concerns have not been resolved. Should bushfire concerns be addressed, it is likely that asset protection zones would be required to be established which would require vegetation removal.

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

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

The proposed development is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is not considered that the proposed development contradicts the objectives of the Government Coastal Policy, given residential use is permissible on the subject site.

Clause 92(1)(b) Applications for demolition

The application does not propose demolition.

Clause 93 Fire Safety Considerations

The application was referred to Council's Building Services Unit who have no objections to the proposal in this regard subject to conditions of consent.

Clause 94 Buildings to be upgraded

Council's Building Services Unit have reviewed the application and provided assessment. Building Certificate applications BC16/0036 and BC16/0113 have been lodged by the applicant in respect of the two existing dwellings and a metal clad shed on the subject site. Council officers have concurrently assessed these applications and require the completion of a number of Building Code of Australia (BCA) upgrading works prior to certificate issue. These matters remain outstanding.

However, regarding Clause 94, the Building Services Unit have not raised any concerns with the proposal subject to standard conditions of consent which include the requirement for the Building Certificates being issued and completion of the upgrade works in accordance with Clause 94.

- (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 subject site is not located on the coastal foreshore and is not affected by coastal hazards. The proposed development is not considered to be inconsistent with this Plan.

Tweed Coast Estuaries Management Plan 2013

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

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

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

Bushfire Hazard

The subject site is mapped as bushfire prone and after preliminary assessment of the development against the provisions of *Planning for Bushfire Protection 2006*,

it was considered that the structures could have a high BAL rating of 40 and as such, the application required referral to the NSW Rural Fire Service in accordance with Section 79BA of the Environmental Planning and Assessment Act 1979. A bushfire assessment report was requested from the applicant and Council was advised the report had been commissioned. Subsequently, a report was not provided to Council for proper assessment of the development and as such, the development is considered to be unacceptable in this regard.

Flooding Hazard

As detailed elsewhere in this report, the subject site is flood prone and the application was referred to Council's Flooding Engineer who advised that new developments of this nature in flood prone locations are not considered acceptable development on the basis of limiting flood risk exposure to humans. However as continuing use rights have been established for the dwellings, the assessment of this application is limited to the additions to the dwellings.

Based on the plans provided, the lower level of House 1 and House 2 do not meet the minimum habitable floor level requirements by 0.8m – 1m.

In this instance, only minor extension/expansion of existing dwellings are permitted which is limited to 35m² of the original structure. As House 2 has more than doubled in size with approximately 80m² being added to the original structure without the required approvals, Council's Flooding Engineer recommended two bedrooms be removed from the floor plan or the existing structure be raised to the minimum habitable floor level of RL 3.6m AHD to comply. Additionally, the lower level of House 1 is not be used as habitable space given it is well below (1m) the Design Flood Level.

To mitigate the impact of flooding on existing and future occupants of both these structures the applicant was advised of the above assessment and amended plans were requested however, were not provided. Therefore the development as proposed is not considered to be acceptable with regard to the flooding hazard at the subject site.

Flora and Fauna

The property to the south is substantially vegetated and zoned 7(l) Environmental Protection (Habitat). No vegetation clearing is proposed as part of the application and as such, flora and fauna impacts are considered acceptable.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Rural residential development is located northeast and northwest from the subject site. Land to the south is substantially vegetated and zoned 7(l) Environmental Protection (Habitat). The Pacific Motorway is located 100m to the east. The additions to the residential use of the site could be considered acceptable from a

landuse perspective given permissibility under the Act and consistency with development to the north of the site.

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

In accordance with Section A11 of TDCP 2008, the application was not notified and as such, no public submissions were received as part of the notification process. It is noted however that the application has come about following complaints from a neighbour in relation to House 2's existence, construction work as it was occurring and the dumping of construction waste.

NSW Rural Fire Service (RFS)

Following preliminary assessment, it was determined the application required referral to the NSW RFS in accordance with Section 79BA of the Environmental Planning and Assessment Act 1979. A bushfire hazard report was requested and not provided by the applicant. Subsequently, the application has not been referred to the NSW RFS due to a lack of information required for proper assessment.

(e) Public interest

The substantial additions to the existing dwellings and construction of a metal shed were carried out without the required approvals stated under the Environmental Planning and Assessment Act 1979. As such, approving the application is considered to not be in the public interest given the development is not in accordance with the relevant controls and potentially contributing to people being exposed to bushfire and flooding hazards.

OPTIONS:

1. Adopt the recommendations made and refuse the development application and undertake compliance action; or
2. Grant in-principle approval for the development application and that the officers submit a report to a future Planning Committee Meeting with recommended conditions of consent.

CONCLUSION:

The substantial additions to the existing dwellings and construction of a metal shed were carried out without the required approvals. Although it has been established that the dwellings benefit from Continuing Use rights, the dwelling additions as constructed are considered to not meet controls relevant to flooding hazard and bushfire protection. As such it is considered to be in the public interest to refuse the application and take compliance action on this matter. The landowner has had ample opportunity to remedy the situation and provide the required information however given the known hazards to the subject development, the additions cannot be supported by Council officers and as such the application is recommended for refusal with the matter forwarded to Council's legal representatives to rectify the issue.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Council will incur legal expenses in the referral of this matter to a member of its Legal Panel.

c. Legal:

If the applicant is dissatisfied with the determination of this application, they may appeal the decision to the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

2 [PR-PC] Development Application DA17/0084 for a Seniors Living (33 Aged Care Residential Rooms and 36 Independent Living Units) at Lots 1, 3 & 4 NPP 271020 Nos. 124-128 Leisure Drive, Banora Point

SUBMITTED BY: Development Assessment and Compliance

nhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

ROLE: Provider

SUMMARY OF REPORT:

The subject application was reported to Councils Planning Committee Meeting of 3 August 2017.

At this meeting Council resolved *that Development Application DA17/0084 for a Seniors Living (33 Aged Care Residential Rooms and 36 Independent Living Units) at Lots 2 & 3 NPP 271020 No. 128-130 Leisure Drive, Banora Point be deferred for a workshop and invite the proponent and representatives of the residents and then bring back a further detailed report with particular regard to parking, amenity and character issues, to 7 September 2017 Planning Committee meeting.*

Following Councils request for further information and Councillor workshop the applicant made amendments to the proposed application namely in relation to the following:

- Further detail in relation to the proposed uses of the units and definition under the SEPP (Housing for Seniors or People with a Disability) 2004;
The applicant submitted to Council further description in relation to the intended uses of the ground floor units. The following was advised:

"The rooms are identified as Residential care facility rooms (persons with dementia rooms at the northern end) and the Self-contained dwellings on the top two floors."

Residential care facility is defined as follows:

“a residential care facility is residential accommodation for seniors or people with a disability that includes:

- (a) meals and cleaning services, and*
- (b) personal care or nursing care, or both, and*
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, not being a dwelling, hostel, hospital or psychiatric facility.”*

The Hostel definition does not include personal care or nursing care, which is a necessity for this facility. The definition for Residential care facility includes the term appropriate staffing, which includes 24 hour on site staff for management and nursing.

- **Onsite parking**

As a result of the Councillor workshop the applicant undertook a rework of the proposed car parking arrangement. 12 additional car spaces have been added to the proposal; for the most part these are located on the existing private ring road. The ring road has been designated as a one-way road in part, which allows for service vehicles to manoeuvre. A further 5 car spaces can also be provided if the need arises.

In summary, the proposal now contains 93 car spaces, far exceeding the statutory requirement.

- **Sunlight/Amenity**

The applicant submitted to Council amended plans, including the provision of additional skylights. The proposed development now achieves compliance both SEPP 65 and SEPP (Housing for Seniors or People with a Disability) 2004, by providing a minimum 3 hours of direct sunlight between 9 am and 3 pm (mid-winter) to 75% of the apartments.

With regards to amenity/sunlight a review of the SEPP has indicated that the only requirement is that the sunlight is to be “direct”. Accordingly, it is considered that the subject application complies.

Further to the above, SEPP 65/ the ADG advises that solar access is the ability of a building to receive direct sunlight without the obstruction from other buildings or impediments, not including trees.

- **Floor Space Ratio**

The applicant provided further detail to Council in relation the GFA of the development proposed on both Lot 3 and Lot 4.

Viewing Lot 3 independently to determine the FSR of the new building that sits upon it, the proposal complies with Clause 4.4 of the Tweed Local Environmental Plan 2014. See below:

*Lot 3 site area: 2,601m²
GFA of new building on Lot 3: 4,780m²
FSR: 1.84:1*

It is noted some new works occur within Lot 4. Therefore, the development should be viewed holistically across Lots 3 and 4, which results in an FSR of 0.98:1. This consistent with the requirements of SEPP (Housing for Seniors or People with a Disability) 2004.

The applicant's response to Council's request for further information including amended plans was published on the DA tracker and referred to the Residents Association (Darlington Retirement Community) for review and comment. This is attached under the submissions section of this report.

These issues are discussed throughout the report.

DEVELOPMENT SUMMARY:

Consent is sought for the construction of a three storey, 69 room Seniors Living development, comprising 33 Residential Aged Care rooms (RAC) (15 of which are special care dementia rooms and 18 are general care rooms) and 36 Serviced Apartments (SA).

The proposed development is within the existing 'Darlington Retirement Community'. The Darlington Retirement Community was approved under DA03/0078 as a 7 stage development. All stages except Stage 6 have been completed. The subject of this proposal is to develop Stage 6 with an alternative built form to that under the original approval. The original approval for Stage 6 involved a single level building consisting of 30 RAC rooms.

The subject application also includes the following ancillary facilities:

- Health and Wellbeing centre;
- Dining rooms;
- 'Café' area for residents, staff and visitors;
- Childrens play area; and
- Communal open space areas including gardens and multi-purpose area

These areas are for the use by staff, residents and their guests. Conditions have been applied in this regard.

To facilitate the proposed works partial demolition is required. It should be noted that some these works are exempt as per the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. These works are discussed further within this report. Conditions have been applied to ensure works other than those which are exempt require compliance with AS 2601.

The application has been assessed against *SEPP (Housing for seniors or People with a Disability) 2004* and *SEPP No. 65 - Design Quality of Residential Flat Development* and is generally compliant with these Policies.

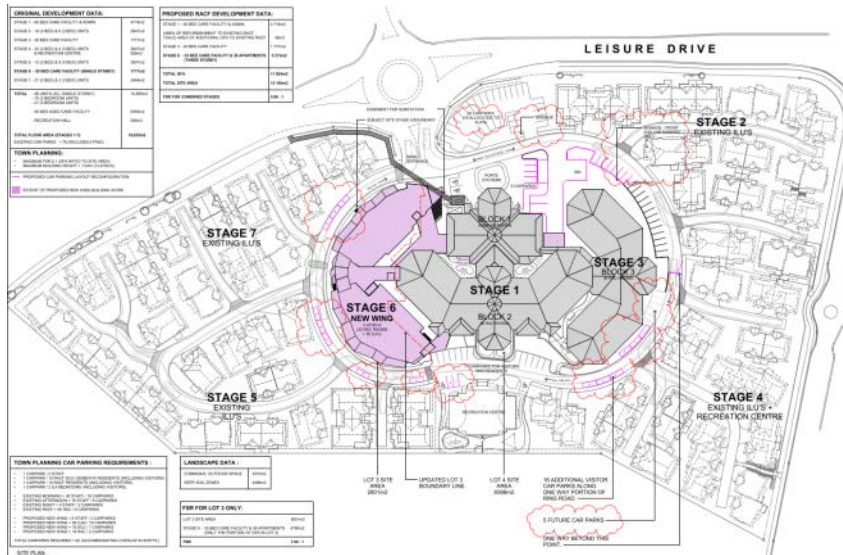
The application was advertised and notified for a period 14 days from Wednesday 29 March 2017 to Wednesday 12 April 2017. During this period 28 submissions were received.

Estimated cost of works for the subject application is \$16,610,000.

The subject site is shown below:



The location of works is shown below (as highlighted):



The subject application is being reported to Council for determination as the estimated cost of works exceeds \$10 million.

The officer's recommendation is for approval.

RECOMMENDATION:

That Development Application DA17/0084 for a Seniors Living (33 Aged Care Residential Rooms and 36 Independent Living Units) at Lots 1, 3 & 4 NPP 271020 Nos. 124-128 Leisure Drive, Banora Point be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan listed in the below table and drawn by Marchese Partners, except where varied by the conditions of this consent.

Title	Plan Number	Revision	Dated
Development Summary	DA1.02	H	17/08/2017
Site Plan	DA2.02	K	17/08/2017
Ground Floor Plan/Level 1 Plan	DA2.05	E	21/10/2016
Level 2 Floor Plan	DA2.06	E	21/10/2016
Level 3 Floor Plan	DA2.07	E	21/10/2016
Roof Plan	DA2.08	E	09/08/2017
Services Area Plan	DA2.09	B	21/10/2016
RAC Plans	DA2.10	E	21/10/2016
ILA Plans	DA2.11	E	21/10/2016
ILA Plans	DA2.12	E	21/10/2016
ILA Plans	DA2.13	E	21/10/2016
ILA Plans	DA2.14	E	21/10/2016
ILA Plans	DA2.15	E	21/10/2016
North and West Elevations	DA3.01	F	10/02/2017
South and East Elevations	DA3.02	F	10/02/2017

[GEN0005]

2. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0115]
3. **Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.**
[GEN0135]
4. **Any business or premises proposing to discharge wastewater containing pollutants differing from domestic sewage must submit a Liquid Trade Waste Application Form to Council. The application is to be approved by the General Manager or his delegate prior to any discharge to the sewerage system. A Liquid Trade Waste Application fee will be applicable in accordance with Council's adopted Fees and Charges.**
[GEN0190]
5. **The development is to be carried out in accordance with Councils Development Design and Construction Specifications.**
[GEN0265]
6. **Any air-handling system, hot water system, humidifying system, warm-water system, water-cooling system or any other 'regulated system' as defined in Section 26 of the Public Health Act 2010 shall be installed in accordance with the relevant requirements of Part 2 Clause 6 of the Public Health Regulation 2012.**
[GEN0315]
7. **The development shall take into consideration all existing easements and restrictions burdening the subject allotment.**
[GENNS01]
8. **Any food handling area that is to be used for the preparation and handling of food for sale shall comply with the provisions of the NSW Food Act, NSW Food Safety Standards and AS 4674 "Design, Construction and fit-out of food**

premises. Food premise fit-out plans together with a completed application form and payment of the required fee are to be provided drawn to a scale of 1:50 detailing the following with regards to all food related areas to Council's Environmental Health Officers for assessment and approval:

- a. Floor plan
- b. Layout of kitchens and bar showing all equipment
- c. All internal finish details including floors, wall, ceiling and lighting
- d. Hydraulic design in particular method of disposal of trade waste
- e. Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required
- f. Servery areas including counters etc.

[GENNS02]

9. Water and sewerage reticulation for the proposed building shall be connected to the existing internal water and sewerage of the lot. As such applicant is to ensure the building is serviced by the existing water connection to the East of the access driveway from Leisure Drive located in Lot 1 DP 271020 and the sewer junction in the North East corner of Lot 2 NPP 271020.

10. All ancillary facilities are for the use of residents, staff and their guests. No retail sale of products shall be open to the general public.

[GENNS04]

11. Where applicable, accessibility and useability must be provided in accordance with Schedule 3 Standards concerning accessibility and useability for hostels and self-contained dwellings.

12. The use of the building approved under this application is solely for the use of

- (a) seniors or people who have a disability

13. A restriction as to user is required to be registered against the title of the property on which the development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919. The restriction shall limit the use of any accommodation to seniors or people who have a disability.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

14. Any car parking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards.

[PCC0055]

15. The developer shall provide parking spaces in accordance with Drawing DA2.02 Revision K, prepared by Marchese Partners and Tweed Shire Council's Development Control Plan Part A2 - Site Access and Parking Code.

Vehicular parking spaces shall be compliant with the provisions of AS2890.1:2004 Parking Facilities Part 1: Off-Street Car Parking and AS2890.6: Off-Street Car Parking for People with Disabilities.

Full design detail of the proposed parking and maneuvering areas including integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0065]

16. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

<p>(a) Tweed Road Contribution Plan: 131.5 Trips @ \$1416 per Trips (\$1,318 base rate + \$98 indexation) S94 Plan No. 4 Sector2_4</p>	<p>\$186,204</p>
<p>(b) Shirewide Library Facilities: 36.3704 ET @ \$869 per ET (\$792 base rate + \$77 indexation) S94 Plan No. 11</p>	<p>\$31,606</p>
<p>(c) Bus Shelters: 36.3704 ET @ \$66 per ET (\$60 base rate + \$6 indexation) S94 Plan No. 12</p>	<p>\$2,400</p>
<p>(d) Eviron Cemetery: 36.3704 ET @ \$127 per ET (\$101 base rate + \$26 indexation) S94 Plan No. 13</p>	<p>\$4,619</p>

- (e) **Community Facilities (Tweed Coast - North)**
36.3704 ET @ \$1457 per ET \$52,992
(\$1,305.60 base rate + \$151.40 indexation)
S94 Plan No. 15
- (f) **Extensions to Council Administration Offices
& Technical Support Facilities**
36.3704 ET @ \$1935.62 per ET \$70,399.27
(\$1,759.90 base rate + \$175.72 indexation)
S94 Plan No. 18
- (g) **Cycleways:**
36.3704 ET @ \$490 per ET \$17,821
(\$447 base rate + \$43 indexation)
S94 Plan No. 22
- (h) **Regional Open Space (Casual)**
36.3704 ET @ \$1132 per ET \$41,171
(\$1,031 base rate + \$101 indexation)
S94 Plan No. 26
17. **A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.**

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Certificate of Compliance" signed by an authorised officer of Council.

BELOW IS ADVICE ONLY

The Section 64 Contributions for this development at the date of this approval have been estimated as:

Water: 30.30 ET @ \$13,386 = \$405,595.80

Sewer: 42.25 ET @ \$6,431 = \$271,709.75

18. **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]

19. The site shall be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system. At no time shall the development result in additional ponding or runoff impacting on ~~occurring~~ within neighbouring properties. [PCC0485]
20. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. [PCC0585]
21. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate. [PCC0945]
22. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application for Building Works shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
 - (c) It is encouraged that the stormwater and site works incorporate Water Sensitive Urban Design principles and where practical, integrated water cycle management, as proposed by "Water By Design", an initiative for best practice by the South East Queensland Healthy Waterways Partnership, however existing "end of line" proprietary Gross Pollutant Device on site may be utilised where it can be shown that it has been appropriately sized to cater for this additional catchment.
 - (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (e) Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site, prior to any earthworks being undertaken.
 - (f) Runoff from all hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's *Development Design Specification D7 - Stormwater Quality*, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.
-

- (g) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

23. A Construction Certificate application for works that involve any of the following:

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

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

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

[PCC1145]

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

- (a) The Construction Certificate Application for Building Works (where applicable) 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]

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

The Legal Point Of Discharge for piped stormwater for the development is via connection into the existing pipe drainage network servicing the Darlington Retirement Community where it is shown that the existing piped network has capacity to cater for the additional catchment, unless agreed otherwise by Council.

[PCC1195]

26. If the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), 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.

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

The Section 68 Application must be approved by Council prior to the associated Construction Certificate being issued.

[PCC1310]

27. A detailed acoustic assessment by a suitably qualified acoustic consultant with experience in the assessment of aircraft noise impacts on residential premises is to be carried out in accordance with the recommendations and conclusions of the Aircraft Noise Assessment Report prepared by TTm Acoustics Ref: 16BRA0189 R01-1 and dated 19 October 2016 to establish compliance with the provisions of AS2021-2015 Acoustics-aircraft noise intrusion-Building siting and construction prior to the issue of any construction certificate and a Report shall be provided to Council's Environmental Health Officer for assessment and approval. Recommendations included in the Report shall be incorporated into the design of the building and a post construction acoustic assessment shall be carried out to demonstrate compliance with the provisions of AS2021-2015.

[PCCNS01]

28. Prior to the issue of the construction certificate an Acid Sulfate Soils Management Plan shall be prepared in accordance with the provisions of the NSW Acid Sulfate Soil Management Advisory Committee Acid Sulfate Soils Manual 1998 to ensure that any acid sulfate soils are appropriately managed during construction works carried out on the site. The Acid Sulfate Soils Management Plan shall be prepared by an appropriately qualified consultant with experience in the assessment and management of acid sulfate soils. The management Plan shall be submitted to Council's Environmental Health Officer for assessment and approval.

[PCCNS02]

29. The roof must comprise of non-reflective roof surface. Prior to the issue of a Construction Certificate the use of any reflective roof materials must be approved by the Gold Coast Airport Pty Ltd.

[PCCNS05]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

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

(a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and

(b) the person having the benefit of the development consent has:

(i) appointed a principal certifying authority for the building work, and

(ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

(c) the principal certifying authority has, no later than 2 days before the building work commences:

(i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and

(ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

(d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:

(i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and

(ii) notified the principal certifying authority of any such appointment, and

(iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

33. 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]

34. 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]

35. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with the approved Erosion and Sedimentation Control Plan and adequately maintained throughout the duration of the development.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

36. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

38. Should any Aboriginal object or cultural heritage (including human remains) be discovered all site works must cease immediately and the Tweed Byron Local Aboriginal Land Council (TBLALC) Aboriginal Sites Officer (on 07 5536 1763) are to be notified. The find is to be reported to the Office of Environment and

Heritage. No works or development may be undertaken until the required investigations have been completed and any permits or approvals obtained, where required, in accordance with the National Parks and Wildlife Act, 1974.

[DUR0025]

- 39. 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]

- 40. 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]

- 41. The roof cladding is to have low reflectivity where it would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.**

[DUR0245]

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

[DUR0285]

- 43. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.**

[DUR0415]

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

[DUR0815]

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

[DUR0985]

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~~ deposited on the roadway by construction vehicles will be at the Developers expense and any such costs are payable prior to the issue of an 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. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.

[DUR1045]

50. Any air-handling system, hot or warm water system or water-cooling system and any other regulated system as defined in Part 4, Section 43 of the Public Health Act shall be installed in accordance with the requirements of Part 2, Clauses 6, 7 and 8 of the Public Health (Microbial Control) Regulation 2000.

[DUR1645]

51. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

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

[DUR1875]

53. Where existing kerb or driveway laybacks are to be removed for new driveway laybacks, stormwater connections, pram ramps or for any other reason, the kerb or driveway laybacks must be sawcut on each side of the work to enable a neat and tidy joint to be constructed. [DUR1905]
54. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site. [DUR2185]
55. A garbage storage area shall be provided in accordance with Council's "Development Control Plan Section A15 - Waste Minimisation and Management". [DUR2195]
56. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary. [DUR2205]
57. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate. [DUR2425]
58. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act. [DUR2625]
59. The development shall ensure that stormwater runoff associated with the development, up to the Q100 storm event can be appropriately conveyed and managed through the Darlington Retirement Community development, to either the drainage canal to the southwest of the site or the Leisure Drive road reserve. [DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

60. Prior to issue of an Occupation Certificate, all works / actions / inspections etc required at that stage by other conditions or approved Management Plans or the like shall be completed in accordance with those conditions or plans. [POC0005]
61. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units). [POC0205]
62. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards. [POC0225]

63. All landscaping work is to be completed in accordance with the approved plans prior to the issue of a final occupation certificate for the building. [POC0475]
64. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications. [POC0755]
65. 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]
66. Parking located at the rear and immediately east of the existing Residential Aged Care Facility shall be marked as 'Residents parking only'. Evidence of this is to be provided to the satisfaction of the General Manager or delegate prior to occupation. [POCNS01]
67. Prior to the issue of an Occupation Certificate, a certificate of practical completion shall be obtained from Council's General Manager or his delegate for all works required under Section 68 of the Local Government Act. [POCNS01]

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 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]
70. All commercial / 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]
71. Any air-handling system, hot water system, humidifying system, warm-water system, water-cooling system or any other 'regulated system' as defined in Section 26 of the Public Health Act 2010 shall be operated and maintained in accordance with the relevant requirements of Part 2 Clauses 7, 8 & 9 of the Public Health Regulation 2012. A certificate to confirm that the regulated system is being maintained shall be submitted to Council on a 12 monthly basis. [USE0945]

REPORT:

Applicant: RSL Care
Owner: RSL Care Rdns Limited
Location: Lot 1 NPP 271020 No. 124 Leisure Drive, Banora Point; Lot 4 NPP 271020 No. 126 Leisure Drive, Banora Point; Lot 3 NPP 271020 No. 128 Leisure Drive, Banora Point
Zoning: R3 - Medium Density
Cost: \$16,610,000

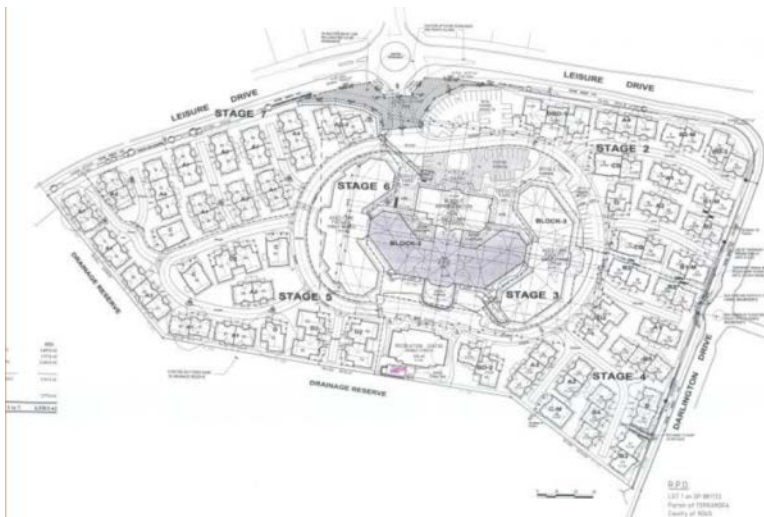
Background:

The existing Darlington Retirement Community was granted consent over 7 stages, under development consent DA03/0078.

DA03/0078 granted consent to occur in seven (7) stages. The development involved the following:

- Residential aged care facility (90 Units) – stage 1;
- independent living units, not be individually titled (96) – stages 2, 4, 5 and 7;
- a recreation centre – stage 4;
- Residential aged care facility (30 units) – Stage 6;
- administration facilities – stage 1; and
- associated health related and community facilities – stages 1, 3 and 4

Minor modifications have been granted to this application.



Development Application DA15/0175 for a four lot Community Title subdivision was granted consent 1 June 2015 and registered in 2016.

The vacant land is identified as Stage 6 (Lot 3). This land has been used informally as 'open space', however in accordance with development consent DA03/0078 there has always been the intention to develop this area for aged care units.

It is acknowledged that the building envelope under the subject application has intensified significantly in comparison to that approved under DA13/0078. However, the development

achieves compliance with the applicable State Environmental Planning Policies, offers a range of housing options for seniors, responds to current demands for housing shortages (seniors), provides additional parking and offers a higher number of ancillary facilities and services to residents, than approved under DA03/0078.

The below image indicates the footprint approved under DA03/0078.



The application seeks consent for:

- the construction of a three (3) storey, 69 room Seniors Living development, comprising 33 Residential Aged Care rooms (RAC) (15 of which are special care dementia rooms and 18 are general care rooms) and 36 Serviced Apartments (SA).

The subject application also includes the following ancillary facilities:

- Health and Wellbeing centre;
- Dining rooms;
- 'Café' area for residents, staff and visitors;
- Children's play area; and
- Communal open space areas including gardens and multi-purpose area

The design has taken into consideration the context of the immediate area and is considered to complement the existing built form of the RACF.

The subject site is zoned R3 Medium Density Residential in the Tweed Local Environmental Plan 2014 (TLEP 2014) and is located within the Banora Point locality. The proposed use is permissible with consent in the in TLEP 2014.

SITE DIAGRAM:




Site Diagram

0 0.3 0.6 Km

DA17/0084 – seniors living (33 aged care residential rooms and 36 independent living units), Banora Point
 Lot 2 & 3 NPP 271020
 No. 128-130 Leisure Drive, Banora Point



Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council make no representations or warranties, expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaim 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 "Dig before You Dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.

GDA  Cadastre: 30 June, 2010
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 Coordinate System - MGA Zone 56
 Datum - GDA 94
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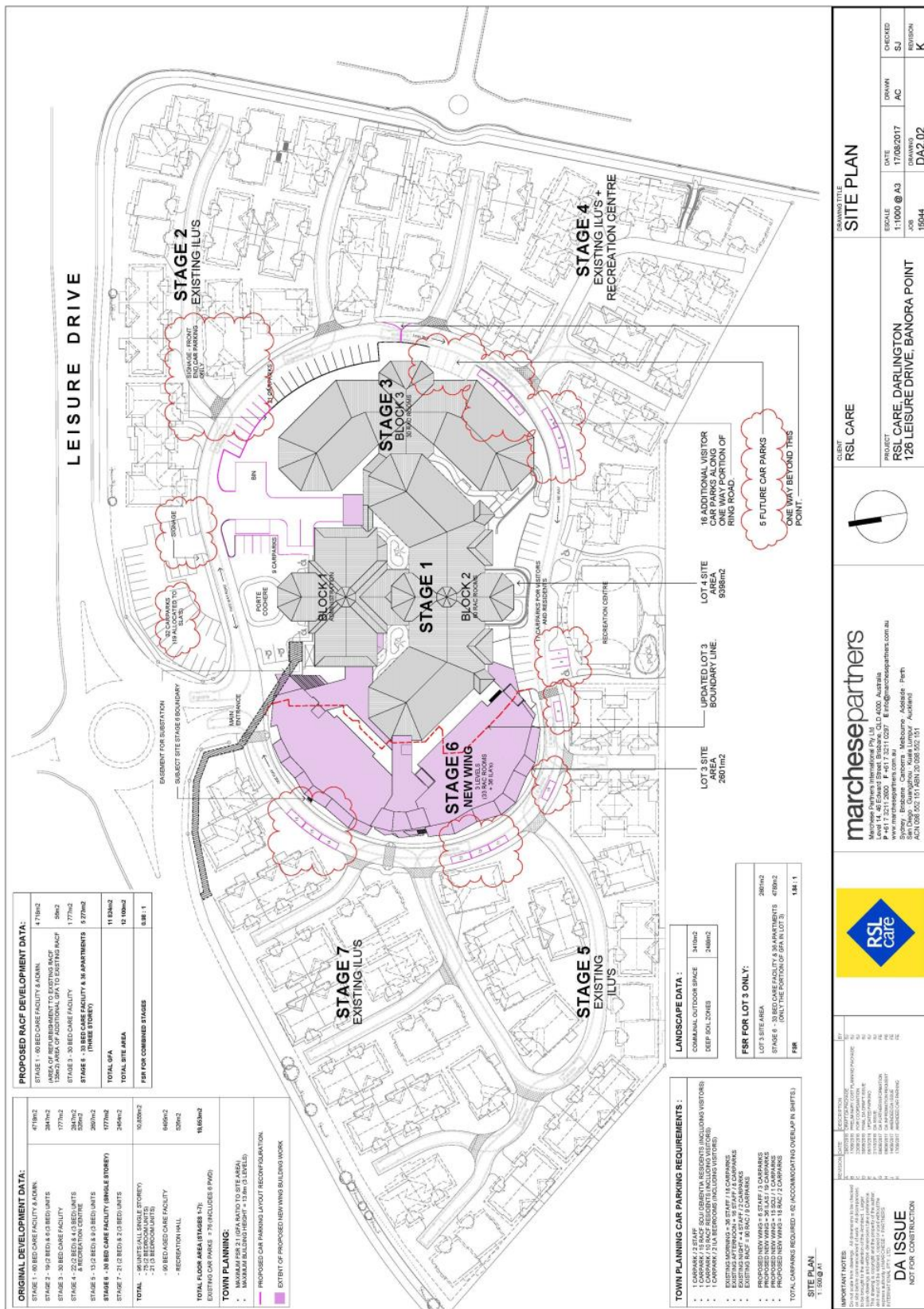
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 Murwillumbah NSW 2484
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 F: (02) 9670 2483
 W: www.tweed.nsw.gov.au
 E: planning@tweed.nsw.gov.au



Author: S. Scott - GIS

Date Printed: 18 July, 2017

DEVELOPMENT/ELEVATION PLANS:



PROPOSED RAC DEVELOPMENT DATA:

STAGE 1 - 60 BED CARE FACILITY & 80 APARTMENTS	471m ²
STAGE 2 - 160 BED CARE FACILITY & 80 APARTMENTS	660
STAGE 3 - 30 BED CARE FACILITY & 80 APARTMENTS	177m ²
STAGE 4 - 30 BED CARE FACILITY & 80 APARTMENTS (THREE STOREY)	177m ²
STAGE 5 - 15 (2 BED) & 15 (3 BED) UNITS	112m ²
STAGE 6 - 30 BED CARE FACILITY (SINGLE STOREY)	112m ²
STAGE 7 - 21 (2 BED) & 21 (3 BED) UNITS	154m ²
TOTAL UPA	1510m²
FSR FOR COMBINED STAGES	538.1

ORIGINAL DEVELOPMENT DATA:

STAGE 1 - 60 BED CARE FACILITY & 80 APARTMENTS	471m ²
STAGE 2 - 160 BED CARE FACILITY & 80 APARTMENTS	341m ²
STAGE 3 - 30 BED CARE FACILITY & 80 APARTMENTS	177m ²
STAGE 4 - 30 BED CARE FACILITY & 80 APARTMENTS	177m ²
STAGE 5 - 15 (2 BED) & 15 (3 BED) UNITS	200m ²
STAGE 6 - 30 BED CARE FACILITY (SINGLE STOREY)	177m ²
STAGE 7 - 21 (2 BED) & 21 (3 BED) UNITS	244m ²
TOTAL	1932m²
- 80 BERTHALL (SINGLE STOREY)	649m ²
- 21 (3 BED) RESIDENTIAL UNITS	52m ²
- RECREATION HALL	105m ²

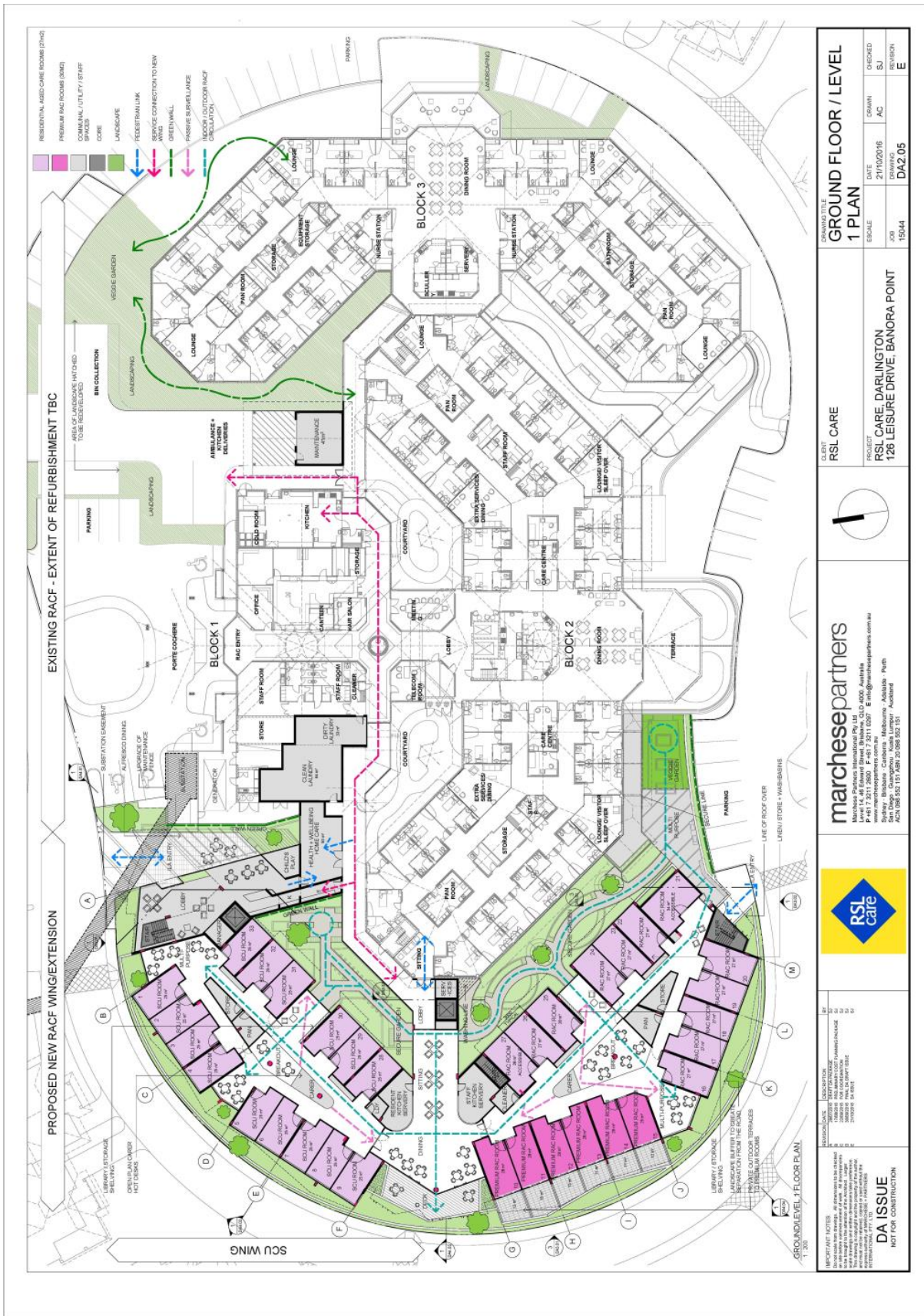
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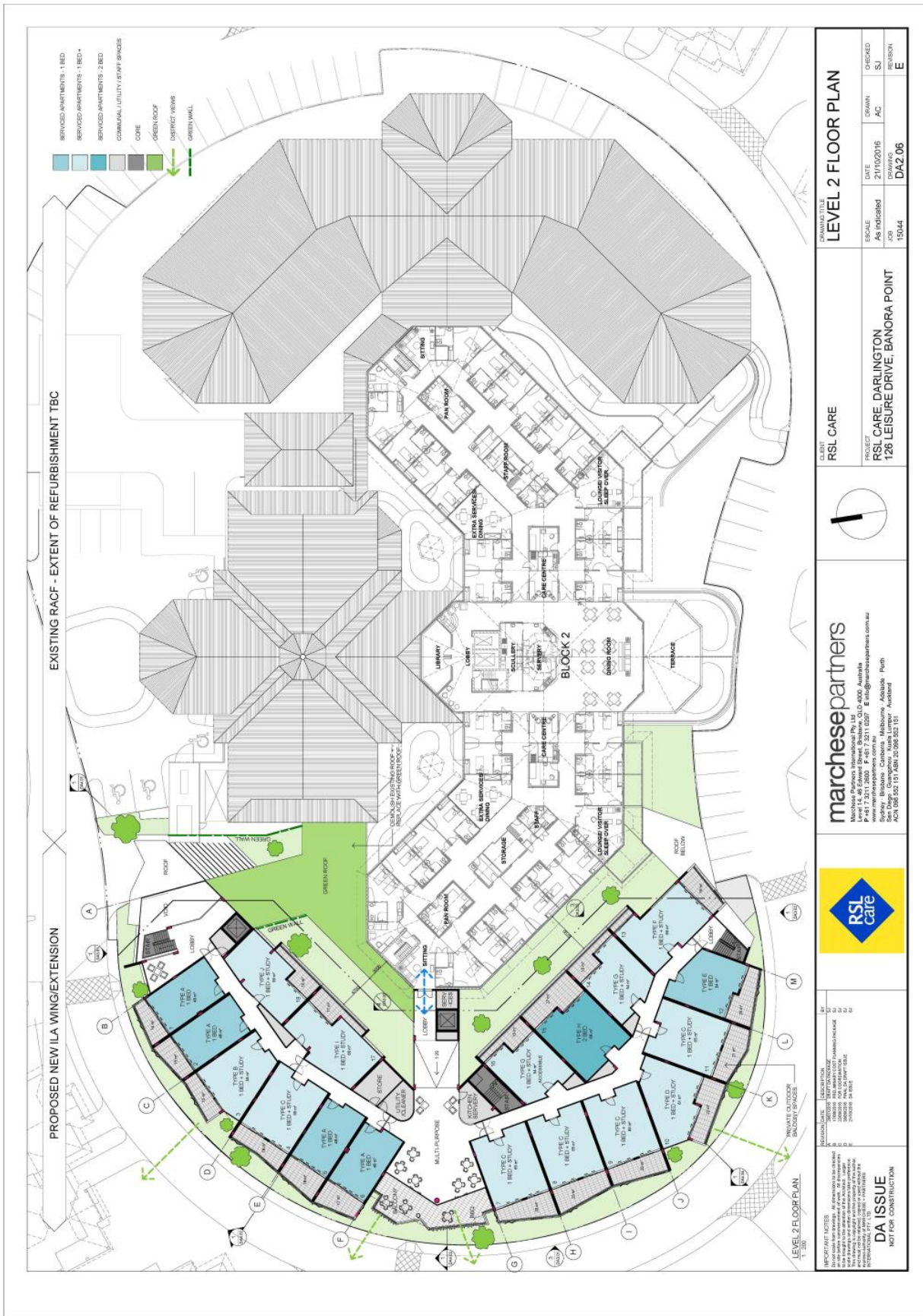
- EXISTING CAR PARKS - 75 (INCLUDES 6 PWS)
- TOTAL FLOOR AREA (STAGES 1-7)
- EXISTING CAR PARKS - 75 (INCLUDES 6 PWS)
- MAXIMUM BUILDING HEIGHT - 12 METRE LEVELS

PROPOSED CAR PARKING LAYOUT RECONFIGURATION

EXTENT OF PROPOSED NEW WING BUILDING WORK

DRAWING TITLE SITE PLAN	
SCALE 1:1000 @ A3	CHECKED SJ
DATE 17/08/2017	DRAWN AC
JOB 15044	REVISION K
DRAWING DA2.02	
CLIENT RSL CARE	
PROJECT RSL CARE, DARLINGTON 126 LEISURE DRIVE, BANORA POINT	
<p>marchesepartners Marchese Partners International Pty Ltd 126 Leisure Drive, Banora Point, QLD 4200, Australia P +61 7 3211 2000 F +61 7 3211 0297 E info@marchesepartners.com.au San Diego, California, Korea, Lumpur, Adelaide Perth ACT 1000 (02) 101 1601 (02) 855 1211</p>	
<p>DA ISSUE NOT FOR CONSTRUCTION</p>	





DRAWING TITLE		LEVEL 2 FLOOR PLAN	
SCALE	DATE	DRAWN	CHECKED
As Indicated	21/10/2016	AC	SJ
JOB	DRAWING	NO.	REVISION
15044	DA2 06		E

CLIENT
RSL CARE

PROJECT
**RSL CARE, DARLINGTON
126 LEISURE DRIVE, BANORA POINT**

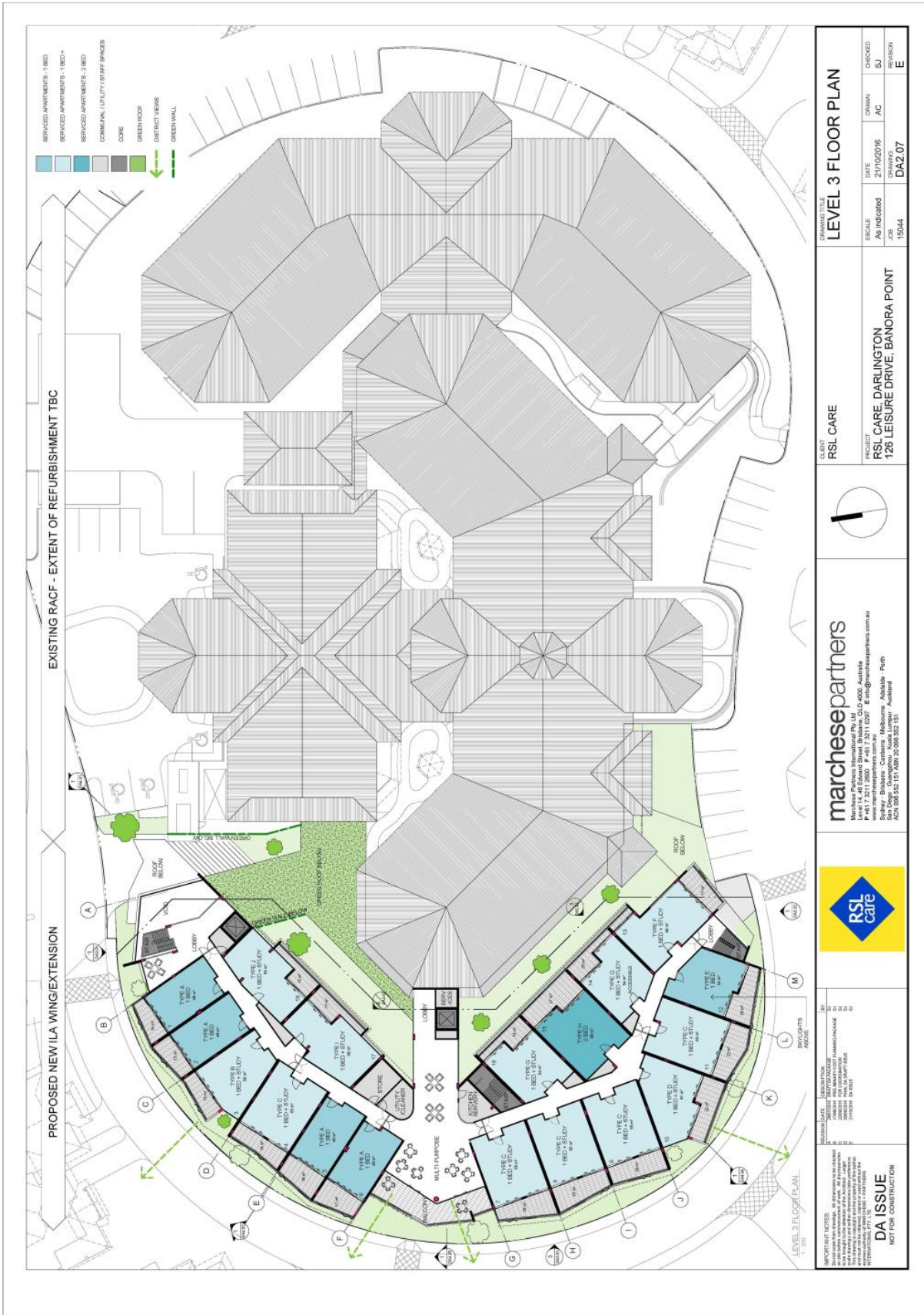


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Sydney Brisbane Canberra Melbourne Adelaide Perth
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REVISION/DATE	DESCRIPTION
01 / 21/10/2016	ISSUED FOR CONSTRUCTION
02 / 21/10/2016	AMENDMENT TO 01
03 / 21/10/2016	AMENDMENT TO 02
04 / 21/10/2016	AMENDMENT TO 03
05 / 21/10/2016	AMENDMENT TO 04
06 / 21/10/2016	AMENDMENT TO 05
07 / 21/10/2016	AMENDMENT TO 06
08 / 21/10/2016	AMENDMENT TO 07
09 / 21/10/2016	AMENDMENT TO 08
10 / 21/10/2016	AMENDMENT TO 09

DA ISSUE
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DRAWING TITLE	
LEVEL 3 FLOOR PLAN	
DATE	21/10/2016
SCALE	As Indicated
JOB	15044
DRAWING	DA2.07
REVISION	E

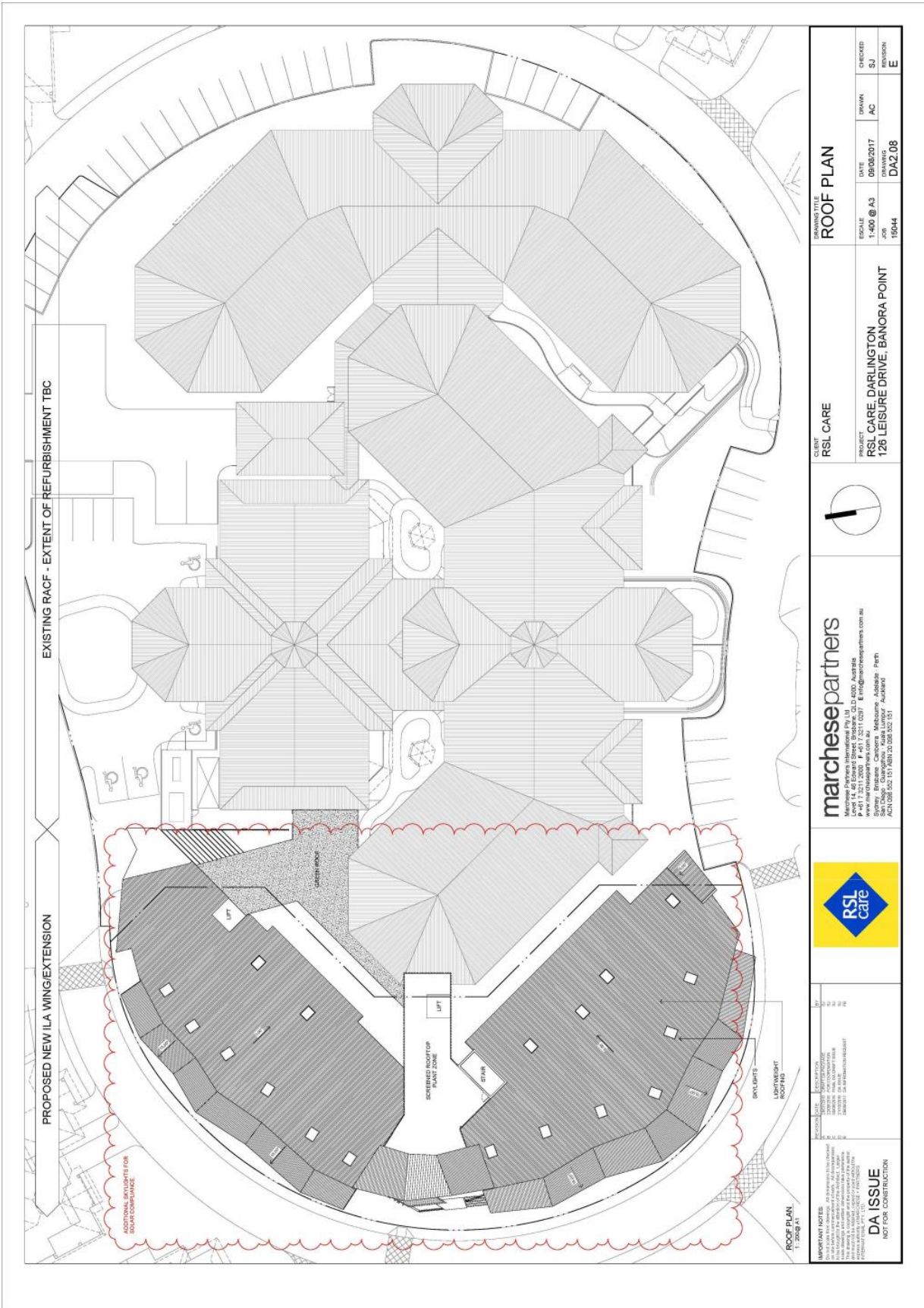
CLIENT	RSL CARE
PROJECT	RSL CARE, DARLINGTON 128 LEISURE DRIVE, BANORA POINT

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 ACT 106 525 121 1881 20 989 525 121



PROJECT NO.	15044
LOCATION	DARLINGTON
DATE	21/10/2016
SCALE	As Indicated
JOB	15044
DRAWING	DA2.07

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EXISTING RAFC - EXTENT OF REFURISHMENT TBC

PROPOSED NEW I/LA WING/EXTENSION

SEE ARCHITECT'S DRAWINGS FOR
DIMENSIONS AND FINISHES

COMMONS

LIFT

STAIR

ROOF PLAN
1:1000 (A1)

IMPORTANT NOTES:
 1. THIS DRAWING IS A PRELIMINARY DESIGN AND IS SUBJECT TO CHANGE.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
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CLIENT
 RSL CARE

PROJECT
 RSL CARE, DARLINGTON
 129 LEISURE DRIVE, BANORA POINT

DRAWING TITLE
 ROOF PLAN

SCALE
 1:400 @ A3

DATE
 09/08/2017

JOB NO.
 10044

REVISION
 DA2.08

DRAWN
 AC

CHECKED
 SJ

DATE
 09/08/2017

JOB NO.
 10044

REVISION
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DATE
 09/08/2017

JOB NO.
 10044

REVISION
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DATE
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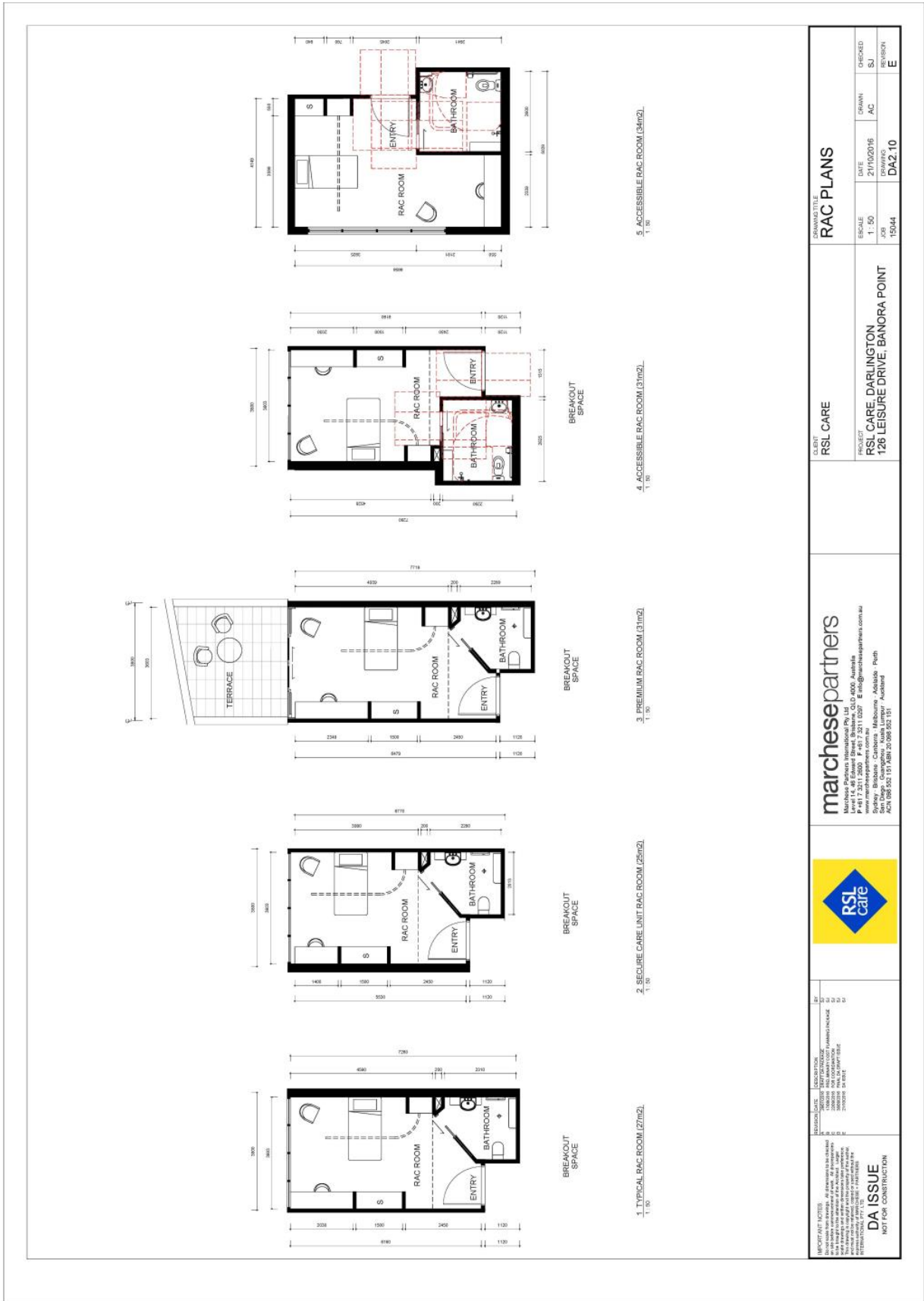
JOB NO.
 10044

REVISION
 DA2.08

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1	20/08/2016	DA ISSUE											
<p>marchespartners</p> <p>Marches Partners Pty Ltd Level 14, 48 Edward Street, Brisbane, QLD 4000, Australia Phone: +61 7 3221 1259 Email: info@machespartners.com.au www.marchespartners.com.au Sydney Brisbane Canberra Melbourne Adelaide Perth ACTN 098 552 157 ABN 20 086 552 151</p>													
<p>CLIENT: RSL CARE PROJECT: RSL CARE DARLINGTON 128 LEISURE DRIVE, BANORA POINT</p>													
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KEY PLAN

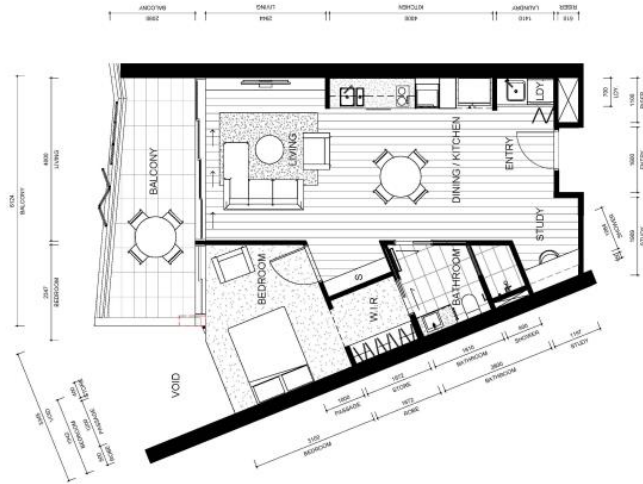
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TRAFFIC ENGINEERING DESIGN



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	<p>DRAMA/TITLE RAC PLANS</p>			
<p>REVISION DATE DESCRIPTION</p> <p>1 15/09/16 200 DIMENSIONS FOR CONSTRUCTION</p> <p>2 15/09/16 200 DIMENSIONS FOR CONSTRUCTION</p> <p>3 15/09/16 200 DIMENSIONS FOR CONSTRUCTION</p> <p>4 15/09/16 200 DIMENSIONS FOR CONSTRUCTION</p>		<p>CLIENT RSL CARE</p> <p>PROJECT RSL CARE DARLINGTON 128 LEISURE DRIVE, BANORA POINT</p> <p>SCALE 1:50</p> <p>DATE 27/09/16</p> <p>15944</p> <p>DOWN AC</p> <p>REVISION E</p>		

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 ACN 085 502 15 | ABN 20 085 502 15





2. TYPE B - 1 BED + STUDY (LA) (60m²)
1:50

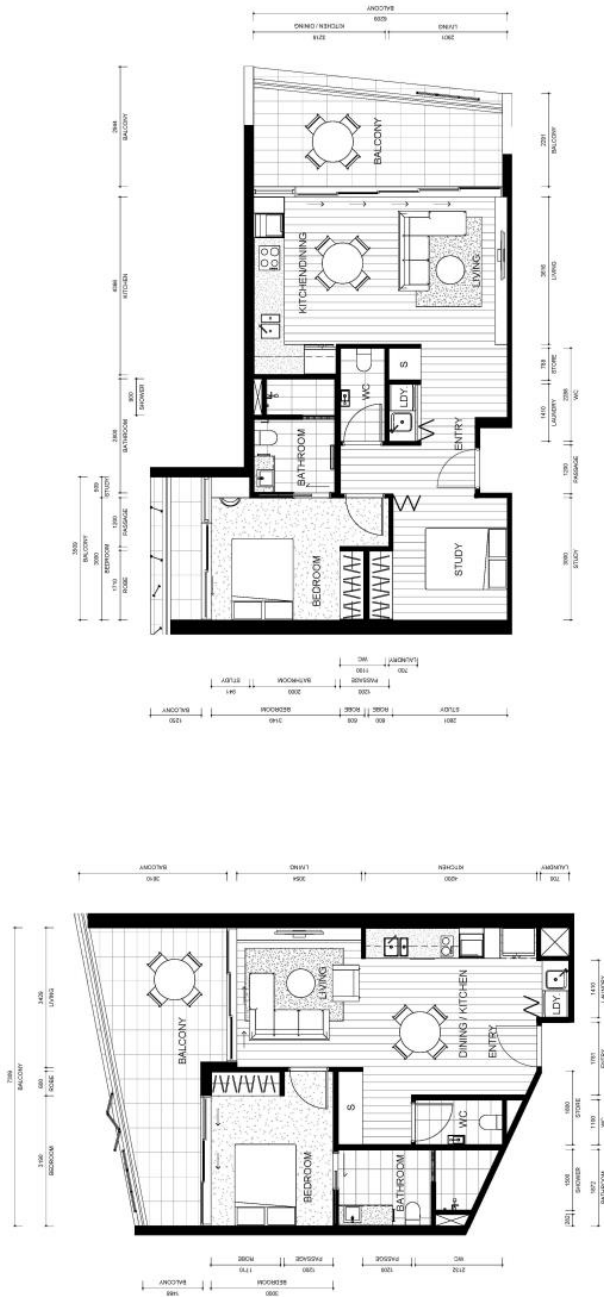


1. TYPE A - 1 BED (LA) (60m²)
1:50

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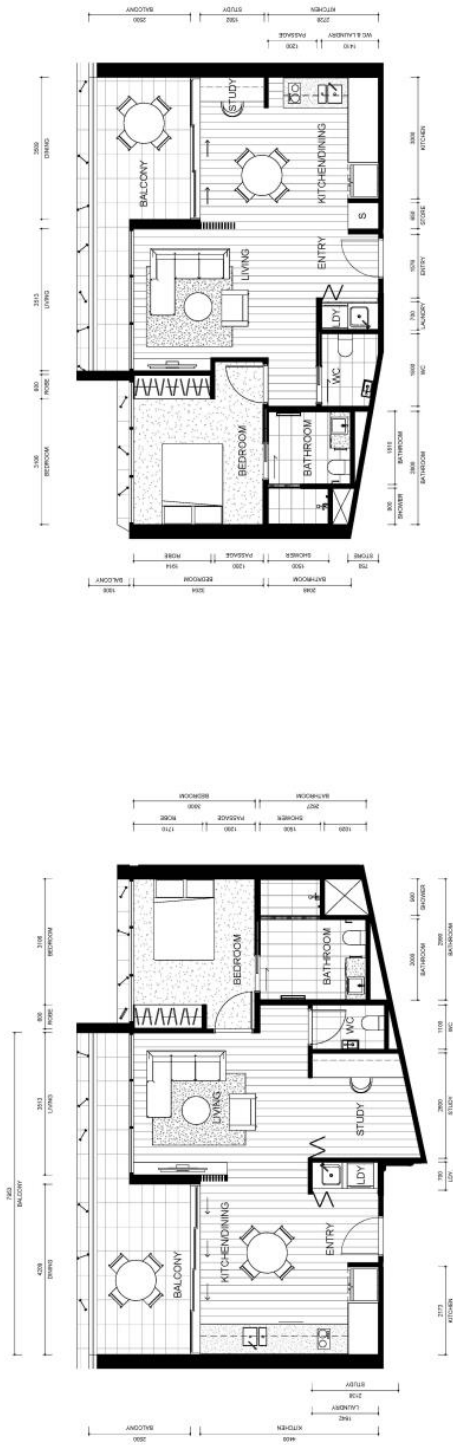




2. TYPE F - 1 BED + STUDY L.A. (SR)2
1:50

1. TYPE E - 1 BED L.A. (SR)2
1:50

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2. TYPE J - 1 BED + STUDY I.A. (58m2)
1:50

1. TYPE I - 1 BED + STUDY I.A. (55m2)
1:50

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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

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 subject site is mapped as R3 Medium Density Residential under the Tweed Local Environmental Plan 2014. The objectives of the R3 zone are identified as follows:

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

The proposed development is considered to meet the objectives of the zone by meeting housing needs of the community and offering a variety of living arrangements and ancillary facilities for the ageing community.

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.*

The subject site is mapped as having a maximum building height of 13.6m. The proposed development has a maximum height of 13.5m. Accordingly, complies with clause 4.3.

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 2:1 (Control J) over the entire site.

The proposed development is for additions to stage 1, as approved under DA03/0078 (Lot 4) and the construction of a new building (Lot 3). The gross floor area of the proposed addition (including works within Lot 4) is approximately 5273m².

The total floor area for the combined building (Lots 3 and 4) is 11,824m². The combined site area is 11,999m² (Lots 3 and 4) equating to a FSR of 0.98:1 which complies with this clause.

Notwithstanding the above, Lot 3 has an independent land area of 2601m². The GFA of the proposed building, contained within this lot is 4780m² resulting in a FSR of 1.84:1.

Clause 4.6 - Exception to development standards

The subject application does not seek any exception to development standards.

Clause 5.4 - Controls relating to miscellaneous permissible uses

The subject application does not seek consent for any miscellaneous uses.

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 Seniors Living 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

The subject site is not mapped as being bushfire prone land.

Clause 7.1 – Acid Sulfate Soils

Class 2 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, subject to compliance with the submitted Acid Sulfate Soil Management Plan, conditions with this regard have been applied. 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 earthworks only to establish foundations and for the elevator shafts. 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 a design flood level of 2.6m AHD and PMF level of 5.8m AHD.

Topography of the site ranges generally between 3 and 4m AHD, with a minimum habitable floor level of 3.1m AHD.

The proposed building has a ground floor level of 4.0m AHD and level 2 (first floor) of 7.5m AHD (levels 2 and 3 meet the requirements of a PMF refuge).

The site is above the design flood level and therefore not in a mapped high flow area.

The development therefore complies with this clause.

Clause 7.4 - Floodplain risk management

The objectives of this clause are as follows:

- (a) *in relation to development with particular evacuation or emergency response issues, to enable evacuation of land subject to flooding in events exceeding the flood planning level,*
- (b) *to protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events.*

This clause goes on to advise that development consent must not be granted for residential accommodation on land zoned R3 unless the consent authority is satisfied that that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land.

The site is mapped as being affected by a design flood level of 2.6m AHD and PMF level of 5.8m AHD.

Topography of the site ranges generally between 3 and 4m AHD, with a minimum habitable floor level of 3.1m AHD.

As discussed above, the proposed building has a ground floor level of 4.0m AHD and level 2 (first floor) of 7.5m AHD.

Levels 2 (7.5m AHD) and 3 (11.0m AHD) meet the requirements of a PMF refuge.

The site is above the design flood level and not in a mapped high flow area.

The nature of the proposal and the emergency response information provided are sufficient to address the emergency response provisions of Council.

Councils Infrastructure Engineer raised no objection on flooding grounds.

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 proposed development will connect to an existing internal stormwater system that was designed and built to cater for complete 7 stage development for the site. The existing system incorporates a stormwater treatment device prior to discharge and is capable of accommodating the intensified development as proposed under the subject application for stage 6. The system satisfies the deemed to comply requirements of Council.

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

Clause 7.8 – Airspace operations

Not applicable – the subject site is not mapped on the *Obstacle Limitation Surface Map or the Procedures for Air Navigation Services Operations Surface Map for the Gold Coast Airport*.

Clause 7.9 - Development in areas subject to aircraft noise

The site is identified as being with the 20-25m contours for aircraft noise.

The objectives of this clause are as follows:

- (a) *to prevent certain noise sensitive developments from being located near the Gold Coast Airport and its flight paths,*

- (b) *to assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings,*
- (c) *to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport.*

In order to satisfy the objectives of this clause, the consent authority:

- (a) must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and
- (b) must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021:2015, and
- (c) must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015.

An Aircraft Noise Assessment Report has been submitted prepared by TTm Acoustics Ref: 16BRA0189 R01-1 and dated 19 October 2016.

This Report has been reviewed against the provisions of AS2021-2015 and Council's 2014 LEP.

The relevant aircraft type assessed under the provisions of the Report is the Boeing 737-800 aircraft which is satisfactory.

The Report concludes that it will be possible to attenuate aircraft noise impacts to comply with the provisions of AS2021 – 2015 however detailed acoustic design will be required to be carried out at the detailed unit design stage in accordance with the provisions of AS2021-2015.

It is also noted that comments have been provided by Ian Rigby on 8 March 2017 of Rigby Consulting Pty Ltd on behalf of the Coolangatta Airport.

Condition required that detailed acoustic assessment by a suitably qualified acoustic consultant with experience in the assessment of aircraft noise impacts on residential premises is carried out in accordance with the recommendations and conclusions of the Aircraft Noise Assessment Report prepared by TTm Acoustics Ref: 16BRA0189 R01-1 and dated 19 October 2016 to establish compliance with the provisions of AS2021-2015 prior to the issue of any construction certificate.

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 No. 55 - Remediation of Land

Clause 7 of SEPP 55 states that the consent authority must not consent to the carrying out of any development on land unless it has considered, among other things, whether the land is contaminated, based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines (Department of Urban Affairs and Planning, Environment Protection Authority, 1998).

In addition, Council has adopted a Contaminated Land Policy, which contains details of the information required to be submitted with applications for development.

A SEPP 55 assessment has been included in the SEE submitted with the application. This assessment concludes that contamination is not likely to be an issue associated with the application.

Further to the above, consideration of Contamination information as contained on Council GIS indicates that no known contamination has been recorded for the subject site and that no cattle tick dip sites are indicated within 200 meters of the subject site.

In addition given that the site was approved as stage 6 of development under DA03/0078 and that according to the SEE is within an existing residential area and further that the site inspection did not reveal any potentially contaminating activity on the site, it is considered that contamination is not a constraint relevant to this application.

Based on the information provided it is expected that there will be no contamination located on site. It is therefore considered that the development has complied with the provisions of the SEPP.

SEPP No. 65 - Design Quality of Residential Flat Development

SEPP 65 applies to the proposal. The Policy aims to improve the design quality of residential flat development and aims:

- (a) to ensure that it contributes to the sustainable development of New South Wales:
 - (i) by providing sustainable housing in social and environmental terms, and*
 - (ii) by being a long-term asset to its neighbourhood, and**

- (iii) by achieving the urban planning policies for its regional and local contexts, and*
- (b) to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- (c) to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- (d) to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions, and*
- (f) to contribute to the provision of a variety of dwelling types to meet population growth, and*
- (g) to support housing affordability, and*
- (h) to facilitate the timely and efficient assessment of applications for development to which this Policy applies.*

This policy applies to the proposed development by virtue of consisting of the erection of a new residential flat building in accordance with the definition under the SEPP. SEPP 65 states that development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and*
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.*

SEPP 65 establishes nine design quality principles to be applied in the design and assessment of residential apartment development. This Apartment Design Guide provides greater detail on how residential development proposals can meet these principles through good design and planning practice. The proposed residential flat building has been designed by Registered Architect, Jon Voller (Marchese Partners) who has included a Design Verification Statement that states that the development was designed in accordance with the nine key principles of the SEPP.

Clause 29(2) requires an assessment against the design quality principles; this is provided below, while Attachment 1 to this report contains a detailed assessment against the ADG:

Principle 1 - context

The Darlington Retirement Community has been established for a number of decades and was built over a number of stages. This community currently

comprises 96 single storey independent living units, a 90 bed aged care facility and a communal recreational facility. The proposed development is the final stage of the development as originally envisaged.

The “design language” of the existing buildings is typical of the era when these were designed; the roof forms are strongly expressed resulting in high ridge lines and complicated pitched roofs. A low pitch skillion roof is proposed for the new wing. This will sit comfortably below the overall height of the existing buildings.

Articulation of the façade, the generous provision of balconies and expressed eaves overhangs projecting from an interesting roof-form will become recognisable elements of Australian coastal architecture endearing the completed project with a proper sense of place in coastal, sub-tropical Tweed Heads.

Principle 2 - scale

Height, bulk and scale are consistent with the existing surrounding nursing home. The proposed new wing will form a transition in scale between the single storey residences across the road on the west and the large bulky scale of the existing nursing home with its exaggerated roof forms. In plan the new wing will be faceted around the curved road frontage reinforcing this transitional approach to fitting the new wing into a largely built-out environment with its many existing buildings of different sizes.

Principle 3 - built form

The built form of the new wing derives from the curvilinear site with a footprint matching that originally envisaged for this final stage. Overall the proposed built form will relate comfortably to that of the existing nursing home with its very large footprint, large roof forms and tight planning arrangements around a series of internal courtyards.

Along the prominent western façade the built form is highly articulated as the building steps around the curve. Further visual interest to facades will be provided by the different window, balustrade and sun control devices proposed. The external materials and finishes proposed are of a high standard that will positively contribute to the contemporary building design.

The contemporary facade has been developed to create a new identity for the wing extension, whilst complementing the existing buildings adjacent. The orientation of the building has afforded spectacular views towards the Tweed Valley from large balcony spaces, balanced with façade treatments required for the western aspect.

Principle 4 - density

The proposal embodies the uses specified by the original approval for this village and thus the density will match that anticipated by the original overall development approval on the site.

The density of the proposal is appropriate for the site given that the FSR is well below the maximum allowable rate of 2:1, when considering the site independently and has an FSR of 0.98:1 combined with Lot 4.

Principle 5 resource energy and water efficiency

Rain water is harvested from roofs and is stored tanks and is to be recycled for irrigation purposed in the landscaping. The development is BASIX compliant and utilizes many of the energy saving technologies such as AAA taps and fittings and 3 star washing machines and clothes dryers along with low energy light bulbs. The majority of apartments will enjoy a minimum of 3 hours of sunlight into their living areas.

From an energy efficient perspective the solid massing of the building and masonry construction results in provision of good thermal mass. The unit layouts are repeated where possible maximising the efficiency in planning, construction and servicing.

Principle 6 - landscape

The communal open space located within the courtyards and around the building will provide both a suitable aesthetic and usable landscaped space for the future residents whilst also creating spaces to promote social interaction. Predominantly subtropical species using 80% local native species will be used to ensure habitat provision and a strong sense of comfort, wellbeing and belonging. Residents will be encouraged to participate in internal community gardens and have opportunities to embrace ownership through use of private balcony planters.

Principle 7 amenity

All units meet the Apartment Design Guide of unit depth, width, cross ventilation, access to natural light, solar access and private open space.

With the building's construction being primarily solid masonry and concrete, all the units will have excellent acoustic and visual privacy. In addition the vertical screening to the façade will provide adjustable sun control as well as privacy for the residents.

A majority of the self-contained units enjoy views towards the Tweed Valley, both from large private outdoor balconies and communal spaces. The planning of the building has included giving thought to maximising the opportunities for natural light to fall within the living areas of each floor plate.

Principle 8 - safety & security

The definition between public and private use has been clearly defined and the design will facilitate casual surveillance of the internal village roads. A clearly defined entrance lobby areas is provided to access the two apartment floors, which will be highly visible from visitor parking areas. All areas will be well lit at night providing safe environments in which to circulate.

Principle 9 - social dimensions 8 housing affordability

The development allows for a good mix of units, which caters for a greater diversity in residents for the Darlington village and thus will foster social inclusion. The significant improvements in the efficiency of this proposal will allow the finished project to offer up to date accommodation at the appropriate, affordable price point for the locality.

On the ground floor one 15 room section of the aged care facility will become a dementia specific wing in order to satisfy the demand for dementia specific accommodation within the Tweed Heads area.

Principle 10 - aesthetics

The proposal incorporates a range of differing materials and finishes to promote visual interest throughout the façade. Additionally, the natural colours and textures used throughout the building allow for the development to reinforce the natural features present in the surrounding locality

The proposal will present a far superior, modern and contemporary architectural built form to the locality when compared to the current approval. The materials and finishes and attention to details will ensure the aesthetics of the building are or the highest standard, which are Commensurate with the architectural team who have presented this modified design.

The proposal also incorporates numerous breaks in forms, variations in height, and large recesses, which when combined with the architectural detailing [i.e. privacy & sun shading screens], large windows and balconies, and the surrounding vegetation, act to reduce the apparent bulk and scale of the development whilst providing an aesthetically pleasing contemporary built form.

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 (Housing for Seniors or People with a Disability) 2004

Clause 4 Land to which Policy Applies

The proposal is sited on residential land zoned R3 Medium Density Residential pursuant to Tweed Local Environmental Plan 2014. Accordingly pursuant to the provisions of Clause 4 the policy applies, as the zoning permits residential development.

The proposal includes 36 Self-contained dwellings (levels 2 and 3) and 33 Residential care facility rooms (ground floor), as defined by Chapter 2 of the SEPP (Housing for Seniors or People with a Disability) 2004. Of the 33 Residential care facility rooms, 15 rooms are accommodation for persons with dementia.

Clause 11 Residential care facilities (33 rooms, including 15 rooms for dementia patients)

In this Policy, a residential care facility is residential accommodation for seniors or people with a disability that includes:

- (a) meals and cleaning services, and*
- (b) personal care or nursing care, or both, and*
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, not being a dwelling, hostel, hospital or psychiatric facility.*

Clause 13 Self Contained Dwellings (36 rooms)


The proposal also incorporates units defined as ‘self-contained dwellings’ pursuant to the provisions of Clause 13(1) of the SEPP. The definition states: ‘In this Policy, a self-contained dwelling is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.’

The following table provides an assessment of the proposed development in accordance with the relevant provisions of the SEPP.

Provision	Assessment
<p>Part 1A – Site Compatibility certificates Not applicable to the subject application. Clause 24(2) advises that this clause does not apply to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing if the proposed development is permissible with consent on the land concerned under the zoning of another</p>	

Provision	Assessment
environmental planning instrument.	
Part 2 – Site Related Requirements	
<p>Clause 26 Location and access to facilities</p> <p>(1) The consent authority must not grant consent to a development application unless it is satisfied by written evidence that residents of the proposed development will have access to:</p> <p>a) shops, banks & other retail & commercial services that residents may reasonably require;</p> <p>b) community services & recreation facilities and</p> <p>c) the practice of a general medical practitioner.</p> <p>(2) Access complies with this subclause if:</p> <p>a) the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development, and the overall average gradient along the distance is not more than 1:14, although the following gradients along the distance are also acceptable:</p> <ul style="list-style-type: none"> • 1:12 for a maximum of 15 metres at a time • 1:10 for a maximum of 5 metres at a time • 1:8 for a maximum of 1.5 metres at a time <p>OR</p> <p>c) there is a transport service available to the residents who will occupy the proposed development.</p>	<p><i>The subject site is located approximately 500 metres from the Tweed Heads Shopping District and 700 metres from the Banora Point Shopping Village.</i></p> <p><i>The Tweed Heads Shopping District provides for a range of shopping, banking, retail & commercial services and medical facilities. Recreational needs are also met with a swim school being located adjacent to the site, a golf course located approximately 400 metres away and the Twin Towns Club Banora Bowls Club being approximately 400 metres away.</i></p> <p><i>The gradients to the bus stop and surrounding services are within acceptable limits prescribed by the SEPP (1:14).</i></p> <p><i>The locality is serviced by public transport with a bus stop being located approximately 150 metres from the site. This bus stop services part of the Tweed Heads Shopping District</i></p>
<p>Clause 27 Bushfire Prone Land</p>	<p><i>The site is not with land identified as prone to bushfire and the provisions of this clause do not apply.</i></p>
<p>Clause 28 Water and Sewer</p> <p>(1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.</p>	<p><i>The site has adequate access to existing water and sewer infrastructure.</i></p>

Provision	Assessment
<p>(2) If the water and sewerage services referred to in subclause (1) will be provided by a person other than the consent authority, the consent authority must consider the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure. In locations where reticulated services cannot be made available, the consent authority must satisfy all relevant regulators that the provision of water and sewerage infrastructure, including environmental and operational considerations, are satisfactory for the proposed development.</p>	<p><i>Not applicable – the subject site is and will continue to be connected to Councils reticulated services.</i></p>

Part 3 – Design Requirements	
<p>Division 1 General Clause 30 Site Analysis</p> <p>(1) consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with this clause.</p> <p>(2) A site analysis must:</p> <p>(a) contain information about the site and its surrounds as described in sub clauses (3) and (4), and</p> <p>(b) be accompanied by a written statement (supported by plans including drawings of sections and elevations and, in the case of proposed development on land adjoining land zoned primarily for urban purposes, an aerial photograph of the site):</p> <p>(i) explaining how the design of the proposed development has regard to the site analysis, and</p> <p>(ii) explaining how the design of the proposed development has regard to the design principles set out in Division 2.</p> <p>(3) The following information about a site is to be identified in a site analysis:</p> <p>Site Dimensions</p> <p>Topography</p> <p>Services</p>	<p><i>The applicant provided a site analysis as part of the application.</i></p>  <p><i>The site analysis and Statement of Environmental Effects are considered to satisfy this requirement. The site and detail are discussed below under clause 3 and within the assessment report.</i></p> <p><i>The property (Lot 3) is oval in shape, with a length of 150 metres and width of 90 metres</i></p> <p><i>The site is deemed level from the previous development on the site.</i></p> <p><i>The site has adequate access to urban infrastructure including water, sewer,</i></p>

Part 3 – Design Requirements	
	<i>stormwater, power and telecommunications. An easement for a substation runs in a line in a small section of the north of the property.</i>
Existing Vegetation	<i>The site contains little in the way of vegetation other than ornamental garden species and lawn. No removal is required as part of the subject application.</i>
Micro Climates	<i>The site has orientation to the North providing suitable solar access into each of the proposed apartments throughout the day. No topographical features or built structures overshadow the property or affect predominant wind patterns. It should be noted however that 50% of the rooms are oriented to the west. Conditions have been applied in relation screens.</i>
Location of Building and Other Structures	<i>Two single-storey and one two-storey predominantly brick buildings are situated on Lot 1 of the site. Lot 2 also holds 96 single storey units. A fence also runs along part of the border between Lots 1 & 3.</i>
Views to and from the Site	<i>The property is within the urban area of Banora Point and is generally surrounded by housing. No views of significance are available to and from the site.</i>
Overshadowing by Neighbouring Structures	<i>As the subject site is bounded by a private road, overshadowing is limited to the adjacent roads and the subject site itself. There has been some minor shadowing of existing ILU located on the site. However the shadowing is minimal and is not considered to significantly affect the amenity afforded to residents. Shadowing is discussed further within the SEPP 65 attachment.</i>
Public open space	<i>An open space that includes a canal runs along the south of the site. Another public open space is also located 400 metres directly north of the site.</i>
<p>Division 2 Design Principles Clause 33 Neighbourhood Amenity and Streetscape The proposed development should:</p> <p>(a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and</p>	<p><i>The subject site is currently comprised of a Retirement Community, which includes a Residential aged care facility, independent living units (not individually titled), recreation centre, administration facilities and associated health related facilities.</i></p> <p><i>The development incorporates the construction of a multi-level seniors living development consisting of a total of 33 RAC rooms and 36 ILUs. The building is proposed to be connected to the existing</i></p>

Part 3 – Design Requirements

RSL Aged care facility.



Northern elevation

The proposed development is to replace that originally approved under stage 6 of DA03/0078.

Whilst it is acknowledged that the subject application is significantly different to that which was approved as Stage 6 under DA03/0078, it is considered the proposed development is of a bulk, scale and height which will not detract from the streetscape or the amenity of the neighbourhood.

- (b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and
- (c) maintain reasonable neighbourhood amenity and appropriate residential character by:
 - (i) providing building setbacks to reduce bulk and overshadowing, and

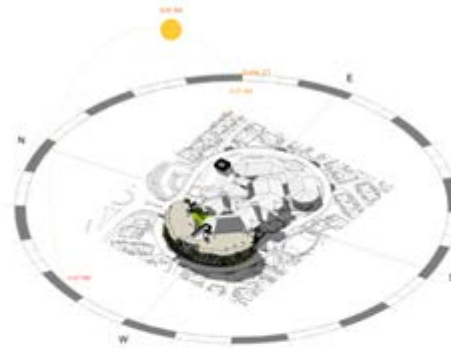
Not applicable the subject site is not mapped within a heritage conservation area, nor does the site contain any heritage items.

The development is setback approximately 45 metres from Leisure drive. The development is also adjoined to the east by the existing RSL care building and to the north (maximum height (pitched/gable roof of approximately 14.5m), south and west by an internal access road. The building is not considered visually bulky from the streetscape and overshadowing is considered minimal, as the site is adjoined to the south by an internal access road. See images below.

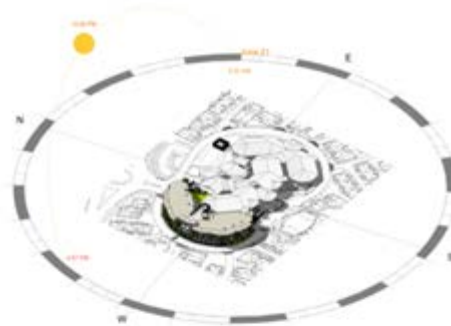


Location of development site

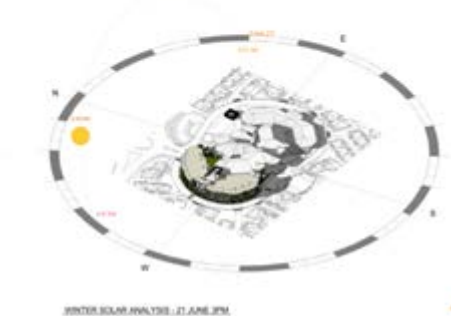
Part 3 – Design Requirements



WINTER SOLAR ANALYSIS - 21 JUNE 9AM



WINTER SOLAR ANALYSIS - 21 JUNE 12PM



WINTER SOLAR ANALYSIS - 21 JUNE 3PM

Shadow plans

- (ii) using building form and siting that relates to the site's land form, and
- (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and

Notwithstanding the above it is acknowledged that within the Neighbourhood Property Plan the proposed development results in a significantly larger building than that previously approved under DA03/0078. However, the development complies with the setback, height and Floor Space Ratio requirements of this SEPP.

The building relates to the subject sites landform. No cut or fill is required as part of the subject application.

The subject site forms part of an existing neighbourhood property plan – see highlighted below.

Part 3 – Design Requirements



The immediate area surrounding the site is predominately comprised of single and two storey low density dwellings.

The existing neighbourhood plan is comprised of single storey developments adjoining the street frontage and adjacent to the development Lot, to the north, south and west.

To the east is the existing RSL residential aged care building and administration, which has a maximum height of approximately 14.5m

Both the existing RSL facility and the proposed development are setback approximately 45m from the street frontage.

Accordingly, it is not considered that the proposed development will impact the existing residential character of the Banora Point area.

(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and


The proposed development is not located on the boundary.

(d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and


As discussed above the proposed development is additional to the existing use of the site. The front building setback is consistent with the existing RSL care building and the footprint approved under DA03/00078.

(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and

The site is currently comprised of mature planting within the sites setback. The proposed development also includes the provision of additional planting on Lots 3 and 4. Conditions requiring 80% local native species has been applied to this consent. Please also see the plan of landscape intent below.

Part 3 – Design Requirements	
<p>(f) retain, wherever reasonable, major existing trees, and</p> <p>(g) be designed so that no building is constructed in a riparian zone.</p>	 <p><i>Not applicable – the development site is clear of any trees</i></p> <p><i>Not applicable – the site does not comprise a riparian zone.</i></p>
<p>Clause 34 Visual and Acoustic Privacy The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:</p> <p>(a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and</p> <p>(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</p>	<p><i>Levels 2 and 3 include a total of 24 units (12 each storey), which have balconies oriented to the north-west, west and south west. These areas adjacent are comprised of independent living units. Each balcony is proposed to be fitted with adjustable screen for both privacy and amenity. The balconies are angled/orientated to increase privacy and reduce overlooking.</i></p> <p><i>The locations of the rooms are setback from the internal access road and landscaping will be provided. Further suitable noise insulation measures will be installed between each unit to ensure acoustic privacy is maintained.</i></p>
<p>Clause 35 Solar Access and Design for Climate The proposed development should:</p> <p>(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and</p> <p>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.</p>	<p><i>The submitted overshadowing diagrams indicate minimal overshadowing. Please refer to images above.</i></p> <p><i>The site is oriented north-south. The design of the development, has allowed for the self-contained dwellings at levels 2 and 3 to each have operable windows and external living areas. Further the self-contained dwellings comply with the required 70% of all units having at least 3 hours direct sunlight mid-winter.</i></p> <p><i>The units located on the ground floor are for special aged care (nominated dementia care rooms) and Residential aged care. Each room has operable windows, which allow natural light and heating. These rooms do not include dining areas.</i></p>

Part 3 – Design Requirements	
	<i>The SEE advises that Certis Energy has been engaged to provide energy efficiency advice for the development.</i>
<p>Clause 36 Stormwater</p> <p>The proposed development should:</p> <p>(a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and</p> <p>(b) include, where practical, on-site stormwater detention or re-use for second quality water uses.</p>	<i>The proposed stormwater will be collected and treated in accordance with Council's requirements. Engineers have provided any applicable conditions.</i>
<p>Clause 37 Crime Prevention</p> <p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:</p> <p>(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and</p> <p>(b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and</p> <p>(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.</p>	<p><i>The proposal provides for good visual surveillance of the adjacent road, and private open space areas to assist in the prevention of crime.</i></p> <p><i>At the ground floor the building includes two lobby entrances with external access and a lobby which connects through to the main facility building. All entrances at ground floor are accessible by residents, staff and guests.</i></p> <p><i>The two ground floor entrances allow access via stairs to the second and third storeys.</i></p> <p><i>The second storey includes access into the existing main building, however this is for staff only.</i></p> <p><i>The configuration of the building allows for residential areas to be locked separate from the lobby's and multi-purpose areas.</i></p> <p><i>The development is configured in a multi-storey, unit configuration. This is not possible for each unit. The development does however allow for overlooking of the common areas.</i></p>

Part 3 – Design Requirements	
<p>Clause 38 Accessibility</p> <p>The proposed development should:</p> <p>a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and</p> <p>(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.</p>	<p><i>The site is accessible through pedestrian links to local facilities, shopping districts, parks and other recreational opportunities with a public bus service also linking the neighbourhood to the surrounding area. The site plan below includes formal parking, which is clearly identifiable and links with the development site.</i></p>  <p><i>The site includes open, visible and shaded footpaths and vehicle access. The proposed development will provide a total of 93 parking spaces.</i></p>
<p>Clause 39 Waste Management</p> <p>The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.</p>	<p><i>Each unit will have access to its own rubbish receptacle with a rubbish storage area also provided.</i></p>

Part 4 Development standards to be complied with	
<p>Division 1 General</p> <p>Clause 40 Development Standards – minimum sizes and building height</p> <p>Site size The size of the site must be at least 1,000 square metres.</p> <p>Site Frontage The site frontage must be at least 20 metres wide measured at the building line</p> <p>Height where residential Flat Buildings are not permitted</p> <ul style="list-style-type: none"> the height of all buildings in the proposed development must be 8 metres or less a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and a building located in the rear 25% area of the site must not exceed 1 storey in height. 	<p><i>The lot size of Lot 4 is 9,398m² and Lot 3 is 2,601m². Total area of 11,999sqm.</i></p> <p><i>The approximate site frontage is 150 metres across and 90 metres deep.</i></p> <p><i>Not applicable, the subject site is zoned R3 Medium Density Residential under the Tweed Local Environmental Plan 2014. Accordingly, residential flat buildings are a permissible use.</i></p>

Part 4 Development standards to be complied with	
Division 3 – Hostel and self-contained dwellings – standards concerning accessibility and useability	
<p>Clause 41 Standards for hostels and self-contained dwellings</p> <ul style="list-style-type: none"> • A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of a hostel or self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development. • Despite the provisions of clauses 2, 7, 8, 9, 10, 11, 12, 13 and 15–20 of Schedule 3, a self-contained dwelling, or part of such a dwelling, that is located above the ground floor in a multi-storey building does not have to comply with the requirements of those provisions if the development application is made by, or by a person jointly with, a social housing provider. 	<p><i>Schedule 3 assessment following.</i></p>
Schedule 3 – Standards concerning accessibility and useability for hostels and self-contained dwellings	
Part 1 Standards applying to hostels and self-contained dwellings	
Siting standards	
<p>(1) Wheelchair access if the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road.</p> <p>(2) If the whole of the site does not have a gradient of less than 1:10:</p> <p style="margin-left: 40px;">(a) the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and</p> <p style="margin-left: 40px;">(b) the wheelchair access provided must be by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or an internal road or a driveway that is accessible to all residents.</p> <p>Note. For example, if 70% of the site has a gradient of less than 1:10, then 70% of the dwellings must have wheelchair access as required by this sub clause. If more than 50% of the site has a gradient greater than 1:10, development for the purposes of seniors housing is likely to be unable to meet these requirements.</p> <p>(3) Common areas Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.</p>	<p><i>The development and all units are designed with direct wheelchair access from the public road with a gradient not exceeding 1:14. Wheelchair access is also freely available to the common areas of the properties.</i></p> <p><i>Not applicable the site does not have a gradient of less than 1:10.</i></p> <p><i>As discussed above, all common areas are compliant with AS 1428.1 for wheelchair access.</i></p>

Part 4 Development standards to be complied with	
<p>Security Pathway lighting:</p> <p>(a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and</p> <p>(b) must provide at least 20 lux at ground level.</p>	<p><i>Noted – conditions with this regard will be applied</i></p>
<p>Private Car Accommodation If car parking (not being car parking for employees) is provided:</p> <p>(a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890, and</p> <p>(b) 5% of the total number of car parking spaces (or at least one space if there are fewer than 20 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and</p> <p>(c) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.</p>	<p><i>The proposal sees the minor reconfiguration and addition of new car spaces with there being a proposed 81 parking spaces around the site. The parking spaces comply with the disability guidelines outlined in AS 2890; and</i></p> <p><i>5% of the total number of parking spaces allow the width to be increased to 3.8 metres.</i></p> <p><i>Not applicable</i></p>
<p>Accessible Entry Every entry (whether a front entry or not) to a dwelling, not being an entry for employees, must comply with clauses 4.3.1 and 4.3.2 of AS 4299.</p>	<p><i>All units are designed to comply with the gradient requirements. Entrances to comply with the relevant clauses to AS4299 and AS1428 as stipulated.</i></p>
<p>Interior: general</p> <p>(1) Internal doorways must have a minimum clear opening that complies with AS 1428.1.</p> <p>(2) Internal corridors must have a minimum unobstructed width of 1,000 millimetres.</p> <p>(3) Circulation space at approaches to internal doorways must comply with AS 1428.1</p>	<p><i>The proposal has been designed to comply with AS1428.1 to ensure suitable width of corridors and manoeuvring areas throughout the development.</i></p> <p><i>Complies at the narrowest points, the development exceeds this requirement.</i></p> <p><i>Complies unit configuration offers rooms compliant with AS 1428.1 for accessibility</i></p>
<p>Bedroom At least one bedroom within each dwelling must have:</p> <p>(a) an area sufficient to accommodate a wardrobe and a bed sized as follows:</p> <p>(i) in the case of a dwelling in a hostel—a single-size bed,</p> <p>(ii) in the case of a self-contained dwelling—a queen-size bed, and</p> <p>(b) a clear area for the bed of at least:</p> <p>(i) 1,200 millimetres wide at the foot of the bed, and</p>	<p><i>Not applicable – no hostels proposed</i></p> <p><i>Complies all self- contained dwellings can accommodate a queen size bed.</i></p> <p><i>Complies – refer to plans DA2.10 – DA2.15</i></p>

Part 4 Development standards to be complied with	
<p>(ii) 1,000 millimetres wide beside the bed between it and the wall, wardrobe or any other obstruction, and</p> <p>(c) 2 double general power outlets on the wall where the head of the bed is likely to be, and</p> <p>(d) at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be, and</p> <p>(e) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and</p> <p>(f) wiring to allow a potential illumination level of at least 300 lux.</p>	<p><i>Complies – refer to plans DA2.10 – DA2.15</i></p> <p><i>Noted – condition applied</i></p> <p><i>Noted – condition applied</i></p> <p><i>Noted – condition applied</i></p> <p><i>Noted – condition applied</i></p>
<p>Bathroom</p> <p>(1) At least one bathroom within a dwelling must be on the ground (or main) floor and have the following facilities arranged within an area that provides for circulation space for sanitary facilities in accordance with AS 1428.1:</p> <p>(a) a slip-resistant floor surface,</p> <p>(b) a washbasin with plumbing that would allow, either immediately or in the future, clearances that comply with AS 1428.1,</p> <p>(c) a shower that complies with AS 1428.1, except that the following must be accommodated either immediately or in the future:</p> <p>(i) a grab rail,</p> <p>(ii) portable shower head,</p> <p>(iii) folding seat,</p> <p>(d) a wall cabinet that is sufficiently illuminated to be able to read the labels of items stored in it,</p> <p>(2) Subclause (1) (c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.</p>	<p><i>Bathrooms and toilets have been designed to comply with the provisions of the SEPP. Further detail to be provided at construction stage. Conditions have been applied.</i></p>
<p>Toilet</p> <p>A dwelling must have at least one toilet on the ground (or main) floor and be a visit able toilet that complies with the requirements for sanitary facilities of AS 4299.</p>	<p><i>Toilets have been designed to comply with the provisions of the SEPP. Further detail to be provided at construction stage. Conditions with this regard have been applied.</i></p>

Part 4 Development standards to be complied with	
<p>Surface finishes Balconies and external paved areas must have slip-resistant surfaces.</p>	<p><i>All external paved areas will have slip resistant surfaces.</i></p>
<p>Door hardware Door handles and hardware for all doors (including entry doors and other external doors) must be provided in accordance with AS 4299.</p>	<p><i>The SEE advises that all door handles and hardware are provided in accordance to AS 4299.</i></p>
<p>Ancillary items Switches and power points must be provided in accordance with AS 4299.</p>	<p><i>The SEE advises that all switches and power points are provided in accordance with AS 4299.</i></p>
Part 2 Additional standards for self-contained dwellings	
<p>Living and Dining Room</p> <p>(1) A living room in a self-contained dwelling must have:</p> <p>(a) a circulation space in accordance with clause 4.7.1 of AS 4299, and</p> <p>(b) a telephone adjacent to a general power outlet.</p> <p>(2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.</p>	<p><i>As discussed above, each unit has been designed with generous proportions in the living and dining room to comply with these requirements. A telephone and power outlet to be installed adjacent to each other and situated in the Living Room.</i></p> <p><i>A telephone and power outlet to be installed adjacent to each other and situated in the Living Room.</i></p> <p><i>This detail will be provided at the construction stage. Conditions have been applied.</i></p>
<p>Kitchen A kitchen in a self-contained dwelling must have:</p> <p>(a) a circulation space in accordance with clause 4.5.2 of AS 4299, and,</p> <p>(b) a circulation space at door approaches that complies with AS 1428.1, and</p> <p>(c) the following fittings in accordance with the relevant subclauses of clause 4.5 of AS 4299:</p> <p>(i) benches that include at least one work surface at least 800 millimetres in length that comply with clause 4.5.5 (a),</p> <p>(ii) a tap set (see clause 4.5.6),</p> <p>(iii) cooktops (see clause 4.5.7), except that an isolating switch must be included</p> <p>(iv) an oven (see clause 4.5.8), and</p> <p>(d) "D" pull cupboard handles that are located towards the top of below-bench cupboards and towards the bottom of overhead cupboards, and</p>	<p><i>The proposal has been designed to comply with the provisions of the SEPP for Kitchen fitout. Further detail to be provided at construction certificate stage. Refer to Plans DA2.11 – DA2.15</i></p>


Part 4 Development standards to be complied with	
<p>(e) general power outlets:</p> <p>(i) at least one of which is a double general power outlet within 300 millimetres of the front of a work surface, and</p> <p>(ii) one of which is provided for a refrigerator in such a position as to be easily accessible after the refrigerator is installed.</p>	
<p>Access to kitchen, main bedroom and toilet In a multi storey dwelling must be located on ground floor.</p>	<i>Not applicable each unit is single storey.</i>
<p>Lifts in multi-storey buildings In a multi storey building containing separate self-contained dwellings on different storeys, lift access must be provided to dwellings above the ground level and is to comply with clause E3.6 of the Building Code of Australia.</p>	<i>The proposal has been designed with lift access to dwellings above the ground level that complies with clause E3.6 of the Building Code of Australia.</i>
<p>Laundry A self-contained dwelling must have a laundry that has:</p> <p>(a) a circulation space at door approaches that complies with AS 1428.1, and</p> <p>(b) provision for the installation of an automatic washing machine and a clothes dryer, and</p> <p>(c) a clear space in front of appliances of at least 1,300 millimetres, and</p> <p>(d) a slip-resistant floor surface, and</p> <p>(e) an accessible path of travel to any clothes line provided in relation to the dwelling.</p>	<p><i>Refer to Plans DA2.11 – DA2.15. All self-contained dwelling, with the exception of type D includes open laundries, with room for a washing machine, tub and dryer.</i></p> <p><i>Type D includes a laundry room, with a depth of 1800mm and a clearance of 1.3m.</i></p> <p><i>A washing line is located at ground floor, within the secured garden area. This area is accessible by formal paths.</i></p>
<p>Storage Linen Cupboard in accordance with AS4299</p>	<i>Linen/storage is provided open plan areas, with clear access.</i>
<p>Garbage A garbage storage area must be provided in an accessible location.</p>	<i>A garbage storage area is provided in an accessible location. See plans D2.11-D2.15.</i>

Part 5 – Development on land adjoining land zoned for primarily urban purposes	
<p>42 Serviced self-care housing</p> <p>(1) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have reasonable access to:</p> <p>(a) home delivered meals, and</p> <p>(b) personal care and home nursing, and</p> <p>(c) assistance with housework.</p>	<p><i>The proposed development includes a mix of development types. The self-contained units have the benefit of a kitchen. Alternatively the development includes on each level a kitchen servery and dining areas.</i></p> <p><i>The development includes options for personal care and home nursing.</i></p> <p><i>The development includes options for assistance with housework.</i></p>

<p>Part 5 – Development on land adjoining land zoned for primarily urban purposes</p>	
<p>(2) For the purposes of subclause (1), residents of a proposed development do not have reasonable access to the services referred to in subclause (1) if those services will be limited to services provided to residents under Government provided or funded community based care programs (such as the Home and Community Care Program administered by the Commonwealth and the State and the Community Aged Care and Extended Aged Care at Home programs administered by the Commonwealth).</p>	<p><i>Alternative services are offered in addition to government funded options.</i></p>
<p>43 Transport services to local centres</p>	
<p>(1) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that a bus capable of carrying at least 10 passengers will be provided to the residents of the proposed development:</p> <p>(a) that will drop off and pick up passengers at a local centre that provides residents with access to the following:</p> <p>(i) shops, bank service providers and other retail and commercial services that residents may reasonably require,</p> <p>(ii) community services and recreation facilities,</p> <p>(iii) the practice of a general medical practitioner, and</p> <p>(b) that is available both to and from the proposed development to any such local centre at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day.</p>	<p><i>The service includes a private mini bus.</i></p> <p><i>The provider will comply with these requirements.</i></p>
<p>(2) Subclause (1) does not apply to a development application to carry out development for the purposes of the accommodation of people with dementia.</p>	<p><i>Noted. However, the clause will apply to the remaining self-contained units and residential aged care units.</i></p>
<p>44 Availability of facilities and services</p>	
<p>A consent authority must be satisfied that any facility or service provided as a part of a proposed development to be carried out on land that adjoins land zoned primarily for urban purposes will be available to residents when the housing is ready for occupation. In the case of a staged development, the facilities or services may be provided proportionately according to the number of residents in each stage.</p>	<p><i>The development is not staged and includes a range of ancillary services, including private transportation. Accordingly, Council is satisfied that when the housing is ready and available for occupation any ancillary facilities will also be available.</i></p>

Part 6 Development for vertical villages	
45 Vertical villages	
<p>(1) Application of clause This clause applies to land to which this Policy applies (other than the land referred to in clause 4 (9)) on which development for the purposes of residential flat buildings is permitted.</p> <p>(2) Granting of consent with bonus floor space Subject to subclause (6), a consent authority may consent to a development application made pursuant to this Chapter to carry out development on land to which this clause applies for the purpose of seniors housing involving buildings having a density and scale (when expressed as a floor space ratio) that exceeds the floor space ratio (however expressed) permitted under another environmental planning instrument (other than State Environmental Planning Policy No 1—Development Standards) by a bonus of 0.5 added to the gross floor area component of that floor space ratio.</p>	<p><i>The proposed development does not need to be assessed against this section of the SEPP as the subject development complies with the required FSR.</i></p>

Part 7 Development standards that cannot be used as grounds to refuse consent	
48 Standards that cannot be used to refuse development consent for residential care facilities	
<i>Clause 48 applies to level 1</i>	
<p>A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds:</p>	
<p>(a) building height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys), or</p> <p>(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,</p>	<p><i>The proposed development is 13.5m</i></p> <p><i>Whilst this section applies to levels 2 and 3, the site should be considered holistically. The proposed development is for additions to stage 1, as approved under DA03/0078 (Lot 4) and the construction of a new building (Lot 3). The gross floor area of the proposed addition (including works within Lot 4) is approximately 5273m².</i></p> <p><i>The total floor area for the combined building (Lots 3 and 4) is 11,824m². The combined site area is 11,999m² (Lots 3 and 4) equating to a FSR of 0.98:1</i></p> <p><i>Notwithstanding the above, Lot 3 has an independent land area of 2601m². The GFA of the proposed building, contained within this lot is 4780m² resulting in a FSR of 1.84:1.</i></p>

Part 7 Development standards that cannot be used as grounds to refuse consent	
<p>(c) landscaped area: if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,</p>	<p><i>The site (lots 3 and 4) provides a total landscaped area of 3,410m². The site (Lot 3 and 4) includes 90 existing RAC rooms, 33 proposed RAC rooms and 36 proposed ILUs, a total 159 units of this amounts to 21m²/room.</i></p> <p><i>This area does not include the common internal areas, multi-purpose room, café area and children’s play area located at the entrance.</i></p>  <p style="text-align: center;"><i>Plan of landscape intent</i></p>
<p>(d) parking for residents and visitors: if at least the following is provided:</p> <p>(i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and</p> <p>(ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and</p> <p>(iii) 1 parking space suitable for an ambulance.</p>	<p><i>The development includes a total of 93 car spaces onsite, excluding the existing ILUs as these have individual car spaces.</i></p> <p><i>A minimum 11 spaces are provided for the 108 RAC rooms and 1 space for the rooms for persons with dementia.</i></p> <p><i>There are 58 staff (including crossover times) on site at any one time, therefore 29 spaces have been made available for staff</i></p> <p><i>There is provision onsite for ambulance parking.</i></p>
<p>50. Standards that cannot be used to refuse development consent for self-contained dwellings</p> <p><u>Clause 50 applies to levels 2 and 3</u></p> <p>The consent authority must not refuse consent to a development application under this Part on the grounds of:</p>	
<p>a) building height: if all proposed buildings are 8 metres or less in height, or</p> <p>b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less</p>	<p><i>The proposal is a multi-level development that exceeds 8m.</i></p> <p><i>The proposed development is for additions to stage 1, as approved under DA03/0078 (Lot 4) and the construction of a new building (Lot 3). The gross floor area of the proposed addition (including works within Lot 4) is approximately 5273m².</i></p> <p><i>The total floor area for the combined building (Lots 3 and 4) is 11,824m².</i></p>

Part 7 Development standards that cannot be used as grounds to refuse consent

The combined site area is 11,999m² (Lots 3 and 4) equating to a FSR of 0.98:1

Notwithstanding the above, Lot 3 has an independent land area of 2601m². The GFA of the proposed building, contained within this lot is 4780m² resulting in a FSR of 1.84:1.

c) landscaped area: if:

- (i) in the case of a development application made by a social housing provider—a minimum 35 square metres of landscaped area per dwelling is provided, or

The site (lots 3 and 4) provides a total landscaped area of 3,410m². The site (Lot 3 and 4) includes 90 existing RAC rooms, 33 proposed RAC rooms and 36 proposed ILUs, a total 159 units of this amounts to 21m²/room.

This area does not include the common internal areas, multi-purpose room, café area and children’s play area located at the entrance.



Plan of landscape intent

- (ii) in any other case—a minimum of 30% of the area of the site is to be landscaped,

The development provides 29%

d) deep soil zones: A minimum of 15% of the site area with two thirds of the area located at the rear of the site with minimum dimension of 3 metre.

Given the nature and configuration of the site, it is difficult to achieve a significant rear and front DSZ. The total area of DSZ required for the site is 15%, or 1773.6sqm. The development includes a total of 3410sqm landscaped and 2,488m² of this being considered as DSZ.

e) solar access: Living Rooms and Private Open Space for 70% of the dwellings to receive a minimum of 3 hours direct sunlight between 9 am and 3 pm.

The following table includes the hours of direct sunlight between 9am and 3pm, mid-winter.

The proposed development complies with this requirement, by providing 75% compliance.

It has been noted that compliance with this regard has included sunlights; however this complies with the requirement of the SEPP for direct sunlight.

Part 7 Development standards that cannot be used as grounds to refuse consent

BLA No.	SUN EXPOSURE LEVEL TWO		SUN EXPOSURE LEVEL THREE	
	SUN ACCESS BEGINS	SUN ACCESS ENDS	SUN ACCESS BEGINS	SUN ACCESS ENDS
1	9:00 AM	3:00PM	9:00 AM	3:00PM
2	11:00AM	3:00PM	11:45PM	3:00PM
3	10:00AM	3:00PM	10:30AM	3:00PM
4	12:00PM	3:00PM	12:00PM	3:00PM
5	11:00AM	3:00PM	12:00PM	3:00PM
6	12:00PM	3:00PM	12:00PM	3:00PM
7	12:00PM	3:00PM	12:00PM	3:00PM
8			12:00PM	3:00PM
9			12:00PM	3:00PM
10			11:30AM	3:00PM
11			11:30AM	3:00PM
12			11:30AM	3:00PM
13			11:30AM	3:00PM
14	9:00AM	12:00PM	9:00AM	12:00PM
15	9:00AM	12:00PM	9:00AM	12:00PM
16			9:00AM	12:00PM
17			9:00AM	12:00PM
18			9:00AM	12:00PM

*Additional skylights used on Level 3 to achieve solar compliance.

TOTALS	
TOTAL SELF-CONTAINED DWELLINGS	36
TOTAL COMPLIANT	27
TOTAL NON-COMPLIANT	9

COMPLIANCE 9AM - 3PM (3 HOURS) REQUIRED FOR COMPLIANCE PRECENTAGE OF COMPLIANT APARTMENTS 70% 75%

- f) **private open space:** Ground Floor Dwellings 15 m2 with Dimensions of 3 metres and Upper level Dwellings a balcony of 10 m2 with Dimensions of 2 metres.
- h) **parking:** One resident space per five dwellings.

All units have access to ground level private open space compliant with these requirements and directly accessible from the living area.

In total the development provides a total of 93 parking spaces. The development includes 36 self-contained dwellings. Accordingly, requires 8 spaces.

As discussed under Clause 48, a total of 48 spaces are required (including staff).

The development requires a total of 56 spaces.

The development includes 93 spaces, with a requirement 60 spaces. This is discussed further under Section A2 – Site Access and Parking Code of this report.

SEPP (Exempt and Complying Development Codes) 2008

Subdivision 13 – Demolition of the SEPP advises that demolition of development that would be exempt development under this code if it were being constructed or installed is development specified for this code if it is not carried out on or in a heritage item or a draft heritage item or in a heritage conservation area or a draft heritage conservation area.

The subject application includes the following demolition works which are considered to meet the requirements of the SEPP:

- *Removal of existing maintenance yard and shed*
- *Removal of 15 car parks, bin collection area, and ambulance/kitchen delivery zone*
- *Demolition of dividing wall and door within southern sector of block 2 (central building)*
- *Demolition of internal walls within the western sector of block 1 (main entrance).*

The demolition works are required to comply with AS 2601—2001, the demolition of structures.

North Coast Regional Environmental Plan

In March 2017 the NCRP 2036 was introduced. The NCRP 2036 established the following vision for the area:

The best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities

The NCRP 2036 includes 4 overarching goals to achieve the aforementioned vision:

- 1. The most stunning environment in NSW*
- 2. A thriving interconnected economy*
- 3. Vibrant and engaged communities*
- 4. Great housing choices and lifestyle options*

The site is mapped as an Urban Growth area and within the coastal strip.

Consideration of the planning principles, which will guide growth on the North Coast, is required to be undertaken in determining an application.

Principle 1: Direct growth to identified Urban growth areas

Urban growth areas have been identified to achieve a balance between urban expansion and protecting coastal and other environmental assets. They help maintain the distinctive character of the North Coast, direct growth away from significant farmland and sensitive ecosystems and enable efficient planning for infrastructure and services.

Assessment:

Complies - the proposed development is for the construction of a Seniors Living Development. The site is within walking distance of Banora Shopping Centre and public transport. The area is located outside of sensitive coastal and farmland areas.

Principle 2: Manage the sensitive coastal strip

The coastal strip comprises land east of the planned Pacific Highway alignment plus the urban areas of Tweed Heads around the Cobaki Broadwater. The coastal strip is ecologically diverse and contains wetlands, lakes, estuaries, aquifers, significant farmland, and has areas of local, State, national and international environmental significance. Much of this land is also subject to natural hazards, including flooding, coastal inundation, erosion and recession.

Demand for new urban and rural residential land in this area is high. To safeguard the sensitive coastal environment, rural residential development will be limited in this area, and only minor and contiguous variations to urban growth area boundaries will be considered.

Assessment:

The development site is mapped under this plan as being within the sensitive coastal strip. The proposed development not considered to impact on a natural hazards or farmlands.

Principle 3: Provide great places to live and work in a unique environment

Making cities and centres the focus of housing diversity, jobs and activities makes communities more vibrant and active, reduces pressure on the environment, and makes it easier for residents to travel to work and access services.

The Plan guides councils in preparing local growth management strategies and planning proposals to deliver great places to live and work that maximise the advantages of the North Coast's unique environment.

Assessment:

As discussed above the site is located within a five minute walk to the Banora Shopping complex recreation facilities and associated services and also within five minutes' walk of public transport.

The proposed development is considered to comply with the planning principles of the NCRP 2036, goals and overarching vision of being the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities.

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

There are no draft SEPPs applicable to the subject application.

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

A1-Residential and Tourist Development Code

Section A1 applies when the provisions of SEPP 65 Design Quality of Residential Flat Development and SEPP 64 (Housing for Seniors or People with a Disability) are silent. Accordingly, Design Control is 9 – External Building Elements requires consideration. The proposed development is compliant with this regard.

A2-Site Access and Parking Code

The original Development Consent DA03/0078 dated 6 June 2003 was issued having undertaken assessment against the State Environmental Planning Policy No.5 – Housing for Older People or People with a Disability, the SEPP in force at the time. This SEPP referred to parking within Clause 14(d) if providing:

- i in the case of a hostel or residential care facility, at least:*
- *parking space for each 10 beds in the hostel or residential care facility, and*
 - *1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and*
 - *1 parking space suitable for an ambulance.*

120 Residential care facility rooms were approved as part DA03/0078 and 36 staff on duty at any one time. Therefore, the required car parking was 30 car spaces. 76 car spaces were provided, whilst only 37 parking spaces were required. It should be noted that this requirement include the future stage 6, which has not been development and this consent seeks to replace and intensify.

Further to the above development consent DA03/0078 was changed via a section 96 dated 30 June 2006 (Council Ref: DA03/0078.11) with updated plans. These changes did not affect car parking.

In relation to onsite parking Section A2 refers to the SEPP (Housing for seniors or People with a Disability) 2004. The SEPP requires the following for the subject application:

Land-Use	No./GFA	Rate	Requirement
Care Facility			
– Residents and visitors	18 beds	1 space per 10 residential care beds	2
– Special care	15 beds	1 space per 15 special care beds	1
– Staff	6 staff	1 space per 2 persons employed	3
– Ambulance	-	1 space suitable for ambulance	1
Sub Total – Care Facility			7
ILU's			
– Residents and visitors	36 units	0.5 spaces for each bedroom	19
Total			28 spaces

Although consent has been granted for stages 1 and 3, a complete recalculation at today's rates has been undertaken, see below table:

Land-Use	No./GFA	Rate	Requirement	Supply
Care Facility				
– Residents and visitors	108 beds	1 space per 10 residential care beds	11	98 spaces*
– Special care	15 beds	1 space per 15 special care beds	1	
– Staff	52 staff	1 space per 2 persons employed	26	
– Ambulance	-	1 space suitable for ambulance	1	
Sub Total – Care Facility			39	
ILU's				
– Residents and visitors	38 units	0.5 spaces for each bedroom	19	
Total			58 spaces	98 spaces

**include the five future spaces (93 excluding these spaces)*

Further to the above RSL care have advised the following:

- *The 36 Self-contained dwellings proposed are referred to as Supported Living Apartments by the applicant. These rooms are designed for people that are not completely independent and require some level of care to assist*

with their day to day living. These rooms provide a step between independent living and the fulltime care rooms of the residential care facility. Given that the prospective residents require some level of assistance with everyday living, it is envisaged a large proportion of these residents would not be capable of driving.

- *Stage 1 and 3 have a peak staffing demand that occurs in the AM, with 36 staff on duty. The subject application will require an additional 16 staff, bringing the total AM peak to 52 staff on duty.*

Following the workshop between the proponent, Council and residents held on 10 August 2017 a rework of the proposed car parking arrangement was undertaken. A further 12 car spaces have been added to the proposal; for the most part these are located on the existing private ring road (Lot 1).

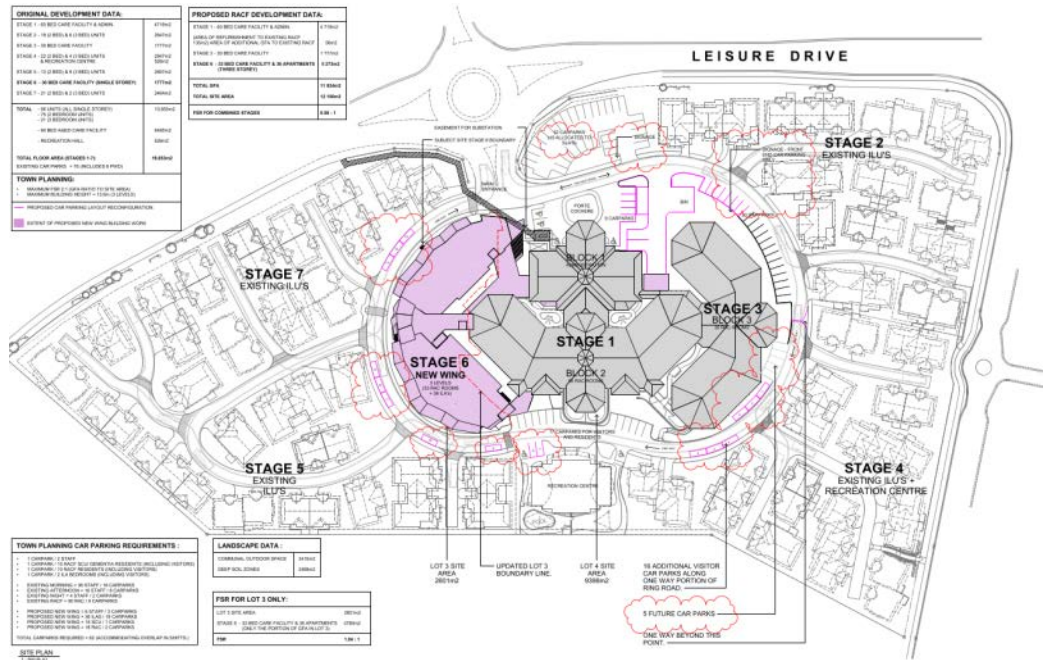
The ring road has been designated as a one-way road in part, which allows for service vehicles to manoeuvre. A further 5 car spaces can also be provided if the need arises.

The development is to add an additional 22 spaces, resulting in a total of 98 spaces provided across the site.

The reconfiguration of parking has also seen more parking being provided closer to the proposed development. However it should be noted that the SEPP (Housing for seniors or People with a Disability) 2004 does not include requirements in relation maximum distances for parking spaces.

Conditions will be applied to ensure parking in these areas are for the use of residents and visitor parking shall be provided at the front of the site.

Accordingly, well exceeds the requirements of the SEPP. It is considered that given the nature of residents and the staffing requirements, the site is capable of accommodating the proposed development.



Further to the above the traffic consultant also provided the following Parking Supply Table:

Date	Day	Time	Parking Area				Total Demand	Total Spaces Remaining	Parking Demand (% of Capacity)
			Area 1	Area 2	Area 3	Area 4			
21/07/2017	Friday	11:11am	28	14	3	3	48	28	63%
29/05/2017	Monday	10:16am	29	13	6	8	56	20	74%
3/07/2016	Tuesday	8:58am	28	13	3	4	48	28	63%
18/5/2016	Wednesday	10:05am	24	14	1	5	44	32	58%
1/06/2015	Monday	12:30pm	28	12	0	6	46	30	61%
9/04/2015	Thursday	12:30pm	27	13	3	3	46	30	61%
8/10/2014	Wednesday	11:40am	24	10	4	7	45	31	59%
27/06/2014	Friday	11:50am	32	15	2	8	57	19	75%
21/04/2014	Monday	1:40pm	9	7	0	4	20	56	26%
10/10/2013	Thursday	1:10pm	26	8	0	5	39	37	51%
9/09/2013	Monday	1:40pm	26	10	1	4	41	35	54%
9/08/2013	Friday	9:55am	27	12	1	3	43	33	57%
17/06/2013	Monday	11:10am	29	12	1	4	46	30	61%
6/08/2012	Monday	1:00pm	27	10	0	3	40	36	53%
18/06/2012	Monday	9:45am	29	12	0	4	45	31	59%
16/11/2011	Wednesday	1:15pm	32	11	3	3	49	27	64%
26/07/2011	Tuesday	12:20pm	28	15	2	2	47	29	62%
20/06/2011	Monday	12:20pm	29	12	1	2	44	32	58%
25/01/2011	Tuesday	2:00pm	26	13	1	1	41	35	54%
20/07/2010	Tuesday	2:35pm	21	11	1	4	37	39	49%
7/05/2010	Friday	12:35pm	27	14	0	3	44	32	58%
11/11/2009	Wednesday	N/A	19	12	1	2	34	42	45%
Average			26	12	2	4	44		
85th Percentile			29	14	3	6	48		
Maximum			32	15	6	8	57		
Capacity			32	16	14	14	Total Capacity	76	

The results of the parking demand survey indicate that the combined four parking areas operate at an average of 57% capacity. As shown, Area 1 and 2 are generally approaching capacity whilst Area 3 and 4 operate well below capacity. The demand for parking spaces would indicate within Areas 1 and 2 indicate that other onsite uses also utilise these parking areas.



Access:

Vehicular access to the site is currently via Leisure Drive where the access is a leg off the roundabout along with Nudgee Street.

A traffic engineering report was submitted with the application and included an analysis of the current roundabout function generalised to future volumes subject to this application.

The report concluded that that there will be no significant impact on the future road networks and no further road works required to accommodate the proposed development.

The application was referred to Councils Traffic Engineer who supported the submitted report and further advised that the proposed service vehicle and ambulance arrangements are appropriate.

A3-Development of Flood Liable Land

The site is mapped as being affected by a design flood level of 2.6m AHD and PMF level of 5.8m AHD.

Topography of the site ranges generally between 3 and 4m AHD, with a minimum habitable floor level of 3.1m AHD.

The proposed building has a ground floor level of 4.0m AHD and level 2 (first floor) of 7.5m AHD (levels 2 and 3 meet the requirements of a PMF refuge).

The site is above the design flood level and therefore not in a mapped high flow area. The controls of A3.2.5 do not apply.

The nature of the proposal and the emergency response information provided are sufficient to address the emergency response provisions of DCP-A3. Councils Infrastructure Engineer advised there was no objection on flooding grounds.

A11-Public Notification of Development Proposals

In accordance with Section A11, The development application was notified for a period of 14 days, from Wednesday 29 March 2017 to Wednesday 12 April 2017.

During this period a total of 28 submissions (objection) were received.

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

A request for further information was sent to the applicant 4 August 2017. In response to this request and the Councillor Workshop amended plans were submitted to Council. These plans were forwarded to the Darlington Retirement Community's Residents Association for review and comment. The matters raised are addressed later in this report.

A15-Waste Minimisation and Management

A Waste Management Plan has been submitted with the application and reviewed by Council Officers. The application complies with the requirements of A15. Standard conditions have been applied.

B3-Banora Point West- Tweed Heads South

The subject site is identified by Section B3 - Banora Point West – Tweed Heads South being located on Map B3. B3 identifies the subject site as being for Special Purposes (Retirement Village). The proposal accords with the intent of B3 by providing a Seniors Living building consisting of independent living units and aged care facilities.

(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 (Seniors Living) development on an appropriately zoned site. The development will not restrict access to any foreshore areas is considered acceptable in this regard.

Clause 92(1)(b) Applications for demolition

The application advises that all demolition works are in accordance with the SEPP (Exempt and Complying Development Code) 2008. A review of the information submitted has revealed that not all works are classed as exempt. Accordingly, a condition has been applied advising where works are not exempt a Demolition Works Plan is to be submitted to Council to the satisfaction of the General Manager or delegate prior to construction certificate.

Clause 93 Fire Safety Considerations

The application is not for a change of use.

Clause 94 Buildings to be upgraded

The proposed application includes additions and alterations to an existing building. Clause 94 has been addressed by Councils Building Department and conditions have been applied accordingly.

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

The site is not located under any coastal zone management plans.

Tweed Shire Coastline Management Plan 2005

The subject site is not located within an area that is affected by the Tweed Shire Coastline Management Plan 2005.

Tweed Coast Estuaries Management Plan 2004

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is not located in close proximity to any of these creeks and as such this management plan does not apply to the subject application.

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

As the subject site is not located in proximity to either the Cobaki or Terranora Broadwater to which this plan relates, this Plan is not considered relevant to the proposed development.

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

Context and Setting

The proposed development, whilst, at a higher density than the original development approved under DA03/0078 (stage 6) is considered to meet a range of needs in terms of seniors living accommodation. The design whilst somewhat dissimilar to the existing buildings, it is considered to be of a high quality.

RSL Management advised that the difference in design and material was intentional. With the intent being to clearly indicate a way forward for quality, design, services and lifestyle offered to seniors.

Bulk and Scale

In response to demand needs RSL Care are seeking consent to provide a higher number of units onsite and a higher level of ancillary facilities. To facilitate this, the proposed development seeks an increase in scale, in comparison to the previous development approved for Stage 6 of DA03/0078.

It is acknowledged that the building envelope under the subject application has intensified significantly in comparison to that approved under DA13/0078. However, the development achieves compliance with the applicable State Environmental Planning Policies, height, FSR requirements and offers a range of housing options for seniors, responds to current demands for housing shortages (seniors), provides additional parking and offers a higher number of ancillary facilities and services to residents, than approved under DA03/0078.

The below image indicates the footprint approved under DA03/0078.



The height, bulk and scale are consistent with the existing surrounding nursing home. The proposed new wing will form a transition in scale between the single storey residences across the road on the west and the large bulky scale of the existing nursing home.

The below image indicates the footprint subject to this application.



The character of development is not considered to have a negative impact in terms of bulk and scale, given the developments compliance with the mapped height and FSR controls and minimal overshadowing. Further the maximum height of the proposed building is below the existing RACF roofline.

Design

The proposed development essentially follows the curvilinear footprint, which matches the original approval for this stage and the existing RACF. Whilst the proposed façade differs from the existing RACF the contemporary facade has been intentionally developed to create a new identity for the wing extension, whilst complementing the existing buildings adjacent. RSL have advised this is intentional to reflect a 'new' type of development and services offered. It was also advised that the existing RACF will undergo refurbishments in the future.

Access, Transport and Traffic

Site access

Vehicular access to subject site is off Leisure Drive; via an existing roundabout. Leisure Drive has an 11m wide carriageway at the site frontage.

The subject application does not propose any alterations to the existing site access.

Internal access

As a result of a workshop between the proponent, Council and residents held on 10 August 2017 a rework of the proposed car parking arrangement was undertaken. A further 12 car spaces have been added to the proposal, for the most part these are located on the existing private ring road. The ring road has been designated as a one-way road in part, which allows for service vehicles to manoeuvre. A further 5 car spaces can also be provided if the need arises.

As discussed above, a traffic engineering report was submitted with the application and included an analysis of the current roundabout function, including potential future volumes of traffic subject to this application.

The report concluded that that there will be no significant impact on the future road networks and no further road works were required to accommodate the proposed development.

The application was supported by Councils Traffic Engineer.

(c) Suitability of the site for the development

Surrounding Land uses/Development

The subject application is for addition of a three (3) storey Seniors Living Development to the existing Darlington Retirement Community

The subject site is located with the Banora Point Residential Development area. The site is surrounded generally by detached and semi-detached low rise dwellings.

The land is bound immediately to the south by a canal with a publicly accessible footpath. Other notable nearby land uses include:

- Child care centre and swim school to the north across Leisure Drive;
- An Aveo Retirement Community to the east;
- St Joseph's College to the north;
- Twin Towns Club Banora which includes lawn bowls, tennis, golf and pool;
- Banora Point Shopping Village;
- Community centre and child care to the west; and
- Centaur Primary School.

The proposed development is considered in keeping with the surrounding land uses/development.

Topography

The site is relatively flat and comprised of managed lawn. Minimal earthworks are required for footings and lift shafts.

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

The application was advertised and notified for a period 14 days from Wednesday 29 March 2017 to Wednesday 12 April 2017. During this period 28 submissions were received (from existing residents).

The issues raised are outlined below.

Issues	Responses
<p>Car parking</p> <p><i>It has been submitted by existing residents of the Darlington facility that the car parking is inadequate for the proposed development.</i></p>	<p>Applicants Response:</p> <p>The original Development Consent DA03/0078 dated 6 June 2003 was issued having undertaken assessment against the State Environmental Planning Policy No.5 – Housing for Older People or People with a Disability, the SEEP in force at the time. This SEEP referred to parking within Clause 14(d) if providing:</p> <p>(i) <i>in the case of a hostel or residential care facility, at least:</i></p> <ul style="list-style-type: none"> • <i>parking space for each 10 beds in the hostel or residential care facility, and</i> • <i>1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and</i> • <i>1 parking space suitable for an ambulance.</i> <p>120 Residential care facility rooms were approved as part DA03/0078 and 36 staff on duty at any one time. Therefore, the required car parking would be 30 car spaces. 75 car spaces were provided.</p> <p>It should be noted that approval DA03/0078 was changed via a section 96 dated 30 June 2006 (Council Ref: DA03/0078.11) with updated plans. These changes did not affect car parking.</p> <p>The 36 Self-contained dwellings proposed are referred to as Supported Living Apartments by the applicant. These rooms are designed for people that are not completely independent and require some level of care to assist with their day to day living. These rooms provide a step between independent living and the fulltime care rooms of the residential care facility. Given that the prospective residents require some level of assistance with everyday living, it is envisaged a large proportion of these residents would not be capable of driving.</p>

Issues	Responses
	<p>As a result of a workshop between the proponent, Council and residents held on 10 August 2017 a rework of the proposed car parking arrangement has been undertaken. A further 12 car spaces have been added to the proposal, for the most part these are located on the existing private ring road. The ring road has been designated as a one-way road in part, which allows for service vehicles to manoeuvre. A further 5 car spaces can also be provided if the need arises.</p> <p>In summary, the proposal now contains 93 car spaces, exceeding the statutory requirement by 33 spaces.</p> <p>Councils Response:</p> <p><i>The development is to add an additional 22 spaces, resulting in a total of 98 spaces provided across the site.</i></p> <p><i>The reconfiguration of parking has also seen more parking being provided closer to the proposed development. However it should be noted that the SEPP (Housing for seniors or People with a Disability) 2004 does not include requirements in relation maximum distances for parking spaces.</i></p> <p><i>Conditions will be applied to ensure parking in these areas are for the use of residents and visitor parking shall be provided at the front of the site.</i></p> <p><i>Accordingly, well exceeds the requirements of the SEPP. It is considered that given the nature of residents and the staffing requirements, the site is capable of accommodating the proposed development.</i></p>
<p>Loss of Amenity</p> <p>The proposal will affect amenity. This includes overshadowing, privacy and noise.</p>	<p>Applicants Response:</p> <p>Regarding overshadowing, it has been demonstrated by shadow diagrams that there is no discernible impact by overshadowing from the proposed building. The height of the building is similar to that of the building expected of stage 6. The minor overshadowing to the south does not affect the private open space of any existing residents.</p> <p>Regarding privacy, the new building is separated from existing independent living units by the internal road. This provides good separation from existing residents and overlooking into private living areas will not occur.</p> <p>Regarding noise, it is not expected new residents will make any more noise than those existing, given the proposal is for seniors living only. Noise during construction will be managed as per the construction management plan.</p> <p>Therefore this issue does not constitute refusal of the application.</p>

Issues	Responses
	<p>Councils Response:</p> <p><i>Shadow diagrams have been submitted with the application and assessed in accordance with SEPP 65. The overshadowing is minimal and not expected to impact the amenity of residents.</i></p> <p><i>The nature of the proposed use is in keeping with the use of the site and the use of the existing approval for stage 6. Council does not anticipate any impact on amenity in terms of noise during the use of the building.</i></p> <p><i>It is acknowledged that during construction there would be a short term impact on the amenity of the adjoining residents. However once construction had ceased it is not considered that the use of the site for would generate a significant impact on the amenity of residents on the adjoining sites. Conditions in regards to construction have been applied.</i></p>
<p>Building Height</p> <p><i>It has been submitted by existing residents of the Darlington facility that the proposed 3 storey building height is out of character for the area.</i></p>	<p>Applicants Response:</p> <p>The maximum height as per Clause 4.3 of the TLEP is 13.6m. The proposal is 13.5m in height. This is slightly lower than the existing adjoining building.</p> <p>Therefore this issue does not constitute refusal of the application.</p> <p>Councils Response:</p> <p><i>The proposed development is consistent with the mapped height limit for the site, is in keeping with the scale of the adjoining RACF building and results in minimal overshadowing. The development is setback approximately 10.0m at the closest point to any adjacent single storey dwellings (separated by internal access road).</i></p> <p><i>In terms of character the Banora Point area includes a range of varying developments and heights. As detailed throughout this report the proposed development is not considered out of context for the area.</i></p>
<p>Design</p> <p><i>It has been submitted by existing residents of the Darlington facility that the contemporary design is out of character with the existing Darlington village.</i></p>	<p>Applicants Response:</p> <p>The proposed design of the building is of a contemporary design. While this is somewhat dissimilar to the existing buildings, it is considered to be of a high quality and includes elements that are superior to that of the existing. A flat roof form provides greater visual interest to the complex and gives greater amenity to the residents. Incorporation of balconies with glazing and use of high quality materials and colours softens the built form while complementing the existing buildings. With reference to the architectural statement provided by the designer:</p> <p><i>“The palette of materials proposed for the new wing</i></p>

Issues	Responses
	<p><i>extension at Darlington responds to the site's context and in particular to its location & surrounding buildings.</i></p> <p><i>The contemporary facade language has been developed to create a new identity for the wing extension, whilst complementing the existing buildings adjacent. The orientation of the building has afforded spectacular views towards the Tweed Valley from large balcony spaces, balanced with façade treatments addressing the western aspect. This is highlighted through the new ILA lobby form, which creates a new entry statement for the development. Screening elements have been distributed & layered throughout the building facade in different combinations. In doing so, the requirements for sun shading, privacy and external articulation have been addressed across the entire building.</i></p> <p><i>The new wing building is articulated into distinct parts. The upper independent living levels have considered articulation of pop up roofs and framed façade elements. Further framing and expressed recesses will articulate the building along its length. A majority of the ILA's enjoy spectacular views, both from large private outdoor balconies and communal spaces that can be enjoyed in the coastal climate. The articulation of the building has also included maximising opportunities for natural light within the floor plate over all three levels. The ground level facade comprising of high care suites incorporates predominately glazing to maximise natural light opportunities for residents. This is balanced with low level planters and screening to both soften the facade and provide privacy from the internal road aspect.</i></p> <p><i>The communal outdoor spaces will be provided with shade and trellis structures, meeting and seating points which all add to the human experience and sense of community."</i></p> <p>Therefore, this issue does not constitute refusal of the application.</p> <p>Councils Response:</p> <p><i>The proposed development essentially follows the curvilinear footprint, which matches the original approval for this stage and the existing RACF.</i></p> <p><i>Whilst the proposed façade differs from the existing RACF the contemporary facade has been intentionally developed to create a new identity for the wing extension, whilst complementing the existing buildings adjacent. RSL have advised this is intentional to reflect a 'new' type of development and services offered.</i></p> <p><i>It was also advised that the existing RACF will undergo refurbishments in the future.</i></p>

Issues	Responses
<p><i>Additional strain on onsite facilities such as Community Hall, Bus service</i></p>	<p>Councils Response:</p> <p><i>This is a management issue. Notwithstanding, this the proposed development includes the following:</i></p> <ul style="list-style-type: none"> • <i>Health and Wellbeing centre;</i> • <i>Dining rooms;</i> • <i>'Café' area for residents, staff and visitors;</i> • <i>Childrens play area; and</i> • <i>Communal open space areas including gardens and multi-purpose area</i>
<p><i>Possible flooding implications as a result of the development</i></p>	<p>Councils Response:</p> <p><i>The site is mapped as being affected by a design flood level of 2.6m AHD and PMF level of 5.8m AHD.</i></p> <p><i>Topography of the site ranges generally between 3 and 4m AHD, with a minimum habitable floor level of 3.1m AHD.</i></p> <p><i>The proposed building has a ground floor level of 4.0m AHD and level 2 (first floor) of 7.5m AHD (levels 2 and 3 meet the requirements of a PMF refuge).</i></p> <p><i>The site is above the design flood level and therefore not in a mapped high flow area.</i></p>
<p><i>Loss of values to residents within the existing Independent Living Units</i></p>	<p><i>The proposed development whilst at a higher density, different building materials and design than the surrounding area, is considered to offer a diversification of housing type to that in the surrounding areas, whilst still be a compatible land use.</i></p>
<p><i>Setback and design appropriateness</i></p>	<p><i>The application has been assessed against SEPP (Housing for seniors or People with a Disability) 2004 and SEPP No. 65 - Design Quality of Residential Flat Development and is compliant with these Policies.</i></p> <p><i>The design has taken into consideration the context of the immediate area and is considered to complement the existing built form of the RACF.</i></p> <p><i>The subject site is zoned R3 Medium Density Residential in the Tweed Local Environmental Plan 2014 (TLEP 2014) and is located within the Banora Point locality. The proposed use is permissible with consent in the in TLEP 2014.</i></p>

Following Councils request for further information (4 August 2017) and Councillor workshop (10 August 2017) amended plans were received.

The amended plans included the following:

- additional parking;
- addition of skylights;

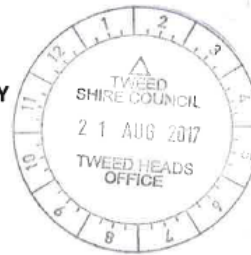
The applicant also provided a response in relation to landscaping and Floor Space Ratio.

A copy of the amended plans and the applicant's written response were forwarded to the Darlington Retirement Community's Residents Association.

The response from the Darlington Retirement Community's Residents Association is below.

**DARLINGTON RETIREMENT COMMUNITY
RESIDENTS COMMITTEE**

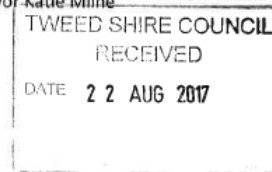
Secretary: Rita Lindsay
90/126 Leisure Drive (PO Box 751)
Banora Point NSW 2486
Phone: (07) 55 24 7363



21 August 2017

The General Manager
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484

cc Mayor Katie Milne



Attention: Ms. Lydia Charman

Re: DA17/0084 Amended Plans

Your email correspondence was received late on Friday 18 August 2017, thus providing us only 1 business day to consider the material and respond.

Firstly, we would like to point out that RSL Care, at no time, advised us that arrangements were in place between the owner of Lot 4, Generation Health Care, and themselves that this proposed development was being planned in a co-operative way. When the 2015 sub-division of the total site was decided, RSL Care advice to residents of the independent living village (Lot 2) was that further development would occur on Lot 3 with the only connection to Lot 4 being via the existing constructed breezeway and outdoor garden space. It was a surprise to us therefore to realise the full implications of the combined application to Council.

From our layman resident perspective, we respond to the latest correspondence as follows:

1. **Density, scale and floor space ratio** – It may be that only the ground floor of the proposed development fits the definition of a residential aged care (RAC) facility as included on page 1 of the Jensen Bowers letter of 18 August. The care and services to be provided on this level are similar to those provided in the existing 90 bed facility, a government accredited facility. We understand the upper 2 levels of the development will be offered as independent living units (ILU) under the NSW Retirement Villages Act where residents will have the option of none, some or all of the services RSL Care may offer.

Should calculations for the ground floor then be assessed differently to the 2 upper levels? It appears that it may only be in combination with the low density nature of the existing building that the proposed ground floor RAC facility complies with the density and scale standards of Clause 48 of the relevant SEPP.

Looking at Lot 3 in isolation, the floor space ratio (FSR) provided for the entire building indicates compliance with Tweed Environmental Plan 2014 with a ratio of 1.84:1. However, this is greater than the FSR of 1:1 under Clause 48 of the relevant RAC SEPP. As Lot 3 is the

combination of RAC and ILU the question remains, what planning requirement should be applied? Does compliance with Tweed Environmental Plan 2014 override Clause 48 of the SEPP Seniors Living?

At the workshop with Councillors and RSL Care representatives on 10 August 2017, we queried contradictory statements on aspects related to density and scale included in documentation attached to the Agenda of the Planning Meeting held on 3 August 2017. This has not been addressed in the correspondence of 18 August. Our question related to SEPP 71 – Coastal Protection clause (d) (page 107) where it stated “Accordingly, the development is considered likely to have an adverse imposition upon the immediate area in terms of size and scale.” However, under the sub-heading Bulk and Scale (page 121) it was stated “The character of development is not considered to have a negative impact in terms of bulk and scale, given the developments compliance with the mapped height and FSR controls.” (Please note that when we printed the relevant part of the Agenda documentation as no page numbers appeared, those quoted above are our best calculation of what the page numbers were in the Agenda papers.)

2. **Landscaped area** – On the information provided by the Consultant, the 21 square metres per room does not meet the minimum requirement of Clause 48 of the SEPP for seniors living of 25 square metres per RAC bed/room.
3. **Sunlight** – We note the revised sunlight study and comment that whilst compliance for self-contained dwellings under SEPP seniors living clause 48 has now been achieved, it is disappointing that a quarter of the ILU’s fail compliance.
4. **Parking** – Our concern that the provision of adequate future parking, should the proposed development be approved, was such that in a spirit of co-operation, we worked with RSL Care last week on alternative parking arrangements. The agreed amended plan is Site Plan Revision K provided by the Consultant to Council.

We would like to emphasise that this necessitated converting part of the circuit road to one-way traffic. This will, when implemented, inconvenience about half of the ILU residents and make for a riskier exercise path for all residents, but it seemed the only way we could achieve adequate future parking for all visitors to the site.

Can we now be assured that Condition 63 of Council recommendations will no longer be required?

5. **Construction time limits** – In our objection presented to Council on 3 August 2017, we requested that given the ages of the village residents (both RAC and ILU) consideration be given to a slight reduction in construction times. This has not been responded to as yet. Can any concession be made?

We take this opportunity to convey our sincere thanks to the Councillors for facilitating the workshop on 10 August in an endeavour to address issues between RSL Care and ILU residents.

Unfortunately, from our viewpoint, RSL Care has not been prepared to offer any compromise in relation to the sheer scale of this project still considered so out of keeping with the existing nature of the village.

Is it possible for us to be provided with a copy of the report to the Councillors that will be presented to the Planning Meeting on 7 September or will this be accessible when the Agenda for that meeting is published?

We await the outcome of the next Planning Meeting.

Yours faithfully



Rita Lindsay
Secretary

3

(e) Public interest

The proposal has been investigated and is considered to be suitable to the site; unlikely to cause any significant long term negative impacts to the surrounding built and natural environment and meets all of Council's applicable requirements within the TLEP and relevant DCPs. The application has been assessed by Council's technical officers; with no objections being raised subject to the

attached conditions of development consent. The proposed Seniors Living development is therefore considered to warrant approval.

OPTIONS:

1. Approve, the application subject to conditions
2. Refuse the application for reasons specified

Council officers recommend Option 1.

CONCLUSION:

It is considered that the development is compatible with the existing residential aged care development, needs of the ageing population and local environment. The assessment has had regard for the SEPP (Housing for Seniors of people with a disability) 2004 and SEPP (Design Quality of Residential Flat Development) and for the issues raised by the public submissions. As a result, the proposed Seniors Living development is considered to be acceptable.

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.

SEPP 65 (ADG) Assessment (ECM 4730051)

3 [PR-PC] Development Application DA17/0102 for a 17 Lot Community Title Subdivision (16 Residential Lots and 1 Community Lot) at Lot 156 DP 628026 No. 40 Creek Street, Hastings Point

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

ROLE: **Provider**

SUMMARY OF REPORT:

The purpose of this report is to provide an update to Council and seek direction to progress the assessment of this development application, given the history of the site, previous legal proceedings and the emerging outstanding environmental and engineering issues of the proposal, as outlined in this report. Prior to seeking any further information and amended plans for the application, Council's views are sought on the critical issue of the ecological buffers for this site.

The subject site has a long development history and is the subject of a current development application for a 17 Lot Community Title Subdivision including 16 new residential lots and 1 community title lot.

A previous application for a similar subdivision was the subject of a NSW Land and Environment Court Class 1 Appeal for deemed refusal of DA15/0201, being a 20 Lot Torrens Title subdivision lodged in March 2015. During the Court process, the proposed development was amended, with the final proposal being a 17 lot community title subdivision, including 16 residential lots and 1 community lot, as per the current proposal, with some variations to fill levels. The Class 1 Appeal was discontinued on the applicants' request on 22 November 2016. Council is currently seeking the re-imbursement of costs incurred in conjunction with this Appeal. This DA still remains undetermined, pending Council's assessment of the current DA17/0102.

Following the discontinuance of the Class 1 Appeal, a new development application was lodged, identical to the 2015 proposal. It is this most recent development application (DA17/0102) that is the subject of this Report.

Assessments of the current DA17/0102 have been made by the relevant internal technical staff and external consultants. Responses from relevant Government bodies have also been received.

As Council may be aware, the Department of Planning and Environment are unwilling to recommence the Planning Proposal for the subject site whilst the current development application process remains active. The most recent Planning Proposal for the subject site in accordance with Council's previously resolved position, seeking to establish updated planning controls to restrict the extent of the development footprint, including a 75 metre ecological buffer, was rejected at Gateway Stage in late April 2017.

Given that the assessment of the current DA has identified continued, significant technical concerns, which would necessitate very detailed requests for further information and delays to the DA process, Council's direction on how best to progress the application is being sought.

RECOMMENDATION:

That Council, in respect of Development Application DA17/0102 for a 17 lot community title subdivision (16 residential lots and 1 community lot) at Lot 156 DP 628026 No. 40 Creek Street, Hastings Point resolves to support one of the following two options:

- 1. That Council support further negotiations with the applicant to resolve the identified issues, including engineering and ecology, with the understanding that the developable footprint may include services (including an internal road) within the 75m Saltmarsh buffer identified within Tweed DCP B23 - Hastings Point;**

OR

- 2. That the development application is assessed on the information currently available and a report be prepared for presentation to Planning Committee when completed.**

REPORT:

Applicant: Palm Lake Works Pty Ltd
Owner: Walter Elliott Holdings Pty Ltd
Location: Lot 156 DP 628026 No. 40 Creek Street, Hastings Point
Zoning: R1 - General Residential 7(a) Environmental Protection (Wetlands & Littoral Rainforests) 2(e) Residential Tourist
Cost: \$570,000

Background:

Council has been assessing a development application for the subject site following lodgement in March 2017. This development for a 17 Lot residential subdivision consisting of 16 residential Lots and a single community Lot reflects the amended subdivision layout proposed by the applicant during the Class 1 Appeal for DA15/0201. This Class 1 Appeal was discontinued on 22 November 2016. Council's solicitors are seeking to negotiate costs from the applicant.

DA15/0201 remains undetermined. The Class 1 Appeal mentioned above was lodged following the prescribed 60 day period for determination, deeming the application refused. Legal advice previously recommended that DA15/0201 application remain undetermined and a request from the applicant for Council to accept a variation to the proposal was denied, consistent with the Council Meeting Resolution of 16 February 2017.

This discontinued appeal and the applicant's anticipation of Council rejection of the variations to DA15/0201 triggered the concurrent lodgement of the current DA17/0102. It is this DA that is the subject of this report requesting direction.

The site has been the subject of previous applications that have been refused by the relevant consent authority. These are summarised below:

Previous Development Application DA13/0189

This application for 22 Lots was refused on 13 items. This proposal had a far greater development footprint, creating split lots and fragmenting the environmentally sensitive land. No residue lot for environmental protection was proposed. This application also proposed greater volumes of fill contrary to Councils requirements for flooding.

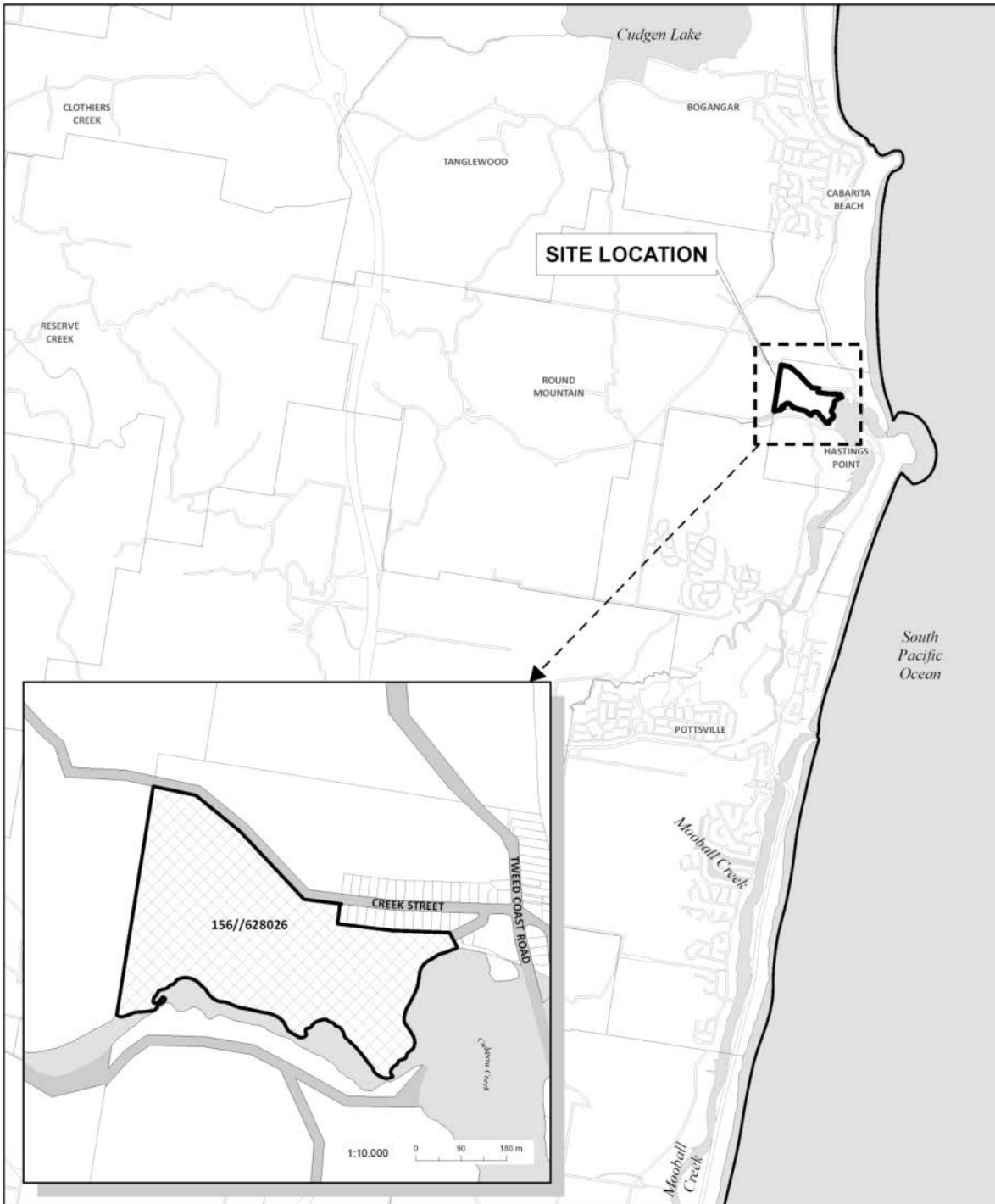
Strategic Framework and Planning Proposal 14/0001

Following the refusal of a concept plan for 45 Lots by the Planning Assessment Commission (MP06_0153) in February 2012, Council resolved on the 17 October 2013 for the subject Lot 156 as follows:

"Council endorses the findings of the January 2012 Department of Planning assessment of the proposed Lot 156 concept plan as they relate to flooding impacts, environmental buffers and adverse ecological impacts and seeks to incorporate these findings into the Hastings Point Locality Based Development Code and the Tweed LEP 2012 at the earliest possibility."

This resolution of Council instigated the preparation of Planning Proposal 14/0001. This Planning Proposal was made on 27 November 2015, with the exception of the subject site, due to the Class 1 Appeal proceeding for DA15/0201 at the time.

SITE DIAGRAM:



Site Plan
 Lot 156 DP 628026
 No 40 Creek Street, Hastings Point

0 0.6 1.2 Km
 1:50,000



Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaim 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 "Dig before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.



Coordinate System - MGA Zone 56
 Datum - GDA 94

Cadastre: 30 June, 2010
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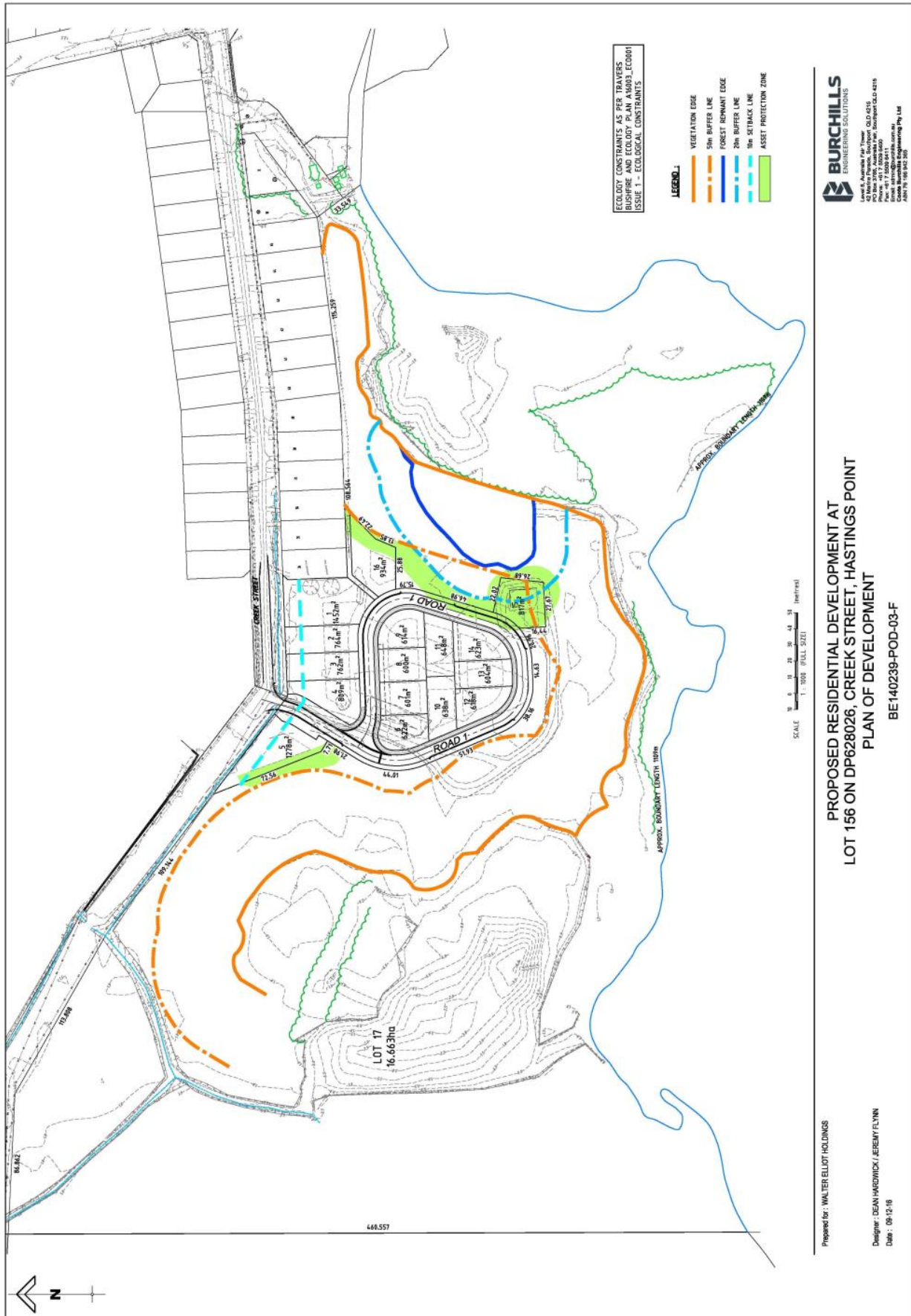


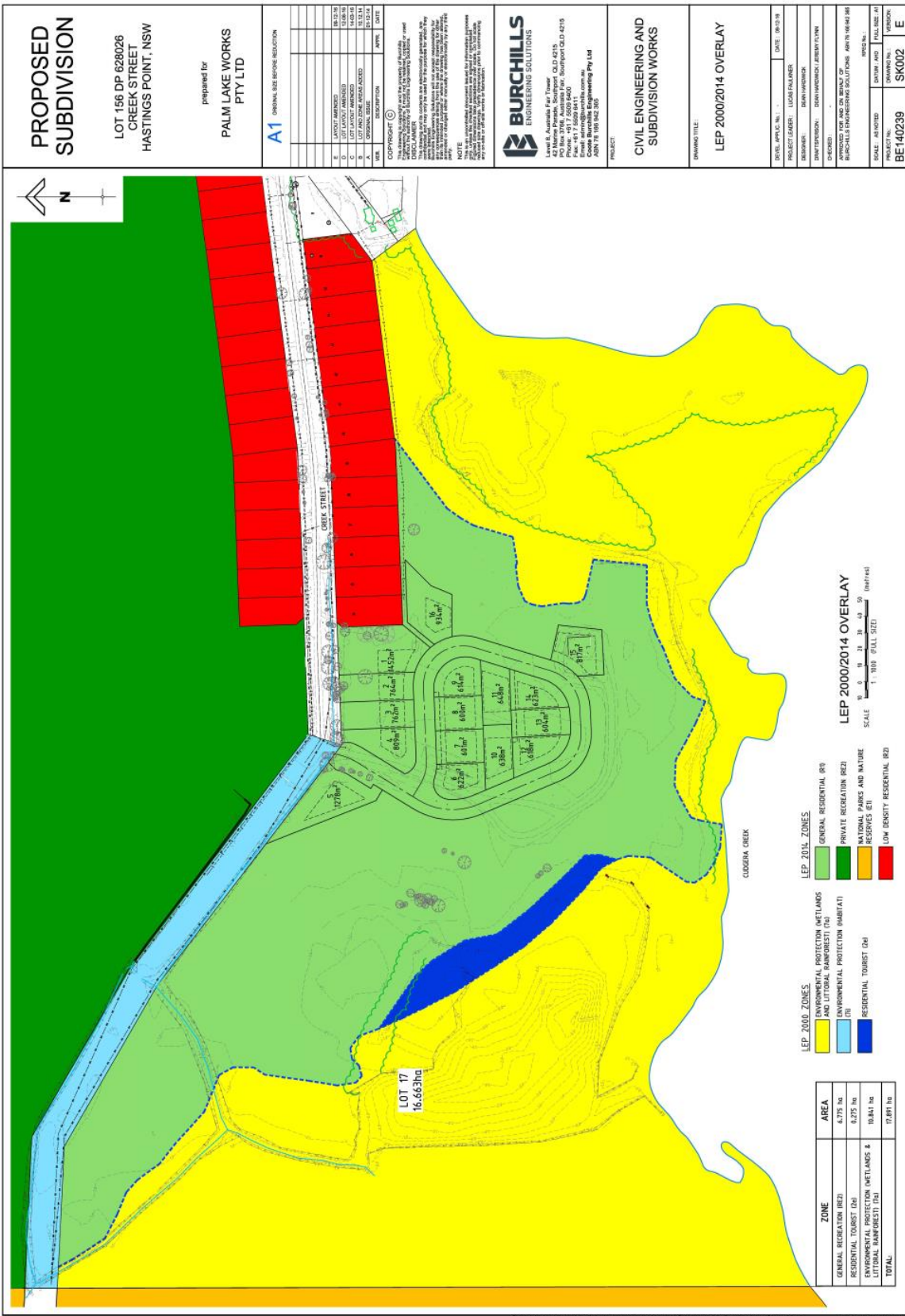
TWEED
 SHIRE COUNCIL

Date Printed: 15 August, 2017

DEVELOPMENT PLANS:







Current Proposal

The current application is for the development of the subject site for the purposes of a 17 Lot Residential Subdivision. This subdivision involves the use of 16,530m³ of fill for the subdivision footprint and associated infrastructure. The development would result in the retention of an existing dwelling onsite, 16 additional dwellings and a residual Lot that would encompass infrastructure and environmentally sensitive land. The existing access to the property will be retained. An internal roadway is proposed. Due to the flood prone nature of the site, a large set of culverts will be constructed along the first 50m of internal roadway to facilitate the passing of floodwaters beneath the road, through Lots 1-5 and 16. The single internal road has been designed as a return circuit with 9 Lots on the inside of this road with Lots 1-5, 15 (containing an existing dwelling) and 16 fronting Creek Street on the outer loop of this road.

The residential Lots range in area between 608m² and 1278m².

The site is constrained due to flooding, sensitive estuarine and terrestrial vegetation, the presence of acid sulfate soils and bushfire. The subdivision will result in a raised pad for the internal road and Lots of up to 1.9m above natural ground level. Lots 1-5 and 16 will require excavation works to facilitate the flow of flood waters through the site. Any buildings on these lots will be raised above the excavated ground level to allow flood waters to pass beneath.

The current application differs from DA15/0201, as amended, as a greater volume of fill is proposed to be imported to the site to enable infrastructure such as onsite detention ponds to operate correctly. The subdivision layout includes a 50m buffer to Saltmarsh vegetation and 20m buffer to other sensitive vegetation from the development footprint, noting that an existing dwelling will remain within both buffers.

The following responses have been provided from Government Authorities:

- NSW Department of Planning and Environment – *SEPP 71 Waiver for a Masterplan provided on 3 March 2017.*
- NSW Office of Environment and Heritage- This Authority has several issues of concern in regards to the proposal, specifically
 - *Lack of detail regarding the management of environmentally sensitive area*
 - *Insufficient detail regarding the management of acid sulfate soils*
 - *Relevance of Aboriginal Cultural Heritage report given its age*
 - *No collation of mitigation measures in SEE.*
- NSW Department of Primary Industries- Fisheries – this Authority has no role in issuing GTA's for this development however, the Department advised that *the buffer distance between the proposed development and key fish habitats and the proposed future management of those ecological buffers generally satisfies Fisheries NSW long established policy outlined in the Department's policy and guidelines.*
- NSW Department of Primary Industries – Water – *General Terms of Approval issued on 21 July 2017.*
- NSW Rural Fire Service – *General Terms of Approval Issued 10 April 2017.*
- Cultural Heritage - The application was presented to the Aboriginal Advisory Committee on 5 May 2017. The committee recommended that;

- *Aboriginal Advisory Committee requests Council to advise the Applicant that an updated Aboriginal Cultural Heritage Assessment is required.*
- *Aboriginal Cultural Heritage Assessment needs to align with the current proposal and the current legislative requirements in regards to consultation with the Aboriginal community.*
- *Updated Cultural Heritage Assessment should include a site survey with a cultural heritage consultant and consultation with the same registered parties as reflected in the 2010 Cultural Heritage Assessment prepared by Everick.*

The application was referred to specific Units within Council for assessment. The following responses have been provided in regard to the development:

- Water and Wastewater – Due the community title status of the proposal, the application does not need to be assessed to the same standard if the internal infrastructure was to become a Council's asset. Therefore, no objection is raised to the development, subject to conditions.
- Environmental Health- This Unit assessed the 2015 development application and requested additional information during the court process. The level of information provided for the 2015 application and the current application satisfies this Unit in regards to the Onsite Sewer Pump Station, Mosquitos and Biting Midge, Groundwater and Dewatering processes, Contaminated Land, Amenity and Acid Sulphate Soils.
- Subdivision Engineer – Further information has been requested from the applicant in May 2017. No response has been received.
- Recreation Services – No objection, subject to conditions.
- Natural Resource Management- This Unit has assessed the proposal in conjunction with Council's external consultant. This Unit have raised issues with the development. These will be discussed in a latter section of this report.
- Roads, Flooding and Stormwater- This Unit have assessed the development and concur with the external consultant conclusion provided in response to this current development application.

The primary issues that emerged during the 2016 Court case for the subject application were flooding, groundwater, stormwater and ecology issues. Council engaged expert consultants for these issues for the duration of the Appeal. As a consequence, these consultants were again appointed to assess the application, given their associated history and the similarities of this application.

Council's Engineering Consultant concluded that based on the information provided by the applicant for the revised proposal, the application is deficient in regards to:

- Flooding- Questions remain regarding flood impact as a result of the development and the risk to the potential additional population within the flood prone community.
- Surface and groundwater interaction- There is insufficient groundwater monitoring and modelling to establish baseline data and properly understand surface water and groundwater hydrology on the site and its surrounds.
- Stormwater- Due to the deficiencies outlined above, the proposed stormwater system including drainage system, OSD and water quality treatment strategies

risk poor engineering performance and environmental harm within the surrounding sensitive estuarine environments.

- Civil Engineering -Issues remain with the engineering elements of the design, including adequate fall for site drainage, subsoil pavement drainage and a reliance on a pumped sewerage solution.

Despite these shortcomings, it is the view of these consultants that these interrelated issues could be overcome by the following amendments to the development as proposed:

1. Fill level:

- a. The proposed fill level should be increased in the order of 300mm. This will provide additional flood freeboard and additional fall on the sewer and stormwater system to be 'lifted' out of the contact area with groundwater.

2. Lots 1-5 and 16:

These lots **should be removed** from the development application for the following reasons.

- a. The lots are located in the inlet/outlet flow path of the major culvert system proposed below the access road.
- b. These lots are located within a flood way and lot amenity will therefore be considerably reduced compared to lots 6 - 15.
- c. The open space areas of these lots are affected by a range of flood events, which would place them at high risk of loss of life or property.
- d. There is a risk that the undercroft areas below the proposed buildings would be used for storage or could be enclosed. This would elevate the risk of these structures, and lead to potential blockage of flood flows.

3. Flood modelling:

- a. Further flood modelling should be requested which includes blockage factors for the proposed culvert demonstrating that this does not affect performance of the culvert or result in detrimental off-site impacts.
- b. The range of other factors discussed in this review could potentially be resolved if the fill levels were raised by 300 mm as suggested above.

4. Flood risk management:

- a. The flood risk management plan should be updated such that it does not rely upon the local community to marshal a flood emergency response.

5. Groundwater:

- a. A groundwater model should be prepared that demonstrates that the proposed filling and diversion of stormwater flows and infiltrating flows does not have a detrimental impact on the adjoining riparian system and any other ecosystems sensitive to ground water.
- b. Raising of the fill by 300 mm. and with that raising of the stormwater system should mitigate the current conflicts between stormwater and groundwater.

6. Stormwater:

- a. Amend the stormwater plans in accordance with the fill levels being raised as recommended above.
- b. the performance of the stormwater system is expected to be significantly improved once it can be demonstrated that it is decoupled from the groundwater

system. Models should be updated to reflect issues raised in this review and the raising of fill levels.

7. Internal roads

- a. Swept paths analyses should be provided to demonstrate that service vehicles can safely manoeuvre through the proposed road when cars utilise the internal road system.
- b. Road layouts should be amended as necessary to accommodate any swept path conflicts.

8. Sewer

- a. Details should be provided which show that the pump station will be secure during a flood event and not pose a risk to the local environment.
- b. Details should be provided regarding venting and potential impacts on neighbouring allotments.

In conjunction with these matters, **Landmark Ecological Services** confirmed that additional information is necessary and issues remain outstanding in regards to ecology relating to the proposed subdivision and critically, the 75m Saltmarsh buffer as required by Tweed DCP 23 – Hastings Point.

Additional information was recommended within correspondence to Council dated 25 May 2016 as follows:

1. Supplementary **Flora and Fauna Assessment** for the:
 - bush stone curlew,
 - koalas and
 - salt marsh EEC
2. Assessment of the documentation concluded that the **75m buffer to estuarine (Saltmarsh) environments should be maintained as provided within DCP 23- Map below. As the yellow line indicates the 75m Saltmarsh buffer**, the proposed layout does not comply.



Figure 1 Lot layout overlaid with the DCP B23 development boundary (yellow)

3. A **20m buffer from terrestrial EEC** is not demonstrated to the immediate north of the proposed lots along the road reserve. It is noted that the deletion of Lots 1-5 to address flooding concerns would allow for an adequate buffer to be provided. Notwithstanding, any resulting revised Lot layout would still need to demonstrate protection and adequate setback from the Creek Street EEC.
4. Further detail regarding the risk of Acid Sulfate exposure as detailed within OEH submission is considered necessary.
5. The documentation provided with the DA is deficient in regards to the 'cross – assessment and correlation' of:
 - impacts of engineering infrastructure requirements on vegetation.
 - relationship with mosquito and midge and proposed restoration plan.
 - relationship between bushfire management and vegetation retention ie vegetation removal as a result of APZs – not done.
6. The **Vegetation Management Plan** proposed to address the management of the surrounding sensitive lands is significantly deficient in terms of performance targets, thresholds and corrective actions.

Further comments were made by Landmark Ecological Services following the review of the Martens documentation on flooding.

7. Ground water

Unless groundwater can be confidently demonstrated to be unaffected, vegetation types in the vicinity and considered to be known or probable groundwater dependent ecosystems should be identified and the impacts assessed.

Mangroves, saltmarsh and seagrasses are considered to be Probable Groundwater Dependent Ecosystems (Serov P, Kuginis L, Williams J.P., May 2012, Risk assessment guidelines for groundwater dependent ecosystems, Volume 1 – The conceptual framework, NSW Department of Primary Industries, Office of Water, Sydney). Other vegetation at the site of the proposed development may also depend on groundwater.

8. Sea level rise

Sea level rise will affect much of the site over a 100 year timeframe. In particular, the seven part test for Coastal Saltmarsh will need to account for the adverse impacts of rising sea levels on buffer width and the options for upslope migration.

9. Stormwater and flooding

Changes to surface flows during flood events and discharge from storm water treatment basins, total nitrogen concentrations in discharge water all have potential to adversely affect vegetation in the vicinity of the proposed development.

10. Long Term Management of Community Parcel

The future long term management arrangements of the ecological buffer zone and core habitat area require further clarification to ensure that the area will be appropriately secured under a formal protection mechanism and managed to a high standard in perpetuity.

The applicant currently proposes to retain buffer areas and core habitat (terrestrial and marine) (collectively termed 'environmental land') in private ownership as Association Property. Given the type and value of habitat (i.e. SEPP 14 Coastal Wetland, Endangered Ecological Communities, and threatened species habitat), proximity to the Cudgen Nature Reserve network and Cudgera Estuary, Council's Natural Resource Management Unit strongly recommends that all environmental land seaward of the development footprint be dedicated to Council. This position is consistent with a suite of relevant environmental planning policy provisions.

However, any dedication of environmental land to Council would require an appropriate financial contribution from the landowner to facilitate rehabilitation and maintenance works. This option has not been proposed in conjunction with this application, rather the land would become the responsibility of the future Lot owners of this subdivision. Council would need to negotiate this ownership and funding arrangement as an alternative to the community title subdivision if it was agreed that the balance land was to be in Council ownership.

The applicant has been advised of the additional information requests from the Aboriginal Advisory Committee, the Office of Environment and Heritage and Council's Subdivision Engineer on 5 May 2017. No response has been received as a result of this request, likely due to the unknown issues that were likely to emerge from Council's Engineering and Ecology consultants.

Discussion

Considering the issues outlined above and site history, Council staff seeks the view of Council in order to progress the assessment of this development application. Most critically, Council's views are sought on whether they wish to retain the ecological buffers for this site, and whether further amended plans and information should be sought from the applicant, prior to a final determination.

A full planning assessment of this DA has not been undertaken to date, however the development was assessed in detail during the 2015 Court proceedings. Ultimately, no objection was raised on planning grounds during these proceedings. This was also the conclusion made when the application was presented to Council when the legal proceedings commenced in 2015. The current iteration of the development is virtually identical to the amended version assessed by the 2015 Appeal, with the exception of fill levels. These fill levels have increased and coupled with the proposed amendments by Councils' Consultant engineer will increase the height of the building pad to RL3.08m AHD from natural ground level. Natural ground level varies between 2.0m AHD and 2.5m AHD. This increased fill, as proposed by Councils Engineering Consultants may result in an increased visibility of the dwellings from view lines surrounding.

The application has been accompanied by a Visual Impact Assessment and based on the previous assessments provided by Council's Planning Consultant with the 2015 Court proceedings and these generated images (Attachment 1), the visual impact of this revised development will continue to be minimal on the surrounding landscapes, even with the additional 300mm as recommended by Councils engineering Consultant (RL3.08m AHD).

While the external advice received from Martens and Landmark Ecological Services are generally supported by staff, Council staff have recognised that certain aspects of the conclusions reached by Martens could be conditioned rather than requesting additional information. For example Civil engineering details- Council considers that these issues can be conditioned, particularly as the site is to be community title and therefore all internal services will not be the responsibility of Council. i.e. the pumping station for sewer to connect to the Creek Street reticulated service.

Ultimately however, both Council's Consultant Engineer and Roads and Stormwater Unit concur that the proposed amendments to the development would result in a development that is acceptable from an engineering perspective. This is a critical factor given the recent Court case ultimately focussed on these issues and were the reasons why the applicant discontinued the proceedings. Concurrently, it was considered that the ecological issues would not preclude the approval of the development.

Despite the opportunity that exists for staff to negotiate with the applicant in an attempt to resolve particular issues, it is unknown if the applicant would be willing to accept the changes proposed by the engineering consultants, given these changes reduce the proposed number of Lots by 6.

Notwithstanding, if these changes were to be accepted by the applicant, the issues raised by Council's Consultant Ecologist remain outstanding, particularly the 50m Saltmarsh buffer versus 75m Saltmarsh buffer discrepancy.

It is also pertinent to raise the ongoing objection to the proposal by the resident individuals and groups to the development. This application received approximately 175 submissions objecting to the proposal. The residents group engaged experts to assess the documentation and submit on their behalf and know the site history in detail. The Hastings Point residents have strongly stated their concerns in respect of the decision by the NSW Department of Planning and Environment not to support the Planning Proposal presented by Tweed Council.

If the applicant did not accept the proposed changes to the development as recommended by the Consulting Engineer, a report would be presented to Council recommending refusal of the application, and no additional information would be requested. It is anticipated that a refusal would trigger a further appeal in the LEC by the applicant. However, if Council are not willing to accept the varied buffer from aquatic habitats, the proposed changes to the development to satisfy the engineering deficiencies may well become superfluous.

The land remains partially zoned for residential purposes and it is not an unreasonable expectation of the landowner that some form of residential development should be accepted on the site. Therefore, it may be considered of value to enter into negotiations with the applicants to avoid another costly legal process when it appears that the landowner will continue to pursue some form of residential development upon the site. The negotiation process is given additional weight due to the Department of Planning and Environments rejection of any LEP amendments.

With respect to the Tweed DCP B23 ecological buffer provisions, it is clear from Figure 1 above that the proposed development fails to comply with the applied 75m Saltmarsh buffer prescribed within DCP B23. The difficulty of achieving best practice development design becomes apparent in the irregularity of the resulting development footprint. Such an irregularity may limit development layout options to accommodate a perimeter road due to the geometry of the DCP B23 development boundary. In order to achieve an acceptable ecological setback whilst enabling a practical and desired best practice lot layout, the merit of adjusting the development boundary to suit may be (as an example) a design element that could be the focus of negotiation.

As demonstrated in Figure 2 below, the deletion of Lots 1-5 and 16 to resolve engineering issues would also result in the 75m Saltmarsh buffer generally being met for new residential lots, if utilising the red line provided below. While the 75m Saltmarsh buffer footprint, nominated within Tweed DCP Chapter B23, requires all development to be outside the 75m buffer, indicated by the yellow line, the footprint nominated illustrates that only services and an internal road will be within this footprint.

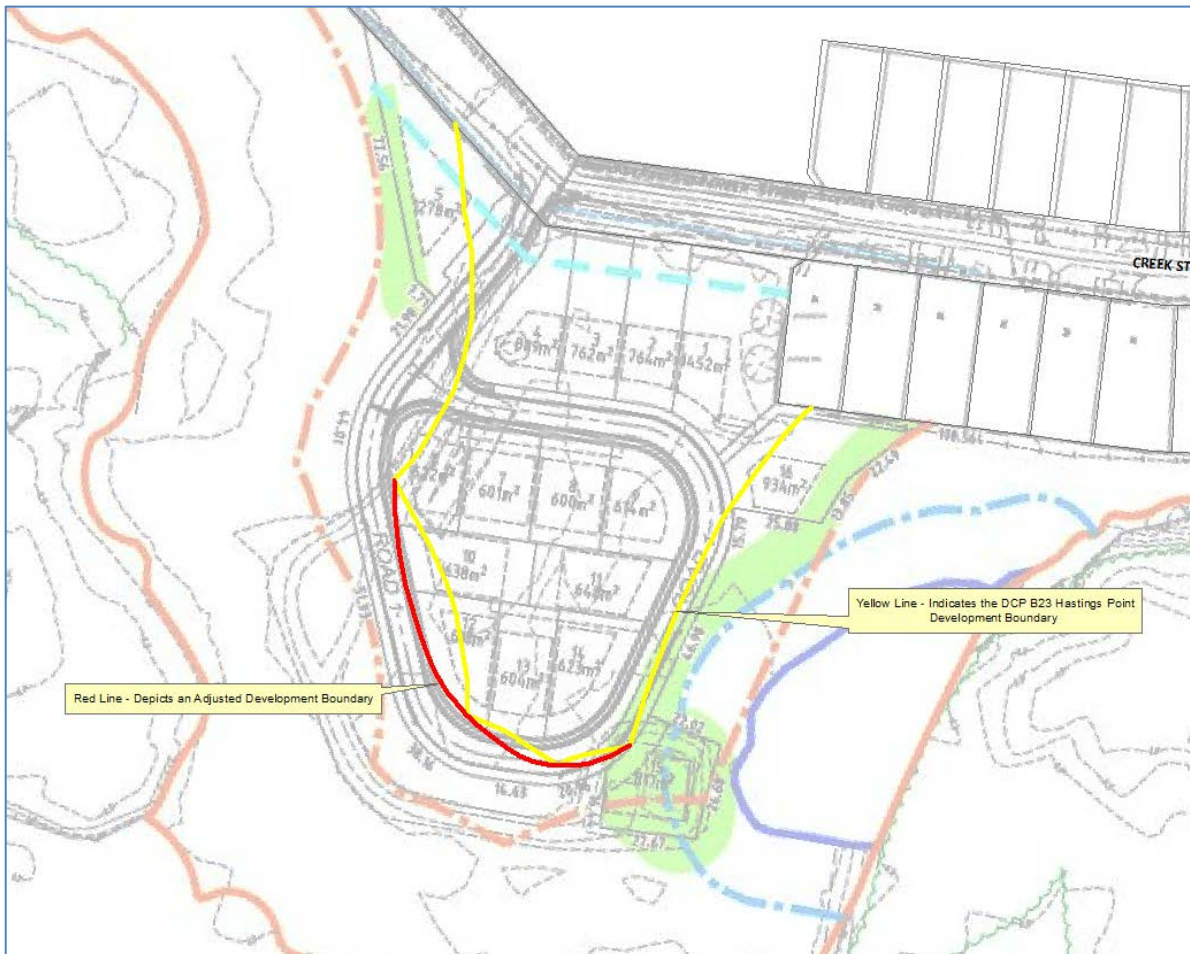


Figure 2 Adjusted development boundary identified for possible consideration, subject to the applicant identifying a lot layout and development footprint that can be wholly contained within and satisfactorily addressing all other issues identified herein.

The 75m Saltmarsh buffer for all works is, in the opinion of staff, a setback that the landowner will meet. However, if the outcome of the negotiations provides a pathway for 10 Lots uncontested, the applicants may be willing to accept this reduced yield. Notwithstanding, other issues identified by the ecologist, the AAC and OEH also require further information to be provided by the applicant and the corresponding imposition of appropriate conditions on any consent granted. This additional information and conditions will be required to ensure a satisfactory outcome in regards to:

- the rehabilitation and management of the vegetation and
- the long term management of the community title development;

due to the constraints of the site in regards to bushfire and flooding.

However, as this report has stated, requesting further information from the applicant to address the issues identified within this report in regards to flooding is considered redundant without support from the elected Council regarding the issue of the ecological buffers. Should Council not support some compromise on the environmental buffer zones proposed by this report and suggested by Council's Natural Resource Management Unit, the relevant recommended option (Option 2) is to prepare a 79C Assessment for the current DA plans for Council's consideration

It is noted that any negotiations may result in an amended proposal being submitted by the applicant pursuant to Clause 55 of the Environmental Planning and Assessment Act, also triggering a readvertising process. Further, any amended proposal and corresponding assessment would result in a Council Report being prepared and presented to Council for a final determination.

OPTIONS:

1. That Council support further negotiations with the applicant to resolve the identified issues, including engineering and ecology, with the understanding that the developable footprint may include services (including an internal road) within the 75m Saltmarsh buffer identified within Tweed DCP B23 - Hastings Point.

OR

2. That the development application is assessed on the information currently available and a report be prepared for presentation to Planning Committee when completed.

Council's direction on either of these two options is being sought.

It should be noted that should Council resolve to support Option 2 this assessment would likely be a recommendation of refusal based on the information currently available.

CONCLUSION:

Given that the assessment of the current DA has identified continued, significant technical concerns, which would necessitate very detailed requests for further information and delays to the DA process, Council's direction on how best to progress the application is being sought.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Any further legal challenge to the current development applications for this site will incur expenditure of Council's current legal budget.

c. Legal:

Council is still seeking to negotiate costs from the applicant for the discontinued LEC appeal.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Visual Impact Assessment (ECM 4729189)

4 [PR-PC] Development Application DA16/0795 for a Two Lot Subdivision and Dwelling at Lot 7 DP 1178620 No. 2041 Kyogle Road, Terragon

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

ROLE: **Provider**

SUMMARY OF REPORT:

A development application has been received proposing a two lot subdivision and seeking approval for the use of an existing unauthorised structure for the purposes of a dwelling on one of the proposed allotments at Lot 7 DP 1178620; No. 2041 Kyogle Road, Terragon.

The existing subject lot is 101.26 hectares with no dwellings currently approved over the site. The lot is heavily vegetated with some cleared grass areas and is mapped as being bushfire prone and having a high ecological status. The subdivision proposes two new lots with Lot 17 being 61 hectares and Lot 18 being 40.3 hectares. A new proposed dwelling site is nominated for proposed Lot 18 and an unapproved structure is currently located on proposed Lot 17 for which the applicant seeks ongoing approval as a dwelling.

The application was initially lodged seeking consent for a two lot subdivision and minor earthworks at the subject site with a proposed dwelling site nominated for each of the proposed lots. Previous correspondence from the applicant prior to the lodgement of the application indicated that the construction of the unauthorised structure and some earthworks have been completed without development approval. A site visit revealed extensive development works had been previously undertaken without development consent including; earthworks; a habitable structure (the 'unauthorised structure'); three water tanks, on-site sewerage management system; five shipping containers; and a spa.

The applicant was subsequently requested to withdraw the application or alternatively amend the application nominating the existing unauthorised structure as a dwelling. In response to this request the applicant submitted amended plans for a two lot subdivision and nominated the existing unauthorised structure as a dwelling on proposed Lot 17 and a proposed new dwelling site on proposed Lot 18.

The existing unapproved structure is required to comply with Planning for Bushfire Protection 2006, including the establishment of Asset Protection Zones (APZ). Achieving compliant APZs requires a 65m APZ to the east of the existing structure which would necessitate the removal and modification of approximately 4,500m² of additional vegetation to that which has been already undertaken onsite without approval. The vegetation forms part of a Regional Wildlife Corridor and includes area defined as Core Koala Habitat under State Environmental Planning Policy 44 Koala Habitat Protection.

The subject site contains a number of previously cleared areas. The amended application failed to identify alternate dwelling sites on proposed Lot 17 that would result in a more favourable environmental outcome. An application for a two lot subdivision with proposed dwelling sites for each of the proposed lots that do not require extensive vegetation removal would be generally supportable in the absence of the existing unauthorised works.

The removal of vegetation required to achieve compliant APZs for the existing unapproved structure on proposed Lot 17 is considered to have an unacceptable impact on significant habitat and as such the proposal is not supported and this application is recommended for refusal. Should the application be refused it is also recommended that Council seek legal advice in regards to the best way forward for compliance action to restore the site to its previous state prior to the construction of all the unauthorised structures.

Parts of the site have previously been cleared and the application does not consider alternative dwelling sites for proposed Lot 17 that have a more favourable outcome with regard to significant habitat retention.

RECOMMENDATION:

That:

- A. Development Application DA16/0795 for a two lot subdivision at Lot 7 DP 1178620 No. 2041 Kyogle Road, Terragon be refused for the following reasons:**
- 1. The development is not considered to be consistent with aims of the Tweed Local Environmental Plan 2000 outlined in clause 4(a) and (d).**
 - 2. The development is not considered to satisfy Clause 8(1)(a) - Consent Considerations of the Tweed Local Environmental Plan 2000 as the development is considered not to be consistent with the primary objectives of the 7(I) Environmental Protection (Habitat) zone.**
 - 3. The development is not considered to satisfy Clause 8(1)(c) - Consent Considerations of the Tweed Local Environmental Plan 2000 as the removal of significant habitat, proposed by bushfire protection measures, is considered to have an unacceptable cumulative impact on the locality.**
 - 4. The development is not considered to comply with Clause 28 of the Tweed Local Environmental Plan 2000 as the development is considered to have an unacceptable impact on flora and fauna in the locality.**

5. The development is not considered to comply with Clause 39A(2)(d) and (e) of Tweed Local Environment Plan 2000 in that consideration was not given to the siting of the development to mitigate the threat from bushfires and that the environmental and visual impacts of clearing of vegetation for bushfire hazard reduction would be unacceptable.
 6. The development is not consistent with Chapter A5.5 of the Tweed Development Control Plan Section A5 Subdivision Manual which relates to Rural Subdivision in regard to its impact on the local native flora and fauna and the need for rural subdivision to have adequate regard to bushfire provisions.
 7. The development fails to satisfy the provision of State Environmental Planning Policy 44 – Koala Habitat Protection in that a Koala Plan of Management was not provided.
 8. The applicant has failed to sufficiently evaluate under Section 5A of the EP&A Act the direct and indirect impact of the development (in its current form) on those threatened species known or considered to have a high likelihood of occurrence on or adjacent the subject site. As such significant uncertainty remains as to the extent and level of cumulative impact on threatened species, their habitats and Endangered and Threatened Ecological Communities listed under the Threatened Species Conservation Act 1995.
- B. Council seeks advice from its solicitors regarding appropriate action to remedy the unauthorised works.

REPORT:

Applicant: Mr Clive Martin
Owner: Mr Clive Martin and Ms Clare Miller
Location: Lot 7 DP 1178620, 2041 Kyogle Road, Terragon
Zoning: 7(I) Environmental Protection (Habitat) under Tweed Local Environment Plan 2000
RU2 Rural Landscape under Tweed Local Environment Plan 2014
Cost: \$10,000

Background:

Site details

The site is described as Lot 7 DP 1178620, 2041 Kyogle Road, Terragon, and has an area of 101.26 hectares. The majority of the subject site is located on the southern side of Kyogle Road with a small portion of the lot, approximately 3,521m², located to the north of Kyogle Road adjacent to the Tweed River. The site is accessed from Kyogle Road and is mapped as being bushfire prone and having a high ecological status. The site is within the Drinking Water Catchment area as mapped by the Tweed LEP 2014.

The land is relatively steep and rises up from Kyogle Road to an elevation approximately 290m above the road. The site is dominated with heavily vegetated slopes with some previously cleared areas on the ridgelines of lower portion of the site. Surrounding land uses include forested areas interspersed with land previously used for cattle grazing and agricultural uses. Clarrie Hall dam is located approximately 1km to the east of the site.

Application details

The application was lodged initially seeking consent for a two lot rural subdivision including minor earthworks. A proposed subdivision plan was submitted outlining proposed Lot 17 with an area of 61 hectares and proposed Lot 18 with an area of 40.3 hectares. Each of the proposed lots nominated a proposed dwelling site adjacent to the southern side of Kyogle Road (refer to figure below). The submitted plans and the Statement of Environmental Effects indicated there were no existing dwellings located on the site however the plans showed an “existing shed” is located on proposed Lot 17.

Following a site inspection it was resolved that the “existing shed” was in fact an unauthorised structure capable of being used as a dwelling.

The applicant also acknowledged the unauthorised dwelling and some earthworks being completed without development approval prior to their development application being lodged with Council.

The site visit revealed extensive construction and earthworks previously completed without approval at the location of the unauthorised structure proposed as a dwelling as part of this application. The extent of unauthorised works includes:

- Earthworks;
- Construction of a structure capable of habitation comprising of a single room structure with mezzanine level, bathroom and deck including hot water system and solar panels;

- On-site sewerage management system;
- Location of five shipping containers with various uses (additional rooms or storage);
- Three rainwater tanks; and
- An outdoor spa.



Initial proposal of a two lot subdivision with two proposed dwelling sites and unauthorised structure/shed as shown on Plan. The amended proposal deletes the proposed dwelling site from Lot 17 and proposes the unauthorised structure/shed be the approved dwelling site as part of this DA.

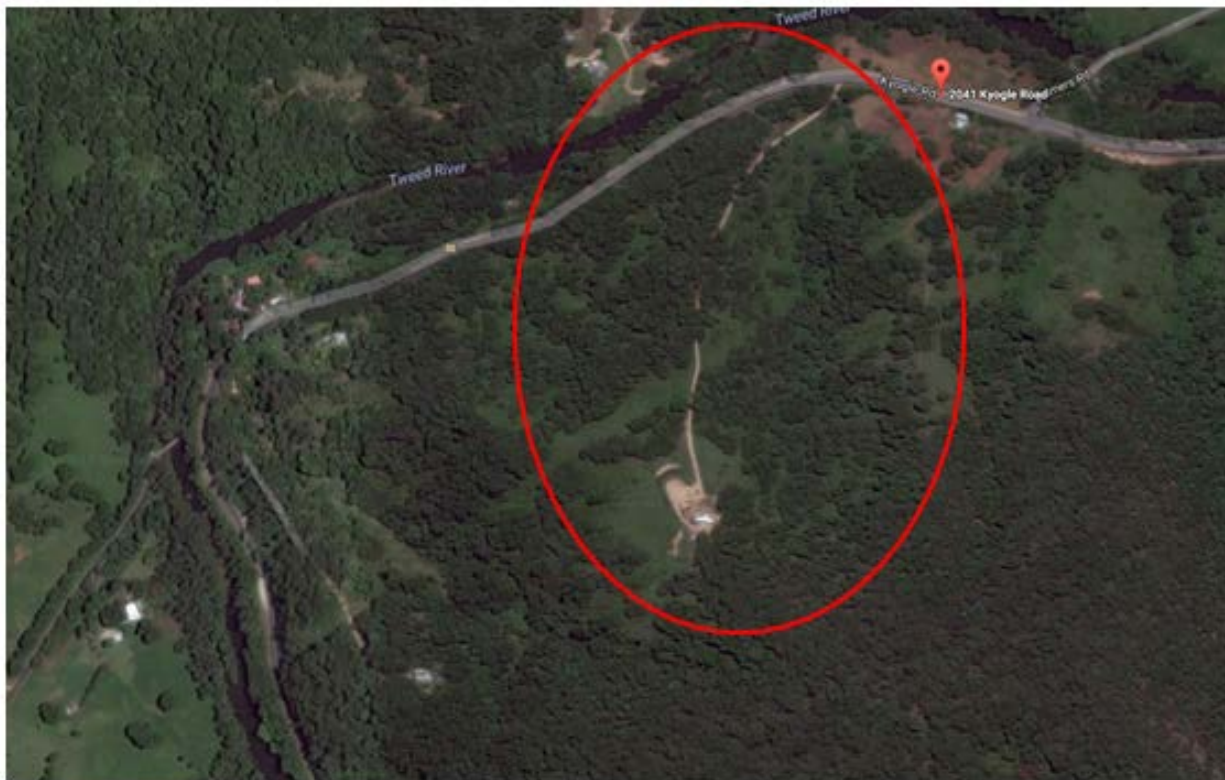
From aerial imagery it appears that the unauthorised structure was started sometime after Council's 2012 imagery as shown by the series of aerial photography below. The imagery also suggests that works have been undertaken to upgrade the access track to the current unauthorised structure.



2012 – no structure in circled location



2016 - structure appears in circled location



2017 Google Satellite - structure, clearing, access track and vegetation works now evident on aerial imagery

The works appeared to be ongoing as demonstrated by the following site photos:



Structure with deck and two shipping containers



Side view of structure showing front door



Internal view of structure showing mezzanine level and bathroom



View from rear showing two rainwater tanks



Two of five shipping containers located on the site

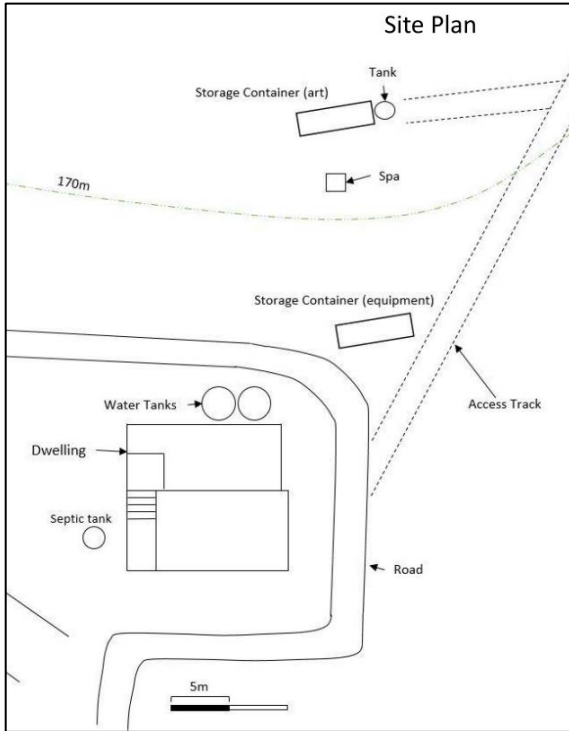
The unapproved works are located within the 7(l) zone under Tweed Local Environment Plan 2000. The structure appears to be capable of habitation and as such may be defined as a dwelling.

The applicant was given notice to stop all building and development works and requested to withdraw the application or alternatively amend the application to a proposed two lot subdivision and dwelling with the current unauthorised structure located on the site to be nominated as a dwelling. Revised plans and supporting documentation were requested if the application was to be amended.

The applicant advised that they wish to proceed with an amended application nominating the current unauthorised structure as a dwelling and submitted amended plans and documentation consisting of plans of existing authorised structure, an amended ecological assessment, on-site sewerage management report and bushfire risk management report.



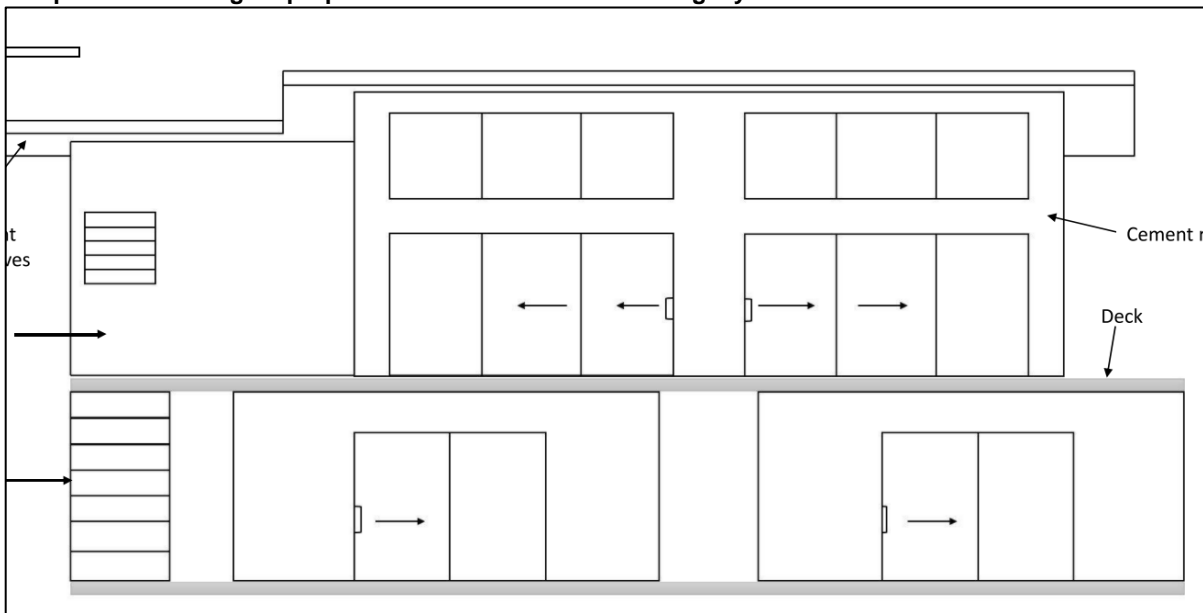
Current application plan for a two lot subdivision and dwelling (nominating the existing 'shed' as a dwelling)



Site plan for dwelling on proposed Lot 17



Dwelling layout



Elevations of existing dwelling

The existing unapproved structure (proposed dwelling) is split level with a single room open plan living/kitchen area, bathroom and deck on the upper level. This part of the dwelling is constructed from rendered straw bales with a colorbond roof and includes a non-habitable mezzanine area over the living area. The lower level is located below the deck and consists of two shipping containers to be utilised as bedrooms and a bathroom.

The existing unapproved structure (proposed dwelling) is located on the lower portion of a ridge line and benefits from views to the north of Wollumbin (Mt Warning). Land immediately to the north and west of the dwelling slopes down and is primarily grassland. Land to the east has a down slope of greater than 25° and comprises forest vegetation. Land to the north slopes upwards and also comprises of forest vegetation.

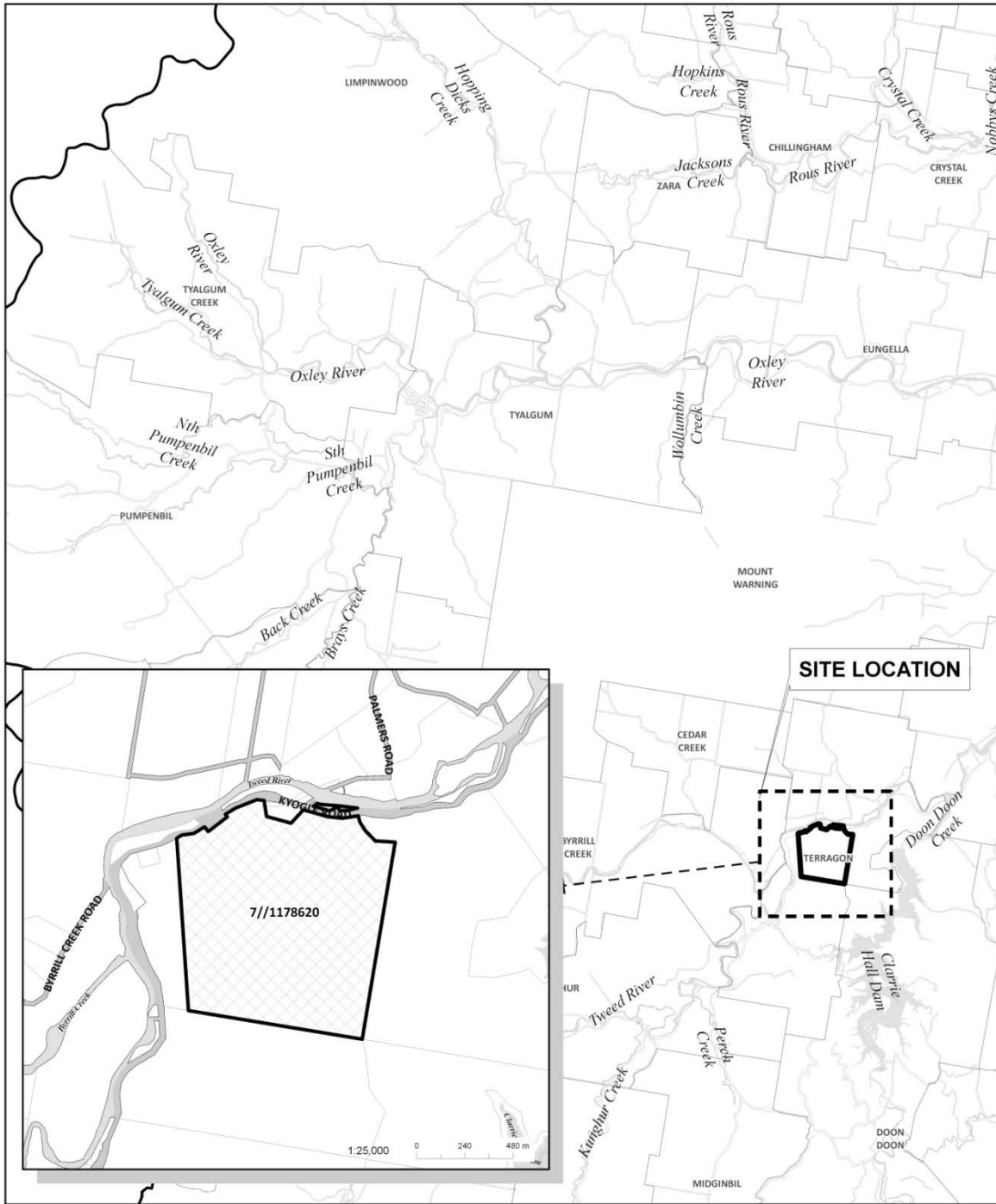
The site is mapped as bushfire prone and the existing unapproved structure is located adjacent to land mapped as vegetation category 1. The proposed dwelling is required to comply with *Planning for Bushfire Protection 2006* and the Rural Fire Service has recommended that an Asset Protection Zone (APZ) of 114m x 43m (8,322m²) is to be established and is to be maintained entirely as an Inner Protection Area (IPA). Due to the steepness of the site, a portion of this area will also require terracing to ensure the IPA can be maintained.

Achieving the recommended APZ requires the modification and disturbance of approximately 4,500m² of vegetation. This vegetation forms part of a Regional Wildlife Corridor and Council's assessment has identified the portion of vegetation to be impacted by the establishment of the APZs as being Core Koala Habitat as defined under State Environmental Planning Policy 44 Koala Habitat Protection.

Parts of the site have previously been cleared and the application does not consider alternative dwelling sites for proposed Lot 17 that have a more favourable outcome with regard to significant habitat retention.

This extent of clearing to comply with the recommended APZs is considered unacceptable in this sensitive environment and accordingly the application is recommended for refusal.

SITE PLAN:



Site Plan

Lot 7 DP 1178620
2041 Kyogle Road, TERRAGON

0 1 2 Km
1:100,000



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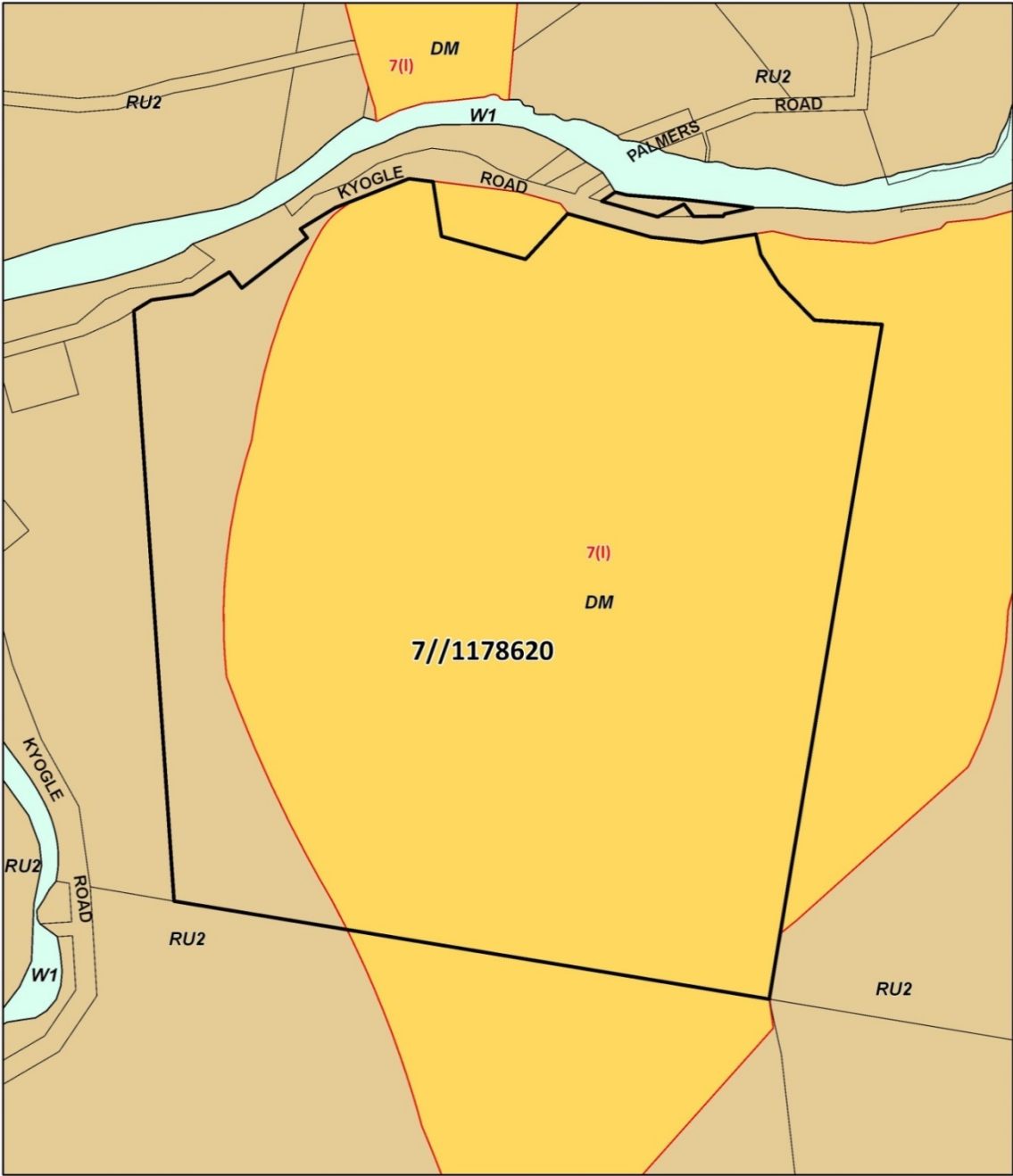
GDA Cadastre: 30 June, 2010
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Coordinate System - MGA Zone 56
Datum - GDA 94

Civic and Cultural Centre
3 Tumbulgum Road
Murrumbidgee NSW 2484
Murrumbidgee NSW 2484
T: (02) 6670 2400 / 1300 292 872
F: (02) 6670 2483
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E: planningforms@tweed.nsw.gov.au



Date Printed: 03 May, 2017

ZONING MAP:



Tweed Local Environmental Plan 2014 Tweed Local Environmental Plan 2000

- | | |
|----------------------|---|
| Zone | ENVIRONMENTAL PROTECTION |
| RU2 Rural Landscape | 7(I) Environmental Protection (Habitat) |
| W1 Natural Waterways | |
| DM, Deferred Matter | |

1:7,500 @ A4 Portrait
 0 50 100 150 200M
 DO NOT SCALE
 COPY ONLY - NOT CERTIFIED
 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geoidetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

Civic and Cultural Centre
 3 Tumbulgum Road
 Murwillumbah NSW 2484
 PO Box 816
 Murwillumbah NSW 2484
 T | (02) 6670 2400 | 1300 282 872
 F | (02) 6670 2429
 W | www.tweed.nsw.gov.au
 E | planning@tweed.nsw.gov.au

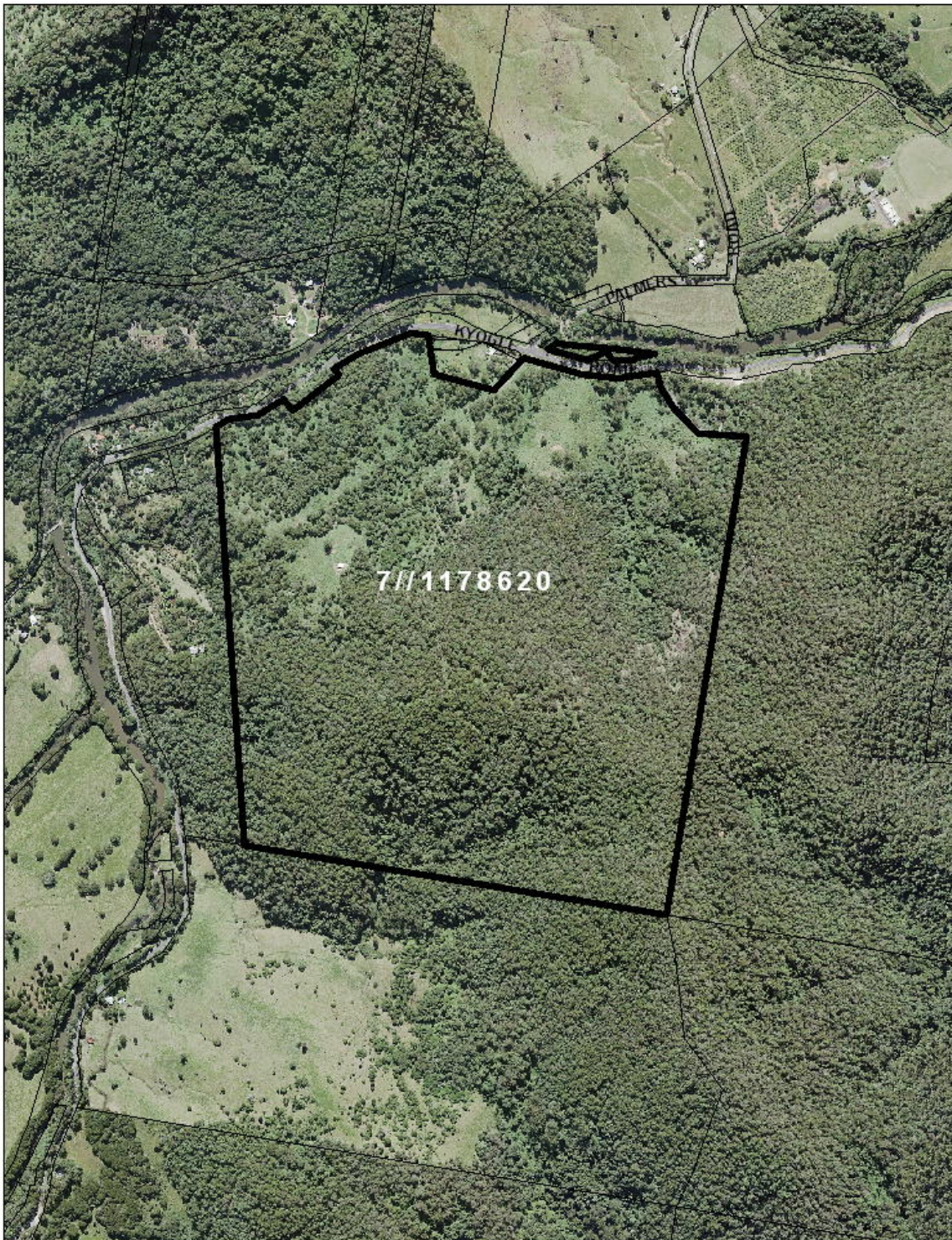
Tweed Local Environmental Plan
 Lot 7 DP 1178620
 2041 Kyogle Road, TERRAGON

Base Data 04/10/2016
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 Boundaries shown should be considered approximate only

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Date Printed: 03 May, 2017

AERIAL IMAGE:



<p>1:10,000 @ A4 Portrait 0 60 120 180 240 M GDA Map Projection: Universal Transverse Mercator Horizontal Datum: Geocentric Datum of Australia 1994 Grid: Map Grid of Australia, Zone 56</p>	<p>Civic and Cultural Centre 3 Tumbulgun Road Murrumbidgee NSW 2484 PO Box 879 Murrumbidgee NSW 2484 T 1 (02) 6670 2400 / 1300 262 872 F 1 (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	<p>Aerial Photography 2015 Lot 7 DP 1778620 2041 Kyogle Road, TERRAGON</p>	<p>Base Data 04/10/2016 © Land and Property Information (LPI) and Tweed Shire Council © Tweed Shire Council Boundaries shown should be considered approximate only</p>
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Author: [unreadable]
Date Printed: 05 May 2017

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The aims of the plan are:

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

*Tweed Shire 2000+ Strategy
Pottsville Village Strategy, and*
- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.*

The subject proposed two lot subdivision and dwelling is considered to be inconsistent with the aims of the plan, specifically 4(d) as the proposal would result in an unacceptable environmental impact not compatible with the area's environmental qualities as it:

- a. Requires removal of remnant vegetation regarded as preferred threatened species habitat within a recognised Regional Wildlife Corridor
- b. Does not utilise available alternative sites to avoid impact to the areas' environmental qualities

Clause 5 - Ecologically Sustainable Development

An objective of the TLEP 2000 is to promote development that is consistent with the four principles of ecologically sustainable development. This clause outlines these four principles including the principle of:

conservation of biological diversity and ecological integrity - namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration

Threaten fauna and flora species are identified as being located on the subject site. It is uncertain if this application is consistent with this principle in that the applicant has failed to sufficiently evaluate the impact of the proposal on threatened species, their habitats and Endangered and Threatened Ecological Communities.

An ecological assessment was provided with the application however the assessment did not include habitat in the vicinity of existing unauthorised structure (proposed dwelling).

Clause 8 - Consent Considerations

Clause 8(1) states that:

- (1) *The consent authority may grant consent to development (other than development specified in Item 3 of the Table to clause 11) only if:*
 - (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
 - (b) *it has considered those other aims and objectives of this plan that are relevant to the development, and*
 - (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

The zone objectives as they apply to the proposal are discussed under clause 11 below.

Consideration with regard to subdivision objectives are discussed under clause 20.

The applicant has not satisfactorily established that the proposal will not result in an unacceptable cumulative impact on the locality. The site is within a recognised Wildlife Corridor and the proposal will result in the removal of Core Koala Habitat. Additionally the application has not sufficiently evaluated the impact on threatened species, their habitats and Endangered and Threatened Ecological Communities listed under the Threatened Species Conservation Act 1995.

Clause 11 - Zone Objectives

Two zones apply to the subject lot: Environmental Protection (Habitat) under Tweed local Environment Plan 2000; and RU2 Rural Landscape under Tweed

Local Environment Plan 2014. The proposed dwelling, ancillary structures and associated access are located in the 7(l) zone, the objectives of which are:

Primary objectives

- *to protect areas or features which have been identified as being of particular habitat significance.*
- *to preserve the diversity of habitats for flora and fauna.*
- *to protect and enhance land that acts as a wildlife corridor.*

Secondary objectives

- *to protect areas of scenic value.*
- *to allow for other development that is compatible with the primary function of the zone.*

The proposed subdivision is compatible with the primary function of the land.

The dwelling on proposed Lot 17 requires additional earthworks and the removal and modification of approximately 4,500m² of remnant vegetation on steep slopes to achieve compliant Asset Protection Zones to comply with *Planning for Bush Fire Protection 2006*.

The area of vegetation is identified as being Core Koala Habitat and is located within a designated Regional Wildlife Corridor as identified by the Upper North East and Lower East Regions – NSW Comprehensive Regional Assessment 1999 by National Parks and Wildlife Service. The habitat to be disturbed forms part of a significant functional wildlife corridor for the following fundamental reasons:

- The area of vegetation to be disturbed is intact and forms part of a well-connected and contiguous tract of vegetation. There is no significant break in the corridor on the subject site that may act as a barrier to wildlife movement;
- The vegetation to be disturbed offers preferred habitat for a suite of threatened species;
- Threatened species are known to occur onsite within the mapped wildlife corridor.

As such the unauthorised structure (proposed dwelling) on proposed Lot 17 does not meet the primary objectives of the zone in that the proposal fails to protect and enhance land that acts as a wildlife corridor.

Development permissible within the 7(l) zone is itemised as such:

Item 1 allowed without consent:

- *nil*

Item 2 allowed only with consent:

- *bed and breakfast*
- *bushfire hazard reduction that is not exempt development*
- *business identification signs*

- *dwelling houses if on an allotment of at least 40 hectares or an allotment referred to in clause 57 and if the number of dwellings does not exceed one for each 40 hectares of land contained within the allotment*
- *earthworks*
- *environmental facilities*
- *home businesses*
- *noxious weed control that is not exempt development*

Item 3 allowed only with consent and must satisfy the provisions of clause 8 (2):

- *agriculture*
- *camping grounds*
- *emergency service facilities*
- *forestry*
- *public utility undertakings*
- *roads*
- *urban stormwater water quality management facilities*
- *utility installations (other than gas holders or generating works)*
- *works for drainage and landfill*

Item 4 prohibited:

- *any buildings, works, places or land uses not included in Item 1, 2 or 3*

Each of the proposed lots is greater than 40 hectares and development of no more than one dwelling is permissible. Under TLEP 2000 a dwelling is defined as:

dwelling: *a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.*

The existing unapproved structure is nominated as a dwelling for proposed Lot 17 and proposed Lot 18 nominates a proposed house site setback a minimum of 30m from Kyogle Road.

Earthworks that require consent have under Item 2 have previously been undertaken without approval at the site. Details of the extent of these earthworks (e.g. volume of cut and fill) have not been provided.

The plans also indicate two storage containers (for art and equipment) and a spa located on the site ancillary to the dwelling.

Clause 15 - Essential Services

Council water and sewer infrastructure is not available to the site and the development proposes on-site collection, storage and disposal systems for water and waste water. The existing unapproved dwelling on proposed Lot 17 is currently serviced by two water tanks.

An existing unapproved on-site sewage management system (OSMS) currently services the dwelling on proposed Lot 17. An On-site Sewage Management Design report has been submitted with the application recommending rectification works to improve the functionality of the existing OSMS. Council's Environmental

Health Unit has reviewed the report and considers the on-site sewage system treatment system adequate in accordance with AS 1547/2012 and NSW Environment and Health Protection Guidelines "*On-site Sewage Management for Single Households*". An application to obtain approval to install an on-site sewage system under Section 68 of The Local Government Act 1993 would be required for any approval.

An OSMS report submitted with the initial application was considered to be satisfactory with regard to on-site sewerage management for the proposed dwelling site on proposed Lot 18.

Clause 20 - Subdivision in Zones 1 (a), 1 (b), 7 (a), 7 (d) and 7 (l)

The objectives of this clause are to:

- *to prevent the potential for fragmentation of ownership of rural land that would:*
 - (i) *adversely affect the continuance or aggregation of sustainable agricultural units, or*
 - (ii) *generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.*
- *to protect the ecological or scenic values of the land.*
- *to protect the area of Tweed's water supply quality.*

The clause goes on to state that consent for the subdivision of land may only be granted if the area of the lot created is a least 40 hectares. Each of the proposed lots meets this provision being 61ha and 40.3ha respectively.

Clause 22 Development near designated roads

The site has frontage to Kyogle Road which is a designated road and as such this clause applies. The proposal involves the creation of one additional new lot and associated access to an existing unapproved dwelling and a proposed new dwelling site. The proposal has been assessed as being within the capacity of the current road network and no upgrades are required to accommodate the proposal. Proposed site access is not expected to result in any issues. As such the application is considered to compliant with the provisions of this clause.

Clause 24 Setback to designated road

This includes controls for setbacks to designated roads within the 7(l) zone and states that dwelling are to be setback from a designated road being Kyogle Road at a minimum distance of 30m. The plans indicate that the proposed dwelling site nominate on proposed Lot 18 is setback a minimum of 30m.

The existing dwelling on proposed Lot 17 is set back approx. 340m from Kyogle road. The proposal complies with this control.

Clause 28 Development in Zone 7(l) Environmental Protection (Habitat) and on adjacent land

The objective if this clause is to protect wildlife habitat from the adverse impacts of development.

The proposal involves the vegetation clearing of 4,500m² of remnant vegetation on steep slopes recognised as preferred habitat for a suite of threatened species. The area of impact occurs within a designated Regional Wildlife Corridor.

Vegetation clearing is defined in clause 30 as:

For the purpose of this Part, vegetation clearing means any one or more of the following:

- (a) cutting down, felling, thinning, logging or removing any vegetation, or*
- (b) killing, destroying, poisoning, ringbarking, uprooting or burning vegetation, or*
- (c) severing, topping or lopping branches, limbs, stems or trunks of native vegetation, or*
- (d) substantially damaging or injuring native vegetation in any other way.*

The proposed vegetation clearing and associated earthworks required to establish asset protection zones on Lot 17 would be expected to have an unacceptable adverse impact on local ecosystem dynamics and the integrity of the broader contiguous tract of habitat. More specifically, the disturbance to habitat would likely result in the following:

- Increase in edge effects to adjacent habitat;
- Disruption/impediment to movement corridors;
- Removal/exposure of hollows;
- Reduction of reliable flowering species;
- Increased risk of sediment and erosion.

A plan of management showing how any adverse effects arising from the development are to be mitigated has not been provided in accordance with Clause 28(c). The impact associated with establishment of a dwelling on Lot 17 could be avoided through repositioning of the proposed dwelling and associated building envelope within an existing cleared area of the site. Adequate available cleared areas suitable for a dwelling occur elsewhere onsite.

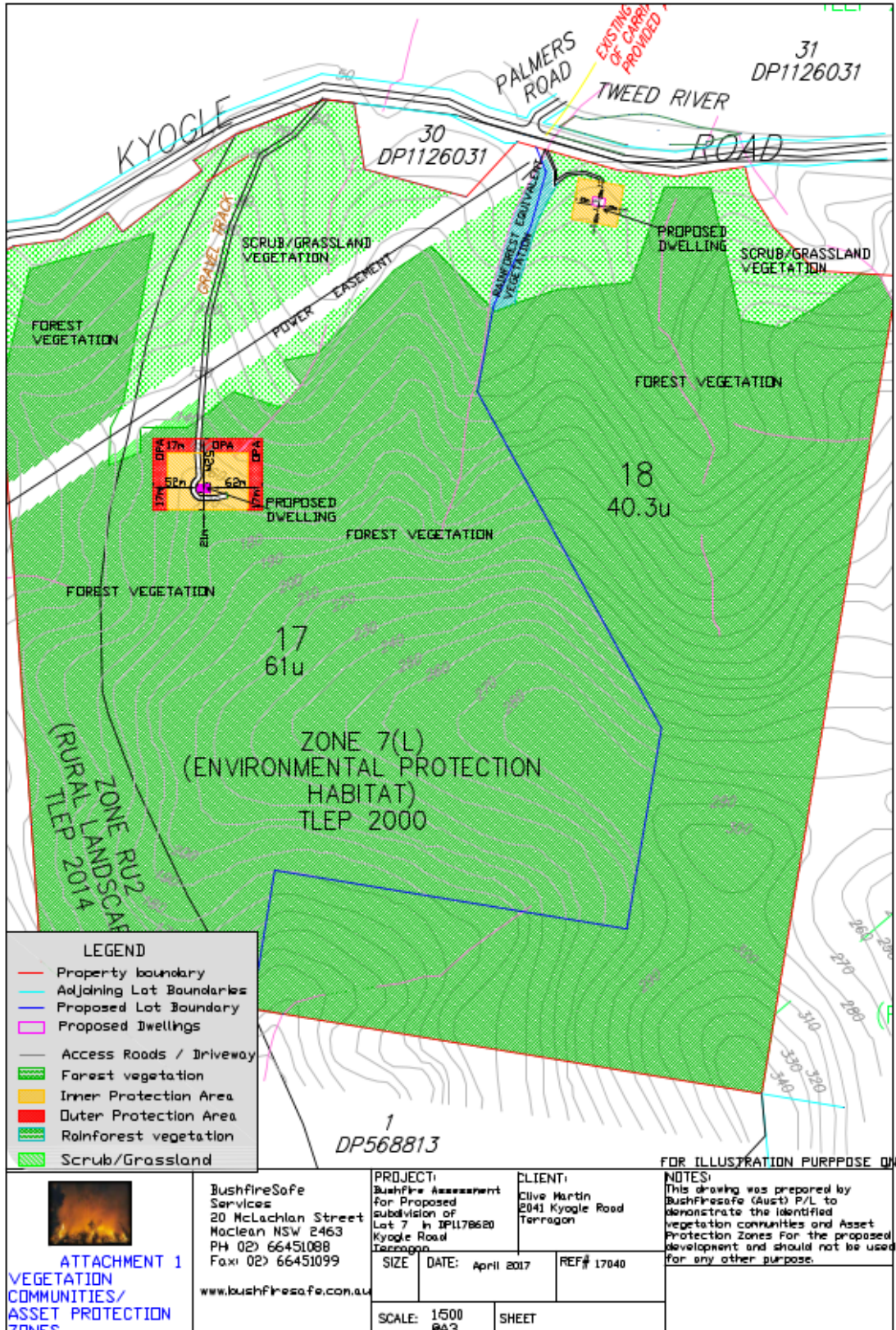
As such the applicant has not adequately demonstrated that the development meets the objective of the zone.

Clause 39A - Bushfire Protection

The objective of this clause is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

In order to establish recommended APZs to be maintained as Inner Protection Area (IPA) for the existing unauthorised structure (proposed dwelling), the removal of a significant number of trees would be required within an estimated area of 4,500m² (refer to image below). In addition to vegetation removal required to establish an IPA, steep slopes to the east of the unauthorised structure are to be terraced to allow continued maintenance of the IPA which will result in further habitat destruction.

The application is not compatible with clause 39A (d) or (e) in that alternative sites for the unauthorised structure (proposed dwelling) on proposed Lot 17 was not considered in order to avoid or mitigate the threat from bushfires and that the environmental and visual impacts of the clearing of vegetation for bushfire hazard reduction would be unacceptable.



Proposed APZs for the proposed dwelling site on Lot 18 and the existing unauthorised structure (proposed dwelling) on Lot 17

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:

- (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 application is not consistent with the aims of this plan specifically with regards to the conservation of biological diversity and the protection of suitable habitat for the Tweed Coast Koala.

Clause 2.3 – Zone objectives and Land use table

The objectives of the RU2 Rural Landscape zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*

- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

The proposal relates to the subdivision of land and the establishment of a residential dwelling. The proposal is consistent with the objectives of the zone in that dwellings are permissible on lots that meet the minimum lot size. However the extensive earthworks undertaken and the proposed clearing of vegetation to achieve a compliant Asset protection zone for the dwelling are not compatible with the objective of maintaining the rural landscape character of the land.

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

Clause 4.1 relates to minimum lots sizes for subdivisions and the objectives of the clause are:

- (a) *to ensure minimum lot sizes are appropriate for the zones to which they apply and for the land uses permitted in those zones,*
- (b) *to minimise unplanned rural residential development.*

The site is mapped as being subject to a minimum lot zone of 40 hectares. The subdivision proposes two lots of 61ha and 40.3ha and so complies with the provisions of this clause.

4.2B - Erection of dwelling houses and dual occupancies on land in certain rural and residential zones

This clause states that consent must not be granted for the erection of a dwelling or dual occupancy on land unless the land is a least the minimum lot size shown on the Lot Size Map.

The application proposes a dwelling on proposed Lot 17 which is 61ha and a proposed dwelling site on proposed Lot 18 which is 40.3ha and so complies with the provisions of this clause.

Clause 4.3 - Height of Buildings

The site is mapped as being subject to a 9m building height limit. The proposed dwelling is a maximum of 4.12m high from ground level and so complies with the provisions of this clause.

Clause 4.4 – Floor Space Ratio

The site is a rural lot and is not mapped as being subject to a maximum floor space ratio and so this clause does not apply.

Clause 4.6 - Exception to development standards

Not applicable as no exception to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable as no uses listed under this clause are proposed.

Clause 5.5 – Development within the Coastal Zone

Not applicable as the site is not located within the Coastal zone

Clause 5.9 – Preservation of Trees or Vegetation

This clause relates to prescribed vegetation defined within the Development Control Plan. Whilst some tree clearing is proposed to achieve compliant Asset Protection Zones around the dwelling for the purposes of bush fire management, no trees are proposed to be removed within the RU2 zone under TLEP 2014.

Clause 5.10 - Heritage Conservation

Not applicable as the site is not within a heritage conservation area.

Clause 5.11 - Bush fire hazard reduction

The site is mapped as being bushfire prone and the application was referred to the Rural Fire Service in accordance with Section 91 of the *Environmental Planning and Assessment Act, 1979* (as amended).

The proposal does not impact the provisions of this clause.

Clause 7.1 – Acid Sulfate Soils

The site is not mapped as be affected by acid sulfate soils and so this clause is not applicable.

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.

Earthworks have been completed without consent prior to the lodgement of this application. However, no earthworks have been complete or are proposed to be completed within an area to which TLEP 2014 applies.

Clause 7.3 – Flood Planning

The site is mapped as being partially within an area that Could Be Affected by flooding. No dwellings or other structures are proposed within the area to which the TLEP 2014 applies and so the proposal is considered to be compliant in this regard.

Clause 7.4 - Floodplain risk management

Not applicable as the subject site is not mapped as being within the area to which this clause applies.

Clause 7.5 - Coastal risk planning

Not applicable as the subject site is not mapped as being within the area to which this clause applies.

Clause 7.6 - Stormwater Management

Not applicable as the subject site is rural land to which this clause does not apply.

Clause 7.7 – Drinking Water Catchments

The site is mapped as being with land identified as Drinking Water Catchment. No development other than the subdivision of land will occur within the area to which TLEP2014 applies and so the application is considered compliant in this regard.

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

No development other than the subdivision of land will occur within the area to which TLEP2014 applies and so the application is considered compliant in this regard.

Other Specific Clauses

No other specific clauses apply.

State Environmental Planning Policies

SEPP No. 44 - Koala Habitat Protection

The aims of SEPP 44 are:

This Policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:

- (a) *by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and*
- (b) *by encouraging the identification of areas of core koala habitat, and*
- (c) *by encouraging the inclusion of areas of core koala habitat in environment protection zones.*

An ecological assessment was submitted with the initial application for the two lot subdivision which includes an assessment of koala habitat for the development footprint of the two proposed dwelling sites on the northern portion of the site adjacent to Kyogle Road and includes area required for asset protection zones. The assessment determined that whilst Potential Koala Habitat occurs at the subject site, no areas of Core Koala Habitat occurred within the subject site as no koala activity was detected within the development footprint.

Koala habitat is defined for the purposes of the SEPP as being either:

core koala habitat means an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population.

potential koala habitat means areas of native vegetation where the trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.

An addendum to the ecological assessment was submitted with the amended application for the two lot subdivision and use of the existing unauthorised structure as a dwelling on proposed Lot 17. The addendum provided further assessment with regard to koala habitat focusing on the existing unauthorised structure and required asset protection zones on proposed Lot 17. To achieve a compliant asset protection zone as prescribed for *Planning for Bushfire Protection 2006* vegetation management is required for a distance of 62m to the east; 21m to the south and 52m to the west of the existing dwelling. Excavation to construct several terraces on land east of the dwelling is also recommended by the Bushfire Management Risk Plan to manage areas of the APZ where the slope is greater than 18 degrees.

The ecological assessment determined that the site supports potential koala habitat at the site but did not confirm the presence of core koala habitat only stating:

As per a preliminary assessment based on historical records and recent activities at the site it is considered likely that area of the property would support Koala habitat. However, to be defined as core Koala Habitat a spot assessment would need to be carried out on the impacted area of the subject site.

A spot assessment was conducted at the site by Biolink Pty Ltd focussing vegetation to the south and east of the dwelling and the results reported in a letter submitted with the amended application. The letter reported that no significant koala activity was detected at the site and concluded that whilst the site is an

area of Potential Koala Habitat, the site does not support a resident koala population and as such is not Core Koala Habitat as defined by the SEPP.

Assessing Officers of Council have reviewed the ecological assessment and conducted a site visit of the impacted areas of the development and determined that the disturbance footprint of the site continues to support Core Koala Habitat as defined by the SEPP for the following reasons:

- Potential Koala Habitat was recognised to occur onsite remaining as a significant habitat node within a Regional Wildlife Corridor;
- Evidence of historical records of a population (as specified in the definition for Core Koala Habitat) as indicated in the Addendum to the Ecological Assessment; *“the Tweed Coast Koala Habitat Study shows generational persistence of Koalas around Uki, Kunghur and Byrril Creek and sightings as recent as 2013 and 2015 are recorded within less than one kilometre of the site. Of the total 74 records within the area, greater than 98% have been recorded since 2000 and 35 records since 2013”*;
- Koala pellets were found by Council’s Biodiversity Officer within the study area;
- Indicative koala scratch marks observed on *Eucalyptus propinqua* trees within Tallowood dry grassy forest vegetation (TVMS 2008).

The establishment of compliant APZs would result in the modification and disturbance of approximately 4,500m² of Core Koala Habitat. Clause 9 of the SEPP states that before Council can grant consent to development on land that has been determined to be Core Koala Habitat, a plan of management must be prepared in accordance with the SEPP. A plan of management has not been submitted with the application.

The provisions of the SEPP have not been satisfied.

SEPP No. 55 - Remediation of Land

A Preliminary Site Investigation HMC Environmental (HMC 2016.099) was submitted with the application to enable an assessment against the provisions of this SEPP. This report was revised when the application was amended to include a dwelling on proposed Lot 17.

Council’s Environmental Health Unit has reviewed the application and Site Investigation report and has made the following comments:

A review of Council’s GIS records of historical aerials, ECM data and topo maps did not indicate any intensive agriculture, cropping, dip sites or other potentially contaminating activity.

The amended site investigation report concluded that the site is suitable for the proposed residential use of the land and Council Officers have determined that the conclusions of the report to be valid. The application is considered to be compliant with the provisions of this SEPP.

SEPP (Building Sustainability Index: BASIX) 2004

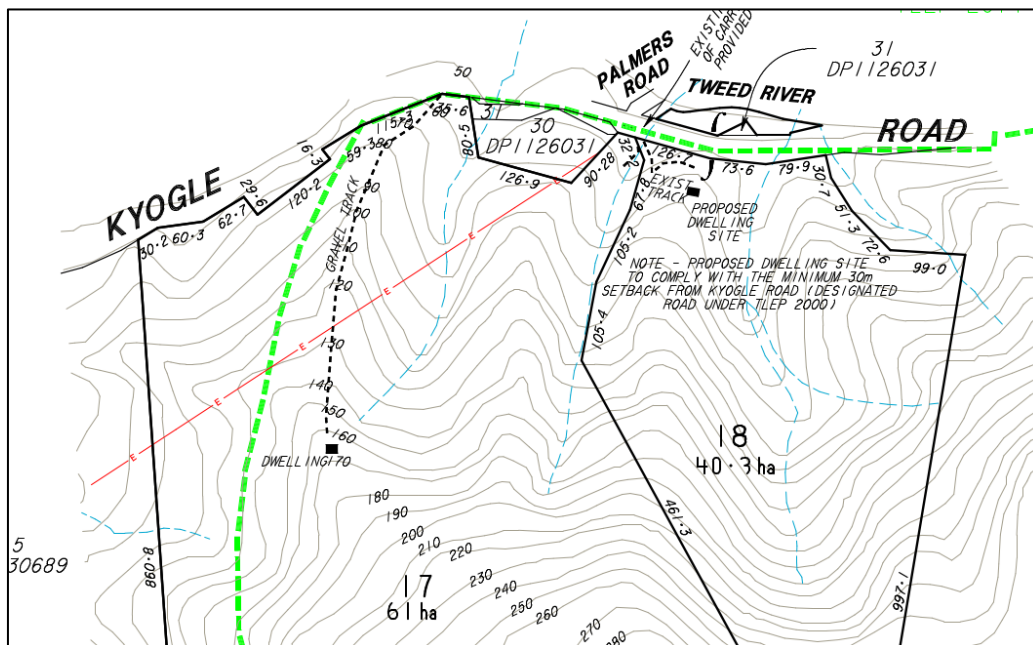
The aim of this policy is to ensure consistency in the implementation of the BASIX scheme for BASIX affected development identified in the *Environmental Planning and Assessment Regulation 2000*. The proposed dwelling is identified as a BASIX affected building for which a BASIX Certificate is required.

No BASIX Certificate was submitted with the application and so the proposal is deemed to be not compliant with the provisions of this SEPP.

SEPP (Infrastructure) 2007

The plans indicate that overhead electricity powerlines transect the site. Subdivision 2 of the SEPP relates to development likely to affect an electricity transmission or distribution network.

There is no formal easement for electricity purposes noted on the deposited plan and the unauthorised structure proposed as a dwelling is not within 5m of the electricity power line (being located approx. 88m distant) therefore the electricity authority is not required to be notified of the application. The application is considered to be compliant with the provisions of the SEPP.



SEPP (Rural Lands) 2008

The aims of this policy are to: facilitate the orderly and economic use and development of rural lands for rural and related purposes; reduce the potential for land use conflicts by identifying Rural Planning and Rural Subdivisions Principles; and the identification of State Significant Agricultural Land. The site is not identified as State Significant Agricultural Land.

Clause 10 of the policy applies to rural subdivisions and rural dwelling in rural and environmental protection zones and states that the following matters are to be taken into account:

- (a) *the existing uses and approved uses of land in the vicinity of the development,*
- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*
- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

The site is mapped primarily as bushland with a high ecological status. A small portion of the site, less than 0.03 percent, adjacent to the Tweed River is mapped as being Significant Non-Contiguous Farmland under the Northern Rivers Farmland Protection Project. The site is not currently utilised for agricultural purposes.

Land to the west of the site is bushland bordering the Clarrie Hall Dam and land to the north, south and west of the site contains a mix of bushland and land used for pasture or grazing purposes.

The proposed two lot subdivision and proposed future dwelling site on proposed Lot 18 would not have an impact on the current or future land uses of the site or surrounding land.

The proposal to seek approval for the current unauthorised structure to be used as a dwelling on proposed Lot 17 requires vegetation clearing within a significant habitat to establish APZs. The predicted impact to significant habitat is incompatible with the existing use of the site as bushland with a high ecological status that is within a designated Regional Wildlife Corridor and zoned as Environmental Protection (Habitat) under TLEP 2000.

The application has not considered any measures to avoid or minimise any impact on the current use as an environmental protection zone as required by clause 10(e). The proposal is not considered to be compliant with the provisions of the Rural Lands SEPP.

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

There are no draft environmental planning instruments applicable to the proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

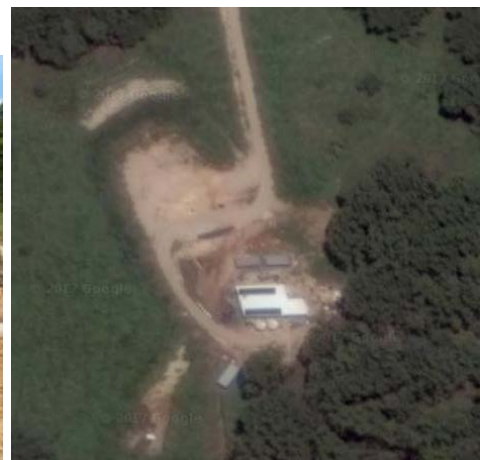
Consent is sought for the use of the existing unauthorised structure as a dwelling. The submitted plans did not provide sufficient detail to enable a comprehensive assessment of the structure against the DCP.

Variation – Earthworks

Earthworks have previously been undertaken without consent prior to the lodgement of this application. Slope of the house site is approximately 23° and the controls allow for a cut allowance of 3m within the footprint of the building for slopes up to 18° or 1m where the slope is greater. Control C2 allows for cut and fill outside of the building footprint to 1m for up to 100m² to achieve flatter outdoor living areas. Cut and fill exceeding this may be permitted on steeper sites with justification.

Although the application does not provide details regarding the volume/extent of the cut and fill undertaken, a site visit revealed that the earthworks previously undertaken without approval are unlikely to comply with the controls. Specifically with regard to the extent of the earthworks undertaken outside the building footprint. Data from aerial imagery suggest approximately 1000m² of land has been disturbed for the construction of the dwelling and associated parking areas.

Further earthworks are required for the establishment of recommended APZs as land with a slope of greater than 18° to the east of the site is required to be terraced to allow for ongoing maintenance of the APZ. No details have been provided of the extent of earthworks required to comply with the recommendations of the submitted Bushfire Risk Management Report and the Rural Fire Service.



Ceiling heights

The plans do not provide sufficient detail to confirm that the area below the mezzanine level, bathrooms, or bedrooms comply with the 2.7m ceiling control.

A2-Site Access and Parking Code

The site provides sufficient parking areas to comply with the control. Plans or details of the constructed driveway access to the existing dwelling on proposed Lot 17 were not provided so it is not possible to determine if the access complies with Council's Driveway Design Specification. Current access is an unsealed track approx. 370m in length and climbing approx. 100m in elevation from Kyogle road.

The Bushfire Risk Management Report submitted with the application has stated that the driveway access to the existing dwelling includes two sections where the gradient is greater than 15° and recommends that the driveway access be sealed with bitumen to provide for safe access in the event of a bush fire.

A3-Development of Flood Liable Land

Part of the site shares a boundary with the upper reaches of the Tweed River and is mapped as "Could be Affected" by flooding in the upper Tweed River catchment. There are a number of lower order streams on the site. The proposed dwelling site on proposed Lot 18 is elevated above these gullies and is unlikely to be affected by flooding.

The existing unauthorised structure (proposed dwelling) on proposed Lot 17 is elevated above the mapped flood levels. The proposal is compliant with respect to the provisions of Section A3.

A5-Subdivision Manual

The proposal meets the minimum lot size of 40ha for the 7(l) and RU2 zones proposing Lot 17 with an area of 61ha and Lot 18 with an area of 40.3ha.

Section A5.5 of the Subdivision Manual sets out the guidelines and development standards for rural subdivisions and also reference the general requirements for subdivisions as outlined in Section A5.4.5.

Section A5.4.5 specifies criteria in relation to environmental constraints as they apply to the subdivision of land. Of particular relevance to this application are the following constraints.

Threatened species, population or ecological communities or their habitats

The criteria states that subdivisions and associated works must be assessed in accordance with section 5A of the Environmental Planning and Assessment Act 1979 to determine if there will be a significant effect on threatened species, population or ecological communities or their habitats. An assessment of threatened species was conducted however the assessment only considered the impact created by the two proposed dwelling sites proposed with the original application. The threatened species assessment was not updated for the amended application in which the current unauthorised structure is proposed to be used as a dwelling.

The threatened species assessment did not provide an assessment of the development footprint for the current unauthorised structure (proposed dwelling) and the impact on threatened species, ecological communities or significant habitat from 4,500m² of vegetation clearing required for the establishment of recommended APZs.

Significant vegetation

The criteria specify that areas of significant vegetation are to be preserved. Significant vegetation is defined as including regionally significant natural areas and corridors. The site is mapped as having a high ecological status and is within a designated Regional Wildlife Corridor.

The controls state that proposal for sites that contain significant vegetation must:

- *Demonstrate that the development proposal does not detract from the ecological scenic landscape or local identity values of the significant vegetation;*
- *Provide a street and lot layout and or lot sizes and shapes that will enable the proposed development to take place whilst also providing sufficient space (outside building platforms) on lots to enable significant individual trees or small stands of vegetation to be retained.*

The area of the proposed dwelling site on proposed Lot 18 is mapped as being highly modified and the Bushfire Risk Management Report indicates that recommended APZs can be established without significantly impacting adjacent forest vegetation.

The current unauthorised structure (proposed dwelling) is located adjacent to significant vegetation (Tallowood forest and rainforest vegetation) and the establishment of the recommended APZs require vegetation clearing of approximately 4,500m² of significant vegetation and so is not compliant with these controls.

Section A5.5.5 specifies the criteria for subdivision of rural lots and states that for residential purposes a building platform must be identified that:

- *has access to a public road that is readily upgraded to all weather two wheel drive standard;*
- *is free from environmental constraints;*
- *is safe from bushfire;*
- *is above Q100 flood level and has high level road and/or pedestrian access to land above probable maximum flood level;*
- *has adequate solar access;*
- *will not impact on rural activities on nearby land;*
- *has appropriate area and dimensions for the siting and construction of a dwelling and any ancillary outbuildings.*

The nominated proposed dwelling site on proposed Lot 18 has been assessed and is considered to be compliant with the above.

The location of the existing unauthorised structure (proposed dwelling) on Lot 17 does not meet the above provisions in that the development footprint is not free from environmental constraints and is not safe from bushfire. The land immediately to the west and south of the existing dwelling is steep and heavily vegetated. To achieve compliant APZs in accordance with *Planning for Bushfire Protection 2006* an approximate 4,500m² of significant habitat within a Regional Wildlife Corridor would have to be modified resulting in:

- Direct loss of Core Koala Habitat;
- Disruption to the movement of fauna/interactions across the site, particularly to the east of the development on Lot 17;
- Improved habitat conditions for invasive species ;
- Loss of critical hollow resources that provide available habitat to an assemblage of fauna known/highly likely to utilise the site for roosting/nesting/refuge;
- Result in increased edge effects/fragmentation of an existing tract of vegetation recognised as a functional wildlife corridor that currently exhibits low levels of disturbance;
- Removal of vegetation from steep slopes (excess of 18°) such as those encountered onsite within the proposed APZ would exacerbate soil erosion;
- Loss of winter flowering Eucalypt species known as a reliable seasonal blossom resource for species such as the Grey headed Flying Fox (*Pteropus poliocephalus*);
- Removal of dead wood and dead trees;
- Loss of hollow-bearing trees – considered significant even where relatively high numbers remain available elsewhere on site given the high conservation value of the tract of vegetation and likely indirect impacts on function suitability of remaining hollows in close proximity to the building envelope preventing occupation through increased activity ;
- Invasion, establishment and spread of *Lantana camara*.

The subject site contains a number of previously cleared areas. The amended application failed to identify alternate dwelling sites on proposed Lot 17 that would result in a more favourable environmental outcome.

A16-Preservation of Trees or Vegetation

Not applicable. No clearing of vegetation is proposed with areas zoned under Tweed Local Environment Plan 2014 to which Section A16 applies.

Section A16 does not apply to the clearing of vegetation within areas identified as Deferred Matter under clause 1.3(a) of Tweed Local Environment Plan 2014. The provisions under Tweed Local Environment Plan 2000 apply to the clearing of vegetation (addressed elsewhere in the report).

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

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

The subject site is not nominated as Coastal Land and therefore this clause is not applicable.

Clause 92(1)(b) Applications for demolition

Not applicable to the subject application as no demolition is proposed as part of this application.

Clause 93 Fire Safety Considerations

The application is seeking consent for the use of a partially completed dwelling. Any approval would be conditioned to ensure compliance with this clause.

Clause 94 Buildings to be upgraded

The application is seeking consent for the use of a partially complete dwelling. Any approval would be conditioned to ensure compliance with this clause.

- (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 site is approximately 6.3km from the coast and not located within a specific area identified under that Plan.

The site is located adjacent to any coastal estuaries covered by this plan.

Coastal Zone Management Plan for the Tweed Coast Estuaries 2013.

The site is located adjacent to any coastal estuaries covered by this plan.

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

The site is not located with the Cobaki or Terranora Broadwater areas to which this plan applies.

- (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/Natural Hazards - Bushfire

The proposal of a two lot rural subdivision in which each lot meets the minimum lot size is consistent with the context of the locality and is permissible development within the zone. As each lot meets the minimum lot size a dwelling is permitted on each lot.

The proposed dwelling site on proposed Lot 18 is located on an area of the site that has been previously cleared and relatively free from environmental constraints including the risk of bushfire. The Bushfire Risk Management Report and indicates that the recommended 40m x 40m (1,600m²) APZ can be established without significant impact on the surrounding vegetation and habitat.

The unauthorised structure (proposed dwelling) on proposed Lot 17 is located adjacent to vegetation identified as Core Koala Habitat. An APZ of 114m x 43m (8,322m²) is required due to the steepness of the slopes surrounding the dwelling and the vegetation types. Vegetation clearing and terracing of approximately 4,500m² is required within the area identified as Core Koala Habitat.

It is therefore considered that the location of the unauthorised structure (proposed dwelling) is not compatible with the context or setting of the surrounding environment being a significant habitat.

Access, Transport and Traffic

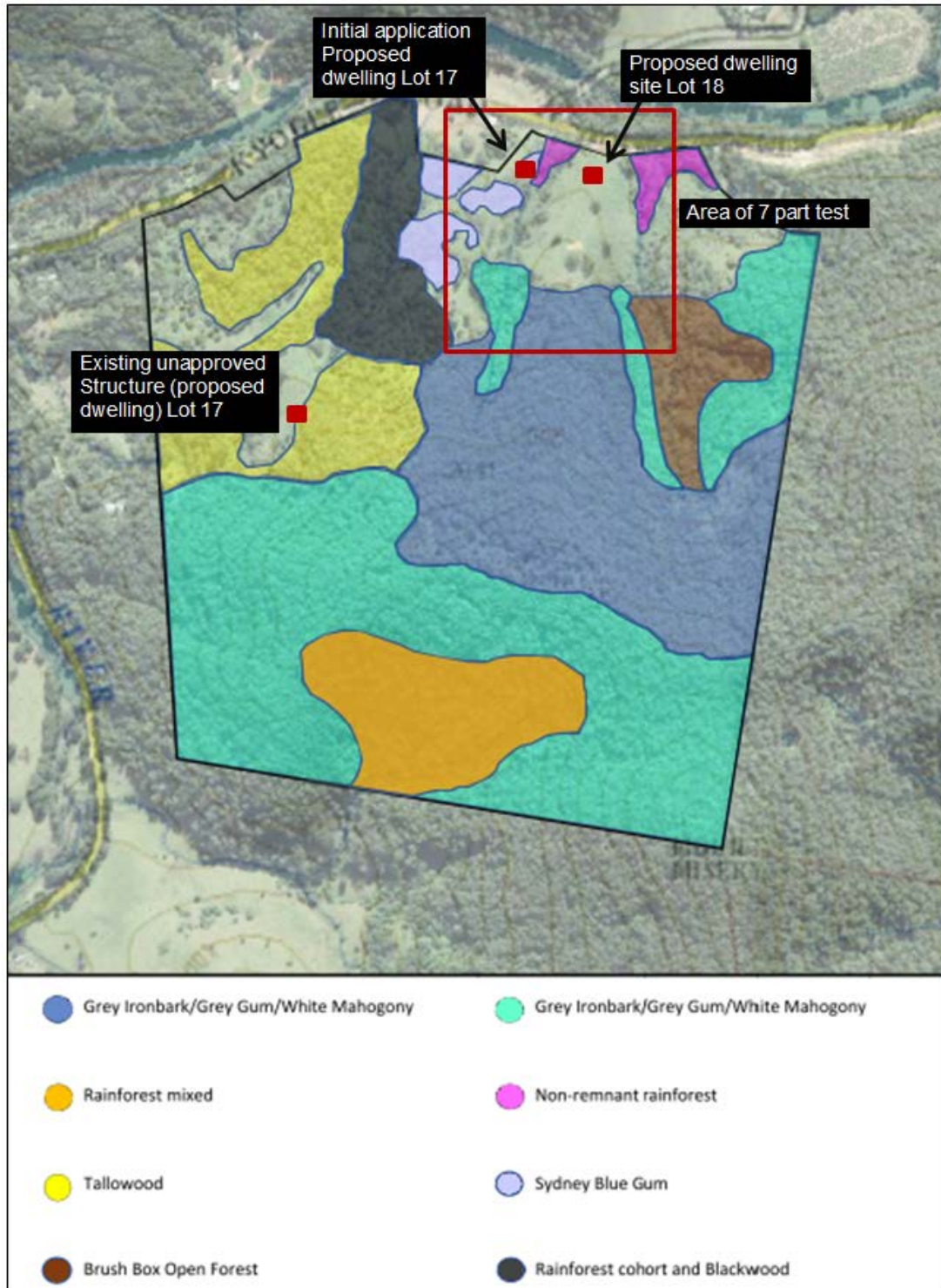
Access to the site is required to comply with *Planning for Bushfire Protection 2006* except where provided with an exemption by the Rural Fire Service for an alternative access. The provisions for access within section 4.1.3(2) *Planning for Bushfire Protection 2006* specify that a minimum carriage way with a width of 4m is required with passing bays with a minimum width of 6m to be provided every 200m. Carriage ways are required to have a 4m clearance above ground level.

It has not been made clear in the application if further additional vegetation removal is required to comply with the provisions. Aerial imagery suggests that the access track to the unauthorised structure (proposed dwelling) has been upgraded in recent times which may have involved the removal of vegetation.

Flora and Fauna

An Ecological Assessment was submitted with the initial application and further information was provided in an addendum to support the amended application for the two lot subdivision and dwelling. The Ecological Assessment addressed the impact of the proposal on threatened species, population or ecological communities listed within the *Threatened Species Conservation Act 1995* and the *Environment Protection and Biodiversity Conservation Act 1999*. An assessment with respect to State Environmental Planning Policy 44 Koala Habitat protection was also provided which is discussed in an earlier section of this report.

Threatened fauna and flora species are known to occur on site including Koala, Grey headed flying fox and Quoll. The ecological assessment performed a seven part test of significance in accordance with clause 5A of the Environmental Planning and Assessment Act 1979 on 10 threatened flora species and 16 threatened fauna species. The report concluded that the proposed development was unlikely to significantly impact on any threatened species, populations, ecological communities or their habitat where appropriate mitigation measures are implemented.



Amended Image from Ecological Assessment showing area where 7 part test was conducted in relation to current application which seeks approval for the use of the unapproved structure as a dwelling.

It is noted that the seven part test of significance was performed for the original application for the two lot subdivision and proposed dwellings sites located on the northern portion of the site.

The seven part test did not include an assessment of habitat in the vicinity of the existing unauthorised structure (proposed dwelling) location and does not account for impacts associated with the clearing of vegetation and terracing required for the establishment of an approximate 8000m² APZ.

Furthermore it was noted that flora species known to occur onsite or considered to have a high likelihood of occurrence where not subject to the seven part test as the seven part test did not assess habitat in the vicinity of the existing unapproved structure (dwelling).

As such significant uncertainty remains as to the extent and level of cumulative impact on threatened species, their habitats and Endangered and Threatened Ecological Communities listed under the *Threatened Species Conservation Act 1995*.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The surrounding land use includes rural residential development and agricultural and grazing activities interspersed with areas of natural bushland. The two lot subdivision is permissible within the zone and will not impact existing uses on adjoining lots.

However as the existing unapproved structure (proposed dwelling) requires vegetation removal of Core Koala Habitat within a designated Regional Wildlife Corridor, the proposed dwelling is not considered to be suitable in its current location. Alternate dwelling sites that have less direct impact on significant habitat are available on site.

Farmland of State or Regional significance (Section 117(2) Direction 14 dated 30 September 2005 (Refer to Council resolution of 25 July 2006))

A small portion of the site along the boundary with the Tweed River, being less than 0.03 percent of the site, is mapped as being Significant Non-Contiguous Farmland under the Northern Rivers Farmland Protection Project. This area is within proposed Lot 18 with a maximum width of 3m and it is unlikely that the proposal will impact directly or indirectly on the current or future use of the identified significant farmland. Referral to the Department of Primary Industry is not necessary in this regard.

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

The application for a two lot subdivision was initially referred the Rural Fire Service in accordance with section 100B of the Rural Fires Act 1997. The amended application to for a two lot subdivision and dwelling was referred to the RFS for comment following receipt of the amended plans.

The RFS issued conditions as a bush fire safety authority under section 100B of the Rural Fires Act 1997. The proposal is to comply with the following specified Asset Protection Zones:

- North for a distance of 52 metres as an Inner Protection Zone (IPA);
- South for a distance of 21 meters as an IPA;
- East for a distance of 62 meters as an IPA; and
- West for a distance of 52 meters as an IPA.

The conditions also stated that for APZs on slopes greater than 18°, the property shall be landscaped or managed (e.g. terracing) with suitable access being provided to the APZ for ongoing maintenance of the area. General advice provided by the RFS acknowledged that the establishment of asset protection zones on proposed Lot 17 may require the clearing of vegetation.

Furthermore, clearing of additional vegetation may be required to comply with the requirement for access to satisfy the provisions of *Planning for Bushfire Protection 2006*. The conditions would be applied to any consent issued.

(e) Public interest

The application represents an unacceptable impact on significant habitat and as such the proposal is considered not to be in the public interest.

OPTIONS:

1. Refuse the application in accordance with the recommendation and engage Council's solicitors to provide advice regarding a remedy to the authorised activity.
2. Report this matter to the next Planning Committee Meeting with draft conditions of consent to enable consideration for the application as proposed.

CONCLUSION:

It is considered that the negative ecological impacts likely to be associated with the proposed development, specifically with the approval of the existing unapproved structure for the purposes of a dwelling, cannot be avoided, minimised or managed to an acceptable level through conditions of approval. As such the application is being recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

5 [PR-PC] Development Application DA04/0162.03 for an Amendment to Development Consent DA04/0162 for Expansion and Amalgamation of Existing Quarries at Lot 28 DP 1079480 Pollards Road, Dulguigan

SUBMITTED BY: Development Assessment and Compliance

nhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

ROLE: **Provider**

SUMMARY OF REPORT:

In November 2004 Council approved DA04/0162 which authorised the amalgamation and expansion of three existing quarries at Dulguigan Road, North Tumbulgum. These quarries were the Reedy Creek, Sanderson's, and Pollards Quarries. DA04/0162 was issued as a deferred commencement consent which was later activated on 7 March 2005. The quarries were merged and the material between the three quarries has started to be removed to allow the site to operate as one quarry operation over new Lot 28 in DP 1079480. The amalgamated quarry was previously known as the Reedy Creek Quarry but is now known as the Hy-Tec Tumbulgum Quarry as new owners took over the site in 2011.

In December 2014 Council received the first Section 96(2) Modification to DA04/0162 from Hy-Tec Industries (Queensland) Pty Ltd (Reference Number DA04/0162.02). The application specifically sought consent to amend the extraction boundary of the quarry (predominantly increasing the development footprint to allow an extra 1,400,000m³ of resource to be extracted over an extra 7 years). In addition the application sought consent to modify conditions 1, 26 and 27 of the existing consent as it related to the approved plans, noise barriers and the acoustic fence requirements. This Modification was approved by Council at the Planning Committee Meeting of 4 August 2016.

In December 2016 Council received its second and **current** Section 96(1A) Modification to DA04/0162 from Hy-Tec Industries (Queensland) Pty Ltd (Reference Number DA04/0162.03). The proposed Modification was lodged to seek a variation to Condition 3 of the consent which states:

3. *The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers.*

The above condition allows the average of 40 trips a day which equates to a total of 14,600 trucks being allowed to depart the quarry per year. It should be noted that the yearly consent period for DA04/0162 is 7 March to 6 March annually as the consent officially commenced on 7 March.

The modification seeks to delete Condition 3 and replace it with a new Condition 3A to read as follows (new text in red):

- 3A. *The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers. With the exception of the 2016/2017 consent year where the total number of trucks departing the quarry shall not exceed 16,000, being an average of 44 vehicles a day.*

The applicant has stated that the reason for this proposed change is that at 1 December 2016 (3 months before the yearly traffic count was to finish) the applicant acknowledged that the total number of trucks to depart the quarry was likely to exceed the allowed 14,600 trips if normal commercial operations continued throughout December 2016 – 6 March 2017.

As the consent year of 7 March 2016 to 6 March 2017 has now lapsed it should be noted that the quarry did continue to operate during this period and did exceed the traffic allowed under the existing conditions. However, the S96 Modification was in the system and being assessed at this time.

The continued operation of the quarry allowed the continued supply to local projects and businesses.

The applicant stated that the increase in truck departures was a direct result of increased demand from local projects and businesses which utilise smaller than average trucks for haulage material. For example, sales to Tweed Shire Council are transported by trucks with an average payload of 15.73 tonnes which is significantly less than the typical 32 tonne payload truck.

The applicant anticipated that the end of year figure would be 1,400 truck departures more than that permitted by Condition 3. Accordingly S96 Modification DA04/0162.03 was lodged for a one off temporary change to Condition 3 for an extra 1,400 trucks for the 7 March 2016 – 6 March 2017 consent year (only). This equated to an increase of 4 extra trucks per day when averaged over the year as required by the condition (total 44 trucks per day instead of 40).

The applicant has also stated that this modification does not seek to increase the maximum annual extraction volume (200,000 cubic metres / 550,000 tonnes). Furthermore, no change is proposed to the extraction boundaries, hours of operation, or any other aspect of the consent.

The actual number of trucks to depart the site from 7 March 2016 to 6 March 2017 was 15,910 movements totalling 411,678.08 tonnes.

This current modification was advertised and notified to adjoining land owners and any original submitters to DA04/0162 or DA04/0162.02. Following this exhibition period Council received two submissions. One submission was an individual submission and one submission was on behalf of the Tumbulgum Community Association. The objections primarily related to traffic/road safety concerns (resulting in health and safety concerns), impact of noise and dust from trucks on dwellings along Dulguigan Road, total extraction compliance concerns and the lack of community consultation. The individual objection has specifically queried the presumption that the condition restricting the quarry to 200,000m³ of extraction equates to 550,000 tonnes as documented by the applicant. The objector has stated that if this conversion rate is not accurate then the total amount of material being removed from the quarry could be contrary to the issued consent.

Council has liaised with the licencing authority for quarries being the NSW Environment Protection Authority (EPA) on the matter of converting m³ into tonnes and the EPA are satisfied with the applicant's data which indicates the quarry is not exceeding its annual extraction amounts. However, this matter is discussed in detail in the following report.

The application as proposed which seeks approval to amend the consent to allow additional truck movements effective for the 7 March 2016 to 6 March 2017 (only) is recommended for approval given the limited nature of the modification.

Data from the quarry operators indicates that from 7 March 2017 to 30 July 2017 the quarry has had 4226 trucks depart the site (approx. 29 per day) removing 77,631.29 tonnes. This is below the allowable averaged 40 trucks per day and within the allowable extraction limits.

Therefore there is no request or need to amend the consent for any subsequent year.

RECOMMENDATION:

That Development Application DA04/0162.03 for an amendment to Development Consent DA04/0162 for expansion and amalgamation of existing quarries at Lot 28 DP 1079480 Pollards Road, Dulguigan be approved subject to the following amendment:

- 1. Delete Condition 3 of Schedule B which states:**
 - 3. The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers.**

and replace it with Condition 3A (in Schedule B) which states:

- 3A. The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers. With the exception of the 2016/2017 consent year where the total number of trucks departing the quarry shall not exceed 16,000, being an average of 44 vehicles a day.**

REPORT:

Applicant: HY-Tec Industries (Queensland) Pty Ltd
Owner: HY-Tec Industries (Queensland) Pty Ltd
Location: Lot 28 DP 1079480 Pollards Road, Dulguigan
Zoning: RU2 Rural Landscape
Cost: Not Applicable to S96 Modification

Background:

The current quarry is located on Lot 28 in DP 109480 (which was a consolidated Lot created in 2005) on the north western side of Dulguigan Road, approximately 7 kilometres north east of Murwillumbah and 2.5 kilometres west of Tumbulgum. The surrounding area comprises sugar cane, bushland, grazing land and six dwelling houses. The land comprises a ridge rising up to approximately RL 90 metres at the peak, which is located in the centre of the site. Other than the existing extraction areas, the land is heavily vegetated.

The site contains a significant well connected tract of remnant vegetation known to support a suite of threatened flora and fauna species and ecological communities.

Following is a table detailing the history of the site and how the amalgamated quarry and current controls came about with a comparison to the proposed amended consent:

ITEM	REEDY CREEK QUARRY	SANDERSON'S QUARRY	POLLARDS QUARRY	AMALGAMATED QUARRY AS PER DA04/0162	QUARRY AS PER DA04/0162.02	PROPOSED S96 - QUARRY AS PER DA04/0162.03
EXTRACTION RATE	200,000m ³ pa 195,000m ³ average over a three year period	30,000m ³ pa 20,000m ³ average over a three year period	7,300m ³ pa 0.3ha lateral expansion during any 12 month period	200,000m ³ pa 195,000m ³ average over a three year period (Approximately 5,100,000m ³ total extraction)	No increase (Approximately 4,239,800m ³ total extraction as a result of increased boundaries but also increased bench widths which lowers the overall extraction volume)	No Change
QUARRY LIFE	20 years	40-50 years	Unknown	27 years from November 2014 (2031)	An Extra 9 Years to enable extraction of the additional material 1,755,000m³ (2040)	No Change
OPERATING	7.30am – 6pm	7.00am to 5.pm Monday	Unknown	7.30am – 6pm Monday to	No change proposed	No Change

ITEM	REEDY CREEK QUARRY	SANDERSON'S QUARRY	POLLARDS QUARRY	AMALGAMATED QUARRY AS PER DA04/0162	QUARRY AS PER DA04/0162.02	PROPOSED S96 - QUARRY AS PER DA04/0162.03
HOURS	Monday to Friday 7.30am to 12 Noon Saturdays No works Sundays or Public Holidays	to Friday 7.00am to 12 Noon Saturdays		Friday 7.30am to 12 Noon Saturdays No works Sundays or Public Holidays	however the current EPA licence states: Saturday operating hours as 8am to 1pm The applicant needs to comply with both approvals so Council Officer's recommend Council align the consent with the existing EPA licence.	
BLASTING FREQUENCY	Max 3 times per month	As required	Unknown	Max 3 times per month	No change	No Change
TRAFFIC	Max 40 trucks per day (averaged over a year)	No specific limits on consent, however the EIS indicated 8 truck loads per day	Unknown	Max 40 trucks per day (averaged over a year). This equates to 14,560 trucks per year.	No change	Increase for the 2016/2017 consent year (only) where the total number of trucks departing the quarry shall not exceed 16,000, being an average of 44 vehicles a day.
ACCESS	One main entry/exit.	One small unformed entry/exit	One small unformed entry/exit	One main entry/exit (the old Reedy Creek access) with all other access points off Dulguigan Road removed	No change	No change

Proposal:

On 1 December 2016 the applicant lodged a request for Condition 3 of Schedule B to be amended. Condition 3 of the consent currently states:

3. *The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers.*

The proposed modification requests that Condition 3 of Schedule B of DA04/0162 be amended to read as follows:

- 3A. *The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers. With the exception of the 2016/2017 consent year where the total number of trucks departing the quarry shall not exceed 16,000, being an average of 44 vehicles per day.*

The above amended condition would facilitate a temporary increase in the average vehicles per day departing the Quarry for the 2016/2017 consent year only (7 March 2016 – 6 March 2017).

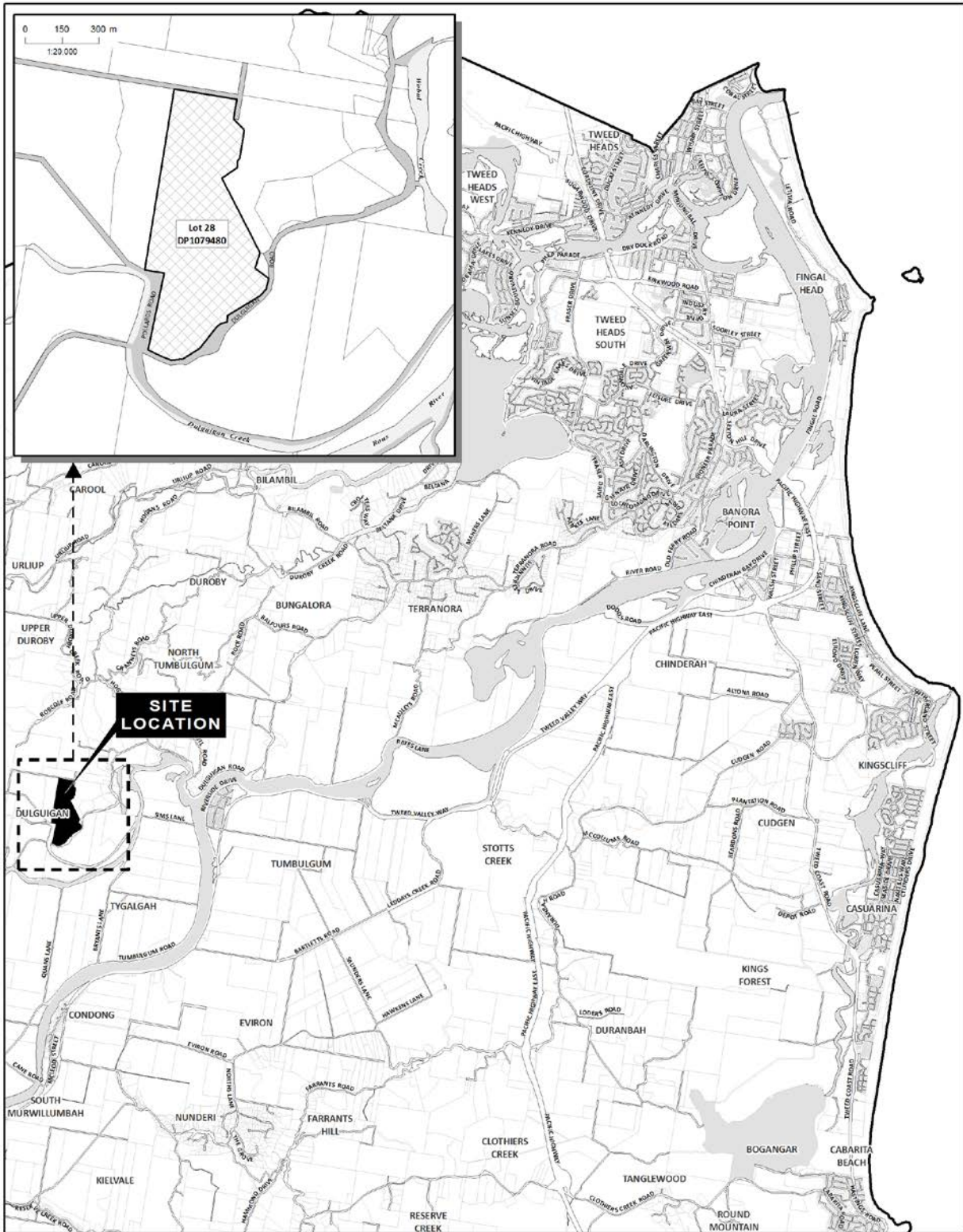
As this period has now lapsed it should be noted that the quarry continued to operate during this period and did exceed the traffic allowed under the existing conditions. However, the S96 Modification was in the system and being assessed at this time.

The continued operation of the quarry allowed the continued supply to local projects and businesses.

Hy-Tec has implemented and will continue to implement the following measures to facilitate the proposed temporary increase in average truck movements:

- Reducing truck numbers during the hours of 8:00am to 9:30am and 3:00 to 4:00pm (school traffic hours).
- Requiring all truck drivers (internal or external) to sign a code of conduct to ensure they understand the requirements of the Tumbulgum community.
- Working with the Tumbulgum Community Committee to advise on why the additional truck movements are occurring, and more specifically the individual projects which require the additional truck movements. The Tumbulgum Community Committee placed a notification in their newsletter.
- Notifying the community of the opportunity to report any truck driver misconduct to the quarry with the registration number and the time of the incident.

LOCALITY PLAN:



Locality Plan

Lot 28 DP1079480
Pollards Road, Dulguigan

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

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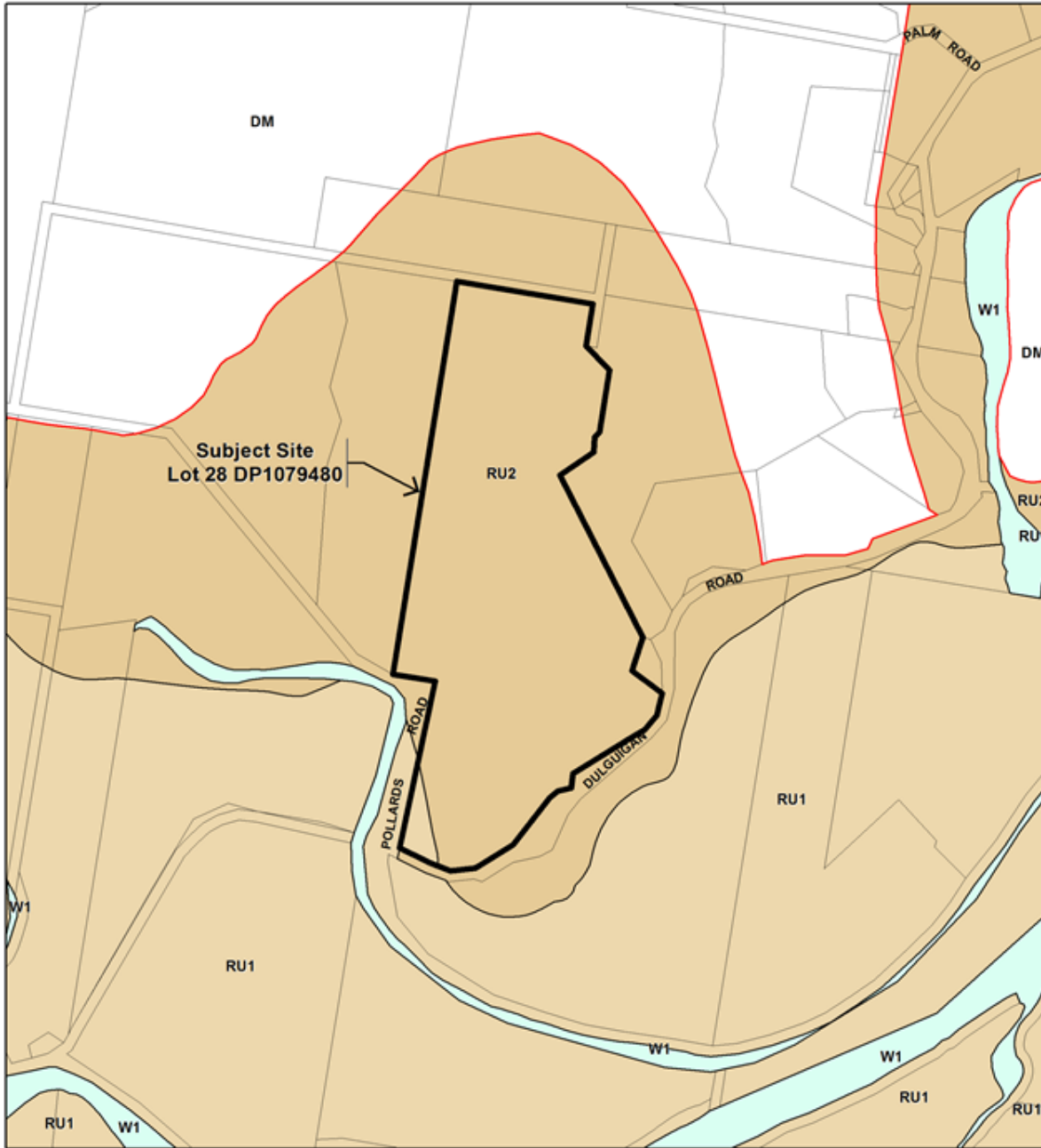


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Author: Elizabeth - Strategic Planning & Urban Design Unit

Date Printed: 25 October 2015

ZONING PLAN:



CURRENT LAND ZONING

Lot 28 DP1079480
Pollards Road, Dulguigan

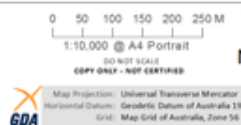
Tweed Local Environmental Plan 2014

Land Zoning

B1 Neighbourhood Centre	E1 National Parks & Nature Reserves	R5 Large Lot Residential	SP1 Special Activities	DM Deferred Matter
B2 Local Centre	IN1 General Industrial	RE1 Public Recreation	SP2 Infrastructure	MD SEPP (Major Development) 2005
B3 Commercial Core	IN4 Working Waterfront	RE2 Private Recreation	SP3 Tourist	TCC Tweed City Centre LEP 2012
B4 Mixed Use	R1 General Residential	RU1 Primary Production	W1 Natural Waterways	
B5 Business Development	R2 Low Density Residential	RU2 Rural Landscape	W2 Recreational Waterways	
B7 Business Park	R3 Medium Density Residential	RU5 Village	W3 Working Waterways	

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Author: J. Batchelor - Strategic Planning & Urban Design Unit

Date Printed: 21 October, 2015

AERIAL IMAGE:



AERIAL PHOTO - April 2015

Lot 28 DP1079480
Pollards Road, Dulguigan

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

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

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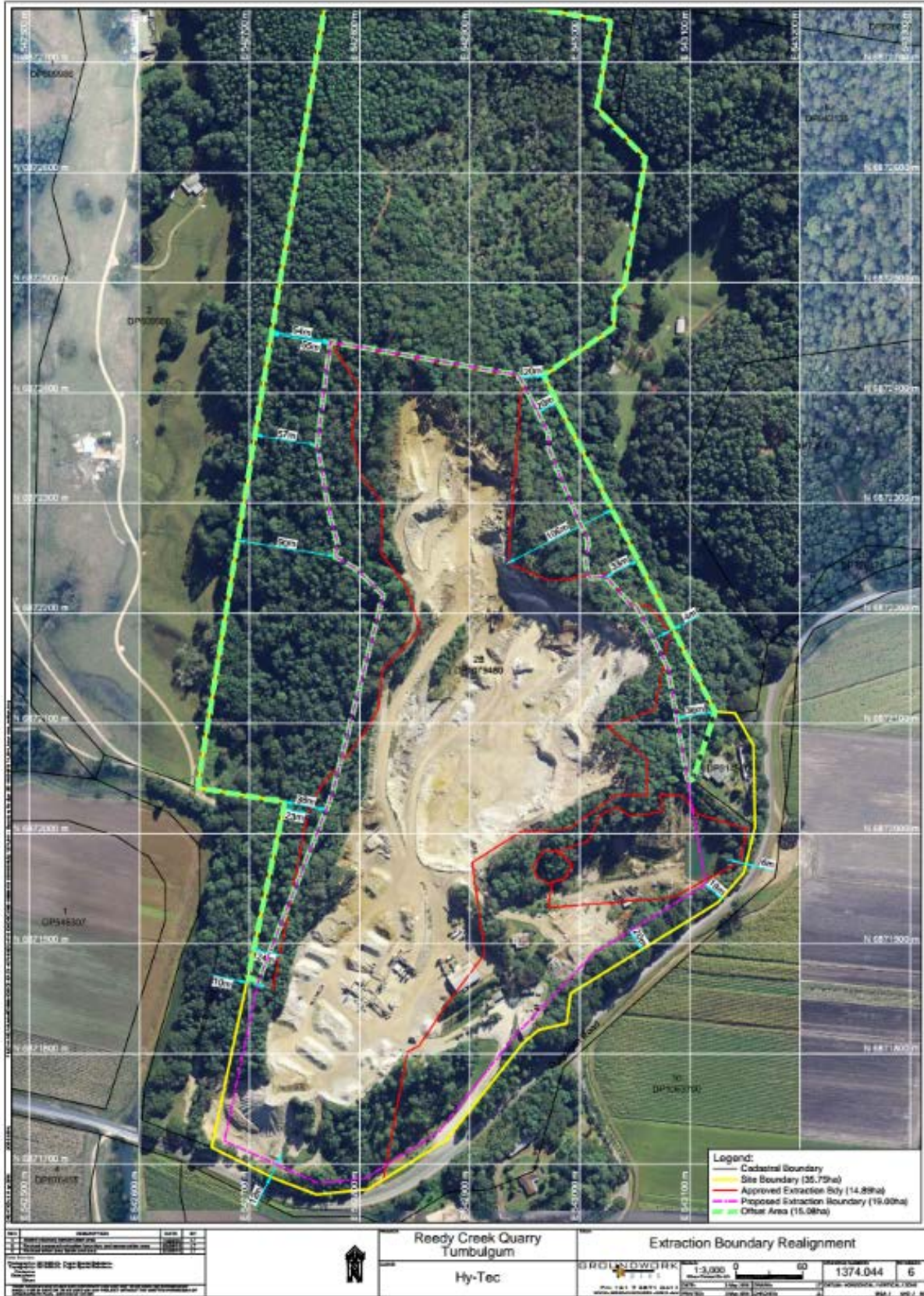
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Author: J. Batchelor - Strategic Planning & Urban Design Unit

Date Printed: 21 October, 2015

APPROVED DA04/0162.02 PLAN

(Note: red line existing approved boundary, pink line proposed alignment; green line depicts area for a Biodiversity Offset Area as Per OEH Guidelines):



APPLICANTS TYPICAL DRIVERS CODE OF CONDUCT Page 1:



Driver's Code of Conduct
Tumbulgum Quarry
Be professional – It's your job!

Procedure

This procedure applies to all transport related activities conducted by Hy-Tec Contractors or Customers to any Hy-Tec quarry located in Queensland or Tweed Coast Area of NSW.

Objective

This Driver's Code of Conduct has been established to minimise the impact of the Hy-Tec Quarries located at Tumbulgum, Goomeri, Coominya, Calcium and Cape Cleveland transport activities on the Community and the environment to ensure high Quality, Reliability and Safe Services.

Ownership

The driver of Hy-Tec Contractors or Customers:

- Have completed the Hy-Tec induction process.
- Comply with all Road Rules and regulations regarding speed, load limits and driving hours (Fatigue Management).
- Compliance to all Health and Safety requirements including correct PPE and Clothing.
- Attend training as requested by Hy-Tec.
- Ensure that all loads are correctly secured and covered before entering public roads (compliance with State Laws).
- Limit the use of engine brakes and other nosy driving practices in built up areas.
- Show courtesy to all Customers, Road Users and Members of the Public at all times.
- Remain aware of School Zone times and recommended speed nominated morning and afternoons.
- Ensure that your actions provide recognition upon yourself, your company, Hy-Tec and the transport industry in general.
- Completion of the site specific induction at all Hy-Tec sites annually that satisfies the Health and safety procedures for the Hy-Tec business.
- Compliance with the Driver Vehicle Checks (chain of responsibility – CORs) as required at all of Hy-Tec sites.
- Ensure trucks have identification to easily be identified by road users.

APPLICANTS TYPICAL DRIVERS CODE OF CONDUCT Page 2:



Community commitment

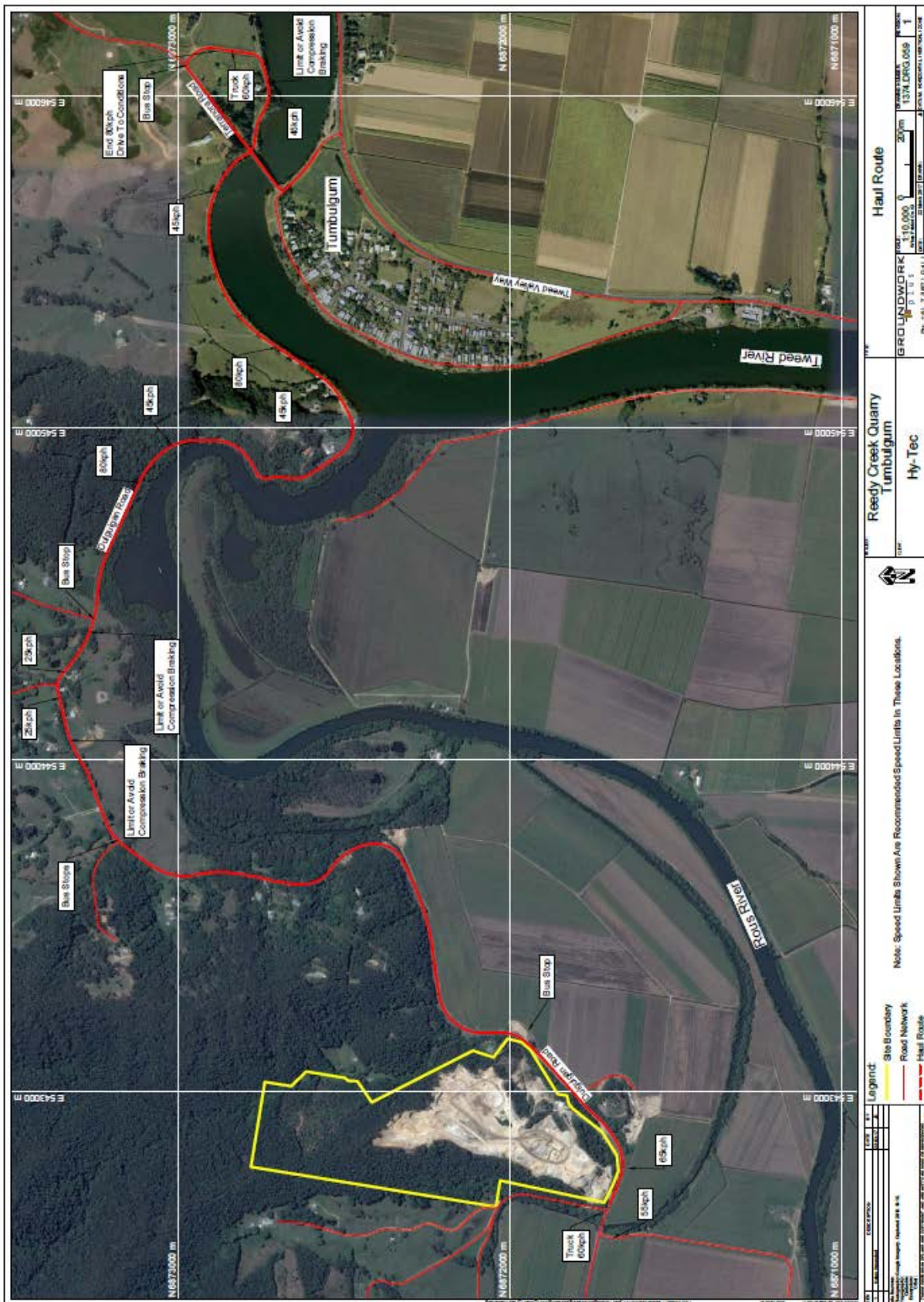
Dulguigan Road is the Road leading up to and away from the HY-Tec Quarry and is a requirement for all Transport operators and their drivers to obey the road requirements on this road and keep in mind the community use of the road including school children and cyclists.

Disciplinary Action

You will face disciplinary action if you do not meet the requirements in this Code of Conduct or Hy-Tec receives a Community complaint regarding your driving or vehicle. Disciplinary action can include a verbal warning, a written warning, temporary or permanent dismissal from the site and/or termination of any contract/agreement with Hy-Tec.

Transport Company	
Driver's Name (printed)	
Driver's Signature	
Date	

APPLICANTS TYPICAL HAULAGE ROUTES WITH NOTES FOR TRUCK DRIVERS:



Considerations under Section 96(1A) and 79C of the Environmental Planning and Assessment Act 1979.

S96(1A) and 96(3) of the Act specifies that:

(1A) Modifications involving minimal environmental impact

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

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

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

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*

Accordingly, the following report addresses these heads of consideration.

To determine if the S96 Application meets the substantially the same test a 79C (1) Assessment has been undertaken in the first instance:

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

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

Tweed Local Environmental Plan 2014

(Note : The original DA was assessed against LEP 2000)

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 existing consent has extensive conditions to ensure responsible environmental management. The proposed temporary increase in truck movements is considered to satisfy the aims of the plan.

Clause 2.3 – Zone objectives and Land Use Table & Permissibility

The subject site is now zoned RU2 Rural Landscape which has the following zone objectives:

Objectives of zone

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*

- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

The quarry would be best defined as an extractive industry which is permissible with consent however permissibility of this modification is derived by S109B 2(b) of the Environmental Planning and Assessment Act 1979 which states:

109B Saving of effect of existing consents

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

The additional temporary truck movements were necessary to allow the quarry to continue operating between December 2016 to March 2017, the temporary increase in trucks does not contravene the objectives of the zone.

Clause 7.10 - Essential Services

All essential services are available to the development.

State Environmental Planning Policies

SEPP (Mining, Petroleum Production and Extractive Industries) 2007 and SEPP (Infrastructure) 2007

In accordance with Clause 104 Traffic Generating Developments and Schedule 3 of the Infrastructure SEPP and Clause 16 of the SEPP (Mining, Petroleum Production and Extractive Industries) 2007 the first S96 application was originally referred to the Roads and Maritime Services who advised that Council should be satisfied as to certain matters pertaining to traffic as the affected roads are local roads and for Council's consideration.

The application was accordingly referred to Council's Traffic Engineer who advised that:

Comments from the first S96 Modification DA04/0162.02 are still valid as follows:

"Traffic volumes on Dulguigan Road are currently around 500 vpd (481 vpd @ quarry - 2012) at the quarry and approaching 900 vpd (812 vpd @ Terranora Rd - 2012) at the Tumbulgun end. Traffic count records for

Dulguigan Rd dating back to 2003 show little to no growth in traffic volumes during the period.

The Dulguigan Road formation typically incorporates a sealed width of 6.6m or greater which roughly corresponds to a class B rural road in Council's specifications. Council's development design specification D2 - Road Design and Standard Drawing SD.009 suggest a class B rural road is suitable for up to 250 vpd. However, Austroads Guide to Road Design Part 3: Geometric Design (Table 4.5) suggests that a road of this width is suitable for up to 1000 vpd.

No detailed analysis of sight distances at the multiple corners and intersections along the haul route has been performed.

Dulguigan Rd has a rural speed limit of 100kph, however, the road geometry along the haul route generally restricts speeds to less than this. A truck speed limit of 60kph is applied to the haul route between the quarry and Terranora Rd."

Dulguigan Road is capable of accommodating the minor temporary increase of 4 additional trucks per day (on average over a year) without any additional road improvement works or survey data.

A recent heavy vehicle traffic incident on Dulguigan Road has caused Council to investigate improved line markings and signage on the road to assist in delineation. Further speed surveys are to be conducted and the data will form the basis of discussions with the quarry operator on enforcement strategies.

The S96 Modification is considered satisfactory with all other provisions of the SEPP's as the Modification is minor and temporary.

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

Nil applicable

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

Nil applicable to the proposed S96 Modification

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

Designated Development

The original application did not constitute "Designated Development" therefore current S96(1A) has been assessed against the relevant legislation but not as a Designated S96 Application.

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

The proposed site is located outside the area covered by the Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

No demolition is proposed in the application.

Clause 93 Fire Safety Considerations

No consideration of fire safety within the bounds of Clause 93 is required.

Clause 94 Buildings to be upgraded

There are no buildings to be upgraded.

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

Not applicable

Tweed Shire Coastline Management Plan 2005

Not applicable

Tweed Coast Estuaries Management Plan 2004

Not applicable

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

Not applicable

(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**

Access, Transport and Traffic

As mentioned above, the application was referred to Council's Traffic Engineer who made the following comments

Dulguigan Road is capable of accommodating the minor temporary increase of 4 additional trucks per day (on average over a year) without any additional road improvement works or survey data.

A recent heavy vehicle traffic incident on Dulguigan Road has caused Council to investigate improved line markings and signage on the road to assist in delineation. Further speed surveys are to be conducted and the data will form the basis of discussions with the quarry operator on enforcement strategies.

Noise & Hours of Operation

The subject application does not propose any changes to the approved hours of operation.

The applicant has stated that they are prepared to make a conscious effort to reduce truck numbers during the hours of 8:00am to 9:30am and 3:00 to 4:00pm (school traffic hours).

However hours of operation are listed on the EPA licence as follows:

L6. Hours of operation

L6.1 *Activities covered by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, must only be carried out between the hours of 7:30 am and 6:00 pm Monday to Friday, and 8:00 am and 1:00 pm Saturday, and at no time on Sundays and Public Holidays.*

L6.2 *This condition does not apply to the delivery of material outside the hours of operation permitted by condition L6.1 if that delivery is required by police or other authorities for safety reasons; and/or the operation or personnel or equipment are endangered. In such circumstances, prior notification must be provided to the EPA and affected residents as soon as possible, or within a reasonable period in the case of emergency.*

L6.3 *The hours of operation specified in condition L6.1 may be varied with written consent if the EPA is satisfied that the amenity of the residents in the locality will not be adversely affected.*

L6.4 *Heavy vehicles (including excavators, haul trucks, loader and water carts) and machinery [including screening plant, jaw crusher, feed bin, cone crusher, rock drill, water pump and generator (genset)] cannot be started, maintained, arrive or leave the site or operated outside of operating hours as detailed in L6.1 and at no time on Sundays and Public Holidays."*

Dust

The previous S96 Modification stated:

An Assessment of Noise and Dust Impacts has been prepared by MWA Environmental Pty Ltd dated 17 November 2014. The report states the following;

"Based upon our review of the available dust monitoring results the current quarrying activities are compliant with the relevant objective by a significant margin at the nearest residential land to the west. As such, subject to implementation of the dust management measures recommended in Section 3.4, it is considered that the proposed extraction activities within the western area of Modified Extraction Boundary can occur in compliance with the requirements of the REMP and without causing unreasonable dust nuisance at properties to the west"

This is still considered valid for the current S96 Modification.

Approvals from other Regulatory Authorities

The application was referred to the NSW EPA as the licencing authority for the quarry.

Initially the EPA stated that:

“Offsite traffic movements and any effects which may arise from those, are not an issue for the EPA to comment on.”

However, in response to the letters of objectors which queried the conversion of 200,000m³ to 550,000 tonnes the EPA stated:

“In the objection letter it is proposed that based on industry standard a conversion rate of 1.7 tonne/m³ be used:

As stated below, documents provided by Hy-Tec to the EPA are based on actual laboratory results of the resource from the quarry which indicates 2.75 tonne/m³ (refer below).

*“Currently the site has an approved annual extraction limit, as stated on the development consent, for extraction of 200,000m³. As discussed, we provide NATA certified testing documentation to the Department to confirm, that using the consent threshold, the true and accurate annual tonnage based on a 200,000m³ annual extraction limit using an Average Apparent Particle Density of 2.65 t/m³ is 530,000 tonnes per annum, refer **APPENDIX 2 NATA DENSITY TEST RESULTS.***

*Critically it is noted that within the resource certain rock types as expected having differing densities and the meta-greywacke and carbonaceous shales on site have insitu densities of up to 2.85t/m³. Accordingly, and when averaged across the site, the average Apparent Particle Density used or Joint Ore Reserves Committee Resource reporting density is 2.75t/m³, as this is the average global density assigned to the block model, refer **PLATE 1.***

For Environment Protection Licence 3430 extraction limits, the EPA are using the conversion rate based on the laboratory results from the quarry resource.”

The applicant further clarified that:

“Regarding the tonnage conversion rates, as previously discussed with Council, the consent currently limits the annual extraction rate to a maximum of 200,000m³. This volume measurement relates to the amount of resource measured in-situ, for which the conversion rate from in-situ cubic metres to tonnes is confirmed by testing previously submitted to the Environmental Protection Authority (EPA) and Council to be 2.75t/m³.”

Both Council and the EPA agreed that this volume measurement relates to the amount of resource material measured in-situ.

(c) Suitability of the site for the development

North Coast Regional Plan 2036

The strategy is intended to protect the unique environmental assets, cultural values, and natural resources of the Region while ensuring that future planning maintains the character of the Region and provides for economic opportunities.

Direction 13 Sustainably Manage Natural Resources has the following actions:

Actions

- 13.1 Enable the development of the region's natural, mineral and forestry resources by directing to suitable locations land uses such as residential development that are sensitive to impacts from noise, dust and light interference.
- 13.2 Plan for the ongoing productive use of lands with regionally significant construction material resources in locations with established infrastructure and resource accessibility.



The subject site is outside of the significant farmland areas.

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

The S96 Application was referred to the following Government Agencies and their relevant responses are detailed below:

Government Agency	Nature of Government Agency Comments
NSW Environment Protection Authority	<p>This application relates to an existing facility which is currently licensed under the Protection of the Environment Operations Act (POEO Act).</p> <p>The proposed amendment makes no changes to the existing licence conditions.</p> <p>Traffic is a matter for Council as the local Roads Authority</p>

Further to the Government agency referrals the application was advertised and notified for a period of 14 days in January 2017 (18 January 2017 – 1 February 2017).

Council received 2 submissions. One submission was an individual submission and one submission was on behalf of the Tumbulgum Community Association.

Submission 1 – Tumbulgum Community Association (Extracts below)

...The North Tumbulgum and Tumbulgum communities have expressed concern about the road condition and safety on Dulguigan Road. Of particular concern is the high volume of heavy weight trucks travelling to and from the Tumbulgum Quarry and the associated driver behaviour.

Dulguigan Road is a secondary road designed to serve local rural and recreational traffic, and is being adversely impacted by heavy traffic. The heavy trucks passing on-coming trucks are required to move onto the limited verges. Trucks are observed over the centre of the road on corners, particularly of concern when the truck includes a trailer. Concern exists for the safety of traffic entering and leaving the road, cyclists and pedestrians on the verge, particularly on the river edge.

The proposed change in truck movements by Hy-Tec in its current application is inaccurate. The quarry is currently approved to operate five and a half days a week, excluding Sundays and Public Holidays with an average of 40 movements per day. In its deliberation on 3 November 2004, the Council approved extraction of a maximum of 200,000 cubic metres per annum. The number of truck movements of 40 per day acknowledged that the quarry was 'not open every day of the year'.

On page 3 of the application, Hy-Tec assumes 365 operating days a year in the consent year and divides the proposed increase over 365 days for 2016/7. An increase to the requested 16,000 movements results in an average increase of 33% per day. After taking into account that Saturday is a half day and there are limited movements at school times, the increase can be expected to be greater in peak hours of operation and result in significant increase in the impact on the road and user safety.

While Tumbulgum Community Association acknowledges the contribution of the quarry to the economic activity in the Tweed Shire, this should not be at the expense of community safety and amenity.

Submission 2 – Individual (Large **Extracts** following):

Safety Concerns

...Trucks have been repeatedly observed as needing to cross double lines and use predominantly the middle of the road. This is not a reflection on their driving but simply confirmation that these roads are not adequate or designed to be used by quarry trucks.



Above is one of many photos taken which clearly shows the truck in the middle of the road, crossing double lines. (Council staff have a USB showing numerous other photos taken last year which indicate this is not, a one off occurrence).

I will also draw your attention to the fact that school buses regularly travel this same route including coming around that very corner displayed above towards the truck. It is extremely lucky that there have not been any major loss of life.

We are aware that there have been two quarry trucks roll over in Dulguigan road.

Added to this, maintenance and truck usage have added to unacceptable dust spray including that of silica dust, introducing residents to unacceptable carcinogenic exposure. Pictures below indicate just what this looks like:



We also note here that vibrations caused by these trucks are structurally affecting our home with cracks in brickwork and lifting floor tiles becoming more widespread. Living with the dust and noise is often unbearable.

Figures Supplied

We disagree with the supplied figures and the presumption that 550,000 tons equals 200,000m³. Based on the materials carried by the trucks, namely road base type materials.....one ton equals 0.363m³ or 1m³ which equals 2.75 ton. These figures are from two separate authorities. The chart below gives a more visual clarification of figures used by the industry. If figures supplied by Hy-Tec were to be true, then trucks would be leaving the quarry with loads no higher than 370 mm high.

Table One: Bulk Density Conversion Guide.

PRODUCT	1m3	1/2m3	2/3m3	1/3m3	1/4m3	1/8m3
Concreting & Filling (A-Z)						
Ash	0.70	0.35	0.47	0.23	0.18	0.09
Concrete Blend	1.80	0.90	1.20	0.60	0.45	0.23
Crusher Dust	1.60	0.80	1.07	0.53	0.40	0.20
Deco	1.50	0.75	1.00	0.50	0.38	0.19
Drainage Gravels	1.50	0.75	1.00	0.50	0.38	0.19
Recycled Dust & Roadbase	1.50	0.75	1.00	0.50	0.38	0.19
Road Base	1.70	0.85	1.13	0.57	0.43	0.21

The correct industry standard for conversion of road base material is 1.7 ton per cubic metre or 0.59m³ per ton, as indicated in the above table, so annual allowance is:

- 200,000 m³ equals 340,000 tons
- 195,000m³ equals 331,500 tons

It is important that the tonnage moved from the quarry be calculated by the council at the correct ratio in order to gain an accurate measurement of cubic metres. This does not appear to be happening. The application as it stands does not reflect correct conversion of cubic metre to ton.

HY –Tec refer on page 3 of their application, dated 1 December 2016, to an average truck size of 27.25 tonne. Using this figure the following is extrapolated:

$$27.25 \text{ ton} \times 16,000 \text{ movement} = 436,000 \text{ tons}$$

436,000 tons at .59m per ton = 257,240 m³

(Note: reference to 16,000 movement is the proposed new amount of movements referred to in the application)

This is well in excess of the 195,000m³ per year allowance as approved in the current DA (Refer page 233, Tweed Shire Planning Committee meeting minutes, dated 4 August 2016). In fact this new proposed figure based on Hy-Tec's assessment of average size would equate to them being over their allowance by 62,240m³.

It is our belief that the size portrayed of the average quarry truck utilising these roads is highly underestimated. This is further verified by observation and photos captured of actual movements.

Size of trucks and loads

On page 64 of the Tweed Shire Council meeting minutes, dated 3 November 2004, which adopted the current operating DA, it states that truck capacity is rated at 20m³ (largest truck). Using road base from the previous table as the conversion guide this means that:

20m³ would be 34 ton load as per 1:7 ratio.

However, in the quarries application, reference is made to 200,000 cubic metres being equivalent to 550,000 tonnes, which is incorrect. If we use this incorrect ratio of 1:2.75, as alluded to in the application, it would mean the same load would be 55 ton which is highly illegal.

On figures, provided in table 1 on page 3 of the quarries application, it notes the proposed modification and average truck size as 27.25 ton. The rest of the information provided in this table remains somewhat irrelevant to the DA as the DA only talks in cubic metres.

However utilising their figure of 27.25 ton we can extrapolate it out to what it equates to in cubic metres to get a better picture of their overall proposal:

27.25 ton x 16,000 movement = 436,000 ton

436,000 tons at .59m per ton = 257,240 m³

This is well in excess of the 195,000m³ pa allowance.

In fact, if these figures were indeed true, the Quarry would have exhausted its cubic metre allowance at 12,140 movements with these large loads. Again the application refers to 27.25ton as being the current overall average yet the current DA allows at its maximum average load of 13.35 cubic metres which converts to 22.7 ton. It is very apparent that the quarry is running well above the original maximum average load specification.

We believe the council has not been active in auditing the annual reports on quarry turnover. This is available through the EPA via the relevant license

agreement. Therefore, we would ask that the council, as a matter of urgency, accesses the figures for the past 3 years and calculates the declared tonnage and applies correct conversion ratio.

Further to this, in using the industry standard for road base of 1m³ to 1.7 ton, a truck and dog load with 32 tons would be loaded 0.6m high x 2.42 wide x 13m with a combined load to be 18.9m³.

This fits within the tonnage load limit for being on the road and is under the 20m³ capacity in councils DA application 2004 as required.

Alternately, using the quarries' incorrect application figures of 550,000 tons equaling 200,000m³, the following would result. In loads of 32 ton, trucks would be loaded 0.37 metre high x 2.42 wide x 13metre making the combined load to be 11.64m³. This equates approximately to having a truck not much more than a ¼ full in height. Chances of any truck running on quarter full would be highly negligible.

Note: a 32ton pay load would be the maximum allowance for road base to travel on the road.

Observations were recorded in September 2016 (as per the USB supplied) for a full quarry working day (7.30am to 4.30pm). This may however be considered a relevantly quiet day probably as a result of the quarry having been given notice, at that time, that they were well in excess of allowed truck movements. A fact further verified by the quarries own submission of numbers to council. Findings for this day are detailed in the table below:

Type	Number	% of all movements
Truck & dog	37	71
Semi Trailer	7	13
Dual Rigid	6	11
Single Rigid	2	4

It should also be noted here that:

there were 10 other additional non quarry trucks during that period;
this only included trucks travelling East of the quarry and not any travelling West of the quarry;
this would satisfy the 27.25 tons per load declared;
the % of truck & dog combination would be estimated to be at least double of what it was in 2004.

It defies logic that the quarry operator is blaming Tweed Shire Council for an increase in truck movements, citing that they were using smaller sized trucks. This is certainly not indicated by both observation made and recordings of movements and type of truck used. The council trucks are loaded with 9.3m³ product, named in whole as being 15.73 ton. The maximum average is noted as being 13.35m³ which means they are only slightly and not significantly smaller. The council has shown leadership and a true sense of responsibility here in keeping under the total maximum as compared with the quarry, where the

average load out of the quarry is 16.1m³ which is 2.4m³ in excess of the DA allowance.

The EPA makes allowance for storage, production and movement, a much higher allowance than the council. The council DA only allow for movements. The EPAs is higher allowance so it will never trigger an EPA capacity until well after a council breach in regards to capacity.

It should be noted here that the Council is the major consenting authority.

Road Classification

Dulguigan Road has been rated by the Council as classification Class B rural road. In fact reference is made to this on page 274 of the Council's Planning Committee Meeting report dated 4 August 2016, where it states:

'The Dulguigan Road formation typically incorporates a sealed width of 6.6m or greater which roughly corresponds to a Class B rural road in Council's specifications'.

We believe this classification to be incorrect and further negate the assumption given that it 'typically incorporates a sealed width of 6.6m or greater'. Many sections of Dulguigan road sealed width are under 6 metres. This is equally backed up by the fact that many trucks (over 90%) have trouble keeping to their side of the double lines. This is further verified in the photos supplied in this submission and in the supplied USB to council.

The following guide is taken from the Tweed Shire Council web site and can be found at

[http://www.tweed.nsw.gov.au/Controls/Engineers/Drawings/S.D.009%20\(Aug-14%20Rev%20C\).pdf](http://www.tweed.nsw.gov.au/Controls/Engineers/Drawings/S.D.009%20(Aug-14%20Rev%20C).pdf)

RURAL ROAD CLASS	CLASS vpd RANGE	WIDTH OF SEAL	LINE MARKING	UNSEALED SHOULDER WIDTH (EACH SIDE)	NOMINAL WIDTH OF FORMATION
CLASS 'A'	<150	4.0	NONE	2.3 Gravel	8.6
CLASS 'B'	150-250	6.0	NONE	1.3 Gravel	8.6
CLASS 'C'	250-1000	8.6	NONE	NIL	8.6
CLASS 'D'	1000-2000	9.6	CENTRE + EDGE AT 3.5m	NIL	9.6
ARTERIAL	>2000	11.0	CENTRE + EDGE AT 3.5m + RAISED REFLECTOR PAVEMENT MARKERS	NIL	11.0

CROSS SECTION ELEMENTS
MINIMUM STANDARDS (RURAL ROADS)

Looking at the Councils table for the minimum standards for rural roads, as copied above, it states that roads that carry 250 – 1000 vpd should have a width of seal of 8.6m.

Class B comprises a 6.0 m seal with 1.3m shoulder either side and is only suitable for 150-250 vpd. Dulguigan road is predominantly not supportive of that width. In fact the council has even erected a sign just outside the quarry which indicates 'narrow roads'.

Picture depicting warning sign indicating narrow roads erected by the council near the quarry:



Statistics supplied (Planning Committee report dated 4 August 2016) note that, back in 2012, traffic volumes on Dulguigan Road were between 500 to 900 vpd. This in itself equates to a road needing to be of the dimension and classification of a Class C Rural road with a seal required to be 8.6 metres wide and not a 6.6 metre wide seal. Dulguigan road in many parts is not even 6.0 sealed metres wide let alone 8.6 sealed metres wide. It is clearly not fit for the purpose in which it is being used.

Again Dulguigan road, for the traffic volumes known, should be rated at Class C. This is on top of the fact that it clearly has many problems even coming close to satisfying the requirements of a Class B rural road, let alone the proper classification of a Class C.

Further verification of road guidelines can be viewed in the Austroads guide table 3.2 where minimum carriageway rural roads requires for 400 – 1000 vpd or 9 m carriageway with 6.5m seal and 1.25 shoulders.

Submission 2 Suggestions:

1. *As concerned residents we have previously taken our personal concerns to both Local and State Government representatives. In fact a proposal was even tabled to Geoff Provest which would alleviate a great deal of the objections here. The proposal involved running another road and small bridge across the Rous river linking on to roads that run through cane fields that then meet up with the Tweed Valley Highway at Condong. This proposal runs nowhere near houses and once the truck get to Tweed Valley way they can continue on to either Tweed Heads, the M1 to Ballina or Murwillumbah. It would be quicker for the trucks and link with roads better designed to handle their traffic. The added benefit being they would not being running near residences or pose the current significant threat to safety that they currently do. Surely this is a better way of representing and protecting public interest;*

Alternately

2. *Find an alternate, more suitable site for the quarry – one that does not affect residents health or safety and enjoyment of their land;*

Alternately

3. *Set up monitors to count trucks and monitor speeds;*

4. *Do a full noise evaluation on the affect of trucks on residents;*

5. *Arrange a full builders' evaluation of all residences affected and provide compensation for damage caused by the quarry trucks (due to noise, vibration and dust) with preventions put in place to prevent further damage;*

6. *Provision of health benefits;*

7. *Restrict trucks from using the road during school hour pick up and drop off times;*

8. *Put a cap on a safe number of trucks allowed each day. Should this cap be broken then it must have consequences. Our suggestion here would be \$10,000 for each additional truck per day over the limit;*

9. *Widen and seal all the roads;*

10. *Tweed Shire Council to enter into talks with residents and their legal representatives concerning loss of the enjoyment of their land.*

(Note these suggestions are not all inclusive as other matters may not yet have been fully identified)

The **applicant** has responded to these submissions as follows:

Dulguigan Road was assessed for its suitability for quarry trucks in the original application (Consent No. DA04/0162) and deemed suitable by Council subject to certain upgrades which were completed prior to commencement of the approved development. The proposed additional four (4) trucks departing the quarry on average per day, being an increase of 10% for one year, is not considered to change the suitability of Dulguigan Road for quarry trucks. It is important to remember that the requested amendment is only for the 2016-2017 period and not an ongoing arrangement.

Hy-Tec are committed to road safety and require that all truck drivers must sign a code of conduct to ensure they are aware of the road safety requirements when travelling to and from the quarry. The Drivers Code of Conduct is attached for reference (refer Attachment 1 – Drivers Code of Conduct). In addition to that existing management measure, Hy-Tec will also provide a map to truck drivers as part of the Drivers Code of Conduct which identifies any sharp bends or bus stops along Dulguigan road (refer Attachment 2 – Haul Route Map).

The map will ensure drivers are aware of the requirements of the Tumbulgum community and know where they must take care, over and above the standard road signs already in place. As a further commitment to monitoring compliance with the Drivers Code of Conduct, Hy-Tec will seek approval from Council to place a speed camera monitoring system at regular intervals (3 monthly or thereabouts) at various locations along Dulguigan Road to monitor the speed of trucks.

It is noted that one submission included photos alleging that dust from passing quarry trucks was excessive and that loads were uncovered. Upon review of the photos we believe the alleged impact occurred at the corner of Dulguigan Road and Hogans Road. Upon review of Hy-Tec records we understand that Council was carrying out roadworks at that location on Dulguigan Road at the Hogans Road corner and that during construction a portion of the road was unsealed which resulted in dust being generated when any and all vehicles traversed this section of the road and not just quarry trucks. This would have been the case for all vehicles using the road and not just trucks associated with the quarry. Importantly the dust was not generated by uncovered loads on quarry trucks and was a temporary occurrence and outside of the control of Hy-Tec. It is also noted that not all trucks travelling along Dulguigan Road are associated with the quarry. The proposed additional trucks are not considered to result in any significant dust or noise impact above that of the existing road usage.

A suitably qualified engineer has advised us that the probability that trucks are causing structural damage to any house adjacent to Dulguigan Road is considered highly implausible, and in reality a baseless comment.

The vibrational levels caused by trucks on Dulguigan Road will simply not provide enough amplitude to impact upon properly designed and constructed houses. Without completing a detailed vibrational assessment of the impact of the trucks on any particular house, it is considered that the vibrational impact caused by the trucks would be several orders of magnitude lower than the required vibrational levels needed to impact upon the structural integrity of any particular building. Throughout Australia the cracking and settling of houses is related to reactive soils, inappropriate foundation design, and commonly a divergence of the design footings versus as built requirements.

The submissions question how the truck movement calculations are described within the application. As per previous discussions with Council officers, the consent currently permits an average of 40 trucks to depart the

quarry per day. This volume is not specified to operational days, accordingly, the total number of trucks permitted to depart the quarry per year is 14,600 trucks. An increase to 44 trucks departing the quarry per day, equating to a total of 16,000 trucks per year, is a 10% increase. To avoid any confusion, both the average number of trucks per day, as well as the total number of trucks per year, are included in the proposed amended condition.

Regarding the tonnage conversion rates, as previously discussed with Council, the consent currently limits the annual extraction rate to a maximum of 200,000m³. This volume measurement relates to the amount of resource measured in-situ, for which the conversion rate from in-situ cubic metres to tonnes is confirmed by testing previously submitted to the Environment Protection Authority (EPA) and Council to be 2.75t/m³. Importantly, the extraction rate is the physical removal of material from the resource prior to processing and sale of processed product. After the resource is extracted, the conversion rate for the in-situ resource is different to the conversion rate that would be applicable to the material after being extracted, processed, stockpiled and loaded for transport, which then being 'loose' would have a lower density closer to the amount referred to by the submission. This is the reason why development consents and Environment Protection Licences regulate the amount of material extracted in-situ rather than the amount of material hauled. Accordingly, the annual extraction rate is limited to a maximum of 550,000 tonnes per annum as discussed and agreed to previously with the EPA and Council. In the correct context, 550,000 tonnes is unequivocally and demonstrably approximated to 200,000m³. To suggest otherwise is erroneous. For Council's information, we now provide a summary of the extraction rates from the last three anniversary periods of both the Environment Protection License (EPL) (refer Table 1 below) period and the Consent period (refer Table 2 below).

Year	Volume
1 July 2013 to 30 June 2014	261,525t / 95,100m ³
1 July 2014 to 30 June 2015	248,288t / 90,285.55m ³
1 July 2015 to 30 June 2016	416,633t / 151,502.9m ³
3 Year Average	112,296.15m ³

Year	Volume
7 March 2014 to 6 March 2015	264,424.84t / 96,154.49m ³
7 March 2015 to 6 March 2016	372,562.64t / 135,477.32m ³
7 March 2016 to 6 March 2017	411,703.62t / 149,710.41m ³
3 Year Average	127,114.07m ³

These tables clearly show the annual extraction is well under the permitted amounts.

Hy-Tec previously met with representatives of the Tumbulgum Community Association (TCA) to discuss the increased volume of trucks. Hy-Tec also placed a notice in the July 2016 TCA newsletter in relation to the increase in truck movements, and inviting community members to report any feedback on driver behaviour. Hy-Tec continue to work to keep the local community informed of quarry activities.

Council Assessment of the Submissions

The submissions can be summarised into the following categories:

- Road Safety relating to the condition of the Dulguigan Road and Driver Behaviour
- Impact of noise and dust from trucks on dwellings along Dulguigan Road
- Calculation of haulage figures
- Community Consultation

It is extremely important to acknowledge that the quarry is operating under an existing approval, with conditions of consent.

A S96 Modification is not an opportunity to re-visit the original assessment.

Council can only consider the modification being requested by the applicant which in this instance is an increase in truck movements for the period of 7 March 2016 – 6 March 2017 only. And this time period has since lapsed. Which means the applicant is now required to comply with the condition as currently drafted. The purpose of the amendment now is just to reflect that for that consent year Council was made aware of the additional truck movements and Council can either approve or refuse to have that reflected in the consent.

Road Safety relating to the condition of the Dulguigan Road and Driver Behaviour

The quarry currently has approval for an average of 40 truck movements a day and the temporary increase to 44 trucks per day is considered minimal. Dulguigan Road is capable of accommodating the minor temporary increase of 4 additional trucks per day (on average over a year) without any additional road improvement works or survey data.

A recent heavy vehicle traffic incident on Dulguigan Road has caused Council to investigate improved line markings and signage on the road to assist in delineation. Further speed surveys are to be conducted and the data will form the basis of discussions with the quarry operator on enforcement strategies.

The condition of Dulguigan Rd will continue to be assessed on an annual basis as part of Council's standard works program and any repairs prioritised as necessary.

The quarry is obligated to keep detailed logs of all material and trucks leaving the site to meet their licence obligations with NSW EPA. At any time Council or NSW EPA can request information from the quarry to ensure compliance with their conditions of consent.

As the consent allows the operators to have a maximum of 40 trucks per day (averaged over a year) there may be times when there are more than 40 trucks a day however the consent allows for this and slower months throughout the year

means the quarry can generally comply with the conditions of consent in regard to overall trip numbers in any given year.

This objection does not warrant refusal of the current S96 proposal.

Impact of noise and dust from trucks on dwellings along Dulguigan Road

The subject application sought the temporary increase in truck numbers (an additional 4 trucks per day) for March 2016 to March 2017. This period has now lapsed.

The existing conditions of consent therefore apply in regard to mitigating noise and dust implications from the quarry operations.

Some of these conditions include:

- 1.2. Within 90 days of the issue of S96 DA04/0162.02 consent, the amended REMP prepared in accordance with those matters prescribed in new Attachment 1 forming part of this consent shall be submitted to and approved by Council. The amendments may be made as an attachment and/or addendum of the REMP. Where any conflict or inconsistency exists between the REMP and attachment and/or addendum (consistent with Attachment 1 of this consent) the provisions detailed in the later shall prevail.*
- 8. Provision of signs erected in the vicinity of the above-mentioned transfer location, and at other strategic points along Dulguigan Road, advising that school buses operate in the area, and their hours of operation. Prior to manufacturing the signs, the applicant is required to contact Council's signwriter regarding the actual wording for the signs.*
- 27.2. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant that assesses compliance with the adopted noise criteria detailed in the Assessment of Noise and Dust Impacts prepared MWA Environmental dated 17 November 2014. The NIS is to be submitted to the satisfaction of the General Manager or delegate and is to include recommendations for noise attenuation if required. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's Authorised Officer.*
- 29. Any screens and loading areas for the existing quarry are to be located to direct sound away from any affected residences and/or be located such as to maximise the effect of the ridge in separating Residences from the site.*
- 30. Noise attenuation measures are to be in accordance with the REMP*
- 31. Dust control measures are to be implemented as proposed in the REMP*
- 37. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties.*

38. *The operators of the quarry are to carry out a review of the activities of the quarry, using the Rehabilitation and Environmental Management Plan, on an annual basis. The results of the reviews, including an assessment of the effectiveness of the dust and noise management, and the sediment erosion control system, are to be submitted to Council's Environment and Health Services for approval.*
40. *The quarry and associated operations are not to cause a nuisance to residents or disruption to amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.*

Any issues of non-compliance should be reported the NSW EPA.

This objection does not warrant refusal of the current S96 proposal.

Calculation of haulage figures

Council agrees with the applicant's response to the objectors' claims in this regard and is confident that the quarry is not exceeding the extraction quotas as the 200,000m³ was based on in-situ material.

This was communicated to Submission Number 2 who again replied with:

The following should assist you to understand what these concerns actually are and what issues they raise.

The EPA conversion of 2.75 tons per cubic metre refers to the state of it as an 'extractive resource' not as the produced 'material'. These two matters are shown in conclusion of the 2004 council report (p71). The report requires an average of 195,000m³ of 'materials' removed per annum (p65 &70).

Once the 'extractive resource' goes through its manufacture process it creates 'road base materials'. Road base materials have a conversion of 1.7 tons per cubic metre. At this conversion the DA becomes fully functional in allowing varied size trucks to move up to 14,600 loads of road base material to conform to the 195,000m³ pa over 3 year average or up to 200,000m³ in any one year thereof.

At 2.75 tons per metre, the quarry would not even be able to remove 195,000m³ pa over 3 years average or up to 200,000m³ in any one year. Even if every load was cut out in slabs and loaded on flat tray B double trucks with a crane, it still would not reach the DA's allowance at the 2.75 conversion, meaning the DA would not be functional.

Other extractive industries like the petroleum industry has items evaluated at its produced material stage. The resource material being crude oil is used to produce materials such as Diesel and petrol fuels, LPG, oils and fluids and grease. Then taxes and excise are applied to these materials.

Fuels have excise and other taxes, oils fluids have no excise but other taxes. If these were evaluated at its resource level then these calculations would not be possible.

Department of energy and mines gave a conversion between 1.5 to 1.8 for road base materials.

Since the introduction of the weigh bridge at the quarry the operator has charged and recorded materials by the ton, (previously cubic m³ to tons currently). A copy of a price list is attached which was in operation before and around 2004 when the DA was formulated.

The introduction of the change of measure has now brought confusion into play. This along with the quarry requiring annual reporting periods to change, using average figures when they are actually maximum figures and misleading truck sizes quantity has all made the current operation extremely questionable – especially that now we have gone from a fully functional DA to an operation that does not comply.

Listed are some of the facts in the 2004 DA that may assist:

- 195,000m³ of mainly road base material
- 40 movements average per day over 1 year
- 14,600 movements per year
- 56 movements per day based on 260 working days
- 13.35m³ average max load at 195,000m³ pa
- 22.7 ton average max load at 195,000m³ @ 1.7 ton per cubic metre
- Table of varied truck sizes estimated in 2004

Table depicting quarry maximum capacity

Type	%	No	Size per load	Tons at 1.7	Total m ³
Truck & dog	30	4380	19m ³	(32.34)	83,220
Semi Trailer	30	4380	16m ³	(27.24)	70,080
Dual axel rigid	30	4380	7m ³	(11.94)	30660
Single axel rigid	10	1460	3.5m ³	(5954)	5110
Total	100	14600		(av 22.0t)	189,070

The 189,070m³ and 14,600 movements which conforms with the DA requirements would enable the use of some bigger trucks if need be (up to in one year 200,000m³).

These figures (which are at 1.7ton per M³) make the DA fully functional.

At 2.75 tons per cubic metre it does not work.

When the quarry tenders for large scale jobs which involves the largest size trucks it makes the Dulguigan road system very dangerous and also uses up their truck movement allowance along with their cubic metre allowance at a quicker rate.

In Brief the EPA epl licence ratio is calculated on the solid state ie RESOURCE;

The Councils DA is calculated on the produced state ie MATERIAL.

The applicant, Council and the EPA disagree with this submission and are of the view that the original DA was always in-situ material being removed.

The applicant has provided this table to show the extraction rates:

Year	Volume
1 July 2013 to 30 June 2014	261,525t / 95,100m ³
1 July 2014 to 30 June 2015	248,288t / 90,285.55m ³
1 July 2015 to 30 June 2016	416,633t / 151,502.9m ³
3 Year Average	112,296.15m ³

Year	Volume
7 March 2014 to 6 March 2015	264,424.84t / 96,154.49m ³
7 March 2015 to 6 March 2016	372,562.64t / 135,477.32m ³
7 March 2016 to 6 March 2017	411,703.62t / 149,710.41m ³
3 Year Average	127,114.07m ³

These tables clearly show the annual extraction is well under the permitted amounts.

Therefore this objection does not warrant refusal of the current S96 proposal.

Community Consultation

The S96 was publically notified as statutorily required.

This objection does not warrant refusal of the current S96 proposal.

(e) Public interest

The S96 application is considered to generally be in accordance with the public interest as it allows for the continuation of a finite resource to be utilised in a sustainable manner.

S96(1A) Modification Substantially the Same Development

(1A) Modifications involving minimal environmental impact

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

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*

- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Minimal Environmental Impact & Substantially the Same Development

The applicant has provided the following:

It is considered that the proposed modification is one of minimal environmental impacts as the change does not alter the land use, annual extraction limit, hours of operation or environmental management measures. The change is required because smaller than average trucks have been and are continuing to transport quarry material to local projects and businesses during the 2016/2017 consent year. Because the average truck size has decreased the amount of quarry material transported per truck is less and therefore more truck movements are required to deliver the same amount of quarry material. To clearly illustrate this, Table 1, below provides a comparison of the vehicles per day and average tonnes per truck considered in the original EIS and consent with the proposed modification.

Table 1. Comparison of vehicles per day and average tonnes per truck			
	Average departures per day	Average truck size	Approximate annual Sales ₁
Consent condition	40	32 tonne	40 x 32 x 365 = 467,400t
Original three quarries per EIS Appendix G, Table 5.1.3	50	32 tonne	50 x 32 x 365 = 584,000t
Proposed modification	44	27.25 tonne (<i>current overall average</i>)	44 x 27.25 x 365 = 437,635t
Proposed modification	44	32 tonne	40 x 32 x 365 = 467,200t

1. Assume 365 days in a consent year

It is important to note that the table above shows that the maximum annual extraction rate of 200,000m³ /550,000t can't be achieved under the constraints of the condition of consent if the average truck size is 32 tonnes. It is noted that in past years the quarry has been regularly visited by larger trucks balancing out the smaller trucks, thereby achieving extraction in the order of 500,000t per annum. Importantly the table above illustrates how an increased number of departures by smaller trucks does not result in the maximum annual extraction rate being exceeded. Furthermore, an increased number of departures by standard 32t trucks does not exceed the maximum annual extraction rate.

These comments are acknowledged and are concurred with.

The temporary increase in truck numbers which has occurred from March 2016 – March 2017 is considered to have had minimal environmental impact is capable of being considered substantially the same development to that originally approved by DA04/0162.

OPTIONS:

1. Approve the S96 Modification subject to the recommended conditions which have been authorised by the applicant; or
2. Refuse the application.

Council Officers recommend Option 1.

CONCLUSION:

The amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

The S96 Modification seeks approval for a temporary amendment which is considered capable of favourable consideration.

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. DA04/0162.02 Council Report (ECM 4730475)

Attachment 2. DA04/0162.02 Determination Notice (ECM 4730476)

6 [PR-PC] DA12/0170 Halcyon House and Paper Daisy Restaurant - Lot 100
DP 1208306 No. 19-25 Cypress Crescent, Cabarita Beach

SUBMITTED BY: Development Assessment and Compliance

mhm



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LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Making decisions with you
2.1	Built Environment
2.1.2	Development assessment - To assist people to understand the development process and assess applications lodged with Council to achieve quality development outcomes and land use decisions.

ROLE: **Provider**

SUMMARY OF REPORT:

Updated Summary

Since 1 June 2017 a further submission has been received regarding operating hours, building conditions and parking. In regard to these issues a warning letter in accordance with resolution 3 as a result of the meeting held on 1 June 2017, however, the hours of operation are as follows:

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

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

A building inspection has been carried out and further information will be sought from the owners. In relation to parking the Statement of Environmental Effects for the application to modify the development application to include a day spa made the following statement regarding staff and parking:

"The proposed ancillary use of the stage 5 building for a day spa, staff room, manager's office, and storage facility will not require the provision of additional parking spaces given that the use of the day spa remains ancillary to the use of the site for the approved motel and no additional staff will be employed. The original development consent DA12/0170 included a pool of 12 staff members for the motel, the ancillary use proposes to absorb 3 of the 12 staff members. As there are no additional staff

employed and the spa is only for guest the 25 spaces conditioned in the approval remain sufficient."

The recommendation has been updated to include requesting up to date information about staff numbers for the establishment including the proposed day spa.

Council at its meeting of 1 June 2017 resolved as follows:

- "1. ATTACHMENT 4 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
(a) personnel matters concerning particular individuals (other than councillors)*
- 2. Council defer this item and a report be brought back to 6 July 2017 Planning Committee meeting.*
- 3. A warning letter be issued by the General Manager to the owners of Halcyon House and Paper Daisy restaurant that any further breaches of the hours of use or noise limits will result in fines or civil enforcement."*

In accordance with the Point 2 of the resolution the report is now being resubmitted for Council's determination.

Original Summary

Council has received written complaints regarding the operation of the restaurant that forms part of the motel known as Halcyon House at Cabarita Beach. The restaurant within is called Paper Daisy.

The complaints made include hours of operation, noise, car parking, location of rubbish bins and compliance with the use conditions of consent.

The latter issue is the pivotal issue as the other items generally stem from use of the restaurant for general public use. Conditions 11 and 12 of the development consent are the key conditions.

- 11. This development consent approves the construction of alterations and additions to the existing motel only to be used by guests and staff of the motel only and other ancillary activities.*
- 12. The use of the motel for members of the general public or for functions, parties or the like is permitted on an ancillary basis to the primary function of the premises as a motel.*

The issue that requires resolution is whether the restaurant component of the motel should be confined to use by the patrons of the accommodation component other than for ancillary general public use and ancillary functions, parties or special events.

The proponents agree that condition 12 (at least) confines the use of the motel (see email dated 10 May 2017 at Attachment 1).

The restaurant operates for all customers 7 days per week for breakfast from 7am to 11am, lunch 12pm to 3pm and dinner 6pm to 10pm.

The proponents have indicated they would like to amend the consent to remove the use restriction and would prefer Council's in principle support prior to seeking the amendment.

RECOMMENDATION:

That:

- 1. ATTACHMENT 4 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
(a) *personnel matters concerning particular individuals (other than councillors)***
- 2. Council, in terms of further consideration of DA12/0170 Halcyon House and Paper Daisy Restaurant - Lot 100 DP 1208306 No. 19-25 Cypress Crescent, Cabarita Beach, endorse the following:**

The General Manager advises the proponents in writing the following:

- 1. It is their choice if they wish to attempt to remedy the terms of the consent via lodgement of a Section 96 amended application;**
- 2. Council's position is that enabling the motel restaurant to operate for unconstrained general public use would not be substantially the same development as approved and a fresh development application would be required and it is their choice if they wish to remedy the operating terms of the motel;**
- 3. Council does not support intensification of the motel use (accommodation, restaurant and ancillary components) that results in increased demand for on street carparking and/or has the potential to adversely affect the amenity of the neighbourhood such as from noise and traffic; and**
- 4. Council requires the motel (accommodation, restaurant and ancillary components) to operate in accordance with the development consent as it stands, and any unauthorised use is to cease immediately.**
- 5. Council requires the owners to give an update regarding staff numbers for the whole establishment including the proposed day spa.**

REPORT:

Development consent was issued on 18 February 2013 for alterations and additions to motel (staged). Various amendments have been approved to date mainly relating to design changes and ancillary use areas.

The motel has been very successful and has along with the restaurant received several industry awards.

The relevant recommended conditions of consent were:

9. *The facilities hereby approved within the motel building (such as restaurant/dining area, lounge room and outdoor food and beverage service area) are to be used by guests of the motel only.*
11. *This development consent approves the construction of alterations and additions to the existing motel only to be used by guests and staff of the motel only (i.e. persons using the premises for overnight accommodation within the motel). This application does not approve the use of the facilities hereby approved for functions, parties or the like or for catering to the general public.*
12. *The use of the motel for members of the general public or for functions, parties or the like will require an additional development approval.*

Council resolved to adopt the following conditions at the request of the proponent's consultant (submission dated 11 December 2012 provided at Attachment 2):

- 9 *The facilities hereby approved within the motel building (such as restaurant/dining area, lounge room and outdoor food and beverage service area) are to be used by guests of the motel only, with the exception of ancillary functions and events consistent with the use of the premises as a Motel and linked to guests residing on site.*
11. *This development consent approves the construction of alterations and additions to the existing motel only to be used by guests and staff of the motel only.*
12. *The use of the motel for members of the general public or for functions, parties or the like is permitted on an ancillary basis to the primary function of the premises as a Motel.*

The assessment report applied conditions for contributions based on no general public use of the restaurant. Car parking was also assessed on this basis.

Council has received three written complaints representing three nearby property owners. The complaints are provided at Confidential Attachment 4.

The issues are summarised as follows:

- New Years' Eve party noise
- General public use of the restaurant and bar
- Car parking and traffic impact
- Rubbish bin odour/collection location

- Provision of no parking zone

Halcyon House have provided a response to the issues which is provided at Attachment 3.

The key outstanding issues are:

- General public use of the restaurant
- Exceedance of the hours of operation on New Years' Eve permitted by the consent
- Provision by Council of a no parking zone in Cypress Crescent.

General Public Use

If an application is submitted for general public use of the restaurant, the impacts on the neighbourhood would need to be carefully considered by Council. Any further intensification that adversely affected the neighbourhood by noise, on street parking overflow, traffic cohesion would be undesirable.

It is recommended that Council advise the proponents that it does not support an intensification of the use that creates further increases adverse impacts.

The site has existing use rights for a motel, however, those rights are defined and confined by Development Consent DA12/0170 which has been carried out for the intensification of the existing use.

Section 107 of the Environmental Planning and Assessment Act says:

107 Continuance of and limitations on existing use

- (1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- (2) *Nothing in subsection (1) authorises:*
 - (a) *any alteration or extension to or rebuilding of a building or work, or*
 - (b) *any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - (c) *without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
 - (d) *the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 80A (1) (b), or*
 - (e) *the continuance of the use therein mentioned where that use is abandoned.*

- (3) *Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*

Section 107(2)(d) requires compliance with the development consent. The motel is operating outside the terms of the development consent and needs to comply with the consent or seek development consent for intensification of the motel use.

New Years Eve 2016/17

Liquor and Gaming NSW permit extended trading hours on New Years' Eve. Accordingly it is considered appropriate for this incident that a warning letter be issued to Halcyon House advising that the operating hours conditions of consent need to be complied with.

No Parking zone in Cypress Crescent

Council's Traffic Committee considered this issue in May 2016 and did not support prohibitive parking as no significant safety issue was identified however Council's traffic Officers continue to monitor the site.

OPTIONS:

1. As per the recommendations;
2. Invite the proponents to lodge a fresh development application seeking to remedy the terms of the operation so that the current motel restaurant use is regularised;
3. Issue no warning letter; or
4. Issue a Penalty infringement Notice for the hours of operation breach.

CONCLUSION:

Unconfined use has, and is likely to, in to the future result in unacceptable and unmanageable impacts on the neighbourhood. The site and location is not suitable for a general purpose restaurant and its use should be confined.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Adam Smith email dated 10 May 2017 on behalf of the proponents (ECM 4719464)

Attachment 2. Planit submission dated 11 December 2012 (ECM 4719476)

Attachment 3. Halcyon House response dated 14 March 2017 (ECM 4719478)

(Confidential) Attachment 4. 3 submissions (ECM 4719479)

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

SUBMITTED BY: Director



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LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development assessment - To assist people to understand the development process and assess applications lodged with Council to achieve quality development outcomes and land use decisions.

ROLE: **Provider**

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 July 2017 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.
