



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 2 March 2017

held at Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads commencing at 5.00pm

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C

79C Evaluation

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

(a) the provisions of:

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

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

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

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

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

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

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

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

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

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

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

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

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Items for Consideration of Council:

ITEM	PRECIS	PAGE
	REPORTS THROUGH THE GENERAL MANAGER	6
	REPORTS FROM THE DIRECTOR PLANNING AND REGULATION	6
1	[PR-PC] Section 94 Contributions - DA11/0499 - GP Super Clinic	6
2	[PR-PC] Illegal Fence at No. 93 Caloola Drive, Tweed Heads	10
3	[PR-PC] Development Application DA16/0029 for a Proposed Demolition of Existing House, Six Townhouse Development and Six lot Strata Subdivision at Lot 678 DP 257438 No. 63-71 Sexton Hill Drive, Banora Point	17
4	[PR-PC] Status Update on S96 Modification DA03/0445.03 and Development Application DA15/0664 for Upgrading Works on Urliup Road associated with DA03/0445 at Urliup Road, Urliup to Accommodate 19m Trucks in Association with an Existing Water Extraction Business at 477 Urliup Road	84
5	[PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards	125
	CONFIDENTIAL ITEMS FOR CONSIDERATION	127
	REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE	127
	REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE	127
C1	[PR-PC] Environmental Damage and Unauthorised Works at Lot 469 DP 1144944 off Henry Lawson Drive, Terranora	127

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

1 [PR-PC] Section 94 Contributions - DA11/0499 - GP Super Clinic

SUBMITTED BY: Development Assessment and Compliance

Validms



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Development Consent DA11/0499 was issued for a Medical Centre (known as Tweed Health for Everyone Super Clinic) at the premises, Nos. 33-35 Corporation Circuit, Tweed Heads South in March 2012. The consent was modified in 2012 to enable periodic payment of the Section 94 contributions. The approved payment schedule was as follows:

- 25% shall be paid prior to the issue of a Construction Certificate by a Certifying Authority;
- a further 50% of the required contributions shall be paid at the completion of the construction of the proposed building to the satisfaction of the General Manager or his delegate; and
- the remaining balance of 25% shall be paid prior to the issue of an Occupation Certificate by a Certifying Authority.

The first two payment thresholds have been undertaken, but the remaining 25% balance has not been paid, despite occupation of the centre. The outstanding amount is \$111,416. The contributions are for the Tweed Road Contribution Section 94 Plan. The proprietors have offered to pay the outstanding amount off at \$4,000 monthly instalments. It is likely that payment of the contribution was overlooked given the staggered payment arrangement.

Water (\$11,731.50) and Sewer (\$8,454.20) Section 64 contributions are also outstanding. However, these contributions will be resolved by having the medical centre site operate under the high consumption charge system.

RECOMMENDATION:

That, in respect of the premises, Nos. 33-35 Corporation Circuit, Tweed Heads South:

- 1. The General Manager advises the Tweed Health for Everyone Super Clinic that Council accepts the offer to pay the outstanding Section 94 contributions of \$111,416 at an instalment rate of \$4,000 per month until the balance is exhausted; and**
- 2. Council advises the Tweed Health for Everyone Super Clinic of the option of operating under the high consumption charge system in lieu of payment of the outstanding water and sewer Section 64 Developer Charges.**

REPORT:

Section 94 Contributions

Development Consent DA11/0499 was issued for a Medical Centre (known as Tweed Health for Everyone Super Clinic) at the premises, Nos. 33-35 Corporation Circuit, Tweed Heads South in March 2012. The consent was modified in 2012 to enable periodic payment of the Section 94 contributions, exempt from any interest charges or CPI increases. The approved payment schedule was as follows:

- 25% shall be paid prior to the issue of a Construction Certificate by a Certifying Authority;
- a further 50% of the required contributions shall be paid at the completion of the construction of the proposed building to the satisfaction of the General Manager or his delegate; and
- the remaining balance of 25% shall be paid prior to the issue of an Occupation Certificate by a Certifying Authority.

Whilst the building is occupied and in operation, the final payment has not been paid. The outstanding amount of \$111,416 is for the Tweed Road Contribution Plan. Water (\$11,731.50) and Sewer (\$8,454.20) Section 64 contributions are also outstanding.

The proprietors of the clinic have offered to pay the balance via monthly \$4,000 instalments. This is considered reasonable given that the Clinic has paid over \$300,000 in S.94 contributions and over \$200,000 in S.64 contributions for the medical centre.

Section 64 Developer Charges

The existing ET entitlement for the property is:

Water	11.733 ET
Sewer	17.690 ET

The outstanding Water and Sewer Section 64 Developer Charges are:

Water	\$11,731.50	(0.8764 ET)
Sewer	\$8,454.20	(1.3146 ET)

In lieu of the upfront payment or a deferred payment plan for the outstanding Developer Charges, the Super Clinic is eligible to maintain the existing ET entitlement for the property and pay for any additional water consumption and sewerage usage above the ET entitlement on an ongoing basis via their Water Notice.

Water consumption up to the equivalent of the existing ET entitlement, will be charged at the standard consumption charge and consumption greater than the existing entitlement will be charged at the high consumption charge for non-residential properties. Sewerage usage up to the equivalent of the existing ET entitlement will be charged at the standard usage charge and usage in excess of the existing entitlement will be charged at the high sewerage usage charge for non-residential properties.

No additional ET entitlement will accrue to the property through the payment of the high consumption and high sewerage usage charges.

The daily average water consumption and sewer usage of the property is currently below their ET entitlement. Therefore, if the Super Clinic chooses the option of high consumption charges, there will be no requirement for an upfront payment or a deferred payment plan for the outstanding Developer Charges. High Consumption Charges will only be applied when the water consumption and sewer usage of the property exceeds the existing ET entitlement. The Super Clinic will be required to submit an *Application for a Certificate of Compliance under Section 305 or the Water Management Act 2000 for Water Supply and Sewerage Requirements* to Council to proceed.

OPTIONS:

1. Accept the offer of \$4000 monthly instalments for outstanding Section 94 contributions and advise the Tweed Health for Everyone Super Clinic of the option to take up the high consumption charge option in lieu of Section 64 Developer Charges for water and sewerage services; or
2. Require full payment of all outstanding contributions by a specified time; or
3. Identify some other payment arrangement.

Option 1 is recommended.

CONCLUSION:

The payment offer for the outstanding contributions is reasonable in the circumstances and is recommended for support

COUNCIL IMPLICATIONS:

a. Policy:

Business Investment Policy; and
Revenue Policy.

b. Budget/Long Term Financial Plan:

The TRCP S94 fund has been impacted by the decision to allow periodic payments resulting in foregone interest and CPI increases.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

2 [PR-PC] Illegal Fence at No. 93 Caloola Drive, Tweed Heads

SUBMITTED BY: Development Assessment and Compliance

Validms



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

4	Caring for the Environment
4.1	Protect the environment and natural beauty of the Tweed
4.1.3	Manage and regulate the natural and built environments

SUMMARY OF REPORT:

The premises known as No. 93 Caloola Drive Tweed Heads consists of a single storey duplex, on a corner block, within Stata Plan 20446. The duplex is made up of two residences known as Lots 1 and 2, No. 93 Caloola Drive.

In 2015 the owner of Unit 1 lodged a Development Application (DA) for a 1.8m, concrete panel fence to enclose her outdoor yard. This proposal would have been exempt, except that it was on a flood control lot, thereby requiring development consent. The owner later withdrew the DA, but then erected a colorbond fence claiming she could not afford the original concept. The owner then advised that her need for a fence to deflect traffic noise, provide security and offer some privacy remained the same.

A revised DA was then prepared to seek approval for an amended, improved fence which was largely compliant. However, this second DA could not be lodged as the owner of Unit 2 will not provide owner's consent for the fence to be built on common property. In order to resolve this dispute, the Unit 1 owner sought adjudication from the NSW Civil & Administrative Tribunal (NCAT). The NCAT decision did not specifically address the issue of whether a DA could be lodged without the consent of all strata owners to allow processing by the consent authority.

RECOMMENDATION:

That Council, in respect of the unauthorised fence erected on the common property of SP 20446, No. 93 Caloola Drive Tweed heads endorse:

- 1. The lot owners be requested to resolve their own differences through formal mediation under the NSW Justice Department's 'Community Justice Centres' (CJC); or seek further adjudication under the NSW Civil & Administrative Tribunal (NCAT) who can make orders to resolve the fencing dispute; or apply for a Fencing Order through the Local Court, and that a 6 month time frame be granted for the parties to resolve the dispute; and**

2. **A further status report be prepared for Council's consideration following the 6 month period.**

REPORT:

Background:

T4/1298 – Council granted development consent to erect a single storey duplex on the property previously known as No. 31 Ducat Street Tweed Heads. The property subsequently was gained strata title approval within Stata Plan 20446. The duplex is made up of two residences known as Lots 1 and 2, No. 93 Caloola Drive.

On **25 August 2015**, a Development Application (DA15/0691) was lodged for a 1.8m, concrete panel fence to enclose the corner lot known as Unit 1/93 Caloola Drive. That proposal did not satisfy the requirements of the provisions of DCP A1 for residential fencing. The owner was invited to either amend the plans showing a compliant solid concrete fence, or withdraw the application.

On **30 November 2015**, the owner phoned Council and advised they were not willing to amend the proposal and requested Council continue to assess and support the Development Application.

After further deliberations, the owner finally withdrew the Development Application (DA) on **19 January 2016**. A full refund of the applicable fees was granted on **9 February 2016**.

The owner proceeded to erect the front fence on both frontages of Ducat and Caloola Streets, however, not as a concrete panel fence, but as a 1.8m colorbond fence (see photos below).



Ducat Street frontage



Corner perspective



Caloola Drive perspective

Council received complaints from local residents regarding the construction of the fence resulting in a site inspection on **24 May 2016**.

In view of the clear history (prior written advice sent 1 December 2015; then DA lodgement in January 2016; then withdrawal of that DA with a full refund on 9 February 2016; then the intentional erection of a different fence in May), correspondence was sent on **25 May 2016** directing removal of the unauthorised fence. In addition, a Penalty Infringement Notice (PIN) for \$3000 was issued on 25 May 2016.

The owner then wrote to Council on **3 June 2016** advising that the fence was needed to “reduce some of the noise, to provide security and privacy for her block” and that her contractor had erected a colorbond fence because she could not afford a solid, block fence.

Council wrote to the owner on **7 June 2016** in respect to a review of the \$3000 PIN, and also indicated that it may be possible to re-lodge an amended plan with recessed panels and landscape plantings along the length of Ducat Street which is considered to be an arterial road. It recommended engaging a Planning Consultant to assist with design and lodgement.

A fresh DA16/0560 was lodged on **22 June 2016**, but had certain deficiencies which prevented lodgement. One deficiency was that only one of the two owners of Unit 2 had signed the new DA, thereby precluding any lodgement. When invited to rectify the deficiency, it is alleged that the owner of Unit 1 copied the original signature of the Unit 2 owner from the first DA because that owner now refused to sign the amended DA.

Consequently, the amended DA was not able to be processed.

It was recommended that the owner of Unit 1 seek a resolution independently through the Office of Fair Trading to determine the question of whether or not one strata owner should be able to prevent lodgement of a DA which would be assessed independently by Council. The matter was then heard before the NSW Civil & Administrative Tribunal (NCAT) on **5 December 2016**. The Adjudicator dismissed the application on grounds of the fence being on common property; the Owners Corporation not failing in respect to insurance or the sinking fund; and there being no basis for compulsorily appointing a Strata Manager to resolve the issue of a fence as Council remains the Consent Authority. The issue of Council assessing the DA without the signatures of all owners does not appear to have been

considered within the judgement and therefore does not assist Council, or the owner of Unit 1.

Assessment of fence:

DA15/0691 – The first DA proposed a solid, tilt up concrete panel fence 1.8m in height. It would have been similar in height to other local fences, and would have largely satisfied the objectives for fencing described under the Development Control Plan (DCP A1) in that it would have defined the boundaries, enhanced useability of the private open space, and offered acoustic and visual privacy on a busy road. The DCP requires a “minimum openness ratio of 60%” to create a more interesting streetscape, but also allows a “solid, 1.8m fence if located on an arterial road”. As Ducat Street is a very busy, connector road, a solid, 1.8m fence would have been justified.

The only reason this fence was **not exempt** was because it was nominated as a flood affected lot. (Please refer to Attachment 2 for a relevant extract from Council’s flood mapping).

Unfortunately the original fence proposal was withdrawn, as the owner explained later she could not afford a solid fence. Regrettably, she instead erected a colorbond fence which does not satisfy the requirements of the DCP.

During the compliance process, the owner was encouraged to remedy the situation by lodging a second DA which better addressed the streetscape.

DA16/0560

The revised concept (DA16/0560) was to include 4 recessed sections to allow landscape plantings. This would have more suitably ameliorated the stark appearance of the fence within the streetscape and provided a way forward in terms of an unauthorised fence.

That DA could not be lodged however, as one of two owners of Unit 2 withheld their signature. Unfortunately, the owner of Unit 1 then allegedly copied the previous signature of the Unit 2 owner in an attempt to satisfy the DA lodgement requirements.

To resolve this dispute, the owner was encouraged to pursue other administrative options such as mediation services, the Office of Fair Trading, NCAT or the Local Court.

The matter was later heard before the NCAT but did not assist the particular issue concerning lodgement of a DA with Council to allow independent assessment and determination.

The current fence remains unauthorised.

OPTIONS:

That Council:

1. Take no further compliance action; or

2. The parties be requested to resolve their own differences through mediation under the NSW Justice Department's 'Community Justice Centres' (CJC), **or** seek further adjudication under NCAN, **or** seek judgement via the Local Court, and that a 6 month time frame be granted for the parties to resolve their dispute; or
3. Take further enforcement action to ensure the fence is removed.

Option 2 is recommended.

CONCLUSION:

The owner of Unit 1, No. 93 Caloola Drive has stated a need for a fence to deflect traffic noise, provide security and offer some privacy in the frontage to her residence. The current fence however, remains unauthorised. The revised DA would have allowed the assessment of an amended, improved fence, but could not be lodged as the neighbour will not provide his signature. The NCAT decision did not specifically address the issue of whether a DA could be lodged without the consent of all strata owners to allow processing. The current fence, if amended with four recessed panels to allow landscape plantings, would have complied with Council's fencing code.

It is therefore considered the parties be granted 6 months to resolve their own differences in regard to this fencing dispute. This can be achieved through a formal mediation process offered by the NSW Justice Department's 'Community Justice Centres' (CJC). This process is free and has an 80% success rate for those parties who are prepared to use the service. Alternatively the two owners can apply to NCAT to make orders to resolve the fencing dispute. As strata owners and neighbours who cannot agree on the fencing work, the Tribunal can present a Conciliation Notice in an attempt at an alternative dispute resolution process. If this fails to help the two parties settle the fencing dispute, NCAT can offer a hearing where it will ultimately make final Orders which are binding and enforceable.

Thirdly, the parties can apply for a Fencing Order to be heard before the Local Court.

This option is more formal and costly. The first two options are more mediatory within a more informal and less costly forum.

A 6 month time frame should be granted for the parties to resolve the dispute.

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. A copy of the approved Strata Plan 20446 (ECM 4421520)
- Attachment 2. Extract from Tweed Shire Council Flooding Map (ECM
4421521)
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3 [PR-PC] Development Application DA16/0029 for a Proposed Demolition of Existing House, Six Townhouse Development and Six lot Strata Subdivision at Lot 678 DP 257438 No. 63-71 Sexton Hill Drive, Banora Point

SUBMITTED BY: Development Assessment and Compliance

Validms



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Council is in receipt of an application for the proposed demolition of the existing dwelling and the construction of a six townhouse development and six lot strata subdivision. The development consists of six townhouses consisting of two storeys each, three bedroom and study and two resident parking spaces per townhouse. Two visitor parking spaces are provided on site with access via Sexton Hill Drive. Each townhouse has ground level access from a centrally located driveway, with individual private open space areas provided to each townhouse. The site is described as Lot 678 DP 257438; No. 63-71 Sexton Hill Drive Banora Point. The site has a land area of 2,599 Square Metres, which currently contains a single dwelling which is to be demolished as part of this application. The site is zoned R2 Low Density Residential with a height restriction of 9 metres.

Section A1 Part B of Council's Consolidated Development Control Plan 2008, permits town house development within land zoned R2 if the lot size exceeds 1,350m². The subject site is zoned R2 and has a land area of 2,599m². The development control also requires that town house development is not to have a dwelling density exceeding 1 dwelling per 450m² with a development lot area of 220m² each. The proposed dwelling density is 1 dwelling per 433.17m² with the proposed development lots ranging between 306m² to 568m². The proposed variation to the development control relating to dwelling density of 1 per 450m² equates to 16.83m² or 3.74% per dwelling. The proposed variation is considered to be reasonable in this situation as the development complies with all of the other density controls.

The application was notified for a period of two weeks, from Wednesday 27 January 2016 to Wednesday 10 February 2016. Council received seven submissions in relation to the application. The details of the submissions are addressed later within this report.

The proposed development has been reviewed by Council's Development Engineering Unit, Infrastructure Engineer, Traffic Engineer, Building Unit, Environmental Health Unit, Waste unit

and Water and Waste Water Unit who have all provided comment with respect to the proposal. It is recommended that the application be approved subject to the provision of appropriate recommended conditions of consent.

The application was requested to Council for determination by Mayor Milne and Councillor Cherry.

RECOMMENDATION:

That Development Application DA16/0029 for a proposed demolition of existing house, six townhouse development and six lot strata subdivision at Lot 678 DP 257438 No. 63-71 Sexton Hill Drive, Banora Point be approved subject to the following conditions:

GENERAL

1. **The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos DA.100, DA.101, DA.102, DA.200, DA.201, DA.202, DA.300, issue 8 prepared by Marco & Co. and dated 05/09/16, as amended in Red, Strata Plans Sheet 1 to 3 drawn by Simon Berrisford dated 15/02/2017, except where varied by the conditions of this consent.**
[GEN0005]
2. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0115]
3. **Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property. Any necessary adjustment or modification of existing services are to be undertaken in accordance with the requirements of the relevant service authority.**
[GEN0135]
4. **Sewer manholes are present on this site. Manholes are not to be covered with soil or other material.**

Should adjustments be required to the sewer manhole, then applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee. Works will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.
[GEN0155]
5. **The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.**
[GEN0300]

6. Prior to demolition work commencing a sign containing the words “DANGER ASBESTOS REMOVAL IN PROGRESS” measuring not less than 400mm by 300mm shall be erected in a prominent visible location on the site. The sign shall remain in place until all asbestos has been removed from the site. [GEN0345]
7. Prior to the commencement of construction of the new structure or use of the site a ‘clearance inspection’ shall be conducted for the site and a ‘clearance certificate’ issued by a licensed asbestos assessor or competent person which states that the site ‘does not pose a risk to health and safety from exposure to asbestos’ in accordance with Clause 474 of the Work Health and Safety Regulation 2011. A copy of this certificate shall be forwarded to the Principal Certifying Authority and Council within 7 days of completion of the ‘clearance inspection’. [GEN0350]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

8. The developer shall provide 14 parking spaces including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to the Principal Certifying Authority with the Construction Certificate for Building/Civil Works. [PCC0065]

9. 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: 16.9 Trips @ \$1400 per Trips (\$1,318 base rate + \$82 indexation) S94 Plan No. 4 Sector2_4</p>	<p>\$23,660</p>
<p>(b) Open Space (Casual): 5 ET @ \$557 per ET (\$502 base rate + \$55 indexation) S94 Plan No. 5</p>	<p>\$2,785</p>
<p>(c) Open Space (Structured): 5 ET @ \$638 per ET (\$575 base rate + \$63 indexation) S94 Plan No. 5</p>	<p>\$3,190</p>
<p>(d) Shirewide Library Facilities: 5 ET @ \$859 per ET (\$792 base rate + \$67 indexation) S94 Plan No. 11</p>	<p>\$4,295</p>
<p>(e) Bus Shelters: 5 ET @ \$67 per ET (\$60 base rate + \$7 indexation) S94 Plan No. 12</p>	<p>\$335</p>
<p>(f) Eviron Cemetery: 5 ET @ \$125 per ET (\$101 base rate + \$24 indexation) S94 Plan No. 13</p>	<p>\$625</p>
<p>(g) Community Facilities (Tweed Coast - North) 5 ET @ \$1425 per ET (\$1,305.60 base rate + \$119.40 indexation) S94 Plan No. 15</p>	<p>\$7,125</p>
<p>(h) Extensions to Council Administration Offices & Technical Support Facilities 5 ET @ \$1909.57 per ET (\$1,759.90 base rate + \$149.67 indexation) S94 Plan No. 18</p>	<p>\$9,547.85</p>
<p>(i) Cycleways: 5 ET @ \$485 per ET (\$447 base rate + \$38 indexation) S94 Plan No. 22</p>	<p>\$2,425</p>
<p>(j) Regional Open Space (Casual) 5 ET @ \$1119 per ET (\$1,031 base rate + \$88 indexation) S94 Plan No. 26</p>	<p>\$5,595</p>

- (k) **Regional Open Space (Structured):**
5 ET @ \$3928 per ET **\$19,640**
(\$3,619 base rate + \$309 indexation)
S94 Plan No. 26

[PCC0215/POC0395/PSC0175]

10. **All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.** [PCC0465]
11. **All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.** [PCC0485]
12. **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]
13. **Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimising the impact of filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted for Council approval.** [PCC0675]
14. **Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works:**
- (a) **Vehicular access: widening of the existing vehicular footpath crossing to 6m, splaying to 6.5m wide at the kerb line.**

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following:

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

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 138 of the Roads Act 1993 will then NOT be required.

[PCC0895]

15. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

16. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

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

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

[PCC1105]

18. 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]

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

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

(b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

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

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

[PCC1185]

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

[PCC1195]

22. Where water is to be drawn from Councils reticulated system, the proponent shall:

- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
- Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
- Payment of relevant fees in accordance with Councils adopted fees and charges.

[PCC1205]

23. Privacy screens are to be provided to all upper level windows facing the rear/southern elevation located on House 5 and House 6.

[PCCNS01]

24. A minor extension of the internal driveway will be required to enable a reversing movement for a vehicle egressing the last garage at the north-eastern end of the driveway. This will need to be addressed in the construction certificate plans.

PRIOR TO COMMENCEMENT OF WORK

25. 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]

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

[PCW0045]

27. 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]

28. 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]

29. Residential building work:

(a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

- * in the name and licence number of the principal contractor, and
- * the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

- * the name of the owner-builder, and
- * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

(b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

30. 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]

31. 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]

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

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

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

[PCW0985]

33. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

34. Prior to the commencement of works, the applicant is to indicate their compliance with the provisions of the Road Traffic Noise Impact Assessment for 63-71 Sexton Hill Drive, Banora Point prepared by CRG Acoustics Pty Ltd dated 17 March 2016 (crgref: 16022 Report) and any addendum(s) or amendment(s) to this report as approved by Council's General Manager or delegate by providing to the Principal Certifying Authority details on the building components and systems intended to be used in the construction of the dwelling with the corresponding STC/RW ratings.

[PCWNS01]

DURING CONSTRUCTION

35. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved construction certificate, drawings and specifications.

[DUR0005]

36. All works shall comply with AS2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2011.

[DUR0165]

37. 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]

38. 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]

39. Prior to demolition of the structure is commenced all asbestos material shall be identified and removed from the site by an asbestos removalist who is licensed to carry out the work by WorkCover NSW. All asbestos waste shall be disposed at a facility that is licensed to receive asbestos waste (all receipts related to disposal must be kept on site and provided to a Council Authorised Officer upon request).

[DUR0335]

40. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

41. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

42. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

43. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise

unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.

[DUR0415]

44. Excavation

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

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

- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
- (b) building involves the enclosure of a public place,

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

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

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

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

[DUR0435]

46. 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]

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

[DUR0675]

48. During filling operations,

- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.

- All fill and cut batters shall be contained wholly within the subject land, unless specifically nominated otherwise on the DA approved plans.
- All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications and to the satisfaction of the Principal Certifying Authority.

and upon completion,

- all topsoil to be respread and the site to be grassed and landscaped including battered areas.

[DUR0755]

49. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

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

[DUR0815]

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

[DUR0905]

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

[DUR0985]

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

[DUR0995]

54. 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]

55. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.
[DUR1015]
56. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.
[DUR1045]
57. 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]
58. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
[DUR1875]
59. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.
[DUR1905]
60. During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection.
[DUR1925]
61. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.
[DUR2015]
62. 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]
63. 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.
[DUR2205]

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

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

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

65. 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 and NSW Department of Primary Industries - Water.

[DUR2425]

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

[DUR2445]

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

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

[DUR2485]

68. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

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

[DUR2505]

70. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.

[DUR2525]

71. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

72. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**
- * 50°C in all other classes of buildings.**

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

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

[DUR2645]

74. Dust and Erosion Management

- (a) Completed earthworks areas are to be topsoiled and seeded immediately to protect them from water and wind erosion, unless building works are imminent.**
- (b) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.**
- (c) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54 km/h). The applicant shall be responsible for the monitoring of on-site wind speeds and be able to produce this data to Council on request.**

[DUR2825]

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

[DUR2835]

76. Written notice shall be provided to the 'regulator' at least 5 days before the removalist commences licensed asbestos removal work in accordance with Clause 466 of the Work Health and Safety Regulation 2011.

[DUR2840]

77. The development shall be carried out in accordance with the recommendations of the Road Traffic Noise Impact Assessment for 63-71 Sexton Hill Drive, Banora Point prepared by CRG Acoustics Pty Ltd dated 17 March 2016 (crgref: 16022 Report) and any addendum(s) or amendment(s) to this report as approved by Council's General Manager or delegate.

[DURNS01]

78. If window systems to be used are not openable or are required to remain closed in order to satisfy the requirements of the Road Traffic Noise Impact Assessment for 63-71 Sexton Hill Drive, Banora Point prepared by CRG Acoustics Pty Ltd dated 17 March 2016 (crgref: 16022 Report) and any addendum(s) or amendment(s) to this report as approved by Council's General Manager or delegate, then a system of mechanical ventilation complying with the relevant provisions of the Building Code of Australia shall be installed to service all habitable areas of the dwellings.

[DURNS02]

79. The exportation or importation of fill or soil from or to the site must be in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the NSW Environmental Protection Authority's Waste Classification Guidelines.

[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

80. 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]

81. 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]

82. Prior to the issue of an occupation certificate,

(a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and

(b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-

(i) the method of protection; and

(ii) the date of installation of the system; and

(iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and

(iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

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

[POC0355]

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

[POC0435]

85. 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]

86. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

87. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

88. 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]

89. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

[POC1055]

90. Prior to an Occupation Certificate being issued, a Post Construction Noise Impact Compliance Assessment report prepared by a suitably qualified acoustic consultant shall be prepared and submitted for consideration and approval by Council's General Manager or delegate.

The assessment report shall consider the Road Traffic Noise Impact Assessment for 63-71 Sexton Hill Drive, Banora Point prepared by CRG Acoustics Pty Ltd dated 17 March 2016 (crgref: 16022 Report) and any addendum(s) or amendment(s) to this report as approved by Council's General Manager and include any recommended noise amelioration measures to be carried out by the applicant.

The applicant shall carry out any such recommendations as provided within the Post Construction Impact Compliance Assessment report to the satisfaction of the General Manager or delegate within 30 days from the date of the acoustic assessment, provided that the General Manager or delegate may extend the time period for the carrying out of any recommended acoustic treatment to a date which may be determined by the General Manager or delegate.

[POCNS01]

USE

91. 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]

92. The development shall be carried out in accordance with the provisions of the Road Traffic Noise Impact Assessment for 63-71 Sexton Hill Drive, Banora Point prepared by CRG Acoustics Pty Ltd dated 17 March 2016 (crgref: 16022 Report) and any addendum(s) or amendment(s) to this report as approved by Council's General Manager. [USE0305]
93. All wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate. [USE0875]
94. Air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008. [USE1510]
95. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans. [PSC0005]
96. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate or Occupation Certificate (whichever occurs first). Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate or Occupation Certificate (whichever occurs first). [PSC0725]
97. A Subdivision Certificate will not be issued by the General Manager until such time as all relevant conditions of this Development Consent have been complied with. [PSC0825]
98. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 2 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier. [PSC0885]

- 99. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.**

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

[PSC1115]

- 100. Prior to the issue of a Subdivision Certificate (for Strata), all building construction works are to be completed.**

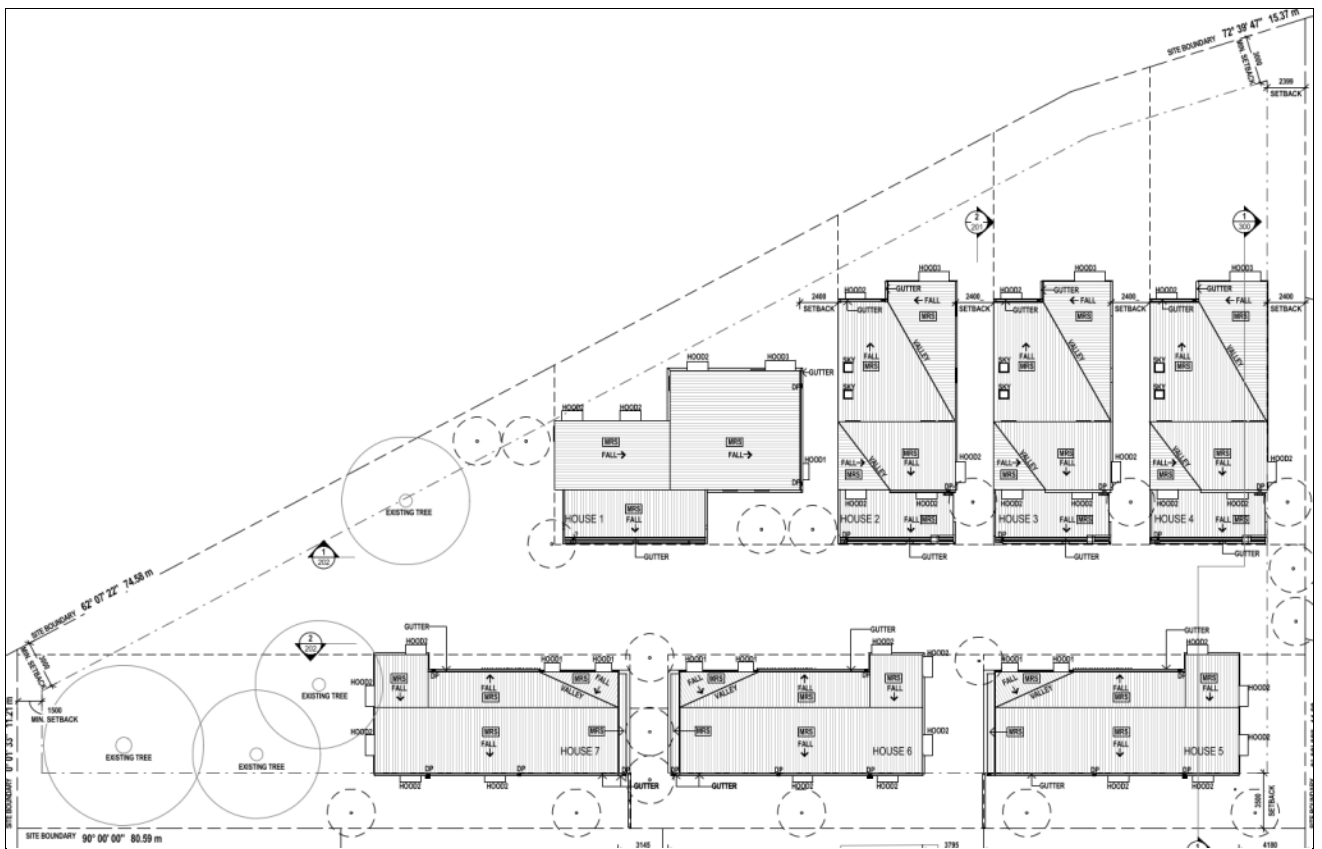
[PSCNS01]

REPORT:

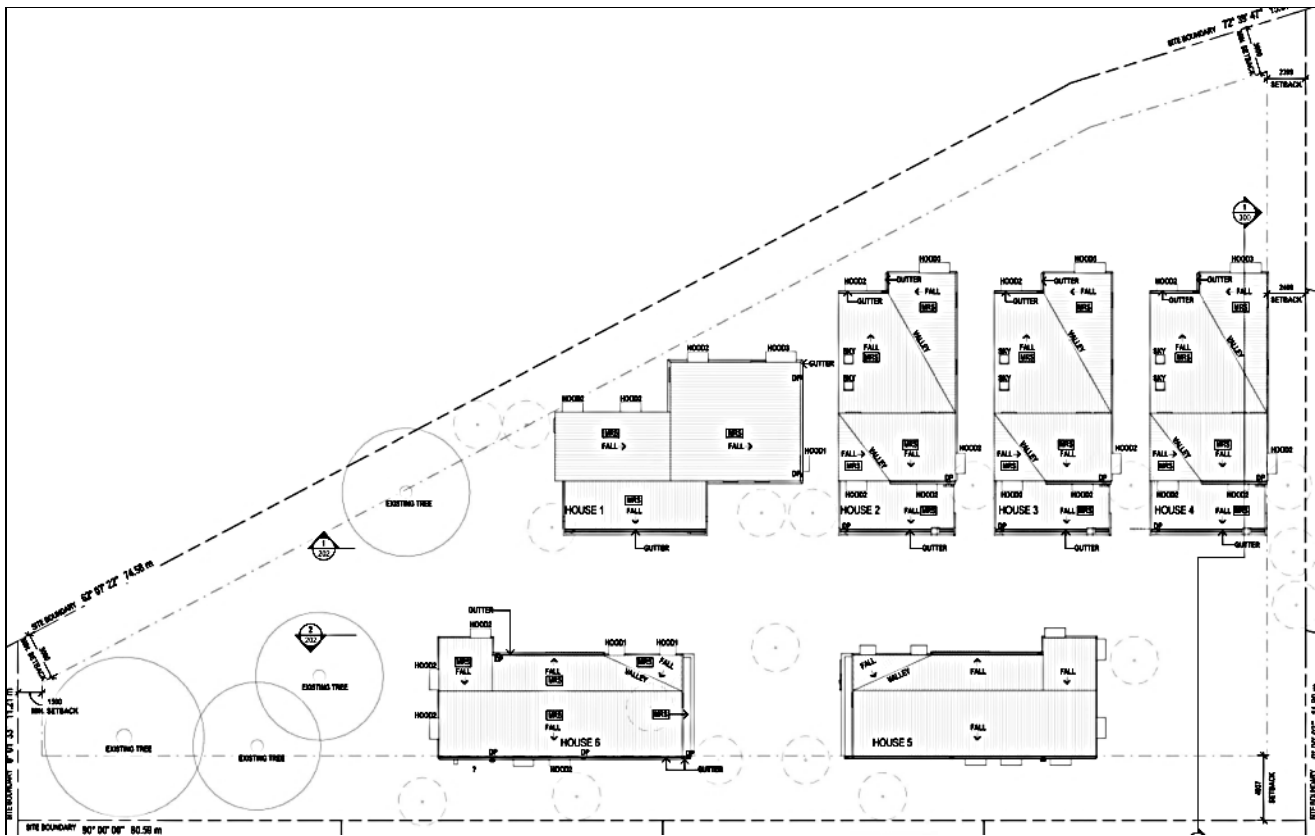
Applicant: Raynk Investments Pty Ltd
Owner: Mr Frank H Yates & Mrs Rhonda A Yates
Location: Lot 678 DP 257438 No. 63-71 Sexton Hill Drive, Banora Point
Zoning: R2 - Low Density Residential
Cost: \$1,500,000

Background:

The applicant originally sought approval for a seven townhouse development, however one townhouse located at the rear of the site has been removed therefore the amended application seeks Council consent for a six townhouse development and six lot strata subdivision.



Original proposal - seven townhouse development 3.5m rear setback.

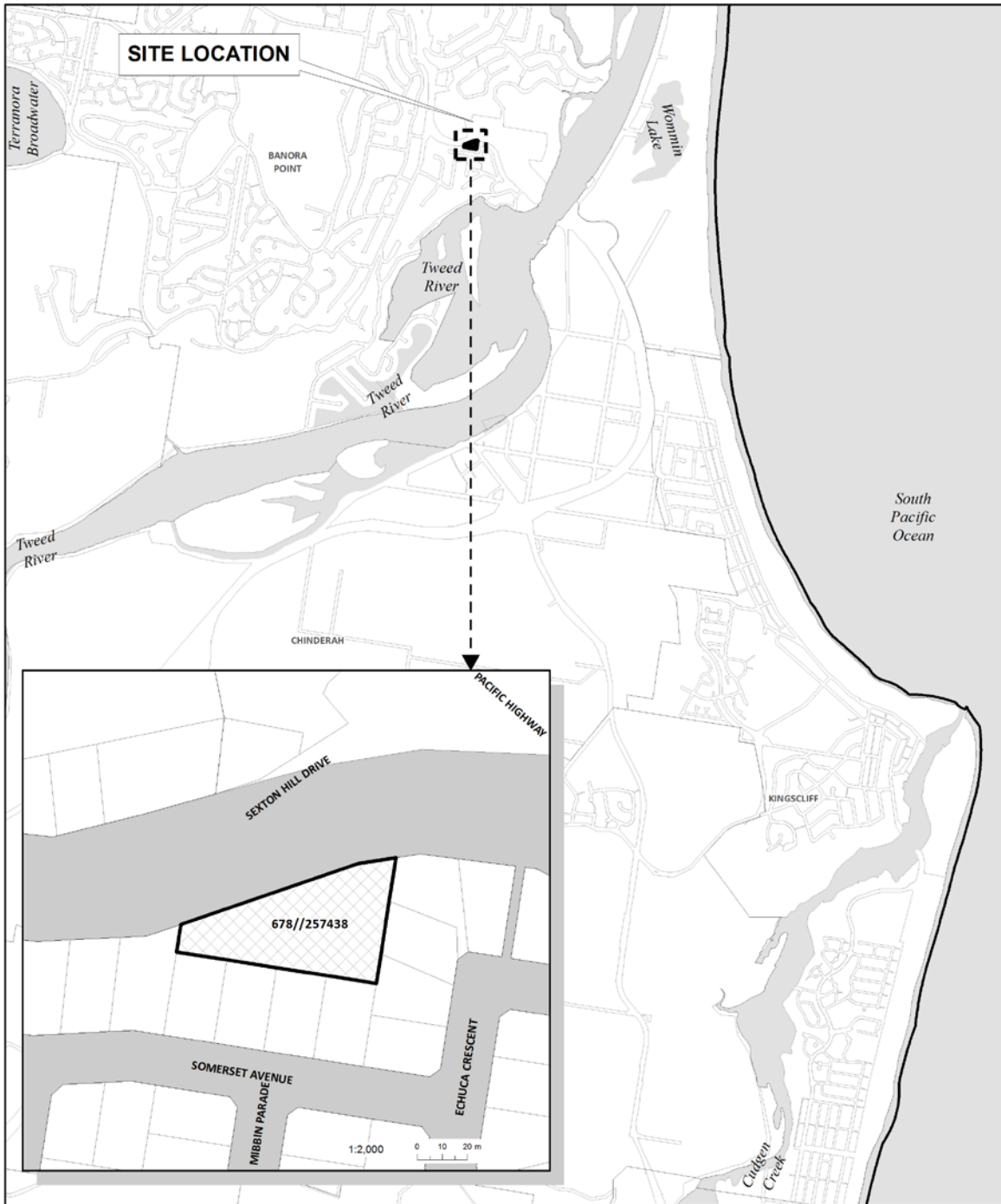


Amended proposal – six townhouse development and increased rear setback to 4.037m.

Design Element	Detail	Requirement
Number of Dwellings	6	
Storeys/Height	2 storeys or 8.5m	9m
Site area	2599m ²	1350m ²
Gross Floor Area	828m ²	
Floor Space Ratio	0.318:1	0.8:1
Car Parking (Resident/Visitor)	2 spaces per unit and 2 visitor spaces. Total 14 spaces.	14

Site access will be via Sexton Hill Drive, with a double garage provided for each dwelling 12 and two visitor spaces, making a total of 14 car parking spaces. The two visitor spaces are located towards the front of the site.

SITE DIAGRAM:



LOCALITY PLAN

0 0.4 0.8 Km

1:35,000

Lot 678 DP 257438
No. 63-71 Sexton Hill Drive, Banora Point



Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, 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 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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Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484
T: (02) 6670 2400 / 1300 292 872
F: (02) 6670 2483
W: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au



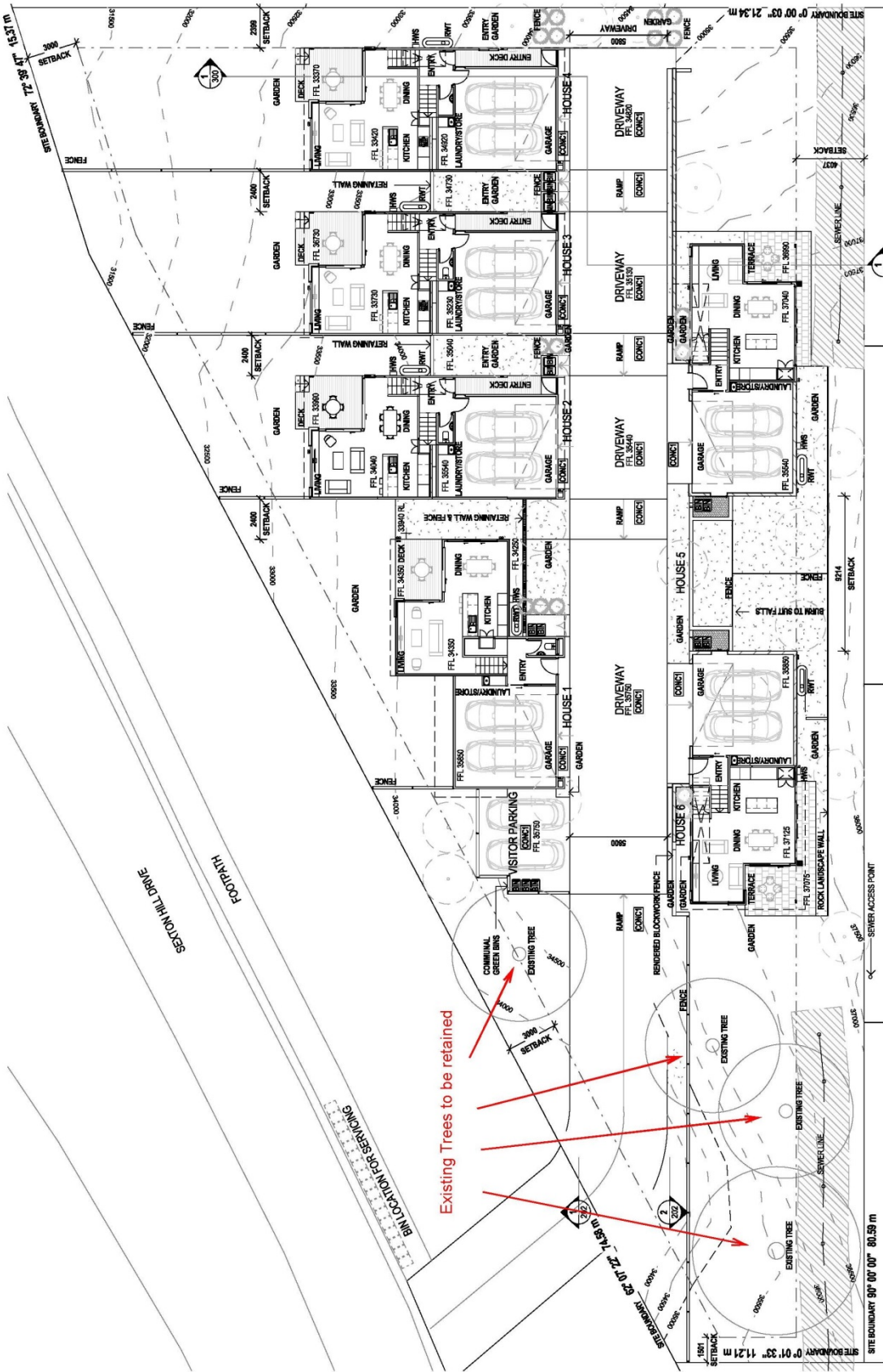
TWEED
SHIRE COUNCIL

Filepath: Z:\ESRI\PRU\COUNCIL REPORTS\63-71 Sexton Hill Drive\Site Plan.mxd

Author: S. Scott - GIS

Date Printed: 20 February, 2017

DEVELOPMENT/ELEVATION PLANS:



Existing Trees to be retained

PO Box 8711
Wellington, NZ 6121
www.marc.co.nz
ARCHITECTS

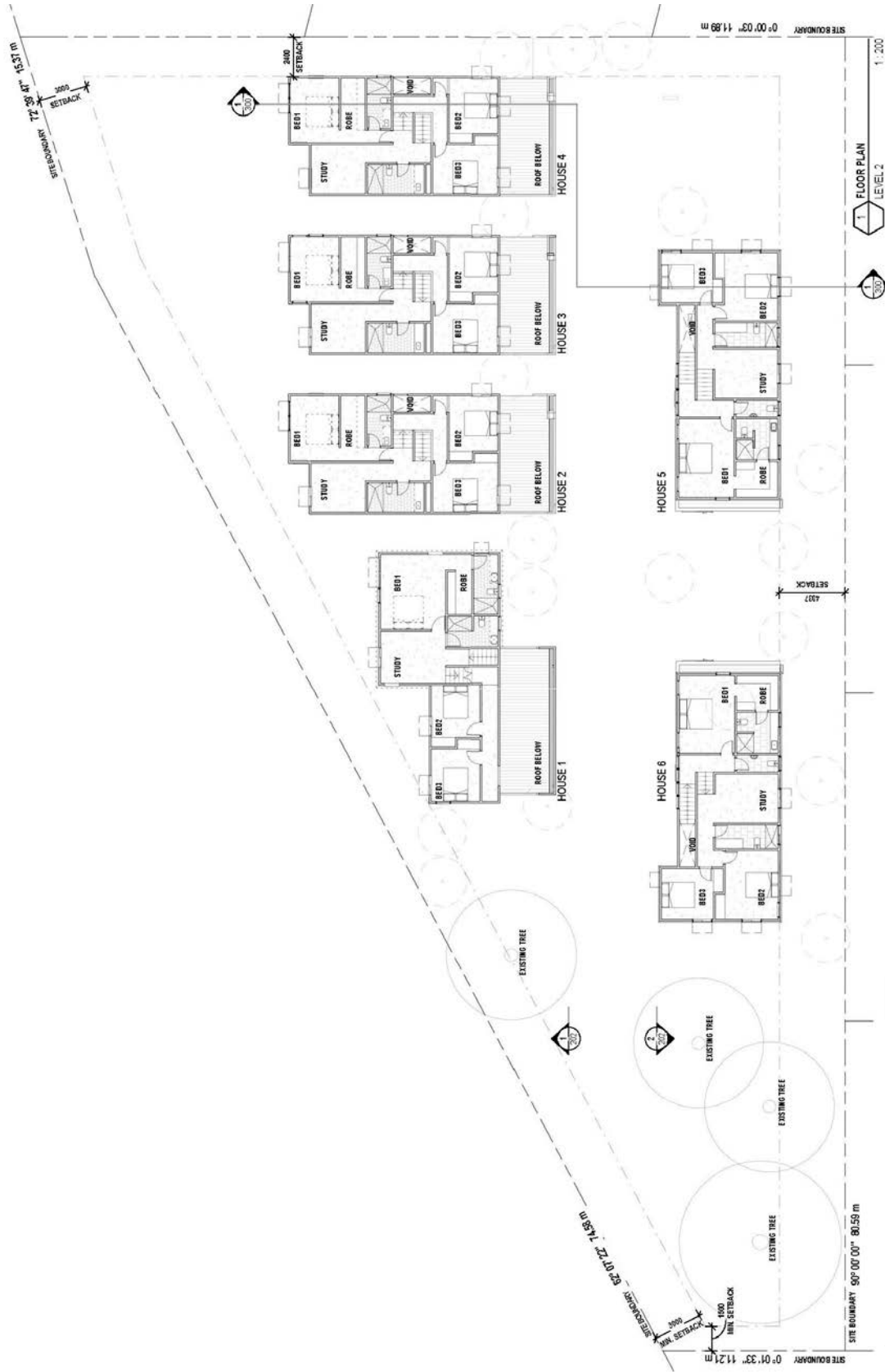
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Client: YATES
Project: 65-71 SEXTON HILL DRIVE

Check all dimensions on all taken fabrication or exact.
Use figure dimensions in preference to text.
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Drawing Title: FLOOR PLAN - LEVEL 1
Scale: @ A3
Date: 06.06.16
Project No.: 1522
Sheet No.: DA.100
Issue: 8



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Title: VATES
 Project: 83-37 SEXTON HILL DRIVE

Date: 11/20/16
 Drawn: DA 011
 Checked: DA 011
 Scale: 1:200
 Block: 80.09.16
 Project No: 1622

This is a preliminary drawing and is not to be used for construction without the written permission of the architect. The architect shall not be responsible for any errors or omissions in this drawing.

1:200
 FLOOR PLAN - LEVEL 2



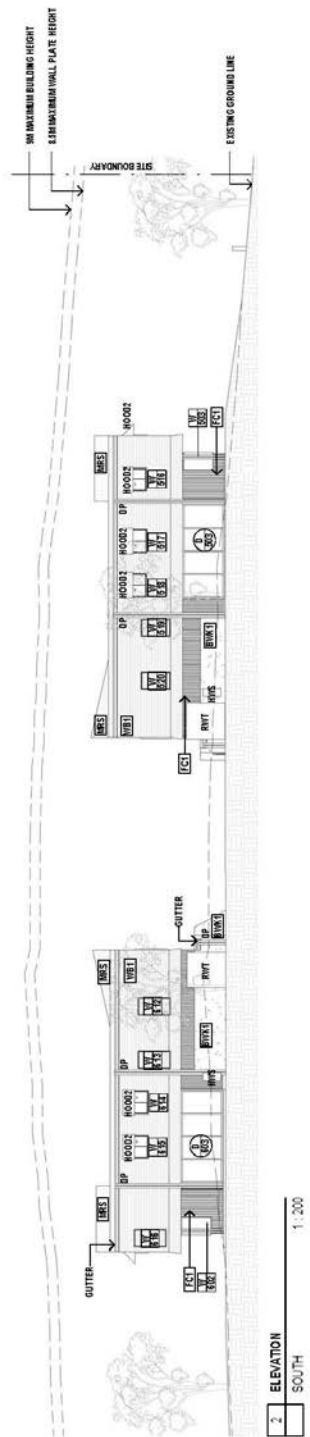
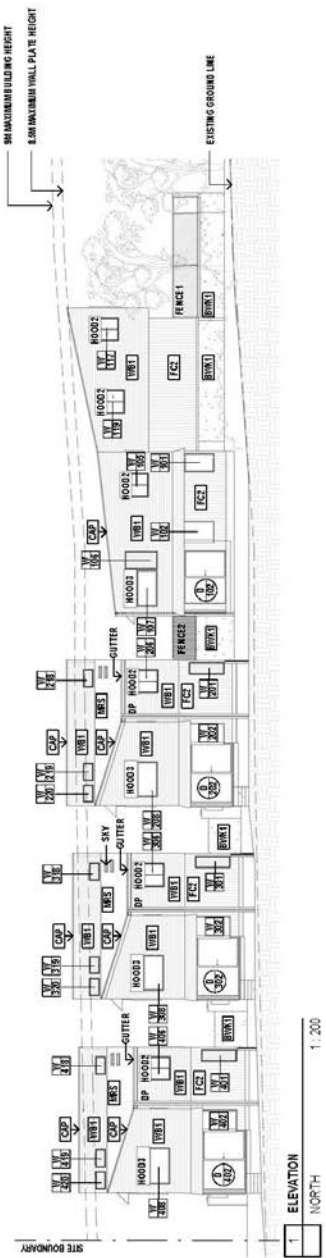
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MARC SCO
 Preliminary
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1
ROOF PLAN
 Scale: 1:200
 Date: 09/09/16
 Project No. 1622
 Drawn By: DANIEL
 Year: 6

Client: YATES
 Project: 5071 SECTION HILL DRIVE
 Check all dimensions on this plan in relation to the site plan.
 All dimensions are in millimeters unless otherwise specified.
 These drawings are for information only and do not constitute an offer of construction services.
 All dimensions are in millimeters unless otherwise specified.

P1: 09/09/16
 P2: 09/09/16
 P3: 09/09/16
 P4: 09/09/16

MATERIAL LEGEND	
CODE	DESCRIPTION
BW1T	BLOCKWORK, REINFORCED FINISH
CLP	ROCK AND BRIDGE CLIPPING
CP	CONCRETE
CP1	CONCRETE, COLOURED
CP2	CONCRETE, POLISHED
CP3	CONCRETE, STAIN
CP4	CONCRETE, STAIN, POLISHED
FAS2CA	PAINTED TIMBER FASCIA
FC1	JAMES HARVEY TIMBER, HEDGELEY, TIMBER COVER BATTENS
FC2	JAMES HARVEY TIMBER, HEDGELEY, TIMBER COVER BATTENS
FC3	JAMES HARVEY TIMBER, HEDGELEY, TIMBER COVER BATTENS
FC4	JAMES HARVEY TIMBER, HEDGELEY, TIMBER COVER BATTENS
FENCE1	CHAIN WIRE FENCE WITH TIMBER BATTERS AND RAILS
FENCE2	PAINT FINISHED TIMBER BATTERS WITH PAINT FINISHED TIMBER POSTS AND RAILS
GUTTER	EDGE GUTTER
H0001	ALUMINIUM PROFILED HOODS
H0002	ALUMINIUM PROFILED HOODS
H0003	ALUMINIUM PROFILED HOODS
H0004	ALUMINIUM PROFILED HOODS
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H0200	ALUMINIUM PROFILED HOODS



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Client: **VATES**
 Project: **6371 SEXTON HILL DRIVE**

Check of dimensions to be taken before construction is started.
 All dimensions are in millimetres unless otherwise stated.
 Dimensions are given in millimetres unless otherwise stated.
 Dimensions are given in millimetres unless otherwise stated.
 Dimensions are given in millimetres unless otherwise stated.

Scale: 1:200
 Date: 30/09/16
 Project No.: 1622
 Sheet No.: DA-200
 Page: 8

MATERIAL LEGEND	
CODE	DESCRIPTION
BRST	BRUSHWOOD, BRUSHWOOD FINISH
CLAP	ROSEWOOD CLAPBOARDING
CONE1	BROOKFORD COMPARE
DP	DOWNPIPE
FAS2A	PAINTED TIMBER FASCIA
F1	JAMES SHRODE FORMHARQUELEX, TIMBER COVER BATTENS
F2	85-200MM CENTERS, JAMES SHRODE FORMHARQUELEX, TIMBER COVER BATTENS
FENK1	CHAIN WIRE FENCE WITH TIMBER POSTS AND RAILS
FENK2	PAINT FINISHED TIMBER BATTENS WITH PAINT FINISHED TIMBER POSTS AND RAILS
GUTTR	HAVE GUTTER
H1	WALLS OF CUSTOM ALUMINUM IMPROVED DOORS
H2	WALLS OF CUSTOM ALUMINUM IMPROVED DOORS
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H100	WALLS OF CUSTOM ALUMINUM IMPROVED DOORS



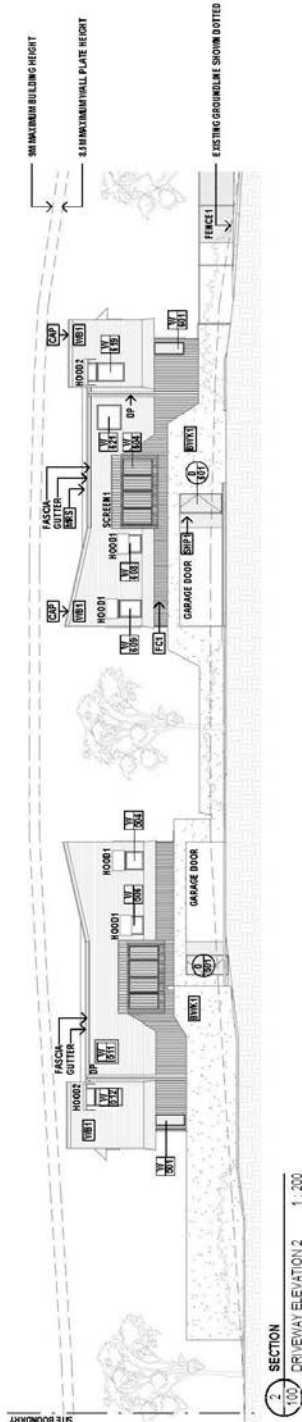
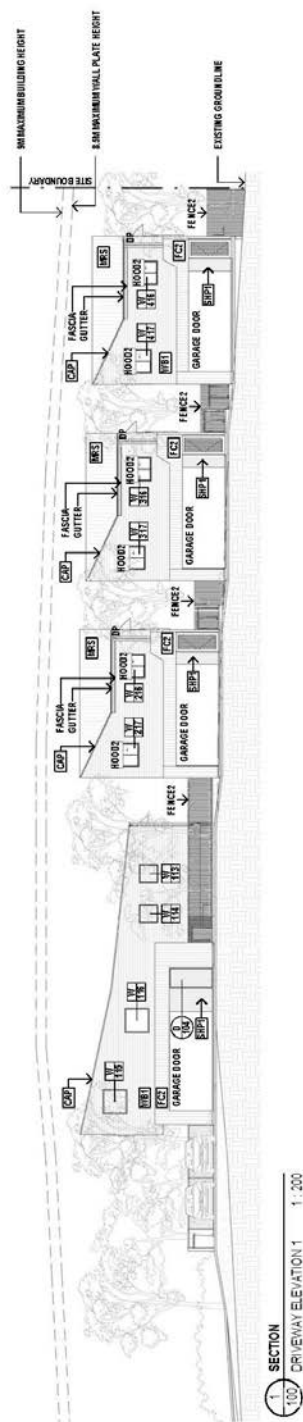
MARC & CO
 1700-1101 West 50th Street
 Edmonton, Alberta
 A.B.N. 96-9933338

Preliminary
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Check all elevations with the fabric manufacturer or vendor. Use the dimensions in preference to detail.
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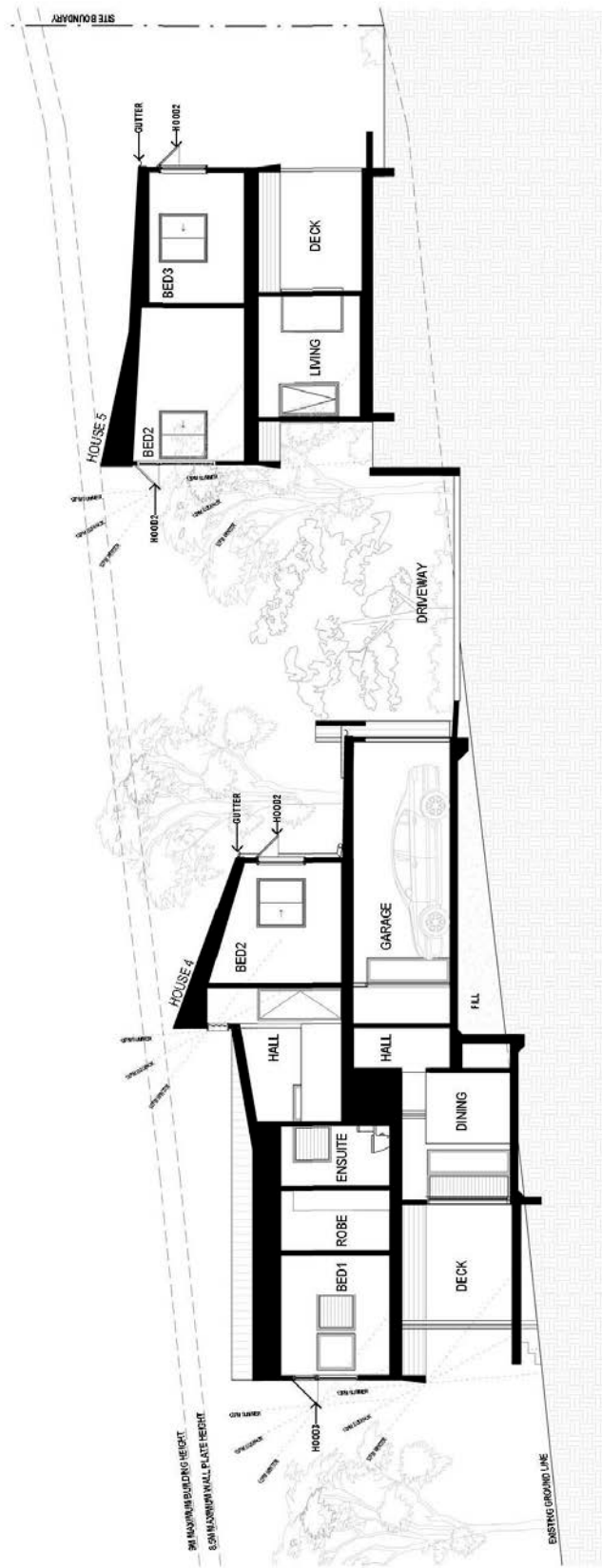
ELEVATIONS
 Scale: 8:1
 1:200
 Date: 5/09/16
 Project No.: 1622
 Sheet No.: DA.301
 Issue: 3

MATERIAL LEGEND	
CODE	DESCRIPTION
SWK1	BLOCKWORK, RENDERED FINISH
CAP	RIDGE AND BARGE CLIPPING
CONC	BROOM FINISHED CONCRETE
DP	DOWN PIPE
FASDA	PAINTED TIMBER FASCIA
FCT1	UPPER FASCIA WITH HARDIFLEX, TIMBER COVER BATTENS @ 4MM/4 CENTERS
FCT2	JAMES HARVEY 6mm HARDIFLEX, TIMBER COVER BATTENS @ 4MM/4 CENTERS
FENC1	PAINT FINISHED TIMBER BATTENS WITH PAINT FINISHED WOOD WALL
FENC2	PAINT FINISHED TIMBER BATTENS WITH PAINT FINISHED WOOD WALL
GUTTR	GAME GUTTER
HOOD1	POWER COATED CUSTOM ALUMINUM PROFILED HOODS
HOOD2	POWER COATED CUSTOM ALUMINUM PROFILED HOODS
HWS	HOT WATER SYSTEM
INS	COLORBOND METAL ROOF SHEETING
INT	INTERIOR WALL
ROOF	SKYLIGHT WATER TANK
SCREEN	EXTERNAL PAINT FINISHED TIMBER BATTEN GREEN SCREEN
SHPL	BOARL SHIP LAP CLADDING, BLACK GRUNT
SKY	ALUMINUM FINISHED VENTING SKYLIGHT
WB1	JAMES HARVEY 50' X 100' LINEA WEATHERBOARD, PAINT FINISH



MARC & CO
 Preliminary For information only Not for construction
 Client: YATES
 Project: 6371 SECTION HILL DRIVE
 Date: 5/09/16
 Sheet No: DA-302
 Issue: 8
 Scale: 1:200
 Project No: 1622

Check of dimensions on this plan is the responsibility of the client.
 Dimensions are given in millimeters unless otherwise stated.
 All dimensions are given in millimeters unless otherwise stated.
 Dimensions are given in millimeters unless otherwise stated.
 Dimensions are given in millimeters unless otherwise stated.
 Dimensions are given in millimeters unless otherwise stated.



SECTION 1
SECTION A
1:100

Client: **WARRIS**
 Project No: **1622**
 Date: **09/09/16**
 Scale: **DA.300**
 Year: **3**

Investigator: **SECTION**
 Scale: **1:100**
 Project No: **1622**
 Date: **09/09/16**

Client: **WARRIS**
 Project No: **1622**
 Date: **09/09/16**
 Scale: **DA.300**

MARC & CO
 Preliminary
 For information only
 Not for construction

Check all dimensions on plan for fabrication, submit to fabricator for confirmation in preference to this.
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 2/0/16: 5206
 07/16: 1014
 07/16: 1009
 07/16: 1008
 07/16: 1007

REPORT:

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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

This plan aims to make local environmental provisions for land within the Tweed Heads area in accordance with the relevant standard environmental planning instrument under Section 33A of the Act.

The particular aims of this plan are as follows:

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

It is considered that the proposal would be consistent with the aims of the plan, in enabling of a form of residential development with minimal impact on the environment.

Clause 2.3 – Zone objectives and Land use table

The subject site is located within the R2 Low Density Residential zone. The objectives of this zone are:

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

The proposal is considered to provide a low density development within an appropriately zoned location, it is noted that a significant proportion of surrounding properties are dual occupancies with site areas of around 700m² (which equates to 1 dwelling per 350m²). Section A1 Part B of Council's DCP 2008 requires a dwelling density of 1 per 450m² the proposal would have a ratio of 1 dwelling per 433.17m². The proposed variation of 16.83m² per dwelling is considered acceptable in this instance. Accordingly, the proposal is considered to be consistent with surrounding landuses, the zone objectives. Residential Accommodation (multi-dwelling housing) is permitted with consent in the zone.

Clause 2.6 Subdivision

The proposal seeks approval for a seven lot (revised to six lot) strata subdivision.

Clause 2.7 Demolition

The proposal seeks approval for the demolition of the existing dwelling. Appropriate conditions have been recommended.

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

The proposal seeks approval for a seven lot (revised to six lot) strata subdivision, strata subdivisions are not covered by the clause. The application does not propose a Torrens title subdivision, therefore the proposal is compliant with the clause.

Clause 4.3 - Height of Buildings

The objectives of this clause are as follows:

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

- (g) *to prevent gross overshadowing impacts on the natural and built environment.*

This clause states that the height of any building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. In this instance the subject site is mapped as having a maximum building height of 9m.

The proposed development has a maximum stated height of 8.5m. Accordingly, the proposed development complies with this regard.

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 states that the maximum floor space ratio (FSR) for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area. In this instance the applicable floor space ratio is (0.8:1) over the entire site.

The development has an approximate FSR of 0.318:1 which is much less than the permitted maximum. The proposal is acceptable in this regard.

Clause 4.6 - Exception to development standards

There are no exceptions to development standards proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

The development is not listed as a miscellaneous permitted use.

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 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 located in excess of 500m from the coastal foreshore and is therefore not considered to impact on the amenity of the foreshore by virtue of overshadowing or a loss of views. 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 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 due to its nature 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 proposal is to be undertaken on a previously developed land which is currently utilised for residential purposes. The proposed development would

result in the removal of some landscaping vegetation within the existing site. It is considered that this vegetation provides amenity landscaping rather than having a specific ecological value.

It is noted that replacement landscaping is to be provided to the site. 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 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 subject site would maintain connection to Council's reticulated sewer 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 Engineering Unit with respect to stormwater. It has advised that the townhouse development site relies on two downstream easements through private allotments for the legal discharge of stormwater. Hydraulic investigation and design was required to determine the spare capacity of these services to accept increased runoff from the development (and any external contributing catchments) in minor and major storm events, and any upgrades and/or stormwater detention facilities necessary to protect downstream development.

Further information in this regard was received from the applicant, with Council's Flooding and stormwater Engineering raising no further concerns subject to conditions being applied.

Having regard to the above, 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, permissibility 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 this clause.

Clause 5.9 – Preservation of Trees or Vegetation

The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation. The subject site comprises limited vegetation, the four trees located in the eastern portion of the site consisting of any amenity value are proposed to be retained. A landscape intent plan was provided however a condition is recommended requiring a landscape plan to be submitted to Council for approval. 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. A search was undertaken via the AHIMS web services and found zero Aboriginal sites and places in or near the site.

Clause 5.11 - Bush fire hazard reduction

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

Clause 7.1 – Acid Sulfate Soils

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

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

Council's Environmental Health Officer has reviewed this aspect of the proposed development and has not raised any objections on this basis, stating "*Given the elevation of the site and proposed development, acid sulfate soil is not considered a constraint for the proposal.*" 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.

There are earthworks required to facilitate the proposed development and access.

Clause 7.2(3)(a)-(i) outlines matters which require consideration when assessing an application.

- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) *the effect of the development on the likely future use or redevelopment of the land,*
- (c) *the quality of the fill or the soil to be excavated, or both,*
- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) *the source of any fill material and the destination of any excavated material,*
- (f) *the likelihood of disturbing relics,*
- (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*
- (i) *the proximity to, and potential for adverse impacts on, any heritage item, archaeological site, or heritage conservation area.*

The proposed development seeks consent to undertake earthworks for the construction of the development and access to the site.

The extent of works is considered not to have an impact on the amenity of the surrounding residences. No impact is envisaged on the drainage system, with stormwater to discharge directly in to a pit in Sexton Hill Drive.

The development meets the provisions of Clause 7.2.

Clause 7.3 – Flood Planning

The subject site is not prone to flooding.

Accordingly, Clause 7.3 is considered satisfied.

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.

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

Clause 7.8 – Airspace operations

The development will not impact on airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

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

Clause 7.10 - Essential Services

All essential services are made available to the subject site, appropriate conditions are recommended with regards to essential services.

Other Specific Clauses

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

State Environmental Planning Policies

SEPP No. 55

A Preliminary Site Investigation for 63-71 Sexton Hill Drive, Banora Point prepared by HMC Environmental Consulting Pty Ltd dated March 2016 (Report: HMC 2016.035) has been submitted.

A site history and investigation including sampling has been completed, with results below health investigation levels (HILs) for Residential A development. HMC advise that in relation to potential site contamination associated with the current and former land use, the site is considered suitable for the current and proposed residential land use. No further consideration is required in relation to contamination.

SEPP No. 65 - Design Quality of Residential Flat Development

The proposed development will comprise of a Class 1a building under the Building Code of Australia and is less than three storeys in height. Therefore is excluded from the definition of a residential flat building, as defined under SEPP 65.

Pursuant to Clause 4, the policy does not apply.

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 due to 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.*

The proposed development is sited and designed in general accord with the relevant Council controls, the proposal is considered suitable for the surrounding area as the surrounding development consists of a mixture of single and dual occupancy development. The dual occupancy developments are at a higher density than the proposed development. Accordingly, the development is considered not likely to have a significant 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 Banora Point 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 Part), 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. The proposal is consistent with the desired future character for the area. It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

SEPP (Building Sustainability Index: BASIX) 2004

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

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

There is no draft LEP applicable to the application.

Exhibited Draft State Environmental Planning Policies or Regional Environmental Plan/s

The draft Coastal Management SEPP applies to the site. The 'coastal zone' is defined in the Coastal Management Act 2016 as four coastal management areas:

- Coastal wetlands and literal rainforests area (Coastal wetlands and Literal rainforest 100m buffer).
- Coastal environment area (water).
- Coastal use area (100m buffer above mean high water mark).
- Coastal vulnerability area (Coastal Hazard).

The site is identified as being within the 'Coastal Use Area'. The Coastal Use Area is land adjacent to coastal waters and the like, and needs protection through permitting appropriate development, adequate public open space, and avoiding adverse impacts of development on cultural and built environment.

The proposed development is considered to address the public interest criteria by not impacting on public access to foreshore areas, does not create overshadowing, wind funnelling or impede views from public places, is not visible from the coast, will not impact on Aboriginal cultural heritage or the surf zone. The site is located approximately 340 metres from the nearest coastal water and therefore is considered not likely to conflict with the Draft Coastal Management SEPP.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A complete A1 assessment has been undertaken and is appended to the DA file. The subject application seeks the following variations to Section A1 of Councils DCP, namely:

Section A1 - Part B - Chapter 1 - Building Types (Town Houses), Control B

The proposed development does not meet the minimum 1 dwelling per 450m² as listed within Control B.

Section A1- Part B - Chapter 2 Design Control - Site Configuration - Topography Cut & Fill - Control H

The proposed development does not meet control H relating to the maximum level of cut and setback requirements for fill.

Section A1- Part B - Chapter 2 Design Control- Setbacks - Front Setbacks - Control C

The proposed development does not meet Control C relating to the average setback in established areas given that it is not possible to define an average as no neighbouring allotments front Sexton Hill Drive.

Section A1- Part B - Chapter 2 Design Control- Setbacks - Rear Setbacks - Control C

The proposed development does not meet Control C relating to the rear setback requirement of 5m or the deep soil zone.

Section A1- Part B - Chapter 2 Design Control- Car parking and Access - Garages- Control E

The proposed development does not meet Control E relating to the setback for on-grade car parking in town houses.

Section A1 - Part B - Chapter 1 - Building Types (Town Houses), Control B

The proposed development does not meet the minimum 1 dwelling per 450m² as listed within Control B.

The site is zoned R2 Low Density Residential, with a land area of 2599m².

However, the proposal does not comply with 1 dwelling per 450m² with the development proposing 1 dwelling per 433m². The proposal does comply by providing 1 per 220m² development lot area.

The objectives state:

- *To provide development capacity on larger lots within residential areas.*
- *To retain the residential character in streets and suburbs.*
- *To create or retain quality residential and pedestrian friendly streetscapes.*
- *To provide an alternative form of medium density housing.*

Comment:

The applicant provided the following:

To provide development capacity on larger lots within residential areas.

Comment:

The sites unique nature has the capacity to provide six (6) town houses with the ability to ensure precedence is not created in the area.

To retain the residential character in streets and suburbs.

Comment:

Given the high set nature of the allotment on Sexton Hill Drive no true residential character exists through both the historical use of Sexton Hill Drive as the Pacific Highway and the allotments positioning above Sexton Hill Drive providing a clear disconnect between residential and public land. The unique characteristics of the allotment as mentioned above provide further support that precedent in the shire cannot possibly be set. Through architectural merit and response to landscaping provisions the presentation of the town houses to the street frontage will not over power the streetscape.

To create or retain quality residential and pedestrian friendly streetscapes.

Comment:

The architectural merit awarded to the development actively fronts Sexton Hill Drive, as such pedestrian and vehicular access is clearly oriented toward the street frontage in a safe and orderly method.

To provide an affirmative form of medium density housing

Comment:

The proposed development effectively provides an alternative form of housing in response to the zoning permissibility aiming to inject a housing type into the area to provide affordable living opportunities in the market.

While the development does not meet the 450m² minimum a further note within this control identifies that each town house is to be provided with a development lot area of 220m². The development lot area for each town house ranges from 293m² - 481 m². It is noted that the site is one of the last infill development sites of its kind within the Banora Point area, the development will inject a suitable residential type that will add to the mix of dwellings within the vicinity while increasing the availability of affordable housing stock. Being one of the last large residential allotments within the area the site presents a unique opportunity ensuring no precedent will be set given that no other property within the vicinity has the capacity to provide the density that this application can ultimately achieve. It is important to distinguish that this variation sought does not act as a precursor for other variations sought within this application.

Given that landscaping requirements can be achieved and that the sites characteristics allow the development to not unduly affect neighbouring developments or the streetscape, Councils support for the variation to the 450m² control is respectfully requested."

Council Officer comment

- *To provide development capacity on larger lots within residential areas.*

The proposal complies with this objective by providing development on a larger lot within a residential area. However, it is noted that that proposal does not comply with the 1 per 450m² standard, but the proposal does comply with 1 per 220m² of development lot area.

- *To retain the residential character in streets and suburbs.*

The residential character of the area is primarily single and two storey, single dwelling detached residential housing on lots sizes around 650m². It is noted that there are a few attached dual occupancy located within the immediate area on lot sizes around the 632m²-700m² size therefore equating to 1 dwelling per 316m² to 350m².

- 7 Sommerset Avenue has a land area of 702m² therefore equating to 1 per 350m².
- 46 Pacific Drive is a dual occupancy with a land area of 632.5m² therefore 1 per 316.25m².
- 1 Mibbin Parade attached dual occupancy on land 670m², therefore 335m² per dwelling. (There are many other examples within the immediate area).
- 50 unit aged care facility 2-4 Terranora Road Banora Point on land area of 7875m² therefore 157.5m² per unit.

It is also noted that the site is located at the rear of residential development and fronts Sexton Hill Drive which does not have a formalised residential character, refer to aerial photo below.



Aerial of the site and surrounding land.

The large setbacks proposed to the street (Sexton Hill Drive) of 3 metres to 13.5 metres in combination with the significant height difference between the subject site and Sexton Hill Drive (the site is approximately 3 metres higher than Sexton Hill Drive) and proposed landscape intent would assist in providing an improved and positive streetscape and would not adversely impact on the streetscape, refer below to site plan.



Photo illustrating dense vegetation and change in elevation.

- *To create or retain quality residential and pedestrian friendly streetscapes.*

As stated above, the proposal development with generally exceeding setbacks to Sexton Hill Drive (up to 13.5 metres) and proposed Landscape plan will improve on the current streetscape and will not impact on the existing pedestrian footpath. It is noted that the setback between the property boundary and the footpath is approximately 10 metres. Therefore the potential setback from the dwelling façade to the footpath is up to 23 metres (min 12 metres).

- *To provide an alternative form of medium density housing.*

The proposed development (six Townhouses) provides an alternative form of Medium density housing.

The proposal has been assessed against the objectives and it is considered that the proposal is consistent with the objectives as demonstrated above.

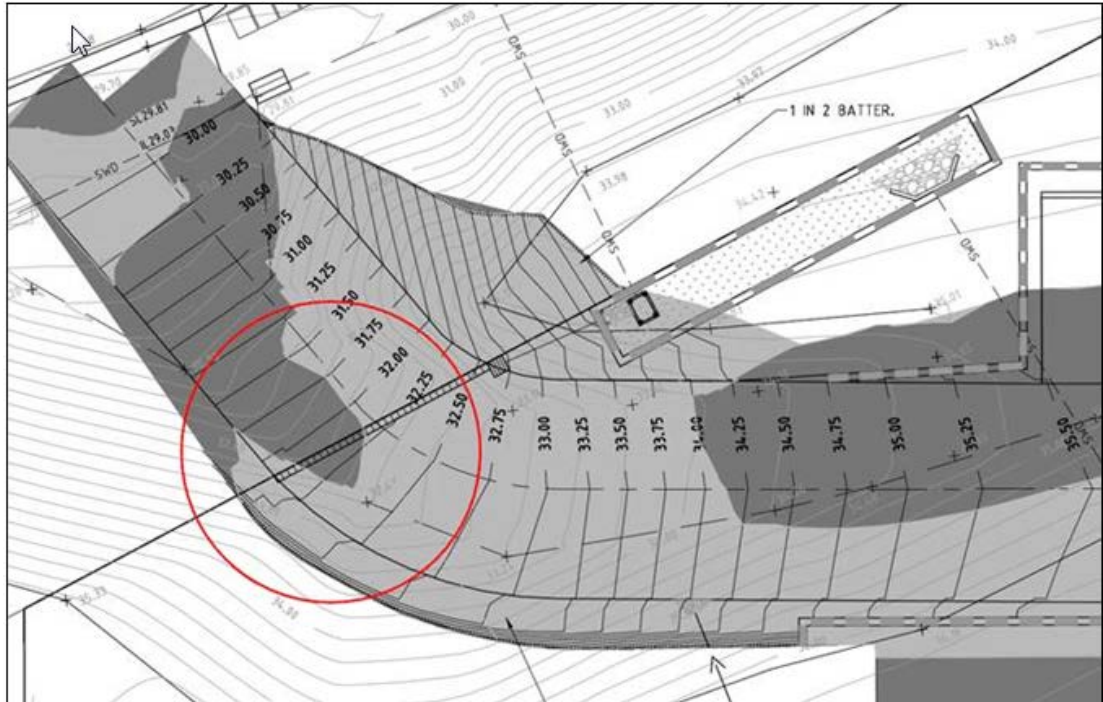
Section A1- Part B - Chapter 2 Design Control - Site Configuration - Topography Cut & Fill - Control H

The proposed development does not meet control H relating to the maximum level of cut and setback requirements for fill.

The proposal seeks a variation in regards to the following standard:

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

The area of noncompliance relates to proposed fill to enable improved access to the site, refer to figure below.



The applicant provides the following comments:

- . *To retain the existing landform.*

Comment:

The proposal has been subject to extensive design development to ensure the minimum amount of cut/fill and retaining is required to facilitate the proposal. The extent of retaining is located within the confines of the building footprint. No adverse impact to the existing landforms results. The proposal is compliant with this objective.

- . *To limit the extent of excavation.*

Comment:

The proposed variation is associated with excavations within the building footprint. The extent of non-compliant excavation remains predominantly within the building footprint. The proposal does not compromise attainment of this objective.

- . *To moderate the effects of building height and bulk on sloping land.*

Comment:

The proposed variation to cut has no direct impact on the building height or bulk of the proposed building. The proposal is compliant with this objective.

- . *To minimise the extent of earth works on residential land and earthworks associated with residential development.*

Comment:

The proposed variation to retaining has no direct impact on the building height or bulk of the proposed building. The proposed variation relates to excavation within the building footprint. The proposal is compliant with this objective.

- . *To ensure that the building design is appropriate for site topographical conditions*

Comment:

Where variation is sought, the non-compliant cut and fill is predominantly contained within the building foot print. Minor encroachments outside of the building footprint will not restrict stormwater drainage nor does it dominate the landscape.

The proposal is compliant with this objective.

Council's support of the proposed variation to Design Control 2 - Site Configuration - Topography, Cut and Fill- Control F and H is respectfully requested.

Council Officers comment:

The applicant states that cut and fill is proposed along the front boundary (driveway access) and therefore does not comply with the standard. Refer to the cut and fill plan above. Cut and fill appears to be minor but also required to provide improved access, with all other cut and fill is within the confines of the building footprint or internal access and parking. The proposed variation is minor and is due to the strict interpretation to the control. It is considered that the earthworks are unlikely to create an impact on the natural or built environments. However the following comments are made in relation to the objectives.

Objectives

- *To retain the existing landform.*

The proposed earthworks are considered to be relatively minor, with the development retaining the existing landform. The proposed earthworks are considered not likely to impact on adjoining properties.

- *To limit the extent of excavation.*

The extent of excavation is considered to be minor and is mainly contained within the building footprint or is providing access to the site.

- *To moderate the effects of building height and bulk on sloping land.*

The cut within the building envelope will reduce the height of the buildings.

- *To minimise the extent of earth works on residential land and earthworks associated with residential development.*

The proposed earthworks are considered to be relatively minor and relate to providing improved access to the site and within the building footprints.

- To ensure that the building design is appropriate for site topographical conditions.

The buildings have been designed to conform and reflect the existing topographical features of the site. This is evident in the minor levels of cut and fill relating to the development.

Section A1- Part B - Chapter 2 Design Control- Setbacks - Front Setbacks - Control C

The proposed development does not meet Control C relating to the average setback in established areas given that it is not possible to define an average as no neighbouring allotments front Sexton Hill Drive.

The site is within an established area and is an infill site, with the neighbouring properties to the east having setbacks of 6m and 5.3m therefore the average could be suggested as 5.65m minus 1m would equate to 4.65m setback under the policy.

The site does not have dual frontage. The site has only one street frontage – Sexton Hill Drive.

The majority of developments on Sexton Hill Drive do not front Sexton Hill Drive but rather the rear of the properties front Sexton Hill Drive.

A setback of 6 metres is the development control, however, as the site is an infill site the average setback plus or minus 1m can be applied. Therefore the infill setback could be reduced to 4.65m. The development proposes a small variation relating to the visitor car parking space, refer to figure below illustrating the 4.65m setback and variation.

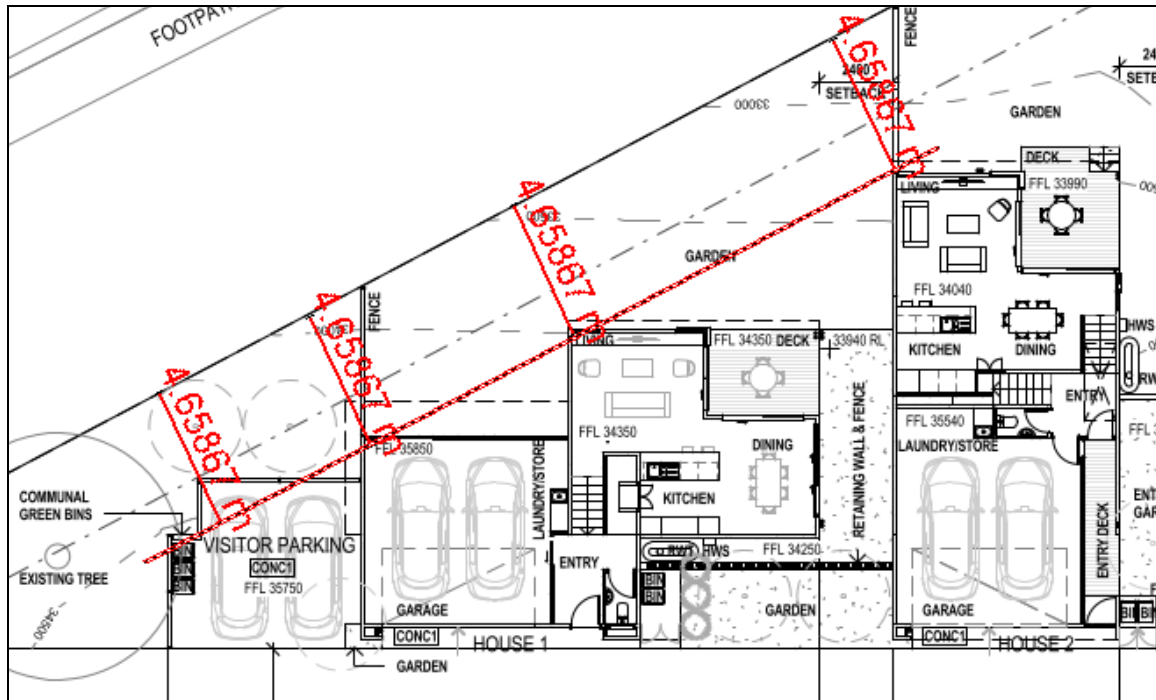


Figure illustrating the front setback variation which effects the visitor car space.

The applicant provides the following comments in relation to the front setback variation.

The objectives of this control are as follow:

- To establish the desired spatial proportions of the street and define the street edge.*

Comment:

The site elevation ensures that the street edge remains definable, the encroachment does not constrain this objective.

- To enable a transition between public and private space.*

Comment:

The site elevation from public space provides a clear transition between public and private land, the encroachment to the nominated front building line does not constrain this objective.

- To create a landscape setting for residential buildings.*

Comment:

The proposed developments compliance with landscaping controls within the TDCP 2008 further quantify the ability to provide sufficient landscaping to each allotment and the site in general.

- . To ensure compatibility with other buildings in the street.

Comment:

The street frontage to Sexton Hill Drive is elevated and will not unduly affect any neighbouring properties visual privacy

- . To allow for landscaping.

Comment: With the encroachment of the front building line the provision of landscaping is not reduced given that gradual stepping back of the buildings from front boundary provides adequate capacity to maintain a large deep soil zone.

Council Officers comment:

The proposed front setback variation is supported, as the variation will not impact on the streetscape as the buildings will not be visible from the Sexton Hill Drive. The site is elevated above Sexton Hill Drive which is vegetated therefore the variation will not be visible or impact on the street edge. The site has a large setback from the property boundary to the road edge being 11.8 metres, which contains vegetation, refer to figure below.



Figure illustrating the large setback between the property boundary and the road edge.



Photo image illustrating Sexton Hill Drive, existing dense landscaping and the topography change.

The Applicant has provided a landscape intent plan which illustrates landscaping between the buildings and the property boundary further reducing any potential impact to the street edge, refer to figure below.



Figure illustrating the landscaping intent plan and vegetation within the front setback - Please note that this plan relates to the original proposal for seven townhouses.

Section A1- Part B - Chapter 2 Design Control- Setbacks - Rear Setbacks - Control C

The proposed development does not meet Control C relating to the rear setback requirement of 5m or the deep soil zone.

The proposed rear setback is 4m which is less than the 5m requirement, therefore a variation is requested of 1m.

The applicant provided the following justification for the 1m variation to the rear setback.

The objectives of this control are as follows:

- . *To establish the desired spatial proportions of the street and define the street edge.*

Comment:

N/A - This variation seeks consent for the rear setback only.

- . *To enable a transition between public and private space.*

Comment:

N/A - This variation seeks consent for the rear setback only.

- . *To create a landscape setting for residential buildings.*

Comment:

The proposed developments compliance with landscaping controls within the TDCP 2008 further quantify the ability to provide sufficient landscaping to each allotment and the site in general.

- . *To ensure compatibility with other buildings in the street.*

Comment:

Given that the site will require cut and fill during forming the scale of the proposed development will not unduly affect any neighbouring properties visual privacy

- . *To allow for landscaping.*

Comment:

The proposed developments compliance with landscaping controls within the TDCP 2008 further quantify the ability to provide sufficient landscaping to each allotment and the site in general.

Councils support on the variation to the front building line setback control is respectfully requested.

Council officer comment:

The proposed variation is supported as the variation will not impact on the residential properties located at the rear of the site, not impact on the transition between public and private space. Adequate space is provided on the rear property boundary for landscaping, refer to landscape intent plan below.



Figure illustrating landscape intent - please note that this plan relates to the original proposal for seven townhouses.



Due to the topography of the site being lower than the properties to the south and the proposed cut, the proposal is considered to less of a visual and privacy impact than if the site were level. The site level difference combined with rear fencing and the setback of the existing residential dwellings combine to assist in

reducing visual and privacy impacts and support the variation of 1m for the two town houses (numbered 5 and 6) located on the rear southern boundary.

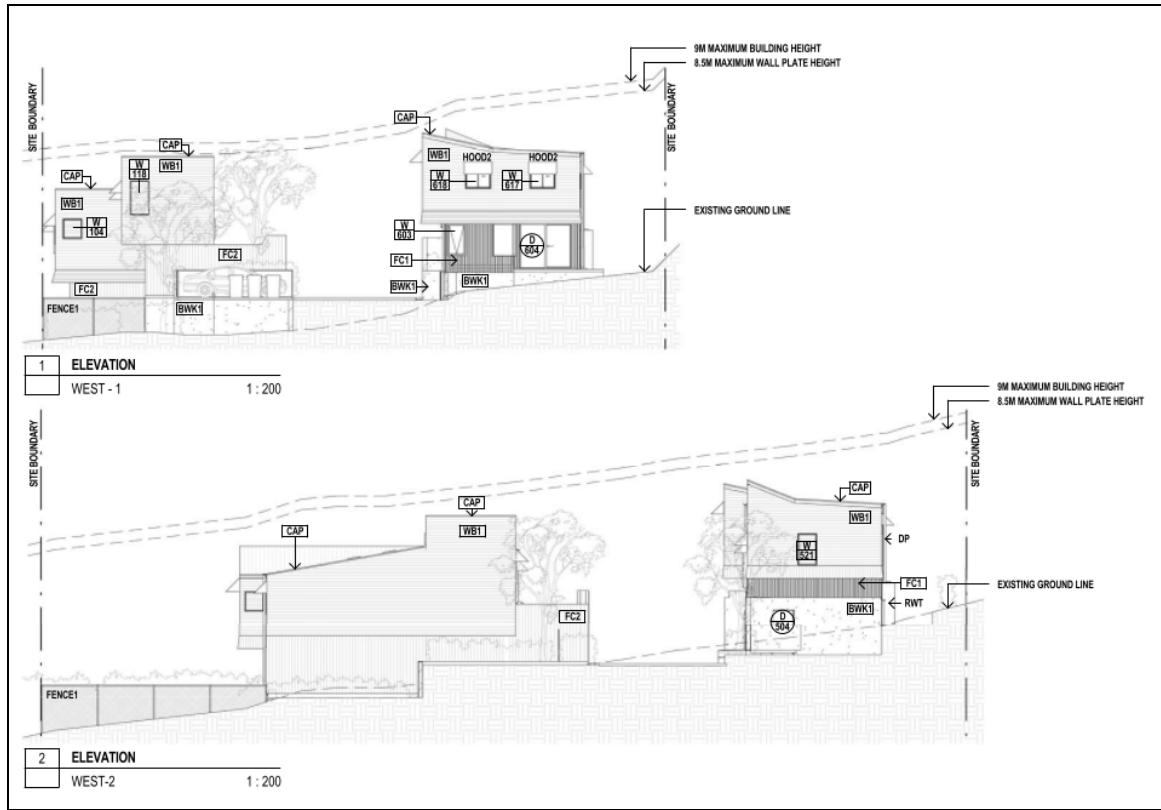


Figure illustrating the rear setback and topography of the subject site and neighbouring property to the rear (south).

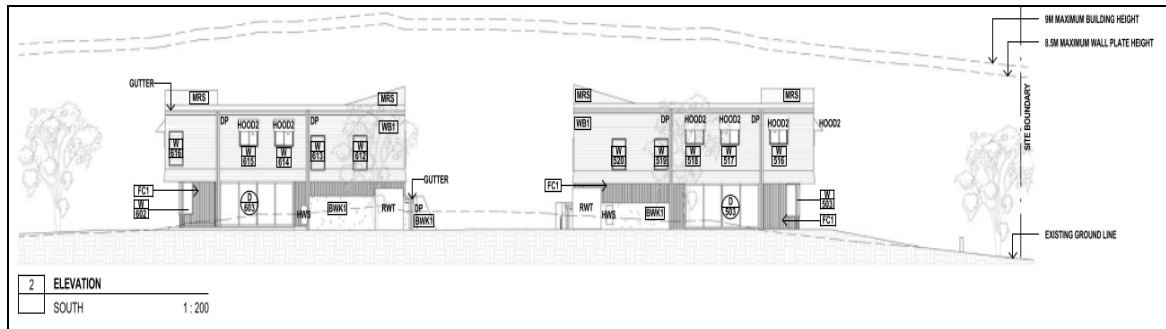


Figure illustrating view from the south.

Section A1- Part B - Chapter 2 Design Control- Car parking and Access - Garages- Control E

The proposed development does not meet Control E relating to the setback for on-grade car parking in town houses.

The development proposes at grade visitor parking that is within 6m (setback 3m from boundary).

The Applicant provided the following justification:

The objectives of this control are as follow:

- . To provide onsite car access, parking and manoeuvring areas.*

Comment:

This application provides onsite car access, parking and manoeuvring areas, given the peculiar shape of the allotment a minor variation is sought relating to the front setback for on grade car parking.

- . To minimise the physical and visual dominance of vehicles on sites.*

Comment:

Given the peculiar shape of the allotment it is inevitable that at some point a minor variation will be sought relating to the front setback. With the shape of the allotment and gradual stepping back of townhouses only a portion of the development encroaches ensuring that the encroached features do not dominate across the entire front setback. The elevation of the site from the street frontage essentially prevents any dominance of the development to the street front.

- . To minimise footpath and street reserve crossings.*

Comment:

The sites elevation restricts pedestrian access to the site through the driveway crossing only. No new footpath or street reserve crossings will be required to facilitate this encroachment.

Councils support on the variation to the front building line setback for on grade car parking is respectfully requested.

The applicant's justification is supported, as the variation is not visible from a public place, neighbouring property or from Sexton Hill Drive therefore no physical or visual dominance. Only one footpath and street reserve crossing is proposed.



Photo image illustrating Sexton Hill Drive, existing dense landscaping and the topography change. The proposed at grade visitor car parking is unlikely to be visible from the street.

A2-Site Access and Parking Code

The application and Traffic Impact Assessment report was referred to Council's Traffic Engineer no objection was raised to site access and parking for the development and the Traffic Report.

Development Type

Multi Dwelling housing

Parking Rate

1 per each 1 bedroom unit,
1.5 per 2 bedroom unit, and
2 spaces for 3 or more bedroom units.
Plus 1 space per 4 units for visitor parking.

Parking required

14 spaces (12 for units 2 for visitors).

Parking Provided

14 spaces (12 for units 2 for visitors).

Access and parking is considered to be acceptable.

A11-Public Notification of Development Proposals

The application was notified for a period of two weeks, from Wednesday 27 January 2016 to Wednesday 10 February 2016. Council received seven submissions in relation to the application.

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

A15-Waste Minimisation and Management

A Waste Management Plan was submitted with the application and referred to Council's Waste Management Unit for comments. Council's Waste Management Unit responded who advised that there are no waste issues with the proposal.

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

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

The development does not contravene the Government Coastal Policy, being landward of any defined erosion zones. The proposed development would not overshadow any foreshore open space or impede public access to any such areas.

Clause 92(1)(b) Applications for demolition

Demolition of the existing dwelling is proposed with the application. Council's Building Unit recommended suitable conditions in relation to demolition of the existing dwelling.

Clause 93 Fire Safety Considerations

Not Applicable.

Clause 94 Buildings to be upgraded

Not Applicable.

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

Tweed Shire Coastline Management Plan 2005

The site is not covered by a coastline management plan.

Tweed Coast Estuaries Management Plan 2004

The site is not covered by a coastal estuaries management plan.

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

The site is not covered by a coastal zone management plan.

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

Context and Setting

The proposed development, is considered to be acceptable in terms of the local context, as the surrounding area consists of a mixture of single dwelling attached dual occupancies and a 50 unit aged care facility. The average densities provided by the dual occupancy developments are 1 dwelling per 350m² with the proposal consisting of 1 dwelling per 433m². The development is considered to offer a diversification of housing type to that in the surrounding areas, whilst still being a compatible land use. Accordingly, the development is considered to be consistent with the surrounding residential context of the site.

Bulk and Scale

Given the site's positioning, the proposed development will not be highly visible from Sexton Hill Drive, if at all. The character of development located behind the existing residential development and adjacent to Sexton Hill Drive will be difficult to view from public places. The development is considered not to have a negative impact in terms of bulk and scale, given its location behind existing dwellings (Somerset Avenue and Echuca Crescent) and elevation above Sexton Hill Drive and that the townhouses are under the maximum building height and floor space ratio.

Access, Transport and Traffic

Access to the site is proposed to be via a single 5.8m wide driveway, located off Sexton Hill Drive. The development proposes two visitor parking spaces and two spaces per town house, which complies with Council's parking requirements.

Flora and Fauna

Four trees will be retained in the north western frontage of the site. The approved plan has been amended in Red referencing the subject trees to be retained. Any trees proposed to be removed are not considered to be threatened species, and the site is already highly modified. The submitted statement of landscape intent clearly identifies where the retention of trees is proposed. A condition requiring a landscaping plan to be approved by Council is recommended.



Figure illustrating landscape intent. Note this is for the original seven dwellings.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is located within an existing and established residential area, in Banora Point. The surrounding area contains a mixture of single dwelling houses, dual occupancies and 50 unit aged care facility.

Topography

The subject land slopes from the southern boundary down to the north, with minor cut proposed to create level building pads, access and parking areas. Site levels

vary from approximately RL 37m along the southern boundary to RL 31m along the northern boundary. The subject site is lower than the surrounding properties to the south and east, combined with the proposed cut the development will have an even lower finished ground level than the surrounding residential properties. This will assist in reducing potential impacts with regards to views and privacy from the neighbouring properties.

Services

The site is in within an existing urban area and all required services are available.

Demolition

Demolition of the existing dwelling is proposed under this application and appropriate conditions have been recommended.

Road Noise

A Road Traffic Noise Impact Assessment for 63-71 Sexton Hill Drive, Banora Point was prepared by CRG Acoustics Pty Ltd dated 17 March 2016 (crgref: 16022 Report) and been submitted to Council.

To achieve the required indoor noise levels, CRG Acoustics recommend building shell treatments as outlined in Table 3 of the report. To achieve the indoor criteria in affected spaces, it is necessary to close windows and doors. It is also noted that louvre style windows are unlikely to achieve the required Rw ratings and an alternate style is recommended.

CRG has advised that the proposal can be shown to comply subject to the recommended treatments detailed in Section 6 of the report being incorporated into the proposed buildings. Council officers have recommended conditions to be applied to the consent.

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

Submission	Comment
Is vehicular access from Sexton Hill or neighbouring property.	Applicant's response - Vehicular access is sought entirely from Sexton Hill Drive. A traffic report has been provided with this application, we confirm that the traffic report guided the yield for this application while Sexton Hill Drive can sustain a town house development. Council's Response – No objection to access from Sexton Hill Drive.
Current vegetation and landscaping. Will landscaping be replaced if removed to facilitate the proposal?	Applicant's response - Concern is raised to the protection of trees that have been planted by neighbours within Council's road reserve. Our client is willing to reinstate to a satisfactory level any vegetation removed to facilitate required upgrades. Any landscaping would have to consider the clearance of services, this in effect may not be plausible.

Submission	Comment
	<p>Council's Response – No objection to the removal of vegetation. It is noted that the application was supported by a statement of landscape intent. A condition is recommended requiring a landscaping plan to be submitted to Council for approval.</p>
<p>Variation to the minimum lot size of 450m². The proposal to develop seven houses is considered to significantly change the landscape of the area.</p>	<p>Applicant's response - Concern is raised around the variation to minimum 450m² lot size. Council's concerns have also been noted, we have responded accordingly. Please see attached Appendix A – Amended Architectural Plans addressing Council and objectors concerns about density.</p> <p>Council's Response – A Torrens title subdivision is not proposed therefore the current allotment of 2599m² remains compliant with Clause 4.1 of the Tweed LEP 2014. However Section A1 Part B contains a development control requiring a density of no greater than 1 dwelling per 450m². The proposed amended development seeks a density of 1 dwelling per 433m².</p> <p>The proposed variation is considered to be minor particularly in the context of the surrounding multi dwelling housing developments (dual occupancies and aged care facility 50 units) which have a much greater density of 1 dwelling per 433m².</p>
<p>Rear setback. The proposed variation has potential impacts on privacy and increased noise.</p>	<p>Applicant's response - Rear setback. Objectors raise concerns around the rear setback variation. The siting of the building located 3.5m from the nominated rear boundary does not raise any privacy concerns given the excavation proposed effectively results in dwellings sited below the natural ground level of neighbouring properties. It is further noted that a variation between the proposed townhouses and neighbouring properties has not been sought. An assessment of separation distances for unit 5 & 6 has been provided below confirming that the separation provides a distance greater than Councils controls.</p>
	<p>Councils controls. Complies: The 8m minimum separation between the wall containing primary living rooms (on any level of the proposed town houses are provided with significant setbacks between the wall containing primary doors to the adjacent buildings. The outdoor</p>

Submission	Comment
	<p>building) to the living space wall is setback 6.60m from the rear boundary, a review of the siting of existing homes to the west (rear boundary) confirms the outermost portion of outdoor living spaces is setback between 8.70m and 13.80m from their rear boundaries. It is therefore identified that a separation between the proposed town houses primary windows/doors to adjacent buildings is in exceedance of between 15.3m – 20.4m. No privacy concerns are borne.</p> <p>6m minimum separation distance between primary windows/doors (on any level of the building) of living rooms to windows other than the primary windows of living rooms.</p> <p>Complies: The proposed town houses are provided with significant setbacks between the wall containing primary doors to the adjacent buildings. The outdoor living space wall is setback 6.60m from the rear boundary, a review of the siting of exciting homes to the west (rear boundary) confirms the outermost portion of outdoor living spaces is setback between 8.70m and 13.80m from their rear boundaries. It is therefore identified that a separation between the proposed town houses primary windows/doors to adjacent buildings is in</p>

Submission	Comment
	<p>exceedance of between 15.3m – 20.4m. No privacy concerns are borne.</p>
	<p>Council's Response – The proposed rear setbacks are considered to be acceptable due to the distance provided, change in elevation with the subject site being lower than the neighbouring property and solid timber fencing located between the rear property boundaries.</p>
<p>Cut and Fill. How much cut and fill is proposed?</p>	<p>Applicant's response - Fill: Objectors raise concern around fill levels and clarity around the proposal, we confirm that section 3.1 of the submitted engineering report documents the level of cut and fill. No imported fill will be required in order to facilitate this proposal in fact 240m³ of soil will be exported from the site. Cut and fill is proposed to effectively grade the site in order to allow stormwater to be discharged to a lawful point.</p> <p>Council's Response – There are no engineering concerns relating to cut and fill. It is noted there is a numerical non-compliance issue involving the access driveway at the front of the site, however the access proposal is acceptable and the steepness of the site does not provide much flexibility for variation. This variation is supported.</p>
<p>Stormwater. All of our rear stormwater runs into Council approved stormwater drainage pit system that then runs into the proposed development.</p>	<p>Applicant's response - Storm water management: Objectors raise concern over stormwater discharge into neighbouring properties. Civil design has been undertaken, confirmation that stormwater can be discharged to a lawful point has been documented within the engineering report see section 4.0.</p> <p>Council's Response – There are no engineering concerns relating to stormwater. The revised plans show the previously proposed bio-retention pods removed and stormwater treatment requirements addressed by 2 x Humeceptor GPTs. This is acceptable in relation to Council's requirements.</p> <p>The revised proposal also discharges stormwater directly to a pit in Sexton Hill Drive. This resolves the previous issue of the outlet not free draining. No further objections.</p>

Submission	Comment								
<p>Vegetation removal. Which 3 existing trees are being left standing and will they be properly maintained if this development goes ahead.</p>	<p>Applicant's response - Tree retention: Objectors are unclear of the trees to be retained. The submitted statement of landscape intent clearly identifies where the retention of trees is proposed. Council's Response – The application was supported by a Landscape Intent which illustrates vegetation to be retained and location of new vegetation. The Landscape Intent illustrates that existing and proposed landscaping will be used to improve privacy and amenity. Conditions relating to landscaping are recommended.</p>								
<p>Car parking shortfall. We believe that there is not sufficient parking on the proposed size of the development and excess parking will spill over into adjoining streets ie. Summit St and Somerset Ave.</p>	<p>Applicant's response - Car parking: Objectors raise concerns around non compliance with car parking. We confirm the original submission maintained full compliance with Section A2 of the Tweed DCP 2008, furthermore, the reduction of 1 town house continues to fully comply as follows:</p> <table border="1" data-bbox="711 1061 1383 1644"> <thead> <tr> <th data-bbox="711 1061 911 1122">Development Type</th> <th data-bbox="917 1061 1062 1122">Parking Rate</th> <th data-bbox="1069 1061 1238 1122">Parking Required</th> <th data-bbox="1244 1061 1383 1122">Parking Provided</th> </tr> </thead> <tbody> <tr> <td data-bbox="711 1131 911 1644">Multi Dwelling Housing</td> <td data-bbox="917 1131 1062 1644">- 1 per each 1 bedroom unit - 1.5 per 2 bedroom unit, and - 2 spaces for 3 or more bedroom units. Plus 1 space per 4 units for visitor parking.</td> <td data-bbox="1069 1131 1238 1644">6 townhouses at 2 spaces per town house = 12 + Provision of 2 visitor spaces Total required= 14</td> <td data-bbox="1244 1131 1383 1644">14</td> </tr> </tbody> </table> <p>Council's Response – There are no concerns relating to parking. The proposal is considered to provide compliant number of car parking spaces being two per unit and two visitor spaces, total of 14 spaces.</p>	Development Type	Parking Rate	Parking Required	Parking Provided	Multi Dwelling Housing	- 1 per each 1 bedroom unit - 1.5 per 2 bedroom unit, and - 2 spaces for 3 or more bedroom units. Plus 1 space per 4 units for visitor parking.	6 townhouses at 2 spaces per town house = 12 + Provision of 2 visitor spaces Total required= 14	14
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Public Authority Submissions Comment

Comments from Public Authorities are not required.

(e) Public interest

The proposed development has been assessed against all relevant legislation and policies, is permissible with Council consent and is not considered to be contrary to the public interest. Subject to recommended conditions being imposed on the consent, the application is considered reasonable and appropriate for the locality.

OPTIONS:

1. Approve the development application with the recommended conditions of consent; or
2. Refuse the development application and provide reasons.

Council Officers recommend Option 1.

CONCLUSION:

Having regard to the assessment of the proposed development highlighted throughout this report, it is recommended that development consent should be granted for the proposed development given the application relates to an appropriate land use on land zoned for residential purposes.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant has the right of appeal in the NSW Land Environment Court if dissatisfied with the determination.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

4 [PR-PC] Status Update on S96 Modification DA03/0445.03 and Development Application DA15/0664 for Upgrading Works on Urliup Road associated with DA03/0445 at Urliup Road, Urliup to Accommodate 19m Trucks in Association with an Existing Water Extraction Business at 477 Urliup Road

SUBMITTED BY: Development Assessment and Compliance



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Council is in receipt of two applications that both relate to DA03/0445 which originally granted approval to a rural industry, comprising the harvesting & bottling of mineral water at 477 Urliup Road, Urliup.

The first application is a Section 96 Modification to DA03/0445 with a reference number of DA03/0445.03 which seeks to change a condition of their consent which currently limits the applicant to the use of 6m trucks (for a maximum of 6 deliveries a day (i.e. 12 trips). The Modification seeks permission to use 19m trucks instead of the already allowed 6m trucks for the same number of trips per day (6 deliveries a day i.e. 12 trips).

The second application is a new Development Application with a reference number of DA15/0664 which seeks Council approval to undertake upgrading works (and tree clearing) to the road reserve of Urliup Road to accommodate the proposed 19m trucks for the water extraction business at 477 Urliup Road. The works proposed to Urliup Road have been based on trying to get the width required for a 12.5 single unit truck (for example a garbage truck) and a 19m articulated vehicle with a 0.6m separation for sections of road only where adequate stopping sight distance is not achievable. This has resulted in the applicant proposing work to 13 bends along Urliup Road stretching along approximately 4km (originally when first lodged works were only proposed to 3 bends, however in November 2016 the amended plans showed works to 13 bends). The works currently proposed by the applicant have been costed by the applicant to be in the order of approximately \$260,230. The application also proposes offsetting for any trees lost within road reserve, such offsetting would occur within the applicant's land at 477 Urliup Road, Urliup.

The purpose of this report is to give a status update on both of these applications and seek direction from the Council in regard to the next step of the assessment phase. The following report will detail that both applications have had an extensive development history in which

the applicant has been asked for substantial amounts of information in order for Council Officer's to make a proper assessment of the impacts of the development being requested.

It is acknowledged that Urliup Road is a low-volume rural road, which does not comply with Council's contemporary rural road standard (Development Design Specification D1 – Road Design) in the subject area. It is not feasible (or arguably reasonable) for the proposed upgrade works to retrofit the road to this standard to achieve full seal widths, shoulder widths and clear zone widths to accommodate the proposed trucks dimensions from the water extraction development.

The upgrade standard to be adopted for the purpose of any approval issued for the subject Application would need to be a compromise of Council contemporary rural standards, and would carry with it liability risks. However given the age of the current road infrastructure, the significant slope, alignment and ecological constraints along the road corridor, the low volumes of traffic pre and post development, and the benefits that other landholders can receive by virtue of the developer's works, this approach is considered reasonable.

However, in determining the necessary standard for the upgrade works, it is appropriate to ensure that adequate design, certification, risk assessment and mitigation is undertaken by the developer to protect the public interest, and accordingly additional information is still being sought in regards to the appropriate batter slopes, pavement designs, road widening at particular bends and the impact this all has on ecology.

The applicant on the other hand is of the opinion that Council has requested enough of them and that they have more than satisfied their obligations given that they are proposing to upgrade Council's infrastructure at their own personal expense. The applicant has indicated that any further additional information or work being requested should now be provided by Tweed Shire Council.

The applicant has made the following additional statements:

- *“If a rural road is not up to the standard for serving its rural business, then the answer is to fix the problem, not let the problem dictate that the business' on that road must suffer”*
- *“One solution may be to allow the business to operate 24/7, this would also place trucks on the road at night which is a much safer time and equalling less movements required by day (if any in some cases where most or all daily movements can be accomplished at night) Our business (as per my understanding) is currently restricted by operating hours reflecting trade hours in residential areas for noisy operations. Our business is in a rural area and our operation is 100% dead silent. If it is possible to add this to the DA when it goes up for vote as a condition, then I think it would be a positive outcome for all.”*

One of the factors for consideration in determining development applications involving significant works/costs is whether Council as the consent authority can legally link the works/costs with the development being proposed. Is there a nexus between the two factors? In this case does the proposal to increase from a 6m truck to a 19m truck (for the already approved 6 deliveries a day) justify the works being proposed/asked for by Council? As it should be noted that agricultural trucks such as dairy trucks or general rural trucks do not require separate development approval to use existing roads such as Urliup Road. Both

the applicant and Council staff agree that some work needs to be done to Urliup Road to make it safe for a 19m truck and other road users however what is in dispute is the level of work being required and who should pay for these works. If Council's road work crew were doing the work or if a developer were doing the work for a new road in a new subdivision more detail and more design work would be required. However the applicant is arguing that the road is in such a poor state of repair that their proposed improvements are more than adequate to accommodate the development being proposed. The applicant is therefore asking Council to fund any additional difference beyond \$260,230 worth of road works required in Council's opinion to upgrade the road to Council satisfaction. It should be noted that Council officers have not costed the proposed works, however, the applicant's estimation may be understated.

Both applications have been publically notified on multiple occasions and have attracted a great deal of public interest. The first round of public notification attracted 25 objection letters, while the second round of public notification attracted 61 objection letters and 34 letters of support. The nature of the objections primarily focuses on road safety issues and concern that the road is not suitable to accommodate 19m trucks. There are also many submissions indicating that they oppose water extraction and that they do not believe water extraction to be environmentally sustainable. This report is not a Section 79C merit assessment of all of these objection matters but rather a status update of both applications to seek direction on how Council want to progress the applications. A future report will address all of the objections in detail. **However, it should be noted that whilst this application relates to trucking of extracted water the approvals being sought are not for the extraction of water itself as all the necessary approvals for water extraction are already in place. The applications currently before Council relate to the truck size associated with DA03/0445 and whether Urliup Road is at or can be upgraded to an acceptable level to cater for 19m trucks.**

One of the most difficult ecological issues to resolve on DA15/0664 is whether Bend L and K can be re-designed to retain two (2) threatened *Syzygium moorei* (Durobby) specimens listed under the *Threatened Species Conservation Act 1995* and *Environment Protection and Biodiversity Conservation Act 1999*. If these trees are to be retained through redesign additional works will likely also be required to Bend K. If the larger of these two trees cannot be retained the applicant would need to justify why a Species Impact Statement is not required given the limited local population.

Therefore, this report seeks direction from Council on whether there is sufficient nexus between this development and the level of work/costs/information being requested to warrant seeking additional information and whether Council would entertain funding any difference in works/costs beyond \$260,230 or whether Council is satisfied with the level of information currently received and want the matter brought back to Council with a full Section 79C Merit Report which would enable the Council to determine the matter.

RECOMMENDATION:

That:

1. **ATTACHMENT 3 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
 - (g) **advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**

2. Council asks the applicant to provide the following additional information in regard to DA15/0664 and DA03/0445.03.

If the applicant states that such information will not be forthcoming or the information is not received within 60 days from 2 March 2017 the matter will be reported back to Council for determination based on the information currently on file.

1. Revised details on batter slopes for bends G, H, J, L, M and N.

Council's concerns with the proposed cut earthworks are as follows:

- a) The submitted plans only show one typical cross section, which may not be at the critical location. Generally cross sections at 10m spacings would be required to properly assess such works, including adjacent property boundaries.
 - b) No geotechnical investigation of the existing batters has been undertaken, and the consultant engineers have stated that no geotechnical certification will be provided on the new works. This poses significant risk for Council.
 - c) The works include removal of large amounts of vegetation and mature trees, which help to stabilise the existing batters, and increases the risk to Council of slips occurring in the new works.
 - d) The proposal does not specify any batter slope treatment or revegetation measures to avoid erosion, scour or slippage of the new works. Bare earth batters are not acceptable to Council from an environmental and maintenance perspective.
 - e) It is Council's assessment that retaining walls are required in certain critical locations, due to poor quality material in the batters, proximity to property boundaries and services, or to preserve significant vegetation. The assessment to date has not considered any retaining walls. This poses significant risk for Council.
 - f) No catch drains are proposed at the top of any of the cut batters. This is particularly important along batters that have rising terrain behind to minimise erosion of the batter face. Catch drains need to discharge into roadside drainage in a manner that does not cause erosion or scour in the drains.
 - g) The addition of retaining structures (e) and catch drains (f) increases the footprint of the proposed works, and will likely encroach on private land and fence lines and increase impacts on vegetation.
2. Revised details on road widening at on bends L and M as these bends require the extension of existing stormwater culverts and headwalls. There is no detail provided for these works with respect to the distance from the pavement edge (clear zone) and augmentation of erosion prevention works

upstream or downstream of the works. This could impact on the extent of works and vegetation removal.

3. Additional information on the adequacy of the pavement design to accommodate the additional truck movements or to determine the appropriate pavement design where widening occurs.
4. Confirmation that all work required as detailed above occurs within the road reserve. Compulsory acquisition of private land by Council should not be used to facilitate private development.
5. The following concerns are raised by Council with respect to engineering design and subsequent clearing extent necessary to facilitate earthworks:
 - a. Lack of sufficient cross sectional detail at regular intervals of each bend (particularly those zones with existing steep embankments adjacent to the road pavement) to enable assessment of the suitability of batter grades. Without confirmation that the batter grades are acceptable on the basis of slope stability, it is difficult to accurately and confidently ascertain the extent of vegetation removal.
 - b. The removal of existing mature vegetation from steep embankments to achieve the proposed embankment profiles may lead to future bank failure. Re-profiled batters vary from 1:1 to 1:2 slopes whilst no retaining structures and/or catch/cut-off drains or bank stabilisation treatment have been proposed. Where confidence in the structural integrity of the re-profiled banks cannot be provided potential risk of environmental impacts becomes elevated. These issues relate not just to the removal of vegetation to facilitate works but the risk of significant erosion and sedimentation events affecting the water quality of Bilambil Creek.

The applicant is requested to address matters relating to engineering as raised by Council's engineers and subsequently evaluate the ecological effects of any change to the engineering design plans.

6. The applicant is requested to review comments provided by Council below and address within an amended *Ecological Assessment (EA) – Urliup Road Widening dated 29 August 2016 prepared by Ecological Australia*. It is noted that all items detailed below should influence and take into consideration any modification to the engineering design.
 - a. Impact on endangered vegetation communities

Upon analysis of the vegetation removal calculations in the EA report the area of Lowland Rainforest EEC to be disturbed relates to the area captured in the batter slopes only, equating to 337 m². The area does not include the total canopy impact area. Council are of the opinion that the area captured under the canopy of the vegetation to be impacted should be taken into consideration (excluding that area of the canopy overhanging the existing pavement), as the disturbance of the canopy will introduce new conditions to the mid and understorey

effectively resulting in indirect disturbance. As such all impact assessment calculations made in the EA report are considered inaccurate and an underestimate of the extent of Lowland Rainforest EEC to be adversely affected.

Furthermore it is noted that:

- Vegetation at Bend M is representative of a Lowland Rainforest EEC, this is contrary to the EA report that classifies the unit as 'Scattered rainforest Trees'
- The areal extent of the local occurrence of the Lowland Rainforest EEC appears to have been overestimated
- Due to locational inaccuracy of the survey, Lowland Rainforest EEC has not been identified at Bend H

Given that the areal extent calculations form the basis of the 7-part test, it is considered that certain elements of the test should be reevaluated in order to determine whether the proposal would have a significant effect on the local extent.

Similarly, the offset area figures should be recalculated using the revised area of impact extent.

b. Impact on threatened species – flora

i. During a recent site inspection it was confirmed that the number of individual threatened plants (as listed under the *Threatened Species Conservation Act 1995* and/or *Environmental Planning & Biodiversity Conservation Act 1999*) to be removed to facilitate the road upgrade as reported in the Ecological Assessment (EA) report has been underestimated. The additional stems occur within Bends of H, L and M. These species include:

- *Macadamia tetraphylla* – Rough-shelled Bush Nut
- *Syzygium moorei* – Durobby
- *Lepiderema pulchella* – Fine-leaved Tuckeroo

The failure to quantify the extent of impact has an influence on the results of the assessment of significance (7-part test) (necessary to satisfy Section 5A of the *Environmental Planning & Assessment Act 1979*) used to determine whether the proposal would result in a significant effect on the local population. Council cannot therefore be confident that proposal would not trigger the requirement for a Species Impact Statement for either of the listed species based on inaccurate figures.

In addition it is noted that the assessment of significance (7-part test) performed as part of the EA report failed to consider any direct impact on *Macadamia tetraphylla*. Numerous stems of both semi-mature and juvenile *M. tetraphylla* were recorded by Council in the field within the area of impact.

As such the applicant is requested to identify all stems to be impacted and undertake a revised assessment of significance

- ii. **A significantly sized semi-mature threatened *Syzygium moorei* (Durobby) (listed under both the TSC Act and EPBC Act) occurs on the existing embankment at Bend L. Removal of the Durobby would be necessary to facilitate the road upgrade works under the current design plans. The applicant proposes to offset the loss of the tree through compensatory planting on the water extraction site (Lot 1 DP735658).**

This specimen is currently in a healthy condition showing no clear signs of structural deformity/deficiency. The tree may be considered a keystone species for the local population and associated localised unit of lowland rainforest habitat due to the tree's level of maturity - at a reproductive age, providing blossom/fruit and refuge for fauna.

Council are of the opinion that the 7-part test conducted by the applicant may not have been performed judiciously in that certain elements of the test have been overlooked and/or miscalculated (as a function of the inaccurate stem counts) such as:

- **The local population size**
- **Likely age and maturity of individuals in the local population**
- **The genetic importance of those more significant reproductive individuals**
- **The duration and timing of adverse effects**

Council therefore remain concerned that the loss of this specimen may likely have a significant effect on the local population.

With regard to the applicant's recommendations to undertake compensatory planting it is considered that this approach to mitigation should only be contemplated where avoidance strategies have been sufficiently investigated. This is consistent with fundamental threatened species management and Office of Environment & Heritage (OEH) biodiversity offset principles.

The significance and value of the specimen and concerns regarding the assessment of significance were raised during a recent onsite meeting. Subsequently, the applicant advised that investigations would be undertaken to consider the feasibility of an alternative road alignment should Council reaffirm their position on the matter.

As such the applicant is requested to:

- A. Provide options for alternative road design to avoid impact on EEC Lowland Rainforest and loss of 2 x *Syzygium moorei* at Bend L
- B. Identify the additional stem of *Syzygium moorei* on the engineering plans and re-evaluate as part of the ecological assessment

b. **Offset Area**

A large proportion of the offset area is positioned in the Bilambil Creek waterway corridor and a section within the Urliup Road corridor. The offsetting should be undertaken on private land and be protected under a secure mechanism i.e. 88B statutory covenant. The applicant is therefore requested to reconfigure the offset area plan to:

- i. Show the offset area principally configured on private land
- ii. Be modified to account for recalculated impact areas using offset ratios currently adopted in the EA report for Lowland Rainforest EEC and Brushbox Open Forest (at Bend J)
- iii. Detail what long term protection mechanism shall be established over the offset area.

c. **Threatened Species Management**

Given the likely impacts on threatened flora species, commitment should be provided to prepare a threatened species management plan and implementation of measures such as (but not limited to):

- i. The collection of propagation material and consideration of plant translocation (where practical) for those flora species not considered likely to have a significant effect on the population as a result of the proposal
- ii. Construction phase protection requirements

d. **Non EEC remnant vegetation**

The issues relating to canopy calculations and offset requirements with respect to Lowland Rainforest EEC detailed above also apply to the Brushbox Open Forest unit at Bend J.

e. **Non-remnant vegetation**

To facilitate the road upgrade approximately 85 non-remnant planted or exotic trees (i.e. those that do not form part of a vegetation community) are proposed to be removed. The applicant has not proposed any compensation for the loss of these trees.

A high number of the trees are local native species (*Araucaria cunninghamiana*, *Eucalyptus grandis*, *E. microcorys*, *E. robusta*) yet are considered to have a lower ecological value (due to their origins) Notwithstanding, several of these trees have reached maturity

providing habitat value for local fauna species (blossom, fruit and hollows) and contribute to the local rural landscape aesthetic.

Further consideration should be given to compensating for the loss of rural landscape amenity trees with a plan to undertake revegetation areas within the road reserve in strategic locations that would not compromise road safety. The following offset calculations should be adopted for non-threatened species outside a remnant unit:

- i. Between 250mm dbh – 800mm dbh at a ratio of 1:1 (remove:replace)
 - ii. Greater than 800mm dbh at a ratio of 1:5 (remove:replace) to be installed within the road reserve and form part of the offset area
- f. **Loss of hollow bearing trees**

An active hollow was identified at Bend D. As such the applicant is requested to provide commitment to install and monitor nest boxes at a ratio of 1:2 to offset the loss of the hollow or any other hollows recorded during tree felling.

REPORT:

Applicant: L Karlos
Owner: Tweed Shire Council
Location: ROAD 5720; Urliup Road URLIUP and 477 Urliup Road, Urliup
Zoning: RU2 Rural Landscape
Cost: Total cost of road works yet to be determined.

Site Details

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

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



Subject Site

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

Urliup Road is a rural low volume road with varying seal widths, several creek crossings, tight radius curves and a 100km/h posted speed limit.

DA History & Current Proposal

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

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

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

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

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

[GENNS02]

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

[GENNS03]

In September 2012 Council received complaints Council's that the applicant was not complying with the above conditions of consent.

Subsequently Council received S96 Modification (DA03/0445.02) on 25 November 2013 which sought to modify two conditions of consent to allow a delivery truck size of 14 metres, and a maximum of 12 trips per day (6 trips in and 6 trips out of the site).

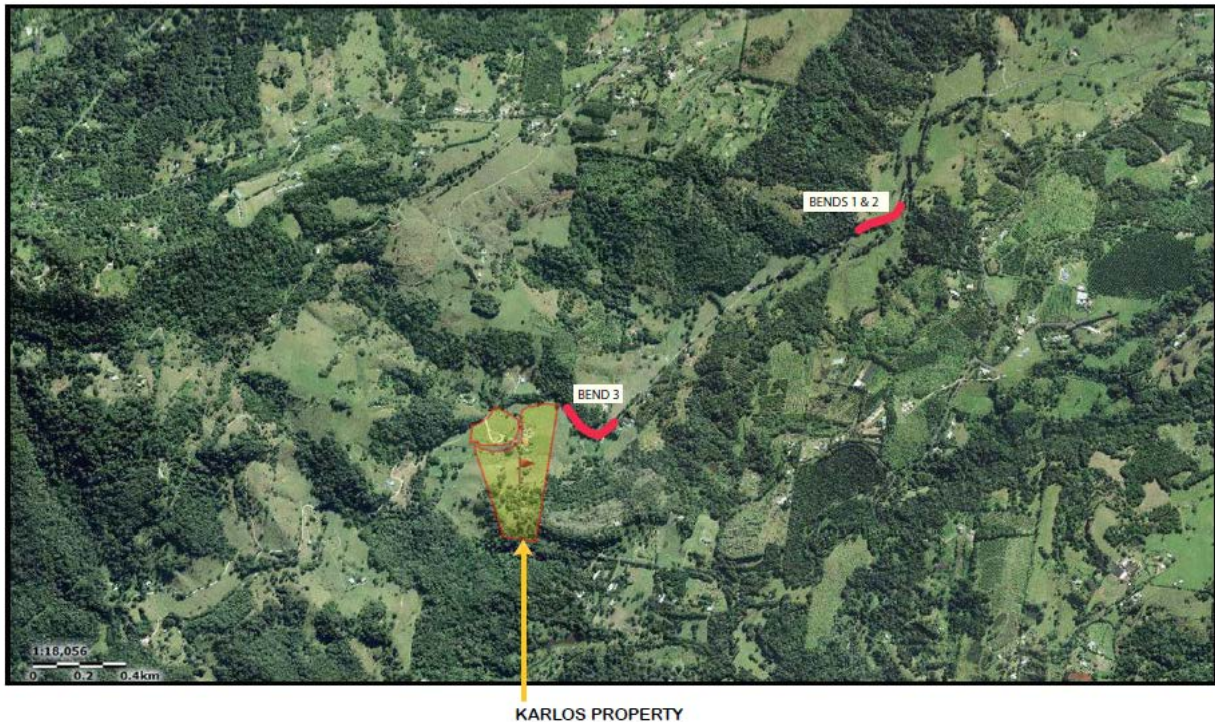
The use of the articulated trucks on Uriup Road was of great concern as Uriup Road is restricted in its configuration. Subsequently that modification was originally recommended for refusal (5 February 2015 Planning Committee Meeting). However throughout the assessment of DA03/0445.02 the applicant amended their application to utilise a 6m truck as originally approved but to increase the number of trips per day from 2 to 10. This amended application was recommended for approval and was ultimately approved at the Council meeting held 19 March 2015 (for a 12 month trial period from 20 March 2015 to 20 March 2016).

S96 Modification DA03/0445.03 was originally lodged in August 2015 and originally sought to:

1. Enable delivery vehicles up to 14m in length to visit the site
2. Permit operations between 6am and 5.30pm even days a week
3. Permit a maximum of 6 deliveries per day (12 trips)
4. Delete the trial period as approved by DA03/0445.02

The S96 acknowledged that the increased truck size raises issue with respect to conditions on Urliup Road. To substantiate the additional truck size the applicant proposed that upgrading works to Urliup Road would be funded by the applicant.

DA15/0664 was initially lodged in August 2015 to accommodate the proposed 14m trucks and works for the 14m trucks only involved 3 bends with poor sight distance:



In November 2015 Council undertook a detailed assessment of the proposed works to the 3 bends being proposed to accommodate the 14m trucks and asked the applicant for detailed additional information in regard to Roads and Stormwater as follows:

1. *Provision of an engineering assessment of Urliup Road from Bilambil Village to (and including) the driveway access to the subject property, to confirm that the road is suitable for the design water tanker vehicle, based on applicable Austroads standards, specifically:*

Austroads Guide to Road Design, Part 3 Geometric Design ensuring that sight distance of minimum 110m is provided to limit the risk of head on crashes on curves where the pavement width does not allow the safe passing (600mm clearance) of the largest design vehicles.

2. *Submission of proposed designs indicating how the unapproved works on Urliup Road at the driveway access to the property at No. 477 will be remediated to Council's satisfaction. The design is to outline how the embankments will be constructed from the top edge of the concrete structure at a maximum 2:1 gradient with no material to be placed on top of the concrete structure.*
3. *Assessment of Urliup Road to:*
 - *confirm that there is a compliant passing width along narrowed straight sections;*

- *indicate areas where shoulder widening is required; and*
 - *confirm adequate (600mm) clearance for two 2.5m wide vehicles to pass on bends.*
4. *Provision of cross sections associated with the proposed passing bay shown in Drawing C07 Ch10.000 – Ch30.000. Cross sections shall indicate the extent of the work and are to be accompanied by environment assessments.*
 5. *Confirmation that the section of Uriup Road 150m east of the driveway at No. 477 to 450m east of the driveway is suitable for the proposed vehicle use and that adequate sight distance is available to ensure that vehicles are not required to reverse to avoid conflict, especially at the segment with mountable kerbing.*
 6. *The applicant is requested to substantiate the removal of the note in Drawing C06 in relation to vegetation clearing in consideration of the Austroads specifications.*

The following additional information was requested in regards to ecology:

1. *Ecological Assessment*

General

- a. *Based on additional flora and fauna survey detailed below a contemporary 7-part test of significance should be performed to satisfy Section 5A of the Environmental Planning & Assessment Act 1979;*
- b. *The local population of threatened species and the extent of the candidate endangered ecological community should be appropriately considered as part of the 7-part test of significance;*
- c. *Ecological impact assessment shall consider any modifications to road design, batters or sight-lines pursuant to Council's transport engineer request items;*
- d. *Based on contemporary survey, conduct an evaluation of the vegetation identified as candidate EEC – Lowland Rainforest having regard for the Environment Protection & Biodiversity Conservation Act 1999 listing advice and diagnostic criteria for Lowland Rainforest of Subtropical Australia (Threatened Ecological Community).*

Fauna

- a. *The applicant is requested to undertake fauna survey targeting those species identified as having a high likelihood of occurrence within the study area. Survey should be undertaken generally in accordance with Threatened Biodiversity Survey and Assessment: Guidelines for Development and Activities Working Draft dated November 2004 prepared by Department of Environment and Conservation (NSW);*
- b. *The fauna survey component should involve an assessment of hollow density within those trees likely to be directly impacted by the proposal at Bend 3.*

Flora

- a. *During a site inspection conducted on 8 September 2015 individuals/aggregations of threatened flora species were flagged/marked where*

occurring within 10m of the proposed road upgrade works the subject of this application. The species identified include:

- i. *Macadamia tetraphylla* (Rough-shelled Bush Nut) and *Hicksbeachia pinnatifolia* (Red Bopple Nut) listed as Vulnerable under the TSC Act and EPBC Act
- ii. *Lepiderema pulchella* (Fine-leaved Tuckeroo) listed as Vulnerable under the TSC Act
- iii. *Endiandra globosa* and *Rhodamnia maideniana* identified as ROTAP species

The applicant is requested to identify the locations of those species detailed above (and additional stems, species identified during additional survey) where occurring within 10m of the proposed road upgrade works on a site plan overlaid with the engineering drawings;

- b. Management recommendations to protect those threatened stems located within 10m of the extent of works during the construction phase shall be provided;
- c. The applicant is requested to rectify Figure 5 in the submitted Assessment of Significance report to show the accurate locations of those *Hicksbeachia pinnatifolia* individuals at Bend 2.

Candidate Endangered Ecological Community

- a. Calculations shall be provided based on the areal extent of impact (the maximum extent shall be calculated i.e. to the extent of canopy projection) of the proposed road upgrade on candidate EEC - Lowland rainforest in NSW North Coast and Sydney Basin bioregion;
- b. Fragmentation of the candidate EEC should be taken into consideration when undertaking the 7-part test;
- c. Where sight lines are required and would result in the removal/disturbance of an EEC alternative road designs should be considered. It is noted that Council is unlikely to support any proposal that would result in removal/disturbance of candidate EEC immediately adjacent Bilambil Creek.

Compensatory Habitat Proposal

- a. Specifics of the calculation method and adopted ratios for offsetting have not been clearly provided and/or justified by the applicant in the AoS. Council does not concur with the view that offsetting calculations and nomination of an area may be addressed through conditions of consent and that this is normal practice. Council does not have a policy for offsetting and adopts an avoidance approach through prevention and mitigation measures. Offsetting is only considered under exceptional circumstances and where it can be demonstrated that compensation can result without net loss.

As such the applicant is requested to provide detailed information of any offsetting arrangement for evaluation to enable Council to make a determination as to whether those measures proposed are adequate to ensure that cumulative direct and indirect on threatened species and communities would be offset.

Principles and criteria as referenced under the 'OEH Principles for the Use of Biodiversity Offsets in NSW' should be applied;

- b. Based on the requested arboricultural impact assessment, compensation for the removal of roadside trees should be incorporated into any offset package (subject to acceptance by Council).*

2. Arboricultural Impact Assessment

The effect of excavation works (root disturbance, increased, exposure) on the long term integrity and health of those trees nominated to be retained should be evaluated. As such the applicant is requested to submit an arboricultural impact assessment (AIA) report and accurate tree survey of all native trees of greater than 200mm dbh or any listed threatened flora species regardless of girth occurring within 10 m of the extent of earthworks (pursuant to any modifications requested by Council's assessing engineer).

The AIA should be prepared by a qualified Level 5 AQF arborist generally in accordance with AS4970-2009 Protection of trees on development sites. The tree survey component should be conducted using survey grade equipment with plant identification verified by a qualified ecologist/botanist with experience in rainforest species recognition

3. Alternative Access

The applicant is requested to clarify whether the alternative access arrangement forms part of this application and if so additional ecological assessment information will be required due to proximity of proposed driveway access and associated structures (holding tanks, shed) to Bilambil Creek and associated riparian vegetation.

As a result of this substantial request for information the applicant lodged S96 Modification DA03/0445.04 to address the matters out of DA03/0445.03 that did not relate to truck size as the applicant needed to get additional truck movements without the truck size matter holding up the other matters which were:

1. Permit operations between the times of 6am and 6pm seven days per week.
2. Permit a maximum of 6 deliveries (i.e. 12 trips) per day.
3. Delete the trial period restriction relating to the number of deliveries per day.

This application (DA03/0445.04) was approved at the Planning Committee Meeting of 2 June 2016. The report forms an attachment to this business paper for background purposes.

This left DA03/0445.03 and DA15/0664 undetermined and awaiting additional information from the applicant.

The applicant officially responded to Council's request for information from November 2015 on 9 November 2016 with a comprehensive bundle of documents. This material detailed several changes.

DA03/0445.03 now seeks consent to:

1. Enable delivery vehicles up to 19m in length to visit the site

The applicant has justified his position and more specifically the change from a 14m truck to a 19m tuck based on changes to the industry which the applicant has detailed as follows:

- "1. The history of the industry is such that, for some time now, 19 meter trucks have been the standard particularly in Victoria where a large amount of haulage is operated by Blackmount who don't run the 6 meter trucks as they are not financially viable. Blackmount have been contracted (after our application for 14 meter trucks) by our primary customer here on the coast and have since taken over haulage here on the coast for our main customer. The 14 meter application we made, before Blackmount took over, was to cater for the old haulage company which used 14 meter trucks. We have been told by our main customer and Blackmount that the 6 meter trucks are being kept on just so we can personally "stay financially alive" until we have approval for 19 meter trucks from the TSC. This 6 meter truck operating period has been given a deadline by our main customer, perspective customers and Blackmount of only a few more months. On this point, without approval for 19 meter trucks, our business will die. (refer Blackmount letter by Director Tim Carey attached).*

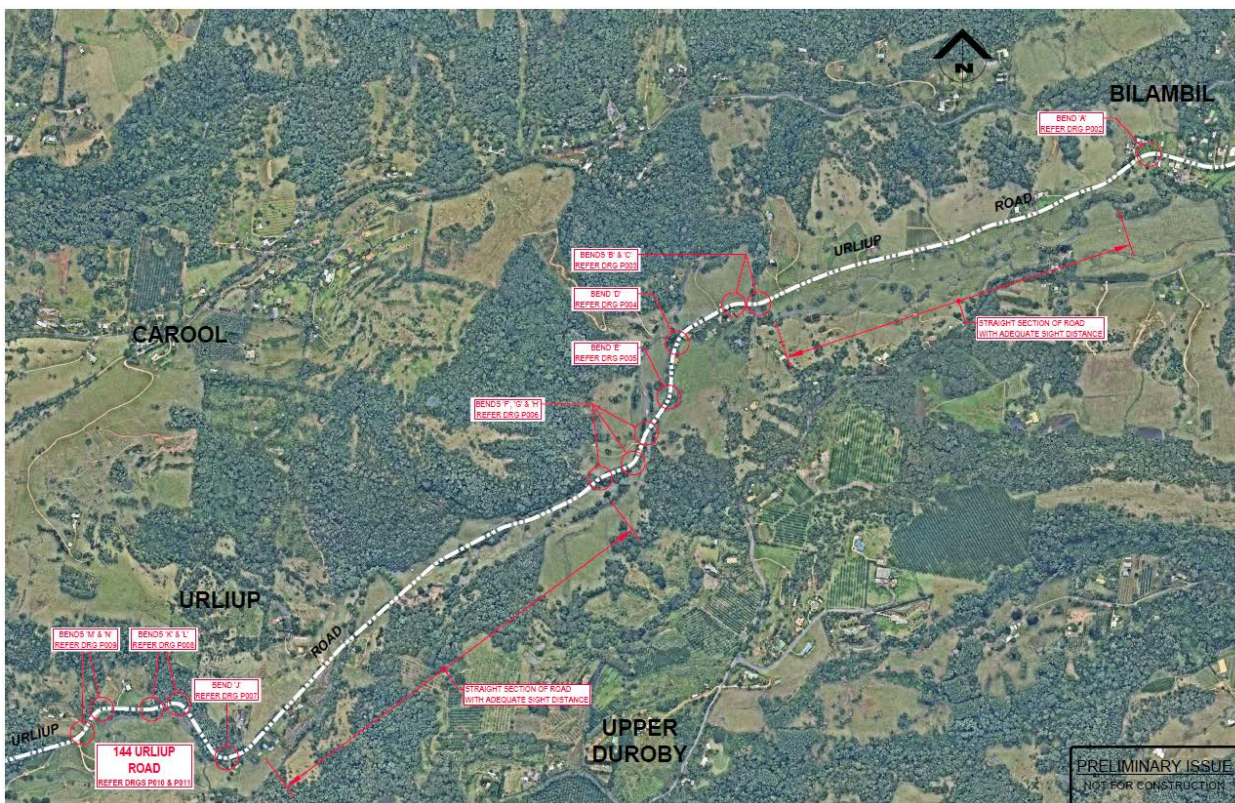
Since we have been restricted to 6 meter trucks, we have suffered immensely financially. The massive pay cut in cents perlitre is half of what we would be paid using the 19 meter trucks. Combine this with council restrictions of being able to offload a maximum amount of less than half of what we are lawfully allowed to extract by the NSW office of water and around 100k in bills for various reports and other requests from council which have taken over a year to put together and we are seriously looking at financial ruin without 19 meter truck approval. I don't think I can make that point clear enough. I have been personally needing to go and do labouring at my age with an old family friend Robert Dawes just to be able to pay household bills and afford groceries. These 6 meter trucks have drastically slashed our family's income at a time we have been required to put together the material and reports which have sent overheads with no return through the roof.

All this has also made our financial contribution to the Aboriginal community suffer as well (refer Waddi springsattachment) We are the only source of water to Waddi Springs. Something we have been doing for many years.

- 2. We are a good environmentally friendly, hard working family business in the Tweed Shire who have in good faith, spent close to 100k and over a year in time to go above and beyond what the TSC has asked of us (with reference to material attached to B&P surveys app on our behalf) among other works. My son resigned his full time career as an airline captain and position training pilots for the airline he worked at for the past 8 years in Perth to return here just to make dealing with all this his full time job.*
- 3. I would like to emphasise the fact that this application has nothing to do with increasing the capacity of what we are already entitled to under our commercial licenses issued by the NSW Office of Water.*

19 meter vehicles will be a far more economically viable way of transporting our allocated 60ML/year as opposed to the current smaller truck options. It will also have a significantly reduced environmental impact in terms of reduced emissions compared to the number vehicle movements required with the current trucks, combined with the fact that the emissions generated per litre of water transported is significantly less with the 19 meter trucks. In summary, for us to transport our licensed allocation with the current vehicle size would require us to just over double the amount of current truck movements on the road. With the 19 meter truck option, we won't need any more truck movements to transport our allocated amount. This would require condition 3 to be amended to reflect a 19 meter truck. Please note that this S96 application should be considered in conjunction with DA15/0664 which proposes alterations to Urliup road to accommodate the proposed 19 meter trucks."

DA15/0664 now seeks to undertake works to 13 bends (not the original 3) along 4km of Urliup Road:



KNOBEL CONSULTING <small>CONSULTING ENGINEERING ARCHITECTURE PROJECT MANAGEMENT</small>		CLIENT: LARRY & SUE KARLOS PROJECT: PROPOSED MINOR CIVIL ROADWORKS LOTS 1 & 33 URLIUP ROAD, BILAMBIL NSW 2484		DESIGN: [initials] DRAWN: [initials] APPROVED: [initials]	TITLE: OVERALL LAYOUT PLAN PROJECT NO: K3492 DRAWG NO: P001 ISSUE: 2
2	2015-05	ISSUED FOR INFORMATION	Suite 4 - 105 Varsity Parade, Varsity Lakes QLD 4219 Phone: 07 5514 455 200 Fax: 07 5514 455 201 Email: info@knobelconsulting.com.au		
1	2015-04	ISSUED FOR INFORMATION	PO Box 41, Varsity Lakes QLD 4217 Phone: 07 5514 455 200 Fax: 07 5514 455 201 Email: info@knobelconsulting.com.au		
002	NA	DATE:	SCALE: 1:5000 AT A1 1:10000 AT A3		

Diagram 1: Red circles indicating the location of the proposed works along Urliup Road

The engineering report states that the submitted plans demonstrating the extent of works have been based on the following parameters:

- 80kph generally adopted for sight distance analysis. Note that the existing road is sign posted as 'drive to suit conditions'.
- Design speeds were calculated for individual bends as required based on existing horizontal radii & super elevation and reference to AGRD-03 Fig. 7.6.
 - o Bend 'M' = 50 kph
 - o Bend 'N' = 60 kph
 - o Bend 'J' = 55 kph

Stopping sight distance (SSD) analysis:

- Based on AGRD-03, Section 5.3 & Table 5.4.
- 110m SSD generally adopted to suit 80kph design speed. Reaction time in line with AGRD-03 Table 5.2.
- 50m SSD for Bend 'J' based on calculated operating speed of bend.

Safe intersection sight distance (SISD) analysis:

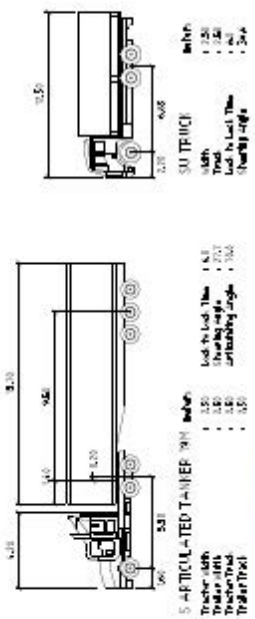
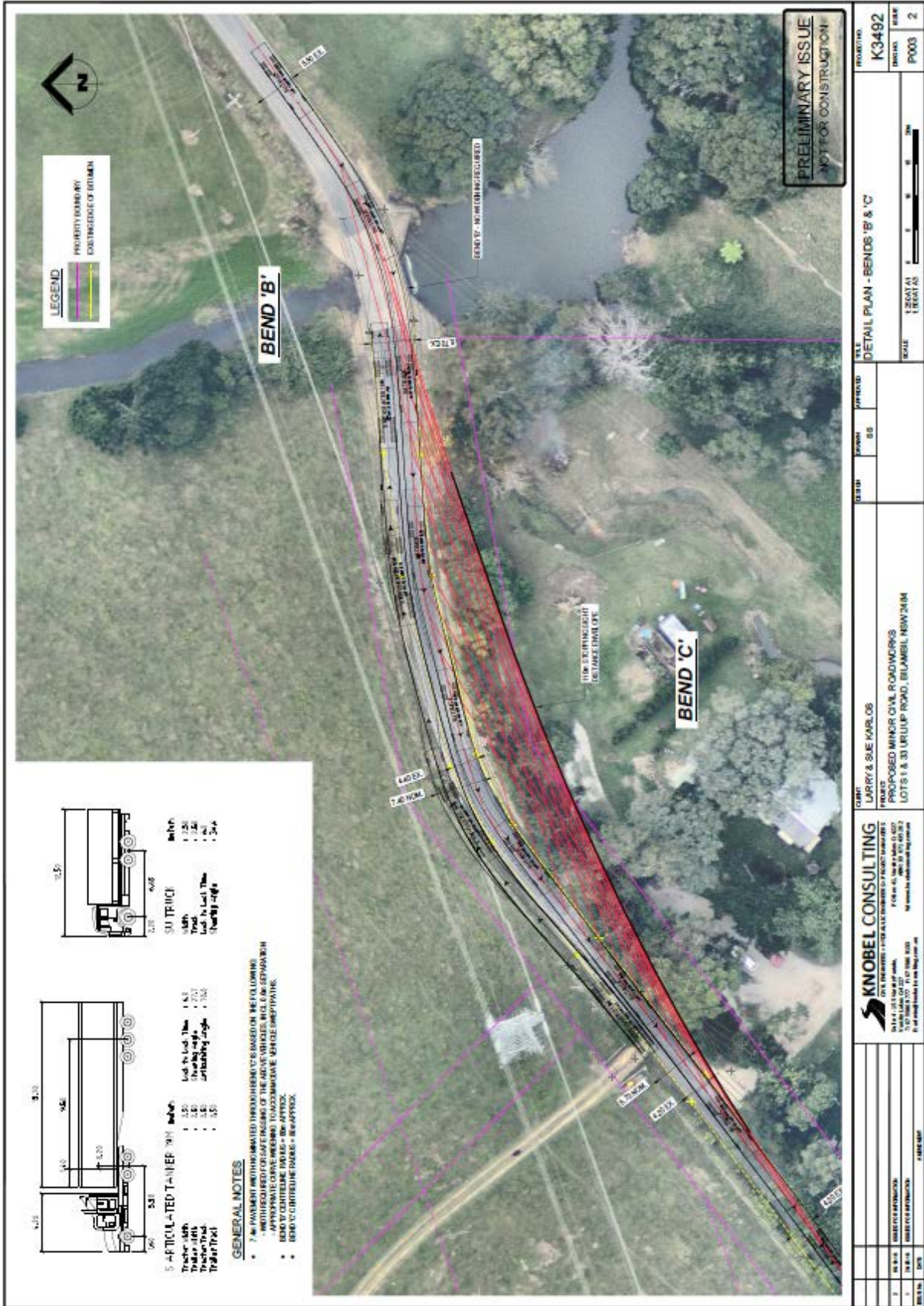
- Based on AGRD-Part 4A Section 3.2.2 & Table 3.2.
- Values are based on calculated operating speeds of adjacent bends.

Widening philosophy:

- The proposed road widening is based on the width required for safe passing of a 12.5m single unit truck & a 19.0m articulated vehicle with 0.6m separation (for sections of road only where adequate SSD is not achievable).

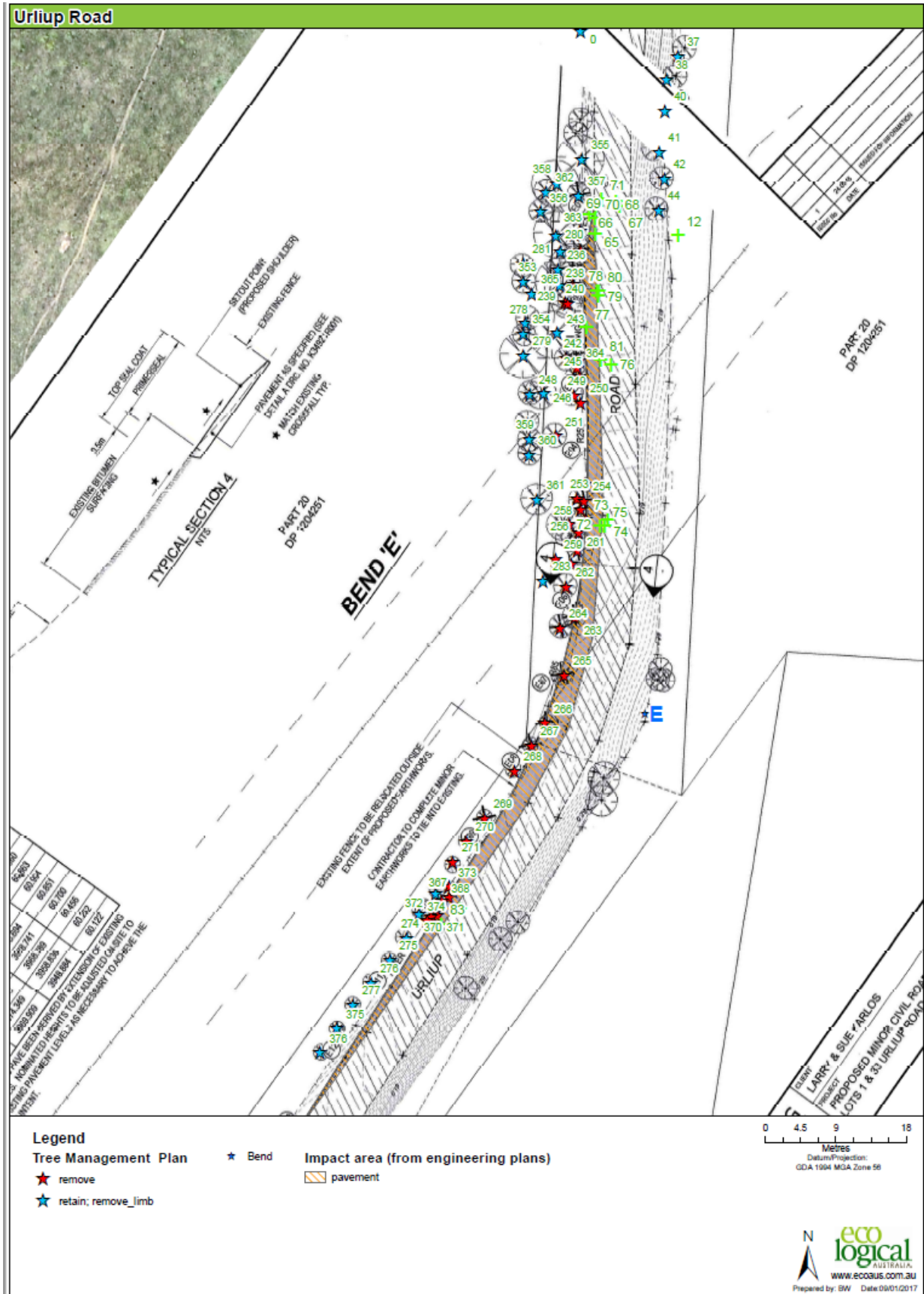
Furthermore the engineering report acknowledges that the cut barriers on certain bends will result in the following batter slopes:

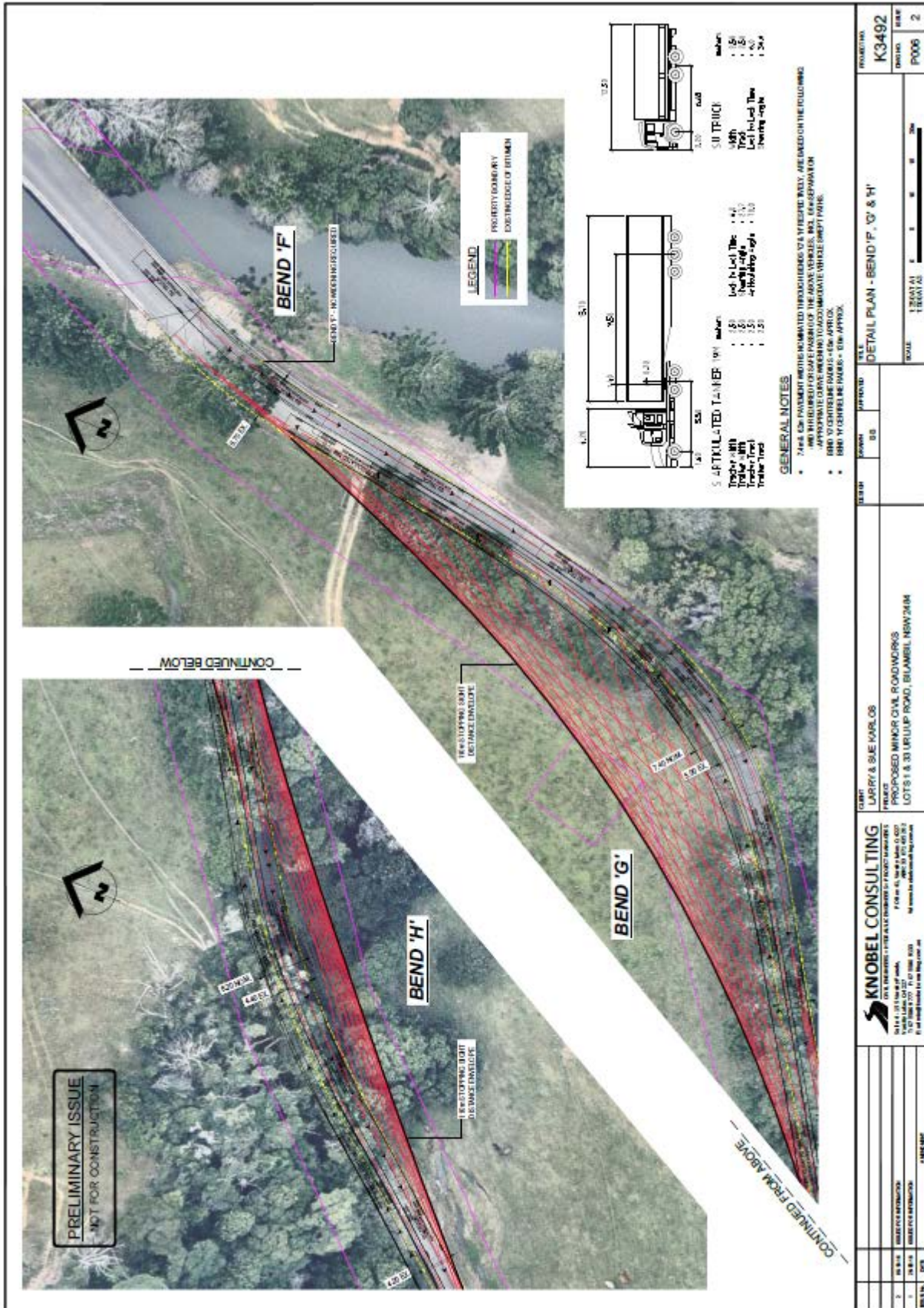
CUT BARRIERS AFFECTED		
BEND	EXISTING BATTER SLOPE (X IN Y)	PROPOSED BATTER SLOPE (X IN Y)
G	1 IN 1	1 IN 1
H	1.25 IN 1	1.25 IN 1
J	1 IN 1.6 TO 1.50 IN 1	1.25 IN 1
L	2 IN 1	2 IN 1
M	1 IN 2	1 IN 2
N	1.5 IN 1	1.5 IN 1

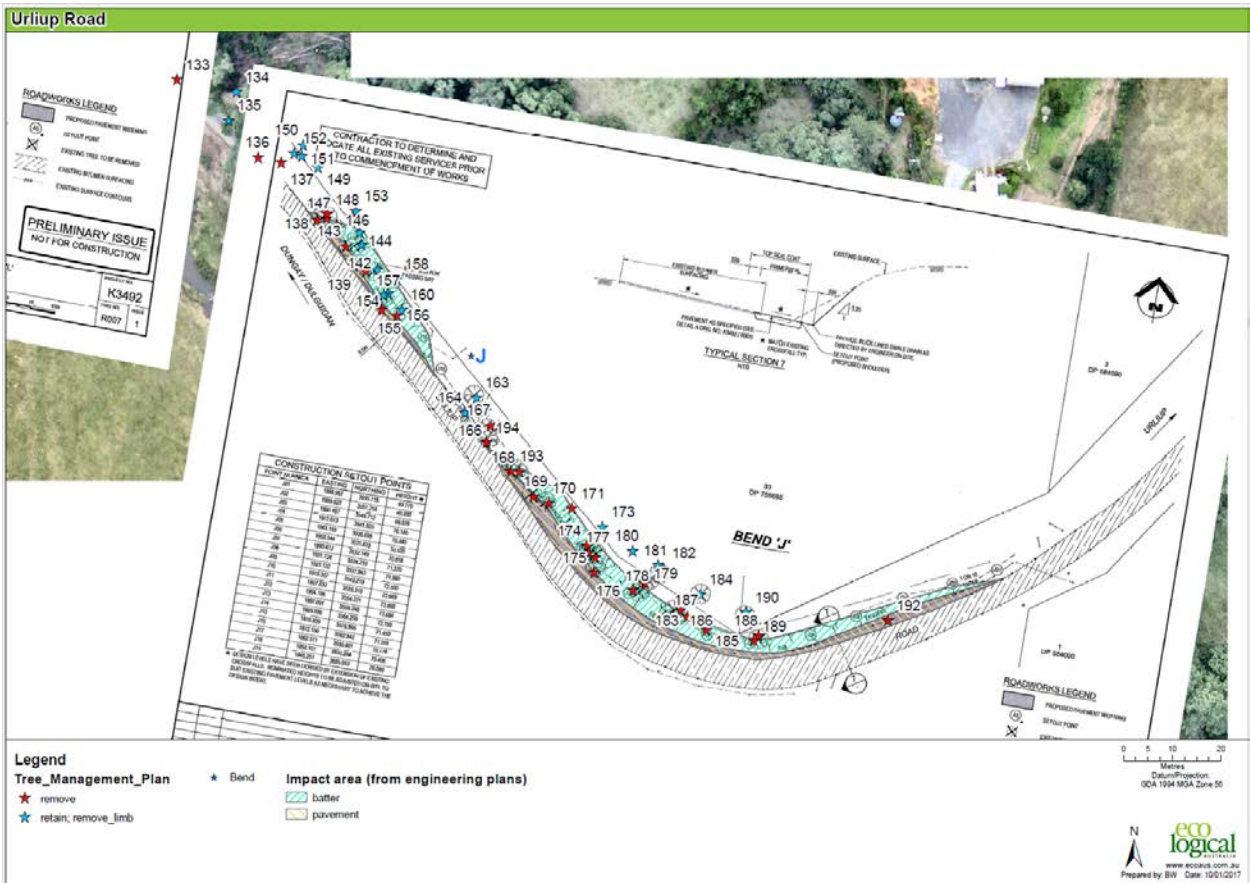
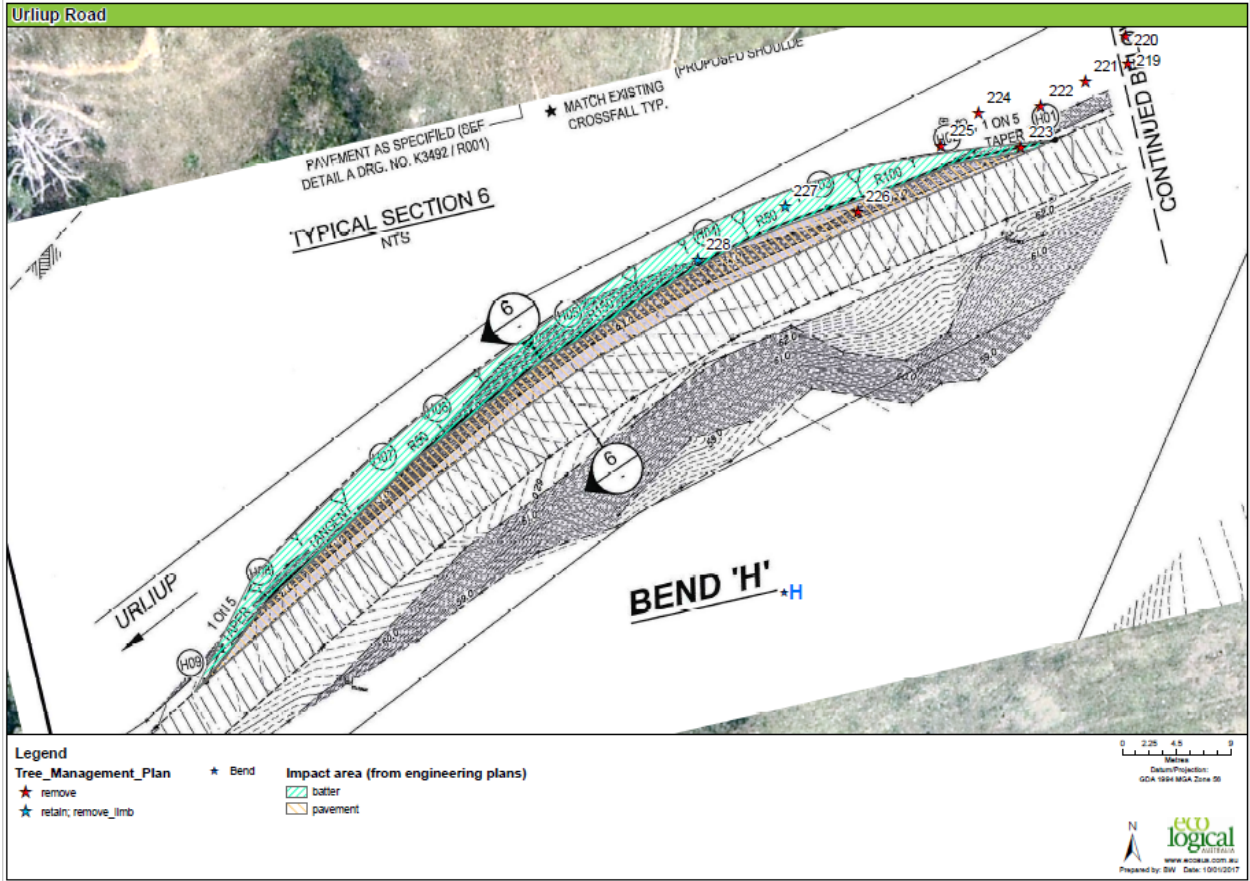


- GENERAL NOTES**
- THE DRAWING AND DIMENSIONS THEREON ARE BASED ON THE FOLLOWING:
 - INTERIOR CLEARANCES OF THE ABOVE VEHICLES, INCLUDING SEPARATION
 - APPROPRIATE CURVE RADII AND TO ACCOMMODATE VEHICLE DIMENSIONS.
 - BEND 'C' CENTRELINE TO BE 100.00m APPROX.
 - BEND 'C' CENTRELINE TO BE 100.00m APPROX.

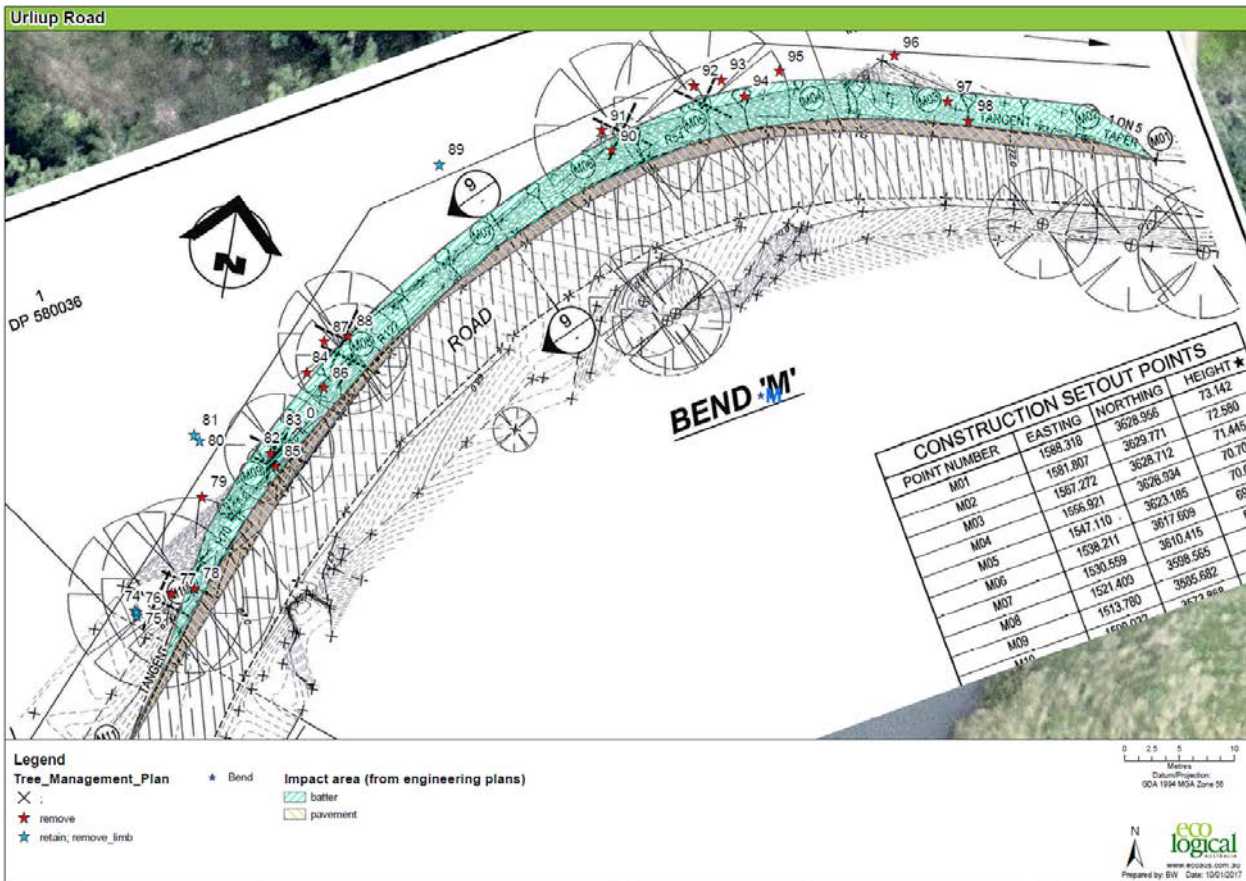
KNOBEL CONSULTING CIVIL ENGINEERING & SURVEYING 10/11-13/15 Hill Street, Bulahdelah NSW 2414 Ph: 02 6552 1000 Fax: 02 6552 1001 Email: info@knobelconsulting.com.au		CLIENT: LARRY & SUE KARLOS PROJECT: PROPOSED MINOR CIVIL ROADWORKS LOTS 1 & 30 URUUP ROAD, BULAHDEL NSW 2414	SHEET NO: P003 OF: 2
DATE: 15/03/17	DRAWN BY: [Name]	CHECKED BY: [Name]	SCALE: 1:200 AT 1:1000 AS SHOWN
ROAD NO: [Blank]		TITLE: DETAIL PLAN - BENDS 'B' & 'C'	
ROAD NO: [Blank]		ROAD NO: K3492	
ROAD NO: [Blank]		ROAD NO: P003	











Outstanding Engineering Issues

1. Road Standards

It is acknowledged that Uriup Road is a low-volume rural road, which does not comply with Council's contemporary road standard (Development Design Specification D1 – Road Design) in the subject area. It is not feasible (or arguably reasonable) for the proposed upgrade works to retrofit the road to this standard to achieve full seal widths, shoulder widths and clear zone widths to accommodate the increased truck movements from the water extraction development.

The upgrade standard to be adopted for the purpose of any approval issued for the subject DA will be a compromise of Council contemporary rural standards, and carries with it liability risks. However given the age of the current road infrastructure, the significant slope, alignment and ecological constraints along the road corridor, the low volumes of traffic pre and post development, and the benefits that other landholders can receive by virtue of the developer's works, this approach is considered reasonable.

However in determining the necessary standard for the upgrade works, it is appropriate to insist that adequate design, certification, risk assessment and mitigation is undertaken by the developer to protect the public interest.

2. Batter slopes

Of the 13 road curves assessed, 6 require significant cut earthworks on the upslope batter (bends G, H, J, L, M and N) to allow for road widening and increased sight

distance to accommodate the increased truck movements. The cut batter slope varies from 1:1 to 1:2, in general accordance with existing landform. Council's concerns with the proposed cut earthworks are as follows:

- a) The submitted plans only show one typical cross section, which may not be at the critical location. Generally cross sections at 10m spacings would be required to properly assess such works, including adjacent property boundaries.
- b) No geotechnical investigation of the existing batters has been undertaken, and the consultant engineers have stated that no geotechnical certification will be provided on the new works. This poses significant risk for Council.
- c) The works include removal of large amounts of vegetation and mature trees, which help to stabilise the existing batters, and increases the risk to Council of slips occurring in the new works.
- d) The proposal does not specify any batter slope treatment or revegetation measures to avoid erosion, scour or slippage of the new works. Bare earth batters are not acceptable to Council from an environmental and maintenance perspective.
- e) It is Council's assessment that retaining walls are required in certain critical locations, due to poor quality material in the batters, proximity to property boundaries and services, or to preserve significant vegetation. The assessment to date has not considered any retaining walls. This poses significant risk for Council.
- f) No catch drains are proposed at the top of any of the cut batters. This is particularly important along batters that have rising terrain behind to minimise erosion of the batter face. Catch drains need to discharge into roadside drainage in a manner that does not cause erosion or scour in the drains.
- g) The addition of retaining structures (e) and catch drains (f) increases the footprint of the proposed works, and will likely encroach on private land and fence lines and increase impacts on vegetation.

3. Road Widening

Road widening on bends L and M requires the extension of existing stormwater culverts and headwalls. There is no detail provided for these works with respect to the distance from the pavement edge (clear zone) and augmentation of erosion prevention works upstream or downstream of the works. This could impact on the extent of works and vegetation removal.

4. Pavement Design

There has been no investigation of the adequacy of the existing pavement to accommodate the additional truck movements, or to determine the appropriate pavement design where widening occurs. While it may be unreasonable for the applicant to upgrade an existing pavement that was already inadequate, there is no way to determine the impact of the additional truck movements on the road pavement and may result in accelerated damage to Uriup Road. This is a risk to Council should the application be approved.

5. Land Acquisitions

Works at Bend J show the batter slope encroaching slightly into private land. However as discussed above, this design does not include any consideration of retaining structures, catch drains, or clear zones between the top of the batter and the allotment boundary. Typically Council would require acquisition of private land to resolve the encroachment and provide sufficient buffer to protect private land and public infrastructure. Realignment of the bend to avoid this land conflict does not appear feasible without significant additional works and vegetation removal. Compulsory acquisition of private land by Council should not be used to facilitate private development.

Outstanding Ecological Issues

Council's engineers expressed concerns about the lack of sufficient cross sectional detail at regular intervals of each bend (particularly those zones with existing steep embankments adjacent to the road pavement) to enable assessment of the suitability of batter grades. Without confirmation from the Council's engineers that the batter grades are acceptable on the basis of slope stability, it is difficult to accurately and confidently ascertain the extent of vegetation removal.

Furthermore, concerns have been raised that the removal of existing mature vegetation from steep embankments to achieve the proposed embankment profiles may lead to future bank failure. Re-profiled batters vary from 1:1 to 1:2 slopes whilst no retaining structures and/or catch/cut-off drains or bank stabilisation treatment have been proposed. Where confidence in the structural integrity of the re-profiled banks cannot be provided potential risk of environmental impacts becomes elevated. These issues relate not just to the removal of vegetation to facilitate works but the risk of significant erosion and sedimentation events affecting the water quality of Bilambil Creek.

Table 1 Current Evaluation of the Proposal

The current set of engineering plans and ecological assessment information lacks adequate detail in addressing matters of environmental impact, road safety, design standards and ongoing maintenance. Outstanding issues are summarised below (Column 2) and the respective information considered necessary to comprehensively evaluate the proposal has been summarised in Column 3. Reference to expanded formal information request items as detailed in Table 2 have been identified in Column 4.

Report Component	Issue	Information Request	Information Request Item Number
Ecological Assessment Report General	<ul style="list-style-type: none"> • Uncertainty with respect to the engineering design of batter slopes. As a result tree removal as reported in the EA report may have been underestimated • A large proportion of the offset area is positioned in the Bilambil Creek waterway corridor. The offsetting should be undertaken on private land and be protected under a secure mechanism i.e. 88B. • The area to be impacted should consider the canopy projection of those trees to be removed when calculating offset areas and undertaking the 7-part test of significance. 	<ul style="list-style-type: none"> • Undertake re-evaluation of the engineering plans • The applicant should detail what long term protection mechanism shall be established over the offset area • Detailed plans at a suitable scale (comparative with the engineering plans for each bend) should be provided showing the 	5,6a, 6c,

Report Component	Issue	Information Request	Information Request Item Number
		area that has been identified to be impacted and used to calculate offsets	
Engineering Plans – General	<ul style="list-style-type: none"> Lack of sufficient cross sectional detail at regular intervals of each bend (particularly those zones with existing steep embankments adjacent to the road pavement) to enable assessment of the suitability of batter grades. Without confirmation from the Council's engineers that the batter grades are acceptable on the basis of slope stability, it is difficult to accurately and confidently ascertain the extent of vegetation removal. Not all threatened species stems trees have been identified on the engineering plans. 	<ul style="list-style-type: none"> Undertake re-evaluation of the EA report and engineering plans to address concerns 	5, 6a, 6b
Engineering Plans - Bend D	<ul style="list-style-type: none"> The applicant undertook further survey after it was noted that the previous investigation was undertaken in the incorrect location. The following features on the plans were identified: <ul style="list-style-type: none"> Large <i>Eucalyptus robusta</i> approx. 5400mm dbh to be removed <i>Jagera pseudorhus</i> 490 mm dbh to be removed. Features a hollow occupied by a Mountain Brushtail Possum A number of juvenile <i>Macadamia tetraphylla</i> were identified occurring in the batter are to be removed <p>The EA report has not been updated to reflect on and evaluate the more recent survey information.</p>	<ul style="list-style-type: none"> Amend the EA report to: <ul style="list-style-type: none"> Quantify the area to be disturbed and number of stems to be removed Evaluate the direct and indirect impacts Include calculations of an offset for non-threatened species: Include commitment to install and monitor nest boxes at a ratio of 5:2 to offset the loss of the hollow or any other hollows recorded during tree felling 	6b, 6c, 6f, 6g
Engineering Plans - Bend E	<ul style="list-style-type: none"> Uncertainty with respect to the engineering design of batter slopes. As a result tree removal may have been underestimated. A number of juvenile <i>Macadamia tetraphylla</i> were observed within the proposed works footprint these stems have not been identified in the EA report 	<ul style="list-style-type: none"> Undertake re-evaluation of the ecological assessment and engineering plans to address concerns 	5, 6b, 6d, 6f,
Engineering Plans -Bend H	<ul style="list-style-type: none"> Uncertainty with respect to the engineering design of batter slopes. Without confirmation from the Council's engineers that the batter grades are acceptable on the basis of slope stability, it is difficult to accurately and confidently ascertain the extent of vegetation removal. It is anticipated that extensive removal of Lowland Rainforest EEC would be required at this bend in the absence of retaining structures Ecological survey has been undertaken in the incorrect location of the road reserve. Therefore evaluation of the impacts on ecological values in the EA report has not been addressed at this bend. 	<ul style="list-style-type: none"> The applicant should amend the ecological assessment report and associated arboricultural report to evaluate the impact at this bend based on any revised engineering plans. Engineering design should take into consideration the ecological impacts and include design alternatives to minimise disturbance 	5, 6a, 6b, 6d, 6f

Report Component	Issue	Information Request	Information Request Item Number
	<ul style="list-style-type: none"> A number of threatened species have been recorded by Council officers in this location. 	<ul style="list-style-type: none"> Identify all stems of threatened species within the disturbance footprint 	
Engineering Plans - Bend J	<ul style="list-style-type: none"> Uncertainty with respect to the engineering design of batter slopes Without confirmation from the Council's engineers that the batter grades are acceptable on the basis of slope stability, it is difficult to accurately and confidently ascertain the extent of vegetation removal. Removal of existing mature vegetation from steep embankments to achieve the proposed embankment profiles may lead to future bank failure. Re-profiled batters vary from 5:5 to 5:2 slopes whilst no retaining structures and/or catch/cut-off drains or bank stabilisation treatment have been proposed Issues relate not just to the removal of vegetation to facilitate works but the risk of significant erosion and sedimentation events affecting the water quality of Bilambil Creek. 	<ul style="list-style-type: none"> The applicant is requested to amend the ecological assessment report and associated arboricultural report to evaluate the impact at this bend based on any revised engineering plans Engineering design should take into consideration the ecological impacts and include design alternatives to minimise disturbance 	5, 6b, 6e
Engineering Plans - Bend L	<ul style="list-style-type: none"> Impact on a suite of significant trees including a mature <i>Syzygium moorei</i> An additional stem of <i>Syzygium moorei</i> occurring within the works footprint has not been identified Avoidance strategies and alternative road designs do not appear to have been considered. All efforts should be made to avoid impact on threatened species. 	<ul style="list-style-type: none"> Provide options for alternative road design to avoid impact on Lowland Rainforest EEC and loss of 2 x <i>Syzygium moorei</i> Identify the additional stem of <i>Syzygium moorei</i> on the engineering plans and re-evaluate as part of the ecological assessment 	5, 6b
Engineering Plans -Bend M	<ul style="list-style-type: none"> Additional threatened species to be removed i.e. <i>M. tetraphylla</i> and <i>L. pulchella</i> not identified in the EA report. Vegetation at Bend M is representative of a Lowland Rainforest EEC, this is contrary to the EA report that classifies the unit as 'Scattered rainforest Trees' 	<ul style="list-style-type: none"> Identify the additional threatened species stems on the engineering plans and re-evaluate as part of the ecological assessment Re-evaluate the EEC classification 	5, 6b
Engineering Plans -Bend K	<ul style="list-style-type: none"> This area is currently devoid of riparian vegetation and has been proposed to be rehabilitated as part of the offset package. The future growth of trees within this area may compromise sight visibility. Even where revegetation wasn't proposed within this area the maintenance of a sight lines for water trucks may preclude the re-establishment of riparian vegetation along the waterway 	<ul style="list-style-type: none"> This matter should be addressed as part of the ecological assessment 	6c

Table 2 Information Request Items

Information Request Item	Information Request Specifics
5	<p>The following concerns are raised by Council with respect to engineering design and subsequent clearing extent necessary to facilitate earthworks:</p> <ol style="list-style-type: none"> a. Lack of sufficient cross sectional detail at regular intervals of each bend (particularly those zones with existing steep embankments adjacent to the road pavement) to enable assessment of the suitability of batter grades. Without confirmation that the batter grades are acceptable on the basis of slope stability, it is difficult to accurately and confidently ascertain the extent of vegetation removal. b. The removal of existing mature vegetation from steep embankments to achieve the proposed embankment profiles may lead to future bank failure. Re-profiled batters vary from 5:5 to 5:2 slopes whilst no retaining structures and/or catch/cut-off drains or bank stabilisation treatment have been proposed. Where confidence in the structural integrity of the re-profiled banks cannot be provided potential risk of environmental impacts becomes elevated. These issues relate not just to the removal of vegetation to facilitate works but the risk of significant erosion and sedimentation events affecting the water quality of Bilambil Creek. <p>The applicant is requested to address matters relating to engineering as raised by Council's engineers and subsequently evaluate the ecological effects of any change to the engineering design plans.</p>
6	<p>The applicant is requested to review comments provided by Council below and address within an amended <i>Ecological Assessment (EA) – Uriup Road Widening dated 29 August 2056 prepared by Ecological Australia</i>. It is noted that all items detailed below should influence and take into consideration any modification to the engineering design.</p> <ol style="list-style-type: none"> a. <u>Impact on endangered vegetation communities</u> <p>Upon analysis of the vegetation removal calculations in the EA report the area of Lowland Rainforest EEC to be disturbed relates to the area captured in the batter slopes only, equating to 337 m². The area does not include the total canopy impact area. Council are of the opinion that the area captured under the canopy of the vegetation to be impacted should be taken into consideration (excluding that area of the canopy overhanging the existing pavement), as the disturbance of the canopy will introduce new conditions to the mid and understorey effectively resulting in indirect disturbance. As such all impact assessment calculations made in the EA report are considered inaccurate and an underestimate of the extent of Lowland Rainforest EEC to be adversely affected.</p> <p>Furthermore it is noted that:</p> <ul style="list-style-type: none"> • Vegetation at Bend M is representative of a Lowland Rainforest EEC, this is contrary to the EA report that classifies the unit as 'Scattered rainforest Trees' • The areal extent of the local occurrence of the Lowland Rainforest EEC appears to have been overestimated • Due to locational inaccuracy of the survey, Lowland Rainforest EEC

has not been identified at Bend H

Given that the areal extent calculations form the basis of the 7-part test, it is considered that certain elements of the test should be reevaluated in order to determine whether the proposal would have a significant effect on the local extent.

Similarly, the offset area figures should be recalculated using the revised area of impact extent.

b. Impact on threatened species – flora

i. During a recent site inspection it was confirmed that the number of individual threatened plants (as listed under the *Threatened Species Conservation Act 5995* and/or *Environmental Planning & Biodiversity Conservation Act 5999*) to be removed to facilitate the road upgrade as reported in the Ecological Assessment (EA) report has been underestimated. The additional stems occur within Bends of H, L and M. These species include:

- *Macadamia tetraphylla* – Rough-shelled Bush Nut
- *Syzygium moorei* – Durobby
- *Lepiderema pulchella* – Fine-leaved Tuckeroo

The failure to quantify the extent of impact has an influence on the results of the assessment of significance (7-part test) (necessary to satisfy Section 5A of the *Environmental Planning & Assessment Act 5979*) used to determine whether the proposal would result in a significant effect on the local population. Council cannot therefore be confident that proposal would not trigger the requirement for a Species Impact Statement for either of the listed species based on inaccurate figures.

In addition it is noted that the assessment of significance (7-part test) performed as part of the EA report failed to consider any direct impact on *Macadamia tetraphylla*. Numerous stems of both semi-mature and juvenile *M. tetraphylla* were recorded by Council in the field within the area of impact.

As such the applicant is requested to identify all stems to be impacted and undertake a revised assessment of significance

ii. A significantly sized semi-mature threatened *Syzygium moorei* (Durobby) (listed under both the TSC Act and EPBC Act) occurs on the existing embankment at Bend L. Removal of the Durobby would be necessary to facilitate the road upgrade works under the current design plans. The applicant proposes to offset the loss of the tree through compensatory planting on the water extraction site (Lot 5 DP735658).

This specimen is currently in a healthy condition showing no clear signs of structural deformity/deficiency. The tree may be considered a keystone species for the local population and associated localised unit of lowland rainforest habitat due to the tree's level of maturity - at a reproductive age, providing blossom/fruit and refuge for fauna.

Council are of the opinion that the 7-part test conducted by the applicant may not have been performed judiciously in that certain elements of the test have been overlooked and/or miscalculated (as a function of the inaccurate stem counts) such as:

	<ul style="list-style-type: none"> ○ The local population size ○ Likely age and maturity of individuals in the local population ○ The genetic importance of those more significant reproductive individuals ○ The duration and timing of adverse effects <p>Council therefore remain concerned that the loss of this specimen may likely have a significant effect on the local population.</p> <p>With regard to the applicant's recommendations to undertake compensatory planting it is considered that this approach to mitigation should only be contemplated where avoidance strategies have been sufficiently investigated. This is consistent with fundamental threatened species management and Office of Environment & Heritage (OEH) biodiversity offset principles.</p> <p>The significance and value of the specimen and concerns regarding the assessment of significance were raised during a recent onsite meeting. Subsequently, the applicant advised that investigations would be undertaken to consider the feasibility of an alternative road alignment should Council reaffirm their position on the matter.</p> <p>As such the applicant is requested to:</p> <ul style="list-style-type: none"> A. Provide options for alternative road design to avoid impact on EEC Lowland Rainforest and loss of 2 x <i>Syzygium moorei</i> at Bend L B. Identify the additional stem of <i>Syzygium moorei</i> on the engineering plans and re-evaluate as part of the ecological assessment <p>c. <u>Offset Area</u></p> <p>A large proportion of the offset area is positioned in the Bilambil Creek waterway corridor and a section within the Urliup Road corridor. The offsetting should be undertaken on private land and be protected under a secure mechanism i.e. 88B statutory covenant. The applicant is therefore requested to reconfigure the offset area plan to:</p> <ul style="list-style-type: none"> i. Show the offset area principally configured on private land ii. Be modified to account for recalculated impact areas using offset ratios currently adopted in the EA report for Lowland Rainforest EEC and Brushbox Open Forest (at Bend J) iii. Detail what long term protection mechanism shall be established over the offset area. <p>d. <u>Threatened Species Management</u></p> <p>Given the likely impacts on threatened flora species, commitment should be provided to prepare a threatened species management plan and implementation of measures such as (but not limited to):</p> <ul style="list-style-type: none"> i. The collection of propagation a material and consideration of plant translocation (where practical) for those flora species not considered likely to have a significant effect on the population as a result of the
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	<p>proposal</p> <p>ii. Construction phase protection requirements</p> <p>e. <u>Non EEC remnant vegetation</u></p> <p>The issues relating to canopy calculations and offset requirements with respect to Lowland Rainforest EEC detailed above also apply to the Brushbox Open Forest unit at Bend J.</p> <p>f. <u>Non-remnant vegetation</u></p> <p>To facilitate the road upgrade approximately 85 non-remnant planted or exotic trees (i.e. those that do not form part of a vegetation community) are proposed to be removed. The applicant has not proposed any compensation for the loss of these trees.</p> <p>A high number of the trees are local native species (<i>Araucaria cunninghamiana</i>, <i>Eucalyptus grandis</i>, <i>E. microcorys</i>, <i>E. robusta</i>) yet are considered to have a lower ecological value (due to their origins) Notwithstanding, several of these trees have reached maturity providing habitat value for local fauna species (blossom, fruit and hollows) and contribute to the local rural landscape aesthetic.</p> <p>Further consideration should be given to compensating for the loss of rural landscape amenity trees with a plan to undertake revegetation areas within the road reserve in strategic locations that would not compromise road safety. The following offset calculations should be adopted for non-threatened species outside a remnant unit:</p> <p>i. Between 250mm dbh – 800mm dbh at a ratio of 5:5 (remove:replace)</p> <p>ii. Greater than 800mm dbh at a ratio of 5:5 (remove:replace) to be installed within the road reserve and form part of the offset area</p> <p>g. <u>Loss of hollow bearing trees</u></p> <p>An active hollow was identified at Bend D. As such the applicant is requested to provide commitment to install and monitor nest boxes at a ratio of 5:2 to offset the loss of the hollow or any other hollows recorded during tree felling.</p>
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UNDERSTANDING THE PLANNING PROCESS

The NSW Planning system is complex in nature. However the approval system is based on the need to obtain development approval for uses which are defined as “development”.

To compare two different defined types of development below is the definition of extensive agriculture and the definition of a water bottling facility.

With Extensive Agriculture being defined as:

extensive agriculture means any of the following:

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

water bottling facility means a building or place at which groundwater from land in Zone RU2 Rural Landscape is extracted, handled, treated, processed, stored or packed for commercial purposes.

In the RU2 zone under the Tweed LEP 2014 extensive agriculture is a permissible land uses **without development consent**. However these uses could require the use large 19m trucks on a regular basis and Council would have no assessment role in determining whether the roads are suitable for such a truck.

However in the same RU2 water bottling facilities require development approval which triggers some consideration of whether the trucks being used by the business are suitable for the subject site and the roads on which the trucks use to access the site. This is an anomaly of the system that requires Council to have regard for equity when assessing development applications.

APPLICANT'S RESPONSE TO ADDITIONAL INFORMATION REQUEST

The applicant has not yet seen the full extent of the above additional information request. However following various site inspections and multiple meetings with the applicant he was advised that Council Officers were likely to request additional information as detailed above. In response to this the applicant advised as follows:

"Upon receipt of legal advice which reflects our position on the subject of our DA, we feel the council has requested enough of us and we have addressed these requests for further information more than satisfactorily given that the essence of our DA is requesting that we upgrade council infrastructure at our personal expense.

Should the council's position at this present time be such that they see fit to request further information, it is our position that in lieu of doing so, they instead provide what it is that they request further and actually offer us support to upgrade their infrastructure by way of providing the material they otherwise would request at this time, which will enable us to move our lawful rural business forward in what is an appropriately zoned area which has seen other rural industry's die off.

I also wish to note the council's own commitment they have given towards supporting local rural and small business. Given this, I would find it highly inappropriate, (and as I am informed) that any court would, for the council to argue that our DA not be approved given that the facts are that we are a lawful rural business simply requesting to upgrade a rural road which is in need of improvement anyway to accommodate our proposed vehicles which are smaller than what is currently approved to operate on the road (including council's own low loaders) Given this fact alone, it would also be our position in court that given the outcome of our engineering reports, that the TSC is now effectively on notice from a safety perspective given that vehicles which are free to use the road now (and have been for quite some time including the council's own vehicles), do so on a road which does not meet Aus road standards for said vehicles, therefore the council would need to either approve our DA which addresses this issue or upgrade the road to meet the standards at their expense in order to address this safety issue that they have now been put on notice with regards to.

Furthermore, it is our opinion that it would be frivolous to suggest our proposal not be approved on ecological grounds given that the only proposed vegetation removal occurring is from within road reserve which we propose to more than compensate for so that the safety issues which the council is now effectively on notice for, be addressed at our personal expense. We believe that a court would agree with our position that it would be unreasonable for council to suggest that key-proven existing safety issues be over-ridden by a handful of trees within a road reserve which will be more than compensated for at our expense anyway.

In summary, we will not be addressing any further requests for information from council given that this has now dragged out multiple years and we have invested vast amounts of money into reports etc for upgrades to council infrastructure.

The time has come for us to start investing our money into real work (not just on paper) so that our business can go ahead, instead of going under.

We are a lawful rural business proposing to increase safety issues which are now proven to exist on council's own road to accommodate our vehicles (which are smaller than council's own vehicles and others which are already free to use the road.)

I wish to also make brief mention of what has been described as a large objection from the community by saying that it is our position that this will hold no weight in court, and nor should it. Just because you have a large number of people voicing something that is unsubstantiated and completely fabricated, doesn't mean it should be given any weight in any fair democratic process.

I make this statement based on the outcome of our Hydrogeological report (attached) and the other facts and evidence we have provided, versus the fabricated nonsense that forms the public objection which is fuelled on only negativity and personal hate campaigns against our family, including by radical individuals and Splinter factions of small radical green groups who have provided zero reports or evidence and only hot air and ridiculous claims. The facts (as evidenced by our hydro report) are that we are an environmentally friendly and completely sustainable rural business. {Not that this is even relevant with regards to this DA anyway}.

I trust our DA will be addressed promptly and a report completed within the next week or 2 so that it may be voted on by councillor's who can proved to have fair and unbiased minds and who have no conflict of interest on the subject which our DA is based.

I also propose that from an engineering perspective, should there be any concern from council regarding any of the proposed works holding up (in the next storm event for example), that this be addressed by way of us rectifying any such issue should it arise at our expense. I wish to note that most of our proposed works are in areas which already require prompt council rectifications following such events anyway. We are confident that all our proposed works only upgrade and improve the existing conditions. We are also confident of this given the work that Knobel consulting have done and have advised us on."

PUBLIC INTEREST

As detailed in the summary section of this report the subject applications have generated a great deal of public interest. The first round of public notification attracted 25 objection letters, while the second round of public notification attracted 65 objection letters and 34 letters of support.

The letters of objection focus on matters such as:

- Road safety (crash history)
- Road suitability (e.g. heavy vehicles across causeways that are not strong enough)
- Road conflict issues between people walking/cycling, horse riding and driving
- The loss of trees in such a visually attractive rural landscape
- The impact on flora and fauna
- Generally opposed to water extraction

The future 79C Merit assessment report will consider and detail all of these submissions.

OPTIONS:

1. Ask the applicant to provide additional information as detailed within this report at their own expense to enable a proper assessment of the application.

If the applicant states that such information will not be forthcoming or the information is not received within 60 days from 2 March 2017 the matter will be reported back to Council for determination based on the information currently on file.

2. Bring back a 79C Merit Assessment Report based on the information currently before Council to enable Council to determine the application.
3. Council consider partially funding an upgrade to Urliup Road through a Federal or State Grant Program targeting product to market outcomes such as the Fixing Country Roads Program to ensure any road works undertaken occur to the required standard.

Council Officer's Recommend Option 1.

CONCLUSION:

This report seeks direction from Council on whether there is sufficient nexus between the proposal to increase from a 6m truck to a 19m truck (for the already approved 6 deliveries a day) to justify the extent of works being proposed/asked for by Council given the state of the road at present.

Both the applicant and Council staff agree that some work needs to be done to Urliup Road to make it safe for a 19m truck and other road users however what is in dispute is the level of work being required and who should be required to fund these works.

The applicant is arguing that the road is in such a poor state of repair that their proposed improvements are more than adequate to accommodate the development being proposed.

The applicant is therefore asking Council to fund any additional difference beyond \$260,230 worth of road works required in Council's opinion to upgrade the road to Council satisfaction.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

If the applications were to be refused the applicant has a right of Appeal to the NSW Land & Environment Court where Council would incur costs to defend such an Appeal.

In regards to liability see Confidential Attachment 3 in which Council officers sought advice from Council's Insurers.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Council Report DA03/0445.04 in regard to the number of trips previously approved by Council (ECM 4418741)

Attachment 2. The applicant's Hydrological Report addressing the sites bore capacity (ECM 4418779)

(Confidential) Attachment 3. Confidential Attachment Legal Advice (ECM 4422500)

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

SUBMITTED BY: Director



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.4 Strengthen coordination among Commonwealth and State Governments, their agencies and other service providers and Statutory Authorities to avoid duplication, synchronise service delivery and seek economies of scale
 - 1.4.1 Council will perform its functions as required by law and form effective partnerships with State and Commonwealth governments and their agencies to advance the welfare of the Tweed community
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SUMMARY OF REPORT:

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported/refused.

RECOMMENDATION:

That Council notes the January 2017 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, the following Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

DA No.	DA16/0526
Description of Development:	Multi-dwelling housing development comprising 4 townhouses in 2 stages
Property Address:	Lot 607 DP 792534 No. 102 Ash Drive, Banora Point
Date Granted:	14/2/2017
Development Standard to be Varied:	Clause 4.6 for the variation of height of building
Zoning:	R2 Low Density Residential
Justification:	<p>Height Limit of Site is 9m. Application requires a minor variation to allow a small area of Unit 2 to have a maximum height of 9.135m. This is a variation of less than 10% being 1.5%</p> <p>This variation is due to the steepness of the site and to allow the adjoining Unit 1 to be at a slightly lower level enabling light to enter both units from the north east.</p> <p>The variation is for a small portion of a balcony roof only and does not extend over the entire roof space</p>
Extent:	1.5% Variation to a 9m height limit being 9.135m
Authority:	Tweed Shire Council under assumed concurrence

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.

CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

C1 [PR-PC] Environmental Damage and Unauthorised Works at Lot 469 DP 1144944 off Henry Lawson Drive, Terranora

REASON FOR CONFIDENTIALITY:

This report concerns legal matters that could influence the appeal process.

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Validms



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
 - 4.1 Protect the environment and natural beauty of the Tweed
 - 4.1.3 Manage and regulate the natural and built environments
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