



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 4 October 2018

held at
Council Chambers, Murwillumbah Civic & Cultural Centre, Tumbulgum Road, Murwillumbah
commencing at 5.30pm

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 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 Secretary 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 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, 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.

(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 4.16 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 4.16 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 4.28 (3) and (4).

(3A) **Development control plans**

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, **standards** include performance criteria.

(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 the Planning Committee:

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ORDERS OF THE DAY

- 1 **[NOR-PC] Development Application DA16/0936 for a Bulk Loading/Delivery of Extracted Water and Roadworks at Lot 3 DP 815475 No. 350 Rowlands Creek Road, Rowlands Creek**

NOTICE OF RESCISSION:

Councillors K Milne, C Cherry and R Cooper hereby give notice that at the Ordinary Meeting of the Planning Committee to be held 4 October 2018 we will move that the resolution from the Planning Committee meeting held on 6 September 2018 at Minute No P63 Item No 1 titled [PR-PC] Development Application DA16/0936 for a Bulk Loading/Delivery of Extracted Water and Roadworks at Lot 3 DP 815475 No. 350 Rowlands Creek Road, Rowlands Creek being:

P 63

Cr R Byrnes

Cr W Polglase

RECOMMENDED that Development Application DA16/0936 for a bulk loading/delivery of extracted water and roadworks at Lot 3 DP 815475 No. 350 Rowlands Creek Road, Rowlands Creek 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 21525 D Sheet 1, prepared by B and P Surveys and dated 17/08/16, and the Rowlands Creek Road Traffic and Safety assessment prepared by Bitzios Consulting, dated 24 May 2017, except where varied by the conditions of this consent.*

[GEN0005]
2. *The first water truck cannot access the site until such time as the flood repair works to curve/site 5 and works required as part of Condition 17 are completed and access approved by Council Resolution.*

[GENNS01]
3. *This consent authorises:*
 - (a) *water extraction from bore GW304537 to the maximum extraction volume of 24 megalitres of water in any 12 month period;*
 - (b) *infrastructure as identified on the stamped approved Location Plan identified in Schedule 1 of this consent and the provision of two water tanks and an electric pump adjacent to the tanks;*
 - (c) *Maximum 15m truck with a maximum of three loads of water a day;*
 - (d) *Hours of operation of the business are restricted to the following hours (including pumping operations):*
 - * *7am to 6pm - Mondays to Fridays*
 - * *7am to 6pm - Saturdays*
 - * *No operations are to be carried out on Sundays or Public Holidays*
 - * *All deliveries and pickups relating to the business are to occur within the approved hours*

Note: No truck is to enter/exit the site before/after these hours.

- (e) *This use is in conjunction with Approval 30CA314315 issued by Water NSW under the Water Management Act 2000. The use must be undertaken in accordance with the provisions of this Approval.*
4. *The development is to be carried out in accordance with Council's Development Design and Construction Specifications and provided with appropriate stormwater management and erosion and sediment control.*
[GEN0265]
5. *The approved development shall not result in any clearing of native vegetation without prior approval from the relevant authority.*
6. *The driveway access to 350 Rowlands Creek road is to be constructed to Council's requirements and will be subject to submission and approval via a s138 Roads Act application.*
[GENNS02]
7. *All vehicles entering the subject allotment must enter and exit in a forward direction.*
[GENNS03]

PRIOR TO COMMENCEMENT OF WORK

8. *Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved Management Plans or the like, shall be installed/operated in accordance with those conditions or plans.*
[PCW0015]
9. *Prior to commencement of any works on the site, all appropriate erosion and sedimentation control measures are to be installed and maintained throughout the duration of the development.*
[PCW0985]
10. *Warning signage erected in relation to expected heavy vehicle encounters are to be installed on Rowlands Creek Road and the associated costs borne by the developer.*
[PCWNS01]

DURING CONSTRUCTION

11. *All proposed works are to be carried out in accordance with the conditions of development consent, any approved Management Plans, any approved Construction Certificate, drawings and specifications.*
12. *All necessary roadworks including pruning of vegetation as prescribed in the approved Traffic Assessment Report shall be undertaken strictly in accordance with Australian Standards AS 4372:2007 Pruning of amenity trees and AS 4970:2009 Protection of trees on development sites*
[DUR0005]

13. *Should any Aboriginal object or cultural heritage (including human remains) be discovered all site works must cease immediately and the Tweed Byron Local Aboriginal Land Council (TBLALC) Aboriginal Sites Officer (on 07 5536 1763) are to be notified. The find is to be reported to the Office of Environment and Heritage. No works or development may be undertaken until the required investigations have been completed and any permits or approvals obtained, where required, in accordance with the National Parks and Wildlife Act, 1974.*

[DUR0025]

14. *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 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 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]

15. *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]

PRIOR TO COMMENCEMENT OF THE OPERATION

16. *Section 7.11 Contributions*

Payment of the following contributions pursuant to Section 7.11 of the Act and the relevant Contribution Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, the use shall not commence unless all Section 7.11 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 Section 7.11 Contribution 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 7.11 Contribution Plan current at the time of the payment.

A copy of the Section 7.11 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- (a) *Tweed Road Contribution Plan:*
6 Trips @ \$2529 per Trips \$15,174
((\$2,239 base rate + \$290 indexation)
S94 Plan No. 4
Sector12b_4

[POC0395]

17. *Prior to the commencement of the approved use on the site, 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 (but not limited to) engineering plans and specifications for the following required works:*
- (a) *Bitumen sealing (or equivalent) of the existing driveway servicing the site to at least the property boundary in accordance with Council's Development Control Plan - Section A2 "Site Access and Parking Code" and Council's "Driveway Access to Property - Design Specification" (current version), including any driveway widening as required to safely accommodate a 15.0m articulated Water Truck, confirmed by swept paths.*
- (b) *Road widening and upgrading of Rowlands Creek Road as recommended in the Bitzios - Traffic and Safety Assessment, dated 24 May 2017. These works are to include any recommended safety signage.*
18. *Truck warning signage at the approaches of the driveway of the subject site from both directions shall be installed to the satisfaction of the General Manager or delegate.*
19. *Prior to the commencement of the approved use, vegetative screening shall be provided along the eastern side boundary of the site to screen the proposed Water tanks and trucks from adjoining properties. This vegetative screening shall be to the satisfaction of the General Manager or delegate.*
20. *Prior to Water Trucks transporting extracted water from site, a Certificate of Practical Completion shall be obtained from Council's General Manager or his delegate for all works required under Section 138 of the Roads Act 1993.*

[POCNS01]

USE

21. *The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.*
22. *Except as may be expressly provided in a licence approval under the Protection of the Environment Operations Act 1997 (POEO) Act, the licence holder must comply with section 120 of the POEO Act 1997 prohibiting the pollution of waters.*

[USE0155]

23. *All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation (including but not limited to the electric pumps to fill the trucks) which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.*

[USE0175]

24. *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]

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

[USE0245]

26. *All plant and equipment installed or used in or on the premises:*

- (a) Must be maintained in a proper and efficient condition, and*
- (b) Must be operated in a proper and efficient manner.*

In this condition, "plant and equipment" includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.

[USE0315]

27. *Any pump used for water extraction and water transfer/ filling operations are to be installed and operated in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.*

28. *Only one truck shall be permitted to travel along Rowlands Creek Road or be on site at any one time.*

29. *One truck is permitted to be on the site at any one time for the purposes of transporting water in association with this consent.*

30. *No truck movements are to take place on Rowlands Creek Road during school bus travel times.*

31. *No more than three trucks (3 in 3 out of the site) are permitted per day.*

32. *The movements of truck of the site in accordance with this development consent is to be maintained in a daily log which records the date and time of all inbound and outbound trucks from the subject site.*

At any time, Tweed Shire Council Officers may request a copy of the log to be provided for audit of compliance with conditions of this development consent in regard to the times and frequency of truck movements in and out of the subject site.

The submission of the log at the request by Tweed Shire Council is to be accompanied by a Statutory Declaration by the operator declaring that the information contained in the log is true and correct.

33. *The extraction of water in accordance with this development consent is to be maintained in a daily log which records the quantity of water being extracted from the subject site.*

At any time, Tweed Shire Council Officers may request a copy of the log to be provided for audit of compliance with conditions of this development consent and any approval or license issued by Water NSW.

The submission of the log at the request by Tweed Shire Council is to be accompanied by a Statutory Declaration by the operator declaring that the information contained in the log is true and correct.

[USENS01]

34. *No intensification of use beyond:*

- a) The bore water extraction volume is limited to 24 ML / pa:*
- b) A maximum of 3 x bulk water collections per day in accordance with the approved hours of operation;*
- c) No supplementary or additional water collection vehicles are to service the site without the approval of the General Manager or his delegate.*

[USENS02]

35. *Prior to Water Trucks transporting extracted water from site, a Certificate of Practical Completion shall be obtained from Council's General Manager or his delegate for all works required under Section 138 of the Roads Act 1993.*

[USENS03]

be rescinded.

2 [NOM-PC] Development Application DA16/0936 for a Bulk Loading/Delivery of Extracted Water and Roadworks at Lot 3 DP 815475 No. 350 Rowlands Creek Road, Rowlands Creek

NOTICE OF MOTION:

Councillor K Milne moves that Development Application DA16/0936 for a bulk loading/delivery of extracted water and roadworks at Lot 3 DP 815475 No. 350 Rowlands Creek Road, Rowlands Creek be deferred for the following:

- 1. Noting that the NSW Water response to the pumping study was a brief email, not a formal review, that Council seek additional consideration and hydrological testing from the applicant as outlined in Professor Cook's report and that a suitably qualified university review the applicant's report and subsequent response as well as the NSW Water response and Professor Cook's reports.**
- 2. That the costings of road damage referred to in the Report but not provided are publicly released.**
- 3. That given the problem of the Rowlands Creek / Kyogle Roads intersection has been acknowledged and considered by the applicant's traffic engineers but remains unresolved, that the matter be referred to an independent expert for an opinion on the best practice approach.**
- 4. That council also refer the problem of the Rowlands Creek Road / Mitchell Street intersection to the same independent expert for opinion on a best practice solution.**
- 5. That Council staff report if they have investigated previously claimed discrepancies in the road width on the straight close to Uki. If not, do so and if the Bitzios report is incorrect propose appropriate corrective measures.**
- 6. That the Council seek independent legal advice on whether its public interest assessment meets Council and other legal obligations.**

Councillor's Background Notes

Recommended Priority:

Nil.

Description of Project:

Nil.

Management Comments:

This undetermined application has been in Council's system for almost two years, and it its continuing deferral will impact negatively on the overall DA determination performance.

Delivery Program:

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

Budget/Long Term Financial Plan:

A number of the proposed deferral items may incur significant expenditure in terms of any independent external assessments.

Legal Implications:

This motion if carried will require Independent legal advice to be sought.

Policy Implications:

Nil.

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 3 [PR-PC] Development Application DA17/0573 for a Mixed Use Development Comprising of Creative Industries Precinct over 3 Stages, Establishment of a Bar and Restaurant, Boundary Adjustment/Subdivision and Signage at Lot 1 DP 202712 Brisbane Street, Murwillumbah; Lot 1 DP 439512 No. 1 Brisbane Street, Murwillumbah; Lot 1 DP 123065 & Lots 3 & 4 DP 772263 Wollumbin Street, Murwillumbah

SUBMITTED BY: Development Assessment and Compliance

mhm



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LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

Updated Summary since 6 September 2018

On 6 September 2018 at its Planning Committee Meeting, Council deferred its decision to determine the subject DA to facilitate a workshop on the calculated Section 7.11 Traffic Road Contribution Plan (TRCP) charges, and to invite the applicant to revisit their traffic study.

On 20 September Council staff received additional information prepared by Bitzios Consulting Traffic Engineering and Transport Planning. That information details a revised TRCP calculation based on further information supplied by the applicant to Bitzios Consulting.

Original TRCP calculation and charges

The original TRCP calculations were based on the data contained in the originally submitted Traffic Impact Assessment Report prepared by Bitzios Consulting (dated 15 August 2017) (see Table 1 below):

Table 1 Extract of TRCP calculation from original report

Table 5.2: TRCP Calculations

Land Use	Quantity (GFA)	Quantity (GLA)	TRCP Trip Rate	Daily Trips
Creative Industry	845m ²	633.75m ²	16/100m ² GLA (Office)	101.4
Art Gallery	106m ²	79.5m ²	10/100m ² GLA (Showroom)	8
Bar	215m ²	161.3m ²	110/100m ² GLA (Pub/Hotel/Tavern)	177.4
Restaurant	75m ²	56.25m ²	60/100m ² GLA (Refreshment Room)	33.8
<i>Sub Total</i>				320.6
<i>Linked Trips Discount</i>				15%
<i>40% Employment Generating Discount</i>				40%
Gross Total				164 trips / day

As shown in Table 5.2, the daily trips generated by the redevelopment is calculated to be 164 trips per day in accordance with Council's TRCP. However, in determining the final TRCP contributions, only the net difference between existing and proposed development daily trips are to be chargeable.

Council officers used the above data combined with existing site credits based on land use to calculate a net trip generation for the proposed development according to the following table:

Table 2: Council officers original TRCP calculation (net trips after discounts and site credit)

Existing Land Use	Quantity (GFA)	Quantity (GLA)	TRCP trip rate	Daily Trips
First Floor				
Office	80m ²	60m ²	16/100m ² GLA (office)	9.6
<u>Ground Floor</u>				
Motor Showroom	470.1m ²	352.575m ²	5/100m ² GLA (motor showroom)	17.63
Coffee shop	106m ²	79.5m ²	60/100m ² GLA (refreshment room)	47.7
Mechanical Repairs	1433.19m ²	1074.8925	5/100m ² GLA (Light industry)	53.74
Total trips				128.67
Redevelopment 320.6 trips – existing use 128.67 trips				191.93
Linked trip discount				15%
40% employment generating discount				40%
Total trips generated by redevelopment				97.88 trips

Based on the above figures, the calculated rate for TRCP at \$1,488.00 per trip (according to current CPI) equated to a total charge of \$145,645.00 with each payment split over each stage of the development.

Revised TRCP Calculation and Charges

The revised TRCP calculation have been collated by Bitzios Consulting having regard to the above calculation method for site credits, linked trip discount and 40% employment generating discount (refer to Table 3 below):

Table 3: Revised TRCP Calculation submitted by Bitzios Consulting on 20 September 2018

Proposed Development				
Land Use	Quantity (GFA)	Quantity (GLA)	TRCP Trip Rate	Daily Trips
Creative Industry	845sqm	633.75sqm	10/100sqm GLA (Showroom)	63.375
Art Gallery	106sqm	79.5sqm	10/100sqm GLA (Showroom)	7.95
Bar	170sqm	127.5sqm	110/100sqm GLA (Pub/Hotel/Tavern)	140.25
Restaurant	75sqm	56.25sqm	60/100sqm GLA (Refreshment Room)	33.75
Sub Total				245.325

Existing				
Land Use	Quantity (GFA)	Quantity (GLA)	TRCP Trip Rate	Daily Trips
First Floor Office	80sqm	60sqm	16/100sqm GLA (Office)	9.6
Motor Showroom	470.1sqm	352.575sqm	5/100sqm GLA (motor showroom)	17.63
Coffee shop	106sqm	79.5sqm	60/100sqm GLA (refreshment room)	47.7
Mechanical Repairs	1433.19sqm	1074.89sqm	5/100sqm GLA (Light industry)	53.74
Sub Total				128.67

Redevelopment minus existing use	116.655
Linked trip discount	70%
40% employment generating discount	40%
Total trips generated by redevelopment	20.9979

Based on the calculation rate for TRCP which is \$1,488.00 per trip (according to current CPI) the revised TRCP calculation will result in a total charge of \$31,248 split over 3 stages (and 3 sub-stages in Stage 1) as per the following breakdown:

Stage 1:

Stage 1A: A charge of \$3,472.00 (2.3331 trips) is applicable for this stage.
 Stage 1B: A charge of \$3,472.00 (2.3331 trips) is applicable for this stage.
 Stage 1C: A charge of \$3,472.00 (2.3331 trips) is applicable for this stage.

Total \$10,416.00 (6.9993 Trips) for Stage 1 works.

Stage 2:

A charge of \$10,415.00 (6.9993 Trips) is applicable for this stage.

Stage 3:

A charge of \$10,415.00 (6.9993 Trips) is applicable for this stage.

Total TRCP charges for all Stages: \$31,246.00 (20.9979 Trips)

Assessment of revised charges

In considering the proposed revisions to the charges, Council officers received advice from Bitzios Consulting to justify the revised calculations. A copy of the information is provided below:

Linked Trips

M-Arts is located in the Murwillumbah CBD. The nature of a CBD environment is such that visitors are typically visiting multiple places as part of a single trip and thus not adding any additional vehicular trips to the road network. M-Arts is intended to be a

creative and social space, with a focus on sustainable transport. Its location within Murwillumbah CBD (the 'destination') is conducive to achieving this vision as it seeks to attract visitors who are already in town and conducting other business, such as visiting the bank, cinema and so on in the single trip.

M-Arts naturally shares a synergy with the Tweed Regional Gallery at the southern end of town. It is expected that a large proportion of trips to M-Arts will be associated with a linked trip from the Tweed Regional Gallery, many of whom would pay a brief stop in town, now may stay longer and walk around more of the town given M-Arts is likely to activate the western end.

M-Art's land use composition is entirely complimentary. The art gallery is centred around a bar, café and restaurant, which is expected to create high cross-utilisation of land uses (i.e. artists purchasing lunch from the café, visitors dining at the restaurant, visiting the art gallery and then the bar). Furthermore, its location adjacent to a cinema will create a strong connection and provide before/after activities to extend the stay of visitors in the CBD (i.e. visiting the bar, café or restaurant before/after a movie).

For the reasons presented above, it is estimated that the vast proportion of visitors to M-Arts will occur as a linked trip in the context of the CBD environment. A 70% linked trips factor is therefore deemed appropriate for M-Arts.

Artist Studios

Many in the creative industry areas do not want public interaction; they just want a vibrant place to come and work, to paint or make things, around other artists but have no intention of creating any foot or road traffic and deliberately don't want it. It is the reason why the studios were created upstairs. As an example, one of the artists sells his art work in Sydney and has the shutters pulled down while in the studio to ensure privacy.

A survey of the artists identified that:

- at least a third (i.e. 5 out of the 15 artists) currently walk or cycle to the site as they reside in Murwillumbah; and*
- most of the artists are not working on-site full time. It is estimated that half the studios are used during business hours, with quite a few attending the studios at night or weekends only as they have jobs elsewhere.*

Based on the site-specific information presented above, an alternative trip rate for the "Creative Industry" land use of 10/100sqm (i.e. showroom) is deemed suitable to reflect the expected operations of this component of the development.

Councils Traffic Engineer has provided the following commentary as part of a comprehensive assessment of the revised calculations submitted by Bitzios Consulting for TRCP charges:

"The Plan allows departure from its prescriptive rates should suitable justification be provided based on sound traffic engineering principles. The Plan requires a detailed traffic study based on observations at similar land sites to substantiate departures from the prescribed rates. However, given the uniqueness of the site and its expected uses it is acknowledged that observations at similar sites would be difficult to reference.

The applicant has reviewed the Creative Industry component of the development and determined that traffic generation is similar to that expected for a Showroom, being 10 trips per 100m² GLA, rather than an office which has a comparatively high trip rate. This is accepted as reasonable as visitors are likely to walk from premise to premise as one would travel through a Showroom, and advice was provided that some artists (equivalent to “staff”) currently use sustainable transport to and from the site.

The proponent has advised that the Bar component has been reduced in size from 161.3m² GLA to 127.5m² which will reduce trip generation.

The most significant change to the previous submitted calculations relates to the linked trips discount which has been modified from 15% to 70%. The source or derivation of the 15% linked trip discount in the original submission is not known and is considered to significantly under estimate the numbers of customers who would visit other destinations within the CBD.

Similarly there are no traffic counts, estimates or calculations provided in the latest submission to justify the 70% linked trips discount. Within the Tweed Road Contribution Plan (TRCP) modification factors are provided in Table 3.6.1B to make allowance for diverted trip making, being shared purpose journeys (Linked Trips) for a limited number of specific land uses. The list of specific land uses is not comprehensive and this development is somewhat unique in that it combines artist studios, gallery, retail, bar and restaurant.

Table 3.6.1B does not have a modification factor for mixed commercial use of the kind proposed. Shops, being a type of retail premises are specifically addressed in the Table and are provided a modification factor for Local Shops with less than 100m² in size of 0.15 (that is, an 85% discount) and Shops larger than 100m² up to 10,000m² are provided a modification factor between 0.15 (85% discount) to 0.60 (40% discount). The larger the Shop the more likely it becomes a trip end generator in its own right. While the Development is not classed as a Shop, the principle could be applied in this instance, given it is a use in a CBD precinct where it would be reasonably expected that visitors would experience shared purpose journeys.

The proposed development has a GLA of 897m². The modification factor for Shops, if applied to this Development as per Table 3.6.1B, would result in 0.20, a discount of 80%. The Applicant has submitted a linked trip discount of 0.30 (70%) and this would appear reasonable given that the Bar and Restaurant component is not a Shop and may attract customers in their own right.

In adopting the “shop” modification factor, it is acknowledged that the Development is within Murwillumbah CBD area and typically visitors to the CBD would attend several premises or business within that precinct. Vehicle trips specifically for this Development would also reasonably be linked to similar type emerging industries within the CBD and the Art Gallery located on the outskirts of the CBD. The CBD area has public parking provision and visitors walk from business to business.

A significant proportion of visitors to the site would not unreasonably be expected to visit some or several of the uses within the site, being cross utilisation. The Applicant has not provided a percentage cross utilisation rate in their calculations.

As previously stated the proposed development is unique in its nature and there are limited direct comparisons in existence or within the TRCP. There may be days of higher traffic generation for specific events however on average the best estimate of the modification factor to apply for linked trips is 0.3 or 70%.

Council's Traffic Engineer has made the following conclusions based on the assessment of the submitted information by Bitzios Consulting:

"Clause 3.6.3 of the TRCP acknowledges that from time to time, Council may receive development applications that do not fit within the traffic generation assumptions specified within the Plan and that assessment will be on the merit of the individual case.

Given that the Development is within the Murwillumbah CBD area and the proposed activities are complementary to nearby businesses and that internal cross utilization will occur, there is no objection to the proposed TRCP calculations and 20.9979 trips should be applied after the appropriate discounts applied."

Accordingly, updates have been made to Condition 19 in Recommendation B of this report to reflect the above stated net trip generation of 20.9979 Trips.

It is noted that an updated ground floor layout plan was also submitted to Council to compliment the proposed floor area calculation by Bitzios Consulting noting that the bar floor area was originally some 215sqm and is now proposed to be 170sqm. The updated plan has been considered by Council officers and is acceptable. Accordingly the updated plan is now referenced in Recommendation B, Condition 1.

Original Summary

Council is in receipt of a staged development application for a mixed use creative arts precinct in the Murwillumbah Town Centre (old Sunrise Ford site) comprising of the following:

- Use of an existing ground level and first floor art gallery accessible via a new lift installation;
- The provision of creative industry/studio spaces ranging from 7m² up to 150m² and commercial spaces (nominated office and retail) forming separate individual tenancies;
- Alterations and additions to an existing ground floor Café and new outdoor dining area;
- Establishment of a 'bar garden' and restaurant;
- The construction of an internal driveway accessible via Proudfoots Lane and incidental use of this area as shared space to be used for 'Special Events' outside of regular business (such events are described to include seasonal and community uses such as food events, artisan markets, workshops, art trails etc) and;
- Consolidation of five lots into two lots.

The application includes the provision of additional public toilets and onsite car parking for 11 vehicles.

The applicant has stated that the precinct will likely attract tenants such as a boutique restaurant operator to deliver fine dining experiences, an award winning Brisbane based bar operator to provide a casual atmosphere for social engagement, local and regional artists

utilising individual studio spaces to encourage the public to engage with their processes and products with a strong educational focus (which would lead to the use of shared space for workshops) and the use of the gallery space by Tweed Regional Gallery as a 'satellite gallery'.

Special events are described to be any events or functions which occurs after business hours and utilised the shared internal space (i.e the internal laneway). During these events there may also be access to the studios, restaurant and bar facilities.

The types of events that can be expected are activities in association with events and festivals within the town centre such as Murwillumbah Arts Trail, food festivals, movie and cultural event nights, studio open nights, artesian style markets, fundraising events. It is noted that weddings receptions are described as being part of the special events. The occasional wedding could be considered as ancillary to these approved uses however the applicant would need to ensure that any such event is ancillary to that approved and that weddings do not become the dominant use as they would be defined as a function centre which is prohibited.

During the early stages of the assessment it was requested that further information be provided to Council to clarify how the varying uses would be managed having regard to the limited parking and the potential for traffic impacts.

The applicant has submitted a Preliminary Operational Management Plan which outlines the ongoing operation and use of the site to ensure that appropriate parameters are established to mitigate impacts arising from the development for two key aspects, being; access and parking constraints and noise impacts.

Upon review of the Preliminary Operational Management Plan in consultation with the submitted Environmental Noise Impact Report and the Traffic Impact Assessment; Council can be satisfied that appropriate measures would be employed to ensure that each aspect of the development can operate in a manner that would complement the varying uses occurring on the site and avoid cumulative impacts on Traffic, Parking, Access and Noise.

It is noted that several amendments have been nominated by the applicant during the assessment of this DA, the amendments related to the layout of the site, staging of the development, changes to the location of the new lot boundary and subsequent changes to the hydraulic arrangements having regard to the proposed new boundary location. A full timeline and history of additional information and amendments is provided in the 'Background' section of this report.

The reports and documentation submitted as part of the application have been considered having regard to the relevant plans and instruments which apply to the site, and on merit the development is considered to be worthy of support. Therefore, the proposal is recommended for approval subject to conditions of development consent.

RECOMMENDATION:

A. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-

- (d) commercial information of a confidential nature that would, if disclosed:**
- (i) prejudice the commercial position of the person who supplied it; or**
 - (ii) confer a commercial advantage on a competitor of the council; or**
 - (iii) reveal a trade secret**

B. That:

- 1. Development Application DA17/0573 for a mixed use development comprising of creative industries precinct over 3 stages, establishment of a bar and restaurant, boundary adjustment/subdivision, and signage at Lot 1 DP 202712; Brisbane Street, Murwillumbah; Lot 1 DP 439512 No. 1 Brisbane Street, Murwillumbah; Lot 1 DP 123065 & Lots 3 & 4 DP 772263 Wollumbin Street, Murwillumbah be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the following plans and documents except where varied by the conditions of this consent.**

Document/Plan Title	Drawn By	Project Reference	Rev No.	Drawing No.	Dated
Floor Plan - Ground Level - Proposed	Buro Two Architects	M-ARTS Creative Precinct	C	DA 102c	19/09/2018
Floor Plan - Upper Level - Proposed	Buro Two Architects	M-ARTS Creative Precinct	B	DA 104b	14/06/2018
Site Plan - Lot Layout - Proposed	Buro Two Architects	M-ARTS Creative Precinct	B	DA106b	14/06/2018
Floor Plan - Indicative Staging	Buro Two Architects	M-ARTS Creative Precinct	B	DA 107b	13/08/2018
Floor Plan - Indicative Staging - Upper Level	Buro Two Architects	M-ARTS Creative Precinct	-	DA 112	August 2018
Elevations - North	Buro Two Architects	M-ARTS Creative Precinct	B	DA 201b	21/06/2018
Elevations - East	Buro Two Architects	M-ARTS Creative Precinct	B	DA 202b	21/06/2018
Elevations - South	Buro Two Architects	M-ARTS Creative Precinct		DA 203	JULY 2017
Elevations - Advertising Locations	Buro Two Architects	M-ARTS Creative Precinct	B	DA 207b	21/06/2018
Floor Plan - Brisbane Street Gallery Zone - Ground Level	Buro Two Architects	M-ARTS Creative Precinct	B	DA 301b	21/06/2018

Document/Plan Title	Drawn By	Project Reference	Rev No.	Drawing No.	Dated
Floor Plan - Brisbane Street Gallery Zone - Upper Level	Buro Two Architects	M-ARTS Creative Precinct	B	DA 302b	21/06/2018
Elevations - East and North	Buro Two Architects	M-ARTS Creative Precinct	B	DA 303b	21/06/2018
Floor Plan - Proudfoots Lane Creative Precinct Zone - Ground Level	Buro Two Architects	M-ARTS Creative Precinct	B	DA 401b	21/06/2018
Floor Plan - Proudfoots Lane Creative Precinct Zone - Upper Level	Buro Two Architects	M-ARTS Creative Precinct	B	DA 402b	21/06/2018
Section A	Buro Two Architects	M-ARTS Creative Precinct	-	DA403	JULY 2017
Section B	Buro Two Architects	M-ARTS Creative Precinct	-	DA404	JULY 2017
Section C	Buro Two Architects	M-ARTS Creative Precinct	-	DA405	JULY 2017
Floor Plan - Proudfoots Lane Bar Zone- Ground Level	Buro Two Architects	M-ARTS Creative Precinct	B	DA 501b	21/06/2018
Floor Plan - Proudfoots Lane Bar Zone- Upper Level	Buro Two Architects	M-ARTS Creative Precinct		DA 502	JULY 2017
Floor Plan - Wollumbin Street Zone - Ground Level	Buro Two Architects	M-ARTS Creative Precinct	B	DA 601b	21/06/2018
Floor Plan - Wollumbin Street Zone -Upper Level	Buro Two Architects	M-ARTS Creative Precinct		DA 602	JULY 2017
Section D	Buro Two Architects	M-ARTS Creative Precinct		DA 603	JULY 2017
Existing Site Services Plan - Drainage Services - Water Services	Sedgman Consulting	-	A	17H174-00-0100	18.05.18

[GEN0005]

- The Development shall be undertaken generally in accordance with the stamped approved indicative staging plan.

The development shall be undertaken generally in accordance with the following elements of the development being included in the relevant stages:

Stage 1a

Construction of the Proudfoots Lane access and internal driveway including associated lighting installations as required by this consent.

Provision of 7 on-site carparking spaces. Construction of bar adjacent to Proudfoots Lane and associates services, including toilets.

Provision / adjustment of services, as applicable to the consolidation.

(Works associated with the provision of entry and exit to and from Proudfoots Lane and 7 on site car parking spaces is to be completed to the satisfaction of Tweed Shire Council prior to the issue of an Occupation Certificate for Stage 1a).

Stage 1b

Construction of creative studios and workshop spaces as nominated in the stamped approved staging plan.

Construction of outdoor café dining space in terrace adjacent to art gallery building.

Stage 1c

Construction of studios adjacent to the gallery/terrace and associated works at the rear of the gallery building as nominated in the stamped approved staging plan.

Lot consolidation and registration of new Lots 1 and 2 with the Lands and Property Information (LPI).

Stage 2:

Provision of additional studios (except for the centralised 'creative Industry space' as identified in the Stage 3 works on the stamped approved staging plan).

Construction of the Wollumbin Street driveway and access.

Provision of 4 car parking spaces and bicycle parking spaces at the Wollumbin Street frontage.

Associated embellishment works at the Wollumbin Street frontage as required by this consent.

Works associated with the vehicular and pedestrian access at Wollumbin Street frontage together with four parking spaces and nominated bicycle parking areas are to be completed to the satisfaction of Council prior to the issue of an Occupation Certificate for Stage 2.

To this extent, a total of 11 on site car parking spaces in accordance with AS2890.1 are to be available by the completion of this Stage of works.

Stage 3:

Provision of centralised restaurant and 'Creative Industry Space' as nominated in the stamped approved staging plan.

[GENNS03]

3. **The use of the site as a function centre is not permitted.**

[GENNS04]
4. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**

[GEN0115]
5. **The development is to be carried out in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design and Construction Specifications.**

[GEN0125]
6. **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 is to be undertaken in accordance with the requirements of the relevant authority, at the Developer's expense.**

[GEN0135]
7. **Any business or premises proposing to discharge wastewater containing pollutants differing from domestic sewage must submit a Liquid Trade Waste Application Form to Council. The application is to be approved by the General Manager or his delegate prior to any discharge to the sewerage system. A Liquid Trade Waste Application fee will be applicable in accordance with Council's adopted Fees and Charges.**

[GEN0190]
8. **Council advises that the site is flood liable with a Design Flood Level of 3.8-4.2m AHD.**
 - (a) **All new building materials used below Council's Design Flood Level must not be susceptible to water damage.**
 - (b) **Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. for the proposed building should, to the maximum extent possible be located above the Design Flood Level. All new electrical wiring installed below the Design Flood Level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.**
 - (c) **Provide adequate provision for the flood free storage for goods and equipment susceptible to water damage.**

[GEN0195]

9. 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]
10. All works shall comply with AS2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2011. [GEN0360]
11. Prior to commencement of construction works all asbestos material in the relevant work area 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). [GEN0365]
12. Within 6 months of the date of this consent a Contaminated Land Site Management Plan shall be submitted to the satisfaction of the General Manager or his delegate. The site shall be operated and managed in accordance with the adopted Management Plan. A copy of the Management Plan shall be maintained on site and made available to Council officers upon request. The Plan shall address:
- a. Additional groundwater monitoring of the existing monitoring wells, to confirm whether the contamination has reduced in concentration, and/or is not migrating off-site. Ongoing monitoring may be required to evaluate potential offsite migration.
 - b. Potential exposure of subsurface contaminants in the vicinity of the decommissioned underground petroleum storage system to onsite workers
 - c. Limits to permissible site disturbances, having regard for any OH & S or environmental protection requirements. [GENNS01]
13. The Applicant shall ensure that sewer reticulation and water reticulation servicing each of the proposed lots does not encroach adjacent properties including the other lot created as part of this development. The Applicant shall also ensure that any internal reticulation joining the two lots is removed. [GENNS02]
14. All works associated with the new crossover and internal driveway off Proudfoots Lane is to be established as part of the first Building works Construction Certificate obtained for the development. [GENNS05]

15. The internal driveway and all parking is to be constructed in accordance with AS/NZS 2890.1.

[GENNS06]

16. Within 24 months after the date of the First Occupation Certificate for any stage of the development, proposed Lot 1 and proposed Lot 2 are to be consolidated and registered with LPI in accordance with the stamped approved Lot Layout Plan No DA106b dated 14/06/2018.

17. The buildings on each new lot are to be fire separated at the new boundary line for Proposed Lot 1 and Proposed Lot 2 (as identified on the stamped approved plans) in accordance with the BCA.

[GENNS07]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

- A minimum of 7 off street car parking spaces as part of Stage 1a works
- A minimum of 4 off street car parking spaces as part of Stage 2 works

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

A total of 11 off street car parking spaces are to be provided and maintained on the site prior to the issue of an Occupation Certificate for Stage 2 works.

[PCC0065]

19. Section 7.11 Contributions

Payment of the following contributions pursuant to Section 7.11 of the Act and the relevant Contribution 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 7.11 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 Section 7.11 Contribution 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 7.11 Contribution Plan current at the time of the payment.

A copy of the Section 7.11 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

Stage 1A

- (a) Tweed Road Contribution Plan:
 2.3331 Trips @ \$1488 per Trips \$3,472
 (\$1,317 base rate + \$171 indexation)
 CP Plan No. 4
 Sector9_4

Stage 1B

- (a) Tweed Road Contribution Plan:
 2.3331 Trips @ \$1488 per Trips \$3,472
 (\$1,317 base rate + \$171 indexation)
 CP Plan No. 4
 Sector9_4

Stage 1C

- (a) Tweed Road Contribution Plan:
 2.3331 Trips @ \$1488 per Trips \$3,472
 (\$1,317 base rate + \$171 indexation)
 CP Plan No. 4
 Sector9_4
- (b) Extensions to Council Administration Offices
 & Technical Support Facilities \$196.84
 0.09 ET @ \$2187.14 per ET
 (\$1,759.90 base rate + \$427.24 indexation)
 CP Plan No. 18

Stage 2

- (a) Tweed Road Contribution Plan:
 6.9993 Trips @ \$1488 per Trips \$10,415
 (\$1,317 base rate + \$171 indexation)
 CP Plan No. 4
 Sector9_4

- (b) **Extensions to Council Administration Offices
& Technical Support Facilities**
0.36 ET @ \$2187.14 per ET **\$787.37**
(\$1,759.90 base rate + \$427.24 indexation)
CP Plan No. 18

Stage 3

- (a) **Tweed Road Contribution Plan:**
6.9993 Trips @ \$1488 per Trips **\$10,415**
(\$1,317 base rate + \$171 indexation)
CP Plan No. 4
Sector9_4
- (b) **Extensions to Council Administration Offices
& Technical Support Facilities**
0.31 ET @ \$2187.14 per ET **\$678.01**
(\$1,759.90 base rate + \$427.24 indexation)
CP Plan No. 18

TRCP contributions applicable for each stage of the development could be levied through a deferred payment incentive in accordance with Councils Business Investment Policy. A written agreement between the applicant and Council is to be entered into for deferred payments of TRCP charges in accordance with the incentive threshold and deferral periods contained in the Business Investment Policy.

[PCC0215]

20. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

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

BELOW IS ADVICE ONLY

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

Stage 1a

Water: 2.9095 ET @ \$13,926 = \$40,517.70
Sewer: 5.7825 ET @ \$6,690 = \$38,684.90

Stage 1b

Water: 0.507 ET @ \$13,926 = \$7,060.50

Sewer: 0.752 ET @ \$6,690 = \$5,030.90

Stage 1c

Water: 0.059 ET @ \$13,926 = \$821.60

Sewer: 0.059 ET @ \$6,690 = \$394.70

Stage 2

Water: 0.922 ET @ \$13,926 = \$12,839.80

Sewer: 1.208 ET @ \$6,690 = \$8,081.50

Stage 3

Water: 0.743 ET @ \$13,926 = \$10,347.00

Sewer: 1.118 ET @ \$6,690 = \$7,479.40

TOTAL (stages 1a, 1b, 1c, 2 and 3)

Water: 5.1405 ET @ \$13,926 = \$71,586.60

Sewer: 8.9195 ET @ \$6,690 = \$59,671.50

[PCC0265]

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

[PCC0285]

22. Prior to the issue of a Building Works Construction Certificate for each Stage of works , design detail shall be provided to the PCA to address the flood compatibility of the proposed use of the building including the following specific matters:
- a) All building materials used below Council's design flood level must not be susceptible to water damage.
 - b) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.

- c) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage for lower floor tenancies.

[PCC0705]

23. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate for Subdivision Works for Stage 1a works. Safe public access shall be provided at all times.

[PCC0865]

24. An 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, including (but not limited to) the construction of a new, vehicular access off Wollumbin Street for Stage 2 of the development, in accordance with Council's Development Control Plan - Section A2 "*Site Access and Parking Code*" and Council's "*Driveway Access to Property - Design Specification*" (*current version*).

Applications shall include (as applicable) engineering plans and specifications undertaken in accordance with Council's Development Design and Construction Specifications, including:

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

[PCC0895]

25. Prior to the issue of a Subdivision Construction Certificate for Subdivision Works (for Stage 1A), the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

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

- earthworks
- roadworks/furnishings

- (c) Construction of two one-way driveway crossovers in Proudfoots Lane to accommodate Stage 1A of the development.

- stormwater drainage

- (d) Adjustment of internal drainage, as applicable to ensure drainage associated with the consolidation and creation of proposed Lot 1 and Lot 2 are self-contained and legally discharged, per allotment.
- landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure),

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

[PCC0985]

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

- (a) The first Construction Certificate Application for any stage of works associated with this consent shall include a detailed Stormwater Management Plan (SWMP) 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.

[PCC1105]

27. A Construction Certificate application for any stage of the development containing 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 for works associated with the creation of Proposed Lot 1 and Proposed Lot 2 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]

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

(a) The Construction Certificate Application for each stage of works must include a detailed Erosion and Sediment Control Plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

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

[PCC1155]

29. 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]

30. In accordance with Section 68 of the Local Government Act, 1993 any premises proposing to discharge wastewater into Councils sewerage system other than domestic sewage, shall submit to Council a completed Liquid Trade Waste Application for a Liquid Trade Waste Services Agreement. The Application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate to discharge to Council's sewerage system.

[PCC1255]

31. Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. grease arrestor, oil separator, basket traps) must be installed in accordance with Tweed Shire Council's Policy - Discharge of Liquid Trade Waste to Council's Sewerage System. Submission of detailed hydraulic plans and specifications indicating the size, type and location of pre-treatment devices and full details of drainage installations in accordance with AS 3500 shall be submitted to Council for approval along with a Liquid Trade Waste Application Form and all required information required therein.

[PCC1265]

32. If any stage of the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate for that stage or any works commencing, whichever occurs first.

Applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee. The arrangements and costs associated with any adjustment to water and wastewater infrastructure shall be borne in full by the applicant/developer.

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

[PCC1310]

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

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

[PCC1325]

34. Prior to the issue of building works Construction Certificates for Stage 1a & Stage 3, plans drawn to a scale of 1:50 detailing the following with regards to all food related areas shall be provided to Council for assessment and approval, accompanied by a completed Application for Approval of Food Premise Fitout and the adopted fee in Council's Fees and Charges. Evidence of the plans being approved shall be provided prior to release of the construction certificate:

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

[PCCNS01]

35. Prior to the issue of building works Construction Certificate for Stage 2 works a plan outlining a high level of landscaping treatment or public art embellishment at the Wollumbin Street frontage to be submitted to Tweed Shire Council for consideration and approval.

The provision of such embellishment is to be located forward of the four car parking spaces at Wollumbin Street interface in an effort to screen views of these spaces from the street and compliment the pedestrian amenity at the public domain and private land interface of the site in this location. Any works to this area of the site are to maintain sight lines for vehicles entering and existing the site in accordance with AS2890.1.

[PCCNS03]

36. Prior to the issue of the first building works Construction Certificate associated with any stage of works approved under this consent, a signage plan is to be provided to Council for consideration and approval. All signage intended for the road reserve is to be installed by Council at the expense of the applicant.

[PCCNS04]

37. Prior to the issue of the first building works Construction Certificate associated with any stage of works under this consent, a pedestrian management plan for the entire site is to be provided to Council for consideration and approval. The pedestrian management plan is to outline physical measures to separate pedestrians and vehicles, include the provision of directional signage, speed humps and pavement treatment. Particular consideration is to be given to the pedestrian safety at the western access off Proudfoots Lane as well as the control of pedestrians (and patrons) spilling out or accessing the Garden Bar.

[PCCNS05]

PRIOR TO COMMENCEMENT OF WORK

38. 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]

39. 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]

40. Prior to work commencing for any stage of the development, 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]

41. 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]

42. Subdivision work in accordance with a development consent must not be commenced until:

- (a) a Construction Certificate for the subdivision work has been issued in accordance with Councils Development Construction Specification C101 by:

- (i) the Consent Authority, or
 - (ii) an Accredited Certifier, and
- (b) the person having the benefit of the development consent:
 - (i) has appointed a Principal Certifying Authority,
 - (ii) has appointed a Certifying Engineer to certify the compliance of the completed works.

The Certifying Engineer shall be a Professional Engineer (Civil) with National Engineering Register (NER) or a Registered Surveyor. Documentary evidence is to be provided to Council demonstrating currency of the above accreditation, and
 - (iii) has notified the Consent Authority and the council (if the council is not the Consent Authority) of the appointment,
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Certifying Engineer is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.

[PCW0815]

43. Prior to commencement of any 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 to the satisfaction of the Principal Certifying Authority. These measures are to be in accordance with the approved Erosion and Sedimentation Control Plan and adequately maintained throughout the duration of the development.

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

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

[PCW0985]

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

[PCW1065]

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

[PCW0665]

DURING CONSTRUCTION

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

[DUR0005]

47. Should any Aboriginal object or cultural heritage (including human remains) be discovered, all site works must cease immediately and the Tweed Byron Local Aboriginal Land Council (TBLALC) Aboriginal Sites Officer (on 07 5536 1763) are to be notified. The find is to be reported to the Office of Environment and Heritage. No works or development may be undertaken until the required investigations have been completed and any permits or approvals obtained, where required, in accordance with the National Parks and Wildlife Act, 1974.

[DUR0025]

48. Commencement of work, including the switching on and operation of plant, machinery and 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]

49. 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 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 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]

- 50. 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]

- 51. Building materials used in any stage of works associated with 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]

- 52. 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 6.6 of the Environmental Planning and Assessment Act 1979.**

[DUR0405]

- 53. 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]

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

[DUR0815]

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

[DUR0985]

- 56. 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 deposited on the roadway by construction vehicles will be at the Developers expense and any such costs are payable prior to the issue of either the Subdivision Certificate or Occupation Certificate as applicable to each stage of the development.**

[DUR0995]

57. All work associated with this approval is to be carried out so as not to impact on the neighborhood, 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]

58. Fire hose reels shall be installed throughout the whole of the building in accordance with the provisions of Part E1.4 of the Building Code of Australia and comply with Australian Standard AS1221 and AS2441.

However, they shall not be installed until the PCA has been furnished with a certificate, signed by a Hydraulics Engineer stating that the design and proposed manner of installation complies with the relevant standards.

[DUR1255]

59. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.

Note: Many materials including some timbers such as western red cedar do not comply and it is the applicant's responsibility to ensure that all materials to be used are within the criteria specified.

[DUR1275]

60. Exits are to be provided so that no point on the floor of the building shall be more than 20 metres from:

- (a) an exit; or**
- (b) a point from which travel in different directions to two exits is available in which case the maximum distance to one of those exits shall not exceed 40 metres.**

[DUR1285]

61. Exit signs which comply with Part E4.5 of the Building Code of Australia and are designed in accordance with Part E4.8 of the Building Code of Australia and are to be installed throughout the whole of the building. Mounting heights shall be in accordance with AS2293.1.

[DUR1295]

62. Emergency lighting to comply with Part E4.2 of the Building Code of Australia shall be provided throughout the building. Details of the system to be used and a certificate from the electrical engineer to certify that the system will comply with all relevant requirements of Part E4.4 of the Building Code of Australia and AS 2293.1 are to be submitted to the PCA prior to installation.

[DUR1305]

63. **Doors forming exits, paths of travel to exits and parts of exits shall comply with the relevant provisions of D2.19 and D2.20 and D2.21 (door latch to operate by single handed, downward action on egress) of the Building Code of Australia.**

[DUR1315]

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

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

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

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

[DUR1495]

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

[DUR1505]

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

[DUR1515]

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

[DUR1545]

68. **During the course of the construction and fitout of the kitchen/food premises periodic inspections must be arranged with Councils Environmental Health officer to ensure compliance with all health related conditions of approval and respective legislation.**

[DUR1575]

69. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of any stage of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of an Occupation Certificate associated with the relevant stage of the works.

[DUR1875]

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

Roadworks / Driveway

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks / "boxing"
- (c) Pathways, footways, cycleways - formwork/reinforcement
- (d) Final Practical Inspection - On Maintenance
- (e) Off Maintenance Inspection

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

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

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

[DUR1895]

71. Where existing kerb, footpath or driveway laybacks are to be removed for new driveway laybacks, stormwater connections, pram ramps or for any other reason, the kerb, footpath or driveway laybacks must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

72. The developer/contractor is to maintain a copy of the development consent, approved Management Plans and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

73. All waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section 15 - Waste Minimisation and Management.

[DUR2195]

- 74. 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]

- 75. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.**

[DUR2425]

- 76. 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]

- 77. 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]

- 78. 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]

- 79. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.**

[DUR2535]

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

[DUR2545]

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

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

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

[DUR2555]

82. Drainage lines affected by the proposal are to be relocated to Council's satisfaction. Prior to the relocation of any plumbing and drainage lines, a plumbing permit and the relevant plumbing permit fee is to be submitted to Council. Inspection of drainage works prior to covering is required

[DUR2565]

83. The Applicant shall submit the appropriate 'Application for Water Service Connection' to Council's Water Unit to facilitate a property service water connection for proposed Lot 1, from the existing water main in Wollumbin Street. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

[DUR2800]

84. The maximum depth of excavation in any development stage shall be 1m below ground level, except for connection to existing services. Should excavation greater than 1m in depth be required, prior to those works being undertaken the applicant shall submit to Council an Acid Sulfate Soil Management Plan to the satisfaction of the General Manger or his delegate. All works shall comply with the approved plan.

[DURNS01]

85. The exportation of waste (including fill or soil) from the site must be in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the Office of Environment and Heritage "*Waste Classification Guidelines*". Excavated material shall be disposed of at an approved landfill facility unless material has been demonstrated to be the subject of a resource recovery exemption under Clause 51A of the *Protection of the Environment Operations (Waste) Regulation 2014*. Any waste-derived material the subject of a resource recovery exemption must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to Council on request.

[DURNS02]

86. As part of the first building works Construction Certificate issued; the existing external western timber frame wall (adjoining the Gym property) is to be upgraded with a fire rated external wall with a fire resistance level (FRL) of 90/90/90 in accordance with the Building Code of Australia. Install fire attenuation screens with a tested minimum heat flux resistance of 20kW/m² to all the external wall opening adjoining the Cinema/ supermarket building (south east) and Gym building (west) OR fire protect the opening in accordance with Part C3.4 of the Building Code of Australia OR infill the openings with a material having a fire resistance equivalent to the existing wall system.

[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

87. Prior to issue of an Occupation Certificate for each Stage of works, all works/actions/inspections etc required at that stage by other conditions or any approved Management Plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

88. 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 6.9 and 6.10 unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

89. No part of the building for any stage of works is to be occupied or a final occupation certificate issued for that stage until a fire safety certificate has been issued for that part of the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

90. Prior to commencement of operation of food premises in Stages 1a & Stage 3 and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

91. Prior to the issue of an Occupation Certificate for Stage 1a and Stage 2 works, 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, as applicable to each stage of the development.

[POC0745]

92. Prior to the issue of the first Occupation Certificate for any stage of development completed as part of this consent, the applicant shall produce a copy of the "Satisfactory Inspection Report" issued by Council for all s68h2 permanent Stormwater Quality Control Devices.

[POC0985]

93. Prior to the issue of any Occupation Certificate for the development a detailed acoustic report from a suitably qualified person shall be provided to the building certifier which assesses music, mechanical plant and compliance with all Part 6 recommendations of the Environmental Noise Impact Report, CRG Acoustics 7 August 2017 (crgref:17102 report rev.1).

[POCNS01]

94. Prior to the issue of any Occupation Certificate for any stage of the development, a certificate of practical completion shall be obtained from Council's General Manager or his delegate for all works required under Section 68 of the Local Government Act, as applicable to each stage of the development.

[POCNS02]

95. Prior to the issue of any Occupation Certificate for Stage 2 Works, the location of construction waste storage areas in the approved Car 1 and Car 2 parking spaces (at Wollumbin Street frontage) is to be relocated so to not compromise onsite car parking associated with any other stage of approved works and operations of the site.

Any relocated construction waste storage areas for other stages of work not yet complete after the finalisation of Stage 2 works shall be provided onsite (not on public land) and be located to avoid impact on the overall operation of the site in regard to vehicle and pedestrian access and manoeuvrability.

[POCNS03]

96. Prior to the issue of the First Occupation Certificate for any Stage of works associated with this consent, a lighting system shall be installed for the development to provide uniform lighting across common areas, driveways and pedestrian access points to and from the site. The lighting system is to include an external lighting scheme for illumination of Proudfoots Lane.

97. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).

[POCNS04]

98. Prior to the issue of any Occupation Certificate for each stage of the development directional signage associated with works within the relevant stage to which the Occupation Certificate is being issued is to be erected within common areas of the site. The signage is to assist way finding and access control for pedestrian entry and exit points in and out of the site.

[POCNS05]

99. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Council's Development Design and Construction Specifications, prior to the issue of an Occupation Certificate, as applicable to each stage of the development.

[POCNS06]

100. Prior to the issue of the first Occupation Certificate for any stage of building works, works associated with the vehicular access and construction of the internal driveway off Proudfoots Lane is to be completed to the satisfaction of Tweed Shire Council.

[POCNS08]

101. Prior to the issue of the last Occupation Certificate for the development or 24 months after the first Occupation Certificate for the development (whichever comes first) the submitted draft Operational Management Plan to be updated and re-submitted to Tweed Shire Council for consideration and approval prior.

The updated Operational Management Plan is to:

- a. outline an obligation for each art studio operator (tenant) to store Material Safety Data Sheets (MSDS) for all classified Dangerous Goods being used within their individual studio spaces, and the detail of such goods in terms of classification and quantity be provided to the site manager so to maintain a common register of classified Dangerous Goods for the site.

To this extent, the common register is to be audited by the site manager on a monthly basis to ensure the cumulative quantity of goods used by the individual tenants do not reach the thresholds which require screening as per the items scheduled in Table 3 of the Department of Planning Hazardous and offensive Development Application Guideline '*Applying SEPP 33*' (January 2011);

- b. Include a copy of the ongoing use conditions of this consent;
- c. Include all parts of the originally submitted draft operational management plan as considered and approved under this consent.
- d. Include the name of the contact person for community liaison including the telephone number and email address.

[POCNS09]

USE

102. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

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

[USE0165]

104. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

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

- * **Gallery: 10am to 11pm 7 Days.**
- * **Cafe Restaurant: 6am to 9pm 7 Days**
- * **Restaurant: 12pm to midnight 7 Days**
- * **Artist studios: 9am to 6pm 7 Days**
- * **Bar: 3pm – 10pm Wednesday – Thursday
12pm – 12am Friday
11am – 12am Saturday
11am – 10pm Sunday**

- * **Shared space for Special Events: Outside of normal business hours but no later than 12am on Friday and Saturday or 10pm on any other night.**

[USE0185]

106. All deliveries to the premises and waste collection services are to occur only within the hours of 7am to 6pm unless otherwise approved by Councils General Manager or his delegate. Urgent or medical related deliveries exempted.

[USE0195]

107. A community liaison officer and contact phone number shall be available for the approved operations on the site. Details of the name of the contact person and contact phone number are to be included in the Operational Management Plan, be made available to Tweed Shire Council at the request of the General Manager or his delegates, and be clearly displayed at the site at all times.

[USE0215]

- 108. 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 including the adjacent roads.**
[USE0225]
- 109. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.**
[USE0245]
- 110. No items or goods are to be stored or displayed outside the confines of the premises.**
[USE0445]
- 111. The building is not to be used for any habitable purpose.**
[USE0455]
- 112. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act* 2003, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Council's Environmental health Officer included in this approval.**
[USE0835]
- 113. All mechanical ventilation shall comply with AS1668.2 Ventilation Requirements.**
[USE0845]
- 114. All commercial / industrial / residential wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate.**
[USE0875]
- 115. The premises shall be maintained in a clean and tidy manner.**
[USE0965]
- 116. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.**
[USE1035]
- 117. The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of to the satisfaction of Council's General Manager or his delegate as outlined in the Liquid Trade Waste Services Agreement and General Conditions of Approval.**
[USE1055]
- 118. All activities shall be carried out in accordance with the requirements of the NSW Office of Liquor, Gaming and Racing (OLGR).**
[USE1085]

119. Footpath dining activities shall not be carried out unless a Footpath Dining License Agreement has been approved by the General Manager or his delegate. Footpath dining activities shall be restricted to the approved footpath dining area and carried out in accordance with Councils adopted Footpath Dining Policy.
[USE1105]
120. A backflow containment device will be installed adjacent to Councils water meter installation at the property boundary in accordance with AS3500. The device is to be maintained in accordance with the provisions of AS3500 by the owner of the property at the owners expense.
[USE1455]
121. The designated smoking area shall not be external to the building in Proudfoots Lane.
[USENS01]
122. Live or amplified music shall not be played external to the building and live music in the 'bar' area shall cease at 10pm on Sundays.
[USENS05]
123. The development shall be constructed and operated in accordance with the Part 6 recommendations of the *Environmental Noise Impact Report, CRG Acoustics 7 August 2017 (crgref:17102 report rev.1)*.
[USENS06]
124. An appropriate area on the upper floor shall be made available to lower floor tenancies for the temporary storage of goods and equipment prior to, and during, flood events.
[USENS02]
125. No A-Frame advertising structures are permitted to be erected on Council owned land as part of this consent.
[USENS03]
126. The internal driveway must be closed to vehicular traffic for "special events" where the parking or laneway area is being used for event purposes. However, the closure of this road is not permitted prior to 6pm Monday - Friday.
127. The closure of internal driveway and associated vehicular access to the site from Proudfoots Lane for use of the internal driveway for 'Special Events' is not permitted until works associated with the provision of four vehicle parking spaces and associated pedestrian access and bicycle parking at the Wollumbin Street frontage have been completed to the satisfaction of Council.
[USENS04]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

128. Prior to issue of a Subdivision Certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like as applicable to the approved lot consolidation into 2 lots shall be completed in accordance with those conditions or plans.

[PSC0005]

129. 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 the Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

130. Prior to the issue of the Subdivision Certificate for Proposed Lot 1 and Proposed Lot 2, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

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

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;**
- (b) the plans accurately reflect the Work as Executed.**

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

[PSC0735]

131. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent associated with the consolidation of lots (and subsequent creation of Proposed Lot 1 and Proposed Lot 2) have been complied with.

[PSC0825]

132. The creation of Easements for services, Rights Of Carriageway and Restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property;**
- (b) Right of Carriageway burdening Lot 1 and benefiting Lot 2;**
- (c) Notation of historic site investigation reports which relate to the land, as listed below:**

- Validation Report Cavvanba August 2012 (Ref 11014 R03)
- Validation Addendum Cavvanba June 2014 (Ref 11014L03 SM03)
- Preliminary Site Investigation HMC Environmental August 2017 (HMC2017.108.02)
- Groundwater, Soil Vapour and Indoor Air Monitoring Factual Report Precise Environmental, May 2018 (PE2626.18)
- The Detailed Site Investigation HMC Environmental, June 2018 (HMC2018.117)

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

Any Section 88B Instrument creating Restrictions as to user, Right Of Carriageway or Easements which benefit Council shall contain a provision enabling such Restrictions, Easements or Rights Of Carriageway to be revoked, varied or modified only with the consent of Council.

[PSC0835]

133. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each lot in the new Deposited Plan.

[PSC0845]

134. Prior to registration of the Plan of Subdivision for Proposed Lot 1 and Proposed Lot 2, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) submission of all documentation electronically (in pdf format), plus the original Plan of Subdivision (and Admin Sheets) prepared by a registered surveyor together with any applicable, original 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]

135. In conjunction with the application for a Subdivision Certificate, the applicant must also apply to Council (OR PCA if applicable) for a

Compliance Certificate for Subdivision Works. This may require obtaining individual Compliance Certificates for various civil works components such as (but not limited to) the following:

- (a) Water Reticulation
- (b) Sewerage Reticulation
- (c) Drainage
- (d) Driveway Access.

Note:

1. All compliance certificate applications for Subdivision Works must be accompanied by documentary evidence from the developers Certifying Engineer, certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "Accredited Certifier".

[PSC0915]

136. The six months Defects Liability Period for the Subdivision Works commences upon the registration of the Plan of Subdivision.

[PSC0925]

137. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation (including household connections) 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]

138. The production of written evidence from the local telecommunications supply authority certifying that the provision of underground telecommunications at the front boundary of both allotments associated with the lot consolidation has been completed.

Unless agreed otherwise by Council, an acceptable form is Telstra's "Telstra Network Infrastructure Letter" or NBN's "Provisioning of Telecommunication Services - Confirmation of final payment" letter (for small subdivisions) / "Certificate of Practical Completion of NBN network infrastructure" letter (for large subdivisions) (as applicable to the development).

The NBN letter must reference:

- Over which Lot and Deposited Plan the agreement applies to,
- Identification of the number of lots to be serviced,

[PSC1165]

139. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity has been provided adjacent to the front boundary of each allotment associated with the Stage 1 consolidation; and

An acceptable form is Essential Energy's "Notice of Arrangement".

Unless agreed otherwise by Council, the form must reference;

- Over which lot and Deposited Plan did the arrangement for the provisioning of electricity (and street lighting, as applicable) apply to,
- Identification of the proposed lots to be created that have been serviced, or the development stage to which the arrangement applies,

140. Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

141. Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

142. Prior to the issue of a Subdivision Certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 68 of the Local Government Act 1993 as applicable to the creation of Proposed Lot 1 and Proposed Lot 2 on the approved lot layout plan.

143. The application for a Subdivision Certificate is to include a report from an accredited building surveyor confirming that the building structures adjoining the proposed new boundary fully comply with the National Construction Code Volume 1 (BCA).

[PSCNS01]

- C. NSW Police and Roads and Maritime Services be notified of Councils decision and a copy of the consent notice be provided

REPORT:

Applicant: Zask Pty Ltd
Owner: Zask Pty Ltd
Location: Lot 1 DP 202712 Brisbane Street, Murwillumbah; Lot 1 DP 439512 No. 1 Brisbane Street, Murwillumbah; Lot 1 DP 123065 & Lots 3 & 4 DP 772263 Wollumbin Street, Murwillumbah
Zoning: B4 - Mixed Use
Cost: \$1,500,000

Background:

The proposal

The development will be staged and a staging plan has been provided with the DA package.

A summary of the proposed staging is as follows:

Stage 1a

- Construction of the Proudfoots Lane access and internal driveway including associated lighting
- Provision of 7 on-site carparking spaces.
- Construction of bar adjacent to Proudfoots Lane and associates services, including toilets.
- Provision/adjustment of services, as applicable to the consolidation.

Stage 1b

- Construction of creative studios and workshop spaces.
- Construction of outdoor café dining space in terrace adjacent to gallery building.

Stage 1c

- Construction of studios adjacent to the gallery/terrace and associated works at the rear of the gallery building
- Lot consolidation and registration of new Lots 1 and 2 with the Lands and Property Information (LPI).

Stage 2:

- Provision of additional studios (except for the centralised 'creative Industry space' as identified in the Stage 3 works on the staging plan).
- Construction of the Wollumbin Street driveway and access.
- Provision of 4 car parking spaces and bicycle parking spaces at the Wollumbin Street frontage.

Stage 3:

Provision of centralised restaurant and 'Creative Industry Space' as nominated in the indicative staging plan.

Operations/Use

As mentioned in the summary of this report, the proposed development is supported by a Preliminary Operational Management Plan which outlines the ongoing operation and use of the site to ensure that appropriate parameters are established to mitigate impacts arising from the development for two key aspects, being; access and parking constraints and noise impacts.

In addition, the development application includes an Environmental Noise Impact Report and a Traffic Impact Assessment Report which demonstrates that measures would need to be employed to ensure that each aspect of the development can operate in a manner that would complement the varying uses occurring on the site and avoid cumulative impacts on Traffic, Parking, Access and Noise.

The proposed hours of operation for each component of the uses are as follows:

Ground Floor Gallery:	10am – 11pm daily
First Floor Gallery:	10am – 11pm daily
Café:	6am – 9pm daily
Restaurant:	12pm – Midnight daily
Art studio/creative industry spaces:	9am – 7pm daily
Bar:	3pm – 10pm Wednesday – Thursday 12pm – 12am Friday 11am – 12am Saturday 11am – 10pm Sunday
Shared Space:	Any time outside of regular business hours but no later than 12am on Friday and Saturday night, or 10pm on any other night.

The applicant has expressed an intention to obtain a Liquor License from NSW Liquor and Gaming for various parts of the site generally in accordance with the submitted plan provided in Figure 1. The Liquor License Areas are associated mainly with the bar which is located at the North West corner of the site (near Proudfoots Lane).

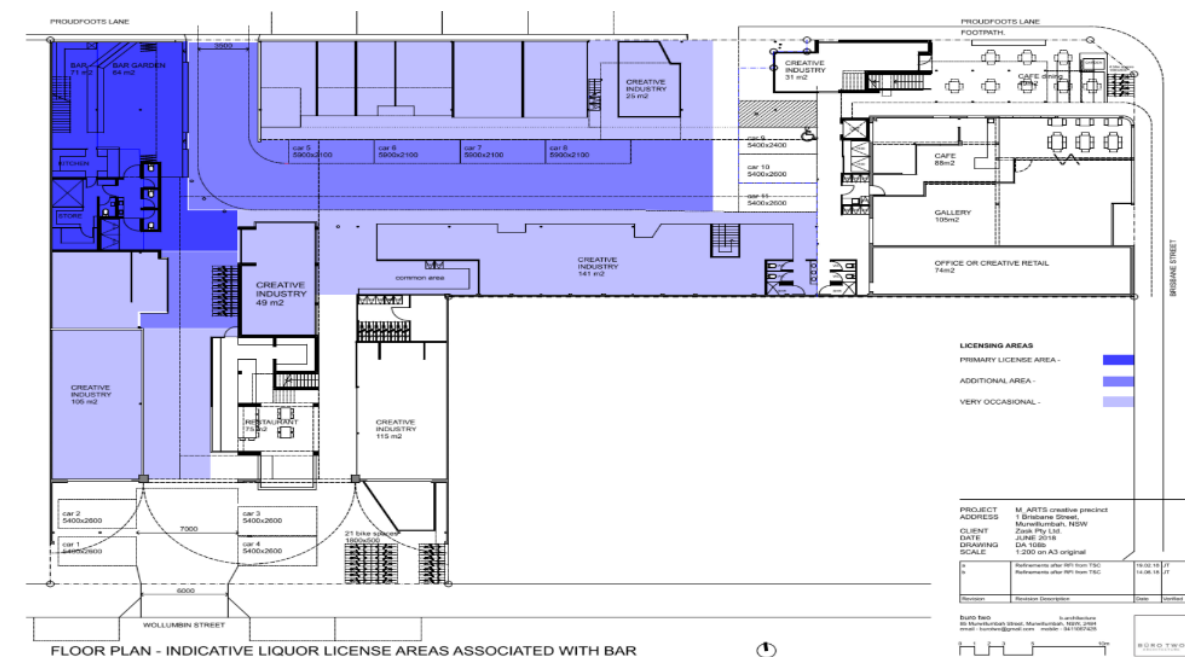


Figure 1: Extract of Indicative Liquor license area

It is noted that the bar garden will be the primary licensed area with additional areas spilling into the 'shared space'. This would facilitate 'Special Events' which are described as being informal or formal gatherings, artisan markets, food festivals, movie nights, fundraising events, workshops and the like.

Council officers have consulted with the NSW Police (Tweed/Byron Local Area Command) in regard to the proposal and copy of their advice is provided in Attachment 1 of this report.

Access

Two vehicular access points will be provided for the site; one is proposed via the existing driveway crossover at Wollumbin Street and the other via a one way in/out access at Proudfoots Lane (vehicle access points highlighted in Figure 2 below).



Figure 2: Extract of proposed Ground Floor Plan highlighting vehicle entry/exit points nominated

Consolidation of Lots

The building straddles 5 lot boundaries and therefore it is proposed the lots be amalgamated into two lots and each lot will have its own separate water and sewer service to respective streets. A copy of the proposed lot layout highlighting service provisions is provided in Figure 3.

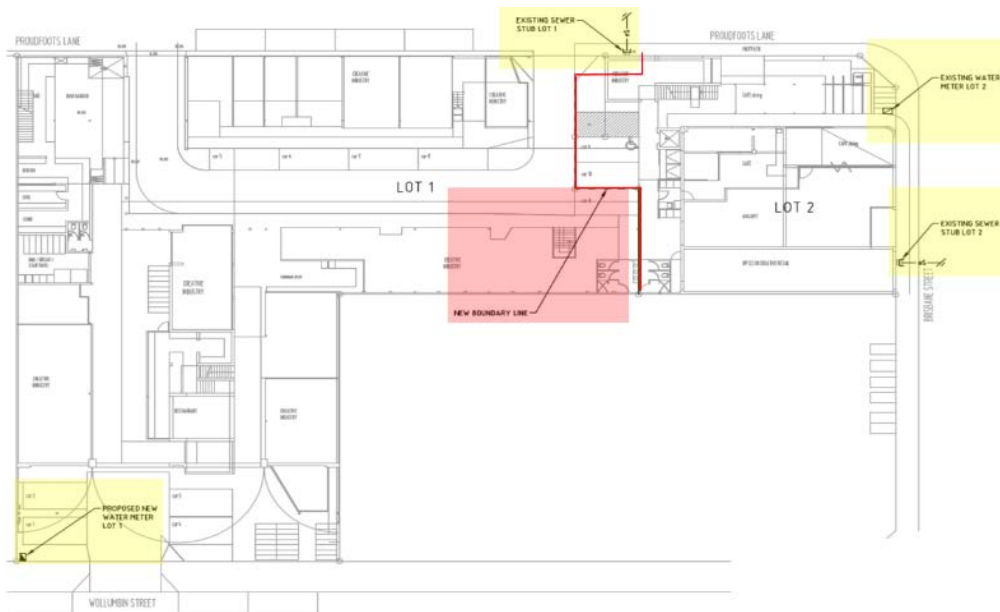


Figure 3: Extract of proposed plan highlighting service provisions and proposed new boundary

Signage

The development includes the provision of nine advertising signs in the form of banner style signs across parapet features of the building at the Proudfoots Lane, Brisbane Street and Wollumbin Street elevation. The signage will be provided in locations where existing parapet, fascia and walls signs for previous uses have been utilised.

The design, font and colour selection for the graphic/logo which selected is consistent with the character of the area and the location of the site adjacent to a heritage item.

A summary of the proposed signage is provided below:

- 1 x 1500mm W x 900mm H (1.35m²) back lit sign (illuminated) at Proudfoots Lane elevation.
- 1 x 1500mm W x 900mm H (1.35m²) back lit sign (illuminated) at Brisbane Street elevation.
- 1 x 14050mm W x 600mm H (8.43m²) ground floor parapet banner sign wrapped around Brisbane Street and Proudfoots Lane elevation.
- 1 x 3900mm W x 400mm H (1.56m²) slim parapet banner sign at Brisbane Street elevation.
- 1 x 100mm W x 1000mm H (2m²) fascia sign at Brisbane Street elevation.
- 2 x 8000mm W x 900mm H (14.4m²) parapet banner sign at Wollumbin Street elevation.
- 1 x 22850mm W x 1350mm H (30.85m²) parapet banner sign at Wollumbin Street elevation.

An extract of the proposed location of signage together with the graphic is provided in Diagram 1.

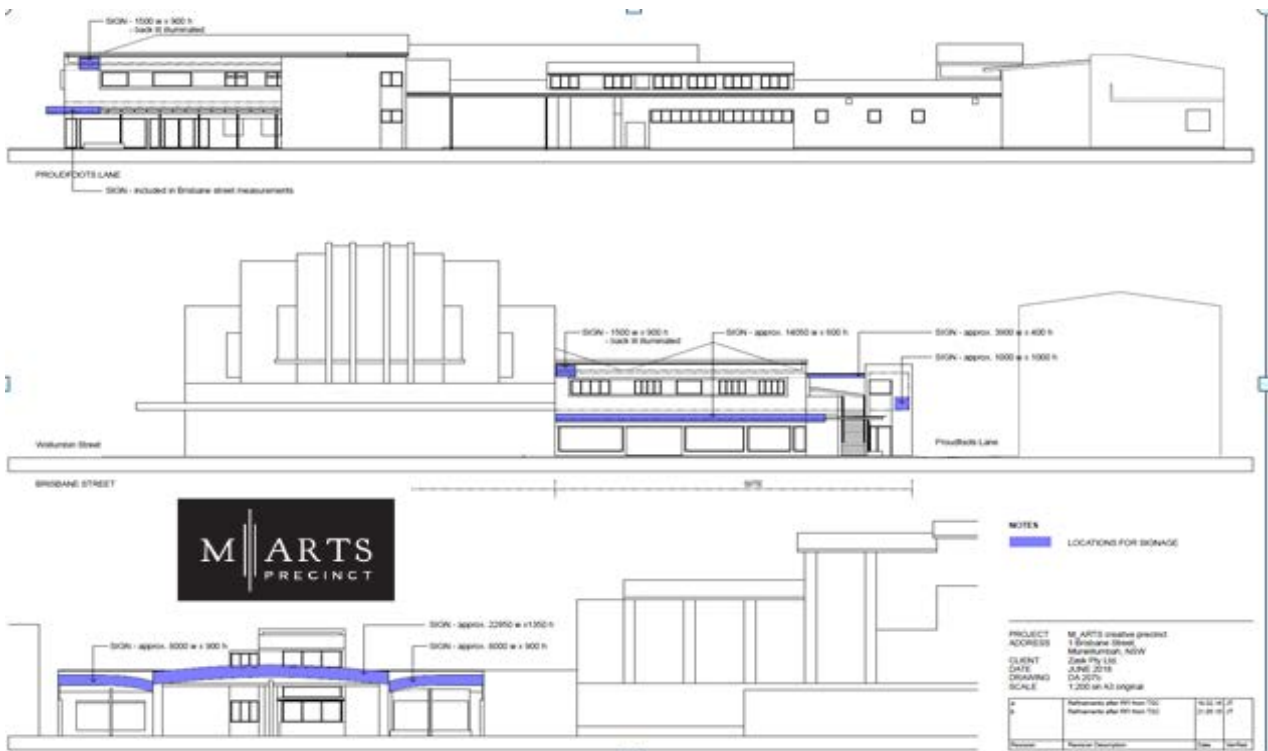


Diagram 1 : Extract of Signage location and 'M Arts' graphic

Site Details

The subject site is located within Murwillumbah Town Centre and features a primary street address to Brisbane Street and secondary frontage to Wollumbin Street as well as Proudfoots Lane. The site is adjacent to the Regent Theatre and opposite Knox Park and close to the round-about intersection of Brisbane Street and Wollumbin Street.

The site is surrounded by a range of uses conducive to the Murwillumbah Town Centre including but not limited to cafés and restaurants to the north of the site, a local gym immediately west, a health food shop, bottle shop and Subway to the east and Sunnyside Mall south east.

The site comprises of five lots which include Lot 1 DP 202712; Lot 1 DP 439512; Lot 1 DP 123065 & Lot 3 DP 772263 & Lot 4 DP 772263 (see site diagram accompanying this report) and is commonly known as the 'Sunrise Ford' site.

Site History

Council records do not provide information on the original construction of this building however the use of the premises by Sunrise Ford for the sale of vehicles (motor showroom) dates back to at least 1948 (see extract of newspaper clipping in Figure 4 below).



Figure 4: Extract of newspaper clipping from Tweed Daily (circa 1948)

Council records indicate the following approvals have been granted in relation to building works and use of the site:

Approval Date	Use/Description	File Reference Number
10 Nov 1978	Altering the showroom area of service station.	Permit Number 45024 and BA Number 772/78
23 April 1980	The use of an existing shop as a 'material remnant' shop.	T4A/2811
6 March 1985	Creation of a new shop and its use for a real estate agency.	T4/3691
16 Feb 1989	Erection of advertising structure (pylon sign).	89/106
8 June 2004	Addition of Staff Amenities.	DA04/0390
1 Sept 2005	Use of existing first floor office and spare parts retail area (associated with sunrise ford operations) for an art gallery and the removal of one car repair station space on the ground floor for loading area associated with art gallery.	DA05/0862
9 June 2006	Conversion of motor showroom into a refreshment room (coffee shop) and conversion of an area of the car repair station to accommodate the existing motor showroom. This DA sought to retain the existing NRMA offices located on the first floor of the development.	DA06/0130
1 Sept 2010	Excavation and removal of disused underground petrol storage systems and remediation of site.	DA10/0420

DA History and timeline

On 14 December 2016, Council officers met with the applicant at a pre development assessment panel (DAP) meeting to discuss the particulars of the subject development application. The discussions were in relation to the establishment of a 'creative arts precinct' and a Supercheap autos store (these discussions sought to retain the existing café and art gallery approved under DA05/0862 and DA06/0130).

During these discussions Council officers highlighted the following:

Carparking, Access and Traffic

- There are limitations on the provision of onsite car parking spaces on the subject site and considerable investigations would be required in regard to traffic, access and parking for the proposal.
- It is noted that the applicant and Councils officers discussed options for parking on the Wollumbin Street frontage and there was a general support for rationalising the site access in this area providing the parking arrangements would provide adequate manoeuvrability within the site and not on the public footpath.
- The applicant was advised that paved footpath for the full frontage of the site would be required and should be integrated into a legible pedestrian movement route through the site.
- It was suggested that use of Proudfoots Lane for HRV loading could be considered due to the nature of the laneway, one way arrangement and the desire to preserve the existing structure.

Heritage

- The applicant was further advised that the land is within a Heritage Conservation Area and adjacent to a Heritage Item therefore would require a Statement of Heritage Impact Statement.

Building & Environment Comments

- The existing building does not comply with the current BCA requirements and therefore any new works would need to achieve compliance and resolve the areas of existing non compliances.
- Compliance with the Disability Discrimination Act would be required.
- Access for disabled would need to comply with AS1428.
- Provision would need to be made on site for storage and collection of waste. Details for collection would need to be determined in conjunction with the waste service provider.

On 31 August 2017 Council received the subject application which included the creative arts precinct however not the Supercheap auto store. On 13 October 2017, Council officers issued a Request for Information (RFI) requiring the following key matters to be further investigated:

- A detailed Car parking and traffic analysis for the Murwillumbah Town Centre together with detail of car parking credits for the site based on previous land uses in light of the likely intensity of the proposed use and associated parking impacts.
- trunk sewer lines within Brisbane Street and Proudfoots Lane having regard to proposed lot 2 not having frontage/ access to existing services in Brisbane Street.
- Statement Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) in regard to groundwater, soil vapour intrusion and indoor air monitoring based on the proposed enclosing of buildings which were otherwise open and deemed suitable for use under previous Validation reports prepared for the removal of disused underground petrol storage systems.

Council officers met with the applicant and their consultants on several occasions to facilitate discussions in regard to the requested information.

Further to the various discussions between Council officers; the applicant supplied the following additional information on the following respective dates:

- 1 March 2018: Operational Management Plan, car parking and site credit analysis;
- 18 May 2018: Amended Hydraulic Assessment demonstrating the provision of sewer and water services to Proposed Lot 1 (from Proudfoots Lane) and;
- 7 June 2018: A detailed Site Investigation (for contamination) by a suitably qualified environmental consultant addressing the previous validation reports and preliminary site investigations undertaken on the site.

The above reports were considered by relevant officers and were found to satisfy the concerns raised by Council.

On 27 June 2018, the applicant nominated to amend their plans to adjust the layout of the various uses on the site to improve the overall function of the site and satisfy the future tenant needs. These plans were re-considered by internal departments and no objections were raised to the amendments.

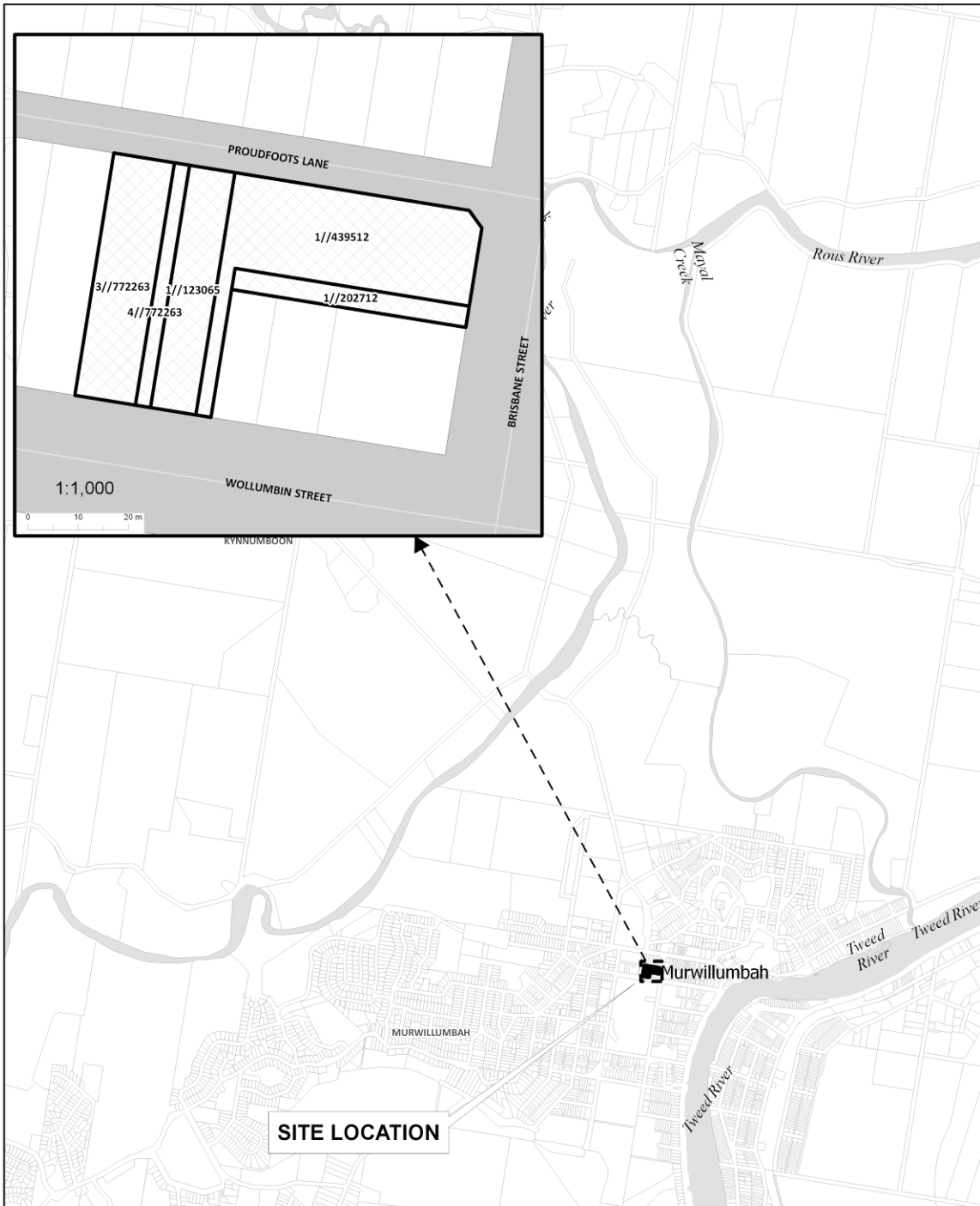
On 13 August 2018, upon completion of the assessment and following further discussions with the applicant; it was identified that whilst the layout of the development resolved the previous constraints on the applicant having regard to commitments for future tenants to occupy particular spaces, the staging of the development would need to be updated to facilitate the timing of occupancy of certain tenancies as part of the initial stages of the development.

Therefore, the applicant sought to further amend their DA to adjust the staging of the development and associated works within the stage.

The amendments to the staging plans were considered by Council officers and found to satisfy the relevant considerations for services, parking, access and fire safety/BCA compliance as relevant for each stage. However, to ensure that essential services that are required to service various parts of the development within each stage can be established at appropriate times, the recommended conditions have been structured to enforce works to be completed prior to the commencement of operations associated with any stage of the development.

A full set of the plans are provided as an attachment to this report and it is this latest version of the plans that form the subject of this report for assessment and determination.

SITE DIAGRAM:



Site Plan

Lot 1 DP 202712, Lot 1 DP 439512,
Lot 1 DP 123065, Lot 3 DP 772263, Lot 4 DP 772263



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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastre: 02/08/2018
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PO Box 816
Murwillumbah NSW 2484

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F: (02) 6670 2483
W: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au



TWEED
SHIRE COUNCIL

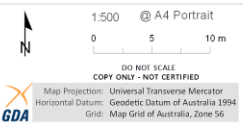
Date Printed: 02 August, 2018

ZONING PLAN:



Subject Land Tweed Local Environmental Plan 2014

- Subject Land
- B3 Commercial Core
- B4 Mixed Use
- RE1 Public Recreation



Site Plan - Local Environmental Plan

Lot 1 DP 202712, Lot 1 DP 439512,
Lot 1 DP 123065, Lot 3 DP 772263, Lot 4 DP 772263

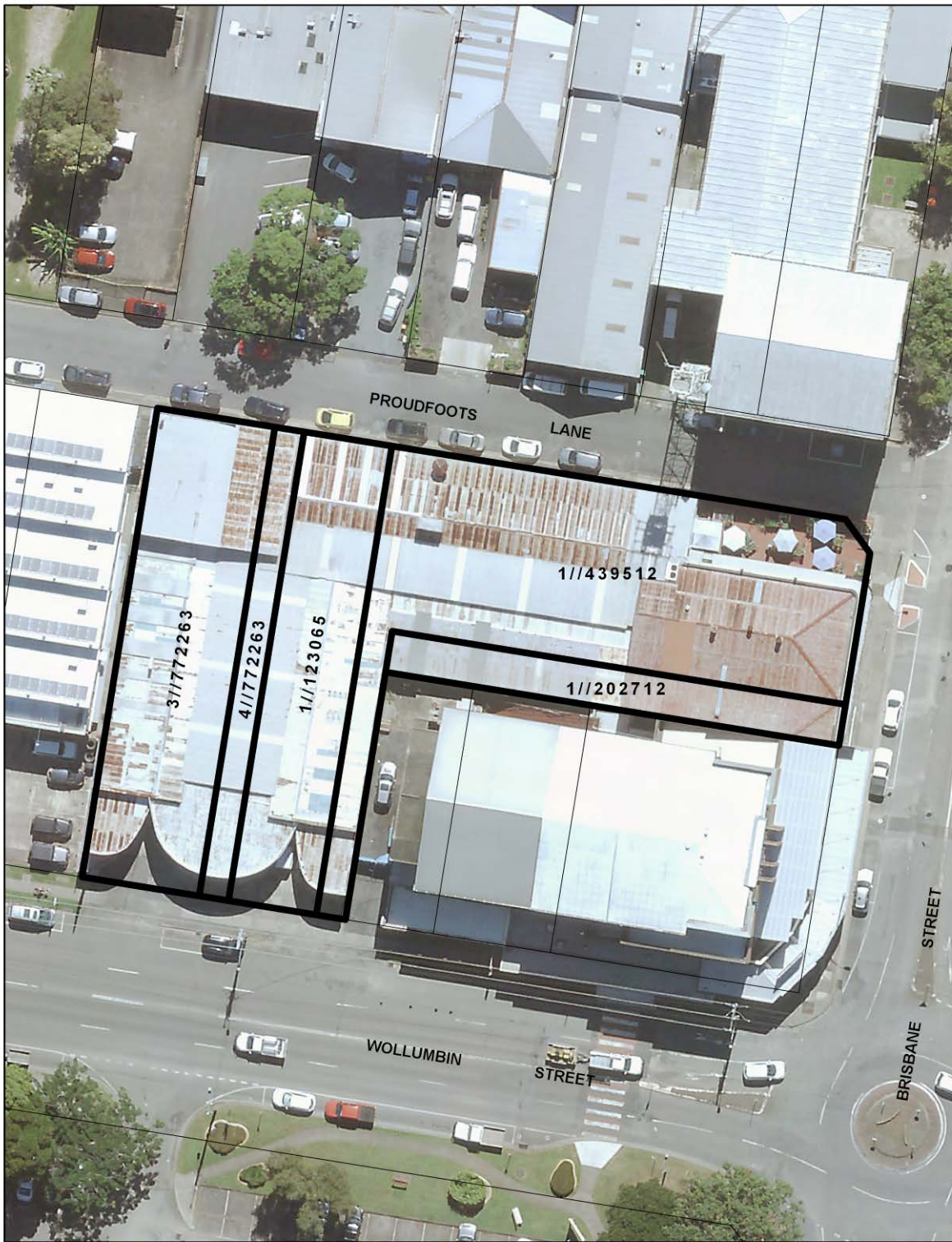
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Date Printed: 02 August, 2018

AERIAL PHOTOGRAPH:



Aerial Photography April 2018

Lot 1 DP 202712, Lot 1 DP 439512,
Lot 1 DP 123065, Lot 3 DP 772263, Lot 4 DP 772263

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Boundaries shown should be considered approximate only.

1:500 @ A4 Portrait
0 5 10 m
DID NOT SCALE
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Map Projection: Universal Transverse Mercator
Horizontal Datum: Geodetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

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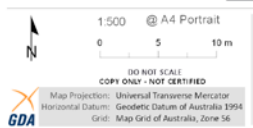
Author: S.Scott - GIS
Date Printed: 02 August, 2018

HERITAGE PLAN:



Subject Land Heritage (HER 2014)

- Subject Land
- Conservation Area - General
- Item - General



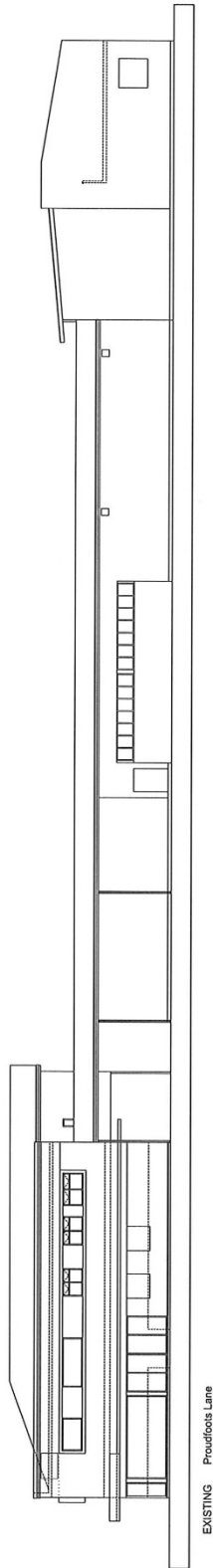
**Site Plan - Local Environmental Plan 2014
Heritage**
 Lot 1 DP 202712, Lot 1 DP 439512,
 Lot 1 DP 123065, Lot 3 DP 772263, Lot 4 DP 772263

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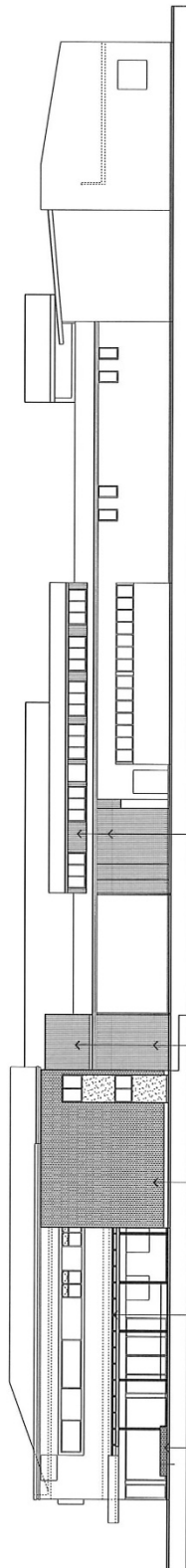


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 Date Printed: 02 August, 2018

DEVELOPMENT/ELEVATION PLANS:



EXISTING Proudfoots Lane



PROPOSED Proudfoots Lane

NOTES

- brickwork garden bed and seat
- black stained timber pergola like structure
- brickwork to match existing
- zincalume metal wall cladding sheet to match existing

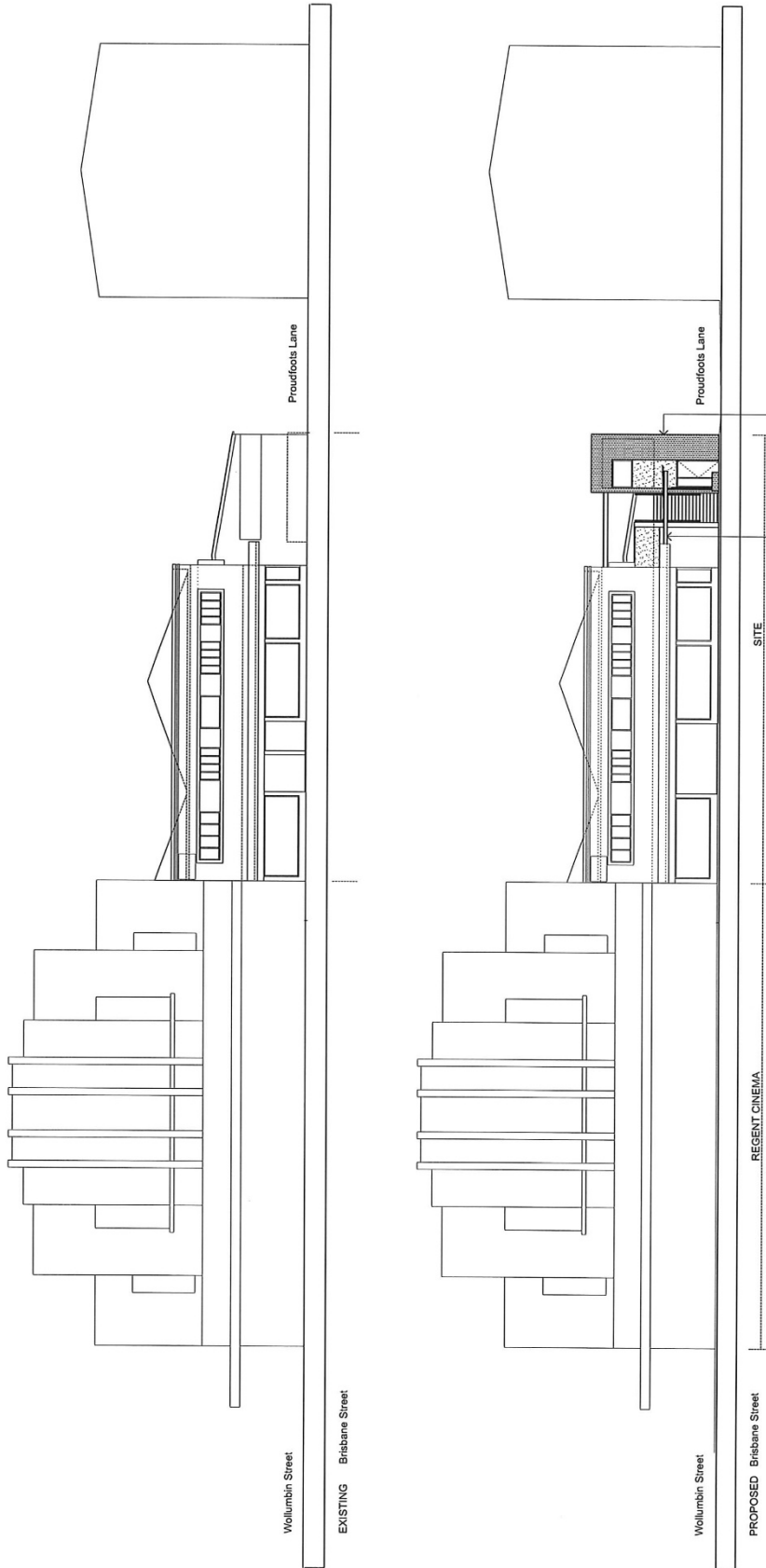
PROJECT M ARTS creative precinct
 ADDRESS 1 Brisbane Street,
 Murwillumbah, NSW
 CLIENT Zane Pty. Ltd.
 DATE 18/05/18
 DRAWING DA 201b
 SCALE 1:200 on A3 original

Revision	Revision Description	Date	Verified
a	Revisions after RFI from TSC	18/05/18 JT	
b	Revisions after RFI from TSC	21/05/18 JT	

BURRO TWO
 85 Murwillumbah Street, Murwillumbah, NSW, 2484
 email: burrow@burrow.com mobile: 0415017428

BURRO TWO
 ARCHITECTS

ELEVATIONS - NORTH



PROJECT M ARTS creative precinct
ADDRESS 1 Brisbane Street,
 Murwillumbah, NSW
CLIENT Zask Pty Ltd.
DATE 14/08/18
DRAWING DA 202b
SCALE 1:200 on A3 original

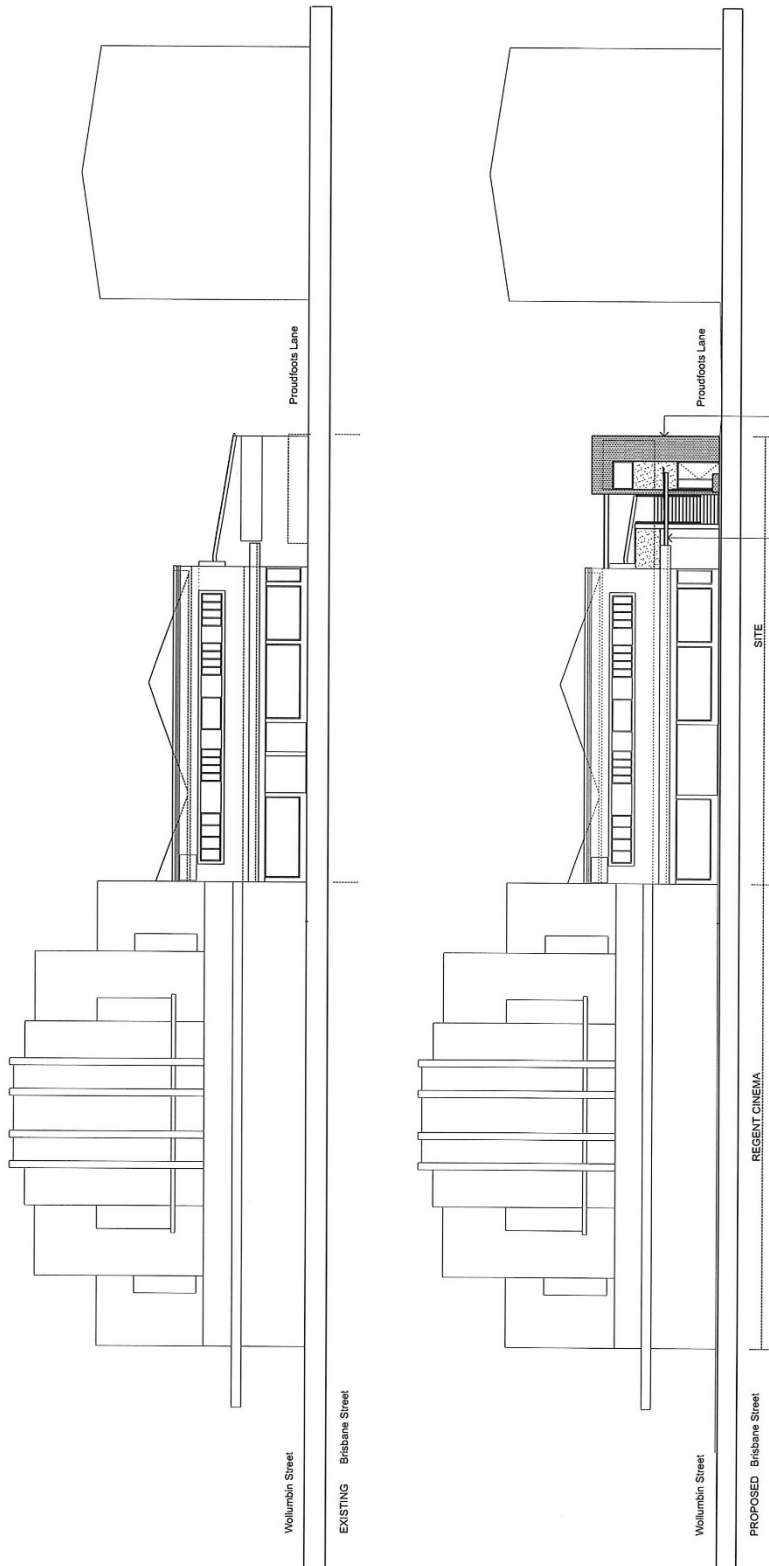
Revision	Revision Description	Date	Verified
a	Revisions after RFI from TSC	19.02.18 JF	
b	Revisions after RFI from TSC	21.02.18 JF	

BURO TWO
 architecture
 140 Macleay Street, Murwillumbah, NSW
 email - buruo2@net.com mob - 041105728

brickwork to match existing
 black stained timber pergola like structure

NOTES

ELEVATIONS - EAST



PROJECT M_ARTS creative precinct
 ADDRESS 85 Wollumbin NSW
 CLIENT Zask Pty Ltd.
 DATE JUNE 2018
 DRAWING NO. 04/2018
 SCALE 1:200 ON A3 original

Revision	Revision Description	Date	Verified
a	Revisions after RF from TBC	19.02.18 JT	
b	Revisions after RF from TBC	21.06.18 JT	

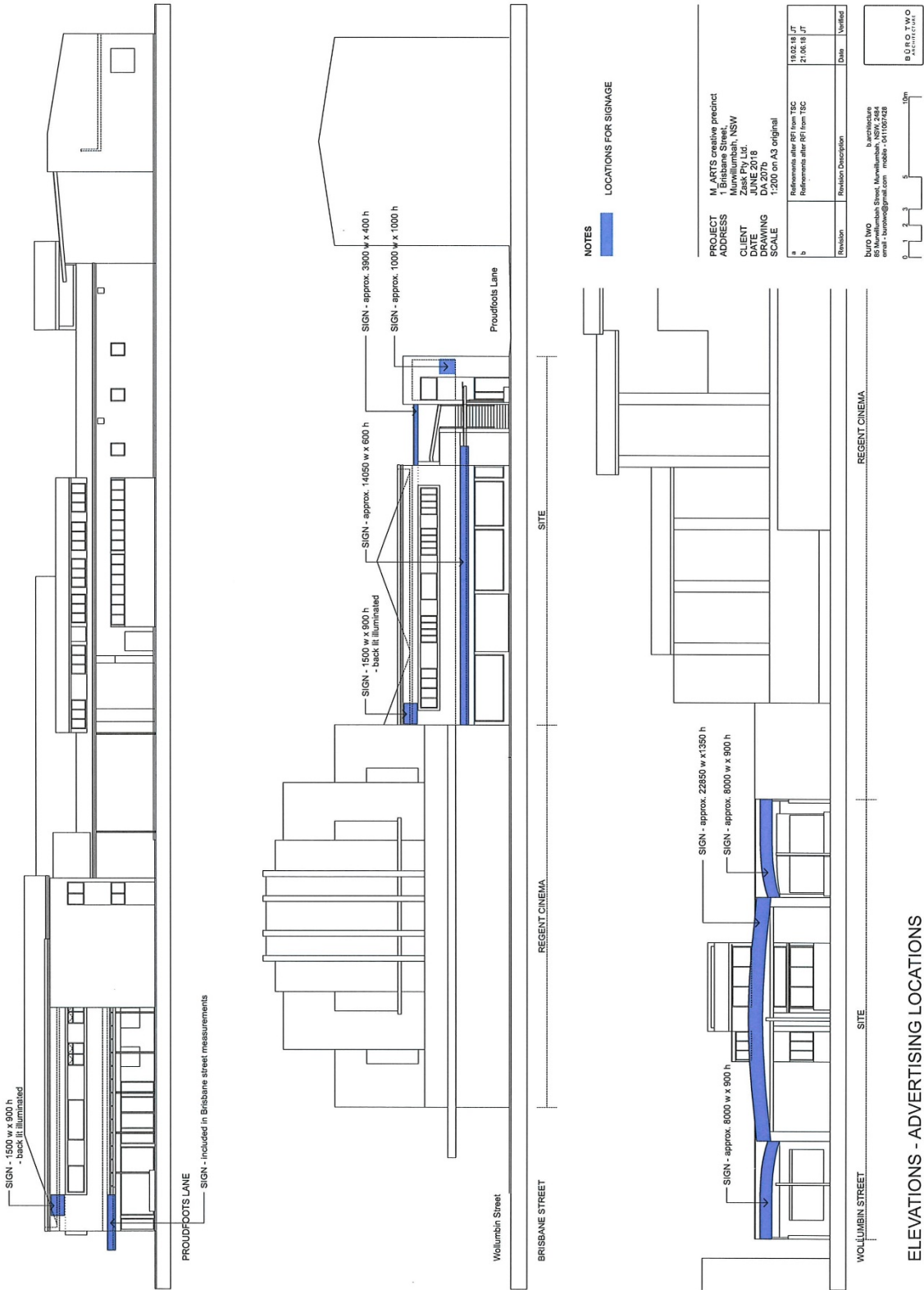
BURT INC
 85 Wollumbin Street, Wollumbin, NSW, 2464
 email - burto@gmail.com mobile - 041106729
 BURT INC

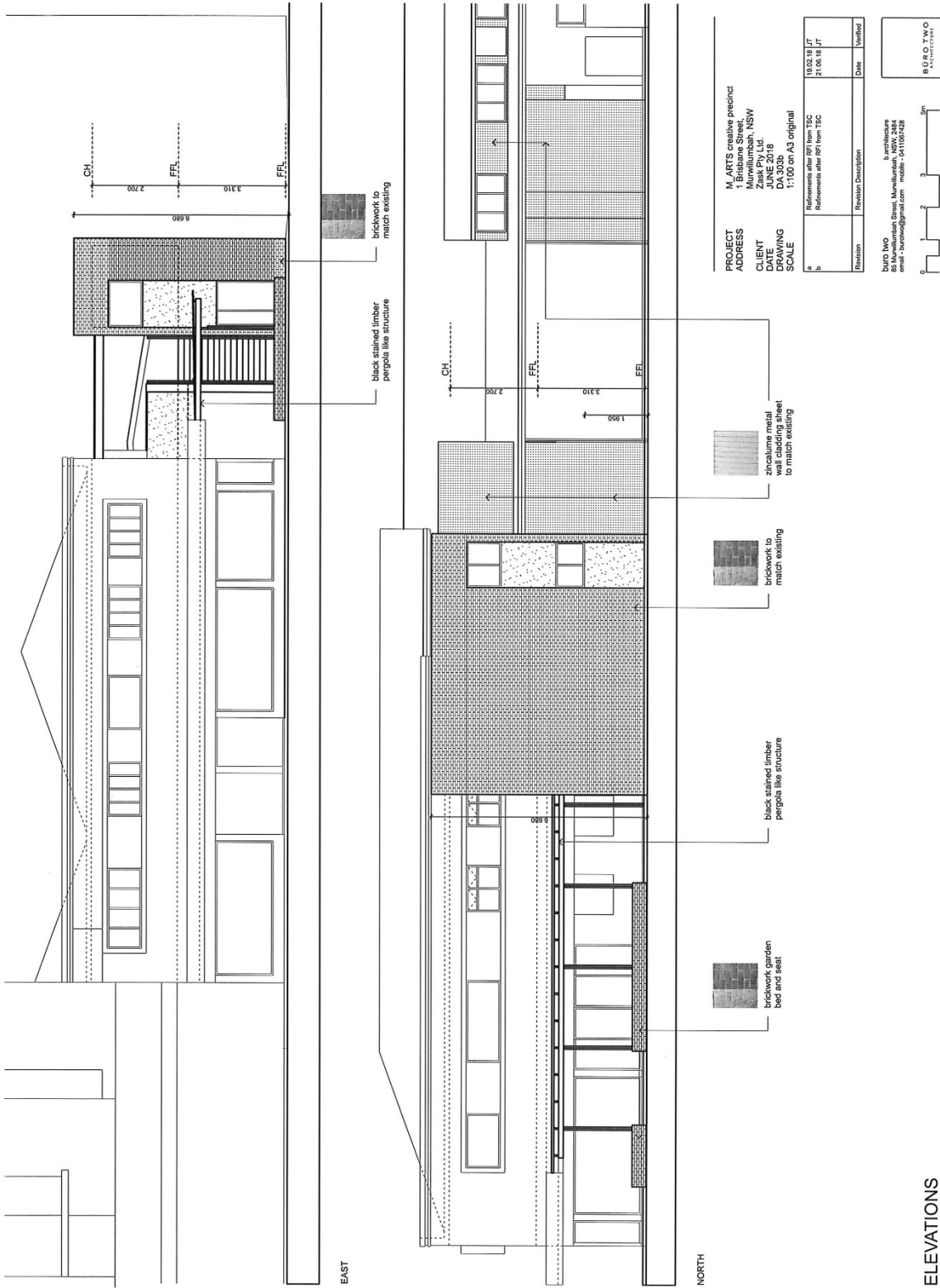
black stained timber pergola like structure

brickwork to match existing

NOTES

ELEVATIONS - EAST





PROJECT M. ARTS creative precinct
 ADDRESS 1 Brisbane Street,
 Murwillumbah, NSW
 CLIENT M. Arts Creative Precinct
 DATE JUNE 2018
 DRAWING DA 303b
 SCALE 1:100 on A3 original

Revision	Description	Date	Verified
a	Refinements after RF from TSC	18.02.18 JT	
b	Refinements after RF from TSC	21.06.18 JT	

burow
 b architecture
 55 The Esplanade, Murwillumbah NSW 2472
 Tel: (67) 5234 2222 Fax: (67) 5234 2228
 www.burow.com.au



ELEVATIONS

Considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

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

The proposal relates to a mixed use development within the B4 – Mixed Use zone. The development will further enhance the social, cultural, economic and urban fabric

of the Murwillumbah Town Centre thus demonstrating consistency with the aims of the plan having regard to its nature and permissibility in the B4 – Mixed use zone.

Clause 2.3 – Zone objectives and Land use table

The objectives of the B4 – Mixed Use Zone are:

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

The proposed mixed use development comprises of a range of land uses which fall under the group term of 'commercial premises' which is permissible in the zone.

The individual land uses within the development proposal comprise of:

- Food and Drink premises (restaurant, café, bar);
- Business premises (studios, flexible space and existing offices);
- Retail premises (markets, shops and retail component of studio space) and;
- Information and Education Facility (art gallery).

It is noted, in order to limit the functions of the site within the scope of permitted uses within the B4 zone, special conditions are recommended in relation to the activities and trade occurring on the site. Where applicable, these special considerations are discussed throughout the report. In particular, please refer to the SEPP 33 discussion on Hazardous and Offensive Development.

In addition, it is recommended that special events be limited to events and activities ancillary to the approved land use as defined in the land use table. To this extent it is recommended that a prohibition for the use of the site as a function centre be outlined in the recommended conditions due to the limitations on noise, traffic and parking (as discussed later in this report).

Subject to compliance with conditions of development consent (which limit uses outside the scope that are permitted in the zone), the proposed development and defined land uses are appropriate within the B4 Mixed use zone given they integrate business, office, retail and food outlets that are consistent with the fabric of the Murwillumbah Town Centre as a hub for general day to day trade and social and cultural activities in a location that is accessible by bus, car and pedestrian orientated transport networks.

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

The subject site is not burdened by a minimum lot size under the LEP and therefore this Clause does not apply.

Clause 4.3 - Height of Buildings

The maximum building height as identified in the Tweed LEP 2014 is Control M being 12.2m.

The proposal seeks to modify the internal components of the building and will not modify the existing height of the building which is a maximum of 6.68m.

Clause 4.4 – Floor Space Ratio

The maximum floor space ratio (FSR) as identified in Tweed LEP 2014 is Control T being 2:1.

The proposed Gross Floor Area (GFA) for the development is 1709m² which represents a FSR of 0.7:1.

Clause 5.10 - Heritage Conservation

The subject site is located within the Murwillumbah Main Street Conservation Area and adjacent to a local heritage item, listed No 51 Commercial premises (former Regent Theatre) under Schedule 5 of the Tweed LEP 2014.

As such, in accordance with the provision of this clause, a Statement of Heritage Impact was submitted with the application to consider and address the impacts of the development on the conservation area as well as the adjacent Heritage Item.

Prior to the lodgement of the subject development application, consultation with Councils Heritage Advisor was undertaken. As part of that consultation, formal comments regarding the proposal were provided to the application to assist with the preparation of the Statement of Heritage Impact.

It is acknowledged that works are required in relation to the existing structure as part of the proposed development, that being; part demolition of roof and associated structures as well as the provision of Signage.

These elements of the development have been addressed in the submitted Statement of Heritage Impact (prepared by Buro Two Architecture). The report highlights that part demolition the existing roof and associated structures will occur in a manner that will retain contributory building fabric and not impact the curtilage of the adjacent heritage item.

The provision of signage is located within areas that have been previous associated with signage so to maintain existing faces and minimise intrusive addition to the current streetscape. The signage has a reduced colour palette (white letters on black background) and font selection is influenced by the Interwar art deco period which is in keeping with the character the building based in its era of construction.

The report has been prepared having regard to the comments received by Councils Heritage Advisor and upon review; no objection was raised in regard to the proposed development and its impact on the fabric of the Murwillumbah Main Street Conservation Area and adjacent local heritage item (Regent Theatre).

As such, Council can be satisfied the development meetings the objectives of Clause 5.10.

Clause 7.1 – Acid Sulfate Soils

The subject site is identified as Class 3 Acid Sulfate Soils (ASS) and therefore works 1m below ground level require an Acid Sulfate Soil Management Plan.

The applicant has demonstrated that no works extend beyond 1m below ground level and therefore at this stage, an Acid Sulfate Soil Management Plan is not required. Council officers have concurred that an Acid Sulfate Soil Management Plan is not necessary at this stage however recommend conditions of consent to be imposed to limit works in the absence of a plan. Therefore, should further engineering detail necessitate works which extend beyond the limitations imposed, an Acid Sulfate Soil Management Plan is to be submitted to Council prior to excavation works occurring on the site.

Subject to compliance with recommended conditions of consent, the objectives of Clause 7.1 have been satisfied.

Clause 7.2 - Earthworks

The subject site comprises of existing structures and concrete driveways and pavement. The development will include minor earthworks for the construction of drainage to existing trunk main lines in Proudfoots lane however those works are considered to minor and therefore are unlikely to impact on the matters relevant for consideration under this Clause.

Notwithstanding the above, the site is located adjacent to a heritage item and the earthworks would necessitate appropriate environmental measures to protect and control sediment run off. As such, conditions of consent have been recommended to ensure that appropriate dilapidation reporting measures are taken for the adjacent Heritage Item and sediment and erosion measures be installed prior to the commencement of works on the site.

Clause 7.3 – Flood Planning

The objectives of this clause is to minimise the flood risk to life and properties associated with the use of land and allow development that is compatible with the land flood hazards without impacting flood behaviour and the environment.

The subject site is mapped as being subject to 1 in 100 year flood event and design flood levels are measured at RL7.5m AHD however the proposal is for commercial use and therefore minimum floor level requirements do not apply. Notwithstanding, in order to satisfy the objectives of this Clause a condition of consent is recommended to ensure the protection of stock, equipment and electrical servicing in times of flood.

Clause 7.4 - Floodplain risk management

This aim of this clause is to minimise the risk to life in a flood event and to protect the operational capacity of emergency response facilities.

The proposed development is a non-habitable land use and is not a land use affected by the provisions of this Clause.

Clause 7.5 - Coastal risk planning

The site is not mapped as being subject to coastal risk planning under this clause.

Clause 7.6 - Stormwater Management

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

This clause outlines that consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) *includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) *avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

The proposed development will not impact or modify the existing stormwater management measures for the site. Onsite stormwater generated onsite will comprise of roof water which does not require treatment.

The applicant has submitted a stormwater concept plan which includes the redirection of all existing roof water to separate collection points for each proposed lot. This arrangement has been reviewed by Councils Development Engineers who are satisfied with the proposed stormwater drainage concept plan subject to recommended conditions of consent. Therefore, Council can be satisfied the matters for consideration under this Clause can be satisfied.

Clause 7.8 – Airspace operations

Not applicable as the site is not in an area subject to airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

Not applicable as the site is not within an area subject to aircraft noise.

Clause 7.10 - Essential Services

Water, electricity, sewer and stormwater services

The subject site benefits from existing access to sewer, water and stormwater drainage. Notwithstanding, as a result of the proposed lot amalgamation, Council officers have considered the provision of easement for services between proposed Lot 1 and Proposed Lot 2.

A review of the existing infrastructure within Proudfoots Lane and Brisbane Street suitably demonstrates that each lot will benefit from its separate connection to existing sewer infrastructure.

In addition, the provision of water and stormwater drainage can also be established for each separate lot.

As such, Council can be satisfied that no easements for services are required and that adequate arrangements have been made for the supply of water, electricity, sewer and stormwater drainage.

Vehicular Access

The provision of vehicular access is proposed via a new driveway crossover to the western extent of the site, at the Proudfoots Lane interface. This will facilitate a one-way internal vehicle entry and thoroughfare via an internal driveway which will also provide access to onsite parking within the site. Vehicles will exit the site via the existing driveway crossover at the eastern extent of the Proudfoots Lane frontage, providing a left turn only exit from the site onto Proudfoots Lane (one-way lane).

In addition, secondary two-way access to the site is provided via the existing Wollumbin Street crossover which also contains four car parking spaces and bicycle storage spaces (see Figure 5 below).



Figure 5: Proposed Ground Level Plan demonstrating vehicular access to the site

The proposed access via Wollumbin Street has been considered by the RMS (classified Road) and RMS have advised that no objections are raised subject to compliance with AS2890.

The proposed entry and exit arrangements via Proudfoots Lane was supported by a Traffic Impact Assessment Report (prepared by Bitzios Consulting Pty Ltd dated 31 August 2017). The report includes a swept path analysis for a standard private vehicle moving in and out of the site via the entry and exist points nominated on the above plan (see Figure 5 above and Figure 6 below).

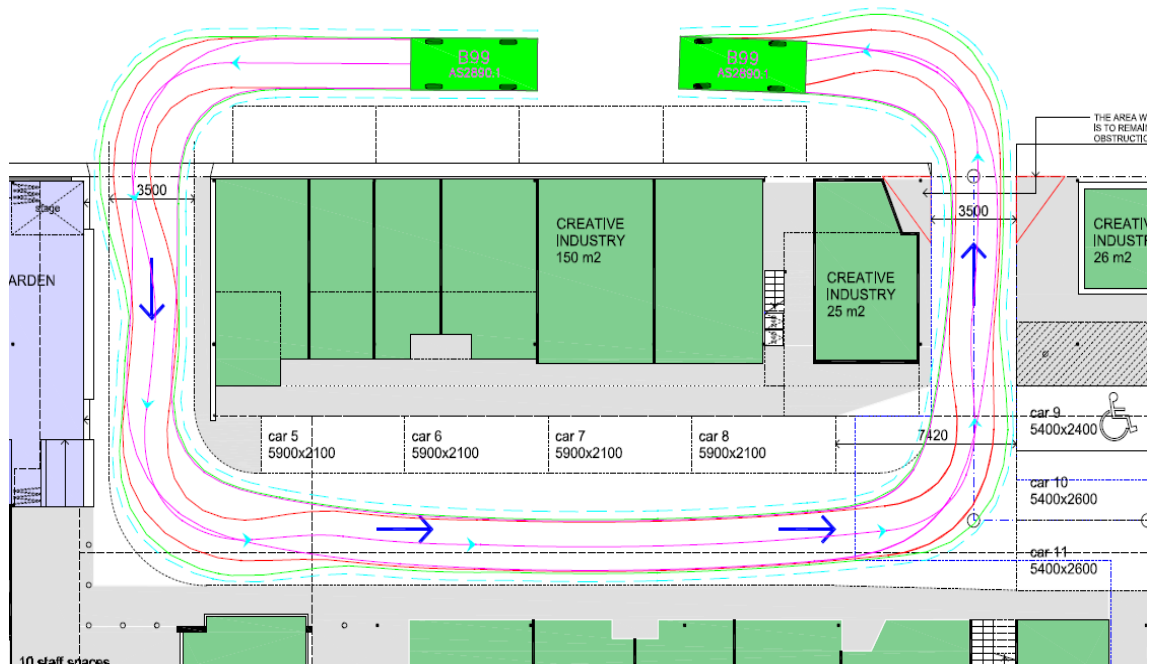


Figure 6: Extract of Swept Path circulation plan submitted by Consultant Traffic Engineer (Bitzios Consulting Pty Ltd)

Based on the information provided by the Traffic Engineering Consultant, Council can be satisfied the proposed vehicular access arrangements comply with AS2890 and are therefore suitable for the subject site. Conditions of consent have been recommended to ensure vehicle access and associated parking is provided at the initial stage of the development.

North Coast Regional Plan 2036 (NCRP)

The subject site is located within a Coastal Zone and mapped to be within a Coastal Environment Area under the NCRP.

Clause 13 of the SEPP states that Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) *coastal environmental values and natural coastal processes,*
- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Whilst the subject site is mapped to be contained in a Coastal Environment Area, its locality is not that which has direct access to a public foreshore, surf zone, open space or native wildlife corridor associated with the coastal environment. As such, by virtue of the site locality and the scope of the works, Council can be satisfied the development will have no adverse impact on the matters listed in this section of SEPP.

State Environmental Planning Policies

SEPP No. 33 - Hazardous and Offensive Development

The aim of this policy is to:

- (a) *to amend the definitions of hazardous and offensive industries where used in environmental planning instruments, and*
- (b) *to render ineffective a provision of any environmental planning instrument that prohibits development for the purpose of a storage facility on the ground that the facility is hazardous or offensive if it is not a hazardous or offensive storage establishment as defined in this Policy, and*
- (c) *to require development consent for hazardous or offensive development proposed to be carried out in the Western Division, and*
- (d) *to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and*
- (e) *to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact, and*
- (f) *to require the advertising of applications to carry out any such development.*

In order to determine whether a development is a hazardous or offensive industry due consideration of guidelines published by the Department of Planning in relation to hazardous and offensive development is to be undertaken.

The *Hazardous and Offensive Development Application Guideline 'Applying SEPP 33'* (January 2011) by *NSW Department of Planning* further elaborates on the procedural requirements when applying SEPP 33 and also the assessment and risk screening measures for various types of uses.

Such uses, relevant to the proposed development, which could be classified as potentially hazardous include those which involve use of paints and lacquers, resins and other chemicals which are classified Dangerous Goods. In addition, uses such as metal processing and recycling and welding are listed as potentially offensive.

The proposed development includes the use of creative industry studio space which falls within the definition of a 'business premises' under the LEP. Therefore, whilst the above mentioned uses could fall within the categories listed under the Guideline, given the zoning of the land and the defined land use, it is considered that the small scale studio spaces would not reach the screening thresholds which

would require Preliminary Hazard Assessments (PHA) as outlined in the 'Applying SEPP 33 Guideline'.

As such, based on a preliminary review of the development having regard to the 'Applying SEPP 33 Guideline' the provision of further assessment having regard to the Guideline is not required due to the location (greater than 100m from sensitive residential location) and quantity unlikely to be within the screening thresholds listed on Table 3 of the Guideline.

Notwithstanding, a special condition of consent is recommended to require the draft Operational Management Plan to be updated and submitted to Tweed Shire Council prior to the issue of a Construction Certificate for the Stage 1 works.

The updated Operational Management Plan is to outline an obligation for each art studio operator (tenant) to hold Material Safety Data Sheets (MSDS) for all classified Dangerous Goods being use within their individual studio spaces, and the detail of such goods in terms of classification and quantity be provided to the site manager so to maintain a common register of classified Dangerous Goods.

The common register is to be audited by the site manager on a monthly basis to ensure the cumulative quantity of goods used by the individual tenants do not reach the thresholds which require screening as per the items scheduled in Table 3 of the Department of Planning Hazardous and offensive Development Application Guideline '*Applying SEPP 33*' (January 2011).

It is considered that the imposition of the above special condition suitably satisfies the aims of the SEPP and provide a measure to ensure that in determining whether a development is a hazardous or offensive industry, appropriate measures are in place to safe guard the development and reduce and minimise potential for adverse impact as a result of the ongoing operation of the site.

Should the development reach a threshold which requires further consideration under the SEPP 33 Guideline and subsequent PHA, the applicant would need to lodge a modification application or new DA in order for an assessment of the proposal having regard to the SEPP 33 Guidelines and the approved land use. It is noted that the provision of 'industries' involving 'industrial activity' is a prohibited land use in the zone and therefore the applicant would need to demonstrate that the modification/new DA maintains its defined land use and is permitted in the zone.

SEPP No. 55 - Remediation of Land

SEPP 55 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. The provisions of SEPP 55 specify when consent is required and not required for remediation work and specify certain consideration that are relevant in determining application in general by requiring that remediation work meet certain standard and notification requirements. Clause 7 of the SEPP states that a consent authority must not consent to the carryout of the any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The subject site was previously used for mechanical repairs which included the refuelling of vehicles on the site. Therefore the site once contained Underground Petroleum Storage Systems (UPSS's). In 2010 development consent (DA10/0420) was sought for the removal of the disuses UPPS's together with the remediation of land. In associated with these works, a Remediation Action Plan was submitted to Council as part of the Development Application (prepared by Cavvanba Consulting, referenced 11014.2 dated May 2010). Consent was granted for the works in September 2010.

In accordance with the SEPP 55 provisions after the removal and remediation works were complete, a Validation Report (referenced 11014 R03 dated August 2012 prepared by Cavvanba Consulting) followed by a Validation Addendum Report, also prepared by Cavvanba in June 2014 (referenced 11014L03 SM 03).

The 2014 Validation Report concluded that post remediation contaminant detections for the soils do not exceed the limitations for drinking water and freshwater ecosystems or health screening levels. Exceedances were observed for the ecological screening levels (ESL's) but not to the extent that it would deem the site unsuitable for commercial land use. No significant groundwater contamination were identified, given the surrounding area is paved, and no immediate sensitive receptor were identified, therefore it was concluded that it is unlikely that there are significant ecological risks associated with the contaminated soil remaining.

The report outlined that as far as vapour intrusion was concerned it is unlikely that there is a vapour intrusion risk associated with the residual contamination, however it stated that more specific information/assessment would be required if an enclosed building was proposed to be constructed overlying the area. It further outlined that the material in-situ is unlikely to present a human health risk, but if the site was to be disturbed through removal of the pavement and/or excavation of soil, management controls will need to be in place to limit the exposure risk to workers.

Having regard to the above site history and remediation works; the subject application was lodged with a Preliminary Site Investigation Report prepared by HMC Environmental dated 21 December 2017. The report referenced the findings from the previous Cavvanba Report (2012) and (2014) (mentioned above) and was based on laboratory analysis of soils. The report mentions slab penetration however concluded that the proposed creative arts precinct is considered suitably for the current and proposed land use and no further investigation or remediation is required.

As such, based on the findings and limitations of the previous Cavvanba report (2014) Council officers deemed it necessary to undertake a more detailed assessment relevant to the scope of the proposed works and use. Therefore Council requested a review of the previous 2012 and 2014 Cavvanba Validation reports. The review would need to address the scope of the proposed work and comment in respect to the need for further investigation, site management plan and suitability of the site for the proposed development.

Following several meetings between Council and the proponent two additional reports were submitted for consideration and review, being:

1. *Groundwater, Soil Vapour and Indoor Air Monitoring Factual Report prepared by Precise Environmental dated May 2018 (reference PE2626.18)*
2. *Detailed Site Investigation prepared by HMC Environmental dated June 2018 (reference HMC2018.117).*

The Groundwater, Soil Vapour and Indoor Air Monitoring Factual Report by Precise Environmental dated May 2018 (referenced PE2626.18) indicates that concentrations of Contaminants of Potential Concern (CoPC's) in groundwater were not restrictive to commercial use of the site and soil vapour and indoor air concentrations of CoPC's were also not restrictive to commercial use of the site.

In addition, the detailed Site Investigation by HMC Environmental (dated June 2018) further addressed that the existing concrete slab floor would be penetrated in areas to install footings and drainage, and therefore to validate any potential contamination impact as a result of these works soil investigations were undertaken. The report suitably demonstrates the results from the laboratory analysis of samples collected are below the adopted investigation criteria for contaminants of potential concern.

In conclusion the report indicates that all soil samples collected during the Preliminary Site Investigation (by HMC in 2017) and the current investigation (for the subsequent HMC Environmental Consulting Report dated 2018) recorded results for CoPC's within the investigation criteria for the proposed commercial land use. In addition the Precise Environmental (2018) investigations for indoor air quality, sub-slab vapour and groundwater quality recorded results that were also below the investigation criteria for the proposed commercial land use.

As such, the site has been deemed suitable for the current and proposed land use subject to the submission of a Site Management Plan within 3 months of the development consent to address:

- a. Additional groundwater monitoring of the existing monitoring wells, to confirm whether the contamination has reduced in concentration, and/or is not migrating off-site. Ongoing monitoring may be required to evaluate potential offsite migration;
- b. Potential exposure of subsurface contaminants in the vicinity of the decommissioned underground petroleum storage system to onsite workers and;

- c. Limits to permissible site disturbances, having regard for any OH & S or environmental protection requirements.

Councils Environmental Health Officer has reviewed the findings of both reports (and considered the originally submitted Preliminary Investigation Report and Cavvanba Validation Report 2012, 2014) and raised no objection subject to the adopted recommendation by HMC Environmental for the submission of a Site Management Plan forming a conditions of consent.

Based on the above explanation and subject to compliance with the recommended conditions, Council can be satisfied that the subject site is suitable for the proposed development pursuant to Clause 7 of SEPP 55.

SEPP No. 64 – Advertising and Signage

The aims of this policy relate to ensuring that signage and advertising are compatible with the desired amenity and visual character of the subject locality. To comply with the policy, signage should be:

1. Compatible with the desired amenity and visual character of the area;
2. Provide effective communication in suitable locations;
3. Signage should be of high quality design and finish.

Clause 8 requires Council to assess whether proposed signage is consistent with the objectives of the policy, and compliant with Schedule 1 of the policy.

The proposal includes the provision of nine advertising signs in the form of banner style signs across parapet features of the building at the Proudfoots Lane, Brisbane Street and Wollumbin Street elevation.

This signage is summarised as follows:

- 1 x 1500mm W x 900mm H (1.35m²) back lit sign (illuminated) at Proudfoots Lane elevation.
- 1 x 1500mm W x 900mm H (1.35m²) back lit sign (illuminated) at Brisbane Street elevation.
- 1 x 14050mm W x 600mm H (8.43m²) ground floor parapet banner sign wrapped around Brisbane Street and Proudfoots Lane elevation.
- 1 x 3900mm W x 400mm H (1.56m²) slim parapet banner sign at Brisbane Street elevation.
- 1 x 100mm W x 1000mm H (2m²) fascia sign at Brisbane Street elevation.
- 2 x 8000mm W x 900mm H (14.4m²) parapet banner sign at Wollumbin Street elevation.
- 1 x 22850mm W x 1350mm H (30.85m²) parapet banner sign at Wollumbin Street elevation.

Schedule 1 provides 8 assessment criteria, as set out below:

1. Character of the area: The proposed location and design of the signage is compatible with the existing character of the area, the fabric of the streetscape

and building itself and is considered to be consistent with the use and function of the site within the Murwillumbah Town Centre B4 Mixed Use zone

2. Special Areas: Being located within the Murwillumbah Town Centre Heritage Conservation Area and adjacent to a heritage Item, due consideration as to the proposed signage suitability and contribution to the themes of the building and fabric of the conservation area has been undertaken.
3. The use of simple black and white colours, on high quality materials with art deco design is considered to be conducive to the era of the adjacent heritage building thus contributing to the fabric and providing a design within the curtilage of the heritage item. As such, the proposal is not considered to detract from the amenity or visual quality of the listed item or conservation area.
4. Views and vistas: The proposal as submitted is not considered to obscure or compromise important views.
5. Streetscape, setting or landscape: The scale of the proposal, including its proportions and form is considered appropriate for the streetscape and setting of the proposal. The proposed signage is consistent with existing signage in the area and utilises locations where predated signage once existed on the building and therefore is not considered to create unsightliness. The signage maintains a sightline which is within the roofline and does not protrude above buildings, structures or tree canopies in the area. It is therefore considered to be consistent with these criteria.
6. Site and building: The proposal as submitted appears compatible with the scale and proportion of both the subject site, and the existing surrounding development which comprises of a range of uses including the 'Regent Theatre' building, post office building and small retail shops across the opposite side of Brisbane Street. It is considered that the proposal's size and design respects the existing building and does not detract from any important features of the subject building or the adjacent Heritage Item. The nature of the proposal does not lend itself to particular innovation, and as such, it is considered that the proposed advertising signage is consistent with the requirements under Schedule 1, part 5.
7. Associated devices and logos with advertisements and advertising structures: The proposed signs are easily accessible for installation and maintenance. No new safety devices or platforms are required. As mentioned above, the proposed signage displays the logo of the applicant's company which is an integral component of the advertising structure.
8. Illumination: The proposal includes 2 illuminated signs. Each sign measures 1.5m x 900mm and having regard to the overall elevation of the buildings, is unlikely to result in unacceptable glare or impact the safety of drivers or pedestrians. Furthermore, the site is suitably located within the commercial zone and would not impact any habitable dwellings. Notwithstanding, a special conditions is recommended to ensure that any impacts resulting from the illumination of signs can be regulated and managed by way of compliance with conditions of consent.

9. Safety: The proposal is not considered to reduce the safety for any public road, pedestrians or cyclists as it does not protrude into the sight lines of the subject site or that of any adjoining lots. It is not considered to obscure any sightlines from public areas and does not encroach onto the footpath or car park of the subject site. The proposal may improve driver safety by way of clearly delineating the subject site from the surrounding environment.

It is considered that the proposal, as submitted is consistent with the aims and objectives of SEPP 64 – Advertising and Signage and the requirements of Schedule 1 of the policy.

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

Draft TLEP No. 17 – Short-term rental accommodation. This draft LEP has no bearing on the subject application.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The objectives of this Section of the DCP are:

1. *To achieve integrated car park design with high levels of amenity for users*
2. *To integrate site landscaping and water sensitive urban design to minimise hardstand areas and address site stormwater flow and pollution*
3. *Provide public domain, comfort and legibility treatments to support the volume of pedestrian movement in and around sites.*
4. *To ensure developments support pedestrian, cycling, vehicle and public transport demand through implementing prescriptive parking supply rates or site specific studies.*
5. *To manage generated traffic volumes and to minimise potential adverse impacts on the local road network.*
6. *Provide a planning framework for considering alternatives to established parking rates for community and business centres which are supported by integrated transport systems.*

An assessment of the proposal having regard to the design principles and controls contained in Section A2 of the DCP as well as the above mentioned objectives is contained herein:

Pedestrian Access and Amenity

The proposed development has been considered having specific regard to pedestrian amenity, safety and access. The submitted Traffic Impact Assessment briefly address' the provision of pedestrian access links and whilst it is accepted that there is ample opportunity to delineate pedestrian and vehicular access to secure pedestrian safety, detail of such has not been provided as part of the proposal. Therefore to ensure an appropriate outcome is achieved in accordance

with this section of the DCP as well as the recommendations by NSW Police, it is recommended a condition of consent be imposed to require a pedestrian management plan to be prepared and submitted to Council for consideration and approval.

Subject to compliance with the recommended condition of consent, the proposed development is considered to satisfy the DCP as far as pedestrian access and amenity.

Vehicle Access and Parking Design

The proposed development includes the provision of 11 onsite car parking spaces which is less than the number of spaces normally required for a development of this scale. The subject site contains a limited amount of space for onsite parking and existing buildings constrain the viability to expand onsite car parking to cater for the proposed development. Notwithstanding, based on historic land uses and developments approved for the site, the site benefits from credits for parking spaces.

In addition, the site is also located within the core of the Murwillumbah Town Centre and therefore the provision of cross utilisation of more than one use is likely to occur for customers visiting the subject site as well as other retail and commercial uses within the town centre.

It is further noted that “special events” require the closure of the internal laneway which results in the loss of seven car spaces. This aspect of the proposal has been reviewed by Councils Traffic Engineer whom has advised that given the “special events” only occur outside of normal business hours when on street parking demand is lower, the loss of the car parking spaces for these events is acceptable.

The laneway or parking area is to be used for special events while the internal laneway should be closed to prevent conflicts between vehicles and pedestrians. This has been outlined in the Operational Plan however it is recommended that a special condition of consent be imposed to reiterate this requirement to mitigate any conflict pedestrian and vehicular movement.

The development application is accompanied by a Carparking Analysis and Traffic Impact Statement accompanied by addendum information which details justification for the calculation of the credits for car parking spaces, the current parking demand in the area (and the peak periods), the provision of cross utilisation in this area, and detail of access and manoeuvring for vehicles through the site.

A breakdown of the parking calculation is provided below:

Parking Credit calculation

Parking Credits have been calculated having regard to numerous past uses which have simultaneously occurred at the site. In particular, Council records indicate that in 2005; the site was already occupied by a motor showroom, NRMA office, car repair station and an art gallery (approved under DA05/0862) and in June 2006 DA06/0130 was consented to for the conversion of the existing motor showroom

and six car spaces on Proudfoots Lane into a refreshment room (including outdoor dining area). This proposal also involved the conversion of part of the existing car repair station (480m²) to cater for the relocated motor showroom.

An extract of the formula used for the calculation of the refreshment room parking space under DA06/0130 (for additional use on the site for the refreshment room) is provided below:

Development	Standard	Total Car Spaces
<i>Proposed Development</i>		
Refreshment Room (84 seats)	0.5/staff + 1/3 seats (includes 20% ESD reduction)	25

Under DA06/0130; a parking credit was calculated for the mechanical repair workshop at a rate of 9 (work bays) x 4.2 spaces per work bay = 37.8 spaces (round up to 38).

For the new use approved under DA06/0130 for a refreshment room and based on the balance of spaces associated with the changes to the motor show room; only 27 spaces were provided and therefore the short fall or credit was calculated to be 11 parking spaces.

Based on the proposed development; the parking demand will change for the reduced area for the café and increase to the gallery space (first floor) as compared to the approved refreshment room under DA06/0130 which generated a demand for 25 parking spaces. The parking demand changes based on the updated floor area of the cafe are outlined in figure 3 below. In summary, it highlights the reduction in floor space for the café results in a credit of 15.31 parking spaces.

Proposed Land Use	Calculations	Parking Required	Existing parking allocation/credit	Change
Café (71m ² dining area)	3.5 spaces / 100m ² of dining area + 4 Staff	6.485	25 spaces (refer to DA 06/0130 assessment)	6.485- 25 =18.51 space reduction
Additional Ground Floor Gallery Area (105m ²)	3.2 spaces ⁽¹⁾	3.2	Part of the coffee shop floor area (total 25 spaces)	+3.2
Credit resulting from reduced coffee shop floor area				18.51 - 3.2 = 15.31 space credit

Figure 7: Extract of Parking Demand Changes from approved Refreshment Room to additional gallery and reduced cafe use

Having regard to the residue credit of 11 parking spaces calculated under DA06/0130 and the above residue credit of 15.31 for the proposed café and ground

floor gallery associated with the subject application; the total parking credits available for the site is 26.21 spaces.

Proposed Demand for Parking

The submitted Table 5 in 'Carparking Analysis' (dated March 2018 prepared by Kellie Shapland Townplanning) (see figure 4 below) contains a breakdown of required parking based on proposed land use in accordance with Section A2 of the DCP.

Table 5 - Required Car Parking		
Proposed Land Use	Calculations	Parking Required
Café (71m ² dining area)	3.5 spaces / 100m ² of dining area + 4 Staff	6.485
Additional Ground Floor Gallery Area (105m ²)	3.2 spaces ⁽¹⁾	3.2
Ground floor office to creative retail (74m ²)	4.5 spaces / 100m ² GFA minus office rate of 1/50m ² GFA 3.3 - 1.48 = 1.82	1.82
Restaurant (30m ² dining area) +3 staff	3.5/100m ² = 1.05 spaces (customer) + 3 staff = 4.05	4.05
Creative Industries 845m ²	90% commercial rate (760.5m ²) 10% ⁽³⁾ retail rate (84.5m ²) 760.5m ² (90%) = 15.21 spaces 84.5 (10%) = 3.8 spaces = 19.01 spaces	19.01
Bar	Refer to Bitzios report dated August 2017	13.5 ⁽¹⁾
Upstairs Gallery	Already Approved	No change ⁽²⁾
Total		48.065 spaces

Figure 8: Parking generation based on Numerical provisions in Table 2, Section A2 of the DCP

A local Parking Analysis was undertaken by Bitzios Consulting (in their supplementary advice provided to Council dated 22.2.2018) and includes a table (see figure 5 below) which shows the actual required spaces based on the time of day parking demand analysis.

The table further outlines the provision of a reduced number of spaces based on the Cross utilisation (15%) of uses between the town centre. This table demonstrates a reduction in the demand for onsite parking spaces from 45.2 spaces to 38.4 spaces.



Table 2.2: Time of Day Car Parking Demand Analysis

Time Starting	Café		Restaurant		Bar		Office ³		Shop ⁴		Total Parking Demand	Total Parking Demand with 15% Cross-Utilisation
	% Use	Demand	% Use	Demand	% Use	Demand	% Use	Demand	% Use	Demand		
1:00AM	0%	0	0%	0	0%	0	0%	0.0	0%	0	0.0	0.0
2:00AM	0%	0	0%	0	0%	0	0%	0.0	0%	0	0.0	0.0
3:00AM	0%	0	0%	0	0%	0	0%	0.0	0%	0	0.0	0.0
4:00AM	0%	0	0%	0	0%	0	0%	0.0	0%	0	0.0	0.0
5:00AM	0%	0	0%	0	0%	0	0%	0.0	0%	0	0.0	0.0
6:00AM	25%	4.6	0%	0	0%	0	0%	0.0	0%	0	4.6	3.9
7:00AM	50%	5.2	0%	0	0%	0	10%	2.4	0%	0	7.7	6.5
8:00AM	60%	5.5	0%	0	0%	0	70%	16.9	10%	0.6	23.0	19.6
9:00AM	75%	5.9	0%	0	0%	0	90%	21.8	35%	2	29.6	25.2
10:00AM	85%	6.1	0%	0	0%	0	100%	24.2	65%	3.7	34.0	28.9
11:00AM	90%	6.2	0%	0	0%	0	100%	24.2	85%	4.8	35.2	29.9
12:00PM	100%	6.5	100%	4.1	3%	6.2	90%	21.8	95%	5.4	43.9	37.3
1:00PM	90%	6.2	90%	3.9	4%	6.3	95%	23.0	100%	5.7	45.2	38.4
2:00PM	50%	5.2	50%	3.5	5%	6.4	100%	24.2	95%	5.4	44.7	38.0
3:00PM	45%	5.1	45%	3.5	6%	6.5	100%	24.2	80%	4.6	43.8	37.2
4:00PM	45%	5.1	45%	3.5	10%	6.8	90%	21.8	70%	4	41.1	34.9
5:00PM	75%	5.9	75%	3.8	20%	7.5	80%	19.3	60%	3.4	39.9	33.9
6:00PM	80%	6.0	100%	4.1	25%	7.9	30%	7.3	60%	3.4	28.6	24.3
7:00PM	80%	6.0	100%	4.1	50%	9.8	15%	3.6	15%	0.9	24.3	20.7
8:00PM	80%	6.0	100%	4.1	75%	11.6	7%	1.7	10%	0.6	24.0	20.4
9:00PM	60%	5.5	60%	3.6	100%	13.5	3%	0.7	5%	0.3	23.6	20.1
10:00PM	0%	0	40%	3.4	100%	13.5	1%	0.2	0%	0	17.2	14.6
11:00PM	0%	0	20%	3.2	100%	13.5	0%	0.0	0%	0	16.7	14.2
12:00AM	0%	0	5%	3.1	100%	13.5	0%	0.0	0%	0	16.6	14.1
Maximum Car Parking Demand (Occurs at 1PM)											45.2	38.4

Note 1: indicates that the time of day typical trends have been adjusted to reflect operational hours (i.e. closed)
 Note 2: denotes that the staff car parking component is not affected by time of day factors (i.e. only the customer component is adjusted)
 Note 3: office parking demand profile assumed to be similar to creative industries (commercial) and arts gallery (ground and upper levels)
 Note 4: shop parking demand profile assumed to be similar to creative industries (retail)

Figure 9: Extract of Parking Demand Analysis prepared by Bitzios Consulting Pty Ltd dated 22.2.18

Final Parking calculation

The submitted Carparking Analysis (dated March 2018 prepared by Kellie Shapland Townplanning) contained a summary table of the final car parking calculation. This summary fails to include a parking demand calculation which includes the cross utilisation reduction of 15%.

As such, Council's Traffic Engineer has used the raw data collected to undertake a more accurate calculation of site credits, parking generation for the proposed development and shortfalls.

The updated calculation figures are noted in Figure 10 below:

Table 7 - Final Parking Calculations	
No. of spaces required (refer Table 5)	48.065 38.4 spaces per table 2.2
No. of spaces provided (refer Table 6)	12 11 onsite parking
Shortfall	36.065 38.4-11 = 27.4 space shortfall
Shortfall using credits from Table 3 and 4	36.065 - 26.31 = 9.755 ie. 10 Calculated credit based on previous discussion = 26.21 spaces spaces.

Figure 10: Extract of applicant’s final parking calculation with Council officers calculation amendments provided

Based on recalculated assessment of the proposed car parking arrangements, there is a residue of 1.19 spaces that have not been accounted for. However, the subject site is located within the Murwillumbah Town Centre and the applicant originally sought to utilise the car parking amnesty policy to offset payment of Section 94 Contributions for car parking spaces under Plan No 23. This would have reduced their calculated parking shortfall from 10 to 7 spaces.

Having regard to the above calculations and given the applicant has sought to claim an amnesty for payment of Section 94 contributions for car parking spaces under Councils contribution Plan No 23 (regardless the number of spaces/their calculation), Council could rely on utilising 1.19 spaces of the 3 spaces under the car parking amnesty policy for Murwillumbah Town Centre to account for this shortfall.

Based on this assessment the 11 spaces proposed on site is considered adequate given the historical uses of the site and theoretical car parking credits which apply to the site.

Traffic Roads Contribution Charges

The submitted Traffic Impact Assessment Report prepared by Bitzios Consulting outlines a daily trip calculation of 320.6 trips/ day (no discounts) for the proposed development as per Councils TRCP (see Figure 11 below).

Table 5.2: TRCP Calculations

Land Use	Quantity (GFA)	Quantity (GLA)	TRCP Trip Rate	Daily Trips
Creative Industry	845m ²	633.75m ²	16/100m ² GLA (Office)	101.4
Art Gallery	106m ²	79.5m ²	10/100m ² GLA (Showroom)	8
Bar	215m ²	161.3m ²	110/100m ² GLA (Pub/Hotel/Tavern)	177.4
Restaurant	75m ²	56.25m ²	60/100m ² GLA (Refreshment Room)	33.8
<i>Sub Total</i>				320.6
<i>Linked Trips Discount</i>				15%
<i>40% Employment Generating Discount</i>				40%
Gross Total				164 trips / day

As shown in Table 5.2, the daily trips generated by the redevelopment is calculated to be 164 trips per day in accordance with Council's TRCP. However, in determining the final TRCP contributions, only the net difference between existing and proposed development daily trips are to be chargeable.

Figure 11: Calculation of daily trips for the proposed development (in accordance with Councils TRCP).

In order to determine the net difference between the existing daily trips and proposed daily trips a review of previous development consents based on uses has been undertaken (noting that the provision of TRCP charges on the first use consents are not available due to the age of the building).

Council officers have calculated the existing trip credit as per the following breakdown:

Land Use	Quantity (GFA)	Quantity (GLA)	TRCP trip rate	Daily Trips
First Floor				
Office	80m ²	60m ²	16/100m ² GLA (office)	9.6
<u>Ground Floor</u>				
Motor Showroom	470.1m ²	352.575m ²	5/100m ² GLA (motor showroom)	17.63
Coffee shop	106m ²	79.5m ²	60/100m ² GLA (refreshment room)	47.7
Mechanical Repairs	1433.19m ²	1074.8925	5/100m ² GLA (Light industry)	53.74
			Total trips	128.67
Redevelopment 320.6 trips – existing use 128.67 trips				191.93
Linked trip discount				15%
40% employment generating discount				40%
Total trips generated by redevelopment				97.88 trips

The net difference in trips is 191.93 trips daily which is reduced to 97.88 trips after discounts.

The calculation rate for TRCP is \$1,488.00 per trip (according to current CPI) therefore equating to a total charge of \$145,645.00.

The proposed development is split into three stages with Stage 1 being undertaken in three sub-stages and therefore the levying of TRCP charges will reflect the proposed staging.

Stage 1:

Stage 1A: A charge of \$16,182.66 (10.875 trips) is applicable for this stage.

Stage 1B: A charge of \$16,182.66 (10.875 trips) is applicable for this stage.

Stage 1C: A charge of \$16,182.66 (10.875 trips) is applicable for this stage.

Total \$48,548.00 (32.626 Trips) for Stage 1 works.

Stage 2:

A charge of \$48,548.00 (32.626 Trips) is applicable for this stage.

Stage 3:

A charge of \$48,548.00 (32.626 Trips) is applicable for this stage.

Total for all Stages: 97.88 Trips

A condition of development consent has been recommended for the calculated charge to be payable prior to the issue of a Construction Certificate of each stage of the development.

A3-Development of Flood Liable Land

The aims of this Section of the DCP are:

- Present Council's Flood Mitigation Strategy; and
- Set detailed standards for land development in order to minimise the adverse effect of flooding on the community.
- Progressively implement the provisions of the NSW Floodplain Development Manual (April 2005)
- Implement Part 1 of the Tweed Valley Floodplain Risk Management Plan 2005 – Establish Appropriate Flood Planning Levels for Residential Development.
- Implement Part 2 of the Tweed Valley Floodplain Risk Management Plan 2005 - Planning Controls for High Flow Areas.
- Implement Part 3 of the Tweed Valley Floodplain Risk Management Study – Habitable Land Use on the Floodplain
- Implement the Flood Risk Management Policy

The subject site is located within an area affected by 1 in 100 year flooding and is subject to Probable Maximum Flooding (PMF). Design flood levels for the site are measured at RL7.5m AHD.

In addition to the above; under this Section of the DCP, the subject site is located within the vicinity of Main Street Murwillumbah and as set out in Table 2.1 of the DCP; is subject to 1 in 80 year chance of flooding, with an anticipated warning time of 3-4 hours.

Whilst the subject site is not being used for habitable purposes and therefore is not subject to development standards and controls for 'Residential development in flood liable land' (under A3.8.3 of the DCP), it is still affected by the General Development requirements on Flood Liable Land under Section A3.8.2 of the DCP.

The proposed use involves the adaptive reuse of an existing building and therefore new floor levels and materials cannot be applied to all parts of the building. However, it is recommended that in accordance with Section A3.8.2 of the DCP a condition of consent has been recommended by Councils Flooding Engineer to require an area on the upper floor for downstairs tenants to temporarily store their goods/products during floods.

In addition, a separate condition is recommended to require design detail be provided to the PCA prior to the issue of a Construction Certificate for Stage 1 works to address the flood compatibility of the proposed use of the building including the following specific matters:

- a) All building materials used below Council's design flood level must not be susceptible to water damage.
- b) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
- c) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage for lower floor tenancies.

Subject to compliance with recommended conditions of consent, the proposal meets the aims of Section A3 of the DCP.

A4-Advertising Signs Code

The proposal includes the provision of nine advertising signs in the form of banner style signs across parapet features of the building at the Proudfoots Lane, Brisbane Street and Wollumbin Street elevation. See extract of proposed signage plan below (shaded areas in Figure 12 highlight location of proposed signs).

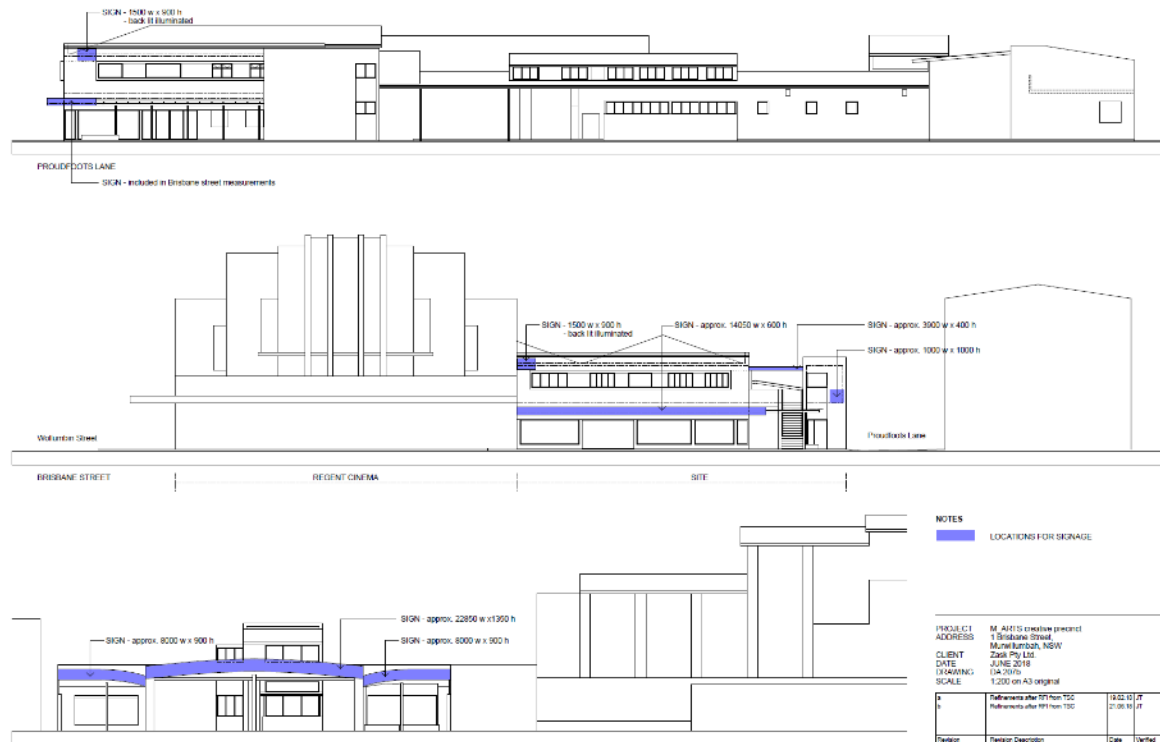


Figure 12: Extract of Proposed Signage location

4.2 General Development Principles and Objectives.

In accordance with A4.2.3, each business may have a maximum of 5 signs to identify / advertise the premises. The proposed location of the overall signage is within the existing parapet features to which previous signage was displayed.

Furthermore, the subject site features three frontages (Brisbane Street, Wollumbin Street and Proudfoots Lane) and given the various exposure points available to the site, it is considered that the proposed signage whilst exceeding the maximum permitted for the overall development, does not result in more than 5 signs per elevation and therefore is still consistent with the intent of this control.

This signage is summarised as follows:

- 1 x 1500mm W x 900mm H (1.35m²) back lit sign (illuminated) at Proudfoots Lane elevation.
- 1 x 1500mm W x 900mm H (1.35m²) back lit sign (illuminated) at Brisbane Street elevation.
- 1 x 14050mm W x 600mm H (8.43m²) ground floor parapet banner sign wrapped around Brisbane Street and Proudfoots Lane elevation.
- 1 x 3900mm W x 400mm H (1.56m²) slim parapet banner sign at Brisbane Street elevation.
- 1 x 100mm W x 1000mm H (2m²) fascia sign at Brisbane Street elevation.
- 2 x 8000mm W x 900mm H (14.4m²) parapet banner sign at Wollumbin Street elevation.
- 1 x 22850mm W x 1350mm H (30.85m²) parapet banner sign at Wollumbin Street elevation.

The site (including all street elevations) has a total frontage of approximately 123.9m which is made up of 27.5m for the Wollumbin Street frontage; 20.2m for the Brisbane Street frontage; 72m for the Proudfoots Lane frontage; and a 4.2m splay at the corner of Proudfoots Lane and Brisbane Street.

Using the formula in A4.2.4 (1 x 10m, then 0.5 x 56.95m) the maximum total area of signs permitted for the site is 66.95m². The proposed business identification signage has a total area of 60.31m². The signage is therefore compliant with the DCP.

4.3.1 District Business Centres/Town Centres

The site is identified as a town centre and as such is required to be consistent with the development principles identified within A4.3.1.

Having regard to the aforementioned signage detail and the location and design of the signage, it is considered that:

- The signage will assist in expressing the character of the development and its contribution to the fabric of the Murwillumbah Town Centre;
- The signage is in keeping with the scale and character of the subject building and adjacent Regent Theatre Building (Heritage Listed) and;
- The signage provides a co-ordinated response to advertising.

Based on the above considerations, Council can be satisfied the development meets the specific development principles and objectives for Town Centres as outlined in the DCP.

4.4 Types of Signs

The proposed development includes fascia and banner signs on the parapet of the buildings.

The types of signs proposed on the building are not listed as being prohibited in Section 4.5 of the DCP.

A review of the proposed signage against the design features and limitations outlined in this Section of the DCP has been undertaken and Council can be satisfied the development is consistent with the controls contained in Section A4.4 of the DCP.

A5-Subdivision Manual

The proposal includes the amalgamation of lots with the provision of separate sewer and water for the newly created lots.

Lot amalgamation is not a form of development as defined under the Act however the adjustment of boundaries for Proposed Lot 1 and Lot 2 to reflect the provision of access and utilisation of existing services is relevant to Section A5 of the DCP.

Council officers have considered the proposed lot layout and are satisfied that it is capable of meeting the objectives of the DCP as well as Clause 7.10 of the LEP.

It is however noted that the first floor component of the existing building in the location of the proposed lot boundary will need to satisfy the BCA provisions as far fire separation and safety. A condition of development consent is recommended to require compliance with the National Construction Code (BCA) to be established as part of future construction works and prior to the issue of any Subdivision Certificate for Proposed Lot 1 and Lot 2.

A11-Public Notification of Development Proposals

In accordance with Section A11 of the DCP, the proposal was advertised in the Tweed Link and notified to surrounding land owners. The exhibition period was from Wednesday 20 September 2017 until Wednesday 4 October 2017.

During the exhibition period, one submission was received on behalf of a nearby business owner.

The submission related to appropriate mitigation measures for dust and noise throughout the development and that access to the rear of adjoining properties, at Proudfoots Lane is not obstructed at any time.

Consideration and response to the above mentioned matters is contained later in this report.

A13-Socio-Economic Impact Assessment

The proposed development does not meet any of the thresholds scheduled in the DCP which would necessitate a Social Economic Impact Assessment Report.

A15-Waste Minimisation and Management

The application is accompanied by a Waste Management Plan which outlines the provision of construction and operational waste management requirements for the site in accordance with Section A15 of the DCP.

Construction Waste

It is noted that the initial construction phase of the development will result in temporary waste storage bin being stored in the Car 1 and Car 2 parking space (at Wollumbin Street frontage).

It is recommended a special condition of development consent be imposed to require that the location of construction waste storage not associated with Stage 3 works be relocated so to not compromise onsite car parking during the operations of the Stage 1 and Stage 2 uses for the site.

Operational Waste

The provision of the size, type and location of recycled and general waste mobile bins has been calculated based on an estimated m³/ week waste generation using the maximum guidelines prescribed in the DCP (in the absence of project specific

waste generation volumes). The number of bins and waste generation results in threshold of waste collection services to a maximum of twice per week.

The plan outlines this waste collection service will be provided via a private waste contractor (Solo Resource Recovery). It is noted that the site is unlikely to have internal manoeuvrability for the waste collection service however the service lane (Proudfoots Lane) has ample thoroughfare for waste collection with a connection Nullum Street and Brisbane Street.

Based on the detail contained in the Waste Management Plan it is considered that the aims and objectives of Section A15 of the DCP have been satisfied in regard to the ongoing management of construction and operational waste.

A18 - Heritage

The eastern part of the site is located within the Murwillumbah Main Street Heritage Conservation Area (MMSHCA) which contains four key precincts including:

- Churches and Educational Precinct
- Murwillumbah Retail Precinct
- Courthouse and Police Station Precinct. And
- Proudfoots Lane Precinct.

Part of the site is located within the Murwillumbah Retail Precinct and is adjacent to, and also serviced by the Proudfoots Lane Precinct (see Figure 13 below).

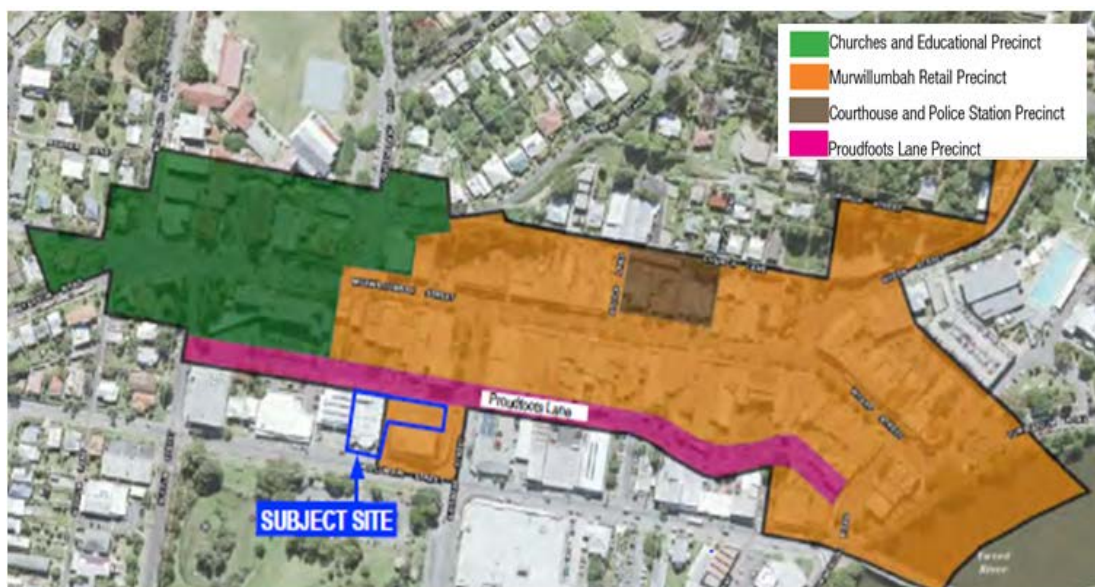


Figure 13: Extract of site locality in respect to Heritage Precincts

The subject site is also part of a 'contributory building' within the Murwillumbah Main street HCA (see Figure 14 below).



Figure 14: Extract of site locality in respect to contributory buildings, landscaping and views of the Murwillumbah Main Street HCA:

Murwillumbah Retail Precinct

The key features of the Murwillumbah Retail Precinct are identified as:

- Fine grained shop frontage with a zero front and side setback to the retail uses;
- Northern side is interspersed with a collection of civic buildings with a landscaped setback;
- Hard surface urban edge to southern side;
- Mix of single and two stories;
- Provision and continuity of awnings and parapets, which ties the retail precinct as a group and provides a rich and varied silhouette;
- Variety of facades, architectural styles and traditional step in shopfront entries with window displays;
- A material palette of rendered masonry, bagged brickwork, and face brickwork characterise and contribute to a unified retail precinct streetscape;
- At the shopfront level of these buildings a richer material palette can be found including ceramic tile, terrazzo, detailed glass and joinery. Art deco buildings are characterised by geometric forms, chevrons, sunburst motifs, aluminium, stainless steel, brick, stained glass, vitrolite glass; and
- Opportunities for taking advantage of the northern solar access.

The DCP identifies that intrusive elements that are not supported in the precinct include: uncharacteristic or absence of awnings except on civic buildings; enclosed footpaths spaces or barricades to the footpath; advertising signage above awnings; cabling or air-conditioning damage to the parapet features and significance.

The proposal would not detract from the relevant identified key features of this precinct, and does not contain any of the above listed intrusive elements.

Proudfoots Lane Precinct

The key features of the Proudfoots Lane Precinct are identified as:

- Rear service accessway with a mix of vehicle and pedestrian uses;
- Multiple pedestrian access points through arcades and shops between Murwillumbah Street and Proudfoots Lane ensures pedestrian permeability;
- The Laneway is characterised by a mix of painted and unpainted brickwork, corrugated iron and hard stand surfaces interspersed with small landscaped pedestrian seating areas and scattered vegetation;
- A mix of single and two storey building forms.

The DCP identifies that intrusive elements that are not supported in the precinct include: removal of the vegetation as this provides shade cover for pedestrians, painting of existing non painted brickwork; removal or replacement of traditional painted signage, advertising signage other than business identification and information signage.

The proposal does not contain intrusive elements as described above. Furthermore, the applicant has suitably demonstrated that the proposal maintains the function of Proudfoots Lane as a service access way however the provision of interesting visual links through the site from the laneway to Wollumbin Street provides an improved pedestrian amenity. In addition, the building form and material are maintained which is consistent with the provision of the DCP.

The application is supported by a Statement of Heritage Impact that has been prepared pursuant to Part C of Section A18 of the DCP.

The Statement summarises the following key consideration for each element of the development:

Proudfoots Lane interface

The proposed Proudfoots lane creative precinct zone require part demolition to the existing roof and associated structure. The proposed upper level areas however are located sensitively so to retain contributory building fabric including steel open web trusses and associated columns. The roof penetrations have been informed by the existing roofs both materially (new work to use matching corrugated metal roof profile) and in form. Being located behind the existing Brisbane Street building they do not adversely affect its curtilage.

Wollumbin Street zone

The proposed Wollumbin street zone requires part demolition to the existing roof and associated structures. The proposed two storey building is located sensitively so to retain contributory building fabric including steel open web trusses and associated columns. The siting occurs within the zone of the joined curved roof so to maintain the side awnings and keep them intact. The material quality of the new building continues the brick language of the Wollumbin Street façade. The roof form varies from what is on site but is informed by the saw-toothed roofs of the neighbouring buildings and will contribute positively to the roofs capes as seen

along Wollumbin Street. Being lower in scale and located some 15m way form the Regent Theatre the proposed building does not adversely affect its curtilage.

Proposed Signage

The proposed signage is located in areas that have been previously associated with signage so to maintain existing facades and minimise intrusive additions to current streetscape. The proposed signage has a reduced colour palette (white letters on black background) and have used a font influenced from the Interwar art deco period so to be in keeping with the character of the buildings.

Adaptive reuse

The proposed adaptive reuse of the old sunrise for site to accommodate a creative industries precinct is not seen to create an adverse effect on the identified heritage significance of the site itself or for its contribution to the Murwillumbah Main Street Heritage Conservation Area.

Councils Heritage Advisor has reviewed the Statement of Heritage Impact prepared by the applicant as well as the architectural plans submitted as part of the DA and provided the following comments:

"The proposed transformation of the site into a creative arts precinct will retain the Brisbane Street fronted art gallery, office and cafe and develop the remainder of the site into artist studios, a restaurant and bar. The proposal is generally consistent with HA-01 and previous heritage comments.

It is considered that the DCP outcomes for t development in the Murwillumbah Conservation Area have been addressed and the proposed is described thoroughly. Therefore no further information regarding the addressing of heritage or conservation area protection is ought. This proposal for a creative arts precinct which will retain the Brisbane Street fronted art gallery, office and café and develop the remainder of the site into artists studios, restaurants and bar is recommended for approval."

Based on the developments performance against the relevant key heritage features of the various precincts to which the site forms part of; and the information provided in the Statement of Heritage Significance, as well as the comments received by Councils Heritage Advisor, Council can be satisfied the development meets the relevant aims and objectives of this section of the DCP.

B22-Murwillumbah Town Centre

Section B22 of the Tweed DCP establishes a vision and key strategies for the development within the Murwillumbah Town Centre (MTC).

The DCP identifies that the adopted MTC vision, will underpin the development that occurs within the precinct.

The vision under this DCP is as follows:

Build on Murwillumbah’s lively hinterland village qualities to create a walkable, vibrant, mixed use centre with a successful main street and a balance between building scale and landscape character.

The DCP contains an urban structure plan for the MTC and the proposed development is considered to be affected by the ‘Mixed Use’ area within the Town Centre Core precinct.

This area forms a principal retail and commercial precinct in the DCP and it is intended that the situation be maintained and consolidated in the future by limiting major retail developments outside of the core and focusing new commercial and retail development with precinct in areas that best support its existing strong urban structure.

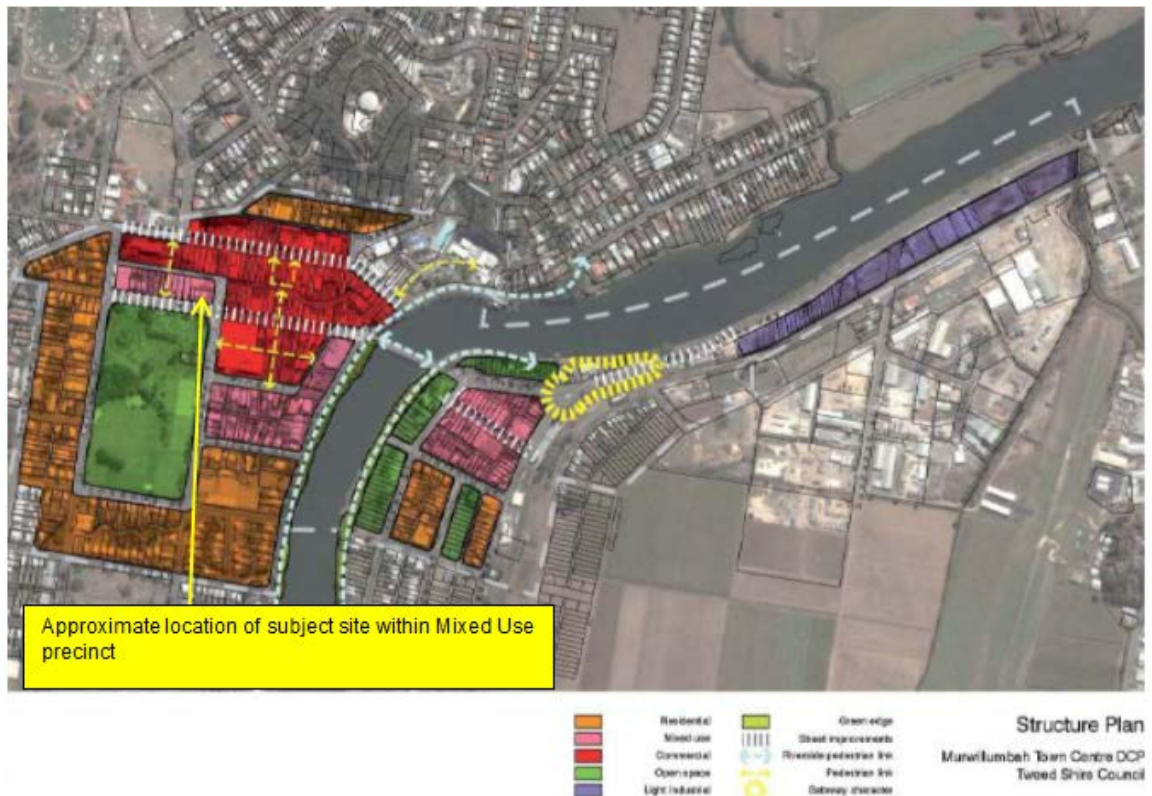


Figure 15: Extract of Structure Plan for Murwillumbah Town Centre DCP (subject site shown with arrow indication)

The proposed use is considered to be consistent with the intention for this area as it further contributes to the mix of land uses occurring in the precinct.

Furthermore, an assessment of the proposal against the relevant guidelines and controls is provided in the compliance table below.

The outcome of this assessment demonstrates the proposed development is consistent with the vision for Murwillumbah Town Centre.

Control	Requirement	Comment	Compliance
Section 4.1. Floor Space Ratio	2:1	The proposed The proposed Gross Floor Area (GFA) for the development is 1709m ² which represents a FSR of 0.7:1.	Yes
Section 4.2. Site Coverage	Max 100% site coverage permitted	The proposed development involves the adaptive reuse of existing buildings as well as activation of internal driveways for car parking and pedestrian circulation. As such, whilst the site will not be fully occupied by buildings, it will meet the objectives of this control by providing for the efficient and cost effective use of land.	Yes
Section 4.3 Building Height	3 Storeys	Adaptive reuse of existing building. Proposed height is maximum two storeys.	Yes
Section 4.4 Street frontage height	Compatible with the average existing street frontage height of adjacent nearby/ building	Adaptive reuse of existing building with no change to existing street frontage height. Street frontage height of the existing building is below the parapet of the adjacent Regent Theatre building.	Yes
Section 4.5 Building Alignment	External facades to be aligned with the street they front. Main 'face' of entrance of buildings is to be orientated toward and be immediately visible from the street directly in front. Where building is located on an allotment that has more than one street frontage, the main pedestrian entry is to be orientated toward the more significant of the street.	The proposed development seeks for the adaptive reuse of existing building with the same building alignment as existing. Pedestrian access is favoured from the Brisbane Street frontage (main street frontage) and vehicle access via Proudfoots Lane (secondary frontage) which suitably delineates the different forms of transport creating a space that is consistent with CPTED principles.	Yes
Section 4.6 Street Setbacks	2.5m setback for sites that do utilise rear lane access. Consistent setback along the street (mostly zero setback for retail streets) and in other areas by taking cues	The proposed adaptive reuse of the existing building will not impact established setbacks at Brisbane Street or Proudfoots Lane. A small addition is proposed at the Wollumbin Street however it	Yes

Control	Requirement	Comment	Compliance
	<p>from adjoining and adjacent properties.</p> <p>Encroachments into the street setback are allowable only for awnings in the Town Centre Core.</p>	<p>is located within the established setback of the existing awning.</p>	
Section 4.7 Active frontage	85% active frontage along Brisbane St and Wollumbin St.	<p>The proposed adaptive reuse will utilise all buildings with frontage to Brisbane St and Wollumbin Street.</p> <p>The existing built form and proposed uses will activate greater than 85% of the Brisbane St frontage.</p> <p>The existing built form at the Wollumbin Street frontage will comprise of creative spaces which are accessible to the public intermittently at the discretion of each individual tenant (to provide retail uses as a result of the display and sale of art material). These areas are accessed via an internal pedestrian links and further activated by a proposed restaurant within the central core of the Wollumbin Street frontage. As such, the combined total of active frontage would be 17m for buildings and 10m for pedestrian areas which translates to the entire frontage at Wollumbin Street.</p>	Yes
Section 4.9 Rear Lanes	<p>Maintain the extensive rear lane system present in the DCP area.</p> <p>Ensure rear lanes are adequately provided for their service function, while also providing a safe and pleasant pedestrian environment.</p>	<p>Proudfoots Lane provides a service and function for the proposed development by way of loading and unloading of service vehicles as well as vehicular and secondary pedestrian access to the site.</p> <p>In order to satisfy CPTED principles, the recommendations of the Tweed Byron LAC as well as this Section of the DCP; is recommended that a condition of development be imposed to require lighting improvements to Proudfoots Lane.</p> <p>In additional single lane one way traffic is recommended for the entry and exit from the site. This</p>	Yes subject to compliance with recommended conditions of consent.

Control	Requirement	Comment	Compliance
		will require appropriate directional signage to facilitate ease of access and wayfinding for vehicles. This matter also forms a recommended condition of consent as far as the signage being installed by Council to Council standards at the expense of the applicant.	
Section 4.10 Awnings	Provide weather protection in areas of high pedestrian traffic. Encourage the use of consistent and continuous awnings within the Town Centre Core.	Use of existing awning along Brisbane St. This is the primary pedestrian entry point and therefore meets the intent of this control.	Yes
4.11 Advertising and Signage	All applications for new buildings or the substantial refurbishment of an existing building shall detail the design provisions made to accommodate future signage; Signs are designed and treated as an extension of the architecture of the building reflecting the building in terms of styling and materials; The scale proportion and form of advertising devices and entry features are appropriate to the streetscape or other setting in which they are located; Signage devices do not obstruct the passage of pedestrians or vehicles. They do not impact on traffic safety and do not obstruct sight lines; Signage devices placed on footpaths and street edges (e.g. "A-frame" display	Signage detail plan provided. Signage compliments the aesthetics of the building as well as the heritage significant of the adjacent item. Provided. The signage is modest in scale and utilises existing parapet locations which have historically been use for signage banners for previous uses. They are located above eye height and will not compromise sight lines or impact on traffic safety. No A-Frame signs proposed. Condition recommended to restrict the use of A Frame Signs. Provided. See previous SEPP 65 and Section A4 DCP discussion. Provided. See previous SEPP 65 and Section A4 DCP discussion Provided. See previous SEPP 65 and Section A4 DCP discussion.	Yes

Control	Requirement	Comment	Compliance
	<p>boards) are not permitted</p> <p>Signage devices are designed and integrated into the building and landscape design so as to minimise visual clutter;</p> <p>Signage devices are constructed of robust materials so as to minimise ongoing maintenance;</p> <p>Signs will only be permitted above the awning of a building where they are incorporated into the design of the building; and</p> <p>Signs are not to cover windows or detract from the architectural qualities of a building.</p>	<p>The heritage significant of the building prevents this and Councils Heritage Advisor has reviewed the planning information for signage and raised no objection.</p>	
<p>Section 6. Mixed Use</p>	<p>Mixed Use development is encouraged in Murwillumbah Town Centre in those areas identified in Figure 6.1.</p> <p>The upper floor uses of mixed use buildings must have clearly defined and separate entrances from the street frontage.</p> <p>The entrances for upper floor activities is not to occupy more than 10%-20% of the street frontage.</p> <p>Mixed use buildings must establish clear sightlines for casual surveillance of the public domain, whilst allowing for suitable privacy for upper storey residential apartments.</p>	<p>The subject site is located within a mixed use precinct identified in Figure 6.1.</p> <p>The upper floor uses of the mixed use building are accessed via internal stairs from the ground floor or via a lift (for the proposed gallery space).</p> <p>Entrance for upper floor activities/uses are separate from the street frontage.</p> <p>No residential proposed. Street frontages suitably activated to provide casual surveillance of the street and internal pedestrian connections.</p> <p>Window openings are provided in the external elevations of the building to further survey the</p>	<p>Yes</p>

Control	Requirement	Comment	Compliance
	<p>Mixed use buildings are to be highly detailed and articulated such that their bulk and scale is reduced and compatible with the fine grained development pattern that surrounds them.</p> <p>All parking is to be located at the rear or in a basement car park, accessed via a rear lane wherever possible.</p>	<p>internal and external domain. Parapet features and variation to materials are provided with the existing façade of the building which articulates its architectural expression and form based on the era of its construction (art deco) as well as the adjacent Regent Theatre building.</p> <p>Primary parking areas are provided with the internal confines of the site with access via the rear lane. The provision of four additional spaces are provided at the Wollumbin Street frontage. Whilst rear lane access and parking is desired, given the nature of the use whereby these areas will be closed for events, the provision of separate parking will allow for the continuation of parking amenities for the site. Notwithstanding, it is recommended a condition of development consent be imposed to require a form of landscaping treatment or public art at the Wollumbin Street frontage forward of the car parking spaces to screen views of these spaces from the street and compliment the pedestrian amenity of the public domain.</p>	
<p>Section 7.11 Heritage and Contributory Buildings</p>	<p>When submitting an application in respect of a heritage item, the onus is on the proponent to demonstrate that the heritage significance of the item would not be compromised by the proposal.</p> <p>When submitting an application in respect of a heritage building, the onus is on the applicant to demonstrate that the architectural and streetscape value of the building would be retained or enhanced by the proposal.</p> <p>Where a development involves a heritage</p>	<p>The proposed development meets the requirements of Section 7.11 of the DCP by virtue of the development meeting the provisions of the LEP and Section A18 of the DCP.</p> <p>The architectural and streetscape value of the building is retained by the proposed adaptive reuse of the existing building.</p> <p>A Statement of Heritage Impact has been prepared and submitted with the DA which was found to be satisfactory.</p>	<p>Yes</p>

Control	Requirement	Comment	Compliance
	<p>building, Council requires that a statement of heritage impact be prepared and lodged with the DA. The statement is to set out the relative merits of the place and the effects that proposed works may have on the significance of the place.</p> <p>When submitting an application in respect of a property within the vicinity of a heritage building, the onus is on the applicant to demonstrate that the architectural and streetscape appearance of the proposal is compatible with the streetscape and urban character established by the heritage building.</p>	<p>The urban character established by the heritage building is maintained by the proposal.</p>	
Section 7.3 Major Retail Options	<p>The subject site is marked as a possible retail (supermarket) option under this Section of the DCP.</p>	<p>The land which has been identified applies to a number of sites and therefore an acquisition and amalgamation of lots would need to occur. This is not considered to be feasible in the short term. Notwithstanding, the adaptive reuse of the existing building would not constrain the viability of future supermarket/retail expansion for the subject site and surrounds in the future.</p>	Yes

(a) (iia) Any planning agreement or any draft planning agreement under section 7.4

Not applicable.

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

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

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises a commercial mixed use development on an

appropriately zoned site. The development will not restrict access to any foreshore areas is considered acceptable in this regard.

Clause 92(1)(b) Applications for demolition

The proposed development includes part demolition of structures and therefore conditions of consent are recommended to address the provisions of this Clause in the Regulation.

Clause 93 Fire Safety Considerations

See discussion below regarding Clause 94 Building to be upgraded and recommended conditions of consent.

Clause 94 Buildings to be upgraded

This clause applies to a development application for development comprising the rebuilding, alteration, enlargement or extension of an existing building where:

- (a) *the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls, or*

Comment: The building works proposed involve an area of less than 50% of the existing volume of the building.

- (b) *the measures contained in the building are inadequate:*

- (i) *to protect persons using the building, and to facilitate their egress from the building, in the event of fire, or*

Comment: It is proposed to reconfigure the existing 5 allotments into 2 which will necessitate fire separation of the existing structures at the new boundary line. This will then allow the current building to be considered as two buildings. With this in mind, it is still considered that the current measures in the existing building are considered inadequate to protect persons using the building and to facilitate their egress in the event of a fire. It is to be noted that the proposed use of the building is an intensification of the occupancy and fuel load from the previous use.

- The exit travel distance do not comply with the part D1.4 of BCA
- Some of the exit doors are not complying with D2.19
- There is no fire hose reel coverage.
- There is no emergency lighting.
- The total floor area of the building on proposed lot 1 will not exceeds the BCA floor area limitations of 2000m² and therefore will be assessed Type C building. Typically walls on the boundary with adjoining lots would require an FRL of 90/90/90.
- The existing building does not comply in this regard.

(ii) *to restrict the spread of fire from the building to other buildings nearby.*

Comment: The existing measures to protect spread of fire are limited.

- Openings that are less than 3m from the side boundary are not fire protected
- Part of the western wall does not have the 90/90/90 Fire Resistance Level (FRL) required for Type C Construction as it is timber frame with corrugated iron cladding.
- There is no fire hose reel coverage.

2) *In determining a development application to which this clause applies, a consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the Building Code of Australia.*

Comment: Having regard to the matters for consideration under this Clause; concerns are raised over the unprotected openings in the external walls adjoining the cinema/supermarket building (South & East) and Gym building (West), and the part non- fire rated wall adjoining the gym on the west. Should a fire occur in the adjoining buildings the Fire Brigade would have greater difficulty preventing the spread of fire to the subject building. Preventing a fire from reaching the subject building would be a high priority for the brigade. The existing external masonry walls are considered to provide reasonable fire protection and should remain largely unchanged.

A total upgrade of the building to comply with external boundary fire resistance would be too onerous.

However it is possible to achieve a reasonable degree of fire protection by requiring:

1. Upgrade of the fire rating of the metal clad timber external wall adjoining the gym to the west to comply with current BCA requirements of Type C construction and FRL of 90/90/90.
2. Fire Attenuation Screens with a minimum heat flux resistance of 20kW/m² to be fitted the openings. This solution is based on the principles of CV1 of the BCA as applied to the existing separation between buildings rather than the boundary setback (*fire source feature*). The fire brigade would then be likely to have additional time to control spread of fire, OR fire protect the openings in accordance with Part C3.4 of the BCA, OR infill the opening with a material having a Fire Resistance Level equivalent to the existing wall system.
3. Require total BCA compliance throughout the building of exit signs, emergency lighting, hose reels and exits.

- 3) *The matters prescribed by this clause are prescribed for the purposes of section 79C (1) (a) (iv) of the Act.*

Comment: Having regard to the prescribed matters relevant in Section 94 of the Regulation, it is considered that the provision of Section 79(c)(1)(a)(iv) of the Act and Section 94 of the Regulation can be dealt with via conditions of consent to require:

1. Upgrade of the fire rating of the metal clad timber external wall adjoining the gym to the west to comply with current BCA requirements of Type C construction and FRL of 90/90/90.
2. Install Fire Attenuation Screens with a tested minimum heat flux resistance of 20kW/m² to all the external wall openings adjoining the cinema/supermarket building (South East) and Gym building (West) OR fire protect the openings in accordance with Part C3.4 of the BCA OR infill the openings with a material having a Fire Resistance Level equivalent to the existing wall system.
3. Require total BCA compliance throughout the building of exit signs, emergency lighting, hose reels and exits.

A special condition has been recommended outlining the above mentioned upgrade requirements as part of the approved construction works.

In addition, having regard to the proposed lot boundary, a separate condition of consent is recommended to require the building to be fire separated at the proposed new boundary line in accordance with the BCA.

It is noted that recommended conditions of consent to require fire upgrades of the building and fire separation at the boundary have been referred to the applicant for consideration so to ensure compliance can be achieved. Should compliance be achieved, the applicant would need to consider a revision to the layout or consolidation of the 5 lots into one which would constitute a modification to the development consent under Section 4.55 of the Act.

The consequence of this would be that the fire rated wall on the west side adjoining the gym would need an FRL 240/240/240 due to the lack of separation and thus increased in overall building size on the single allotment (i.e. beyond 2000m² and forming a Type B Construction).

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. Given the distance of the site from the coastline and the residential development situated between the site and the coast, the proposed development will not impact upon that coastline with regard to demands and issues

identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand. The Management Plan objectives at Clause 3.1.1 are therefore satisfied. It is noted that the site is not located within a specific area identified under that Plan.

Tweed Coast Estuaries Management Plan 2004

The development is not located within proximity to a Tweed Coast estuary.

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

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

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

Context and Setting

The subject site is suitably located within the Murwillumbah Town Centre Core and the development is conducive to the function of the Town Centre precinct. The site contains an existing structure which historically has been underutilised and somewhat dilapidated. The provision of a mixed use development that provides a high level of amenity and function that is conducive to the surrounding land uses within the vicinity of the site is considered to provide a positive outcome for the town centre. As such, having regard to the zone of the land and the proposed use of the building, the development will have a positive impact on the social, economic and built environment of the area.

Carparking

Having regard to the findings contained in the submitted Traffic Impact Assessment report, subsequent car parking analysis for the Murwillumbah Town Centre and the car parking analysis report for the subject site (as previously discussed); the proposed development generates a demand of an additional 12.19 spaces beyond the existing site credits for previous land uses which have occurred on the site.

The proposed development includes the provision of 11 spaces and therefore represents a shortfall of 1.19 spaces.

The site is located within the Murwillumbah Town Centre and on 5 July 2018 Council resolved to continue the waiver applying to car parking contributions for Murwillumbah CBD and Prospero Street. The waiver is due to be reviewed on 30 June 2019. Therefore, based on this resolution by Council; the proposed shortfall of 1.19 spaces enjoys an amnesty of payable Section 94 Contribution for 1.19 car parking spaces that would otherwise be levied under the Carparking contribution plan for Murwillumbah CBD.

It is further noted that as per the information contained in the DA and further outlined previously in this report, the development seeks consent for occasional special events which will involve use of existing hard stand parking areas and the internal driveway for entertainment and pedestrian access to the site associated with the special events.

A draft Operational Management Plan is submitted with the DA to demonstrate how the Special Event would be managed having regard to other uses occurring on the site and pedestrian safety. The Plan outlines that on these occasions, the provision of vehicle entry and exit to the site would be cut off so to promote pedestrian safety and movement through the site. In addition, the special events are sought during *'Any time outside of regular business hours but no later than 12am on Friday and Saturday night, or 10pm on any other night'*.

In considering what could be considered 'regular business hours' and the associated impacts resulting from the existing hard stand car parking and internal driveway being limited to pedestrians only (and therefore resulting in a loss of seven car parking spaces), Council officers have relied on the data collection by Bitzios in the submitted addendum information to the Traffic Impact Assessment.

Based on the carparking demand analysis for the subject site (worst case scenario adopted for the purpose of special event) and the supply and uptake of public car parking in the tables contained in the Bitzios report, peak periods appear to cease at 5pm however it is safe to assume that during these times there is an increase in local traffic movement as the parking spaces are being emptied and people are commuting to and from their destinations. Therefore, to ensure that special events do not result in adverse impacts to local traffic and public parking, it is recommended that a special condition of consent be imposed to restrict the closure of the laneway for such events prior to 6pm.

Having regard to these merit based assessment matters, and subject to compliance with recommended conditions of consent, the proposed development is deemed suitable in regard to the provision of carparking.

Access

The provision of vehicular access is proposed via a new driveway crossover to the western extent of the site, at the Proudfoots Lane interface. This will facilitate a one-way internal vehicle entry and thoroughfare via an internal driveway which will also provide access to onsite parking within the site. Vehicles will exit the site via the existing driveway crossover at the eastern extent of the Proudfoots Lane frontage, providing a left turn only exit from the site onto Proudfoots Lane (one-way lane).

In addition, secondary two-way access to the site is provided via the existing Wollumbin Street crossover which also contains four car parking spaces and bicycle storage spaces.

The proposed access via Wollumbin Street has been considered by the RMS (classified Road) and RMS have advised that no objections are raised subject to compliance with AS2890.

The proposed entry and exit arrangements via Proudfoots Lane were supported by a Traffic Impact Assessment Report (prepared by Bitzios Consulting Pty Ltd dated 31 August 2017). The report includes a swept path analysis for a standard private vehicle moving in and out of the site via the entry and exist points nominated on the above plan.

Based on the information provided by the Traffic Engineering Consultant and RMS and subject to recommended conditions of consent, Council can be satisfied the proposed vehicular access arrangements are suitable for the subject site.

Noise

The proposed development involves several individual uses which cumulatively may have potential acoustic impacts. This is particularly the case having regard to the proximity of the nearest residential sensitive receiver locations (see Figure 16 below).



Figure 16: Extract from Environmental Noise Report prepared by CRG Acoustics showing the location of residential sensitive receiver locations

The application has been supported by an Environmental Noise Impact Report (prepared by an appropriate qualified Acoustic Consultant). The report identifies hours of operation for the various uses within the proposal and considers associated impacts resulted from the accumulation of different uses of the site. A review of the hours of operations nominated in the Noise Report and Operational Management Plan has been undertaken to ensure consistency.

In accordance with the NSW Industrial Noise Policy, the report establishes intrusive and amenity criteria and models relevant to the proposed activities such as traffic (including waste collection trucks), pedestrians, plant and music. Background

noise was established by site monitoring and detail of the recommendation in Part 6 of the Environmental Noise Impact Report conclude that generally noise levels are predicted to be within the criteria. However, the report acknowledges the background noise levels are low at two of the sensitive receiver locations and therefore allowable noise limits for amplified entertainment are likely to be low, and these allowable noise limits will greatly depend on the finishing time for the acts.

Therefore, in accordance with the constraints highlighted in the Environmental Noise Report, Councils Environmental Health Unit has recommended conditions of consent be imposed that limit any live or amplified music being played external to the building in Proudfoots Lane, that live musical acts cease at 10pm on Sundays and further detail monitoring of music and plant be undertaken prior to detail design.

Subject to compliance with recommended conditions of consent and the findings of the Environmental Noise Report (prepared by CRG Acoustics dated 7 August 2017),

Council can be satisfied the proposed development is unlikely to have detrimental impacts in regard to noise.

Heritage

The proposed adaptive reuse of an existing building which is itemised as a contributory building within a heritage conservation area and adjacent to a local heritage item has been considered in regard to character, streetscape, urban design and function. In addition, ancillary elements of the development such as signage have also formed part of a heritage assessment for the DA.

Based on the findings of the Heritage Impact Statement and the advice provided by Councils Heritage Advisor, Council can be satisfied that the development will not have adverse impact on the fabric of the Heritage Conservation Area or the aesthetics and function of the adjacent Heritage Item (Regent Theatre).

Crime Prevention through Environmental Design (CPTED)

The proposed development was referred to NSW Police Tweed Byron Local Area Command for consideration having regard to principals of Crime Prevention through Environmental Design (CPTED).

Recommendations provided by the NSW Police include the provision of lighting at Proudfoots Lane, appropriate security for night time activities, access control, way finding signage, and control of vehicular movement within the site. A copy of the advice provided by the NSW Police is provided in Attachment 1.

The advice provides a list of matters which are relevant for consideration under *Crime Prevention through Environmental Design* (CPTED) principles and have formed recommended conditions of consent. In particular, they aim to ensure appropriate measures are employed for lighting, security, access control and directional signage. It is considered that subject to compliance with recommended conditions in relation to CPTED principles, the development would mitigate

potential crime related activities through good design and planning outcomes. Outstanding matters raised by the NSW Police would be managed through the separate Liquor License application to Office of Gaming and Liquor (OGL).

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is located within the Murwillumbah Town Centre B4 Mixed Use Zone. Surrounding land uses include the Regent Cinema immediately south of the subject site, the rear loading area for commercial and retail uses immediately north, a liquor store, health food store and food outlet (Subway) immediately east and gymnasium immediately west of the site. Land opposite the subject site (further south) comprises of Knox Park and associated large public car parking area. The site is approximately 80m east of the closest residential land use and appropriate testing for noise impacts resulting from the proposed use have been undertaken (as previously discussed in this report).

Based on the zoning and the merits of the proposal in regard to operational management and associated car parking and acoustic impacts, the proposed development is considered to be consistent with the zoning of the land and a development which is conducive to the overall function of the Murwillumbah CBD.

As such, subject to recommended conditions of consent, Council can be satisfied that the subject site is suitable for the proposed development having regard to the surrounding land uses and developments within the locality.

Contamination

All works and use associated with the proposed development have been reviewed by appropriately qualified Environmental Consultants and based on the findings of several groundwater, soil vapour, air monitoring and subsequent environmental site investigations, the subject site is suitable for the proposed development. Notwithstanding, to ensure ongoing monitoring and safety of the site for future activities and land uses, a special condition is recommended to require a Site Management Plan to be prepared by a suitably qualified consulting within 3 months of development consent. The Site Management Plan is to address groundwater monitoring and potential exposure of subsurface contaminates in the vicinity of previously decommissioned UPSS's to onsite works who many break through existing surfaces.

Essential Services

The proposed adaptive reuse of buildings will result in the provision of access to existing essential services for the site.

Sewer

The existing site benefits from a sewer connection in Brisbane Street which will be utilised for Proposed Lot 2.

The proposed hydraulic plans for the site indicate there is an existing sewer line within the road reserve of Proudfoots Lane and a sewer stub which could be utilised for this lot. Council officers have undertaken an inspection of the site and identified the sewer stub therefore concur to proposed Lot 1 connecting to this line.

Water

The subject site benefits from an existing water meter within the property boundary at Brisbane Street interface. Proposed Lot 2 will benefit from this meter. Proposed Lot 1 will be accessed by a new Water Meter at Wollumbin Street per Figure 17 below.

Council officers have reviewed the proposed arrangements and raise no objection to the provision of water in this location.

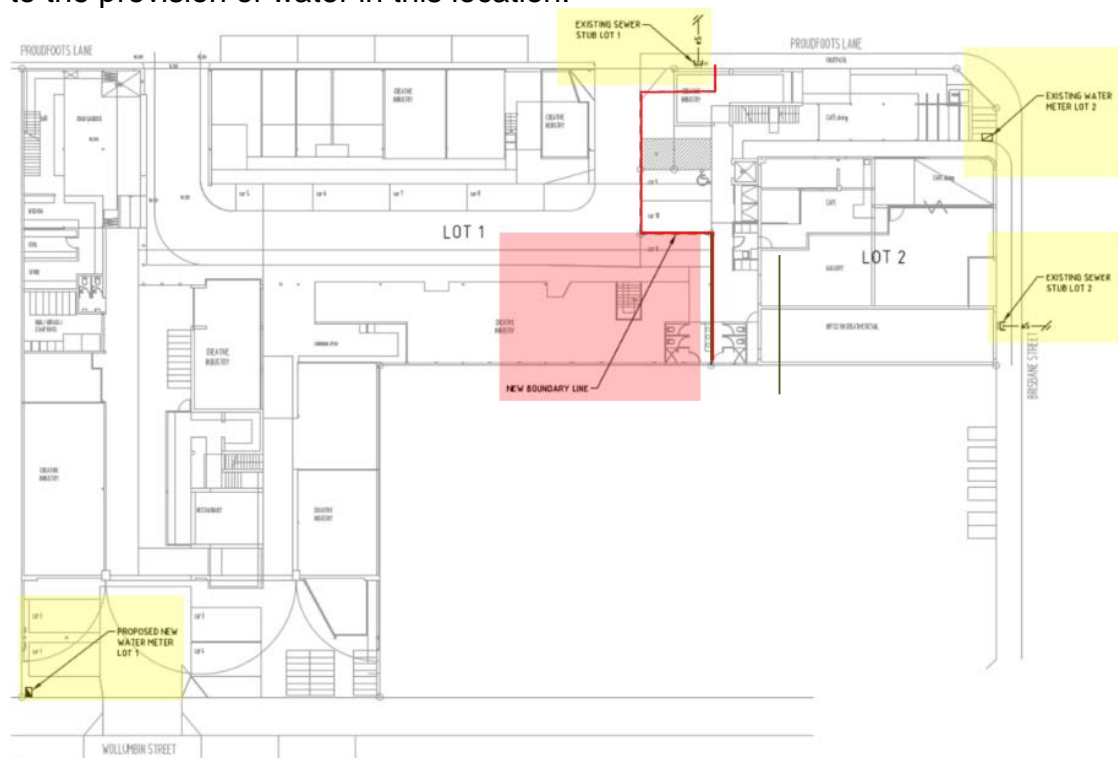


Figure 17: Preliminary Hydraulic (Drainage and Water) Plans (prepared by Sedgman Engineering dated 17 May 2018)

Stormwater Drainage

Given the development seeks for the adaptive reuse of existing buildings; roof water disposal is interconnected over the proposed lot boundary. A stormwater drainage concept diagram has been submitted as part of the application which suitably demonstrates existing lines which cross the proposed boundary will be capped off at the boundary and a new connection will be established to provide for the separate disposal of stormwater for each lot respectively.

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

In accordance with Section A11 of the DCP, the proposal was advertised in the Tweed Link and notified to surrounding land owners. The exhibition period was from Wednesday 20 September 2017 until Wednesday 4 October 2017.

During the exhibition period, one submission was received on behalf of a nearby business owner.

The submission related to appropriate mitigation measures for dust and noise throughout the development and that access to the rear of adjoining properties, at Proudfoots Lane is not obstructed at any time.

A planning response to the above mentioned matters is below:

Objection Matter	Planning Response
Construction Noise and Dust	<p>Standard conditions of development consent are recommended to ensure the construction of the development is within acceptable hours of construction to mitigate impacts arising from construction noise.</p> <p>Standard conditions of consent are recommended to ensure dust suppression techniques are enabled during any works which are likely to emanate dust.</p>
Operational Noise	<p>The ongoing operation of the site is considered to have an acceptable acoustic impact having regard to the sites location within a commercial zone and suitably buffered from residential land uses.</p> <p>Council officers have considered the proposed use, hours of operation and the acoustic report submitted as part of the DA. Subject to compliance with recommended conditions, it is considered that potential noise impacts arising from the operation of the site are acceptable in this location.</p>
Rear Lane Access (Proudfoots Lane)	<p>The proposed development seeks access to the site via Wollumbin Street and Proudfoots Lane. However the existing no parking/stopping signs located within Proudfoots Lane will remain and the provision of onsite parking within Proudfoots Lane is not included as part of the DA and therefore Proudfoots Lane will remain a thoroughfare road corridor providing rear loading and access points for the subject site and surrounding development.</p>

(e) Public interest

The proposal relates to a mixed use development within the B4 – Mixed Use zone. The development typology is likely to further enhance the social, cultural, economic and urban fabric of the Murwillumbah Town Centre thus demonstrating consistency with the aims of the plan having regard to its nature and permissibility in the B4 – Mixed use zone.

A merit based assessment of the development has been undertaken to consider potential amenity impacts and address concerns raised during the public exhibition and it considered conditions of development consent would resolve any potential impacts. As such, subject to compliance with the recommended conditions of consent, the development is considered to be within the public interest.

OPTIONS:

1. Approves the development subject to recommended conditions of consent and provides the NSW Roads and Maritime Services and NSW Police a copy of the determination notice.
2. Refuses the development.

Council Officers recommend Option 1.

CONCLUSION:

Based on the matters for consideration under Section 4.15 (evaluation) of the Environmental Planning & Assessment Act 1979, the proposed development has suitably demonstrated consistency with the relevant plans and policies that apply to the land. Where potential impacts in regard to traffic, access, parking and noise have been identified, appropriate conditions of development consent are recommended to mitigate such impacts and secure a positive development outcome for the site. As such based on the merits of the proposal the application is considered to be worthy of support and therefore is recommended for approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. NSW Police Comments dated 28 May 2018 (ECM 5511065)

4 [PR-PC] Singh's Quarry, 617 Numinbah Road North Arm

SUBMITTED BY: Building and Environmental Health

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.2 Asset Protection
- 1.2.1 Floodplain Management - To manage the risk of flooding and its impacts for property owners and the community.

ROLE: **Provider**

SUMMARY OF REPORT:

Updated Summary since 20 September 2018

Council at its meeting of 20 September 2018 resolved as follows:

"that this item be deferred to be considered at the next meeting of the 4 October 2018."

The report is now submitted for Council's determination.

Original Summary

At its meeting of 22 March 2018 Council resolved the following:

"That Council brings forward a report on the current state and any compliance issues at the three quarries off Numinbah Rd/Harry's Road/North Arm."

There are three quarries in this immediate area, one is owned by Council and two privately owned, known as Singh's Quarry and Sandercott's Quarry. Council Kinnear's Quarry and the southern-most Sandercott Quarry are no longer operational. It is understood that the eastern most quarry, Singh's Quarry is operational.

In response to the above resolution, Singh's Quarry was inspected by Council officers on Wednesday 30 May 2018. The investigation also considered recent complaints received about Singh's Quarry. The investigation found that the property is being generally operated in compliance with the DA and the associated Plan of Management.

There was no discharge identified from Singh's quarry to the nearby creek, and the garlic production area had acceptable silt fences in place. Further, while a landslide had occurred, staff did not consider this was result of the quarry operation.

In February 2018, a separate complaint was received following the reddish discoloration of water in the creek. The complainant was advised that this is usually the result of acid sulphate (acidification reduces pH and increases iron and or aluminium) as confirmed in test results.

While acidification was identified in preliminary water results taken on March 1 2018, at the time of the discoloration, a subsequent sample in May at Singh's Quarry suggested that this was not the source. However, in any future pollution events a more thorough catchment assessment including an assessment of holding ponds at Singh's Quarry is proposed.

The NSW Office of Environment and Heritage (OEH) also investigated a previous landclearing complaint and found no issues or breaches. OEH have closed their investigation.

RECOMMENDATION:

That the report be received and noted that additional monitoring and investigation be undertaken in the catchment by Council, if further pollution/acidification events are identified in relation to the operation of Singh's Quarry.

REPORT:

Council Resolution

At its meeting of 22 March 2018 Council resolved the following:

“That Council brings forward a report on the current state and any compliance issues at the three quarries off Numinbah Rd/Harry’s Road/North Arm.”

In response to the above resolution, Singh’s Quarry was inspected by Council officers on Wednesday 30 May 2018.

Council had also previously received a complaint regarding the three following issues:

- Land Clearing
- Land Slide
- Water Pollution

PHOTOS PROVIDED BY COMPLAINANT



Investigation

Council officers inspected the site on Wednesday 30 May 2018 and reported as follows:

The investigation considered all recent complaints received and found that the property is being generally operated in compliance with the DA and the associated Plan of management.

Land Clearing

TSC staff contacted the NSW Office of Environment and Heritage (OEH) who conducted an onsite inspection. OEH advised there were no compliance issues and the matter was closed.

Council advised the operator that sediment and erosion controls should be installed in earlier conversations. The land owner has installed sediment fencing along the lower perimeter fence and had dug this into the ground appropriately.

It was further advised that rock should be placed in the centre drain to slow water flows and prevent erosion. Staff advise that this issue is resolved and no further action is needed.

Land Slide

The land slide (photo previous page) can be seen from the lower portion of the property is a naturally occurring landslide that did not seem to be associated with any works at the quarry.

There was no evidence of a land slide starting from the eastern side of the quarry. The land owner advised this occurred during the 2017 flood weather event.

Staff advise that the landslide is not as a result of the quarry activities.

There was also no evidence of material being washed down from the quarry to the creek.

Water Quality and Sediment Control/Plan of Management

The quarry has an earth bund and surface water flows are largely directed to the site sediment pond. The sediment pond had a small volume of water and there was no evidence of elevated iron (0.17mg/L is low) indicating there is no acid rock discharge.

The owner has been requested to commence water quality testing in accordance with the plan of management. As can be seen from the attached figure the surface water catchment and flows from the quarry catchment are separate from the flows on the adjacent properties where water quality concerns have arisen.

Second Complaint: discoloration of creek

In February 2018 a complaint was received from a nearby resident about discoloration in the creek near his property. He advised that the problem has been occurring for the last 2-3 weeks following heavy rain events (with no fish kills). The complainant advised that the disused Council Quarry did not drain into this catchment, but believed the Singh's Quarry did.

The red discoloration is usually caused by acid sulphate soils being disturbed. When the disturbed oxygen depleted AS soil (which has iron sulphide) comes in contact with oxygen sulphuric acid is formed which releases the iron and aluminium in the soil.

Water quality samples were taken 1 March 2018 during a discoloration event.

Table 1: Water quality samples were taken 1 March 2018 during a discoloration event:

Sample Identification: Date Taken: Test	Method	Units	Harry's Rd 01/03/2018 180850-1	Numinbah Rd 01/03/2018 180850-2
pH	P1	pH units	6.4	5.7
Aluminium (Total)	M16	mg/L	0.38	0.20
Chromium (Total)	M16	mg/L	<0.001	<0.001
Copper (Total)	M16	mg/L	0.001	0.016
Iron (Total)	M16	mg/L	1.01	3.35
Manganese (Total)	M16	mg/L	0.041	1.53
Nickel (Total)	M16	mg/L	<0.001	0.018
Zinc (Total)	M16	mg/L	<0.005	0.033

Table 2: Water Quality Results taken at Singh's Quarry 30 May 2018:

Sample Identification: Date Taken: Test	Method	Units	Singhs Quarry 31/05/2018 181978-1
pH	P1	pH units	7.1
Suspended Solids	P4	mg/L	5.2
Aluminium (Total)	M16	mg/L	0.13
Chromium (Total)	M16	mg/L	<0.001
Copper (Total)	M16	mg/L	0.001
Iron (Total)	M16	mg/L	0.17
Manganese (Total)	M16	mg/L	0.032
Nickel (Total)	M16	mg/L	<0.001
Zinc (Total)	M16	mg/L	<0.005

Summary of the results:

Table 1 shows a pH of 6.4 and 5.7 which is slightly acidic and much higher Total Iron (3.35mg/L). The results indicate an acid sulphate event did occur, which warrants a broader assessment if another similar incident occurs in the future. In particular Council will need to sample multiple sites, across a broader catchment, including the pond at Singh's Quarry.

Table 2 results do not indicate that Singh's Quarry is the source of the acidification. Even though this sample was taken at a later date (May 2018) Council officers would have expected low pH and high Iron in the holding pond had this been the source of the acidification.

Suspended Solids (5.2 mg/L) did not exceed the 50mg/L in the plan of management and pH was 7.1 and not under the 6.5 within the plan of management. Singh's Quarry have advised Council that they will continue to take water samples, in line with their plan of management.

In addition, the site visit on 30 May found that the source of poor surface water quality is highly unlikely to be from the quarry due to the topography of the land. However, further testing is proposed if discoloration reoccurs and will be taken more broadly in the catchment to identify likely source of acid, including further assessment at Singh's Quarry.

AERIAL PHOTOGRAPHY: SINGH'S QUARRY



Singh's Quarry highlighted blue.

PREDICTED OVERLAND FLOWS

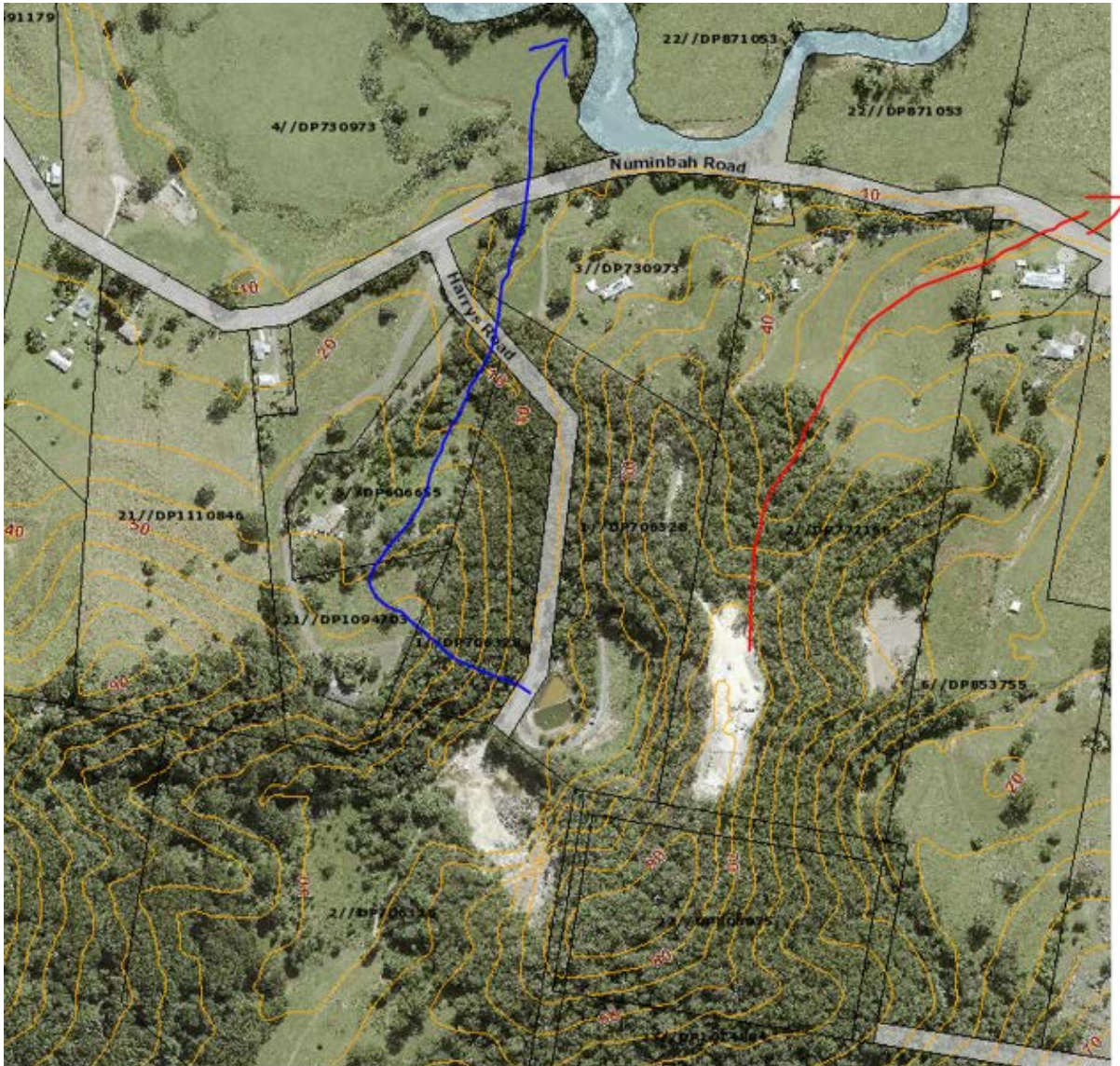


Photo 2 shows predicted overland flows using a topographic overlay on our GIS.

The blue line refers to predicted flows at Council's Kinnear's Quarry. The red is for Singh's Quarry, however this would need to be verified on ground in a future pollution investigation.

RELATIONSHIP TO COUNCIL'S KINNEARS QUARRY:

Council owns a disused quarry "Kinnear's Quarry" situated in a separate catchment to the west of Singh's Quarry. It has been inactive since December 2008. Given the topography of the location, and the nature of the complaints, Kinnear's Quarry is not considered to have contributed to the event.

Further, Council has met all of its obligations for a disused quarry under EPA licence No.20014 including submitting annual License Returns, following the Pollution Incident Response Management Plan (PIRMP) and publishing all test results on the EPA Pollution Monitoring website (access via Council's website www.tweed.nsw.gov.au/environment/ and select the EPA pollution monitoring tab).

The licence was last reviewed by the EPA in 2016 and next review date is August 2021. Council's Pollution Incident Management Plan was last tested in January 2017. Council has complied with the EPA licence, all reporting conditions and any non-compliances are publically available on the EPA website.

OPTIONS:

1. The report be received and noted that additional monitoring and investigation be undertaken in the catchment by Council, if further pollution/acidification events are identified in relation to the operation of Singh's Quarry; or
2. Council determine an alternative action.

Option 1 is recommended.

It is considered that the matter has been satisfactorily investigated and no compliance issues were identified.

However, if further complaints are received in respect of Singh's Quarry, these will be investigated. In particular, further discoloration (acidification) events will require a broader assessment to identify the source.

CONCLUSION:

Investigations by OEH and Council have not identified breaches of the POEO Act or the DA conditions for Singh's Quarry.

Upon reviewing the Plan of Management it has been requested the following be undertaken by Singh's Quarry on a yearly basis:

- Implementation of an event based surface water monitoring program specified in the Plan of Management; and
- Completion of an Annual Report that summarises annual extraction limits, surface water quality monitoring results and compliance with conditions of consent.

The Compliance Unit will ensure that water monitoring continues to be undertaken.

The Environmental Health Unit will undertake a broader water quality assessment if further acidification events are identified.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Letter and DA sent to property owner (ECM 5543843)

Attachment 2. Plan of Management Singh's Quarry (ECM 5543854)

5 [PR-PC] Work Priorities Plan 2018-19 - Strategic Planning & Urban Design Unit

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Behind the scenes
Providing support to make it happen

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

4	Behind the scenes
4.2	Support Services
4.2.2	Human Resources and Work Health and Safety - To support a productive, respectful and safe work environment.

ROLE: Collaborator

SUMMARY OF REPORT:

This report presents the updated three-part Strategic Planning and Urban Design (SPUD) Work Priorities Plan (“Unit Resourcing Plan”) Plan, Quarter 1 2018-19; Project Priority Schedule (“Priority Schedule”) and SPUD Priorities Plan (“Delivery Plan”) to June 2019.

The Priority Schedule has been updated to reflect Council’s resolution of 6 September 2018, which refined Council’s priority projects. The SPUD Delivery Plan identifies the timing and sequencing to undertake the projects relative to their priority.

Based on Council’s resolution the key project priorities until June 2019 are:

Priority 01

- Exhibition and finalisation of the Kingscliff Locality Plan including round table event.
- Progression of the Rail Trail Planning Proposal.
- Implementation of the Rural Villages Actions.
- Commencement of the E-Zone Review Process and community consultation.
- Commencement of the Fingal Head Locality Plan.
- Commencement of the Chinderah Locality Plan.

Priority 02

- Progressing the Wardrop Valley Masterplan and Planning Proposal.
- Progressing the Dunloe Park Masterplan and Planning Proposal.
- Finalisation of the Rural Land Strategy.
- Winchelsea Way Planning Proposal.
- Development Standards Planning Proposal.
- Bob Whittle Murwillumbah Airfield Planning Proposal.
- Zoning Amendments – Heights Planning Proposal.

Priority 03

- Exhibition of the Scenic Landscape Strategy.
- Progressing the Aboriginal Cultural Heritage Planning Proposal.
- Local Heritage Assistance Funding.
- Progression of the Palms Village Caravan Park Planning Proposal.
- Implementation of the Rural Land Strategy Actions.
- Ongoing inter-unit and inter agency coordination and advice.
- Initiate and report on the Private Native Forestry Workshop (complete).
- Initiate and report on Water Extraction Industry Workshop (complete).
- Advancing Council's Affordable Housing Policy Statement.
- Initiating Chinderah Round table workshop (P&R Division).

The recalibration of the SPUD Unit Resourcing Plan for the first quarter of the 2018-19 year reflects the Council's prioritisation of projects and relies on curbing some current resource commitments to service internal demand enabling a closer resource to commitment from 153.9% down to 139.9%.

There is an overall reduction in the level of resource commitment for priority 02 and 03 projects, as well as in other service areas provided by the SPUD. As such the Council resolved nomination of additional Priority 01 projects (E-Zone review, Fingal and Chinderah Locality Plans) has resulted in re-sequencing and delivery of both Priority 02 and 03 projects. This is a normal consequence of reprioritising a scarce resource relative to the demand for than resource.

The consequence of 'managing' the SPUD resources to deliver on the Council's resolved project priorities inevitably means that other lesser prioritised projects will not be commenced prior to June 2019, without a further resolution of the Council.

RECOMMENDATION:

That Council endorse:

- 1. The Work Priorities (Unit Resourcing) Plan Quarter 1, 2018-19; Project Priority Schedule 2018-19, and Priorities Plan (Delivery) 2018-19 for the Strategic Planning and Urban Design Unit, as presented in this report;**
- 2. The deferral of the Chinderah round table, and that it be included as part of any future community engagement strategy in relation to the Chinderah Locality Plan; and**
- 3. A further report on the Strategic Planning and Urban Design Unit's work program and resourcing be submitted by July 2019.**

REPORT:

Council resolved at the Planning Committee meeting on 6 September 2018:

- “1. *The Work Priority Schedule 2018-19 for the Strategic Planning and Urban Design Unit, provided as Table 1 to this report is adopted with the following changes:*
 - a) *The Fingal Head and Chinderah Locality Plan be treated as two separate locality plans and these plans along with the building heights review, be elevated to a priority 1 status,*
 - b) *The Environmental Zone review be elevated to a priority 1 status,*
 - c) *The MO conversion at Round Mountain and the Stokers Siding Planning Proposal be removed from the work program,*
2. *A further report be brought back to the October meeting on how the work program may need to be further adjusted to accommodate the above.*
3. *Any new planning proposals not be accepted until July 2019 and the Department of Planning and Environment to be duly notified.*
4. *A further Councillor workshop and work plan report be initiated in July 2019.”*

In response to this resolution, the SPUD Unit Resourcing Plan 2018-19 (Figure 1), Work Priority Schedule (Table 1) and have been updated to now reflect the resolved project priorities. In addition a SPUD Delivery Plan has been attached to this report (Table 2) which illustrates the sequencing and timing of proceeding with or initiating priority projects.

Notwithstanding Council’s resolved position to not initiate any new planning proposals before June 2019, the reprioritisation of the E-Zone review and consultation and commencement of both the Fingal Head and Chinderah Locality Plans has necessitated adjustments to both resource allocation and timing of priority 02 and 03 projects.

As such projects, and despite recent Council resolutions, projects which remained unresourced to commence until after June 2018 include:

- Local Strategic Planning Statements (Statutory requirement by June 2020).
- Review of the Murwillumbah DCP.
- Initiation of the Seabreeze estate planning proposal (School site).
- Initiation of the Halcyon House planning proposal (Additional permitted uses).
- Initiation of the Aboriginal culture heritage planning proposal.
- Amendment (or further resolved action) to the water extraction planning proposal.
- Review of the DCP A1 (Housekeeping).
- Commencement of a Local Growth Management Plan.
- Review of the Tweed Urban and Employment Land Release Strategy.
- Progression of an Affordable Housing Policy / Strategy.

Notwithstanding the inability to commence these projects in-house before June 2019, there is opportunity to engage external consultants to undertake certain projects. Whilst some of

these projects could be funded by cost recovery agreements, Council initiated projects would require funding from general revenue allocation of the 2019/20 financial year.

Figure 1 – Work Priorities (Unit Resourcing) Plan 2018-19, Qtr 1



Table 1: Project Priority Schedule 2018-19

Work Plan Priorities		
Locality Plans / Master Plans / Site Specific Plans	Project	Status
	Kingscliff Locality Plan	PRIORITY 1
	Fingal Head Locality Plan	PRIORITY 1
	Chinderah Locality Plan	PRIORITY 1
	Wardrop Valley Masterplan	PRIORITY 2
	Dunloe Park Masterplan	PRIORITY 2
Planning Proposals	Wardrop Valley Area 6 Extension	PRIORITY 2
	Winchelsea Way	PRIORITY 2
	Palms Village Caravan Park	PRIORITY 3
	Review of Development Standards	PRIORITY 2
	Bob Whittle Murwillumbah Airfield	PRIORITY 2
	Zoning Amendments – Height	PRIORITY 2
	Water Extraction (Cllr Resolution – workshop)	PRIORITY 3
	Rail Trail	PRIORITY 1
	Aboriginal Cultural Heritage Planning Proposal	PRIORITY 3
	E-Zone Review (From 1 st quarter 2019)	PRIORITY 1
Strategic Policy	Rural Land Strategy (Final endorsement)	PRIORITY 2
	Scenic Landscape Strategy (Exhibition)	PRIORITY 3
Programs Implementation	Implementation of the Rural Villages Actions	PRIORITY 1
	Implementation of the Rural Land Strategy	PRIORITY 3
	Local Heritage Assistance Funding	PRIORITY 3
Consultation Workshops	Kingscliff Roundtable	COMPLETE
	Water Extraction Stakeholders Workshop	COMPLETE
	Private Native Forestry Stakeholders Workshop	COMPLETE
Ongoing Tasks	Inter-unit coordination and advice	PRIORITY 3
	Tweed Valley Hospital coordination / advice	PRIORITY 3
	Tweed City Action Plans coordination / advice	PRIORITY 3

Table 2: SPUD Work Priorities Delivery Plan 2018-19

Work Plan Priorities - Delivery Plan		Jan	Feb	Mar	Apr	May	Jun
Locality Plans	Project	Jan	Feb	Mar	Apr	May	Jun
Master Plans	Kingscliff Locality Plan						
	Fingal Head Locality Plan						
	Chinderah Locality Plan						
Site Specific Plans	Wardrop Valley Masterplan						
	Dunloe Park Masterplan						
Planning Proposals	Wardrop Valley Area 6						
	Winchelsea Way						
	Palms Village Caravan Park						
	Development Standards						
	Bob Whittle Airfield						
	Zoning Amendments – Height						
	Water Extraction						
	Rail Trail						
	ACHMP Planning Proposal						
	E-Zone Review						
Strategic Policy	Rural Land Strategy						
	Scenic Landscape Strategy						
Programs Implementation	Rural Villages Strategy Actions						
	Rural Land Strategy Actions						
	Local Heritage Assistance						
Ongoing Tasks	Advice and referrals						

Project Activity
Exhibition / consultation

Kingscliff Locality Plan and Development Control Plan (KLP & DCP)

The formal public exhibition of the Kingscliff Locality Plan which has included four community round table workshops attracting over 300 people will conclude on the 24 September 2018. Given the comprehensive feedback which was received from the round table events, it is anticipated the feedback review period will undertake in coming months with a final KLP & DCP being reported back to Council by the end of 2018.

Fingal and Chinderah Locality Plans

Following the nomination of the Fingal Head and Chinderah as separate Locality Plans, it is anticipated that the project inception including the preparation of the project plan, budget and community engagement strategy will commence in December 2018.

It is acknowledge that Council has resolved to host a community round table to discuss issues surrounding the proposed Chinderah Tavern redevelopment. Given the current status of the development application and forthcoming initiation of the locality plan process there is opportunity to defer this site specific round table event to be considered more broadly within the context of this plans community engagement strategy. A similar round table workshop would also be hosted in Fingal Head as part of its locality plan consultation process.

Following the development of each of the project plans and community engagement strategies, appropriate budget allocations will be sought within the 2019/20 financial year.

E-Zone Review

Following Council's resolved nomination of the E-Zone review as a priority 01 project, SPUD will work with NRM Unit in preparing for a 'pre-gateway' community consultation event ear marked for the first quarter of 2019. Whilst a significant amount of work has been undertaken by NRM to date in terms of application of E-Zone criteria, collection of data and GIS mapping, there remains a substantial body of coordinated work which needs to be undertaken prior to the initiation of a pre-gateway consultation event. This includes:

- Peer review from Department of Planning and Environment and Office of Environment and Heritage;
- Refinement and review of land use tables;
- Preparation of a communication and engagement plan;
- Allocation of a budget for community consultation;
- Preparation of support material including mapping, web-interface, factsheets and exhibition panels.

Combined SPUD Community Engagement Projects to June 2019

As identified within Table 2 – SPUD Work Priorities Sequencing Plan 2018-19, there is opportunity to expedite the community consultation processes of the Rail Trail, Rural Land Strategy, Rural Village Strategy (Actions Implementation) and Scenic Landscape Strategy together with the Tweed Shire Open Space to be undertaken in October and November 2018 at selected locations.

The grouping of these interrelated projects as a combined consultation event seeks to deliver and consult with the community more efficient and convenient and cost saving manner.

Presenting this collection of projects concurrently builds upon the success of the Kingscliff shopfront exhibition will provide the unique opportunity for community members to be informed about each of the projects and make comments and submissions in selected locations.

Local Strategic Planning Statements

In March 2018, amendments to the Environmental Planning and Assessment Act 1979 (EP&A Act) introduced new requirements for councils to prepare a Local Strategic Planning Statement (LSPS).

The intent of the LSPS is to set out:

- the 20-year vision for land use in the local area;
- the special characteristics which contribute to local identity;
- shared community values to be maintained and enhanced; and
- how growth and change will be managed into the future.

The statements will assist to implement actions in the North Coast Regional and District Plans, and the council's own priorities in the Community Strategic Plan it prepares under local government legislation.

Council officers are currently liaising with other NOROC Councils with a view to potentially develop LSPS in a consistent format but with local content across the region. It is a requirement that local Council areas outside of the Greater Sydney region must have their statements in place by July 2020. As such the preparation of the LSPS will need to be nominated as a priority 01 project from June 2019.

Following the development of each of the LSPS project plan and community engagement strategy, appropriate budget allocations will be sought within the 2019/20 financial year.

OPTIONS:

That Council:

1. Adopts the revised work program and schedule of project priorities as detailed in the 'Recommendation' to this Report, or
2. Amends or defers the work program or part thereof.

CONCLUSION:

The Council resolved review of the SPUD work plan and subsequent nomination of additional priority 01 has necessitated the re-sequencing and delivery timing of a number of priority 02, 03 projects. In addition there are a number of standing Council resolutions on strategic planning matters including resolutions to progress planning proposals (Seabreeze estate School site, Halcyon House, amend Water extraction planning proposal) and additional community engagement (Chinderah round table) which remain unresourced and unable to commence before June 2019.

In addition, a number of other key strategic planning projects including the statutory requirement to prepare Local Strategic Planning Statements which will need to be prioritised as part of the SPUD work plan beyond June 2019 with an appropriate funding allocation to undertake this work. Similarly, budgets to progress the Fingal and Chinderah Locality Plans and E-Zone review will form the basis of a future report to Council once a project plans and community engagement strategies have been undertaken.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Under provision of staff resourcing in proportion to the existing and scheduled projects risks the delay in the delivery of projects. Escalation of strategic planning strategies and the introduction of new strategies may have implications for the long term financial plan if they require funding. This includes additional community consultation which introduces significant additional staff resourcing and financial costs.

Allocation of project budget will need to be made for the 2019/20 financial year for a number of strategic projects including the preparation of the Local Strategic Planning Statements, preparation of the Fingal and Chinderah Locality Plans and the E-Zone Review.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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

SUBMITTED BY: Director



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes there are no variations for the month of September 2018 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

In accordance with that Planning Circular, no Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
