



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

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

Agenda

Planning Committee Meeting Thursday 1 March 2018

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C

79C Evaluation

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

(a) the provisions of:

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

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

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

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

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

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

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

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

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

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

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

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

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Items for Consideration of Council:

ITEM	PRECIS	PAGE
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1	[PR-PC] Development Application DA16/0852 for a Dwelling House and Secondary Dwelling at Lot 2 DP 1201210 No. 5 North Hill Court Tanglewood	6
2	[PR-PC] Development Application DA17/0536 for Shop Top Housing and Commercial Premises at Lot 1 Sec 4 DP 4570 No. 79 Wharf Street, Lot 2 Sec 4 DP 4570 No. 81 Wharf Street Tweed Heads, Wharf and Frances Streets, Tweed Heads	70
3	[PR-PC] Development Application D91/0266.01 for an Amendment to Development Consent D91/0266 for the Erection of a Three (3) Storey Mixed Development Comprising Seven (7) Shops and Five (5) Flats With Associated Car Parking at Lot 3 SP 64511, No. 3/31-33 Tweed Coast Road Bogangar	162
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REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

1 [PR-PC] Development Application DA16/0852 for a Dwelling House and Secondary Dwelling at Lot 2 DP 1201210 No. 5 North Hill Court Tanglewood

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

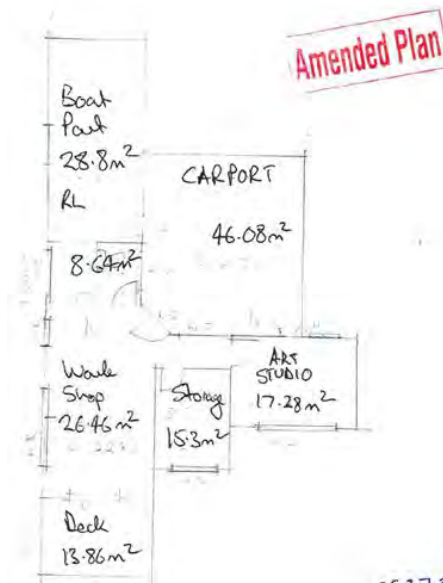
ROLE: **Provider**

SUMMARY OF REPORT:

In November 2016 Council received the subject Development Application which seeks consent for the erection of a dwelling house, shed extension, and the use of a structure previously approved as a workshop, art studio and storage area for use as a secondary dwelling.

The Development Application was received following compliance investigation over the site as Council was notified that an approved art studio (DA15/0199) at the site was being used for habitable purposes.

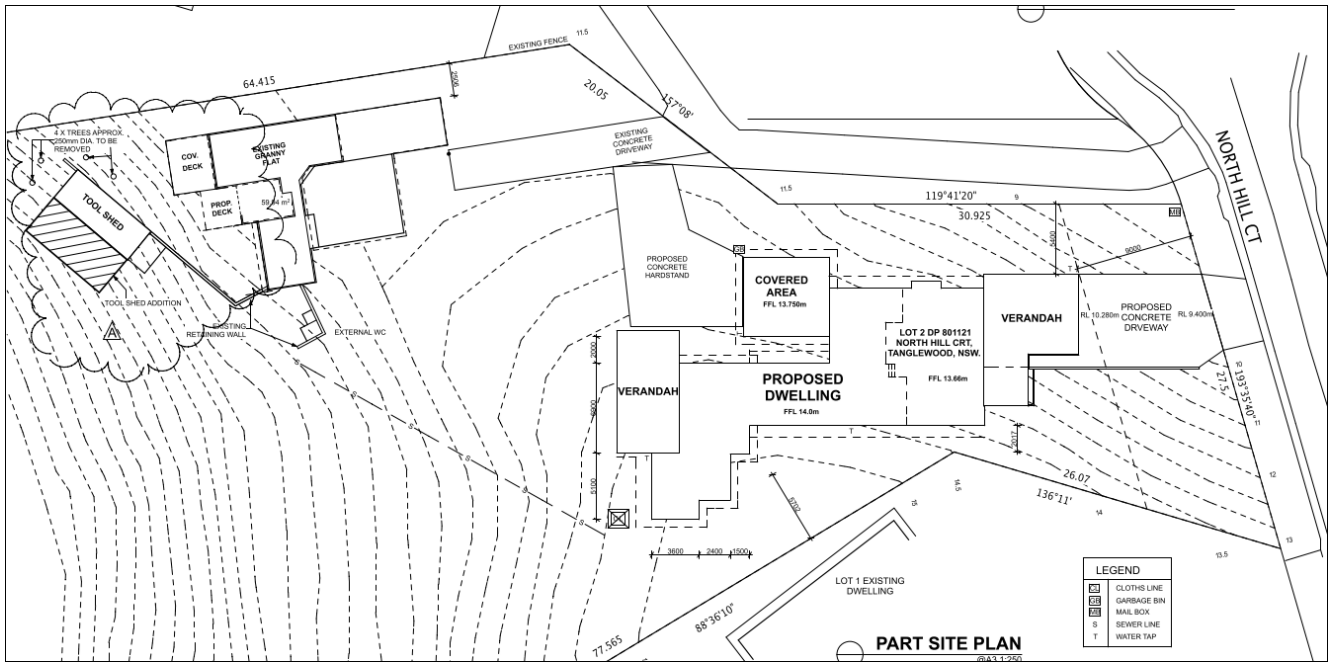
The approved art studio under DA15/0199 was meant to have the following layout and uses:



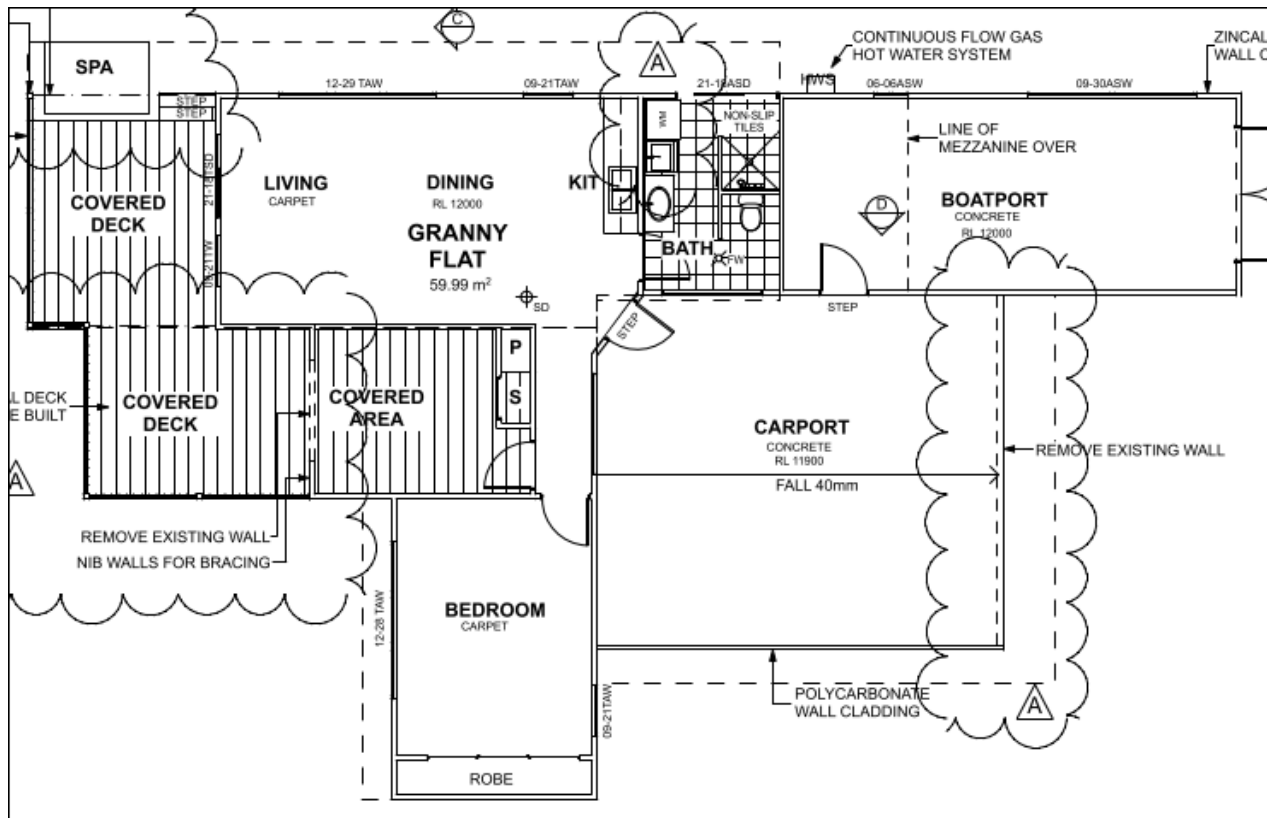
The site is zoned RU5 Village, and benefitted from a 6 lot subdivision in 2008 which created the subject site with 4256m² of land. The site currently contains:

- an approved boatport (which has been converted to a bedroom with loft sleeping quarters),
- an approved double carport (which was previously being used as an enclosed lounge room and laundry but has since been converted back to a carport),
- an approved structure (for workshop, storage, and art studio) comprising 73.66m² which is and has been used as a habitable structure without approval since September 2016 (kitchen installed in workshop area, storage space converted to a bedroom and art studio converted to a bedroom all without consent).
- An external spa (which originally did not meet the exempt development provisions but has since been amended to comply with the exempt development provisions)
- A 20.9m² shed is also located on the site approximately 3.2m to the rear of the approved structures (this structure was not shown on the plans for DA15/0199 and does not meet the exempt provisions for a shed as the structure is located between 3.18m and 5.4m from the neighbouring block when the exempt provisions require a 5m setback)

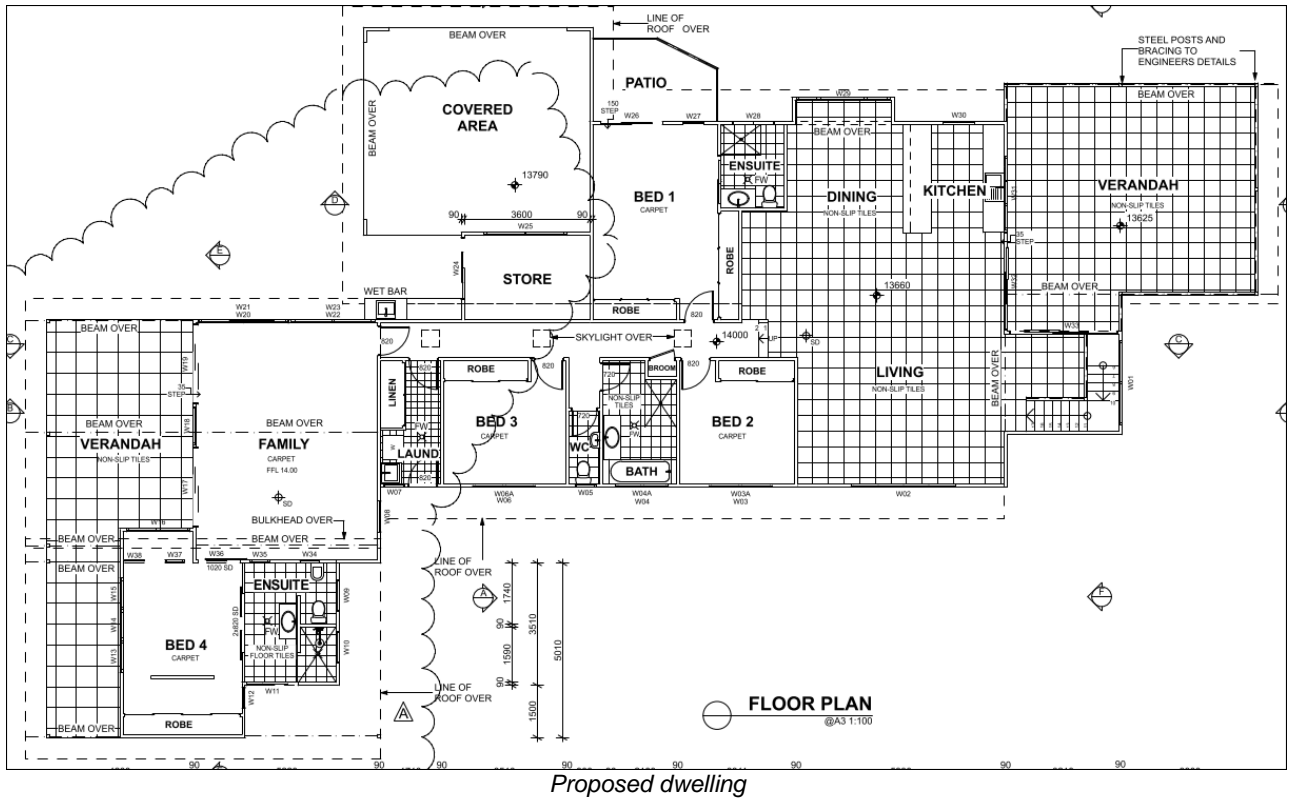
The approved structures onsite have been modified without approval and are currently being used for habitable purposes without approval. This application seeks to rectify this by seeking approval for conversion of the current structures to a secondary dwelling (this would involve a reduction of the 73.66m² floor area to comply with the 60m² requirements for secondary dwellings) and construction of the first main dwelling house on the site. The application also seeks approval for a 24.5m² extension to the existing fibre cement clad and colorbond roof unauthorised shed and use of the existing shed to legalise the use going forward.



Proposed site plan



Proposed secondary dwelling currently approved as an art studio, workshop, car port and boat port



The assessment of this application has been prolonged due to the delayed responses by the applicant to Councils requests for further information which included requests for certification and compliance certificates for unauthorised works, detailed survey reports as well as amended plans.

This application has been subject to extensive objections by the neighbour to the north of the site. The objector has written to Council, the Ombudsman, the local member, the Mayor and the Department of Planning. The nature of the objections have included the unauthorised habitable use of the structures, the privacy implications of the structure and its windows, the inaccuracy of the plans, the secondary dwelling exceeding the 60m² provisions, the ability for any approved structures (boat port and storage area) to continue to be used illegally as its been used illegally since 2016 and nothing has happened, the removal of vegetation to accommodate the expanded shed, and compliance with BCA and fire provisions. Council has responded to every enquiry with a status update and an explanation that the application is being assessed on its merits. The following report and attached summary of submissions has considered all matters raised by the objector and it is concluded that the application warrants **conditional** approval. However it will be imperative that such conditions are monitored and enforced by Council given the history of the subject site.

RECOMMENDATION:

That:

A. Council issue two Penalty Infringement Notices to the land owner for:

- 1. non-compliance with Condition 40 of DA15/0199 which stipulated that the building was not to be used for any habitable, commercial or industrial purpose without prior approval of the Council; and**

2. undertaking building works (installation of a kitchen, and construction of a shed) without approval
- B. Council advise the applicant that further compliance action may be undertaken in association with the proposed secondary dwelling (the boatport and approved storage area under DA15/0199 are not to be used for habitable purposes and are to be reinstated as a boatport and outdoor living area as endorsed by this consent) after 120 days of the issuing of this consent.
- C. Development Application DA16/0852 for a dwelling house and secondary dwelling at Lot 2 DP 1201210; No. 5 North Hill Court Tanglewood be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans prepared by Bischoff Building Design and dated 4 December 2017, as amended in red:

- Site plan Drawing No. DA.2.02 Revision A;
- Carport floor plan Drawing No. DA.3.01;
- Floor plan Drawing No. DA.3.01;
- Carport floor plan Drawing No. DA.3.02 Revision A;
- Roof plan Drawing No. DA.3.03 Revision A;
- Elevations Drawing No. DA.4.01 Revision A;
- Elevations Drawing No. DA.4.02 Revision A;
- Sections Drawing No. DA.5.01 Revision A;
- Sections Drawing No. DA.5.02 Revision A;
- Sections Drawing No. DA.5.03;
- Granny flat floor plan Drawing No. DA.8.01 Revision A;
- Granny flat roof plan Drawing No. DA.8.02 Revision A;
- Sections Drawing No. DA.8.04 Revision A;
- Elevations Drawing No. DA.8.03 Revision A;
- Tool shed plans Drawing No. DA.9.01;

except where varied by the conditions of this consent.

[GEN0005]

2. Within 120 days of issuing this consent the applicant is to lodge a Building Certificate for the conversion of the approved Class 10a Building (Art Studio) to a Class 1a Building (Secondary Dwelling). This needs to include the unauthorised installation of the mezzanine and kitchen.
3. Within 120 days of issuing this consent the applicant is to lodge a Construction Certificate demonstrating compliance with the following provisions:
 - The total floor area of the secondary dwelling (excluding the boat port, carport and external decks) is not to exceed 60m². The current plans show a floor area of 61.82m² as a pantry has been installed and needs to be removed and converted back to an external deck area.

- The approved storage area (under DA15/0199) has been converted to a bedroom without approval and must be reverted back to an outdoor living areas as shown on the approved plans for DA16/0852
- The existing window in the existing unauthorised shed is to be removed and replaced with a solid wall as the existing and proposed shed is not to have any windows on the northern elevations.
- Partially remove the wall of the southern elevation of the approved carport so that the southern elevation of the carport is substantially open (approximately 50% open).

[GEN0005]

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

[GEN0115]

5. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]

6. **Bushfire Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building.

- (a) At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

[GEN0320]

7. **Bushfire Water and Utilities**

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

- (a) Electricity and/or gas services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

[GEN0325]

8. **Bushfire Design and Construction**

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

- (a) The proposed dwelling and carport shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings

in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

- (b) The existing studio/secondary dwelling is to be upgraded to improve ember protection. This is to be achieved by enclosing all openings or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, external doors, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

[GEN0335]

9. Bushfire Landscaping

- (a) Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

[GEN0340]

10. This consent does not approve any tree removal. Any proposed future tree removal requires an application to be submitted to Council for approval where statutorily required.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0285]

12. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

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

[PCC0945]

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

[PCC1195]

PRIOR TO COMMENCEMENT OF WORK

15. The erection of a building (in this case the principal dwelling house, alterations and additions to secondary dwelling as required by Condition 3

and the extension of the tool shed) 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 license 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]

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

[PCW0225]

17. Residential building work:

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

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

* in the name and licence number of the principal contractor, and

* the name of the insurer by which the work is insured under Part 6 of that Act,

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

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

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

[PCW0235]

18. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

19. 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]

20. Prior to commencement of building works a stormwater drainage plan is to be submitted to and approved by the Principal Certifying Authority.

[PCW0955]

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

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

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

[PCW0985]

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

[PCW1005]

- 23. An application to 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]

- 24. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.**

[PCW1170]

DURING CONSTRUCTION

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

[DUR0005]

- 26. If during construction works and Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment and Heritage are to be notified immediately, in accordance with the provisions of the National Parks and Wildlife Act 1974.**

[DUR0025]

- 27. 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]

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

[DUR0245]

- 29. 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]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

- 33. The finished floor level of the building should finish not less than 225mm above finished ground level.**

[DUR0445]

- 34. Any cut or fill on the property is to be battered at a ratio not greater than 1:2 (v:h) within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.**

Please note timber retaining walls are not permitted.

[DUR0835]

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

[DUR0905]

- 36. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.**

[DUR1075]

- 37. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.**

[DUR1955]

- 38. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.**

[DUR2015]

- 39. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site,**

and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site.

[DUR2185]

40. 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]

41. 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]

42. 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]

43. 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]

44. Should any Aboriginal object or cultural heritage (including human remains) be discovered all site works must cease immediately and the Tweed Byrin Local Aboriginal Land Council (TBLALC) Aboriginal Sites Officer are to be notified (on 07 5536 1763). The find is to be reported to the Office of Environment and Heritage. No works 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.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

45. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless

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

[POC0205]

- 46. Prior to the issue of an occupation certificate,**
- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and**
 - (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-**
 - (i) the method of protection; and**
 - (ii) the date of installation of the system; and**
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and**
 - (iv) the need to maintain and inspect the system on a regular basis.**
- 47. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).**
- [POC0235]
- 48. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.**
- [POC0355]
- 49. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.**
- [POC0435]
- 50. Prior to the occupation of any building and prior to the issue of any occupation certificate approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993 shall be obtained from Council.**
- [POC1035]
- 51. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.**
- [POC1040]
- 52. Prior to the issue of an occupation certificate building certificate is to be obtained in respect of the mezzanine, kitchen and works associated with the conversion of the outbuilding to a secondary dwelling.**
- [POC1055]
- [POCNS01]
- 53. Prior to the issue of an occupation certificate a smoke detector is to be installed in the secondary dwelling in accordance with the requirements of Part 3.7.2 Smoke Alarms of the NCC-Building Code of Australia. A certificate from a licensed electrician certifying that the new smoke alarms in accordance with AS 3786 and have been connected to the consumer mains power is to be submitted to the PCA.**
- [POCNS02]
- 54. Completion and certification of bushfire upgrading works as specified in the Bushfire Report prepared by Bushfire Risk Pty Ltd - April 2017.**
- [POCNS03]

USE

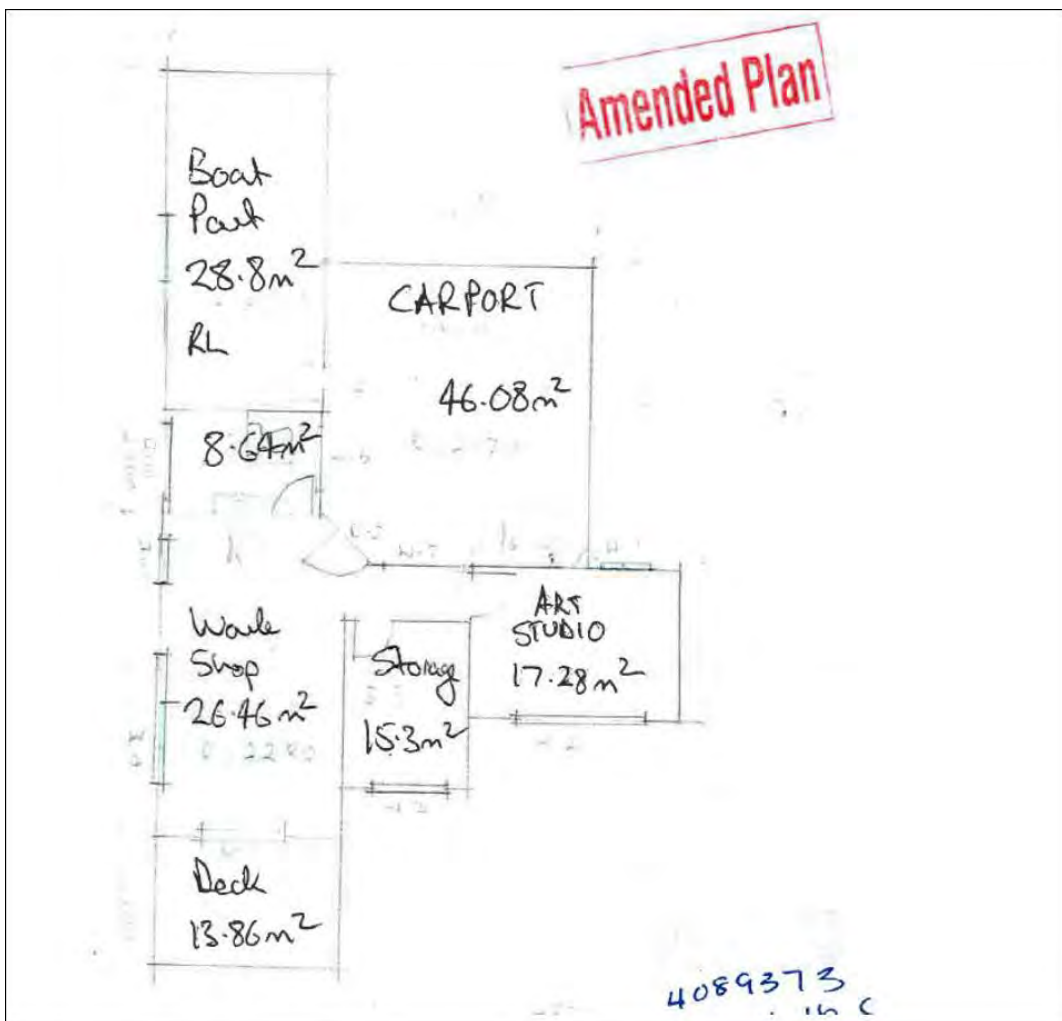
- 55. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.**
[USE0125]
- 56. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any 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]
- 57. 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]
- 58. The external living areas of the secondary dwelling are not to be adapted or enclosed for habitable use.**
[USE0465]
- 59. The shed is not to be adapted or used for habitable purposes.**
[USE0475]
- 60. The car port and boat port of the secondary dwelling must not be adapted or used for human habitation or occupation.**
[USE0475]
- 61. The primary dwelling is to be used for single dwelling purposes only and not be adapted so as to be used as two domiciles.**
[USE0505]
- 62. Subdivision of the development, including strata subdivision, is not permitted.**
[USE1255]

REPORT:

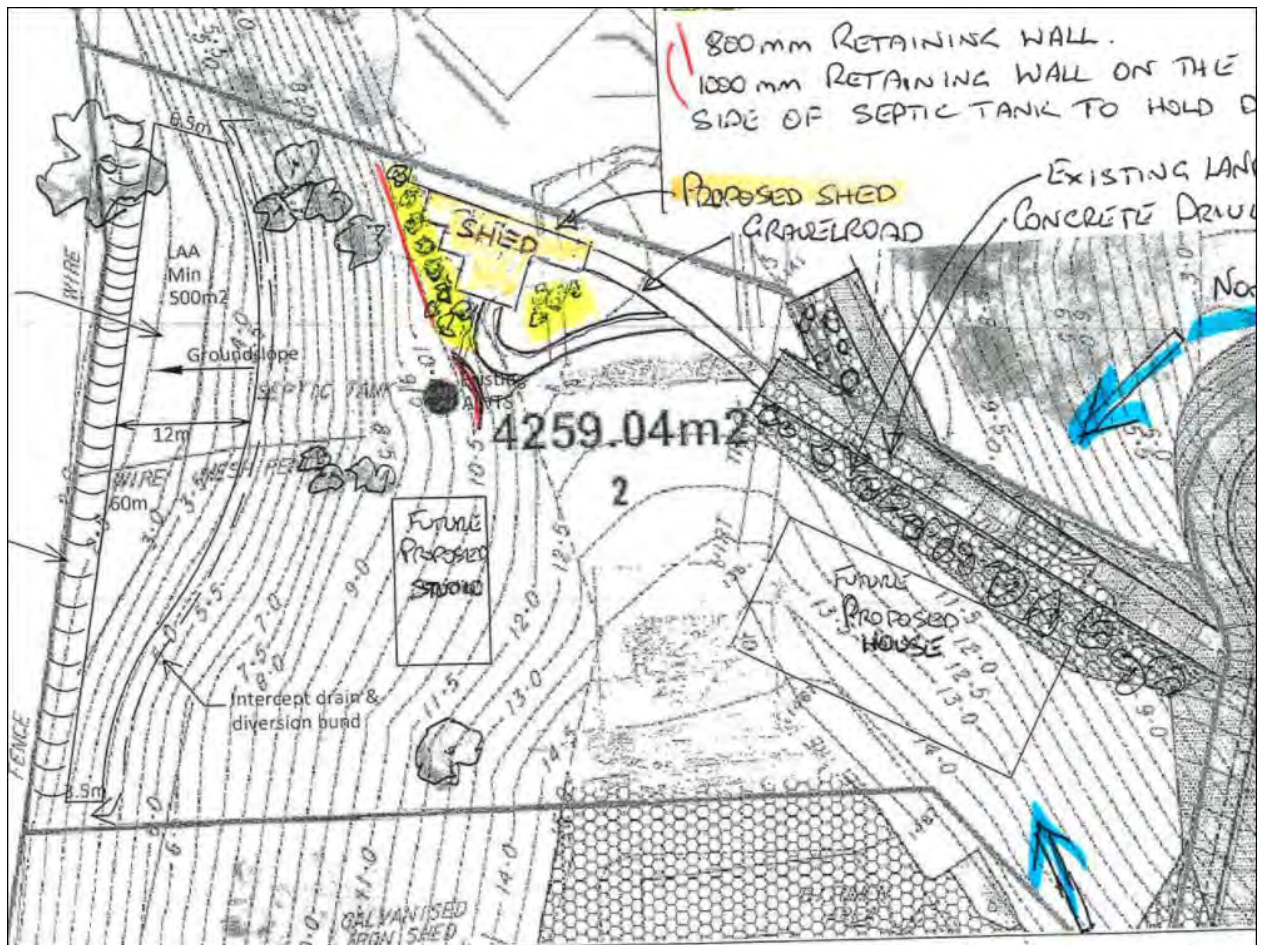
Applicant: Ms LA Raussin and PD Kirkland
Owner: Mr Peter D Kirkland & Ms Laetitia A Raussin
Location: Lot 2 DP 1201210; No. 5 North Hill Court Tanglewood
Zoning: RU5 - Village
Cost: \$225,000.00

Background:

Development approval DA15/0199 for carports (single boatport and double carport), art studio, workshop, storage area, excavation and retaining wall for future house pad was approved on 13 May 2015. The consent was imposed with a condition stating that the building is not to be used for habitable purposes without prior approval from Council.



Plans DA15/0199



Site plan showing location of art studio and associated structures adjacent to northern boundary

In September 2016 Council received a complaint that the owner of the property was living in the approved structures. An inspection by Council Officers confirmed that the building had been modified without consent and was (and still is) being used for habitable purposes without approval. The land owner was directed to submit an application seeking approval for the conversion of the building to a secondary dwelling and for the construction of a primary dwelling house to rectify the situation. Compliance action for the unauthorised use and illegal building works to the art studio have not been initiated while DA16/0852 has still been under assessment. However the recommendation within the report is to issue two penalty infringement notices for the illegal work and use.

Unauthorised Works

A site inspection following submission of the application revealed unauthorised works had been undertaken to the approved building currently located on site. The unauthorised works included:

- Construction of a kitchen and associated plumbing works within the approved workshop area;
- Installation of a laundry and associated plumbing in the approved carport;
- Construction of a mezzanine level (loft) in the approved boat port;
- Conversion of the art studio to a bedroom;
- Conversion of the storage area to a bedroom;
- A detached toilet and retaining walls;
- A spa located within 1m of the lot boundary;

- An attached awning within the northern site setback which was used to cover outdoor timber.



Kitchen installed in workshop area



Laundry installed in carport area



Mezzanine (loft) installed in boatport area



Art Studio space converted to bedroom



Storage Area converted to a bedroom



External Toilet and retaining wall erected without approval



External Spa located on boundary which does not meet the exempt provisions



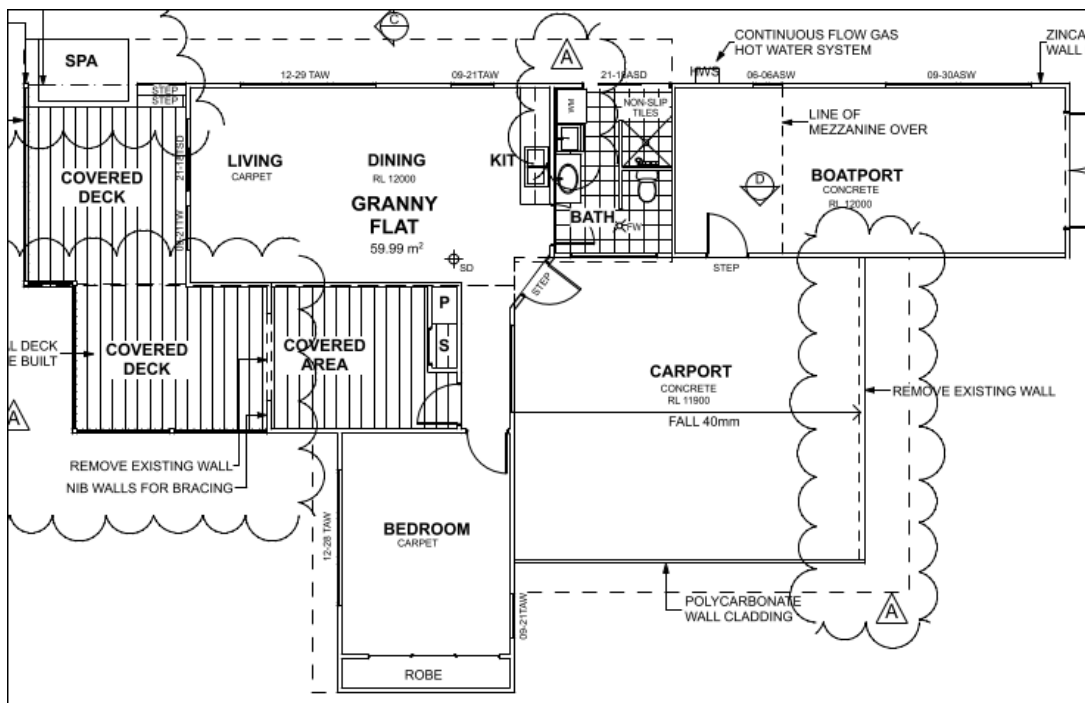
View of the structure from the neighbours property with unapproved awning to the boundary

The submitted application is seeking approval for the use of the previously approved workshop, art studio and storage area as a secondary dwelling. The approved carport and boatport are to be converted to the approved use and as such the applicant was requested to cease habitation of these areas as well as to remove non complying structures being the spa within the site setback and the attached awning which was being used as a timber storage area.

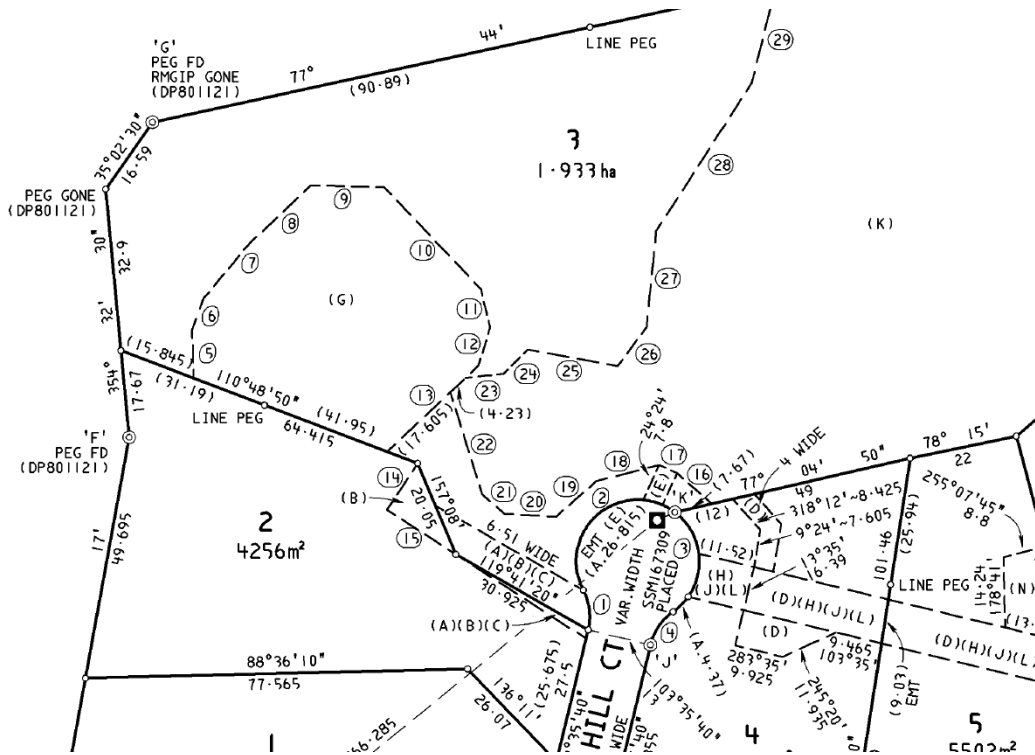
It appears that the applicant has complied with this request however the workshop, storage and studio areas continued to be used for habitable purposes pending the outcome of this application.

Proposed secondary dwelling

The proposed secondary dwelling will consist of one bedroom, bathroom, kitchen/dining/living, external living area, attached carport and boat shed (including 7.5m² mezzanine) nominated as boatport storage. Access to the secondary dwelling will be from the existing shared driveway with the neighbouring lot as authorised on title by way of a right of carriageway benefiting the subject site. The primary elements of the secondary dwelling are already constructed with some alterations required to ensure compliance with National Construction Code. Further alterations are required to reduce the floor area of the structure to meet the 60m² standard required for secondary dwellings, this will be achieved by removing one of the bedrooms and converting this space to an external deck. The unapproved alterations to the previously approved structure will need to be the subject of a building application.

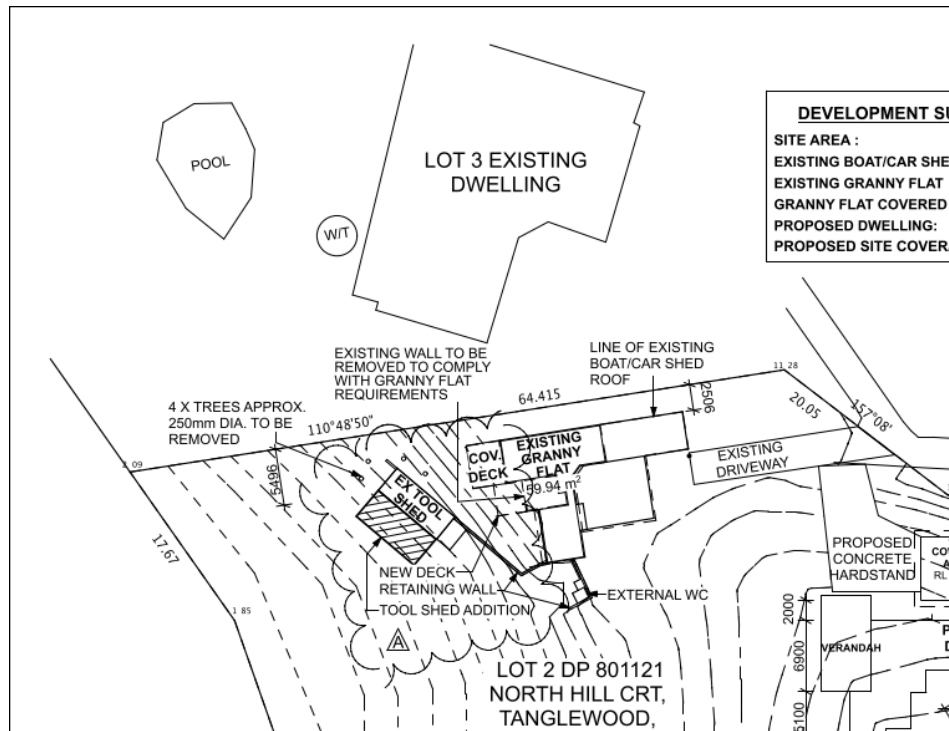


Proposed Secondary Dwelling Layout



Existing access to the secondary dwelling over right of carriageway (shared driveway) over the neighbouring Lot 3

The secondary dwelling is located 2.5m from the northern boundary of the site and is located approximately 9m from the dwelling on the adjoining property (refer to images below). The residents of the adjoining property have made numerous complaints regarding visual, acoustic and amenity impacts resulting from the habitable use of the approved studio and have made formal submissions objecting to the application.



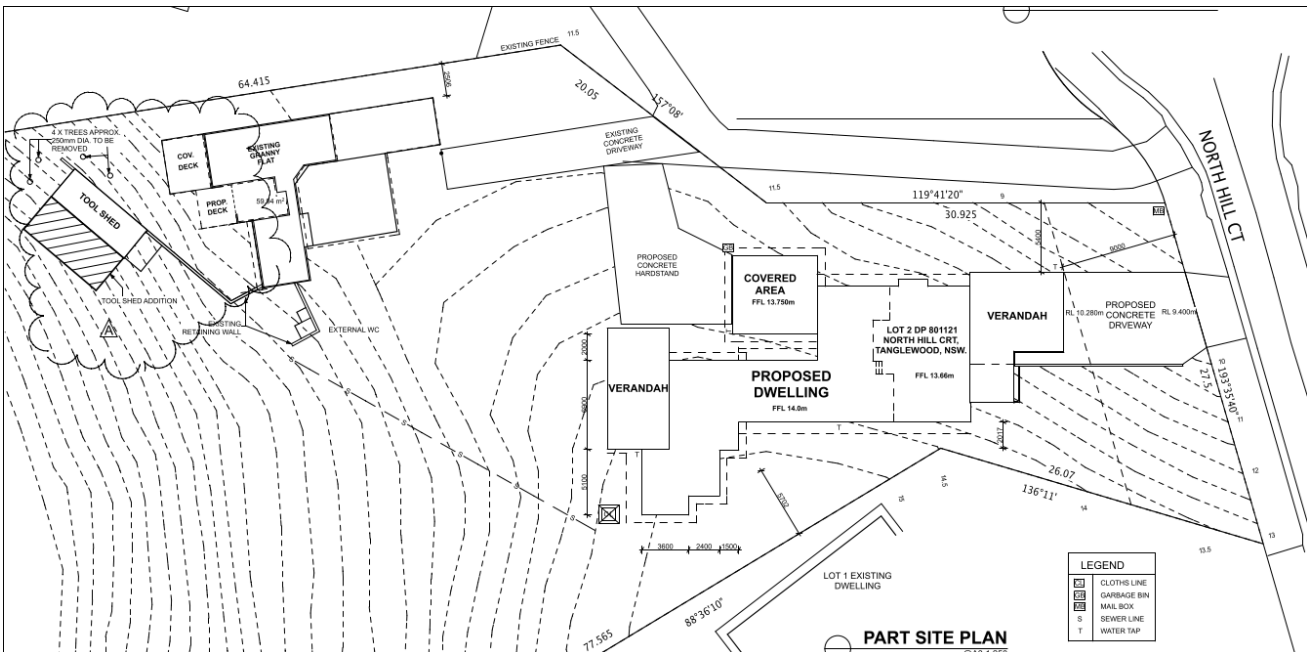
Site Plan showing setbacks from northern most property



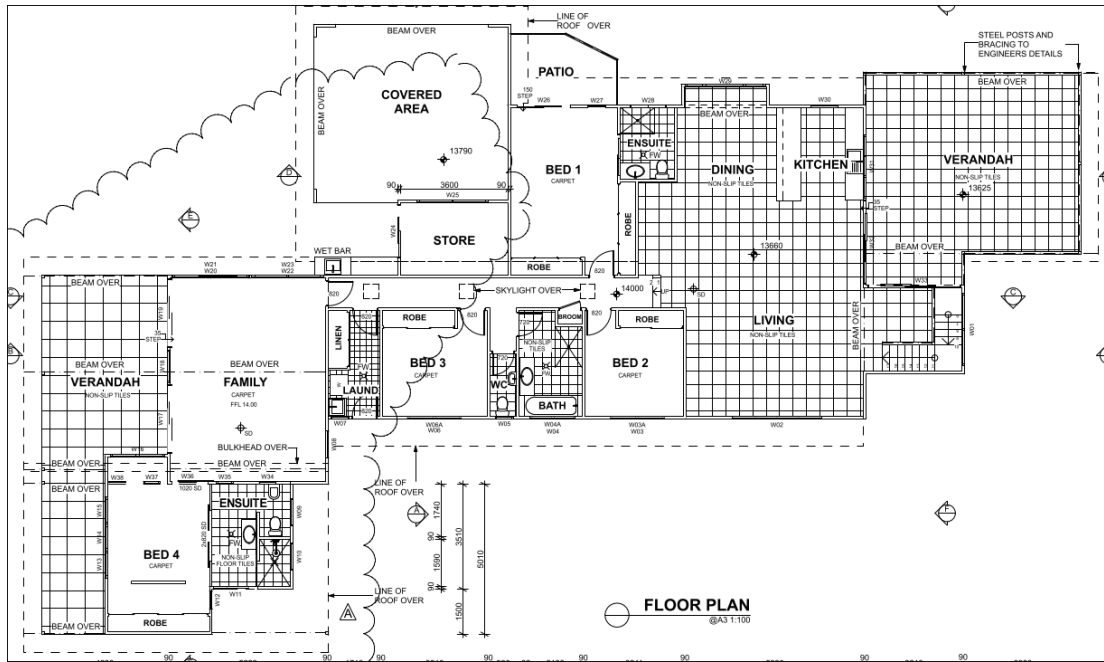
Google Satellite image showing the location of the existing structures relative to the neighbours house to the north (note the neighbours pool at the rear as a concern has been raised in regard to lack of privacy to the pool area)

Primary dwelling

The proposed primary dwelling consists of 4 bedrooms, kitchen/dining/living room, family room, 2 bathrooms, laundry, 3 external living areas, external attached storeroom, and 2 carports (one on a sub level). It is also proposed that the principal dwelling will utilise a new separate driveway to the secondary dwelling. This new secondary driveway access off North Hill Court is proposed 8.8m from the existing shared access which will remain in place for the secondary dwelling.

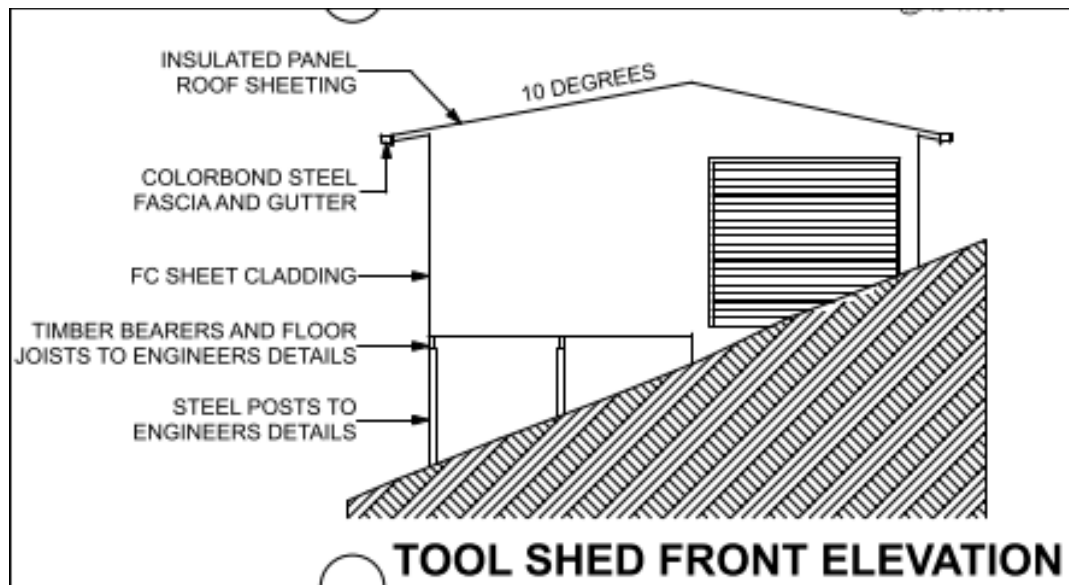


Site Plan showing new driveway access

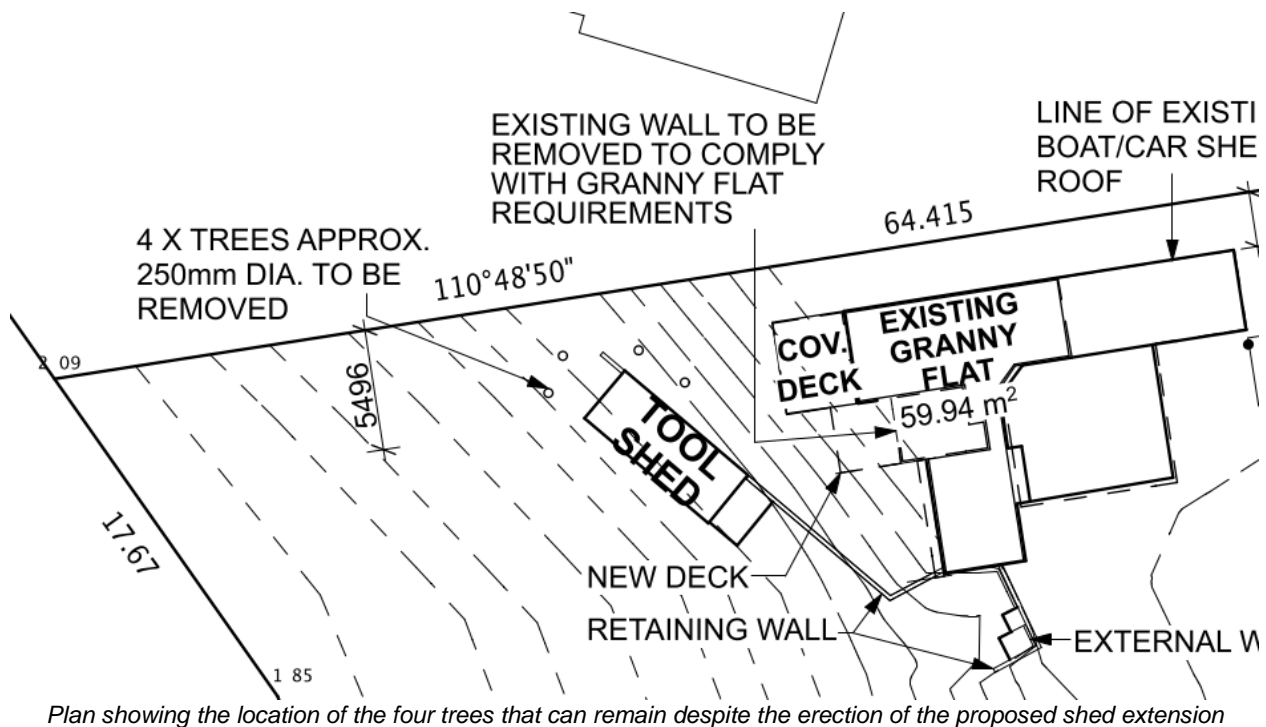


Floor Plan of proposed house

The application also seeks approval for a 24.5m² extension to the existing fibre cement clad and colourbond roof shed.



The application as submitted indicated that four trees were proposed to be removed to accommodate this additional shed area. However a site inspection and discussion with the land owner has indicated that the four trees could actually remain in place and do not need to be removed to accommodate the shed. A condition of consent in this regard is recommended to ensure no trees are approved as part of this application.



The application as originally submitted was notified to neighbouring properties with one submission being received. Following the receipt of amended plans the application underwent a further notification process with one additional submission being received. An assessment of the submissions is detailed later in this report.

This application has been subject to extensive objections by the neighbour to the north of the site. The objector has written to Council, the Ombudsman, the local member, the Mayor and the Department of Planning. Council has responded to every enquiry with a status update and an explanation that the application is being assessed on its merits.

The following is a brief overview of history of the application:

21 Nov 2016	Application lodged
29 Nov 2016	Notification to neighbours
11 Jan 2017	Site visit
20 Jan 2017	Further information letter
30 Jan 2017	First response from applicant to RFI to address some items in RFI. Other matters pending
17 Mar 2017	Request to applicant to submit a response and amended plans to outstanding matters from RFI
18 Mar 2017	Response from applicant informing that the collation of required reports, surveys, certification etc. is ongoing
5 May 2017	Request to applicant to submit a response and amended plans to outstanding matters from RFI. Response required urgently
9 May 2017	Response from applicant - waiting on engineering and surveyors report.
14 Jun 2017	Request to applicant - still waiting on outstanding matters

14 Jun 2017	Response from applicant – one more report due in a week
19 June 2017	Submission by applicant of requested information from RFI of 20 Jan and includes amended plans
20 Jun 2017	Internal referral of application to relevant units
28 June 2017	Re-notification of amended plans
13 Sep 2017	Request to applicant for additional information
17 Oct 2017	Request to applicant to submit a response
18 Oct 2017	Response from applicant – need more time
24 Nov 2017	Site visit by Building Services Unit
6 Jan 2017	Response from applicant to include additional information and final amended plans
14 Feb 2017	Final site visit
16 Feb 2017	Preparation of Council Report

The following report and attached summary of submissions has considered all matters raised by the objector and it is concluded that the application as amended warrants conditional approval. However, the conditions will need to be monitored for compliance given the history of non-compliance on the site.

SITE DIAGRAM:



Site Plan

Lot 2 DP 1201210
No. 5 North Hill Court, Tanglewood.

0 0.25 0.5 Km
1:20,000



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  Cadastre: 22/01/2018
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Coordinate System - MGA Zone 56
Datum - GDA 94

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Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 815
Murwillumbah NSW 2484

T: (02) 6670 2400 / 1300 292 872
F: (02) 6670 2483
W: www.tweed.nsw.gov.au
E: planningforms@tweed.nsw.gov.au



Date Printed: 15 February, 2018

AERIAL IMAGE:



1:1,000 @ A4 Portrait
 0 10 20 m
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COPY ONLY - NOT CERTIFIED
 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geodetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56
GDA

Civic and Cultural Centre
 3 Tumbulgum Road
 Murwillumbah NSW 2484
 PO Box 818
 Murwillumbah NSW 2484
TWEED
 SHIRE COUNCIL
 T (02) 6670 2400 | 1300 292 872
 F (02) 6670 2429
 W www.tweed.nsw.gov.au
 E planning@tweed.nsw.gov.au

Aerial Photography 2015
 Lot 2 DP 1201210
 No. 5 North Hill Court, Tanglewood.

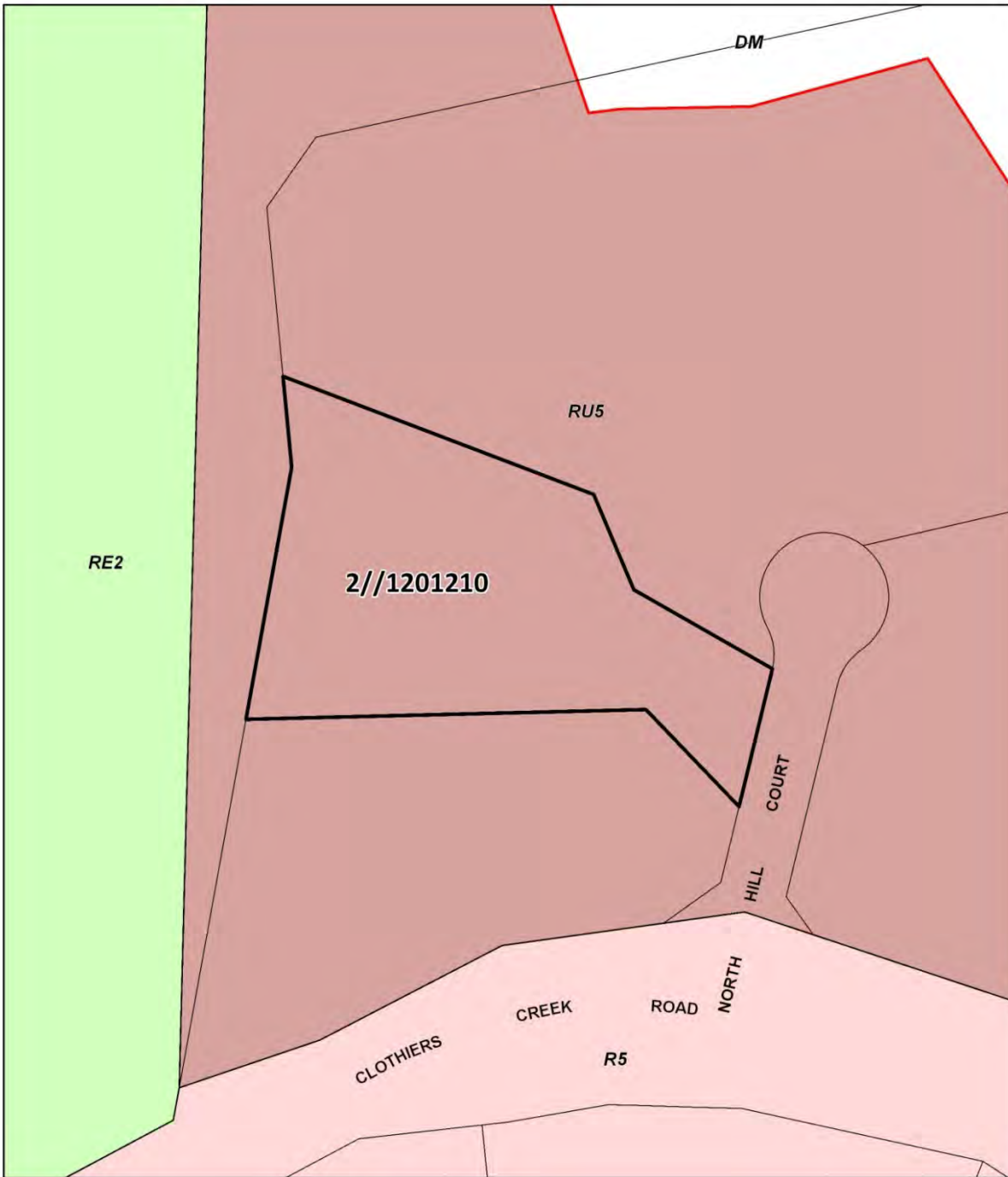
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Author: C. Lees - Information Technology

Date Printed: 13 February 2018

ZONING DIAGRAM:



Subject Land
 RE2 Private Recreation
 RU5 Village
 DM, Deferred Matter
 R5 Large Lot Residential

Tweed Local Environmental Plan 2014
Zone

1:1,000 @ A4 Portrait
 0 10 20 m
 COPY ONLY - NOT CERTIFIED
 GDA
 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geocentric Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

Site Plan - Local Environmental Plan

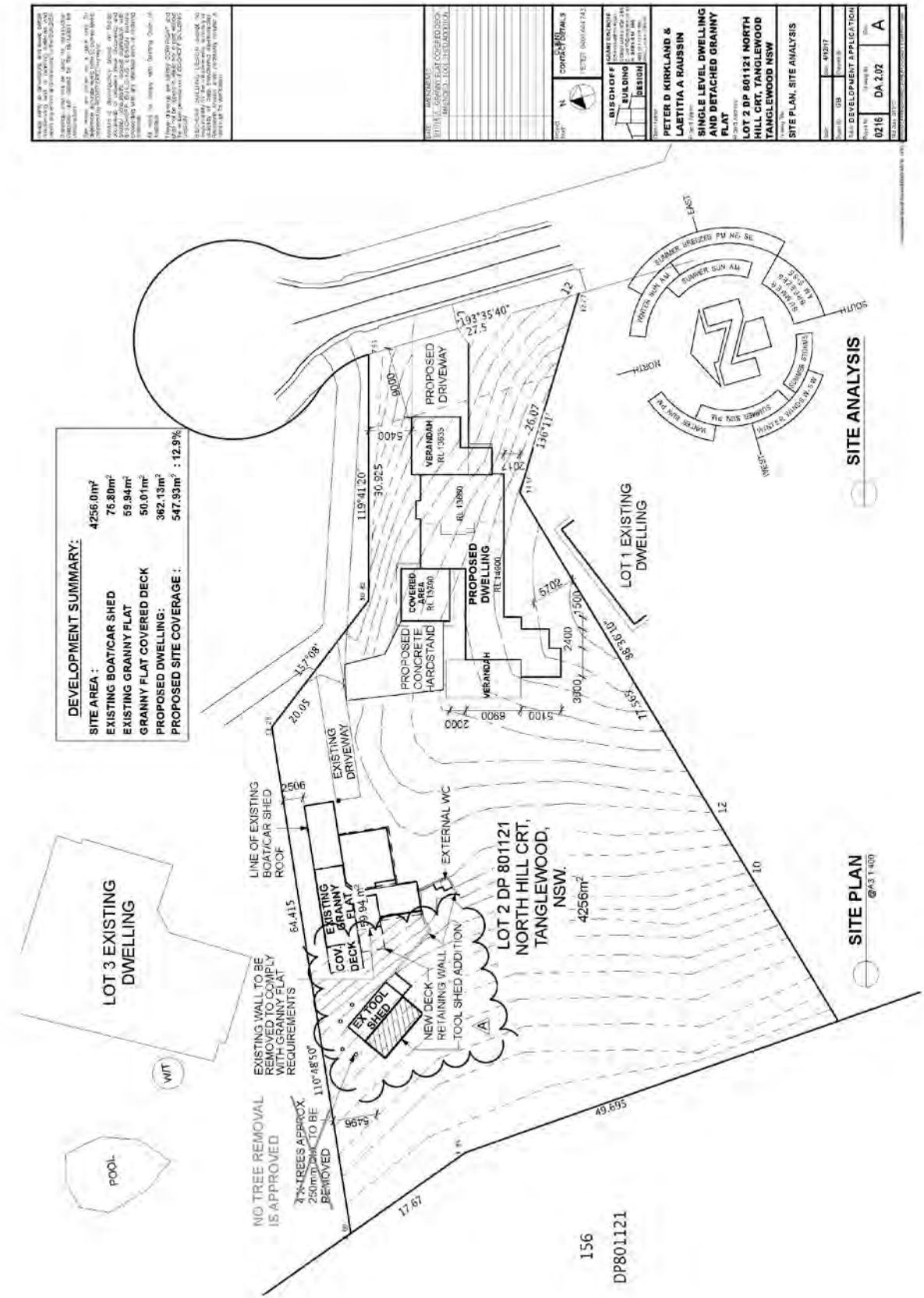
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No. 5 North Hill Court, Tanglewood.

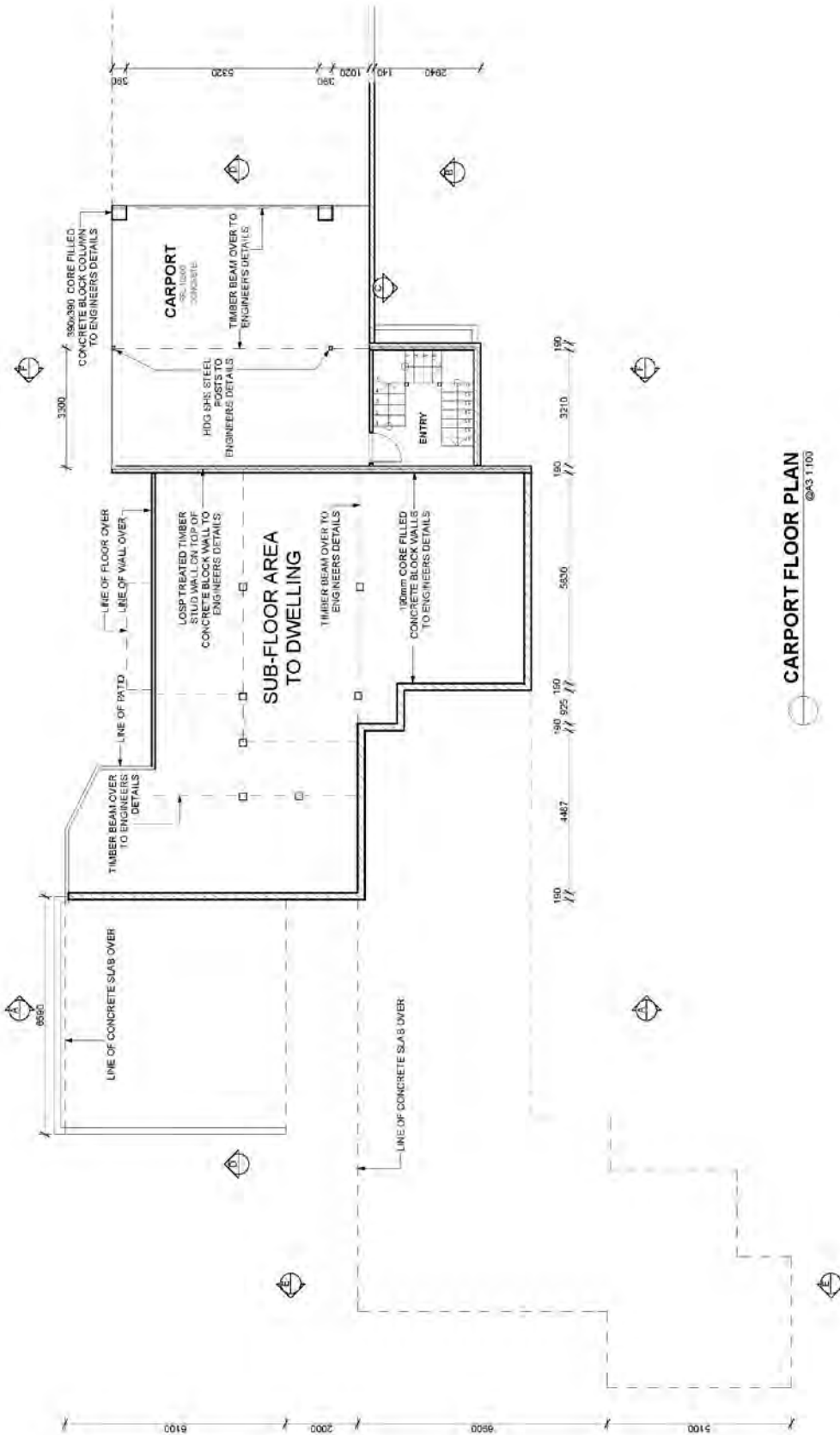
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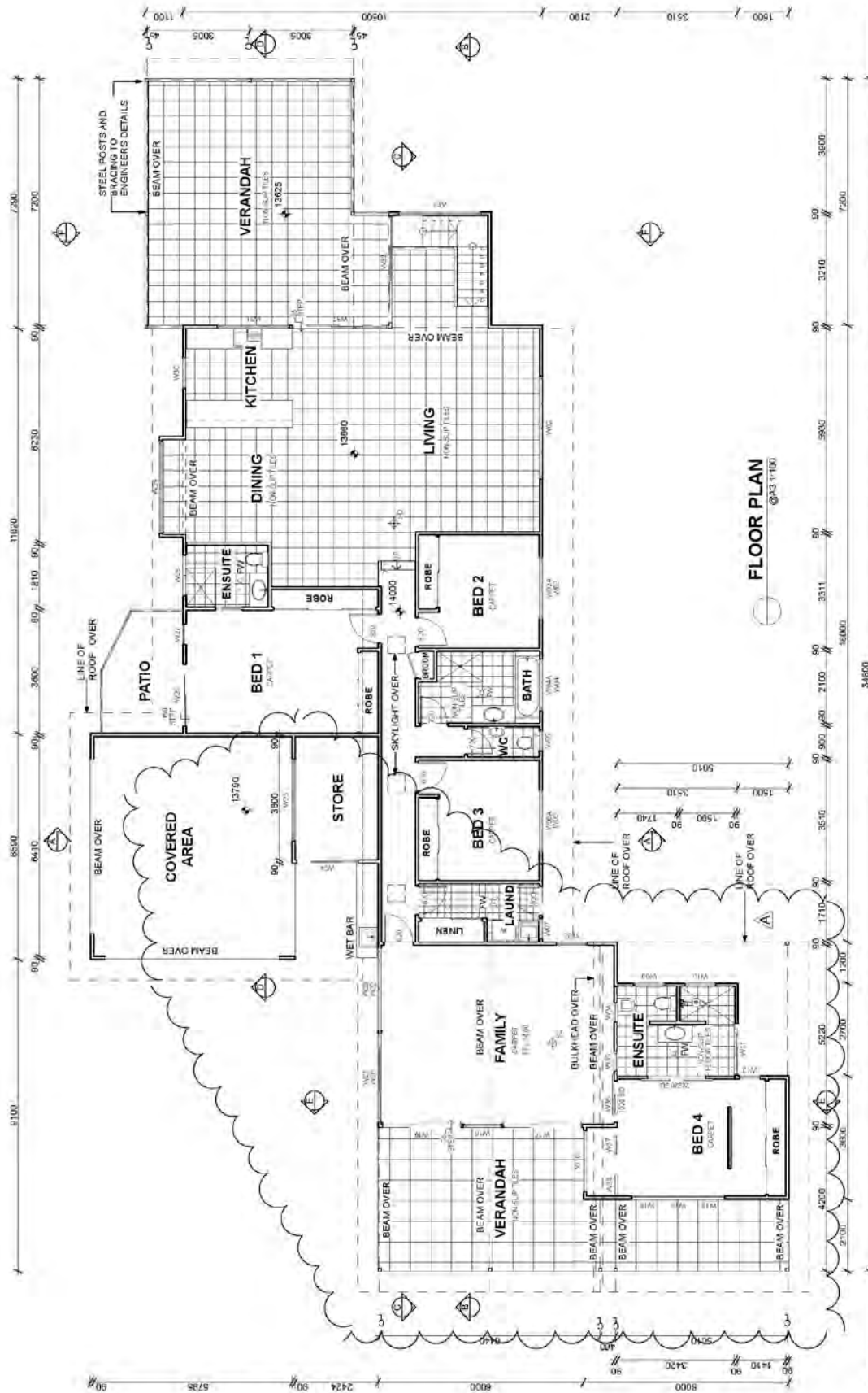
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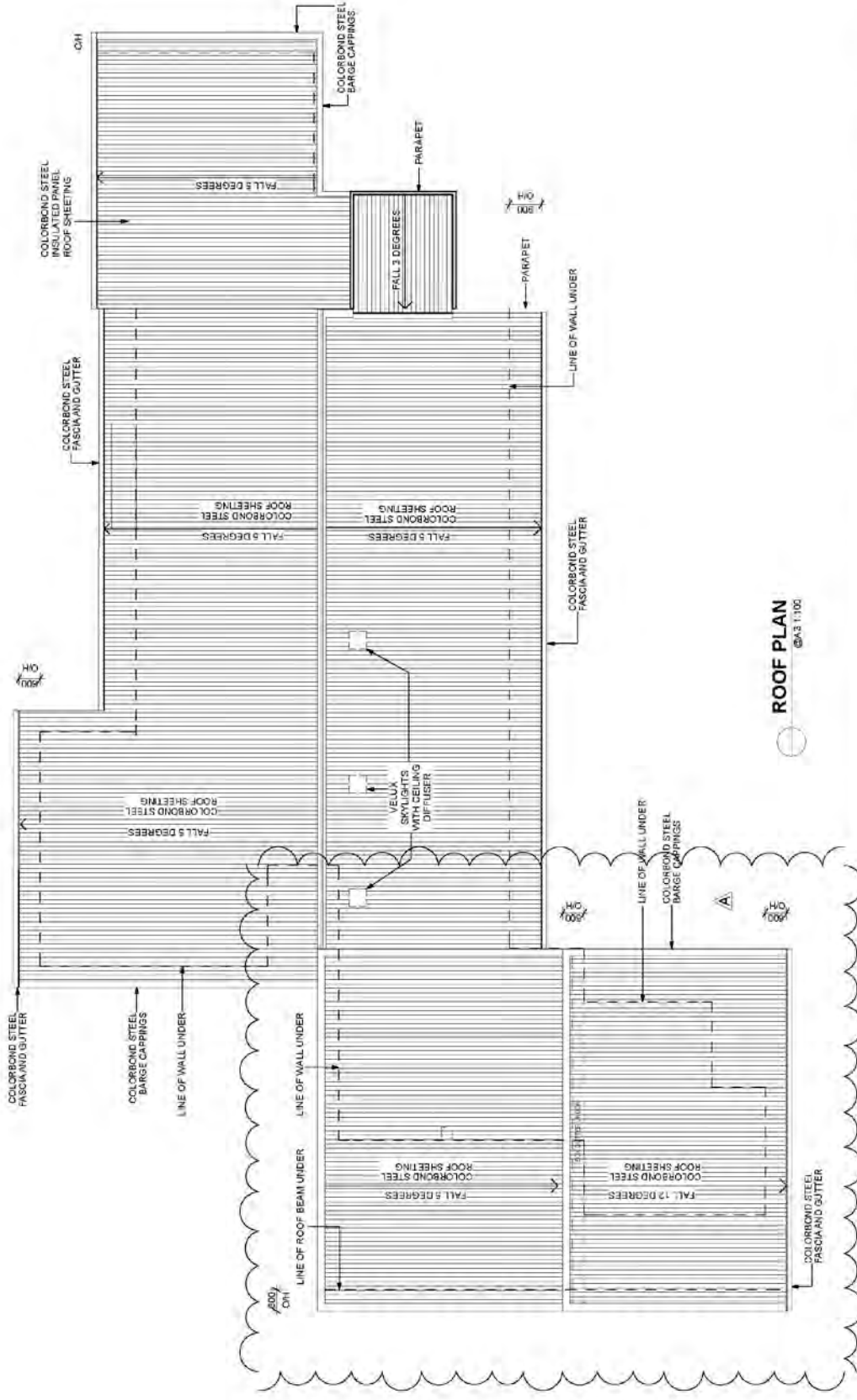


CARPORT FLOOR PLAN
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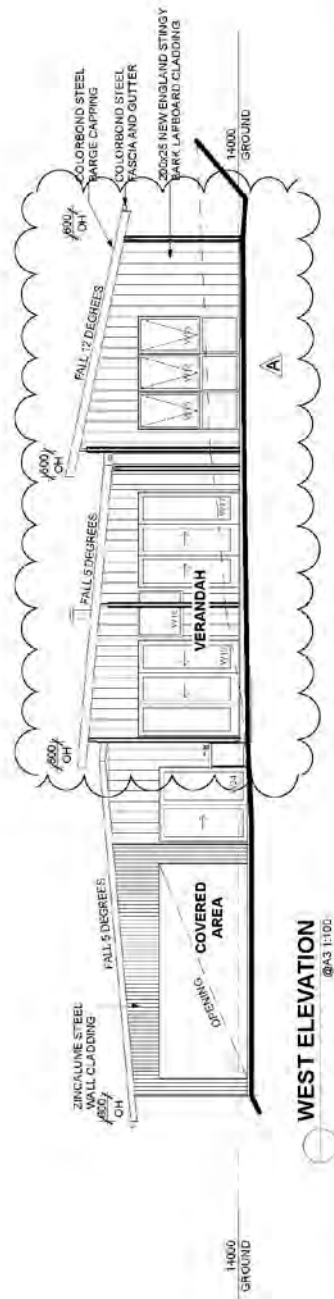
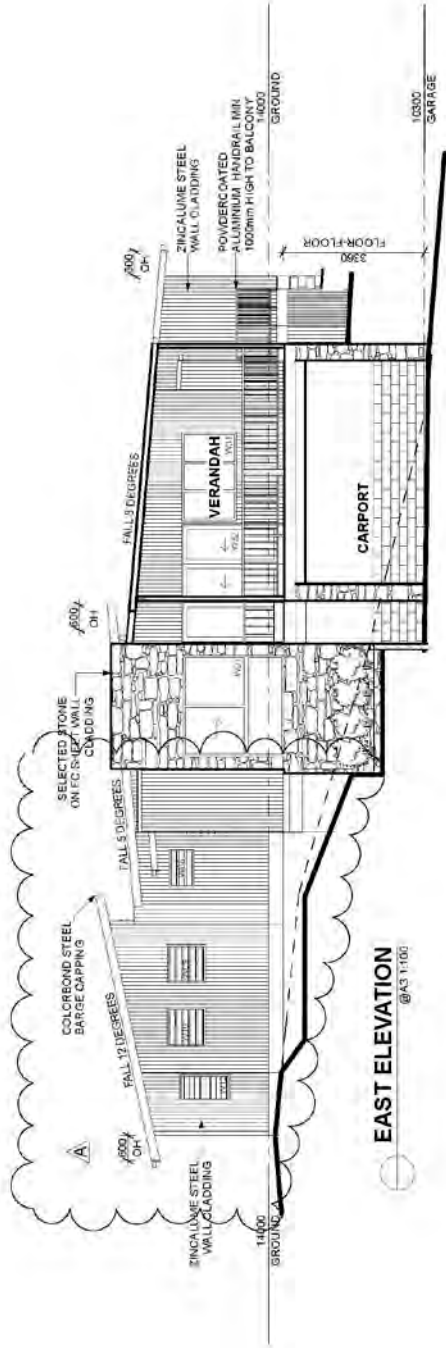
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	<p>DATE: 1/12/17</p>	<p>CLIENT: PETER D KIRKLAND & LAETITIA RAUSSIN</p>	<p>PROJECT NUMBER: LOT 2 DP 801321 NORTH HILL CRT, TANGLEWOOD/NSW 2488</p>
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<p>DATE: 1/12/17</p>			
<p>PROJECT TITLE: CARPORT DETAILS</p>			
<p>DATE: 1/12/17</p>			
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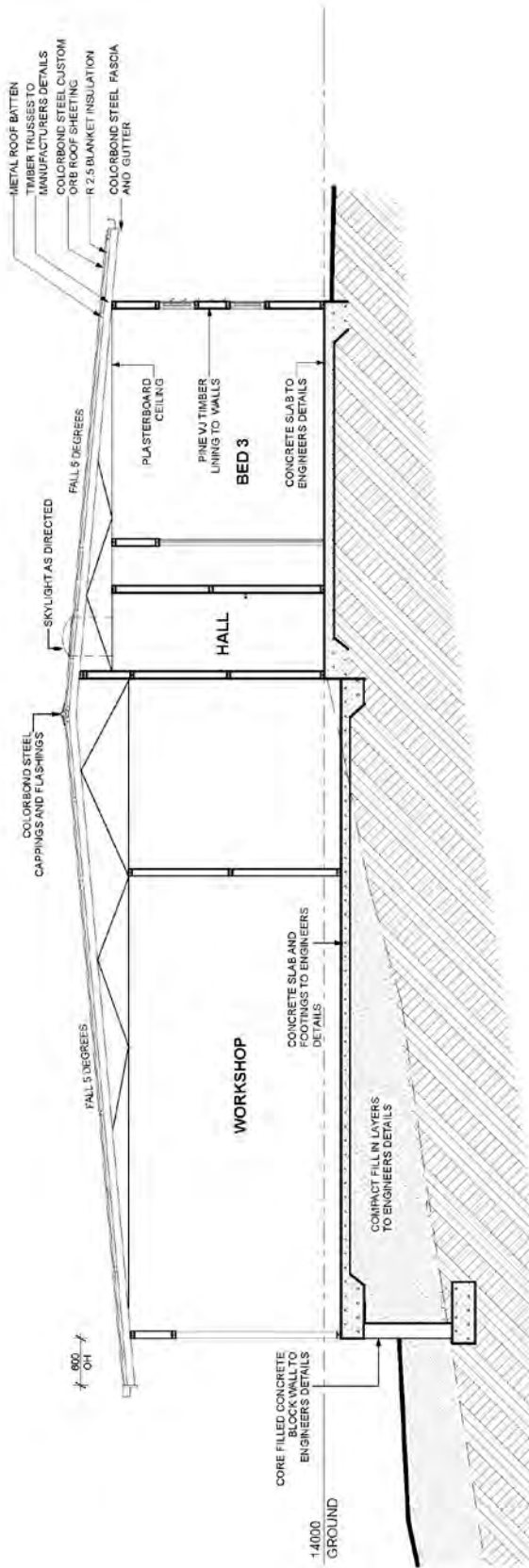
<p>PLEASE NOTE: THIS PLAN IS A PRELIMINARY DESIGN AND IS SUBJECT TO CHANGE WITHOUT NOTICE. THE CLIENT ACCEPTS RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED AND THE DESIGNER'S LIABILITY IS LIMITED TO THE SERVICES PROVIDED. THE DESIGNER DOES NOT WARRANT THAT THE INFORMATION PROVIDED IS COMPLETE, ACCURATE, OR FREE FROM ERROR. THE DESIGNER'S LIABILITY IS LIMITED TO THE SERVICES PROVIDED AND THE CLIENT ACCEPTS RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED.</p>	<p>BISCHOFF ARCHITECTURE 10/100 WILSON STREET, WILSON, VIC 3178 TEL: 03 9594 1111 WWW.BISCHOFFARCHITECTURE.COM.AU</p>	<p>CLIENT: PETER D MCKLAND & LAETITIA A RAUSSIN SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT 86/151 NORTH HILL TANGLEWOOD, NSW 2418</p>	<p>PROJECT: FLOOR PLAN DATE: 02/16 SCALE: DA.3.02</p>	
	<p>DESIGNER: PETER D MCKLAND & LAETITIA A RAUSSIN ARCHITECTS</p>	<p>DATE: 02/16</p>	<p>SCALE: DA.3.02</p>	<p>PROJECT NO.: 0216</p>
	<p>CLIENT: PETER D MCKLAND & LAETITIA A RAUSSIN ARCHITECTS</p>	<p>DATE: 02/16</p>	<p>SCALE: DA.3.02</p>	<p>PROJECT NO.: 0216</p>



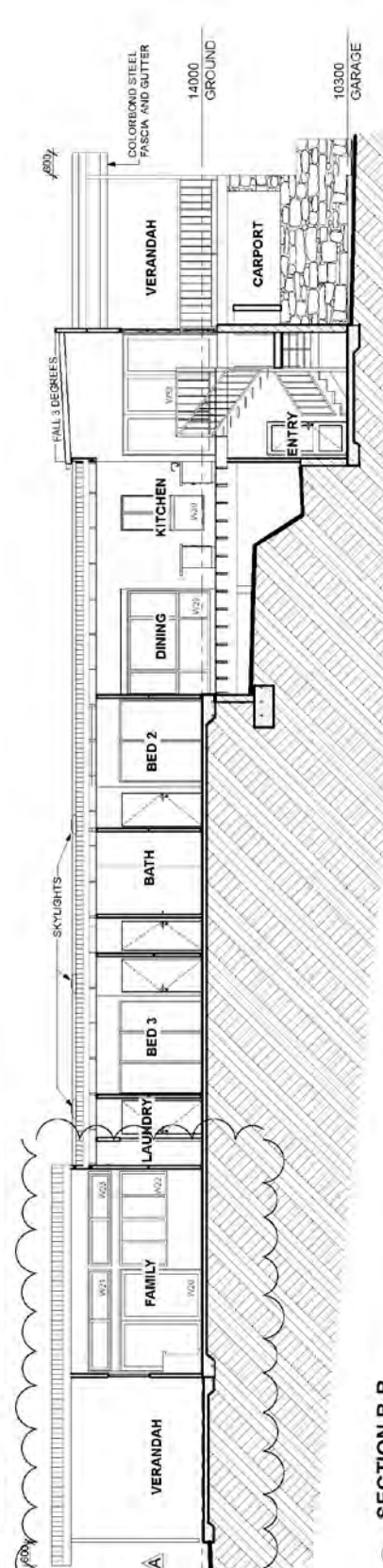
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CLIENT NAME PETER D KIRKLAND & LAETITIA A RAUSSIN		DATE 2018
PROJECT DESCRIPTION SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT		DRAWING BY DEB
PROJECT ADDRESS 106 MARKISIA NORTH HILL CRT, TANGLEWOOD, NSW 2488		SCALE DA.3.03
DESIGNER BISCHOFF BUILDING DESIGN	ARCHITECT CONCEPT MILK & HONEY	SHEET NO. 0216
PROJECT STATUS PRELIMINARY		SHEET TOTAL 0216



<p>Project No: EAST ELEVATION, WEST ELEVATION</p> <p>Client No: PETER D KIRKLAND & LAETITIA A RAUSSIN</p> <p>Project Name: SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT</p> <p>Site No: LOT 2 DP 801121 NORTH HILL CRT TANGLEWOOD, NSW 2481</p> <p>Development Application No: DA 4.02</p> <p>Date: 02/15</p> <p>Scale: A</p>	
<p>Architect: BIRDHOFF BUILDING DESIGN</p> <p>Address: 107/108 WILSON ST, TANGLEWOOD NSW 2481</p> <p>Phone: 08 9392 1111</p> <p>Website: www.birdhoff.com.au</p>	<p>Structural Engineer: ROBIT BRISCHOFF</p> <p>Address: 107/108 WILSON ST, TANGLEWOOD NSW 2481</p> <p>Phone: 08 9392 1111</p> <p>Website: www.birdhoff.com.au</p>
<p>Notes:</p> <p>1. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.</p> <p>2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p>	

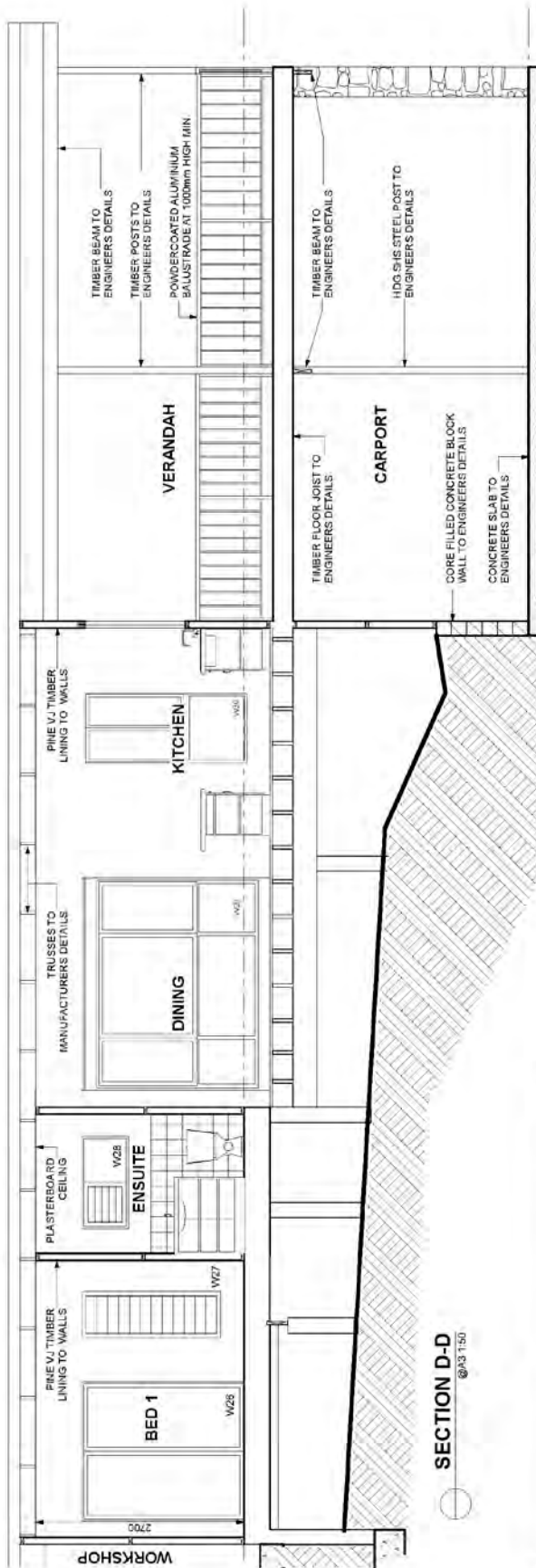
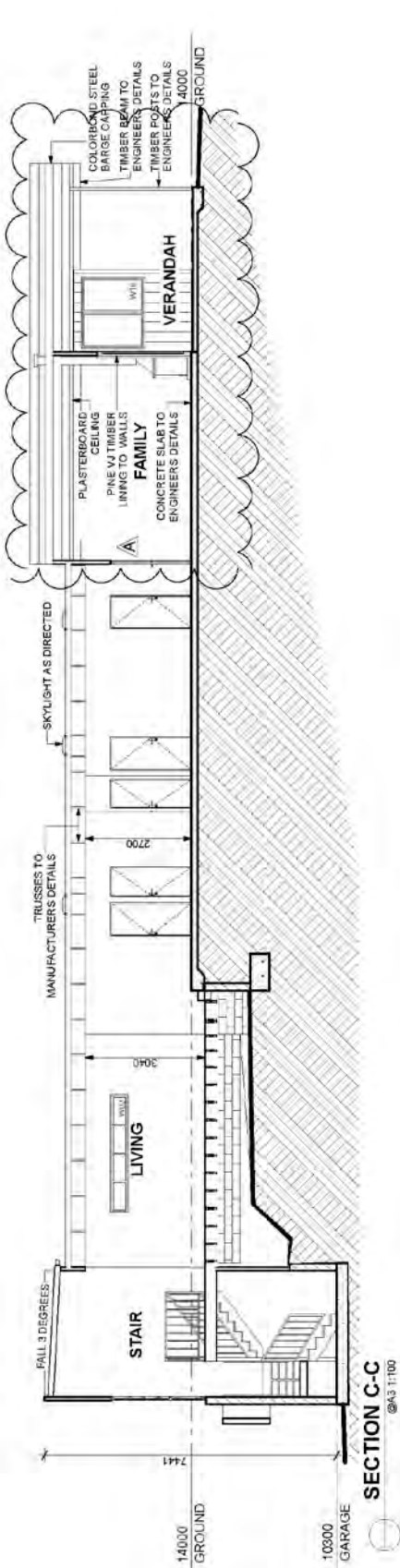


SECTION A-A
@A3 1:50



SECTION B-B
@A3 1:100

<p>GRANT BECHOFF ARCHITECTURE PTY LTD 15 BROADWAY, BROADWAY DUNEDIN, 9013 CONTACT DETAILS PHONE: 03 478 1172</p>	<p>BISCHOFF BUILDING DESIGN 107/108 107/108 107/108 107/108</p>	<p>PETER D. KIRKLAND & LAETITIA RAUSIN SINGLE LEVEL DWELLING AND GARAGE GRANTY PLAT REF: A/14/15</p>	<p>SECTION A-A, SECTION B-B SCALE: 1:50 DATE: 15/03/17</p>
<p>LOT 2 DP 801421 NORTH HILL ROAD, DUNEDIN, 9013</p>			<p>0216</p>



<p>Client: PETER D WIRKLAND & SYLVIA A. BOSE ANSCHKE</p> <p>Project: SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT</p> <p>Address: LOT 2 DP 801121 NORTH HILL CRT, TANGLEWOOD, NSW 2480</p>		<p>Section: SECTION D-D, SECTION C-C</p> <p>Scale: 1:50, 1:100</p> <p>Date: 02/17</p>
<p>Architect: BISHOP F</p> <p>Project: BUILDING DETAIL</p> <p>Client: PETER D WIRKLAND & SYLVIA A. BOSE ANSCHKE</p> <p>Address: LOT 2 DP 801121 NORTH HILL CRT, TANGLEWOOD, NSW 2480</p>	<p>Contract Details:</p> <p>Project: PETER D WIRKLAND & SYLVIA A. BOSE ANSCHKE</p>	<p>Drawn By: DA 5.02</p> <p>Rev: A</p>

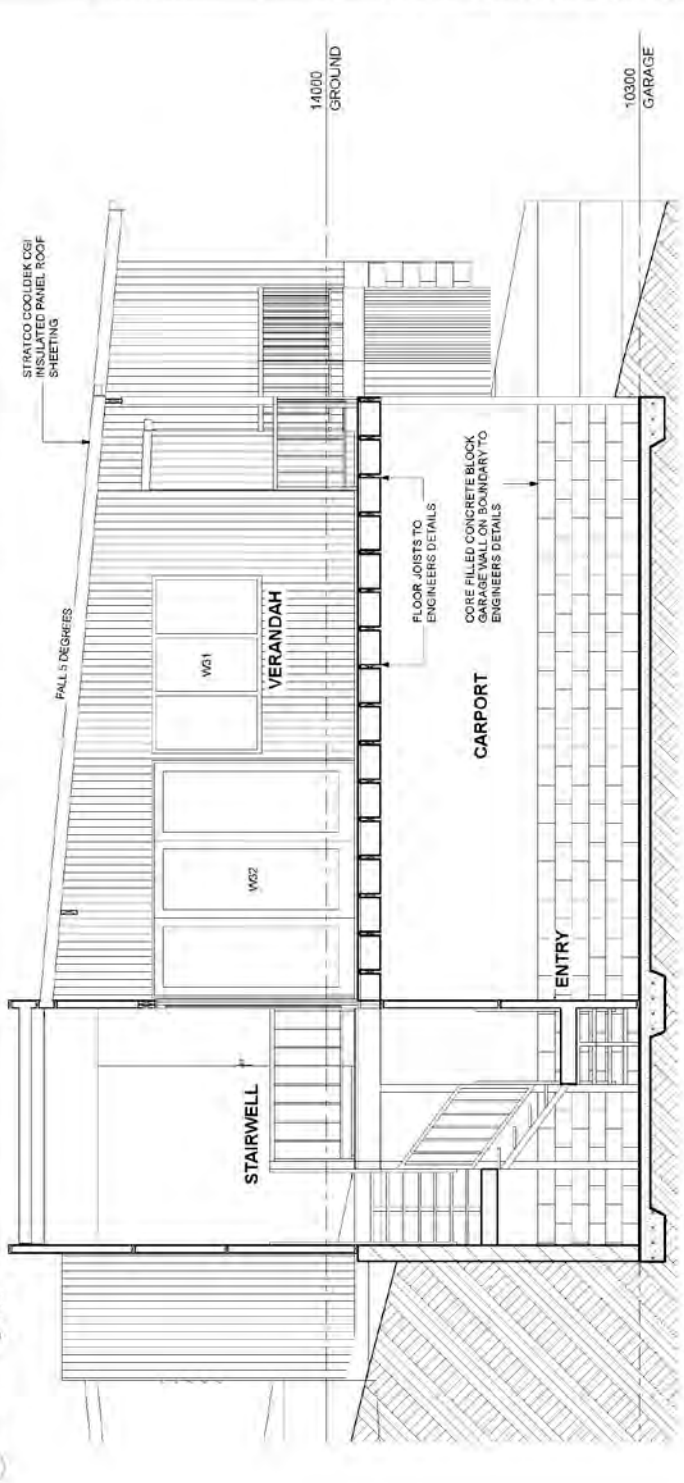
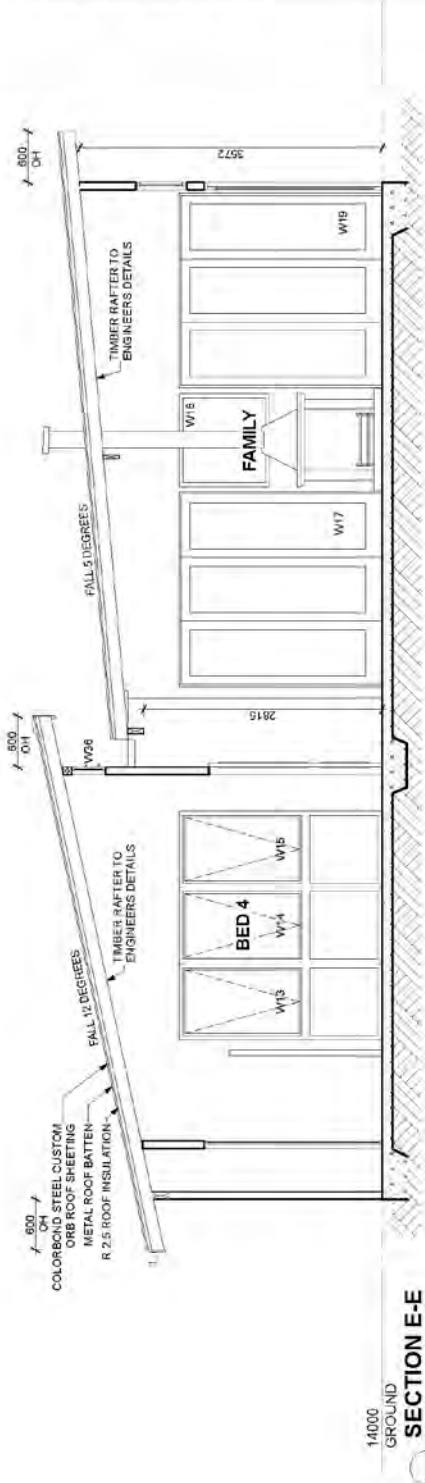
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 BUILDING CONTRACTOR'S BUDGET
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 CONTRACTOR'S BUDGET
 CONTRACTOR'S BUDGET

PETER D KIRKLAND & LAETITIA A RAUSSIN
 ARCHITECTS
 SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT
 LOT 2 DP 801121 NORTH HILL CRT, TANGLEWOOD TANGLEWOOD NSW

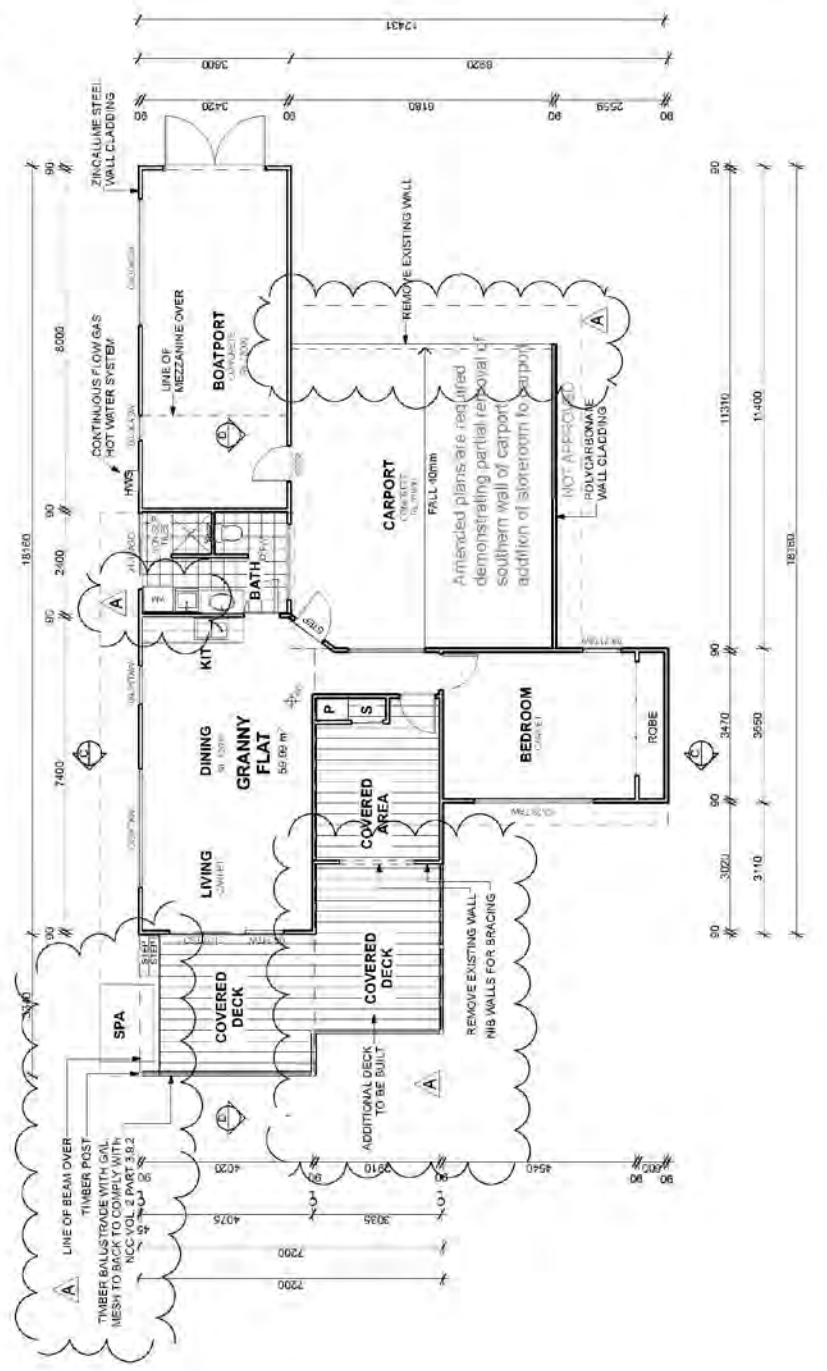
SECTION E-E, SECTION F-F

Date: 02/16
 Drawn by: DA 5 03
 Title: DA 5 03



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DATE	18/03/2017
DESCRIPTION	SUBMITTAL ARCHITECTURAL INFORMATION
PROJECT NAME	PETER B KIRKLAND & LAETTIA A RAUSSIN SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT
CLIENT NAME	BIS CHOFF PAVIMENT BUILDING DESIGN
PROJECT NO.	102714
PROJECT ADDRESS	LOT 2 DP 801121 NORTH HILL CRT, TANGLEWOOD TANGLEWOOD NSW
PROJECT TYPE	GRANNY FLAT FLOOR PLAN
SCALE	1:100
DATE	18/03/2017
PROJECT NO.	102714
PROJECT ADDRESS	LOT 2 DP 801121 NORTH HILL CRT, TANGLEWOOD TANGLEWOOD NSW
PROJECT TYPE	GRANNY FLAT FLOOR PLAN
SCALE	1:100
DATE	18/03/2017

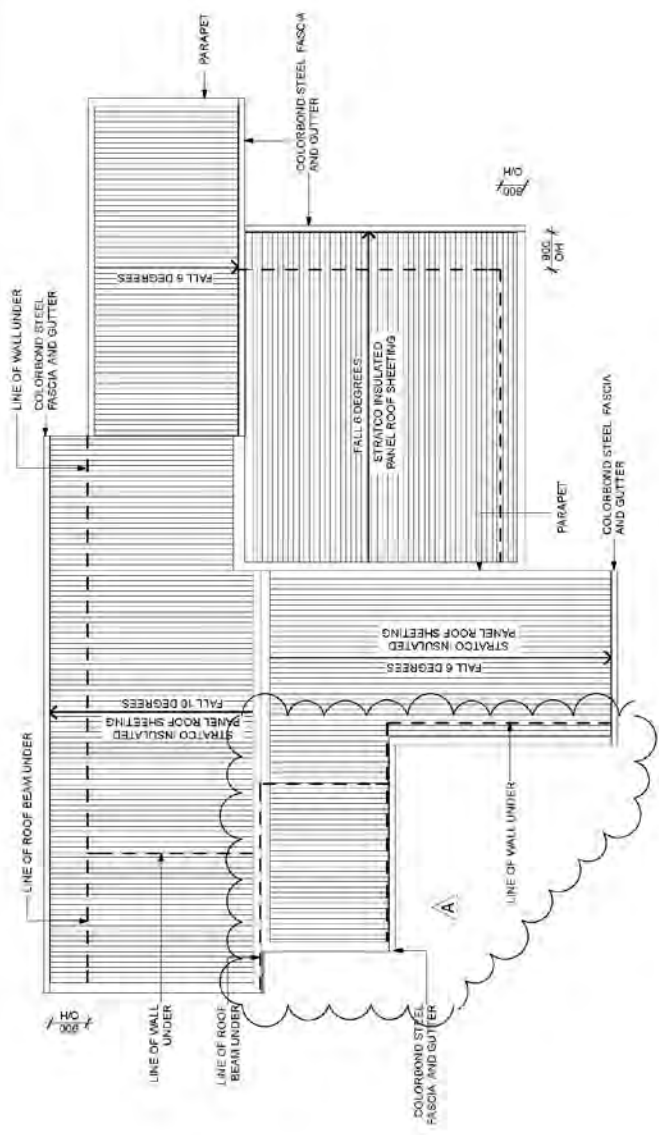
NOTE: SEE BUSHFIRE REPORT PREPARED BY BUSHFIRE RISK PTY LTD - APRIL 2017 FOR GALV. RATING (ALL WORK TO BE IN ACCORDANCE WITH AS3958-2009)



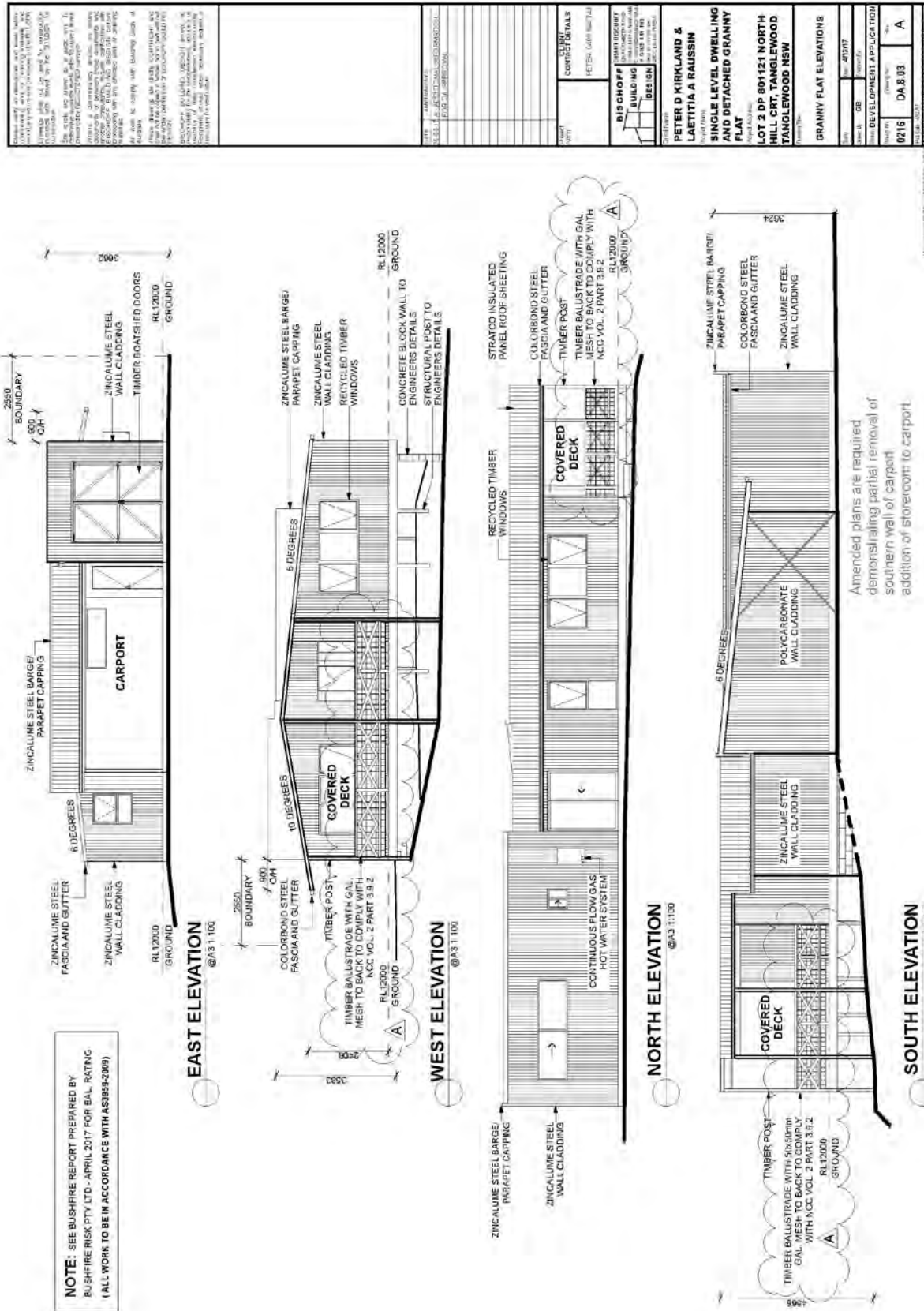
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@A3 1:100

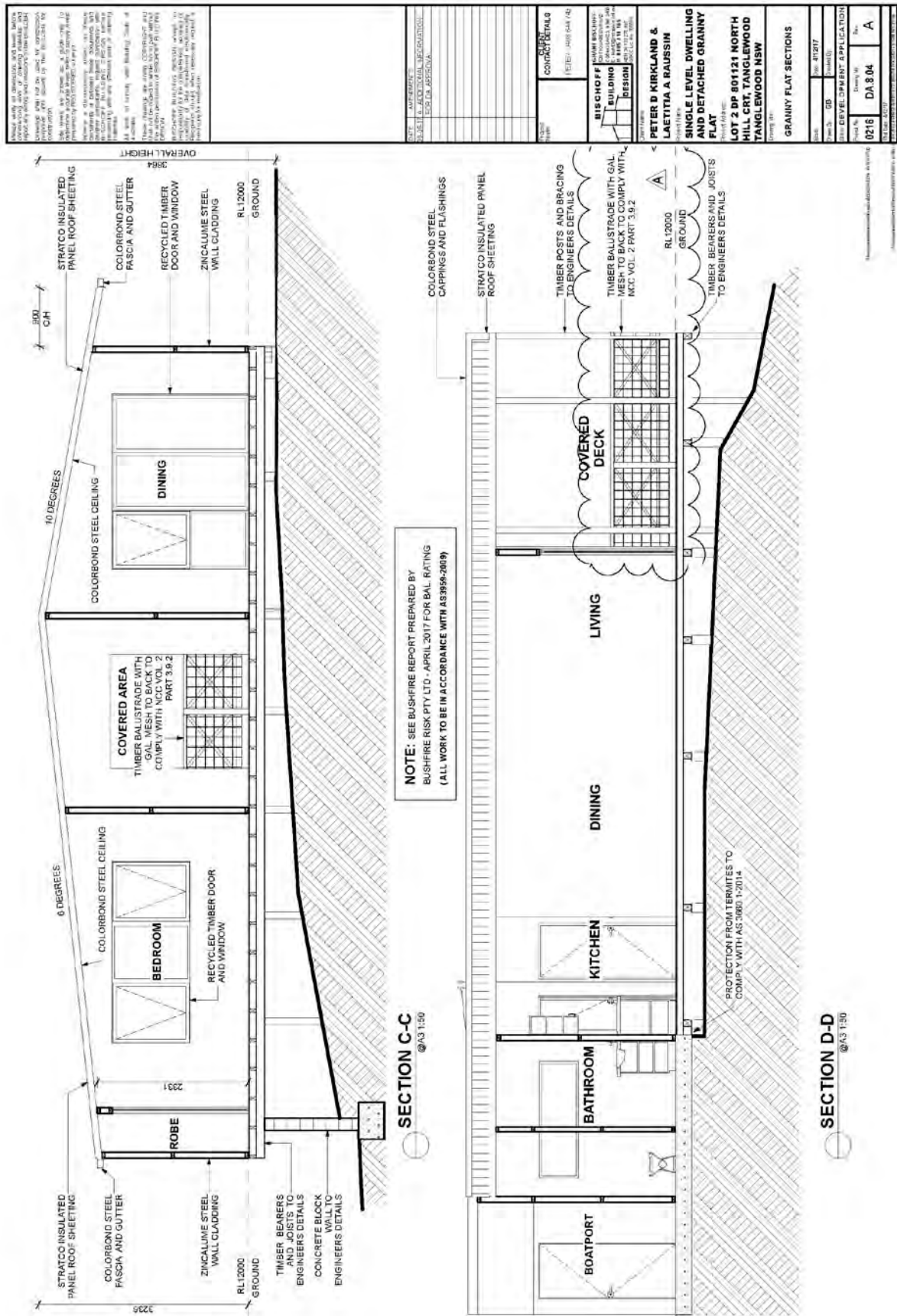
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DATE	20/03/2018
DESCRIPTION	GRANNY FLAT ROOF PLAN
PROJECT	BUSHFIRE RISK PTY LTD
CLIENT	PETER D KIRKLAND & LAETITIA A RAUSSIN
DESIGNER	BUSHFIRE RISK PTY LTD
PROJECT NAME	GRANNY FLAT ROOF PLAN
PROJECT ADDRESS	LOT 2 DP 801121 NORTH HILL CRT, TANGLEWOOD TANGLEWOOD NSW
PROJECT TYPE	GRANNY FLAT ROOF PLAN
PROJECT REFERENCE	DA 8102
PROJECT NUMBER	A

NOTE: SEE BUSHFIRE REPORT PREPARED BY BUSHFIRE RISK PTY LTD - APRIL 2017 FOR BAL RATING (ALL WORK TO BE IN ACCORDANCE WITH AS2958-2009)



GRANNY FLAT ROOF PLAN
@A3 1:100





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CLIENT: AMBERLEY
PROJECT: L2017/0001
DATE: 02/04/2017

CONTRACT DETAILS
 CONTRACT NO: 1001
 CONTRACT VALUE: \$100,000.00
 CONTRACT START DATE: 01/01/2017
 CONTRACT END DATE: 31/12/2017

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SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT
 LOT 2 DP 801121 NORTH HILL CRT, TANGLEWOOD TANGLEWOOD NSW

GRANNY FLAT SECTIONS
 DRAWING NO: 0216
 DATE: 02/04/2017
 SCALE: DA 8.04
 SHEET NO: A

NOTE: SEE BUSHFIRE REPORT PREPARED BY BUSHFIRE RISK PTY LTD - APRIL 2017 FOR BAL-RATING (ALL WORK TO BE IN ACCORDANCE WITH AS 3959-2009)

SECTION C-C
 @A3 1:50

SECTION D-D
 @A3 1:50

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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

- (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 residential development within the RU5 Village zone and the primary dwelling and secondary dwelling generally comply with the aims of the plan having regard to its nature and permissibility in the subject zone.

Clause 2.3 – Zone objectives and Land use table

The objectives of the RU5 Village zone are:

- *To provide for a range of land uses, services and facilities that are associated with a rural village.*
- *To ensure that new development responds to and respects the character of a rural village.*

The proposed dwelling and secondary dwelling are compatible with the range of land uses associated with a rural village. The development is of an appropriate scale fitting the character of a rural village. The proposal is compliant with the provisions of this clause.

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

Not applicable as no subdivision is proposed. The consent will be conditioned to prevent the strata subdivision of the site.

Clause 4.3 - Height of Buildings

The maximum building height as identified in the Tweed LEP 2014 is Control N2 being 13.6m. The maximum height of the proposal is 7.75m for the primary dwelling and 4.1m for the secondary dwelling and therefore complies with this control.

The proposed shed additions will be approx. 4.6m high and therefore complies.

Clause 4.4 – Floor Space Ratio

A floor space ratio of 2:1 (Control T) applies to the site. The area of the **proposed** buildings on site is as follows:

Dwelling	272m ²
Secondary dwelling	61.862m ² *

**Note there is a recommended condition of consent to reduce the gross floor area of the secondary dwelling to meet the 60m² provision.*

This equates to a total floor area of approx. 333m². The site is 4,256m² the proposal will result in a FSR of 0.078:1 which complies with the control.

Clause 4.6 - Exception to development standards

Not applicable as no exceptions to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

The proposal includes a secondary dwelling which is a use listed under this clause. The clause states that:

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- (a) 60 square metres,*
- (b) 20% of the total floor area of the principal dwelling.*

The proposed secondary dwelling has an internal floor area of 61.862m² (excluding car parking, boat port and deck areas) and therefore it recommended to include the following condition of consent:

- 2. *The total floor area of the secondary dwelling (excluding the boat port, carport and external decks) is not to exceed 60m². The current plans show a floor area of 61.82m² as a pantry has been installed and needs to be removed and converted back to an external deck area.*
[GEN0005]

- 14. *Amended plans for the secondary dwelling must be submitted to Council for approval prior to the issue of an construction certificate that demonstrate the following:*

- *Removal or partial removal of the southern wall of the car port so that the southern elevation of the carport is substantially open (at least 50% open);*
- *Removal of the internal pantry and conversion of this space back to an external deck area to ensure an internal area of 60m² for the secondary dwelling*
- *Removal of the laundry from the carport;*

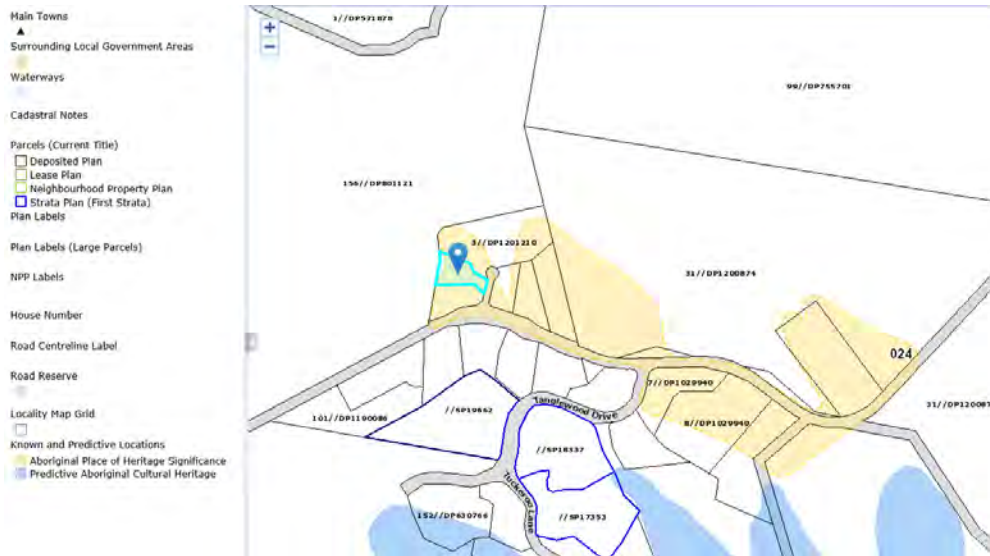
[PCCNS01]

Clause 5.5 – Development within the Coastal Zone

Not applicable as the subject site is not located within the Coastal zoned being located approx. 3.4km westward of the coastal waters of the site.

Clause 5.10 - Heritage Conservation

The subject site is mapped as a known Aboriginal Place of Heritage Significance on Council's **Draft** Aboriginal Cultural Heritage Management Plan.



The subject land benefited from a 2008 subdivision that anticipated residential use of the approved 6 allotments of land and accordingly the proposed application is consistent with the anticipated use of the site.

Since this time the **Draft** Aboriginal Cultural Heritage Management Plan has been exhibited BUT not yet fully adopted.

Having regard to Clause 5.10(8) of the Tweed LEP 2014 the subject site is a Draft known Aboriginal Place of Heritage Significance but as this Policy has not been fully endorsed to date the Clause is not considered to strictly apply.

However, given the sites history (earthworks and disturbance for the 2008 subdivision) and intended use for residential purposes the proposed structures with limited cut are not anticipated to cause any harm to any Aboriginal Cultural Heritage. Utilising the recommended approach under the **Draft** Aboriginal Cultural Heritage Management Plan a condition of consent is recommended that states:

25. *If during construction works and Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment and Heritage are to be notified immediately, in accordance with the provisions of the National Parks and Wildlife Act 1974.*

[DUR0025]

This condition is considered to adequately address Clause 5.10

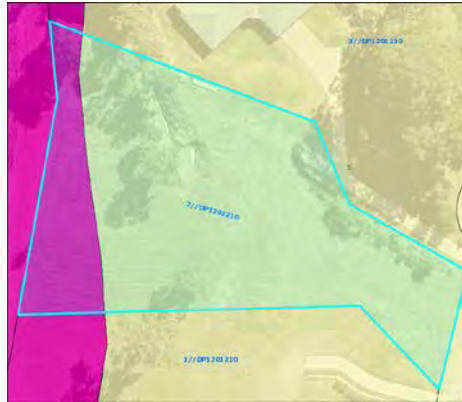
Clause 5.11 - Bush fire hazard reduction

The site is mapped as being bushfire prone however this application does not have any implications regarding the application of this clause.

Clause 7.1 – Acid Sulfate Soils

The site is mapped as possibly containing acid sulfate soils class 2 and 5. No works are proposed within the Class 2 acid sulfate soils are the rear of the site however the plans indicate that the footings for the proposed extension to the shed will involve works on class 5 soil that is 5m AHD or lower. The proposed footings for the shed are unlikely to lower the water table on the adjacent class 2 land

nevertheless the consent will be imposed with a condition requiring an Acid Sulfate Soils Management Plan for Minor Works to be submitted to reduce the risk of environmental damage resulting from the possible exposure of acid sulfate soils (DUR1075).



Clause 7.2 - Earthworks

The proposed site is positioned on a low ridgeline which is elevated approx. 4m above the road with the rear of the site dropping approx. 10m below the highest point. As such cut of up to 1.2m for the lower carport and fill of up to 2.8m for the upper level carport is required to facilitate construction of the primary dwelling. The clause states that before consent is granted to development involving earthworks, the following matters must be considered:

- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

The earthworks are contained primarily within the footprint of the proposed building and are unlikely to have a detrimental effect on the drainage patterns or soil stability of the site or locality. The consent will be conditioned with the requirement to submit a detailed stormwater and drainage plan for approval prior to the commencement of works.

- (b) *the effect of the development on the likely future use or redevelopment of the land,*

The earthworks are considered reasonable with respect to the scale of the residential development and are unlikely to have a detrimental impact on any future use of the site.

- (c) *the quality of the fill or the soil to be excavated, or both,*

The proposed volume of cut and fill is relatively minor and all excavated material should be able to be reused on site. The consent will require the submission of an Acid Sulfate Soils Management Plan for Minor Works which includes requirements regarding the treatment of acid soils should they be encountered.

- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*

The volume of cut or fill is consistent with the scale of the proposed residential development and surrounding development. The consent will be imposed with conditions to ensure that impacts associated with works associated with the proposal are minimised.

(e) *the source of any fill material and the destination of any excavated material,*

The proposed volume of cut and fill is relatively minor and all excavated material is to be reused on site as specified in the SEE. Any cut and fill is required to comply with Councils Design and Construction Specifications and Development Control Plan A1

(f) *the likelihood of disturbing relics,*

The site is mapped as being an Aboriginal Place of Heritage Significance under the Draft Aboriginal Cultural Heritage Management Plan 2017. The site is highly disturbed being the subject of previous works associated with the residential subdivision of the land. However the precautionary principle to minimise harm will be applied and the consent will be imposed with standard conditions relating to prescribed actions should an item of Aboriginal cultural heritage be discovered.

(g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

The volume of proposed cut and fill is relatively minor and confined to the foot print of the proposed building. It is unlikely that the proposed works will impact upon environmentally sensitive areas. The consent is being appropriately conditioned to ensure the possibility of adverse impacts are minimised.

(h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*

The application has been conditioned appropriately to minimise and mitigate any potential impacts from the proposed residential development.

(i) *the proximity to, and potential for adverse impacts on, any heritage item, archaeological site, or heritage conservation area.*

The site is not in proximity to a heritage item or within a heritage conservation area. As mentioned above a precautionary approach is being applied with respect to Aboriginal cultural heritage.

Clause 7.3 – Flood Planning

The rear of the site is partially mapped as being subject to the Q100 flood event and the site is subject to a design flood level of RL 3.2m AHD. The residential development will occur on the flood free portion of the lot and the habitable floor for the primary dwelling is level is at RL 14m AHD and RL 12m AHD for the secondary dwelling. The proposal is compliant with the provisions of the clause.

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 residential development is not nominated as applicable development for the application of this clause and as such the proposal is compliant with 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.*

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

The subject site is located within an approved residential subdivision with all requisite essential services considered to be available. These include water, stormwater drainage, electricity and adequate vehicular access.

An on-site sewage management report was submitted with the application and considered to be acceptable. An application to operate on-site sewage system has been approved. Where required, appropriate conditions of consent would be applied to ensure that development is undertaken in accordance with Council requirements. The proposal does not negatively impact upon the provisions of this Clause.

Other Specific Clauses

There are no other specific clauses applicable to the proposal.

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

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

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

The subject site was approved for residential development under DA08/0436 for a 6 lot subdivision and public road approved 12 January 2010. A contaminated land assessment for this DA08/0436 concluded that the site is suitable for residential use.

Further to the above, consideration of Contamination information as contained on Council GIS indicates that no known contamination has been recorded for the subject site and that no cattle tick dip sites are indicated within 800 meters of the subject site.

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

SEPP (Building Sustainability Index: BASIX) 2004

A current BASIX Certificate has been submitted with the application for the primary dwelling (Certificate No: 769760S_02) and the secondary dwelling (Certificate No: 775986S_03). As the secondary is already constructed, certification is required to be submitted to demonstrate compliance with the BASIX commitments prior to the issue of a construction certificate. The BASIX certificates will be included with the stamped plans. The proposal is compliant with the provisions of the SEPP.

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

Draft Coastal Management SEPP 2016

The subject site is mapped as being within the Coastal Use Area under this SEPP and as such assessment against Divisions 4 and 5 is required.

Division 4 Coastal use area

15 Development on land within the coastal use area

Development consent must not be granted to development on land that is wholly or partly within the coastal use area unless the consent authority:

- (a) is satisfied that the proposed development:*
 - (i) if near a foreshore, beach, headland or rock platform—maintains or, where practicable, improves existing, safe public access to and along the foreshore, beach, headland or rock platform, and*
 - (ii) minimises overshadowing, wind funnelling and the loss of views from public places to foreshores, and*
 - (iii) will not adversely impact on the visual amenity and scenic qualities of the coast, including coastal headlands, and*
 - (iv) will not adversely impact on Aboriginal cultural heritage and places, and*
 - (v) will not adversely impact on use of the surf zone, and*
- (b) has taken into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.*

The subject proposal will not impede public access to the foreshore, create overshadowing, adversely impact on the visual amenity and scenic qualities of the coast on coastal land (including the surf zone) or Aboriginal cultural heritage or places. The proposed single storey development is considered in keeping with the existing and future intended development or the location and surrounds.

The proposed development is considered in keeping with the aims of Clause 15 of the draft Coastal Management SEPP.

Division 5 General

16 Development in coastal zone generally—development not to increase risk of coastal hazards

- (1) Development consent must not be granted to development on land within the coastal zone (other than land to which clause 13 applies) unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

Note. *Clause 13 (2) (b) contains a development control provision that substantially mirrors the effect of this provision.*

- (2) This clause ceases to have effect at the end of 31 December 2021.*

17 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of the following:

- (a) a coastal management program that applies to the land,*
- (b) a coastal zone management plan (within the meaning of the Coastal Protection Act 1979) that applies to the land that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016.*

It is considered that the proposal will not result in increased risk of coastal hazards on that land or other land.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposal generally complies with the controls for dwellings and secondary dwelling in relation to setbacks, built form and landscaping. No variations to controls were noted on the plans.

The proposed secondary dwelling is located 2.5m from the northern side boundary which is compliant with side setback controls of 900mm for single storey dwellings/secondary dwellings. The rear external living area of the secondary dwelling is located 2.5m from the northern side boundary and the existing 2m high timber boundary fence ensures visual privacy is maintained. With regard to acoustic privacy from the principal dwelling the external living area is located approx. 10m from habitable rooms of the adjoining property and is considered to be acceptable. The neighbours pool is no longer visible from the secondary dwellings deck since the neighbour increased the fencing between the two properties.



The existing shed at the rear of the site is proposed to be extended to be a total of 45m². It is noted that total area restrictions and with regard to outbuildings are not applicable to the RU5 Rural Village Zone. The existing shed is constructed on a sloping area of the lot and the proposed shed extension is elevated a maximum of approx. 2.2m above ground level. The shed contains windows oriented to the

west overlooking neighbouring open space and is unlikely to create amenity impact on the northern adjoining properties. A condition has been recommended to ensure no windows occur on the northern elevation of the shed, the existing window on the northern elevation should be removed and this has been conditioned.



A2-Site Access and Parking Code

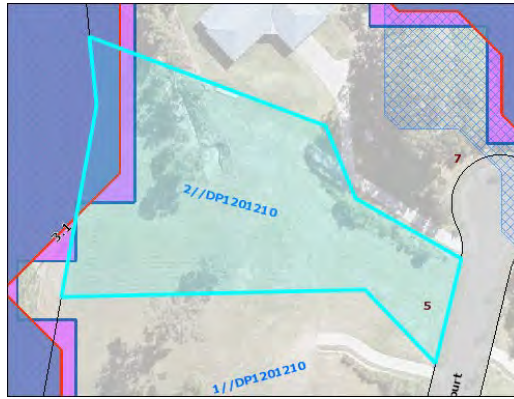
DCP A2 provides for the consideration of on-site access and vehicle parking, to ensure that sufficient facilities are provided and the road network is not compromised, whilst ensuring consistency with ESD principles. Item A14 states that Secondary dwellings require 1 resident parking. For the principal dwelling at the site, 1 space per dwelling plus provision for driveway parking of another vehicle is required.

The secondary dwelling includes a partially enclosed double carport and the plans for the primary dwelling include two double car ports. The application is compliant with respect to car parking provision.

Access to the secondary dwelling is via the existing approved driveway over the existing right of carriage way over adjoining Lot 3 DP 1201210. Access to the lower level car port for the primary dwelling will be via a proposed new driveway. The proposed new driveway has been reviewed by Council's Traffic Unit and found to be acceptable. Standard conditions of consent will be applied requiring the submission of a Section 138 application.

A3-Development of Flood Liable Land

The rear of the site is partially mapped as being subject to the Q100 flood event and the Probable Maximum Flood Event. The site is subject to a design flood level of RL 3.2m AHD. The residential development will occur on the flood free portion of the lot and the habitable floor for the primary dwelling is level is at RL 14m AHD and RL 12m AHD for the secondary dwelling. The proposal is compliant with the provisions of the code.



A11-Public Notification of Development Proposals

The application was initially notified to neighbouring properties with a submission period of period of fourteen days from Monday 5 December 2016 to Monday 19 December 2016. During this time one formal submission was received and a number of informal queries were received by the same submitter.

The plans were amended following a request by Council and as such the application was notified for a second time for a period of fourteen days from Wednesday 5 July 2017 to Wednesday 19 July 2017. During this time one formal submission was received in relation to the application from the previous submitter.

Throughout the assessment process Council has received numerous objections to the proposal by a neighbouring resident. The subject of the formal submissions and informal objections are detailed in a later section of this report.

A16-Preservation of Trees or Vegetation

See flora and fauna comments below.

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

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

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises a residential development on an appropriately zoned site. The development will not restrict access to any foreshore areas is considered acceptable in this regard.

Clause 92(1)(b) Applications for demolition

Not applicable as the development does not propose any demolition.

Clause 93 Fire Safety Considerations

The application relates to the upgrading of the approved Class 10a building (approved art studio, storage and workshop) to a Class 1a building (secondary dwelling). The application has been reviewed by the Building Services Unit with

regard to Fire Safety consideration with respect to Clause 93. The application will be conditioned appropriately to comply with the provisions of this clause.

Clause 94 Buildings to be upgraded

The proposal includes the addition of a deck to the previously approved structure and as such this clause applies. The application has been reviewed by the Building Services Unit and will be conditioned appropriately to comply with the Building Code of Australia.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The subject site approx. 3.4km from the coastal foreshore and is not affected by coastal hazards. As such the proposed development does not contradict the objectives of the plan.

Tweed Coast Estuaries Management Plan 2004

The site is located approx. 1.3km from Cudgen Lake and as such the provisions of this Management Plan apply. The proposal relates to residential development on land previously approved for residential subdivision. The proposal is not inconsistent with the provisions of this management plan.

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

Not applicable as the site is not located within the area to which this plan applies.

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

The proposed development has an extensive history given the unauthorised habitable use of a previously approved art studio. Despite this history of non-compliance the current application to approve a formal secondary dwelling is now capable of achieving compliance with Council provisions subject to the recommended conditions of consent. Having had regard to all possible environmental impacts the application warrants the recommendation for approval.

- (c) **Suitability of the site for the development**

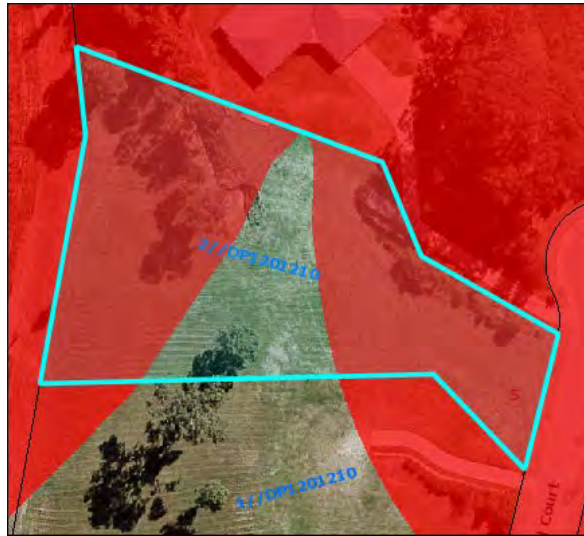
Surrounding Landuses/Development

The surrounding development is consistent with the proposed dwelling and secondary dwelling. The uses are permissible with consent subject to meeting the provisions as conditioned in this recommendation.

Natural Hazards - Bushfire

The site is mapped as being bushfire prone being located within the Vegetation Buffer zone. The application was referred to the Rural Fire Service in accordance with Section 79BA of the Environmental Planning and Assessment Act 1979.

The RFS recommended conditions of consent asset protection zones, water and utilities, design and construction and landscaping. The recommended conditions are considered to be appropriate and will be imposed as conditions of consent.



North Coast Regional Plan 2036 (NCRP 2036)

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

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

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

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

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

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

Principle 1: Direct growth to identified Urban growth areas
Urban growth areas have been identified to achieve a balance between urban expansion and protecting coastal and other environmental assets. They help maintain the distinctive

character of the North Coast, direct growth away from significant farmland and sensitive ecosystems and enable efficient planning for infrastructure and services.

Principle 2: Manage the sensitive coastal strip
The coastal strip comprises land east of the planned Pacific Highway alignment plus the urban areas of Tweed Heads around the Cobaki Broadwater. The coastal strip is ecologically diverse and contains wetlands, lakes, estuaries, aquifers, significant farmland, and has areas of local, State, national and international environmental significance. Much of this land is also subject to natural hazards, including flooding, coastal inundation, erosion and recession.

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

Principle 3: Provide great places to live and work in a unique environment
Making cities and centres the focus of housing diversity, jobs and activities makes communities more vibrant and active, reduces pressure on the environment, and makes it easier for residents to travel to work and access services.

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

The subject application for residential development on appropriately zoned land being RU5 Village, and as such full consideration and assessment of the NCRP 2036 is not required for the subject application. Notwithstanding this the proposal is considered to comply with the planning principles of the NCRP 2036, goals and overarching vision of being *the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities.*

Flora & Fauna

The submitted plans indicated that four trees located at the rear of the proposed secondary dwelling and adjacent to the shed were proposed to be removed. The trees were identified as 2 Pink Bloodwood (*Corymbia intermedia*) and 2 Swamp Box (*Lophostemon suaveolens*). The species are not Preferred Koala Food Trees as per the Tweed Coast Koala Plan of Management.

A site visit and discussions with the applicant confirmed that the removal of these trees were not necessary to facilitate constructions works on site. The applicant indicated that pruning of the trees was would be required to prevent branches falling on the secondary dwelling and shed. The trees are located within 5m of an

existing lawful building and as such exemptions under the Tweed DCP Section A16 for pruning will apply.

The consent will be conditioned stating that removal of any trees is not approved and any future tree removal will require approval (where statutorily required).


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

The proposed plans were amended during the assessment process and as such were formally notified to neighbouring properties on two occasions. The initial plans were notified with a submission period between Monday 5 December 2016 to Monday 19 December 2016 and the amended plans were notified with a submission period between Wednesday 5 July 2017 to Wednesday 19 July 2017.



During the submission period and throughout the assessment process the application has been the subject of numerous objections from a neighbouring property. The below table summarises each of the issues raised by the objector and includes the Council's response to those issues. Due to the large number of complaints, a document is attached to this report includes a timeline detailing the nature of each query to Council and a summary of Council's response in each instance.

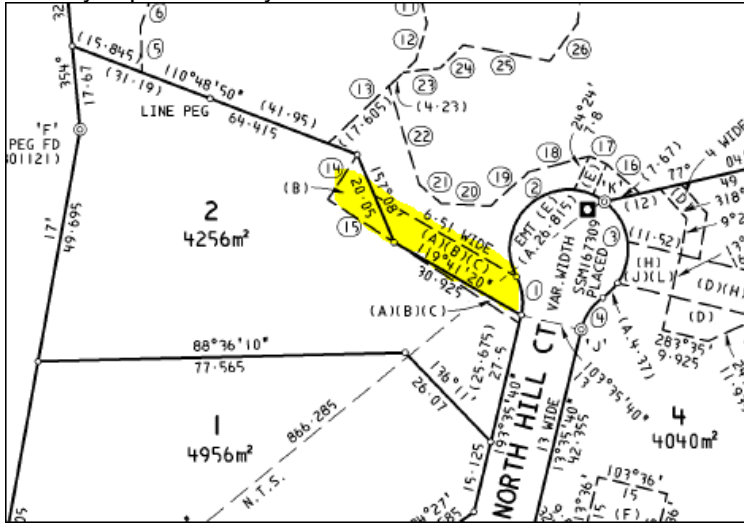
In addition to objections to the application, the objector made General submissions regarding noise and other complaints against the applicant. As these complaints do not relate to planning matters in relation to the application they have not been included in the below discussion.

Summary of objections	Council's response
Plans inaccurate ("fudged")	The amended plans submitted are a fair and accurate representation of the existing structures on site with respect to setbacks and siting of windows and openings (or can be conditioned to achieve our desired outcome) . The plans detail the changes to the existing structure that are required to ensure compliance with Council development controls and the National Construction Codes. In the instances that the current plans are not satisfactory and require further amendment (with regard to the southern wall on the carport for the secondary dwelling, the ultimate size of the secondary dwelling and the removal of a window from the shed) a condition is imposed requiring the submission of amended plans for approval prior to the issue of the subdivision certificate.

Summary of objections	Council's response
<p>Secondary dwelling not compliant with 60m² development control</p>	<p>The plans indicate that the secondary dwelling is 62m². However with the removal of the P/S Storage area a 60m² can be achieved.. It is noted that the 60m² control relates to internal areas only and excludes car parking areas, garages (in this case the boat port may be described as a garage) and external living areas. The consent will be conditioned to prohibit the habitable use of the car port and boat port.</p> 
<p>Boat port or carport will be used as an additional bedroom</p>	<p>As mentioned above the consent will be conditioned to prohibit the habitable use of the car port and boat port. Reliance is placed on the applicant to comply with these conditions and the applicant has been made aware that defiance of these conditions will result in formal compliance action which may include monetary fines.</p>
<p>Bedroom 1 in primary dwelling will be converted to additional secondary dwelling</p>	<p>The layout of the primary dwelling includes a large family room at the rear of the dwelling with an adjacent bedroom, ensuite and verandah that is separated from the remaining portion of the house by a single entrance door. This portion of the house may be utilised as a 'parents retreat' or 'teenagers retreat' and is consistent with modern living expectations and aspirations. The consent will be imposed with a condition stating that the primary dwelling house is to be used as a single domicile only and no portion of the dwelling is to be converted to be used as a separate domicile.</p>
<p>Boat port should be removed North facing window of boat port Mezzanine level in boat port (loft)</p>	<p>The boat port (including mezzanine storage area) is excluded from being included in the 60m² control for the secondary dwelling. Development controls do not limit the number of garages or carports that may be constructed in association with a dwelling or secondary dwelling. The current boat port is an approved structure and complies with the side setback controls contained within Section A1 part A of the Tweed Development Control Plan 2008. The site is 4,256m² in area and is compliant with respect to site coverage and landscaping provisions and as such there is nothing to warrant removal of the boat port in this regard. A six foot timber fence separates the boat port from the adjoining property and as such the boat port does not create any overlooking or privacy implications. The location of windows on the northern elevation of the boat port does not result in privacy impacts due to the placement of the fence. As mentioned above, the consent will be conditioned preventing the boat port from being used for habitable purposes.</p>

Summary of objections	Council's response
	<p>The boat port includes a 7.5m (approx.) mezzanine level or loft area which the applicant has stated is additional storage area that is required. The area has previously been used as a bedroom/sleeping area. The area is not included in the 60m² for the secondary dwelling. Development controls do not limit garages by floor area or additional internal additional storage areas (vertical or horizontal).</p>  <p>The photograph shows the interior of a boat port. In the foreground, a green John Deere tractor is parked. In the middle ground, a motorcycle is parked. In the background, there is a mezzanine level with a wooden railing and a staircase. A license plate 'LR 365' is visible on the wall above the motorcycle.</p>
<p>Overlooking and privacy concerns</p>	<p>The proposed secondary dwelling is located 2.5m from the northern side boundary. The dwelling on the adjoining property is located approx. 7m from the boundary and a pool is located in the rear yard located approx. 30m from the rear of the proposed secondary dwelling.</p> <p>A 2m high (approx.) timber boundary fence has been constructed along the northern boundary adjacent to the proposed secondary dwelling. Since the lodgement of this application this boundary fence has been extended at the western end of the proposed secondary dwelling adjacent to external deck.</p> <p>The boundary fence and the new extension to the fence mitigate any overlooking impacts into the adjoining property.</p>

Summary of objections	Council's response
	  <p data-bbox="683 1503 1460 1624">The proposal is compliant with regard to setback controls and acceptable with regard to any potential privacy impacts now that the neighbour has erected an additional section of fence to restrict sight lines to the neighbouring pool.</p> <p data-bbox="683 1653 1460 1839">Even if the new deck had potential to have a sight line to the neighbours pool the neighbour could erect a vegetation screen on their land to better protect their own privacy as the topography of the land and location of the pool .enable easy overlooking. The application should not be refused on privacy concerns.</p>

Summary of objections	Council's response
Use of driveway	<p>The site is benefited by a right of carriageway of variable which burdens Lot 3 with as nominated on the deposited plan and associated Section 88b Instrument. The lawful use of this driveway is protected by this instrument.</p> 
Removal of koala habitat trees	<p>The plans indicate that four trees located at the rear of the secondary dwelling are proposed to be removed. The trees have been identified as being 2 Pink Bloodwood (<i>Corymbia intermedia</i>) and 2 Swamp Box (<i>Lophostemon suaveolens</i>). These species are not koala food trees. Never the less the applicant has indicated that he is willing to retain the trees and the consent will be imposed with a condition preventing any tree removal without prior approval from Council.</p>
Compliance with BCA standards Compliance with fire safety standards	<p>Unauthorised alterations have been made the existing building and the applicant was requested to provide certification that the unauthorised work complied with the requirements of the National Construction Code – Building Constriction Code (BCA). Council's Building Unit has review the requested information and is satisfied that the necessary requirements have been/are able to be met. An outstanding issue in relation to the location of a smoke detector is required to be resolved prior to the issue of a construction certificate.</p> <p>The application was accompanied by a Bushfire Risk Assessment Report. Details on the plan indicate that the necessary alterations are to be made to comply with the requirements of this report and a condition has been imposed on the consent requiring certification of compliance with the bushfire report be submitted prior to the issue of the occupation certificate.</p>

(e) Public interest

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

OPTIONS:

1. Approve, the application subject to conditions and issue penalty infringement notices (two – one for use and one for works) as recommended. In addition, the applicant be advised that further compliance action will be taken if the boatport and storage area (as approved by DA15/0199) are not reinstated for non-habitable purposes as recommended in this report

Or:

2. Approve the application subject to conditions with NO penalty infringement notices;

Or

3. Refuse the application for reasons specified.

Option 1 is recommended.

CONCLUSION:

The subject application has had a very long history of unauthorised works and uses, however the application as amended and conditioned is now considered capable of approval. The conditional consent would require the applicant to comply with conditions which has not happened to date. Therefore there is an acknowledgement that the applicant may not comply with the recommended conditions but this is not grounds for refusal in itself. Therefore compliance monitoring will be essential at this site.

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.

Objection Submission Summary (ECM 5089798)

2 [PR-PC] Development Application DA17/0536 for Shop Top Housing and Commercial Premises at Lot 1 Sec 4 DP 4570 No. 79 Wharf Street, Lot 2 Sec 4 DP 4570 No. 81 Wharf Street Tweed Heads, Wharf and Frances Streets, Tweed Heads

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

Council is in receipt of a development application that proposes construction of a mixed use development at the above location which includes 43 residential units, retail area and commercial premises and vehicular parking. Development is to be undertaken over 10 levels, including a basement car park, retail development to the ground level, commercial to the first floor and 7 levels of residential above.

The development is proposed over two allotments in a prominent location to the centre of Tweed Heads, on land zoned for commercial core uses.



VIEW FROM WHARF STREET



VIEW FROM FRANCES STREET

Perspective Drawings of development

The subject application was placed on public exhibition for a period of 30 days as the application was Integrated to NSW Office of Water. During the exhibition period, no public submissions were received. General terms of Approval were also received from NSW Office of Water, while Gold Coast Airport Pty Ltd also provided recommended conditions of consent with respect to the application.

Within Council, the application was reviewed by Tweed Shire Council officers in the Building, Environmental Health, Development Engineering, Water & Wastewater, Traffic, Stormwater and Waste Units. Approval of the application is recommended by these Units subject to the imposition of conditions on any consent issued.

The applicant seeks variations to Council's floor space ratio controls. Justification for these variations is provided within this report. This development application is referred to elected Council for determination as the extent of this variation exceeds the 10% figure under which the control can be varied under delegation.

The proposed development is recommended for conditional approval.

RECOMMENDATION:

That:

- A. Clause 4.6 variation to Clause 4.4 of Tweed City Centre Local Environmental Plan 2012 regarding the floor space ratio of the building be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- B. Development Application DA17/0536 for Shop Top Housing and Commercial Premises at Lot 1 Sec 4 DP 4570 No. 79 Wharf Street, Lot 2 Sec 4 DP 4570 No. 81 Wharf Street Tweed Heads, Wharf and Frances Streets, Tweed Heads be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans identified as:**
 - Basement Floor (Drawing No. DA10.01, Issue A), prepared by Lightwave International and dated 9 June 2017**
 - Ground Floor Plan (Drawing No. DA10.02, Issue E-RFI), prepared by**

Lightwave International and dated 10 January 2018

- Level 2 Plan (Drawing No. DA10.03, Issue C-RFI), prepared by Lightwave International and dated 13 November 2017
- Level 3 - 7 Plan (Drawing No. DA10.04, Issue A), prepared by Lightwave International and dated 9 June 2017
- Level 8 Plan (Drawing No. DA10.05, Issue B-RFI), prepared by Lightwave International and dated 6 July 2017
- Level 9 Plan (Drawing No. DA10.06, Issue B-RFI), prepared by Lightwave International and dated 6 July 2017
- Roof Plan (Drawing No. DA10.07, Issue A), prepared by Lightwave International and dated 9 June 2017
- North Elevation (Drawing No. DA20.01, Issue C-RFI), prepared by Lightwave International and dated 13 November 2017, as amended in red
- East Elevation (Drawing No. DA20.02, Issue B-RFI), prepared by Lightwave International and dated 18 July 2017
- South Elevation (Drawing No. DA20.03, Issue B-RFI), prepared by Lightwave International and dated 18 July 2017
- West Elevation (Drawing No. DA20.04, Issue C-RFI), prepared by Lightwave International and dated 13 November 2017
- Section S1 (Drawing No. DA30.01, Issue A), prepared by Lightwave International and dated 9 June 2017
- Section S2 (Drawing No. DA30.02, Issue A), prepared by Lightwave International and dated 9 June 2017, and
- Colour & Material Selection (Drawing No. DA50.01, Issue B-RFI), prepared by Lightwave International and dated 18 July 2017, except where varied by the conditions of this consent.

[GEN0005]

2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).

[GEN0065]

3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

4. 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]

5. 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]

6. The development is to be carried out in accordance with Council's Development Design and Construction Specifications.

[GEN0265]

7. 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]
8. This development consent does not include demolition of the existing structures on the subject site. A separate approval will need to be obtained for this purpose, as statutorily required.
[GEN0305]
9. Prior to the commencement of construction of the new structure or use of the site a 'clearance inspection' shall be conducted for the site and a 'clearance certificate' issued by a licensed asbestos assessor or competent person which states that the site 'does not pose a risk to health and safety from exposure to asbestos' in accordance with Clause 474 of the Work Health and Safety Regulation 2011. A copy of this certificate shall be forwarded to the Principal Certifying Authority and Council within 7 days of completion of the 'clearance inspection'.
[GEN0350]
10. A reflux valve shall be required on any sewer fixtures located within the basement.
11. A minimum vertical clearance of 2.4m must be provided below the proposed awning and the footpath to allow Council access for maintenance to Water and Wastewater Assets located within Frances and Wharf Streets.
[GENNS01]
12. Any use of a crane or other equipment on this site that may exceed a top RL of 49.5 metres AHD would intrude into the prescribed airspace of Gold Coast Airport, and therefore represent a "controlled activity" under the Airports (Protection of Airspace) Regulations. The proponent must obtain approval for any temporary penetration of the airspace, via an application to be submitted to Gold Coast Airport Pty Ltd at least 6 weeks before the intended commencement of the controlled activity.
[GENNS02]
13. The four existing, parallel, on street car parks along the site frontage to Frances Street are to remain, unless agreed otherwise by Tweed Shire Council.
[GENNS03]
14. No vehicle larger than a standard Small Rigid Vehicle (SRV) as defined in the latest version of *AS 2890.2 Parking Facilities - Off-Street Commercial Vehicle Facilities* shall service the site, with a designated parking space for the SRV provided in accordance with the provisions of AS2890.2 and details relevant to but not limited to the following:
 - Minimum clearance heights.
 - Design turning radius provisions.
 - Parking / service bay dimensions.
 - Maximum roadway and ramp grades and rates of change.
 - Access driveway widths.
 - Access driveway sight distances.
 - Manoeuvring clearances.
[GENNS04]

15. Any use of a crane or other equipment on this site that may exceed a top RL of 49.5 metres AHD would intrude into the prescribed airspace of Gold Coast Airport, and therefore represent a "controlled activity" under the Airports (Protection of Airspace) Regulations. The proponent must obtain approval for any temporary penetration of the airspace, via an application to be submitted to Gold Coast Airport Pty Ltd at least 6 weeks before the intended commencement of the controlled activity.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

16. Prior to the issue of a construction certificate a lease agreement is to be entered into with Council in respect to the use of that part of the road reserve, owned by Council, to be occupied by the proposed awning.

[PCC0025]

17. 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 49 designated car parks for the residential component of the development, clearly defined as "reserved" parking.
- The 49 residential car parking spaces is to include 5 designated visitor car parks.
- A minimum of 13 designated car parks for the retail/commercial component of the development.
- A minimum of 3 motorbike spaces are to be provided for the development.
- 1 designated Delivery / Load Bay, sized to accommodate a SRV, compliant with AS 2890.2 Off-Street Commercial Vehicle Facilities and the minimum dimensions specified in Council's DCP B2 - Tweed City Centre.

The basement car park must be designed accordingly to provide sufficient height clearance to allow appropriate vehicles to access the basement stormwater treatment device for servicing or the building proper must provide acceptable alternative access facilities.

The visitor, retail and commercial car parks shall be clearly sign posted and fully accessible to the public.

Full design detail of the proposed parking and maneuvering areas, incorporating the above requirements, 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 Building Works.

[PCC0065]

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

[PCC0285]

19. The building is to have a low reflective roof in accordance with the requirements of Gold Coast Airport Pty Ltd.
The subject land is within the Lighting Zone for Gold Coast Airport, in which use of non-reflective roof surfaces is mandatory. Any proposed use of reflective roof materials requires approval from Gold Coast Airport Pty Ltd, prior to issue of a construction certificate. (Note: Colorbond is a pre-approved material, with the exception of roof colours having solar absorption equal to or less than 0.35).

[PCC0335]

20. A detailed plan of landscaping for site, containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species (non-cultivars) as identified in Council's Native Species Planting Guide - Species List (www.tweed.nsw.gov.au/NativePlants), is to be submitted to and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

The plan shall be consistent with the following provisions of NSW Planning & Environment, Apartment Design Guide:

- Section 40 - Landscape Design, Table 4
- Section 4P - Planting on Structures, Table 5

[PCC0585]

21. The basement car parking is to be provided with immunity against inundation of stormwater associated with the local road reserve. Details of any basement stormwater pump-out system shall be submitted to and approved by the Principle Certifying Authority prior to the issue of a Construction Certificate for Building Works.

Installed pumps must be designed and installed in accordance with Section 9 of AS/NZS3500.3.2 1998 *"National Plumbing and Drainage - Part 3.2: Stormwater Drainage - Acceptable Solutions"*

[PCC0685]

22. Prior to the issue of a Construction Certificate for Building Works, 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 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) off Frances Street.

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]

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

[PCC0945]

24. Council will not permit ground anchors (to retain sacrificial sheet piling for basement excavations) within Council or neighbouring private property or within 200mm of the subject site's property boundary, without prior consent from Council or the applicable neighbouring property owner being obtained. If the land is owned by Council, approval is required from the General Manager or his delegate.

Prior to the issue of a Construction Certificate for the basement, the Proponent must enter into a contract regarding liability for the ground anchors and lodge an application under Section 138 of the Roads Act (with applicable fee) plus a bond of \$25,000 for each road frontage. This bond will be refunded upon the removal of the ground anchors to the satisfaction of Council. If the ground anchors are not removed prior to the occupation/use of the development, the bond shall be forfeited to Council.

[PCC0955]

25. Permanent stormwater quality treatment shall be provided in accordance with the following:
- a. The Construction Certificate Application for Building Works shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - b. Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
 - c. It is encouraged that Water Sensitive Urban Design principles such as bio-retention facilities in accordance with "Water By Design" guidelines (being a program of the South East Queensland Healthy Waterways Partnership) are utilised, instead of installing an "end of line" proprietary Gross Pollutant Device.
The proposed treatment system shall be supported by MUSIC modelling, with details of the intended filter provided, and shall include details of treatment for the undercover and basement car parking areas.
 - d. Specific Requirements to be detailed within the Construction Certificate application include:
 - i. Shake down area shall be installed within the property, immediately prior to any construction vehicles entering or exiting the site, prior to any works being undertaken.
 - ii. Runoff from all hardstand areas, (including on-grade and basement car parking and hardstand landscaping areas and

excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm, with treatment provisions designed in accordance with Council's Development Design Specification D7 - *Stormwater Quality*, Section D7.12. Engineering details of proposed "end of line" devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.

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

[PCC1105]

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

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

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

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

[PCC1145]

27. 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".

A detailed Erosion and Sediment Control Plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality* shall be submitted with the Construction Certificate Application for Building works and Section 68 stormwater drainage application.

[PCC1155]

28. 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]

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

The development's Lawful Point of Discharge for stormwater remains the existing Tweed Shire Council stormwater network located within Wharf Street and Frances Street road reserves.

[PCC1195]

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

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

The Section 68 Application must be approved by Council prior to the associated Construction Certificate for Building Works.

[PCC1310]

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

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

[PCC1325]

34. Prior to the issue of a Construction Certificate, application shall be made to Council under Section 305 of the Water Management Act 2000 for a certificate of compliance for development to be carried out - i.e.: the provision of water and sewerage to the development, as applicable.

Note:

- a. Following this, requirements shall be issued by Council under Section 306 of the Water Management Act 2000.
- b. Following this, any works needing to be undertaken will require a further application to be made to Council under Section 68 of the Local Government Act for the relevant water / sewer works. Approval of this application will be required prior to/in conjunction with issuing the Construction Certificate.

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.

[PCC1335]

35. The proposed water and sewer infrastructure on the Engineering Services Layout are considered to be preliminary and are subject to change to meet Council requirements.

36. If the developer is unable to connect to the existing sewer junction on lot 2 DP 4570, a 150mm diameter sewer extension to Council's existing sewerage system is required to be constructed from the existing 150mm diameter sewer manhole (DD/1) in Frances St to Lot 1 Section 4 DP 4570 to provide a new sewerage discharge point for the proposed building. Detail Design Plans of the new 150mm diameter sewer extension shall be provided to Council as part of a Section 68 application and approved by Council prior to the issue of a Construction Certificate.

[PCCNS01]

37. Prior to issue of the construction certificate a construction management plan shall be developed for the project. All works shall comply with the approved management plan.

38. Prior to issue of a Construction Certificate, an updated Waste Management Plan shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate, demonstrating the following amendments to the current Waste Management Plan:

- Council recycling services includes bins to a maximum 360 litre capacity. Therefore amended bin provision required from that identified in Tables 4 - 6 of the submitted Waste Management Plan.
- In the event that increased area is required to facilitate the correct bin types within the refuse room, modifications should be made to the refuse room and demonstrated on an updated site plan, submitted to Council for approval of General Manager or delegate.

[PCCNS02]

39. Prior to the issue of a construction certificate, a modified awning design is to be submitted to Council for the approval of the General Manager or his delegate. This modified design should provide for a minimum 600mm horizontal clearance from the back of any roadside kerb to the awning above.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

40. 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]

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

[PCW0045]

42. 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]

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

[PCW0225]

44. Residential building work:

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

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

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

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

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

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

[PCW0235]

45. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

46. 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]

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

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

[PCW0765]

48. Prior to commencement of the basement excavation, a Dilapidation Report detailing the current general condition (including the structural condition) of adjoining buildings/sites, infrastructure, driveways and roads is to be prepared and certified by a suitably qualified and experienced Structural Engineer. The Report (supported by recent photos) is to be submitted to and accepted by Council prior to commencement of ANY works on the site.

[PCW0775]

49. Prior to commencement of building works a stormwater drainage plan is to be submitted to and approved by the Principal Certifying Authority.

[PCW0955]

50. Prior to commencement of work on the site, all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required 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]

51. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges prior to commencing any building works.

[PCW1135]

52. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCW1170]

53. Prior to any soil being extracted from site, the Developer must advise Council of the proposed haul route and intended destination. No material can leave site until the proposed route and destination have been endorsed by the General Manager or his delegate.

[PCWNS01]

DURING CONSTRUCTION

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

[DUR0005]

55. 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]

56. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

- A. Short Term Period - 4 weeks.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

- B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15

minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

57. All pumps used for onsite dewatering operations are to be installed on the site 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.

[DUR0225]

58. All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Council's General Manager or his delegate to neutralise any offensive odours. The point of discharge shall be approved by Council's General Manager or his delegate prior to installation and shall include a water sampling outlet.

[DUR0235]

59. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.

[DUR0255]

60. 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]

61. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:

- a. A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
- b. The chute shall be located in a position approved by the Principal Certifying Authority.
- c. A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.

[DUR0385]

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

[DUR0395]

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

[DUR0405]

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

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

[DUR0415]

65. Excavation

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

[DUR0425]

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

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

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

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

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

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

[DUR0435]

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

[DUR0675]

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

[DUR0815]

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

[DUR0905]

70. 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]

71. 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 an Occupation Certificate. [DUR0995]
72. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:
- Noise, water or air pollution.
 - Dust during filling operations and also from construction vehicles.
 - Material removed from the site by wind.
- [DUR1005]
73. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans. [DUR1045]
74. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428. [DUR1685]
75. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428. [DUR1695]
76. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia. [DUR1705]
77. A full width reinforced concrete footpath is to be maintained along the development's road frontage to both Wharf Street and Frances Street from the property line to the back of the existing kerb in accordance with Council's Development Design and Construction Specification, unless agreed otherwise by Council. [DUR1755]
78. 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]

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

[DUR1875]

80. 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]

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

[DUR2015]

82. Council's Environmental Health Officer shall be advised within 24 Hours in the event of detection of any failure associated with the dewatering activity being carried out on the site.

[DUR2315]

83. 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 Council is satisfied that the site is fully rehabilitated.

[DUR2375]

84. 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]

85. 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]

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

[DUR2505]

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

[DUR2525]

88. 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]

89. 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]

90. 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]

91. Dust and Erosion Management

a. All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54 km/h). The applicant shall be responsible for the monitoring of on-site wind speeds and be able to produce this data to Council on request.

[DUR2825]

92. Prior to commencement of dewatering the applicant shall arrange for a site inspection with Council's Environmental Health Officer and all representatives involved in the dewatering activity.

93. The names and 24 hour contact phone numbers of the site manager and project manager shall be provided to Council's Environmental Health Officer prior to the commencement of dewatering operations.

94. Prior to the commencement and following completion of dewatering operations closed circuit television (CCTV) footage and report examining sediment deposits in the drainage network shall be provided to Council's Stormwater Maintenance Engineer.

95. Prior to commencement and upon completion of the dewatering operations, the applicant shall arrange for an inspection of the dewatering connection

point to Council's stormwater system with Council's Stormwater Maintenance Engineer. The applicant shall comply with any directions issued by Council's Stormwater Maintenance Engineer in respect to the dewatering connection point.

96. 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*". If retained in NSW excavated material shall be neutralised for acid sulfate on site and 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 2005*. Records of excavated material and disposal location to be maintained on site and provided to Council upon request.

[DURNS01]

97. Works shall be completed in accordance with the Acid Sulfate Soil Investigation and Management Plan HMC Environmental June 2017 (HMC2017.053.03). Where excavated spoil is transported to QLD it shall be deposited and treated as stipulated in the identified Acid Sulfate Management Plan.

98. Works shall be completed in accordance with the Dewatering Management Plan HMC Environmental, May 2017 (HMC.2017.053.3) and revised monitoring schedule dated 20 November 2017.

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

99. Prior to issue of an Occupation Certificate, 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]

100. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

101. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

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

[POC0355]

103. Section 94 Contributions

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

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

- (a) Tweed Road Contribution Plan (Residential charge):
167.67 Trips @ \$876 per Trips \$146,879
((\$815 base rate + \$61 indexation)
S94 Plan No. 4
Sector1_4
- (b) Tweed Road Contribution Plan (Retail/Commercial charge):
23.66 Trips @ \$876 per Trips \$12,435.60
((\$815 base rate + \$61 indexation)
(\$8,290.40 has been subtracted from this total as this development is deemed an 'Employment Generating Development')
S94 Plan No. 4
Sector1_4
- (c) Open Space (Casual):
27.274 ET @ \$564 per ET \$15,383
((\$502 base rate + \$62 indexation)
S94 Plan No. 5
- (d) Open Space (Structured):
27.274 ET @ \$645 per ET \$17,592
((\$575 base rate + \$70 indexation)
S94 Plan No. 5
- (e) Shirewide Library Facilities:
27.274 ET @ \$869 per ET \$23,701
((\$792 base rate + \$77 indexation)
S94 Plan No. 11

(f)	Bus Shelters: 27.274 ET @ \$66 per ET ((\$60 base rate + \$6 indexation) S94 Plan No. 12	\$1,800
(g)	Eviron Cemetery: 27.274 ET @ \$127 per ET ((\$101 base rate + \$26 indexation) S94 Plan No. 13	\$3,464
(h)	Community Facilities (Tweed Coast - North) 27.274 ET @ \$1457 per ET ((\$1,305.60 base rate + \$151.40 indexation) S94 Plan No. 15	\$39,738
(i)	Extensions to Council Administration Offices & Technical Support Facilities 27.636 ET @ \$1935.62 per ET ((\$1,759.90 base rate + \$175.72 indexation) S94 Plan No. 18	\$53,492.79
(j)	Cycleways: 27.274 ET @ \$490 per ET ((\$447 base rate + \$43 indexation) S94 Plan No. 22	\$13,364
(k)	Tweed Heads Master Plan: 41 MDU @ \$1047 per MDU ((\$1,047 base rate + \$0 indexation) S94 Plan No. 27	\$42,927

[POC0395]

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

[POC0435]

105. 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.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 64 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Certificate of Compliance" signed by an authorised officer of Council.

BELOW IS ADVICE ONLY

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

Water:	20.976 ET @ \$13,632 =	\$285,938.80
Sewer:	31.948 ET @ \$6,549	\$209,229.70

[POC0675]

106. Prior to the issue of an Occupation Certificate, the applicant shall produce a copy of the "Satisfactory Inspection Report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

107. Upon completion of the basement excavation and prior to the issue of an Occupation (including interim) Certificate, a further Dilapidation Report is to be prepared and certified by a suitably qualified and experienced structural engineer detailing the condition including the structural condition of the adjoining buildings/sites, infrastructure and roads. The Dilapidation Report shall take into consideration the findings of the original reports and advise if any damages have occurred that could be attributed to the work the subject of this development consent. If damages have occurred the PCA is to be provided with evidence that the damages have been satisfactorily repaired prior to the issue of an Occupation Certificate (including interim).

A copy of the Dilapidation Report is to be provided to the Principle Certifying Authority/Council.

[POC0825]

108. The lots are to be consolidated into one (1) lot under one (1) title. The Plan of Consolidation shall be registered with the Lands and Property Information (LPI) (formerly the Lands Titles Office), prior to issue of an Occupation Certificate.

[POC0855]

109. Prior to the issue of an Occupation Certificate, the applicant shall produce a copy of the "Satisfactory Inspection Report" issued by Council for all s68h2 permanent Stormwater Quality Control Devices.

[POC0985]

110. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

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

[POC1055]

112. Prior to the issue of the occupation certificate a site audit statement from an accredited contaminated land site auditor shall be provided to Council to the satisfaction of the General Manager or his delegate.

[POCNS01]

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

[POCNS02]

USE

114. 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]
115. 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]
116. 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]
117. 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]
118. All mechanical ventilation shall comply with AS1668.2 Ventilation Requirements.
[USE0845]
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. The residential visitor, retail and commercial car parks shall be clearly sign posted and fully accessible to the public.
[USENS01]
121. The Level 2 and Level 8 communal areas are to be clearly identified for the use of residents in the subject development and are not to be open to the public or operated commercially without further consent from Council.
122. All wastes shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section A15 - Waste Minimisation and Management and to the satisfaction of the General Manager or his delegate.
[USENS02]

GENERAL TERMS OF APPROVAL FOR A LICENSE UNDER THE WATER ACT 1912

General Conditions (all approvals)

The purposes of these conditions are to:

- Define certain terms used in other conditions
- Specify the need to obtain a license, permit or authority before commencing any works
- Specify that, in most cases an approval will only be issued to the occupier of the lands where the works are to be located (as required by the Water Act)
- Require existing approvals to be cancelled or let lapse when a license is issued (if applicable)
- Require the safe construction and operation of all works
- Require the use of appropriate soil conservation measures
- Limit vegetation destruction or removal to the minimum necessary
- Require the separate authorisation of clearing under the NYC Act
- Allow conditions to be imposed for management of fuel (petroleum)

In the following conditions relating to an approval under the Water Act 1912:

'the department' means the department administering the Water Act 1912;

'approval' means a license, permit, authority or approval under that Act;

'river' has the same meaning as in Section 5 of the Water Act 1912;

'work' means any structure, earthwork, plant or equipment authorised under the approval to be granted, as defined in Section 5 and 105 of the Water Act 1912;

'controlled work' means any earthwork, embankment or levee as defined in Section 165 of the Water Act 1912

Before commencing any works or using any existing works for the purpose of industrial (sand & gravel extraction) an approval under Part V of the Water Act 1912 must be obtained from the department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.

An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.

When the department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or let lapse.

All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.

All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry or sediments into any river, lake, waterbody, wetland or groundwater system.

The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.

All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.

The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.

A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.

Conditions of water use (including irrigation)

The purpose of these conditions are to:

- Allow the department to obtain an accurate measure of water use where necessary
- Specify the purpose(s) for which the water may be used

If and when required by the department, suitable devices must be installed to accurately measure the quality and quantity of water extraction or diverted by the works.

All water measuring equipment must be adequately maintained. It must be tested as and when required by the department to ensure its accuracy.

The water extracted under the approval to be granted shall be used for the purpose of industrial (dewatering) and for no other purpose. A proposed change in purpose will require a replacement license to be issued.

Conditions for bores and wells

See also 'general conditions' and 'conditions for water use'

The purpose of these conditions are to:

- Set a limited period bore construction
- Require the bore to be properly completed and sealed
- Require certain information to be provided on completion of the work, including a location plan
- Allow NOW access for inspection and testing
- Specify procedures if saline or polluted water found
- Specify a volumetric allocation for the works purpose
- Allow NOW to alter the allocation at any time

Works for construction of bore must be completed with such period as specified by the department.

Within two months after the works are completed the department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are specified in the approval.

Any water extracted by the works must not be discharged into any watercourse or groundwater if it would pollute that water.

The department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.

- (1) The licensee must allow authorised officers of the NSW office of Water, and its authorised agents reasonable access to the works with vehicles and equipment at any time for the purposes of:**
 - Inspecting the said work**
 - Taking samples of any water or material in the work and testing the samples.**
- (2) the licensee shall within 2 weeks of being notified install to the satisfaction of the NSW Office of Water in respect of location, type and construction an appliance(s) to measure the quantity of water extracted from the works. The appliance(s) to consist of either a measuring weir or weirs with automatic recorder, or meter or meter(s) of measurement as may be approved by the NSW Office of Water. The appliance(s) shall be maintained in good working order and condition. A record of all water extracted from the works shall be kept and supplied to the NSW Office of Water upon request. The licensee when requested must supply a test certificate as to the accuracy of the appliance(s) furnished either by the manufacturer or by some person duly qualified.**
- (3) the authorised work shall not be used for the discharge of polluted water into a river or lake otherwise than in accordance with the conditions of a licence granted under the protection of the environment operations act 1997. A copy of the licence to discharge is to be provided to the NSW Office of Water.**
- (4) the term of this licence shall be one (1) years.**
- (5) the volume of groundwater authorised from the work by this licence shall not exceed 30 megalitres per water year.**
- (6) the authorised work shall not be used for the discharge of water unless the ph of the water is between 6.5 and 8.5, or the water has been treated to bring the ph to a level between 6.5 and 8.5 prior to discharge, or the water is discharged through the council's sewerage treatment system.**
- (7) the licensee shall test the ph of any water extracted from the work prior to the commencement of any discharge and at least twice daily thereafter and record the date, time and result of each test in the site log. A copy of the records of the ph testing is to be returned with the form 'ag'.**
- (8) A Groundwater Management Plan must be developed for the site including a monitoring bore, a comprehensive list of analytes, and proposed threshold values for parameters with contingency and reporting measures outlined for threshold breaches.**

- (9) An acid sulphate soil management plan to the satisfaction of the Water NSW must be developed for the site in accordance with the ASSMAC guidelines which includes management of impacts on both soils and the pit water. The need for procedures such as mechanical removal of ASS fines and lime dosing should be considered.**
- (10) The works shall be managed in accordance with the approved Acid Sulfate Soil Management Plan.**

REPORT:

Applicant: Zinkohl Pty Ltd
Owner: Zinkohl Pty Ltd
Location: Lot 1 Sec 4 DP 4570 No. 79 Wharf Street, Lot 2 Sec 4 DP 4570 No. 81 Wharf Street Tweed Heads, Wharf and Frances Streets, Tweed Heads
Zoning: B3 Commercial Core
Cost: \$9,086,000.00

Background:

Proposed Development

Council is in receipt of a development application that proposes construction of a mixed use development at the above location which includes 43 residential/tourist units, retail premises and office premises. The residential units are configured as following;

- 10 x 1 bedroom units
- 30 x 2 bedroom units
- 3 x 3 bedroom units

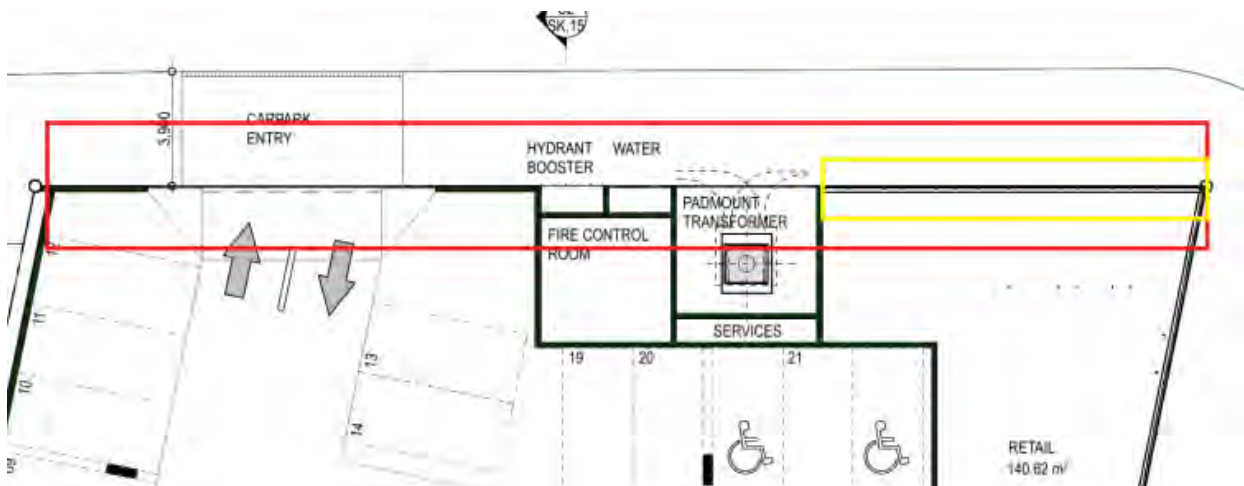
The building has a maximum building height of 29.8m and a Gross Floor Area of 4455m². In detail, the proposal consists of development over 10 levels as follows:

- Basement: 41 car parking spaces with ancillary storage and bicycle parking.
- Ground Level: 200m² retail area to the Wharf and Frances Street elevation with 21 car parking spaces located behind with site vehicular access from Frances Street. An Entry/foyer area is also proposed, in addition to bicycle parking, refuse room and services.
- Level 2: 525m² commercial area (offices) over 5 separate tenancies, in addition to toilet amenities and a communal open space. An awning is also provided to this level.
- Levels 3 – 7: 7 residential units per storey, consisting of 1 x 1 bedroom and 4 x 2 bedroom units per level.
- Level 8: 3 x 3 bedroom residential units with private courtyard/landscaping. There is also a communal open space provided to this level.
- Level 9: 5 x 1 bedroom residential units.

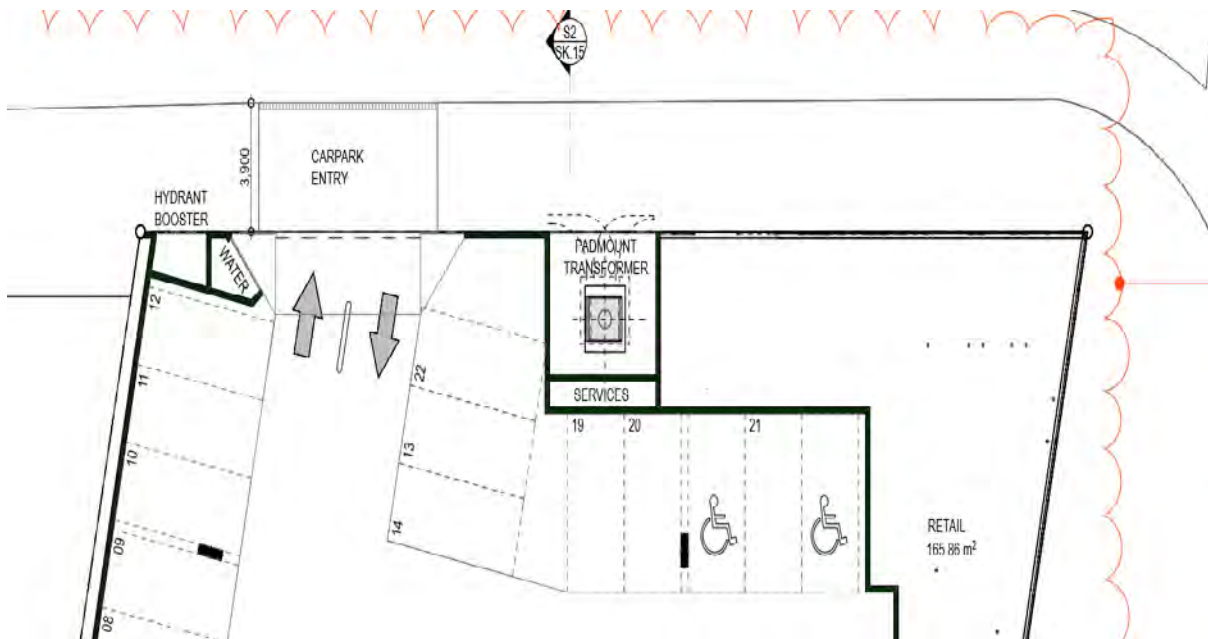
It is noted that further information was requested with respect to the following matters, which are now considered to be satisfactorily addressed;

Street Frontage to Frances Street

The subject site has a total frontage of approximately 40m to Frances street, however it was considered that this elevation is poorly activated to the ground level through the provision of business/retail use, with approximately 12.5m frontage dedicated to retail tenancy and the remainder being for servicing purposes, as demonstrated on the below image.



Original Frances Street Ground Floor Frontage

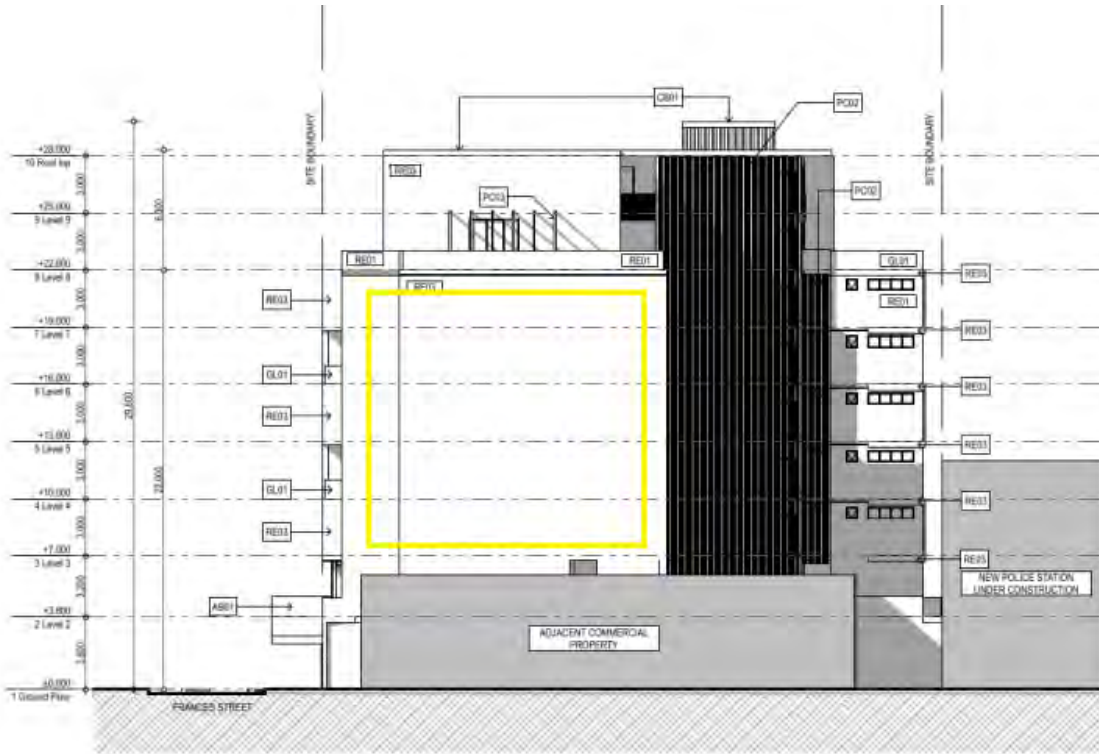


Updated Frances Street Ground Floor Frontage

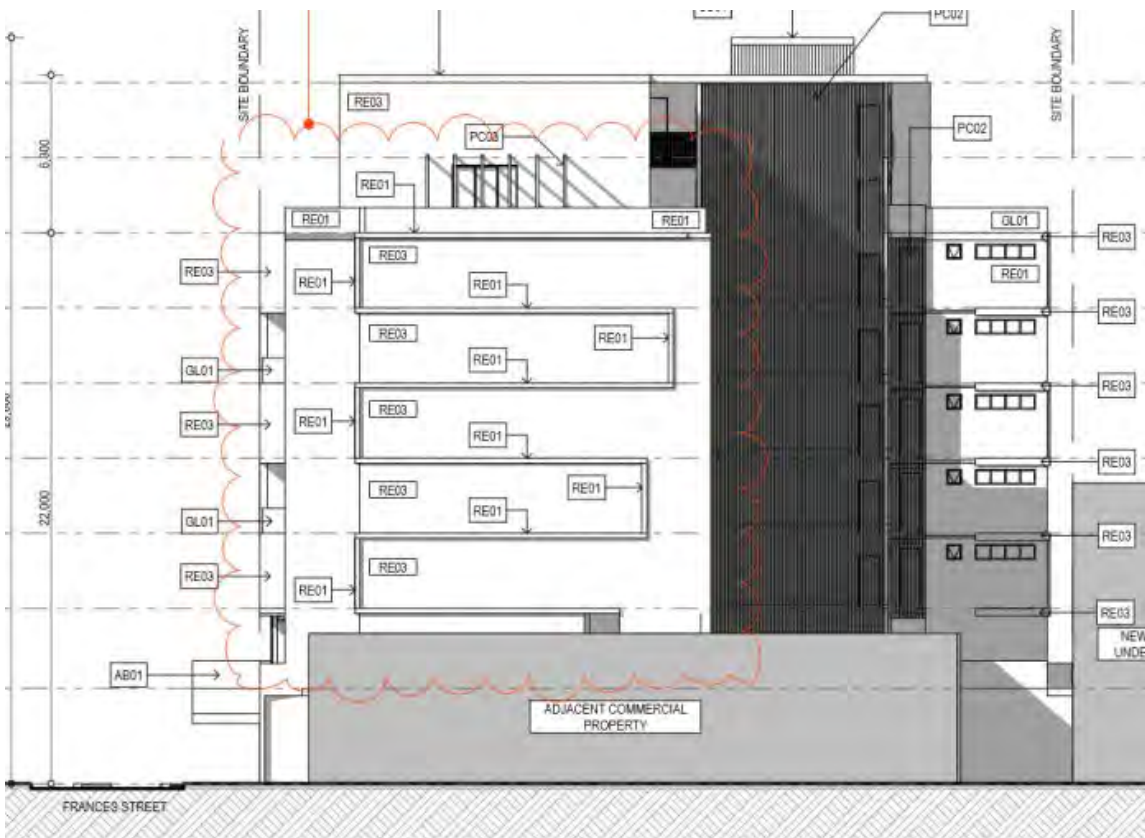
The applicant has altered the layout in order to provide for additional retail/business use at this location. This results in an extra 25m² of retail space and an additional 5m of street frontage activated through retail use. This is considered to result in adequate street front activation at this location.

West Elevation Building Design

A submitted, the western elevation of the proposed development was considered to result in excessive wall massing at the highlighted area below. The applicant was requested to provide a design alternative which reduced this massing.



Original Western Elevation



Updated Western Elevation

Additional articulation and breaks in built form have been incorporated on the western elevations, including vertical and horizontal wall extrusions which create visual interest and

reduce the appearance of bulk and scale. This is considered to be an acceptable amendment and reduces the massing which was evidenced in the original design.

The subject application does not include provision for any advertising signage associated with the proposed development.

The application as lodged also included the ability for the residential units to be used for tourist and visitor accommodation purposes. The application was subsequently amended by the applicant to remove this element of the application.

Demolition of the existing structures on site is not proposed through this application. Separate approval is to be obtained for the demolition of the existing commercial building.

The subject application was placed on public exhibition for a period of 30 days, during which time no submissions were received. The proposal was also reviewed by NSW Office of Water (Integrated referral due to dewatering proposed) and Gold Coast Airport who have raised no objection to the proposal subject to the imposition of appropriate condition of consent.

The proposal was reviewed by Tweed Shire Council officers in the Building, Environmental Health, Development Engineering, Water & Wastewater, Traffic, Stormwater and Waste Units. Approval of the application is recommended by these Units subject to the imposition of conditions on any consent issued.

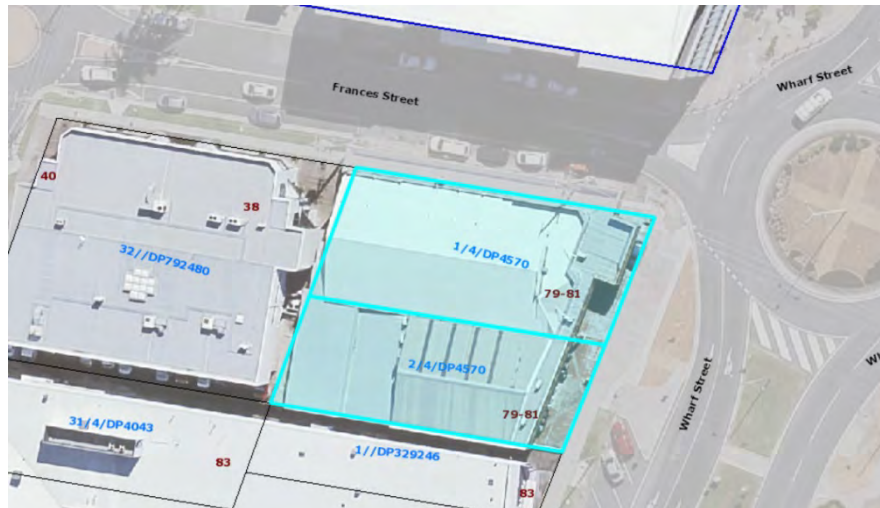
The proposed floor space ratio over the site of 3.42:1 exceeds the permitted ratio of 2.54:1, being a 35% variation to the applicable development standard. Furthermore, the proposed residential floor space ratio over the site of 2.6:1 exceeds the permitted ratio of 2.1:1, being a 25% variation to the applicable development standard. An application to vary these development standards has been submitted by the applicant in accordance with Clause 4.6 of TLEP 2012 and are supported in this instance by Council officers. The development is considered to conform to the relevant land zoning objective while the building controls relating to building height and requisite setbacks and separation distances are considered to be achieved. Therefore the application is supported by Council officers despite the non-compliance with the floor space ratio control.

Council has assumed concurrence from the Department of Planning and Environment in accordance with Planning Circular PS 17-006 to approve the proposed variations to Clause 4.4 of the LEP. In accordance with this Planning Circular, only elected Council can assume concurrence and approve this application as the variation exceeds 10%.

Site Details

The subject site comprises two regular, rectangular shaped lots located on a corner site in Tweed Heads. The site has a total area of *1299m² with a 40m frontage to Frances Street and a 33m frontage to Wharf Street.

The immediate surrounding allotments have been developed, with a Police Station site recently developed to the south and a Department of Aging, Disability and Home Care building located to the west.



Site

Presently the site is developed with a single storey commercial premises. Which covers the entire site footprint. The site is generally flat. Council's water infrastructure is available from the adjoining road reserves while the connection to sewer infrastructure is through the police station site to the south.

The subject application also incorporates development (of an awning) located over Council's Wharf Street and Frances Street road reserves. Council's owners consent has been provided with respect to this.

*Note: conflicting site areas were provided by the applicant in the application originally. The applicants surveyor has since confirmed that the site area is 1299m².

Site History

A search of Council records indicated an extensive development history relating to the existing commercial premises on site. In this regard, the majority of these applications relate to changes of use and ancillary signage etc. to the current building, which will be demolished in the event that this application is approved and is not considered to raise any substantive merit issues which require assessment under this application.

The most recent use of the site was as a shop (Rivers Outlet). This was approved on 25 September 2006 under DA06/0771 for a change of use from the Tweed motors reception/sales office and vehicle servicing area to a retail store and associated signage. The application related to a 550m² GFA area of shop and 18 car parking spaces.

SITE DIAGRAM:



Site Plan
 Lot 1 Sec 4 DP 4570 No. 79
 Lot 2 Sec 4 DP 4570 No. 81
 Wharf Street and Frances Street, Tweed Heads

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dial before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

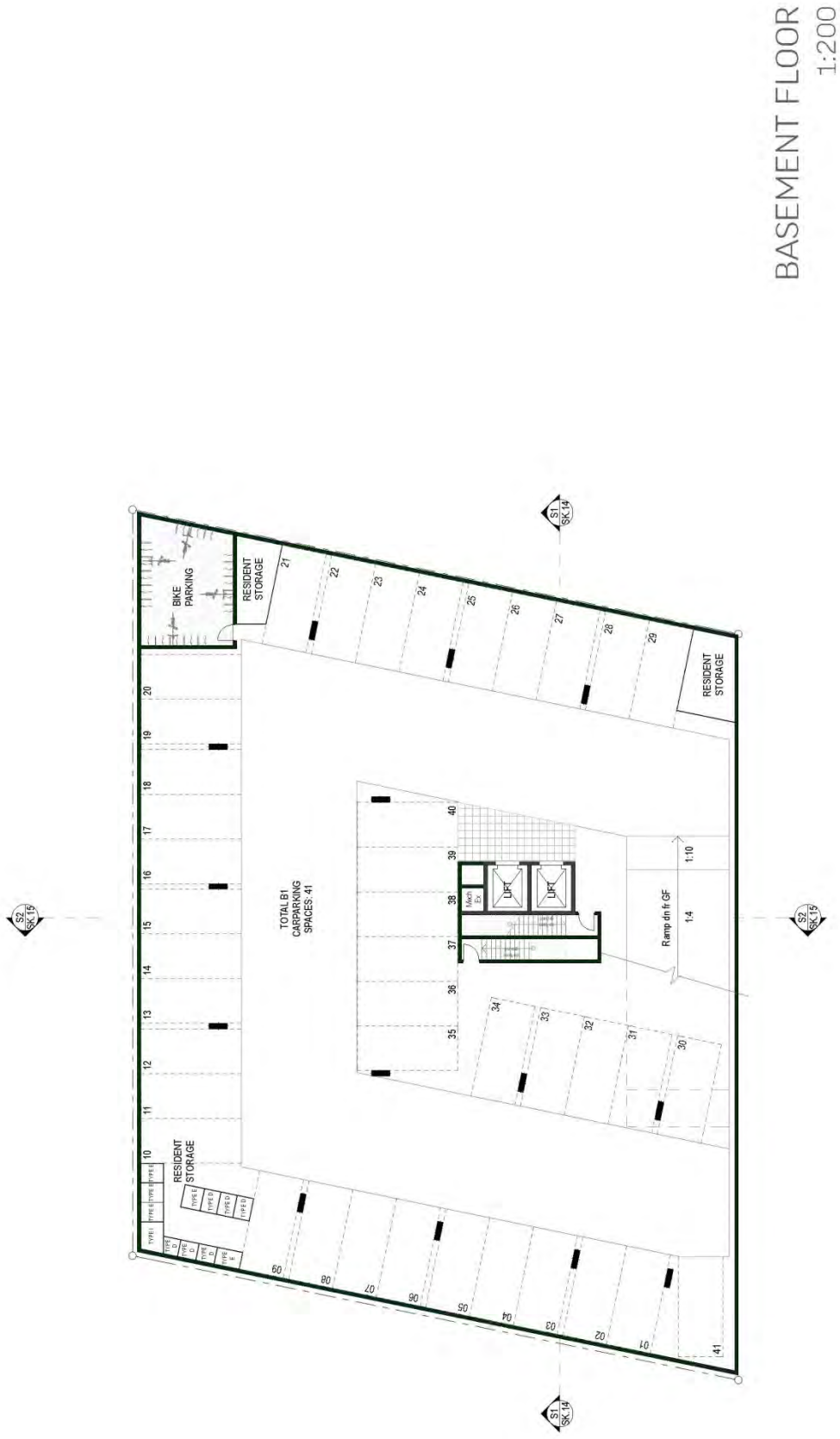
GDA Cadastre: 22/01/2018
 © NSW LPI & Tweed Shire Council
 Coordinate System - MGA Zone 56
 Datum - GDA 94

Civic and Cultural Centre
 3 Tumbulgum Road
 Murwillumbah NSW 2484
 PO Box 816
 Murwillumbah NSW 2484
 T: (02) 6670 2400 / 1300 292 872
 F: (02) 6670 2483
 W: www.tweed.nsw.gov.au
 E: planningreforms@tweed.nsw.gov.au



Date Printed: 15 February, 2018

DEVELOPMENT/ELEVATION PLANS:



BASEMENT FLOOR
1:200

LIGHTWAVE INTERNATIONAL

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Newport, Victoria 3240
P 03 9497 1000
E info@lightwave.com.au
W www.lightwave.com.au

CLIENT: ZIMHOL

PROJECT: 1813 Wharf St

DRAWING: Basement Floor Plans

SCALE: 1:200 @ A3

DATE: 09.06.2017

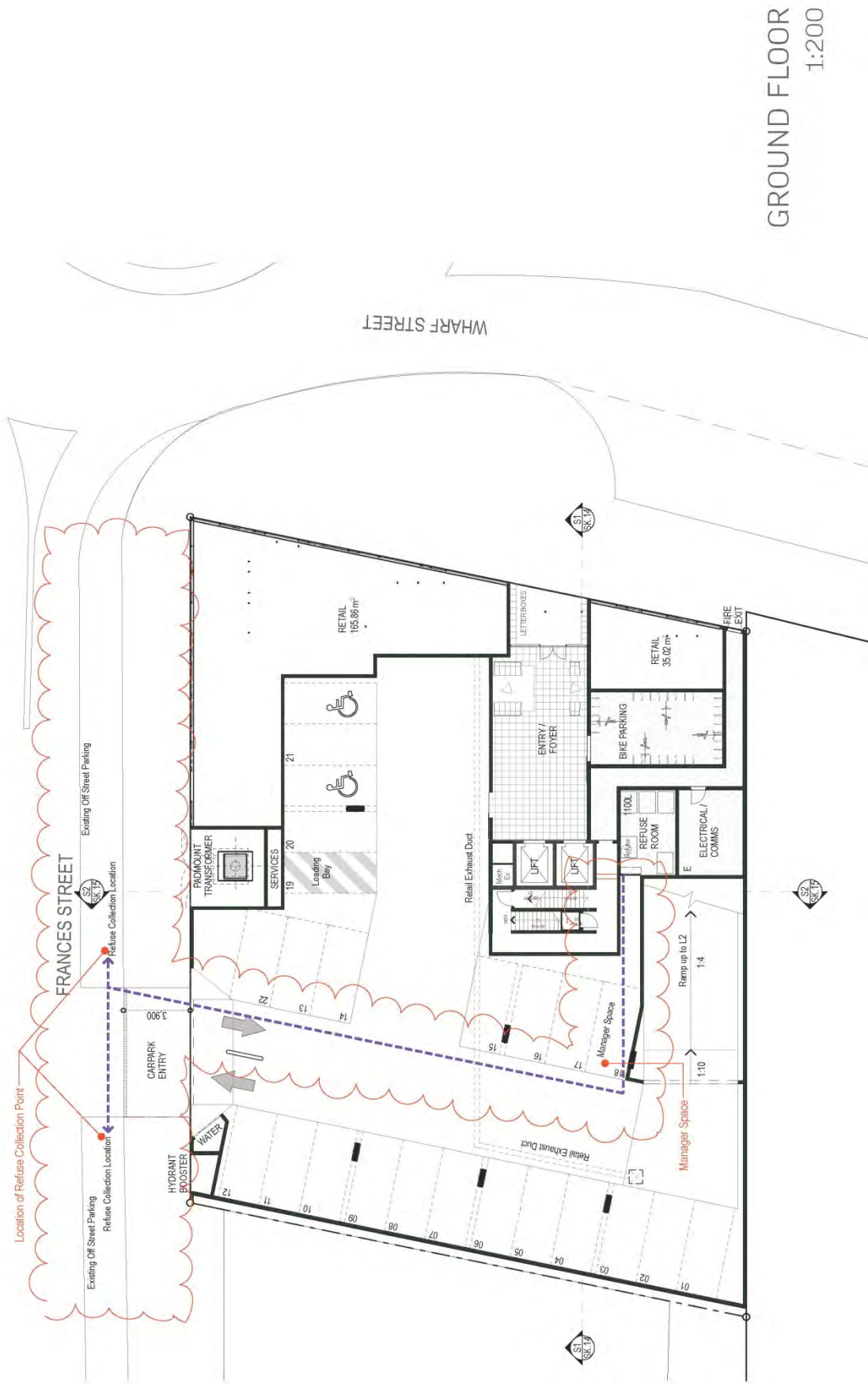
DESIGN: Mark Walsh

DRAWN: MTMB

JOB NO.: 1813

DWG NO.: DA10/01

ISSUE NO.: A



GROUND FLOOR
1:200

JOB NO.: 1619
DWG NO.: DA10.02
ISSUE NO.: E-RFI

SCALE: 1:200 @A3
DATE: 10.01.2018
DESIGN: Mark Walsh
DRAWN: MTAB

DRAWING:
Ground Floor Plans

PROJECT:
1613 Wharf St

CLIENT:
ZINHOL



1:200 SCALE
DATE: 10.01.2018
BY: M. WALSH
CHECKED: M. WALSH

LIGHTWAVE INTERNATIONAL

Architectural Projects and Planning Services
100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

LEVEL 2
1:200



SCALE: 1:200 @A3
DATE: 13.11.2017
DESIGN: Mark Walsh
DRAWN: MTMB

DRAWING:
Level 2

PROJECT:
1613 Wharf St

CLIENT:
ZIMHOL

1613 Wharf St, Suite 201
1613 Wharf St, Suite 201
1613 Wharf St, Suite 201
1613 Wharf St, Suite 201

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Lightwave International is a leading architectural and engineering firm. We provide a wide range of services to our clients, including design, construction management, and project management. Our team is experienced and professional, and we are committed to delivering high-quality results for every project.

JOB NO.: 1613
DWG NO.: DA10.03
ISSUE NO.: C-R1



LEVEL 3-7
1:200

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CLIENT: ZINKHOL

PROJECT: 1813 Wharf St

DRAWING: Level 3-7

SCALE: 1:200, @A3
DATE: 02.05.2017
DESIGN: Mark Walsh
DRAWN: MTMB

JOB NO.: 1613
DWG. NO.: DA10.04
ISSUE NO.: A



LEVELS 8
1:200

SCALE: 1:200 @A3
DATE: 06/07/2017
DESIGN: Mark Walsh
DRAWN: M/TMG

DRAWING: Levels 8

PROJECT: 1613 Wharf St

CLIENT: ZIMHOL

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JOB NO.: 1613
DWG NO.: DA10.05
ISSUE NO.: B RFI



LEVELS 9
1:200

JOB NO.: 1613
DWG NO.: DK10.06
ISSUE NO.: B-RFT

SCALE: 1:200 @ A3
DATE: 05.07.2017
DESIGN: Mark Walsh
DRAWN: MT/AB

DRAWING:
Levels 9

PROJECT:
1613 Wharf St

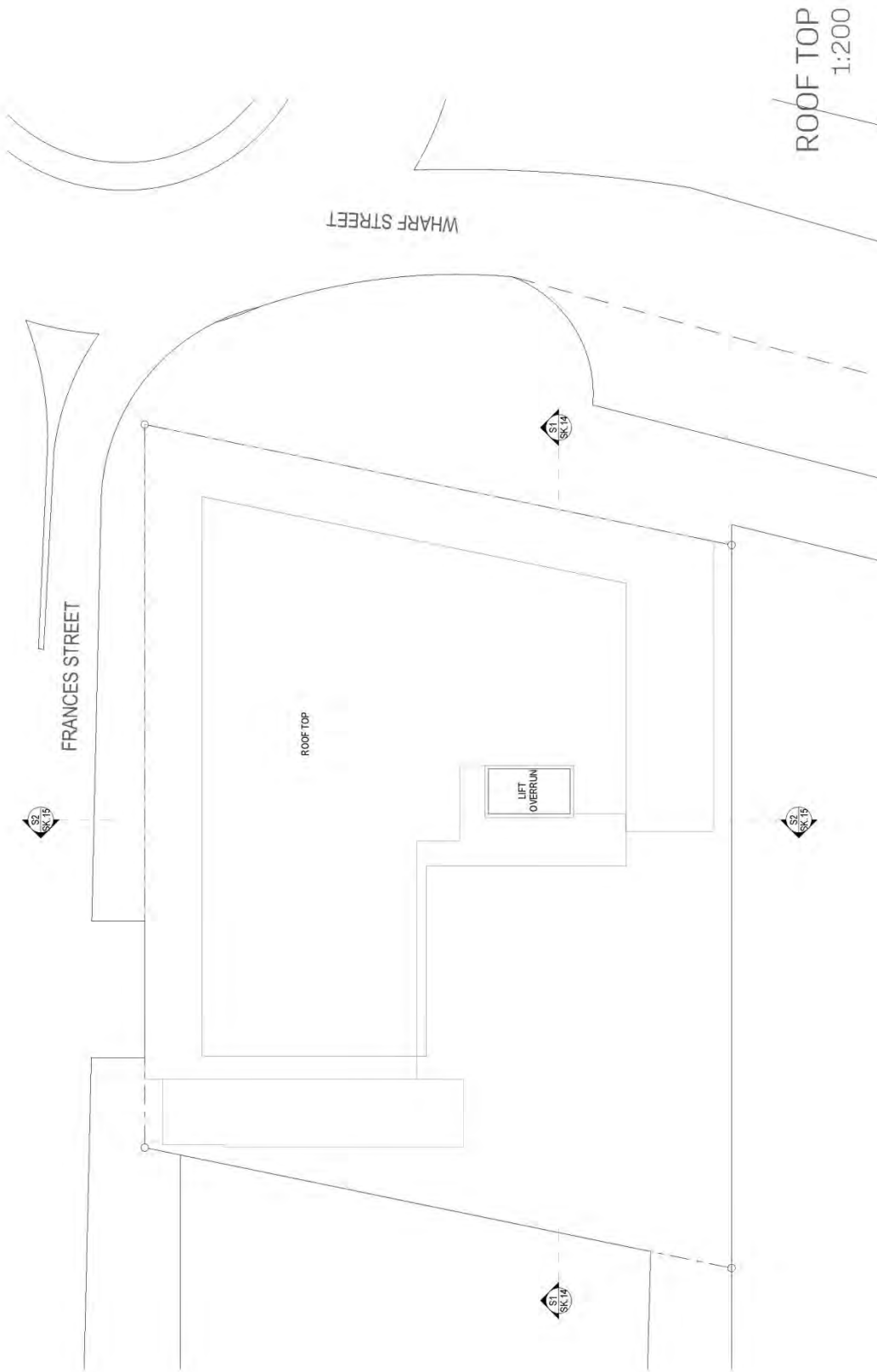
CLIENT:
ZIMHOL



1613 Wharf St
Level 9
1:200
05.07.2017
Mark Walsh
MT/AB



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SCALE: 1:3.6' @ A3
 DATE: 09/05/2017
 DESIGN: Mark Walsh
 DRAWN: M.W.G.

DRAWING: Roof

PROJECT: 1813 Wharf St

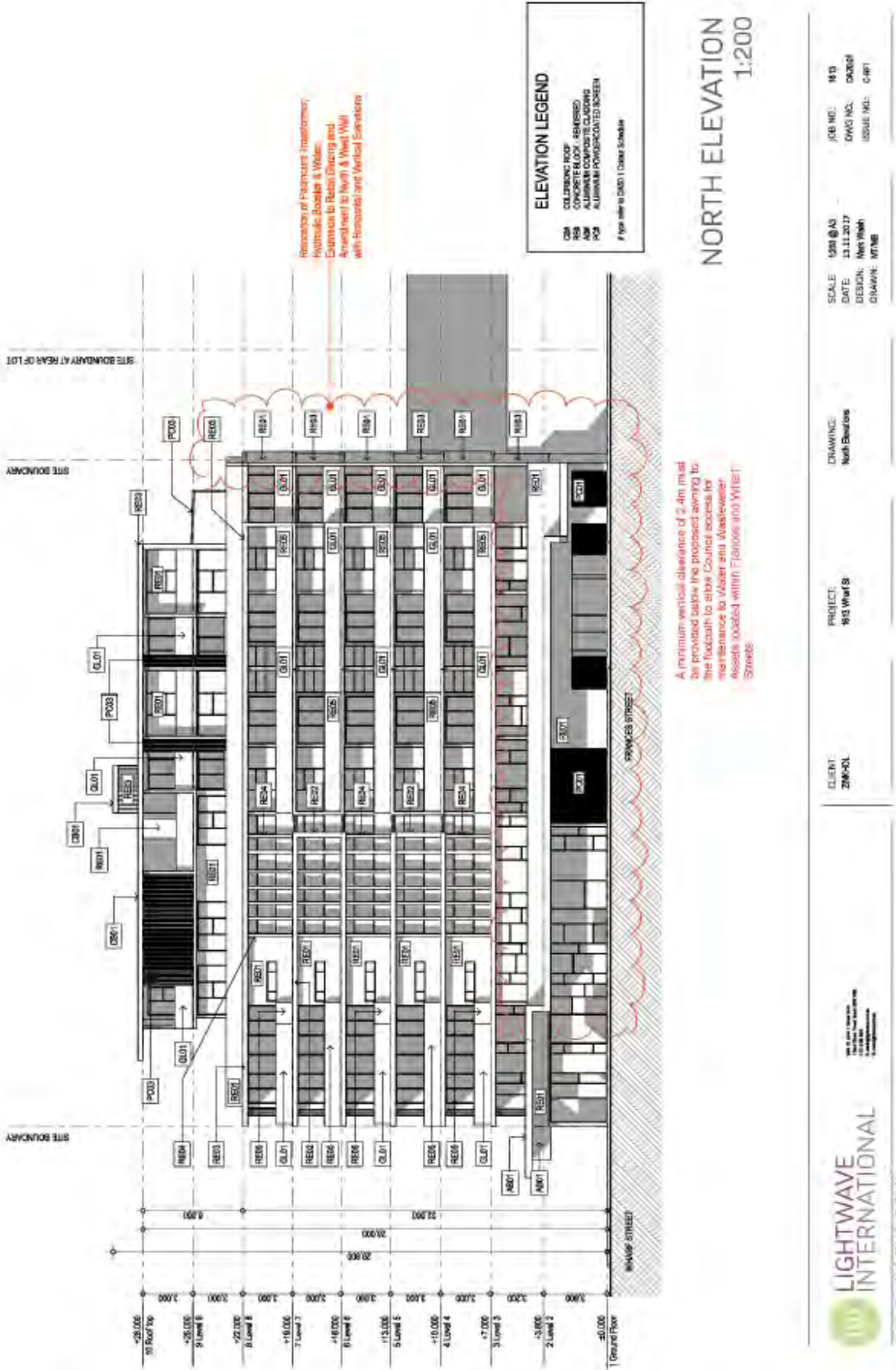
CLIENT: ZIMHOL

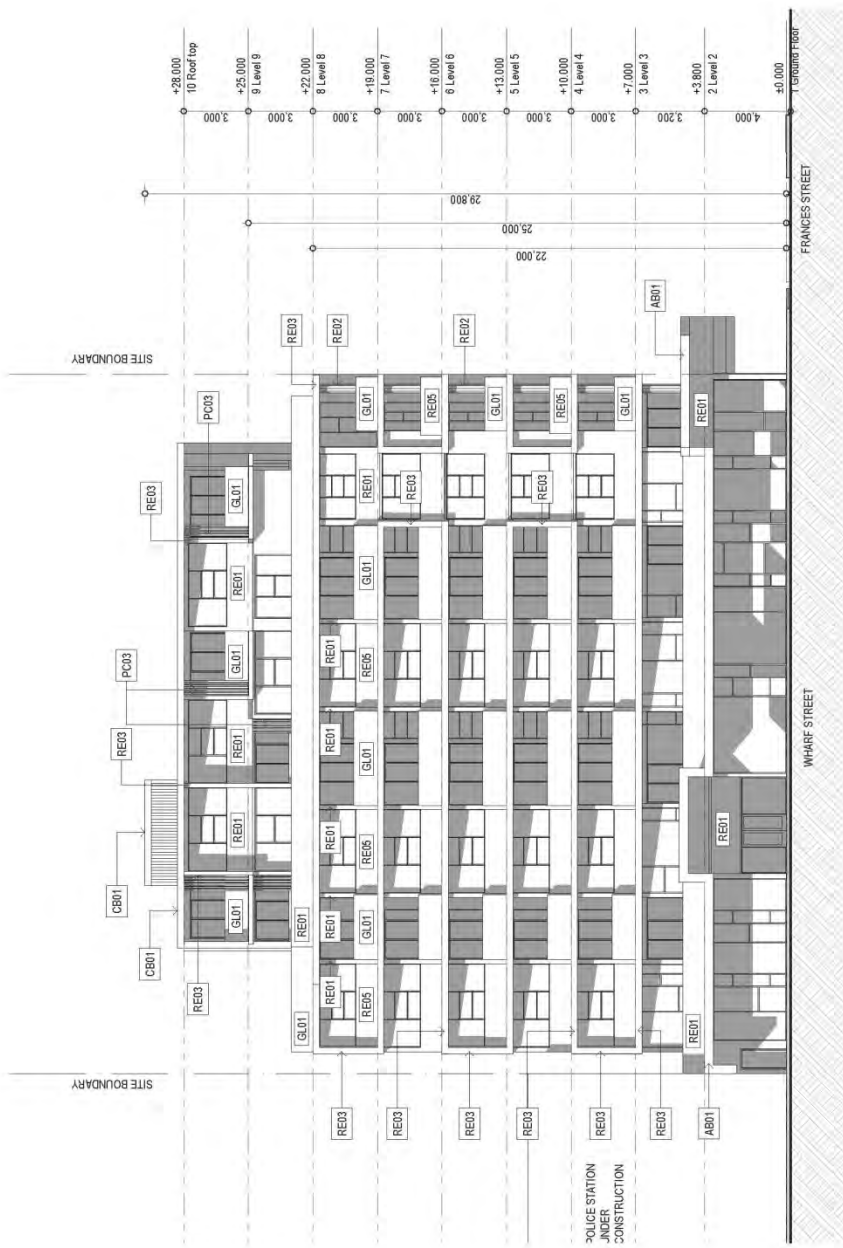


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 303.733.8888
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LIGHTWAVE INTERNATIONAL


Job No: 1613
 DWG No: DA10.07
 Issue No: A





ELEVATION LEGEND	
CB#	COLORBOND ROOF
RE#	CONCRETE BLOCK - RENDERED
AB#	ALUMINIUM COMPOSITE CLADDING
PC#	ALUMINIUM POLYMER COATED SCREEN
# refers to DA601 Colour Schedule	

EAST ELEVATION

1:200

SCALE: 1:200, 1:111.09 @ A3
 DATE: 18.07.2017
 DESIGN: Mark Walsh
 DRAWN: M/TAB

JOB NO.: 1613
 DWG NO.: DA2002
 ISSUE NO.: B-F11

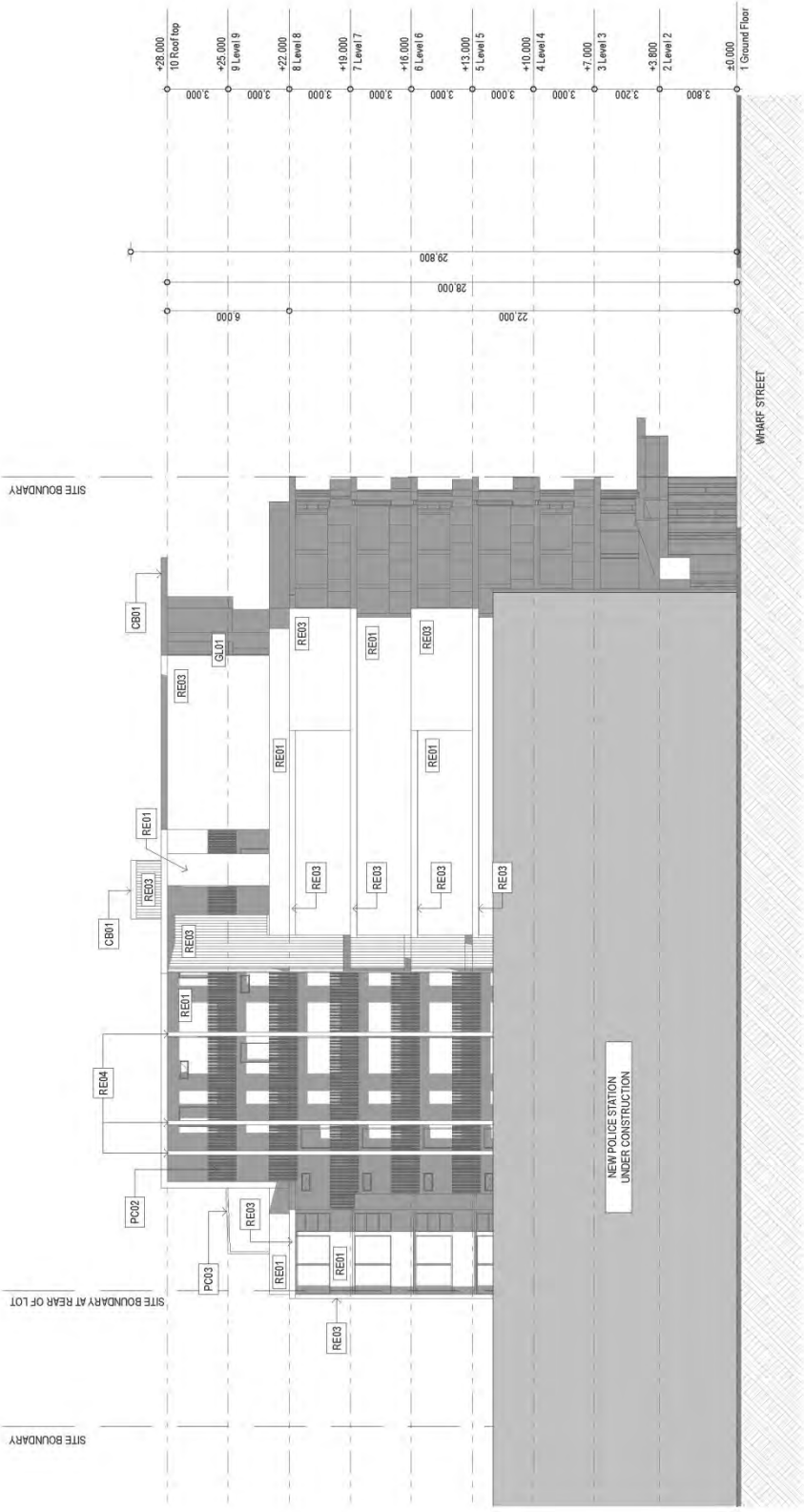
DRAWING: East Elevations

PROJECT: 1613 Wharf St

CLIENT: ZINKHOL

Architect: Lightwave International
 170 St Albans Street, St Albans, VIC 3024
 Tel: 03 9499 1000
 Email: info@lightwave.com.au





SOUTH ELEVATION
1:200

ELEVATION LEGEND

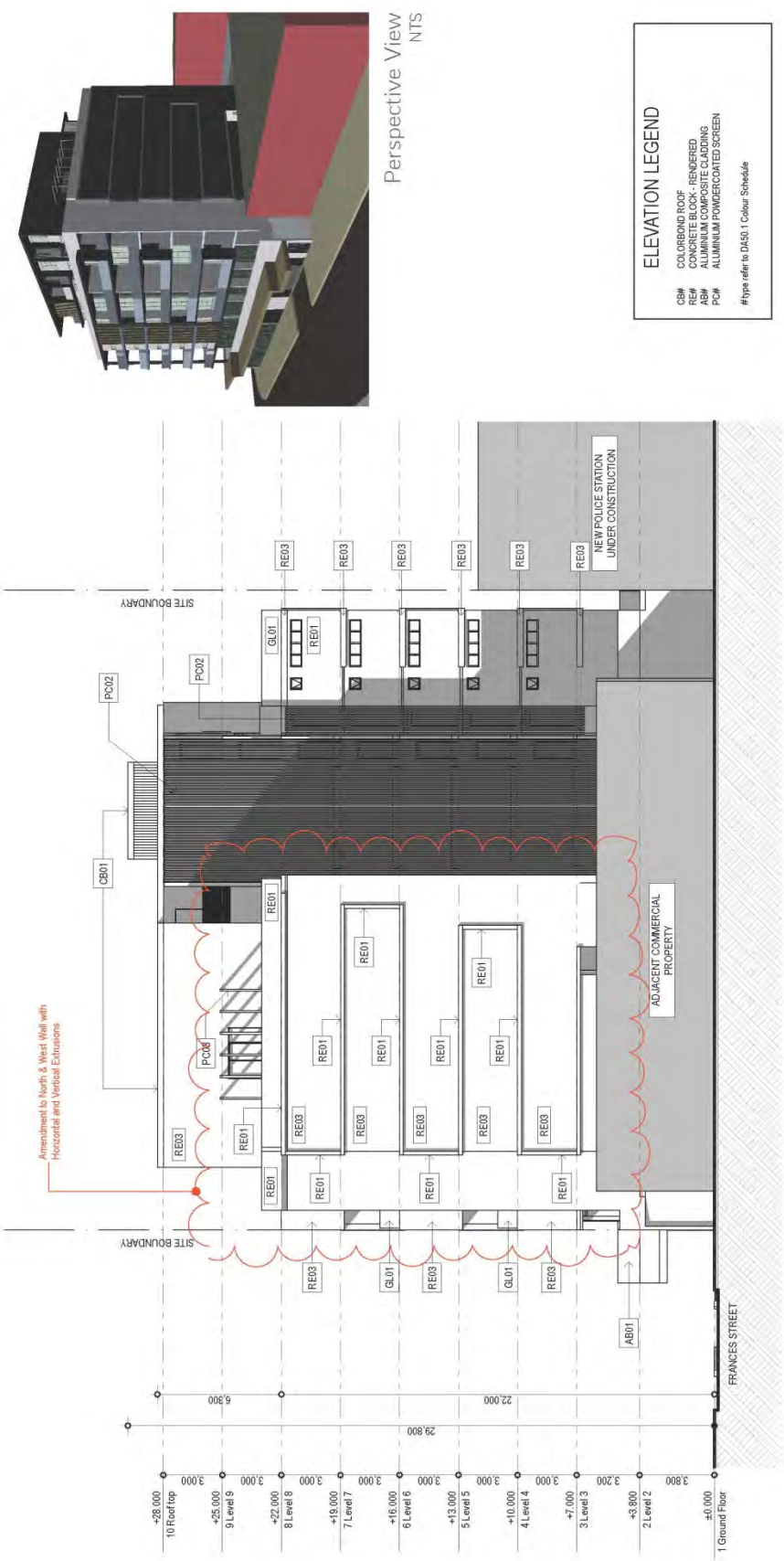
- CR# COLOURBOND ROOF
- RE# CONCRETE BLOCK - REINFORCED
- AB# ALUMINUM COMPOSITE CLADDING
- PC# ALUMINUM POWDER COATED GREEN

type refer to D601 Colour Schedule

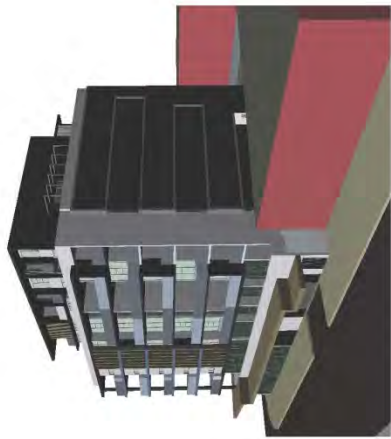
<p>CLIENT: ZINKHOL</p>	<p>PROJECT: 1613 Wharf St</p>	<p>DRAWING: South Elevations</p>	<p>SCALE: 1:200, 1:110.08 @ A3</p>
<p><small>Mark L. Lister, J. Lister 17/10/2016 10/10/2016 10/10/2016 10/10/2016</small></p>	<p>JOB NO.: 1613 DWG NO.: DA20.03 ISSUE NO.: B-PF1</p>	<p>DESIGN: Mark Walsh DRAWN: M/TMB</p>	<p>DATE: 18.07.2017</p>



All drawings prepared for the Project are the property of Lightwave International and shall remain confidential.



Perspective View
NTS



ELEVATION LEGEND	
CB#	COLORBOND ROOF
RE#	CONCRETE BLOCK - RENDERED
AB#	ALUMINUM COMPOSITE CLADDING
PO#	ALUMINUM POWDERCOATED SCREEN
#Type refer to DA50.1 Colour Schedule	

WEST ELEVATION
1:200

SCALE: 1:200 @A3
 DATE: 13.11.2017
 DESIGN: Mark Walsh
 DRAWN: MTFAB

DRAWING:
West Elevations

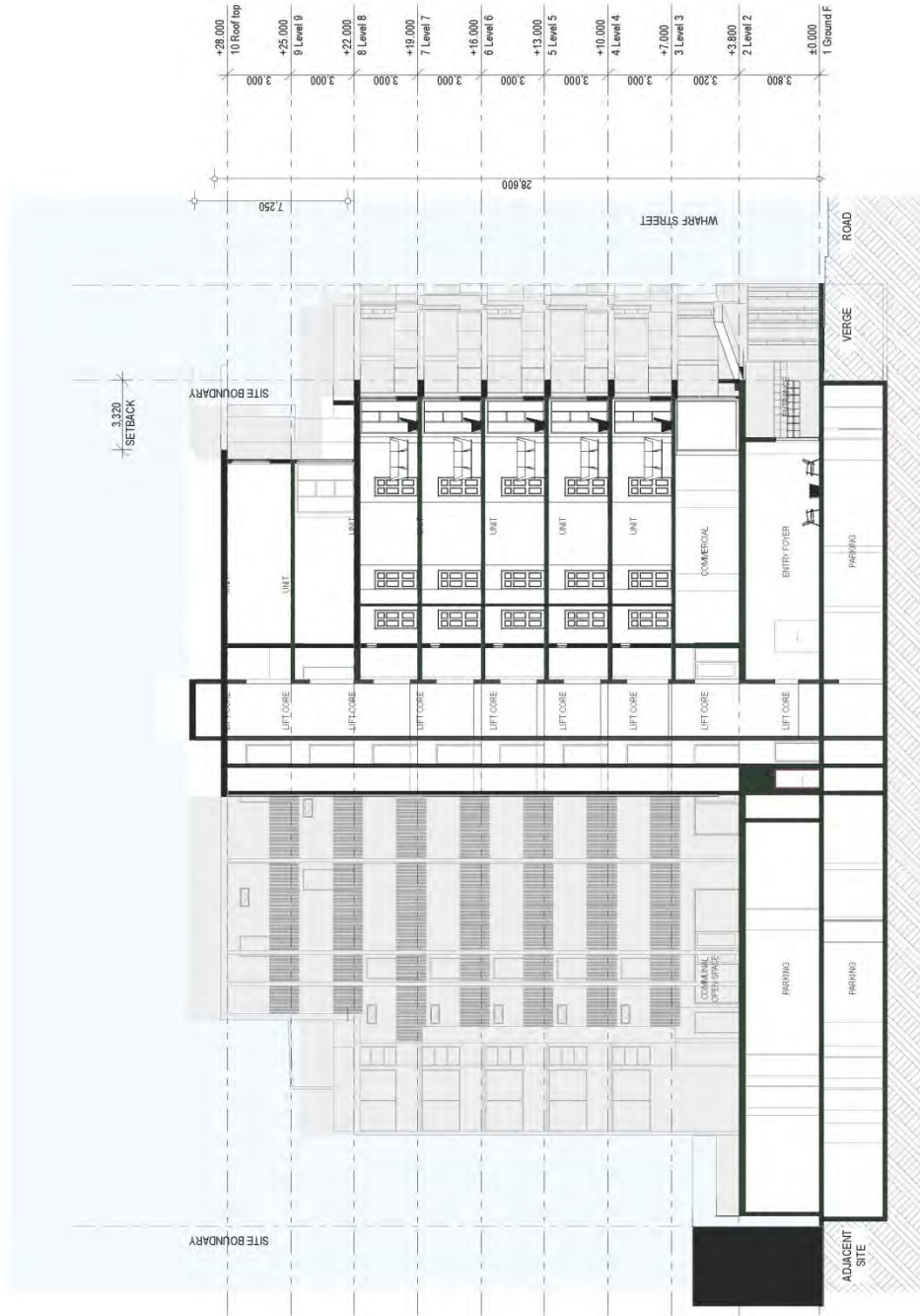
PROJECT:
1613 Wharf St

CLIENT:
ZINKHOL

Mr. S. Lane, Lead Designer
 1000 West Street, Suite 1000
 West Vancouver, BC V8V 1K1
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Architectural Elevation: West Elevation (1:200) - 1613 Wharf St



SECTION S1
1:200

JOB NO.: 1613
DWG NO.: DA3001
ISSUE NO.: A

SCALE: 1200 @ A3
DATE: 09.06.2017
DESIGN: Mark Walsh
DRAWN: MFM

DRAWING:
Sections S1

PROJECT:
1613 Wharf St

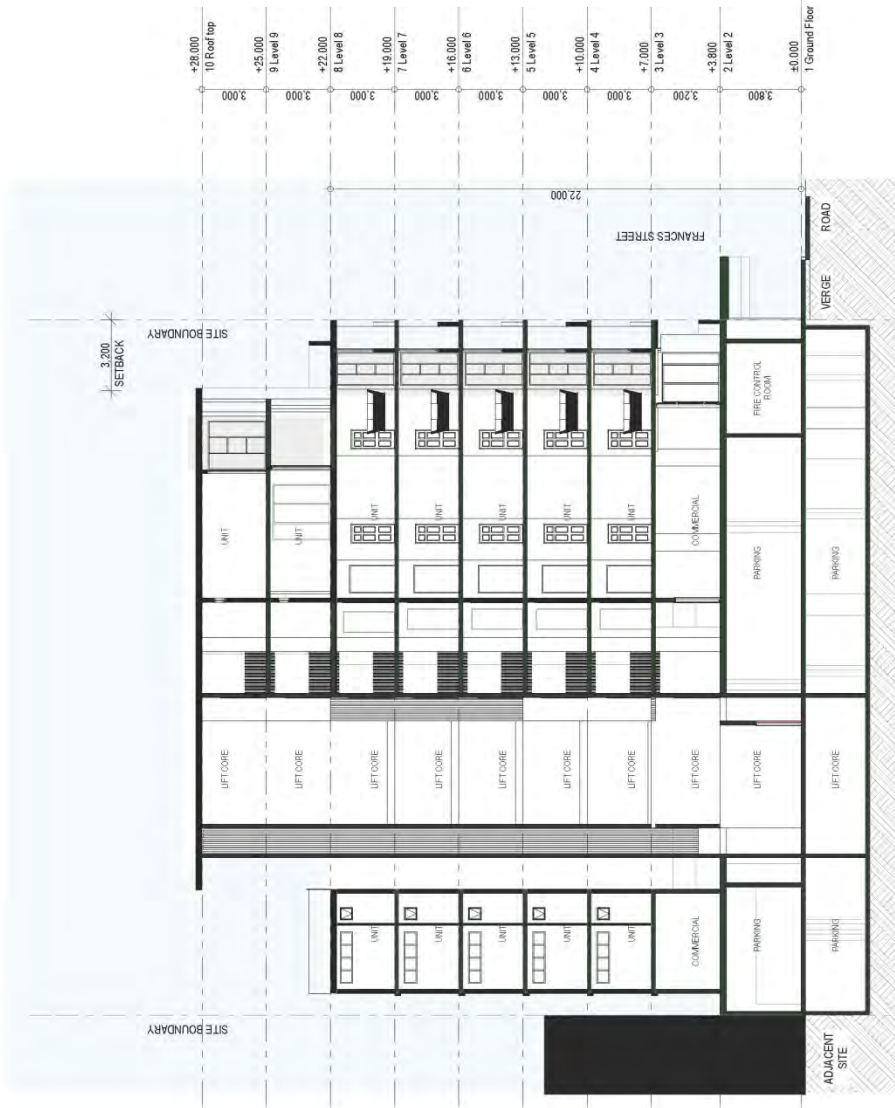
CLIENT:
ZKHOL

Sheet 1 of 1
This sheet is intended for use
in conjunction with the
following drawings:

**LIGHTWAVE
INTERNATIONAL**



Lightwave International Ltd, 1613 Wharf Street, London, E16 2RQ, UK



SECTION S2
1:200

JOB NO: 1613
 DWG NO: DA3002
 ISSUE NO: A

SCALE: 1:200 @ A3
 DATE: 09/06/2017
 DESIGN: Mark Walsh
 DRAWN: M/WAB

DRAWING:
 Sections S2

PROJECT:
 1613 Wharf St

CLIENT:
 ZINKHOL

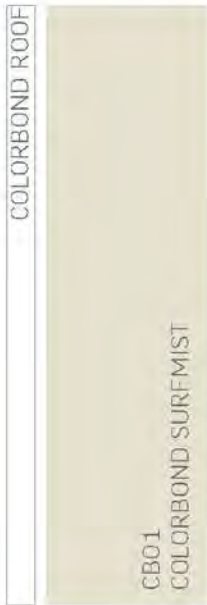
DATE: 11/06/2017
 DRAWN: M/WAB
 CHECKED: M/WAB
 BY: M/WAB

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CLIENT
ZAKHOL

PROJECT
1813 Wharf St

DRAWING
Colour Schedule

SCALE
DATE: 16/07/2017
DESIGN: Mark Walsh
DRAWN: MMB

DWG NO.: DA-301
ISSUE NO.: 01-RFN

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

(a) (i) **The provisions of any environmental planning instrument
Tweed City Centre Local Environmental Plan 2012**

Part 1 Preliminary

1.2 Aims of Plan

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

- (1) This Plan aims to make local environmental planning provisions for land in Tweed City Centre in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents,
 - (b) to promote employment, residential, recreational, arts, social, cultural and tourism opportunities in Tweed City Centre,
 - (c) to encourage the responsible sustainable management and conservation of Tweed City Centre's natural and environmentally sensitive areas, the built environment and cultural heritage,
 - (d) to promote development that is consistent with the principles of ecologically sustainable development,
 - (e) to promote the economic revitalisation of Tweed City Centre,
 - (f) to strengthen Tweed City Centre as a multi functional and innovative regional centre that encourages employment and economic growth,
 - (g) to protect and enhance the vitality, identity and diversity of Tweed City Centre,
 - (h) to facilitate building design excellence appropriate to a regional city in Tweed City Centre.

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, permissible at this location.

1.4 Definitions

Under this Plan, the proposed development would be a '*mixed use development*' defined as follows;

'mixed use development' means a building or place comprising 2 or more different land uses.'

The following uses are provided within the development;

'shop top housing' means one or more dwellings located above ground floor retail premises or business premises.'

Note.

Shop top housing is a type of residential accommodation—see the definition of that term in this Dictionary.

and;

'commercial premises means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises.'

The above uses are permitted with consent in the B3 Commercial Core zone.

Part 2 Permitted or prohibited development

2.1 Land use zones

The proposed development area is zoned as B3 Commercial Core under the provisions of this plan.

2.3 Zone objectives and Land Use Table

The objectives of the B3 Commercial Core zone are:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To encourage upper floor residential or tourist accommodation that does not compromise the commercial use of the land.

The proposed development is considered to be consistent with the objectives of the zone through the provision of a mixed use building which provides a range of retail, business, office uses and upper floor residential or tourist accommodation. Furthermore the proposal will provide employment opportunities through both the construction and operational phase and the subject application, by virtue of being located within Tweed City Centre, is considered to facilitate additional public transport patronage at this location.

2.7 Demolition requires development consent

This clause states that *'the demolition of a building or work may be carried out only with development consent.'* The submitted application does not seek development consent for the demolition of the existing structures, with it being noted that this would form part of a separate development application. Therefore no further consideration is required with respect to this clause.

Part 4 Principal development standards

4.3 Height of buildings

The objectives of this clause include provisions to establish the maximum height for which a building can be designed and ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity.

This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. In this instance the proposed development site is identified as having a maximum building height of 34m (Control M) as identified on the building height map.

The proposed development has a maximum stated height of 29.8m which is considered to be compliant with the provisions and objectives of this control.

4.4 Floor space ratio

The objectives of this clause are as follows:

- (a) to define the allowable development density of a site and for particular classes of development,
- (b) to enable an alignment of building scale with the size of a site,
- (c) to provide flexibility for high quality and innovative building design,
- (d) to limit the impact of new development on the existing and planned natural and built environment,
- (e) to encourage increased building height and site amalgamation at key locations in the area of Tweed City Centre.

This clause goes on to further state that the maximum floor space ratio (FSR) for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The *floor space ratio* of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area. In this instance the applicable floor space ratio is V (3.25:1) over the entire site.

The provisions of Clause 2A are also relevant to this application however, as detailed below;

(2A) Despite subclause (2), the maximum floor space ratio for a building on a site area that is on land in Zone B3 Commercial Core for which the maximum floor space ratio is as specified in Column 1 of the Table to this subclause is:

- (a) if the site area is no more than 1,000 square metres—the ratio specified opposite that ratio in Column 2 of that Table, and
- (b) if the site area is more than 1,000 square metres, but less than 2,000 square metres—the ratio specified opposite that ratio in Column 3 of that Table,

where:

$$Z = (\text{the area of the land in square metres} - 1000) / 1000$$

Table—Maximum FSR in Zone B3 Commercial Core

Column 1	Column 2	Column 3
3.25:1	2.25:1	2.25 + Z:1
4.5:1	3:1	(3 + (1.5 × Z)):1
5:1	3.5:1	(3.5 + (1.5 × Z)):1
6:1	4:1	(4 + (1.5 × Z)):1

As the site covers a total area of 1,299m², 2(A)(b) is the applicable control in this instance, calculated as follows;

Column 3 is the correct Floor Space Ratio control to apply. 2.25 + Z:1.

$$Z = (\text{the area of the land in square metres} - 1000) / 1000$$

$$Z = 1299 - 1000/1000 = 0.299$$

$$=2.25 + Z (0.299):1$$

Therefore the maximum Floor Space Ratio for the site is = **2.54:1**

In this instance the proposal results in a building with a GFA of 4455m² on a 1299m² site = FSR of **3.42:1**

The proposed development does not comply with this control and as such the applicant has submitted a variation request. The application results in a 35% variation to the development control (total floor space proposed is 135% of that allowed under the control)

This variation is addressed in detail under the clause 4.6 variation assessment below, with it being considered that the development is acceptable in this instance.

Further to this, 2C is also relevant to this application. This states that the floor space ratio for the residential component of a building that is a mixed use development that includes shop top housing or serviced apartments is to be calculated as follows:

(a) if the building is in Zone B3 Commercial Core:

$$[(MaxFSR \times (NR)/100) + (2 \times R/100)];1$$

(b) if the building is in Zone B4 Mixed Use:

$$[(MaxFSR \times (NR)/100) + (2.5 \times R/100)];1$$

where:

MaxFSR is the first term of the maximum floor space ratio permitted for the building under either subclause (2), (2A) or (2B).

NR is the percentage of the building's floor space to be used for purposes other than shop top housing or serviced apartments.

R is the percentage of the building's floor space to be used for the purpose of shop top housing or serviced apartments.

residential component means the part of the development used for the purpose of shop top housing or serviced apartments, or both.

In this case,

$$MaxFSR = 3276$$

$$NR = 18.83 \text{ (Based on } 839m^2 \text{ total ground and first floor GFA)}$$

$$R = 81.16$$

$$2.54 \times (18.83)/100 + 2 \times 81.16/100 = 0.478 + 1.6232$$

2.1:1 = allowable residential FSR

3420m² GFA of residential area proposed

In this instance the proposal results in a building with a residential GFA of 3420m² on a 1299m² site = FSR of **2.6:1**

Again, the proposed development does not comply with this control and as such the applicant has submitted a variation request, detailed below. The application results in a 25% variation to the development control (total residential floor space proposed is 125% of that allowed under the control)

Clause 4.6 Exceptions to development standards

The objectives of this clause are as follows:

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

This clause provides a mechanism by which development standards may be varied under the local planning instrument. In this instance the applicant has proposed to vary the controls contained within Clause 4.4 – Floor Space Ratio.

Under this control, the overall site floor space ratio control is 2.54:1 while the application before Council exhibits a floor space ratio of 3.42:1. Furthermore, the residential component of the building has a permissible floor space ratio of 2.1:1 while the development exhibits a 2.6 ratio.

The applicant has lodged an application to vary the development standard under Clause 4.6 and includes the following in support of the application:

“Clause 4.6 of the LEP permits exemptions to development standards where the change is ‘well-founded’.

In addition to the above, Clause 4.6 requires that the consent authority is satisfied:

- *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
- *That there are sufficient environmental planning grounds to justify contravening the development standard;*
- *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out;*
- *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning;*
- *The public benefit of maintaining the development standard;*
- *Any other matters.*

With regard to the above, it is submitted that there are sufficient environmental planning grounds to justify that the subject standards relating to floor space ratio provisions in this case are unreasonable or unnecessary in the circumstances of this case.

The proposed development has been designed in response to the planning controls outlined in the Tweed Heads City Centre LEP and complies with

the intent for the B3 Commercial Core Zone (refer Section 5.7.1 above). The development complies with the maximum building height, minimum street frontage and all other relevant qualitative outcomes. Similarly, the development achieves a high level of architectural design excellence as evidenced in the attached Design Verification Statement. It is therefore submitted that the proposal is of a form, scale and type envisioned for the subject site and wider Commercial Core zone.

The proposed floor space ratio is consistent with the objectives of Clause 4.4 of the LEP. The proposed development is of a form and scale consistent with the desired future character of the area. The development is a high-quality, innovative land use outcome which provides an appropriate mix of commercial and residential land uses in an inner city location. The development does not present any adverse impacts upon the built or natural environment. Finally, the development also accords with the maximum building height for the area and promotes a compact, subtropical centre which reflects the unique coastal surrounds.

The site is also a corner site where from an urban design perspective slightly larger buildings are generally encouraged to provide a strong urban design statement. Granting slightly higher floor space ratio on this site promotes this outcome. The proposal is also in the public interest as it assists in rejuvenating this area of Tweed Heads.

The proposed change does not raise any matter of significance for State or regional environmental planning. The proposed development achieves the intent of the Commercial Core zone and aligns with the higher-order aims of the LEP. The development directly benefits the Tweed Heads population through the provision of greater housing, employment and entertainment choices in the city centre.

In summary, it is submitted that the proposed development provides a high-quality, innovative and appropriate land use outcome which achieves the intent of the Commercial Core zone and wider LEP provisions. The development provides a contemporary response to the relaxed, coastal character of the Tweed Heads locale and sets an important precedent with regard to architectural form and building design. The proposed change to the floor space ratio helps achieve this outcome and will not result in any adverse impacts to surrounding development or the natural environment.”

Council Officer Assessment

Applications to vary development standards may address matters set out in the ‘five part test’ established by the NSW Land and Environment Court. The five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy are discussed as follows:

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

It is considered that the proposal remains consistent with the objectives of the standard and that the integrity of Clause 4.4 would not be impacted upon via the approval of the proposed mixed use development with variation to the maximum FSR. The objectives of this clause are;

- (a) to define the allowable development density of a site and for particular classes of development,
- (b) to enable an alignment of building scale with the size of a site,
- (c) to provide flexibility for high quality and innovative building design,
- (d) to limit the impact of new development on the existing and planned natural and built environment,
- (e) to encourage increased building height and site amalgamation at key locations in the area of Tweed City Centre

It is considered that the proposal results in an appropriate residential and commercial density on this site as per the land zoning objective and it is noted that the building height control is complied with, resulting in an appropriate built form at this prominent corner site in Tweed Heads. It is considered that the proposal results in minimal impact upon the existing built environment on adjoining sites as demonstrated through the detailed development assessment contained elsewhere in this report. The requisite built form controls are complied with, including with respect to building height, and setbacks which indicate that the overall built form is appropriate for the site in question, notwithstanding a variation to the Floor Space Ratio controls.

It is considered that in this instance, the variation does not result in any negative impacts on surrounding properties or the area as a whole and the development is considered to be appropriate for this location.

The objectives of the control as outlined above are considered to be achieved notwithstanding noncompliance with the standard.

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

Not applicable. The underlying objective or purpose of the standard is not considered to be irrelevant to the development.

3. *The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable:*

The basis of the variation is not demonstrated through this manner.

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

Not applicable. The development standard is not considered to be abandoned or destroyed.

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

Not applicable. It is not considered that the parcel of land has been zoned incorrectly.

Summary

It is considered that the proposed floor space ratio variation does not impact on the objectives of the Clause 4.4 controls being achieved. In particular, the proposal is considered align the building scale with the size of the site and encourages site amalgamation at key locations in Tweed City Centre. Compliance with the control is therefore considered to be unnecessary in this instance.

The proposed development achieves the objectives of the zone and standard. Upholding the development standard in this regard would limit the urban design and architectural outcome for the site and is therefore unnecessary in the circumstances. Varying the standard in this regard would provide the opportunity to maximise use of a underutilised site while building character of the envisaged city centre. The proposed development is consistent with the environmental character of the area.

This clause further outlines that development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

As outlined above, the applicants written submission is considered to adequately address the required matters.

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

The proposed development is considered to be in the public interest by virtue of being consistent with the objectives for this B3 Commercial Core zone, listed below, by virtue of providing increased retail, commercial and residential development at a city centre location;

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.

- To maximise public transport patronage and encourage walking and cycling.
- To encourage upper floor residential or tourist accommodation that does not compromise the commercial use of the land.

The proposal is also assessed as being appropriate when assessed against the controls contained within the Apartment Design Guidelines as well as Council's site specific Development Control Plan B2 for Tweed City Centre. The variation is therefore considered to be in the public interest.

(b) *the concurrence of the Secretary has been obtained.*

The concurrence of the Secretary has been assumed as per the provisions of Planning Circular PS 17 – 006.

Conclusion

Considering the matters raised under Clause 4.6 and 4.4 of the Tweed City Centre LEP 2012 and the 'Five Part Test', it has been demonstrated adequately that there are sufficient planning grounds to justify the contravention of the standard and therefore the variation to the standard is acceptable in this case.

As such, the proposed variation is supported by Council staff.

Note; The development application has been referred to elected Council for determination as the extent of variation, being 35% for Clause 4.4 2A (b) and 25% for Clause 4.4 2C (a) exceeds the 10% maximum variation which can be approved by Council staff.

Part 5 Miscellaneous provisions

5.5 Development within the coastal zone

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

- (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*
- (i) *maintaining existing public access and, where possible, improving that access, and*
 - (ii) *identifying opportunities for new public access, and*

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

- (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*
- (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*

- (ii) *the location, and*
- (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

The proposed development is permissible on the subject site and is generally consistent with the prescribed development requirements as outlined throughout this report. As such the proposal is considered to be acceptable at this location.

- (c) *the impact of the proposed development on the amenity of the coastal foreshore including:*
 - (i) *any significant overshadowing of the coastal foreshore, and*
 - (ii) *any loss of views from a public place to the coastal foreshore,*

The proposed development is located approximately 320m from the coastal foreshore (to the east) and it therefore not considered to impact on the amenity of the foreshore by virtue of overshadowing or a loss of views. The subject application is considered to be acceptable having regard to the above considerations.

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

The proposed development is not considered to compromise the scenic qualities of the coast as it represents an acceptable development on appropriately zoned land. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature and scale.

- (e) *how biodiversity and ecosystems, including:*
 - (i) *native coastal vegetation and existing wildlife corridors, and*
 - (ii) *rock platforms, and*
 - (iii) *water quality of coastal waterbodies, and*
 - (iv) *native fauna and native flora, and their habitats, can be conserved, and*

The proposal is to be undertaken on a previously developed land which does not exhibit any vegetation. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard.

- (f) *the cumulative impacts of the proposed development and other development on the coastal catchment.*

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the sites zoning and the permissibility of the development at this location.

This clause goes on to further state;

- (3) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
 - (a) *the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

As outlined elsewhere in this report, the proposal will not impede or diminish the right of access of the public either to or along the public foreshore.

- (b) *if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

The subject site would maintain connection to Council's reticulated sewer system.

- (c) *the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

It is noted that the application has been reviewed by Council's Flooding Engineer with respect to stormwater, with no issue raised subject to the imposition of relevant conditions of consent. The stormwater comments are detailed further elsewhere in this report.

In any event, it is considered that the subject application would be in accordance with the above controls, with no untreated stormwater being discharged to the sea, beach or the like.

- (d) *the proposed development will not:*
- (i) *be significantly affected by coastal hazards, or*
 - (ii) *have a significant impact on coastal hazards, or*
 - (iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature, permissibility and the spatial separation between the site and coastal hazards at this location.

5.10 Heritage conservation

The objectives of this clause are as follows:

- (a) *to conserve the environmental heritage of Tweed City Centre,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The subject site is not mapped as being within an area of heritage significance or a heritage conservation area. Furthermore, the site is not mapped as being within a known or predictive aboriginal Cultural Heritage Area. The subject application does not result in any works which require consent under the provisions of part (2) of this clause. The application is considered to be acceptable.

Part 6 Additional local provisions

6.1 Acid sulfate soils

The subject site demonstrates Class 2 Acid Sulfate Soils (ASS) in accordance with the provisions of this clause. The objective of this clause is to ensure that

development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The application was supported by an Acid Sulfate Soil Investigation and Management Plan by HMC Environmental and dated June 2017. Excavation to 3.5m depth will be required with 4,800m³ of material to be removed. This plan has been reviewed by Councils Environmental Health Section who have provided the following comment with respect to acid sulphate soils;

"The existing building covers the entire allotment, so a borehole was placed in the Wharf Street frontage. Dark grey sand was found to 1.7m depth with indurated sand below. 9 samples were taken, with 5 subject to laboratory analysis. ASS requiring treatment was found below 1.5m depth (the report indicates this is similar to the findings for the adjacent Police/Court House development)."

Table 4 - Soil Laboratory Analysis Results

Depth (m)	Borehole ID				
	BH1				
	pH _f	pH _{FOX}	%SCR	TAA mol H ⁺ /T	
0.1-0.2	8.3	6.7			Non-ASS
0.4-0.5	8.3	6.4	<0.01	-	
0.9-1.0	8.4	6.5			
1.4-1.5	8.4	6.4	<0.01	-	
1.9-2.0	5.7	4.6	<0.01	57	ASS
2.4-2.5	5.4	4.0			
2.9-3.0	5.5	4.3	<0.01	25	
3.4-3.5	5.0	2.9	0.01	90	
3.9-4.0	5.2	2.9			

Indicative of AASS/PASS or SCR/TAA exceeds action criteria

The required liming rate is 30Kg/m³ of soil. An ASSMP is provided in App. 1. App. 2 is a basic ASS leachate treatment proposal, but this would be superseded by the detailed DWMP. There will be no available area to treat material on site and it is to be transported to a treatment facility in QLD:

As the proposed basement carpark excavation would require the removal of the soil extending to the site boundaries, there would be difficulty in treating the identified ASS on the project site. As discussed in 9.1, an approved treatment and disposal site has been identified on the North End Industrial Solutions facility at Lot 11 SP 258752 34 Maudsland Road, Oxenford. It is proposed to excavate the ASS and transport this material via covered vehicle to this facility for treatment, and validation prior to sale in Qld.

No objection, subject to conditions."

Recommended conditions of consent have been provided with respect to Acid Sulfate Soils which are to be attached to any consent issued. In this regard, the proposal is considered to be acceptable with respect to the requirements of this clause.

6.2 Flood planning

The objectives of this clause are as follows:

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

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

With respect to the abovementioned matters, it is noted that the subject application was referred to Councils Flooding Engineer who reviewed the proposed development with respect to flooding and has provided the following advice;

"Flood Characteristics

- *Design flood level (100 year ARI flood) = RL 2.6m AHD (Australian Height Datum)*
- *Minimum habitable floor level (for new development) = RL 3.1m AHD*
- *Natural surface levels approximately range between RL 3.5 and 4.5 metres AHD*
- *Probable Maximum Flood level (PMF - worst case scenario event) = RL 5.4m AHD*

As the property is below the PMF, the property is considered to be flood liable, however realistically due to it being roughly 1 metre above the design flood, there is only a small chance that the property could be subject to any flooding from the Tweed River. The PMF is the largest flood event that could conceivably occur.

Having regard to this advice, the proposal is considered to be in accordance with the provisions of this clause.

6.5 Restriction on certain uses in Zone B3

This clause outlines that '*Development consent must not be granted to development for the purposes of backpackers' accommodation or serviced apartments on land in Zone B3 Commercial Core, unless the development is part of a mixed use development.*'

The application originally sought consent for use of the shop top housing units as serviced apartments, however this component of the application has been removed and this clause no longer applies.

6.6 Minimum building street frontage

This clause outlines that Development consent must not be granted to the erection of a building on land in this zone that does not have at least one street frontage of 20 metres or more. In this instance the proposed development site has a frontage of approximately 33 metres to Wharf Street and approximately 40m to Frances Street. As such the proposed development is considered to be in accordance with this control.

6.7 Serviced apartments

This clause states that consent must not be granted for the strata subdivision of a building that is being, or has ever been, used for the purpose of serviced apartments unless Council has considered the provisions of SEPP 65 and the Apartment Design Guide.

In this instance no strata subdivision is sought and therefore this clause is not strictly applicable, however it is noted that assessment is undertaken with respect to SEPP 65 in any event, as a new shop top housing development.

The application originally sought consent for use of the shop top housing units as serviced apartments, however this component of the application has been removed.

6.8 Ground floor and first floor development in certain business zones

This clause applies to land in Zone B3 Commercial Core and the objective is "to promote uses that attract pedestrian traffic along certain ground floor street frontages in certain business zones."

This clause further states that consent must not be granted to the erection of a multi storey building, or a change of use of a multi storey building, on land to which this clause applies unless the consent authority is satisfied of the following:

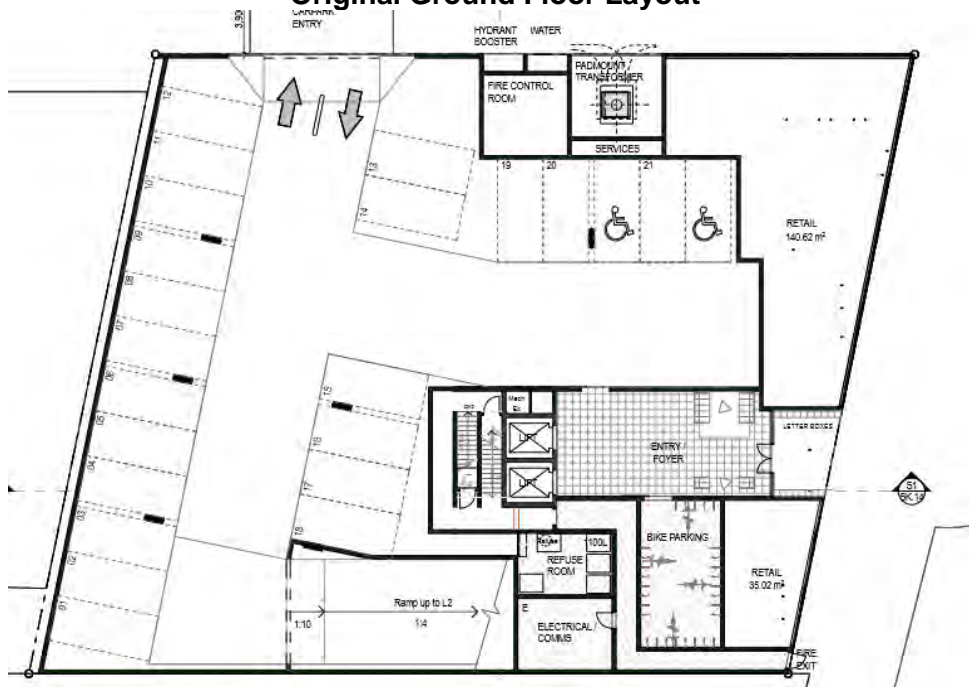
- (a) the building will have an active street frontage after its erection or change of use, and
- (b) the ground floor of the building will be used for the purpose of commercial activities, and
- (c) if the building is, or will be, located on land in Zone B3 Commercial Core, the first floor of the building will also be used for the purpose of commercial activities.

Subclause (4) further identifies that the above does not apply to any portion of a building used for the following purposes;

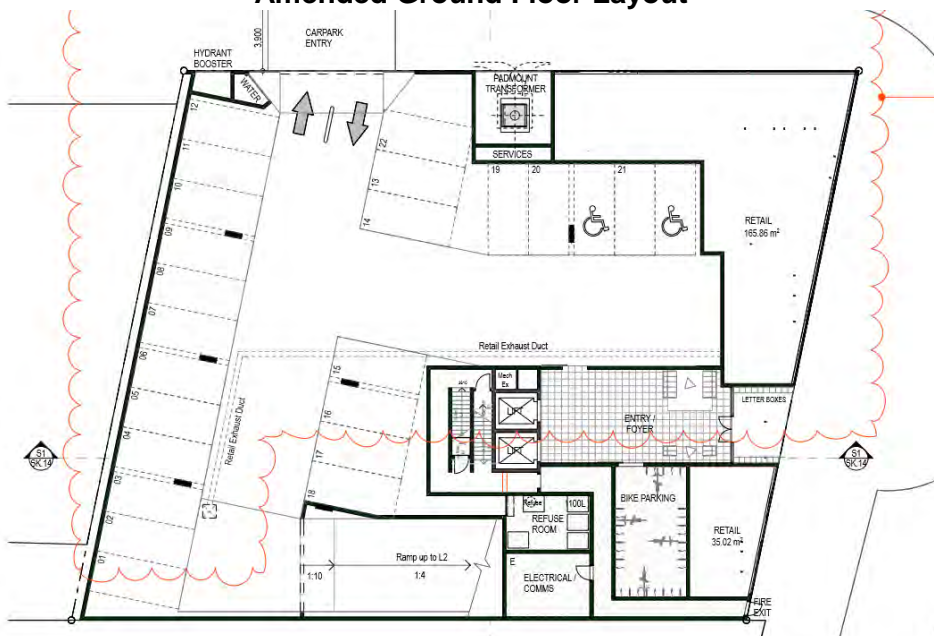
- (a) entrances and lobbies (including as part of a mixed use development),
- (b) access for fire services,
- (c) vehicular access

The application as originally submitted was considered to result in inadequate promotion of uses to Frances Street. It was noted that the proposed development has a total frontage of approximately 40m to Frances street, however it is considered that this elevation is poorly activated to the ground level through the provision of business/retail use, with approximately 12.5m frontage dedicated to retail tenancy and the remainder being for servicing purposes, as demonstrated on the below image.

Original Ground Floor Layout



Amended Ground Floor Layout



An amended Ground Floor Layout has now been provided which is considered to be an improvement from that originally submitted, with an additional 4m of retail shopfront provided to Frances St.

With respect to the above controls, the development is considered to be acceptable, as the building is considered to have an active street frontage, with the entire street frontage save for vehicle and pedestrian access and 'Padmount Transformer' given over to active street frontage uses.

The ground floor is to be used for retail purposes which conforms with the provisions of (b) above.

In this clause, *commercial activities* means amusement centres, business premises, function centres, hotel or motel accommodation, medical centres, office premises, registered clubs or retail premises. As the site is located in the B3 zone, the first floor is also identified as being used for the purpose of commercial activities, with the submitted plans identifying five office tenancies.

The proposed development is considered to be acceptable having regard to the requirements of this clause.

Clause 6.9 - Airspace Operations

The objectives of Clause 6.9 are to provide for the effective and ongoing operation of the Gold Coast Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport and to protect the community from undue risk from that operation.

The application was referred to Gold Coast Airport Pty Ltd's planning consultant who advised that

'It would be appropriate to include a condition relating to obtaining airspace approval for any crane use, even though exceeding the OLS may be unlikely in this instance.'

A recommended condition has been provided and will be attached to any consent issued. In this regard, the proposed development is considered to be in accordance with this Clause.

Clause 6.10 - Design excellence

This clause applies to development involving the erection of a new building or external alterations to an existing building and in particular applies to land identified as being on the 'key sites map' and development in respect of a building that will be higher than 35 metres.

The proposed development does not relate to a 'key site' or a building with a height in excess of 35m which eliminates the requirement for the proponent to undertake a architectural design competition, however the consent authority must consider whether the development exhibits design excellence. In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters;

- (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*

The subject application has been assessed in detail under SEPP 65 Apartment Design Guide and DCP Section B2 provisions elsewhere in this report with respect to the above controls and it is considered that the subject development is generally compliant with these requirements, demonstrating an acceptable architectural design, materials and detailing.

- (b) *whether the form and external appearance of the development will improve the quality and amenity of the public domain,*

The subject development is considered to represent an appropriate building form and external appearance having regard to the development controls now applicable to development at this location. It is considered that the proposal will result in an improvement to the quality and amenity of the public domain at this area.

- (c) *whether the development detrimentally impacts on view corridors,*

The proposed development is not considered to impact detrimentally on view corridors having regard to the proposed building mass and height, which is acceptable at this location.

- (d) *the requirements of the Tweed City Centre DCP,*

The proposed development is assessed elsewhere in this report against the provisions of this DCP. The proposal is considered to be generally acceptable having regard to this DCP.

- (e) *how the development addresses the following matters:*

- (i) *the suitability of the land for development,*
- (ii) *existing and proposed uses and use mix,*
- (iii) *heritage issues and streetscape constraints,*
- (iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
- (v) *bulk, massing and modulation of buildings,*
- (vi) *street frontage heights,*
- (vii) *solar access controls,*
- (viii) *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
- (ix) *the achievement of the principles of ecologically sustainable development,*
- (x) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
- (xi) *the impact on, and any proposed improvements to, the public domain.*

The proposed development is considered to be acceptable having regard to the above criteria. In particular it is noted that the proposal relates to a mixed use

development (shop top housing and commercial premises) on appropriately zoned land.

Having regard to the above assessment, the subject application is considered to be generally in accordance with the provisions of the Tweed City Centre Local Environmental Plan 2012.

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

The objectives of SEPP No. 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose. In particular it is noted that this SEPP states that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the 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 application has been reviewed by Council's Environmental Health Unit who has provided the following advice with respect to contamination:

"The premise was formerly used for vehicle repairs and UPSSs existed in the footpath areas facing both Wharf and Frances Streets. A Preliminary Site Investigation (PSI) HMC Environmental, April 2017 (HMC2017.053.01) and Detailed Site Investigation (DSI) HMC Environmental May 2017 (HMC2017.053.02) have been submitted. The following points are noted from the PSI and DSI:

- *After removing a UPSS the Ground Doctor undertook both soil and groundwater sampling in Frances Street in 2014; whilst COPC were detected in both soil and groundwater samples above the LOR the area was reported to be suitable for public open space and commercial use (below HIL).*
- *Pg 12 of the DSI correctly indicates that excavated soil (above ASS layer) would need to be classified prior to disposal to landfill. No further mention or planning for this process is included.*
- *Pg 15 of the DSI indicates targeted sampling has been completed (limited to small area at Wharf Street frontage as the existing building prevents access across the development site).*

- 32 discrete samples were taken in the DSI assessment.
- Work Cover records indicate there were 10 UPSS tanks on the site (one on Frances Street and 9 on Wharf Street). It remains uncertain whether the historical UPSSs were removed or filled. Historical statutory declarations use the words decommissioned and filled up with sand; however following works by Council in Frances Street a consultant was required in 2014 to remove a fuel tank which still contained 450L of fuel. PSI Pg 11 and 17:

Conclusion

The report is considered thorough and generally in accordance with relevant NSW EPA Guidelines. However there has been limited site access and therefore limited soil and groundwater analysis. Analysis results are reported to be above LOR (in some cases) but below HIL Res B.

Whilst sufficient information exists to satisfy SEPP 55 Clause 7, it is considered appropriate that a condition be applied requiring the submission of a contaminated land site auditor statement prior to issue of an occupation certificate. Prior to CC may have been preferable, however this would not allow demolition, earthworks, site analysis etc to occur in a logical sequence."

Having regard to the advice provided, the subject application is considered to be acceptable with respect to contaminated land subject to the inclusion of the recommended conditions of consent as outlined above.

SEPP No. 64 – Advertising and Signage

The submitted Statement of Environmental Effects advises that no new advertising or signage devices are proposed through this application. However it is noted that *'all future sign age will be compatible with the desired amenity and visual character of an area, provide effective communication in suitable locations and will be of high quality design and finish.'*

For the purpose of clarity, a condition would be included on any consent advising that advertising structures/signs are to be subject to a separate development application (where statutorily required).

As such, no further assessment is required with respect to signage.

SEPP 65 - Design Quality of Residential Flat Development

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

- (a) *to ensure that it contributes to the sustainable development of New South Wales:*
 - (i) *by providing sustainable housing in social and environmental terms, and*
 - (ii) *by being a long-term asset to its neighbourhood, and*
 - (iii) *by achieving the urban planning policies for its regional and local contexts, and*

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

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

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

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

Clause 29(2) requires an assessment against the design quality principles, this is provided below with a summary of the Apartment Design Guidelines also below while Attachment 1 to this report contains a detailed assessment against the ADG.

Principle 1: Context and neighbourhood character

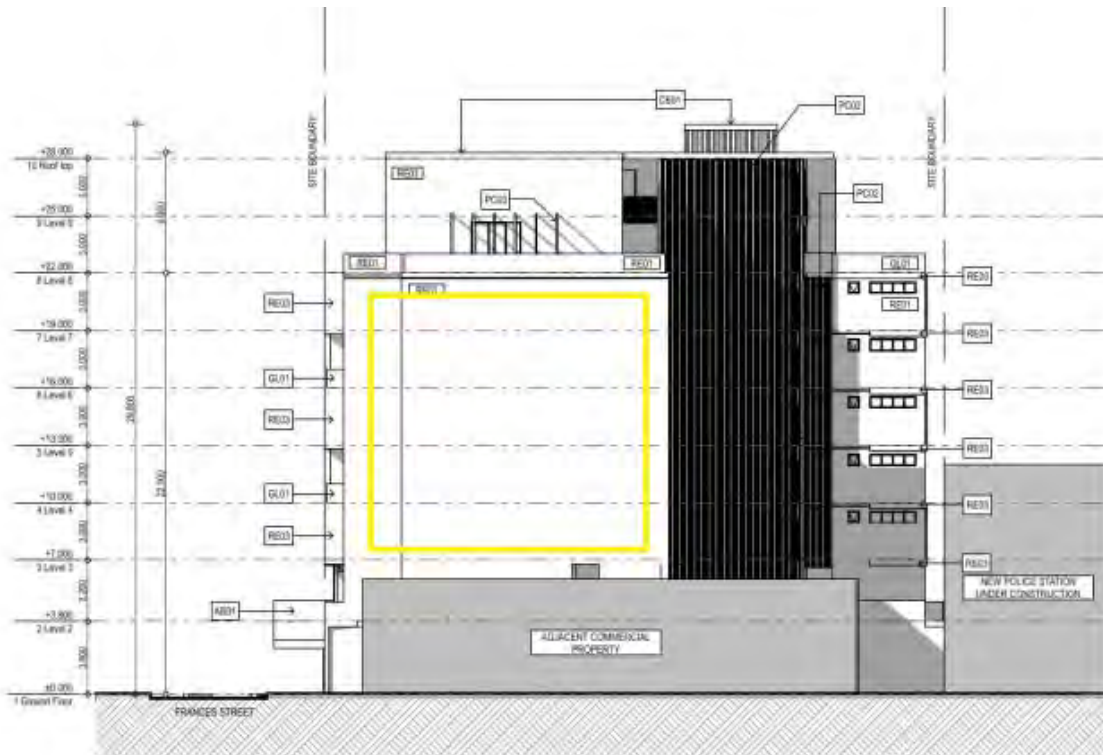
The site is within the city centre support precinct of the Tweed City Centre DCP which is to *allow for a similar range of land uses to the City Centre Core although at a lower density and without the extent of active street front uses as in the City Centre Core. Future development on consolidated allotments will be up to 10 storeys fronting Wharf Street and 14 fronting Pearl Street with residential land uses only to the west of Beryl Street and Boyd Street. The objective for future development west of Beryl Street and Boyd Street is to create a residential precinct with high quality urban design and buildings that respond to the topography of the land.*

The proposed development is considered to be representative of the desired future character of the area, as represented by the planning controls for the mixed commercial and residential development.

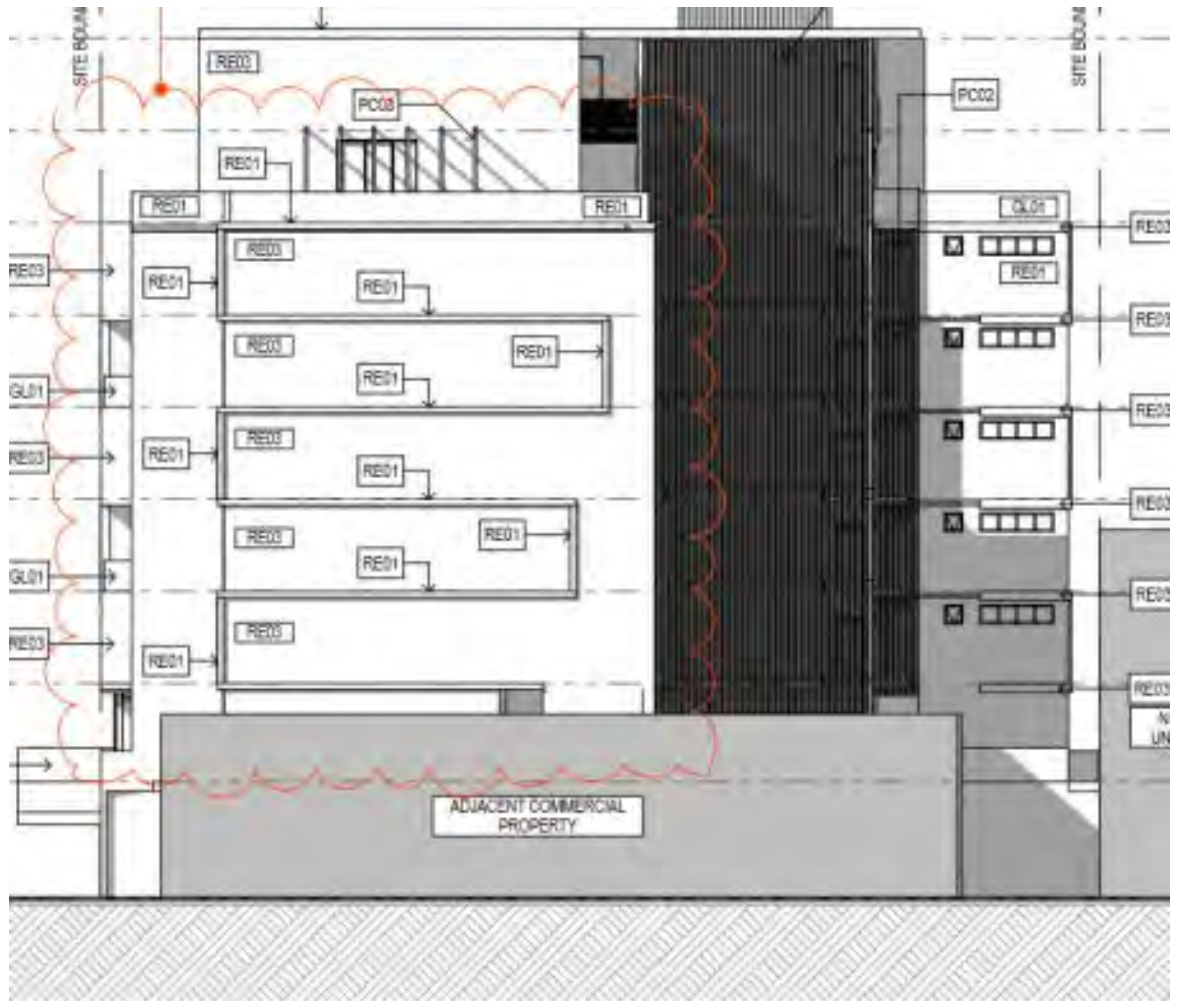
Principle 2 – Built Form and Scale

The built form and scale of the proposal is considered to be acceptable, having regard to the height controls in place for the site and the design of the development, which orientates balconies and outdoor living areas to the roadside elevations.

The application as originally assessed noted that some modification was required to the west elevation. The amended proposal has incorporated more treatment to the west facade as outlined in the below image;



Originally proposed west elevation



Amended west elevation

The proposal is for a 9 storey building, similar in scale and height to other existing buildings in the nearby vicinity. The proposal complies with Council’s height controls under the Tweed City Centre LEP 2012.

The overall building bulk is reduced through articulation of the balconies. The roof profile of the building is minimal, which further reduces the scale of the building and keeps the apparent overall height to a minimum. The scale of this development is considered appropriate for the site and the area generally.

Principle 3 – Density

The 9 storey building will result in an increased number of residents in the locality that has satisfactory access to a variety of large commercial, community and recreational facilities. The proposal complies with the height limits and building lines. This development is consistent with the stated desired future density through the Tweed City Centre LEP 2012. The proposal is acceptable in this regard.

Principle 4: Sustainability

A BASIX certificate has been provided for the development.

The architect has outlined the following energy efficiency measures incorporated into the development design:

Passive solar design principals for subtropical climates were a key design strategy during the design process and are consequently embodied in the final design. The inclusion of passive design principals is a highly effective method to reduce energy consumptions and consequently carbon emissions.

Maximising sunlight to all units was a priority, with most apartments having recessed balconies and glass sliding doors to further facilitate light into the living areas. Large openings are protected by large overhangs and are typically focused around balconies. Indeed the extent of balconies used throughout the project, and the "Z" shape forms, limits the amount of direct sunlight on the buildings surfaces further reducing heat load in summer. All units face either east or north - the two preferred directions to maximize passive solar energy.

87.5% of the apartments have cross ventilation opportunities from at least one other opening and in most cases up to two and three openings. External walls are masonry rendered walls with internal batten insulation to all external walls to comply with Basix report.

The building includes a rubbish chute combining a recycle function allowing domestic recycling to continue.

Given the above design considerations, the building is considered acceptable in this regard.

Principle 5: Landscape

The proposal has been accompanied by a Landscape Concept Plans which indicate landscaping to the level 2 podium area as well as to private terraces on level 8 communal open space area. These are considered to be general acceptable, however it is noted that conditions would be applied to ensure that these landscaped areas are in accordance with the Apartment Design Guide.

The general arrangement of planting is considered to adhere to the above principles and, subject to detailed information being received with respect to species and planting numbers, proposed landscaping is considered acceptable.

Principle 6: Amenity

The development incorporates a single communal area to level 2, which would add to the future residents overall amenity

Beyond this, each unit has been designed to optimise access to sunlight and natural ventilation, with balconies orientated north and east. The layout of the units will enable natural air circulation to reduce the need for artificial cooling. Each room contains at least one window, and the main living areas have access to balconies and are oriented to the north where possible.

Whilst the development does not have strict compliance with the design controls of the ADG, the variations proposed are generally minor, affect a limited number of units and are not considered to warrant refusal of the application given the other overall positive amenity outcome discussed above.

Principle 7: Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

The development design provides:

- casual surveillance of the public street and common open space.
- clear visibility of the main pedestrian entry point from Wharf Street.

Principle 8: Housing diversity and social interaction

This development provides housing diversity through a mix of 1, 2 & 3 bedroom units. The effect of this will be greater differential in the blend of age and social demographics to the local area.

Principle 9: Aesthetics

The proposal features a varied material composition which provides interest to the built form whilst being appropriate for the residential seaside location. The building is suitably articulated.

It is considered that the design of the proposed development exhibits suitable regard for the SEPP 65 design quality principles and demonstrates good practice in urban design. The modern appearance of the building is in keeping with the desired future character of the area.

Apartment Design Guide Assessment

A complete SEPP 65 assessment has been undertaken and is within the following table. The development generally complies with the intent and controls of SEPP 65, however seeks minor variations to the following elements of the ADG:

Part 4 – designing the building

- Apartment size and layout

Objective 4D-2

Environmental performance of the apartment is maximised

Design Criteria

2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window

Assessment

1. The development does not comply with the maximum 8m depth for open plan layouts.

The applicant has submitted the following in this regard;

'Unit type I has a total distance of 9.9 metres from a window; however, this unit type has been provided with a large open terrace space to ensure maximum natural light and ventilation can be provided to the open areas. It is also noted that there is only one of this unit type across the development.'

From assessment of the submitted information it is considered that the non-compliance extends beyond the Type I unit as identified above. In assessing the application it is considered that the maximum depth of non-compliant units is as follows;

20 x Type B Units maximum 9.4m/minimum 8.5m
1 x Type I Units 9.7m

In assessing this variation, the amendment is considered to be minor in nature (being a maximum of 1.7m or 21%) which in all instances is measured to the back wall of kitchen where there would likely be kitchen facilities (fridges/cupboards etc.) to, in practicality, reduce this depth.

It is not considered that in this instance, the variation would compromise the objective of this control. This shortfall is therefore considered acceptable in this instance

- Apartment size and layout

Objective 4D-3

Apartment layouts are designed to accommodate a variety of household activities and needs

Design Criteria

3. Living rooms or combined living/dining rooms have a minimum width of:
 - 3.6m for studio and 1 bedroom apartments
 - 4m for 2 and 3 bedroom apartments

Assessment:

This variation states the following with respect to this control.

All living and living/dining areas have a minimum width of four metres with the exception of Unit type C. Type C units have a minimum width of 3.3m; however, this is a function of its "L" on the northern corner which allows maximum northern light and functional balcony. The layout has been designed to facilitate functional use of daily household activities and needs in accordance with this criteria.

From assessment of the submitted information it is considered that the non-compliance extends beyond the Type C units as identified above. In assessing the application it is considered that the minimum width of non-compliant units is as follows;

- 20 x Type B Units 3.85m
- 5 x Type C Units 3.9m
- 5 x Type D Units 3.8m
- 1 x Type I Units 3.9m
- 2 x Type H Units 3.8m

In assessing this variation, the amendment is considered to be minor in nature (ranging from 0.2m to 0.1m. It is not considered that in this instance, the variation would compromise the objective of this control to and it is noted that all units meet the overall minimum areas for both the units and the outdoor living areas as outlined in the Apartment Design Guide. This shortfall is therefore considered negligible in this instance.

- Storage
Objective 4G-1
Adequate, well designed storage is provided in each apartment

Design Criteria

1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

Dwelling type	Storage size volume
Studio apartments	4m ³
1 bedroom apartments	6m ³
2 bedroom apartments	8m ³
3+ bedroom apartments	10m ³

At least 50% of the required storage is to be located within the apartment

Assessment:

The proposed development includes internal storage within each unit, generally equating to 50% of the total required area. The remainder of the required storage volume is catered for within the basement parking area.

Adequate storage not provided to the Type E (level 9 one bedroom units) or Type D (units to level 3 – 7) units. Therefore a variation is required to 10 of the 43 units proposed. The applicant has provided the following information with respect to this matter

The following storage volumes are provided for each unit type:

- Type A (1 bedroom): 6.15m³
- Type B (2 bedroom): 8.87m³
- Type C (2 bedroom): 8.41m³
- Type D (2 bedroom): 7.45m³
- Type E (1 bedroom): 6.04m³
- Type H (3 bedroom): 13.61m³
- Type I (3 bedroom): 11.8m³

The storage volumes for unit Types A, B, C, E, H and I comply with the requirements under the table.

Type D units have a shortfall of approximately 0.55m³; however, this unit type provides substantial spaces within the kitchen, bathroom, bedroom and living areas for additional self-storage opportunities. Further storage is also available at the basement level if required. It is therefore submitted that this shortfall is minor in nature and will not result in a shortage of storage space within unit Type D.

The proposal is considered to be generally acceptable having regard to the above storage space provided and the variation proposed to the control is considered minimal and acceptable. The development is considered to comply with the design objective to ensure that 'adequate, well designed storage is provided in each apartment' and is therefore supported in this instance.

Summary

Whilst the development does not have strict compliance with the design controls of the ADG, the variations proposed are generally minor, affected a limited number of units and not considered to warrant refusal of the application.

Further to the above the development is consistent with the future desired character of the Tweed Heads area.

SEPP No 71 – Coastal Protection

SEPP 71 – Matters for Consideration

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

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

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

The proposal development will not alter or restrict the public's access to the foreshore reserve areas.

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

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

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

The proposed development is sited and designed in general accord with the relevant Council controls and is considered unlikely to create any form of adverse imposition upon the immediate area in terms of size, scale or design.

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

The proposed development is not considered impact on the amenity of the coastal foreshore, given it is located approximately 320m from the foreshore mapped under this SEPP. In particular there is considered to be no loss of views or overshadowing associated with this application.

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

The proposal is unlikely to impact upon the scenic quality of the NSW coast, with the development being spatially separated from the coastal foreshore.

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

The proposal is not considered to impact negatively animals or their habitats. The subject development site has been previously developed for retail purposes with minimal grassed landscaping evidenced on site which could constitute animal or plant habitat of significance.

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

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

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

It is considered that there are no wildlife corridors impacted by the proposed development. The subject development is to be located on a previously developed site and in an area which has historically been significantly developed.

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

The subject site is not located within an area affected by Coastal Erosion and is landward of the defined Coastal Erosion Zones. The development is therefore unlikely to have an adverse impact upon Coastal Processes or be affected by Coastal Processes

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

The proposal is not considered to cause any conflict between land-based and water-based activities.

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

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

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

The subject application is not considered to have any significant impact upon the water quality of coastal waterbodies.

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

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

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

Not applicable to the subject application.

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

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

The proposed development is not considered to have a negative cumulative impact on the environment.

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

The subject application has not provided measures in relation to the minimisation of water and energy usage. It is noted that the proposed development does not require a BASIX certificate be submitted as the development is not residential in nature. The subject application is considered to be acceptable in this regard.

The proposal is generally consistent with the matters for consideration as it does not impede public access to the foreshore nor result in any unacceptable loss of view or overshadowing. The proposal has a minimal impact on flora or fauna and the proposed development site is not known to contain any items of Aboriginal significance. The provisions of SEPP 71 are considered satisfied.

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

Draft Coastal Management SEPP

The subject site is mapped under the Coastal Use Area map. Accordingly, is mapped as land to which this policy applies.

It is noted that the subject site is currently mapped as SEPP 71. The Draft Coastal Management SEPP will repeal this policy.

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016* by:

- (a) *managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) *establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- (c) *mapping the 4 coastal management areas which comprise the NSW coastal zone, in accordance with the definitions in the Coastal Management Act 2016.*

The subject application is for a mixed use building, within a developed area of Tweed Heads. The development is not considered to cause adverse impacts in relation to geological and geomorphological coastal processes, the environment (including flora and fauna and their habitats) or Aboriginal culture or the surf zone.

Further to the above, the proposed development provides acceptable effluent and stormwater management.

Accordingly, the proposed development is consistent with the aims of clause 14(1).

Division 4 Coastal use area

15 Development on land within the coastal use area

Development consent must not be granted to development on land that is wholly or partly within the coastal use area unless the consent authority:

- (a) *is satisfied that the proposed development:*
 - (i) *if near a foreshore, beach, headland or rock platform—maintains or, where practicable, improves existing, safe public access to and along the foreshore, beach, headland or rock platform, and*
 - (ii) *minimises overshadowing, wind funnelling and the loss of views from public places to foreshores, and*
 - (iii) *will not adversely impact on the visual amenity and scenic qualities of the coast, including coastal headlands, and*
 - (iv) *will not adversely impact on Aboriginal cultural heritage and places, and*
 - (v) *will not adversely impact on use of the surf zone, and*
- (b) *has taken into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.*

The subject proposal will not impede public access to the foreshore, create overshadowing, adversely impact on the visual amenity and scenic qualities of the coast on coastal land (including the surf zone) or Aboriginal cultural heritage or places.

The proposed development is considered in keeping with the existing and future intended development or the location and surrounds.

The proposed development is considered in keeping with the aims of Clause 15 of the draft Coastal Management SEPP.

Summary

The proposed development is not considered to increase the risk of coastal hazards.

The proposed development is consistent with the overall aims of the draft Coastal Management SEPP.

The proposed development is consistent with the aims of the coastal use areas (as applicable to the subject site).

There are no specific coastal management programs applicable to the subject site.

There is no coastal zone management plan (*Coastal Protection Act 1979*) applicable to the subject site.

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

Tweed Development Control Plan

Section A1-Residential and Tourist Development Code

TDCP 2008 Section A1 is not considered to apply to this development as residential development controls for this development type (shop top housing) are addressed in the site specific TDCP 2008 Section B2 for Tweed City Centre as well as SEPP 65 Design Quality of Residential Flat Development. In this regard, a detailed assessment of the proposal against the abovementioned controls is provided elsewhere in this report.

Section A2-Site Access and Parking Code

The proposed development is not subject to the provisions of Council's Tweed DCP Section A2 - Site Access and Parking Code with respect to parking. Vehicular parking rates are calculated with the provisions of Section B2- Tweed City Centre, as detailed later in this report. It is assessed that the parking provisions under Section B2 for the proposed development are considered to be acceptable in this instance.

With regard to access to the basement car park, the application has been reviewed by Council's Development Engineering Unit and Council's Traffic Engineer who have raised no concerns to the proposed new driveway crossover located at the eastern side of the site which will be required to comply with Council's Access to Property Guidelines and will be subject to Section 138 application and approval.

Section A3 - Development of flood liable land

DCP A3 advises that the minimum DFL in Tweed Shire is RL 2.6m AHD, with a minimum habitable floor area of RL 3.1m AHD. The site is identified as being flood affected being affected by the PMF. The lowest residential floor is identified as being at approximately 11m AHD.

Furthermore, the site can gain permanent high level evacuation routes to land above the Probable Maximum Flood level.

Council's Development Engineer and Flooding Engineer have both reviewed this application with no issues raised in relation to the proposal from a flooding perspective. It is considered that the proposal is consistent with the controls established within A3.

Section A5-Subdivision Manual

The existing development is located over two separate existing allotments. It is considered appropriate that these be consolidated into a single allotment as part of the works proposed under this application. Upon completion of this, the proposed development would be located on a single allotment and the allotment configuration would be regularised to represent a single building across the site.

The application has been reviewed by Council's Development Engineering Unit with respect to this lot consolidation and recommended conditions of consent have been applied requiring that the proposal be undertaken in accordance with Tweed Shire Council's Development Control Plan Section A5-Subdivision Manual which is considered appropriate.

Section A11-Public Notification of Development Proposals

The application was placed on public exhibition for a 30 day exhibition period in accordance with the Environmental Planning & Assessment Act 1979. During the exhibition period no public submissions were received.

Section A15 – Waste Minimisation and Management

Council's DCP Section A15 aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development.

The applicant has provided a Waste Management Plan which includes details relating to both the construction phase and the ongoing operational phase of the proposed development. Minor modification would be required to this plan to correctly identify that Council recycling bins are to a maximum size of 360 litres (and not 1,100 litres as identified in the Waste management Plan). This can be addressed through conditions of consent.

Furthermore, the following condition should be applied to any consent with respect to the proposal *"All wastes shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section A15 - Waste Minimisation and Management and to the satisfaction of the General Manager or his delegate."*

As such, the proposal is considered to be acceptable having regard to waste management and the provisions of this section of the DCP.

Section B2-Tweed Heads

The subject site is located in the City Centre Support Precinct in the northern city centre character area of the above policy. This Section of the DCP outlines the following Character Statement with respect to this precinct:

"The City Centre Support Precinct is located to the south of the City Centre Core and adjoins the Ridgeline and Razorback Precinct, the Tweed River Precinct and the Civic/ Campus Precinct and the Southern Boat Harbour Precinct.

The objective for future development in this precinct is to allow for a similar range of land uses to the City Centre Core although at a lower density and without the extent of active street front uses as in the City Centre Core.

Future development on consolidated allotments will be up to 10 storeys fronting Wharf Street and 14 fronting Pearl Street with residential land uses only to the west of Beryl Street and Boyd Street. The objective for future development west of Beryl Street and Boyd Street is to create a residential precinct with high quality urban design and buildings that respond to the topography of the land. Buildings up to 10 storeys will be encouraged along Thomson Street on consolidated sites to reinforce the ridgeline and define the State border. Some medium density buildings between Angela Street and Florence Street will function as an interface between City Centre Support Precinct and lower density Ridgeline and Razorback Precinct."

Having regard to the provisions of this precinct, it is considered that the proposed development would be generally in accordance with the above by virtue of being a 9 storey building fronting Wharf St.

DCP Section B2 also has controls in regards to building form, pedestrian amenity and access parking and servicing which are relevant to this application.

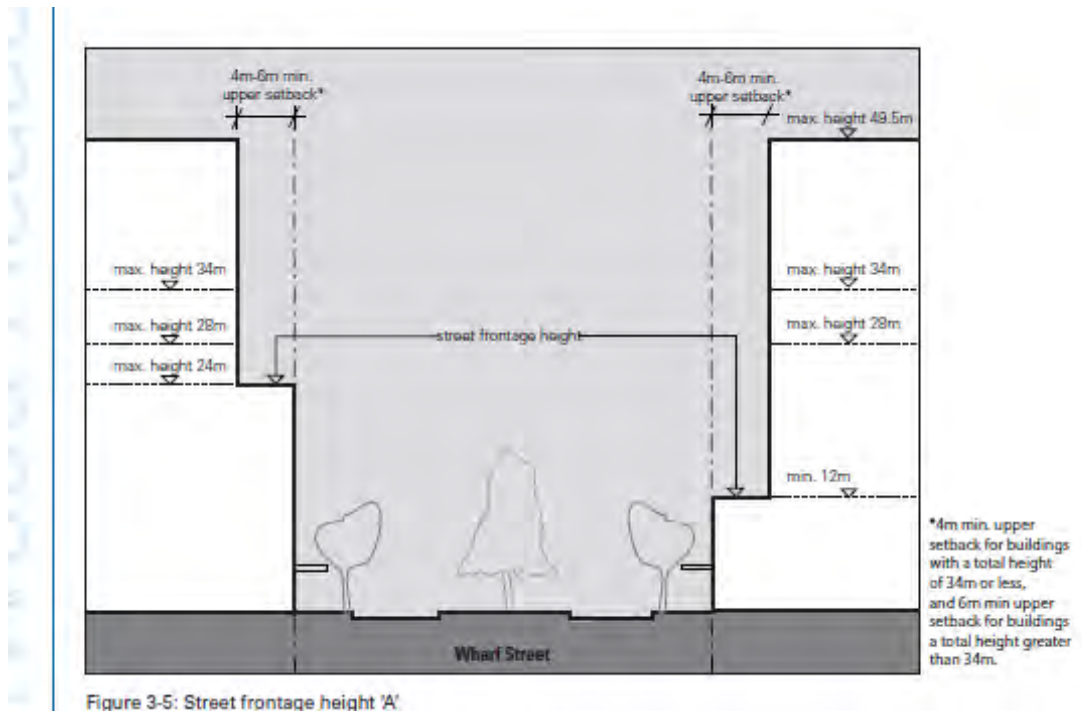
Section 3.0 Building Form

3.1 Building Alignment and Setbacks

It is noted that this section of the DCP outlines a 0m setback along Wharf Street and a 0m setback to Frances Street at the proposed development location which is complied with in the subject application.

3.2 Street frontage heights

Street frontage heights are to be in accordance with Frontage Height A (See Figure 3.5 below).



This equates to a street frontage height of between 12m and 24m to the site boundary which the proposed development complies with, to a height of approx. 22m. Above this height, the building is set back 4m to Wharf St and Frances St,

3.3 Building Depth and Bulk

3.0 Building form

TABLE 3-1: TABLE OF MAXIMUM BUILDING DEPTH AND GFA PER FLOOR

LAND USE ZONE	BUILDING USE	CONDITION	MAXIMUM GFA PER FLOOR	MAXIMUM BUILDING DEPTH (EXCLUDES BALCONIES)
Commercial core	Non-residential	Above SFH	1,200m ²	25m
	Residential and serviced apartments	Above SFH	900m ²	18m
Mixed use	Non-residential	Above SFH	900m ²	25m
	Residential and serviced apartments	Above SFH	700m ²	18m
Residential and other zones	All uses	Above SFH	700m ²	18m

SFH: Refers to maximum permissible Street Frontage Height

Note: On large, consolidated allotments, where multiple structures may be constructed above the street frontage height, development applications need to demonstrate appropriate building bulk, scale and separation.

900m²-1200m² max. GFA per floor (depending on use)

As per the conditions above, this control only applies to levels above the Street Frontage Height, which in this case is above the 22m height. In this instance this relates to Levels 8 & 9. These are residential use and therefore are limited to a maximum GFA per level of 900m² and a maximum building depth of 18m.

Level	GFA (m2)
8	310
9	260

The maximum building depth is identified as being approximately 21m which is a variation to the above control, however it is noted that this depth is only evidenced to a minor proportion of the development, with the majority complying with the 18m control. The proposal is considered to be acceptable in this regard, with the extended building depth not considered to result in any adverse impacts with respect to building scale in this instance. The bulk and scale on this site is considered acceptable.

3.4 Mixed use buildings

The proposal is considered to comply with the requirements outlined under this control, including the provision of flexible building layouts while the ceiling heights of 3.8m to retail and lobby areas, 3.2m to commercial and 3m to residential levels are proposed.

3.5 Building design and materials

The proposal is considered to be acceptable in terms of materials used and would contribute positively to the streetscape and public domain at this location. It is particularly noted that amendments were sought through further information for amended features to improve the building design to the west elevation.

3.6 Landscape design

The subject provides an open space area to level 3. Details relating to the extent of landscaping etc. provided here have not been submitted, however would be required in further detail via an appropriate condition of consent.

3.7 Planting on structures

As outlined above, the proposal does not include detailed information relating to the plantings proposed to level 3. These will be required through an appropriate condition of consent. It is considered that the development can accommodate plantings in accordance with this clause.

4. Pedestrian Amenity

The provisions of this portion of the DCP relate to permeability, active street frontages, safety and security, awnings and vehicle footpath crossings and advertising and signage which are considered to be relevant to this application.

The subject site is not identified for any specific site permeability controls. The development achieves active street frontages, as detailed within the Tweed City Centre LEP controls (see elsewhere in this report). It is also considered that adequate safety and security is provided through casual surveillance via overlooking of public space from the residential units.

It is noted that active street frontages are required and outdoor dining encouraged to the Wharf Street elevation, with an active street frontage required to the Frances Street elevation. Furthermore, awnings are required and provided to both elevations under the provisions of this plan. No signage is proposed.

5. Access, Parking and Servicing

The subject application was referred to Council's Traffic Engineer and Development Engineering Unit with respect to parking and access provisions. The access provisions are outlined in detail under the DCP Section A2 assessment above and are considered acceptable subject to the application of recommended conditions of consent.

This Section of the DCP contains specific vehicular parking rates.

5.3 On-site parking

The objectives of this control include provisions to provide adequate space for parking and manoeuvring of vehicles, to encourage economic growth in the city centre and to recognise the complementary use and benefit of public transport and non-motorised modes of transport such as bicycles and walking.

Residential/Commercial Component

Development	Required Parking	Provided Parking
Attached Dwellings	<p>1 per each 1 and 2 bedroom unit, 1.5 per 3 bedroom unit, and Plus 1 space per 10 units for visitor parking.</p> <p>Development proposed residential units in the following configuration;</p> <p>10 x 1 bedroom units = 10 30 x 2 bedroom units = 30 3 x 3 bedroom unit = 4.5</p> <p>Visitor 43 Units/10 = 4.3</p> <p>Residential needs 48.8 spaces</p>	
Retail	<p>1 Space per 40m² 200m²/40 = 5 spaces needed</p>	
Office	<p>1 Space per 70m² 526m²/70 = 7.5 spaces needed</p> <p>Retail/Commercial Needs 12.5 spaces</p>	
Total Parking	(61.3) 62 Spaces required	<p>Parking provided 41 spaces to basement & 22 spaces to ground level (63 total). In addition 2 x disabled spaces also identified</p> <p>However 1 x space is also identified as a loading bay and 1 x space is to be allocated for a site manager and therefore cannot be included in the above calculations.</p>

Development	Required Parking	Provided Parking
		It s considered that parking can be reconfigured on site to ensure compliant no. of spaces provided (see condition).
	Bicycle parking 2 per unit 1 = 86	ample storage has been provided
	Motorbike parking 1/25 car = 3 required	None provided, however updated site plan required which demonstrates 3 x bike spaces

A condition of consent is to be provided which requires an updated site plan which demonstrates compliant parking on site. This is to be worded as follows;

- # *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 49 designated car parks for the residential component of the development, clearly defined as "reserved" parking.*
 - *The 49 residential car parking spaces is to include 5 designated visitor car parks.*
 - *A minimum of 13 designated car parks for the retail/commercial component of the development.*
 - *A minimum of 3 motorbike spaces are to be provided for the development.*
 - *1 designated Delivery / Load Bay, sized to accommodate a SRV, compliant with AS 2890.2 Off-Street Commercial Vehicle Facilities and the minimum dimensions specified in Council's DCP B2 – Tweed City Centre.*

The basement car park must be designed accordingly to provide sufficient height clearance to allow appropriate vehicles to access the basement stormwater treatment device for servicing or the building proper must provide acceptable alternative access facilities.

The visitor, retail and commercial car parks shall be clearly sign posted and fully accessible to the public.

Full design detail of the proposed parking and maneuvering areas, incorporating the above requirements, 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 Building Works.

Having regard to the above, the proposed development is considered to be consistent with the controls outlined above. The application has been reviewed by Council's Traffic Engineer in this regard who has concurred with the car parking calculations provided.

6. Environmental Management

The subject application includes proposed measures to be undertaken to achieve compliance with Basix which is demonstrated to the file.

The submitted application also advises that '*The proposed development is located in an established urban area and will utilise a range of energy efficiency measures to promote the sustainable operation of future land uses.*'

Council's Waste Management Unit has reviewed the subject application with respect to waste and recycling. Additional comment with respect to this matter is provided under DCP Section A15 comments in this application.'

Having regard to the above, the proposed development is considered to be generally acceptable having regard to Environmental Management measures as outlined by this DCP.

7. Residential Development Controls

7.2 Housing choice and mix

A choice of apartment types has been provided to this development. It is noted that the bedroom mix is provided as follows;

- 10 x 1 bedroom units
- 30 x 2 bedroom units
- 3 x 3 bedroom units

This is considered to be acceptable with respect to this clause.

7.3 Residential design for a subtropical climate

The subject application is considered to be acceptable with respect to natural ventilation, shading and balconies and terraces as outlined elsewhere in this report.

8. Controls for special areas

The subject site is not identified as being a special area under the provisions of this DCP. As such the controls contained within Section 8 are not applicable to the subject development.

The development as proposed is considered to be generally compliant with the provisions of Council's DCP Section B2 and is assessed as being an appropriate development on the subject site, having regard to the above assessment of the matters contained in this DCP.

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

Clause 92(a) Government Coastal Policy

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

development contradicts the objectives of the Government Coastal Policy, given its permissible nature on a site identified for development works.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology and, social and economic demand.

The subject site is located within the Point Danger- Fingal Head Area identified under the Plan at Clause 3.1.3. The subject site is not identified for specific development or issues within this plan and it is not considered to be directly impacted upon by the issues identified for that area.

Under this plan, the subject site is not identified as having any key management actions or specific management strategies. The proposal is assessed as being consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

The subject site is not located within an area that is affected by the Coastal Zone Management Plan for the Tweed Coast Estuaries 2013.

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

The subject site is located approximately 1km from the Terranora Inlet to which this management plan relates. It is noted that the site is not located within any of the broadwater catchment areas identified under this plan.

The proposal is not considered to result in a significant or unacceptable impact on the Broadwater given its spatial separation from the areas identified in this plan. Furthermore the application relates to a development in an area zoned for this type of development, being currently utilised for retail purposes. The proposal is not considered to impact upon coastal zone management strategies for Cobaki and Terranora Broadwater.

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

Construction

The construction of the proposed development will be subject to conditions being included on any consent issued. It is noted that Council's Building Unit have reviewed the application and had no objection to its development subject to conditions of consent in this regard. The development phase of the proposal will present some interruption to the ambience of the surrounding area but this is temporary in nature and it is considered that amenity can be adequately protected via conditions of consent in the event of approval.

Stormwater

The subject application was reviewed by Council's Planning and Infrastructure Engineering Section who have provided the following comments with respect to stormwater management for the proposed development:

"The submitted Stormwater Management Plan proposes to utilise a bio-retention basin to filter and remove pollutants and then pipe the filtered water to public stormwater infrastructure along Wharf Street. The plant species selected for the bioretention basin are appropriate and the basin has been sized to meet D7 requirements.

No stormwater quality treatment has been proposed for the undercover and basement car parking areas which therefore shall be conditioned to be rectified. The Development Engineers have recommended a modified condition number PCC1105 which includes mention of the basement car parking but I would also like to add further to this condition."

The engineering comments further advised that subject to an appropriate condition of consent being applied the proposal was considered generally acceptable. Having regard to the received advice and recommended condition of consent, the proposal is considered to be acceptable with respect to stormwater provision on the site.

Sewer & Water Infrastructure

The subject application was reviewed by Council's Water Unit with respect to Sewer and Water infrastructure being provided to the site. The proposal is generally compliant with the requisite provisions in relation to this infrastructure, however, the applicant was required to provide updated information in relation to the sewer infrastructure on the site. In this regard it was noted that the existing sewer junction connection to the proposed development is from a sewer manhole located in the adjacent police station lot and it was not clear that access was still available to this manhole. The applicant was advised that alternate provisions may need to be accommodated if this access was not available. A response has been received by the proponent advising that a site inspection was undertaken and that a connection to the existing manhole is achievable.

This has been accepted by Council's Water Unit who have subsequently provided recommended conditions of consent.

Dewatering

The subject application would require dewatering in relation to the installation of basement car parking and typical underground services. In this regard it is noted that the application incorporated an Integrated referral to New South Wales Office of Water in this regard. General Terms of Approval for works requiring a license under Part 5 of the Water Act have been received in this regard which are to be attached to any consent.

The application has also been reviewed by Council's Environmental Health Unit in this regard who have provided the following comments and a number of recommended conditions with respect to dewatering on the site.

"Previous comments have been provided dated 6 September 2017. These comments requested the following further information:

- *The Dewatering Management Plan report does not address monitoring or an 'action threshold' for potential contaminants (heavy metals, BTEX, PAHs and TRHs) from the former UPSSs on the site. The applicant is requested to review the respective groundwater analysis results in the contaminated land reports and provide comment with respect to the need for further analysis of these potential contaminants prior to discharge from the site.*
- *Please confirm that the basement construction will be 'tanked' or waterproofed to prevent the potential ongoing need for pump out of basement water to stormwater at the street.*

Discussion with Mark Tunks from HMC on 15 December 2017 confirmed that the basement construction will be "tanked".

The proposal is considered to be acceptable subject to the inclusion of the conditions recommended by both the NSW Office of Water and Council's Environmental Health Unit on any consent.

Awning Proposed over Council Road Reserve

The submitted application includes development of an awning structure over Council's Frances Street and Wharf Street road reserves. The application was referred to Council's Water and Wastewater Unit and Council's Traffic Engineer who have raised no issue with the awning proposed. Council's Water Unit provided the following comment with respect to the awning structure.

"Plans show that there will be an awning located over the footpath in Wharf St and Frances Street. ...a condition will be added to ensure that the awning does not have less than 2.4 meters clearance b/w the footpath and the awning."

A condition would be applied to any consent issued requiring that the proposed awning have a 2.4m clearance between the footpath and awning. Furthermore, a condition will be applied requiring that a lease agreement be entered into with Council for any awnings over Council road reserve.

Construction

The construction of the proposed development will be subject to standard amenity and hours of operation conditions being included on any consent issued. It is noted that Council's Building Unit and Environmental Health Unit have reviewed the application and recommended standard conditions of consent with respect to the construction phase of the proposed development.

This phase of the proposal will present some interruption to the ambience of the surrounding area, however this is temporary in nature and the amenity of the surrounding area can be adequately protected via appropriate conditions of consent.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is located in an area where there is a diverse range of surrounding land uses and development with residential, commercial, and a police station within a relatively short distance of the site.

The proposed development is for a mixed use building in the form of shop top housing and commercial premises. The proposal is not considered to result in an unacceptable impact on surrounding development as outlined throughout this report and is considered to be appropriate at this location by virtue of being a permissible use on appropriately zoned land. Accordingly the proposal is recommended for conditional approval.

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

The application was placed on public exhibition for a 30 day period as an Integrated Development in accordance with the Environmental Planning and Assessment Act. During the exhibition period Council received no public objections or submissions.

Public Authority Submissions

NSW Department of Primary Industries (Office of Water)

The subject application was lodged as a nominated Integrated development with a permit required from New South Wales (NSW) Office of Water under Sections 89, 90 and 91 of the Water Management Act 2000 for dewatering. General Terms of Approval have been received from NSW Office of Water which are to be placed on any consent in the event of approval.

Gold Coast Airport Pty Ltd

Comment have been received from Gold Coast Airport Pty Ltd outlining the following with respect to this application;

'It would be appropriate to include a condition relating to obtaining airspace approval for any crane use, even though exceeding the OLS may be unlikely in this instance.

We are currently going through an exercise of reviewing relevant conditions generally in this regard, and related procedures for applications where penetration of the OLS may be involved.

Crane applications are usually not dealt with by the Department, but handled internally under delegation at GCAPL, requiring a re-wording of that part of any condition.

For the current application, we would suggest use of a somewhat revised condition from your draft, along the lines of the following:

Any use of a crane or other equipment on this site that may exceed a top RL of 49.5 metres AHD would intrude into the prescribed airspace of Gold Coast Airport, and therefore represent a "controlled activity" under the Airports (Protection of Airspace) Regulations. The proponent must obtain approval for any temporary penetration of the airspace, via an application to be submitted to Gold Coast Airport Pty Ltd at least 6 weeks before the intended commencement of the controlled activity.

Please let us know if you would like any further information.'

The above has been incorporated into a condition which will be applied to any consent issued.

(e) Public interest

The proposed development is generally consistent with relevant environmental planning instruments and Council policy requirements. The proposal is considered suitable for the subject site, given its permissibility at this location. The subject site is zoned Commercial Core where mixed use development of this nature is anticipated. As such the proposal is considered to be in the public interest.

OPTIONS:

1. Approve the application in accordance with the recommendation; or
2. Refuse the application with reasons for refusal.

Council officers recommend Option 1.

CONCLUSION:

The proposed development is considered suitable for the site as it is a permissible form of development and the relevant planning considerations have been taken into account in the assessment of the application. The proposed development does not present any issues that are considered to be contrary to the public interest and generally aligns with the applicable development legislation, as outlined in this assessment report.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

3 [PR-PC] Development Application D91/0266.01 for an Amendment to Development Consent D91/0266 for the Erection of a Three (3) Storey Mixed Development Comprising Seven (7) Shops and Five (5) Flats With Associated Car Parking at Lot 3 SP 64511, No. 3/31-33 Tweed Coast Road Bogangar

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

A Section 96 (1A) application was been received by Council on 12 December 2017 seeking retrospective approval to modify the development consent issued under D91/0266 which related to the erection of a three (3) storey mixed development comprising seven (7) shops and five (5) flats with associated car parking at No. 3/31-33 Tweed Coast Road Bogangar.

The application as originally submitted sought to modify the governing consent to allow for the retention of works which have been undertaken in Residential Unit 3 (Lot 3 SP 64511). The works in question consist of the following:

- Conversion of a dining area to a kitchen to create an open plan kitchen/dining/living room;
- Enclosure of former open plan kitchen area to create a room which has been identified on the plans as a third bedroom;
- Provision of an additional toilet and connection into the sewerage pipes in the common property.

On 15 February 2018, the applicant advised Council in writing that he did not wish to include the additional toilet as part of the application.

The works have changed an approved two (2) bedroom unit to a three (3) bedroom unit which in turn has increased the car parking requirements associated with the unit from 1.5 car parking spaces to 2 car parking spaces.

The development approved under D91/0266 required the provision of 37 car parking spaces on the site, five (5) of which were to be dedicated exclusively for use by the five (5) residential units.

There is no avenue to provide for additional car parking on site to facilitate the additional car parking demanded created by the third bedroom. The applicant has indicated that the additional car parking requirements can be met in one of two ways:

- By the existing single garage on Lot 3 given that there is no additional car parking requirement as the total residential car parking requirements on the site were already rounded up – when the development was originally approved 7.5 spaces were required for residential use which was rounded up to 8 spaces with a ‘spare’ half space for residential use,
- or
- From a car parking space in the existing pool of ‘unallocated’ car parking on the site which is available to residential and commercial tenants.

An assessment of the current car parking requirements for the approved commercial and residential uses on the site indicates that there is currently two car parking spaces surplus to requirements. However the applicant has not identified which of the car parking space on the common property could/would be allocated to Unit 3.

The application was not notified however three (3) submissions in relation to the application/unauthorised works have been received. The key planning matters raised related to the following:

- The applicant’s entitlement (or lack thereof) to rely on the existing car parking provision on the site with there being a question as to whether the unallocated (common property) car parking spaces were exclusively for the commercial tenancies or could be used by the residential tenancies
- There is no owners consent for work which impact on common property
- Water damage to adjoining property as a result of the additional toilet and inadequate damp-proofing associated with same, and
- A request for Council’s equitable application of the planning controls in the assessment the development.

The application was referred to Council’s Building Unit. Issues were raised in relation to the absence of a fire-collar on the new toilet and compliance with the Building Code of Australia (BCA) in terms of smoke detection and the third bedroom. Retention of the toilet is no longer included in the amended application. The issue in relation to smoke detection can be addressed by condition.

There is no objection in principle to the creation of a third bedroom. There is a garage associated with the lot and there is sufficient unallocated car parking on the site to serve the additional car parking requirement generated as a result of this change.

However to ensure that the residents/tenants of Unit 3 have exclusive use of a car parking space on the common property, it is recommended that a condition to attached to any consent issued requiring that a second car parking space (in addition to that in the garage in Lot 3) be identified and allocated to Unit 3 and made available exclusively for the use of residents/tenants of Unit 3. This is necessary to ensure that the residents/tenants of the three (3) bedroom unit have access to two (2) car parking spaces at all times, and to ensure

that they are not displaced to on-street car parking by other users, as could be the case with unallocated car parking. This will require the applicant to negotiate with the Owners Corporation to identify and secure an additional space within the common property parking.

It is therefore recommended that the application (as amended on 15 February 2018 to delete the retention of the toilet) for the internal alternations involving the relocation of the kitchen and dining room and the creation of a third bedroom be approved subject to condition.

The applicant was issued with a building certificate for Lot 3 SP64511 on 18 January 2018 (BC17/0126). The plans submitted with the application highlighted the structural changes to the internal walls within Unit 3, but did not specifically highlight the additional toilet in the bathroom as a modification to the approved plans. Notwithstanding this, the certificate issued provides that the owner of Unit 3 is immune from Council requiring the demolition or rectification of works within Lot 3 SP64511 for a period of seven (7) years.

The certificate does not prevent Council from taking proceedings against the applicant under section 125 of the *Environmental Planning and Assessment Act 1979* with respect to a failure to obtain development consent for the works or use of the building or to comply with the conditions of a development consent.

The certificate also does not cover any unauthorised works outside of the lot, which would include works relating to the common property floor slab and common infrastructure: The construction of the additional toilet involved the penetration of the floor slab under Unit 3 and the connection into the sewerage pipes in the common property. This works remains unauthorised.

RECOMMENDATION:

That:

A. Development Application D91/0266.01 for an amendment to Development Consent D91/0266 for the erection of a three (3) storey mixed development comprising seven (7) shops and five (5) flats with associated car parking at Lot 3 SP 64511; No. 3/31-33 Tweed Coast Road Bogangar be amended set out below:

1. ADD new Condition 4A, which reads as follows:

4A. 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 (specifically Lot 3 SP64511) have been made with the Tweed Shire Council.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, an Occupation 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 (specifically Lot 3 SP64511) at the date of this modified approval have been estimated as:

Water = 0.2 ET @ \$13,632 =	\$2,726.40
Sewer = 0.25 ET @ \$6,549 =	\$1,637.25

[PCC0265]

2. ADD new Condition 4B, which reads as follows:

4B. Section 94 Contributions – Lot 3 SP64511

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

Prior to the occupation of Unit 3, Lot 3 SP64511 or issue of any Interim or Final Occupation Certificate (whichever comes first) for same, all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

- | | |
|-------------------------------------|-------|
| a. Open Space (Casual): | |
| 0.1667 ET @ \$564 per ET | \$94 |
| (\$502 base rate + \$62 indexation) | |
| S94 Plan No. 5 | |
| b. Open Space (Structured): | |
| 0.1667 ET @ \$645 per ET | \$108 |
| (\$575 base rate + \$70 indexation) | |
| S94 Plan No. 5 | |
| c. Shirewide Library Facilities: | |
| 0.1667 ET @ \$869 per ET | \$145 |
| (\$792 base rate + \$77 indexation) | |
| S94 Plan No. 11 | |

- d. **Bus Shelters:**
 - 0.1667 ET @ \$66 per ET \$11
 - (\$60 base rate + \$6 indexation)
 - S94 Plan No. 12
- e. **Eviron Cemetery:**
 - 0.1667 ET @ \$127 per ET \$21
 - (\$101 base rate + \$26 indexation)
 - S94 Plan No. 13
- f. **Community Facilities (Tweed Coast - North)**
 - 0.1667 ET @ \$1457 per ET \$243
 - (\$1,305.60 base rate + \$151.40 indexation)
 - S94 Plan No. 15
- g. **Extensions to Council Administration Offices
& Technical Support Facilities**
 - 0.1667 ET @ \$1935.62 per ET \$322.67
 - (\$1,759.90 base rate + \$175.72 indexation)
 - S94 Plan No. 18
- h. **Cycleways:**
 - 0.1667 ET @ \$490 per ET \$82
 - (\$447 base rate + \$43 indexation)
 - S94 Plan No. 22
- i. **Regional Open Space (Casual)**
 - 0.1667 ET @ \$1132 per ET \$189
 - (\$1,031 base rate + \$101 indexation)
 - S94 Plan No. 26
- j. **Regional Open Space (Structured):**
 - 0.1667 ET @ \$3974 per ET \$662
 - (\$3,619 base rate + \$355 indexation)
 - S94 Plan No. 26

[PCC0215/POC0395/PSC0175]

3. ADD new Condition 10A, which reads as follows:

10A. One (1) off street car parking space within the common property (in addition to the car parking space contained in Lot 3 SP64511) shall be designated for the exclusive use of the Unit 3; Lot 3 SP 64511.

[GENN001]

4. **ADD new Condition 18A, which reads as follows:**

18A. The works to Unit 3, Lot 3 SP64511 shall be completed in accordance with the Modification Report prepared by DAC Planning and dated November 2017 and Proposed Floor prepared by Martech Drafting & Building Services and dated December 2017, except where varied by the conditions of this consent.

- **The additional toilet identified on the stamped plan does not form part of this consent.**

[GEN0005]

5. **ADD new Condition 18B, which reads as follows:**

18B The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

6. **ADD new Condition 18C, which reads as follows:**

18C. The following works are to be undertaken to ensure that Unit 3; Lot 3 SP64511 is provided with a satisfactory level of fire safety;

- **Smoke alarms are to be installed in Unit 3 in accordance with Part E of the NCC - BCA 2016 and AS3786. A certificate from a licensed electrician certifying that the smoke alarms have been connected to the consumer mains power is to be submitted to Tweed Shire Council prior to the issue of an occupation certificate.**

[GENNS01]

7. **ADD new Condition 18D, which reads as follows:**

18D. An application together with certification in respect of Australian Standard 3500 is to be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act in respect of water works (kitchen relocation) in Unit 3; Lot 3 SP64511.

[PCC1195]

8. **ADD new Condition 21, which reads as follows:**

21 Prior to issue of an occupation certificate for Lot 3 SP64511, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

9. **ADD new Condition 22, which reads as follows:**

22. A person must not occupy or use the whole or any part of Unit 3; Lot 3 SP64511 unless an occupation certificate has been issued in relation to this Unit (maximum 25 penalty units).

[POC0205]

10. **ADD new Condition 23, which reads as follows:**

23. Unit 3, Lot 3 SP64511 is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the

unit to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

11. ADD new Condition 24, which reads as follows:

24. A final occupation certificate for Unit 3, Lot 3 SP64511 must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent (as they relate to Unit 3, Lot 3 SP64511) must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).

[POC0355]

12. ADD new Condition 25, which reads as follows:

25. Prior to the occupation or use of Unit 3, Lot 3 SP64511 and prior to the issue of any occupation certificate for same, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

13. ADD new Condition 26, which reads as follows:

26 Prior to the issue of a final occupation certificate for Unit 3, Lot 3 SP64511, all conditions of consent (as they relate to Unit 3, Lot 3 SP64511) are to be met.

[POC1055]

14. ADD new Condition 27, which reads as follows:

27. Prior to the occupation or use of Unit 3, Lot 3 SP64511 and prior to the issue of any occupation certificate for same, written evidence is to be provided to the General Manager or his delegate demonstrating that one (1) additional off street car parking space as required by Condition 10A has been designated for the exclusive use of Unit 3; Lot 3 SP 64511 and will be available to the residents of Unit 3; Lot 3 SP 64511 at all times.

B. Council writes to the Body Corporate for Strata Plan 64511 requesting that the unauthorised works beneath Lot 3 SP64511 within common property be rectified.

C. A Penalty Infringement Notice be issued to the owner of Lot 3 SP64511 for undertaking development without consent.

D. The owner of Lot 3 SP64511 be advised in writing that Unit 3; Lot 3 SP64511 is not to be occupied or used until the amended consent D91/0266.01 and accompanying conditions have been complied with in full.

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

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

REPORT:

Applicant: Mr RP Anderson
Owner: Mr Ross P Anderson & Mrs Mara-Jane A Anderson
Location: Lot 3 SP 64511; No. 3/31-33 Tweed Coast Road Bogangar
Zoning: B2 – Local Centre
Cost: Retrospective approval to retain works

Background:

Introduction

On 7 July 2017, Council received a complaint in relation to possible unauthorised works at the subject site which had resulted in water penetration to the commercial tenancy below. The complaint was investigated by the Compliance Unit who confirmed that internal works had been undertaken in the unit which were not in accordance with the approved plans. The works were identified as the internal relocation of the kitchen, the creation of an additional bedroom and the installation of an additional toilet. The landowner was issued with a letter requesting a detailed report of all unauthorised works supported by a floor plan, details of the builder and plumber who undertook the works and a copy of the Body Corporate/Strata approval for the unit alterations.

Correspondence from the Compliance team to the landowner has initiated the current Section 96 (1A) application.

Site Details

The site is identified at Lot 3 SP 64511 at 31 - 33 Tweed Coast Road, Bogangar. The site is zoned B2 and accommodates a two storey mixed use commercial development with seven (7) commercial tenancies on the ground floor and five (5) residential units on the first floor.

Four (4) of the residential units are two bed units, with the subject unit having been modified to accommodate a third bedroom.

The commercial units on the ground floor include a medical centre, pathology collection centre, restaurant and a hot yoga centre. Car parking is provided in the forecourt at ground level (6 spaces) and in the basement in the form of 6 garaged spaces and up to 25 car parking spaces – 37 spaces in total. Car parking has not been provided in accordance with the approved car parking plan and so there is a question as to whether all 25 of the basement spaces are accessible and compliant with the minimum dimensions required by the Australian Standards.

There is an extensive planning history associated with the development which is outlined over.

Site History

Governing consent - D91/0266

Development approval was issued on 23 January 1992 (Notice No 91/0266 – PF1190/320) for the erection of three (3) storey mixed development comprising seven (7) shops and five (5) flats with associated car parking at Lots 16 & 17 DP31208.

The consent was amended under Section 102 of the Environmental Planning & Assessment Act (EP&AA) 1979 on 7 May 1992 (D91/9266) with condition 18 of the original consent (now condition 16 of the modified consent) which related to the dedication of a laneway to Council being modified. The modified consent also addressed the erroneous numbering of conditions in the original consent.

The consent was again modified on 4 January 1995 (D91/8266).

Condition 10 of the consent required the provision of thirty seven (37) off street car parking spaces in accordance with Council's Car Parking Code. In this regard, the site was to be suitably signposted to indicate the availability of on-site parking. Further, a total of five (5) car parking spaces were to be designated for the exclusive use of the residents of the building to the satisfaction of the Director of Development Services. No restrictions or allocation requirements in relation to the use of the remaining 32 spaces were identified in the conditions of the consent:

10. *The provision of thirty seven (37) off street car parking spaces in accordance with Council's Car Parking Code. In this regard the site being suitably signposted to indicate the available (sic) of on-site parking. Further, a total of five (5) car parking spaces being designated for the exclusive use of the residents of the building to the satisfaction of the Director of Development Services.*

In 1996 Council approved the lease of an area at the site's frontage to provide an additional three (3) car parking spaces, bringing the total car parking spaces available on site to 40. However this lease has since expired and has not been renewed.

The plans approved under D91/0266 identified a balcony on both the southern and western elevation of Unit 3 (one balcony accessed from bedrooms 1 and 2 and a second balcony accessed from the dining room). Refer to **Figures 1A** and **1B**. It would appear however that when the unit was constructed the balconies were omitted. The approved strata plan does not identify any balconies in Unit 3.

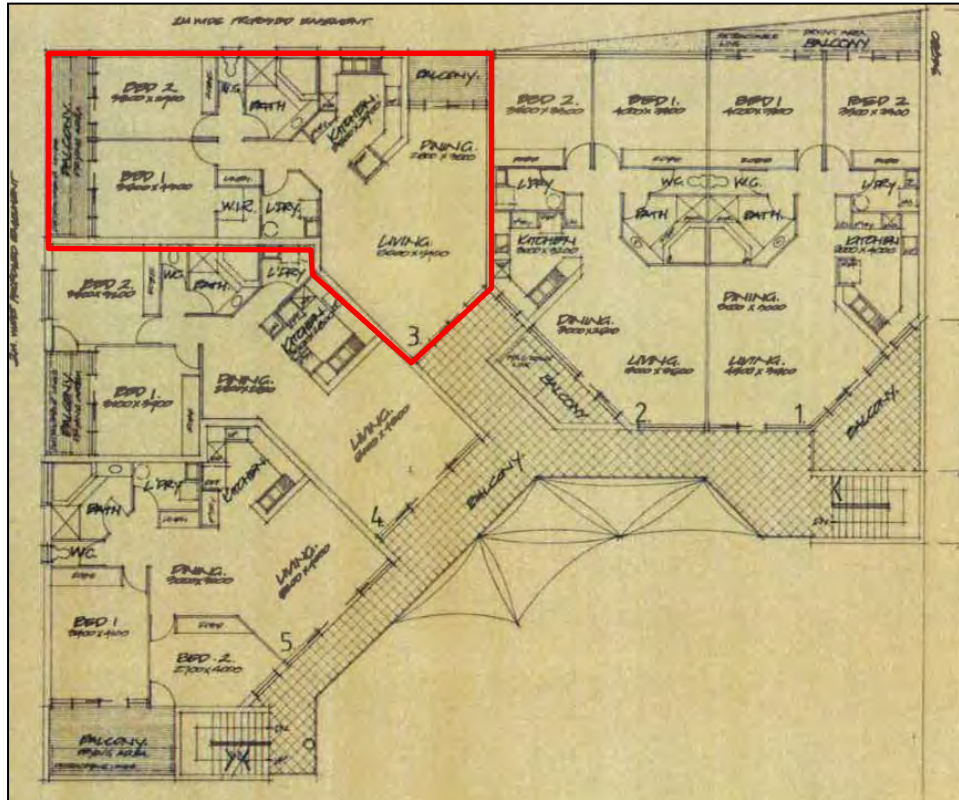


Figure 1A: Approved floor plan

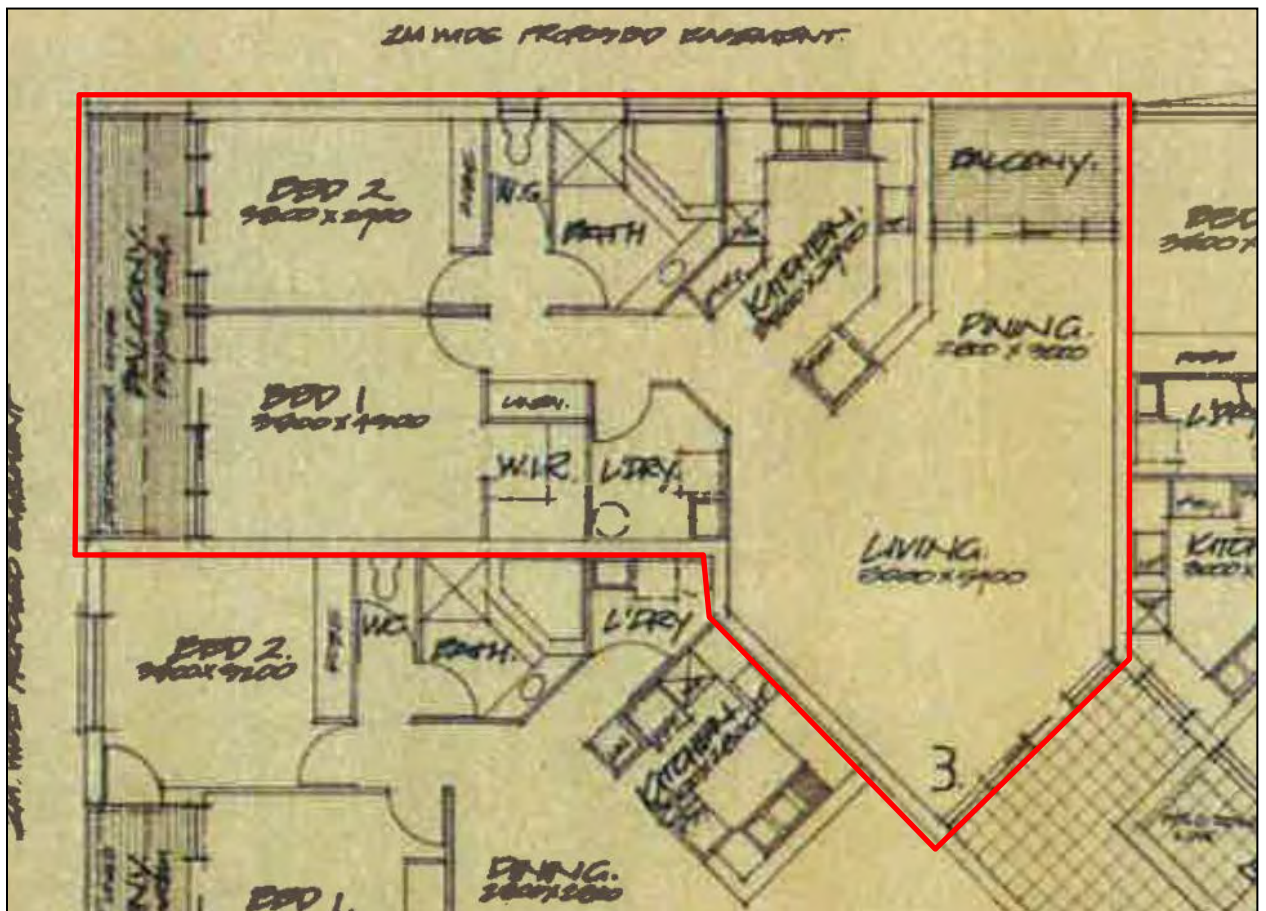


Figure 1B: Approved floor plan – Unit 3 (enlarged)

Strata subdivision of site - 0049/2000SSC

Approval was issued for 13 lot strata subdivision on 29 November 2000. Five (5) car parking spaces on level 1 are allocated to the five residential units. These take the form of enclosed garages.

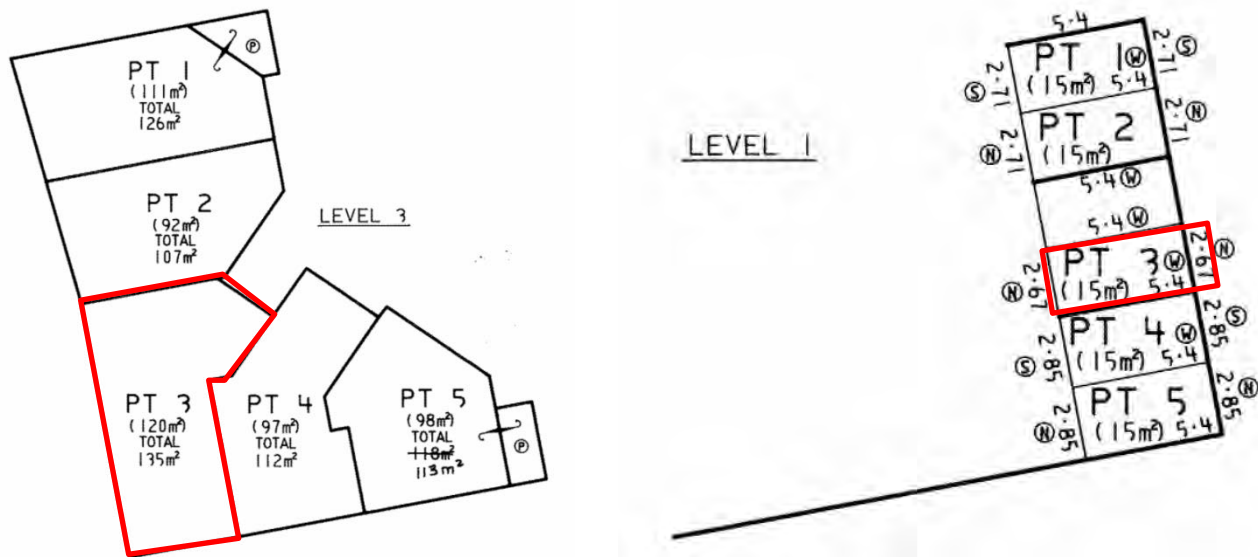


Figure 2: Approved strata plan

Development Applications on Commercial Tenancies

Unit 6 – Shop 1

- 0583/2000DA – Development consent issued on 11 August 2000 for the provision of additional seating to an existing restaurant.
- DA08/0130 – Development consent issued on 15 December 2008 for extension to existing Thai restaurant with balcony – Consent limited to 40 seats.

Unit 7 – Shop 2

- DA11/0421 – Development consent issued on 21 November 2011 for change of use and fitout of a commercial premises (restaurant) to pathology collection centre.

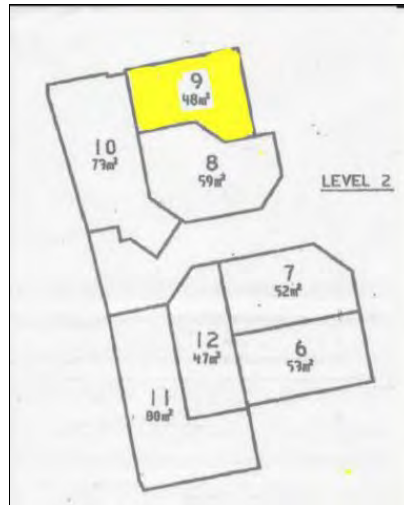
Unit 8 – Shop 3

- 0693/2000DA – Development consent issued on 5 July 2000 for a doctor's surgery. The approved plans showed one consulting room, one treatment room and one nurse's room.
- CDC15/0078 – A Complying Development Certificate was subsequently issued by AXIS Building Certification for a tenancy fit-out of this unit and Unit 10 (Shop 5) to a medical centre.

Unit 9 - Shop 4

- DA16/0093 – Development consent issued on 8 April 2016 for change of use to a barber shop

DA17/0600 – Development consent issued on 26 September 2017 for change of use from barber shop to a coffee shop



Unit 10 - Shop 5

DA04/1322 – Development consent issued on 9 December 2004 for change of use to office

CDC15/0078 – A Complying Development Certificate was subsequently issued by AXIS Building Certification for a tenancy fit-out of this unit and Unit 8 (Shop 3) to a medical centre.

Unit 11 – Shop 6

1178/2000DA – Development consent issued on 7 December 2000 for a community health/early childcare centre in shop 6

DA17/0045 – Development consent issued on 3 May 2017 for change of use to yoga studio

DA17/0045.01 – A modification to development consent DA17/0045 approved on 30 June 2017

Unit 12 - Shop 7

1157/2000DA – Development consent issued on 23 November 2000 for the establishment of an office in shop 7

DA17/0796 – Application for change of use of shop (Shop 7) to health and beauty clinic and for fit-out. This application was subsequently withdrawn

Other

1195/2000DA – Development consent issued on 24 November 2000 for the use of the premises as a retail stationery and copy outlet – unit not identified on files available

D97/0373 - Development consent issued on 13 October 1997 for the establishment of a community radio station - unit not identified on files available

D95/0234 - Development consent issued on 24 August 1995 for a café containing seating for 20 people - unit not identified on files available

Applications relating to subject site

BC17/0126 – An application for a Building Certificate was lodged with Council concurrent with the subject Development Application. The same floor plan was submitted for both applications (refer to *Figure 3* over). The plans specifically highlighted the structural changes to the walls, but not the second toilet. A Building Certificate for the lot (Lot 3 SP64511) was issued on 19 January 2018. This Certificate covers all works within the boundaries of the regardless as to whether they were specifically highlighted on plans or not. It does not however cover any works to common property outside of Lot 3 SP64511.

Application Details

The current application seeks to modify the consent issued under D91/0266.01 to retain some of the works already undertaken on the site:

- Conversion of a dining area to a kitchen with an open plan kitchen/dining/living room; and
- Enclosure of former open plan kitchen area to create a room which has been identified on the plans as a third bedroom and use of this room as a bedroom.

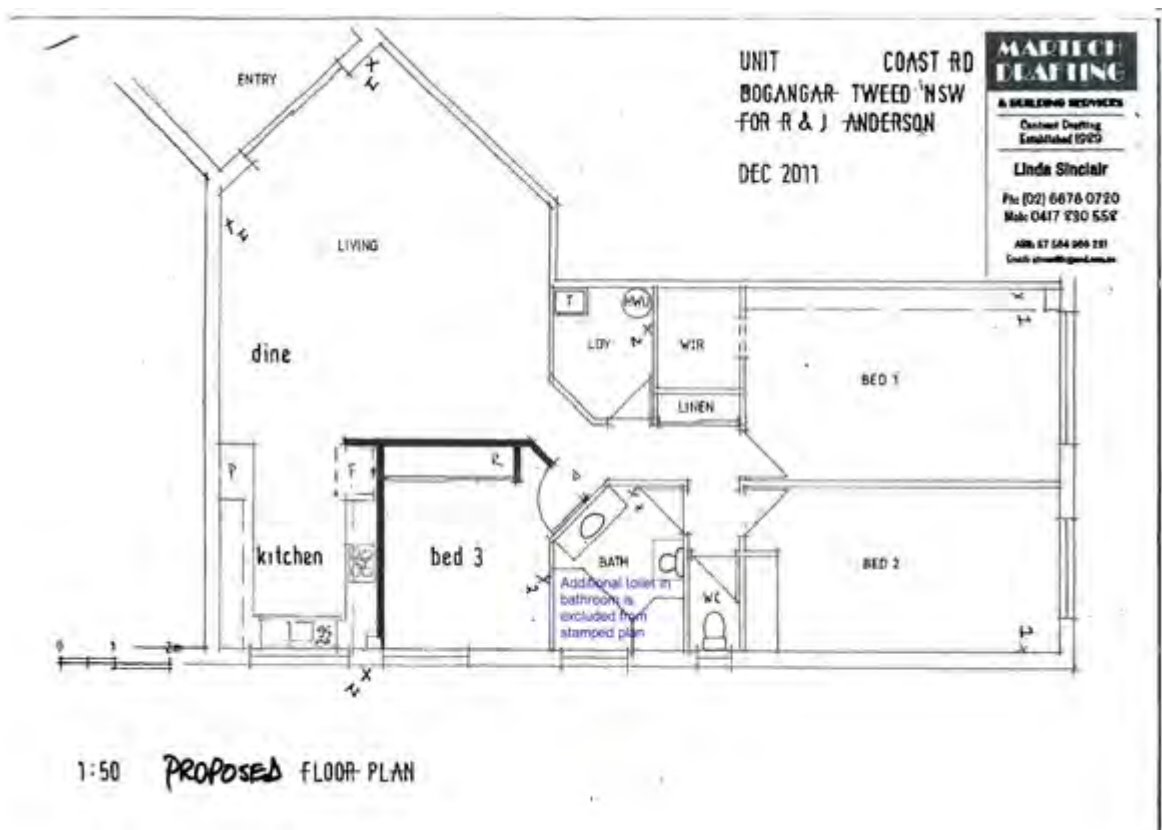


Figure 3: Proposed (existing) floor plan

The application (as modified by the applicant on 15 February 2018) does not include the retention of the additional toilet which has been constructed in the bathroom. The applicant has indicated that he does not believe that this requires development consent.

There are no proposals to provide for additional car parking on site. The applicant responded to a request for further information in relation to the car parking by advising that

the request for a car parking report is unreasonable and unnecessary given that the net increase in car parking demand is 0.5 car parking spaces.

The applicant submits that there is sufficient car parking on the site in that he can either:

- Rely on the existing single garage associated with Lot 3 on the basis that there is no net increase in the total residential car parking requirements for the site (based on the car parking requirements in place in 1992 when the original approval was issued and the previous rounding up of spaces to a whole number), or alternatively
- Rely on the unallocated car parking on the site which is located on common property, is available to both residential and commercial tenancies and to which he has a right (as a lot owner) to access.

The applicant has submitted several documents in response to concerns from Council in relation to adequate car parking provision and owners consent. Of relevance to the assessment of the application are the following documents:

- Calculations of the car parking requirements for the residential units on the site which indicates that based on the car parking requirements in place at the time of the determination of the original consent the residential car parking requirements were 7.5 spaces which would have been rounded up to 8 spaces. Applying the same rates now would result in a demand for 8 spaces and therefore there is no net increase in residential car parking demand.
- Legal advice from an accredited specialist commercial litigation lawyer who advised that he had reviewed the title for the lot and notes *'that there are no exclusive use by-laws that have been registered in respect of any of the car parking spaces on the common property granting exclusive use to any particular lot owner, and therefore those car parking spaces are available for use by all owners, occupier, residents, tenants, guests and customers of both the residential and commercial lots.'* (Refer to Attachment 1)

Building unit

The application was referred to the Building Unit who advised that should planning approval be recommended for this application it will be necessary for a Building Certificate and a plumbing application to be lodged and issued. It has been noted a Building Certificate (BC17/0126) has since been issued.

Clauses 93 and 94 of the Environmental Planning & Assessment Regulation apply as the proposal includes the change of use of the kitchen to a bedroom and the dining room to a kitchen. The Building Surveyor provided the following comments:

"An inspection of the existing tenancy disclosed that the unit is deficient in a number of BCA-NCC requirements. The unit has no functioning smoke detectors and the additional wc has been installed without a fire rated collar around the plumbing penetration. The current FSD contains smoke and heat detectors – AS3786. Based on my inspection and the age of construction I would conclude

these relate to battery operated smoke detectors in the residential Sole Occupancy Unit.

Accordingly a number of BCA upgrades will be required as conditions of consent as follows;

The following works are to be undertaken to ensure the unit is provided with a satisfactory level of fire safety;

- 1. Smoke alarms are to be installed in Unit 3 in accordance with Part E of the NCC - BCA 2016 and AS3786. A certificate from a licensed electrician certifying that the smoke alarms have been connected to the consumer mains power is to be submitted to Tweed Shire Council prior to the issue of an occupation certificate."*

The Building Surveyor has no objection to the proposal subject to the imposition of appropriate conditions.

It is noted that the additional toilet has since been removed from the application.

Water and Wastewater unit

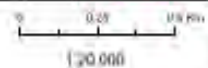
The application was also referred to Council's Water and Wastewater Unit who advised that a change from a two (2) bedroom unit to a three (3) bedroom unit would incur additional S64 charges. If the development is to be approved, a condition requiring additional S64 contributions is to be imposed.

SITE DIAGRAM:



Site Plan

Lot 3 SP 64511
31-33 Tweed Coast Road, Bogonar



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GDA  **License:** 22/012018
 & NSW PL & Tweed Water Board

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ZONING MAP



Tweed Local Environmental Plan 2014

Subject land

Zone

- B2 Local Centre
- R2 Low Density Residential
- R3 Medium Density Residential



Site Plan - Local Environmental Plan

Lot 3 SP 64511
31-33 Tweed Coast Road, Baganal

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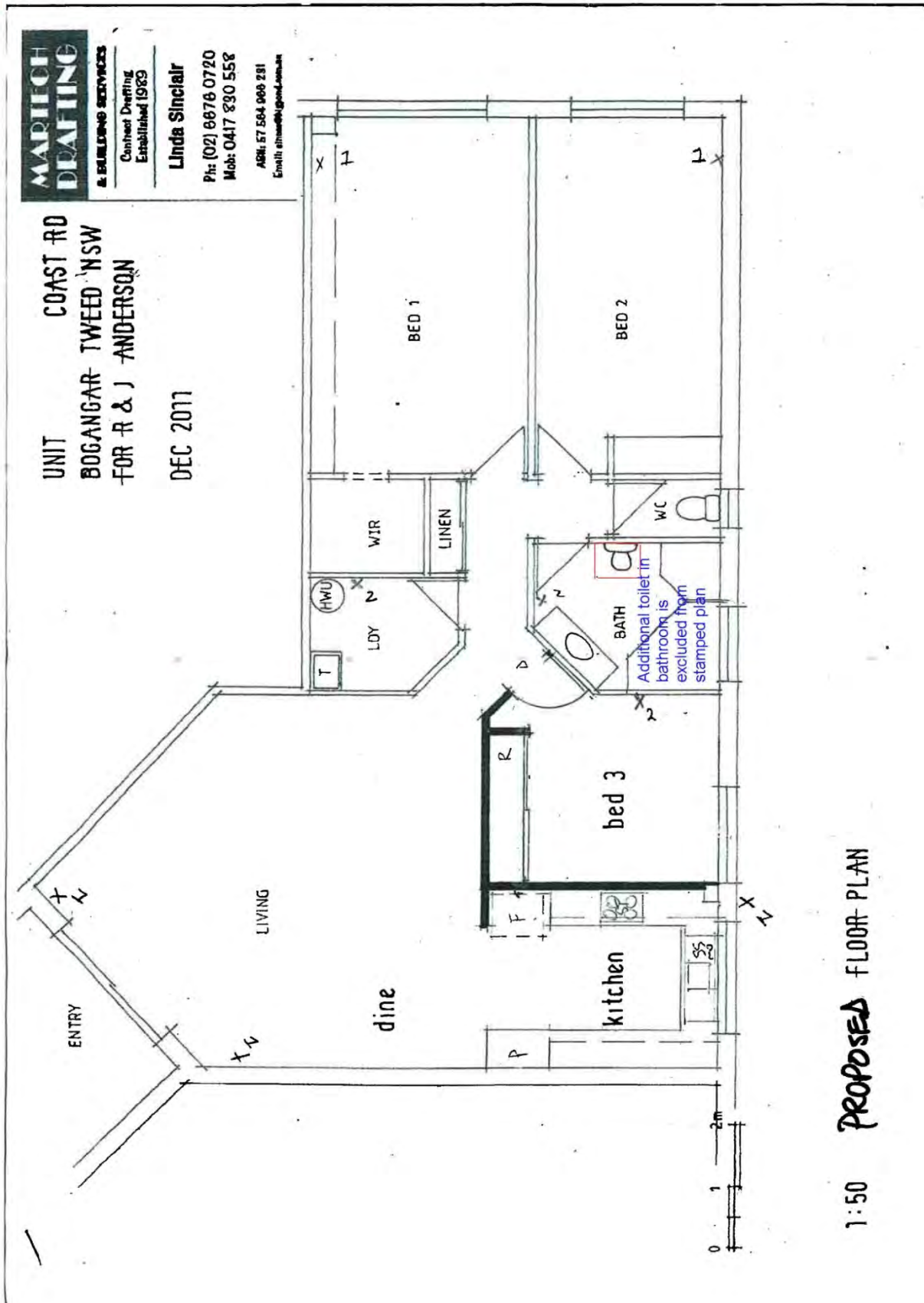
Aerial Photography 2015

Lot 3 SP 64511
31-33 Tweed Coast Road, Bogonar

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DEVELOPMENT/ELEVATION PLANS:



ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
Section 96 (Modification of consents - generally)

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- 1A (a) *It is satisfied that the proposed modification is of minimal environmental impact, and*

Comment:

The minor internal alterations covered by this application and the change from a two (2) bedroom unit to a three (3) bedroom units are in themselves considered to be of minimal environmental impact and as such can be considered under a Section 96 application.

The addition of a bedroom increases the car parking requirements on the site by 0.5 spaces. The 32 unallocated spaces on the common property are available to both the commercial and residential tenants in that they are not dedicated to a specific use (residential or commercial) under the governing consent and are not allocated on the strata plan. An assessment of the existing car parking demand on the site (based on approved uses) indicates that there is sufficient capacity in the existing onsite car parking provision to allow for one of these 'surplus' spaces to be used by Unit 3.

- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment:

The minor internal alterations covered by this application and the change from a two (2) bedroom unit to a three (3) bedroom unit is considered to fall within the scope of works which can be undertaken under a Section 96 application in that the development as modified would be substantially the same as that approved under D91/0266 (and as previously modified).

- (c) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Comment:

The application did not require public exhibition given the nature of the modification. However three (3) submissions were received and these are addressed below.

- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment:

Three (3) submissions were received in relation to the application/unauthorised works. The key issues raised are summarised below:

Issue raised in submission	Planning Officer response
<p><i>Impact on common property/private property</i></p> <ul style="list-style-type: none"> The extra toilet is impacting on common property and has leaked into the tenancy below causing damage to same. The damage has not been repaired affecting the safety and usability of Lot 11 below. 	<p>The applicant has amended the application so that the retention of the toilet does not form part of the scope of works.</p> <p>This is a matter to be resolved between the owner of Lot 3 SP64511 who undertook the work and the Body Corporate.</p>
<p><i>Car parking</i></p> <ul style="list-style-type: none"> The approval of the third bedroom would increase car parking requirements and impact on the on-site car parking spaces allocated/used by the commercial tenancies. The applicant has previously made submissions in relation to other applications/development on the site that there is insufficient car parking for current requirements - Objections to DA17/0045, ILL15/0438. The approval of the third bedroom would set an undesirable precedent for other residential owners to increase the number of bedrooms, further increasing the demand for car parking. 	<p>Refer to section on car parking later in this report.</p> <p>While there is evidence on file that there has been conflict between residential owners and the commercial tenancies in terms of access to car parking /inadequate car parking onsite, there is adequate car parking on site to meet the needs of both (based on current car parking rates).</p> <p>Previous submissions appears to relate to restrictions on the residential tenants and/or their visitors having access to the unallocated spaces. However this is a matter for the Owners Corporation and the lot owners).</p>
<p><i>Appropriate approvals/owners' authorisation</i></p> <ul style="list-style-type: none"> The minor internal alterations which required accessing and modifying the common property floor slab and walls and plumbing works were not approved by the Strata Owners / Owners Corporate. 	<p>The applicant has amended the application so that the retention of the toilet does not form part of the scope of works. However the works to the common property (penetration of the floor slab under Lot 3 SP64511 and connection to the common infrastructure) remain unauthorised.</p>

There were a number of other issues raised in the submissions in relation to the work being undertaken without consent, out-of-standard hours within which the works were undertaken, the unit being advertised for rent as a three bedroom unit, conflicts between owners and tenants, etc which are not considered to be substantive planning matters which would warrant the refusal of the application.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*

Section 79C(1) (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*

Comment:

The original application was assessed in accordance with the Tweed LEP 1987. The subject modification is consistent with the aims of both this earlier LEP and the Tweed LEP 2014 and the objectives and permissible land uses in the B2 (Local Centre) Zone in which the site is located.

- (ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and*

Comment:

The subject site is mapped as being affected by LEP Amendment 17 – Short term rental accommodation. This amendment does not have any significant impacts on the proposed development.

- (iii) *any development control plan, and*

Comment:

Section A1 – Shop Top Housing

An assessment against the development controls for shoptop housing indicated that there were no changes which were impacted by these controls, with the exception of car parking provision and unit storage.

Section A2 of the Tweed Shire Development Control Plan requires the provision of 2 car parking spaces for a three bedroom unit. One space has been specifically allocated to the subject unit under the governing consent and included as such in the strata plan (included as part of Lot 3). The applicant can avail of one of the surplus spaces on the common property to satisfy the requirement for the second space.

The DCP requires 4sqm storage space (excluding kitchen cupboards and bedroom wardrobes) for a two bedroom unit and 5sqm for a three bedroom unit. The area of available storage has not been identified. However if the application for retention of the bedroom were to be supported, a variation in this regard could be supported.

Section A2 – Site Access and Parking Code

Car Parking Requirements

The car parking requirements for the various approved uses in the mixed use building are set out below:

Shop top housing

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

Shops

- 1 space per 100 GFA for staff
- 3.5 spaces per 100sqm GFA for customers

Takeaway food and drink premises

- 1 space /staff
- 3.5 spaces per 100sqm for customers

Restaurant and café

- 1 space per staff at peak operating time
- 3.5 spaces per 100sqm dining area

Recreational facilities (indoor)

- 1 space per 0.5 staff
- 5 spaces per 100smq GFA

Medical Centre

- 1.6 spaces per consulting room for staff and
- 3.2 spaces per consulting room (GP)
- 1.6 spaces per consulting room (specialist)

Office

- 1 space per 50sqm GFA

Accordingly, the provision of a third bedroom in Unit 3 will increase the car parking requirements for Unit 3 by 0.5 spaces.

As stated in Section A2.1.3 of this part of the DCP:

The controls prescribed within this Section are a development guideline and represent a possible acceptable solution to meet the stated aims and objectives. It is acknowledged that there will be alternative solutions, which Council may consider within the assessment.

Where a development application seeks an alternative solution to a design control this must be documented within the Statement of Environmental Effects (SEE), and include:

- *Identification of the control being varied;*
- *Justification, supported by a detailed site analysis and any other supplementary material:*
 - *detailing why the control cannot be met; and*
 - *demonstrating how the alternate proposal achieves the aims and objectives of this Section*
- *Justification, supported by a detailed Access, Traffic and Parking Impact Study for any reduction in the prescribed vehicle parking rates.*
- *Upgrading of:*
 - *public transport facilities, and/or*
 - *on-street parking resulting in additional spaces, and/or,*
 - *the streetscape and pedestrian/cyclist amenity.*

The applicant was requested to submit a car parking report from an appropriately qualified person (eg traffic consultant/engineer/town planner) demonstrating that the existing car parking provision on the site is sufficient to cater for this increased demand having regard to the approved uses on the site and the existing demand for car parking.

The applicant responded that such a request was considered to unreasonable and unnecessary given the net increase of 0.5 spaces. It was submitted that the 32 unallocated spaces are available to residents and visitors to the residential units as well as the tenants and customers of the commercial tenancies. As such, the applicant did not submit any assessment of the existing demand for car parking on the site.

Given that the use is residential, the applicant cannot rely on site credits or the payment of contributions in lieu.

Set out in Table 1 is an assessment of the car parking demand generated by the approved developments on the site.

Table 1: Overview of uses and current car parking requirements - based on approved uses

Unit	Use	Car parking requirement	Comments
Lot 1	Residential - 2 bedroom	1.5 spaces required	1 space dedicated exclusively to unit in strata plan
Lot 2	Residential - 2 bedroom	1.5 spaces required	1 space dedicated exclusively to unit in strata plan
Lot 3	Residential - 2 bedroom	1.5 spaces required	1 space dedicated exclusively to unit in strata plan

Unit	Use	Car parking requirement	Comments
Lot 4	Residential - 2 bedroom	1.5 spaces	1 space dedicated exclusively to unit in strata plan
Lot 5	Residential - 2 bedroom	1.5 spaces	1 space dedicated exclusively to unit in strata plan
	Residential visitor parking	1.25 space	
Lot 6	Restaurant – 53sqm indoor leased area & 59sqm outdoor - seating limited to 40 patrons by condition	3.5 spaces for customer plus 3 spaces for staff (estimated to be 3 staff at peak) - 6.5 spaces Total 6.5 spaces reduced to 3.5 spaces based on most recent approved waivers (3 spaces).	Customer car parking based on outdoor seating area of 59sqm and 75% of indoor area (patron restrictions & to allow for kitchen area) 4 car parking spaces previously waived under 95/181 on basis that patronage was limited by condition and operating hours were outside standard commercial operating hours. The development approved under 0583/2000DA allowed the applicant to avail of 6 spaces from the unallocated pool that was surplus to onsite requirements at that time. The development approved under DA08/0130 allowed the applicant to avail of 4 spaces from the unallocated pool that was surplus to onsite requirements at that time. The shortfall of 3 spaces was waived.
Lot 7	Pathology collection – 1 collection room	4.8 spaces required	Assessed as medical centre – 1 GP consulting room. In the assessment of this applicant, the rate was based on office rates (which at that time was 1 space /40sqm) Applicant availed of existing credits of 8 spaces as the previous approval was for a commercial premises (restaurant).
Lot 8	Medical Centre	4.8 spaces	With a consulting room, treatment room and nurse room - this has been assessed as 1 consulting rooms to allow for cross-utilisation between patients seeing the doctor and nurse and use of the treatment room.
Lot 9	Coffee shop – dining area of 27.6sqm	3 spaces	The car parking rate was based on two staff members. A credit of 3 spaces applied based on previous use and there was therefore no increase in the car parking demand.

Unit	Use	Car parking requirement	Comments
Lot 10	Medical Centre GFA	4.8 spaces	With a consulting room, pathology room and nurse room - this has been assessed as 1 consulting rooms to allow for cross-utilisation between patients seeing the doctor, nurse and pathologist. This use was approved by way of a complying development certificate
Lot 11	Indoor recreational facility (yoga) – 80sqm	4.5 spaces	Credit of 5 spaces applied in assessment based on previous use
Lot 12	Office – 47sqm	0.94 space	
Total parking required (excluding approved waivers)		35.09 spaces	This figure excludes the car parking requirements previously waived for Unit 6 (restaurant)

The approved uses on the site generate a demand for 35 car parking spaces.

Car parking on the site has not been provided in accordance with the layout shown on approved plan, however provision has been made for 6 surface spaces at street level in the development forecourt, and 6 garaged spaces (5 of which are on the titles of the residential units) and up to 25 car parking spaces at basement level; equating to 37 spaces.

Five (5) spaces (in the form of garages) are exclusively for the use of the tenants of the residential units. Under Condition 10 of the original consent, the remaining 32 spaces are available to both the commercial and residential tenants and customers/visitors. With a demand for 35 spaces from the approved residential and commercial demand (as identified in Table 1 above), there are two (2) spaces on the common property which are surplus to requirements of the approved uses (commercial and residential).

Allowing the applicant to have access to a car parking space on common property which has been provided for the use of residential and commercial units and which is deemed to be surplus to the requirements of the approved uses on the site is considered to be reasonable. However to ensure that the amenity of the residents of Unit 3 is not compromised, this second car parking space (in addition to the existing car parking space allocated to Lot 3) must be allocated and designated for the exclusive use of residents of Unit 3. This can be managed by way of a condition of consent requiring the applicant to demonstrate evidence of such an allocation prior to use of an occupation certificate or occupation/use of the unit.

The legal advice submitted by the applicant (Attachment 1) correctly identifies that the 32 unallocated spaces on the site are available to tenants and visitors/customers to both the commercial and residential tenancies. As such the applicant does not need Owners Corporation approval to access a 'surplus' space on the common property. It should be noted however that this would not appear to confer any right on the applicant to have a car parking space allocated exclusively for use by the tenants/residents of Unit 3 or to be otherwise made unavailable or inaccessible to other users on the site.

It will be a matter for the applicant to secure an additional car parking space on the common property on the site which would be designated to Unit 3.

- (iia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*

Comment:

There are no relevant planning agreements or draft planning agreements.

- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*

Comment:

Clause 92(1)(a)(ii) Government Coastal Policy – The site is located on land to which Government Coastal Policy applies. However the nature of the works is such that there is no impact on the coastal area.

Clause 93 Fire Safety Considerations – As addressed earlier in this report, as advised by the Building Unit referrals, issues with regard to fire safety could be addressed by way of a condition. However it is noted that access to the unit below and to the common property will be required to install a fire collar on the additional toilet.

Clause 94 Buildings to be upgraded - As addressed earlier in this report, as advised by the Building Unit referrals, issues with regard to Clause 93 could be addressed by way of a condition.

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

The Tweed Shire Coastline Management Plan 2005 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. While the subject site is impacted by this plan, the works are not of a nature that would impact on the coastal zone area.

- (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,*

Comment:

As outlined above, the proposal will result in a demand for additional car parking which can be met by the existing car parking provision on the site. A condition has been included in the recommendation to ensure the provision of an additional space for use by the residents of Unit 3.

(c) *The suitability of the site for the development,*

Comment:

The site is zoned B2 and there is an existing approval for a mixed use development with shoptop housing on the site. As such there is no issue with the suitability of the site for the works in question.

(d) *Any submissions made in accordance with this Act or the regulations,*

Comment:

The application did not require public exhibition under the provisions of the regulations given the nature of the modification. Notwithstanding this, three submissions were received. The key issues raised are addressed earlier in this report.

(e) *The public interest.*

Comment:

The works in themselves are minor in nature being internal alternations to a residential unit and the development as modified is substantial the same as that approved under the original approval. While the creation of a third bedroom will generate the requirement for an additional car parking space to be allocated to Unit 3, there are surplus spaces on the site to accommodate this. It will be a matter for the applicant to negotiate access to this additional car parking space. On this basis, the works proposed to be retained under this application and the use of the unit as a three bed unit is not be considered to be contrary to the public interest subject to the provision of the required two (2) car parking spaces.

OPTIONS:

OPTION 1

- A. Development Application D91/0266.01 for an amendment to Development Consent D91/0266 be APPROVED allowing for the retention (subject to conditions) of the internal alterations including the relocation of the kitchen and the dining room and the creation of a third bedroom at Lot 3 SP 64511; No. 3/31-33 Tweed Coast Road Bogangar
- B. Council writes to the Body Corporate for Strata Plan 64511 requesting that the unauthorised works beneath Lot 3 SP64511 within common property be rectified.
- C. A Penalty Infringement Notice be issued to the owner of Lot 3 SP64511 for undertaking development without consent.
- D. The owner of Lot 3 SP64511 be advised in writing that Unit 3; Lot 3 SP64511 is not to be occupied or used until the amended consent D91/0266.01 and accompanying conditions have been complied with in full.

Note 1: Though the authorised works to the common property were undertaken by or on behalf of the owner of Lot 3 SP64511, liability to rectify the works remains with the property owner.

OPTION 2

- A. That Development Application D91/0266.01 for an amendment to Development Consent D91/0266 to retain works at Lot 3 SP 64511; No. 3/31-33 Tweed Coast Road Bogangar be REFUSED
- B. That Council instruct the applicant to cease from using the third bedroom,
- C. That Council writes to the Body Corporate for Strata Plan 64511 requesting that the unauthorised works beneath Lot 3 SP64511 within common property be rectified.
- D. That a Penalty Infringement Notice be issued to the owner of Lot 3 SP64511 for undertaking development without consent.

Note 2: As the applicant has a building certificate for the works within Lot 3 SP64511, Council cannot require him to remove the works within the lot for a period of seven (7) years. However he is not immune from prosecution from having breached the *Environmental Planning and Assessment Act 1979* in the first instance.

Option 1 is recommended.

CONCLUSION:

The internal alterations sought to be retained under this application and the creation of a third bedroom is considered to have minimal environmental impact and it is recommended that the application be approved subject to conditions.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

No Legal Costs will be incurred for either Options 1 and 2.

c. Legal:

No Legal Advice is required.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Legal advice dated 24 January 2018 (ECM 5088658)

Attachment 2. Development Consent D91/0266 (as amended) (ECM 5088669)

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

SUBMITTED BY: Director

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: Provider

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes there are no variations for the month of February 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.
