



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 3 May 2018

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 Evaluation

(1) **Matters for consideration—general**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*),
that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations, (e) the public interest.

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

(2) **Compliance with non-discretionary development standards—development other than complying development.**

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

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

and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and
- (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Note. The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) **Development control plans**

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

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

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

(4) **Consent where an accreditation is in force**

A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if the building product or system is accredited in respect of that requirement in accordance with the regulations.

- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) **Definitions**

In this section:

- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
- (b) **non-discretionary development standards** means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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Items for Consideration of the Planning Committee:

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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA17/0921 for a Dwelling, Secondary Dwelling and Swimming Pool at Lot 244 DP 1033384 No. 1 Silveraspen Grove, Pottsville

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:

This application seeks development consent for the erection of a new primary dwelling and a detached secondary dwelling upon a vacant lot within the Koala Beach estate. The application also seeks approval for a pool within the courtyard of the primary dwelling along the northern side boundary.

The site is a corner Lot that slopes up steeply from the road frontage.

Both the dwelling and secondary dwelling will have double garages below the living areas with two driveway crossings from Silveraspen Grove and Muskheart Circuit.

The primary issues relating to the development as proposed are the volumes of cut proposed onsite and the floor area of the secondary dwelling.

Amended plans were submitted during the course of the assessment to reduce the size of the secondary dwelling. The development is now compliant with Clause 5.4 of the TLEP 2014. A detailed assessment of the cut levels proposed on the Lot is provided within this report. This assessment has concluded that a variation to the DCP is justified and the development is satisfactory in this regard.

The development potentially involves the removal of several trees onsite due to earthworks associated with the construction of the dwelling and secondary dwelling. This tree removal has been assessed by Council's Natural Resource Unit and it has been concluded that the removal is acceptable due to the size and significance of this vegetation.

Council received five submissions from four properties adjacent to the development during the notification period. It is considered that these submissions have been suitably addressed within a latter section of this report.

The matter is reported to Council due to the applicant being an employee of Tweed Shire Council.

The development is considered acceptable in its amended form and is considered worthy of support.

RECOMMENDATION:

That Development Application DA17/0921 for a dwelling, secondary dwelling and swimming pool at Lot 244 DP 1033384 No. 1 Silveraspen Grove, Pottsville be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos as follows:**

Plan Number	Title	Date
Unnumbered	Drawing List	Undated
MC-01	Level and Detail Survey	1.06.2017
A-002	Site Plan	18.02.2018
A-003	Site Set out Plan	18.02.2018
A-004	Site set out Plan Main Dwelling	18.02.2018
A-005	Site set out Plan	18.02.2018
A-100	Lower Floor Plan	18.02.2018
A-101	Mid Floor Plan	18.02.2018
A-102	Upper Floor Plan	18.02.2018
A-103	Roof Plan	18.02.2018
A-104	Lower Floor Plan	18.02.2018
A-105	Mid Floor Plan	18.02.2018
A-106	Upper Floor Plan	18.02.2018
A-107	Roof Plan	18.02.2018
A-108	Secondary Dwelling Plans	09.04.2018
A-201	Section - 03 & 04 Main Dwelling	18.02.2018
A-202	Section - 05 & 06 Main Dwelling	18.02.2018
A-203	Section - 01 & 02 Main Dwelling	18.02.2018
A-204	Driveway Section - Main House	18.02.2018
A-205	Driveway Section - Secondary	18.02.2018

Plan Number	Title	Date
	Dwelling	
A-300	Eastern Elevation	18.02.2018
A-301	Northern Elevation	18.02.2018
A-302	Western Elevation	18.02.2018
A-303	Southern Elevation	18.02.2018
A-304	Secondary Dwelling Elevations	18.02.2018
A-305	Secondary Dwelling Elevations	18.02.2018
A-306	Secondary Dwelling Elevations	18.02.2018
A-307	Secondary Dwelling Elevations	18.02.2018

prepared by Studio 153, except where varied by the conditions of this consent.

[GEN0005]

2. The development shall be completed in accordance with the plans approved by Council, except where varied by conditions of this consent.

[GEN0015]

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.

[GEN0135]

5. Sewer manholes are present on this site. Manholes are not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee. Works will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

[GEN0155]

6. 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]

7. 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) Construction shall comply with Australian Standard AS3959-2009 'Construction of buildings in Bush Fire-prone areas', Bushfire attack Level (BAL) 12.5 for the dwelling and secondary dwelling.

[GEN0335]

8. Where removal of native vegetation located on-site cannot be suitably avoided or minimised, native vegetation removal shall be limited to the removal of the "Clump of Casuarina Trees" as generally shown on Level and Detail Survey (Dwg No. MC-01) dated 1 June 2017.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. 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]

10. 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]

11. For developments containing less than four attached or detached strata dwellings having a Building Code classification of 1a, each premises must be connected by means of a separate water service pipe, each of which is connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1175]

12. 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

13. 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]

14. 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]
15. 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]
16. 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]

17. 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]

18. 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]

19. 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]

- 20. 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]

DURING CONSTRUCTION

- 21. 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]

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

[DUR0025]

- 23. 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]

- 24. 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]

- 25. 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]

- 26. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 6.6 of the Environmental Planning and Assessment Act 1979.**

[DUR0405]

27. 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]

28. 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]

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

[DUR0445]

30. 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]

31. 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]

32. 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]

33. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2012 & AS 1926.3 -2010 & AS 1926.2-2007, the Swimming Pool Act 1992 and the Swimming Pool Regulation 2008.**
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.**
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.**
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.**
- (e) Once your pool or spa is complete please register it at www.swimmingpoolregister.nsw.gov.au.**

[DUR2075]

34. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

35. The spa filter and any pumps or aerators are to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.

[DUR2135]

36. 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]

37. 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]

38. 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]

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

[DUR2505]

40. **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]

41. **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]

42. **Landscaping of the site shall be carried out in general accordance with the approved plan.**

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

43. **Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.**

[POC0005]

44. **A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 6.9 and 6.10 unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).**

[POC0205]

45. **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]

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.**

[POC0235]

47. Prior to the issue of an occupation certificate for the use of the swimming pool, the owner is to contact the local Rural Fire Services to arrange and install a static water supply identification plate. [POC0315]
48. 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]
49. 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]
50. All landscaping work is to be completed in accordance with the approved plans prior to the issue of a final occupation certificate for the building. [POC0475]
51. Upon completion of the pool the builder is to submit to the Principal Certifying Authority a certificate stating that the "Water Recirculation System" has been installed in accordance with AS 1926.3-2010. [POC0905]
52. 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]
53. Prior to the issue of a final occupation certificate, all conditions of consent are to be met. [POC1055]
54. The swimming pool or spa is required to be registered at www.swimmingpoolregister.nsw.gov.au prior to the issue of any occupation certificate for the swimming pool or spa. [POC1100]

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. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements. [USE1245]
57. Subdivision of the development, including strata subdivision, is not permitted. [USE1255]
58. The subfloor of the secondary dwelling shall not be used for habitable purposes. [USENS01]

- 59. The swimming pool must contain a stout rope (minimum 50mm diameter) and one end of the rope must be secured to a stable poolside fixture and the other end must trail in the pool at all times.**

[USENS02]

REPORT:

Applicant: Mr MB Cambridge
Owner: Mr Mitchell B Cambridge & Mrs Kirsty J Cambridge
Location: Lot 244 DP 1033384 No. 1 Silveraspen Grove, Pottsville
Zoning: R2 - Low Density Residential
Cost: \$700,000

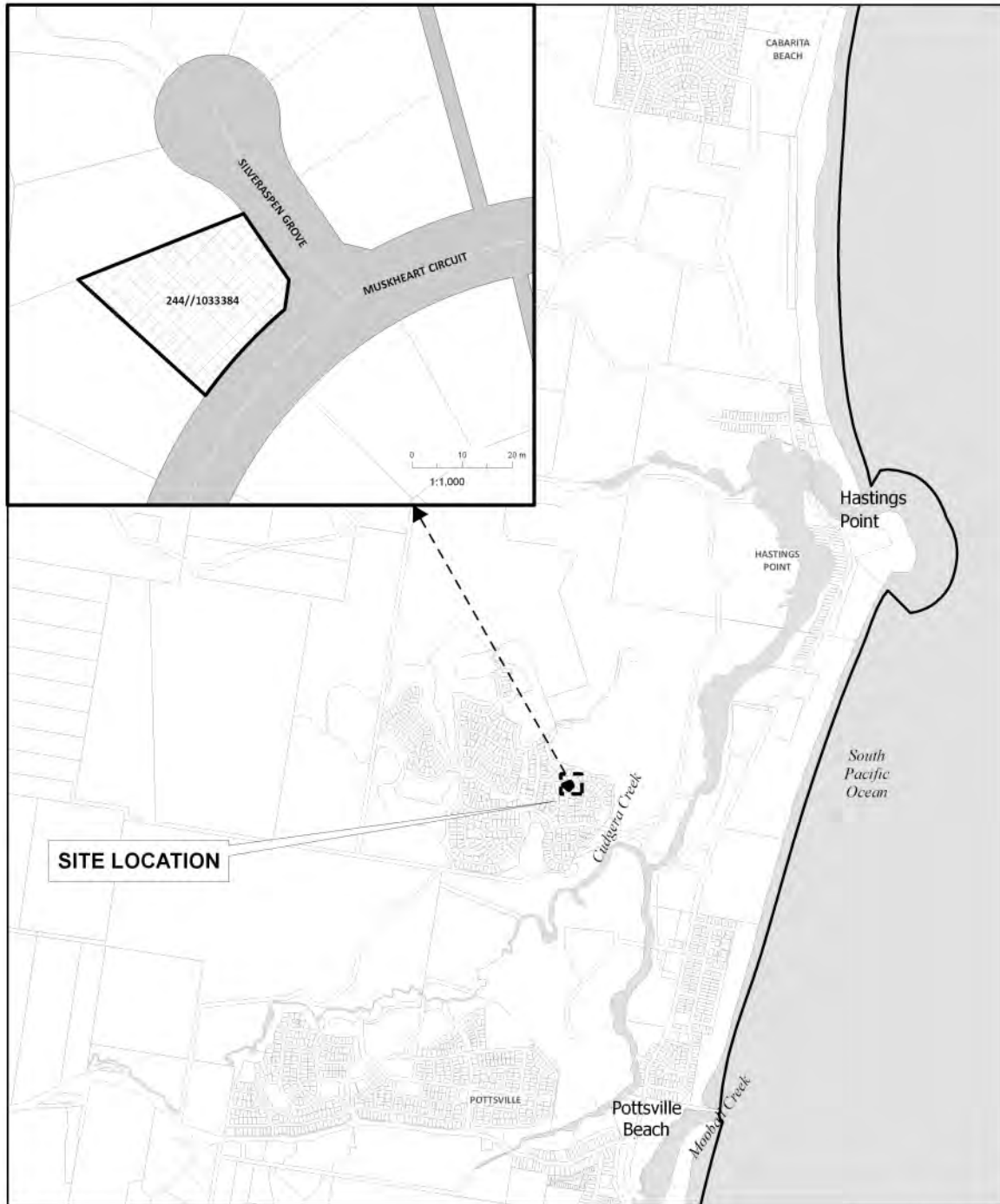
Background:

The application was lodged in late 2017. The preliminary assessment of the development by Council required the application to be amended for compliance with Clause 5.4 of the Tweed Local Environmental Plan 2014. This amendment reduced the floor area of the secondary dwelling. The secondary dwelling is now compliant with this statutory provision.

The application was the subject of a full assessment following a 14 day notification period. The assessment concluded the development, as amended, was worthy of support.

The applicant for this proposal is an employee of Council. To ensure transparency and provide the four submitters with confidence that the application has been assessed appropriately, reporting the matter to Council is considered appropriate.

SITE DIAGRAM:



Site Plan

Lot 244 DP 1033384
No. 1 Silveraspen Grove, Pottsville

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 "Dig before You Dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.

GDA   Cadastral: 20/04/2018
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Coordinate System - MGA Zone 56
Datum - GDA 94

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Date Printed: 20 April, 2018

DEVELOPMENT/ELEVATION PLANS:

STUDIO 155

CAMBRIDGE RESIDENCE
LOT 244 DP 1033384
1 SILVERASPEN GROVE
Pottsville
PRICING ISSUE 1
DRAWING LIST

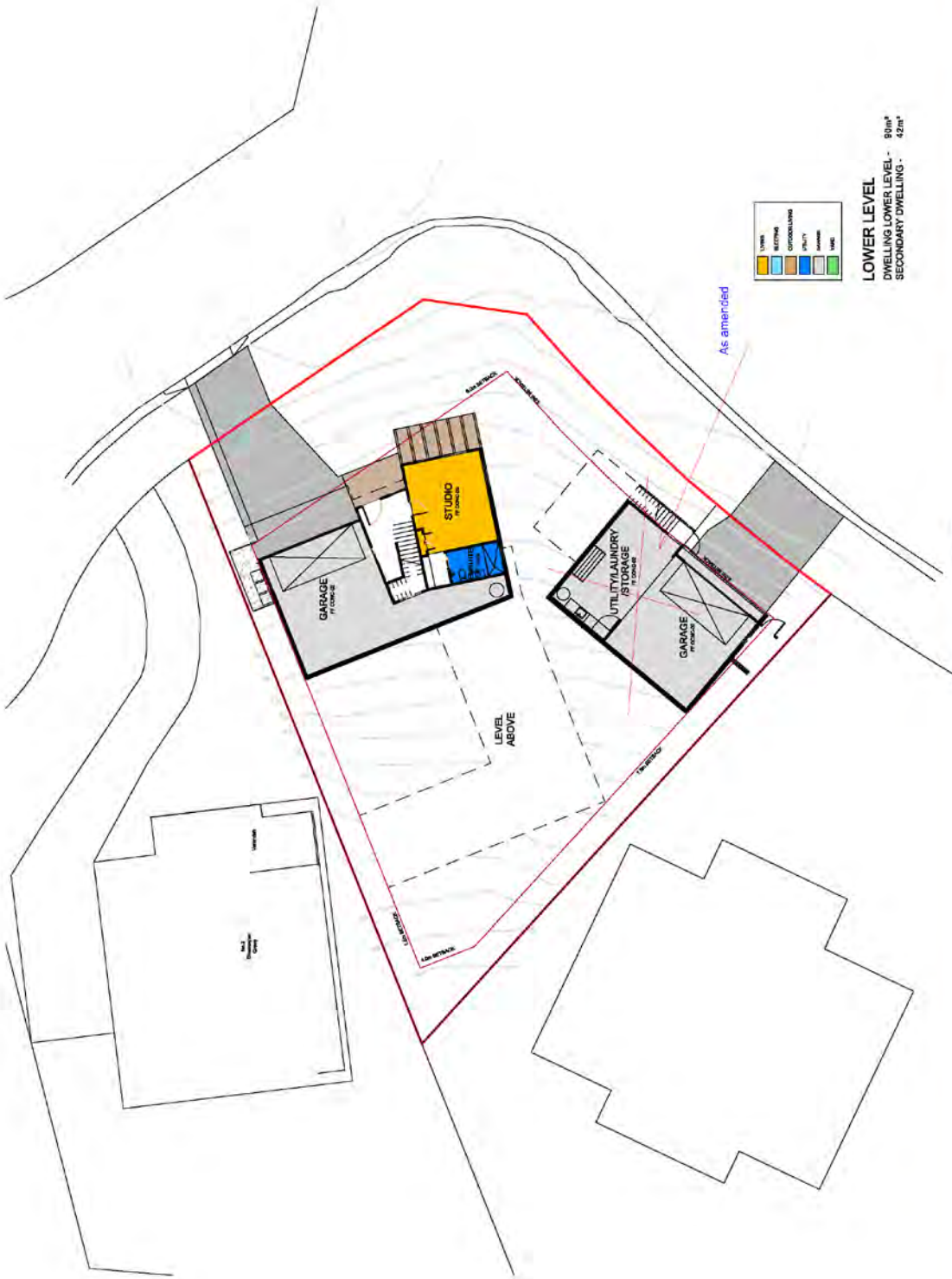
A-000	CONSTRUCTION NOTES
A-001	SURVEY PLAN 1:200
A-002	SITE PLAN 1:200
A-003	SET OUT PLAN 1:200
A-004	SET OUT PLAN (SD) 1:100
A-005	SET OUT PLAN (SD) 1:100
A-100	LOWER FLOOR PLAN 1:200
A-101	MID FLOOR PLAN 1:200
A-102	UPPER FLOOR PLAN 1:200
A-103	ROOF PLAN 1:200
A-104	LOWER FLOOR PLAN 1:100
A-105	MID FLOOR PLAN 1:100
A-106	UPPER FLOOR PLAN 1:100
A-107	ROOF PLAN 1:100
A-108	LOWER, UPPER, ROOF PLAN (SD) 1:100
A-109	LOWER ELECTRICAL PLAN 1:100
A-110	MID ELECTRICAL PLAN 1:100
A-111	UPPER ELECTRICAL PLAN 1:100
A-112	ELECTRICAL PLAN (SD) 1:100
A-113	KITCHEN PLAN 1:50
A-114	BATHROOM 01 DWELLING 1:50
A-115	BATHROOM 02 DWELLING 1:50
A-116	LAUNDRY & WC MAIN DWELLING 1:50
A-117	KITCHEN, BATHROOM & LAUNDRY (SD) 1:50
A-118	STAIRS MAIN DWELLING 1:50
A-200	SECTION 01 & 02 1:100
A-201	SECTION 03 & 04 1:100
A-202	SECTION 05 & 06 1:100
A-203	SECTION - DRIVEWAY (MD)
A-204	SECTION - DRIVEWAY (SD)
A-300	EAST ELEVATION 1:100
A-301	NORTH ELEVATION 1:100
A-302	WEST ELEVATION 1:100
A-303	SOUTH ELEVATION 1:100
A-304	EAST ELEVATION (SD) 1:100
A-305	NORTH ELEVATION (SD) 1:100
A-306	WEST ELEVATION (SD) 1:100
A-307	SOUTH ELEVATION (SD) 1:100
A-400	WINDOW SCHEDULE 1:50
A-401	WINDOW SCHEDULE 1:50
A-402	WINDOW SCHEDULE 1:50
A-403	WINDOW SCHEDULE (SD) 1:50
A-404	DOOR SCHEDULE 1:50
A-405	DOOR SCHEDULE 1:50
A-406	DOOR SCHEDULE (SD) 1:50
A-500	STREET VIEWS 01
A-501	STREET VIEWS 02
A-502	INTERIOR VIEWS 01
A-503	INTERIOR VIEWS 02



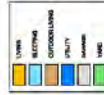
MATERIAL CODES	
CBR	CONCRETE BLOCK
CRK	CONCRETE BLOCK RENDRED
CRF	COMPRESSED FIBRE CEMENT SHEET
SW	SLAB WITH 50mm
MC	COLORBOND WALL CLAD
ML	COLORBOND METAL ROOFING
TC	WOOD TIMBER CLADDING
FT 01	FLOOR TYPE 1 - POLISHED
FT 02	FLOOR TYPE 2 - POLISHED
FT 03	FLOOR TYPE 3 - AGGREGATE
WT 01	WALL TILE TYPE 01
WT 02	WALL TILE TYPE 02
WT 03	WALL TILE TYPE 03
WT 04	WALL TILE TYPE 04
RWT	RAINWATER TANK (5000P)
HWT	HOT WATER TANK

FWD TIMBER TRIM (AS DETAILED)	
AW	AWNING WINDOW
SW	SLIDING WINDOW
SD	SLIDING DOOR
FT 01	FLOOR TILES TYPE 01
FT 02	FLOOR TILES TYPE 02
FT 03	FLOOR TILES TYPE 03
WT 01	WALL TILE TYPE 01
WT 02	WALL TILE TYPE 02
WT 03	WALL TILE TYPE 03
RWT	RAINWATER TANK (5000P)
HWT	HOT WATER TANK

STUDIO 153



LOWER LEVEL
DWELLING LOWER LEVEL - 80m²
SECONDARY DWELLING - 42m²



MITCH & VEERY CAMBRIDGE TEL: 01223 318181 FAX: 01223 318182
15/02/2018 01 18.02.2018
P200@A3 P10000 LOWER FLOOR PLAN A:100



LOUNGE	YELLOW
KITCHEN	ORANGE
DINING	LIGHT BLUE
BED	BLUE
DECK	BROWN
STUDY	GREY
RUMPUS	GREEN

MID LEVEL
DWELLING MID LEVEL - 217m²
SECONDARY DWELLING - 70m² + 21.5m²

ARCH: KRISTY CAMERON | SILVERSPEN GROVE | 2/15/18 | MID FLOOR PLAN | SCALE 1:200 @ A3 | PAVING | DT | 18.02.2018



WALLS
BEDS
KITCHEN
ROOF

UPPER LEVEL
DWELLING LOWER LEVEL - 62m²

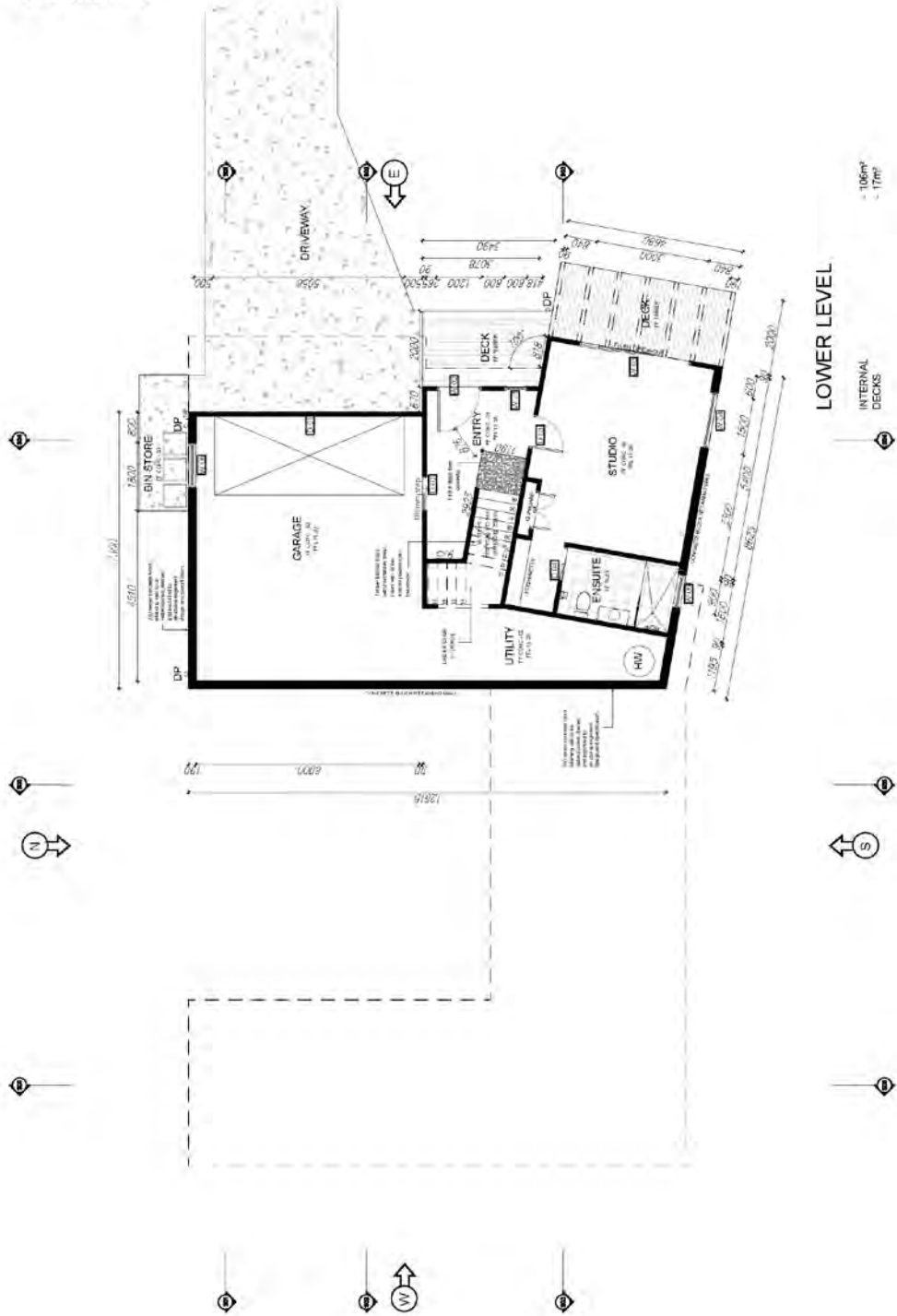


ROOF PLAN

ROOF 01	71m ²
ROOF 02	80m ²
ROOF 03	23m ²
ROOF 04	108m ²
ROOF 05	98m ²
ROOF 06	28m ²

WITCH & WRESTY CAMBRIDGE 1 SILVERSPEN GROVE A 110'11" ROOF PLAN SCALE 1:200 @ A3 18.02.2018

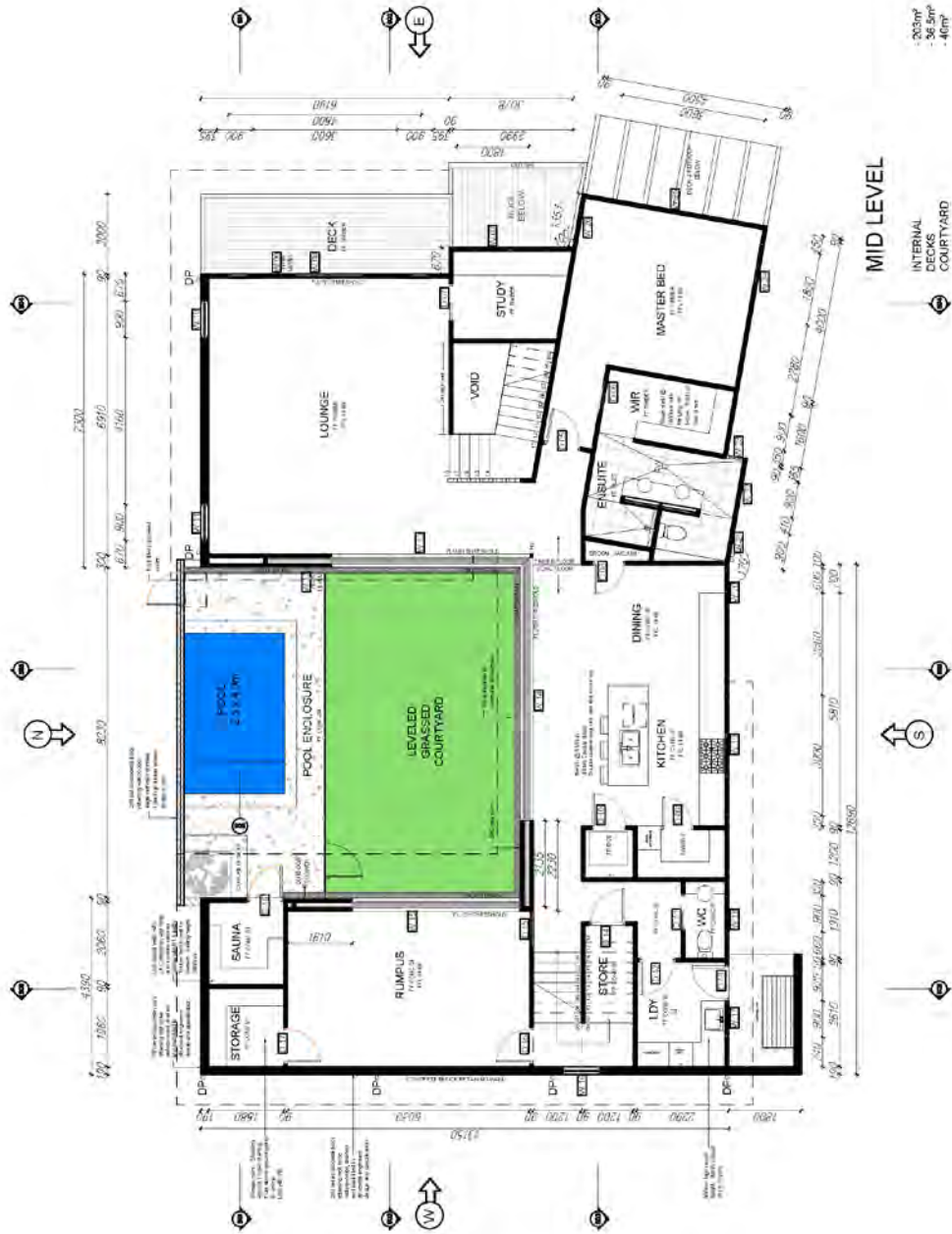
STUDIO 153



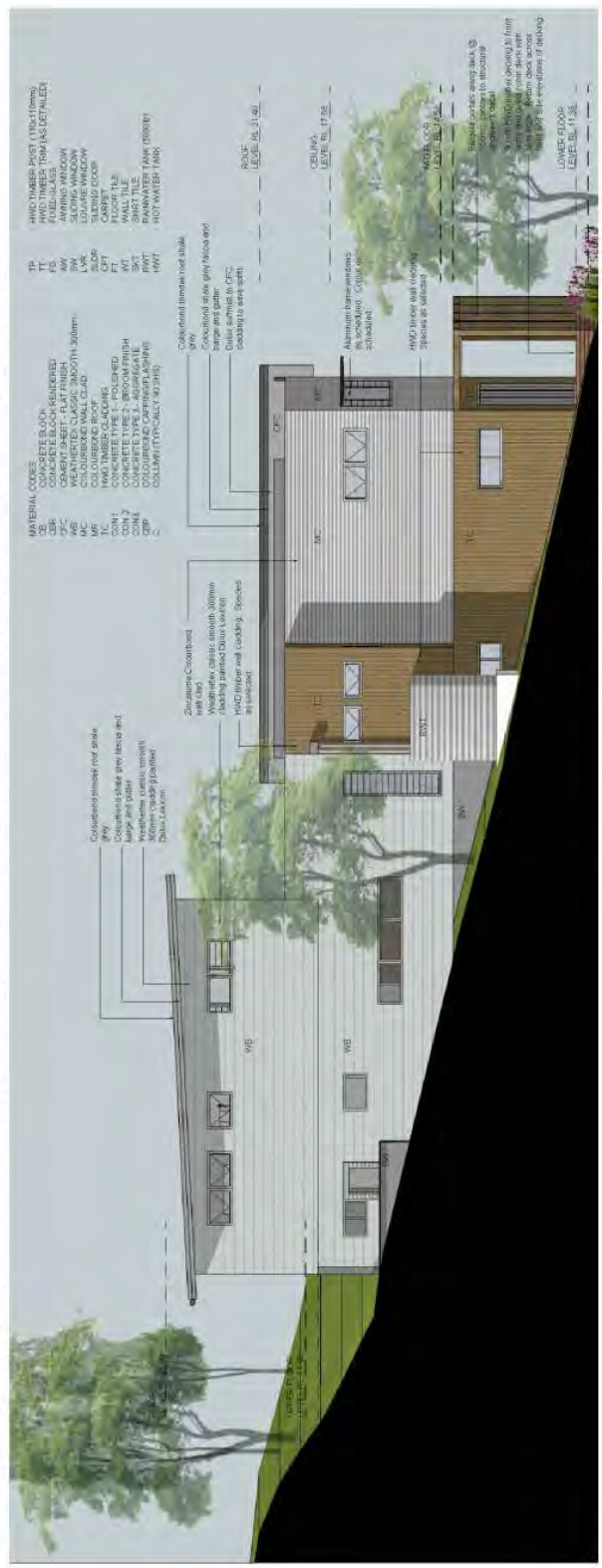
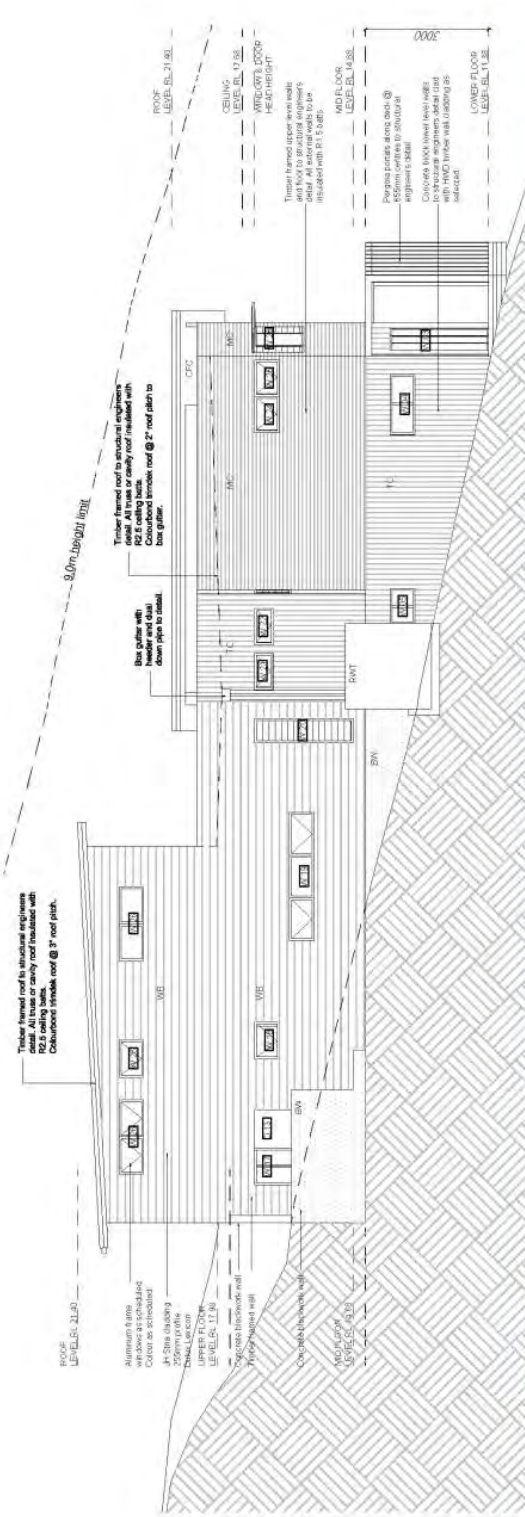
Mitch & Kirsty Cambridge | SILVERSPUR GROVE | A104 | LOWER FLOOR PLAN | SCALE 1:100 @ A3 | P10/010 | 01 | 18 02 2018



STUDIO 153



STUDIO 153



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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

The particular aims of this Plan are as follows:

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

The proposed development is for a new dwelling and secondary dwelling within the R2 Low Density zoning. The proposed development is permissible and consistent with the objectives of the R2 zoning and the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The objectives of the R2 zone are:

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

The proposed development will provide residential housing with a minimal environmental impact, within the R2 Low Density Residential zoning. The proposal is considered to be in accordance with the zones objectives.

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

These clauses are not relevant as the application does not propose a subdivision. The secondary dwelling is not permitted to be subdivided. A condition of consent will be imposed restricting such.

Clause 4.3 - Height of Buildings

The site is the subject of a 9m height limit. The dwelling and secondary dwelling are both below this maximum height as follows:

- Dwelling; 7.72m at the highest point from natural ground level
- Secondary Dwelling; 7.05m

The development is compliant in this regard.

Clause 4.4 – Floor Space Ratio

The subject site area is 790m². The development has a combined total floor areas of 389m². This results in a floor space ratio of 0.59:1. The maximum permissible FSR for the locality is 0.8:1. The proposal is compliant in this regard.

Clause 4.6 - Exception to development standards

The application does not contain any exceptions to development standards.

Clause 5.4 - Controls relating to miscellaneous permissible uses

The plans have been amended to reduce the floor area of the secondary dwelling. The ground floor storage and laundry is now a subfloor with the laundry being incorporated into the garage. The principal dwelling has a floor area of 389m². The secondary dwelling is permitted to have a maximum floor area of 77.8m², being 20% of the floor area of the primary residence. The first floor of the dwelling is 70m² and the ground floor contains a combined garage and laundry. The laundry does not exceed 7.8m² in floor area. The proposal is therefore now compliant with Clause 5.4.

Clause 5.5 – Development within the Coastal Zone

The development site is on land which is subject to SEPP 71, however the site is spatially separated from the coastal foreshore.

In this regard, it is not considered that the development would compromise the NSW Coastal Policy or the scenic or environmental qualities of the NSW Coast, due to the scale and siting of the dwelling at the rear of an existing lot.

Clause 5.10 - Heritage Conservation

The development does not relate to a heritage item or heritage conservation area.

The application was accompanied by an assessment prepared by the Tweed Byron Local Aboriginal Council. This heritage inspection report undertaken late last year was commissioned for the purposes of a cultural site assessment. The recommendations of this assessment are that the application proceed however all works proceed with caution and a stop work procedure condition will be imposed to ensure satisfactory protection measure during the construction phase.

Clause 5.11 - Bush fire hazard reduction

This site is identified as bushfire prone however no tree vegetation removal will be required for bushfire hazard reduction.

A 79BA field assessment was undertaken for the development. The buildings will require a construction standard of BAL 12.5 due to the site being located within the buffer zone for adjoining bushfire prone land. A condition will be applied to the development consent.

Clause 7.1 – Acid Sulfate Soils

The land is identified as Class 5 ASS. Having regard to the works proposed and the unlikely hood of the water table being lowered as a result of this application, the risk of exposure of ASS is considered negligible.

Clause 7.2 - Earthworks

- (1) *The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*
- (3) *Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:*
 - (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

Comment: Earthworks will be required over the residential allotment to cater for the dwelling and secondary dwelling. Soil stability is not deemed an issue on this site. Site drainage will be managed as conditions of consent. It is unlikely due the site area and stormwater requirements that the earthworks will result in any adverse drainage patterns.

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

Comment: the earthworks will allow the site to be developed to its full potential.

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

Comment: the excavation of the site will be managed with conditions of consent. It is unlikely that any fill will be introduced to the site.

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

Comment: the earthworks will not impact upon adjoining properties in regard to drainage or stormwater patterns. The excavation of the site will reduce the overall height and bulk of the dwelling and secondary dwelling when viewed from the adjoining properties.

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

Comment: the destination of the fill material will be requested prior to Construction works commencing.

(f) *the likelihood of disturbing relics,*

Comment: the likelihood of disturbing relics is low given the Tweed Aboriginal Land Council have undertaken a site inspection. Regardless, a condition of consent will be imposed requiring stop work if any relics are discovered during excavation works.

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

Comment: The proposal is not within a water catchment area. Appropriate sediment control plans will be a condition of consent ensuring the excavations do not expose loose fill to erosion offsite to surrounding.

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

Comment: the impacts of the development will be minimised through appropriate soil and sediment controls, stormwater control and appropriate landscaping.

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

Comment: the site inspection undertaken by the Tweed Aboriginal Land Council is considered adequate in regards to the likelihood of aboriginal heritage conservation. A condition of consent will also be added.

Clause 7.3 – Flood Planning

The site is not prone to flooding.

Clause 7.4 - Floodplain risk management

Not applicable – the proposed dwelling and secondary dwelling are not a development with particular evacuation or emergency response issues.

Clause 7.5 - Coastal risk planning

Not applicable - the subject site is not land identified on the Coastal Risk Planning Map under Clause 7.5.

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.

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 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.*

It is considered that the development maintains ample permeable area suitable for the infiltration of water and will connect to Council's stormwater system and therefore will not impact adjoining properties.

Clause 7.10 - Essential Services

Essential services are available to the site.

North Coast Regional Plan 2036 (NCRP)

The Plan resets regional planning priorities to align with NSW Government priorities and provides guidance and direction for local planning decisions. It sets

in place strategic, line-of-sight land use planning objectives for the region as a whole as well as for and each local government area, and will guide the NSW Government's planning priorities and decisions to 2036.

The construction of a dwelling and secondary dwelling upon a vacant residential block of land is not considered to be contrary to the priorities and goals of the REP.

State Environmental Planning Policies

SEPP No. 44 - Koala Habitat Protection

Tweed Shire Koala Plan of Management

Council's NRM Unit advise that:

- *The entire site is located within the Koala Beach Individual Koala Plan of Management.*
- *No Preferred koala Food Trees protected under the Koala Beach Section 88b located on-site.*

No further assessment is required in regards to this Plan of Management. A rope will be required to be permanently situated within the pool for the safety of koalas.

SEPP No 71 – Coastal Protection

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No.71.

Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

Clause 8 – Matters for consideration

(a) the aims of this Policy set out in clause 2,

The proposal is generally in accordance with the aims of this policy.

(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,

It is noted that the subject site is not located in close proximity to any public access to or along the public foreshore.

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

It is not considered that this application offers any opportunities to provide new public access to the foreshore.

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

The proposal is considered suitable, having regard to its permissibility in this area.

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

The proposal will not result in any detrimental impact on the coastal foreshore, given its spatial separation and location on land zoned for residential purposes.

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

This proposal is not considered to have any negative impact on the scenic qualities of the NSW coast.

- (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 would not impact negatively any animals or their habitats.

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

The proposal is not considered to have an adverse impact upon marine environments or habitats.

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

The proposed development is not considered to impact negatively on wildlife corridors.

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

The proposed development is not considered to have any significant impact of development on coastal processes and coastal hazards.

- (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 development is not considered to impact on any traditional Aboriginal cultural values.

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

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,*

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items

- (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*

This 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 submitted development application includes Basix Certification (Certificate No. 884105M) which includes provision for NSW Government standards/requirements in relation to sustainability. In this regard, the proposal is considered to be generally acceptable with respect to water and energy usage, which is assessed through the Basix Certificate.

State Environmental Planning Policy (Coastal Management)

Clause 21 - 'Saving and Transitional Provisions' of the SEPP apply to the subject development. This DA was lodged prior to the adoption of this policy on 3 April 2018.

Notwithstanding, the subject site is within the coastal use area map. The site is not located within the Coastal environment area map, nor the hazard or wetland map.

Clause 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.*

Given the location of the development within a residential zone spatially separated from the coastal foreshores, it is considered that the development for the purposes of a residential flat building will not change any public access, overshadow the foreshore, adversely impact public amenity or impact places of Aboriginal heritage.

The proposal is considered consistent with the objectives and provisions of this draft SEPP.

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

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

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

Tweed Development Control Plan

DCP A1 - Residential Development Code

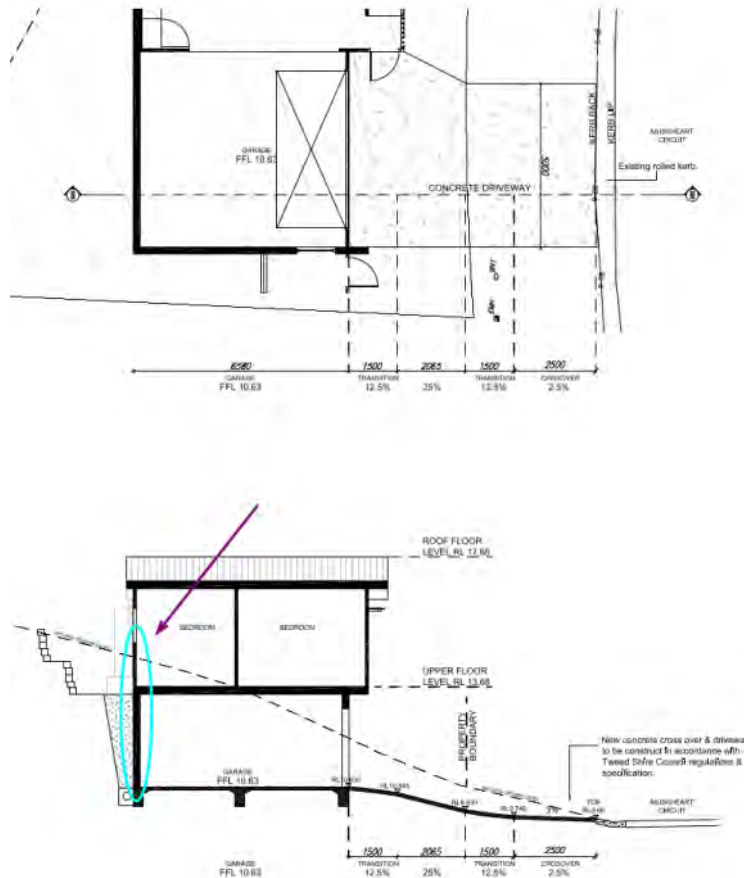
A detailed DCP A1 assessment is provided on file. The applications seek the departures from the DCP in regards to volumes of cut only. It is considered that the proposal has satisfactorily justified this variation and the development as amended is considered acceptable.

Below is an extract from the A1 assessment:

Section 2. Site Design

2.1 Topography, Cut and Fill

The Secondary dwelling has not been stepped up slope due to the relatively small footprint.



While the floor area of the secondary dwelling has been reduced to ensure compliance with Clause 5.4 of the TLEP 2014, the cut required to enable construction of the secondary dwelling has been requested to be retained. The applicant has provided further justification for this variation request.

- *The garage floor height is set at the level proposed in order to achieve a compliant driveway grade. Initial design plans had the garage floor at a higher level which reduced the height of the cut, however, the entire building had to be lowered to achieve the required driveway grades.*
- *The location of the driveway/garage is dictated by two established eucalypt street trees located along the front boundary within the road reserve. These trees are to be retained as part of the development with the driveway to pass between the two.*
- *To relocate the garage further to the north to reduce the depth of the cut would result in the driveway being too close to the street corner which would make it unsafe for the building occupants and road users. Furthermore, moving the garage to the northern end of the house would require flipping the upstairs portion of the house over and would result in the internal and external living spaces facing south. This would have negative implications on the amenity, liveability, and thermal comfort of the dwelling.*

- *The proposed excavations are located at the rear of the secondary dwelling and would generally not be visible from the street. Accordingly, the variation requested would not impact upon the streetscape.*
- *The proposed excavations will not result in any overlooking or overshadowing of the adjoining properties.*
- *By benching the dwelling into the hill as is proposed, this will have the effect of minimising the height, bulk and mass of the building*
- *The proposed design of the secondary dwelling is entirely consistent with other two storey dwellings within the Koala Beach estate which have also been constructed on upward facing slopes.*

The objectives of the DCP Section 2.1 Topography, cut and fill are provided below:

1. *To maintain the integrity of the topographic and scenic landscapes of the Tweed by limiting the extent of excavation, cut, fill and site benching.*
2. *To moderate the effects of building height, bulk and mass on sloping land.*
3. *To ensure that the building siting, design and construction method is appropriate for site slope.*
4. *To mitigate the issues of overlooking, overshadowing and drainage arising from level changes particularly at lot boundary interface.*

The following comments are made having regard to these objectives:

The cutting of the garage into the sloping block will still maintain the integrity of the landscape as the primary dwelling is stepped up the site to provide the form of the existing topography.

The cut will minimise the impact on adjoining properties, particularly 15 Muskheart Court and 9 Silveraspen Grove by reducing the overall height of the secondary dwelling and maintaining this dwellings view to the east.

The construction is considered appropriate for the slope as the garages will be built into the slope obscuring this part of the dwelling from the surrounds and reducing the bulk and scale of the development.

The variation to cut will not have any adverse impacts on adjoining properties due to overshadowing or overlooking. The cut will actually reduce overshadowing to the south by reducing the overall height of the development.

The DCP requests split slabs for dwellings on this slope. A split slab is proposed for the primary dwelling however the secondary dwelling being a living area above a double garage will essentially reflect the principle dwelling. A split slab is not possible due to the relatively small footprint.

The applicant's further justification relating to distance from the corner for the garage, the lack of impact on adjoining properties and the retention of the two trees on the front boundary is considered acceptable reasons for this variation.

It is noted that the dwelling at 15 Muskheart has a significant cut with no benching that while providing this dwelling with elevated views to the east, also decreases

the impact this secondary dwelling will have on this existing property as it is primarily at a higher RL than the roof of the secondary dwelling.

Having regard to these comments against the provisions, it is considered that the variation is acceptable in this instance for the following reasons:

- The objectives of the earthworks limitations will be maintained,
- The proposal is compliant in all other matters
- The variation will not result in any adverse amenity issues for the resident's of the dwelling the secondary dwelling or adjoining dwellings
- The variation will not adversely impact upon adjoining properties through overshadowing or loss of privacy.

The variation is therefore supported in this instance.

A2-Site Access and Parking Code

Both the primary and secondary dwelling will have double garages for carparking. The primary dwelling will provide this double garage 7m from the street boundary, facilitating a further two spaces for vehicles within the driveway in a stacked formation. While the secondary dwelling will have a garage setback of 3.73m, the parking for this dwelling exceed the minimum requirement and will still allow driveway parking, despite some overhang into the road reserve.

Both driveways will be well separated and have presentations to two street frontages. Vehicles will reverse into the street however this is a very common situation in low traffic areas of residential subdivisions.

A11-Public Notification of Development Proposals

In accordance with the above document, the proposed development was notified for 14 days from 17 January 2018. During this time, five submissions were received. Two submissions were received from the same submitter. These submissions have been addressed in a latter section of the report.

A16-Preservation of Trees or Vegetation

The proposal may require the removal of several trees located in the rear corner of the subject site. While these trees are located within the rear setback and removal is not intended, the removal of the trees may be necessary during earthworks associated with the development.

Council's Natural Resource Management Unit has made comment on the development having regard to the trees onsite and the potential loss of these trees due to earthworks:

- *The proposed development is likely to require the removal of four (4) semi-mature Casuarina glauca (Swamp Oak) as well as a number of juvenile species (less than 3 metres in height) including seven (7) Cupaniopsis anacardioides (Tuckeroo), two (2) Macaranga tanarius (Macaranga) and*

two (2) Guioa semiglauca (Guioa) from a small area (~30 m²) in the western corner of the property.

- *While all efforts are to be made to retain existing native vegetation during construction it is expected that the structural root zone of the larger trees will be impacted. The remaining juvenile trees may be able to be retained and protected.*
- *Vegetation removal is not anticipated to have a significant adverse impact on the environment providing conditions of consent are adhered to.*

*Conclusions- The retention of the four (4) semi-mature Casuarina glauca (Swamp Oak) and other juvenile native tree species could be achieved through a reduced development scale or building redesign which would be considered a more desirable ecological outcome. Notwithstanding, considering the **low ecological** significance of vegetation proposed to be removed, the possibility for native trees to be retained (particularly select juvenile trees) and landscaping which utilises predominately local native plants, the proposed development is not anticipated to have a significant adverse impact on the environment providing the consent conditions are adhered to.*

Appropriate Conditions of consent will be imposed. The proposal is therefore considered satisfactory in this regard.

B10-Koala Beach

A general assessment of the development upon the subject site within the context of Koala Beach is provided below:

The dwelling and secondary dwelling will offer excellent passive surveillance over the street due to the presence of living areas and balconies above the street.

The primary dwelling is designed to address the street with an identified front entry, integration of features and a double garage with a setback that exceeds the prescribed minimum.

The secondary dwelling has provided a screened stairwell to the first floor as no entry is provided on the ground floor. Given the distance from the front boundary, the screening while maintaining an acceptable façade, will afford some level of privacy to residents.

Good articulation has been provided for the primary dwelling along the northern side boundary. The approval of both dwellings will allow the use of complimentary materials for both, minimising the impact on the streetscape. It is recognised that the development will change the streetscape however this is a reasonable outcome given the lot is currently vacant and the site is relatively steep. It is noted that the development is generally compliant with the relevant controls and is therefore considered an acceptable development within Koala Beach.

Subject Site - 1 Silveraspen Grove



The impact on the adjoining dwellings that surround the vacant lot has been detailed within the application. The floor levels of the adjoining dwellings decks and pool areas have been provided by the applicant relative to the finished roof heights of the subject dwelling and secondary dwelling.

Per the plan extract below, the deck of the existing dwelling to the north, or 2 Silveraspen Grove is a higher finished level than the proposed roof forward of this deck, therefore the views to the east for the adjoining dwelling to the north will not be impacted. Figure 1 below:

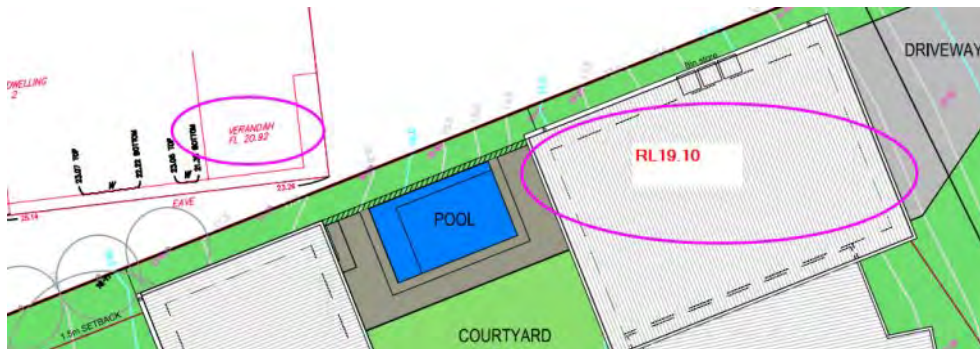


Figure 1



Figure 2

Similarly, the highest point of the secondary dwelling roof, on the eastern proximity of the site, is a maximum of RL17.89m. This is 0.57m higher than the

pool wall and well below the deck of this adjoining residence at 15 Muskheart Circuit.

These finished levels provide added confidence that the proposed dwelling will have minimal impact on the views of the two residential properties immediately to the north and west of the subject site.

It is noted that the provisions of DCP Section B10 is applicable to the subject site. Section B10.3.4- Building, Siting and Design is assessed below:

Performance Measures

M1- Make provision in respect to access to natural light and sunshine, to avoid the potential for significant overshadowing.

Comment: Orientation of both dwellings is to the east north-east.

M2- Optimal orientation for dwelling area windows, shade in summer and sun exposure in winter, should be 20 degrees east and west of north.

Comment: Orientation of both dwellings sympathetic to the summer and winter conditions.

M3- Windows located not less than a horizontal distance of 1 metre from any building of an adjoining lot they face.

Comment: No windows will be less than 1m from an adjoining property window.

M4- Buildings should be orientated with the main indoor and outdoor living spaces and major windows areas facing towards the north.

Comment: The primary dwelling is orientated to the north as is the outdoor pool and open space.

M5- West facing walls should generally have small windows. Alternative, windows should be fitted with appropriate shade structures, and/or landscape screens.

Comment: All western windows of both dwellings are highlight windows.

M6 - External walls to incorporate climate control devices such as overhanging eaves, pergolas, wide verandahs.

Comment: Dwellings have eaves. The secondary dwelling has a covered deck.

M7- Maximum extent of walls to side boundary to be 20 metres (inclusive of garage or carport).

Comment: Compliant <20m

M8- Low to average pitched roofs preferred, with roof plane on steeper sites to be parallel to slope for part of buildings.

Comment: Low pitched roof – compliant

M9- Bright and light colours should be avoided, with use of non-reflective natural, earth-tone colours.

Comment: Compliant building colours and materials- muted tones- browns creams

M10- Buildings to be stepped to follow slope of land.

Comment: Main building is stepped up slope of land- secondary dwelling is not stepped up as the building is on a much smaller footprint, basically the same as the primary dwelling ie one slab for the double garage and living area above.

M11- Height and scale of building on ridge lines visible from the Coast Road to be minimised and softened by tree planting.

Comment: N/A

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

Not applicable

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

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

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

Clause 93 Fire Safety Considerations

Not applicable

Clause 94 Buildings to be upgraded

Not applicable

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. Given the distance of the site from the coastline (approximately 600m), and the residential development situated between the site and the coast, the proposed development will not impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand. The Management Plan objectives at Clause 3.1.1 are therefore satisfied. It is noted that the site is not located within a specific area identified under that Plan.

Tweed Coast Estuaries Management Plan 2004

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

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

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

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

Context and Setting

The proposed development is not considered to have any significant impact upon the residential amenity of the occupants of adjoining properties. The proposal, as amended is considered reasonable and appropriate, given the site is a vacant lot within a residential zone. The proposed dwelling and secondary dwelling do not compromise the existing or desired future character of the area, and are both consistent with developments of a similar nature within the locality.

Access, Transport and Traffic

The proposal is not considered likely to generate significant volumes of traffic so as to be detrimental to the character of the area. The subject site is considered to be able to accommodate the additional traffic and parking requirements generated by this proposed development, given its location in a modern subdivision.

The driveway widths are compliant with Council's Policy and specifications. Both are located a sufficient distant from the intersection of Muskheart Circuit and Silveraspen Grove in accordance with Council's *'Driveway Access to Property Policy'*.

Construction

The construction of the proposed development will be subject to standard 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. The development phase of the proposal may present some interruption to the ambience of the surrounding area but this is temporary in nature and it is considered that potential amenity impacts can be adequately ameliorated through appropriate conditions of consent.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is located within an existing residential area. The bulk and form of the proposal is considered acceptable and generally in keeping with surrounding development. It is considered that the two storey residence and secondary dwelling development would not be out of character with the established residential development in the area.

Availability of Utilities and Services

The subject site is serviced by Council's water and sewer infrastructure which are available to the proposal.

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

In accordance with DCP No. 11, the proposed development was notified for 14 days from 17 January 2018. During this time, five submissions were received. Two submissions were received from the same submitter.

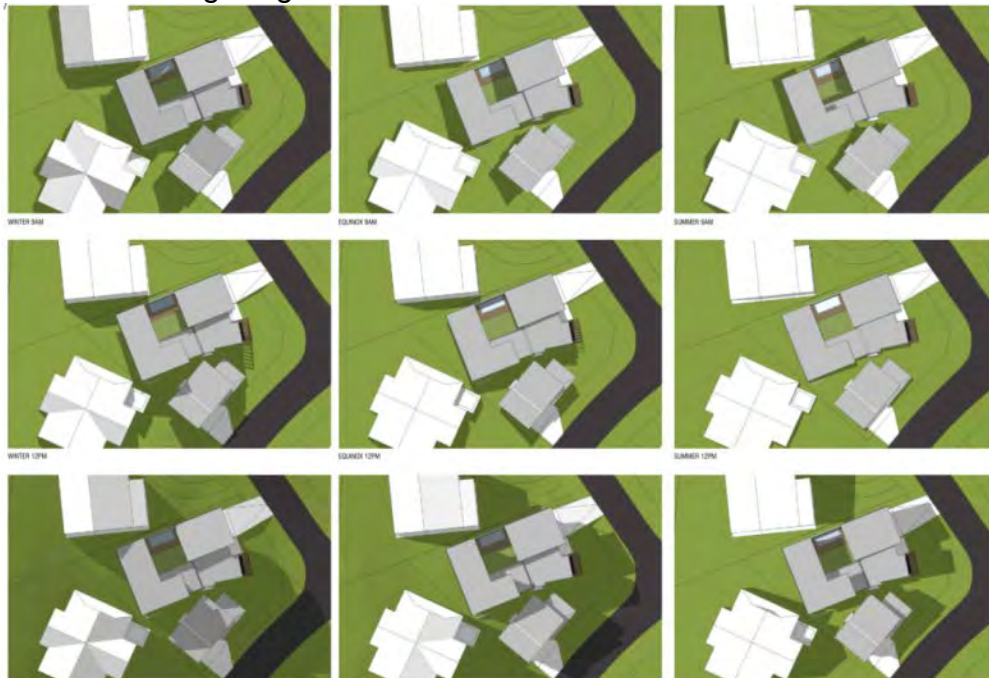
In response to submissions and Council's preliminary assessment, the development has been amended to reduce the floor area of the secondary dwelling.

The submissions were received from properties circled in pink below. The overshadow diagrams provided by the applicant are also provided below. It is noted that no submission was received from 15 Muskheart Circuit. This property contains a single dwelling that has the potential to be most impacted by the secondary dwelling.

Properties of Submitters



Overshadowing Diagrams



This identification of submitters and overshadowing is considered relevant to the review of submissions received. The properties linked to the submitters will not be impacted by the proposed development by way of overshadowing.

The reasons for objection to the development are summarised as follows:

Reason	Applicant response	Planning officer comment
Damage to adjoining properties during construction – dilapidation report for 2 Silveraspen	Will be provided if required.	Dilapidation reports are normally only required for large scale developments in areas where the nature of excavation would potentially lead to damage to adjoining properties. No blasting or rock removal is likely in association with this development. This is not considered necessary in this instance.
Excavations impact subterranean water flows. Diversion of overland flow is of a concern	Any overland flow will be contained on the property and piped to a legal point of discharge.	Satisfactory soil and sediment erosion controls will be imposed prior to the commencement of any works.
Floor space ratio and scale of development is excessive	The development complies with the FSR and DCP A1	The development is well within the maximum floor space ratio permitted for the subject site. The secondary dwelling floor area has been reduced to be compliant with the provisions of Clause 5.4 of the TLEP, specifically; the floor area is no greater than 20% of the primary residence floor area.
Adequacy of onstreet parking for existing residences. Adequacy of parking for dwellings Restrictions in regards to road reserve parking and proximity to corners	Parking has been provided in excess of DCP requirements	The development exceeds the minimum requirements for dwellings and secondary dwellings. The primary residence has a double garage and two stacked spaces available in the driveway set back 7m from the building line. The secondary dwelling also provides two parking spaces within a double garage. It is noted that secondary dwellings are not required to provide any parking in accordance with the affordable housing provisions, despite this application not being subject to this SEPP. The parking onsite is considered more than adequate and compliant with DCP A2. Residential properties are permitted to have two driveways if such comply with specifications in regards to separation from each driveway and distances from the corner. The subject site is not expected to cater for overflow parking from adjoining residential properties.
Concerns in regards to onstreet parking during construction	Some disruption will likely occur during the construction phase but such will be short term only	Onstreet parking has occurred on the adjoining road reserve due the site being vacant while surrounded by residential properties. The loss of on street parking is not the responsibility of the applicant. The development is providing more than the minimum off street parking with 4 garage spaces and two additional stacked parking spaces on the driveway. While some disruption to traffic is anticipated during construction, such would not be considered excessive relative to any other construction works that would be associated with the construction of a dwelling on a vacant Lot. Preventative conditions will be included within the consent to ensure certain standards are maintained during this short term period, such as no storage of building materials within the Council road reserve.
Dust and debris during construction	Standard environmental controls will be implemented during construction	Adequate conditions will be imposed to protect the amenity of the area during the construction phase.
88B restriction on land limiting Koala beach properties to one residence	Existing precedence of secondary dwellings being approved within the Koala Beach estate including at 52 Sassafras.	Clause 1.9A of the Tweed LEP 2014 enables development on land in any zone to be carried out in accordance with this Plan or with consent any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose. The restriction upon the 88B was not imposed by Council, rather the developer. The Koala Beach estate has existing detached secondary dwellings. One such example is CDC13/0080 for a dwelling and detached granny flat at 15 Hovea Drive, 500m from the subject site.
Weakening the 88B in regards to residences also weakens other restrictions such as dogs and cats prohibition	No comment.	Council supported the 88B instrument that prohibited the keeping of dogs and cats onsite. This will be a condition of consent in addition to the provision of a rope for Koalas within the pool. The provisions relating to no secondary dwellings was a developer imposed condition and is not required to be upheld by Council given the overriding provisions of the TLEP 2014 and state government legislation.
Clause 5.6 does not allow for development contravening 4.6	The proposal is complaint with the Tweed LEP. A variation to the LEP as stated in Clause 5.4 is not relevant.	Clause 4.6 does not apply to the development as the secondary dwelling does not contravene Clause 5.4. Namely, the secondary dwelling is no more than 20% of the overall floor area of the principal dwelling.

Reason	Applicant response	Planning officer comment
Two dwellings on the site not in the public interest	Examples of secondary dwellings in the locality have been provided	The development has demonstrated satisfactory compliance with the relevant provisions of the Tweed LEP 2014 and the Tweed DCP 2014. The development is not considered contrary to the public interest as it has been concluded that the dwelling and secondary dwelling are compatible with the locality.
Proposal exceed the threshold for secondary dwellings in regards to floor area	The proposal complies following a reduction in floor area through the submission of amended plans.	In accordance with Clause 5.4 of the TLEP 2014, the floor area of the secondary dwelling is 20% of the primary residence following the submissions of amended plans. The development is therefore compliant with this Clause.
The development does not respond to the topography of the site. This will have a detrimentally impact on the character and amenity of the area	The development is responsive to the various constraints of the site and is general complaint with the relevant sections of the DCP.	The development has responded to the topography of the site through the utilisation of split slabs for the primary residence. This will provide a stepped residence as the Lot slopes up from the site frontage. The secondary dwelling does have a significant excavation to provide adequate grades to the garage and reduce the bulk and scale of the building on the adjoining dwelling to the west which has raised no objection to the proposal. The development is considered satisfactory in this regard.
The existing trees onsite cannot be retained due to the excavation levels proposed. This will adversely impact food trees for glossy black cockatoos	Trees at the rear will be retained if possible. Trees on the street boundary will be retained.	Council's Natural Resource Unit have undertaken an assessment of the trees that will potentially be remove from the rear of the subject site due to the excavations to construct the dwelling and secondary dwelling. The applicant has advised that efforts will be made to retain these trees. However this assessment was required given the trees may not survive the construction phase of the development. The trees may also not be suitable when mature in close proximity to the new dwelling having regard to the excavation onsite. The trees at the rear of the subject site are considered of low ecological significance and removal while not ideal is considered acceptable. The two trees adjacent to the front boundary in proximity to the driveway for the secondary dwelling will be retained. A landscaping plan with native trees more appropriate for a residential Lot will be required prior to issue of the Construction Certificate. The proposal is considered acceptable in this regard.
The development is a dual occupancy rather than a secondary dwelling	The development, as amended is consistent with the secondary dwelling provisions.	The development, as amended, is compliant with the provisions of the TLEP 2014 that provide floor space restrictions for secondary dwellings.
No other development like this has been permitted in Koala beach	Other examples of development have been provided.	Secondary dwellings have been approved within koala beach as have Detached garages. (15 Hovea Drive) The development is permissible and considered appropriate for the subject site when assessed against the provisions of the TLEP 2014 and DCP.
Increased traffic adverse to the safety of children playing in the street	The development is compliant with the relevant provisions and the development has provided more than the minimum parking spaces.	The subdivision has been designed to cater for the development of this Lot for the purposes of a dwelling. The local traffic network is capable of catering for this dwelling and secondary dwelling. The respective driveways will be located a complaint distance from the corner of Silveraspen Grove and Muskheart Circuit.

(e) Public interest

The development complies with the relevant planning controls and is well designed and sited such that impacts upon the public domain are limited. The development does not compromise the interest of the public.

OPTIONS:

1. Approve the Development Application subject to conditions.
2. Refuse the application.

Option 1 is recommended.

CONCLUSION:

The subject application has been subject to a vigorous assessment against the provisions of the Environmental Planning and Assessment Act, the Tweed Local Environmental Plan 2014 and the relevant State and local provisions. Submitters concerns have been given due consideration and the application has been amended to ensure compliance with Clause 5.4 of the TLEP 2014. The application is considered worthy of support and approval is recommended.

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.

2 [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:

Summary since deferral from 1 March 2018 Planning Committee

At the Planning Committee Meeting of 1 March 2018 Council resolved as follows:

"RECOMMENDED that this Item be deferred to the Planning Committee on 5 April 2018 for the following:

- Matters in regard to Known cultural heritage to be referred to the Aboriginal Advisory Committee and the Local Aboriginal Land Council as soon as possible and to be discussed at the next Aboriginal Advisory Committee meeting;*
- Potential mitigation of visual impacts; and*
- Potential mitigation of noise impacts."*

Accordingly the application was referred to the Tweed Byron Local Aboriginal Land Council who inspected the site on 22 March 2018. A Cultural Heritage Site Inspection Report was provided (Attachment 2).

The report contains the following recommendations:

RECOMMENDATION

The cultural heritage sites Inspection considers both the tangible and intangible Aboriginal Cultural Heritage of the project area. TBLALC assesses the potential for harm to ACH and provides advice on avoidance, mitigation, and compliance with the applicable legislation, regulations and procedures.

In TBLALC's opinion there is nothing at this stage to halt or delay the continuation of your project works.

TBLALC considers that the OEH Due Diligence process, being the basic standard of assessment, should be applied in this instance.

A copy of the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* is available on the OEH website.

Note that this report provides supporting documentation for proceeding in accordance with the Code.

A comprehensive cultural heritage assessment is not considered necessary and the proposed development should proceed with caution for all ground disturbing activity.

TBLALC advises that, in the event that any items of Aboriginal cultural heritage are located during the progress of the works, that a 'stop work' procedure must be adopted and the Office of Environment and Heritage and TBLALC must be contacted for further advice which will be promptly provided.

In summary this means to "proceed with caution". The previous and current recommended conditions of consent enforce this precautionary approach.

In addition the application was reported to the Aboriginal Advisory Committee Meeting of 6 April 2018. At this time the Aboriginal Advisory Committee did not have the benefit of the Cultural Heritage Site Inspection Report however they were accepting of whatever recommendations the Tweed Byron Local Aboriginal Land Council report made.

In regards to the other amenity issues the applicant was asked:

"What mitigation measures can you offer in regards to visual impacts and noise impacts?"

Would you like Council to facilitate a meeting between you and your neighbour to discuss viable options or alternatively you can advise me in writing of what you are prepared to offer and I can then advise the neighbour of those suggestions to see which ones are palatable to them."

The applicant responded to this e-mail on 6 April 2018 as follows:

"This is our response to the points stated from the council meeting

- 1. The land council are doing their site inspection on the 22/03/2018 at 11 am.*
- 2. Noise impacts:*

The domestic noise that we produce is well within legal guidelines.

Our children were staying with and have since moved overseas.

We watch television at night and it is off by 10 pm weekdays, on weekends listening to music and a movie at night which rarely goes beyond 11 pm.

We never have party's and only rarely entertain friends.

A lot of our weekends are spent away riding our motorbike or sailing.

When we are at home, we use our spa for an hour or so at a time which would be far from traumatic to the neighbours.

The noise from our spa would be equivalent to the noise generated from their pool when they have friends over.

We live a quiet life style, so I dispute the neighbours' complaints about our noise.

Our side of the noise issue:

The neighbours placed speakers from their window facing us from their spare bedroom which they left on for weeks on replay. This we presume was to try and annoy us or just out of spite, as there was never any one in the room. That was the same room that they displayed that disgusting large hand painted blue sign, saying that we were "perverts or peeping toms".

Nearly every time that we have had friends over and are on our back verandah one of the Dees has started the ride on mowing, edge trimming and lawn blowing on the fence line, causing dust and debris to fly over the fence and stop us from conversation due to all the noise from the machinery. We have many witnesses of these occurrences.

They also have moved their garbage bins beside the fence right next to our deck which we find very offensive.

Our blocks of land are only one acre, it is expected that some noise from a living functioning home may be heard.

We will endeavour to keep our noise down.

Visual Impacts

- 3. We built our shed with the design in mind that has been taken from the rural landscape. Zinacalume corrugated iron has been used by the iconic elder of Australian architecture Glen Murcutt extensively in his designs. Architect James Gross states that zinacalume iron though bright at first quickly weathers to a dull Polina that changes with the day and light . In the full Australian sun zinc iron is light in form and appearance. The boat sheds northern wall has three discoloured sheets that I promise to replace when I fit the timber window that is on plan to replace the existing aluminium window, as well as the fitting of a window awning will complete the design.*
- 4. An old red shipping container with a very noisy door when opening, has been placed right beside the boundary fence adjacent to our lounge room window. We have not made complaints about this though we find it an eye sore. They have placed their garbage bins beside the boundary fence to the rear of the container*

which is noisy and smelly. These issues verses our shed wall that was there before the neighbours even bought their house, I suggest we call it a draw and move on.

5. *We have placed a further 2400 mm high fence and bamboo privacy screen between our properties*
6. *The neighbours have planted conifers right beside the boundary fence which will block our winter sun and become a problem in the future i.e. push-break the fence over that Laetitia and I built. They also have planted a mulberry tree on the boundary next to our deck area that will shade our northern sun and attract bats which will drop purple stain and attract rats close.*
7. *They have 4 acres to plant trees like these and there are many great native screen trees available which would be half grown by now."*

This communication was provided to the neighbours who had objected to the proposed development.

The first objector responded by stating that:

"The plans for the new dwelling in discussion have conflicting colours depending on which part of the DA you look.

Could you please make a condition of consent that the roof, southern and western walls are constructed in non reflective colours and material."

The second objector responded in detail and a copy of that e-mail communication in full has been forwarded to all Councillors. In summary this email from the objector raised the following concerns:

- *Noise – loud music is played regularly.*
- *When the main house is built who will live in the granny flat? Rental? This gives uncertainty to our future amenity*
- *Option 1 (preferred by the objector) – demolish the entire granny flat and re-lodge fresh DA for a new granny flat location 5-6m away from the common boundary.*
- *Option 2 – the applicant to fund an independent builder to build a 2400mm high besser brick infilled fence along the current boundary fence line (900mm on the objectors land) with crushed stone between existing boundary and Besser Brick fence.*
- *Visual - Architect Glen Murcutt does produce beautiful homes but he didn't design the granny flat. The location and style of the granny flat does not result in a rural living environment.*
- *Please don't allow people to build what they want regardless of consequences. We live in paradise lets us try and keep it that way.*
- *Rain overflow from guttering in the vicinity of solar panels spills into objector's yard.*

Council Assessment of Noise & Visual Impacts

Noise

The issues raised regarding noise appear to be associated with reasonably normal residential living. On occasion there is no doubt that music or loud voices from the subject site would carry to the neighbour's house. This could have been exacerbated by the location of the existing structure. However the structure complies with Council's required side setbacks. The previous recommendation for approval contained standard conditions of consent to address standard development related noise issues as follows:

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]

Any future noise complaint issues resulting from unreasonable behaviour should be reported to the Police.

The second objector's preference for the granny flat to be demolished and relocated 5-6m away is not considered to be a viable option in this case. The structure has approval for its location, the subject application merely seeks to change the use of that structure so that it can be used a granny flat lawfully.

The second objector's preference for a 2400mm high besser brick infilled fence within their land is also not considered to be a necessary or viable proposal. Acoustic fences are used in instances of high noise generators (property near high traffic volume roads, residential property that adjoins industrial land etc). The current scenario is between two residential properties with a separation of greater than 5m. The objector has claimed that her decision to setback her house off the boundary should not allow the neighbour to impinge on her amenity. However all properties have the right to develop their land in accordance with the planning provisions that apply to the land. The minimum separation between dwellings is 1.8m (900mm off each boundary). This is easily achieved between the two homes in this scenario.

Therefore there is no recommended change to the original proposed conditions of consent to address the alleged noise issues.

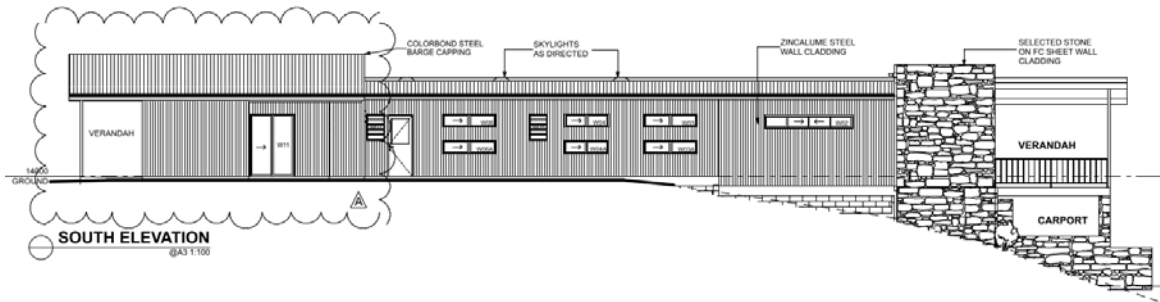
Visual Impact

The neighbour has stated that

"The plans for the new dwelling in discussion have conflicting colours depending on which part of the DA you look.

Could you please make a condition of consent that the roof, southern and western walls are constructed in non reflective colours and material.”

The floor plans state that parts of the southern elevation of the main dwelling will have colourbond steel fascia and gutter. The southern elevation shows a variety of materials (Colourbond steel barge capping, skylights, zincalume Steel Wall Cladding, selected stone on FC sheet wall cladding) as follows:



This variety in material is encouraged in all new dwellings to break up the long elevations. However all materials should be “non reflective” to ensure adjoining properties are not unreasonably affected by glare.

The following sentence has been added to the recommended Condition Number 1:

“The roof and walls of both structures are to result in finishes that are non reflective to avoid glare to adjoining properties.”

Rainwater overflow impacts

With regard to the matter raised of rainwater overflow from the roof of the secondary dwelling entering the adjacent property, an inspection was carried out which found guttering has been installed on the secondary dwelling and is attached to downpipes as required (see images below).





It is not considered likely for rain water to be concentrated and propelled by the solar panels at sufficient velocity to over-shoot the gutter and into the objector's property. The most likely explanation for any water concentrating in the objector's property is the shipping container located immediately adjacent to the boundary and the solar panels. Rainwater would quite easily be concentrated, collected and retained around such a large object and cause saturation of the ground.

The original report is duplicated below with a recommendation for approval. The additional information provided by the applicant and two objectors has not necessitated the change in the report except to amend condition 1 as detailed above.

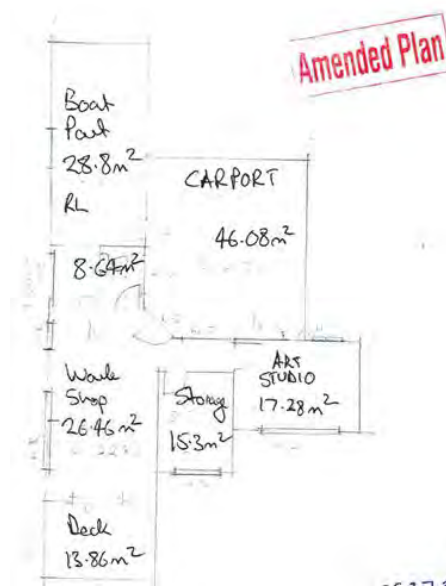
The proposed development is considered to warrant conditional approval and will regulate a lawful way forward. There are options for Council to consider in regards to whether the applicant should be fined for the unauthorised building works and unauthorised use of the structure over the last two years.

SUMMARY OF ORIGINAL 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.

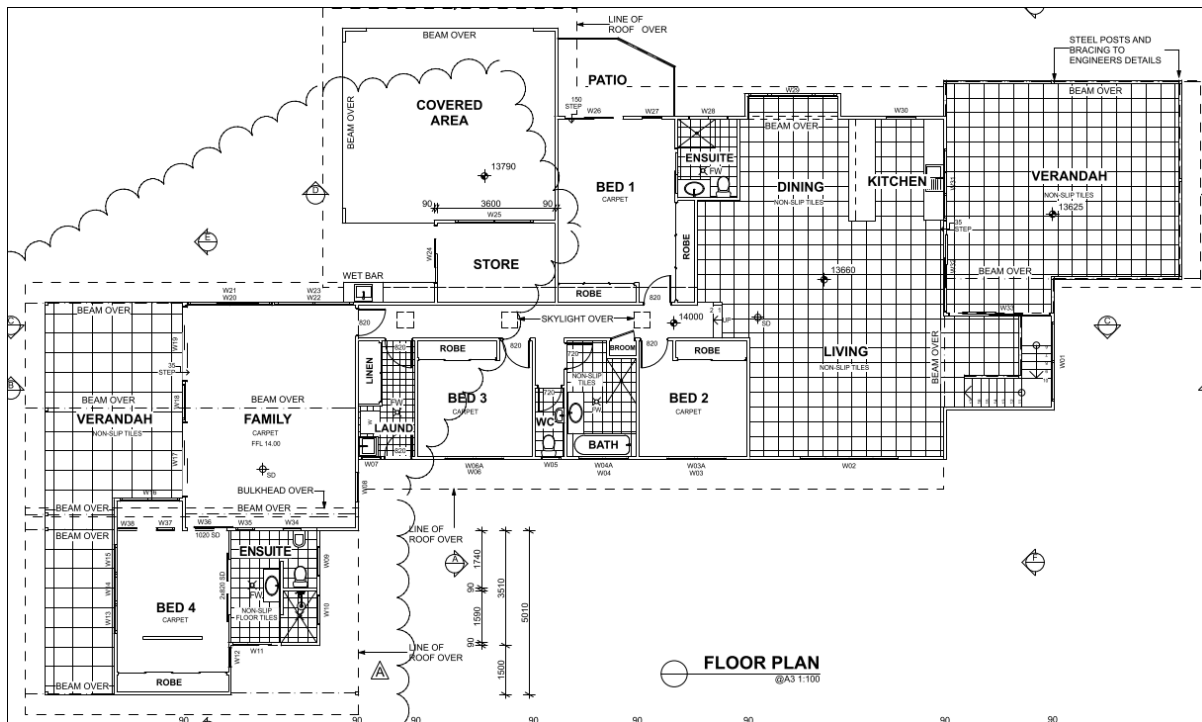
The approved art studio under DA15/0199 was meant to have the following layout and uses:



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 dwelling

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 all the supplementary material provided by the applicant throughout the assessment of the application.
The roof and walls of both structures are to result in finishes that are non reflective to avoid glare to adjoining properties.**

The development shall be completed in accordance with 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 therefore the structure needs to be amended to ensure a size of 60m² is achieved.
- 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 Byron 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.

[POC0235]

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).

[POC0355]

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.

[POC0435]

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.

[POC1035]

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.

[POC1040]

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

[POC1055]

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.

[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

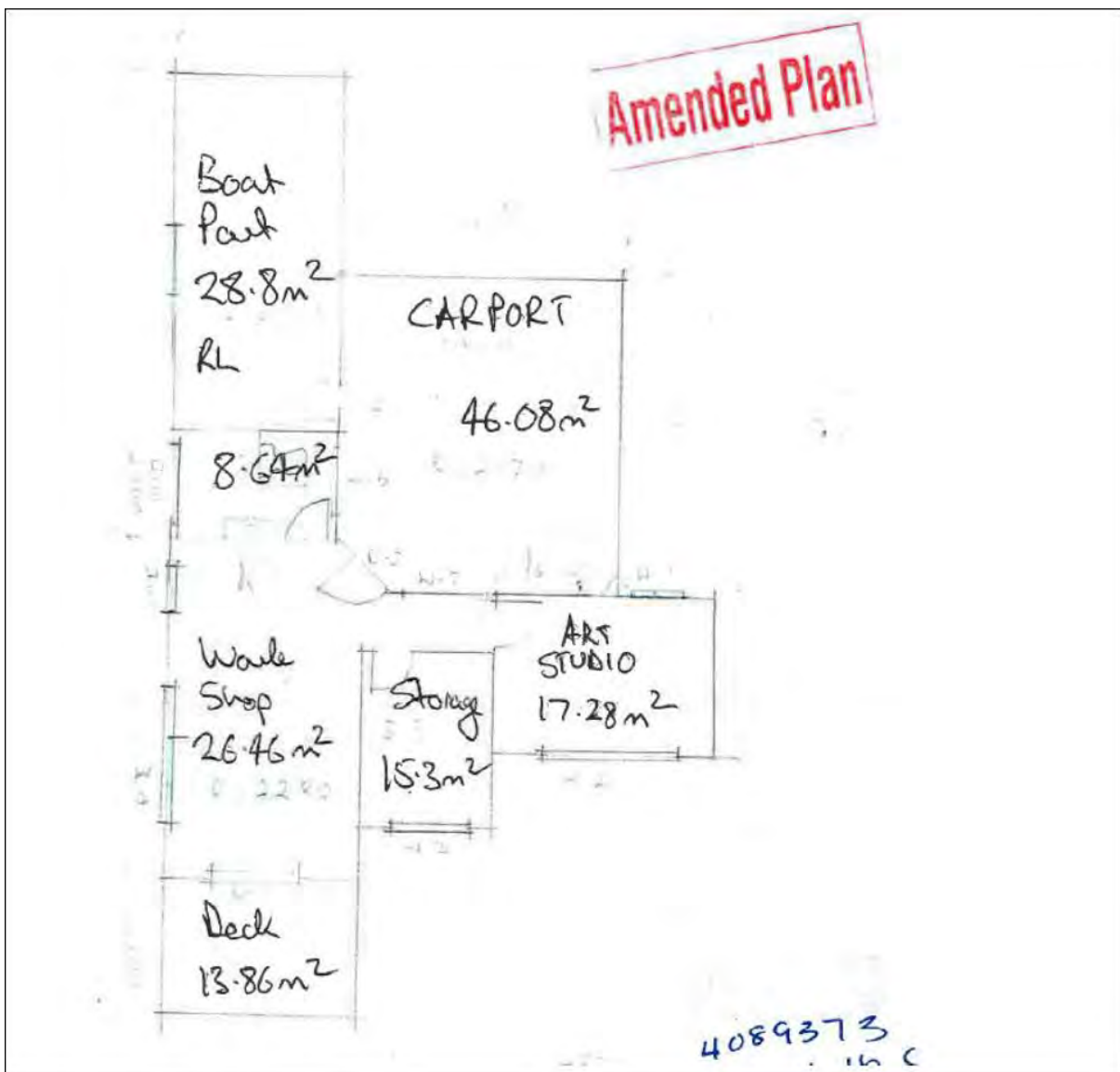
55. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.
[USE0125]
56. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise 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:

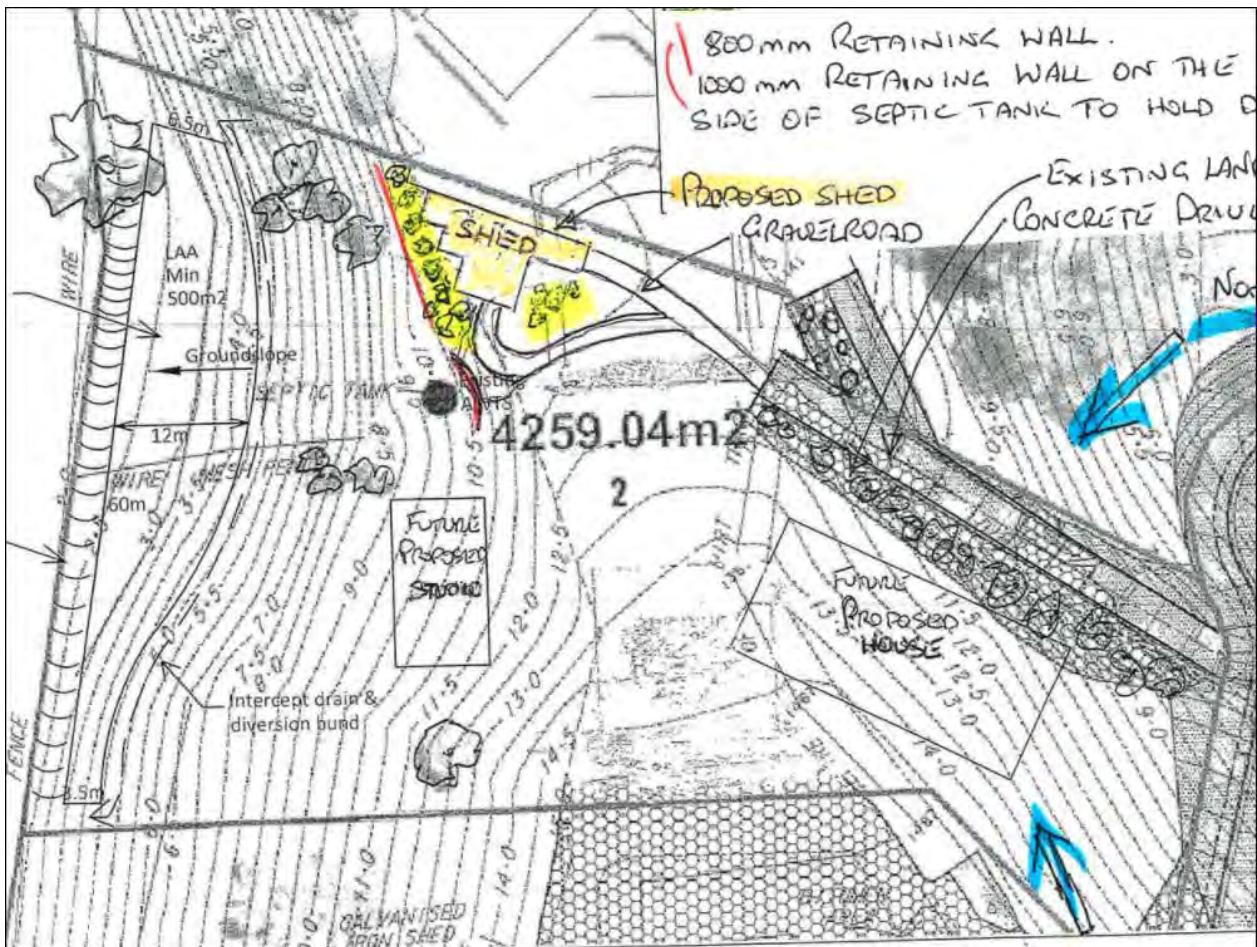
Applicant: Ms LA Raussin and PD Kirkland
Owner: Mr Peter D Kirkland & Ms Laetitia A Raussin
Location: Lot 2 DP 1201210; No. 5 North Hill Court, Tanglewood
Zoning: RU5 - Village
Cost: \$225,000

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



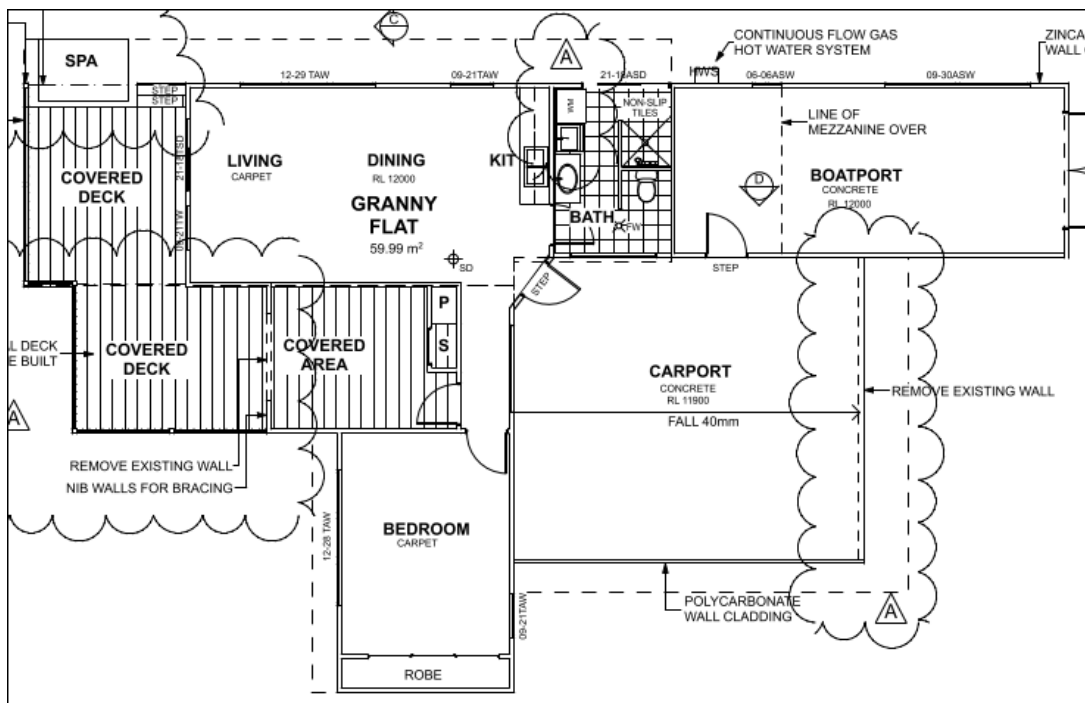
View of the structure from the neighbours property with unapproved awning to the boundary

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.

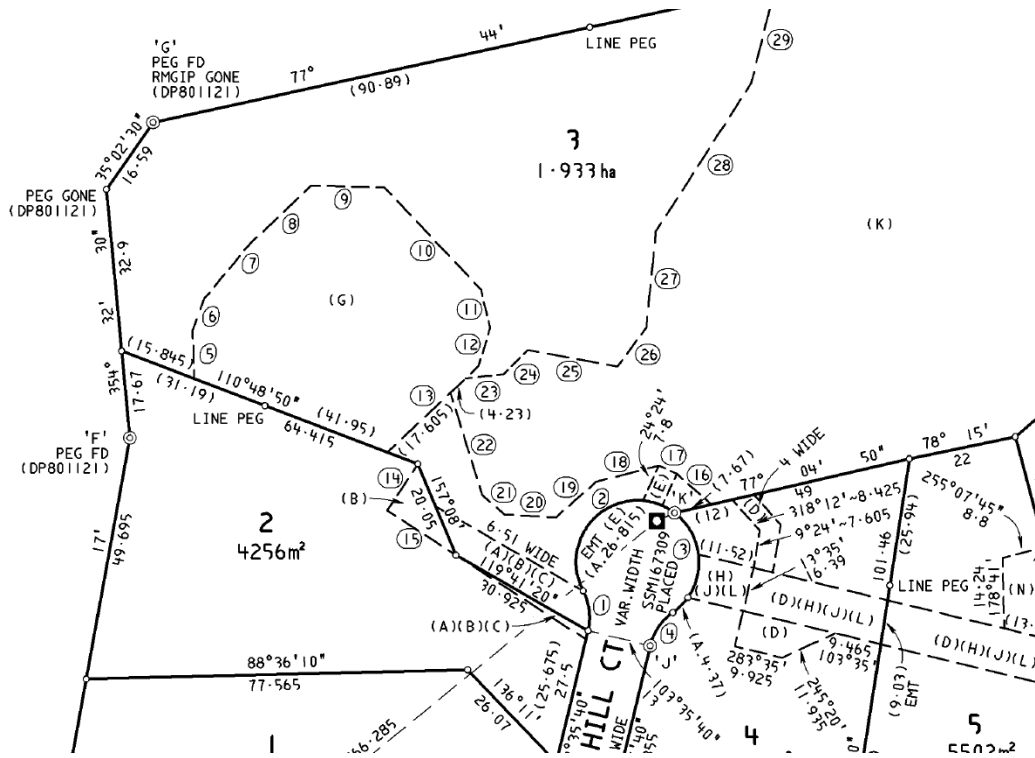
It appears that the applicant has complied with this request however the workshop, storage and studio areas continued to be used for habitable purposes pending the outcome of this application.

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.

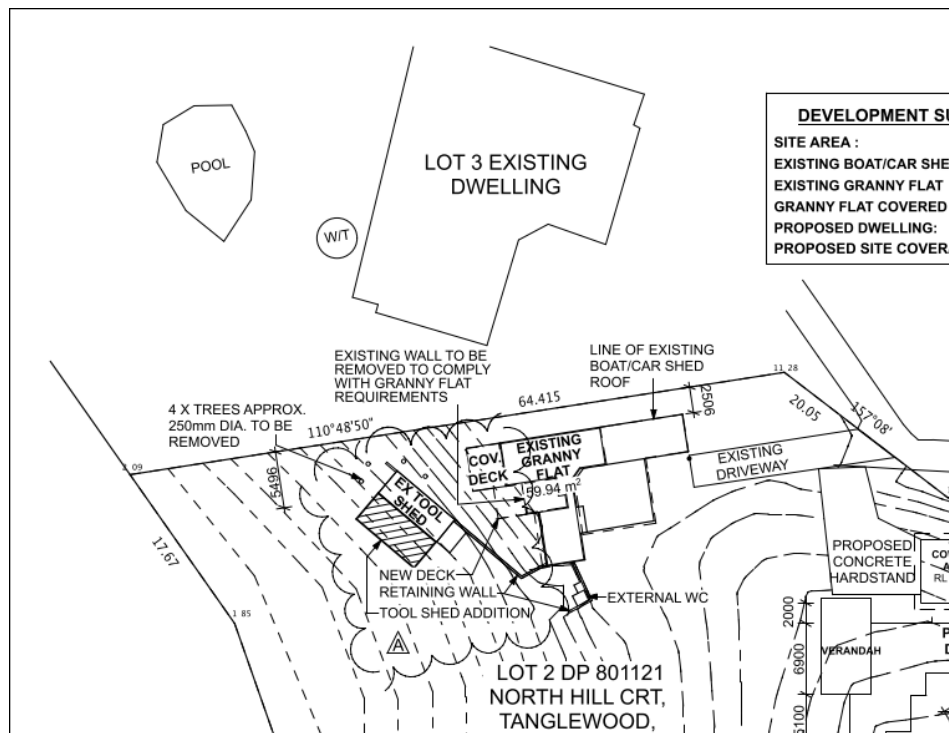


Proposed Secondary Dwelling Layout



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.



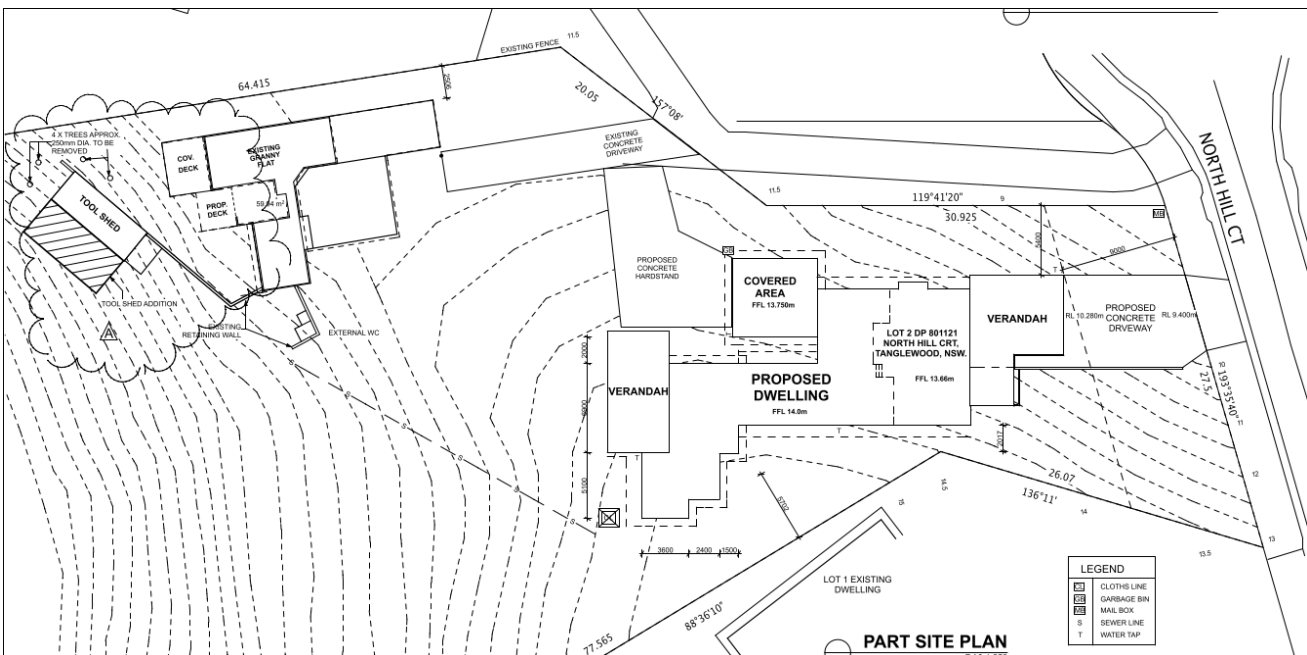
Site Plan showing setbacks from northern most property



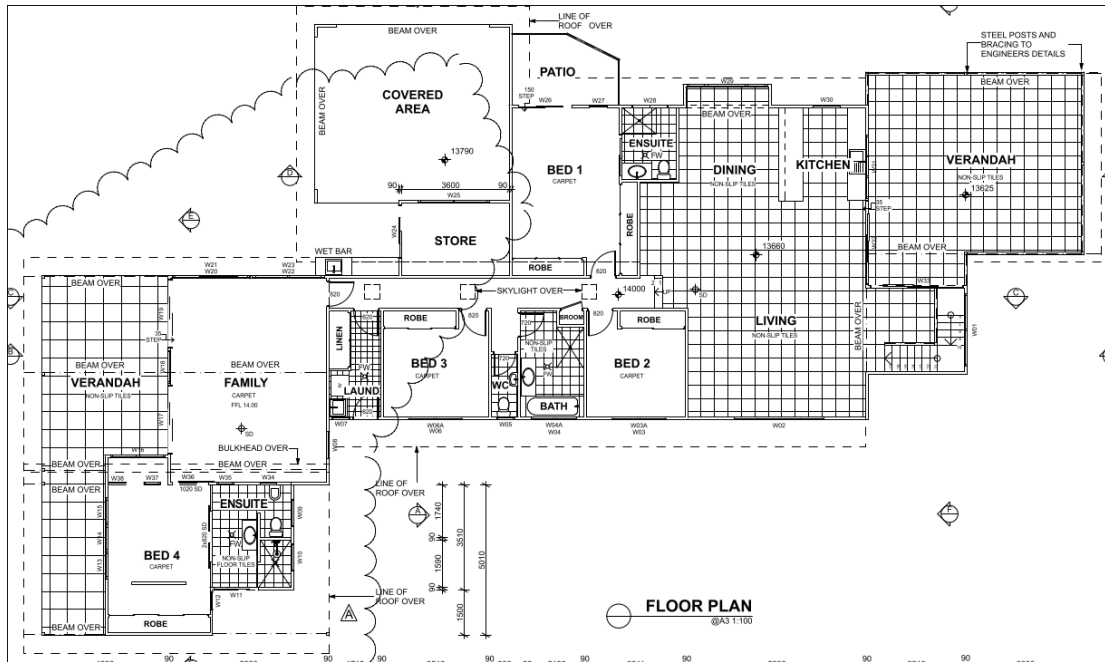
Google Satellite image showing the location of the existing structures relative to the neighbours house to the north (note the neighbours pool at the rear as a concern has been raised in regard to lack of privacy to the pool area)

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.

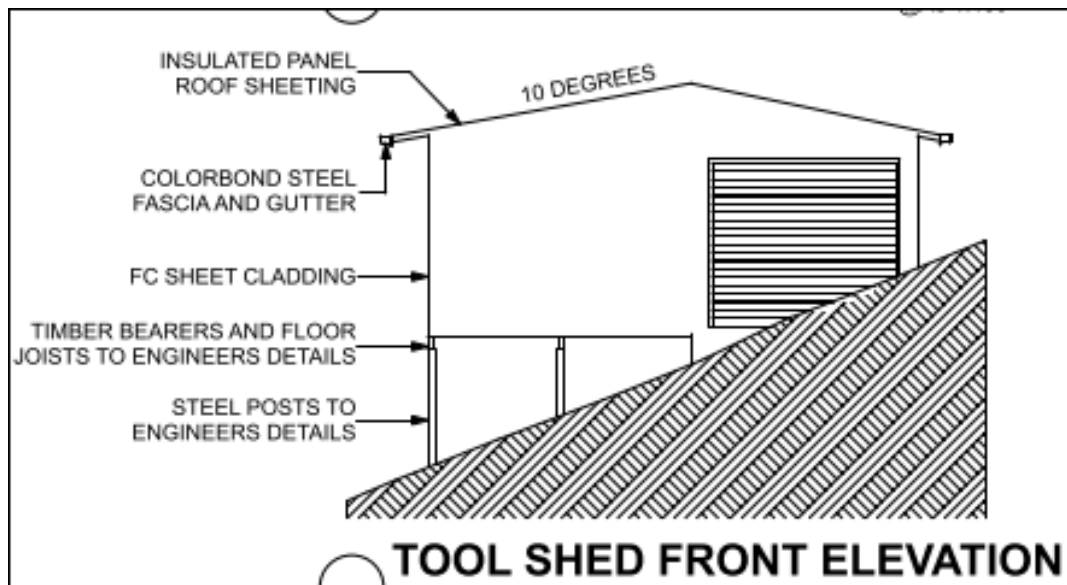


Site Plan showing new driveway access

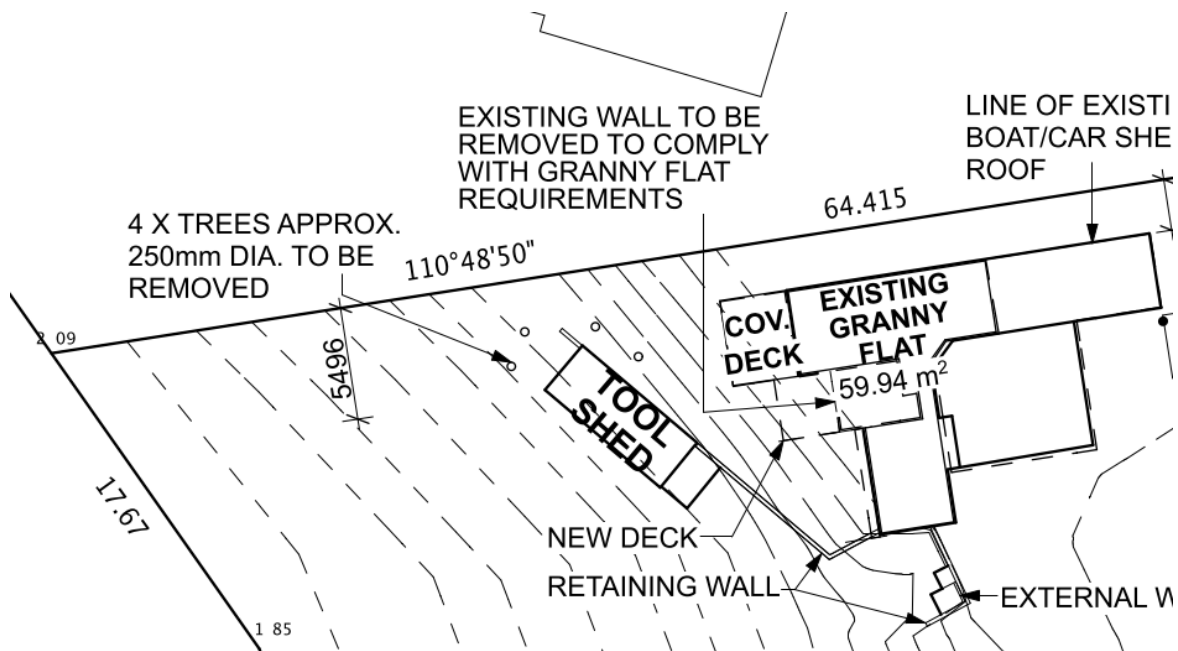


Floor Plan of proposed house

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.



Plan showing the location of the four trees that can remain despite the erection of the proposed shed extension

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.

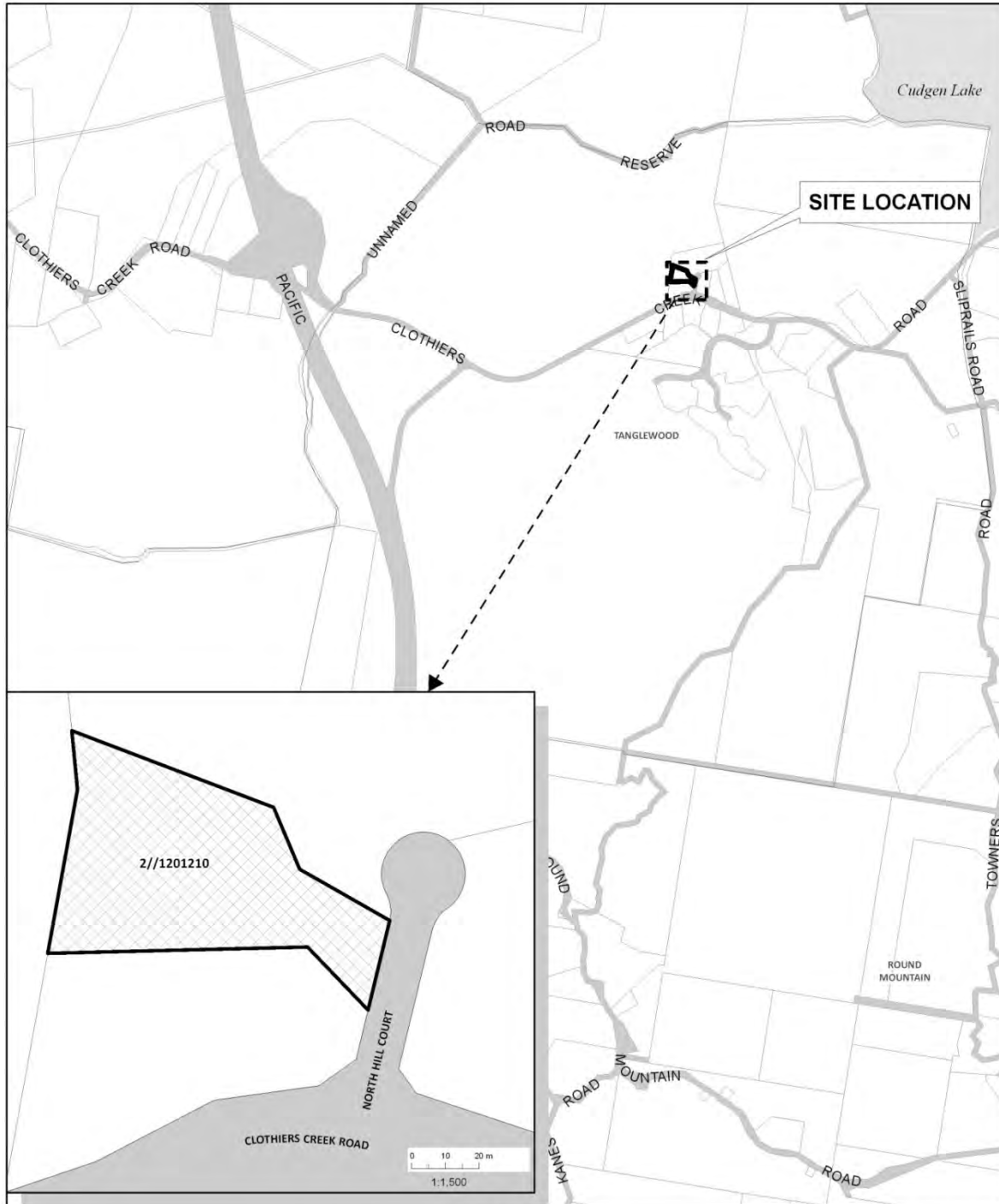
The following is a brief overview of history of the application:

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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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastre: 22/01/2018
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Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484

T: (02) 8670 2400 / 1300 292 872
F: (02) 8670 2483
W: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au



TWEED
SHIRE COUNCIL

Date Printed: 15 February, 2018

AERIAL IMAGE:



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

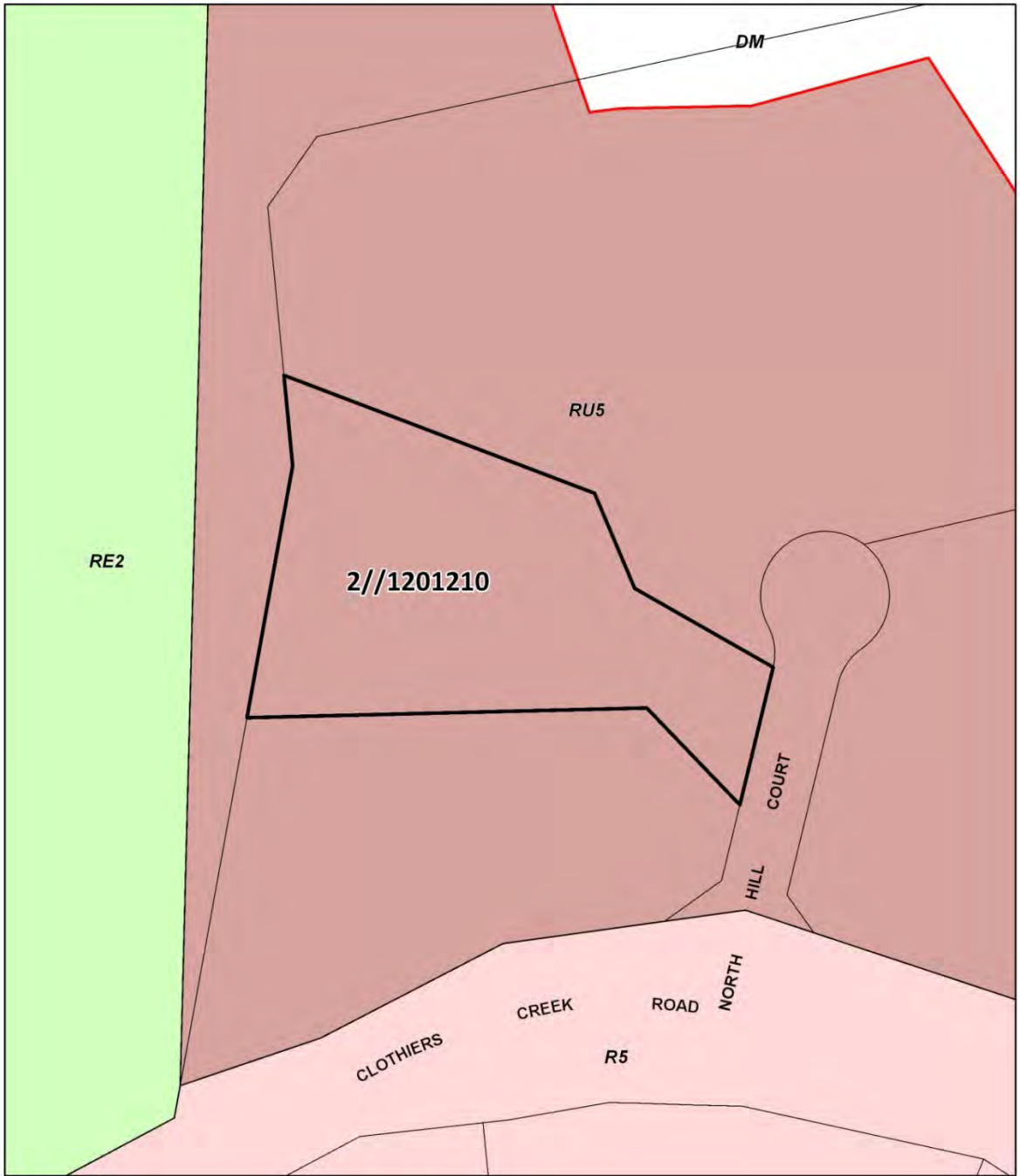
TWEED SHIRE COUNCIL
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W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au

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

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Boundaries shown should be considered approximate only.

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Author: C. Lees - Information Technology Date Printed: 15 February, 2018

ZONING DIAGRAM:



- Subject Land
- RE2 Private Recreation
- RU5 Village
- DM, Deferred Matter

Tweed Local Environmental Plan 2014

Zone
 R5 Large Lot Residential

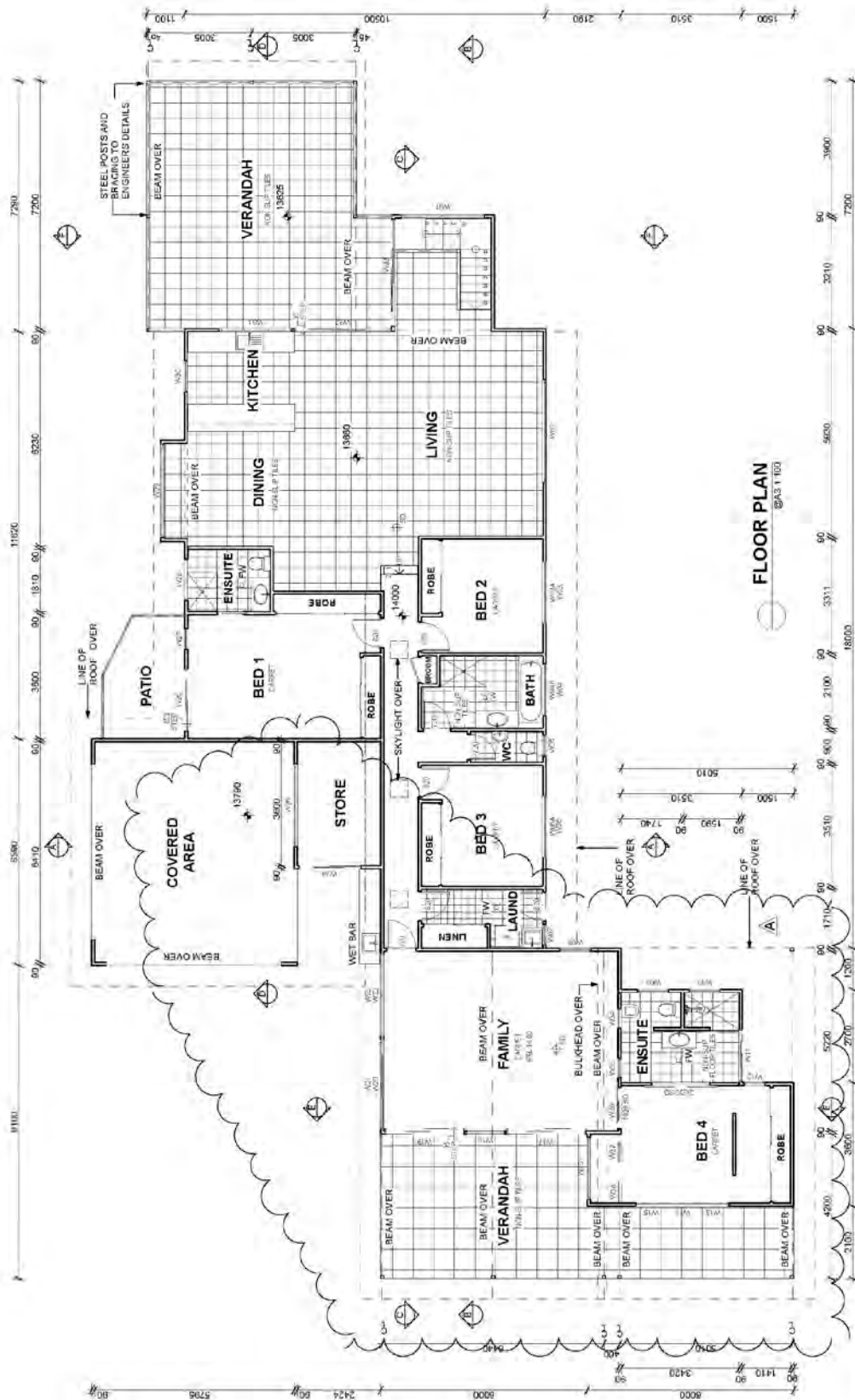
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 GDA
 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geosidic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

Site Plan - Local Environmental Plan

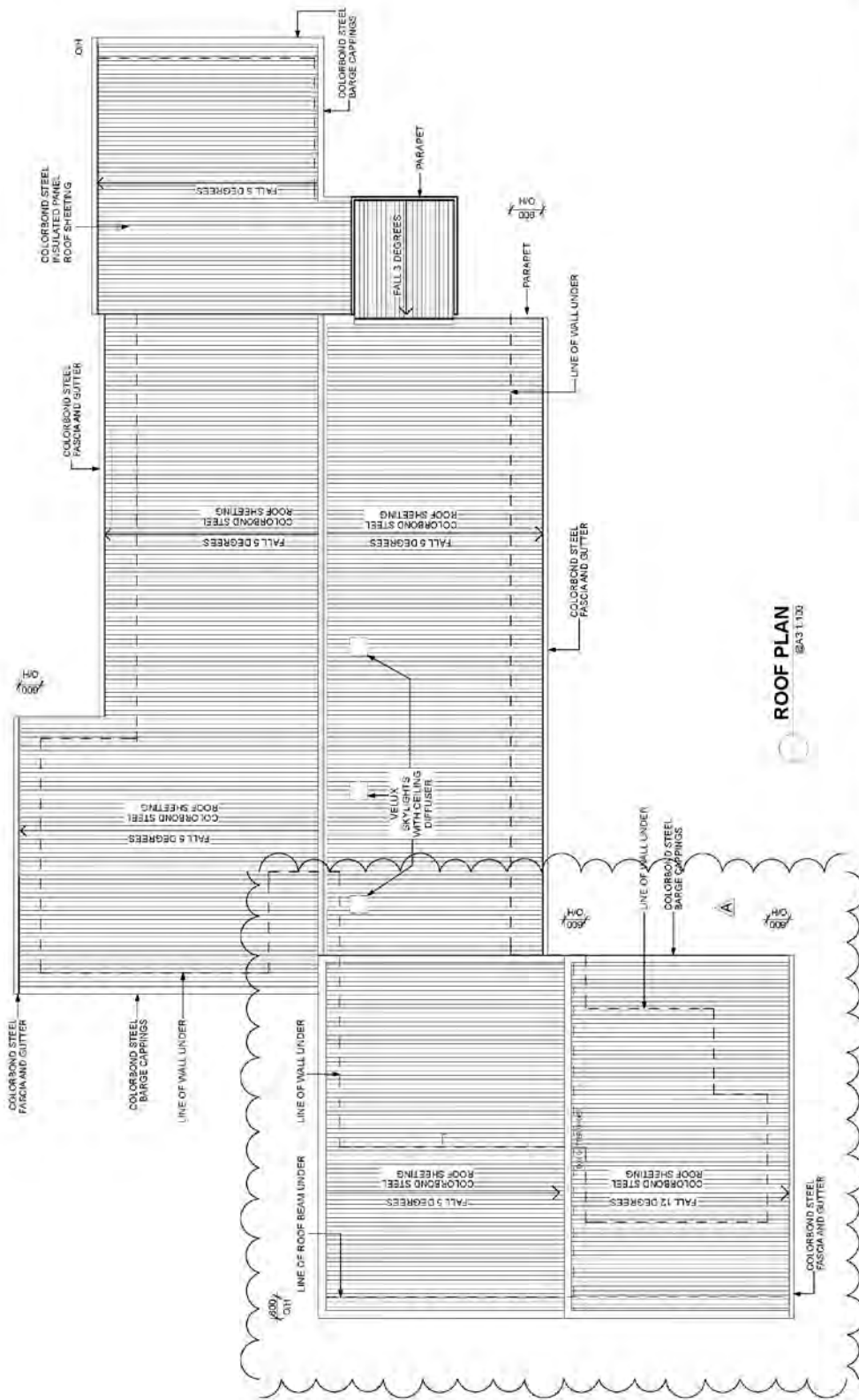
Lot 2 DP 1201210
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 Date Printed: 15 February, 2018

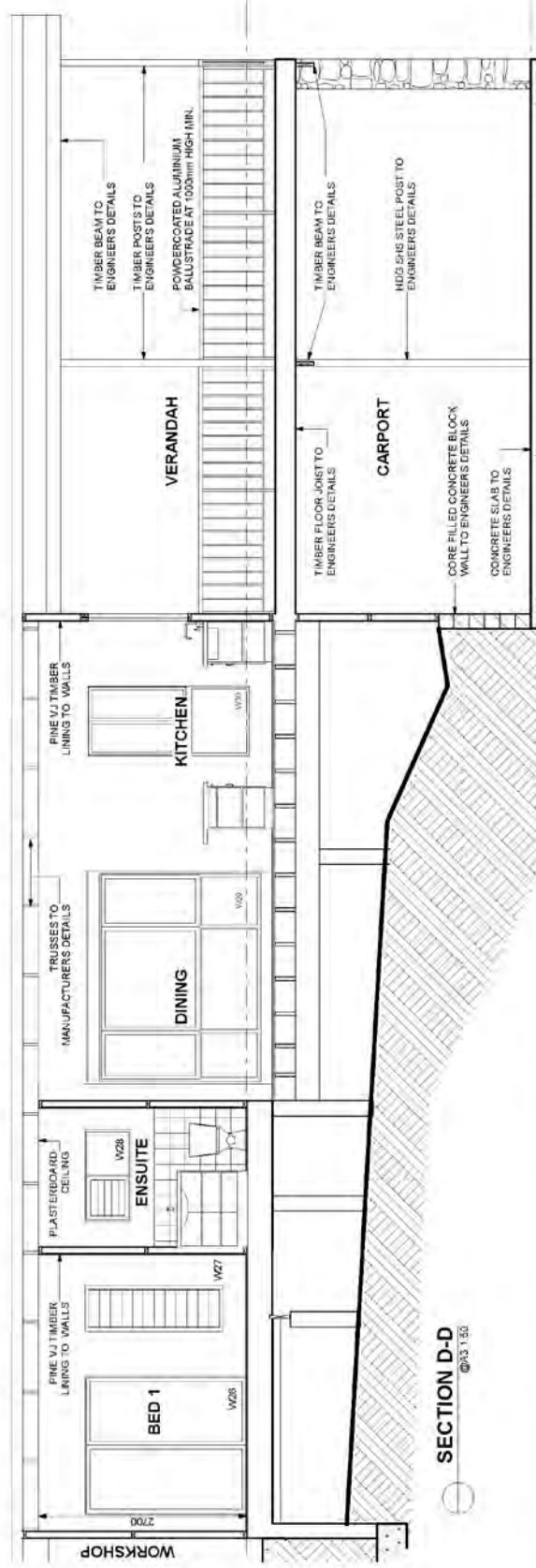
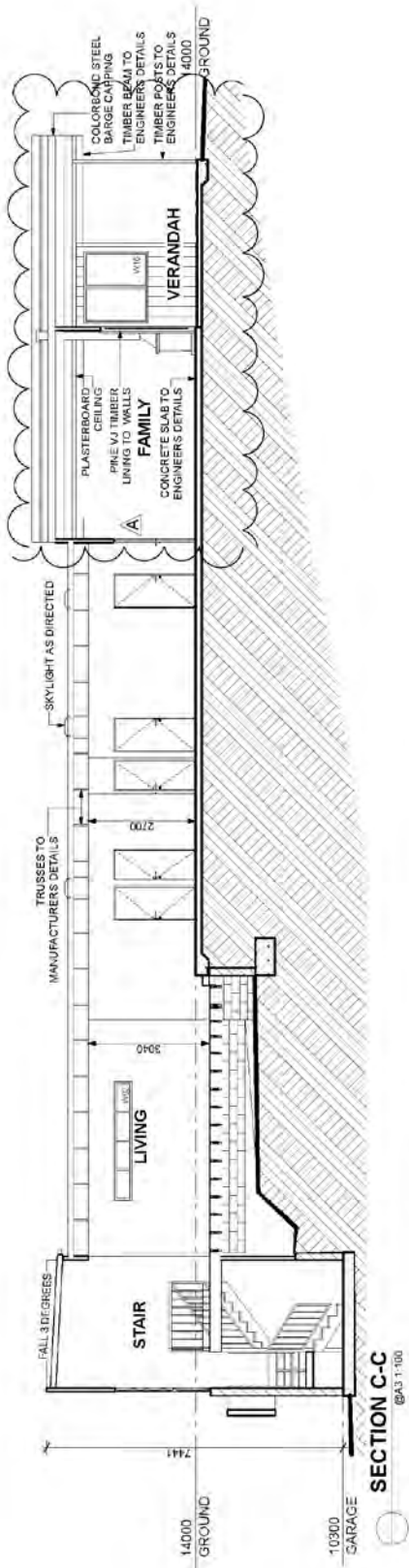


<p>PROJECT: PETER D KIRKLAND & LAETITIA A RAUSSIN SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT</p> <p>PROJECT NO: 054514 NORTH HILL SITE NO: 02116 DATE: 03/07/18</p>	
<p>DESIGNER: BISCHOFF BUILDING DESIGN</p> <p>DESIGNER NO: 1207</p>	<p>CONTRACTOR: CONTRACTOR NAME CONTACT: 0300 034 488</p>
<p>APPLICANT: PETER D KIRKLAND & LAETITIA A RAUSSIN SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT 1207 NORTH HILL TANGLEWOOD, NSW 2488</p>	
<p>APPLICANT NO: 02116 DATE: 03/07/18</p>	
<p>PROJECT NO: 054514 NORTH HILL SITE NO: 02116</p>	
<p>DATE: 03/07/18</p>	
<p>SCALE: 1:100</p>	
<p>PROJECT NO: 054514 NORTH HILL SITE NO: 02116</p>	
<p>DATE: 03/07/18</p>	
<p>SCALE: 1:100</p>	



ROOF PLAN
@A3 1:100

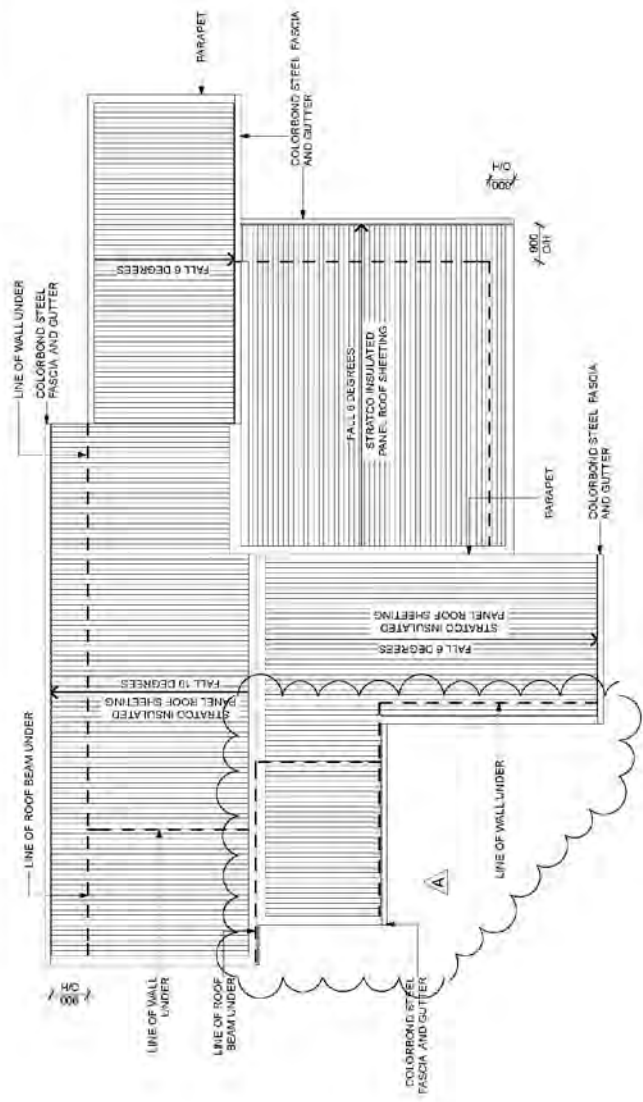
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<p>CLIENT: PETER D KIRKLAND & LAETITIA A RAUSSEN</p> <p>PROJECT: SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT</p> <p>LOT: LOT 2 DP 894124 NORTH HILL CRT, TANLEWOOD, NSW 2488</p>		<p>CLIENT: PETER D KIRKLAND & LAETITIA A RAUSSEN</p> <p>PROJECT: SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT</p> <p>LOT: LOT 2 DP 894124 NORTH HILL CRT, TANLEWOOD, NSW 2488</p>
<p>ARCHITECT: BISCHOFF BUILDING DESIGN</p> <p>ADDRESS: 10/11-13/15 LAMARCA ST, TANLEWOOD NSW 2488</p> <p>CONTACT: 02 4939 1111</p>		<p>ARCHITECT: BISCHOFF BUILDING DESIGN</p> <p>ADDRESS: 10/11-13/15 LAMARCA ST, TANLEWOOD NSW 2488</p> <p>CONTACT: 02 4939 1111</p>
<p>DATE: 15/05/17</p> <p>SCALE: 1:100</p> <p>PROJECT: DA3.3.03</p>		<p>DATE: 15/05/17</p> <p>SCALE: 1:100</p> <p>PROJECT: DA3.3.03</p>
<p>PROJECT NO: DA3.3.03</p> <p>DATE: 15/05/17</p> <p>SCALE: 1:100</p> <p>DEVELOPER APPLICATION: DA3.3.03</p>		<p>PROJECT NO: DA3.3.03</p> <p>DATE: 15/05/17</p> <p>SCALE: 1:100</p> <p>DEVELOPER APPLICATION: DA3.3.03</p>



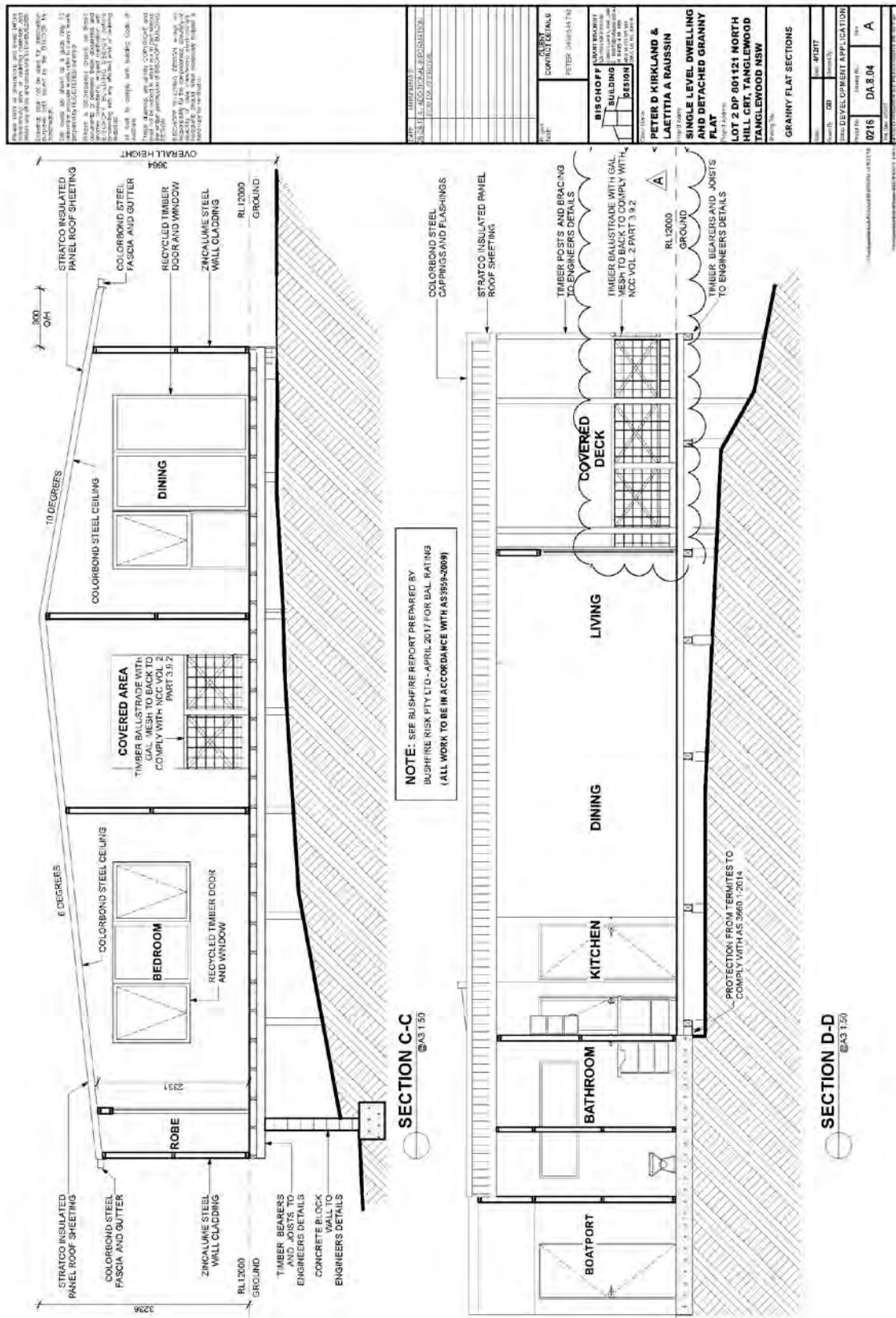
<p>BISCHOFF BUILDING DESIGN</p> <p>11/18 11/18</p>		<p>PROJECT DESCRIPTION</p> <p>PETER D KIRKLAND & LAETITIA A RAUSSIN SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT</p> <p>Project No: 01154 NORTH HILL Site: CRT, TANGLEWOOD, TANGLEWOOD, NSW 2418</p>
<p>DATE: 11/11/14 SCALE: 1:50 PROJECT REFERENCE:</p>	<p>CONTRACT DETAILS</p> <p>11/11/14 11/11/14</p>	<p>SECTION D-D, SECTION C-C</p> <p>DA 5.02</p>
<p><small>THESE DRAWINGS ARE THE PROPERTY OF BISCHOFF BUILDING DESIGN AND ARE NOT TO BE REPRODUCED, COPIED, OR DISTRIBUTED WITHOUT THE WRITTEN PERMISSION OF BISCHOFF BUILDING DESIGN. ANY UNAUTHORIZED REPRODUCTION OR DISTRIBUTION IS STRICTLY PROHIBITED. THE CLIENT ACCEPTS THAT THE DRAWINGS ARE PROVIDED AS A GUIDE ONLY AND THAT THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES. THE CLIENT ALSO ACCEPTS THAT THE DRAWINGS ARE NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN PERMISSION OF BISCHOFF BUILDING DESIGN.</small></p>		

<p>THIS DRAWING IS THE PROPERTY OF BISHOPPS ARCHITECTS AND SHOULD NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF BISHOPPS ARCHITECTS.</p> <p>DATE: 08/05/17 DRAWN BY: J. BISHOPPS CHECKED BY: J. BISHOPPS PROJECT NO: 17/001 SHEET NO: 01/01</p>	
<p>CLIENT: PETER D. KIRKLAND & LAETITIA A. RAUSSIN</p>	<p>CONTRACT NO: 17/001</p>
<p>PROJECT: SINGLE LEVEL DWELLING AND DETACHED GRANNY FLAT</p>	<p>DATE: 08/05/17</p>
<p>LOT 2 DP 801121 NORTH WILKINSON ROAD WANDLEWOOD NSW</p>	<p>SCALE: 1:100</p>
<p>GRANNY FLAT ROOF PLAN</p>	<p>DATE: 07/16</p>
<p>DA 8/02</p>	<p>A</p>

NOTE: SEE BUSHBIRE REPORT PREPARED BY BUSHBIRE RISK PTY LTD - APRIL 2017 FOR BAL RATING (ALL WORK TO BE IN ACCORDANCE WITH AS3098-2009)



GRANNY FLAT ROOF PLAN
 @A3:1:100



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 - 272m²

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 approximately 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

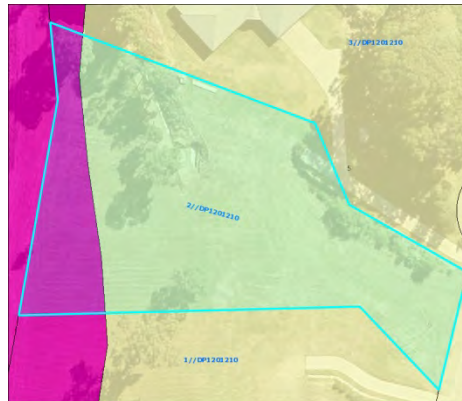
The site is mapped as being bushfire prone however this application does not have any implications regarding the application of this clause.

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

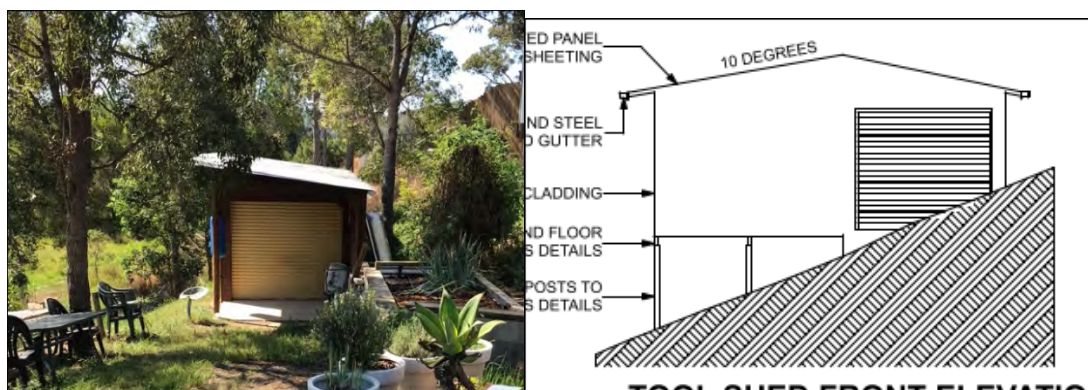
A1-Residential and Tourist Development Code

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

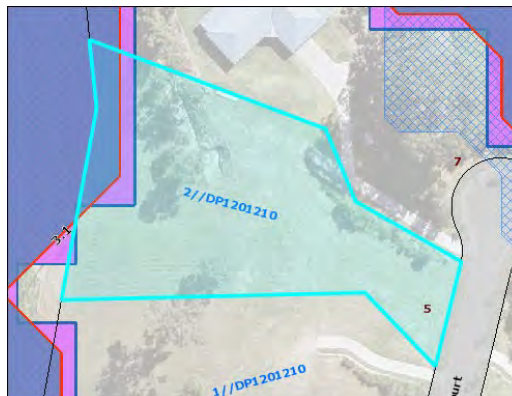
the site, 1 space per dwelling plus provision for driveway parking of another vehicle is required.

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

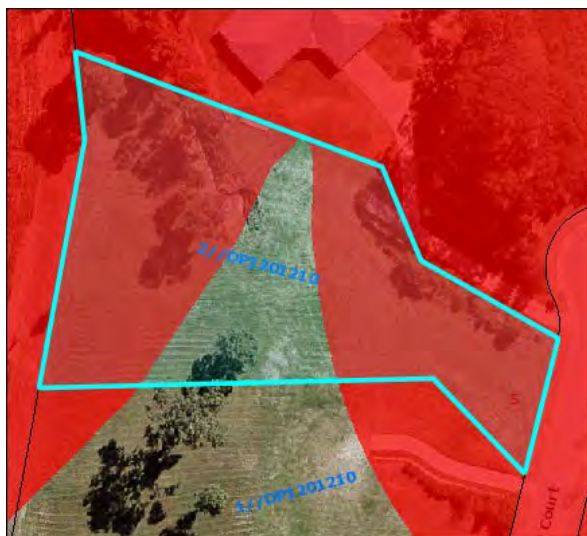
Surrounding Landuses/Development

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 busfire 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.

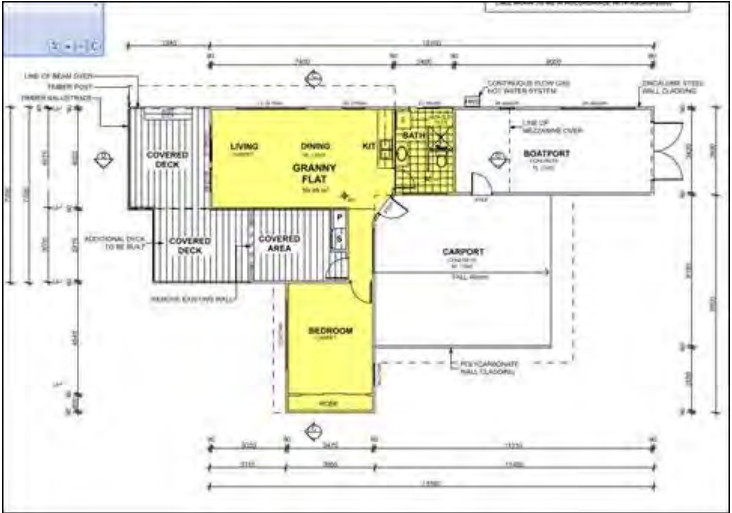
The consent will be conditioned stating that removal of any trees is not approved and any future tree removal will require approval (where statutorily required).

(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.

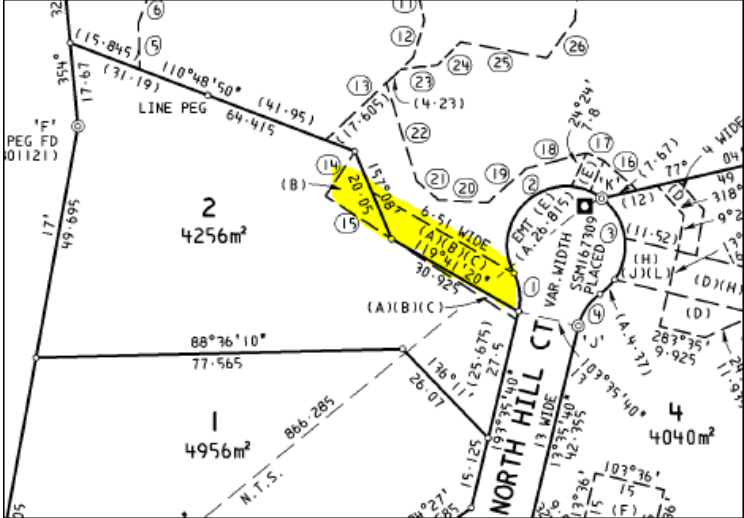
During the submission period and throughout the assessment process the application has been the subject of numerous objections from a neighbouring property. The below table summarises each of the issues raised by the objector and includes the Councils response to those issues. Due to the large number 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
<p>Plans inaccurate ("fudged")</p>	<p>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.</p>
<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>The diagram is a detailed floor plan of a secondary dwelling. It features a central 'GRANNY FLAT' containing a 'LIVING' area, 'DINING', 'KIT' (kitchen), and 'BATH'. To the right of the granny flat is a 'BOATPORT'. Below the granny flat is a 'BEDROOM'. To the right of the bedroom is a 'CARPORT'. The plan also shows several 'COVERED DECK' areas and a 'COVERED AREA'. Dimensions are provided for various sections, and structural notes like 'CONTINUOUS FLOOR OVER FOOT WATER SYSTEM' and 'ENCLOSURE STEEL WALL CLADDING' are present. A north-south orientation is indicated at the top.</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.</p> <p>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>

Summary of objections	Council's response
<p>Boat port should be removed</p> <p>North facing window of boat port</p> <p>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.</p> <p>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.</p> <p>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> <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>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</p>

Summary of objections	Council's response
	<p data-bbox="679 273 1444 331">in the rear yard located approx. 30m from the rear of the proposed secondary dwelling.</p> <p data-bbox="679 349 1444 528">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 data-bbox="679 546 1444 604">The boundary fence and the new extension to the fence mitigate any overlooking impacts into the adjoining property.</p> <div data-bbox="679 622 1331 1102">  </div> <div data-bbox="679 1120 1264 1868">  </div> <p data-bbox="679 1886 1444 2007">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="679 2024 1444 2080">Even if the new deck had potential to have a sight line to the neighbours pool the neighbour could erect a vegetation screen</p>

Summary of objections	Council's response
	<p>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>
<p>Use of driveway</p>	<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 lawfull use of this driveway is protected by this instrument.</p> 
<p>Removal of koala habitat trees</p>	<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>
<p>Compliance with BCA standards Compliance with fire safety standards</p>	<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)

- 3 [PR-PC] Development Application DA18/0064 for a Change of Use to Hair Salon and Associated Fit Out on the Mezzanine Level of Existing Vehicle Repair Station at Lot 20 Section 2 DP 2974 No. 22-24 Prospero Street, South Murwillumbah; Lot 19 Section 2 DP 2974 No. 26-28 Prospero Street, South Murwillumbah

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:

Consent is sought of the use of an existing mezzanine level of an approved vehicle repair business to a hair salon including associated fit out.

The proposed salon is 8.75m² comprises of a single chair, hair washing basin and handwashing basin and will employ one person.

The existing approved vehicle repair/smash repair business will continue to operate from the site in conjunction with the hair salon.

The application is being made with respect to the Parking Contribution Waiver for South Murwillumbah which was endorsed at the Council meeting of 8 May 2017. The resolution states:

"RESOLVED that for a period of 12 months commencing 1 June 2017, a general amnesty/waiver on payment of upfront parking contribution fees or amnesty/waiver on provision of car parks under the car parking development code be provided and this amnesty/waiver be limited to a maximum of 3 (parking) spaces per new or expanding businesses in the Murwillumbah Central Business District and South Murwillumbah (specifically Prospero Street)."

The existing vehicle repair station has benefit of the four approved on-site parking spaces and no further on-site parking is able to be provided to accommodate the proposed hair salon which requires 2 parking spaces in accordance with Section A2 of the Tweed Development

Control Plan 2008. As such a waiver of the non-supplied parking spaces is requested in accordance with the above Council resolution.

The application has been reviewed internally by the Building, Environmental and Water and Wastewater Units with no objections to the proposal subject to conditions.

RECOMMENDATION:

That Development Application DA18/0064 for a change of use to hair salon and associated fit out on the mezzanine level of existing vehicle repair station at Lot 20 Section 2 DP 2974 No. 22-24 Prospero Street, South Murwillumbah; Lot 19 Section 2 DP 2974 No. 26-28 Prospero Street, South Murwillumbah be approved subject to the following conditions:

GENERAL

1. **The development shall be completed in accordance with the Statement of Environmental Effects and Plan for Hair Salon prepared by the applicant and dated 30 January 2018, except where varied by the conditions of this consent.**
[GEN0005]
2. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0115]
3. **A Building Certificate Application is to be lodged within 90 days of the date of this Consent with respect to the mezzanine located on Lot 20 Sec 2 DP 2974 No. 22 Prospero Street South Murwillumbah. The Building Certificate Application is to include a structural engineers certificate of structural adequacy and details of the upgrading required to the stairs and associated handrails/balustrading to satisfy the requirements of Part D of NCC -2016.**
[GENNS01]
4. **Any proposed signage is to be the subject of an application to Council where statutorily required.**
[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

5. Section 7.11 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 7.11 Contributions have been paid and the Certifying Authority has sighted Council's receipt confirming payment.

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

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 7.11 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:**
 1.4 Trips @ \$1415 per Trips \$1,188.60
 (\$1,317 base rate + \$98 indexation)
 (\$792.40 has been subtracted from this total as this development is deemed an 'Employment Generating Development')
 S94 Plan No. 4
 Sector9_4
- (b) **Extensions to Council Administration Offices & Technical Support Facilities**
 0.0044 ET @ \$1935.62 per ET \$8.52
 (\$1,759.90 base rate + \$175.72 indexation)
 S94 Plan No. 18

[PCC0215]

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

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

BELOW IS ADVICE ONLY

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

Water = 0.2161 ET @ \$13,632 = \$2,945.90
 Sewer = 0.5161 ET @ \$6,549 = \$3,379.95

[PCC0265]

7. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water and sewerage works prior to the issue of a Construction Certificate. This application is to include works as executed drainage plans and certification of all works to AS 3500 in respect of all unauthorised plumbing and sanitary drainage.

[PCC1195]

8. To ensure that the building (22-24 Prospero Street South Murwillumbah) is provided with a satisfactory level of fire safety/NCC compliance the following works are required:
- i. Egress from the building is to be upgraded in accordance with the requirements of Part D of the NCC-BCA. In particular an additional exit door is to be provided to the northern elevation;
 - ii. Door/s in a required exit, forming part of, or in the path of travel to a required exit shall be readily openable without a key from the side that faces a person seeking egress by a single hand action on a single device which is located between 900mm and 1.2m from the floor. NCC-BCA Clause D2.2;
 - iii. A fire hose reel system must be provided throughout the building in accordance with AS 2441. The fire hose reels are to be located within 4 m of an exit and so that the nozzle end of a fully extended fire hose fitted to the reel and laid to avoid any partitions or other physical barriers will reach every part of the building. NCC- BCA Clause E1.4, Australian Standard 2441;
 - iv. Portable fire extinguishers containing an extinguishing agent suitable for the risk shall be provided throughout the building to the requirements of AS 2444 - 2001;
 - v. Emergency lighting is to be provided throughout the building in accordance with Part E4 of the NCC- BCA;
 - vi. Exit signs are to be provided in appropriate positions indicating the direction to a required exit to ensure that persons occupying or visiting the units are able to locate the paths of travel to the exits in accordance with Clause E4.6 of the NCC-Building Code of Australia;
 - vii. The stairs and associated handrails/balustrading to the mezzanine are to be upgraded in accordance with Part D of the NCC - BCA and AS 1428.1 - 2009.

Prior to the release of the Construction Certificate, details demonstrating compliance with the above mentioned requirements are to be submitted to and approved by the nominated PCA.

Further to the above fire upgrading, the option is available to submit a fire engineering report containing an alternative solution addressing the Performance Requirements contained in Volume 1 of the Building Code of Australia relating to the non-compliance issues arising from the above BCA assessment. This report is to be submitted to the nominated PCA for assessment and determination prior to issue of the Construction Certificate.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

9. 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]

10. 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]

11. 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]

DURING CONSTRUCTION

12. 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]

13. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

14. 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]

15. 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]

16. 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]

17. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 6.6 of the Environmental Planning and Assessment Act 1979.

[DUR0405]

18. 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]

19. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011.

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

20. 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]
21. Fire hose reels shall be installed in accordance with the provisions of Part E1.4 of the Building Code of Australia and comply with Australian Standard AS1221 and AS2441.
However, they shall not be installed until the PCA has been furnished with a certificate, signed by a Hydraulics Engineer stating that the design and proposed manner of installation complies with the relevant standards.
- [DUR1255]
22. Exits are to be provided so that no point on the floor of the building shall be more than 20 metres from:
- (a) an exit; or
 - (b) a point from which travel in different directions to two exits is available in which case the maximum distance to one of those exits shall not exceed 40 metres.
- [DUR1285]
23. Exit signs which comply with Part E4.5 of the Building Code of Australia and are designed in accordance with Part E4.8 of the Building Code of Australia and are to be installed. Mounting heights shall be in accordance with AS2293.1.
- [DUR1295]
24. Emergency lighting to comply with Part E4.2 of the Building Code of Australia shall be provided. Details of the system to be used and a certificate from the electrical engineer to certify that the system will comply with all relevant requirements of Part E4.4 of the Building Code of Australia and AS 2293.1 are to be submitted to the PCA prior to installation.
- [DUR1305]
25. Doors forming exits, paths of travel to exits and parts of exits shall comply with the relevant provisions of D2.19 and D2.20 and D2.21 (door latch to operate by single handed, downward action on egress) of the Building Code of Australia.
- [DUR1315]
26. 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]

27. 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]

28. 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]

29. 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]

30. 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]

31. 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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

32. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

33. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 6.9 and 6.10 unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).
[POC0205]
34. 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]
35. 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]
36. 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]
37. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.
[POC1055]
38. An Occupation Certificate shall not be issued until a Building Certificate is obtained for the mezzanine level located on Lot 20 Sec 2 DP 2974 No. 22 Prospero Street South Murwillumbah.
[POCNS01]

USE

39. Any person carrying out skin penetration on the premises shall cause a copy of the NSW Health Guidelines on Skin Penetration and also a copy of the NSW Health, Skin Penetration Code of Best Practice to be kept on the premises.
[USE0955]
40. The carrying out of any skin penetration procedure as defined in Section 5 of the Public Health Act 2010 is prohibited without the prior approval of Council's Environmental Health Officer.
[USE0960]
41. Skin penetration activities at the premises shall be conducted in accordance with the Public Health Act 2010 and Part 4 of the Public Health Regulation 2012.
[USE0975]

REPORT:

Applicant: Ms C Wuebben

Owner: Mr Bernard P Quinn & Mrs Margaret E Quinn

Location: Lot 20 Section 2 DP 2974 No. 22-24 Prospero Street, South Murwillumbah; Lot 19 Section 2 DP 2974 No. 26-28 Prospero Street, South Murwillumbah

Zoning: B5 - Business Development

Cost: \$10,000

Background:

Consent is sought for the change of use of a mezzanine level of an existing vehicle repair to a hair salon including associated fit out.

The subject site is approved for the purposes of a car repair station subject to D89/0301 granted 19 May 1989. An additional approval to allow spray painting and panel beating associated with the car repair business was approved 16 May 2008. Both these approvals span both Lots 19 and 20 in DP 2974.

This application relates to the use of an existing mezzanine level and associated fit out for the purposes of a hair salon. A search of Council records could not locate any plans which approved the construction of the mezzanine level which was previously used as a storage area by the vehicle repair business. As such an application for a building certificate is required for the mezzanine level as part of conditions of consent for the hair salon.

The proposed hair salon is **8.75m²** and comprises of a single chair, hair washing basin and handwashing basin. The existing access stairs to the mezzanine level are proposed to be upgraded to comply with National Construction Code standards.

The existing approved vehicle repair/smash repair business will continue to operate from the site in conjunction hair salon.

The application is being made with respect to the Parking Contribution Waiver for South Murwillumbah which was endorsed at the Council meeting of 8 May 2017. The resolution states:

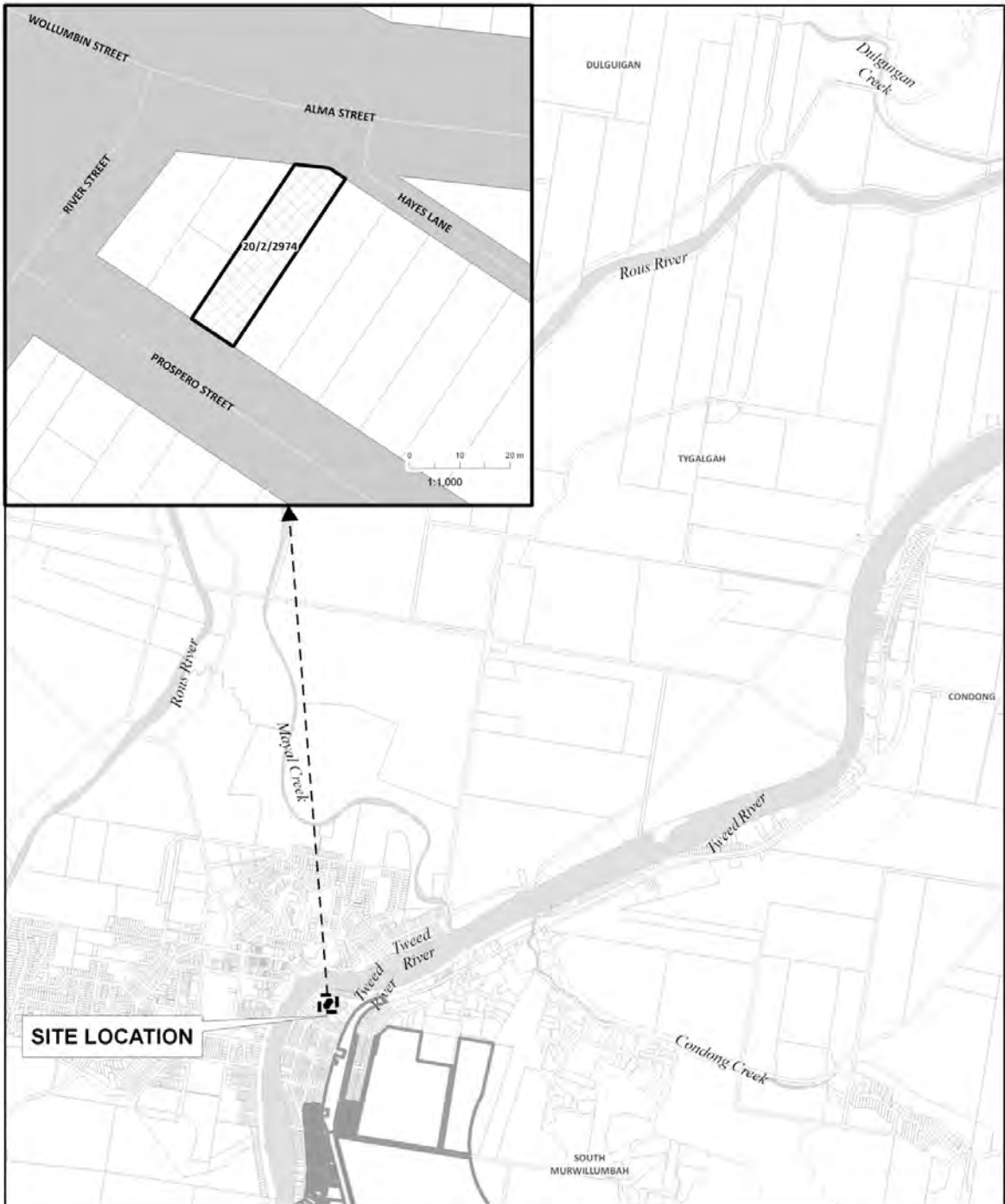
"RESOLVED that for a period of 12 months commencing 1 June 2017, a general amnesty/waiver on payment of upfront parking contribution fees or amnesty/waiver on provision of car parks under the car parking development code be provided and this amnesty/waiver be limited to a maximum of 3 (parking) spaces per new or expanding businesses in the Murwillumbah Central Business District and South Murwillumbah (specifically Prospero Street) region."

The site currently accommodates parking for four vehicles as required by the development consent for the existing car repair businesses. No further parking is available on site.

The proposed hair salon will employ a single person and requires 2 parking spaces to comply with Section A2 of the Tweed Development Control Plan 2008 being provision for 1 staff parking space plus 1 customer space. As such a waiver is requested for the two unsupplied parking spaces in accordance with the above Council resolution.

The application has been reviewed internally by the Building Services Unit, Environmental Health Unit, Traffic Engineer and Water and Wastewater Unit with no objections to the proposal subject to conditions.

SITE PLAN:



Site Plan

Lot 20 Section 2 DP 2974
22-26 Prospero Street, SOUTH MURWILLUMBAH

0 0.35 0.7 Km
1:30,000



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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastre: 12/04/2018
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T: (02) 6670 2400 / 1300 292 872
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TWEED
SHIRE COUNCIL

Date Printed: 12 April, 2018

AERIAL:



 <p>1:500 A4 Portrait 0 5 10 m</p> <p>GDA Map Projection: Universal Transverse Mercator Horizontal Datum: Geoidetic Datum of Australia 1994 Grid: Map Grid of Australia, Zone 56</p>	 <p>Child and Cultural Centre 3 Tambulgan Road Murwillumbah NSW 2454 PO Box 816 Murwillumbah NSW 2454</p> <p>TWEED SHIRE COUNCIL T (02) 6670 2400 1300 292 812 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	<p>Aerial Photography 2015</p> <p>Lot 20 Section 2 DP 2974 22-26 Prospero Street, SOUTH MURWILLUMBAH</p>	<p>© Land and Property Information (LPI) and Tweed Shire Council © Tweed Shire Council <i>Boundaries shown should be considered approximate only.</i></p>
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Author: S.Scott - GIS Date Printed: 12 April 2018

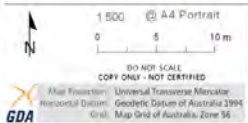
LEP ZONE MAPPING:



 Subject Land Tweed Local Environmental Plan 2014

Zone

-  B5 Business Development
-  RE1 Public Recreation



Site Plan - Local Environmental Plan

Lot 20 Section 2 DP 2974
22-26 Prospero Street, SOUTH MURWILLUMBAH

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Date Printed: 12 April 2018

DEVELOPMENT/ELEVATION PLANS:



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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

The particular aims of this Plan are as follows:

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

The proposed hair salon is consistent with the aims of the plan as it contributes to the Shire's sustainable economic development. The proposal is consistent with the zoning of the land and development controls contained within the LEP and development control plans.

Clause 2.3 – Zone objectives and Land use table

The site is zoned B5 Business development with the following objectives:

- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To provide for retailing activities that are not suited to, or desirable in, other business zones or that serve the needs of other businesses in the zone.*
- *To accommodate a wide range of employment generating uses and associated support facilities including light industrial, transport and storage activities.*

The proposed hair salon is consistent with the objectives of the zone as it contributes to the mix of business in the locality which is desirable to support the vitality of the business centre of South Murwillumbah.

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

Not applicable as no subdivision is proposed.

Clause 4.3 - Height of Buildings

Not applicable as the application relates to an existing building and internal works only are proposed. The subject building remains compliant with the 10m building height control.

Clause 4.4 – Floor Space Ratio

The site is mapped as being subject to a FSR of 2:1. The total area of the subject lots is 809.4m² and the current approvals for the site have an FSR of 1:1. The proposal relates to the use of an unauthorised mezzanine level which has an approximate area of 30m². As such the site has a FSR of 1.04:1 which is compliant with the control.

Clause 4.6 - Exception to development standards

Not applicable as no variations to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable as the proposal does not relation to a miscellaneous permissible to which this clause applies.

Clause 5.5 – Development within the Coastal Zone

Not applicable as the site is not located on land to which this clause applies.

Clause 5.10 - Heritage Conservation

Not applicable as the site is not within a heritage conservation area nor is it a conservation item listed in schedule 5.

Clause 5.11 - Bush fire hazard reduction

The site is not mapped as being bushfire prone. Nevertheless the proposal does not have any implication with regard to the application of this clause.

Clause 7.1 – Acid Sulfate Soils

The site is mapped as possibly containing acid sulfate soils class 4. The proposal relates to an existing internal space and no soil disturbance is proposed to facilitate the application.

Clause 7.2 - Earthworks

Not applicable as no earthworks are proposed.

Clause 7.3 – Flood Planning

The site is mapped as being flood prone land and is located within a high flow area. The proposal relates a change of use of an existing approved commercial premises with only relatively minor alterations proposed. The proposal will not result in any additional adverse impacts on flood behaviour and the environment and is considered to be compatible with the flood hazard of the site. The proposal is considered to be compliant with the provisions of this clause.

Clause 7.4 - Floodplain risk management

The proposal relates to commercial development within a business zone and is not a risk sensitive development listed within this clause. The proposed is considered to be compliant with the provisions of this clause.

Clause 7.5 - Coastal risk planning

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

Clause 7.6 - Stormwater Management

The proposal relates to relatively minor internal alterations only and as such will not impact the existing stormwater arrangements for the site. The proposed is considered to be compliant with the provisions of this clause.

Clause 7.8 – Airspace operations

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

Clause 7.9 - Development in areas subject to aircraft noise

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

Clause 7.10 - Essential Services

All essential services are available to the site including, electricity, telecommunications, sewage and water infrastructure, stormwater drainage and vehicular access.

Other Specific Clauses

There are no other specific clauses applicable to the proposal.

North Coast Regional Plan 2036 (NCRP)

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 is for the hair salon is within an established business locality. 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.

State Environmental Planning Policies

SEPP (Exempt and Complying Development Codes) 2008

No signage is proposed as part of this application and no signage is approved as part of this approval. Business identification signage may be considered as exempt development under the Division 2 of Part 2 of the Codes SEPP if the applicable controls are met. The consent will be imposed with a condition requiring an application for any proposed signage where statutorily required.

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

There are no Draft Environmental Planning Instruments Applicable to this proposal.

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

A2-Site Access and Parking Code

Hair dresser salons are required to provide 2.8 customer parking spaces per 100m² of gross floor area and an additional 0.5 space per 100m² for staff. The proposed hairdresser business has an area of 8.75m² and as such a total of 2 spaces is required for the proposal in accordance with the below calculations.

Customer parking $2.8/100 \times 8.75m^2 = 0.25$ therefore 1 space required

Staff parking $0.5/100 \times 8.75m^2 = .04$ therefore 1 space required

The existing vehicle repair station is required to provide 4 parking spaces in accordance with DA89/301 condition 3:

3. Provision of four (4) off street car parking spaces on Lot 19, as indicated in a letter submitted by the applicant dated 15 May, 1989. The extended area is not to be used for mechanical repairs or storage etc.

No car parking conditions were applied to the most recent consent DA08/0225 for the change of use to car repair and panel beating. The Delegated Report and the SEE for DA08/0225 indicated that the spray booth and panel beating activities related to the exiting approved vehicle repair activities on site and would not generate additional traffic to the site.

Plans for DA89/301 and DA08/0225 both show internal parking for four vehicles on Lot 19 adjacent to the Hayes Lane entrance to the building. Over time the activities relating to car repair and panel beating have separated into two separate businesses occupying the site being Tweed Valley Automotive and Murwillumbah Smash Repairs.

The plans for the current application show parking for four vehicles are still provided on site, although in a different location than previously approved. This is considered to be generally acceptable with the requirements of the current approvals for the car repair activities on site.

Proposed plans for hair salon showing car parking associated with existing approved car repair businesses

The proposal for the hair salon is unable to provide on-site parking for two vehicles as required by the above calculations and the Statement of Environmental Effects submitted with the application has requested consideration of this application with respect to the Council Resolution of the 18 May 2017 which resolved to waive un-supplied parking provision for up to 3 spaces for new and expanding businesses in South Murwillumbah. The resolution states:

"RESOLVED that for a period of 12 months commencing 1 June 2017, a general amnesty/waiver on payment of upfront parking contribution fees or amnesty/waiver on provision of car parks under the car parking development code be provided and this amnesty/waiver be limited to a maximum of 3 (parking) spaces per new or expanding businesses in the Murwillumbah Central Business District and South Murwillumbah (specifically Prospero Street) region."

As such this proposal is considered to be acceptable with regard to the provision of parking.

A17 - Business, Enterprise Corridor and General Industrial Zone

The subject site is zoned B5 Business Development and as such Section A17 of the DCP is applicable to the proposal. Section A17 establishes aims, objectives and controls for site design, building envelope and design, landscaping and ancillary uses within Business Zones. The proposed hair salon is to be located in an existing commercial premises within an established business precinct and does not propose any external physical works. As such the development controls within A17 are not applicable in this instance.

B22-Murwillumbah Town Centre

The subject site is located within the Prospero Street Precinct to which this plan applies. General development controls within this locality plan relate primarily to new construction or rebuilding activities and as such are not applicable to this proposal of the use of an unauthorised mezzanine level for a hair salon in which only minor internal alterations are proposed. Specific controls relating to the Prospero Street Precinct were deferred when the plan was adopted and as such there are no specific development controls related to the proposal. Nevertheless the proposal is not inconsistent with the intent of this plan.

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

There are no planning agreements that have an effect on this proposal.

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

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

The subject site is not nominated as coastal land under this policy and as such this consideration of this clause is not applicable.

Clause 92(1)(b) Applications for demolition

No applicable as no demolition is proposed.

Clause 93 Fire Safety Considerations

The application relates to the change of use of an existing vehicle repair business to a hair salon and as such this clause applies. The application has been reviewed by the Building Services Unit who have recommended that the stairs, handrails, exits, emergency lighting, exit signs and fire hose reels be upgraded to BCA-NCC requirements and the consent is to be conditioned appropriately. The provisions of this clause have been met.

Clause 94 Buildings to be upgraded

The proposal requires the alteration of an existing building to facilitate the development and as such this clause is applicable. The existing mezzanine level and associated access does not appear to be approved. The consent will be conditioned to require a building certificate for the mezzanine level. Alterations are required to the existing mezzanine level to facilitate the proposal. The consent will be conditioned to ensure that satisfactory level of fire safety/NCC compliance is achieved. The provisions of this clause are satisfied.

(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 subject site is approximately 16km from the coastline and as such is unlikely to impact upon coastal land to which this management plan applies.

Tweed Coast Estuaries Management Plan 2004

The site is not located in the area to which this plan applies.

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

The site is not located in 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

Context and Setting

The proposed hair salon is to be located in an existing commercial premises within an established business precinct. The proposal is consistent with current and future uses of the locality and is permissible within the zone.

Access, Transport and Traffic

The proposal relates to the change of use of an existing commercial premises. The hair salon which will employ a single person is not expected to create an unacceptable demand on the road network. On-site parking is not provided and pedestrian access to the hair salon will be via the existing footpath network of South Murwillumbah.

Flora and Fauna

The proposal relates to the change of use of an existing commercial premises. There is no external work proposed and the proposal will not impact upon flora or fauna of the locality.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is within an established business precinct of South Murwillumbah. The proposed hair salon is permissible within the zone and is unlikely to result in negative impacts to surrounding business uses. The site is considered to be suitable for the proposed development.

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

The proposal did not require notification and no public or public authority submissions were received in relation to the proposal.

(e) Public interest

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

OPTIONS:

1. Approve the proposal subject to the conditions included in this report.
2. Refuse the application for specified reasons.

Option 1 is recommended.

CONCLUSION:

The proposed hair salon is considered to be acceptable with respect to compliance with the objectives of the zone and the aims of the Tweed Local Environment Plan 2014. The proposal represents appropriate business development for the locality and the Shire. The waiver of the requirement for additional parking provision as resolved by Council removes a barrier to the establishment of this business which contributes to the economic vitality of South Murwillumbah.

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.

4 [PR-PC] Development Application DA17/0854 for a Change of Use from Dwelling and Secondary Dwelling to Detached Dual Occupancy and Two Lot Strata Subdivision at Lot 57 DP 263729 No. 23 Royal Drive, Pottsville

SUBMITTED BY: Development Assessment and Compliance

nhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

Council is in receipt of a development application for the use of two approved dwellings as a dual occupancy development and associated strata subdivision. The dwellings were subject to separate approvals as a single dwelling and a secondary dwelling prior to their construction and therefore the proposed developments seeks consent to change the use of those dwellings (principal dwelling and secondary dwelling) as a dual occupancy and an associated two lot strata subdivision.

The proposed plan of strata subdivision for the proposed dual occupancy is provided in Figure 1 below.

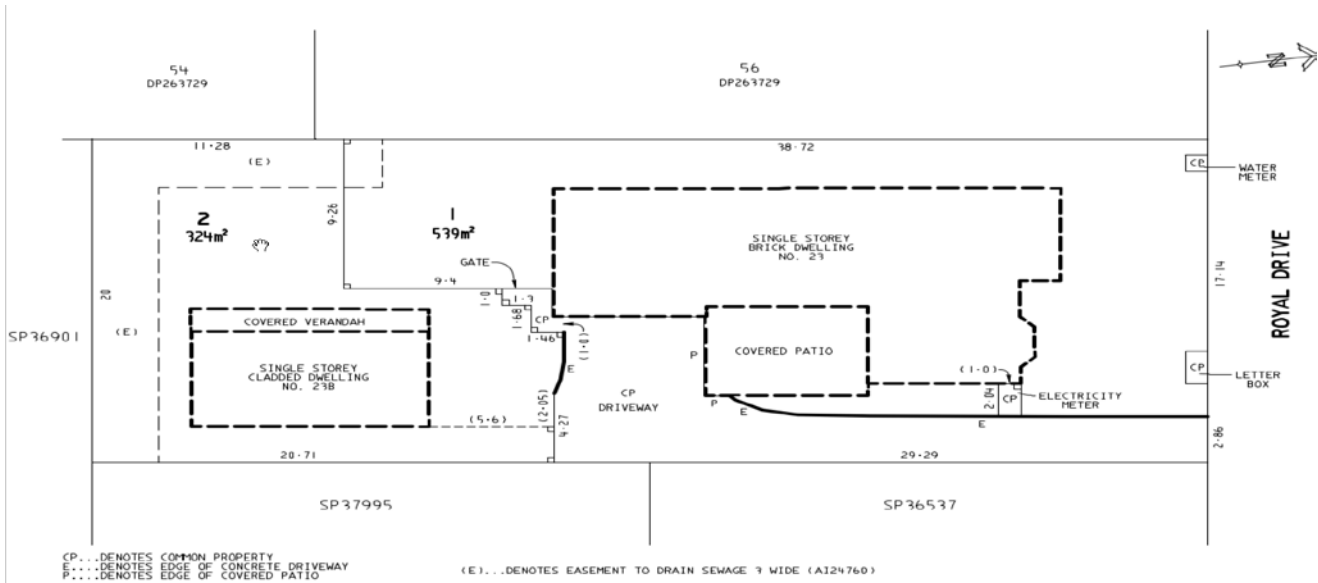


Figure 1: Proposed Plan of Subdivision – 23 Royal Drive POTTSVILLE

Clause 4.1 relates to the minimum subdivisions lot size which under the LEP is mapped as 450m² at the subject site. The proposed strata subdivision lot sizes are as per the following:

Proposed Lot 1: 539m² (complies)

Proposed Lot 2: 324m² (28% variation)

As highlighted above, the lot size for proposed lot 2 is less than the minimum prescribed under Clause 4.1 of the LEP and therefore a variation to the development standard is sought by the applicant.

Accordingly, a Clause 4.6 variation request has been submitted with the application and due to the extent of variation being greater than 10% is reported to a full Council for determination in accordance with the Planning Circular PS17-006 'Variations to development standards' issued on 15 December 2017.

The Planning Circular further states that in accordance with Clause 46 of the *Environmental Planning and Assessment Regulation 2000* that Council may assume the Secretary's concurrence for exceptions to development standards for application made under Clause 4.6 of the Standard Instrument LEP.

The subject site is mapped as bushfire prone land and a review of previous records for the building approvals on site indicate that previous developments were not considered under Section 79BA of the Environmental planning and Assessment Act (this Section of the Act sets out the requirement for a Bushfire Report or referral of applications to the NSW Rural Fire Service). As such, the development did not satisfy the exclusions requirements for Bushfire Safety Authority under Clause 45 of the Rural Fires Regulation 2013.

The application was referred to the NSW Rural Fire Service in accordance with Section 100B of the Rural Fires Act 1997 and General Terms of Approval have been provided.

The application did not require neighbour notification pursuant to Section A11 of the Tweed DCP 2008.

It should be noted that historically development approval was not required for Strata Title Subdivision; however Tweed LEP 2014 now requires development approval for Strata Subdivision.

The application has been considered pursuant to Section 79C of the Environmental Planning & Assessment Act ('the Act') and despite the variation to the minimum lot size for proposed Lot 2; the development suitably satisfies the relevant heads of consideration under Section 79C of the Act and is therefore worthy of support.

RECOMMENDATION:

That:

- A. Clause 4.6 various to Clause 4.1 of the Tweed Local Environmental Plan 2014 regarding the minimum subdivision lot size of the site be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- B. That Development Application DA17/0854 for a change of use from dwelling and secondary dwelling to detached dual occupancy and two lot strata subdivision at Lot 57 DP 263729 No. 23 Royal Drive, Pottsville be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Plan of Strata Subdivision prepared by B & P Surveys Consulting Surveyors referenced T16436/22217D dated 25/09/2017, except where varied by the conditions of this consent.**
[GEN0005]
- 2. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.**
[GEN0135]
- 3. Sewer manholes are present on this site. Manholes are not to be covered with soil or other material.**

Should adjustments be required to the sewer manhole, then applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee. Works will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

[GEN0155]

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

[GEN0190]

5. The approved development shall not result in any clearing of native vegetation without prior approval from the relevant authority.

[GEN0290]

6. A minimum 3.0 metre easement shall be created over the existing sewer on the lot.

7. Both proposed strata lots shall connect to the existing sewer junction located in the South East corner of Lot 57 DP 263729.

8. 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.

9. Water and sewerage reticulation for the proposed building shall be connected to the existing internal water and sewerage of the lot, ensuring the lot only has one connection to Council's public water and sewer infrastructure.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

BELOW IS ADVICE ONLY

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

Stage 1

Water: 1.9 ET @ \$13,632 = \$25,900.80

Sewer: 2.85 ET @ \$6,549 = \$18,664.65

Stage 2
Water: Nil
Sewer: Nil

[PCC0265]

11. 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]

DURING CONSTRUCTION

12. 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]

13. The Applicant shall submit the appropriate 'Application for Water Service Connection' to Council's Water Unit to facilitate a property service water connection for proposed Lot 2 on existing Lot 57 DP 263729, from the existing water main in Royal Drive. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

[DUR2800]

USE

14. The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of to the satisfaction of Council's General Manager or his delegate as outlined in the Liquid Trade Waste Services Agreement and General Conditions of Approval.

[USE1055]

PRIOR TO ISSUE OF A SUBDIVISION CERTIFICATE

15. 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.

A Subdivision Certificate shall NOT be issued unless the Certifying Authority is satisfied provisions have been complied with and the Certifying Authority has sighted Council's Certificate of Compliance signed by an authorised officer of Council.

BELOW IS ADVICE ONLY

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

Water: 1.0 ET @ \$13,632 = \$13,632

Sewer: 1.0 ET @ \$6,549 = \$6,549

[PSC0165]

16. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

- | | |
|---|----------------|
| (a) Tweed Road Contribution Plan:
1.3 Trips @ \$1380 per Trips
(\$1,284 base rate + \$96 indexation)
S94 Plan No. 4
Sector8_4 | \$1,794 |
| (b) Open Space (Casual):
0.75 ET @ \$564 per ET
(\$502 base rate + \$62 indexation)
S94 Plan No. 5 | \$423 |
| (c) Open Space (Structured):
0.75 ET @ \$645 per ET
(\$575 base rate + \$70 indexation)
S94 Plan No. 5 | \$484 |

(d) Shirewide Library Facilities: 0.75 ET @ \$869 per ET (\$792 base rate + \$77 indexation) S94 Plan No. 11	\$652
(e) Eviron Cemetery: 0.75 ET @ \$127 per ET (\$101 base rate + \$26 indexation) S94 Plan No. 13	\$95
(f) Community Facilities (Tweed Coast - North) 0.75 ET @ \$1457 per ET (\$1,305.60 base rate + \$151.40 indexation) S94 Plan No. 15	\$1,093
(g) Extensions to Council Administration Offices & Technical Support Facilities 0.75 ET @ \$1935.62 per ET (\$1,759.90 base rate + \$175.72 indexation) S94 Plan No. 18	\$1,451.72
(h) Cycleways: 0.75 ET @ \$490 per ET (\$447 base rate + \$43 indexation) S94 Plan No. 22	\$368
(i) Regional Open Space (Casual) 0.75 ET @ \$1132 per ET (\$1,031 base rate + \$101 indexation) S94 Plan No. 26	\$849
(j) Regional Open Space (Structured): 0.75 ET @ \$3974 per ET (\$3,619 base rate + \$355 indexation) S94 Plan No. 26	\$2,981

[PSC0175]

17. The creation of easements for services, rights of carriageway and restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

(a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

[PSC0835]

18. For developments containing less than four attached or detached strata dwellings having a Building Code classification of 1a, each premises must be connected by means of a separate water service pipe, each of which is connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.
19. 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.

[PSCNS01]

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

1. The development proposal is to comply with the subdivision layout identified on the drawing prepared by B & P Surveys as submitted in Appendix B of the 'Bushfire Threat Assessment Report' prepared by Bushfire Certifiers dated 24th January, 2018.

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. To achieve this, the following conditions shall apply:

2. At the issue of subdivision certificate and in perpetuity the entire property of proposed Lot 1 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'.

Landscaping

3. Landscaping on proposed Lot 1 is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

REPORT:

Applicant: CMV Enterprises Pty Ltd
Owner: CMV Enterprises Pty Ltd
Location: Lot 57 DP 263729 No. 23 Royal Drive, Pottsville
Zoning: R2 - Low Density Residential
Cost: Nil

Background:

In 1986 Council granted consent to D86/0062 and 74/86 for the construction of a 3 bedroom single storey dwelling and double garage.

On 10 July 2012 under DA12/0120; Council consented to a development application for the construction of a granny flat (secondary dwelling).

The secondary dwelling is located to the rear of the existing dwelling and is accessible via a common driveway which was constructed in 1986 to service the double garage attached to the principal dwelling (denoted 'existing residence' in plan below).

The subject application seeks to utilise this driveway as 'Common Area' under the proposed strata plan to provide vehicular access to each of the dwellings. The double garage will remain part of Proposed Lot 1 and sufficient space is provided at the head of the driveway for vehicular parking associated with the dwelling located on Proposed Lot 2 (refer to Fig 2 below).

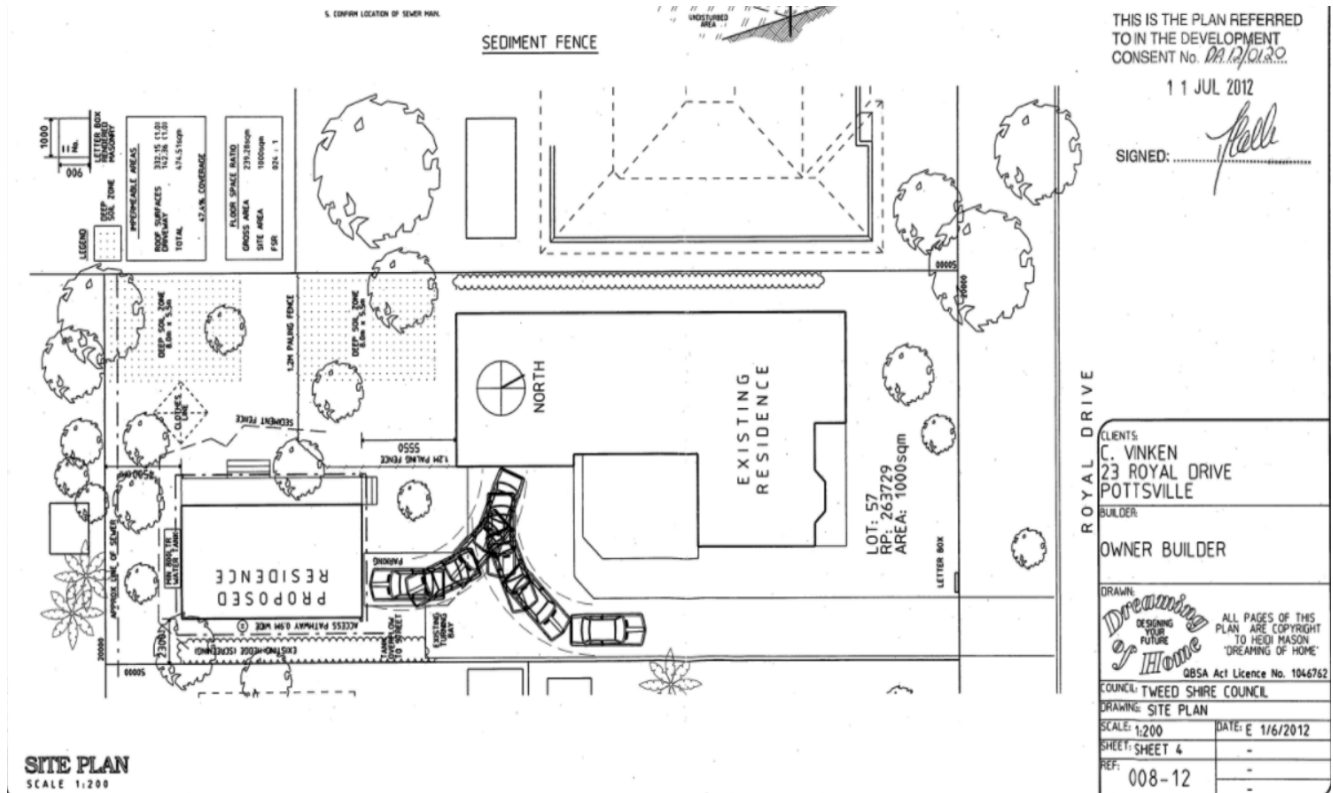
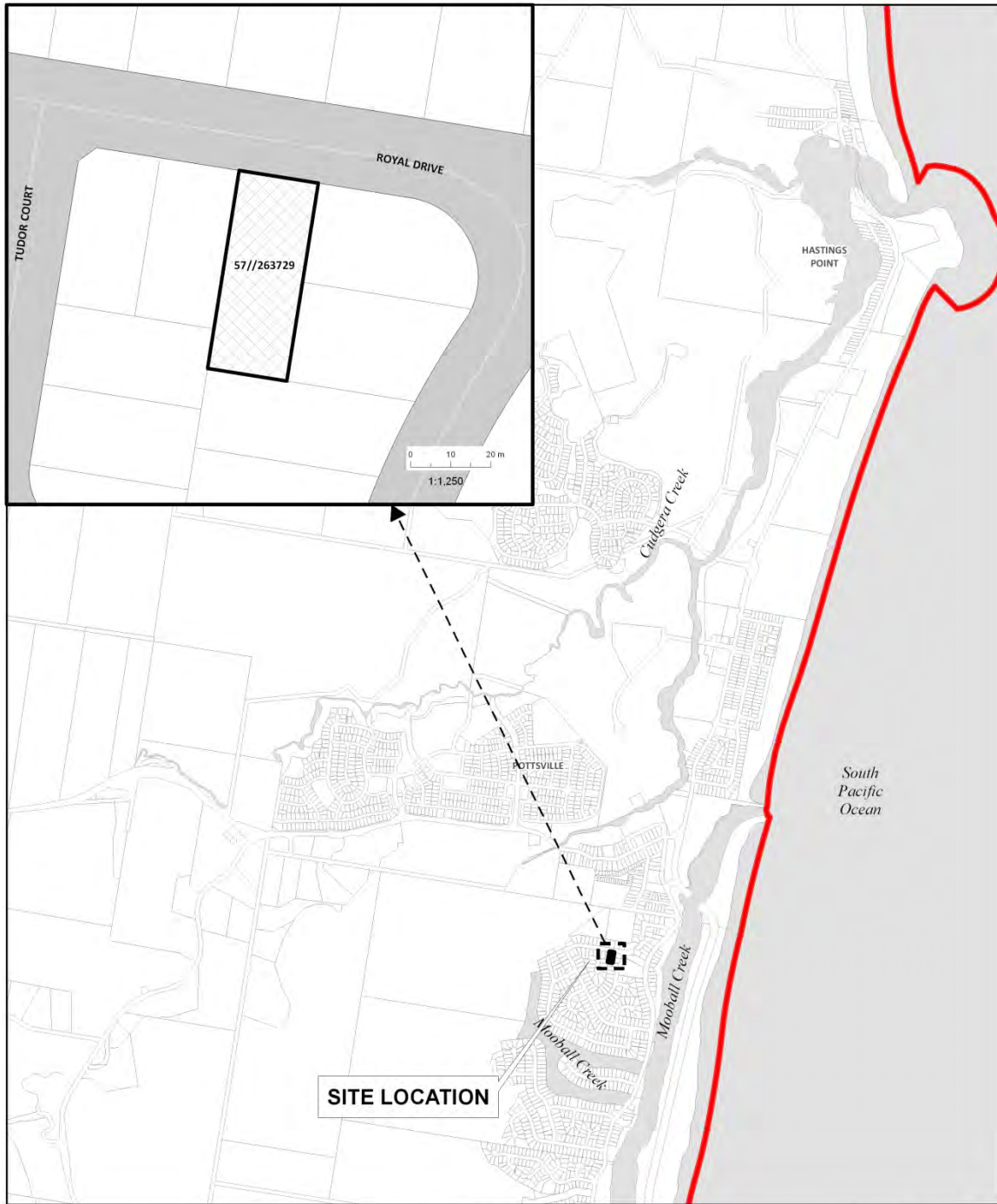


Figure 2: Approved Site plan for DA12/0120 at 23 Royal Drive POTTSVILLE – Secondary dwelling construction

SITE DIAGRAM:



Site Plan

23 Royal Drive Pottsville
DA17/0854

0 0.3 0.6 Km
1:25,000



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GDA  Cadastre: 12/04/2018
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Coordinate System - MGA Zone 56
Datum - GDA 94

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Civic and Cultural Centre
3 Tumbulgun Road
Murwillumbah NSW 2484
PO Box 316
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: 12 April, 2018

AERIAL MAP:



1:500 A4 Portrait
 0 5 10 m
 DO NOT SCALE
 COPY ONLY - NOT CERTIFIED

Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geoid60, Datum of Australia 1996
 Grid: Map Grid of Australia, Zone 56

TWEED
 SHIRE COUNCIL
 Civic and Cultural Centre
 3 Tambourine Road
 Marillambah NSW 2464
 PO Box 616
 Marillambah NSW 2464

T | (02) 6670 2400 | 1 500 292 872
 F | (02) 6670 2429
 W | www.tweed.nsw.gov.au
 E | planning@tweed.nsw.gov.au

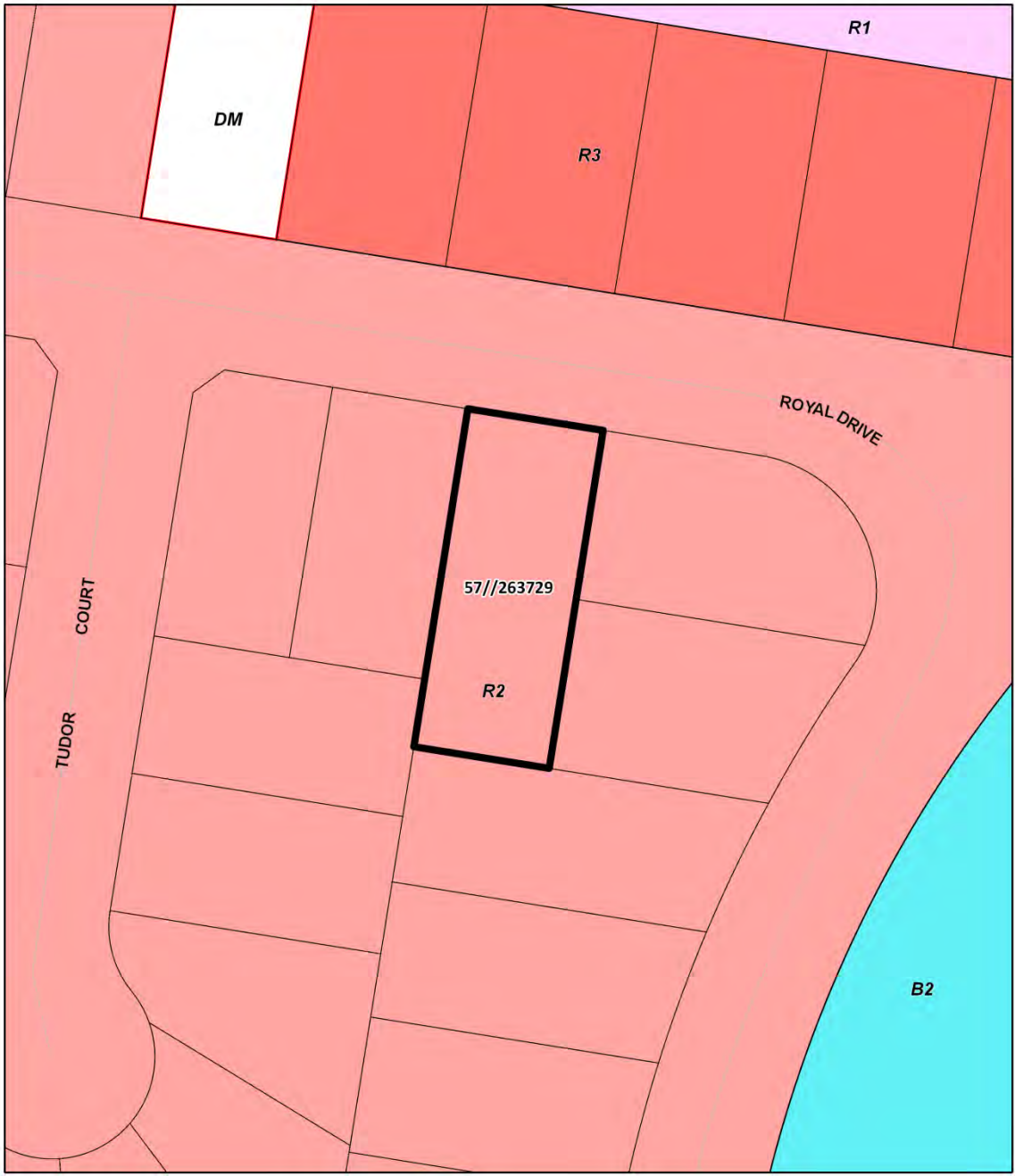
Aerial Photography 2015

23 Royal Drive Pottsville
 DA17/0854

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 Author: S. Scott - GIS Date Printed: 12 April 2016

ZONING MAP:



- Subject Land Tweed Local Environmental Plan 2014
- Zone
- B2 Local Centre
- R1 General Residential
- R2 Low Density Residential
- R3 Medium Density Residential

1:750 @ A4 Portrait
 0 7.5 15 m
 DID NOT SCALE
 COPY ONLY - NOT CERTIFIED
 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geodetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

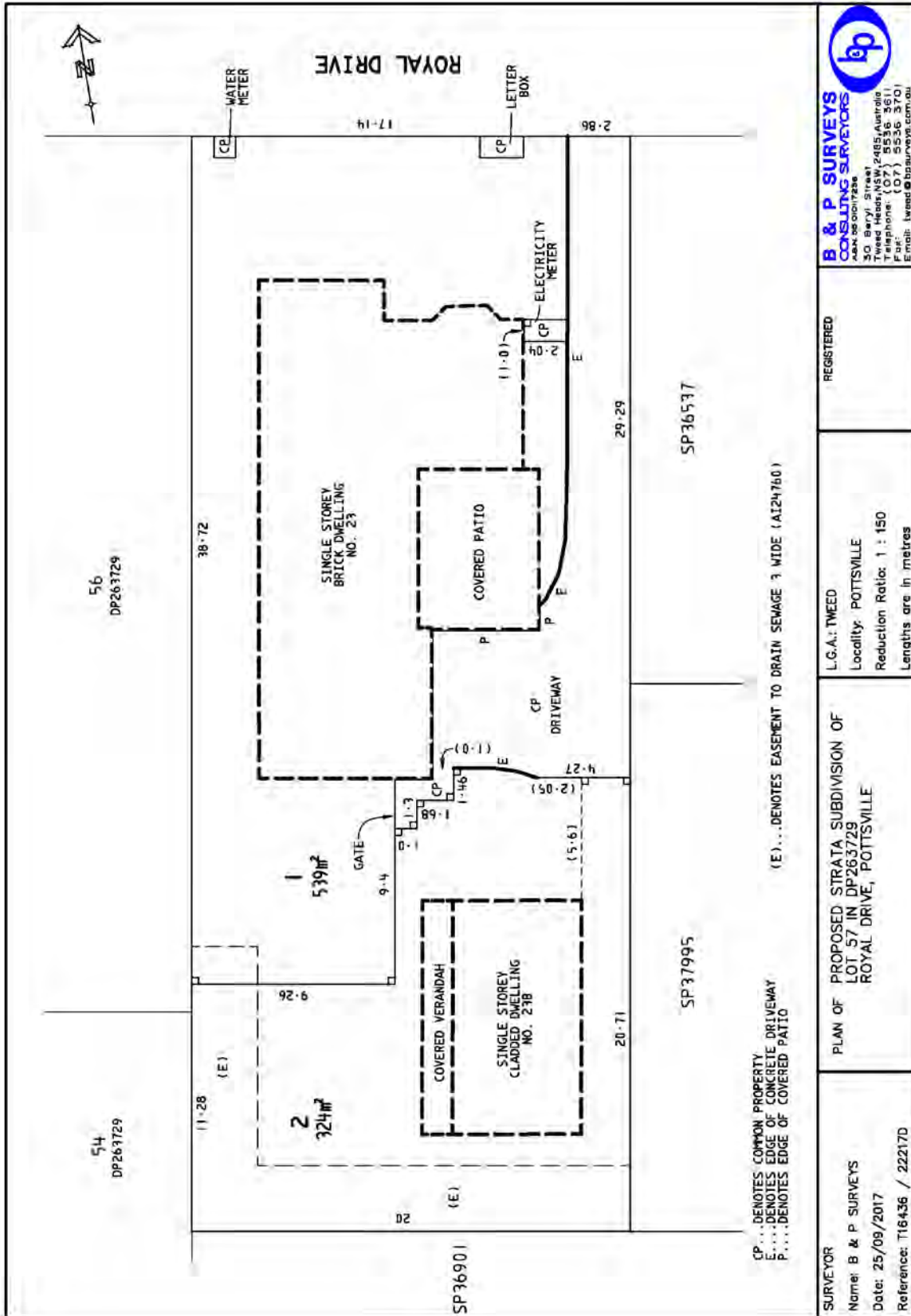
Site Plan - Local Environmental Plan
 23 Royal Drive Pottsville
 DA17/0854

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Date Printed: 12 April 2018

DEVELOPMENT/ELEVATION PLANS:



REGISTERED

L.G.A.: TWEED
Locality: POTTSVILLE
Reduction Ratio: 1 : 150
Lengths are in metres

PLAN OF PROPOSED STRATA SUBDIVISION OF LOT 57 IN DP263729 ROYAL DRIVE, POTTSVILLE

SURVEYOR
Name: B & P SURVEYS
Date: 25/09/2017
Reference: T16436 / 222170

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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

The particular aims of this Plan are as follows:

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

- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed development seeks to modify the approved land use to a dual occupancy development and includes strata subdivision of existing structures. The site is located within a low density residential zone which permits dual occupancy developments. The attributes of the land are such that they afford sufficient area to accommodate a dual occupancy development. The proposed use does not involve any building works and is moderate in size and scale and for these reasons; it is considered that the development (including the proposed strata subdivision) is also consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The subject site is zoned R2 Low Density Residential.

The objectives are:

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

The proposed use of the buildings as a dual occupancy and associated strata subdivision of is consistent with the low density nature of the area. The land is afforded sufficient area to meet the minimum lot size for a dual occupancy development and strata subdivision and therefore meets the objectives of the zone.

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

Clause 4.1 relates to the minimum subdivisions lot size which under The LEP is mapped as 450m² at the subject site. The proposed strata subdivision lot sizes are as per the following:

Proposed Lot 1: 539m² (complies)

Proposed Lot 2: 324m² (28% variation)

As highlighted above, the lot size for proposed lot 2 is less than the minimum prescribed under Clause 4.1 of the LEP and therefore a variation to the development standard is sought by the applicant.

Clause 4.3 - Height of Buildings

The proposed development does not seek to modify the existing single storey height of buildings on the site. Therefore the proposed development does not exceed the maximum building height of 9m prescribed under this clause and approved buildings heights will remain in situ as a result of the proposed development.

Clause 4.4 – Floor Space Ratio

The proposed development does not seek to modify the existing buildings on the site and therefore the floor space ratio remains consistent with the maximum permitted for the site.

The approved gross floor area of the site is 239.28m² which represents a floor space ratio of 0.24:1 which is less than the maximum 0.8:1 permitted for the subject site.

As such, the development complies with the objectives of this Clause.

Clause 4.6 - Exception to development standards

The objectives of this clause are as follows:

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

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 4.1 – Minimum Subdivision lot size.

Council has assumed concurrence from the Department of Planning and Environment in accordance with Planning Circular PS 17-006 to approve proposed variations to Clause 4.1.

The proposed lot details demonstrate a variation to the 450m² minimum lot size control for Proposed Lot 2:

Proposed Lot 1: 539m² (complies)

Proposed Lot 2: 324m² (28% variation)

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

"Prior to the recent NSW Land and Environment Court decision it was recognised that Clause 4.1(4) of the Standard Instrument excluded strata subdivisions from the minimum lot size clause. It is widely considered that a legislative amendment to the Standard Instrument LEP will occur to rectify this anomaly. It is noted that the large number of strata subdivisions in NSW can now be considered non-compliance with the relevant planning instrument, and if the development standard is strictly upheld, this will have far reaching negatively impacts on housing affordability and supply in NSW.

Strict compliance with the development standard is unreasonable for the proposed Dual Occupancy and Strata Subdivision and adherence will prevent the creation of the two (2) titles necessary for the proposed dual occupancy development and as such, render the proposal unfeasible."

With respect to the applicant's justification above, it is considered that in addition to the precedence that has been established to support strata subdivisions that are less than the minimum lot size; the proposed variation does not impact on the objectives of the subdivision controls being achieved by the development. In particular, the proposal does not restrict permitted uses in the residential zone and facilitates the orderly and economic use of the land without having adverse impact on the site and surrounds.

Considering the matters raised under Clause 4.6 and 4.1 of the TLEP 2014, it is considered that there are sufficient planning grounds to justify the contravention of the standard and therefore compliance with the standard is unnecessary in this case. As such, the proposed variation is supported.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable as the proposal does not relate to a use listed under this clause.

Clause 5.10 – Heritage Conservation

The subject site is not within a Heritage Conservation area, is within proximity to a heritage item, nor is considered to impact any known or predicted areas of Aboriginal Cultural Heritage significance. As such, the objectives of this clause are satisfied.

Clause 5.11 - Bush fire hazard reduction

Whilst the development does not seek bush fire hazard reduction as part of the development, the site is mapped to be affected by bushfire prone land.

Review of previous consents for the site revealed that the previous granny flat and principal dwelling approvals were not considered under Section 79BA of the Environmental Planning & Assessment Act 1979. As such, the development fails to satisfy the exclusion provisions under Clause 45(1) of the Rural Fires Regulation 2013.

Accordingly, a request for an addendum Bushfire Assessment Report was issued to the applicant and upon receipt of that report, the application was referred to the NSW Rural Fire Services as development for Special Fire Protection Purposes (SFPP) as 'Integrated Development' under Section 91 of the Act.

On 20 March 2018, NSW Rural Fire Service issued Council with a Section 100B General Terms of Approval for the proposed subdivision.

The terms of Approval are set out below:

1. *The development proposal is to comply with the subdivision layout identified on the drawing prepared by B & P Surveys as submitted in Appendix B of the 'Bushfire Threat Assessment Report' prepared by Bushfire Certifiers dated 24th January, 2018.*

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. To achieve this, the following conditions shall apply:

2. *At the issue of subdivision certificate and in perpetuity the entire property of proposed Lot 1 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'.*

Landscaping

3. *Landscaping on proposed Lot 1 is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.*

In light of the above terms of approval and the recommendations of the submitted Bushfire Threat Assessment Report prepared by Bushfire Certifiers (Referenced 18/007, dated 24 January 2018), further confirmation was received that no vegetation will need to be removed from the site in order to achieve compliance with the above General Terms of Approval and the recommendations of the Bushfire Threat Assessment Report.

As such, Council can be satisfied that the development satisfies the objectives of Clause 5.11.

Clause 7.1 – Acid Sulfate Soils

The subject site is mapped to contain Class 3 Acid Sulfate Soils. The subject application does not include any physical works and considerations of impacts associated with Acid Sulfate Soils were the subject of previous applications for the buildings. As such, the proposed development will have no impact on Acid Sulfate Soils and satisfies the objectives of this Clause.

Clause 7.2 - Earthworks

This Clause is not applicable as the subject application is for strata subdivision only and does not propose any physical works.

Clause 7.3 – Flood Planning

The subject site is affected by Probably Maximum Flood (PMF). However PMF levels do not apply to dual occupancy housing. The recently constructed dwelling on proposed Lot 2 is elevated 600mm on post footings, and will not impede flood

waters in the event of a heavy rain event. The approved dwelling construction on Proposed Lot 1 features a minimum habitable floor level of RL 3.0m AHD as per condition 3 of the 86/062 approval notice. The site is well above the design flood level. Therefore, the proposal complies with this Clause of the LEP.

Clause 7.4 - Floodplain risk management

Not applicable as the proposal does not relate to purposes listed under this clause.

Clause 7.5 - Coastal risk planning

The subject site is not affected by the provisions of this Clause.

Clause 7.6 - Stormwater Management

The proposed development does not include any physical works and will maintain the existing stormwater management arrangements for the site. As such, Council can be satisfied that the development is consistent with the matters for consideration under this Clause and therefore meets the objectives of this Clause.

Clause 7.8 – Airspace operations

The subject site is not located in an area subject to airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

The subject 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.

State Environmental Planning Policies

SEPP (Coastal Management) 2018

The subject site is located within the Coastal Zone and a portion of the north-west extent of the site is mapped to be located within proximity area for coastal wetland (100m). As such, an assessment under Division 1 (Clause 11) and Division 5 is required.

Division 1 Coastal Wetland and Littoral rainforests area

11 Development on land in proximity to coastal wetlands or littoral rainforest.

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for*

littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*
- (2) This clause does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.*

The proposed development does not include any physical works and consideration of bushfire protection zones indicate that no vegetation removal will occur on the site, therefore no part of the development will not impact on the biophysical, hydrological or ecological integrity of the adjacent wetland nor the quantity of quality of surface and ground water flows to and from the adjacent coastal wetland.

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.

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 is located within an existing low density residential area and has been subject to recent approvals for development associated with the residential land use zoning of the land.

A desktop assessment of the site (including review of historic aerial images for evidence of fill importation, review of Council GIS mapping system for potentially contaminated land and or activities on or within the vicinity of the site, and location of cattle dip sites within the vicinity of the site) has been undertaken and there is no evidence that the site is subject to contamination or contaminating activities. As such, the site is suitable for the proposed development and satisfies matters for consideration under SEPP 55.

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

There are no draft environmental planning instruments which apply to the land.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

An assessment of the proposal having regard to the considerations under DCP A1 has been undertaken and the proposed change of use of the dwellings for a dual occupancy generally complies with all the planning controls under Section A1 of the DCP.

No further assessment in relation to the DCP for the Strata Subdivision is required.

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 a secondary dwelling requires 1 resident parking space and the principal dwelling also requires 1 space plus provision for driveway parking of another vehicle is required.

The dwelling on proposed Lot 1 includes a double attached garage on Proposed Lot 1. However, proposed Lot 2 was constructed for the purpose of a secondary dwelling and therefore only contains one parking space which results in an area of non-compliance given that the proposed change of use would necessitate an additional car parking space for the dwelling on proposed Lot 2.

The applicant states that there are no physical works proposed as part of the development application and the current access and parking arrangements will remain in situ. Whilst the dwelling on proposed Lot 2 requires two parking spaces for vehicles, it features a total floor area of 60sqm and only contains two bedrooms. Given the dwelling is not being modified and is relatively small in size; the existing parking arrangements are considered to be sufficient based on the size and scale of the dwelling on this lot. As such, it is considered reasonable that, based on the merits of the proposal, a variation to the DCP requirements can be supported on this occasion. Furthermore, should the owner of the land wish to renovate and expand the floor area of the dwelling on proposed Lot 2 in the future, there is sufficient space within the proposed Lot 2 strata lot to provide a covered space for an additional vehicle parking area by way of a carport or garage.

A3-Development of Flood Liable Land

As stated previously in this report, the subject site is classed as being PMF affected and dual occupancies are not affected by this restriction. The site is also above the design flood level.

The development does not include any building works and previous development consents suitably considered the finished floor levels and construction method for the secondary dwelling having regard to the flood affectations of the land. Therefore, the proposal complies with provisions of this DCP.

A5-Subdivision Manual

The proposed strata subdivision

B21-Pottsville Locality Based Development Code

The Pottsville Locality Based Development Code came into effect 28 April 2010. It is intended to provide the framework for managing growth in Pottsville over the next 25 years, building upon the work contained within the Pottsville Village Strategy 1998.

The code provides policy guidance in relation to a number of key strategy areas. These include:

- Urban structure
- Major retail development
- Pottsville village centre

- Residential neighbourhoods
- Employment
- Community facilities
- Public domain improvements
- Traffic and transport
- Open space and recreation, and
- Infrastructure.

The code is intended to provide provisions for development within the Pottsville locality that will:

- Contribute to the growth and character of the Pottsville village centre and surrounding areas
- Protect and enhance the public domain, and
- Provide for future retail and employment centres as the population increases to meet the needs of the Pottsville locality area.

The development will provide for separate tenure of land and housing on a parcel of land which is considered to be capable of supporting a strata subdivision. The development will not impact the existing character of the site and surrounds however will contribute to the growth of Pottsville. Therefore, the proposed development does not conflict with the objectives of the code.

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

There are no planning agreements or draft planning agreements under Section 7.4 that apply to this development.

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

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

The subject site 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 residential development contradicts the objectives of the Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

Not applicable as the development does not propose any demolition.

Clause 93 Fire Safety Considerations

The proposed strata subdivision achieves a suitable amount of fire separation and does not seek to change the classification of the buildings and therefore satisfies the considerations under Clause 93 of the Regulation.

Clause 94 Buildings to be upgraded

No building works are proposed and therefore no upgrades under Clause 94 are required.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The 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**

Context and Setting

The proposed development will have no physical impacts on the context and setting of the site and surrounds. The proposed use of the principal dwelling and secondary dwelling generally satisfies all of the relevant local planning controls for dual occupancy developments. The strata subdivision component will facilitate the separate tenure of land for each of the dwellings and despite a variation to the minimum lot size, is generally consistent with the surrounding subdivision pattern and character of the low density residential area.

Access, Transport and Traffic

The proposed development will have no additional impact on existing access, transport and traffic arrangements for the site and surrounds. The existing driveway and parking areas will service the dual occupancy and strata subdivision.

(c) Suitability of the site for the development

Surrounding Land Uses / Development

Surrounding land uses are residential and the proposed strata subdivision is consistent with the surrounding character of the area which also comprise of similar size strata subdivision.

Flora and Fauna

As previously discussed in this report, despite an Inner Protection Area being mandated for bushfire protection, the existing vegetation on the site will not compromise this requirements and therefore the proposed development will have no impact on existing vegetation on the site or its surrounds.

Sewer

The subject site is serviced via a sewer line in the rear portion of the site. The sewer service is contained within an easement and will burden Proposed Lot 2 and benefit proposed Lot 1. This detail is outlined on the proposed plan of strata subdivision and will form part of the final linen plan for title registration upon completion of the subdivision.

Water

Council's Water Unit has reviewed the application and did not raise any objection in regard to water service and supply. Additional charges and levies will be applied to account for the use of the dwellings as a dual occupancy. It is further noted that works will be required to separate the water metering for the two dwellings and this will form recommended conditions of consent.

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

The proposal was not notified in accordance with DCP A11 – Public Notification of Development Proposals and therefore no submissions were received.

(e) Public interest

Despite a variation to the minimum lot size for subdivision; the proposal generally complies with all other applicable provisions and will have no material impact on the existing urban form. Therefore, the development is considered to be in accordance with public interest, with no significant impacts anticipated for surrounding residential uses and the local community in general.

OPTIONS:

1. To approval the proposal subject to the conditions included in this report.
2. To refuse the application for specified reasons.

Option 1 is recommended.

CONCLUSION:

The variation to the lot size for the proposed strata lots is considered to be acceptable as the proposal is consistent with the objectives of the zone and the aims of the Tweed Local Environment Plan 2014 in that it facilitates the appropriate use of land zoned for residential land use within the Tweed Shire. The proposed strata lot sizes do not restrict the current or future use of the land and is not considered to be contrary to the public interest.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

5 [PR-PC] Development Application DA04/0162.03 for an Amendment to Development Consent DA04/0162 for Expansion and Amalgamation of Existing Quarries at Lot 28 DP 1079480 Pollards Road, Dulguigan

SUBMITTED BY: Development Assessment and Compliance

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:

Updated Summary since 7 September 2017

On 7 September 2017 the Planning Committee Meeting considered a report on DA04/0162.03 which was a S96 Modification to modify Condition 3 of the consent to reflect past breaches of the consent related to trip numbers. The modification does not propose to alter the current traffic restriction which is as follows "*The average number of trucks departing the quarry is to be 40 vehicles per day*".

On 7 September the Planning Committee resolved as follows:

"that Development Application DA04/0162.03 for an amendment to Development Consent DA04/0162 for expansion and amalgamation of existing quarries at Lot 28 DP 1079480 Pollards Road, Dulguigan:

- 1. Be deferred and propose that a workshop is held to address issues and concerns raised by the Tumbulgum Community Association with Council staff, Hy-Tec Industries, available Councillors and the Tumbulgum Community Association to be in attendance.*
- 2. Request that the Tumbulgum Community Association provide their full list of issues and concerns to Council staff and Hy-Tec Industries to allow due consideration to be given to them prior to the meeting."*

Accordingly the Tumbulgum Community Association produced a very substantial report with a series of annexures that demonstrated their concerns with DA04/0162.03 and the quarry generally. This report was tabled at a workshop on 31 October 2017 and the main report forms Attachment 3 of this addendum report.

The Tumbulgum Community Association believe that earlier submissions regarding volume of heavy vehicles, road condition, driver behaviour, management of quarry operations and interpretation of the EIS and original DA have not been given appropriate consideration.

A summary of the Tumbulgum Community Association position on technical matters and Council's commentary on these matters is below:

Extraction & Truck Movements (including PBS Trucks)

The 1998 Environmental Impact Statement (EIS) for Reed Creek Quarry (which DA04/0162 is meant to be based upon) based reports for the total material for production over the 3 stages as volumes that are “ *adjusted for bulking effects* ” and not as in-situ volumes as described in the current modification application. This is evidenced on the production tables on pages 20-27 from the original EIS.

At the time of the 1998 EIS the figures for quarry operations, i.e. extraction rates and truck movements were balanced. The EIS reported the total maximum annual extraction would be 200,000m³ and the carrying capacity of trucks would be 20m³, which would result in 32 trucks per day. See table below with figures taken from the 1998 EIS.

Estimated total extraction (m3)	Extraction rate (m3)	Quarry Life	Trucks (20 m3) / yr	Trucks (20 m3) / day
3,800,000	200,000 max and 195,000 average over 3 yr period	3,800,000 / 195,000 = 20yrs	200,000/ 20 = 10000	10,000 / 312 days = 32

If Council was to change the extraction volumes to in-situ in the way that Hy-Tec had originally asked it could have increase the permitted extraction volume for the quarry, however this would not provide any opportunity for a change to the operations as the quarry is bound to the average of 40 trucks per day. This could however, create an imbalance in the approved operational figures and the Tumbulgum Community Association is concerned that this imbalance will lead to further requests for increased truck movements (to allow for the extraction rate to be reached) and this was not the intention of the 1998 EIS.

A letter dated 8 October from Jim Glazebrook & Associates in regard to DA04/0162 appears to have erred in its reference to the 1998 EIS when stating that it was clearly evident in the EIS that the 40 trucks is an average annual daily traffic figure and not an absolute limitation on any given day. In actuality the information provided in the 1998 EIS presented the trucks / day at 32 (page 61 from the 1998 EIS showing trucks / day).

The current consent has stamped the letter of 8 October 2004 and granted an **average** of 40 daily trips (despite the EIS) BUT the 200,000m³ insitu v bulked requires clarification as the attached original report from 7 September 2017 stated:

"Council agrees with the applicant's response to the objectors' claims in this regard and is confident that the quarry is not exceeding the extraction quotas as the 200,000m³ was based on in-situ material."

The applicant has since been asked to comment on this matter and was given an extract from the original EIS to review. Accordingly the quarry has revised their earlier advice and now state that via letter dated 10 April 2018 that:

As recognised by Council, the existing consent sets both the annual extraction volume and average daily truck trips. We are not proposing a change to either of these matters. Furthermore, we had not previously been provided with a copy of the 1998 EIS or the previous correspondence and undertakings made by Jim Glazebrook & Associates. Any other matters are historical and before Hy-Tec's involvement and as such, we cannot make comment, nevertheless, as discussed in our meeting, we hold no objection to the measurement of the annual extraction volume being 'bulked or as known at Bank Cubic Meters (BCM)'.

As discussed in our meeting the average truck accessing the quarry is capable of carrying some 33 to 37 tonnes. As previously advised, a significant number of trucks only have an average of 13 to 15 tonnes including Tweed Shire Council trucks. An example of this is the Council purchase over the last year (1 January to 31 December 2017). Over the last year Council, purchase some 54,933 tonnes of material, which was carted from the quarry in 3723 loads at an average of 14.76t per loads. The quarry recorded a total number of loads for the same time at 13762 loads. Council movements therefore being some 27% of the total loads.

As discussed, PBS road requirements regulate heavy vehicle haulage. Modern truck design compliant with the PBS rating systems better distributes axle loading achieving an equal or better outcome for our roads. We hope that Council Staff and Councillors have a better understanding of the PBS requirements and system following the meeting of the 16th of February.

In summary this means the quarry acknowledge Condition 2 in DA04/0162 which states:

*"2. The maximum annual rate of extraction in any 12 month period is 200,000m³.
The maximum average rate of extraction is 195,000m³ over any 3 year period."*

In this regard the quarry operators have no problem with this condition being interpreted as relating to "bulked" or Bank Cubic Meters (BCM).

Council also acknowledges this interpretation however it is not recommended to change Condition 2 of this consent as part of the current modification as the current modification relates to trip numbers and no application has been received to modify Condition 2. It is also not considered necessary to modify this condition now that all parties agree to this interpretation.

The stamped letter of 8 October 2014 which informed Condition 3 of the consent is still valid which states:

"3. The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers."

Whilst the Jim Glazebrook & Associates letter of 8 October 2004 appears to have erred in interpreting the 1998 EIS, Condition 3 is still the condition which is enforceable under DA04/0162.

Tumbulgum Community Association has also raised concern that 40 daily trucks departing the site should not be averaged over 365 days in the year as not all days are active quarry days.

However, the letter of 8 October 2004 clearly references **Annual** Average Daily Traffic and as this letter is called up by Condition 1 the correct interpretation for the allowable number of trucks in any given year is 40 daily trucks x 365 days = 14,600 yearly departing trucks.

In terms of the status of heavy vehicles (PMS trucks) on Dulguigan Road servicing the quarry Council staff have held a series of discussions with the quarry, their trucking contractors, Roads and Maritime Services (RMS), National Heavy Vehicle Regulator (NHVR), and representatives of the Tumbulgum Community Association concerning the ongoing use of Dulguigan Road for heavy vehicles, specifically those that require permits under the NHVR scheme. These are typically truck and dog configurations at higher mass under the “performance-based standards” (PBS) scheme.

PBS trucks are required to undertake a very stringent pre-qualification process prior to gaining approval to operate on Council roads, in terms of undertaking a freight task more efficiently with lower impacts on road infrastructure and the environment, while maximising safety for drivers and other road users.

As the Dulguigan Road Quarry has development consent to operate heavy vehicles on the road, further route assessment has not been undertaken as part of issuing additional PBS approvals. Given the subject application does not propose to change the number of trucks operating on Dulguigan Road on an annual basis (that is, the s96 application is for retrospective changes only), and that trucks as large as 19m 50T B-Doubles can lawfully operate on public roads without approval of the Road Manager, no changes to the current approvals for PBS trucks servicing the quarry are proposed or deemed necessary by Council officers, RMS or NHVR.

Extraction Boundaries

Tumbulgum Community Association raised an issue that the Quarry was becoming increasing more visible from Dulguigan Road, Cane Road, Tweed Valley Way, Riverside Drive and Farrant’s Hill. The community is concerned that the additional areas included in the realigned boundary may have been accessed and/or its vegetation cleared prior to finalisation of the conditions as part of deferred commencement of DA04/0164.02.

Council Officer’s undertook an inspection of the site in January 2018 and were able to see that this was not the case.

The quarry operators have advised that:

As you would have seen during the site visit in early January 2018, the existing quarry remains within the approved area of disturbance and no clearing or disturbance has occurred within the expansion area. We anticipate any perceived increase in visibility is due to recent works to progress the northern face of the quarry, which has not yet reached the terminal bench at the northern extraction boundary limits.

Ongoing Compliance

Council staff asked the quarry operators as follows:

"What conditions of consent would Hy-Tec be prepared to accept as part of DA04/0162.03 to ensure compliance with the current conditions of consent (namely 40 daily trips and 200,000m³).

For example some ideas for consideration could include:

- *Permanent camera monitoring entry of quarry that gets reviewed by the quarry and reported on and compared to weighbridge statistics (raw data provided to Council upon request);*
- *Permanent traffic counter at entry of quarry that gets reviewed by the quarry and reported on and compared to weighbridge statistics (raw data provided to Council upon request);*
- *Quarterly statistics provided to Council on extraction and trip numbers*
- *Regular reports on speed limit breaches as reported to the quarry by the truck operating systems*
- *Road improvements (widening, line marking, maintenance etc.)*
- *Yearly audits of the complete DA conditions submitted to Council for review.*

Council would also like to know how your weighbridge operates. Is it an automated recording system or manual recording?"

Council staff inspected the site and the weighbridge operations in January 2018. The weighbridge is highly automated and staff witnessed and requested the data for various dates to demonstrate how accurate the data is that Council has been receiving. The weighbridge (and weighbridge data) is considered an appropriate mechanism to gauge compliance with the conditions of consent however it relies on the quarry providing this data when requested. An amended Condition 3A is recommended (traffic counter and regular reporting) to ensure regular and accountable reporting to Council on traffic numbers.

In regards to how ongoing compliance can be better managed at the site the quarry operators have advised that:

We are committed to operating in an open and transparent manner. We hold no objection to:

- Installation of a traffic counter at the quarry (details of costs/reporting/accessing of data etc should be further discussed);
 - *We note that not all heavy vehicles accessing the quarry are haulage trucks. For example, maintenance vehicles would trigger the traffic counter as well as when the quarry has customers taken split loads of materials in the truck and dog combination vehicles. Therefore,*

some small allowance will need to be made, when reconciling that data with weighbridge data.

- *Providing quarterly reports of weighbridge traffic movement data to Council for Council to reconcile with the traffic counter data;*
- *Publishing the quarterly reports of weighbridge traffic movements data on our website;*
- *Providing annual compliance reporting to Council.*

The weighbridge system allows the business to ensure that timing of loads over the bridge can be, and are restricted. Overweight vehicles cannot be ticketed and have to pull off the bridge and dump off the excess, material and re-weigh to obtain a ticket.

All trucks are set up in the weighbridge system determining their legal weights. The trucks have to be reweighed (tared) over the bridge monthly.

The weights and measure people have been on site, reviewed our system, and were very happy with the detail.

The reporting of trucks away from the quarry is still happening and any complaints raised are placed into the Hy-Tec Cintellate reporting system and followed up accordingly.

New updated driver code of conduct sheets have now been put in place, detailing all roads leading to the quarry and highlighting the change to Dulguigan Road off the double white lines.

In addition the quarry have now provided data to Council to show the total number of tickets issued from the Tumbulgum Quarry for the period between 7 March 2017 to and including 6 March 2018. Total number for the period was 14,376 (the correct interpretation for the allowable number of trucks in any given year is 40 daily trucks x 365 days = 14,600 yearly departing trucks).

The quarry recorded a total of 14,244 actual truck movements (being 132 less than the total number of tickets), and as discussed, this is due to a number of truck and trailer configurations taking 2 different types of product within the 2 separate parts of the vehicles and having 2 tickets allocated for the 1 movement.

<i>Time period</i>	<i>Tonnes</i>	<i>Truck Movements</i>
<i>7 March 2017 to 6 March 2018</i>	<i>299,258.89</i>	<i>14,376</i>

On 11 April 2018 the quarry operators provided additional individual day data and month data for Council's review.

<i>Time period</i>	<i>Tonnes</i>	<i>Truck Movements</i>
<i>4 April 2017</i>	<i>123.94</i>	<i>5</i>
<i>14 August 2017</i>	<i>3,467.64</i>	<i>115</i>
<i>17 November 2017</i>	<i>546.08</i>	<i>39</i>

<i>Time period</i>	<i>Tonnes</i>	<i>Truck Movements</i>
<i>1 April – 30 April 2017</i>	<i>8,982.68</i>	<i>532</i>
<i>1 August - 31 August 2017</i>	<i>56,608.42</i>	<i>2201</i>

Data provided in October 2017 stated as follows:

"The traffic movements for Tumbulgum have been reviewed for the current year, the single week period of 6 September to 13 September 2017 and the previous 4 years (2013 – 2016) and the results are summarised below. Due to the change of reporting dates from calendar year to 7 March to 6 March during 2016, for completeness we have included the numbers for both reporting periods as they both been used previously to report to council.

Truck movements as per original Calendar year reporting period

Time period	Tonnes	Truck Movements
6 Sep 2017 to 13 Sep 2017	21,304.36	761
1 Jan 2017 to 30 Sep 2017	216,759.17	9885
1 Jan 2016 to 31 Dec 2016	510,109.81	18924
1 Jan 2015 to 31 Dec 2015	315,034.19	14626
1 Jan 2014 to 31 Dec 2014	230,001.1	11106
1 Jan 2013 to 31 Dec 2013	226,226	11651

Truck movements as per the Change of reporting period to DA activation date 7 March

Time period	Tonnes	Truck Movements
6 Sep 2017 to 13 Sep 2017	21,304.36	761
7 Mar 2017 to 30 Sep 2017	193,543.67	8654
7 March 2016 to 6 March 2017	410,675.6	15864
7 March 2015 to 6 March 2016	372,562.64	16199
7 March 2014 to 6 March 2015	263,682.75	12036
7 March 2013 to 6 March 2014	214,560.82	11182

As advised to council earlier in 2016 and previous years, the truck movements were advised as calendar year reporting periods and the number advised for 2015 was 14626. It was after the 2015 numbers had been submitted, there was an agreed change of reporting period dates. In August of 2016, the truck movements were updated and reported to Council in the reporting time period of 7 March to 6 March of each year. These were reported as per the following excerpt –

March 2015 to March 2016 = 16,199 (non-compliant)

March 2014 to March 2015 = 12,076 (complies)

March 2013 to March 2014 = 11,215 (complies)

The original reported (Calendar year) figure for 2015 was considered to have been only a very minor non-compliant, however when the reporting period changed, this number changed to the 16,199 figure and as it was already historical and too late to address by modification, it was then considered to be non-compliant. Following the

resubmission of truck movements in August 2016 and as we continued to evaluate the truck movements in line with our commitments to Council, we identified due to higher than average local demand elevating projected truck movements, that it would be necessary for a Section 96 application to be submitted for the reporting period of 7 March 2016 to 6 March 2017.

It is further advised that the reporting period for Environment Protection Authority is 1 July to 30 June.

The data shows that some days/months have high usage while other days are quite low. This reflects the consent operating with an annual average daily vehicle quota which maxes out at 14,600 trucks per year.

The subject application seeks to change Condition 3A to read as follows:

3A. The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers. With the exception of the 2016/2017 consent year where the total number of trucks departing the quarry shall not exceed 16,000, being an average of 44 vehicles per day.

However the above data also shows an additional breach for 2015/2016 due to the change in data collection being consent year and not calendar year and as follows:

- a breach in the March 2015 to March 2016 = 16,199 (non-compliant); and
- a breach in the March 2016 to March 2017 = 15,864 (non-compliant).

To better monitor the quarry activities Council could also work with the quarry operators in trying to find a suitable location for a traffic counter.

To ensure any modified condition 3A is accurate if Council were of a mind to acknowledge the two breaches condition 3A could read as follows as part of the current modification as the amendments being proposed are directly related to the request at hand.

3A. The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers.

With the exception of the:

- *2015/2016 consent year where the total number of trucks departing the quarry shall not exceed 15870, being an average of 43.5 vehicles per day.*
- *2016/2017 consent year where the total number of trucks departing the quarry shall not exceed 16,200, being an average of 44.5 vehicles per day.*

The applicant is to liaise with Council in finding a suitable location for a traffic counter at the quarry.

The traffic counter is to be installed at the applicant's expense within 4 months of DA04/0162.03 being determined.

The quarry is to forward quarterly reports to Council demonstrating the traffic counter data, demonstrating a comparison of the traffic counter data with the weighbridge data, explanatory notes to interpret the data and demonstrating the likely level of compliance in any given quarter based on future projections.

[GENNS01]

It should be noted that Condition 3A was referred to the applicants for review, who proposed the following modifications to the draft condition:

- 3A. *The average number of trucks departing the quarry is to be 40 vehicles per day (being a maximum of 14,600 loaded trucks departing per normal calendar year <14640 in a leap year>), and all trucks are to be fitted with airbag suspension or other approved road friendly suspension and residential grade mufflers.*

With the exception of the:

- *2015/2016 consent year where the total number of trucks departing the quarry shall not exceed 15,870, being an average of 43.5 vehicles per day.*
- *2016/2017 consent year where the total number of trucks departing the quarry shall not exceed 16,200, being an average of 44.5 vehicles per day.*

The applicant is to liaise with Council in finding a suitable location for a traffic counter at the quarry.

The traffic counter is to be installed at the applicant's expense within 4 months of DA04/0162.03 being determined or other agreed timing as agreed between Hy-Tec and the Director Planning and Environment.

The quarry is to forward quarterly reports to Council demonstrating the data and any explanatory notes to interpret the data. The truck movements to be published on the Hy-Tec website on a quarterly basis.

However, Council is satisfied the amended Condition 3A as drafted by Council and recommended within this report will ensure the satisfactory monitoring of quarry activities.

This type of amendment to Condition 3 is looking back at historical breaches and in no way authorises any future breaches to the annual allowable traffic figure of 14,600 trucks.

Based on the above information an amended condition 3A is now recommended and accordingly the recommendation and options component of the original 7 September report have been amended. No other amendments have been made to the original report as this summary identifies the fundamental change is that:

- **The quarry operators and Council have no problem with the extraction volume condition No. 2 being interpreted as relating to “bulked” or Bank Cubic Meters (BCM).**

Furthermore,

- **The quarry operators and Council re-inforce that the interpretation of the annual allowable traffic figure is 14,600 trucks based on the interpretation of Condition 2 and the Jim Glazebrook letter of 8 October 2004.**

Following are some brief responses to the Tumbulgum Community Association questions throughout their report despite some of these questions not be entirely related to the current modification application.

Q1. Did the Council Review the EIS and REMP before considering the request for increased truck movements in 2016/2017?

The 1998 EIS for the original Reedy Creek Quarry is not the relevant criteria for any enforcement action in regard to DA04/0162. DA04/0162 and its conditions of consent (which call up the Glazebrook letter from 2004) as the more recent development consent prevail over the historic EIS. The original Reedy Creek Quarry REMP is also outdated and is superseded by the REMP for the amalgamated quarries as authorised under DA04/0162. Council is working with the applicant to ensure the latest REMP is robust and contains everything required as detailed under DA04/0162.

Q2. What consideration did the Council give to the community concerns about road safety?

Public submissions are always considered in any Assessment of a Development Application or Modification. However such public submissions must be considered in the context of the application being made. In this instance DA04/162.03 originally sought approval/acknowledgement that the quarry exceeded its traffic quota (40 annual average daily trips = 14,600) for one year (more recent data shows two years' worth of breaches not one). The application does not seek to increase the trips going forward and therefore Council's consideration in regards to road safety for this application is very limited.

Q3. What action has been taken by the Council following the patent breaches in consent?

Council has not historically "taken action" on breaches of consent while there is a Development Application or Modification pending determination in regard to the breach. This assessment report for the modification gives Council options in regards to how they want to handle DA04/0162.03 and the breach that occurred to necessitate the modification in the first instance.

Q4. To date upgrades during maintenance have not been able to keep up with the increased activity and types of vehicles using the road. What is the Council Plan to improve safety in the short term?

Council's maintenance program is prioritised to keeping the Shire's road network in its current overall condition. This means that maintenance funds are directed to preservation works on sealed roads as they exist now rather than major upgrades to alignments or widths. This is in recognition of Council's "Fit for the Future" requirements for asset management. Where other funding sources are made available,

for example Blackspot programs, then these safety and major upgrading considerations can be addressed on a priority basis.

A number of bitumen resurfacing and heavy patching treatments have been completed on Dulguigan Road between Tumbulgum and the quarry over recent years.

Reseal treatments are carried out primarily to provide a waterproof wearing surface on the pavement and are scheduled routinely based on surface age or skid resistance. Pavement patching is in response to damage from traffic loading.

The type of traffic using a road is not a significant factor in scheduling routine bitumen resurfacing where the road's condition is still reasonably good. In the short term (1 to 3 years), the length of Dulguigan Road from Terranora Road overbridge to the old ferry ramp will be considered for inclusion in the routine maintenance program for pavement patching and resurfacing works.

Overall, on the segments of Dulguigan Road from Tumbulgum to the Quarry, the average condition rating has remained at the same levels from the 2011 testing to the 2015 testing.

Officers have carried out site inspections of Dulguigan Road along with members of the Community Association. The members were able to raise areas of concern directly with the officer responsible for road maintenance.

Dulguigan Road has recently been line marked to improve drivers' recognition of the road alignment. Crash data for the road has been reviewed which indicates that there is not a significant crash history.

Officers have requested monitoring of heavy vehicle activity through the North East Weight of Loads Group, of which council is a member. Vehicle and site inspections have been undertaken through this group and through the Roads and Maritime Services heavy vehicle inspections team.

Council's advisory speed radar will be placed on Dulguigan Road when available and police will be encouraged to enforce the existing 60km/h speed limit for heavy vehicles.

Council has received funding to install guardrail this financial year on the section of Dulguigan Road at the area where a recent fatal crash occurred.

Q5. What is the Council long term plan to manage the traffic on Dulguigan Road?

The road will continue to be monitored and maintained within existing budgetary constraints. Sections of the road will be reviewed to determine if road widening could be achieved to reduce ongoing maintenance.

The Quarry operator has advised that when possible, heavy vehicles are entering and exiting the site from and to the west. This reduces the volume of trucks utilising the section of Dulguigan Road between the Quarry and Tumbulgum Bridge.

Q6. Will the Council investigate an alternative route?

The Community Association put forward that an alternate route be considered from Dulguigan Road to Cane Road. The proposal would involve the construction of a new bridge over the Rous River, acquisition of private property, road and intersection upgrading. The costs of the alternate route would be prohibitive and no further action to pursue the route is recommended.

As stated above in response to Q5, the Quarry operator has advised that when possible, heavy vehicles are entering and exiting the site from and to the west. This reduces the volume of trucks utilising the section of Dulguigan Road between the Quarry and Tumbulgum Bridge. However, it should be noted that the road to the west is also constrained by narrow channel crossing and is not subject to a heavy vehicle speed limit that exists to the east.

Q7. How can a proposed variation to a DA that changes a key definition of the original DA be considered substantially the same development?

This question is in regard to extraction volume and whether the extraction limit should be in-situ or bulked. As discussed in the above addendum summary the applicant and Council have re-considered this aspect of the original report and have agreed that the interpretation can be bulked as requested by the Tumbulgum Community Association.

Q8. Why would Council support a variation that turns a fully functional development consent into one that is not?

This question is in regard to a possible imbalance between the total extraction volume and the total allowable trips to leave the quarry.

The 1998 EIS (which related to Reedy Creek Quarry only) showed a balance between these figures DA04/0162 (based on 20m³ per truck with 10,000 trucks per year to create an average of 32 trips a day).

DA04/0162 (which amalgamated 3 quarries and overrides the original Reedy Creek Quarry provisions) shows an allowable extraction total as per the Reedy Creek Quarry but increased the allowable trip numbers to an annual average daily trip rate of 40 = 14,600 per annum.

It is imperative to note that all conditions of consent must be complied with. And therefore the quarry is running more trips than allowed under the 1998 EIS as authorised by DA04/0162 BUT that does not mean the extraction volumes are being exceeded. The quarry have explained that many trucks coming to the quarry carry below the maximum capacity (including Council trucks using the quarry) and therefore it can take more trucks to extract the same volume. However some of the newer PBS trucks are carrying more material and therefore it is crucial that monitoring of the quarry data occurs to ensure annual extraction volumes are not exceeded and annual trip numbers are not exceeded.

Q9. If the quarry is now planning to comply with the truck size specified in the EIS, what size range vehicle does the quarry propose to use?

The quarry services many businesses who have many sub-contractors. The quarry itself will not restrict the type of vehicle businesses have to use and therefore the truck sizes proposed to be used will vary. Provided the annual extraction volume and annual truck numbers are not exceeded the type/size of truck being used is not mandated in the consent.

Q10. What is the legal reporting period to Council for quarry activity?

Consents become operational on either the day they are issued, or the day any deferred matters for consideration to be satisfied to enable a consent to become operational. Therefore the reporting period is based on the individual consent and when it became operational.

Q11. Does the Tweed Shire Council have a standard reporting year?

No see answer to Q10 above.

Q12. Will the Council set the appropriate legal reporting period and put in place compliance monitoring?

The amalgamated Hy-Tec Quarry is working off a reporting period 7 March to 6 March. Compliance monitoring is recommended in the amended Condition 3A as follows:

- 3A. *The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers.*

With the exception of the:

- *2015/2016 consent year where the total number of trucks departing the quarry shall not exceed 15870, being an average of 43.5 vehicles per day.*
- *2016/2017 consent year where the total number of trucks departing the quarry shall not exceed 16,200, being an average of 44.5 vehicles per day.*

The applicant is to liaise with Council in finding a suitable location for a traffic counter at the quarry.

The traffic counter is to be installed at the applicant's expense within 4 months of DA04/0162.03 being determined.

The quarry is to forward quarterly reports to Council demonstrating the traffic counter data, demonstrating a comparison of the traffic counter data with the weighbridge data, explanatory notes to interpret the data and demonstrating the likely level of compliance in any given quarter based on future projections.

[GENNS01]

Q13. What is the Council doing to ensure compliance?

Condition 3A proposes to introduce a traffic counter at the quarry which will be cross referenced with the weighbridge data. Quarterly reports are to be submitted to Council for review. If the quarterly reviews show future projections to be problematic meetings can be had with the quarry to ensure breaches do not occur.

Q14. What penalties have been applied for any non-compliance?

The quarry has not been issued with a Penalty Infringement Notice for the breaches to date as DA04/0162.03 has still been under consideration. A Penalty Infringement Notice is an option for the Council, however if the breaches are acknowledged in the consent a Penalty Infringement Notice may not be valid. Therefore if a Penalty Infringement Notice is preferred DA04/0162.03 should be refused and a Penalty Infringement Notice issued for non-compliance with the existing conditions of the consent.

Q15. Is there a register of community complaints and feedback?

All communication to Council is registered. Any complaint should be in writing and should be titled "Compliance Matter in regard to DA04/0162 – Hy Tec Quarry – Dulguigan" for proper registration and investigation. The quarry also has a complaint register and handling procedure.

Q16. How is the Council protecting the safety of the residents and ratepayers from the cost of non-compliance?

Council manages non-compliance in a comparable way to other comparatively regional NSW Councils, applying budgetary resources, primarily through staff salaries and a budget for legal costs. However it should be noted that these resources need to be shared and applied equitably and efficiently across a wide range of non-compliant land use, construction, parking and companion animal management, road and traffic, health and environmental matters. All best efforts are made within these budgetary constraints to protect the interests of residents and ratepayers.

The Tumbulgum Community Association concludes their report as follows:

7. CONCLUSION

The Association strongly recommends that:

1. due to the issues identified, the Council does not approve the variation to the existing DA that requests retrospective approval to increased quarry activity for the specified period;
2. Councillors request a comprehensive report from the relevant Council departments outlining if, where and how the quarry has complied with the original DA and associated EIS and what outstanding actions need to be taken to achieve this;
3. Councillors seek a comprehensive report from relevant Council departments and/or other authorities on the suitability of Dulguigan Rd for existing and future traffic and, if not deemed suitable, explore options for an alternate transport route;
4. due to the various issues exposed in our correspondence to date, including this report with associated references, the Council request that the Quarry prepare a new DA with updated EIS, traffic studies, and other supporting documentation to reflect the true nature of their past, current and any future activities.
5. Council act to ensure compliance with the existing 2004 development consent and associated EIS, with restrictions to activities to reflect the unsuitability of the current road, until such time as a new development application is approved.

In regard to these recommendations by the Tumbulgum Community Association it is considered that this report in itself clarifies some of the association concerns. The additional concerns of the association (road safety, road maintenance etc.) which fall outside the scope of this application need to be pursued as a separate matter.

It is not considered appropriate to ask the applicant to prepare a new DA with an updated EIS.

DA04/0162 now predominantly sits independently of the 1998 EIS. Any enforcement of DA04/0162 needs to occur as a result of the conditions of the consent for DA04/0162 and not relate back to the 1998 EIS.

It is considered that the Tumbulgum Community Association concerns have been answered sufficiently in the context of DA04/0162.03 (subject to ongoing compliance) and any other general concerns now need to be pursued as separate matters.

It should be acknowledged that the Tumbulgum Community Association and the applicant have responded to all Council enquiries quickly and professionally and have greatly assisted in the preparation of this amended report.

Following is the original report for DA04/0162.03 with a revised Condition 3A in the recommendation.

ORIGINAL SUMMARY OF THE REPORT FROM 7 SEPTEMBER 2017

In November 2004 Council approved DA04/0162 which authorised the amalgamation and expansion of three existing quarries at Dulguigan Road, North Tumbulgum. These quarries were the Reedy Creek, Sanderson's, and Pollards Quarries. DA04/0162 was issued as a deferred commencement consent which was later activated on 7 March 2005. The quarries were merged and the material between the three quarries has started to be removed to allow the site to operate as one quarry operation over new Lot 28 in DP 1079480. The amalgamated quarry was previously known as the Reedy Creek Quarry but is now known as the Hy-Tec Tumbulgum Quarry as new owners took over the site in 2011.

In December 2014 Council received the first Section 96(2) Modification to DA04/0162 from Hy-Tec Industries (Queensland) Pty Ltd (Reference Number DA04/0162.02). The application specifically sought consent to amend the extraction boundary of the quarry (predominantly increasing the development footprint to allow an extra 1,400,000m³ of resource to be extracted over an extra 7 years). In addition the application sought consent to modify conditions 1, 26 and 27 of the existing consent as it related to the approved plans, noise barriers and the acoustic fence requirements. This Modification was approved by Council at the Planning Committee Meeting of 4 August 2016.

In December 2016 Council received its second and **current** Section 96(1A) Modification to DA04/0162 from Hy-Tec Industries (Queensland) Pty Ltd (Reference Number DA04/0162.03). The proposed Modification was lodged to seek a variation to Condition 3 of the consent which states:

3. *The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers.*

The above condition allows the average of 40 trips a day which equates to a total of 14,600 trucks being allowed to depart the quarry per year. It should be noted that the yearly consent period for DA04/0162 is 7 March to 6 March annually as the consent officially commenced on 7 March.

The modification seeks to delete Condition 3 and replace it with a new Condition 3A to read as follows (new text in red):

- 3A. *The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers. With the exception of the 2016/2017 consent year where the total number of trucks departing the quarry shall not exceed 16,000, being an average of 44 vehicles a day.*

Council accepts the applicants' original proposed modification to allow 44 vehicles per day for the 2016/2017 (however amended data shows the figures for this year to represent 44.5 vehicles per day). Furthermore, it is recommended that Council also accepts the 2016/2016 figures (43.5 vehicle trips a day averaged over the year). However, to monitor all future use the Council recommends Condition 3A be amended as follows:

3A. The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers.

With the exception of the:

- **2015/2016 consent year where the total number of trucks departing the quarry shall not exceed 15870, being an average of 43.5 vehicles per day.**
- **2016/2017 consent year where the total number of trucks departing the quarry shall not exceed 16,200, being an average of 44.5 vehicles per day.**

The applicant is to liaise with Council in finding a suitable location for a traffic counter at the quarry.

The traffic counter is to be installed at the applicant's expense within 4 months of DA04/0162.03 being determined.

The quarry is to forward quarterly reports to Council demonstrating the traffic counter data, demonstrating a comparison of the traffic counter data with the weighbridge data, explanatory notes to interpret the data and demonstrating the likely level of compliance in any given quarter based on future projections.

The applicant has stated that the reason for this proposed change is that at 1 December 2016 (3 months before the yearly traffic count was to finish) the applicant acknowledged that the total number of trucks to depart the quarry was likely to exceed the allowed 14,600 trips if normal commercial operations continued throughout December 2016 – 6 March 2017.

As the consent year of 7 March 2016 to 6 March 2017 has now lapsed it should be noted that the quarry did continue to operate during this period and did exceed the traffic allowed under the existing conditions. However, the S96 Modification was in the system and being assessed at this time.

The continued operation of the quarry allowed the continued supply to local projects and businesses.

The applicant stated that the increase in truck departures was a direct result of increased demand from local projects and businesses which utilise smaller than average trucks for haulage material. For example, sales to Tweed Shire Council are transported by trucks with an average payload of 15.73 tonnes which is significantly less than the typical 32 tonne payload truck.

The applicant anticipated that the end of year figure would be 1,400 truck departures more than that permitted by Condition 3. Accordingly S96 Modification DA04/0162.03 was lodged for a one off temporary change to Condition 3 for an extra 1,400 trucks for the 7 March 2016 – 6 March 2017 consent year (only). This equated to an increase of 4 extra trucks per day when averaged over the year as required by the condition (total 44 trucks per day instead of 40).

The applicant has also stated that this modification does not seek to increase the maximum annual extraction volume (200,000 cubic metres / 550,000 tonnes). Furthermore, no change is proposed to the extraction boundaries, hours of operation, or any other aspect of the consent.

The actual number of trucks to depart the site from 7 March 2016 to 6 March 2017 was 15,910 movements totalling 411,678.08 tonnes.

This current modification was advertised and notified to adjoining land owners and any original submitters to DA04/0162 or DA04/0162.02. Following this exhibition period Council received two submissions. One submission was an individual submission and one submission was on behalf of the Tumbulgum Community Association. The objections primarily related to traffic/road safety concerns (resulting in health and safety concerns), impact of noise and dust from trucks on dwellings along Dulguigan Road, total extraction compliance concerns and the lack of community consultation. The individual objection has specifically queried the presumption that the condition restricting the quarry to 200,000m³ of extraction equates to 550,000 tonnes as documented by the applicant. The objector has stated that if this conversion rate is not accurate then the total amount of material being removed from the quarry could be contrary to the issued consent.

Council has liaised with the licencing authority for quarries being the NSW Environment Protection Authority (EPA) on the matter of converting m³ into tonnes and the EPA are satisfied with the applicant's data which indicates the quarry is not exceeding its annual extraction amounts. However, this matter is discussed in detail in the following report.

The application as proposed which seeks approval to amend the consent to allow additional truck movements effective for the 7 March 2016 to 6 March 2017 (only) is recommended for approval given the limited nature of the modification.

Data from the quarry operators indicates that from 7 March 2017 to 30 July 2017 the quarry has had 4226 trucks depart the site (approx. 29 per day) removing 77,631.29 tonnes. This is below the allowable averaged 40 trucks per day and within the allowable extraction limits.

Therefore there is no request or need to amend the consent for any subsequent year.

RECOMMENDATION:

That Development Application DA04/0162.03 for an amendment to Development Consent DA04/0162 for expansion and amalgamation of existing quarries at Lot 28 DP 1079480 Pollards Road, Dulguigan be approved subject to the following amendments:

- 1. Delete Condition 3 of Schedule B which states:**

3. The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers.

and replace it with Condition 3A (in Schedule B) which states:

- 3A. *The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers.***

With the exception of the:

- ***2015/2016 consent year where the total number of trucks departing the quarry shall not exceed 15870, being an average of 43.5 vehicles per day.***
- ***2016/2017 consent year where the total number of trucks departing the quarry shall not exceed 16,200, being an average of 44.5 vehicles per day.***

The applicant is to liaise with Council in finding a suitable location for a traffic counter at the quarry.

The traffic counter is to be installed at the applicant's expense within 4 months of DA04/0162.03 being determined.

The quarry is to forward quarterly reports to Council demonstrating the traffic counter data, demonstrating a comparison of the traffic counter data with the weighbridge data, explanatory notes to interpret the data and demonstrating the likely level of compliance in any given quarter based on future projections.

[GENNS01]

REPORT:

Applicant: HY-Tec Industries (Queensland) Pty Ltd
Owner: HY-Tec Industries (Queensland) Pty Ltd
Location: Lot 28 DP 1079480 Pollards Road, Dulguigan
Zoning: RU2 Rural Landscape
Cost: Not Applicable to S96 Modification

Background:

The current quarry is located on Lot 28 in DP 109480 (which was a consolidated Lot created in 2005) on the north western side of Dulguigan Road, approximately 7 kilometres north east of Murwillumbah and 2.5 kilometres west of Tumbulgum. The surrounding area comprises sugar cane, bushland, grazing land and six dwelling houses. The land comprises a ridge rising up to approximately RL 90 metres at the peak, which is located in the centre of the site. Other than the existing extraction areas, the land is heavily vegetated.

The site contains a significant well connected tract of remnant vegetation known to support a suite of threatened flora and fauna species and ecological communities.

Following is a table detailing the history of the site and how the amalgamated quarry and current controls came about with a comparison to the proposed amended consent:

ITEM	REEDY CREEK QUARRY	SANDERSON'S QUARRY	POLLARDS QUARRY	AMALGAMATED QUARRY AS PER DA04/0162	QUARRY AS PER DA04/0162.02	PROPOSED S96 - QUARRY AS PER DA04/0162.03
EXTRACTION RATE	200,000m ³ pa 195,000m ³ average over a three year period	30,000m ³ pa 20,000m ³ average over a three year period	7,300m ³ pa 0.3ha lateral expansion during any 12 month period	200,000m ³ pa 195,000m ³ average over a three year period (Approximately 5,100,000m ³ total extraction)	No increase (Approximately 4,239,800m ³ total extraction as a result of increased boundaries but also increased bench widths which lowers the overall extraction volume)	No Change
QUARRY LIFE	20 years	40-50 years	Unknown	27 years from November 2014 (2031)	An Extra 9 Years to enable extraction of the additional material 1,755,000m³ (2040)	No Change
OPERATING	7.30am – 6pm	7.00am to 5.pm Monday	Unknown	7.30am – 6pm Monday to	No change proposed	No Change

ITEM	REEDY CREEK QUARRY	SANDERSON'S QUARRY	POLLARDS QUARRY	AMALGAMATED QUARRY AS PER DA04/0162	QUARRY AS PER DA04/0162.02	PROPOSED S96 - QUARRY AS PER DA04/0162.03
HOURS	Monday to Friday 7.30am to 12 Noon Saturdays No works Sundays or Public Holidays	to Friday 7.00am to 12 Noon Saturdays		Friday 7.30am to 12 Noon Saturdays No works Sundays or Public Holidays	however the current EPA licence states: Saturday operating hours as 8am to 1pm The applicant needs to comply with both approvals so Council Officer's recommend Council align the consent with the existing EPA licence.	
BLASTING FREQUENCY	Max 3 times per month	As required	Unknown	Max 3 times per month	No change	No Change
TRAFFIC	Max 40 trucks per day (averaged over a year)	No specific limits on consent, however the EIS indicated 8 truck loads per day	Unknown	Max 40 trucks per day (averaged over a year). This equates to 14,560 trucks per year.	No change	Increase for the 2016/2017 consent year (only) where the total number of trucks departing the quarry shall not exceed 16,000, being an average of 44 vehicles a day.
ACCESS	One main entry/exit.	One small unformed entry/exit	One small unformed entry/exit	One main entry/exit (the old Reedy Creek access) with all other access points off Dulguigan Road removed	No change	No change

Proposal:

On 1 December 2016 the applicant lodged a request for Condition 3 of Schedule B to be amended. Condition 3 of the consent currently states:

3. *The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers.*

The proposed modification requests that Condition 3 of Schedule B of DA04/0162 be amended to read as follows:

- 3A. *The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers. With the exception of the 2016/2017 consent year where the total number of trucks departing the quarry shall not exceed 16,000, being an average of 44 vehicles per day.*

The above amended condition would facilitate a temporary increase in the average vehicles per day departing the Quarry for the 2016/2017 consent year only (7 March 2016 – 6 March 2017).

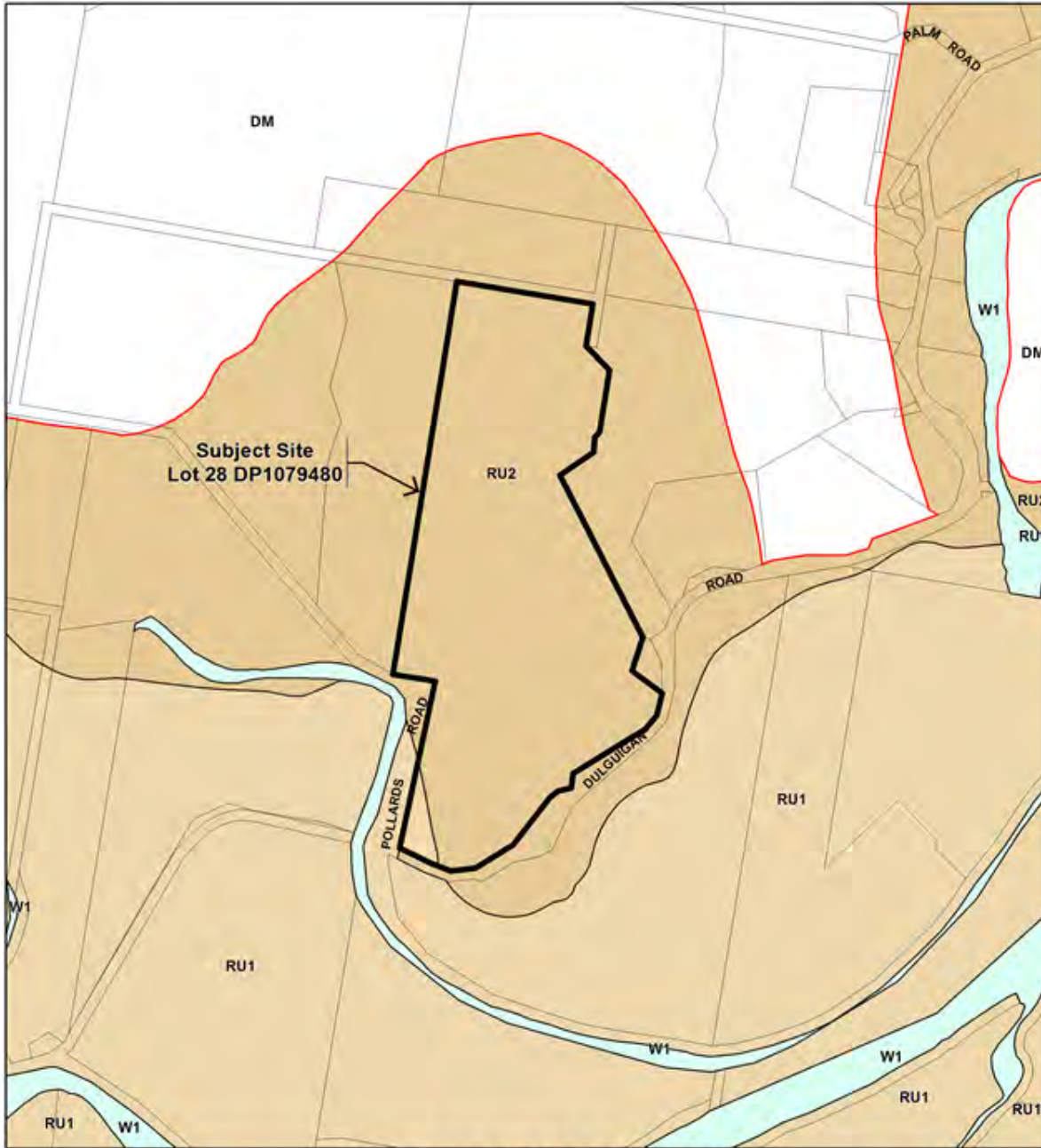
As this period has now lapsed it should be noted that the quarry continued to operate during this period and did exceed the traffic allowed under the existing conditions. However, the S96 Modification was in the system and being assessed at this time.

The continued operation of the quarry allowed the continued supply to local projects and businesses.

Hy-Tec has implemented and will continue to implement the following measures to facilitate the proposed temporary increase in average truck movements:

- Reducing truck numbers during the hours of 8:00am to 9:30am and 3:00 to 4:00pm (school traffic hours).
- Requiring all truck drivers (internal or external) to sign a code of conduct to ensure they understand the requirements of the Tumbulgum community.
- Working with the Tumbulgum Community Committee to advise on why the additional truck movements are occurring, and more specifically the individual projects which require the additional truck movements. The Tumbulgum Community Committee placed a notification in their newsletter.
- Notifying the community of the opportunity to report any truck driver misconduct to the quarry with the registration number and the time of the incident.

ZONING PLAN:



CURRENT LAND ZONING

Lot 28 DP1079480
Pollards Road, Dulguigan

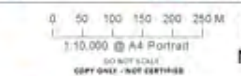
Tweed Local Environmental Plan 2014

Land Zoning

B1 Neighbourhood Centre	E1 National Parks & Nature Reserves	R5 Large Lot Residential	SP1 Special Activities	DM Deferred Matter
B2 Local Centre	IN1 General Industrial	RE1 Public Recreation	SP2 Infrastructure	MD SEPP (Major Development) 2005
B3 Commercial Core	IN4 Working Waterfront	RE2 Private Recreation	SP3 Tourist	TCC Tweed City Centre LEP 2012
B4 Mixed Use	R1 General Residential	RU1 Primary Production	W1 Natural Waterways	
B5 Business Development	R2 Low Density Residential	RU2 Rural Landscape	W2 Recreational Waterways	
B7 Business Park	R3 Medium Density Residential	RU5 Village	W3 Working Waterways	

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Created: 23 October 2015
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AERIAL IMAGE:




AERIAL PHOTO - April 2015

Lot 28 DP1079480
Pollards Road, Dulguigan

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

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


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Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geodetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56


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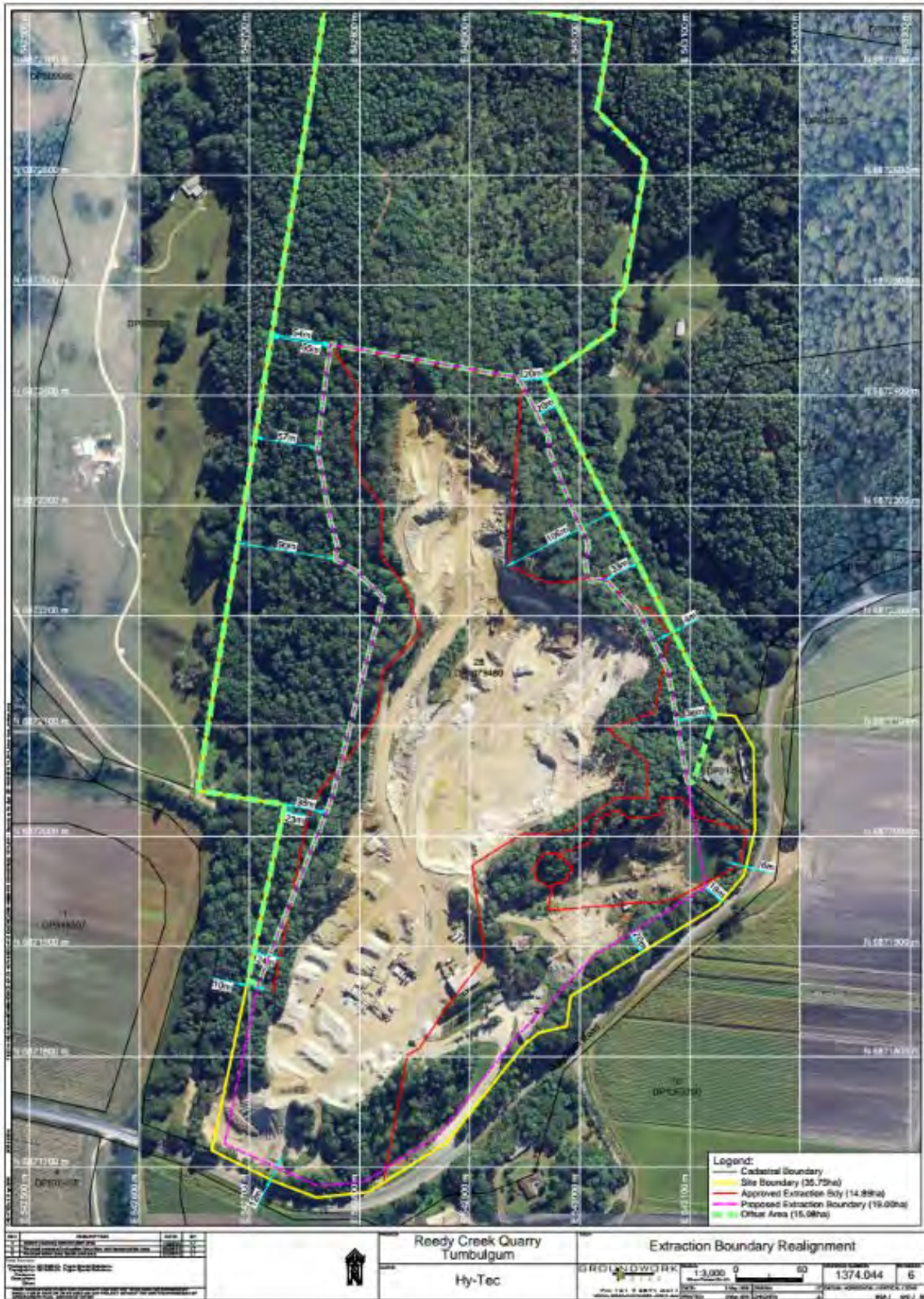
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Author: J. Batchelor - Strategic Planning & Urban Design Unit

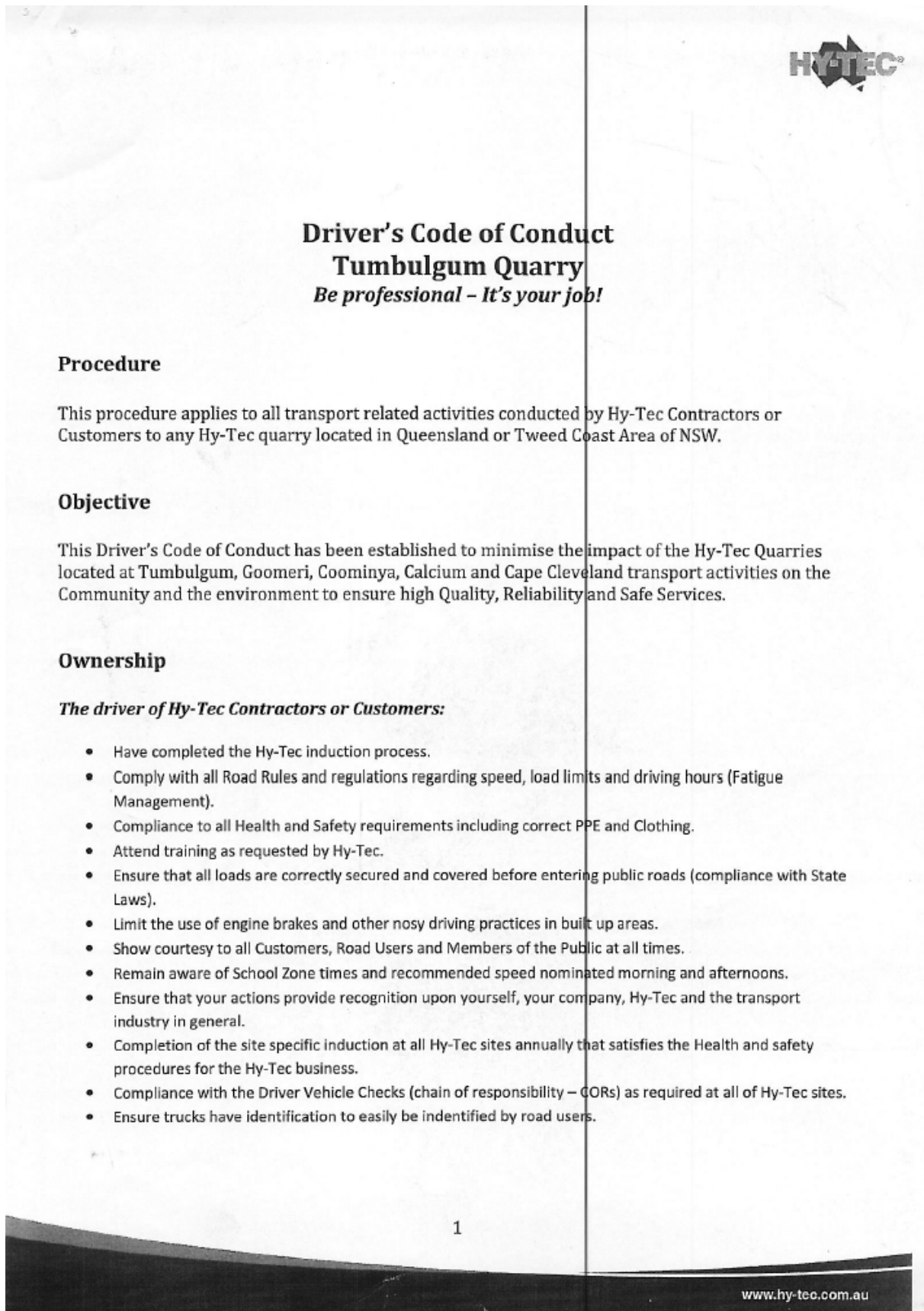
Date Printed: 21 October 2015

APPROVED DA04/0162.02 PLAN

(Note: red line existing approved boundary, pink line proposed alignment; green line depicts area for a Biodiversity Offset Area as Per OEH Guidelines):



APPLICANTS TYPICAL DRIVERS CODE OF CONDUCT Page 1:



APPLICANTS TYPICAL DRIVERS CODE OF CONDUCT Page 2:



Community commitment

Dulguigan Road is the Road leading up to and away from the HY-Tec Quarry and is a requirement for all Transport operators and their drivers to obey the road requirements on this road and keep in mind the community use of the road including school children and cyclists.

Disciplinary Action

You will face disciplinary action if you do not meet the requirements in this Code of Conduct or Hy-Tec receives a Community complaint regarding your driving or vehicle. Disciplinary action can include a verbal warning, a written warning, temporary or permanent dismissal from the site and/or termination of any contract/agreement with Hy-Tec.

Transport Company	
Driver's Name (printed)	
Driver's Signature	
Date	

APPLICANTS TYPICAL HAULAGE ROUTES WITH NOTES FOR TRUCK DRIVERS:



Considerations under Section 96(1A) and 79C of the Environmental Planning and Assessment Act 1979.

S96(1A) and 96(3) of the Act specifies that:

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*

Accordingly, the following report addresses these heads of consideration.

To determine if the S96 Application meets the substantially the same test a 79C (1) Assessment has been undertaken in the first instance:

79C (1) Assessment – Environmental Planning and Assessment Act 1979

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

Tweed Local Environmental Plan 2014

(Note : The original DA was assessed against LEP 2000)

Clause 1.2 – Aims of the Plan

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

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

The existing consent has extensive conditions to ensure responsible environmental management. The proposed temporary increase in truck movements is considered to satisfy the aims of the plan.

Clause 2.3 – Zone objectives and Land Use Table & Permissibility

The subject site is now zoned RU2 Rural Landscape which has the following zone objectives:

Objectives of zone

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*

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

The quarry would be best defined as an extractive industry which is permissible with consent however permissibility of this modification is derived by S109B 2(b) of the Environmental Planning and Assessment Act 1979 which states:

109B Saving of effect of existing consents

- (1) *Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.*
- (2) *This section:*
 - (a) *applies to consents lawfully granted before or after the commencement of this Act, and*
 - (b) *does not prevent the lapsing, revocation or **modification**, in accordance with this Act, of a consent, and*
 - (c) *has effect despite anything to the contrary in section 107 or 109.*

The additional temporary truck movements were necessary to allow the quarry to continue operating between December 2016 to March 2017, the temporary increase in trucks does not contravene the objectives of the zone.

Clause 7.10 - Essential Services

All essential services are available to the development.

State Environmental Planning Policies

SEPP (Mining, Petroleum Production and Extractive Industries) 2007 and SEPP (Infrastructure) 2007

In accordance with Clause 104 Traffic Generating Developments and Schedule 3 of the Infrastructure SEPP and Clause 16 of the SEPP (Mining, Petroleum Production and Extractive Industries) 2007 the first S96 application was originally referred to the Roads and Maritime Services who advised that Council should be satisfied as to certain matters pertaining to traffic as the affected roads are local roads and for Council's consideration.

The application was accordingly referred to Council's Traffic Engineer who advised that:

Comments from the first S96 Modification DA04/0162.02 are still valid as follows:

"Traffic volumes on Dulguigan Road are currently around 500 vpd (481 vpd @ quarry - 2012) at the quarry and approaching 900 vpd (812 vpd @ Terranora Rd - 2012) at the Tumbulgun end. Traffic count records for

Dulguigan Rd dating back to 2003 show little to no growth in traffic volumes during the period.

The Dulguigan Road formation typically incorporates a sealed width of 6.6m or greater which roughly corresponds to a class B rural road in Council's specifications. Council's development design specification D2 - Road Design and Standard Drawing SD.009 suggest a class B rural road is suitable for up to 250 vpd. However, Austroads Guide to Road Design Part 3: Geometric Design (Table 4.5) suggests that a road of this width is suitable for up to 1000 vpd.

No detailed analysis of sight distances at the multiple corners and intersections along the haul route has been performed.

Dulguigan Rd has a rural speed limit of 100kph, however, the road geometry along the haul route generally restricts speeds to less than this. A truck speed limit of 60kph is applied to the haul route between the quarry and Terranora Rd."

Dulguigan Road is capable of accommodating the minor temporary increase of 4 additional trucks per day (on average over a year) without any additional road improvement works or survey data.

A recent heavy vehicle traffic incident on Dulguigan Road has caused Council to investigate improved line markings and signage on the road to assist in delineation. Further speed surveys are to be conducted and the data will form the basis of discussions with the quarry operator on enforcement strategies.

The S96 Modification is considered satisfactory with all other provisions of the SEPP's as the Modification is minor and temporary.

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

Nil applicable

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

Nil applicable to the proposed S96 Modification

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

Designated Development

The original application did not constitute "Designated Development" therefore current S96(1A) has been assessed against the relevant legislation but not as a Designated S96 Application.

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

The proposed site is located outside the area covered by the Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

No demolition is proposed in the application.

Clause 93 Fire Safety Considerations

No consideration of fire safety within the bounds of Clause 93 is required.

Clause 94 Buildings to be upgraded

There are no buildings to be upgraded.

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

Not applicable

Tweed Shire Coastline Management Plan 2005

Not applicable

Tweed Coast Estuaries Management Plan 2004

Not applicable

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

Not applicable

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

Access, Transport and Traffic

As mentioned above, the application was referred to Council's Traffic Engineer who made the following comments

Dulguigan Road is capable of accommodating the minor temporary increase of 4 additional trucks per day (on average over a year) without any additional road improvement works or survey data.

A recent heavy vehicle traffic incident on Dulguigan Road has caused Council to investigate improved line markings and signage on the road to assist in delineation. Further speed surveys are to be conducted and the data will form the basis of discussions with the quarry operator on enforcement strategies.

Noise & Hours of Operation

The subject application does not propose any changes to the approved hours of operation.

The applicant has stated that they are prepared to make a conscious effort to reduce truck numbers during the hours of 8:00am to 9:30am and 3:00 to 4:00pm (school traffic hours).

However hours of operation are listed on the EPA licence as follows:

L6. Hours of operation

L6.1 *Activities covered by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, must only be carried out between the hours of 7:30 am and 6:00 pm Monday to Friday, and 8:00 am and 1:00 pm Saturday, and at no time on Sundays and Public Holidays.*

L6.2 *This condition does not apply to the delivery of material outside the hours of operation permitted by condition L6.1 if that delivery is required by police or other authorities for safety reasons; and/or the operation or personnel or equipment are endangered. In such circumstances, prior notification must be provided to the EPA and affected residents as soon as possible, or within a reasonable period in the case of emergency.*

L6.3 *The hours of operation specified in condition L6.1 may be varied with written consent if the EPA is satisfied that the amenity of the residents in the locality will not be adversely affected.*

L6.4 *Heavy vehicles (including excavators, haul trucks, loader and water carts) and machinery [including screening plant, jaw crusher, feed bin, cone crusher, rock drill, water pump and generator (genset)] cannot be started, maintained, arrive or leave the site or operated outside of operating hours as detailed in L6.1 and at no time on Sundays and Public Holidays."*

Dust

The previous S96 Modification stated:

An Assessment of Noise and Dust Impacts has been prepared by MWA Environmental Pty Ltd dated 17 November 2014. The report states the following;

"Based upon our review of the available dust monitoring results the current quarrying activities are compliant with the relevant objective by a significant margin at the nearest residential land to the west. As such, subject to implementation of the dust management measures recommended in Section 3.4, it is considered that the proposed extraction activities within the western area of Modified Extraction Boundary can occur in compliance with the requirements of the REMP and without causing unreasonable dust nuisance at properties to the west"

This is still considered valid for the current S96 Modification.

Approvals from other Regulatory Authorities

The application was referred to the NSW EPA as the licencing authority for the quarry.

Initially the EPA stated that:

“Offsite traffic movements and any effects which may arise from those, are not an issue for the EPA to comment on.”

However, in response to the letters of objectors which queried the conversion of 200,000m³ to 550,000 tonnes the EPA stated:

“In the objection letter it is proposed that based on industry standard a conversion rate of 1.7 tonne/m³ be used:

As stated below, documents provided by Hy-Tec to the EPA are based on actual laboratory results of the resource from the quarry which indicates 2.75 tonne/m³ (refer below).

*“Currently the site has an approved annual extraction limit, as stated on the development consent, for extraction of 200,000m³. As discussed, we provide NATA certified testing documentation to the Department to confirm, that using the consent threshold, the true and accurate annual tonnage based on a 200,000m³ annual extraction limit using an Average Apparent Particle Density of 2.65 t/m³ is 530,000 tonnes per annum, refer **APPENDIX 2 NATA DENSITY TEST RESULTS.***

*Critically it is noted that within the resource certain rock types as expected having differing densities and the meta-greywacke and carbonaceous shales on site have insitu densities of up to 2.85t/m³. Accordingly, and when averaged across the site, the average Apparent Particle Density used or Joint Ore Reserves Committee Resource reporting density is 2.75t/m³, as this is the average global density assigned to the block model, refer **PLATE 1.***

For Environment Protection Licence 3430 extraction limits, the EPA are using the conversion rate based on the laboratory results from the quarry resource.”

The applicant further clarified that:

“Regarding the tonnage conversion rates, as previously discussed with Council, the consent currently limits the annual extraction rate to a maximum of 200,000m³. This volume measurement relates to the amount of resource measured in-situ, for which the conversion rate from in-situ cubic metres to tonnes is confirmed by testing previously submitted to the Environmental Protection Authority (EPA) and Council to be 2.75t/m³.”

Both Council and the EPA agreed that this volume measurement relates to the amount of resource material measured in-situ.

(c) Suitability of the site for the development

North Coast Regional Plan 2036

The strategy is intended to protect the unique environmental assets, cultural values, and natural resources of the Region while ensuring that future planning maintains the character of the Region and provides for economic opportunities.

Direction 13 Sustainably Manage Natural Resources has the following actions:

Actions

- 13.1 Enable the development of the region's natural, mineral and forestry resources by directing to suitable locations land uses such as residential development that are sensitive to impacts from noise, dust and light interference.
- 13.2 Plan for the ongoing productive use of lands with regionally significant construction material resources in locations with established infrastructure and resource accessibility.



The subject site is outside of the significant farmland areas.

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

The S96 Application was referred to the following Government Agencies and their relevant responses are detailed below:

Government Agency	Nature of Government Agency Comments
NSW Environment Protection Authority	<p>This application relates to an existing facility which is currently licensed under the Protection of the Environment Operations Act (POEO Act).</p> <p>The proposed amendment makes no changes to the existing licence conditions.</p> <p>Traffic is a matter for Council as the local Roads Authority</p>

Further to the Government agency referrals the application was advertised and notified for a period of 14 days in January 2017 (18 January 2017 – 1 February 2017).

Council received 2 submissions. One submission was an individual submission and one submission was on behalf of the Tumbulgum Community Association.

Submission 1 – Tumbulgum Community Association (Extracts below)

...The North Tumbulgum and Tumbulgum communities have expressed concern about the road condition and safety on Dulguigan Road. Of particular concern is the high volume of heavy weight trucks travelling to and from the Tumbulgum Quarry and the associated driver behaviour.

Dulguigan Road is a secondary road designed to serve local rural and recreational traffic, and is being adversely impacted by heavy traffic. The heavy trucks passing on-coming trucks are required to move onto the limited verges. Trucks are observed over the centre of the road on corners, particularly of concern when the truck includes a trailer. Concern exists for the safety of traffic entering and leaving the road, cyclists and pedestrians on the verge, particularly on the river edge.

The proposed change in truck movements by Hy-Tec in its current application is inaccurate. The quarry is currently approved to operate five and a half days a week, excluding Sundays and Public Holidays with an average of 40 movements per day. In its deliberation on 3 November 2004, the Council approved extraction of a maximum of 200,000 cubic metres per annum. The number of truck movements of 40 per day acknowledged that the quarry was 'not open every day of the year'.

On page 3 of the application, Hy-Tec assumes 365 operating days a year in the consent year and divides the proposed increase over 365 days for 2016/7. An increase to the requested 16,000 movements results in an average increase of 33% per day. After taking into account that Saturday is a half day and there are limited movements at school times, the increase can be expected to be greater in peak hours of operation and result in significant increase in the impact on the road and user safety.

While Tumbulgum Community Association acknowledges the contribution of the quarry to the economic activity in the Tweed Shire, this should not be at the expense of community safety and amenity.

Submission 2 – Individual (Large **Extracts** following):

Safety Concerns

...Trucks have been repeatedly observed as needing to cross double lines and use predominantly the middle of the road. This is not a reflection on their driving but simply confirmation that these roads are not adequate or designed to be used by quarry trucks.



Above is one of many photos taken which clearly shows the truck in the middle of the road, crossing double lines. (Council staff have a USB showing numerous other photos taken last year which indicate this is not, a one off occurrence).

I will also draw your attention to the fact that school buses regularly travel this same route including coming around that very corner displayed above towards the truck. It is extremely lucky that there have not been any major loss of life.

We are aware that there have been two quarry trucks roll over in Dulguigan road.

Added to this, maintenance and truck usage have added to unacceptable dust spray including that of silica dust, introducing residents to unacceptable carcinogenic exposure. Pictures below indicate just what this looks like:



We also note here that vibrations caused by these trucks are structurally affecting our home with cracks in brickwork and lifting floor tiles becoming more widespread. Living with the dust and noise is often unbearable.

Figures Supplied

We disagree with the supplied figures and the presumption that 550,000 tons equals 200,000m³. Based on the materials carried by the trucks, namely road base type materials.....one ton equals 0.363m³ or 1m³ which equals 2.75 ton. These figures are from two separate authorities. The chart below gives a more visual clarification of figures used by the industry. If figures supplied by Hy-Tec were to be true, then trucks would be leaving the quarry with loads no higher than 370 mm high.

Table One: Bulk Density Conversion Guide.

PRODUCT	1m3	1/2m3	2/3m3	1/3m3	1/4m3	1/8m3
Concreting & Filling (A-Z)						
Ash	0.70	0.35	0.47	0.23	0.18	0.09
Concrete Blend	1.80	0.90	1.20	0.60	0.45	0.23
Crusher Dust	1.60	0.80	1.07	0.53	0.40	0.20
Deco	1.50	0.75	1.00	0.50	0.38	0.19
Drainage Gravels	1.50	0.75	1.00	0.50	0.38	0.19
Recycled Dust & Roadbase	1.50	0.75	1.00	0.50	0.38	0.19
Road Base	1.70	0.85	1.13	0.57	0.43	0.21

The correct industry standard for conversion of road base material is 1.7 ton per cubic metre or 0.59m³ per ton, as indicated in the above table, so annual allowance is:

- 200,000 m³ equals 340,000 tons
- 195,000m³ equals 331,500 tons

It is important that the tonnage moved from the quarry be calculated by the council at the correct ratio in order to gain an accurate measurement of cubic metres. This does not appear to be happening. The application as it stands does not reflect correct conversion of cubic metre to ton.

HY –Tec refer on page 3 of their application, dated 1 December 2016, to an average truck size of 27.25 tonne. Using this figure the following is extrapolated:

$$27.25 \text{ ton} \times 16,000 \text{ movement} = 436,000 \text{ tons}$$

436,000 tons at .59m per ton = 257,240 m³

(Note: reference to 16,000 movement is the proposed new amount of movements referred to in the application)

This is well in excess of the 195,000m³ per year allowance as approved in the current DA (Refer page 233, Tweed Shire Planning Committee meeting minutes, dated 4 August 2016). In fact this new proposed figure based on Hy-Tec's assessment of average size would equate to them being over their allowance by 62,240m³.

It is our belief that the size portrayed of the average quarry truck utilising these roads is highly underestimated. This is further verified by observation and photos captured of actual movements.

Size of trucks and loads

On page 64 of the Tweed Shire Council meeting minutes, dated 3 November 2004, which adopted the current operating DA, it states that truck capacity is rated at 20m³ (largest truck). Using road base from the previous table as the conversion guide this means that:

20m³ would be 34 ton load as per 1:7 ratio.

However, in the quarries application, reference is made to 200,000 cubic metres being equivalent to 550,000 tonnes, which is incorrect. If we use this incorrect ratio of 1:2.75, as alluded to in the application, it would mean the same load would be 55 ton which is highly illegal.

On figures, provided in table 1 on page 3 of the quarries application, it notes the proposed modification and average truck size as 27.25 ton. The rest of the information provided in this table remains somewhat irrelevant to the DA as the DA only talks in cubic metres.

However utilising their figure of 27.25 ton we can extrapolate it out to what it equates to in cubic metres to get a better picture of their overall proposal:

27.25 ton x 16,000 movement = 436,000 ton

436,000 tons at .59m per ton = 257,240 m³

This is well in excess of the 195,000m³ pa allowance.

In fact, if these figures were indeed true, the Quarry would have exhausted its cubic metre allowance at 12,140 movements with these large loads. Again the application refers to 27.25ton as being the current overall average yet the current DA allows at its maximum average load of 13.35 cubic metres which converts to 22.7 ton. It is very apparent that the quarry is running well above the original maximum average load specification.

We believe the council has not been active in auditing the annual reports on quarry turnover. This is available through the EPA via the relevant license

agreement. Therefore, we would ask that the council, as a matter of urgency, accesses the figures for the past 3 years and calculates the declared tonnage and applies correct conversion ratio.

Further to this, in using the industry standard for road base of 1m³ to 1.7 ton, a truck and dog load with 32 tons would be loaded 0.6m high x 2.42 wide x 13m with a combined load to be 18.9m³.

This fits within the tonnage load limit for being on the road and is under the 20m³ capacity in councils DA application 2004 as required.

Alternately, using the quarries' incorrect application figures of 550,000 tons equaling 200,000m³, the following would result. In loads of 32 ton, trucks would be loaded 0.37 metre high x 2.42 wide x 13metre making the combined load to be 11.64m³. This equates approximately to having a truck not much more than a ¼ full in height. Chances of any truck running on quarter full would be highly negligible.

Note: a 32ton pay load would be the maximum allowance for road base to travel on the road.

Observations were recorded in September 2016 (as per the USB supplied) for a full quarry working day (7.30am to 4.30pm). This may however be considered a relevantly quiet day probably as a result of the quarry having been given notice, at that time, that they were well in excess of allowed truck movements. A fact further verified by the quarries own submission of numbers to council. Findings for this day are detailed in the table below:

Type	Number	% of all movements
Truck & dog	37	71
Semi Trailer	7	13
Dual Rigid	6	11
Single Rigid	2	4

It should also be noted here that:

there were 10 other additional non quarry trucks during that period;
this only included trucks travelling East of the quarry and not any travelling West of the quarry;
this would satisfy the 27.25 tons per load declared;
the % of truck & dog combination would be estimated to be at least double of what it was in 2004.

It defies logic that the quarry operator is blaming Tweed Shire Council for an increase in truck movements, citing that they were using smaller sized trucks. This is certainly not indicated by both observation made and recordings of movements and type of truck used. The council trucks are loaded with 9.3m³ product, named in whole as being 15.73 ton. The maximum average is noted as being 13.35m³ which means they are only slightly and not significantly smaller. The council has shown leadership and a true sense of responsibility here in keeping under the total maximum as compared with the quarry, where the

average load out of the quarry is 16.1m³ which is 2.4m³ in excess of the DA allowance.

The EPA makes allowance for storage, production and movement, a much higher allowance than the council. The council DA only allow for movements. The EPAs is higher allowance so it will never trigger an EPA capacity until well after a council breach in regards to capacity.

It should be noted here that the Council is the major consenting authority.

Road Classification

Dulguigan Road has been rated by the Council as classification Class B rural road. In fact reference is made to this on page 274 of the Council's Planning Committee Meeting report dated 4 August 2016, where it states:

'The Dulguigan Road formation typically incorporates a sealed width of 6.6m or greater which roughly corresponds to a Class B rural road in Council's specifications'.

We believe this classification to be incorrect and further negate the assumption given that it 'typically incorporates a sealed width of 6.6m or greater'. Many sections of Dulguigan road sealed width are under 6 metres. This is equally backed up by the fact that many trucks (over 90%) have trouble keeping to their side of the double lines. This is further verified in the photos supplied in this submission and in the supplied USB to council.

The following guide is taken from the Tweed Shire Council web site and can be found at

[http://www.tweed.nsw.gov.au/Controls/Engineers/Drawings/S.D.009%20\(Aug-14%20Rev%20C\).pdf](http://www.tweed.nsw.gov.au/Controls/Engineers/Drawings/S.D.009%20(Aug-14%20Rev%20C).pdf)

RURAL ROAD CLASS	CLASS vpd RANGE	WIDTH OF SEAL	LINE MARKING	UNSEALED SHOULDER WIDTH (EACH SIDE)	NOMINAL WIDTH OF FORMATION
CLASS 'A'	<150	4.0	NONE	2.3 Gravel	8.6
CLASS 'B'	150-250	6.0	NONE	1.3 Gravel	8.6
CLASS 'C'	250-1000	8.6	NONE	NIL	8.6
CLASS 'D'	1000-2000	9.6	CENTRE + EDGE AT 3.5m	NIL	9.6
ARTERIAL	>2000	11.0	CENTRE + EDGE AT 3.5m + RAISED REFLECTOR PAVEMENT MARKERS	NIL	11.0

CROSS SECTION ELEMENTS MINIMUM STANDARDS (RURAL ROADS)

Looking at the Councils table for the minimum standards for rural roads, as copied above, it states that roads that carry 250 – 1000 vpd should have a width of seal of 8.6m.

Class B comprises a 6.0 m seal with 1.3m shoulder either side and is only suitable for 150-250 vpd. Dulguigan road is predominantly not supportive of that width. In fact the council has even erected a sign just outside the quarry which indicates 'narrow roads'.

Picture depicting warning sign indicating narrow roads erected by the council near the quarry:



Statistics supplied (Planning Committee report dated 4 August 2016) note that, back in 2012, traffic volumes on Dulguigan Road were between 500 to 900 vpd. This in itself equates to a road needing to be of the dimension and classification of a Class C Rural road with a seal required to be 8.6 metres wide and not a 6.6 metre wide seal. Dulguigan road in many parts is not even 6.0 sealed metres wide let alone 8.6 sealed metres wide. It is clearly not fit for the purpose in which it is being used.

Again Dulguigan road, for the traffic volumes known, should be rated at Class C. This is on top of the fact that it clearly has many problems even coming close to satisfying the requirements of a Class B rural road, let alone the proper classification of a Class C.

Further verification of road guidelines can be viewed in the Austroads guide table 3.2 where minimum carriageway rural roads requires for 400 – 1000 vpd or 9 m carriageway with 6.5m seal and 1.25 shoulders.

Submission 2 Suggestions:

1. *As concerned residents we have previously taken our personal concerns to both Local and State Government representatives. In fact a proposal was*

even tabled to Geoff Provest which would alleviate a great deal of the objections here. The proposal involved running another road and small bridge across the Rous river linking on to roads that run through cane fields that then meet up with the Tweed Valley Highway at Condong. This proposal runs nowhere near houses and once the truck get to Tweed Valley way they can continue on to either Tweed Heads, the M1 to Ballina or Murwillumbah. It would be quicker for the trucks and link with roads better designed to handle their traffic. The added benefit being they would not being running near residences or pose the current significant threat to safety that they currently do. Surely this is a better way of representing and protecting public interest;

Alternately

- 2. Find an alternate, more suitable site for the quarry – one that does not affect residents health or safety and enjoyment of their land;*

Alternately

- 3. Set up monitors to count trucks and monitor speeds;*
- 4. Do a full noise evaluation on the affect of trucks on residents;*
- 5. Arrange a full builders' evaluation of all residences affected and provide compensation for damage caused by the quarry trucks (due to noise, vibration and dust) with preventions put in place to prevent further damage;*
- 6. Provision of health benefits;*
- 7. Restrict trucks from using the road during school hour pick up and drop off times;*
- 8. Put a cap on a safe number of trucks allowed each day. Should this cap be broken then it must have consequences. Our suggestion here would be \$10,000 for each additional truck per day over the limit;*
- 9. Widen and seal all the roads;*
- 10. Tweed Shire Council to enter into talks with residents and their legal representatives concerning loss of the enjoyment of their land.*

(Note these suggestions are not all inclusive as other matters may not yet have been fully identified)

The **applicant** has responded to these submissions as follows:

"Dulguigan Road was assessed for its suitability for quarry trucks in the original application (Consent No. DA04/0162) and deemed suitable by Council subject to certain upgrades which were completed prior to commencement of the approved development. The proposed additional four (4) trucks departing the quarry on average per day, being an increase of 10% for one year, is not considered to change the suitability of Dulguigan Road for quarry trucks. It is important to remember that the requested amendment is only for the 2016-2017 period and not an ongoing arrangement.

Hy-Tec are committed to road safety and require that all truck drivers must sign a code of conduct to ensure they are aware of the road safety

requirements when travelling to and from the quarry. The Drivers Code of Conduct is attached for reference (refer Attachment 1 – Drivers Code of Conduct). In addition to that existing management measure, Hy-Tec will also provide a map to truck drivers as part of the Drivers Code of Conduct which identifies any sharp bends or bus stops along Dulguigan road (refer Attachment 2 – Haul Route Map).

The map will ensure drivers are aware of the requirements of the Tumbulgum community and know where they must take care, over and above the standard road signs already in place. As a further commitment to monitoring compliance with the Drivers Code of Conduct, Hy-Tec will seek approval from Council to place a speed camera monitoring system at regular intervals (3 monthly or thereabouts) at various locations along Dulguigan Road to monitor the speed of trucks.

It is noted that one submission included photos alleging that dust from passing quarry trucks was excessive and that loads were uncovered. Upon review of the photos we believe the alleged impact occurred at the corner of Dulguigan Road and Hogans Road. Upon review of Hy-Tec records we understand that Council was carrying out roadworks at that location on Dulguigan Road at the Hogans Road corner and that during construction a portion of the road was unsealed which resulted in dust being generated when any and all vehicles traversed this section of the road and not just quarry trucks. This would have been the case for all vehicles using the road and not just trucks associated with the quarry. Importantly the dust was not generated by uncovered loads on quarry trucks and was a temporary occurrence and outside of the control of Hy-Tec. It is also noted that not all trucks travelling along Dulguigan Road are associated with the quarry. The proposed additional trucks are not considered to result in any significant dust or noise impact above that of the existing road usage.

A suitably qualified engineer has advised us that the probability that trucks are causing structural damage to any house adjacent to Dulguigan Road is considered highly implausible, and in reality a baseless comment.

The vibrational levels caused by trucks on Dulguigan Road will simply not provide enough amplitude to impact upon properly designed and constructed houses. Without completing a detailed vibrational assessment of the impact of the trucks on any particular house, it is considered that the vibrational impact caused by the trucks would be several orders of magnitude lower than the required vibrational levels needed to impact upon the structural integrity of any particular building. Throughout Australia the cracking and settling of houses is related to reactive soils, inappropriate foundation design, and commonly a divergence of the design footings versus as built requirements.

The submissions question how the truck movement calculations are described within the application. As per previous discussions with Council officers, the consent currently permits an average of 40 trucks to depart the quarry per day. This volume is not specified to operational days, accordingly, the total number of trucks permitted to depart the quarry per

year is 14,600 trucks. An increase to 44 trucks departing the quarry per day, equating to a total of 16,000 trucks per year, is a 10% increase. To avoid any confusion, both the average number of trucks per day, as well as the total number of trucks per year, are included in the proposed amended condition.

Regarding the tonnage conversion rates, as previously discussed with Council, the consent currently limits the annual extraction rate to a maximum of 200,000m³. This volume measurement relates to the amount of resource measured in-situ, for which the conversion rate from in-situ cubic metres to tonnes is confirmed by testing previously submitted to the Environment Protection Authority (EPA) and Council to be 2.75t/m³. Importantly, the extraction rate is the physical removal of material from the resource prior to processing and sale of processed product. After the resource is extracted, the conversion rate for the in-situ resource is different to the conversion rate that would be applicable to the material after being extracted, processed, stockpiled and loaded for transport, which then being 'loose' would have a lower density closer to the amount referred to by the submission. This is the reason why development consents and Environment Protection Licences regulate the amount of material extracted in-situ rather than the amount of material hauled. Accordingly, the annual extraction rate is limited to a maximum of 550,000 tonnes per annum as discussed and agreed to previously with the EPA and Council. In the correct context, 550,000 tonnes is unequivocally and demonstrably approximated to 200,000m³. To suggest otherwise is erroneous. For Council's information, we now provide a summary of the extraction rates from the last three anniversary periods of both the Environment Protection License (EPL) (refer Table 1 below) period and the Consent period (refer Table 2 below)."

Table 1. Extraction volume for EPL anniversary period (1 July to 30 June)	
Year	Volume
1 July 2013 to 30 June 2014	261,525t / 95,100m ³
1 July 2014 to 30 June 2015	248,288t / 90,285.55m ³
1 July 2015 to 30 June 2016	416,633t / 151,502.9m ³
3 Year Average	112,296.15m ³

Table 2. Extraction volume for Consent anniversary period (7 March to 6 March)	
Year	Volume
7 March 2014 to 6 March 2015	264,424.84t / 96,154.49m ³
7 March 2015 to 6 March 2016	372,562.64t / 135,477.32m ³
7 March 2016 to 6 March 2017	411,703.62t / 149,710.41m ³
3 Year Average	127,114.07m ³

These tables clearly show the annual extraction is well under the permitted amounts.

Hy-Tec previously met with representatives of the Tumbulgum Community Association (TCA) to discuss the increased volume of trucks. Hy-Tec also placed a notice in the July 2016 TCA newsletter in relation to the increase in truck movements, and inviting community members to report any feedback on driver behaviour. Hy-Tec continue to work to keep the local community informed of quarry activities.

Council Assessment of the Submissions

The submissions can be summarised into the following categories:

- Road Safety relating to the condition of the Dulguigan Road and Driver Behaviour
- Impact of noise and dust from trucks on dwellings along Dulguigan Road
- Calculation of haulage figures
- Community Consultation

It is extremely important to acknowledge that the quarry is operating under an existing approval, with conditions of consent.

A S96 Modification is not an opportunity to re-visit the original assessment.

Council can only consider the modification being requested by the applicant which in this instance is an increase in truck movements for the period of 7 March 2016 – 6 March 2017 only. And this time period has since lapsed. Which means the applicant is now required to comply with the condition as currently drafted. The purpose of the amendment now is just to reflect that for that consent year Council was made aware of the additional truck movements and Council can either approve or refuse to have that reflected in the consent.

Road Safety relating to the condition of the Dulguigan Road and Driver Behaviour

The quarry currently has approval for an average of 40 truck movements a day and the temporary increase to 44 trucks per day is considered minimal. Dulguigan Road is capable of accommodating the minor temporary increase of 4 additional trucks per day (on average over a year) without any additional road improvement works or survey data.

A recent heavy vehicle traffic incident on Dulguigan Road has caused Council to investigate improved line markings and signage on the road to assist in delineation. Further speed surveys are to be conducted and the data will form the basis of discussions with the quarry operator on enforcement strategies.

The condition of Dulguigan Rd will continue to be assessed on an annual basis as part of Council's standard works program and any repairs prioritised as necessary.

The quarry is obligated to keep detailed logs of all material and trucks leaving the site to meet their licence obligations with NSW EPA. At any time Council or NSW EPA can request information from the quarry to ensure compliance with their conditions of consent.

As the consent allows the operators to have a maximum of 40 trucks per day (averaged over a year) there may be times when there are more than 40 trucks a day however the consent allows for this and slower months throughout the year means the quarry can generally comply with the conditions of consent in regard to overall trip numbers in any given year.

This objection does not warrant refusal of the current S96 proposal.

Impact of noise and dust from trucks on dwellings along Dulguigan Road

The subject application sought the temporary increase in truck numbers (an additional 4 trucks per day) for March 2016 to March 2017. This period has now lapsed.

The existing conditions of consent therefore apply in regard to mitigating noise and dust implications from the quarry operations.

Some of these conditions include:

- 1.2. Within 90 days of the issue of S96 DA04/0162.02 consent, the amended REMP prepared in accordance with those matters prescribed in new Attachment 1 forming part of this consent shall be submitted to and approved by Council. The amendments may be made as an attachment and/or addendum of the REMP. Where any conflict or inconsistency exists between the REMP and attachment and/or addendum (consistent with Attachment 1 of this consent) the provisions detailed in the later shall prevail.*
- 8. Provision of signs erected in the vicinity of the above-mentioned transfer location, and at other strategic points along Dulguigan Road, advising that school buses operate in the area, and their hours of operation. Prior to manufacturing the signs, the applicant is required to contact Council's signwriter regarding the actual wording for the signs.*
- 27.2. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant that assesses compliance with the adopted noise criteria detailed in the Assessment of Noise and Dust Impacts prepared MWA Environmental dated 17 November 2014. The NIS is to be submitted to the satisfaction of the General Manager or delegate and is to include recommendations for noise attenuation if required. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's Authorised Officer.*
- 29. Any screens and loading areas for the existing quarry are to be located to direct sound away from any affected residences and/or be located such as to maximise the effect of the ridge in separating Residences from the site.*
- 30. Noise attenuation measures are to be in accordance with the REMP*
- 31. Dust control measures are to be implemented as proposed in the REMP*
- 37. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties.*
- 38. The operators of the quarry are to carry out a review of the activities of the quarry, using the Rehabilitation and Environmental Management*

Plan, on an annual basis. The results of the reviews, including an assessment of the effectiveness of the dust and noise management, and the sediment erosion control system, are to be submitted to Council's Environment and Health Services for approval.

40. *The quarry and associated operations are not to cause a nuisance to residents or disruption to amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.*

Any issues of non-compliance should be reported the NSW EPA.

This objection does not warrant refusal of the current S96 proposal.

Calculation of haulage figures

Council agrees with the applicant's response to the objectors' claims in this regard and is confident that the quarry is not exceeding the extraction quotas as the 200,000m³ was based on in-situ material.

This was communicated to Submission Number 2 who again replied with:

The following should assist you to understand what these concerns actually are and what issues they raise.

The EPA conversion of 2.75 tons per cubic metre refers to the state of it as an 'extractive resource' not as the produced 'material'. These two matters are shown in conclusion of the 2004 council report (p71). The report requires an average of 195,000m³ of 'materials' removed per annum (p65 &70).

Once the 'extractive resource' goes through its manufacture process it creates 'road base materials'. Road base materials have a conversion of 1.7 tons per cubic metre. At this conversion the DA becomes fully functional in allowing varied size trucks to move up to 14,600 loads of road base material to conform to the 195,000m³ pa over 3 year average or up to 200,000m³ in any one year thereof.

At 2.75 tons per metre, the quarry would not even be able to remove 195,000m³ pa over 3 years average or up to 200,000m³ in any one year. Even if every load was cut out in slabs and loaded on flat tray B double trucks with a crane, it still would not reach the DA's allowance at the 2.75 conversion, meaning the DA would not be functional.

Other extractive industries like the petroleum industry has items evaluated at its produced material stage. The resource material being crude oil is used to produce materials such as Diesel and petrol fuels, LPG, oils and fluids and grease. Then taxes and excise are applied to these materials.

Fuels have excise and other taxes, oils fluids have no excise but other taxes. If these were evaluated at its resource level then these calculations would not be possible.

Department of energy and mines gave a conversion between 1.5 to 1.8 for road base materials.

Since the introduction of the weigh bridge at the quarry the operator has charged and recorded materials by the ton, (previously cubic m³ to tons currently). A copy of a price list is attached which was in operation before and around 2004 when the DA was formulated.

The introduction of the change of measure has now brought confusion into play. This along with the quarry requiring annual reporting periods to change, using average figures when they are actually maximum figures and misleading truck sizes quantity has all made the current operation extremely questionable – especially that now we have gone from a fully functional DA to an operation that does not comply.

Listed are some of the facts in the 2004 DA that may assist:

- 195,000m³ of mainly road base material
- 40 movements average per day over 1 year
- 14,600 movements per year
- 56 movements per day based on 260 working days
- 13.35m³ average max load at 195,000m³ pa
- 22.7 ton average max load at 195,000m³ @ 1.7 ton per cubic metre
- Table of varied truck sizes estimated in 2004

Table depicting quarry maximum capacity

Type	%	No	Size per load	Tons at 1.7	Total m3
Truck & dog	30	4380	19m ³	(32.34)	83,220
Semi Trailer	30	4380	16m ³	(27.24)	70,080
Dual axel rigid	30	4380	7m ³	(11.94)	30660
Single axel rigid	10	1460	3.5m ³	(5954)	5110
Total	100	14600		(av 22.0t)	189,070

The 189,070m³ and 14,600 movements which conforms with the DA requirements would enable the use of some bigger trucks if need be (up to in one year 200,000m³).

These figures (which are at 1.7ton per M³) make the DA fully functional.

At 2.75 tons per cubic metre it does not work.

When the quarry tenders for large scale jobs which involves the largest size trucks it makes the Dulguigan road system very dangerous and also uses up their truck movement allowance along with their cubic metre allowance at a quicker rate.

In Brief the EPA epl licence ratio is calculated on the solid state ie RESOURCE;

The Councils DA is calculated on the produced state ie MATERIAL.

The applicant, Council and the EPA disagree with this submission and are of the view that the original DA was always in-situ material being removed.

The applicant has provided this table to show the extraction rates:

Year	Volume
1 July 2013 to 30 June 2014	261,525t / 95,100m ³
1 July 2014 to 30 June 2015	248,288t / 90,285.55m ³
1 July 2015 to 30 June 2016	416,633t / 151,502.9m ³
3 Year Average	112,296.15m ³

Year	Volume
7 March 2014 to 6 March 2015	264,424.84t / 96,154.49m ³
7 March 2015 to 6 March 2016	372,562.64t / 135,477.32m ³
7 March 2016 to 6 March 2017	411,703.62t / 149,710.41m ³
3 Year Average	127,114.07m ³

These tables clearly show the annual extraction is well under the permitted amounts.

Therefore this objection does not warrant refusal of the current S96 proposal.

Community Consultation

The S96 was publically notified as statutorily required.

This objection does not warrant refusal of the current S96 proposal.

(e) Public interest

The S96 application is considered to generally be in accordance with the public interest as it allows for the continuation of a finite resource to be utilised in a sustainable manner.

S96(1A) Modification Substantially the Same Development

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*

- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Minimal Environmental Impact & Substantially the Same Development

The applicant has provided the following:

It is considered that the proposed modification is one of minimal environmental impacts as the change does not alter the land use, annual extraction limit, hours of operation or environmental management measures. The change is required because smaller than average trucks have been and are continuing to transport quarry material to local projects and businesses during the 2016/2017 consent year. Because the average truck size has decreased the amount of quarry material transported per truck is less and therefore more truck movements are required to deliver the same amount of quarry material. To clearly illustrate this, Table 1, below provides a comparison of the vehicles per day and average tonnes per truck considered in the original EIS and consent with the proposed modification.

Table 1. Comparison of vehicles per day and average tonnes per truck			
	Average departures per day	Average truck size	Approximate annual Sales ₁
Consent condition	40	32 tonne	40 x 32 x 365 = 467,400t
Original three quarries per EIS Appendix G, Table 5.1.3	50	32 tonne	50 x 32 x 365 = 584,000t
Proposed modification	44	27.25 tonne (<i>current overall average</i>)	44 x 27.25 x 365 = 437,635t
Proposed modification	44	32 tonne	40 x 32 x 365 = 467,200t

1. Assume 365 days in a consent year

It is important to note that the table above shows that the maximum annual extraction rate of 200,000m³ /550,000t can't be achieved under the constraints of the condition of consent if the average truck size is 32 tonnes. It is noted that in past years the quarry has been regularly visited by larger trucks balancing out the smaller trucks, thereby achieving extraction in the order of 500,000t per annum. Importantly the table above illustrates how an increased number of departures by smaller trucks does not result in the maximum annual extraction rate being exceeded. Furthermore, an increased number of departures by standard 32t trucks does not exceed the maximum annual extraction rate.

These comments are acknowledged and are concurred with.

The temporary increase in truck numbers which has occurred from March 2016 – March 2017 is considered to have had minimal environmental impact is capable of being considered substantially the same development to that originally approved by DA04/0162.

OPTIONS:

1. Approve the S96 Modification subject to the recommended condition 3A which is proposed as follows

3A. The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers.

With the exception of the:

- 2015/2016 consent year where the total number of trucks departing the quarry shall not exceed 15870, being an average of 43.5 vehicles per day.
- 2016/2017 consent year where the total number of trucks departing the quarry shall not exceed 16,200, being an average of 44.5 vehicles per day.

The applicant is to liaise with Council in finding a suitable location for a traffic counter at the quarry.

The traffic counter is to be installed at the applicant's expense within 4 months of DA04/0162.03 being determined.

The quarry is to forward quarterly reports to Council demonstrating the traffic counter data, demonstrating a comparison of the traffic counter data with the weighbridge data, explanatory notes to interpret the data and demonstrating the likely level of compliance in any given quarter based on future projections.

[GENNS01]

2. Refuse the application; or

3. Refuse the application and issue Penalty Infringement Notices for the breaches

Council Officers recommend Option 1.

CONCLUSION:

The amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

The S96 Modification seeks approval for a temporary amendment which is considered capable of favourable consideration.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

A number of potential cost and budgetary implications have been identified in this report.

c. Legal:

Council will need to consider whether any further enforcement action is warranted

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- | | |
|---------------|--|
| Attachment 1. | DA04/0162.02 Council Report (ECM 4730475) |
| Attachment 2. | DA04/0162.02 Determination Notice (ECM 4730476) |
| Attachment 3. | Tumbulgum Community Association Report (ECM 5218133) |
-

6 [PR-PC] Compliance - Development Application DA02/1983.17 for an Amendment to Development Consent DA02/1983 for the Use of Property for Filming and Producing a Television Program at Lot 77 DP 755715 Dungay Creek Road, Dungay; Part Lot 74 DP 755715 No. 366 Dungay Creek Road, Dungay; Lot 93 DP 75715 No. 486 Dungay Creek Road, Dungay

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:

On 15 December 2016 Council approved DA02/1983.17 which was a modification to the development which authorises filming of the show "I'm a Celebrity Get Me Out of Here" on private property at Dungay.

Specifically at that Council Meeting a new condition was drafted and imposed on the applicant that reads as follows:

- 1.6 Within 90 days of the approval of DA02/1983.17 a traffic counter shall be in place at the gate of the property from the commencement of preproduction until the end of the wrap period. The results are to be submitted to Council demonstrating that no more than **80 vehicles a day** have accessed the site.

The counter was not installed within 90 days of the consent as the applicant thought Council would install the counter. However the counter was installed in July 2017 which was before the pre-production period commencing in August 2017.

The traffic counter has been installed just south of the entrance to B Tank Road (which includes some local residential traffic movements). However this location was most suitable to ensure traffic associated with B Tank Area was picked up.

The applicant has been self reporting the results since July 2017.

The applicant self-reported breaches to the 80 vehicle a day limit in the UK filming session over November and December 2017. There is initial raw data from the traffic counter, which is then compared to Granada's security log books to delineate between suppliers, neighbouring property traffic etc. to give an adapted data figure.

In February 2018 Council issued Granada Production Pty Ltd with a Penalty Infringement Notice of \$6000 for 5 breaches throughout November and December (the initial raw data showed 46 breaches however the adapted data figure derived from Granada explanatory notes on traffic showed 5 breaches where the crew numbers exceeded the 80 vehicles):

- 12 November 2017 – 85 vehicles entered the site
- 13 November 2017 – 84 vehicles entered the site
- 20 November 2017 – 85 vehicles entered the site
- 2 December 2017 – 82 vehicles entered the site
- 4 December 2017 - 81 vehicles entered the site

The Penalty Infringement Notice was issued on the adapted data figures shown above.

The applicant has again self-reported breaches (34 instances based on the raw data or a further 6 breaches based on an adapted data) to the 80 vehicle a day limit in the German filming session throughout January and February 2018 as follows:

- 14 January 2018 - 81 vehicles entered the site
- 17 January 2018 - 95 vehicles entered the site
- 18 January 2018 - 88 vehicles entered the site
- 24 January 2018 - 87 vehicles entered the site
- 25 January 2018 - 88 vehicles entered the site
- 29 January 2018 - 87 vehicles entered the site

Granada have stated that *“exacting adherence to Condition 1.6 would essentially deprive Granada of the fundamental benefit of its development consent”*.

DA02/1983 had not been originally issued with strict conditions of consent to enable flexibility based on filming operational needs. The inclusion of new condition 1.6 at the Council Meeting of 15 December 2016 has created a new level of compliance enforcement obligations on both Granada and Council. This report demonstrates the breaches and seeks direction on what action the Council wants to take. It should however be noted that Council did not receive any complaints about filming operations (or traffic number) in the last 2017/2018 filming season. Granada have self-reported two traffic related complaints which included a vehicle not keeping to the left and a large truck driving too fast. Granada have not received any complaints about the number of vehicles accessing the site.

The applicant has been approached for detailed responses to the breaches and their recent communication is incorporated into the body of this report.

RECOMMENDATION:

That:

- 1. A second singular Penalty Infringement Notice be issued to the applicant for breaching Condition 1.6 of DA02/1983.17 (6 instances throughout January based on the adapted data) at Lot 77 DP 755715 Dungay Creek Road, Dungay; Part Lot 74 DP 755715 No. 366 Dungay Creek Road, Dungay; Lot 93 DP 755715 No. 486 Dungay Creek Road Dungay.**

And

- 2. Council work with the applicant to review options for traffic management at the subject site. This could involve a further modification of DA02/1983 to increase the allowable traffic associated with the development or better traffic management (more buses) to accommodate the development as required.**

REPORT:

Applicant: Granada Productions Pty Ltd
C/- Itv Studios Australia Pty Ltd
Owner: Mr Craig D Parker & Ms Ellen L Parker
Location: Lot 77 DP 755715 Dungay Creek Road, Dungay; Part Lot 74 DP 755715
No. 366 Dungay Creek Road, Dungay; Lot 93 DP 755715 No. 486 Dungay
Creek Road, Dungay
Zoning: RU2 Rural Landscape, 7(d) Environmental Protection
(Scenic/Escarpment)
Cost: Not Applicable to Compliance Matter

Background:

The subject site has a long history in terms of the subject development application. The attached Council Report in regard to DA02/1983.17 demonstrates this background and how Condition 1.6 (80 trips maximum and traffic counter) was imposed on the consent on 15 December 2016 at the Council Meeting.

In July 2017 the traffic counter was installed by the applicant in the following location:



Figure 1- Traffic Counter Location

Following are extracts from all the **raw data** provided to Council by Granada in regards to the traffic counter number:

	24 hrs Daily Totals	7am - 5pm Entering Totals	Granada Crew Vehicle Totals
<u>11/07/2017</u>	54	50	31
<u>12/07/2017</u>	47	38	21
<u>13/07/2017</u>	43	39	22
<u>14/07/2017</u>	40	36	19
<u>15/07/2017</u>	23	17	0
<u>16/07/2017</u>	6	5	0
<u>17/07/2017</u>	37	30	17
<u>18/07/2017</u>	46	45	21
<u>19/07/2017</u>	51	48	19
<u>20/07/2017</u>	53	41	23
<u>21/07/2017</u>	53	48	23
<u>22/07/2017</u>	15	11	0
<u>23/07/2017</u>	10	8	0
<u>24/07/2017</u>	53	47	21
<u>25/07/2017</u>	39	33	21
<u>26/07/2017</u>	51	46	24
<u>27/07/2017</u>	57	50	29
<u>28/07/2017</u>	58	48	26
<u>29/07/2017</u>	30	14	0
<u>30/07/2017</u>	9	9	0
<u>31/07/2017</u>	44	40	20
Weekday Average	48	43	22
Weekend Average	16	11	0

Figure 2 - July Traffic Data (Compliance Achieved)

	24 hr Entering Totals	7am - 5pm Entering Totals	Granada Crew Vehicle Totals
<u>01/08/2017</u>	41	38	24
<u>02/08/2017</u>	41	36	20
<u>03/08/2017</u>	37	33	17
<u>04/08/2017</u>	63	51	26
<u>05/08/2017</u>	21	15	0
<u>06/08/2017</u>	12	11	0
<u>07/08/2017</u>	44	40	22
<u>08/08/2017</u>	37	35	23
<u>09/08/2017</u>	50	43	26
<u>10/08/2017</u>	55	53	25
<u>11/08/2017</u>	60	50	26
<u>12/08/2017</u>	18	14	0
<u>13/08/2017</u>	13	11	0
<u>14/08/2017</u>	55	49	26
<u>15/08/2017</u>	40	38	18
<u>16/08/2017</u>	47	44	22
<u>17/08/2017</u>	54	45	20
<u>18/08/2017</u>	60	53	18
<u>19/08/2017</u>	25	22	0
<u>20/08/2017</u>	15	12	0
<u>21/08/2017</u>	38	34	16
<u>22/08/2017</u>	31	25	15
<u>23/08/2017</u>	34	32	14
<u>24/08/2017</u>	26	20	6
<u>25/08/2017</u>	29	21	8
<u>26/08/2017</u>	12	7	0
<u>27/08/2017</u>	13	12	0
<u>28/08/2017</u>	43	37	25
<u>29/08/2017</u>	42	36	24
<u>30/08/2017</u>	41	37	21
<u>31/08/2017</u>	44	34	26
Weekday Average	44	38	20
Weekend Average	16	13	0

Figure 3 - August Traffic Data (Compliance Achieved)

	24 hr Entering Totals	7am - 5pm Entering Totals	Granada Crew Vehicle Totals
01/09/2017	54	42	21
02/09/2017	13	10	
03/09/2017	16	12	
04/09/2017	46	42	28
05/09/2017	44	36	26
06/09/2017	38	29	18
07/09/2017	67	54	28
08/09/2017	66	55	33
09/09/2017	15	11	
10/09/2017	25	17	
11/09/2017	57	49	24
12/09/2017	39	33	32
13/09/2017	42	36	24
14/09/2017	45	39	24
15/09/2017	50	40	28
16/09/2017	8	4	
17/09/2017	19	12	
18/09/2017	50	40	21
19/09/2017	47	37	22
20/09/2017	45	37	29
21/09/2017	57	49	29
22/09/2017	66	49	32
23/09/2017	20	14	
24/09/2017	17	11	
25/09/2017	58	44	32
26/09/2017	45	38	28
27/09/2017	51	40	30
28/09/2017	55	46	33
29/09/2017	59	51	32
30/09/2017	21	17	
Weekday Average	51	42	27
Weekend Average	17	12	0

Figure 4 September Traffic Data (Compliance Achieved)

	24 hr Entering Totals	7am - 5pm Entering Totals	Granada Crew Vehicle Totals
<u>01/10/2017</u>	0	0	3
<u>02/10/2017</u>	0	0	3
<u>03/10/2017</u>	0	0	27
<u>04/10/2017</u>	0	0	36
<u>05/10/2017</u>	43	36	33
<u>06/10/2017</u>	62	53	33
<u>07/10/2017</u>	21	10	3
<u>08/10/2017</u>	22	19	3
<u>09/10/2017</u>	48	42	18
<u>10/10/2017</u>	67	50	21
<u>11/10/2017</u>	63	49	31
<u>12/10/2017</u>	75	63	31
<u>13/10/2017</u>	84	58	39
<u>14/10/2017</u>	59	35	17
<u>15/10/2017</u>	19	12	3
<u>16/10/2017</u>	64	45	38
<u>17/10/2017</u>	67	50	43
<u>18/10/2017</u>	74	52	40
<u>19/10/2017</u>	76	53	44
<u>20/10/2017</u>	76	53	37
<u>21/10/2017</u>	54	25	25
<u>22/10/2017</u>	35	20	17
<u>23/10/2017</u>	96	78	50
<u>24/10/2017</u>	96	69	59
<u>25/10/2017</u>	88	60	57
<u>26/10/2017</u>	86	63	55
<u>27/10/2017</u>	99	68	54
<u>28/10/2017</u>	62	42	34
<u>29/10/2017</u>	58	32	61
<u>30/10/2017</u>	104	74	54
Weekday Average	65	48	38
Weekend Average	37	22	18

Figure 5 October Traffic Data (7 Breaches No Action Taken)

<u>01/11/2017</u>	99	68	60
<u>02/11/2017</u>	113	82	60
<u>03/11/2017</u>	123	81	70
<u>04/11/2017</u>	83	62	39
<u>05/11/2017</u>	87	69	50
<u>06/11/2017</u>	124	102	83
<u>07/11/2017</u>	148	129	88
<u>08/11/2017</u>	141	120	81
<u>09/11/2017</u>	138	112	86
<u>10/11/2017</u>	161	128	96
<u>11/11/2017</u>	144	110	85
<u>12/11/2017</u>	163	87	85
<u>13/11/2017</u>	183	111	98
<u>14/11/2017</u>	165	80	86
<u>15/11/2017</u>	181	82	82
<u>16/11/2017</u>	181	85	75
<u>17/11/2017</u>	190	115	69
<u>18/11/2017</u>	187	96	53
<u>19/11/2017</u>	155	72	77
<u>20/11/2017</u>	278	109	85
<u>21/11/2017</u>	169	87	77
<u>22/11/2017</u>	179	91	79
<u>23/11/2017</u>	171	88	75
<u>24/11/2017</u>	202	110	83
<u>25/11/2017</u>	157	70	75
<u>26/11/2017</u>	162	66	64
<u>27/11/2017</u>	321	159	82
<u>28/11/2017</u>	174	88	84
<u>29/11/2017</u>	170	84	78
<u>30/11/2017</u>	174	90	84
Weekday Average	172	100	75
Weekend Average	142	79	79

Figure 6 November Traffic Data (30 Breaches)

	24 hr Entering Totals	7am - 5pm Entering Totals	Granada Crew Vehicle Totals
01/12/2017	180	102	82
02/12/2017	158	88	82
03/12/2017	151	77	70
04/11/2017	171	97	86
05/12/2017	178	101	83
06/12/2017	181	105	80
07/12/2017	182	102	86
08/12/2017	177	98	74
09/12/2017	182	98	76
10/12/2017	157	75	71
11/12/2017	179	88	77
12/12/2017	91	58	40
13/12/2017	91	59	49
14/12/2017	108	89	58
15/12/2017	94	80	53
16/12/2017	44	33	20
17/12/2017	20	14	3
18/12/2017	55	37	29
19/12/2017	58	36	26
20/12/2017	49	31	22
21/12/2017	54	33	8
22/12/2017	72	50	40
23/12/2017	23	7	3
24/12/2017	12	7	5
25/12/2017	8	0	0
26/12/2017	16	10	3
27/12/2017	24	18	5
28/12/2017	27	14	5
29/12/2017	22	13	5
30/12/2017	18	14	3
31/12/2017	26	16	3
Weekday Average	183	111	83
Weekend Average	132	72	56

Figure 7 - December Traffic Data (16 breaches)

This raw data was supplemented by the applicant with the following adapted data

Date	Overview/Comment	Crew	Suppliers
6 th November	<ul style="list-style-type: none"> - 83 Granada Hired vehicles entered site including our shuttle buses. - 14 local suppliers vehicles entered site as part of the 83. - Local suppliers consist of catering/food/solo waste/build material and other required resources such as utilities etc to keep the site running. 	69	14

Planning Committee: THURSDAY 3 MAY 2018

Date	Overview/Comment	Crew	Suppliers
7 th November	<ul style="list-style-type: none"> - 88 Granada Hired vehicles entered site including our shuttle buses. - 25 local suppliers / Ecosure / Tweedshire Council entered site as part of the 88. - We had to conduct more on site road repairs due to weather causing more vehicles to enter site on this day as part of safety plan. 	63	25
8 th November	<ul style="list-style-type: none"> - 81 Granada Hired vehicles entered site including our shuttle buses. - 16 local suppliers vehicles entered site as part of the 81. 	65	16
9 th November	<ul style="list-style-type: none"> - 86 Granada Hired vehicles entered site including our shuttle buses. - 17 local suppliers vehicles entered site to continue on site road repairs for safety. As part of the 86. 	69	17
10 th November	<ul style="list-style-type: none"> - 96 Granada Hired vehicles entered site including our shuttle buses. - 21 local suppliers vehicles entered site. More local produce for catering entered site as we prepare to go into our dry run / walk in period. – as part of the 75. 	75	21
11 th November	<ul style="list-style-type: none"> - 85 Granada Hired vehicles entered site including our shuttle buses. - 6 local suppliers vehicles entered site. As part of the 85 	79	6
12 th November	<ul style="list-style-type: none"> - 85 Granada Hired vehicles entered site including our shuttle buses. - This was our walk in day for stand in's entering the jungle. (a practice run) 	85	-
13 th November	<ul style="list-style-type: none"> - 98 Granada Hired vehicles entered site including our shuttle buses. - 14 local suppliers vehicles entered site as part of the 98 - This was our first filming day in main camp which meant that technical crew had to deliver their equipment site. 	84	14
14 th November	<ul style="list-style-type: none"> - 86 Granada Hired vehicles entered site including our shuttle buses. - 11 local suppliers vehicles entered site as part of the 86 	75	11
15 th November	<ul style="list-style-type: none"> - 82 Granada Hired vehicles entered site including our shuttle buses. - 13 local suppliers vehicles entered site as part of the 82 	69	13
20 th November	<ul style="list-style-type: none"> - 95 Granada Hired vehicles entered site including our shuttle buses. - 10 local suppliers vehicles entered site as part of the 92 - This was our first transmission date going live back to the UK. We had to bring in more specialist equipment and the presenting hosts wardrobe. 	85	10
24 th November	<ul style="list-style-type: none"> - 95 Granada Hired vehicles entered site including our shuttle buses. - 18 local suppliers vehicles entered site as part of the 95 	77	18
27 th November	<ul style="list-style-type: none"> - 82 Granada Hired vehicles entered site including our shuttle buses. - 13 local suppliers vehicles entered site as part of the 82 	69	13
28 th November	<ul style="list-style-type: none"> - 84 Granada Hired vehicles entered site including our shuttle buses. - 13 local suppliers vehicles entered site as part of the 82 	71	13
30 th November	<ul style="list-style-type: none"> - 84 Granada Hired vehicles entered site including our shuttle buses. - 13 local suppliers vehicles entered site as part of the 84 	71	13
1 st December	<ul style="list-style-type: none"> - 82 Granada Hired vehicles entered site including our shuttle buses. - 6 local suppliers vehicles entered site as part of the 81 	76	6

On 23 February Granada provided additional raw traffic data for January and February 2018 (noting the last day of site being open is 16 February 2018)

	24 hr Entering Totals	7am - 5pm Entering Totals	Granada Crew Vehicle Totals
<u>01/01/2018</u>	24	14	4
<u>02/01/2018</u>	27	15	4
<u>03/01/2018</u>	32	18	5
<u>04/01/2018</u>	30	18	5
<u>05/01/2018</u>	28	21	6
<u>06/01/2018</u>	26	15	4
<u>07/01/2018</u>	24	17	4
<u>08/01/2018</u>	24	12	4
<u>09/01/2018</u>	36	23	5
<u>10/01/2018</u>	110	87	63
<u>11/01/2018</u>	108	79	55
<u>12/01/2018</u>	113	84	59
<u>13/01/2018</u>	129	93	63
<u>14/01/2018</u>	142	105	81
<u>15/01/2018</u>	172	99	64
<u>16/01/2018</u>	171	97	67
<u>17/01/2018</u>	201	121	95
<u>18/01/2018</u>	233	125	88
<u>19/01/2018</u>	194	120	78
<u>20/01/2018</u>	163	90	68
<u>21/01/2018</u>	151	80	64
<u>22/01/2018</u>	176	97	76
<u>23/01/2018</u>	166	97	68
<u>24/01/2018</u>	170	93	87
<u>25/01/2018</u>	182	104	88
<u>26/01/2018</u>	164	92	71
<u>27/01/2018</u>	171	89	76
<u>28/01/2018</u>	159	90	78
<u>29/01/2018</u>	173	98	87
<u>30/01/2018</u>	182	112	72
<u>31/01/2018</u>	166	95	69
Weekday Average	125	75	53
Weekend Average	121	72	55

Figure 9 - January Traffic Data (22 breaches action yet to be determined)

	24 hr Entering Totals	7am - 5pm Entering Totals	Granada Crew Vehicle Totals
<u>01/02/2018</u>	169	97	74
<u>02/02/2018</u>	194	123	78
<u>03/02/2018</u>	185	101	74
<u>04/02/2018</u>	157	97	70
<u>05/02/2018</u>	73	58	34
<u>06/02/2018</u>	107	84	48
<u>07/02/2018</u>	102	83	64
<u>08/02/2018</u>	97	82	54
<u>09/02/2018</u>	96	79	49
<u>10/02/2018</u>	56	40	29
<u>11/02/2018</u>	26	22	3
<u>12/02/2018</u>	88	68	46
<u>13/02/2018</u>	100	83	57
<u>14/02/2018</u>	98	82	55
<u>15/02/2018</u>	101	83	48
<u>16/02/2018</u>	78	56	37
<u>17/02/2018</u>	29	15	0
<u>18/02/2018</u>	9	6	0
Weekday Average	109	82	54
Weekend Average	77	47	29

Figure 10 - February Traffic Data (12 breaches action yet to be determined)

The applicant was approached to comment on the traffic numbers and on 31 January 2018 the **applicant responded** as follows:

"Accuracy

We have concerns that the traffic data system implemented may not be completely accurate. For instance, on 24 November 2017 the traffic monitor calculated 314 trips as having occurred within a 24 hour period. However, after cross-checking with our the travel log, we believe that it would have been almost impossible for site traffic to have hit that number given that we had 95 vehicles entering site of which 18 were local suppliers. I wanted to note this as there were a number of occasions where the automatically recorded numbers seemed very high as against our own manual reports. We can chase up with TDC to investigate whether there is a technical error and, if so, root cause and resolution.

Compliance Baseline & Further DA Amendment (Potential S96 Application)

I note that the 80 vehicle limit was based on our own traffic estimate (a section of the attached document) and provided to the Councillors by Nicholas Melville on 6 December 2016. That estimate was based on a forecast of hired vehicles and shuttle

buses entering site. It did not factor in the various suppliers that complete deliveries to site from time to time.

If we were to ignore the supplier vehicles, there would be only five days during the August to December 2017 period where we have traffic in excess of the 80 vehicles per day limit (as set out in my summary document attached). You will see in the overview document that I have highlighted in blue the supplier numbers have that have caused us to exceed the 80 vehicle limit.

We will continue to monitor our compliance with our traffic policy. However, we fear that the unescapable reality is that there is no practicable means for us to comply with the 80 vehicle limit if it includes all vehicles (including suppliers). It is a considerable logistical feat for us to operate a production that, at its peak, has approximately 500 crew (all working varying shift times) and significant third party demands (for instance, building supplies, catering and waste) with the relatively modest numbers that we have reported.

Accordingly, we would like to discuss with Council potential amendments to Condition 1.6 that could be the subject of a further section 96 application. This might also provide an opportunity to clarify whether one "vehicle" means one automobile (whether a car, bus or truck) or whether it is interpreted to mean one trip in and out of site or multiple trips in and out of site per day.

We would estimate that if we include local suppliers that would be 25 to 30 days that we are over the 80 vehicle limit in the months of October to December. In arriving at that estimate, we assume a vehicle may make multiple trips a day (for instance, a shuttle bus will cycle between site and crew accommodation pick-up/drop-off points).

Traffic Behaviour Generally

On a positive note, we have been very fortunate that this year the community of Dungay Creek Road has been happy with the way we have managed traffic and that this year we only received two complaints. These complaints are not because of traffic numbers but rather because of:

- not keeping to the left; and
- a large truck driving too fast.

Naturally we will continue to work with you and the community in order to constantly review and improve.

Next Steps

Amy Bell will be looking after the IBES/German show results and will be sending you the reports for January and February, as you know the site is due to close on Friday 16th Feb so the traffic reports will soon come after, once TDC has sent over their reports for us to input.

As mentioned, we would like to consult with Council regarding an amendment to Condition 1.6. It may be that it is most appropriate for this to wait until March or April once we have the benefit of seeing the traffic numbers for the German production."

When Council received the raw data for January and February that showed further breaches to the development consent the applicant was again asked to comment on the breaches.

Granada provided the following adaptive data for January and February 2018:

IBES12		IBES12	
January	Granada Crew Vehicle Totals	February	Granada Crew Vehicle Totals
01/01/2018	4	01/02/2018	74
02/01/2018	4	02/02/2018	78
03/01/2018	5	03/02/2018	74
04/01/2018	5	04/02/2018	70
05/01/2018	6	05/02/2018	34
06/01/2018	4	06/02/2018	48
07/01/2018	4	07/02/2018	64
08/01/2018	4	08/02/2018	54
09/01/2018	5	09/02/2018	49
10/01/2018	63	10/02/2018	29
11/01/2018	55	11/02/2018	3
12/01/2018	59	12/02/2018	46
13/01/2018	63	13/02/2018	57
14/01/2018	81	14/02/2018	55
15/01/2018	64	15/02/2018	48
16/01/2018	67	16/02/2018	37
17/01/2018	95		
18/01/2018	88		
19/01/2018	78		
20/01/2018	68		
21/01/2018	64		
22/01/2018	76		
23/01/2018	68		
24/01/2018	87		
25/01/2018	88		
26/01/2018	71		
27/01/2018	76		
28/01/2018	78		
29/01/2018	87		
30/01/2018	72		
31/01/2018	69		

In addition Granada provided the following adaptive data for August to December:

IAC17		IAC17		IAC17		IAC17		IAC17	
August	Granada Crew Vehicle Totals	Septemeber	Granada Crew Vehicle Totals	October	Granada Crew Vehicle Totals	November	Granada Crew Vehicle Totals	December	Granada Crew Vehicle Totals
01/08/2017	24	01/09/2017	21	01/10/2017	3	01/11/2017	60	01/12/2017	82
02/08/2017	20	02/09/2017	0	02/10/2017	3	02/11/2017	60	02/12/2017	82
03/08/2017	17	03/09/2017	0	03/10/2017	27	03/11/2017	70	03/12/2017	70
04/08/2017	26	04/09/2017	28	04/10/2017	36	04/11/2017	39	04/12/2017	86
05/08/2017	0	05/09/2017	26	05/10/2017	33	05/11/2017	50	05/12/2017	83
06/08/2017	0	06/09/2017	18	06/10/2017	33	06/11/2017	83	06/12/2017	80
07/08/2017	22	07/09/2017	28	07/10/2017	3	07/11/2017	88	07/12/2017	86
08/08/2017	23	08/09/2017	33	08/10/2017	3	08/11/2017	81	08/12/2017	74
09/08/2017	26	09/09/2017	0	09/10/2017	18	09/11/2017	86	09/12/2017	76
10/08/2017	25	10/09/2017	0	10/10/2017	21	10/11/2017	96	10/12/2017	71
11/08/2017	26	11/09/2017	24	11/10/2017	31	11/11/2017	85	11/12/2017	77
12/08/2017	0	12/09/2017	32	12/10/2017	31	12/11/2017	85	12/12/2017	40
13/08/2017	0	13/09/2017	24	13/10/2017	39	13/11/2017	98	13/12/2017	49
14/08/2017	26	14/09/2017	24	14/10/2017	17	14/11/2017	86	14/12/2017	58
15/08/2017	18	15/09/2017	28	15/10/2017	3	15/11/2017	82	15/12/2017	53
16/08/2017	22	16/09/2017	0	16/10/2017	38	16/11/2017	75	16/12/2017	20
17/08/2017	20	17/09/2017	0	17/10/2017	43	17/11/2017	69	17/12/2017	3
18/08/2017	18	18/09/2017	21	18/10/2017	40	18/11/2017	53	18/12/2017	29
19/08/2017	0	19/09/2017	22	19/10/2017	44	19/11/2017	77	19/12/2017	26
20/08/2017	0	20/09/2017	29	20/10/2017	37	20/11/2017	85	20/12/2017	22
21/08/2017	16	21/09/2017	29	21/10/2017	25	21/11/2017	77	21/12/2017	8
22/08/2017	15	22/09/2017	32	22/10/2017	17	22/11/2017	79	22/12/2017	40
23/08/2017	14	23/09/2017	0	23/10/2017	50	23/11/2017	75	23/12/2017	3
24/08/2017	6	24/09/2017	0	24/10/2017	59	24/11/2017	83	24/12/2017	5
25/08/2017	8	25/09/2017	32	25/10/2017	57	25/11/2017	75	25/12/2017	0
26/08/2017	0	26/09/2017	28	26/10/2017	55	26/11/2017	64	26/12/2017	3
27/08/2017	0	27/09/2017	30	27/10/2017	54	27/11/2017	82	27/12/2017	5
28/08/2017	25	28/09/2017	33	28/10/2017	34	28/11/2017	84	28/12/2017	5
29/08/2017	24	29/09/2017	32	29/10/2017	61	29/11/2017	78	29/12/2017	5
30/08/2017	21	30/09/2017	0	30/10/2017	54	30/11/2017	84	30/12/2017	3
31/08/2017	26			31/10/2017				31/12/2017	3

Granada also offered additional commentary regarding the breaches as follows:

"You have asked Granada Productions Pty Ltd (Granada) to respond to instances where more than 80 vehicles have accessed the site each day (as stipulated in Condition 1.6 of our DA). In response, I have set out below and in the attached:

- 1. Granada's explanation as to why it exceeded this 80 vehicle limit by way of an illustrative Case Study of our so-called "Walk In" phase (see attachment 2 to this report). This Case Study demonstrates the significant effort required to produce the "Walk In" phase of the Program, which involves the Celebrities first entering "the camp" in "the jungle" on site;*
- 2. A breakdown of the total days Granada exceeded the 80 vehicle per day limit as against the days it was beneath this limit; and*
- 3. Reiteration of the position outlined in the email of Ms Pui-Man Li dated 31 January 2018 that we believe it is not practicable for Granada to strictly adhere to an 80 vehicle limit per day, every day, if the program is to continue at its location.*

Exacting adherence to Condition 1.6 would essentially deprive Granada of the fundamental benefit of its development consent, given that the program must use vehicle numbers greater than 80 per day in certain peak periods (and historically has done so since its inception). We consider that a modest amendment to this condition, whereby the 80 vehicle per day limit is an average figure, would be appropriate in the circumstances. Granada would be happy to consult with, prepare and submit to Council a section 96 application reflecting this amendment, as it requires.

1. *The Case Study & Reasons for the 2017-2018 Vehicle Numbers Observed*

To assist Council's understanding of the traffic generated in the production of the Program, our Case Study provides an overview of the logistics involved in the "Walk In", which is the Program's busiest phase. You will see that almost 250 crew from a range of departments need to access site and also various other filming locations all at different times throughout the relevant filming days.

We believe it is clear from the Case Study that it would not be practicable to achieve this with an allocation of 80 vehicles or less. As mentioned in previous correspondence, it is a considerable logistical feat for us to operate a production that, at its peak, has approximately 500 crew (all working varying shift times) and significant third party demands (for instance, building supplies, catering and waste) with the number of vehicles that we have limited ourselves to.

Further, and also as mentioned in previous correspondence, we note that the 80 vehicle limit was based on our own preliminary traffic estimate and provided to the Councillors on 6 December 2016. That estimate was based on a forecast of hired vehicles and shuttle buses entering site. Unfortunately it did not factor in the various suppliers that complete deliveries to site from time to time. If we were to ignore the supplier vehicles, we estimate our traffic would be within the limit currently prescribed by Condition 1.6.

2. *Statistical Breakdown*

Council will note from the attached breakdown that Granada operated within the current 80 vehicle limit for approximately 87% of the total days we were on site, with 26 days in the aggregate above this limit. Rather than being continuous or spread throughout our full on-site period, those days tended to be concentrated in two much smaller periods: a month commencing at the end of the first week of November; and two weeks starting in the middle of the following January.

We will continue to fund the traffic monitor, at a cost of \$6,500 per annum, because we are committed to reducing traffic and this data assists us achieve this. Granada has and will continue to take all reasonable steps it can to reduce traffic. However, at the same time we do recognise that, even with our best mitigation efforts, we are aware traffic will still have a negative impact on some residents, but we note that we only had two complaints regarding traffic in the last season (a vehicle not keeping to the left and a large truck driving too fast) thanks to Granada devoting more resources to traffic management (both within production and also with the addition of our Community Liaison Officer, Lanie Loughlin).

3. *The Impact of Condition 1.6 on both the Program and the Local Area*

Naturally, Council will appreciate that enforcing the 80 vehicle limit strictly (rather than as an average volume requirement, as we have proposed above) would have a detrimental impact on local businesses and the overall Tweed Shire economy. We rely on the flexibility of smaller local suppliers to provide deliveries responsively and would always prefer to use local businesses rather than larger suppliers.

Hypothetically, reducing the scope of the Walk In in order to go some way towards ensuring complete strict compliance with Condition 1.6 will, as a necessary flow-on effect, unavoidably reducing our local spend. As Council is aware, the production of the UK and German versions of the 'I'm A Celebrity' program generate a direct spend of approximately \$13,000,000.00 annually in the Tweed Shire region alone. A significant amount of expenditure is injected into the region each year as a result of accommodation of our crew and also as a result of the expenditure with approximately 90 local businesses. A reduction in scope would also not be in keeping with the essential creative scale of the program, which is expected as a result of the many previous series produced in Tweed Shire.

4. Next Steps

As above, we would like to consult with Council regarding an appropriate amendment to Condition 1.6.

Naturally, we will continue to work with you and the community in order to improve traffic impacts."

Granada has always responded to Council's request for information quickly and responsibly. They have not hidden breaches or deliberately tried to deceive Council. Granada are trying to continue to run a successful international television program and they have expressed concern that the new condition 1.6 as imposed at the Council Meeting of 15 December 2016 is impeding their ability to do so.

OPTIONS:

1. That a second singular Penalty Infringement Notice be issued to the applicant for breaching condition 1.6 of DA02/1983.17 (6 instances throughout January based on the adapted data) at Lot 77 DP 755715 Dungay Creek Road, Dungay; Part Lot 74 DP 755715 No. 366 Dungay Creek Road, Dungay; Lot 93 DP 755715 No. 486 Dungay Creek Road, Dungay.

And

2. That Council work with the applicant to review options for traffic management at the subject site. This could involve a S96 Modification to increase the allowable traffic associated with the development or better traffic management (more buses) to accommodate the development as required.

Or

3. That a Penalty Infringement Notice be issued to the applicant for each breach of condition 1.6 of DA02/1983.17 (34 instances based on the raw data @ \$6000 a breach = \$204,000) throughout January and February 2018 at Lot 77 DP 755715 Dungay Creek Road, Dungay; Part Lot 74 DP 755715 No. 366 Dungay Creek Road, Dungay; Lot 93 DP 755715 No. 486 Dungay Creek Road, Dungay.

And

4. That Council work with the applicant to review options for traffic management at the subject site. This could involve a S96 Modification to increase the allowable traffic associated with the development or better traffic management (more buses) to accommodate the development as required.

Or

5. That Council seek legal advice on the best way of prosecuting these breaches and enforcing compliance going forward.

Option 1 and 2 are recommended.

CONCLUSION:

It is considered that Council needs to work with the applicant to resolve the traffic breaches to ensure future filming seasons are successful and compliant with their consent and respectful to the amenity of the adjoining residences.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Any legal action to enforce compliance will incur costs.

c. Legal:

Any legal action to enforce compliance will incur costs.

d. Communication/Engagement:

Not applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Council report 15 December 2016 - DA02/1983.17 (ECM 5212773)

Attachment 2. I'm A Celebrity Get Me Out of Here - The Walk in Case Study (ECM 5212774)

7 [PR-PC] Short Term Rental Accommodation - Update on Compliance Actions for Alleged Unauthorised Short Term Rental Accommodation

SUBMITTED BY: Development Assessment & Compliance

mhm



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

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.1 People
- 3.1.4 Compliance Services - To support a safe and healthy built and natural environment through the enforcement of local government rules and regulations.

ROLE: **Provider**

SUMMARY OF REPORT:

Arising from a Notice of Motion, Council resolved the following at its meeting of 5 April 2018:

“That Council defers taking any widespread action against any unauthorised or non-compliant short term holiday let (STHL) uses, until the release of new, anticipated State Government STHL legislative and planning policy controls, except in those circumstances where it can be demonstrated that such uses are having an unreasonable impact on the amenity of adjoining or surrounding neighbours as determined by Council.”

Since that resolution Council officers have received a number of enquiries from the owners of premises that are currently under investigation for alleged unauthorised Short Term Holiday Let (STHL) (or as defined in the Tweed Local Environmental Plan “Short Term Rental Accommodation”) who are seeking some form of commitment from Council that no compliance or enforcement action will be taken against them until a broader State Government policy position is provided. This is proving difficult for Council officers to manage, as the bulk of these sites under investigation are within the Low Density Residential R2 zone, which prohibits these uses. In most of these scenarios, the Council officers have requested the owners to cease the use, for which the owners have not complied with. Unless otherwise directed by Council, the next phase of action for these sites is to issue orders to cease the use.

With up to 30 of these complaints now received in 2018 to date, it is becoming impractical for Council in terms of resourcing to carry out detailed investigations and ultimately report these matters individually to Council to further determine whether or not to take legal action.

Commencing with this report, the officers will therefore periodically submit a report with a brief summary of the details and intended actions for each complaint. Council can then determine whether or not they wish to seek a more detailed report for individual matters.

RECOMMENDATION:

That Council receives and notes this report on current complaints received in respect of alleged unauthorised Short Term Holiday Let uses, and determines whether any further detailed reports be prepared on individual complaint items.

REPORT:

Arising from a Notice of Motion, Council resolved the following at its meeting of 5 April 2018:

“That Council defers taking any widespread action against any unauthorised or non-compliant short term holiday let (STHL) uses, until the release of new, anticipated State Government STHL legislative and planning policy controls, except in those circumstances where it can be demonstrated that such uses are having an unreasonable impact on the amenity of adjoining or surrounding neighbours as determined by Council.”

Since that resolution Council officers have received a number of enquiries from the owners of premises that are currently under investigation for alleged unauthorised Short Term Holiday Let (STHL) (or as defined in the Tweed Local Environmental Plan “Short Term Rental Accommodation”) who are seeking some form of commitment from Council that no compliance or enforcement action will be taken against them until a broader State Government policy position is provided. This is proving difficult for Council officers to manage, as the bulk of these sites under investigation are within the Low Density Residential R2 zone, which prohibits these uses. In most of these scenarios, the Council officers have requested the owners to cease the use, for which the owners have not complied with. Unless otherwise directed by Council, the next phase of action for these sites is to issue orders to cease the use.

With up to 30 of these complaints now received in 2018 to date, it is becoming impractical for Council in terms of resourcing to carry out detailed investigations and ultimately report these matters individually to Council to further determine whether or not to take legal action.

A summary table of these complaints and the compliance action taken is provided below:

Complaints Received by Council January to April 2018 – Alleged Short Term Holiday Let (or Rental Accommodation)

COMPLAINT REFERENCE NUMBER	DETAILS OF COMPLAINT	COUNCIL COMPLIANCE ACTION TO DATE
ILL18/0034	No. 56 Charles Street, TWEED HEADS – complaint from neighbour that garbage bins were being filled as a result of an unauthorised STHL. The bins were since tagged as contaminated by Solo. The property does not have any commercial bin services, and the neighbour has witnessed holidaymakers from the property dumping their rubbish in neighbouring bins on many occasions in the recent past.	Letter was sent to property owner advising them to contact Council regarding the use of STHL. Investigation took place and it was found that property owner was operating STHL. Owner was advised to cease STHL immediately as it is prohibited in R2 Zone. Property owner has ceased operation.
ILL18/0094	14 Bione Avenue, BANORA POINT - complaint from neighbour of an unauthorised STHL, alleging that two bedrooms on the ground floor are being sublet to long term tenants (being an authorised use in this case) but that the upper	Road side inspection took place, no unusual activity. One car on property and that was in the driveway. A check of the Airbnb site showed no

COMPLAINT REFERENCE NUMBER	DETAILS OF COMPLAINT	COUNCIL COMPLIANCE ACTION TO DATE
	<p>floor was being rented out as short term accommodation on the Airbnb website. This use was creating issues with regard to car parking in the area.</p>	<p>results.</p> <p>Complainant could not be contacted for further details as they were anonymous.</p> <p>Property will be monitored over the coming weeks to ensure compliance.</p>
ILL18/0096	<p>4/4-6 Frances Street, TWEED HEADS – alleged unauthorised STHL use for approximately 6 months. The owner does not live in the property.</p>	<p>6 month rental agreement is not considered to be holiday letting.</p>
ILL18/0142	<p>298 Casuarina Way, CASUARINA - complaint from neighbour of an unauthorised STHL, advertised on Airbnb, alleging that cars were parked all over the street, making it hard to get into driveways.</p>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was operating STHL, and was advised to cease the operation immediately as the property is in a R2 Zone.</p> <p>Property owner has written numerous emails regarding the STHL, claiming unfair treatment, and has now asked that Council reconsider the legislation on her property as it is believed that there is no impact for neighbours. The owner was advised that a further report on STHLs would be submitted to Council.</p> <p>Council officers spoke again with complainant on 12.04.18 – Complainant advised that STHL is still operating and noise is a very big issue. As people are using the pool late at night and cooking dinner on the BBQ at 12am/1pm. Living a completely different life style, living a holiday lifestyle. Complainant advised that property owners have gone to NZ and the property is being utilised for STHL at this present moment.</p>
ILL18/0153	<p>2 Prince Street, FINGAL HEAD, backing onto Healy Lane - complaint from neighbour of an unauthorised STHL – <i>“Repairs continues to go from strength to strength. Two of my family have asked him to refrain from noise when they are here on holidays but he is very arrogant plus now he has the radio blasting out from time to time from very early. Surely he cannot be allowed to run a business from home! What if everyone here did that! It is becoming a nightmare living here at Fingal Head and especially when alone and elderly. No consideration is given to neighbours at all.</i></p>	<p>Letter was sent to property owner advising them to contact Council regarding the use of a home business and STHL.</p> <p>Investigation took place and it was found that the property owners reside in their property and no STHL was taking place. Home business was a separate matter and has been dealt with accordingly.</p>

COMPLAINT REFERENCE NUMBER	DETAILS OF COMPLAINT	COUNCIL COMPLIANCE ACTION TO DATE
	<p><i>Neither of these neighbours have the decency to say hello even when approached in a friendly fashion. Does Council permit Airbnb here and I would like you to talk with these owners at some time in the future."</i></p>	
ILL18/0156	<p>22/22A Kirkwood Road, TWEED HEADS SOUTH. This unit is being rented on Airbnb. This is causing issue with regards to noise and also trespassing onto the neighbouring property to use the swimming pool (Pinehurst apartments).</p>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was previously operating STHL. However, property owner advised that he recently signed tenants up for a 12 month contract.</p> <p>The property owner was advised that should he wish to undertake and STHL he will need to submit a DA for the use as the property is in a R3 Zone.</p>
ILL18/0197	<p>10 Roseash Court, POTTSVILLE (Koala Beach) have advertised their recently built home on Airbnb as holiday accommodation. Web site link provided. <i>"Page 2 of their Statement of Environmental Effects for their build, which clearly states that we are zoned R2 Low Density Residential and under Tweed Local Environmental Plan 2014 prohibits Tourist and visitor accommodation in this area. This is the second neighbour we share a boundary with, who have set up their homes as instant motels, this is a very quiet, family and mostly owner occupied residential area. I have identified 9 other listings in Koala Beach and feel this type of business should not be allowed in such a sensitive biodiversity area."</i></p>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that that property owner resides at the property and they have recently had a lot of family over staying with them.</p> <p>Property owner was also happy to state this information in writing to which she has done.</p>
ILL18/0238	<p>11 Echo Lane, CASUARINA - alleged that the property is rented out and advertised on Airbnb, it is zoned R1 and is prohibited from tourist accommodation from house. Complainant is aware that it requires a DA and consent from owners and no DA has been lodged with council.</p>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was operating STHL.</p> <p>Owner was advised to cease STHL immediately as it is prohibited in R1 Zone.</p> <p>Property owner questioned why his property was being targeted as there are at least 10 other STHL operating around the area.</p> <p>Property owner advised that Council are actioning all matters that are being raised.</p> <p>The property owner confirmed that</p>

COMPLAINT REFERENCE NUMBER	DETAILS OF COMPLAINT	COUNCIL COMPLIANCE ACTION TO DATE
		STHL will cease.
ILL18/0277	4/3 Boundary Lane, TWEED HEADS – alleged that the premises <i>“seems to be holiday letting or advertising as an Airbnb, over the weekend there were 14 people for a bucks party and prior to that there were 40 people at this premises.”</i>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was operating STHL.</p> <p>Owner was advised to cease STHL immediately, however should she wish to continue the use, to submit a DA as the property is in a R3 Zone. Permitted with consent.</p> <p>Property owner questioned why his property was being targeted as there are STHLs everywhere.</p> <p>Property owner advised that Council are actioning all matters that are being raised.</p> <p>The property owner confirmed that STHL will cease and that her family will be moving back into the unit.</p>
ILL18/0306	4 Malibu Street, KINGSCLIFF – <i>“This property is currently being used for short term holiday rental (prohibited land use) and has held noisy parties on the weekends for the last few months, there is also others. Others have also been used in this street including 5 (recently sold), 3 (rented at Christmas and the road was parked out with boats during this period) and three others in this particular street (might be 13, 16 and 18)?? 4 and 5 are the worst for noise, parking, and the police have been called on a number times.”</i>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was operating STHL.</p> <p>Owner was advised to cease STHL immediately as it is prohibited in R2 Zone.</p> <p>Property owner advised that she did not know that STHL was prohibited in her area as everyone does it. The property owner has confirmed that the STHL has ceased.</p>
ILL18/0315	679 Casuarina Way, CASUARINA - Woken at night by a group of people making excessive noise. This property is permanently advertised on all STHL sites e.g Airbnb, hotels.com, Stayz, bookings.com. The owners who I believe live in Sydney are never present.	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Owner was advised to cease STHL immediately as it is prohibited in R1 Zone.</p> <p>Property owner has ceased operation.</p>
ILL18/0325	20 Philp Parade, TWEED HEADS SOUTH. House is being used for short term holiday letting. It was been going on for years. Police were called last weekend due to noise.	<p>Letter was sent to property owners advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owners were</p>

COMPLAINT REFERENCE NUMBER	DETAILS OF COMPLAINT	COUNCIL COMPLIANCE ACTION TO DATE
		<p>operating STHL.</p> <p>Owners were advised to cease STHL immediately as it is prohibited in R2 Zone.</p> <p>Property owners questioned the current legislation and advised that they would like to seek legal advice on the matter.</p> <p>Owners sought advice and were reluctant to cease STHL, however understood the consequences should they continue.</p> <p>A statutory declaration was requested from the owners to confirm that the property will not be utilised for STHL.</p> <p>Statutory Declaration was received and no further STHL has taken place.</p>
ILL18/0341	<p><i>"Units 6 and 10, No. 32 Kingscliff St Kingscliff being used for short term holiday lets. There are people coming and staying for just a few days. We are in a R3 Zone which requires a DA for short term lets. Have the owners of these units got a DA ?"</i></p>	<p>Unit 6 - Letter was sent to property owner advising them to contact Council regarding the use of a home business and STHL.</p> <p>Investigation took place and it was found that the "new" property owners only use the unit as their own holiday rental on the weekends.</p> <p>Unit 10 - Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was previously operating STHL. However, property owner advised that he recently signed a contract for long term tenants to reside in the unit.</p>
ILL18/0346	<p>1 Tamarind Avenue, BOGANGAR – Short term holiday letting is causing issues in the neighbourhood such as noise and traffic.</p>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was operating STHL. She was advised to cease the operation immediately as the property is in a R2 Zone.</p> <p>Another complaint came in on the 06.04.18 advising that the STHL is continuing and that the holiday letters hit a boat in the street.</p> <p>The property owner was contacted for a second time and she advised that she was under the understanding from the meeting that no enforcement action</p>

COMPLAINT REFERENCE NUMBER	DETAILS OF COMPLAINT	COUNCIL COMPLIANCE ACTION TO DATE
		<p>will be taken of STHL.</p> <p>The property owner was advised to again (final warning) to cease STHL as it is prohibited in her area.</p> <p>Property owner confirmed that she will cease STHL, however she will be seeking advice from a town planner on the matter.</p> <p>The owner, Ms. Tania Burke, spoke to this matter at Council's 19 April 2018 Community Access Meeting. A copy of a supporting written document tabled at the meeting is provided as an attachment to this report.</p>
ILL18/0347	3 Tamarind Avenue, BOGANGAR - short term holiday letting arising issues in the neighbourhood.	This matter also relates to ILL18/0346 as there are two dwellings on one property.
ILL18/0365	2 White Beech Court, BOGANGAR – <i>“permanent Airbnb. Extremely tired of the noise coming from this place at all hours of the morning. Up to 7 cars parked across our driveway at times. Parties and gatherings.”</i>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was operating STHL</p> <p>Property owner advised that she cannot believe she has been targeted as the entire street operates STHL. Property owner was advised to cease STHL immediately as it is prohibited in the R2 Zone.</p>
ILL18/0385	17 Point Break Circuit, KINGSCLIFF – Short term holiday letting is operating and causing a number of problems that affect the immediate community.	<p>Letter was sent to property owner advising them that should any STHL be taking place to cease immediately.</p> <p>Council officers could not contact the complainant for further details as they were anonymous.</p>
ILL18/0409	3 Jagera Close, POTTSVILLE – Short term holiday letting. This property has not operated since 2017 however they are still listed on Airbnb.	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Owner was advised to cease STHL immediately as it is prohibited in R2 Zone.</p>
ILL18/0463	6 Beason Court, CASUARINA - <i>The owner of this property is operating a short term holiday rental from this property without approval. This is an ongoing matter and we have asked her to contact us when the property is being let. There are people in there today and there is also signage up on the property indicating short term</i>	On the basis of a Council resolution, Council are now in the process of taking legal action to cease the STHL.

COMPLAINT REFERENCE NUMBER	DETAILS OF COMPLAINT	COUNCIL COMPLIANCE ACTION TO DATE
	<i>rentals.”</i>	
ILL18/0492	<p><i>2/1 Hampton Court, POTTSVILLE – “Owners of the property are living in the front duplex and are holiday renting the back duplex. It is being rented through First National in Pottsville. The caller says the amount of noise and cars that are coming and going is very concerning. She knows that this is not approved as a holiday letting and would like Council to investigate please.”</i></p>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was previously operating STHL.</p> <p>The property owner was advised a DA is required for the STHL use as the property is in a R3 Zone.</p> <p>Property owner is now in the process of submitting DA.</p>
ILL18/0515	<p><i>No. 12 Trestles Avenue, CASUARINA - “So it was another raging weekend here in Casuarina with the local airbnb place at 12 trestles ave raging well into the wee-hours. Cars roaring up and down Steelwood Lane. Drunken teenagers running around screaming and yelling. Woke my wife and 11yr daughter up at 11.30pm with screams that somebody had a 'head injury'. Music banging on all night garage door left up so we could share the enthusiasm of the table-tennis team. Our friends at 10 Trestles Avenue said they (recently) sold their home and moved on because of this reoccurring issue. I spoke with friends at No.13 Steelwood Lane who were also kept up all night. I walked around Eclipse Lane this morning and counted 9 QLD, non-resident, vehicles blocking the street near the entrance to Trestles Ave.</i></p> <p><i>Similar situation last Saturday night. I slammed my doors and windows a few times but nobody from 12 Trestles Ave took the hint so I had a few extra glasses of red wine. It is such a shame this area is so quiet and family oriented.”</i></p>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was previously operating STHL.</p> <p>The property owner was advised that should he wish to undertake and STHL he will need to submit a DA for the use as the property is in a R3 Zone.</p> <p>Property owner is now in the process of submitting DA.</p>
ILL18/0563	<p><i>29 Banzai Street, KINGSCLIFF - “Is being advertised on Stayz and I think that this is not the correct zoning for short term holiday lets. The impact is affecting the many people with the amount of cars and noise that comes from the property. The house is advertised for up to 10 people to stay. Could this be investigated?”</i></p>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was operating STHL. She was advised to cease the operation immediately as the property is in a R2 Zone.</p> <p>Property owner was advised that her next two STHL bookings will be allowed due to flight bookings and Commonwealth Games; however any further lettings will need to cease.</p> <p>Property owner has advised that she will comply however she advised that</p>

COMPLAINT REFERENCE NUMBER	DETAILS OF COMPLAINT	COUNCIL COMPLIANCE ACTION TO DATE
		<p>she will be seeking legal advice.</p> <p>Since then, a legal firm has written to Council (11.04.18) and has advised that they will be acting on the property owner's behalf.</p>
ILL18/0578	<p>13 Aeolus Lane, CASUARINA <i>“Zoned R2 - this property has been used for holiday letting for some time (years) and a complaint was received in relation to noise and that it is not a permissible use in that zone.”</i></p>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was operating STHL.</p> <p>Owner was advised to cease STHL immediately as it is prohibited in R2 Zone.</p> <p>Property owner advised that he did not know that STHL was prohibited in his area as everyone does it. The property owner has confirmed that the STHL has ceased.</p>
ILL18/0579	<p>Address needs to be provided. <i>“Land zoned R1 (No DA for holiday letting in system). This property is being used for holiday rentals without approval.”</i></p>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was operating STHL on a minimal basis.</p> <p>Owner was advised to cease STHL immediately as it is prohibited in R2 Zone.</p> <p>Property owner advised that she did not know that STHL was prohibited in her area as everyone does it. She advised that she is very upset as only older people stay in the unit.</p> <p>The property owner has confirmed that the STHL will cease.</p>
ILL18/0582	<p>26 Eclipse Lane, CASUARINA <i>–“advertising their property on Stayz and Airbnb. Over the weekend of the recent Kingscliff Triathlon this property was bursting at the seams with people flowing in and out at all hours of the day and evening and with cars parked everywhere on the street and median strip. This property is now regularly being used as a short term holiday rental. We live in this neighbourhood. Everyone knows each other. When our streets become hotels the entire fabric of our neighbourhood is affected. He didn't know me, I didn't know him. Our neighbourhood isn't supposed to be homes that are turned into hotels. See the following website posts for this property. They advertise</i></p>	<p>Letter was sent to property owner advising them to contact Council regarding the use of STHL.</p> <p>Investigation took place and it was found that property owner was operating STHL.</p> <p>Owner was advised to cease STHL immediately; as the property is situated in a R2 Zone and that STHL is prohibited.</p> <p>Property owner questioned why his property was being targeted as there are STHLs everywhere.</p>

COMPLAINT REFERENCE NUMBER	DETAILS OF COMPLAINT	COUNCIL COMPLIANCE ACTION TO DATE
	<i>10 people!!!</i>	Property owner advised that Council are actioning all matters that are being raised. The property owner confirmed that STHL will cease.
ILL18/0650	5 Cudgera Avenue, POTTSVILLE (Koala Beach) – <i>“listed on Airbnb, you will see that they have already had people staying there recently from the reviews. If you right click on the link and select Open Hyperlink it should take you to their listing on Airbnb, it is listed as: The Tree House at Koala Beach.”</i>	New matter. Letters and investigations are yet to be undertaken.

Commencing with this report, the officers will therefore periodically submit a report with a brief summary of the details and intended actions for each complaint. Council can then determine whether or not they wish to seek a more detailed report for individual matters.

OPTIONS:

Option 1

That Council receives and notes this report on current complaints received in respect of alleged unauthorised Short Term Holiday Let uses, and NOT require any further detailed reports to be prepared on individual complaint items.

Option 2

That Council receives and notes this report on current complaints received in respect of alleged unauthorised Short Term Holiday Let uses, and identifies any further detailed reports to be prepared on individual complaint items.

CONCLUSION:

Commencing with this report, the officers will therefore periodically submit a report with a brief summary of the details and intended actions for each STHL complaint. Council can then determine whether or not they wish to seek a more detailed report for individual matters.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Legal expenses may be incurred if any enforcement action is taken in respect to alleged unauthorised STHL use.

c. Legal:

Council has a duty of care as a regulator to ensure that compliance complaints are appropriately dealt with.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

A copy of document tabled by Ms Tania Burke, owner of No. 1 Tamarind Avenue, Bogangar at Council's Community Access meeting of 19 April 2018 (ECM 5227912)

8 [PR-PC] Rural Land Strategy for Adoption

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Leaving a Legacy
1.4	Managing Community Growth
1.4.1	Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

ROLE: **Leader**

SUMMARY OF REPORT:

This report provides a response to submissions received during the public exhibition of the draft Rural Land Strategy and seeks Council's adoption of the attached Rural Land Strategy.

On 2 November 2017 Council resolved to publicly exhibit the draft Rural Land Strategy. The draft strategy was on public exhibition for a period of 17 weeks from 7 November 2017 to 28 February 2018. During this time 10 information sessions were convened at which nearly 100 people attended.

28 submissions were received: 23 from private parties, one each from the Combined Tweed Rural Industries Association (CTRIA), Crown Lands Department, The Office of Environment and Heritage (OEH), the Department of Primary Industries (DPI), and Scenic Rim Regional Council.

A detailed review of submissions can be viewed in Attachment 2 to this report. Key issues included:

- Minimum lot size, the 40 hectare rule and further subdivision;
- Increased flexibility in the RU1 and RU2 zones;
- Small lot clusters, R5 Large Lot Residential and subdivision;
- Subdivision for primary production purposes;
- Allotments split by infrastructure, and
- Dwellings constructed without consent.

The broad range of issues and opinions expressed in submissions reflects the diversity of landuses and landowners in rural Tweed.

Following a review of submissions received during public exhibition, and further internal review by Council officers, the draft Rural Land Strategy has been amended and is now considered suitable for adoption.

To supplement the Rural Land Strategy the development of a Rural Land Strategy Implementation Plan, which would provide a hierarchy to actions, timeframe and defined implementation responsibilities, will be co-ordinated with the Strategic and Urban Design work program for future delivery.

The attached Rural Land Strategy represents the culmination of effort by Consultants engaged by Council, the Reference Panel, community, government agencies, Council officers and Councillors. Adoption and implementation of the strategy will provide clear guidance on the future of rural Tweed for the next 20 years.

RECOMMENDATION:

That Council:

- 1. Receives and notes the amendments to the publicly exhibited version of the Rural Land Strategy 2018 – 2036;**
- 2. Adopts the Tweed Rural Land Strategy 2018 – 2036, as amended and attached to this report;**
- 3. Provides public notice of the Plan's adoption; and**
- 4. Forward a copy of Rural Land Strategy 2018 – 2036 to the Department of Planning and Environment for endorsement by the Director-General or delegate in accordance with Section 9.1 (Ministerial Direction 1.2) of the *Environmental Planning and Assessment Act 1979*.**

REPORT:

This report provides a response to submissions received during the public exhibition of the Draft Rural Land Strategy and seeks Council adoption of the attached Rural Land Strategy 2018-2036 (RLS).

Diversity is a feature which characterises rural Tweed, in terms of its land use, economy, rural produce and biodiversity. The more recent diversification of rural Tweed has arisen both from 'green change' new arrivals with financial resources, time, education and an open mind to opportunities for their properties, and long established families who have found alternative income sources following the demise of the dairy and banana industries.

In support and encouragement of this diversity, the RLS proposes a balanced approach that delivers the intent of the nine policy directions previously endorsed by Council (6 October 2016) yet encouraging innovation, value-adding and diversification. This will be achieved through the implementation of the more than 140 actions presented in the strategies Implementation Plan.

Achieving a balanced outcome

The nine policy directions have been crucial in achieving a balance between protecting those features that distinguish rural Tweed and the desire to support change and opportunities for innovation, diversification, and value-adding. The nine policy directions are:

1. Encourage sustainable agricultural production and protect agricultural land;
2. Protect and improve environmental values and respond to natural hazards;
3. Support economic development;
4. Grow rural tourism;
5. Greater diversity of rural housing;
6. Council requirements are transparent and planning procedures streamlined where possible;
7. An informed, connected and resilient community;
8. Promote more sustainable landuse practices, and
9. Extractive industries are protected and landuse conflict minimised.

Community engagement and public exhibition

The draft Rural Land Strategy was placed on public exhibition for a period of 17 weeks from 7 November 2017 to 28 February 2018.

The exhibited draft Strategy represented the culmination of an exhaustive consultative process involving multiple community engagement events and utilisation of a range of methods to capture the interest of the community and seek their feedback on draft documents presented at each stage of the project. Details of the consultative process has been summarised in the appendices to the Strategy.

During the exhibition period copies of the draft strategy could be viewed at 10 locations across the Shire, with eight drop-in information sessions run in conjunction with the exhibition of the Draft Aboriginal Cultural Heritage Management Plan. An additional two drop-in sessions were convened for the Combined Tweed Rural Industries Association Inc.

(CTRIA) and the other for the community generally; nearly 100 people attended the drop-in information sessions.

The draft strategy has been presented to the Department of Planning and Environment (DPE) who have verbally advised that there are no significant issues preventing the strategy from proceeding.

Submissions

28 submissions were received: 23 from private parties, one each from the Combined Tweed Rural Industries Association (CTRIA), Crown Lands Department, The Office of Environment and Heritage (OEH), the Department of Primary Industries (DPI) and Scenic Rim Regional Council.

Submissions raised a diverse range of issues, reflecting the complex nature of landuses practiced in rural Tweed and expectations of a disparate rural community. A summary of submissions received and detailed response to comments made can be found in Attachment 2 to this report; key comments and issues raised include:

- Minimum lot size, the 40 hectare rule and further subdivision;
- Increased flexibility in the RU1 and RU2 zones;
- Small lot clusters, R5 Large Lot Residential and subdivision;
- Subdivision for primary production purposes;
- Allotments split by infrastructure, and
- Dwellings constructed without consent.

A range of changes have been proposed to the final strategy following the review of submissions and review by Council officers as listed in Attachments 2 and 3 to this report.

Discussion of key issues raised during the exhibition period follows.

Minimum lot size, the 40 hectare rule and further subdivision

The 40 hectare minimum lot size policy was imposed by the NSW Government in 1973, and later included in the Tweed Interim Development Order 2 in 1976. The rationale for introduction of the policy, as explained by the government at that time, was to prevent fragmentation of viable rural holdings, ensure consolidation of urban areas, prevent premature subdivision, of land on the fringe of urban areas, and avoid ribbon development along roads linking towns and villages.

While the Tweed had adopted 40 hectares as a development standard consistent with the State Government policy, by 1976, continuation of concessional lot provisions in Tweed Interim Development Orders 1 and 2, had resulted in the majority of land in the Tweed being subdivided into allotments less than 40 hectares with nearly 90% of allotments less than 40 hectares in the RU1 and RU2 zones, nearly 70% less than 10 hectares, and 60.7% less than 5 hectares.

The geographic area of land in the RU2 zone less than 40 hectares represents about 45% of the zone. As Map 5 shows, properties in the range of 40 - 75.9 hectares are scattered across the zone, with the majority of larger properties over 116 hectares lying to the west of Mount Warning/Wollumbin.

What this shows is that while the 40 hectare rule is applied in text, the benefit of an across-the-board nominal reduction would be restricted to the few remaining larger properties. Given the majority of properties are less than 5 hectares, unless a strategic approach was taken to where a reduction would apply, then the likely outcome would be a proliferation of rural residential lifestyle development throughout rural Tweed. This is an outcome that is considered consistent with Policy Direction 1 which seeks to encourage and protect agricultural production.

Appendix 3 lists Rural Subdivision Principles (under State Environmental Planning Policy (Rural Lands) 2008) which include minimisation of rural land fragmentation and conflict, consideration of the nature of existing agricultural holdings, existing and planned future supply of rural residential land in planning for dwelling opportunities.

Any reduction in the MLS would lead to increased dwelling entitlements and unless strategically located would lead to fragmented development which is contrary to the principles in the DPE's Settlement Planning Guidelines.

As reported in the Resource Inventory and Land Capability Assessment prepared in Stage 1 of the project, the greatest increase in land values has been associated with small rural holdings, attributed in large part to the capitalisation of the property through construction of a dwelling and other improvements, as such, cutting up the farm is not expected to reduce land values, but make it more difficult for agricultural and environmental land to be protected, and keep land available for those who seek a genuine rural lifestyle experience utilising the land to generate an income.

Investigations into the location of dwelling houses in rural Tweed suggest that about half of all houses are not occupied by the landowner. While this is only an indicative figure, the potential of further subdivision to lead to an increase in rental accommodation or for properties to be sold to newcomers who have no understanding of life and living in rural areas would most likely lead to an increase in conflict and escalation of pressure on legitimate agricultural activities and represents a form of concessional lot subdivision contrary to State Government directives.

The Department of Primary Industry has strongly supported the need to retain the MLS as a means of ensuring resource access, that is, the ability of the land to be utilised for agricultural purposes in the future regardless of whether it is currently utilised for such purposes or not.

While the strategy is not proposing a reduction in the MLS for the majority of rural land, it is proposing opportunities for family members to return to live on the farm, through an increase in the diversity of housing, such as Dual Occupancy (detached), Secondary Dwellings, and greater opportunities to apply for a Rural Workers Dwelling.

In addition, the opportunity to consider subdivision in small lot clusters and R5 Large Lot Residential has been proposed which could lead to a reduction in the MLS in these areas.

Given that the majority of land in rural Tweed is already considerably less than 40 hectares, the benefit of retaining the 40 hectare MLS will ensure that the remaining larger properties are retained, and encourage consolidation of smaller properties to acquire dwelling entitlements and support ongoing use of the land for agricultural purposes.

The RLS has consistently advised the community that it is not a rural residential strategy, and as such subdivision for rural residential purposes was not within the scope of the strategy.

Notwithstanding this, the strategy has proposed that a supply and demand analysis be undertaken to determine if further investigations are required into rural land subdivision perhaps as part of a rural residential strategy. Such an investigation would provide guidance on the strategic merits of further subdivision and locational requirements that may apply if further subdivision was seen as a possibility.

While retention of existing MLS provision is proposed in most circumstances, Council is at liberty to vary the minimum lot size should it so resolve as part of a planning proposal process; however, strategic justification for a variation to this minimum lot size would be required to achieve support from the DPE.

While the RLS is not proposing a reduction in the MLS for the majority of rural Tweed, it provides a range of options that will provide a diversity of rural housing, and support diversification and value-adding of rural enterprises.

Increased flexibility in the RU1 and RU2 zones

Submissions were both supportive of the ability to diversify and value-add, but also concerned about the potential implications of an increase in the range of permissible with consent landuses in the RU1 Primary Production and RU2 Rural Landscape zones.

The intent of broadening the range of 'permissible with consent' landuses is to streamline planning processes where development proposals are able to demonstrate that they conform to land use objectives and planning provisions which will be created once the strategy is adopted and the relevant actions implemented.

Several options exist to achieve the objectives of these actions, either by way of a strategic review of potential landuses that might be added to the landuse table in the LEP, or by 'opening' the RU1 Primary Production, and RU2 Rural Landscape zones.

The draft strategy has specifically identified a range of landuses that should be considered, including, function centres, food processing facilities, restaurants and cafes, minor events, attached commercial and retail development, and seniors housing in rural villages, but these should not be considered the definitive list, which would be more fully developed during later investigations. This approach would increase the list of permissible with consent landuses, and make all other landuses prohibited, which is the way the landuse table is currently structured, and is seen as a more restrictive approach to landuse planning.

'Opening' the RU1 and RU2 zones is an approach that has been applied in a number of councils, by which the list of prohibited landuses is identified, and all other landuses are permissible with consent. This approach is seen to provide more flexibility, but can lead to pressure to approve development that is not well integrated with the rural environment unless clear zone objectives, guidelines and planning provisions are developed and effectively applied.

Both approaches will provide more flexibility in determining alternative or complementary landuse practices. In either case, detailed investigations will be required to ensure that the outcomes are consistent with the objectives of the zone, intention of the actions proposed and potential for adverse impacts minimised. Until investigations are concluded the most desirable approach cannot be determined. It is proposed that these investigations be undertaken and a report brought back to Council with recommendations.

Any changes to the permissibility of landuses in the rural zones and development standards will need to be considered in detail to ensure that the ability of land to be utilised for agricultural and rural-related activities are not threatened, and that the environment and scenic amenity are protected.

Changes to the Tweed DCP 2008 and Tweed LEP 2014 will require public consultation and changes to the LEP will need the support of the DPE.

The RLS proposes to provide greater flexibility and streamlining of the planning process in part through a review of the landuse table to increase the range of permissible with consent landuses in the RU1 Primary Production and RU2 Rural landscape zones.

Small lot clusters, R5 Large Lot Residential and subdivision

The draft strategy proposes that the ability for properties typically less than 10ha in existing clusters to be further subdivided to increase housing density without expanding the footprint of the cluster, impacting agricultural land, environmental values or scenic amenity or character of the locality be investigated.

Inclusion of dual occupancy (detached) housing as permissible with consent in the R5 Large Lot Residential zone has the potential to provide additional housing in locations close to urban areas where access to services and facilities is either existing or can be provided more economical than more isolated cluster development.

While the draft strategy is proposing consideration of additional housing and subdivision in clusters of large lot lifestyle development in the rural areas where property sizes are up to 10 hectares, properties in the R5 zone are also typically within this range. There are approximately 1,240 allotments wholly or partly zoned R5, of which 80.4% (998) are less than 1 hectare, and 97% less than 5 hectares.

Almost all R5 zoned allotments occur in clusters in the localities of Tyalgum, Uki, Dunbible, Murwillumbah, Nunderi, Terranora and Bilambil Heights.

As with any subdivision of rural land, any future intensification of development in the R5 zone, would need to be assessed against the objectives of the zone, and a range of criteria which would include consideration of the purpose of the zone, character, amenity, access to services and facilities, and others yet to be determined.

It is proposed that during investigations into the subdivision of small area clusters, that R5 Large Lot Residential also be considered.

Any changes to the minimum lot size for allotments in small lot clusters and R5 Large Lot Residential land will be advertised and the community engaged prior to finalising a report to Council with recommendations.

While the RLS is not proposing a reduction in the MLS for the majority of rural land, a range of initiatives have been proposed to support a greater diversity of housing opportunities, and in this case, the potential for further subdivision.

Subdivision for primary production purposes

Under clause 4.2 of Tweed LEP 2014 it is currently possible to subdivide rural land for primary production purposes even where the land is less than the minimum lot size, so long as there is no house on the undersized agricultural lot created, and no house shall be built on the lot.

The intent of this clause is to encourage the utilisation of land with potential for agricultural production.

The dilemma, especially for rural Tweed, is that the remnant lot containing the existing homestead (the 'non-agricultural' portion) must have an area of at least the Minimum Lot Size (MLS). In rural Tweed where the majority of allotments are already less than the MLS and the majority of properties consist of a single allotment, it is not possible for these properties to be subdivided under clause 4.2.

The draft RLS proposes that subdivision for primary production purposes should be allowed where the remnant lot created containing the dwelling is less than the MLS in certain circumstance.

The State Government is currently reviewing a range of rural land related State Environmental Planning Policies and as part of this review is proposing an amendment that would support the intention of creating undersized allotments as a consequence of subdividing part of the property for primary production purposes, consistent with the action proposed in the RLS.

However, this approach is not supported by many NSW councils who see such a proposal as reintroducing concessional lot provisions that led to random residential allotments scattered throughout rural areas and was removed from State policies.

It is acknowledged that introduction of a State policy or local planning provisions that brought back a form of concessional lot subdivision would not be desirable; however, the ability of a landowner to sell off a part of the property, particularly those approaching retirement who no longer wish to farm the property, will provide finances to support retirement 'on the farm' and release productive and potentially productive agricultural land to be purchased by adjoining landowners or those seeking to expand rural activities.

A well designed suite of assessment criteria and planning provisions will be necessary to define when a subdivision could occur and what planning provisions will be created to ensure that isolated residential properties do not lead to an escalation in landuse conflict once the property is sold. Any such provision should not lead to further dwelling entitlements.

Allotments split by infrastructure

Concern has been raised that should allotments that are split by infrastructure be subdivided, that additional dwelling entitlements will be created, the potential for ribbon development occur, and unintended outcomes arise.

Action 92 of the strategy proposes that Council undertake a review of the potential implications of making permissible with consent subdivision and dwellings on parcels of land fragmented from the original homestead block due to construction of infrastructure, and if supported, establish criteria to ensure the protection of agricultural land and include the criteria in the assessment list to be developed for undersized allotments.

Concerns expressed about the potential impact of providing dwelling entitlements to undersized parcels of land intersected by infrastructure are acknowledged and considered significant.

The intention of this action was to provide opportunity for subdivision where it could be demonstrated that the impacts of subdivision would not lead to negative changes to the rural landscape. One negative impact would be a proliferation of dwellings along rural roads. Ribbon development would not be considered a desirable outcome of implementing this action.

Subdivision of rural land which generates allotments less than the minimum lot size will require a change to Tweed LEP 2014, and as such public consultation will be required at which time the opinions of the community will be sought, and government agencies will be engaged, including DPI and DPE.

Dwellings constructed without consent

While it was not within the scope of the Rural Land Strategy to undertake an investigation and report specifically on the issue of unapproved or illegal dwellings the matter of inequity between those landowners who abide by the requirements of Council and local planning provisions and those who do not and construct residential dwellings without development consent has been raised on a number of occasions during public consultation sessions.

It is proposed that the issue of unapproved or illegal dwellings be added to the list of actions in the Implementation Plan and for Council to establish its position on this matter.

Additional amendments

In addition to changes made to the draft advertised version of the RLS resulting from comments received in submissions, typographical errors and formatting changes along with additional changes derived from further review by Council officers have been made and are listed in Attachment 3.

Implementation

The RLS has been drafted following extensive consultation with stakeholder groups and the broader community. The nine key policy directions provide the strategic framework from which innovation, value-adding and diversification within Tweeds Rural areas will occur.

The Rural Land Strategy's Implementation Plan presents more than 140 actions which the priority status and proposes timeframes for their implementation.

The ability of Council officers to implement the strategy will rely heavily on allocation of resources to allow implementation of priority short term actions to commence. Given the potential timeframes for implementing actions which may require the development of planning provisions, assessment criteria, guidelines, and amendment to Tweed LEP 2014 and or Tweed DCP 2008, implementation is expected to require a longer term commitment.

Implementation of the actions within Rural Land Strategy will require development of a implementation strategy which would be integrated into the Strategic and Urban Design work program for future delivery.

Since exhibition, the draft strategy has been amended to take in to account the matters raised in submissions and presented in this report and is now considered suitable for adoption.

OPTIONS:

1. Adopt the attached Rural Land Strategy, or
2. Defer for further consideration by Council

Option 1 is the officer's recommended option.

CONCLUSION:

The Rural Land Strategy has been developed through a multi-stage iterative process which involved extensive community and stakeholder engagement.

With endorsement of the nine policy directions in the previous stage of the project, a draft strategy was publically exhibited during the period November 2017 to February 2018.

Submissions received have raised a range of issues which have been responded to in the attachments to this report and have been considered in amendments to the draft strategy and preparation of the final Rural Land Strategy now presented for consideration and adoption by Council.

Should Council resolve to adopt the Rural Land Strategy as attached, or with changes, a procedure for implementation will be required to ensure that the strategy is 'brought to life' and changes become reality. This will require a review of the Strategic Planning and Urban design Unit work program to fit in additional resources, or reallocate tasks to see the strategy implemented as proposed in the document's Implementation Plan.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Implementation of the strategy will be both time consuming and may require additional resources and coordination between Council divisions. An estimate of the budgetary implications of each action has been identified in the Implementation Plan to the Strategy.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Empower-We will give the community greater opportunity to participate in a transparent flow of information and feedback to Councillors who have been empowered as the Community representatives to make decisions in accordance with the Local Government Act 1993.

Involve/Collaborate-We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

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

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- | | |
|---------------|---|
| Attachment 1. | Rural Land Strategy (ECM 5228599) |
| Attachment 2. | Draft Tweed Rural Land Strategy response to submissions received during public exhibition – 17 November 2017 – 28 February 2018 (ECM 5227704) |
| Attachment 3. | Rural Strategy – Additional amendments (ECM 5227706) |
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9 [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 the April 2018 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

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

DA No.	DA17/0669
Description of Development:	Surfboard manufacturing
Property Address:	Lot 31 DP 258721 No. 34 Industry Drive, Tweed Heads South
Date Granted:	05/04/2018
Development Standard to be Varied:	Clause 4.3 Heights of Buildings
Zoning:	B5 Business Development
Justification:	A component of the extraction unit which is required to remedy any possible air quality impacts exceeds the maximum permitted building height by 0.500m (proposed height is 10.5m).
Extent:	Variation to Clause 4.3 of TLEP2014 represents an exceedance in building height resulting in a 0.5% variation (proposed height is 10.5m and max. permitted is 10m).
Authority:	Tweed Shire Council under assumed concurrence

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
