



**Town Planning, Drafting, & Design**

Shop 5/130 Jonson Street Byron Bay

PO Box 2585 Byron Bay, NSW 2481

[tlono@designevolutions.com.au](mailto:tlono@designevolutions.com.au)

[www.byrondesignevolutions.com](http://www.byrondesignevolutions.com)

Ph. (02) 6680 9255; Mob. 0438 363 821

## **SECTION 4.55 APPLICATION**

### **AMEND DESIGN & CONSENT DA 17/0564**

**Amend Conditions 1 and 6 and Delete Condition 42.**

**Alterations and Additions to Existing Dwelling**

**Lot 1 DP 1241037**

**No 125 River St.**

**Murwillumbah.**

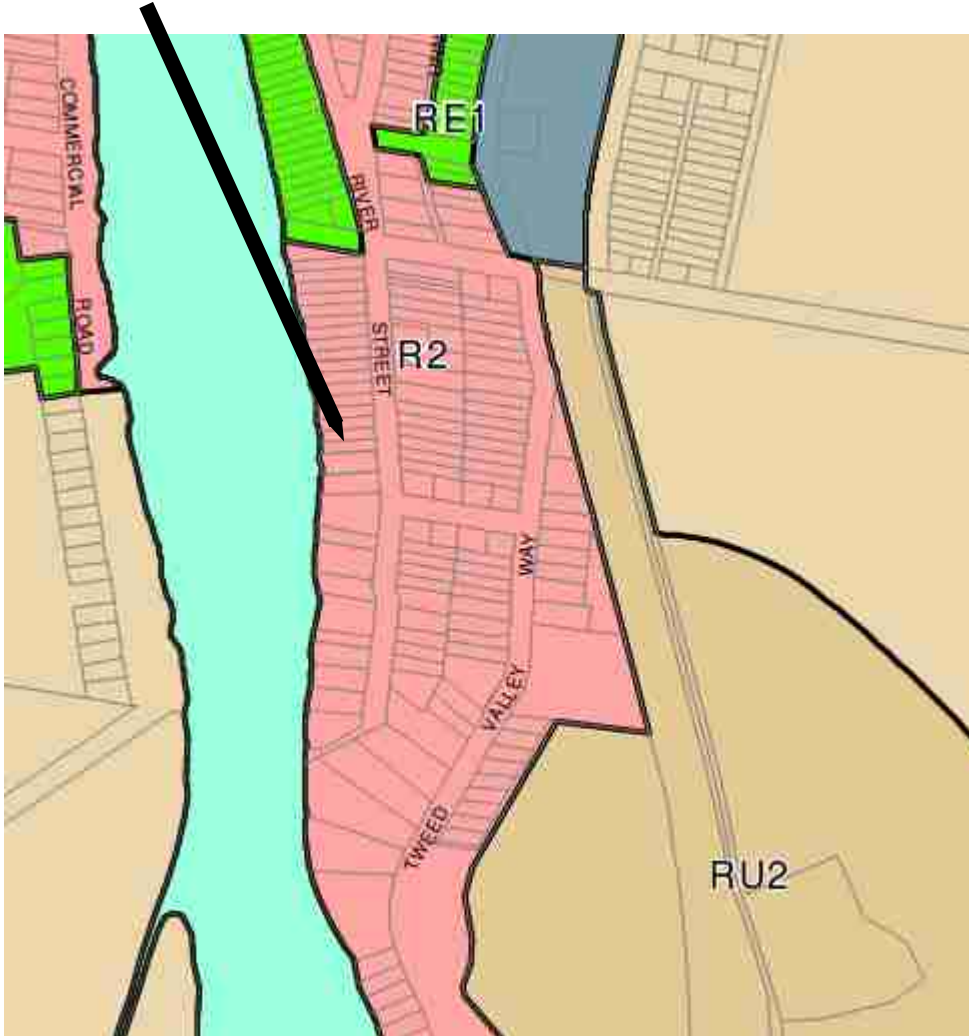
**INDEX**

<b>1 INTRODUCTION.....</b>	<b>4</b>
<i>ASSESSMENT OF A SEC 4.55 APPLICATION – THE SAME DEVELOPMENT.....</i>	<i>9</i>
<b>2 SECTION 4.55(2) MODIFICATION SOUGHT.....</b>	<b>11</b>
2.1 AMEND CONDITION 1.....	11
2.2 AMEND CONDITION 6.....	12
2.2 SECTION 4.55(2) MODIFICATION SOUGHT.....	12
3.3 PLANNING MERITS OF MODIFICATION SOUGHT.....	12
2.4 THE SAME DEVELOPMENT.....	13
<b>3 SEC. 4.15(1)(A) ZONING OF LAND.....</b>	<b>14</b>
2.1.2 Height of Buildings - Tweed Local Environmental Plan 2014.....	14
2.1.3 Floor Space Ratio – Tweed Local Environmental Plan 2014.....	15
2.1.5 Acid Sulfate Soils – Tweed Local Environmental Plan 2014.....	23
2.1.6 Section A1 Dwelling Houses, Dual Occupancy, Secondary Dwelling, Alterations and Additions and Ancillary Development – Tweed Development Control Plan 2008.....	24
2.1.7 Section A2 Site Access and Parking Code – Tweed Development Control Plan 2008.....	39
2.1.8 Section A9 Energy Smart Homes Policy – Tweed Development Control Plan 2008.....	40
2.1.9 State Environmental Planning Policy (Coastal Management) 2018.....	40
2.1.10 FLOOD IMPACT.....	41
Flood Evacuation Plan.....	42
<b>3. SEC. 4.15(1)(B) IMPACT ON ENVIRONMENT.....</b>	<b>43</b>
3.1 LANDSCAPING.....	44
3.2 EPA ACT SEC 5.5 DUTY TO CONSIDER ENVIRONMENTAL IMPACT.....	44
3.2 BIODIVERSITY CONSERVATION REGULATION 2017.....	44
3.2.1 Sec 7.3 of the Biodiversity Conservation Act 2016.....	45
3.3. IMPACT ON CULTURAL AND HERITAGE SIGNIFICANCE OF THE LAND. ABORIGINAL SITES.....	47
3.4 NATIVE FAUNA.....	47
3.5 NATIVE VEGETATION.....	48
3.6 S.E.P.P. No. 44 KOALA HABITAT.....	48
3.7 S.E.P.P. No. 55 CONTAMINATED LAND.....	48
3.7 IMPACT ON SCENIC QUALITY.....	48
3.8 IMPACT ON THE BUILT ENVIRONMENT.....	48
<b>4. SEC. 4.15(1)(C) SUITABILITY OF THE SITE.....</b>	<b>49</b>
5.1 GEOLOGY.....	49
5.2 ACCESS AND PARKING.....	49
5.3 TRAFFIC.....	49
5.4 PUBLIC TRANSPORT.....	49
5.5 SERVICES.....	49
<b>6 SEC. 4.15(1)(D) SUBMISSIONS UNDER ACT OR REGULATIONS.....</b>	<b>50</b>
<b>7 SEC. 4.15(1)(E) PUBLIC INTEREST.....</b>	<b>50</b>
<b>8. CONCLUSION.....</b>	<b>50</b>

**Annexure**
**Amended As Built Plans.**

**LOCALITY & ZONING PLAN**

**AMEND DESIGN & CONDITIONS**  
**Alterations and Additions to Existing Dwelling**  
**Lot 1 DP 1241037 No 125 River St. Murwillumbah.**



**Tweed LEP 2014 – R2 Low Density Residential**

## 1 INTRODUCTION

This report is to accompany a Section 4.55 Application for the amendment of the design and conditions relating to an approval to construct Alterations and Additions to an existing Dwelling located on Lot 1 DP 1241037 No 125 River St. Murwillumbah.

The property has an area of 990.48m<sup>2</sup>.

Following construction of the approved additions, it has become evident that the builders have altered the roof pitch due to a misinterpretation of the plans, there have been some minor changes to internal wall alignments, structural elements, and a minor modification of a window has occurred. The 8 minor amendments are summarised below:-

### - Ground Floor

1. Removal of some sub-floor posts to allow for more cost effective construction.
2. Expansion of ground floor laundry toilet area to better carry load of building above.
3. Expansion of internal stairwell to better carry load of building above.
4. Modification of breeze block wall to better allow for movement of flood waters.

### - First Floor

5. Relocation of internal wall Bathroom and Bed 3 to allow for relocated vanity.
6. Increased size of window by 800mm in Ensuite Bed 1.

### - Roof

7. The new roofing has been built at 40 degrees contrary to the approved plans, this has resulted in the apex of the roof now being higher than previously approved. The new maximum roof height is 16.630 AHD, the previously approved maximum roof height was 14.745AHD. This results in apex of the roof being 1.885 higher than approved.
8. It is now proposed to remove the existing "Bullnose" verandah roof on the existing eastern verandah. This is to be replaced with an "Eye-Lash" style curved roof in place of the old roof, which is to continue around the approved deck on the northern side of Bed 1.

To this end we request that Consent Conditions 1 and 6 be amended.

The annexed photographs and plans show clearly that these variations do not detract from the integrity of the building or the streetscape, and it is requested that Council approve these minor departures, as they do not prejudice the amenity of the area or adjoining dwellings and residential flats.

In addition to this, Condition 42 of the Consent has been satisfied, as the two allotments which comprised this property (**Lot 12 Sec 3 DP 5077 & Lot 13 Sec 3 DP 5077**), have now been consolidated to be Lot 1 DP 1241037. As such condition 42 is no longer required.

**Photographs 1-5 on following pages.**



**Photograph 1: View from North-West**



**Photograph 2: View from East (River Street)**



**Photograph 3: View from North-East (River Street)**



**Photograph 4: View from North-East (River Street)**



**Photograph 5:** View from South-East (Between Flats and Dwelling)

**Condition 1**

1. The development shall be completed in accordance with the Statement of Environmental Effects and the plans identified in the table below, except where varied by the conditions of this consent:

Date	Plan No.
03/08/17	DA P1 - DA P4
05/10/17	DA P5, DA P7 & DA P8
14/11/2017	DA P6, DA P9 - DA P11

[GEN0005]

***New Condition 1***

*The development shall be in accordance with the plans prepared by Design Evolutions dated 3<sup>rd</sup> March 2019, (Sec4.55) P1 – (Sec4.55) P7.*

**Condition 6**

6. The proposed alterations and additions shall not exceed a maximum height of RL 14.745m AHD, as indicated on the approved plans.

[GENNS01]

***New Condition 6***

*The proposed alterations and additions shall not exceed a maximum height of RL 16.630m AHD, as indicated on the plans prepared by Design Evolutions dated 3<sup>rd</sup> March 2019, (Sec4.55) P1 – (Sec4.55) P7.*

**Condition 42**

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

**Delete Condition 42**

*Condition 42 of the Consent has been satisfied, as the two allotments which comprised this property (Lot 12 Sec 3 DP 5077 & Lot 13 Sec 3 DP 5077), have now been consolidated to be Lot 1 DP 1241037. As such condition 42 is no longer required.*

**Assessment of a Sec 4.55 Application – The Same Development**

To assess a development application in terms of whether it was substantially the same, the Court in *Tyagrah Holdings Pty Limited v Byron Bay Shire Council* (2008) NSWLEC 1420, judgment of Commissioner Bly, in which Commissioner Bly conveniently summarises at para 10: “The provisions of s 96 (now Sec 4.55) have been judicially considered on a number of occasions and the following are the relevant important findings or principles that can be utilised in considering whether or not a particular development is substantially the same development as the development for which the consent was originally granted:

1. The word “substantially” means essentially or materially having the same essence. In assessing whether the test is met a factual comparison between the approved development and proposed modifications is required.

*(In this instance, the approved DWELLING ALTERATIONS AND ADDITIONS , retains the same landuse. As such it is “Substantially the same”).*

2. The question must be asked and answered with respect to the particular circumstance of the individual modification application.

*(Again, the approved DWELLING ALTERATIONS AND ADDITIONS , retains the same landuse, and the alteration of Condition 6 still achieves the same outcomes. As such it is “Substantially the same”).*

3. It is for the decision maker to decide the relevant range of facts to assist in determining the question.

*(The only variation from the approved development is an increase in the height of the roof apex, and minor increases to ground floor areas. All other aspects of the application remain unaltered, and the outcome is unaltered).*

4. Even though certain modifications of development may be described as significant this does not mean that the modified development could not necessarily remain substantially the same as the approved development. A comparison process involves an appreciation of both qualitative and quantitative.

*(As the proposed minor alteration to Conditions 1 and 6, retains the same landuse, and does not alter this conditions intent, then the landuse remains “Substantially the same”, and no significant departures occur).*

5. Any planning appraisal of the modified development is not relevant to the threshold question.”

Commissioner Bly notes at para 12:



“Each of these changes is significant in its own way but this does not in itself mean that the modified development is not substantially the same.”

On this basis as the *approved DWELLING ALTERATIONS AND ADDITIONS landuse remains the same, and the intent of the imposed conditions 1 and 6 are still achieved*, thus the same development results, despite this change.

The fact that this change simplifies the process of achieving the approved landuse, and do not change the approved use. As such it is considered that the amended proposal still represents the Same Development as that approved.

As such these alterations meet the requirements of the Consent description i.e. *DWELLING ALTERATIONS AND ADDITIONS*, and accords with the approved plans. As such the SAME DEVELOPMENT results.

These changes do not alter the built form or landuse of the development.

It is requested that the amendment of the Consent, by the amendment of Conditions 1 and 6 relating to the *DWELLING ALTERATIONS AND ADDITIONS*, be approved, as it is a minor amendment, and the proposal does not alter the intent of the original consent, or detract from the integrity of Councils' approval, and is therefore only a minor variation.

### **1. Section 4.55 Application**

Section 4.55 of the Environmental Planning and Assessment Act, so far as is material to the development proposed provides as follows:

(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.

(2) **Other modifications**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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) 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 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

## 2 Section 4.55(2) Modification Sought

This Section 4.55(2) Modification is sought to Amend Conditions 1 and 6 such that the approval relate to the plans prepared by Design Evolutions dated 3<sup>rd</sup> March 2019, Plans (Sec4.55) P1 - (Sec4.55) P7.

### 2.1 Amend Condition 1

#### Existing Condition 1

- The development shall be completed in accordance with the Statement of Environmental Effects and the plans identified in the table below, except where varied by the conditions of this consent:

Date	Plan No.
03/08/17	DA P1 - DA P4
05/10/17	DA P5, DA P7 & DA P8
14/11/2017	DA P6, DA P9 - DA P11

[GEN0005]

**Reasons for variation; Due to a misinterpretation of the plans the roof was built at a steeper pitch. Due to the need for more cost effective use of materials some ground floor walls have been modified and some posts removed. The owner would like coverage over an approved uncovered deck and to modify the roof of the existing verandah. The owner wanted a wider opening in the ensuite of Bed 1.**

On this basis it is requested that Condition 1 be amended to read as follows:-

### **Requested Amendment to Condition 1**

*The development shall be in accordance with the plans prepared by Design Evolutions dated 3<sup>rd</sup> March 2019, (Sec4.55) P1 – (Sec4.55) P7.*

## **2.2 Amend Condition 6**

### **Existing Condition 6**

6. The proposed alterations and additions shall not exceed a maximum height of RL 14.745m AHD, as indicated on the approved plans.

[GENNS01]

**Reasons for variation; Due to a misinterpretation of the plans the roof was built at a steeper pitch.**

On this basis it is requested that Condition 6 be amended to read as follows:-

### **Requested Amendment to Condition 6**

*The proposed alterations and additions shall not exceed a maximum height of RL 16.630m AHD, as indicated on the plans prepared by Design Evolutions dated 3<sup>rd</sup> March 2019, (Sec4.55) P1 – (Sec4.55) P7.*

### **Condition 42**

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

### **Delete Condition 42**

*Condition 42 of the Consent has been satisfied, as the two allotments which comprised this property (Lot 12 Sec 3 DP 5077 & Lot 13 Sec 3 DP 5077), have now been consolidated to be Lot 1 DP 1241037. As such condition 42 is no longer required.*

In summary, the overall development will occur within the framework of the existing Consent, with no change in the approved density or general allotment layout or method of access. As such the same development results (*DWELLING ALTERATIONS AND ADDITIONS*), and as such the requested amendments can be approved using the provisions of Sec 4.55 of the EPA Act.

## **2.2 Section 4.55(2) Modification Sought**

**This Section 4.55(2) Modification is sought to amend the “dwelling additions, approved by Consent DA 17/0564 dated 29 November 2017 on Lots 12 and 13 DP 5077, No.125 River**

**Street, South Murwillumbah”, through the amendment of Conditions 1 and 6 as detailed in the preceding section of this report.**

### **3.3 Planning Merits of Modification Sought.**

The principal reasons in support of the Section 4.55 modification sought are to achieve a design which is better able to meet access requirements within the site, as well as access to the site. The actual development approved on Lots 12 and 13 DP 5077, No.125 River Street, South Murwillumbah. i.e. “dwelling additions”, will not be altered by this modification of Conditions 1 and 6.

As such, Council can be satisfied that the development as modified is substantially the same development as covered by Consent Notice DA 17/0564 29<sup>th</sup>. November 2017, as required by Sec. 4.15(2)(a) of the E.P.A. Act 1997.

The modifications relate to the desire to meet access design provisions, without compromising the amenity of the area, or changing the fundamentals of the previous approval.

This does not affect or alter in any way the intent of the existing approval as the approved landuse does not change. As such it is most unlikely the amendments sought will be prejudicial to any person who may have made a submission to the development application, which is the subject of the consent.

The case of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (in paragraphs [5] to [29]) sets out the relevant principles in respect of clause 4.6 requests. In my view, compliance with the 9 m height development standard is both unreasonable and unnecessary in circumstances where the building is required to be raised to achieve structural floor underside levels that are set adequately above the maximum flood level. In respect of this site, the Climate Change Flood level is set at 7.6 m AHD. Ground level is 5.2 m AHD. Buildings are required therefore to be raised at least 2.4 m above the existing ground level. This is a highly relevant issue that must be taken into account by Council when granting this 4.55 application, and its granting of a variation to the usual 9m height limit.

The need to raise overall building levels must be considered in setting the maximum building height in areas subject to flooding. There are therefore, sufficient environmental planning grounds to allow a contravention of this maximum height development standard in areas where the entirety of the building is required to be raised because of flood level mitigation. It would be both self-evident and consistent with the objectives of the height standard (and the objectives of the particular zone) to allow the building height limit to be exceeded by at least the minimum required amount of overall building raising, in localities subject to flooding.

The conclusion is that the modifications sought to the development satisfy the test imposed by Sec. 4.55(2)(a) and (d) of the E.P.A. Act 1997. The modification sought to the Consent also satisfies the tests imposed by Sec. 4.55(3) of the E.P.A. Act 1997 as detailed in the Section 4.15(1) assessment following in this report.

### **2.4 The Same Development**

The amended proposal is for the same development i.e. “dwelling additions” on Lots 12 and 13 DP 5077, No.125 River Street, South Murwillumbah.

The minor alteration of the Consent by the amendment of Conditions 1 and 6 of the approved dwelling additions retains the approved density and access design, and ensures that the fundamentals of the approved design are achieved. Thus the integrity of the Consent is

maintained.

Therefore the amendments do not alter the nature or intent of the approval, and do not compromise the intent of the proposed plans, which can be amended within the Consent, without impacting upon its integrity. This satisfies the test imposed by Sec. 4.55(2)(a) of the E.P.A. Act 1997.

### 3 Sec. 4.15(1)(a) ZONING OF LAND

#### **STATUTORY - R2 Zoning of Land – Tweed Local Environmental Plan 2014**

##### **1. Objectives of zone**

- 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.

##### **2. Permitted without consent** Environmental facilities; Environmental protection works; Home occupations

##### **3. Permitted with consent** Bed and breakfast accommodation; Boarding houses; **Dwelling houses**; Group homes; Home industries; Roads; **Any other development not specified in item 2 or 4**

##### **4. Prohibited** Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Entertainment facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Highway service centres; Home occupations (sex services); Hostels; Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Marinas; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Public administration buildings; Recreation facilities (major); Registered clubs; Research stations; Residential flat buildings; Restricted premises; Rural industries; Rural workers' dwellings; Service stations; Sex services premises; Shop top housing; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Wharf or boating facilities; Wholesale supplies

The property is located within a **R2 (Low Density Residential)** under the provisions of Tweed Local Environmental Plan 2014. The proposed Alterations and Additions to an existing Dwelling are a permissible landuse with the consent of Council pursuant to the provisions of the R2 Landuse Table.

#### **2.1.2 Height of Buildings - Tweed Local Environmental Plan 2014**

##### 1) The objectives of this clause are as follows:

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

- characteristics,
- f) to limit the impact of the height of a building on the existing natural and built environment,
  - g) to prevent gross overshadowing impacts on the natural and built environment.
- 2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

The subject site is mapped as having a maximum building height of 9m. The proposed development results in a point encroachment in the west, where the peak of the gable reaches a height of 9.838m and 11.88m at the apex of the roof. This results from the need to elevate the building above the climate change flood level, and to this end we seek Council grant this small point encroachment, in relation to an otherwise complying development, under the provisions of Clause 5.6 Architectural roof features, as detailed on the following page.

### 2.1.3 Floor Space Ratio – Tweed Local Environmental Plan 2014

- 1) The objectives of this clause are as follows:
  - a) to define the allowable development density of a site and for particular classes of development,
  - b) to enable an alignment of building scale with the size of a site,
  - c) to provide flexibility for high quality and innovative building design,
  - d) to limit the impact of new development on the existing and planned natural and built environment,
  - e) to encourage increased building height and site amalgamation at key locations in Tweed.
- 2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

The subject site is mapped as having a maximum ratio of 0.8:1.

The proposed additions will result in a dwelling with a First Floor Area of 149.43m<sup>2</sup>, with ground level Storage and Laundry areas of 24.95m<sup>2</sup> and 7.31m<sup>2</sup> respectively.

This will bring the LEP Floor area to 181.69m<sup>2</sup>, which on a 990.48m<sup>2</sup> site results in a low and complying floor space ratio of only 0.18 : 1.

In relation to height, the adjacent residential flats to the south have a height of 10.469m above natural ground level.

The proposed additions to the existing building at No 125 River Street, do exceed the 9m Statutory Maximum to maintain a “Heritage Character” roof design, and to achieve minimum floor levels above maximum flood. However, the maximum point encroachment varies from 11.88m at the central point of the roof peak in the centre of the western addition, to 9.838m above natural ground at the western end of the western gable above the western deck on the addition.

The eastern section of the existing dwelling does already exceed at 9.026m. The exceedences in the west of the site occur where the land starts to fall away towards the Tweed River, and as such they are set well back from the street, and do not detract from the visual amenity of the area, or the visual integrity of the streetscape.

Further to this, these minor exceedences to achieve a “Heritage Character” Architectural Roof Form, are still generally below the 10.469m exceedence which currently exists in the adjacent Residential Flat Building to the immediate south.

To this end the visually soft Heritage Character Dwelling Additions, which are stepped in nature and provide pleasing broken roof lines, remain a minor and blending component of the streetscape, compared to the large bulk and scale of the adjacent Residential Flats, which achieve an imposing 10.469m height.

To this end we request that Council consider the following formal objection to the strict application of the 9m Development Standard, in the circumstances of this case, and request approval of the additions as proposed on the basis that they will not prejudice the proper future planning of the area, and are exemplary in their attaining a Heritage Character Addition, in an area where floor levels must be elevated to minimise the risks associated with flooding, as recently witnessed in this South Murwillumbah area.

#### **Tweed LEP 2014 - Clause 4.3 Height of Buildings**

- 1) The objectives of this clause are as follows:
  - a) building not exceed spec. max. height from existing ground level to finished roof or parapet,
  - b) height of buildings complements streetscape and character of the local area,
  - c) minimise visual impact, disruption of views, loss of privacy & loss of solar access to existing development.
- 2) Height of building not to exceed maximum height shown for the land on Height of Buildings Map.

Maximum height permitted in Tweed LEP 2014 is 9m. The maximum height proposed is between 11.88m at the central point of the roof peak in the centre of the western addition. Down to 9.838m above natural ground at the western end of the western gable above the western deck on the addition. The eastern end of the building, which is the existing structure retained proximate to River Street, and is the only section visible from River Street, is set at a nearly complying 9.026m above natural ground, with a gable addition to the height of 10.023m.

See amended plans attached and “Exemption Request under Clause 4.6” below.

#### **Tweed LEP 2014 - Clause 4.6 Exceptions to development standards**

- 1) 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.
- 2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- 3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by

demonstrating:

- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- 4) Development consent must not be granted for development that contravenes a development standard unless:
- a) the consent authority is satisfied that:
    - i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - b) the concurrence of the Director-General has been obtained.
- 5) In deciding whether to grant concurrence, the Director-General must consider:
- a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - b) the public benefit of maintaining the development standard, and
  - c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

## **DEVELOPMENT STANDARD**

Clause 4.3 Tweed Shire LEP 2014 specifies a maximum height to the topmost part of the building of 9 meters above existing ground level. The **Objective** of this standard is to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

The fact that the majority of the eastern half building meets this Development Standard, with only parts of the western section of the roof exceeding the maximum, then it is considered that the overall design maintains in essence the form and scale of development anticipated by these LEP provisions. Importantly these small encroachments are not visible from the street, and are generally below the 10.469m height of the large adjacent residential flat building to the south.

Further to this, the dwelling is located within a flood prone area, and needs to be elevated. The technical height exceedence occurs over the western section of the land, where the ground levels begin to drop towards the Tweed River. As such lowering of the house into the site is not considered to be an environmentally acceptable or a flood safe outcome, and for this reason it is requested that the minor maximum exceedence of 968mm and lesser 400mm encroachments, be permitted.

**As previously stated, the proposed additions to the existing building at No 125 River Street, do exceed the 9m Statutory Maximum to maintain a "Heritage Character" roof design, and to achieve minimum floor levels above maximum flood. However, the maximum point encroachment varies from 11.88m at the central point of the roof peak in the centre of the western addition, to 9.838m above natural ground at the western end of the western gable above the western deck on the addition.**

**The eastern section of the existing dwelling does exceed 9.026m.**



The exceedences in the west of the site occur where the land starts to fall away towards the Tweed River, and as such they are set well back from the street, and do not detract from the visual amenity of the area, or the visual integrity of the streetscape.

Further to this, these minor exceedences to achieve a “Heritage Character” Architectural Roof Form, are still mostly below the 10.469m exceedence which currently exists in the adjacent Residential Flat Building to the immediate south.

To this end the visually soft Heritage Character Dwelling Additions, which are stepped in nature and provide pleasing broken roof lines, remain a minor and blending component of the streetscape, compared to the large bulk and scale of the adjacent Residential Flats, which achieve an imposing 10.469m height.

To this end we request that Council consider the following formal objection to the strict application of the 9m Development Standard, in the circumstances of this case, and approved the additions proposed on the basis that they will not prejudice the proper future planning of the area, and are exemplary in their attaining a Heritage Character Addition, in an area where floor levels must be elevated to minimise the risks associated with flooding, as recently occurred in this South Murwillumbah area.

To this end the small western point encroachments meet the intent of the 9m Development Standard, despite the two exceedences, particularly as they are set well back from the street, and help maintain the architectural integrity of the core building, and achieve flood free residential floor space.

As such the visual appearance of the development will be in general a compliant one, that is appropriate to its location, surrounding development and the environmental characteristics of the land.

On this basis it is considered that despite the minor numeric encroachment for small sections of the roof, the intent of the Development Standard is met by this proposal, and no person or development off site will be adversely affected by the proposed development. Importantly the minor departures from the Development Standard are considered acceptable as the underlying Objective of the Development Standard is met. That is maintaining the visual character and integrity of this residential area, through limiting excessive heights.

As stated the small scale of these point encroachments are dwarfed by the 10.469m height of the bulky residential flat building to the south, and these small encroachments, set well back from the street, are a function of the flood prone nature of the site, and occur in a locality where many buildings are elevated to similar heights. As such it is not out of character with the built form of the surrounding area.

## **REPORT**

The sitting of the building, and its stepped “Heritage Character” design, as previously detailed, inform the design outcome within a site that is flood affected, and where like surrounding dwellings and residential flats, floor levels must be elevated to avoid adverse flood impacts.

The design ensures that to the greatest extent possible the building minimises site works and the eastern half of the building closest to the street, sits generally below Councils' 9m maximum height where possible. As stated, the majority of the building meets this Development Standard, with only small sections of the apex of the roof exceed the maximum.

On this basis it is considered that the overall design maintains in essence the form and scale of

development anticipated by these LEP provisions. Importantly these small encroachments are not visible from the street, and in any case sit adjacent to residential flats with a higher 10.469m roof height.

On this basis the small exceedences are deemed compatible, and lowering the building could place the building at greater flood risk as climate change variations in anticipated flood levels are realised. As such lowering of the house into the site is not considered to be an environmentally acceptable outcome, and for this reason it is requested that the two minor point encroachments be permitted under the provisions of Clause 4.6 “Exemptions to Development Standards” provisions of Tweed LEP 2014.

Due to the incidental nature of the exceedences, within an otherwise complying structure, it is considered that it will not detract from the visual integrity of the area, and provides a more effective use of a Heritage Character building on a flood prone site, where the exceedences are set back and well screened from local roads. On this basis the minor exceedence achieves a positive environmental outcome, from the development standard variation sought.

As such the variation sought cannot be considered as a component of the design which would detract from the general streetscape of the area, or detract from the amenity of any adjoining development. On this basis it is considered that the strict application of this standard is unreasonable and unnecessary in the circumstances of the case, and on this basis it is requested that the Development Standard be varied using the provisions of Clause 4.6 Tweed LEP 2014 “Exceptions to Development Standards” (see Plans).

The intent of the development standard is to maintain visual amenity, optimise solar access to adjacent properties, and achieve a human scale, particularly when buildings are viewed from the street or adjacent buildings. The proposed visually isolated exceedences cannot be seen as a development which would detract from the visual integrity of the area. It will not impede views or detract from solar access to adjoining buildings, and it in no way detracts from the visual character of the area.

The overall conclusion is that the minor exceedences, which result from a desire to achieve the most productive use of a flood prone site and minimise departures from the architectural merit of the existing Heritage Character Dwelling to be added to, is a positive environmental outcome which will achieve better long term outcomes. This meets the Aims of the E.P.A. Act itself, and makes the community and environmental benefit a valid matter for consideration in the circumstances of the case.

On this basis the development should not have to strictly adhere to the Clause 4.3 Development Standard, and as such this formal Clause 4.6 Tweed LEP 2014 “Exceptions to development standards” Objection to the provisions of Clause 4.3 of Tweed L.E.P. 2014 is submitted.

Despite this Clause setting a 9m height restriction, it is reasonable to assume, given the Objectives of the E.P.A. Act to encourage the proper management, development and conservation of natural and man-made resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment AND encourage the Promotion and co-ordination of the orderly and economic use and development of land, that the proposed point encroachments, which still result in a single storey flood elevated dwelling, where the encroachments are not evident from the road, is a responsible and efficient use of land resources, particularly on flood prone land.

This is based on the fact that the exceedence will occur without detracting from the visual or environmental amenity of the area. On this basis this formal objection to this Development Standard under the provisions of Clause 4.6 Tweed LEP 2014 "Exceptions to development standards" is considered justified.

Section 4 of the EPA Act defines a "**development standard**" as:

Provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including but without limiting the generality of the foregoing, requirements or standards in respect of:

- a) area, shape frontage of lands, buildings or works, or distances from a specific point;
- b) proportion or percentage of the area of a site a building or work may occupy;
- c) **the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,**
- d) cubic content or floor space of building,
- e) **intensity or density of development,**
- f) provision of public access, open space or tree planting,
- g) provision of facilities for vehicles, parking, maneuvering, loading etc.,
- h) volume, nature or type of traffic generated,
- i) road patterns,
- j) drainage,
- k) carry out earthwork,
- l) effect of development patterns on wind, sunlight, shadows etc.,
- m) provisions of services, facilities and amenities,
- n) emission of pollution and control or mitigation thereof, or
- o) such other matters as may be prescribed.

In this instance the L.E.P. permits dwellings within this R2 Zoned site, and this remains permissible under the L.E.P. provisions for the site. Therefore there is no prohibition of the development proposed, however Clause 4.3 specifies that there should be a maximum Height of 9m to the top most part of the building above existing ground level.

This prescription of the **character, location, siting, bulk, scale, shape, size, height, density design or external appearance of a building or work OR intensity or density of development** is a **Development Standard**.

In *Strathfield v Poynting*, Young CJ held that "**The dichotomy between a development standard and an absolute prohibition provides a valuable guideline as long as it is remembered that a development standard may contain expressly or implied some sort of prohibition. However the sort of prohibition involved is a prohibition on the extent of development, not as a prohibition as to whether development is possible at all.**"

**Conclusion:** Although Clause 4.3 contains an implied prohibition in relation to "height", there is no specific prohibition of this development contained in any part of the Tweed L.E.P., and on the contrary Dwelling development is expressly permitted within the R2 Zone. As such the provisions of Clause 4.6 Tweed LEP 2014 "Exceptions to development standards" may be utilised to provide Council, or the Land & Environment Court, with the power to grant this consent for the two small sections of roof as proposed which effect minor point encroachments, despite the implied prohibition contained in Clause 4.3, which based on the Judgement of Young JC in "Poynting", remains a Development Standard".

Due to the minor nature of these encroachments, and the fact that they relate to small sections

of the roof, set well back from the street, ensures that these exceedences occur out of sight of passers by, and the fact that the structure has considerable architectural merit in balancing out the design, and provides a development which minimises impact on solar access or views of adjacent properties, then it is considered that in this specific instance, strict application of the 9m height development standard is indeed unreasonable and unnecessary.

### **OBJECTION**

Having regard to the fact that the majority of the building is compliant and the proposal achieves better outcomes within this flood affected site, then on this basis the strict application of the standard is considered unreasonable given the circumstances of the case.

In addition to this, the proposal satisfies not only the objectives of the R2 Zone within the L.E.P., but most importantly the proposed development will minimise impact through its blending Heritage Character design, where broken elevations and roof forms are incorporated into the building, being in stark contrast to the bulk and scale of the large imposing residential flat building to the south, which reaches a height of 10.469m.

On this basis it is concluded that the result of the development and its minor departure from the development standard, will be positive.

It is in the interests of good economic management, environmental management, and effective utilisation of land resources, that these proposed minor encroachments should be approved. This will enable long term utilisation of the property to be effected realistically, thus ensuring the long term viability of the site.

The proposed design, which blends this development into the surrounding landscape, and mirrors adjacent residential development, is therefore justified. For these reasons it is considered that in the circumstances of the case, strict compliance with the height limit development standard is unreasonable, and unwarranted. This is because the development proposed, as previously shown, fully satisfies the Objectives of the Statutory Zoning that applies, meets the intent of Clause 4.3 of the L.E.P. and meets the Objectives of the Development Standard within Clause 4.3 of the L.E.P. as well as the Objectives of the E.P.A. Act.

### **CONCLUSION**

It is considered that the encroachments will not only have a no adverse impact on the environment and visual amenity of the area, but it will also satisfy a genuine need for the rationalisation of the long term viability of this flood affected property, and the need to better utilise this site in accordance with the developed character of the area and the visual character of the eastern section of the building to be retained and added to. The approval of the minor encroachments will permit an otherwise exemplary development to proceed.

Having detailed the circumstances of the case, it is my considered opinion that Council should consent to this MINOR variation of the development standard contained in Clause 4.3 of Tweed L.E.P. 2014. This positive result from the variation of the development standard, is the major test to determine whether the standard is indeed unreasonable or unwarranted in the circumstances of a particular case (see Judgement of His honour, C.J. Cripps, Hooker Corporation v. Hornsby - 2 June 1986).

Having regard to the merit considerations contained within this application, it is considered that

the proposal has planning merit and should be approved under the provisions of Clause 4.6 of the Byron LEP 2014.

The conclusion is that the non variation of the Development Standard would not **encourage the proper management, development and conservation of natural and man-made resources, for the purpose of promoting the social and economic welfare of the community and a better environment**, and this therefore meets the test proffered in the decision in *Winten Property Group v. North Sydney Council* (2001) 130 LGERA 79

*First*, the planning control in question is a development standard as detailed in the preceding assessment of this matter against the guidelines set in *Strathfield v Poynting, Young CJ*.

*Second*, the underlying object or purpose of the standard is shown to be one of permitting development which maintains the expected built form and character of the area. This objective is achieved by the location of the height encroachments within the visually isolated western section of the site, thus achieving a development which minimises detrimental impact on the amenity of the area, yet placing the building above flood threat. Thus the underlying purpose of the Clause 4.3 objective is met.

*Third*, the preceding assessment of the development against the two primary objectives of the EPA Act shows that the variation of the development standard is consistent with the aims of the Clause 4.6, and shows that compliance with the development standard would tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EPA Act.

*Fourth*, the report shows that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case. As such not to vary the Standard would result in under utilisation of the site. In addition to this, the economic and social flow on from this is important. On this basis a blending development will result, with an improved local environment, and therefore strict application of the standard cannot be seen to be reasonable, or necessary.

*Fifth*, based on the unique circumstances of the case, approval will not prejudice the proper future planning of the area, and can only be considered as achieving an outcome which promotes the economic use of land, and achieves the ESD principles, with no precedent being set.

**As such the strict application of the development Standard in this instance is unnecessary and unreasonable, and strict application would not promote the attainment of EPA Act Objectives 5(a)(i) and 5(a)(ii). for the area.**

The case of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (in paragraphs [5] to [29]) sets out the relevant principles in respect of clause 4.6 requests. In my view, compliance with the 9 m height development standard is both unreasonable and unnecessary in circumstances where the building is required to be raised to achieve structural floor underside levels that are set adequately above the maximum flood level. In respect of this site, the Climate Change Flood level is set at 7.6 m AHD. Ground level is 5.2 m AHD. Buildings are required therefore to be raised at least 2.4 m above the existing ground level. This is a highly relevant issue that must be taken into account by Council when granting this 4.55 application, and its granting of a variation to the usual 9m height limit.

The need to raise overall building levels must be considered in setting the maximum building height in areas subject to flooding. There are therefore, sufficient environmental planning grounds to allow a contravention of this maximum height development standard in areas where the entirety of the building is required to be raised because of flood level mitigation. It would be both self-evident and consistent with the objectives of the height standard (and the objectives of the particular zone) to allow the building height limit to be exceeded by at least the minimum

required amount of overall building raising, in localities subject to flooding.

In conclusion we request that Council approve these dwelling additions based on the attached amended "As Built" plans dated 3<sup>rd</sup> March 2019

### 2.1.5 Acid Sulfate Soils – Tweed Local Environmental Plan 2014

- 1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.
- 2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the [Acid Sulfate Soils Map](#) as being of the class specified for those works.  
Class 5 – Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum, on adjacent Class 1, 2, 3 or 4 land.
- 3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.
- 4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if:
  - a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and
  - b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.
- 5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power):
  - a) emergency work, being the repair or replacement of the works of the public authority, required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,
  - b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),
  - c) minor work, being work that costs less than \$20,000 (other than drainage work).
- 6) Despite subclause (2), development consent is not required under this clause to carry out any works if:
  - a) the works involve the disturbance of less than 1 tonne of soil, and
  - b) the works are not likely to lower the water table.
- 7) Despite subclause (2), development consent is not required under this clause for the carrying out of works for the purpose of agriculture if:
  - a) a production area entitlement is in force in respect of the land when the works are carried out, and
  - b) the works are carried out in accordance with a drainage management plan, and
  - c) the works are not carried out in respect of a major drain identified on the [Acid Sulfate Soils Map](#), and
  - d) the works are not carried out on land to which *State Environmental Planning Policy No 14—Coastal Wetlands* applies.

- 8) In this clause:
- a) **drainage management plan** means an irrigation and drainage management plan that:
    - i) is prepared in accordance with the NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005), and
    - ii) is endorsed by the Sugar Milling Co-operative as being appropriate for the land.
  - b) **NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005)** means the guidelines approved by the Director-General of the Department of Infrastructure, Planning and Natural Resources on 25 May 2005.
  - c) **production area entitlement** means a contractual arrangement between the Sugar Milling Co-operative and a grower member of that co-operative for the production of sugar cane for milling.
  - d) **Sugar Milling Co-operative** means the New South Wales Sugar Milling Co-operative Limited or its successor.

**Note.** The NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005) is available on the Department of Planning and Infrastructure's website.

The subject site is mapped as containing **Class 4 Acid Sulfate Soils**. However minor excavations to achieve pad footings and slab beams, will not exceed 600mm and as such no Acid Soils will be intersected. As such the development does not require an Acid Sulfate Management plan, because acid sulfate soils are not likely to be disturbed.

#### 2.1.6 Section A1 Dwelling Houses, Dual Occupancy, Secondary Dwelling, Alterations and Additions and Ancillary Development – Tweed Development Control Plan 2008

Planning and Design Principles	
Controls	Solution
<b>General</b>	
Dwellings and development must be consistent with the scale and character of surrounding dwellings or as envisaged through an adopted concept plan, locality plan, design statement / covenant or the like.	<b>The proposed Alterations and Additions to an existing Dwelling are anticipated in the R2 zone, and are consistent with the scale and character of surrounding dwellings. The low density residential development complies with all DCP and LEP requirements that govern this.</b>

Site Design	
Controls	Solution
<b>Topography, Cut and Fill</b>	
Where earthworks are proposed within the building footprint, construction shall be generally consistent with the figure below.	<b>Consideration has been given to the figure provided in terms of earthworks and construction, with site works limited to pad footings and slab beams less than 600mm</b>






	<p>into the ground This will minimise the visual impact of the works needed, and these are to be screened by existing landscaping to further visually soften them.</p>
<p>Outside of the building footprint cut and fill to 1.0m for up to 10% of the site or a maximum of 100sqm is permissible to achieve flatter backyards, outdoor living areas, bbq areas, clothes drying areas and the like. On steeply sloping sites (12 degrees and over) consideration may be given to greater cut and fill thresholds subject to:</p> <ol style="list-style-type: none"> <li>i. Justification and satisfaction of the proposal against planning and design principles and objectives of this section;</li> <li>ii. Justification of the proposal and design intent through a site analysis including consideration of the likely streetscape impacts and compatibility with existing streetscape character;</li> <li>iii. Demonstration of a structural system of the house appropriate to the site and slope;</li> <li>iv. Justification and documentation of full site sections showing all existing and proposed levels and proposed retaining walls and batters;</li> <li>v. Consideration of the likely amenity impacts including overlooking, overshadowing, drainage and structural issues;</li> <li>vi. Limiting multiple retaining walls to 1.0m encouraging terracing rather than one large wall;</li> <li>vii. Landscaping to mitigate visual impacts of retaining walls and batters;</li> <li>viii. Suitable stormwater and drainage management</li> </ol>	<p><b>Minimal Cut and Fill.</b>  <b>The proposal will not impact on the streetscape and compatibility with existing streetscape character due to low density design and the fact that the proposed development is surrounded by R2 zoned land to maintain the streetscape.</b></p> <p><b>No amenity impacts will result.</b></p> <p><b>See sections and site plans for details.</b></p>
<p>Excavations and fill in excess of 1 metre may be permitted to allow for compliant driveways and basement garages providing the excavations are adequately retained and drained in accordance with engineering requirements.                  The interface of the proposed building cut and fill and the natural slope is to be documented</p>	<p><b>Not Applicable</b></p>



<p>on all development plans and sections including the existing and proposed slope of the site levels, all proposed batter and retaining works and where appropriate the interface with adjoining properties. All levels are to be depicted in Australian Height Datum (AHD).</p>	
<p>Cut and fill batters and retaining walls outside of the building footprint are to be landscaped to mitigate visual impact</p>	<p><b>Not Applicable</b></p>
<p>Cut and fill batters shall not:</p> <ol style="list-style-type: none"> <li>i. exceed a slope of 1:2 (v:h) unless geotechnical reports result in Council being satisfied with the site stability. All batters are to be provided with both short term and long term stabilization to prevent soil erosion.</li> <li>ii. be located where the toe of any battered fill (or retaining wall) is closer than 900mm for cut and 1.5m for fill to any property boundary, where the overall height at any point exceeds 500mm.</li> <li>iii. be located where they will impact on the privacy of neighbours.</li> <li>iv. shall not extend onto Council's road reserve</li> </ol>	<p><b>Not applicable.</b></p>
<p>Retaining walls, unless constructed for the sole purpose of landscaping, should be constructed of a material such as concrete, masonry, rock or other permanent type material.</p> <p>Timber retaining walls are not acceptable for walls that support side boundaries or structures</p>	<p><b>N/A</b></p>
<p>Where more than one retaining wall is required, this should be in the form of terracing with landscaped areas between level changes to soften the visual impact of the retaining walls.</p>	<p><b>Not Applicable</b></p>
<p>On side sloping allotments where there are existing inter allotment retaining walls, further retaining walls within the side setback will be limited to 600mm.</p>	<p><b>Not applicable.</b></p>
<p>Where a property is burdened by stormwater or water and sewerage mains then Council</p>	<p><b>Not applicable.</b></p>

will generally preclude any excavation or filling within that easement.	
<b>Landscaping</b>	
A lot much include a total landscaped area comprising of the following: <ul style="list-style-type: none"> <li>• More than 1500m<sup>2</sup> – 45% of the site including at least two deep soil zones measuring a minimum of 6m in any direction.</li> <li>• All urban lot sizes – at least 50% of the landscaped area is to be behind the building line of the primary road frontage.</li> </ul>	<b>Complies – Existing landscaping is more than adequate.</b>
All new dwelling application must provide a plan, which may be part of site analysis or on a site plan, identifying landscape area and deep soil location and a schedule of the landscape area and site coverage calculations.	<b>N/A</b>
A landscape Plan is required for dual occupancy development. A landscape plan may also be requested for dwelling houses where significant earthworks are proposed within the front yard or where a potential streetscape impact has been identified by the assessing officer. The landscaping plan is to include: <ol style="list-style-type: none"> <li>i. Calculations of the landscaped area, deep soil zones and site coverage;</li> <li>ii. Demonstrate how the landscaping complements and integrates with the amenity of the dwelling, the streetscape and any topographical features;</li> <li>iii. Demonstrate how each dwelling achieves integration of the dwelling, landscaped areas, private open space and external living areas;</li> <li>iv. Demonstrate suitable privacy and solar access for each dwelling and its outdoor and landscaped spaces; and</li> <li>v. Detail of plant species to be used and their locations. Species are to comprise no less than 80% native species.</li> </ol>	<b>N/A</b>
Existing landscape elements on sites such as natural rock outcrops, watercourses, dune vegetation, indigenous vegetation and mature trees should be retained and integrated with	<b>Existing landscape elements on the site are to be retained.</b>

the design of the buildings.	
On lots adjoining indigenous/native vegetation, protect and retain indigenous native vegetation and use native indigenous plant species for a distance of 10m from any lot boundaries adjoining bushland.	<b>N/A</b>
Locate and design landscaping to increase privacy between neighbouring dwellings without excessive shadowing or blocking primary views or existing solar panels.	<b>Existing landscaping these objectives.</b>
Deep Soil Zones - Deep soil zones are to have soft landscaping and cannot be covered by impervious surfaces such as concrete, terraces, outbuildings, swimming pools, tennis courts or other structures or located on structures such as basement car parks or in planter boxes	<b>The landscaping complies with this requirement.</b>
Rainwater and Runoff - Runoff is to be minimised, delayed in its passage and where possible accommodated within the landscape or site surface depressions of the development site unless this is inconsistent with the geotechnical stability of the site or adjacent/downstream land.	<b>The landscaping complies with this requirement.</b>
Rainwater and Runoff - The concentration, collection and piping of runoff to the street gutter or underground stormwater system shall be minimised unless this is inconsistent with the geotechnical stability of the site or adjacent/downstream land.	<b>Concentration, collection and piping of runoff to the street gutter has been minimised with roof water tanks proposed. See plans.</b>

Slope, construction and cut and fill controls					
Slope		Cut allowance	Fill allowance	Appropriate Structure	Indicative Diagram
0-6°	0-10%	1.0m	1.0m	<ul style="list-style-type: none"> <li>• Single slab on ground</li> <li>• Split slab</li> <li>• Post and beam</li> <li>• Hybrid slab post and beam</li> </ul>	
6-8°	10-14%	2.0m within the footprint of the building*	1.0m	<ul style="list-style-type: none"> <li>• <b>No</b> single slab on ground</li> <li>• Split slab</li> <li>• Post and beam</li> <li>• Hybrid slab post and beam</li> </ul>	
8-12°	14-21.5%	2.0m within the footprint of the building*	1.0m	<ul style="list-style-type: none"> <li>• <b>No</b> single slab on ground</li> <li>• Split slab</li> <li>• Post and beam</li> <li>• Hybrid slab post and beam</li> </ul>	
12-18°	21.5-32.5%	3.0m within the footprint of the building*	1.0m	<ul style="list-style-type: none"> <li>• <b>No</b> single slab on ground</li> <li>• Split slab</li> <li>• Post and beam</li> <li>• Hybrid slab post and beam</li> </ul>	
>18°	>32.5%	1.0m	1.0m	<ul style="list-style-type: none"> <li>• <b>No</b> single slab on ground</li> <li>• Downslope construct only</li> <li>• Split slab</li> <li>• Post and beam</li> <li>• Hybrid slab post and beam</li> </ul>	

\*Building footprint is defined as the most outer edge of the roof (including fascia and gutter).

Table-1 - Cut and Fill Requirements

Building Envelope Controls	
Controls	Solution
<b>Setbacks – Front and Rear</b>	
The minimum setback from the street and rear boundary for a dwelling – as set out in figure below.	<b>Complies. The proposed dwelling setback 6.015m to the front boundary (6m prescribed) and 22.7m to the rear boundary.</b>
In established areas and on infill sites dwelling houses are to be consistent with the front setback distance of neighbouring buildings and are to be the average of the setbacks of neighbouring dwellings within 40 metres or a variation justified under a streetscape analysis. This setback may be varied up to 1 metre where justified through a streetscape analysis.	<b>The lot is surrounded by developed land and the setback is consistent with the surrounding lots.</b>
An articulation zone may permit some elements of a buildings front facade to intrude within the front setback to a maximum of 1.5 metres and not exceeding 25% of the frontage	<b>No elements proposed in articulation zone other than an awning for cooling in summer months, which complies with the requirements of this control.</b>

<p>width. The following building elements may be permitted in an articulation zone:</p> <ol style="list-style-type: none"> <li>i. an entry feature or portico;</li> <li>ii. a balcony, deck, patio, pergola, terrace or verandah;</li> <li>iii. an upper level overhang or cantilever;</li> <li>iv. a window box treatment;</li> <li>v. a bay window or similar feature;</li> <li>vi. an awning or other feature over a window; and</li> <li>vii. a sun shading feature.</li> </ol>	
<p>The minimum front setback for a garage perpendicular to a primary or secondary street frontage is 5.5 metres to allow off-street parking that does not impede the footpath.</p>	<p><b>Not applicable – garage is not perpendicular to a primary or secondary street frontage.</b></p>
<p>Garages and carports, including semi-basement garages and attached garages, are to be set back a minimum of 1 metre from the dwelling's front façade, unless it can be demonstrated how the design mitigates the dominance of the garage door to the street elevation (refer to indicative diagrams on page 47).</p>	<p><b>For the purpose of assessment the façade is towards the road. Therefore the garage is setback well over 1 metre from the façade.</b></p> <p><b>The garage is not dominant from the street elevations (see plans).</b></p>
<p>Council may approve the erection of a garage which does not comply with the required front building line setback where exceptional circumstances, such as the depth and shape of the allotment, slope or grade, make it necessary and as supported by a site analysis that demonstrates:</p> <ol style="list-style-type: none"> <li>i. no other suitable location is available behind the building line;</li> <li>ii. there is no vehicular access to the rear or side of the allotment;</li> <li>iii. the proposal will not affect the amenity of adjoining properties;</li> <li>iv. the design of the garage is complimentary to the design, materials and roof form of the dwelling;</li> <li>v. the proposal will not create an unwanted precedent to the vicinity;</li> <li>vi. the proposal does not result in the creation of additional driveway access;</li> <li>vii. the proposal will not impede on the required pedestrian and traffic sight lines;</li> <li>viii. there are no valid objections are received from adjoining property</li> </ol>	<p><b>Not applicable – complies with the above.</b></p>

owners; ix. the structure is located a minimum of 900mm from the side boundary of the property	
A carport may be permitted to encroach within the front setback subject to the following criteria: <ul style="list-style-type: none"> <li>i. No other suitable location is available behind the building line;</li> <li>ii. It is located a minimum of 900mm from the side boundary;</li> <li>iii. Does not exceed 33% of the width of the allotment frontage or 6 metres measured between supporting posts whichever is the lesser;</li> <li>iv. It is of an open design with two or more sides fully open;</li> <li>v. Frontage facing the street is to remain open and shall not be fitted with a door or enclosing device of any kind;</li> <li>vi. Posts or columns do not obstruct vehicle manoeuvrability or visibility;</li> <li>vii. The roof design is to complement the roofline of the existing house and not significantly impact the streetscape; and</li> <li>viii. The roof is not trafficable</li> </ul>	<b>Not applicable – no carport proposed.</b>
Garages, outbuildings and carports may be located a minimum of 450mm from the rear boundary where no greater than 4.5 metres in height	<b>Not applicable.</b>
Garages and carports accessed by a rear laneway are to be setback a minimum of 1.0m from the laneway.	<b>Not applicable.</b>
Secondary dwellings require a minimum setback from the rear boundary of 1.5m where single storey and 3 metres where two storey.	<b>Not applicable – no secondary dwellings are proposed.</b>
Roofed external living areas are to be setback a minimum of 3.0m from the rear boundary	<b>Complies, the rear setback proposed is a minimum of 22.7m.</b>
<b>Setbacks – side setbacks</b>	
A single storey dwelling, or that part of a building containing only single storey, is to be setback a minimum of 900mm from the side boundary line to the wall of the building. Guttering, eaves, hoods and other similar structures may be constructed within the side setback but not	<b>Complies, the proposed development is setback a minimum of 900mm from the side boundaries, see plans.</b>

closer than 450mm from the boundary.	
A two storey dwelling, or the second storey component of building, is to be setback a minimum of 1.5m from the side boundary line to the wall of the building. Guttering, eaves, hoods and other similar structures may be constructed within the side setback but not closer than 900mm from the boundary.	<b>Not applicable – first floor setback 1.4m.</b>
On corner allotments primary and secondary streets are to be clearly nominated and comply with the appropriate primary and secondary street setbacks.	<b>Not applicable – not a corner allotment.</b>
On corner allotments are to nominate location of side and rear setbacks and comply with the appropriate setbacks.	<b>Not applicable – not a corner allotment.</b>
Garages, whether attached or detached, may be located a minimum of 450mm from a side boundary except where located within the front building setback. Carports may be located adjacent to a side boundary, except where located within the front building setback, subject to: <ul style="list-style-type: none"> <li>i. the boundary wall remaining open;</li> <li>ii. the carport support is not attached to a fence; and</li> <li>iii. the proposed carport complies with the Building Code of Australia.</li> </ul>	<b>Garage is located a minimum of 9.1m from the side boundary and not within the front building setback.</b>
Where opening doors of living rooms face the side boundaries the living room is to be setback a minimum of 4m from the side boundary. This setback may be required to be appropriately screened to minimise overlooking and privacy impacts.	<b>Complies, minimum side boundary setback to open doors of living rooms is 7.5m.</b>
External living areas adjoining side boundaries are to be setback a minimum of 900mm from the side boundary. This external living area may be required to be appropriately screened and/or the setback increased where there may be overlooking and/or privacy impacts	<b>Complies. However, there are no overlooking or privacy impacts of concern.</b>
Where rainwater tanks, water heaters, air conditioning units, retaining walls and the like are located within a side passage, walkable access to and around these items is to be maintained	<b>Walk-able access areas to and around all the applicable features has been maintained.</b>
<b>Building Height</b>	

The overall building height is 9 metres, except on slopes of greater than 12 degrees (21.25%) where the building height may be a maximum of 10 metres.	<b>Complies, the building generally complies with the 9m in height with the exception of a previously detailed point encroachment, where an exemption is sought under Clause 5.6 of the LEP.</b>
The maximum height for a carport and detached garage is 3.5 metres where there is a flat roof or 4.8 metres where there is a pitched or skillion roof.	<b>Complies, the garage's height does not exceed 4.8m to finished site level.</b>
<b>Site Coverage</b>	
The maximum site coverage of a dwelling and all ancillary development on a lot must be consistent with the following: <ul style="list-style-type: none"> <li>Greater than 1500 – 30%</li> </ul>	<b>Proposed development has a site coverage of 18%, which is below the maximum prescribed.</b>

Lot size	Minimum front setback - New Areas (for established and existing areas refer C2 below)	Minimum front setback to secondary street frontage on corner allotments	Minimum rear setback where the building is up to 4.5 metres in height	Minimum rear setback where the building is 4.5 metres in height or greater
less than 300m <sup>2</sup>	3.5 metres	2 metres	3 metres	4.5 metres
at least 300m <sup>2</sup> and less than 600m <sup>2</sup>	4.5 metres	2 metres	4.5 metres	6 metres
at least 600m <sup>2</sup> and less than 900m <sup>2</sup>	6.0 metres	3 metres	4.5 metres	8 metres
at least 900m <sup>2</sup> and less than 1500m <sup>2</sup>	6.0 metres	3 metres	5 metres	12 metres
at least 1500m <sup>2</sup>	8.0 metres	5 metres	10 metres	15 metres

Table 3 - Front and Rear Setbacks

<b>Building Design</b>	
<b>Controls</b>	<b>Solution</b>
<b>Passive Design</b>	
The dwelling is to be sited to encourage a balance of solar access (during winter months) and shading (during summer months) to primary windows and doors of living space and external living areas. This is to be demonstrated on a site analysis.	<b>The dwelling and its main living spaces have been oriented to the north and west to take advantage of solar access and shading. See plans.</b>
The plan layout, including the placement of openings, is to be designed to optimise access to prevailing breezes and to provide for cross-ventilation, demonstrated on a site analysis	<b>The dwelling is designed to optimise access to prevailing breezes and to provide for cross-ventilation. This is achieved with the orientation, and the placement of large openings, which allow breezes to pass through the dwelling. See plans.</b>



<b>Solar Access and Natural Ventilation</b>	
Two storey or greater development must prepare shadowing diagrams over the subject and adjoining sites for the summer solstice (21st December), winter solstice (21 June) at the times of 9am, 12pm and 3pm. Shadow cast by fences, roof overhangs and changes in level are to be considered and should be indicated on shadow diagrams submitted	<b>Not applicable – additions to existing dwelling, with southern setback increased to 1.4m.</b>
Private open space of the subject dwelling is to receive at least two hours sunlight between 9am and 3pm on June 21.	<b>Complies.</b>
Windows to north-facing habitable rooms or external living spaces of the subject dwelling are to receive at least 3 hours of sunlight between 9am and 3pm on 21 June over a portion of their surface.	<b>Complies.</b>
For neighbouring properties ensure: <ol style="list-style-type: none"> <li>i. Sunlight to at least 50% of the principle area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21, and</li> <li>ii. Windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.</li> <li>iii. Where existing overshadowing by buildings is greater than this, sunlight is not to be further reduced by more than 20%.</li> </ol>	<b>No neighbouring properties will be impacted by this proposal.</b>
New dwelling design should minimise overshadowing on existing adjacent solar panels where other reasonable design alternatives are possible.	<b>Not applicable – no existing solar panels nearby.</b>
<b>Building Form</b>	
Building siting, height, scale, and roof form must to relate to the surrounding development, topography and the existing site conditions.	<b>Building siting, height , scale and roof form is consistent with low density residential developments in the locality.</b>
Walls in excess of 15m in length and/or 4m in height must be articulated, landscaped, or otherwise treated in order to provide visual relief. Planning and design principle 4 above identifies various articulation techniques.	<b>Complies, see elevation plans.</b>
Buildings on corner sites are to be designed and articulated to address both streets	<b>Not applicable – not on corner lot.</b>

frontages.	
<b>Visual and Acoustic Privacy</b>	
Terraces, balconies, living room and kitchen windows are to avoid a direct view into neighbouring dwellings or neighbouring private open space.	<b>Residential flats and single dwellings to north and south, and therefore no direct views into neighbouring dwellings or private open space from the western balcony.</b>
Decks, verandahs, terraces, balconies and other external living areas within 4 metres from a side or rear boundary may require a privacy screen unless it can be demonstrated that there will be negligible overlooking and/or privacy impacts, as demonstrated on a site analysis	<b>Screening Proposed (See Plans)</b>
Side windows are to be offset by distances sufficient to avoid visual connection between windows of the subject dwelling and those of the neighbouring dwelling. Location of existing adjoining property windows are to be documented on a site analysis.	<b>Complies</b>
The location of external living areas, swimming pools, spas and other potential sources of noise transfer shall consider the proximity to and potential impacts on habitable rooms of adjoining allotments.	<b>Complies</b>
The noise of an air conditioner, pump, or other mechanical equipment must not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item. These items must be positioned away from neighbouring dwellings, particularly bedrooms, habitable rooms and external living spaces. These items may require a sound proofed enclosure.	<b>Noise levels will comply.</b>
For new dwellings located on arterial roads, designated roads, classified roads or where exposed to aircraft noise, consideration is to be given to the need for acoustic treatment to mitigate noise impacts.	<b>Not applicable, well setback from any noise impacts.</b>
<b>Roof, Domers, Attics and Skylights</b>	
Roofs should incorporate at least 600mm deep eaves for shading of facades, particularly on west facing elevations. Alternate sunshading measures including external louvres, screens	<b>Complies – eaves have been incorporated into the design of Alterations and Additions to the existing Dwelling.</b>

and window hoods are also acceptable solutions	
Roof materials and skylights should not cause excessive glare and reflection and roof colour should be consistent with the existing locality	<b>Roofing is Colorbond ‘windspray’ to ensure no glare and reflection, and consistency with the existing locality. No skylights are proposed.</b>
Attic spaces cannot be more than 50% of the floor below with the majority of the volume of an attic to be contained within the roof space	<b>Not applicable – no attic proposed.</b>
Minimum ceiling heights of 2.7 metre are encouraged for habitable rooms. For habitable rooms with a raking ceiling it is preferable to have at least 30% of the ceiling with a minimum 2.7 metre height.	<b>Complies, all ceiling heights are above 2.7m.</b>
<b>Garages, Driveways and Car Parking</b>	
Carparking and driveways are to be in accordance with Section A2 of the Tweed Shire Development Control Plan and Council’s Driveway Design Specification.	<b>Complies.</b>
Carports and garages visible from the public street are to: <ol style="list-style-type: none"> <li>i. Be compatible with the building design, including roofs; and</li> <li>ii. Be treated with materials and colours and windows which ensure the garage or carport is less visibly intrusive to the streetscape.</li> </ol>	<b>Not applicable – the garage will not be visible from the public street.</b>
Car parking entries are encouraged to be located off secondary streets and laneways where these occur.	<b>Not applicable – no secondary streets or laneways.</b>
Vehicular movement, driveways and parking areas are to be designed to minimise dimensions, to reduce hard surfaces on the lot, and increase the area available for landscaping. Permeable driveway surface treatments are encouraged.	<b>Vehicle movement, driveways and parking areas are designed to minimise dimensions, to reduce hard surfaces and increase the area available for landscaping.</b>
Allotments less than 450 sqm and with a street frontage less than 10m are encouraged to provide rear laneway access to garages. Garages to the primary street frontage will only be considered where either a single garage is provided or a two storey building form with projecting first floor balcony mitigates the visual impact of the double garage.	<b>Not applicable – allotment larger than 450m2.</b>
Driveways may be located adjacent to the side	<b>Not applicable.</b>

boundaries only where front fences above 600mm have a 60% openness ratio for the first 2 metres along the boundary adjacent to the driveway to achieve pedestrian and traffic sight lines as set out in AS2890	
Where vehicles would otherwise have to reverse more than 50 metres, where the site is steep, fronts a busy road or is in a high pedestrian area, driveways should be designed so that the vehicles can enter and leave the site in a forward direction.	<b>Turning bay provided so vehicles can turn around on site.</b>
In stacked dual occupancy configurations, avoid double garages at the termination of the access handle for the rear allotment to minimise visual impact	<b>Not applicable .</b>
Garages - Garage doors to a street frontage cannot be more than 50% of the street frontage or 6 metres, which ever is the lesser.	<b>Not applicable.</b>
Garages - Garage doors along a laneway may take up greater than 50% of the frontage. Providing a pedestrian access way directly from the laneway to the lot is provided	<b>Not applicable.</b>
Garages - Where a garage entry faces the side boundary, articulation, windows and landscaping are to be provided to the street elevation of the garage.	<b>Not applicable – garage entry faces the front boundary.</b>

<b>Operational Requirements</b>	
<b>Control</b>	<b>Solution</b>
Any application for development that involves the demolition of existing structures is to provide a Demolition Work Plan in accordance with the provisions of AS2601 and Councils work plan requirements.	<b>Demolition work plan to be submitted with the Construction Certificate.</b>
Excavation that will result in waste material having to be transported off-site must be minimised through the use of site responsive building design. Where practical, excavated material should be reused on-site.	<b>All excavated material for footings will be reused on site.</b>

<b>Ancillary Development – Fences and Walls</b>	
<b>Control</b>	<b>Solution</b>

<b>General</b>	
Fences and walls are not to impede the natural flow of stormwater runoff.	<b>Complies, existing open fencing retained..</b>
If located in a bushfire prone area fences and walls are to comply with AS3959 and Planning for Bush Fire Protection 2006, as amended from time to time.	<b>N.A.</b>
Fencing is not to obstruct water meter reading access	<b>Complies, see plans.</b>
<b>Front and Return</b>	
Front and return fences are to reflect the design character of the dwelling and be compatible with other fences and walls within the streetscape.	<b>Not applicable – no front or return fences proposed.</b>
Return fences (the side fence between the front boundary and front elevation of the house) are to be the same height and design as front fences.	<b>Not applicable – no front or return fences proposed.</b>
Front and return fences to a primary or secondary street frontage can be up to maximum height of 1.5 metres high with a maximum solid fence height of 600mm. Above the solid wall the fence is to have a minimum openness ratio of 60%. These height may be varied where topography necessitates a retaining wall as demonstrated on a site analysis.	<b>Not applicable – no front or return fences proposed.</b>
Front or return fences must not be timber paling or colourbond, except were integrated into a design theme that is consistent with the character of the dwelling and streetscape and incorporates appropriate articulation to allow for landscaping	<b>Not applicable – no front or return fences proposed.</b>
Front fences are not to obscure a 2.0m x 2.0m splay when adjacent to a driveway.	<b>Not applicable – no front or return fences proposed.</b>
Front and return fences may be solid up to 1.8 metre if: <ul style="list-style-type: none"> <li>i. Located on an arterial road or opposite an intersection where head lights shine into a dwelling; or</li> <li>ii. Where a swimming pool is located forward of the front building line; or</li> <li>iii. Where the allotment is oriented to the north, providing the most suitable location for private open space and</li> </ul>	<b>Not applicable – no front or return fences proposed.</b>

external living areas; and <ul style="list-style-type: none"> <li>○ Are justified by a site analysis;</li> <li>○ Include articulation and landscaping</li> </ul> <b>Not applicable – no front or return fences proposed.</b>	to the street(s); <ul style="list-style-type: none"> <li>○ Must not be a solid unbroken wall and the solid component cannot be more than 50% of the street frontage; and</li> <li>○ Must not be colourbond or timber paling.</li> </ul>
<b>Side and Rear</b>	
Side fences are measured from behind the required building line to the rear boundary. The maximum side or rear fence height is 2.0 metres.	<b>Not applicable – no new side fence proposed.</b>
May include timber paling, metal or Colourbond material. If metal must be of low reflective material.	<b>Not applicable – existing fence retained.</b>
Chain wire fences, except to tennis courts, are not to exceed 1.2 metres in height. On corner allotments, fence and wall treatments on the secondary street frontage are to be of equal design quality and material as the primary street frontage for the length of the building.	<b>Not applicable .</b>

### 2.1.7 Section A2 Site Access and Parking Code – Tweed Development Control Plan 2008

<b>A2.2.3 Vehicle Access and Parking</b>	
<b>Controls</b>	<b>Solution</b>
Onsite parking is to be provided at the numerical rates detailed in Table 2.	<b>Table 2 prescribes 1 space per dwelling plus provision for driveway parking of another vehicle (2 spaces per dwelling). The proposal achieves these requirements.</b>
Any development involving a land use other than a dwelling, secondary dwelling or dual occupancy must provide vehicular access to and from the site in a forward moving direction.	<b>Turning bay provided so vehicles have the ability to turn around on site. Consequently vehicles can ingress and egress in a forward motion.</b>
If a dual occupancy is in a 'stacked' arrangement the rear dwelling shall provide turnaround facilities to allow vehicular access to and from the site in a forward moving direction.	<b>Not applicable.</b>
Provide suitable separation and design	<b>All traffic areas located together on site to</b>

treatments between large vehicle manoeuvring areas, loading and unloading areas and adjoining residential areas to mitigate impacts within and surrounding the site.	<b>ensure an appropriate separation from the dwelling can be provided. No adjoining residential areas impacted.</b>
Vehicle access is expected to be derived from the frontages which have the lowest pedestrian and cycle volumes. This includes porte cocheres (covered vehicle set downs), where permissible.	<b>Complies. Access to River Street exists.</b>
Driveway access in any CBD strip shopping area will not be supported without substantial justification as this breaks the active street frontage.	<b>Not applicable.</b>
Porte cocheres will not be supported in any CBD strip shopping area.	<b>Not applicable.</b>
Generally, no new off street parking bays or aisles will be allowed at street level within 6m of the principal property frontage anywhere within the CBD sectors outlined in areas 1,2 and 3 of Table 2	<b>Not applicable.</b>
Tandem or stacked parking is not generally favoured. However, a limited number of stacked employee and/or resident spaces may be considered where suitably justified, addressing the following...	<b>Not applicable.</b>
Small car spaces will not count towards the required number of vehicle spaces prescribed by Table 2	<b>Not applicable.</b>
Visitor parking shall be incorporated within reasonable and convenient proximity of the visitor's final destination with no barriers to pedestrian movement located in between (e.g. public roads).	<b>Visitor parking is provided on site.</b>
Provide aisles for parcel-pickup facilities or areas for the manoeuvring or docking of commercial vehicles or garbage trucks separate from areas of normal pedestrian/vehicular traffic.	<b>Not applicable.</b>

### 2.1.8 Section A9 Energy Smart Homes Policy – Tweed Development Control Plan 2008

Please see attached BASIX certificate.

### 2.1.9 State Environmental Planning Policy (Coastal Management) 2018



The site is located clear of Wetlands and Littoral Rainforest, and although within the coastal area as mapped, the lack of significant site works and vegetation removal, and its compliance with flood levels, ensures that it does not conflict with the provisions of this state policy.

#### 2.1.10 Flood Impact

Like most river systems in north eastern N.S.W., the Tweed River system, within the catchment of which this development is proposed, experiences some degree of flooding during major storm events. These major storm events most frequently occur between January and April each year, and are caused either by Tropical Cyclones, (which have been known to cross the coast as far south as Coffs Harbour), or by intense East Coast Low Pressure Systems.

Each type of atmospheric event has the propensity to bring heavy rains to the area, and considerably increase sea levels, thus further increasing the risk of flooding.

It should be noted that the development will not result in fill or major site works. The nett result is that it will not aggravate flood levels off site or within the catchment as detailed below.

Councils Mapping Shows the “Climate Change Flood Level” at 7.6m AHD.

As stated in the introduction, the redesign will effect a lifting of the floor level of the dwellings upper floor level from 7.04m AHD and 7.28m AHD to a new floor height of 8.2m AHD, thus placing it well above the required Climate Change Flood Level of 7.6m AHD.

The subfloor, which is currently a Garage, Bathroom, and Storage area with a level of 5.2m AHD will be redesigned to include stairs to the upper level, a laundry and wet-bar, as well as storage and garage.

No habitable rooms are proposed in this area, and the ground floor level will remain an open sided structure to permit the free flow of flood waters.



**Lots 12 & 13 Sec 3 DP 5077 No 125 River St. Murwillumbah**



**Non Restriction of Flood Flow :-** The proposed Dwelling Additions and Alterations, will not restrict the flow characteristics of flood waters in the area, as the type of flooding in this area is restricted to waters backing up behind the mouth of the river, and ponding over the valley floor, with low flow characteristics.

No site works are proposed that will alter the existing drainage characteristics of the site, and the proposed redevelopment of this site will not alter flow characteristics.

**No Filling of Site :-** There will be no filling of the site, only displacement around the foundations of the Dwelling Additions and Alterations, as proposed. The proposed development there fore satisfies this L.E.P. objective.

**Flood Proofing of Building :-** Due to the nature of flooding that affects the site, and the fact that the elevated building will not displace flood waters, then it is considered that the proposed development satisfies this L.E.P. objective.

The requirement of this objective, that 'the building be flood proofed', is satisfied by the habitable floor levels being at 8.2m AHD, well above the 7.6m AHD 1% Flood level now set by Council.

**Vehicular Access :-** The ground level car space will have a level of approx. 5.2m AHD, making it flood affected by 2400mm in the 1% flood. River Street at 4.93mm AHD will also be flood affected, and to this end early evacuation of vehicles to the elevated areas of Tweed Valley Way to the south east is necessary.

## Flood Evacuation Plan

The following flood access and evacuation plan is to be fixed to the Kitchen door of the dwelling.

**FLOOD ACCESS & EVACUATION PLAN**

**Dated 11/08/2017**      **For Property Lots 12 & 13 Sec 3 DP 5077 No 125 River St.**

**Murwillumbah.**

- c) **Flood Characteristics.** During major 1 in 100 year flooding, the site could be covered by approx 2,400mm of flood water. All habitable floors are located at 8.2m ADH, and as such will not be affected by flooding.
- d) **Flood Warnings.** Local Radio Stations will broadcast warnings, so always keep a battery operated radio in the house. Flood warnings will indicate expected flood heights in the Tweed River at Murwillumbah. By Survey the levels on the site vary from 3.7m AHD in the west, to 5.4m in the east of the site. The 1% flood is 7.6m. A.H.D.
- e) **Preparations.** If a flood event is forecast then the following items need to be prepared. Wet weather clothing, Torch, Radio (battery operated), Spare Batteries, Prescription Medicines, Basic Food Stuffs.
- f) **Evacuation.** If a flood event is forecast:-
  - a) Monitor flood advise and take note of estimated flood peaks and expected time.
  - b) Prepare for evacuation and ensure all preparations have been made.
  - c) If evacuation is required, this is achieved by travelling south along River Street, to Smith St., then south to elevated areas along Tweed Valley Way. Timely evacuation avoids emergency personnel taking risks if evacuation is delayed by you.
  - d) If you evacuate other than to an emergency shelter, advise authorities so that you can be accounted for.
- g)       **Contacts. S.E.S.**                               **- 132500 (Tweed Shire 66702400)**  
           **Murwillumbah Police**   **- 66729499**  
           **Emergency Shelter.**  
           **Country Energy.**       **- 132080**  
           **Telstra.**                       **- 132200**  
           **Local Radio.**               **- A.B.C. F.M. 94.5**

**NOTES** It is natural to feel apprehensive if this is your first flood, however, SES HQ should not be phoned as this congests the control centre. Rely on radio advises in the first instance.

**CONCLUSION** - Flooding is not a significant constraint and the Dwelling Additions and Alterations will meet Councils floor height requirements, being 500mm above flood level. Implementation of the Floor Evacuation Plan will ensure that occupant safety is optimised. The development is to achieve minimum floor levels of 8.2m AHD, being 600mm above the projected 7.6m, 1% level.

As such it is considered that the design criteria meets Tweed Shire design requirements.

### **3. Sec. 4.15(1)(b) IMPACT ON ENVIRONMENT**

The amendment of Conditions 1 and 6 involves no additional site works, thus no appreciable change in the character of the site or its surrounding area will result. This is particularly so considering the retention of the native tree stands on site, and the previous completion of the eastern access road.

It is therefore considered that the proposed development will have no adverse impact on the environment of the area.

No change in the character of the area will result, no vegetation will be affected, other than the removal of a small Bottlebrush tree to the north west of the existing dwelling.

The minimal impact of this is reinforced by the sites location within a core residential area, and the residential development proposed is expected and planned for by virtue of the Low Density Zoning that applies to the site, and the DCP which sets out control for residential development of this nature.

Despite this the majority of vegetation about the site is retained to provide a vegetated backdrop to the development proposed, thus maintaining the visual amenity of the area.

#### **3.1 Landscaping**

The trees, shrubs and ground covers to be retained about the site are more than adequate to achieve screening and visual softening, and to this end no additional landscaping is deemed necessary.

#### **3.2 EPA Act Sec 5.5 Duty to consider environmental impact**

(1) For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.

As stated above, the native species are to be retained.

This will effect screening, visual softening, and the broadening of the habitat base of the area.

On this basis the proposal results in development meets the Sec 5.5 requirements of the EPA Act in that it results in the “protection and enhancement of the environment”.

#### **3.2 Biodiversity Conservation Regulation 2017**

The Biodiversity Conservation Regulation 2017 sets out threshold levels for when the Biodiversity Offsets Scheme will be triggered. The threshold has two elements:

- Whether the amount of native vegetation being cleared exceeds a threshold area, or
- Whether the impacts occur on an area mapped on the Biodiversity Values map published by the Minister for the Environment

If clearing and other impacts exceeds either trigger, the Biodiversity Offset Scheme applies to the proposed development including biodiversity impacts prescribed by clause 6.1 of the Biodiversity Regulation 2017.

If the Biodiversity offsets scheme is not triggered, the test of significance detailed in section 7.3 of the Biodiversity Conservation Act 2016 must be used to determine whether a local development is likely to significantly affect threatened species.

**As can be seen from the following extract from the Biodiversity Values map, as published by the Minister for the Environment, the proposed development sits outside the areas mapped on the Biodiversity Values map.**



**3.2.1 Sec 7.3 of the Biodiversity Conservation Act 2016**

**Sec 7.3 Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats**

**(1) The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:**

**(a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,**

In these areas of the Shire, the following Endangered or rare species could occur:

**Endangered or rare tree species:-**

Acianthus amplexicaulis; Acronychia littoralis  
Amorphospermum whiteii

(Scented Acronychia)  
(Rusty Plum) Archidendron

muellerianum	(Veiny Lace Flower)
Cordyline congesta; Cryptocarya foetida	(Stinking cryptocarya)
Endiandra hayseii	(Velvet Laurel)
Syzygium hodgkinsoniae	(Red Lilli Pilli)
Syzygium moorei	(Durobby)
Thozetia racemosa; Randia moorei	(Spiny Gardenia)

**Endangered or rare Bat Species:-**

Chalinolobus nigrogriseus	(Whorie Bat) Miniopterus australis
	(Mini Bent Wing Bat)
Nyctophilus bifax	(Small Cave Bat)

**Endangered or rare animal Species:-**

Phascolarctos cinereus	(Koala)
Potorous tridactylus	(Potoroo)

Threatened species were not identified on this site, and the cleared nature of the site, and the additional native plantings proposed, ensures minimisation of impact.

In general the habitat contained on site is not one conducive to the habitat needs of threatened species, particularly given its small size, disturbed nature, and low density residential R2 Zone location.

**(b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:**

- (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or**
- (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,**

As previously indicated, no habitat is to be removed, and the native species chosen for landscape plantings will effect screening, visual softening, and the broadening of the habitat base of the area.

**(c) in relation to the habitat of a threatened species or ecological community:**

- (i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and**
- (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and**
- (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,**

Due to there being no native trees to be removed, then no habitat areas in the district will become isolated from interconnecting or proximate areas of habitat for a threatened species, population or ecological communities.

The native landscape plantings proposed, will effect screening, visual softening, and result in the broadening of the habitat base of the area.

**(d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),**

As detailed, no critical habitat will be affected.

**(e) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.**

The proposed Dwelling Additions are to take place on the cleared, and grossly disturbed central areas of the site.

The native landscape plantings proposed will effect screening, visual softening, and result in the broadening of the habitat base of the area.

It is thus considered that the development will not be a threatening development or activity.

**(2) The Minister may, by order published in the Gazette with the concurrence of the Minister for Planning, issue guidelines relating to the determination of whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats. Any such guidelines may include consideration of the implementation of strategies under the Biodiversity Conservation Program.**

In this instance no Ministerial order has been issued in relation to the proposed development, and to this end the proposal is not considered to be one which will impact on any declared area of outstanding biodiversity value.

In addition to this, extensive compensatory plantings are proposed, and the development will result in a net increase in native habitat about the site.

### **3.3. Impact On Cultural And Heritage Significance Of The Land. Aboriginal Sites**

Previous Shire Studies have found no aboriginal sites within the development area of the property, or on adjacent lands.

This is confirmed by a check with the Tweed - Byron Aboriginal Land Council.

The survey of the area undertaken as part of this study found no buildings or sites of other historic or cultural significance.

### **3.4 NATIVE FAUNA**

#### **Mammal, Reptile, Bird and Bat Species:-**

The study area was traversed on foot, with fauna identified by tracks, scats, and visual sighting, as well as sightings by local residents.

#### **REPTILES**

Skinks:- Lampropholis delicata (Common Garden Skink)  
 Dragons:- Physignathus lesueurii (Water Dragon)  
 Snakes (previously sighted on site or in area by local land owners):-  
     Demansia psamophis (Yellow Faced Whip Snake)  
     Dewrelapinis punctulatus (Green Tree Snake).  
     Morelia spiloties (Carpet Snake)

Pseudechis porphyriacus (Red-bellied Black Snake)  
 Pseudonaja textilis (Brown Snake).

### **AMPHIBIANS**

Litoria caerulea (Green Tree Frog)  
 Litoria spp. (Striped Marsh Frog)  
 Bufo marinus (Cane Toad)

### **BIRDS**

Of the numerous birds which could be heard throughout the trees the following were sighted or identified by call:

Ardea garzetta	(Little Egret)
Cracticus torquatus	(Grey Butcher-Bird)
Dacelo novaeguineae	(Kookaburra)
Gymnorhina tibicen hypoleuca	(Magpie)
Lichmera indistincta	(Brown Honeyeater)
Malurus cyaneus	(Superb Blue Wren)
Malurus melanocephalus	(Red-backed Fairy-Wren)
Podargus strigoides	(Tawny Frogmouth)
Rhipidura leucophrys	(Willie Wagtail)
Strepera graculina	(Pied Currawong)

### **NATIVE MAMMALS**

Native Mammals identified close to the site include:-

Tachyglossus aculeatus	(Echidna)
Pseudocheirus peregrinus	(Ringtail Possum)

Flying Fox.

Although relatively small, the property does support a diversity of common wildlife. The abundance of this wildlife is a function of the sites' location close to regrowth forests in the south, and river bank corridors to the north and south of the site.

These main habitat areas within the site are to be retained.

### **3.5 NATIVE VEGETATION**

The site was extensively disturbed by vegetation clearance during the early part of this century when timber was extracted from the area. This was followed by decades of stock grazing resulting in the loss of all the original forest, and maintaining the area as pasture.

All of the existing trees within the managed character of the developed areas of the allotment are retained, other than one small Bottlebrush, thus minimising adverse environmental impact. The excavations for foundations and services will be to a depth of less than 1m. Erosion control measures are to be put in place during construction. It is therefore considered that the proposed development will have no adverse impact on the environment of the area.

One plant community exists within the site i.e. **Grassland** which is generally characterised by a close cover of various grass species and scattered landscape plantings, with some large trees and palms.

The retention of all of the trees means that the habitat base of the area is retained.

### **3.6 S.E.P.P. No. 44 KOALA HABITAT.**

1. The site is within schedule 1.
2. The site is less than 1 ha.

3. No Koala food trees exist within the site.
  4. The site is removed from known Koala corridors.
  5. No Plan of Management is required.
- Koala habitat will not be affected.

### **3.7 S.E.P.P. No. 55 CONTAMINATED LAND**

No Bananas have ever been grown on this site, and as previously stated the site is well clear of the zone of influence of the old decommissioned Dip Yard which is spatially well removed from the site, and as such no additional site testing is required.

### **3.7 IMPACT ON SCENIC QUALITY**

As stated above, the amendment of Conditions 1 and 6 will not alter the existing development characteristics of the site and as such the scenic amenity of the area will be unaffected by the proposed amendment. The Dwelling site remains within existing cleared areas, partly screened from roads and adjacent properties by vegetation and topography.

### **3.8 Impact on the Built Environment**

The amendment of Conditions 1 and 6 merely permits the regularisation of the existing constructed works and proposed verandah roof, and as such no additional site works result, it will not alter the density, access or overall design of the site, and it will still reflect the character of the site, thus ensuring maintenance of the residential amenity of the surrounding properties.

## **4. Sec. 4.15(1)(c) SUITABILITY OF THE SITE**

The property is located off the western side of River Street in South Murwillumbah, on elevated, mostly cleared land.

The property drains generally in a westerly direction towards the Tweed River.

The size and shape of the allotments are adequate to ensure that the proposal does not constitute an over development of the site.

It also accords with Councils requirements for developments of this type, as well as the site specific recommendations of the adopted Byron Rural Strategy, and accords with the Zoning provisions of Byron L.E.P. The proposed amendment of Conditions 1 and 6 retains the approved dwelling additions which blends into the settlement pattern of the area.

The recreation areas within sites will be sufficient to afford privacy and adequate recreation space for the future occupants of each.

### **5.1 GEOLOGY:**

The site is characterised by a brown - red, Krazonsem volcanic clay.

The soils are classified as being "Moderately Reactive", and as such are suitable for the dwelling. The amendment of Conditions 1 and 6 does not alter this provision.

### **5.2 ACCESS AND PARKING**

The proposed amendment of Conditions 1 and 6 does not result in any change to the Council approved and already constructed access. Easy access remains directly off the road constructed to the east. As such there is no need for new public roads to be constructed.

### **5.3 TRAFFIC**

The amendment of Conditions 1 and 6 does not alter the fact that dwelling additions have already been approved under Consent DA 17/0564 dated 29<sup>th</sup>. November 2017. As such the minor changes proposed, which maintain this approved density, will not create additional traffic



potential.

On this basis traffic loads are likely to maintain the design capacity of local roads.

#### **5.4 PUBLIC TRANSPORT**

School Bus Service and Taxis currently service the area.

#### **5.5 SERVICES**

Existing services are adequate to cater for the demands made by the development.

This is particularly so as access and servicing to the proposed dwelling additions, exist at present, are not altered by the amendment of Conditions 1 and 6, and as such the proposed amended allotments will create no additional dwelling potential.

On this basis no increased demand beyond the capacity of existing services is anticipated by the proposed low key adjustment of boundaries.

#### **ELECTRICITY SUPPLY**

Country Energy has advised that electricity supply is already planned to the existing dwelling and future allotments, and that no major upgrading of service is required for the altered allotments.

#### **TELEPHONE SUPPLY**

Telstra advised that Telephone cables in the area are connected to the development areas within the site from the local Exchange Network.

#### **GARBAGE COLLECTION**

Garbage from the development will be taken to the Tweed Heads Tip, with organic matter composted on site.

#### **WATER SUPPLY**

Adequate rainfall exists to meet anticipated demand via the roof tank collection method.

#### **SEWERAGE**

Effluent from the development site will be sent to the existing Council sewerage drainage system.

#### **6 Sec. 4.15(1)(d) SUBMISSIONS UNDER ACT OR REGULATIONS**

Not applicable.

#### **7 Sec. 4.15(1)(e) PUBLIC INTEREST**

Due to the continuation of the style of surrounding dwellings, and the fact that changes proposed are only minor and not generally visible from River Street, it is considered that the public response to the proposal will on the whole be a positive one.

The amendment of Conditions 1 and 6 maintains the previously approved density, and it will not result in the visual character of the area changing. As such the amendment to Conditions 1 and

6 will not detract from the visual amenity and outlook of the elevated adjoining properties to the north, south, and east.

## 8. CONCLUSION

It is considered that the proposed amendment of Conditions 1 and 6 will not change the density or structure of the approved dwelling additions, and as such this change will not change the already approved character of the area as anticipated by (Consent DA 17/0564).

As the net result is that no additional negative impacts are created, and as the amendments retain the residential character of the area, then the amendment of Condition 1 and 6 should be supported by this Sec 4.55 Application.

This is particularly so as the changes proposed are only minor and we done to continue the existing structures roof line which **promotes**, rather than prejudices **the proper future planning of the area.**

As such the proposed amendment of Conditions 1 and 6 can be seen as satisfying the intent of Council's Statutory requirements under the L.E.P.

The proposed amendment will thus not result in any alteration to the existing character of the area and will promote long term utilisation of Residential land, and finally the proposed development satisfies all of the zone, and control plan requirements for this type of development.

On this basis Council should have no hesitation in approving this application.

Tai Lonergan.  
20<sup>th</sup> March 2019  
Bachelor of Urban & Regional Planning (UNE)  
Building Designer / Draftsman