



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

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

Agenda

Planning Committee Meeting Thursday 5 September 2019

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 Evaluation

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

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

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

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

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

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

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

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

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

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

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

(3A) **Development control plans**

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

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

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

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

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

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

(6) **Definitions**

In this section:

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

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Items for Consideration of the Planning Committee:

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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA18/0485 for Application for a Staged Development Consisting of Three Dwellings over Three Stages (One Dwelling Per Stage) at Lot 3 DP 371134 No. 141 Byangum Road, Murwillumbah

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

Updated Summary - Thursday 5 September 2019

Council at its meeting of 1 August 2019 resolved as follows:

“that development Application DA18/0485 for application for a staged development consisting of three dwellings over three stages (one dwelling per stage) at Lot 3 DP 371134 No. 141 Byangum Road, Murwillumbah be deferred to receive legal advice regarding the development’s permissibility with regards to being a multi-dwelling development on a battle axe lot. The core of the question is whether DCP A5 applies in regards to multi-dwelling development on battle-axe lots and whether the exemption clause located in the DCP A5 applies.”

Council received legal advice dated 23 August 2019, which states that Section A5 of the Tweed Development Control Plan does not apply to the Development Application as the proposal does not involve subdivision. Therefore application of clause A5.4.2 *Infill Subdivision* is not applicable to the Development Application. The wording within A5 which states that battle-axed allotments must not be used for multi dwelling housing is inconsistent and incompatible with the Tweed LEP and therefore invalid. The legal advice also confirms that a development control plan cannot prohibit development, with permissibility controlled by a Local Environmental Plan, in this case the Tweed Local Environmental Plan 2014. In accordance with the Tweed LEP 2014,

the site is zoned R2 Low Density Residential with multi dwelling housing being permissible with consent. A copy of the legal advice is a confidential attachment.

Updated Summary - Thursday 1 August 2019

Council at its meeting of 4 July 2019 resolved as follows:

"that this item be deferred for an on-site meeting with the proponent and the neighbouring residents to negotiate on an outcome that better addresses the concerns of the neighbours."

An on-site meeting with the owner, Councillors and adjoining residents has been arranged for Monday 29 July 2019.

Original Summary - Thursday 4 July 2019

The proposal is for three detached dwellings (over three stages - one dwelling per stage) development of stage 1 is the construction of dwelling 1, stage 2 is the construction of dwelling 2 and stage 3 is the construction of dwelling 3. Each dwellings are proposed to be two storeys in height with double garages. The proposal does not include Torrens subdivision or strata subdivision, although the potential lot sizes for each dwelling would be: Lot 1 – 744m², Lot 2 – 673m², Lot 3 – 806m².

The application was referred internally to the following units: Building, Environment Health, Water, Development Engineers and Stormwater Engineers. No major concerns were raised, subject to recommended conditions.

The application was notified for a period of 14 days from Wednesday 18 July 2018 to Wednesday 1 August 2018. Council received 10 submissions (three from the same objector) in relation to the proposal which are addressed later within this report.

The main concerns raised by the objectors were: earthworks, bins and vegetation within the right of way, safety concerns of vehicles entering and exiting the site, two of the dwellings exceed the 9m building height, privacy impacts from the balconies of dwelling 1, geotechnical, stormwater and bushfire impacts.

Amended plans were provided which: removed the bins and landscaping from the right of way, provided improved detail of the proposed earth works within the right of way which also assisted in satisfying safety concerns, reduced building height of dwelling 1 and 2 so they are compliant with the 9m building height, privacy screens have been provided on the eastern elevation of dwelling 1 balconies. A geotechnical report, stormwater management plan and bushfire report prepared by suitably qualified persons were provided and assessed by Council staff and considered to be acceptable, these reports have been conditioned.

This development application has been called up for Council determination by Councillor Byrnes and Councillor Cooper.

RECOMMENDATION:

That:

- A. Development Application DA18/0485 for application for a staged development consisting of three dwellings over three stages (one dwelling per stage) at Lot 3 DP 371134 No. 141 Byangum Road, Murwillumbah be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos DA2.0 issue E, DA2.3 issue E, DA2.4 issue E, DA(1)2.0 issue E, DA(1)2.1 issue E, DA(1)3.0 issue E, DA(1)3.1 issue E, DA(1)4.0 issue E, DA(2)2.0 issue C, DA(2)2.1 issue C, DA(2)3.0 issue C, DA(2)3.1 issue C, DA(2)4.0 issue C, DA(3)2.0 issue C, DA(3)2.1 issue C, DA(3)3.0 issue C, DA(3)4.1 issue C, DA(3)5.0 issue C, prepared by iphorm and dated September, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0115]

- 3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property. Any necessary adjustment or modification of existing services is to be undertaken in accordance with the requirements of the relevant authority, at the Developer's expense.**

[GEN0135]

- 4. A sewer manhole is present on this site. Manholes are not to be covered with soil or other material.**

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

[GEN0155]

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

[GEN0300]

- 6. Bushfire Design and Construction**

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

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

(b) The development is to be completed in accordance with the Bushfire threat Assessment Report prepared by Bushfire Certifiers dated 10 January 2018 Ref:8/002.

[GEN0335]

7. A minimum 3.0 metre easement shall be created over ALL the existing public sewerage infrastructure on the lot.

8. Water and sewerage reticulation for all dwellings shall be connected so that there is only connection to Council's public water and sewer infrastructure.

[GENNS01]

9. The development is to be in accordance with the Stormwater Management Plan by Northern Rivers Structure consulting engineers dated 18 April 2019.

[GENNS01]

10. Geotechnical investigations and assessment of the subject site shall be in accordance with the recommendations and requirements as specified in the Geotech Investigations Pty Ltd report, dated 11 December 2017, except where varied by the conditions of this consent.

11. All individual house sites are subject to further geotechnical testing at time of building approval.

[GENNS02]

12. Geotechnical investigations and assessment of the subject site shall be in accordance with the recommendations and requirements as specified in the Geotech Investigations Pty Ltd report, dated 11 December 2017, except where varied by the conditions of this consent.

All individual house sites are subject to further geotechnical testing at time of building approval.

[GENNS02]

13. The landscaping is to be undertaken in general accordance with the approved landscaping plans. The landscaping must contain no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species.

[GENNS03]

14. This consent relates to a staged development as follows:

Stage 1 relates to the construction of dwelling number 1.

Stage 2 consists of the construction of dwelling number 2.

Stage 3 consists of the construction of dwelling number 3.

All conditions within this consent are to be applied to each relevant stage, where applicable.

[GENNS04]

15. No parking of vehicles is permitted within the Right Of Way.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

16. Section 7.11 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 7.11 Contributions for each stage have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council (no contributions for stage 1 are required).

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

These charges include indexation provided for in the Section 7.11 Contribution Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 7.11 Contribution Plan current at the time of the payment.

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

Stage 2

- | | |
|---|---------|
| (a) Tweed Road Contribution Plan:
2.6 Trips @ \$1570 per Trips
(\$1,317 base rate + \$253 indexation)
CP Plan No. 4
Sector9_4 | \$4,082 |
| (b) Open Space (Casual):
1 ET @ \$659 per ET
(\$502 base rate + \$157 indexation)
CP Plan No. 5 | \$659 |
| (c) Open Space (Structured):
1 ET @ \$754 per ET
(\$575 base rate + \$179 indexation)
CP Plan No. 5 | \$754 |
| (d) Shirewide Library Facilities:
1 ET @ \$985 per ET
(\$792 base rate + \$193 indexation)
CP Plan No. 11 | \$985 |

- (e) **Bus Shelters:**
 1 ET @ \$75 per ET \$75
 (\$60 base rate + \$15 indexation)
 CP Plan No. 12

- (f) **Eviron Cemetery:**
 1 ET @ \$140 per ET \$140
 (\$101 base rate + \$39 indexation)
 CP Plan No. 13

- (g) **Community Facilities (Tweed Coast - North)**
 1 ET @ \$1624 per ET \$1,624
 (\$1,305.60 base rate + \$318.40 indexation)
 CP Plan No. 15

- (h) **Extensions to Council Administration Offices
 & Technical Support Facilities**
 1 ET @ \$2195.88 per ET \$2,195.88
 (\$1,759.90 base rate + \$435.98 indexation)
 CP Plan No. 18

- (i) **Cycleways:**
 1 ET @ \$555 per ET \$555
 (\$447 base rate + \$108 indexation)
 CP Plan No. 22

- (j) **Regional Open Space (Casual)**
 1 ET @ \$1282 per ET \$1,282
 (\$1,031 base rate + \$251 indexation)
 CP Plan No. 26

- (k) **Regional Open Space (Structured):**
 1 ET @ \$4500 per ET \$4,500
 (\$3,619 base rate + \$881 indexation)
 CP Plan No. 26

Stage 3

- (a) **Tweed Road Contribution Plan:**
 2.6 Trips @ \$1570 per Trips \$4,082
 (\$1,317 base rate + \$253 indexation)
 CP Plan No. 4
 Sector9_4

- (b) **Open Space (Casual):**
 1 ET @ \$659 per ET \$659
 (\$502 base rate + \$157 indexation)
 CP Plan No. 5

- (c) **Open Space (Structured):**
1 ET @ \$754 per ET \$754
(\$575 base rate + \$179 indexation)
CP Plan No. 5
- (d) **Shirewide Library Facilities:**
1 ET @ \$985 per ET \$985
(\$792 base rate + \$193 indexation)
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- (e) **Bus Shelters:**
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CP Plan No. 26

[PCC0215/POC0395/PSC0175]

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

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

BELOW IS ADVICE ONLY

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

Stage 1

Water = Nil
Sewer = Nil

Stage 2

Water = 0.4 ET @ \$13,926 = \$5,570.40
Sewer = 1.0 ET @ \$6,690 = \$6,690

Stage 3

Water = 0.8 ET @ \$13,926 = \$11,140.80
Sewer = 1.0 ET @ \$6,690 = \$6,690

[PCC0265]

18. Prior to construction certificate of Stage One, details from a Structural Engineer are to be submitted to the Water Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.
19. Prior to construction certificate of Stages Two and Three, Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.
20. The footings and floor slab to the dwelling/s is/are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0935]

[PCC0945]

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

[PCC1175]

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

[PCC1195]

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

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

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

[PCC1310]

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

Note:

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

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

[PCC1335]

25. Prior to Construction Certificate of Stage One, the applicant is required to physically locate the actual location of the 150mm diameter sewer pipeline infrastructure on Lot 3 DP 371134. A Construction Certificate shall NOT be issued by a Certifying Authority unless the Certifying Authority is satisfied that plans show the actual location of the sewer pipelines, actual depth of the sewer dead end and actual depth of the sewer manholes.
26. Prior to Construction Certificate of Stage One, plans shall be provided to the Water Authority to demonstrate that the dwelling structures shall meet the Tweed Shire Council Development Design Specification D15 - Work in Proximity. Plans shall show that footings are located external to the sewer easement and also located below the sewer zone of influence.
27. Safety rails, compliant with the Building Code of Australia are to be provided along the existing retaining wall (adjacent to the driveway) or any new constructed retaining walls where height exceeds 1.0m in height.
28. Safety rails, compliant with the Building Code of Australia are to be provided along the existing retaining wall (adjacent to the driveway) or any new constructed retaining walls where height exceeds 1.0m in height.

[PCCNS01]

[PCCNS02]

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

29. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.
30. The erection of a building in accordance with a development consent must not be commenced until:
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

[PCW0005]

- (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

32. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which

the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

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

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

[PCW0245]

- 34. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:**

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and**
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and**
- (c) stating that unauthorised entry to the site is prohibited.**

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

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

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

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

[PCW0985]

- 36. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new (or modification of the existing) driveway access (or modification of access).**

Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCW1170]

DURING CONSTRUCTION

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

[DUR0005]

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

[DUR0015]

- 39. Commencement of work, including the switching on and operation of plant, machinery and vehicles is limited to the following hours, unless otherwise permitted by Council:**

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0375]

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

[DUR0395]

43. **The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 6.6 of the Environmental Planning and Assessment Act 1979.**
[DUR0405]
44. **It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.**
[DUR0415]
45. **Excavation**
(a) **All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.**
(b) **All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.**
[DUR0425]
46. **The finished floor level of the building should finish not less than 225mm above finished ground level.**
[DUR0445]
47. **The development is to be carried out in accordance with the current BASIX certificate/s and schedule of commitments approved in relation to this development consent.**
[DUR0905]
48. **All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:**
- **Noise, water or air pollution.**
 - **Dust during filling operations and also from construction vehicles.**
 - **Material removed from the site by wind.**
- [DUR1005]
49. **Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.**
[DUR1875]
50. **No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.**
[DUR1945]

51. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times. [DUR2015]
52. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site. [DUR2185]
53. All waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section 15 - Waste Minimisation and Management. [DUR2195]
54. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate. [DUR2425]
55. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
 - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
 - (c) external drainage prior to backfilling.
 - (d) completion of work and prior to occupation of the building. [DUR2485]
56. Plumbing
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
 - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500. [DUR2495]
57. An isolation cock is to be provided to the water services for each dwelling in a readily accessible and identifiable position. [DUR2505]
58. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level. [DUR2545]

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

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

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

[DUR2555]

60. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.

[DUR2705]

61. The Applicant shall submit the appropriate 'Application for Water Service Connection' form to Council's Water Unit to facilitate a property service water connection for proposed Lot 3 DP 371134, from the existing water main in Byangum Road. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

[DUR2800]

62. Works in the vicinity of public infrastructure must comply with the following requirements;

- a) No portion of any structure may be erected within any easement or within one metre where no easement exists for public infrastructure over the subject site. All structures shall be designed and sited such that all structure loads will be transferred to the foundation material outside of the zone of influence of any public infrastructure.**
- b) Surface treatment over the sewer pipe shall be limited to soft landscaping, noninterlocking paving, asphalt or similar treatments as specified by Council officers, to allow ready access to the pipe for excavation. Council will not be responsible for the reinstatement of plantings, unauthorised structures or decorative surfacing in the vicinity of the pipe in the event of pipe excavation or other maintenance works.**
- c) Any fencing erected across the sewer main shall be designed and constructed with removable panels and footings located at least 1.0 metres horizontally clear of sewer main.**
- d) Trees and other landscaping that will grow to over one metre in height at maturity are not permitted within the sewer easement or within one metre of the sewer if no easement exists, to prevent the tree roots intruding into sewer mains and internal sewer pipes. Landscaping over the sewer shall be of a minor nature designed to ensure they do not damage or interfere with any part of the pipeline.**

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

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

[POC0355]

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

(a) The use of any accommodation shall be limited to only the people permitted by the restrictions of occupation provisions under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

[POC0860]

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

[POC1045]

67. Prior to the issue of a final Occupation Certificate, all conditions of consent are to be met.

[POC1055]

68. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the registration of Easements for services, Rights Of Carriageway and Restrictions As To User, as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

(a) A 3m wide easement is to be registered over the existing sewer in favour of Council.

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

[POCNS01]

USE

69. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.
[USE0125]
70. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.
[USE0175]
71. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.
[USE0225]
72. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.
[USE0435]
73. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.
[USE0735]
74. All wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate.
[USE0875]
75. All commercial / industrial / residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.
[USE0875]
- B. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

REPORT:

Applicant: Mr D Crompton
Owner: Mr Daniel J Crompton & Ms Justine C Shields
Location: Lot 3 DP 371134 No. 141 Byangum Road, Murwillumbah
Zoning: R2 - Low Density Residential
Cost: \$660,000

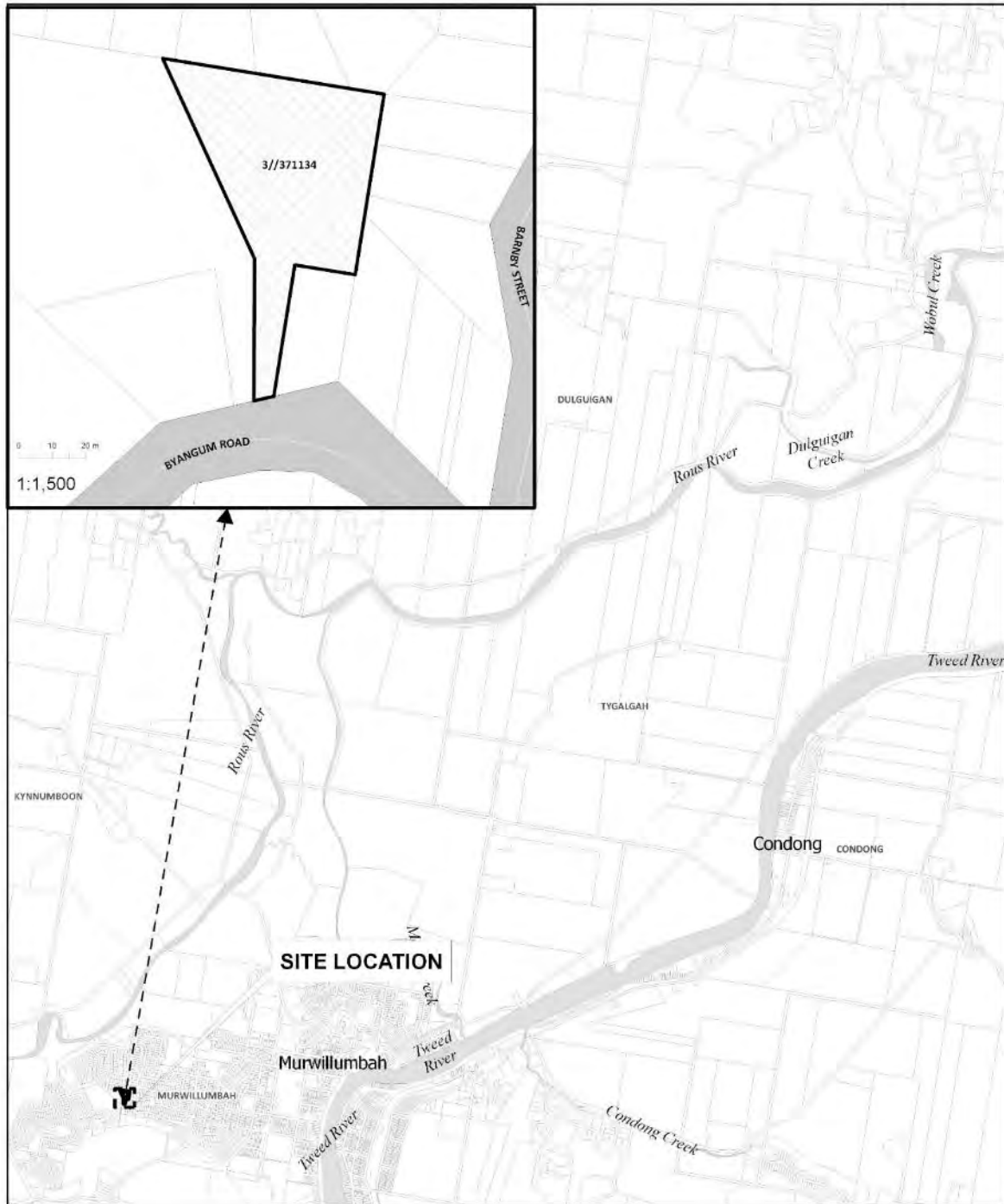
Background:

The site is known as Lot 3 DP 371134; No. 141 Byangum Road Murwillumbah. The site is zoned R2 Low Density Residential with a land area of 3029m². The front boundary access is 6.096m wide at the road reserve which widens to 12.192m with an approximate length of 40m, the rear boundary is 67.056m wide, eastern boundary 54.667 long, and western boundary is 65.748m long. The site has a height of 38m AHD falling to the rear boundary at 22m AHD. The site is restricted by a right of way which benefits the neighbouring property No. 139 Byangum Road.



Figure: Aerial of the site and surrounds.

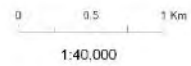
SITE DIAGRAM:



Site Plan

Lot 3 DP 371134

141 Byangum Road, MURWILLUMBAH



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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastral: 19/06/2019
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TWEED
SHIRE COUNCIL

Date Printed: 19 June, 2019

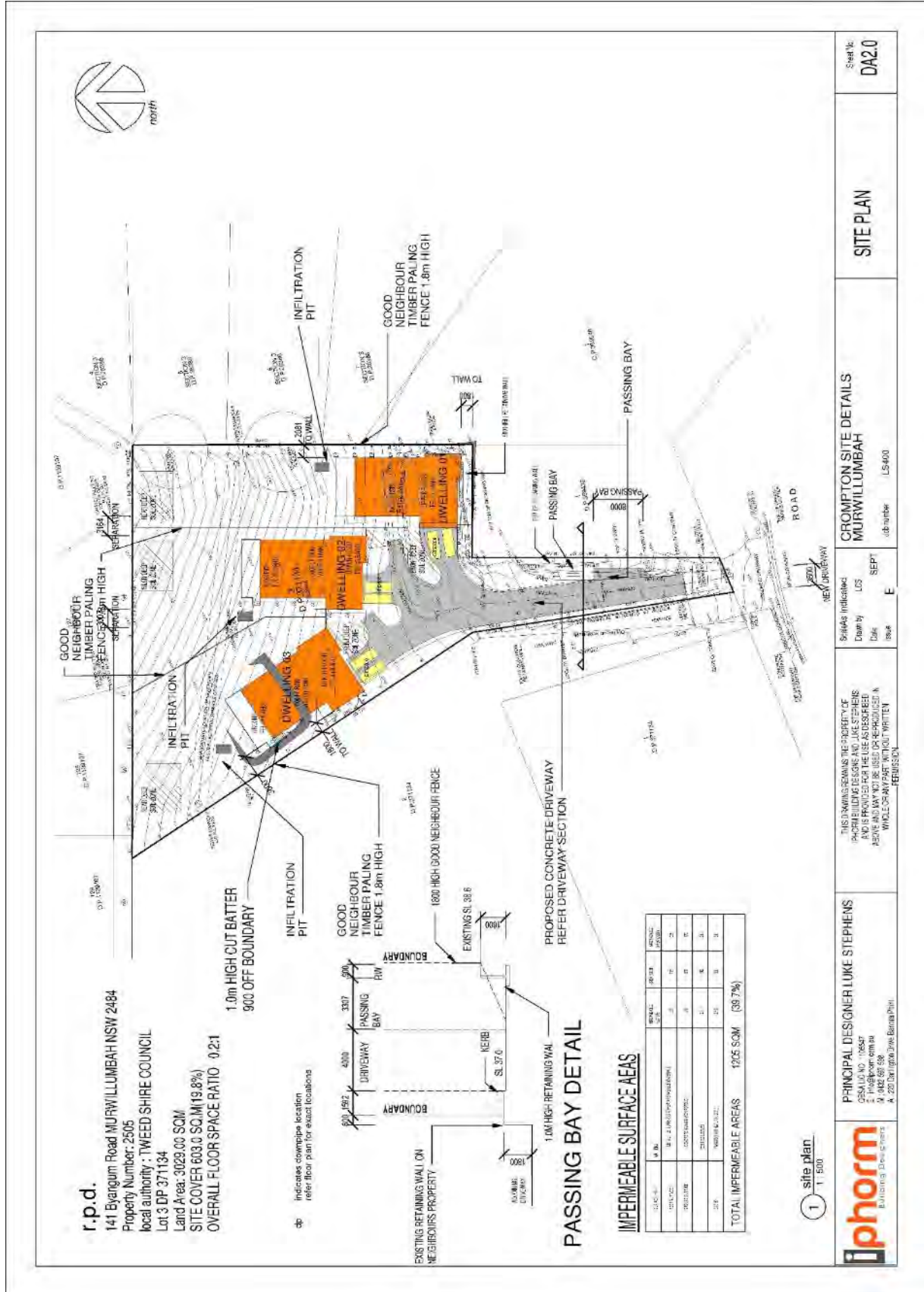
AERIAL PLAN:

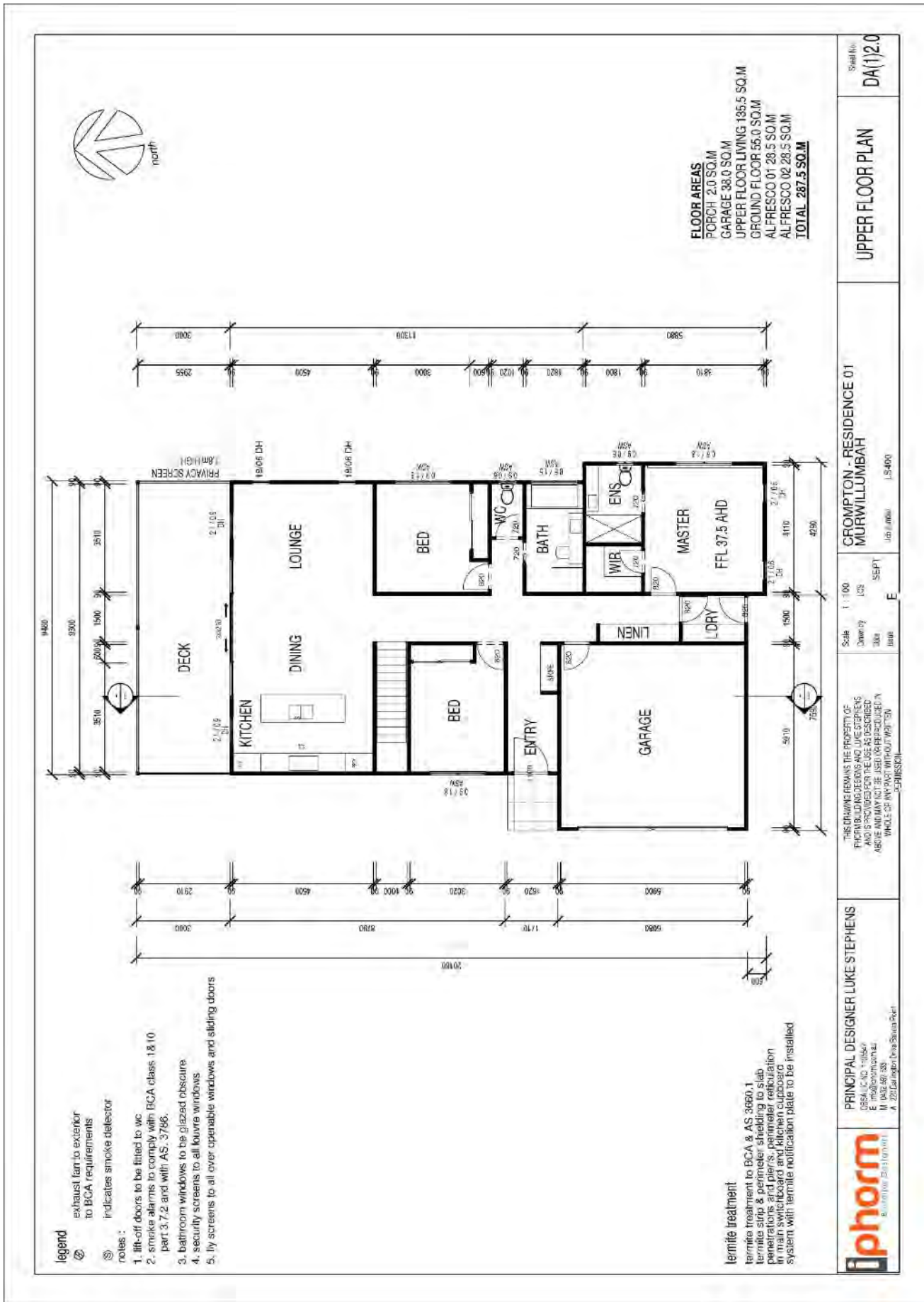


 1:500 @ A4 Portrait 0 5 10m DO NOT SCALE COPY ONLY - NOT FOR REPRODUCTION Map Production: Universal Transverse Mercator Horizontal Datum: Geocentric Datum of Australia 1994 Grid: Map Grid of Australia, Zone 56 GDA	 Civic and Cultural Centre 3 Tambulung Road Murwillumbah NSW 2454 PO Box 576 TWEED SHIRE MURWILLUMBAH T (02) 6670 3400 1300 282 872 F (02) 6670 2429 E planning@tweed.nsw.gov.au planning@tweed.nsw.gov.au	Aerial Photography April 2018 Lot 3 DP 371134 141 Byangum Road, MURWILLUMBAH	<p>© 2018 Imagery - Tweed Shire Council © Cadastre - Tweed Shire Council <i>Boundaries shown should be considered approximate only.</i></p>
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Author: S.Scott - GIS Date Printed: 15 June, 2018

DEVELOPMENT PLANS:





Legend

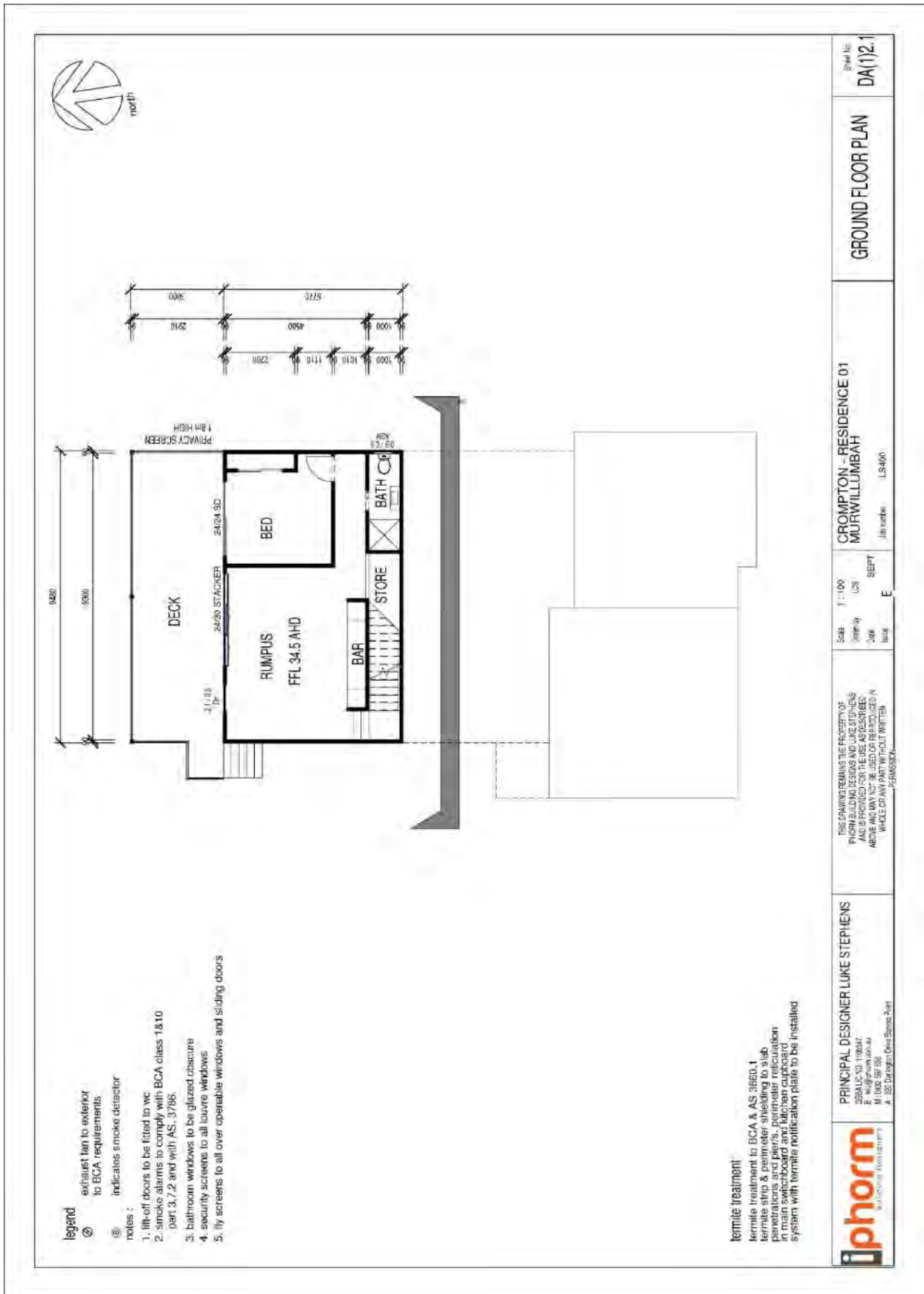
- ⊗ exhaust fan to exterior to BCA requirements
- Ⓢ indicates smoke detector

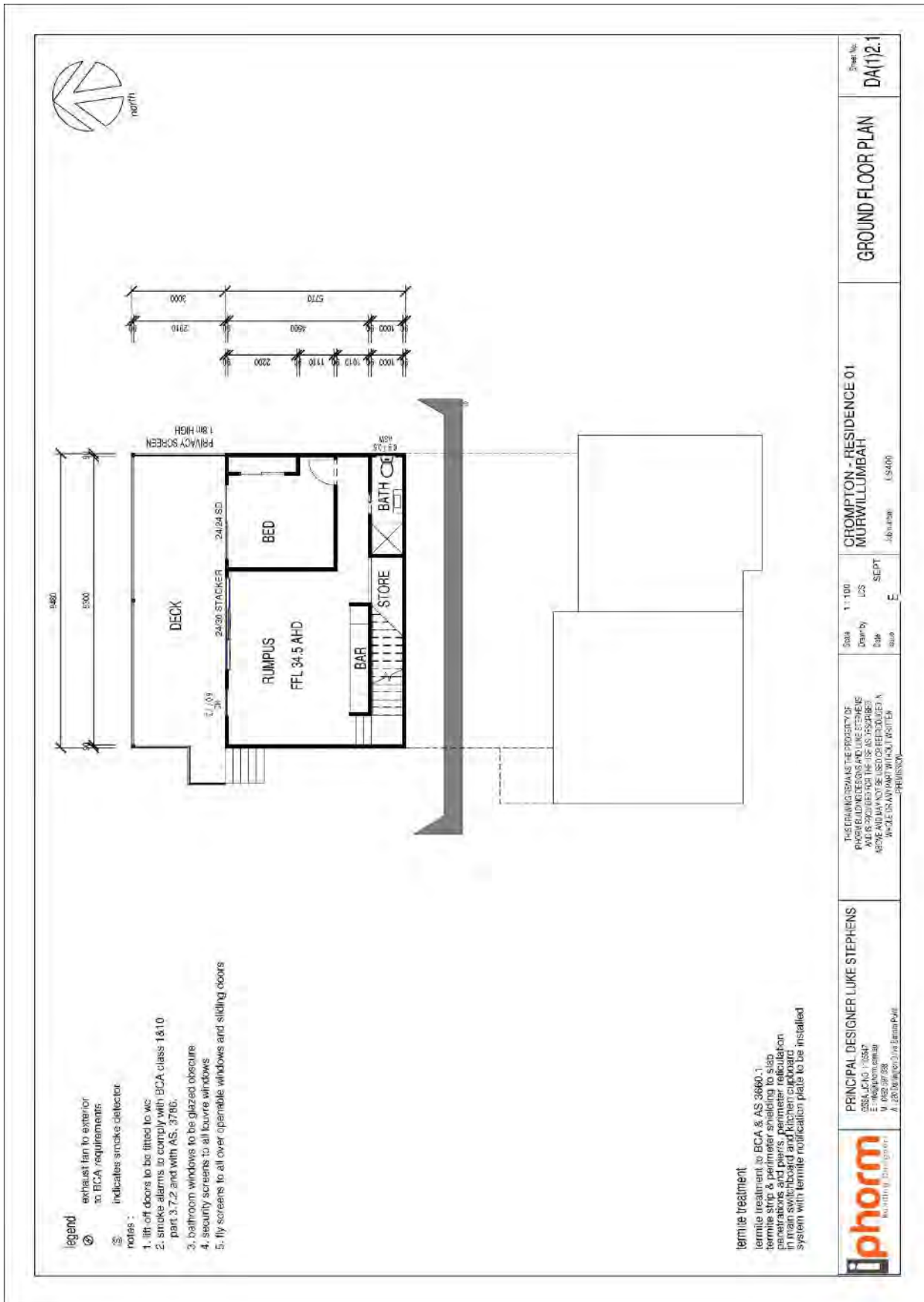
notes :

1. lift-off doors to be fitted to wc
2. smoke alarms to comply with BCA class 1 & 10 part 3.7.2 and with AS. 3786.
3. bathroom windows to be glazed obscure
4. security screens to all lounge windows
5. fly screens to all cover operable windows and sliding doors

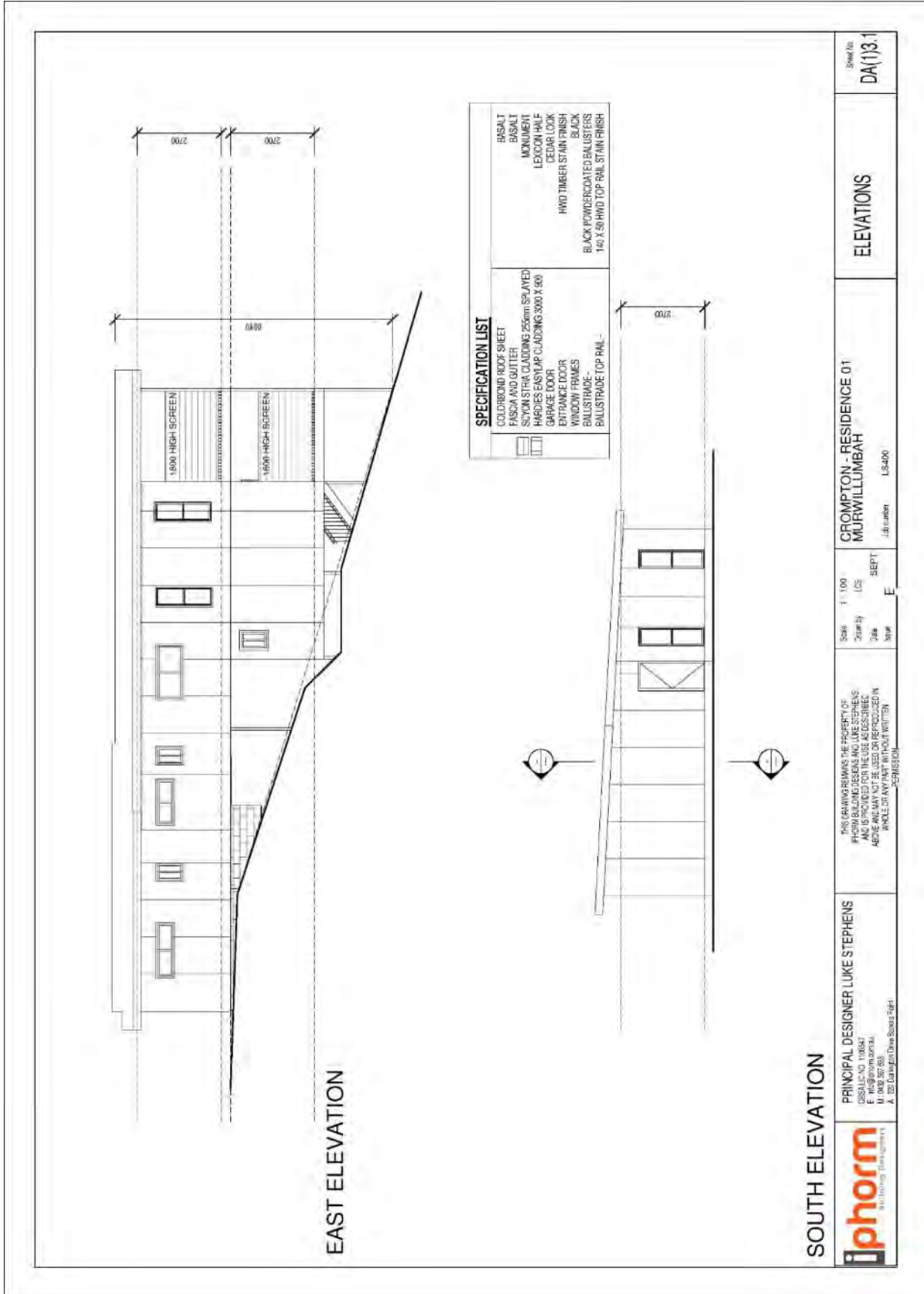
termitite treatment

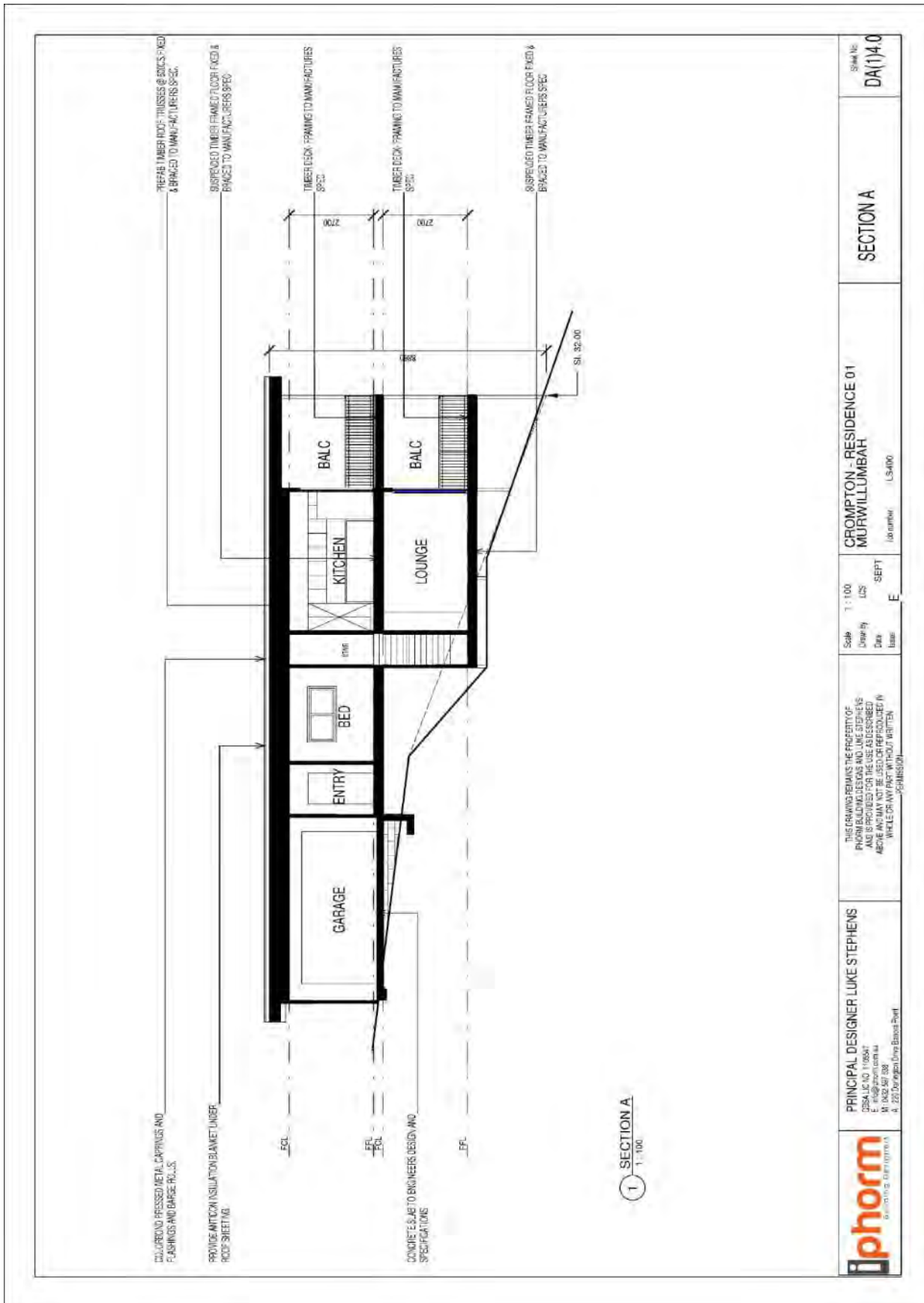
termitite treatment to BCA & AS. 3650.1
 termitite slits & overcoiler shielding to slab penetrations and piers; perimeter rebarulation in main switchboard and kitchen cupboard system with termitite notification plate to be installed

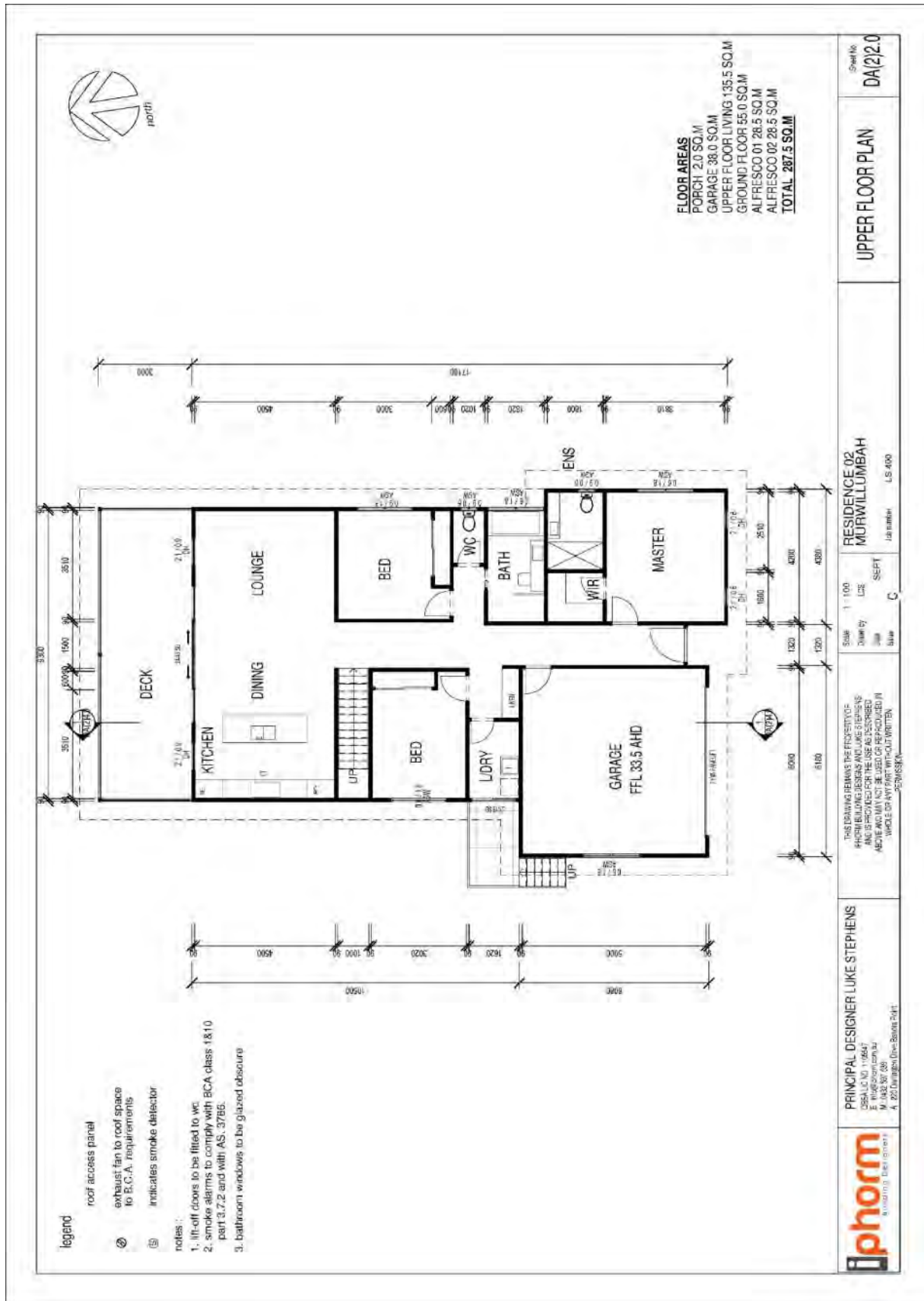




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	GROUND FLOOR PLAN				







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	UPPER FLOOR PLAN				

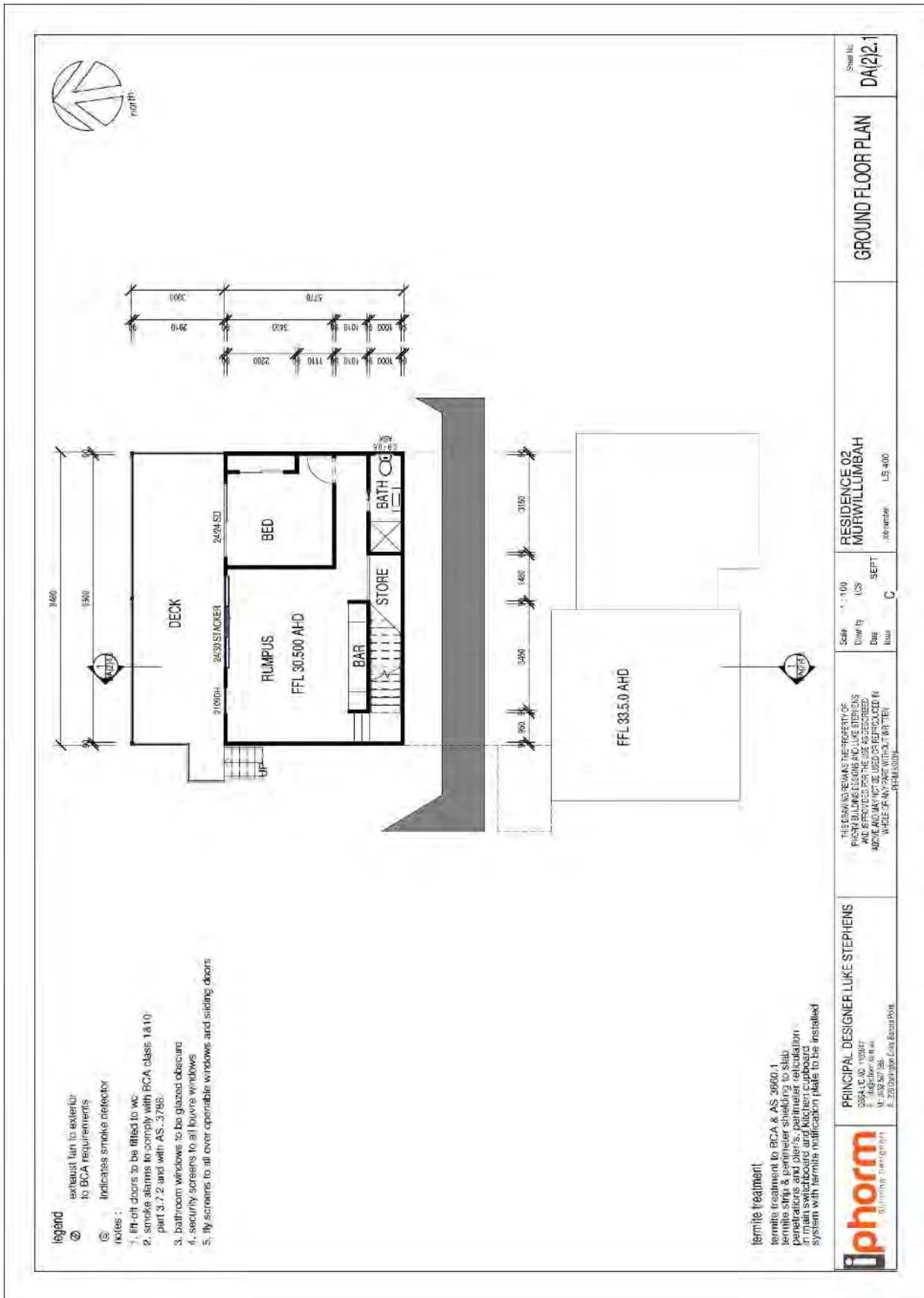
Legend
 exhaust fan to exterior to BCA requirements
 indicates smoke detector

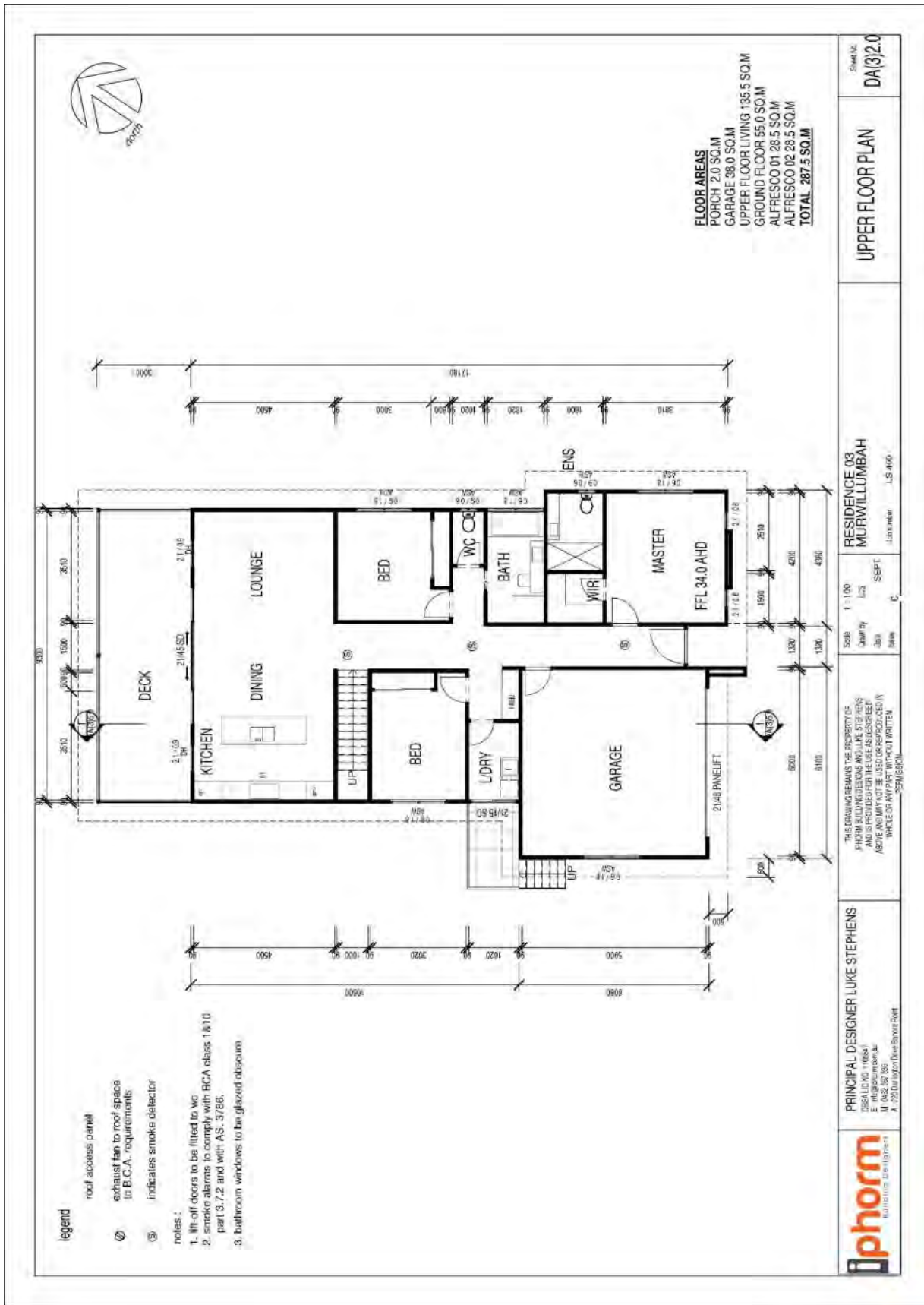
notes:
 1. lift off doors to be fitted to wc.
 2. smoke alarms to comply with FCA class 1&10 part 3.7.2 and with AS_3786.
 3. bathroom windows to be glazed obscure
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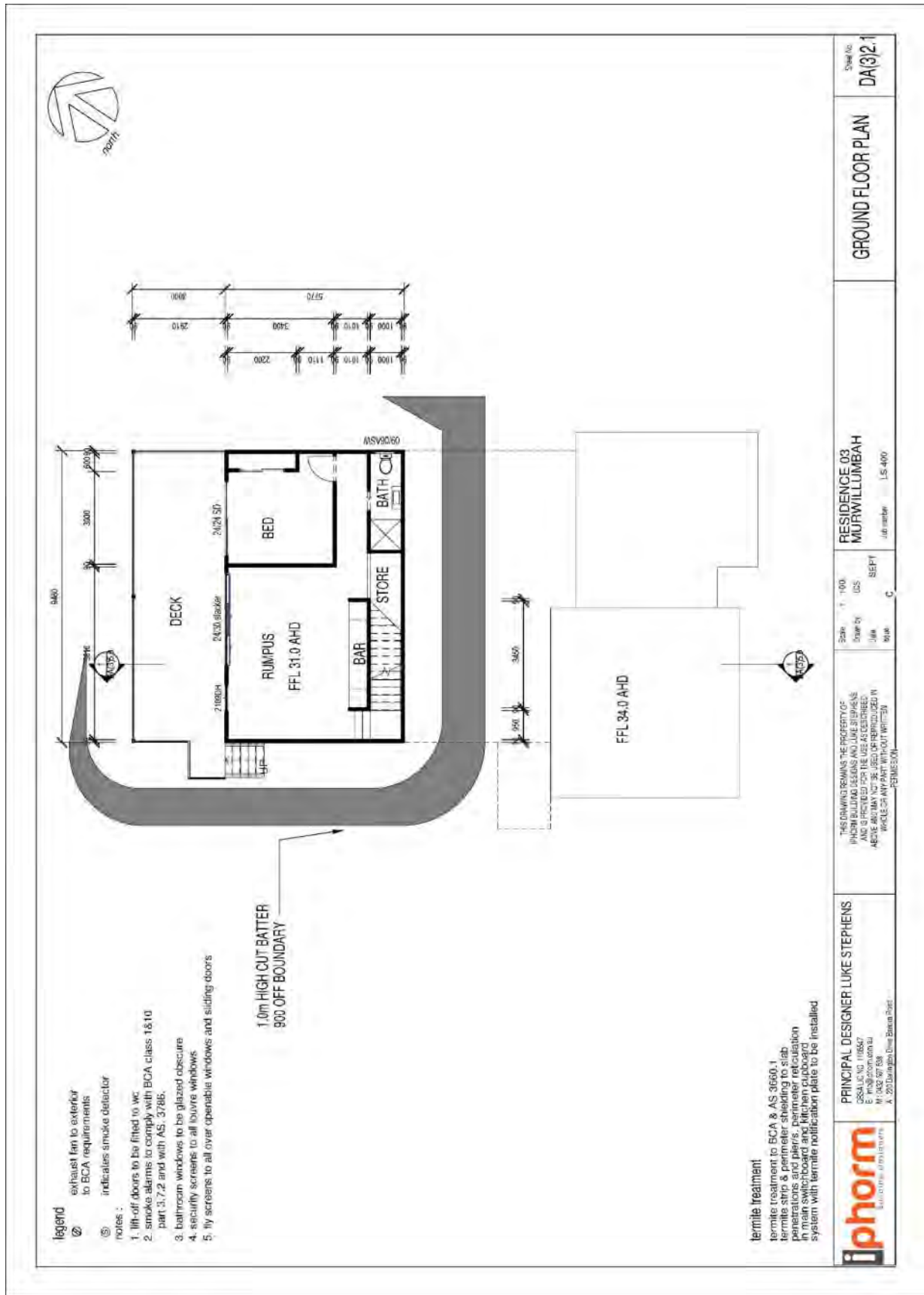
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RESIDENCE 02 MURWILLUMBAH
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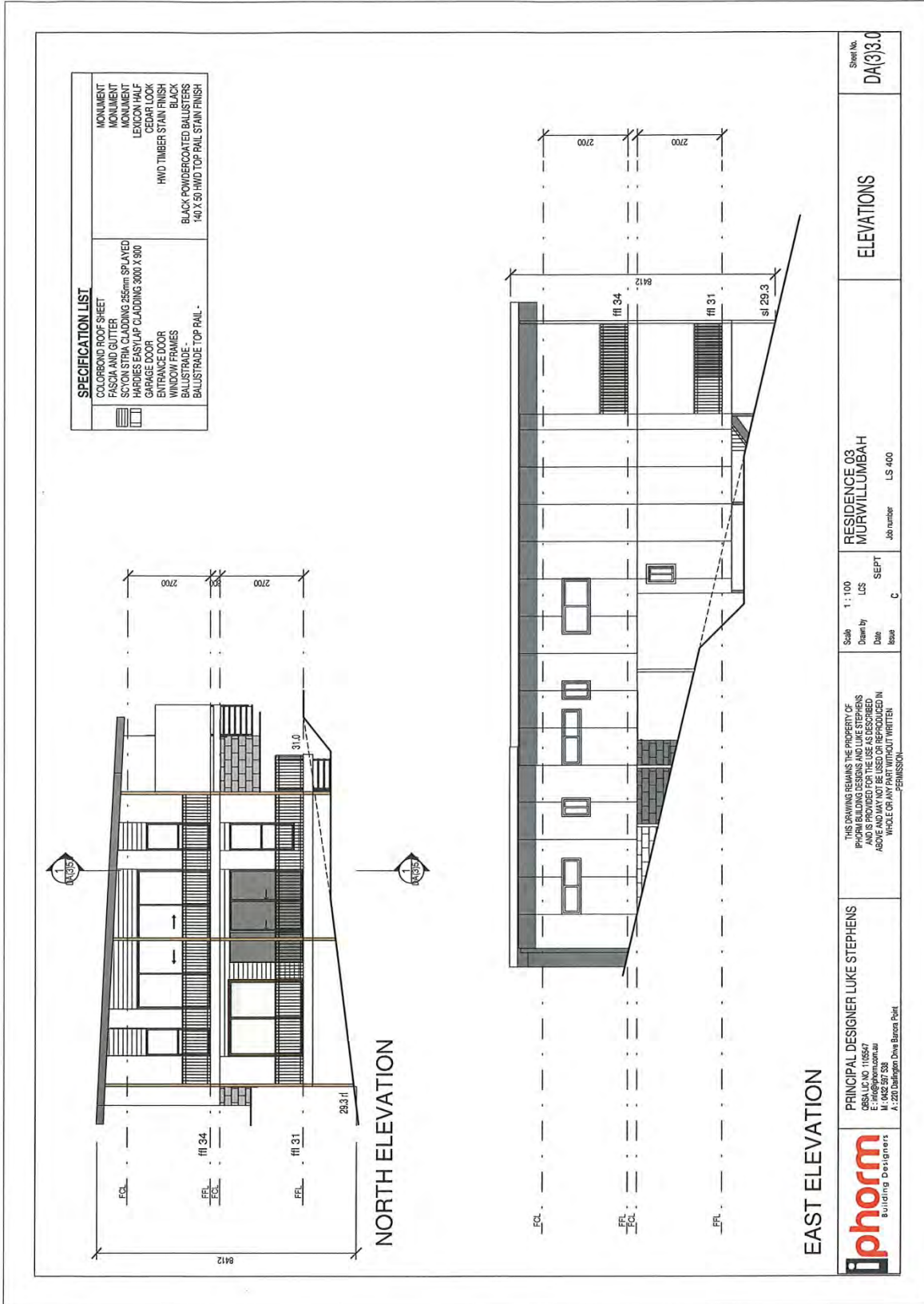
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PRINCIPAL DESIGNER LUKE STEPHENS
 225A UCW, 1/12004
 E: info@phorm.com.au
 M: 0432 587 588
 1, 122 Durrigalla Drive, Bassas Street

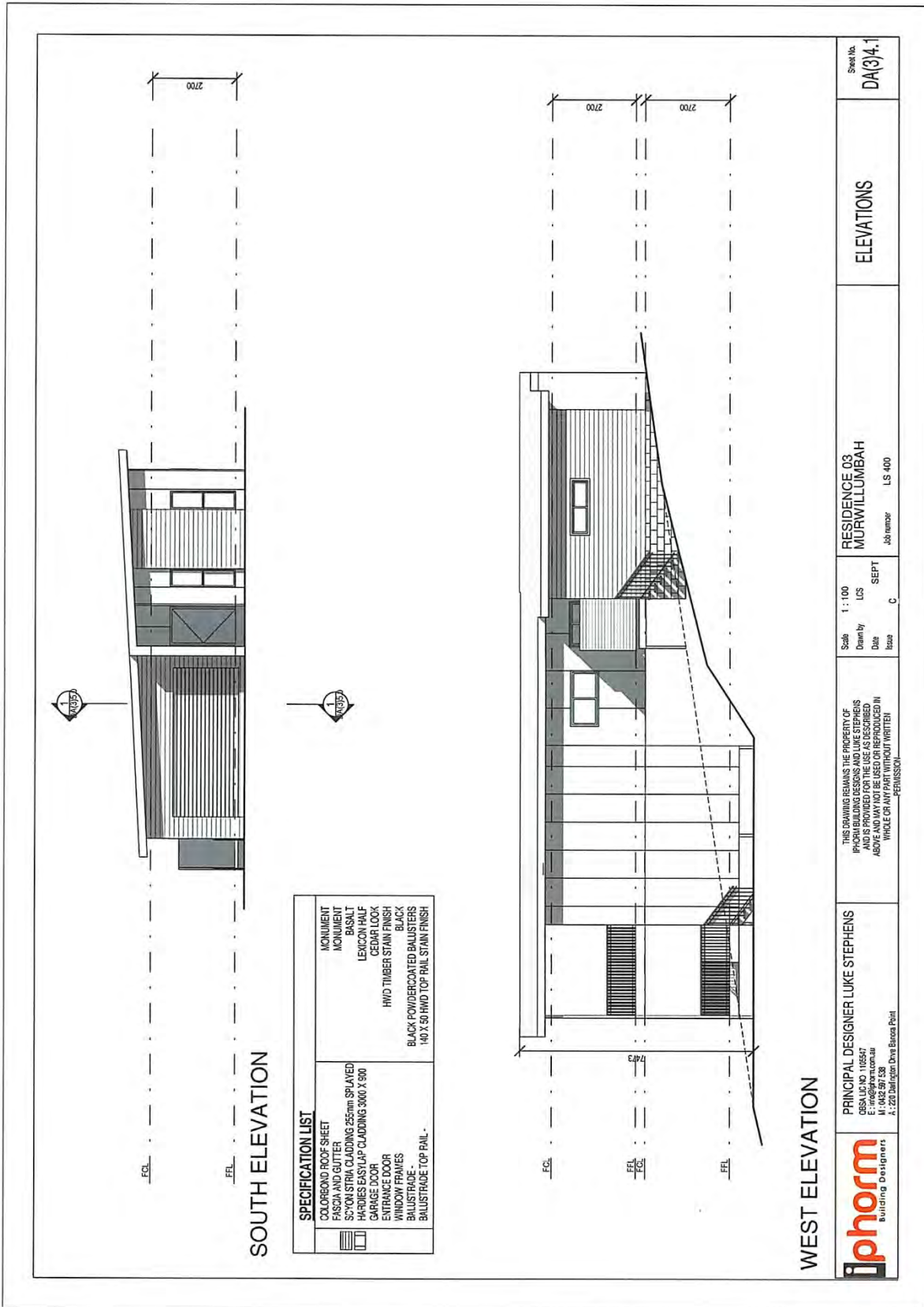
Sheet: DA/2/2.1
GROUND FLOOR PLAN











Sheet No. DA(3)4.1

ELEVATIONS

RESIDENCE 03 MURWILLUMBAH

Job number LS 400

Scale 1 : 100
Drawn by LCS
Date SEPT
Issue C

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P: 062 597 538
A: 250 Ballington Drive Byron Bay



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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

The proposed development is for three detached dwellings within the R2 Low Density Residential zoning. The proposed development is permissible and consistent with the objectives of the R2 zoning and the aims of the plan. Accordingly, the proposal is considered acceptable.

Clause 2.3 – Zone objectives and Land use table

The objectives of the R2 Low Density Residential zone are:

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

The proposal for three dwellings on the site with a land area of 3029m² is permissible with consent and considered to be consistent with the zone objectives by providing housing within a low density residential environment (1 dwelling per 1009.66m²).

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

Subdivision is not proposed. The application states that subdivision will be subject to a future application.

Clause 4.3 - Height of Buildings

The site has a building height restriction of 9 metres. All three dwelling are less than 9m in height.

Clause 4.4 – Floor Space Ratio

The site has a floor space ratio of 0.8:1. The proposed FSR is approximately 0.2:1. Complies.

Clause 4.6 - Exception to development standards

The development does not require a variation to a development standard.

Clause 5.4 - Controls relating to miscellaneous permissible uses

The development does not relates to a miscellaneous permissible use.

Clause 5.10 - Heritage Conservation

The site is not identified as being within a heritage conservation area, or a known or predicative Aboriginal Cultural Heritage site.

Clause 5.11 - Bush fire hazard reduction

Bushfire hazard reduction is not required. A small portion of the access to the site is within the bushfire buffer area. It is to be noted that the development does not propose either Torrens or strata subdivision and therefore is not integrated development.



Figure: The subject site and bushfire layer.

A bushfire report written by an accredited practitioner dated 10 January 2018 was submitted which demonstrates compliance with Planning for Bushfire. It is noted that the report recommends that the dwellings be constructed to Bal 12.5, each dwelling is to have a 5,000 litre water tank, the property is to be maintained as an Inner Protection Area and a reversing bay is acceptable in lieu of a turning circle. A condition is recommended requiring the BAL level. The report is to be conditioned.

Clause 7.1 – Acid Sulfate Soils

The site is class 5 on the ASS planning maps and elevated at 24 – 38m AHD. The Geotech Report and Statement of Environmental Effects (SEE) indicate relatively minor excavations to create a pad for upper slab on ground. Disturbance of ASS and groundwater are unlikely, no further consideration or conditions required.

Clause 7.2 - Earthworks

Minor earthworks are required for slab, piers and services. The proposed works are considered unlikely to create a detrimental impact on the environment and neighbouring properties.

Clause 7.3 – Flood Planning

The site is not prone to flooding.

Clause 7.5 - Coastal risk planning

The site is not within the coastal hazard.

Clause 7.6 - Stormwater Management

The applicant submitted a stormwater report which was reviewed by Council's Development Engineer and Stormwater Engineer and considered acceptable.

Clause 7.8 – Airspace operations

Not Applicable.

Clause 7.9 - Development in areas subject to aircraft noise

Not Applicable.

Clause 7.10 - Essential Services

The provision of essential services is considered to be available.

North Coast Regional Plan 2036 (NCRP)

The North Coast Regional Plan 2036 is a 20-year blueprint for the future of the North Coast. The NSW Government's vision for the North Coast is to create the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities.

To achieve this vision the Government has set four goals for the region:

- The most stunning environment in NSW
- A thriving, interconnected economy
- Vibrant and engaged communities
- Great housing choice and lifestyle options.

The site is identified as being within the Urban Growth Area the proposed three dwellings are considered to be consistent with the plan.

State Environmental Planning Policies

SEPP (Coastal Management) 2018

The subject site is mapped as being within the Coastal Environment Area.

The objectives of each clause are as follows:

13 *Development on land within the coastal environment area*

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*
- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

The proposal is considered to be consistent with the objectives of each clause.

SEPP (Building Sustainability Index: BASIX) - 2004

The proponent has provided an acceptable BASIX certificate and any approval will be conditioned for compliance.

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

Not Applicable.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A full assessment of the development against the provisions of Section A1 of the DCP has been undertaken with the development considered to generally comply with the relevant development controls.

It is to be noted that privacy screens are provided to eastern elevation of both deck areas of dwelling 1 to improve privacy to the neighbouring properties to the east. Although it is noted that there is significant vegetation along the eastern property boundary separating the subject dwelling from the neighbouring properties providing screening and privacy.

A2-Site Access and Parking Code

The development is defined as multi dwelling housing with each dwelling consisting of four bedrooms, therefore requiring two spaces per dwelling. The proposal is considered to comply as the provision of a double garage is provided with all three dwellings. In addition to the double garages adequate area is available for two vehicles in front of each double garage, therefore a total of four spaces are provided to each dwelling.

Entry and exist to the site onto Byangum Road can be provided in a forward direction as vehicles can turn around on site.

Council's Traffic Engineer raised no objection to the proposal.

A5-Subdivision Manual

Although the development does not propose subdivision, the policy contains some relevant control to the proposal such as: right of way access and battle axed allotments.

Access to lots (including right of way access)

Every lot shall have feasible access from a street.

Where access is on a right of way over another property, the following minimum standards shall apply:

Benefited Properties	Standard of Access	Width of right of way
1	3m minimum pavement plus controlled drainage	Pavement width plus width required for earthworks, batters, retaining walls, longitudinal drainage and services. <i>The minimum ROC shall not be less than 4.0m.</i>
2 (or reciprocal)	As above plus provision for passing bays	As above
3 to 5	4.5m minimum pavement	As above

The development is considered to comply with four lots or properties to use the right of way with the access to be a minimum of 6m wide.

Battle-axe or Hatchet Shape Allotments

The policy states the following in relation to battle axed allotments.

Battle-axe lots must only be used where they can achieve adequate amenity for residents and neighbours, and enhance community safety, in situations including:

- *outlook over parks;*
- *providing frontage to major streets;*
- *elevated views;*
- *providing vehicle access to sloping sites; and*
- *in very limited circumstances, larger lots adequate for self-containment of a dwelling and its outlook*
- *Battle-axe allotments must not be used for multi dwelling housing, dual occupancy,*
- *business, industrial, commerce and trade allotments.*
- *The area of battle-axe handles is not to be included in determining minimum lot sizes.*

The proposal is considered to be acceptable in the circumstance as the total site area is 3029m² with the site area minus the access handle being 2667m² which equates to one dwelling per 889m² of site area. This is generally consistent with and exceeds the lot sizes within the area and exceeds the minimum lot size of 450m² set by the Tweed Local Environment Plan 2014.

The proposal complies with all relevant development controls set by Section A1 and A2 of Council's consolidated Development Control Plan and development standards within the Tweed Local Environment Plan 2014.

The proposal is considered to create acceptable and standard residential impacts on the natural and built environments.

A11-Public Notification of Development Proposals

The application was notified for a period of 14 days from Wednesday 18 July 2018 to Wednesday 1 August 2018. Council received multiple submissions objecting to the proposal, these submissions are addressed later within this report.

A15-Waste Minimisation and Management

Council's DCP Section A15 aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development. It is considered appropriate that a standard condition be applied requiring that all waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section A15 - Waste Minimisation and Management.

As such, the proposal is considered to be acceptable having regard to waste management and the provisions of this Section of the DCP, subject to conditions.

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

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

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

Clause 92(1)(b) Applications for demolition

Demolition is not proposed.

Clause 93 Fire Safety Considerations

As the proposal does not involve the change of use of an existing building there are no fire safety considerations, this clause is not relevant.

Clause 94 Buildings to be upgraded

As the application does not cover rebuilding, alteration, enlargement or extension of an existing building, this clause is not relevant.

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

Tweed Shire Coastline Management Plan 2005

Not Applicable.

Tweed Coast Estuaries Management Plan 2004

Not Applicable.

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

Not Applicable.

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

The proposal is considered to create acceptable impacts on the natural and built environment subject to conditions.

Context and Setting

The site is zoned R2 Low Density residential and is surrounded by R2 zoned land consisting of allotments of varying sizes and shapes containing dwellings.

(c) Suitability of the site for the development

The subject site is located within an existing residential area and is appropriately zoned R2 Low density with a site area of 3029m².

Surrounding Landuses/Development

The site is surrounded by residential land on varying sized and shaped sites.

Flora and Fauna

The site is vacant of vegetation, the removal of vegetation is not required.

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

The application was notified for a period of 14 days from Wednesday 18 July 2018 to Wednesday 1 August 2018. Council received nine submissions objecting to the proposal.

Summary of Submissions	Response
<i>Any adjustment (levelling) as this will seriously impeded our access to our driveway;</i>	Council's Traffic Engineer and Driveway Engineer have reviewed the proposal and advised that a 138 certificate is not required as the works are not within the road reserve. A site meeting was held between the applicant and the owner of No. 139 Byangum road to discuss earthworks within the right of way. The meeting concluded with the owners of No. 139 Byangum road being satisfied that access into their property from the right

Summary of Submissions	Response
	of way would be maintained at current standard or improved.
<i>The placement of the bin bay (9 bins), impedes vision of our driveway as well as the hygiene issue as the bins will be placed in a very close proximity (3-4 metres from our dining and kitchen) as well as visually displeasing (value) to our residence.</i>	The applicant has agreed to relocate the garbage bins relating to each residence, which are to be placed at their respective residence. Therefore will not be stored adjacent to the driveway access and residence at No. 139 Byangum Road.
<i>The planting of Franginpani trees (5-6 m tall/ and grow just as wide), Tuckeroo trees (8-15m tall/3-5 m wide) and Lilly Pillies(5m tall/2 m width) along the Right of Carriageway, as it will seriously impede vision and any traffic movement as the driveway is not wide enough to sustain traffic and significant Flora.</i>	The applicant has agreed to remove the vegetation from the proposal. An amended landscape plan has been provided which identifies the removal of vegetation in the right of way.
<i>Any Flora planted along the retaining wall between 141 Byangum Road and 143 Byangum Road as there is a water metre and a Telstra line running along that wall;</i>	An amended landscape plan has been provided which identifies the removal of vegetation in the right of way and retaining wall.
<i>Requesting a covenant (?) that there is no parking upon the Right of Way due to the safety issues with the movement of eight cars upon the driveway (2 per unit plus our two cars)- Can this be done in regards to building (i.e. no trade parking on Right of Way?);</i>	A condition is recommended stating that no parking within the right of way.
<i>Visitor car parking for us and the three units?</i>	Section A2 of the DCP requires visitor parking for four units, with the development being for only three dwellings visitor parking is not applicable to the development. However, it is noted that each dwelling provides four vehicle spaces with only 2 spaces required, therefore effectively providing two visitor parking spaces per unit of six visitor parking spaces overall.
<i>Who maintains the Right of Carriageway and because it is a development, does the developer shoulder the costs?</i>	Maintenance of the right of carriageway is shared by all parties.

Summary of Submissions	Response
<p><i>The safety concerns in regards to the steepness of our driveway upon turning into the driveway and the fact that your cannot see any car, bike, children etc until you have crested up on the driveway.</i></p>	<p>The development proposes to amend the current driveway within the site, by a slight reforming of the access removing the hump located approximately 11.7m in from the road. The following points are made towards adequacy of the access.</p> <ul style="list-style-type: none"> • A passing bay (approximately 9 in length) is also proposed to assist in reduce safety or traffic impacts. • The width of the driveway at the road reserve is 6m, with would enable two vehicles to be entering and exiting at the same time. • The portion of the driveway within the road reserve has a length of 7m to the property boundary with an entrance width of 11m, which also enables the passing of two vehicles. • Compliant pedestrian sight triangles are provide. • The ultimate peak traffic volumes accessing the site is considered to be low (3.12 trips per peak hour, compared to a domestic property of 2.4 trips in peak hour). • Sight distance from the driveway to the east is approx. 125m and to the west >200m which is in excess of that desired under AS2890.1 and council's Driveway Policy. The access is not in a prohibited location as defined by AS2890.1 s3.2.3 <p>Council's Traffic Engineer, Driveway Engineer and Development Engineer raised no objection to the driveway.</p>
<p><i>The safety concerns in regards to the fact that there will be eight cars (plus visitors) utilising the Right of Way and the bottom of the driveway coming in and out of an already congested road and a dangerous corner.</i></p>	<p>As above.</p>

Summary of Submissions	Response
<p><i>The fact that the residence of 143 Byangum Road and 145 Byangum Road will be using that same corner to turn into their residence and that the bottom of the driveway of 141, 143 and 139 Byangum Road all use the same driveway (at the initial entrance of the driveway) and the impact that has on an already dangerous corner (add bin collection of an additional six bins, plus postal delivery);</i></p>	<p>As above.</p>
<p><i>The question of the distance from fire hydrant in road to furthest unit (?);</i></p>	<p>A fire hydrant is not required as static water consisting of three 5,000 litre water tanks are required in accordance with the Bushfire Report.</p>
<p><i>Tweed LEP 2014 Permissibility. Council's Subdivision manual states that battle-axe blocks should not be used for multi dwelling housing.</i></p> <p><i>A5 Subdivision manual states that battle axe blocks should not be used for multi dwelling housing and further states:</i></p> <p><i>May only be used where they can achieve adequate amenity for residents and neighbours and enhance community safety in situations that include - overlooking parks - this development does not provide frontage to major streets - this development does not.</i></p>	<p>Council's Subdivision manual is a development guide, which can be varied subject to a merit assessment. The proposal is considered to be acceptable on merit subject to the detailed assessment within this report.</p>
<p><i>The lot has been identified as being bush fire prone on the Tweed Shire Council Map.</i></p>	<p>The site is partially affected by bushfire buffer and a bushfire report has been provided by a suitably qualified expert that recommends among other requirements the construction of the dwellings to be at BAL 12.5. The bushfire report is to be conditioned.</p>
<p><i>Slope gradient - steeply sloping (Geo Tech report) 18 degree gradient, Class P.</i></p>	<p>A Geotechnical report written by a qualified engineer was submitted and assessed by Council's Development Engineer and considered acceptable. The Geotechnical report is to be conditioned.</p>

Summary of Submissions	Response
<i>“Considering the severity of flood impact upon the region in recent years, the further development of such land to provide a higher density is in the greater interest of the community at large” I would suggest the greater interest of the developer only.</i>	The site is not prone to flooding. The development complies with lot size, FRS etc. The density is greater than 1/450m ² being at around 1/1000m ² and is considered acceptable.
<i>Meets the most basic of BASIX requirements only water 41 (target 40) energy 51 (target 50) thermal comfort pass - opportunity to be more environmentally and alternate energy conscious lost.</i>	The development complies with the BASIX requirements, no further consideration is required.
<i>The proposed multi housing development will not hinder any public views or vistas but will seriously impact on neighbouring allotments by increased overlooking. When buying our lot we considered that a dwelling would be built behind us but as the lot was a battle axe one as confirmed by Council and Tweed LEP 2014 this would be only one dwelling.</i>	The development complies with all relevant controls such as: building heights, setback, FSR, deep soil zones. The proposal is considered to be acceptable development for the site.
<i>We contest the assertion that a 15 metre set back allows ample deep soil zone at the rear of the property to absorb storm water and suggest that council be present when there such an event to see for themselves how inadequate this statement is.</i>	A stormwater management plan was submitted and assessed by Council staff and considered acceptable.
<i>This proposal is located on a site that is private and not visible form the street, it will not be private and will be very visible from the neighbouring allotments.</i>	The proposal is considered to be acceptable and complies with all relevant controls.
<i>Two external covered balconies for hinterland views and for overlooking of neighbour privacy particularly in relation to our backyard enjoyment.</i>	Each dwellings rear setback exceeds the minimum requirement.
<i>Traffic, Access & Safety.</i>	Council's Traffic Engineer reviewed the proposal and did not raise an objection.
<i>Maximum building height exceeded.</i>	The three dwellings comply with the building height of 9m.

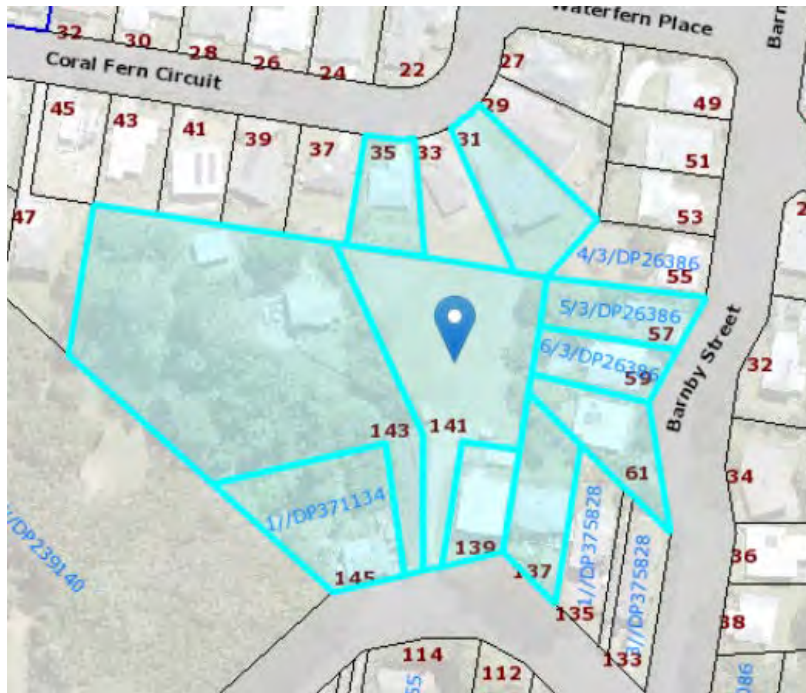


Figure: Site and properties that objected to the proposal

(e) Public interest

The proposed development does not present any issues that are considered to be contrary to the broader public interest as the development is in accordance with the planning regime which applies to the site.

OPTIONS:

1. Approve the application in accordance with the recommendation; or
2. Refuse the application with reasons for refusal.

Council officers recommend Option 1.

CONCLUSION:

The proposed development is considered suitable for the site as it is a permissible form of development and the relevant planning considerations have been taken into account in the assessment of the application. The proposed development does not present any issues that are considered to be contrary to the public interest and generally aligns with the applicable development legislation, as outlined in this assessment report.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1 Legal advice dated 23 August 2019 (ECM 6028141)

2 [PR-PC] Development Application DA18/0486 for a Concept Development Application for 10 Group Homes (Permanent) and Development of Stage 1 for Two Group Homes (Permanent) Containing 14 Units at Lot 6 DP 524303 No. 26 George Street, Murwillumbah

SUBMITTED BY: Development Assessment and Compliance

mbm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

Council is in receipt of a development application for concept approval for the construction of 10 Group Homes (Permanent) to be built in three stages and development approval for Stage 1, being two Group Homes containing 14 units. The proposal also includes 80 car parking spaces to be provided in carports associated with the Group Homes and uncovered in designated parking areas.

Approval is also sought for earthworks in two phases to facilitate the development, with Phase 1 of the earthworks (required to facilitate Stages 1 and 2) forming part of this development application. The earthworks will facilitate the realignment of the existing watercourse on the site to address flooding issues.

The application was accepted by Council on 18 June 2018 following lodgement by Place Design Group Pty Ltd on behalf of the land owner RGBAH Holdings Pty Ltd. North Coast Community Housing (NCCH) have been identified as the Tier 1 Community Housing Provider who would manage the tenure of any Group Home development approved on the site.

The site is zoned as **R2 (Low Density Residential)** and **RU2 (Rural Landscape)** with **group homes (permanent)** being permitted with development consent in both zones.

Group home (permanent) or permanent group home is defined in the *Tweed Local Environmental Plan (TLEP) 2014* as:

'a dwelling:

- (a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and*
- (b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,*

but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.'

The TLEP 2014 defines a '**dwelling**' as meaning:

'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

The Plan does not define '*people with a disability*' nor '*socially disadvantaged*', however these terms are defined in *State Environmental Planning Policy (Affordable Rental Housing) 2009* (referred to hereafter as SEPP(ARH)2009) in Division 7 of Part 2 (New affordable rental housing).

The definition of a **Permanent Group Home** in this Division is the same as the definition in the TLEP 2014, however the SEPP expands the definition to clarify that:

- (a) a reference to **people with a disability** is a reference to people of any age who, as a result of having an intellectual, psychiatric, sensory, physical or similar impairment, or a combination of such impairments, either permanently or for an extended period, have substantially limited opportunities to enjoy full and active lives, and*
- (b) a reference to **people who are socially disadvantaged** is a reference to:*
 - (i) people who are disadvantaged because of their alcohol or drug dependence, extreme poverty, psychological disorder or other similar disadvantage, or*
 - (ii) people who require protection because of domestic violence or upheaval.*

While most of the terms above are self-explanatory, it is noted that there is no further definition in the SEPP, or elsewhere, of '*extreme poverty*'.

As the application is for integrated development (controlled activity within 40m of a waterway) the required advertisement period was 30 days. The application was initially advertised from 18 July 2018 to 17 August 2018. However due to a typing error in the site notice and the notification letter which erroneously referred to the notification period expiring prematurely, the application was re-advertised from Wednesday 15 August to Friday 14 September 2018. During this period, 52 submissions were received: four in support of the proposal and 48 submissions objecting to the proposal.

Following the submission of Further Information (FI), those who made initial submissions were renotified and provided with 14 days in which to make comments. An additional 17 submissions received in this time. Of these, five submissions were from a single submitter with seven new objectors. A number of submitters continued to make additional submissions during the assessment period.

The key issues raised in the objections related to the following:

- Flooding and concerns in relation to both the displacement of flood waters resulting from the development of the site and the placement of vulnerable persons on flood prone land;
- Unsuitability of the site zoned R2 and RU2 for development of this density and this nature;
- Impact on the character of the area as a result of the bulk and scale of the development and the nature of the development as group homes;
- Traffic impacts including inadequate onsite car parking, conflict resulting from the proximity of the site to a primary school, impacts on traffic safety in the area and the availability of on-street parking to continue to service the primary school;
- Impacts on residential amenity in the area in terms of noise impacts, loss of privacy and loss of views;
- Social impacts in terms of personal safety of existing residents, potential increase in crime, capacity of service providers to service the site (eg police), insufficient detail provided on both future tenants and the management of the development;
- The acceptability of concentrating vulnerable persons (people with a disability or those who are socially disadvantaged) in a single location at such high density rather than seeking a more integrated tenure approach (mixed private and social/affordable housing);
- Permissibility of the proposal in terms of satisfying the definition of a Permanent Group Home; and
- Other issues raised included deficiencies and inconsistencies in the application, accessibility of the units, lack of consideration to sustainability in the design, insufficient consideration of the effects of global warming, potential devaluation of properties in the area, and impacts of fauna as a result of realigning the drain.

The submissions in support of the application recognised a dire need for affordable housing for disadvantaged persons and express disappointment at the organised campaign by certain members of the community against this proposal.

The issues raised in the submissions are assessed in detail later in this report. While it is considered that many of the matters can be addressed, the question as to the intent of the development and whether it can be considered to be a Permanent Group Home remains a key issue.

Despite multiple requests for further information, the applicant has failed to adequately demonstrate that the proposal before Council for consideration can be considered to be 10 Group Homes and that it meets the land use definition of same.

Place Design Group was advised in the original Request for Further Information (RFI) dated 19 September 2018 that as per the definition of a Group Home in the TLEP 2014 and SEPP (ARH) 2009, that a Group Home relates to a single dwelling, therefore the proposal was to be

described as Concept Approval for 72 Group homes in 10 building blocks with approval sought for 14 group homes in 2 building blocks in Stage 1.

Only when Place Design Group responded to the RFI in January 2019, did it become apparent that there was some confusion between mainstream 'social and affordable housing' and a 'Permanent Group Home'. As per the FI submitted by the applicant and specifically the Social Economic Needs Assessment and Social Impact Assessment (SIA) prepared by RPS, the development was proposed as 'social and affordable housing', with 70% of the dwellings to be made available to affordable housing tenants with the remaining 30% to be provided as social housing. The applicant also indicated that just seven of the 72 units would be accessible.

The applicant was advised that to approve a Permanent Group Home development, Council must be satisfied that the development satisfies the land use definition of a Permanent Group Home. Accordingly the applicant was requested to demonstrate how this proposal to accommodate 'social and affordable housing' tenants met the expanded definition of a Group Home as set out in SEPP (ARH) 2009.

The question at this time had been whether those persons who were eligible for affordable housing (which is defined as property rented at 80% of market rates) would meet the definition of '*extreme poverty*'. The applicant responded initially that only 'very low' income households would be accommodated, but later expanded this to include 'low' income households. The applicant subsequently sought to exclude all other classes of persons defined as socially disadvantaged (being people who are disadvantaged because of their alcohol or drug dependence, psychological disorder or other similar disadvantage, or people who require protection because of domestic violence or upheaval).

However, classifying each block of 7 - 8 self-contained units as a single Permanent Group Home raises an issue with the definition of '*a dwelling that is occupied by persons as a single household*'. The application was initially submitted as 10 Group Homes. The applicant subsequently changed this to 72 Group Homes, before reverting back to the assertion that the proposal was for 10 Group Homes.

The applicant was advised that there is NSW Land and Environment Court case law on the matter of Permanent Group Homes and the definition of a single household and were referred to *Blacktown City Council v Haddad (2012) NSWLEC 224* where Pepper J determined that a proposal for a Group Home did not meet the definition of a single household notwithstanding the provision of a shared communal kitchen and facilities in the individual rooms being limited to 'tea-making'. The applicants were verbally advised that they would need to address in their application how a block of 7-8 self-contained units met the definition for a Group Home and that if they were seeking to retain the units in a self-contained format (and classify each block as one Group Home) that they would need to demonstrate how this complied.

The applicant tendered amended plans for consideration on 18 July 2019, which sought to replace one unit in each block with a communal space accessible to all residents in an attempt to satisfy the definition of a Group Home, while still retaining a kitchenette in individual tenancies. This proposal would have had the effect of reducing the number of units from 72 to 62.

However following an assessment period of over 13 months, during which time the applicant was twice requested to submit to FI and was given multiple extensions of time to respond to

same, and in which time the community had twice been invited to comment on plans, it was considered that that Council could not accept amended plans at this late stage.

The applicant was advised that should they wish to proceed with the amended plans tendered on this date and further modifications to the management policy/eligibility criteria/etc, that they should to withdraw this application and submit a new development application. The applicants have chosen to have the application as submitted determined.

Notwithstanding the question as to whether the proposal as submitted meets the definition of 10 Group Homes, there remain a number of other unresolved issues:

- The applicant has not demonstrated that the proposed car parking is adequate to cater for a Group Home development of this scale with the provision of eight car parking spaces to service all visitors and support workers to the development;
- An updated Social Impact Assessment which addresses the needs of the future tenants and the potential impacts of the development is still outstanding;
- An updated Emergency Flood Evacuation Plan which addresses discrepancies in relation to the categories of persons to be accommodated on site is still outstanding.

It is recognised that there is a need for affordable housing in Tweed and in Murwillumbah, however this is an application for a 'Permanent Group Home' which though a form of affordable housing, is quite specific in its land use definition as to who is to be accommodated and how the development is to be laid out and managed.

As set out in the correspondence from Place Design Group dated 2 August 2019 in **Attachment 7**, *'the land use definition does not fit the NCCCH's model for providing community housing that is beneficial to the tenants and the surrounding community'*.

If this is the case, then it would appear that the applicants would be better suited to pursue an application for a development that did meet with the housing provider's model.

RECOMMENDATION:

That Development Application DA18/0486 for a concept development application for 10 group homes (permanent) and development of Stage 1 for two group homes (permanent) containing 14 units at Lot 6 DP 524303 No. 26 George Street, Murwillumbah be refused for the following reasons:

- 1. The proposal for the development of 10 Group Homes is not considered to satisfy the definition of a Permanent Group Home as set out in the *Tweed Local Environmental Plan 2014*, which classifies the land use as:**

'a dwelling:

- (a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and***
- (b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,***

but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.'

It is considered that a building containing up to 7 - 8 self-contained units does not constitute a 'dwelling' as that term is defined in the *Tweed Local Environmental Plan 2014* and further that the applicant has not demonstrated to the satisfaction of Council that each building will be 'occupied by persons as a single household'.

- 2. There is insufficient information provided with the application to appropriately determine the impacts of development in terms of the environmental impacts on both the natural and built environments, and social and economic impacts in the locality, specifically in relation to the provision of car parking, an agreed Plan of Management and an updated Flood Response Assessment Plan which addresses tenants' needs.**

REPORT:

Applicant: RGBAH Holdings Pty Ltd
Owner: RGBAH Holdings Pty Ltd
Location: Lot 6 DP 524303 No. 26 George Street, Murwillumbah
Zoning: R2 - Low Density Residential and RU2 - Rural Landscape
Cost: \$1,500,000

Background:

Site details

The property is described as Lot 6 DP 524303, located at 26 George Street Murwillumbah covering an area of approximately 2.85ha. With reference to the TLEP 2014:

- The site is assigned a composite zoning being:
 - RU2 Rural Landscape - low lying areas;
 - R2 Low Density Residential – approximately 3,520sqm generally more elevated land above 4.0 m AHD;
- The immediate area to the east and west of the site is typical of a general urban residential settlement pattern (zoned R2 Low Density Residential);
- Further to the north the land-use transitions to a rural landscape zoned RU1 Primary Production; and
- A section of the southern boundary is bounded by Martin Watt Park (Community Land) zoned RE1 Public Recreation.

Surface levels vary from approximately RL 1.6 to RL 6.0 m AHD. A first order watercourse (1:25000) traverses the central area of the site for a distance of approximately 300m in a south to north alignment. This channel receives storm-water runoff from the surrounding urbanized sub-catchment before discharging to Mayal Creek, a tributary of both the Tweed River and the Rous River approximately 400m north of the subject site.

Due to the low lying nature of the site a high proportion of the site area has been identified as flood liable land (Design Flood Level RL 4.8 m AHD).

The site currently remains vacant dominated by pasture under agistment for cattle grazing. The central watercourse is flanked by woody vegetation however the main canopy element comprises the environmental weed species *Erythrina crista-galli* (Cockspur Coral Tree).

Surrounding Area

The site is surrounded by low density residential development to the east, south and west, with a public park adjoining the site immediately to the south. Murwillumbah East Primary School lies immediately to the north.

The site directly adjoins five residential lots on Martin Street and 19 residential lots on George Street and Charles Street. Refer to Aerial photograph over.

Planning history on the site

DAP meeting 5 March 2004 - A Development Assessment Panel meeting was held to discuss a proposal for a childcare centre and two lot subdivision on the site. This matter was not pursued.

DAP meeting 20 May 2005 - A Development Assessment Panel meeting was held to discuss a proposal for aged persons accommodation on the site.

DAP meeting 29 May 2009 - A Development Assessment Panel meeting was held to discuss a proposal for a two lot subdivision on the site.

Site Compatibility Certificate (10/19113) under Clause 25 of SEPP (Housing for Seniors or People with a disability) was issued by NSW Department of Planning on 22 October 2010.

DA09/0468 - Development Application for staged two lot subdivision on site – subsequently withdrawn on 7 February 2011.

DA11/0292 – Development Application for Seniors Living Development consisting of 32 single storey units and a community building was approved on the site on 17 April 2012.

DAP meeting 3 January 2013 - A Development Assessment Panel meeting was held to discuss a proposal for a three lot subdivision with a residue allotment on the site.

DAP meeting 26 July 2013 - A Development Assessment Panel meeting was held to discuss a proposal for 28 x 1 bedroom garden villas for affordable rent to seniors and people with a disability (under the National Affordability Rental Scheme Round 5 - 2013) on the site.

Site Compatibility Certificate (10/19113) under Clause 25 of SEPP (Housing for Seniors or People with a disability) was issued by NSW Department of Planning on 15 November 2013.

DA15/0997 – Development Application for 10 lot subdivision including associated earthworks, vegetation removal and civil infrastructure on subject site. The Development Application has been determined by the refusal of consent for the following reasons:

1. The development proposal has not demonstrated compliance with Tweed Local Environmental Plan 2014, Clause 1.2 aims of the plan.
2. The proposed subdivision is not considered to be in accordance with the objectives of the RU2 Rural Landscape zone, as identified under the Tweed Local Environmental Plan 2014.
3. The proposed development is not in accordance with the provisions of Tweed Local Environmental Plan 2014, Clause 4.1B Minimum subdivision lot size for certain split zones.
4. The proposed development is not considered to be in accordance with the provisions of Tweed Local Environmental Plan 2014, Clause 5.3 Development near zone boundaries subclause (4) as the development is considered to be inconsistent with the objectives of the RU2 Rural landscape zone and the carrying out of the development is not desirable.
5. The proposed development is not considered to be consistent with the provisions of Tweed Local Environmental Plan 2014, Clause 7.10 Essential Services with respect to the disposal and management of sewage as the submitted application has not demonstrated that the proposed subdivision will be able to provide sewerage that meets Tweed Shire Council specifications. The plans provided indicate there may be above

ground sewer connections and do not demonstrate if the sewer will meet minimum sewer grade. Furthermore, the existing property connections from the lots in Martin Street to the sewer in Lot 6 DP 524303 have not been adequately considered as part of this application.

6. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(e) - the public interest in that the development is not considered to be in the public interest.

DAP meeting 22 November 2017 - The applicant attended a Development Advisory Panel meeting to discuss a proposal for Permanent Group Homes on the site. The proposal was for 12 x 1 bedroom units in Stage 1 and 24 x 1 bedroom units and 12 x 2 bedroom units in Stage 2.

The documentation submitted with the proposal referred to the controls under Schedule 2 of SEPP (ARH). The applicant was advised that as such controls related to Complying Development, and the proposal was not considered to be Complying Development, the residential controls under the Tweed DCP 2008 Section A1 would prevail. **The applicant was also advised at this time that if approved as a Group Home, the development could only be used for the purposes of a group home and would be conditioned as such.**

Current Application details

This integrated development application was lodged with Council on 18 June 2018.

The application as lodged sought concept approval for the development of 10 Permanent Group Homes in three stages at the subject address. Development approval is also for Stage 1 which consists of two Permanent Group Homes.

As set out in Clause 4.22 of the *Environmental Planning & Assessment Act 1979*:

*'a **concept development application** is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.'*

The application may set out detailed proposals for the first stage of development.

Below are some extracts from the Statement of Environmental Effects prepared by Place Design Group which was submitted with the application:

"The applicant seeks Development Consent and Concept Development approval for the development of Group Homes (permanent). Full details are provided for Stage 1, which seeks development consent for 2 No detached permanent group homes, each providing 7 dwelling units. Two further stages of concept development, providing a further 8 No permanent group homes' (58 dwelling units) are proposed, which are to be the subject of subsequent Development Applications, in accordance with the approved concept.

The proposal seeks to develop housing to accommodate socially disadvantaged people who require affordable housing. The proposed accommodation will predominantly comprise of 1 bedroom units, to reflect the identified local need for social and affordable housing. The proposed development is also designed to present an attractive built form that is consistent with surrounding residential neighbourhoods.

Stage 1 is located wholly within the Low Density Residential Zoning under the Tweed Local Environmental Plan 2014 (LEP). Stages 2 and 3 are located within the Rural Landscape Zone.

A summary of the development is outlined in **Table 1** below, with full details provided for Stage 1.

Table 1: Development Summary

Site Area	28,520m ²
Use	Group home (permanent)
Stage 1 Building Height	9 metres and 2 storeys
Stage 1 Gross Floor Area	442m ²
Stage 1 Residential Yield	14 dwellings = 12 x 1 bedroom units and 2 x 2 bedroom units
Stage 1 Floor space ratio	1.5%
Stage 1 Vehicular Access Point	Via the proposed driveway crossover on York Street
Stage 1 Car Parking Allocation	14 off-street car parking spaces with 4 covered
Stage 1 Waste Collection	Refuse collection will be conducted from York Street

The development application requested Concept Approval for 10 group homes across three stages. However, the engineering documents and reports submitted with the application covered only Stages 1 and 2.

Advertisement

As the application is for integrated development (controlled activity within 40m of a waterway) the required advertisement period was 30 days. The application was initially advertised from 18 July 2018 to 17 August 2018. However due to a typing error in the site notice and the notification letter which erroneously referred to the notification period expiring prematurely, the application was re-advertised from Wednesday 15 August to Friday 14 September 2018.

During this period, 52 submissions were received: Four in support of the proposal and 48 submissions objecting to the proposal.

The key issues raised in the objections related to the following:

- Flooding and concerns in relation to both the displacement of flood waters resulting from the development of the site and the placement of vulnerable persons on flood prone land;
- Unsuitability of the site zoned R2 and RU2 for development of this density and this nature;

- Impact on the character of the area as a result of the bulk and scale of the development and the nature of the development as group homes;
- Traffic impacts including inadequate onsite carparking, conflict resulting from the proximity of the site to a primary school, impacts on traffic safety in the area and the availability of on-street parking to continue to service the primary school;
- Impacts on residential amenity in the area in terms of noise impacts, loss of privacy and loss of views;
- Social impacts in terms of personal safety of existing residents, potential increase in crime, capacity of service providers to service the site (police), insufficient detail provided on both future tenants and the management of the development;
- The acceptability of concentrating vulnerable persons (people with a disability or those who are socially disadvantaged) in a single location at such high density rather than seeking a more integrated tenure approach (mixed private and social/affordable housing);
- Permissibility of the proposal in terms of satisfying the definition of a Permanent Group Home; and
- Other issues included deficiencies and inconsistencies in the application, accessibility of the units, lack of consideration to sustainability in the design, insufficient consideration of the effects of global warming, potential devaluation of properties in the area, impacts of fauna as a result of realigning the drain.

Request for Further Information

A RFI was issued to Place Design Group on 19 September 2018 identifying a significant number of deficiencies with the application. A copy is attached in **Attachment 1**.

The key issues raised were as follows:

1. Need for updated engineering plans and reports to address concerns in relation to Stormwater and Flood Management Water & Wastewater;
2. Earthworks – Earthworks to be included in application and preliminary assessment of Acid Sulfate Soils in accordance with the Acid Sulfate Soils Manual required;
3. Density of Development – density considered to be excessive and to represent an over-development of the site. The applicant was requested to submit revised proposal for a concept plan yielding no greater than 1 dwelling per 450sqm across the entire site;
4. Access – Provision of a concrete footpath along the York Street frontage, pedestrian connectivity between Stages 1 & 2 and Stage 3 and minimum separation distance between driveways;
5. Car Parking - Further information on how the car parking assessment was undertaken and to make provision for sufficient car parking for visitors, support workers, health workers, etc (calculations for same to be included in the car parking assessment) with provision made for accessible car parking spaces and parking for service vehicles;
6. Appropriately scaled plans and cross sections of the re-aligned watercourse and a Statement of Landscape Intent;

7. Social Impact Assessment - Further detailed information of housing, mix of clients and examples of best practice models of groups homes, further evidence of long term security of affordable housing, partnership approach and community networks to support future tenants, human/community services/supports for future tenants, access – Universal design evidence and social inclusion considerations, and further analysis of the impacts in terms of magnitude, significance, duration, effect on group housing proposal;
8. Tenancy Management Arrangements;
9. Accessibility - The applicant was requested to submit revised dwelling plans for units which are accessible to persons with a disability and which can meet the needs of the identified target populations (being persons with a disability which may include physical disabilities, limited mobility or vision impairment), and to provide evidence of meeting Australian Standards for Adaptable Housing and/or Australian Standard Access and Mobility 1428.1-2009;
10. Communal Open Space - Having regard to the nature of the development and the limited private open space provided for each unit (less than minimum of 10sqm specified), the applicant was advised that the provision of formal communal open space is essential. The applicant was requested to submit plans which include the provision of a communal open space area;
11. Loss of Privacy and Overshadowing - The applicant was requested to address concerns in relation to the potential for overlooking and noise impacts affecting existing residential properties to the south (7 and 9 Martin Street), and potential overshadowing impact on adjoining properties, in particular 9 Martin Street, whose private open space will be impacted by overshadowing; and
12. Building Design - The applicant was requested to address a number of design issues including building separation, Prevention of Crime through Environmental Design (CPTED) principles, management of shared storage areas, undercover car parking spaces and laundry facilities.

The applicant was requested to address a number of other deficiencies in relation to the Waste Management Plan and the Flood Emergency Management Strategy.

Further the applicant was advised that as per the definition of a Group Home in the TLEP 2014 and SEPP (ARH) 2009, a Group Home relates to a 'single dwelling', therefore the proposal was to be described as Concept Approval for 72 Group homes in 10 building blocks with 14 group homes in 2 building blocks in Stage 1.

The applicant was also advised that NRAR had requested further information requesting a scaled diagram demonstrating that a 20m (+ channel width) riparian corridor is possible given the building layout and any other concerns (such as asset protection zones etc).

Given the extent of the matters to be addressed, a period of 28 days was specified for the provision of the requested information (to 17 October 2018). Place Design Group were advised that the relevant officer was amenable to meet should the applicant wish to discuss the issues raised in the RFI letter.

On 19 October 2018, Place Design Group requested for an extension of time of two months to 19 December 2018 to respond to the RFI, with Council agreeing to same.

On 19 December 2018, a request for a further extension of three months was received (extending the response date to 19 March 2019). The applicant was advised to withdraw the application and resubmit as a new application once they had compiled all the information necessary to assess the application.

A subsequent request to extend the period by one month to 18 January 2019 was accepted.

Further Information

The applicant submitted a response to the RFI on 17 January 2019. The response included the following:

- *"Attachment 1 - Tweed Shire Council letter requesting further information dated 19 September 2018*
- *Attachment 2 - Architectural Drawings prepared by Miskell Designs*
- *Attachment 3 - Socio Economic Needs Assessment prepared by RPS*
- *Attachment 4 - RFI Response DA18/0486 - Engineering Items prepared by Arcadis*
- *Attachment 5 - Flood Emergency Management Strategy prepared by Arcadis*
- *Attachment 6 - Engineering Services Report prepared by Arcadis*
- *Attachment 7 - Stormwater and Flood Hydraulic Report prepared by Arcadis*
- *Attachment 8 - Operational Waste Management Plan prepared by Arcadis*
- *Attachment 9 - Construction Waste Management Plan prepared by Arcadis*
- *Attachment 10 - RFI Response DA18/0486 (Item 7) prepared by Arcadis*
- *Attachment 11 - Landscape Intent Plan prepared by Place Design Group"*

In response to the car parking, the applicant advised that:

"The Tweed development control plan (DCP) lists the parking rates for each land use. The Group home land use does not nominate a car parking rate, but rather states 'assess on merits'.

As with many residential developments, the applicant proposes car parking at a rate of one (1) space per dwelling. During the operational phase car parks will be allocated to each dwelling in accordance with demand. Further, the applicant has provided eight (8) additional car parks available for use by visitors. Management will provide marking of the car spaces to differentiate between visitor and residents' spaces.

The DCP does not require Multi dwelling housing or Residential flat buildings to provide a service by. Similarly, the likelihood of a service vehicle entering the proposed development is low. The most common service vehicles that visit residential developments are removal trucks and parcel delivery vans. The proposed dwellings are small scale and it is unlikely that they would need to be serviced by a removal truck. Parcel delivery vans service residential dwellings without requiring a separate bay."

In terms of the tenancy, the applicant advised that *'the proposed development will comprise a mix of 70/30 affordable housing dwellings and social housing dwellings'.*

The issue of whether this was an application for 10 group Homes or 72 Group Homes was not addressed in the cover letter, though the Social Impact Assessment (SIA) submitted with the application referred to a proposed multi-unit development of 72 dwellings. The report also referred to the units being made available to social and affordable housing tenants:

- *70% of the units will be affordable housing and will be rented at 80% of market rates;*
- *30% of the units will be social housing and will be rented at 25% to 30% of the household income of the tenants (dependent upon individual circumstances).*

In terms of the socio economic impact, the SIA advised that there would be no change in demand for support services (notwithstanding the application being for Permanent Group Homes).

The revised plans/documents were renotified from 4 February 2019 to 18 February 2019. Those who made initial submissions were renotified and provided with 14 days in which to make comments. An additional 17 submissions were received. Of these, five submissions were from a single submitter with seven new objectors.

Clarification of Further Information

As there were still a number of deficiencies in the proposal as resubmitted, a letter requesting clarification was issued to the applicant on 6 March 2019, identifying the outstanding issues to be resolved. Refer to **Attachment 2**.

The key issue raised related to what appeared to be a misunderstanding of the definition of a 'Group Home'. The applicant was requested to submit the following information:

1. Demonstrate that this proposal to accommodate 'social and affordable housing' tenants meets the definition of a Group Home as set out in SEPP (ARH) 2009, and update the SIA accordingly. The SIA should also address the needs of those categories of persons eligible for Group Housing, based on the definition of same;
2. Submit FI to address outstanding issues raised in the RFI dated 19 September 2018, in the context of the development being 'Group Homes' as proposed in the application;
3. Clarify, at the expiry of NCCH's agreement to management the development as Group Homes, what arrangements are in place to ensure the continued operation and management of the site as a Group Homes development;
4. As there were concerns that the provision of parking on site as proposed would result to adverse impacts on the adjacent road network and demand for on-street parking, the applicant was requested to submit further information justifying the reduced parking rates or alternatively provide additional car parking as per the requirements for Multi-dwelling housing in DCP Part A2;
5. Update the Flood Emergency Management Plan to remove reference to middle to low income groups and to address the assumption that there would be no greater than average incidence of medical conditions given the definition of a Group Home was for people with a disability or people who are socially disadvantaged;
6. Confirm the party responsible in the role of 'body corporate'; and

7. Address a discrepancy in the bulk earthworks plans in terms of the realignment of the stream/waterway and the interface between the Phase 1 and Phase 2 works.

Second Response to RFI

On 22 March 2019, the applicant advised that NCCH provides housing for people escaping family violence, people with mental illness, people with intellectual disability.

Information on the housing provider was submitted (refer to **Attachment 3**) with advice that the other issues (car parking and flood evacuation) were being addressed.

On 28 March 2019, advice was provided by Place Design Group that a response to the outstanding issues was being prepared and it was requested that the application not be determined until this information was received.

An interim response was provided on 9 April 2019. Refer to **Attachment 4**.

In this correspondence, the applicant advised that:

"The application seeks approval for dwellings. Each proposed building provides 7 - 8 separate dwellings, which will be occupied by a single household. Over the entire development (stages 1-3) we confirm that there will be 72 dwellings, being 72 Group Homes, that are proposed within the 10 buildings of which:

- *Stage 1 proposed 14 Group Homes within 2 buildings*
- *Stage 2 proposed 36 Group Homes within 5 buildings*
- *Stage 3 proposed 22 Group Homes within 3 buildings*

Following agreement on compliance with the land use, the architectural plans will be updated as discussed above."

It was further clarified that each dwelling would be occupied by a single household and that an on-site office would be provided.

To address the issue of tenant eligibility, the applicant advised as follows:

"In order to ensure compliance with the above, all tenants considered for housing within the Group Homes at 26 George St will be required to comply with at least one of the following eligibility criteria:

- *Person or household with a 'very low' income [NB: The applicant considers that people who are socially disadvantaged because of 'extreme poverty', fall within the 'very low' income bracket (those earning less than 50% of the NSW or Sydney median income, depending on where they live¹). Tenants who wish to apply for housing under this criterion would need to provide written evidence of their income. Households within the low, or moderate income brackets will not be eligible];*
- *Person or household with a disability whether physical, intellectual or mental;*
- *Person or household requiring protection from domestic violence or upheaval;*
- *Person or household in recovery from alcohol or drug dependence;*
- *People or households living with a psychological disorder or mental illness.*

These eligibility criteria will be included within a Plan of Management to govern the operation of the home(s) and to ensure their continued use as Group Homes (beyond the initial 10-year period with NCCH). The Plan of Management could be secured as a condition of the approval."

It is noted that tenants in the low and moderate income bracket would not be eligible.

The applicant was advised that the application would be reported to Council for determination and as such the determination as to whether the tenancy proposal meets the requirements for a Group Home as defined in SEPP (ARH) 2009 would ultimately be a matter for the Councillors.

The applicant indicated that they were seeking legal advice on the definition of Group Homes. They were advised that they should review previous case law in the NSW Land and Environment Court where the definition of 'Permanent Group Homes' was considered.

In relation to the car parking, the applicant proposed 10 additional car parking spaces which was to be used for visitors, support workers and on-site staff. However these spaces were disconnected from the dwellings (being located opposite the Murwillumbah East Primary School) and was not considered to be acceptable being remote from the housing development and accessible by the external road network only. The applicant was advised that in considering locations for any additional car parking proposed, consideration should be given to accessibility and connectivity to the group homes, any potential impacts on stormwater management or flood storage, or any potential impact on the realigned stream which is subjected to General Terms of Approval from NRAR.

Third Response to RFI

On 28 May 2019, the applicant submitted a Draft Plan of Management that set out how the development would operate.

In this Draft Plan, the applicant reverted to the position that each building would operate as a single Group home. As such, Stage 1 proposes two Group homes and Stages 2 and 3 propose a further eight Group homes:

"Up to 10 Group homes (permanent) are proposed at the site. Each Group home (permanent) will provide 6 - 7 suites, which will be occupied by eligible Tenants. The design of the Group home allows for a level of privacy for each Tenancy in their suite within an integrated Group home housing model.

Each suite will be designated one car park space, the location of which will determined by the Operator. Disabled car parking will be made available for Tenants with the relevant permit.

Shared laundry facilities will be provided within each Group home (permanent) and will be maintained by the Operator. Communal open space areas will be provided in two locations on site. Tenants and their visitors will have free access to these areas. The space includes a communal garden which is the responsibility of the Tenants. The communal space furniture and structures will be maintained and governed by the Operator. The Operator may update rules for the open space areas at their discretion."

The Draft Plan of Management also included an eligibility criteria which they advised sought to ensure that any eligible tenants will be either people with a disability or socially disadvantaged, in accordance with the definition of Group Home.

It is noted that this Draft Plan was submitted after the applicant acknowledged receiving legal advice (23 May 2019), though the legal advice has not been submitted.

Contrary to the advice of 8 April 2019, that 'low' income households would not be eligible, the eligibility criteria was now expanded to include 'very low' and 'low' income households. The eligibility criteria also required any person complying with the alcohol or drug dependence clause, to have completed an approved detoxification program.

"All prospective Tenants will be required to complete an 'Application for Tenancy' form and submit to the Operator or be an approved applicant on the NSW Housing Pathways waiting list.

In approving residents to occupy the Group homes the Operator will ensure that all Tenants are people with a disability or who are socially disadvantaged. This will be achieved by requiring that all Tenants comply with at least one of the following eligibility criteria:

- *Person or household with a 'very low' or 'low' income. Households within the moderate income brackets will not be eligible;*
- *Person or household with a disability whether physical, intellectual or mental;*
- *Person or household requiring protection from domestic violence or upheaval who are not in crisis and have suitable support arrangements in place;*
- *Person or household in recovery from alcohol or drug dependence who have completed an approved detoxification program;*
- *People or households living with a psychological disorder or mental illness, who can sustain a community housing tenancy with suitable supports.*

Proof of compliance with any of the above criteria, including proof of income or medical record, may be required to advance an application for tenancy."

To address the issue of a 'single household', it was proposed that shared rights and responsibilities within each Group Home would include cleaning the common areas, taking the bins to the servicing point on a rostered basis with bills for each Group Home to be shared.

Refer to **Attachment 5**.

On 31 May 2019, the applicant was advised by Officers that the Draft Plan of Management has been reviewed and subject to finalisation could be submitted to Council as part of the Council report submitted to enable the elected members to determine the application noting that they were now proposing 'very low' income and 'low' income to satisfy the requirements in the Land use definition for Group Homes.

The applicant was also advised that there were still a number of outstanding matters yet to be addressed to finalise the application, namely:

- updating the SIA to address Group Homes and reflecting the information provided in the Draft Plan of Management in relation to eligible tenants;

- addressing the issues raised in the original RFI dated 19 September 2018 in relation to Item 9 (Tenancy Management Arrangements) and Item 10 (Accessibility), in the context of the development being 'Group Homes',
- providing FI justifying the reduced parking rates or alternatively providing additional car parking as per the requirements for Multi-dwelling housing in DCP Part A2; and
- ensuring that the Flood Emergency Management Plan reflecting the information provided in the Plan of Management in relation to eligible tenants and their ability to evacuate.

Fourth Response to RFI

Following agreement to meet with the applicant, a further response was provided by the applicant on 13 June 2019 in advance of the meeting (identified as a partial response to the issues raised in the RFI of 6 March 2019). Refer to **Attachment 6**.

As per the Draft Plan of Management, it was indicated that the applicants wish to proceed with the application as 10 Group Homes, where each group home provided for 7-8 separate suites that would be tenanted separately. The applicant indicated that this was a similar situation to a rooming accommodation or boarding house, where individual bedrooms or suites are rented within one dwelling. The letter stated that '*each tenancy is part of the Group Home that will work together as a single dwelling*'.

As set out in the Draft Plan of Management, it was advised that persons in the 'very low' and 'low' income bracket would be eligible, being socially disadvantaged because of extreme poverty. The other categories of eligible persons set out in the Draft Plan of Management was also included.

In relation to car parking, the applicant referenced the Complying Development Standards set out in SEPP (ARH) 2009 of a minimum of 2 spaces per Group Home development up to 10 bedrooms:

"The development proposes 10 Group Homes comprising 46 x 1 bed suites and 26 x 2 bed suites. Parking is provided at a rate of 7.2 per Group Home and 1 per suite and 8 shared visitor spaces.

We request that Council considers that the development is for Group Homes and houses people who have a low or very low income. This makes it very unlikely that tenants of either the 1 or 2 bed suites will have any more than 1 car and therefore the multi-dwelling housing requirements are not applicable. Furthermore, the Affordable Rental Housing SEPP (Part 45 and Schedule 2) indicates that a minimum of 2 off-street car parking spaces would be acceptable for a complying Group Home development or up to 10 bedrooms. In this case, the applicant is proposing 10 Group Homes each with less than 10 bedrooms at a rate of 7.2 spaces per Group home plus visitor spaces."

Meeting with applicant

Council officers met with the applicant and a representation from NCCH on 17 June 2019. At this meeting the applicant was advised that the matter of whether 'low' and 'very low' income households was the equivalent of extreme poverty would be reported to Council and that this would be a matter for Council to determine.

In terms of the issue of the Group home being 'a dwelling' and occupied as a 'single dwelling' the applicant was specifically referred to *Blacktown City Council v Haddad [2012] NSWLEC 224* where the following test was set out:

"Having regard to the definition of "permanent group home" in the Standard Instrument, it was agreed that in order for the respondents to succeed, the Court was required to be satisfied of the following four elements:

- (a) first, that the proposed development is for "a dwelling";*
- (b) second, that the dwelling is to be occupied "as a single household";*
- (c) third, that the dwelling is to provide "permanent household accommodation"; and*
- (d) fourth, that the dwelling is to provide permanent household accommodation for people "with a disability or people who are socially disadvantaged.*

All four criteria must be present to characterise the proposed development as a "group home".

As the applicant had in part relied on this test in earlier correspondence, it was apparent that they were aware of the case. However, the applicant was advised that in this instance, concerns were raised as to whether a development (two storey building with 29 bedrooms and associated facilities) was a Group Home based on:

- the absence of any area for the occupants to recreate or congregate together in a communal living room;
- the large rooms clearly envisaged a lounge suite in the individual rooms;
- the provision of a sink and drainage area plainly contemplates that some food preparation will occur in the rooms; and
- the minimal size of the shared kitchen.

The applicant was advised that if they wished to proceed with the application on the basis of a block of self-contained units being defined as a 'Permanent Group Home' that they would need to demonstrate this. It should be noted that they were not specifically instructed at any time to remove the kitchens (contrary to their letter of 2 August 2019), only that they would have to demonstrate how such an arrangement could be considered to be a single dwelling where a number of units were self-contained.

It was understood that after this meeting that the outstanding information would be submitted.

Fifth response to RFI

On 20 June 2019, the applicant requested a copy of the submissions to be re-issued as they wished to collate a more comprehensive response to same.

Following no further correspondence from the applicant, Council Officers contacted them on 17 July 2019 to advise that the outstanding information should be submitted to finalise the application:

- Detailed of proposed car parking provision;
- Documentation on how the proposal meet with the definition of Group Homes;
- Updated Plan of Management (Draft only submitted to date);
- Updated Social Impact Assessment; and

- Detailed response to submissions.

On 18 July 2019, the applicant sought to tender amended plans reducing the proposal from 72 tenancies to 62 tenancies. The amended plans also made provision for a communal space in each block for access to support the case for a single household, though the individual tenancies retained a kitchenette. The applicant submitted that the reduction in units would increase the number of visitor car parking spaces (1 space for each tenancy plus 18 visitor spaces), and that this would also reduce the density.

On 19 July 2019, the applicant advised that they were amending the Draft Plan of Management and that now *'North Coast Community primarily house people on a low income so including people suffering drug dependence is of no real benefit to them.'*

Therefore despite, originally proposing to accommodate those in recovery from a drug or alcohol dependency, the proposed eligibility criteria would once again change to specifically exclude these persons:

'For the avoidance of doubt it is not intended that the proposal will provide accommodation for people who are socially disadvantaged because of a diagnosed alcohol or drug dependence, psychological disorder or other similar disadvantages or who require protection because of domestic violence or upheaval.'

It was proposed that those eligible would now be restricted to:

- *Person or household with a 'very low' or 'low' income.*
- *Person or household with a disability whether physical, intellectual or mental.*

Applicant advised to withdraw the application

The applicant was advised that it had been 13 months since this application was initially lodged (18 June 2018) and that Council could not accept amended plans at this late stage.

The applicant was advised that if they wished to proceed with the amended plans and further modifications to the management policy/eligibility criteria/etc, they would need to withdraw this application and to submit a new development application.

Request to determine application

Correspondence was received from the Place Design Group dated 2 August 2019 acknowledging that Council staff had raised concerns as to whether they had adequately demonstrated that each block of 6-7 tenancies/units could meet the definition of a Group Home, particularly in relation to the reference to 'single household'.

The letter submits that:

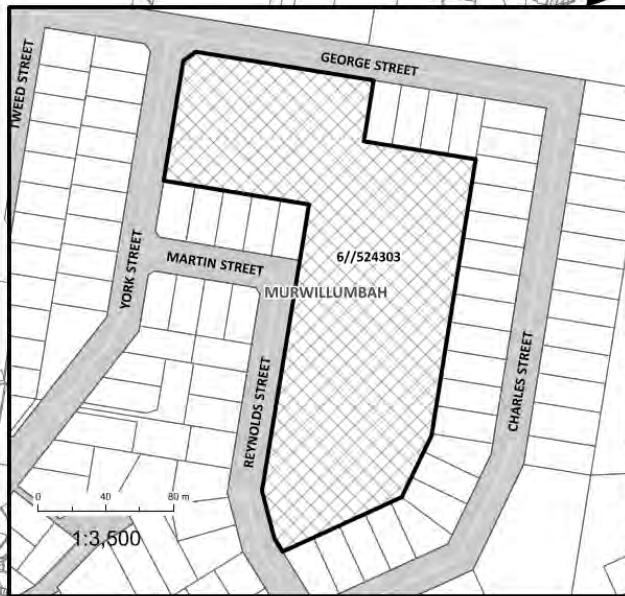
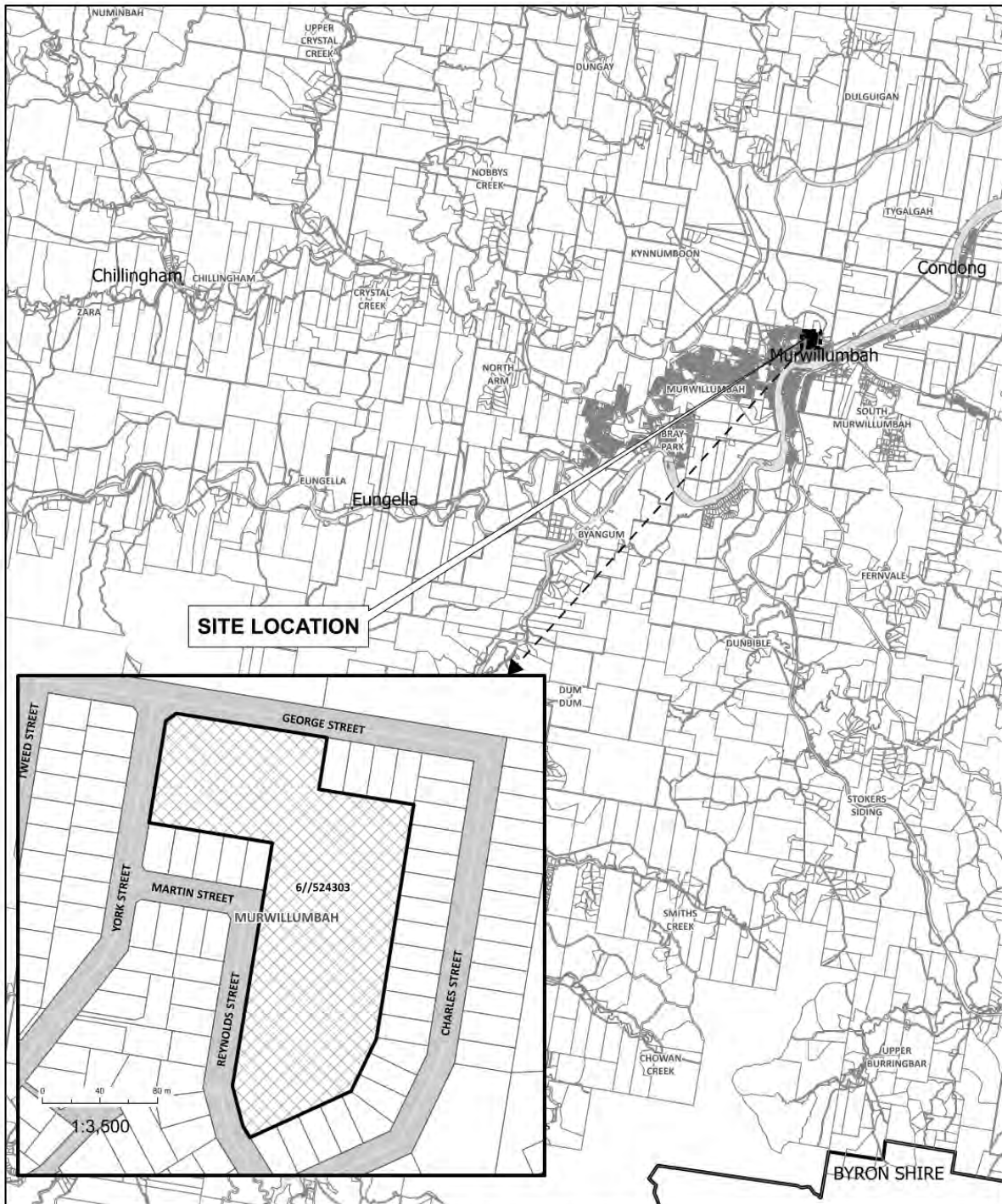
'enforcing that individual tenants interact with people in other tenancies, they are unrelated to, is similar to a boarding house. This structure does not provide housing that is beneficial to people who are experiencing social disadvantage. People have the right to privacy and to dwell within their individual tenancy as they so choose. In NCCH's extensive experience boarding houses cause an array of social issues, such as those raised by the submitters.'

This is notwithstanding the applicant's previous advice of 13 June 2019 that their proposal was in fact similar to a boarding house (refer to **Attachment 6**).

The applicant goes on to state that the '*land use definition does not fit the NCCH's model for providing community housing that is beneficial to the tenants and the surrounding community.*'

Despite what would then appear to be a fatal flaw in the whole application (failing to satisfy the land use definition), the applicant has advised that they do not intend to withdraw the application and requested that Council proceed to determine it. Refer to **Attachment 7**.

SITE DIAGRAM:



Site Plan

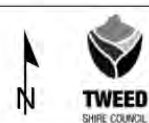
DA18/0486 – Group Homes
26 George Street, Murwillumbah

0 1 2 Km
1:100,000

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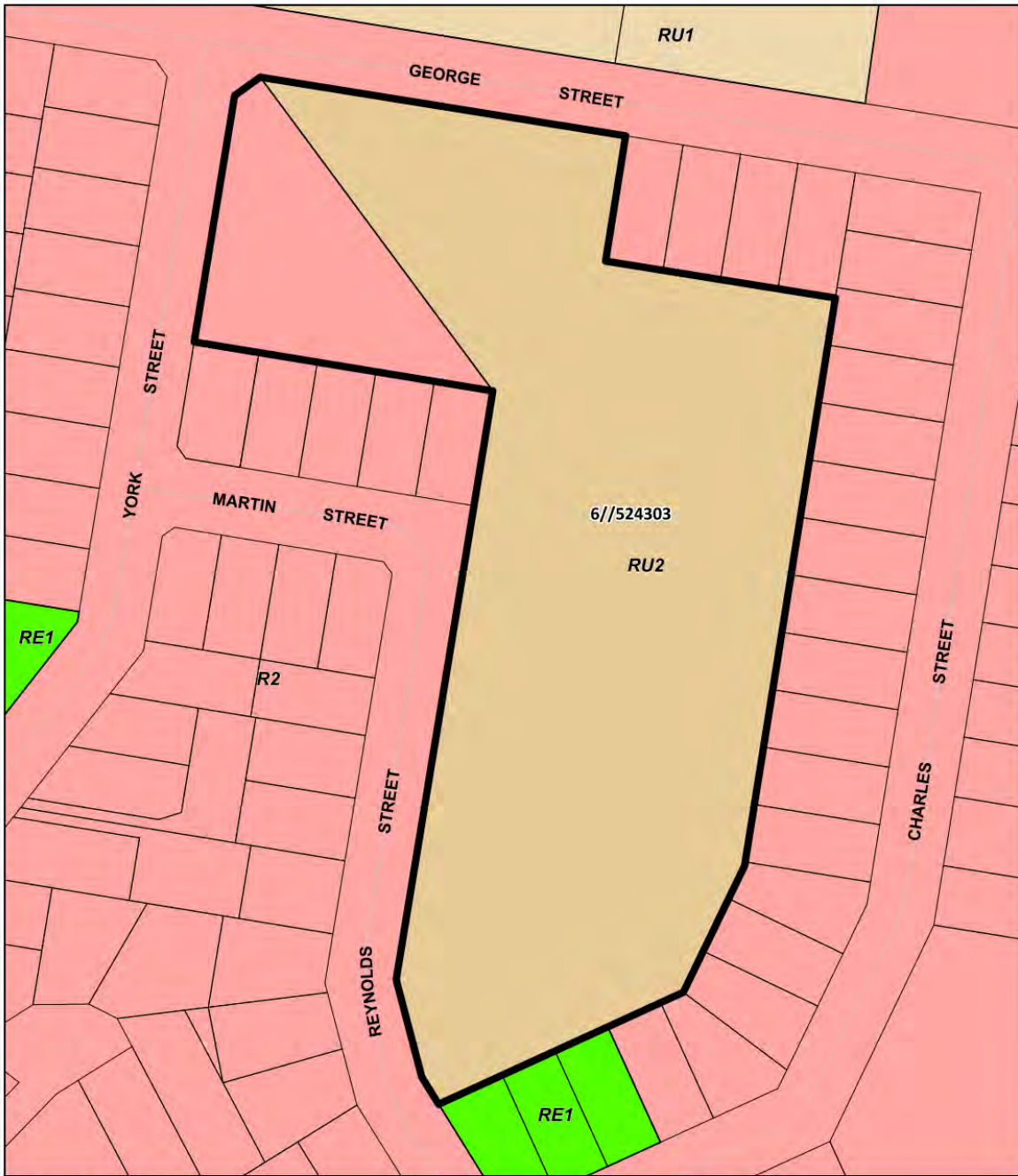
GDA  Cadastre: 18/07/2018
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Coordinate System - MGA Zone 56
Datum - GDA 94

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Date Printed: 11 March 2019

ZONING MAP:

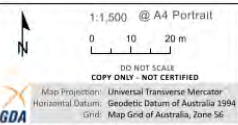


Subject Land

Subject Land

Tweed Local Environmental Plan 2014

- R2 Low Density Residential
- RE1 Public Recreation
- RU1 Primary Production
- RU2 Rural Landscape



Site Plan - Local Environmental Plan

DA18/0486 – Group Homes
 26 George Street, Murwillumbah

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LD486 Printed: 11 March, 2019

AERIAL PHOTOGRAPH:



1:1,500 @ A4 Portrait
 0 10 20 m
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 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geodetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

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Aerial Photography April 2018

DA18/0486 – Group Homes
 26 George Street, Murwillumbah

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 Boundaries shown should be
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Author: C.Lewis - GIS Date Printed: 11 March, 2019

DEVELOPMENT PLANS:



*PROPOSED GROUP HOME DEVELOPMENT
at
26 GEORGE ST. MURWILLUMBAH NSW
for
NCCH - RGBAH P/L*

*April 2018
Reissue January 2019*







Miskell Concepts & Design

ABN 70 589762 116
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NCCH - RGBAH P/L

Lot 6 DP524303 George St.
 Murwillumbah NSW

Existing Site Photos

Project Number	Project Number
Date	18th Jun 2019
Drawn by	DM
Checked by	Checker
Scale	A1 - M - DA1b



Looking South East at the Site from corner of York & George Streets.



Northerly Views from George St.



Looking South at the Site from George St.



Looking East at the Site from York St.



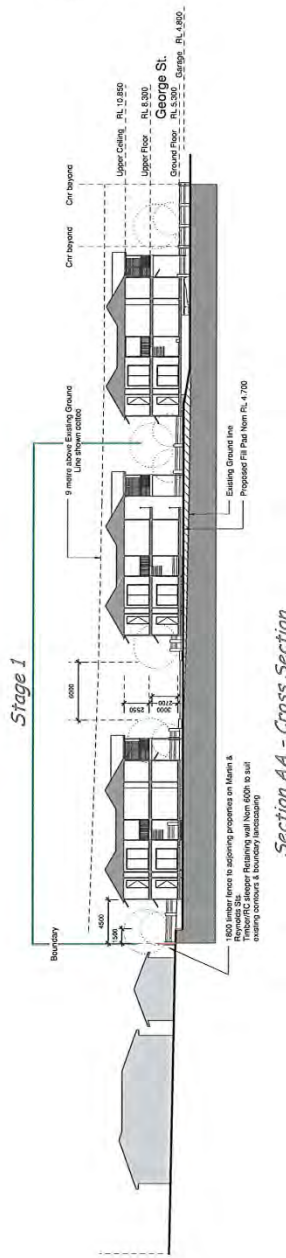




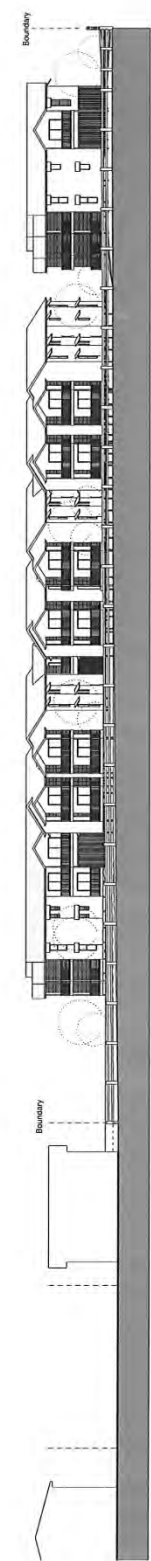
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Section AA - Cross Section



George Street Elevation



York Street Elevation

Lot 6 DP524303 George St.
 Murwillumbah NSW

Section & Elevations

Project number	16th Jan 2019
Date	16th Jan 2019
Drawn by	DM
Checked by	DM
Scale	1 : 200

4.612B SH1 - Privacy screen added to Upper Floor windows
 & Driveway screen added to Upper Floor windows
 Lower Floor screen added to Upper Floor windows
 Lower Floor screen added to Upper Floor windows

Miskell Concepts & Design

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NCCH - RGBAH P/L

Lot 6 DP524303 George St
Murrumbidgee NSW

Views 1



Project Number	Project Number
Date	18th July 2019
Drawn By	DAM
Checked By	Checker
Scale	A1 - M - DAS

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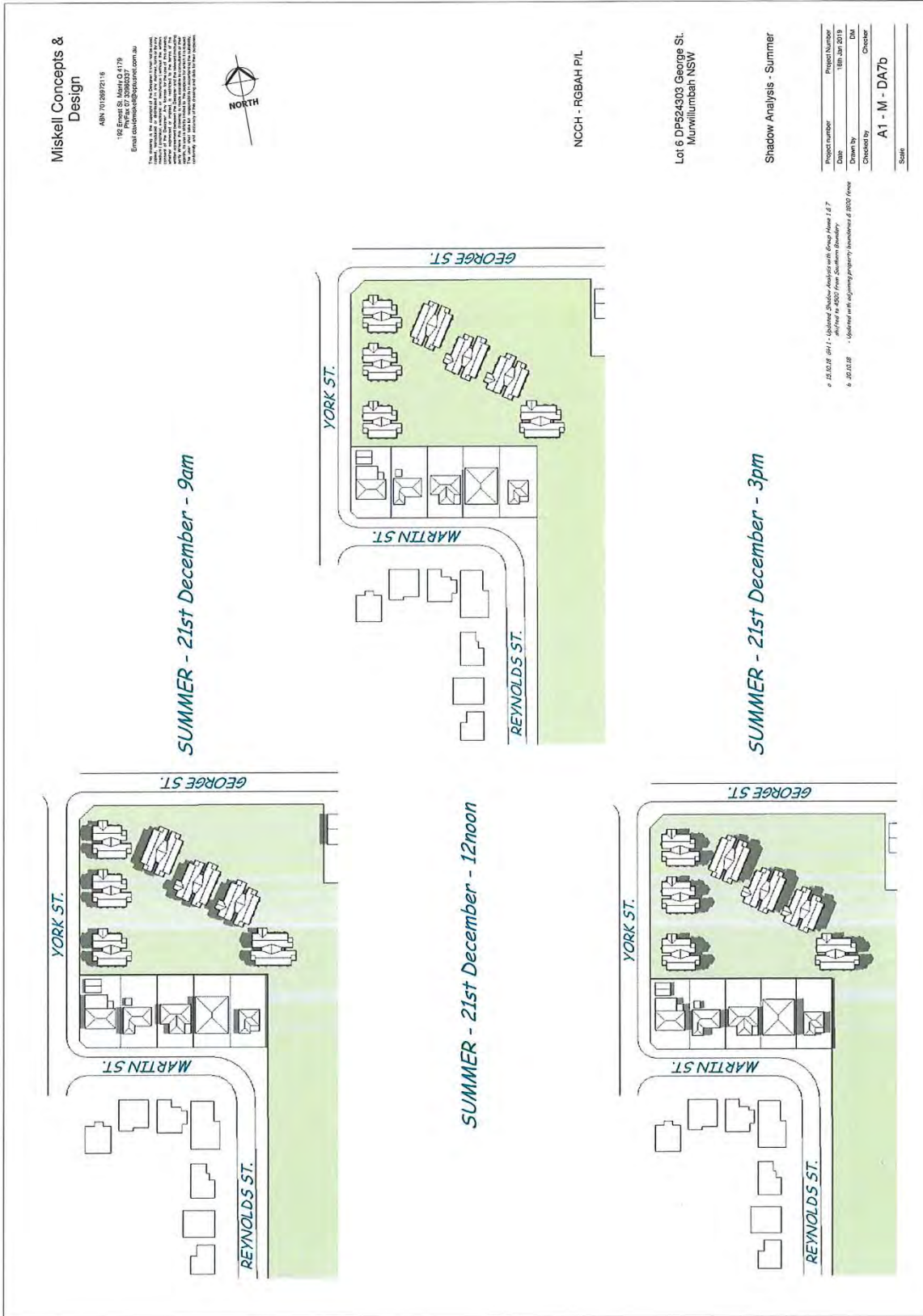
NCCH - RGEBAH P/L

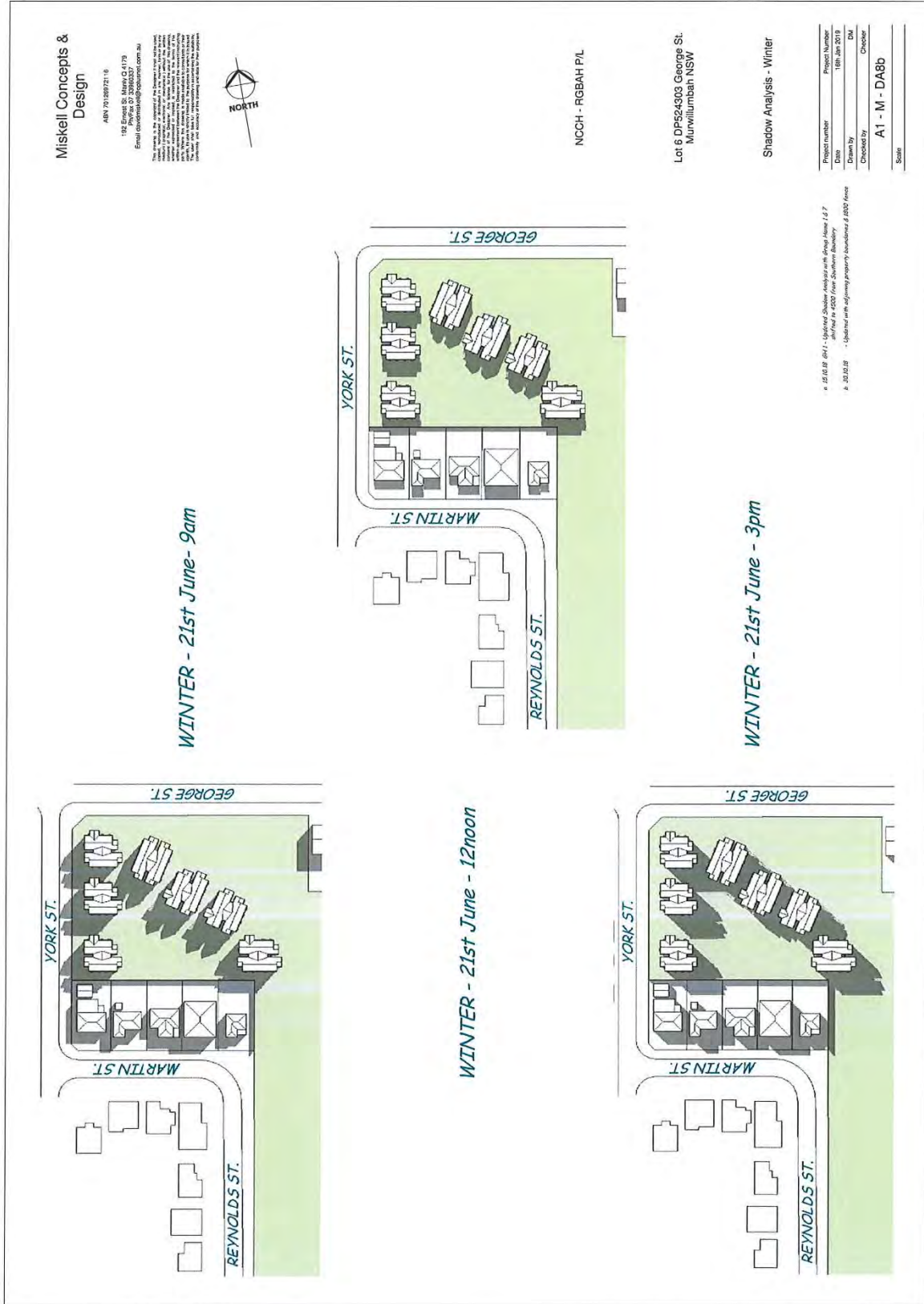
Lot 6 DP524303 George St.
Murrumbidgee NSW

Views 2



Project Number	1611
Date	16th July 2019
Drawn by	DM
Checked by	DM
Scale	A1 - M - DA6





	<p>Scheme 1 <i>Combination of Cementel Wall Cladding 'Plank Woodgrain & Smooth', 'Simpleline' & 'Edge'</i> <i>Screening, Balustrades & Awnings</i> <i>Corrugated Roofing</i></p>	<p><i>Eg Taubmans 'Iron Gate'</i> <i>Eg Colourbond 'Surfmist'</i> <i>Eg Colourbond 'Surfmist'</i></p>	<p>Miskell Concepts & Design ABN 70 239792 18 102 Boreal St, Mavis Q4 179 Pyralis, NT 3086337 Email: info@miskellconcepts.com.au <small>The terms and conditions of the contract apply to this proposal. The client agrees to pay for all services provided. The client agrees to pay for all materials and labour. The client agrees to pay for all permits and fees. The client agrees to pay for all other costs associated with the project. The client agrees to pay for all other costs associated with the project.</small></p>												
	<p>Scheme 2 <i>Cementel 'Headland' Cladding</i> <i>Cementel 'Edge' Cladding</i> <i>Screening, Balustrades</i> <i>Corrugated Roofing & Awnings</i></p>	<p><i>Eg Colourbond 'Windspray'</i> <i>Eg Colourbond 'Surfmist'</i> <i>Sel. Timber Finish</i> <i>Eg Colourbond 'Windspray'</i></p>	<p>NCCH - RGBAH P/L</p>												
	<p>Scheme 3 <i>Cementel 'Territory' Cladding</i> <i>Cementel 'Aspect' & 'Simpleline'</i> <i>Screening, Balustrades & Awnings</i> <i>Corrugated Roofing</i></p>	<p><i>'Woodlands Teak'</i> <i>Eg Taubmans 'Basalt'</i> <i>Eg Colourbond 'Dune'</i> <i>Eg Colourbond 'Dune'</i></p>	<p>Lot 6 DP524303 George St. Murwillumbah NSW</p>												
<p>Colours/Materials Selections</p>			<table border="1"> <tr> <td>Project Number</td> <td>Project Number</td> </tr> <tr> <td>Date</td> <td>10th Jan 2019</td> </tr> <tr> <td>Drawn by</td> <td>DBL</td> </tr> <tr> <td>Checked by</td> <td>Checker</td> </tr> <tr> <td colspan="2" style="text-align: center;">A1 - M - DA9</td> </tr> <tr> <td colspan="2">State</td> </tr> </table>	Project Number	Project Number	Date	10th Jan 2019	Drawn by	DBL	Checked by	Checker	A1 - M - DA9		State	
Project Number	Project Number														
Date	10th Jan 2019														
Drawn by	DBL														
Checked by	Checker														
A1 - M - DA9															
State															

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NOTATION & LOGS SCHEDULE

- N1 2250x2100 Heavy Sliding door
- N2 2250x1400 Heavy window above P1 - RGBAH
- N3 1200x1400 Heavy window - RGBAH
- N4 2250x1400 Heavy window - RGBAH
- N5 1200x1400 Heavy window - RGBAH
- N6 400x1150 P1
- D1 2250x1400 Sl. Solidcore Entry Door
- D2 2250x1400
- D3 2250x1770
- D4 2250x1400 Sl. Powder Entry Door

Ground Floor Plan

Upper Floor Plan

Section AA

Arcell fireshield insulation to U/S Floors 1A, 3A

View from York Street

Rear View from Carparking area

GFA - 282sqm

NCCH - RGBAH P/L

Lot 6 DP524303 George St.
Murwillumbah NSW

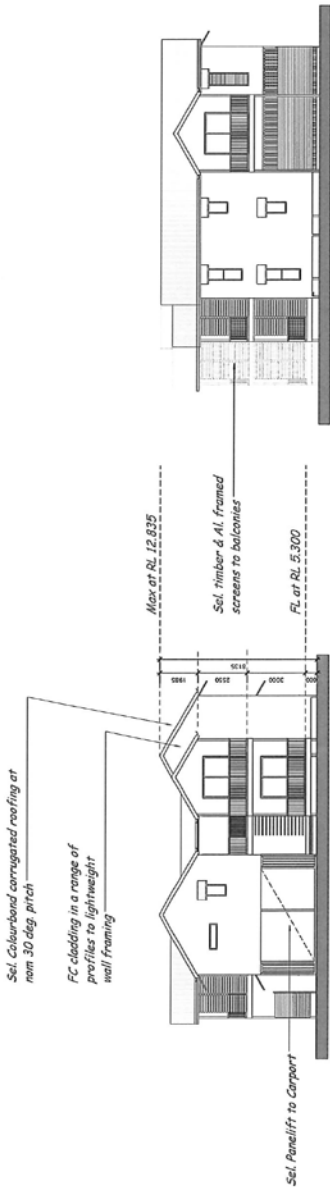
Group Home - TYPE 1

Project number	30174425
Date	24/08/2019
Drawn by	DM
Checked by	Checker
A1 - 1 - 1	
Scale	1:1100

Miskell Concepts & Design

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North Elevation

York Street Elevation - West



South Elevation

Rear Elevation - East

NCCH - RGBAH P/L
 Lot 6 DP524303 George St.
 Murwillumbah NSW

Group Home - Type 1 Elevations

Project number	2017/14/30
Date	24/11/17
Drawn by	DAI/DAI
Checked by	DAI/DAI
Scale	A1 - 1 - 2
	1 : 100

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AUTOMATIC DOOR SCHEDULE

W1	Z250x4000 Glass Sliding Door
W2	Z250x4000 Sliding window above PS - 300x400
W3	Z250x4000 Sliding window - 2200 x 400
W4	Z250x4000 Sliding window and Shower
W5	Z250x4000 Sliding window of Shower
W6	400x1200 PS

D1	Z250x4000 Sol. Solutions Entry Door
D2	Z250x4000
D3	Z250x4000
D4	Z250x4000 Sol. bench/Door
D5	Z250x4000

Ground Floor Plan

Upper Floor Plan

Section AA

Aircell Glassshield insulation to U/S Floors 1A,3A

View from York Street

Rear View from Carparking area

NCCH - RGBAH P/L

Lot 6 DP54303 George St.
Murrumbidgee NSW

Group Home - TYPE 1A

GFA - 282sqm

MASKELL CONCEPTS & DESIGN

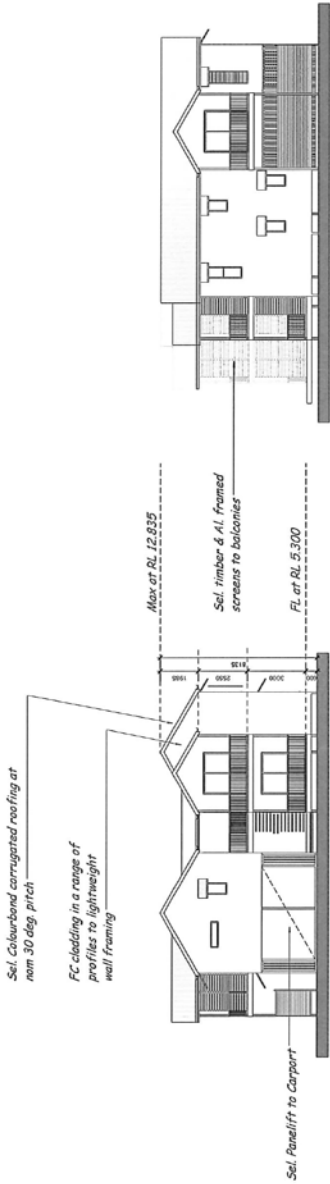
Project Number 2017-0035
Date Jan 19
Drawn By DM
Checked By Checker
AT - 1A - 1
Scale 1 : 100

Miskell Concepts & Design

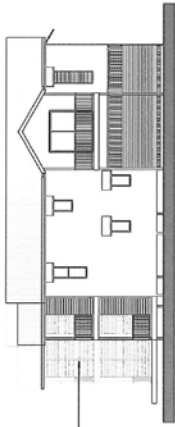
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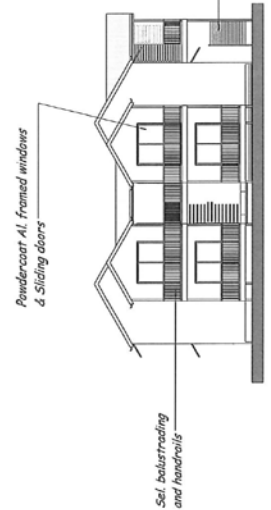
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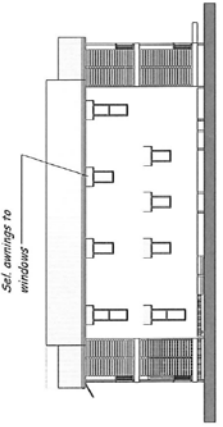
York Street Elevation - West



North Elevation



Rear Elevation - East



South Elevation

NCCB - RGBAH P/L

Lot 6 DP524303 George St.
 Murwillumbah NSW

Group Home - Type 1A
 Elevations

Project number	2017 A15
Date	14/08/19
Drawn by	DA
Checked by	DA
Scale	A1 - 1A - 2
Scale	1 : 100

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WINDOW & DOOR SCHEDULE

W1 2250x1400 Floor Sliding Door
 W2 1950x1400 Floor Sliding Door (S - 3000x1400)
 W3 1200x1400 Floor Sliding Door (S - 1050x1400)
 W4 2250x1400 Floor Sliding Door (S - 3000x1400)
 W5 1200x1400 Floor Sliding Door (S - 1050x1400)
 W6 400x1200 W

D1 2250x1400 Floor Sliding Door
 D2 2250x1400
 D3 2250x1400
 D4 2250x1400 Floor Sliding Door

GFA = 305sqm

NCCH - RGBAH P/L

Lot 6 DP924903 George St, Murrumbidgee NSW

Group Home - TYPE 2

View from Street and or Carparking area

View from Street and or Carparking area

Rear View from Carparking area

Ground Floor Plan
Generally similar to Type 1

Upper Floor Plan
Aircell glareshield insulation to UVS Floors 2A, 6B
Living Rm Sliding Door with Low-e glazing 6A

Project number	2017 M 95
Date	Jan 19
Drawn by	DM
Checked by	Director
A1 - 2 - 1	
Scale	1 : 100

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North Elevation

NCCH - RGBAH P/L

Lot 6 DP524303 George St.
Murrumbidgee NSW

Group Home - Type 2
Elevations

Project number	2017-14-03
Date	Jan 19
Drawn by	DM
Checked by	Creator
A1 - 2 - 2	
Scale	1 : 100

York Street Elevation - West

*Set. Colourbond corrugated roofing at
nom 30 deg. pitch*

*FC cladding in a range of
profiles to lightweight
wall framing*

Max. at RL 12,835

*Set. timber & Al. framed
screens to balconies*

FL at RL 5,900

Set. Panel to Carpet

North Elevation

NCCH - RGBAH P/L

Lot 6 DP524303 George St.
Murrumbidgee NSW

Group Home - Type 2
Elevations

Project number	2017-14-03
Date	Jan 19
Drawn by	DM
Checked by	Creator
A1 - 2 - 2	
Scale	1 : 100

York Street Elevation - West

*Powder-coat Al. framed
windows & sliding doors*

*Set. balustrading
and handrails*

South Elevation

NCCH - RGBAH P/L

Lot 6 DP524303 George St.
Murrumbidgee NSW

Group Home - Type 2
Elevations

Project number	2017-14-03
Date	Jan 19
Drawn by	DM
Checked by	Creator
A1 - 2 - 2	
Scale	1 : 100

Miskell Concepts & Design

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WINDLOADS AND SCHEDULE

- W1 200kN/m2 Glass Sliding Door
- W2 100kN/m2 Glass Sliding Door - 200kN/m2
- W3 100kN/m2 Glass Sliding Door - 100kN/m2
- W4 100kN/m2 Glass Sliding Door - 100kN/m2
- W5 100kN/m2 Glass Sliding Door - 100kN/m2

View from Carparking area

*Aircell Glassshield Insulation to U/S Floors
 4C, 4D
 Living Rm Sliding Door with Low-e glazing
 4G, 4H
 Operable Louvre Screen facing Living Rm Sliding Doors
 4C, 4D, 4H*

Upper Floor Plan

Ground Floor Plan
Generally similar to Type 1

Rear View with Decks facing North East & open swale

View from Carparking area

NCCH - RGBAH P/L

Lot 6 DP524303 George St.
 Murwillumbah NSW

Group Home - TYPE 3

Project number	2017-MCS
Date	Dec 2018
Drawn by	DM
Checked by	Checker
A1 - 3 - 1	
Scale	1 : 100

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WINDOWS & DOOR SCHEDULE

W1 2700x1200 Glass Sliding Door
 W2 1200x1200 Sliding window - 1500x1500
 W3 1200x1200 Sliding window - 1500x1500
 W4 2700x1200 Sliding window - 1500x1500
 W5 1200x1200 Sliding window - 1500x1500

D1 2700x1200 Solid Sliding Entry Door
 D2 2700x1200
 D3 2700x1200
 D4 2700x1200 Solid Panel Entry Door
 D5 2700x1200

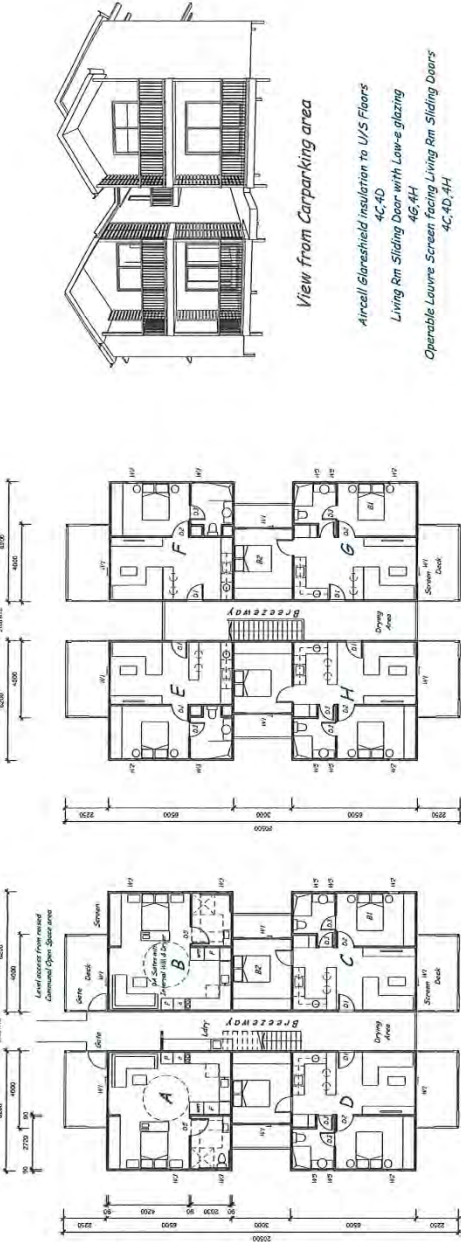
EFA - 3688sqm

NCC - R2019 P/L

Lot 6 DP524303 George St.
 Murrumbidgee NSW

Group Home - TYPE 3A

Project Number	5013 A1/A2
Drawn by	Tom BUI
Checked by	Tom BUI
Checker	
A1 - 3A - 1	
Scale	1:100

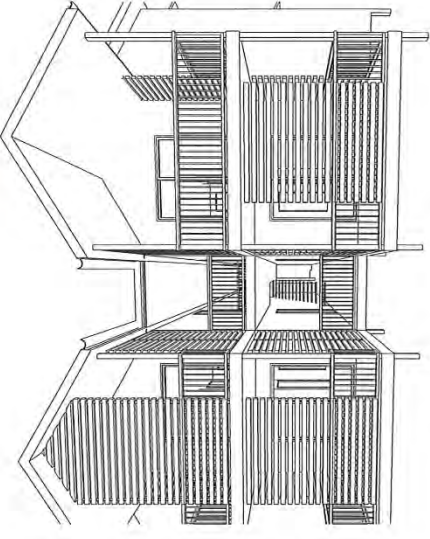


*Ground Floor Plan
 Generally similar to Type 1*

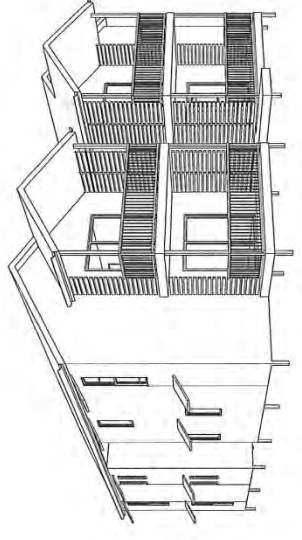
Upper Floor Plan

View from Carparking area

*Aircell Glareshield Insulation to U/S Floors
 4C, 4D
 Living Rm Sliding Door with Low-e glazing
 4E, 4H
 Operable Louvre Screen facing Living Rm Sliding Doors
 4C, 4D, 4H*



*Rear View with Decks facing
 North East & open swale*



View from Carparking area

Miskell Concepts & Design

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MATERIALS LOG/SCHEDULE

- #1 2250x1200 Glass Sliding Door
- #2 1950x1400 Heavy timber window PF - 3054E
- #3 1200x1400 Heavy timber window - 1059 AF
- #4 2250x1650 Slatted Louvre w/ Fibreglass
- #5 1200x1400 Slatted Louvre w/ Fibreglass
- #6 400x1250 PF
- #7 2200x1400 Sh. Slatwood Entry Door
- #8 2200x1400
- #9 2250x1700
- #10 2200x1650 Sh. Panel w/ Fibre

View from Carparking area

Airzell/Elersfield Insulation to US Floors
 5B, 7A, 7C
 Living Rim Sliding Door with Louvre glazing
 5A
 Operable Louvre Screen facing Living Rim Sliding Doors
 5D

Ground Floor Plan
 Generally similar to Type 1

Upper Floor Plan

View from Carparking area

Rear View with Decks facing towards open swale

NCCH - RGBAH P/L

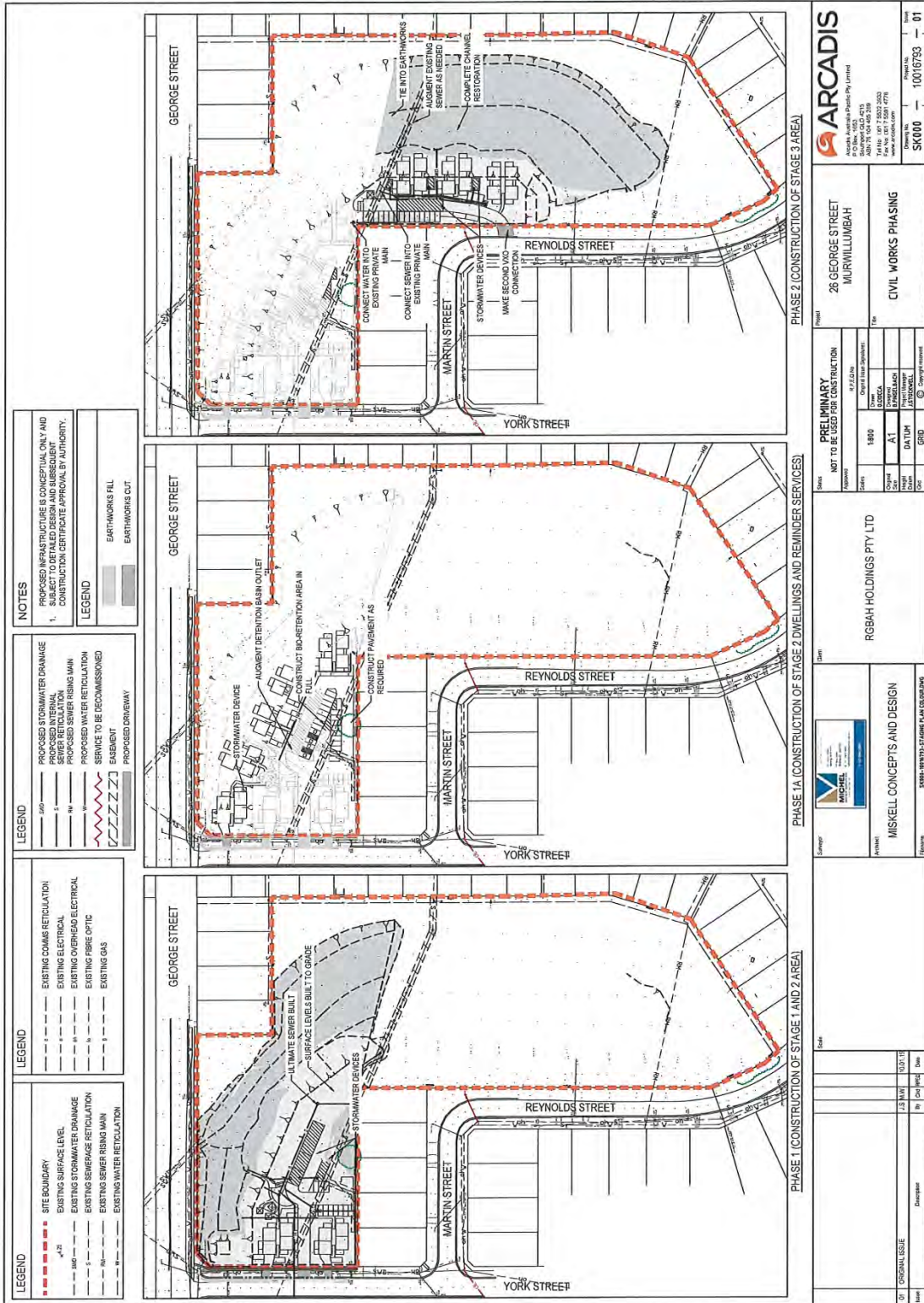
Lot 6 DP524303 George St.
 Murrumbidgee NSW

Group Home - TYPE 4

Project Number: 2017A005
 Date: JAN 2019
 Drawn by: DM
 Checked by: Choober

A1 - 4 - 1

Scale: 1 : 100

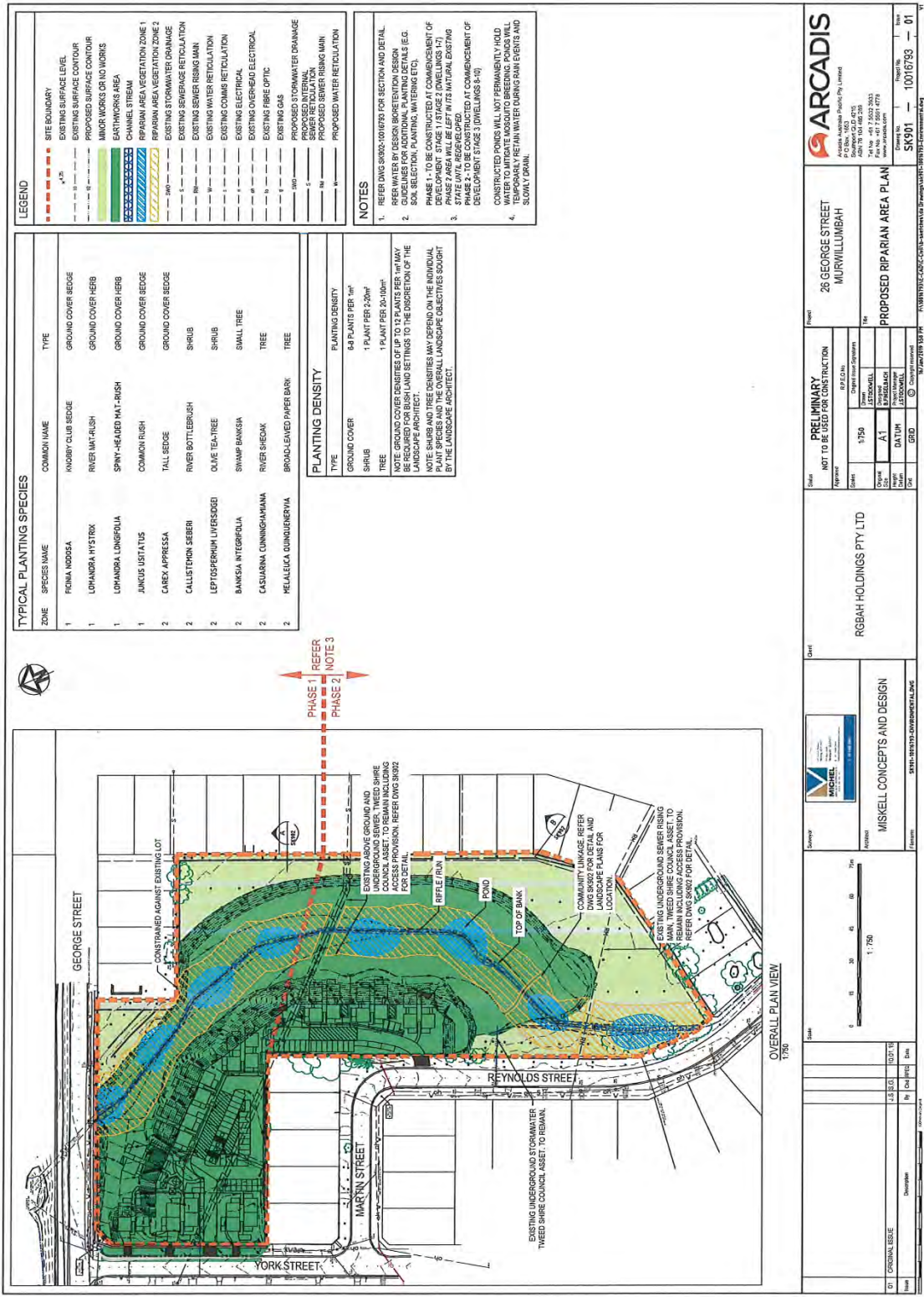


PHASE 2 (CONSTRUCTION OF STAGE 3 AREA)

PHASE 1A (CONSTRUCTION OF STAGE 2 DWELLINGS AND REMINDER SERVICES)

PHASE 1 (CONSTRUCTION OF STAGE 1 AND 2 AREA)

<p>ARCADIS ARCADIS AUSTRALASIA PRACTICE PTY LIMITED 150 COLLEGE AVENUE SOUTHBRIDGE CROSS VIC 3006 TEL: 61 8 7502 2022 WWW.ARCADIS.COM</p>		<p>28 GEORGE STREET MURWILLUMBAH</p>		<p>CIVIL WORKS PHASING</p>	
<p>Project: 28 GEORGE STREET MURWILLUMBAH</p>		<p>Client: ROBAH HOLDINGS PTY LTD</p>		<p>Drawn No: SK000</p>	
<p>Scale: NOT TO BE USED FOR CONSTRUCTION</p>		<p>Author: MISKELL CONCEPTS AND DESIGN</p>		<p>Revised No: 10016793</p>	
<p>Approved: [Signature]</p>		<p>Checked: [Signature]</p>		<p>Issue: 01</p>	
<p>Drawn: [Signature]</p>		<p>Project Manager: [Signature]</p>		<p>Date: [Date]</p>	



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**26 GEORGE STREET
MURWILLUMBAH**

PROPOSED RIPIARIAN AREA PLAN

RGBAH HOLDINGS PTY LTD

MISKELL CONCEPTS AND DESIGN
www.miskellconcepts.com.au

PRELIMINARY
NOT TO BE USED FOR CONSTRUCTION

DATE: 02/09/19
SCALE: 1:750
APPROVED BY: A1
DATE: 02/09/19
DESIGNED BY: DP/14M
DATE: 02/09/19
CHECKED BY: JAC/04M
DATE: 02/09/19
APPROVED BY: GRT
DATE: 02/09/19

PROJECT NO: SK901 - 1010793 - 01

Masterplan



0 10 20 30 40 50m 1:1000@A3

- LEGEND**
1. DRIVEWAY CROSSOVERS
 2. DRIVEWAY 1.5M WIDE TO CONNECT WITH EXISTING PATH
 3. BUFFER PLANTING CORNER OF LOT
 4. EXISTING FOOTPATH
 5. SECONDARY PATH LINES (S TREPPERS OR DECO STONE)
 6. COMMUNAL OPEN SPACE 1
 7. ACCESS STEPS TO NATURE WALK
 8. NATURE WALK (PRIMARY PATH)
 9. COMMUNAL VEGETABLE GARDENS
 10. SHADE TREES WITH BENCHES SPACED EVERY 50M
 11. SHADE TREES IN CARPARKS
 12. BIN STORAGE - REFER TO WASTE MANAGEMENT REPORT BY REPORT BY ARCADIS
 13. 1.2M WIDE ACCESS PATHS
 14. COMMUNAL OPEN SPACE 2
 15. SCREENING BUFFER PLANTING TO ADJOINING RESIDENCES
 16. BIODEGRADABLE AREA - REFER TO STORM WATER MANAGEMENT REPORT BY ARCADIS
 17. EXISTING SEWERLINE
 18. VEGETATION ZONE 1 - REFER TO NATURAL RESOURCE MANAGEMENT REPORT BY ARCADIS
 19. 1.5M WIDE RIPARIAN VEGETATION ZONE TO BOTH SIDES OF CHANNEL - REFER TO NATURAL RESOURCE MANAGEMENT REPORT BY ARCADIS
 20. CHANNEL STREAM - REFER TO ARCADIS DETAIL
 21. CROSSING WITH CULVERT TO ENGINEER DETAILS
 22. 1.5M WIDE CONCRETE FOOTPATH
 23. EXISTING LAWN TO BE RETAINED FOR INFORMAL RECREATION
 24. LAWN TO NEW REPERVED LANDFORM
 25. EXISTING LAWN TO BE RETAINED FOR INFORMAL RECREATION
 26. FICUS RUBIGINOSA TO CREATE SHADED REST AREAS
 27. NOTIONAL RECREATION LOOP
 28. EXISTING TREES AT BOUNDARY TO BE RETAINED
 29. 1.8M HIGH LAPPED AND GAPPED TIMBER FENCE TO COMMON BOUNDARIES

4 | LANDSCAPE STATEMENT OF INTENT - STAGE 1-3 | PROPOSED GROUP HOME DEVELOPMENT - 26 GEORGE ST. MURWILLUMBAH

Detail Area

KEY PLAN



EXAMPLE OF SOCIAL SEATING USED IN SOCIAL HOUSING AND USE OF COLOUR FOR OPTED



STREETPRINT COLOURED GRAPHICS

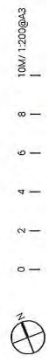


ROBUST FIXED PICNIC BENCHES AND USE OF COLOUR



LEGEND

- 1. CONTINUAL BENCH SEATING
- 2. STREET PRINT COLOURED FINISH TO CONCRETE OR ASPHALT
- 3. FLOWERING TREES
- 4. SECONDARY PATH LINKS (STEPS OR DEO STONE)
- 5. ACCESS STEPS TO MATURE WALK
- 6. WASTE STORAGE
- 7. LAMP AND VEGETATED BATTER TO ENGINEERS DETAILS
- 8. 1.2M WIDE LEVEL ACCESS PATHS TO RESIDENTS
- 9. BROADLEAF SHADE TREES IN PARKING
- 10. SUB-GROUND STORMWATER DEVICES TO ENGINEERS DETAILS
- 11. SHADE UMBRELLAS OVER SEATING AREAS
- 12. DRIVEWAYS
- 13. PWD PARKING (HND) - REFER TO ARCADE REPORT
- 14. RUBBER PLAY MAT
- 15. BIKI STORAGE - REFER TO WASTE MANAGEMENT REPORT BY ARCADES



Detail Area

KEY PLAN



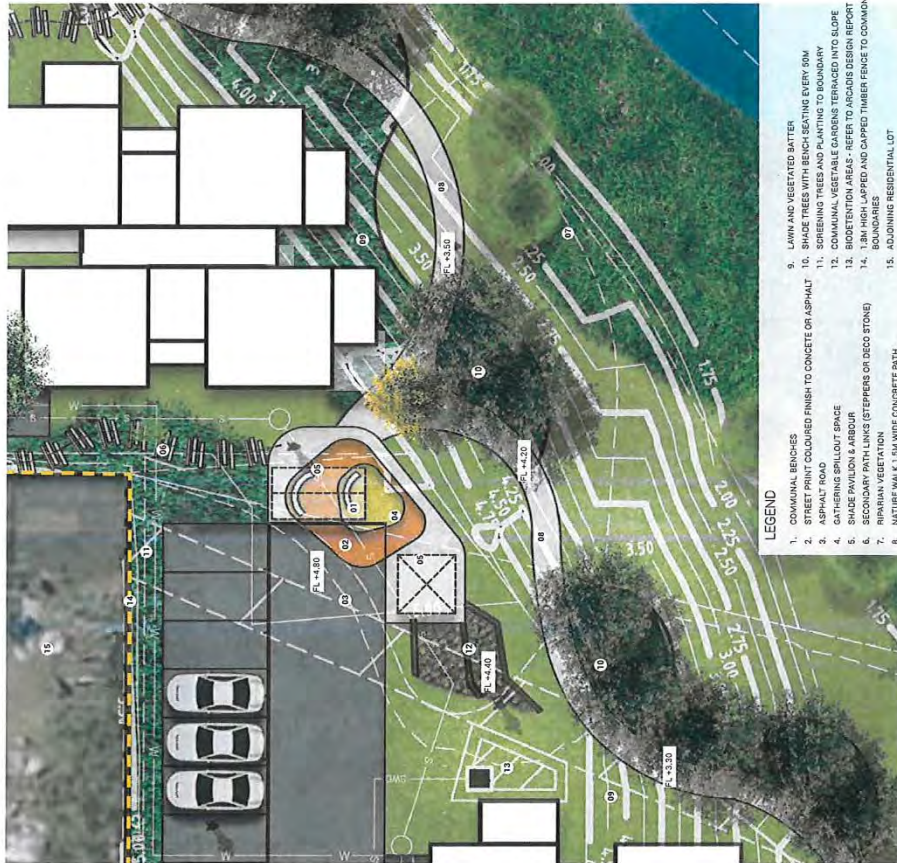
EXAMPLE OF COMMUNAL VEGETABLE GARDENS



SIMPLE STRUCTURE ABOVE GATHERING SPACES



NATURE WALK TO RIPARIAN EDGE



0 2 4 6 8 10M / 1:200 @ A3

Section

KEY PLAN



0 2 4 6 8 10M / 20' @A3

LEGEND

1. NATURE WALK 1.5M WIDE CONCRETE PATH
2. LAWN SWALE TO EDGE OF PATH
3. COPPER OF SHADE TREES TO PATH
4. COMMUNAL VEGETABLE GARDENS TERRACED INTO SLOPE
5. RIPARIAN CORRIDOR - 20M WIDE EXC. CHANNEL REFER TO ARCADIS ENVIRONMENTAL REPORT FOR DETAILS
6. 1.5M WIDE WATER CHANNEL - REFER TO ARCADIS ENVIRONMENTAL REPORT FOR DETAILS
7. BUILDING LINE



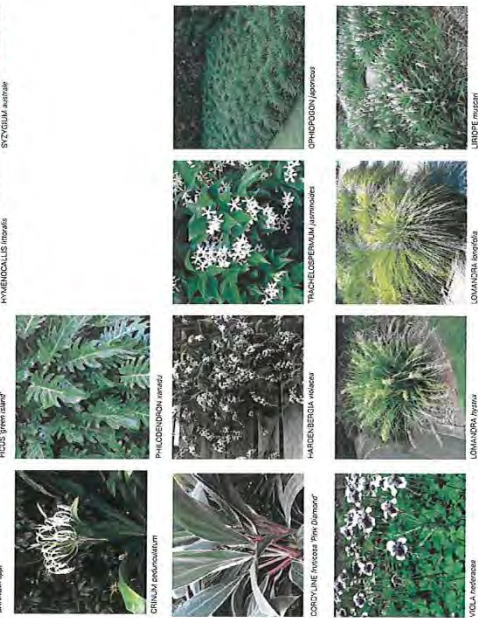
Planting Palette



PALMS & TREES



SHRUBS



GROUNDCOVERS & GRASSES

PALMS & TREES	
FICUS rubiginosa	Rusty Fig
BRACHYCHITON acerifolius	Illawarra flame tree
WATERHOUSEA floribunda	Weeping Lily Pilly
TRISTANIOPSIS laurina	Wateroam
ELAEOCARPUS eumundi	Smooth-leaved quandong
MELALEUCA quinquenervia	Paper bark

SHRUBS	
BANKSIA robur	Banksia
FICUS 'green island'	Green Island
HYMENOCALLIS littoralis	Spider lily
SYZYGIUM australe 'Pinnacle'	Lily pilly
CRINUM pedunculatum	Crimum Lily
PHILODENDRON xanadu	PHILODENDRON

GROUNDCOVERS & GRASSES	
CORDYLINE frutescens 'Pink Diamond'	Pink Diamond
HARDENBERGIA violacea	False sarsaparilla
TRACHELOSPERMUM jasminoides	Star Jasmine
OPHIPOGON japonicus	Montdo grass
VIOLA hederacea	Native violet
LOMANDRA hystrix	Green mat-rush
LOMANDRA longifolia	Mat-Rush
LIRIOPE muscari	Liriope
LIRIOPE stripey white	Stripey White



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

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

Tweed Local Environmental Plan 2014

Definition of Group Home

Group home (permanent) or permanent group home is defined in the *Tweed Local Environmental Plan (TLEP) 2014* as:

'a dwelling:

- (a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and*
- (b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,*

but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.'

The TLEP 2014 defines a '**dwelling**' as meaning:

'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

The plan does not define '*people with a disability*' nor '*socially disadvantaged*', however these terms are defined in *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP(ARH)2009) in Division 7 of Part 2 (New affordable rental housing) which addresses Group Homes.

The definition of a **Permanent Group Home** in this Division is the same as the definition in the TLEP 2014, however the SEPP expands the definition in Subclause 42(2) to clarify that:

- (a) a reference to **people with a disability** is a reference to people of any age who, as a result of having an intellectual, psychiatric, sensory, physical or similar impairment, or a combination of such impairments, either permanently or for an extended period, have substantially limited opportunities to enjoy full and active lives, and*
- (b) a reference to **people who are socially disadvantaged** is a reference to:*
 - (i) people who are disadvantaged because of their alcohol or drug dependence, extreme poverty, psychological disorder or other similar disadvantage, or*
 - (ii) people who require protection because of domestic violence or upheaval.*

While most of the terms above are self-explanatory, it is noted that there is no further definition in the SEPP of 'extreme poverty'.

As set out earlier in this report, the applicant's description of the proposal has changed throughout the assessment period, in terms of whether each block of 7 - 8 units is a Group Home (consisting of 10 Group Homes), or each unit within the block is a Group Home (consisting 72 Group Homes). The eligibility criteria has also changed. Refer to **Table 1** below for a summary of the changes:

Date	Number of Group Homes	Eligible categories
18 June 2019 (lodgement)	10 Group Home	<ul style="list-style-type: none"> Not specified
17 January 2019	<ul style="list-style-type: none"> Not specified in cover letter Revised plans and Flood Evacuation Plan refer to 10 Group Homes. SIA refers to 72 dwelling units 	<ul style="list-style-type: none"> 70% of units to be made available for affordable housing and 30% made available as social housing,
22 March 2019	72 Group Homes	<ul style="list-style-type: none"> Very low income households Persons with a disability Persons requiring protection from domestic violence or upheaval Persons in recovery from alcohol or drug dependence Persons with a psychological disorder or mental illness
28 May 2019	10 Group Homes	<ul style="list-style-type: none"> Very low income households Low income Households Persons with a disability Persons requiring protection from domestic violence or upheaval who are not in crisis and have suitable support arrangements in place Persons in recovery from alcohol or drug dependence who have completed an approved detoxification program Persons with a psychological disorder or mental illness who can sustain a community housing tenancy with suitable supports.
13 June 2019	10 Group Homes	As per 28 May 2019
19 July 2019	10 Group Homes	<ul style="list-style-type: none"> Very low income households Low income Households Persons with a disability <p>Specifically excludes people who are socially disadvantaged because of a diagnosed alcohol or drug dependence, psychological disorder or other similar disadvantages or who require protection because of domestic violence or upheaval.</p>

The question for Council to consider is whether the proposal before them satisfies the definition of a Permanent Group Home.

As set out in *Dooralong Residents Action Group Pty Limited v Wyong Shire Council [2011] NSWLEC 251* by Pain J and as relied on by Pepper J in *Blacktown City Council v Haddad [2012] NSWLEC 224*:

35 Regardless of how a proponent may describe the proposed development, the true question is how one characterises what is proposed. The Council's submission that it is sufficient to look at the consent to construe what was approved is incorrect. In response to the Council's submissions at par 55 below, if the proposed use cannot properly be described in the way the consent describes it then the consent is invalid. Courts go behind the description in the consent in order to assess what is the true characterisation of the purpose: see *Bentham v Kiama Municipal Council* (1986) 59 LGRA 94; *Woolworths Ltd v Pallas Newco Pty Ltd* [2004] NSWCA 422; (2004) 61 NSWLR 707 and *Sansom v Port Stephens Council* [2006] NSWLEC 475; (2006) 147 LGERA 203 at [15]. If the proposed use meets more than one description and one of those is a prohibited purpose within the zone, then the consent is invalid and it matters not what the use may also be characterised as: *Abret v Wingecarribee Shire Council* [2011] NSWCA 107; (2011) 180 LGERA 343. However, if severable, the other part of the use may be permissible with consent as an innominate use.

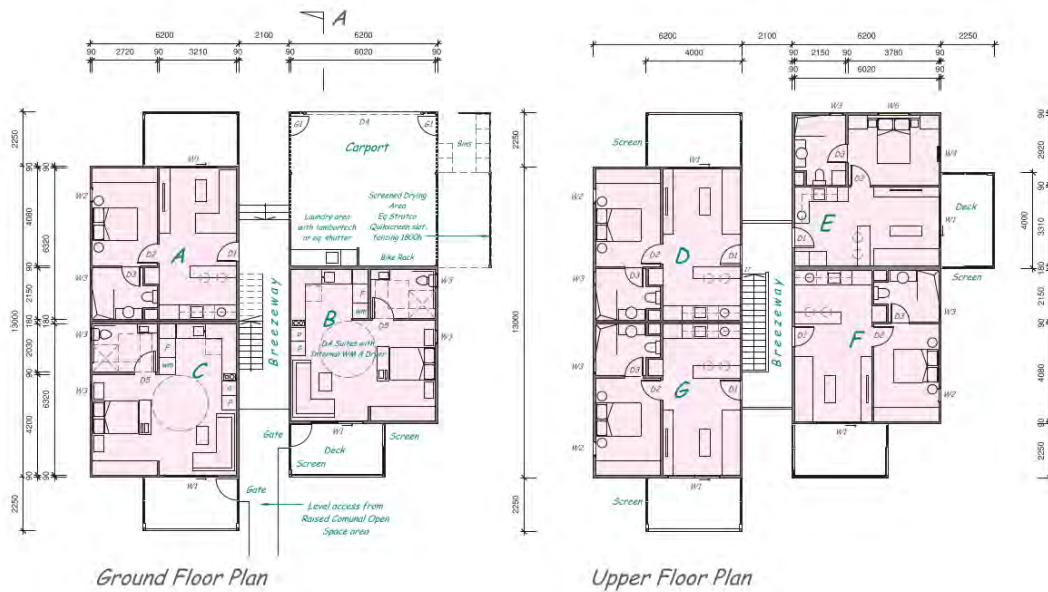
The application was originally lodged for 10 Group Homes. This changed to 72 Group Homes before the applicant advised in April 2019 that they were seeking their own legal advice as to the definition of a Group Home. While no legal advice has been provided with the application, it is noted that the applicant advised that this legal advice had been received by 23 May 2019 and after this time, the application reverted back to referring to the development as 10 Group Homes.

The applicant in their response of 13 June 2019, set out their response to meeting the definition of a Group Home (Refer to pages 1 - 3 of **Attachment 6**). The document acknowledged that there is a four part test, which appears to have been directly taken from *Blacktown City Council v Haddad* [2012] NSWLEC 224:

Having regard to the definition of "permanent group home" the following elements will need to be satisfied by each of the proposed Group Homes:

- (a) first, that the proposed development is for "a dwelling";*
- (b) second, that the dwelling is to be occupied "as a single household";*
- (c) third, that the dwelling is to provide "permanent household accommodation"; and*
- (d) fourth, that the dwelling is to provide permanent household accommodation for people "with a disability or people who are socially disadvantaged".*

The proposal is described as 10 Group Homes consisting of 7 - 8 self-contained suites with a mixture of 1 and 2 bedroom units with bathroom and open plan kitchen/dining/living room. Each unit has an individual external access. With the exception of the shared laundry in the shared carport, there are no other shared living spaces.



View from York Street



Rear View from Carparking area

(a) Is the proposed development "a dwelling"?

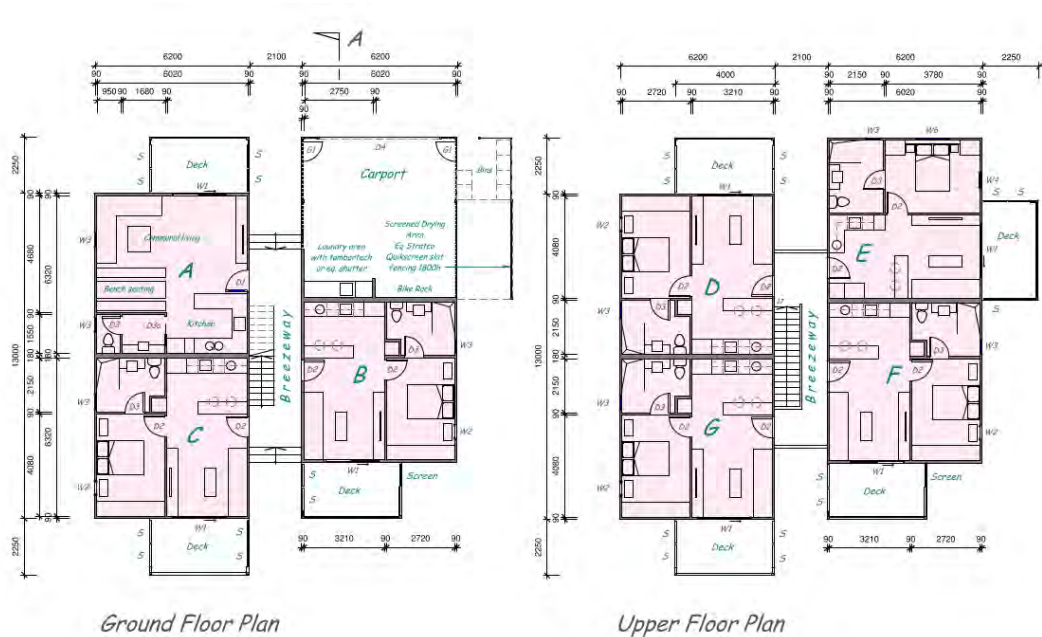
In response to the first test, the applicant provided the following response:

"Whether the development is for 'dwellings'

The term "dwelling" is defined in the Tweed LEP 2014 as a 'room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

The application seeks development approval for 2 Group homes and concept approval for 8 Group Homes. Each Group homes provides 7 - 8 separate suites that are tenanted separately. This is a similar situation to a rooming accommodation or boarding house, that individual bedrooms or suites are rented within one dwelling. In this case, each tenancy is part of the Group home that will work together as a single dwelling."

The applicant sought to tender amended plans in July 2019 which provided for an amended layout with one unit in each block converted to a shared communal kitchen, though the remaining units remained unchanged.



Though the applicant was advised that amended plans could not be accepted at this late stage, the characterisation of what constituted a single dwelling in *Blacktown City Council v Haddad [2012] NSWLEC 224* is relevant.

In *Blacktown City Council v Haddad [2012] NSWLEC 224*, Pepper J advised that:

‘41 Notwithstanding the force of the respondents’ submissions, in my opinion, the proposed development does not constitute a “dwelling” as that term is defined in the Standard Instrument and as it has been considered in both *Ashfield* and *James*.

Note: Reynolds JA in *South Sydney Municipal Council v James (1979) 35 LGRA 432* at 440, said:

‘In my opinion a building is used as a dwelling house within the meaning of cl. 23 if its use is such that it can fairly be said as a matter of fact that it is occupied in much the same way as it might be occupied by a family group in the ordinary way of life and that it is not a use and occupation more appropriately described in other categories of residential buildings.’

Pearlman J in *Ashfield Municipal Council v Australian College of Physical Education Ltd (1992) 76 LGRA 151* where the matter in dispute was whether or not residential accommodation offered by an educational institution for students constituted a boarding house rather than a dwelling, at 153, said:

‘When one considers the evidence that the premises are owned by the respondent...whose students apply to it for an agreement to occupy a numbered room, for rent, with services provided, and with a sharing of common facilities in each house, it seems inescapable that what is more appropriately described here is letting the houses as lodgings and not using them in the same way as a family group in the ordinary way of life.’

42 I have reached this conclusion while nevertheless accepting the respondents’ submission that the concept of a “dwelling” is mutable, and presently accommodates a changing conception of what comprises “a family group in the ordinary way of life”.

- 43 *I agree that the definition of a "dwelling" in the Standard Instrument expressly recognises that the members comprising a 'family group' need not be related to each other. A building accommodating, for example, friends living together in a share house arrangement, will readily constitute a "dwelling". It may even encompass persons living together who, while initially strangers, ultimately live together as a household unit under the rubric of flat-mates or house-mates. Modern 'families' reflect modern times and modern mores.*
- 44 *I also agree that bedrooms in modern dwellings often have ensuite bathrooms or toilets, their own televisions, telephones and other forms of entertainment and communication. This is no more than, as Biscoe J pithily described in Warlam Pty Ltd v Marrickville Council [2009] NSWLEC 23; (2009) 165 LGERA 184 (at [30]) "the evolution of the bedroom". These features do not mean, by themselves, that the proposed development does not constitute a "dwelling" as defined.'*

As set out above, a '**dwelling**' means:

'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

Based on the above, it is submitted that each self-contained unit which is constructed to be capable of being occupied or used as a separate domicile' is a dwelling in itself, and that a block consisting of 7-8 self contained units cannot be considered as a dwelling.

It would appear that the use and occupation would more appropriately be described as a residential flat building which provides for affordable housing.

(b) second, is the dwelling to be occupied "as a single household"?

In response to the second test, the applicant provided the following response:

"Whether the dwelling is to be occupied 'as a single household'

As indicated above, each Group Home will operate as a single household. The Group home provides shared facilities including the laundry facilities. Each Group home will be connected to power water utilities and the bills will be shared between all tenants. Each successful tenant will sign a contract that outlines their responsibilities which will include cleaning of the common areas. A Plan of Management has been prepared and outlines how each Group home will operate as a single dwelling."

In Blacktown City Council v Haddad [2012] NSWLEC 224, Pepper J advised that:

- 48 *Even if I am wrong in my conclusion that the proposed development does not constitute a "dwelling", in my opinion, the dwelling will fail to be "occupied by persons as a single household".*

- 49 The term "household" is not defined in the SEPP or the Standard Instrument. Ever mindful of the caution to be exercised in the invocation of dictionary definitions as an aid to statutory interpretation (*House of Peace v Bankstown City Council* [2000] NSWCA 44; (2000) 48 NSWLR 498 at [25]-[29] and *GrainCorp Operations* at [26]), the term "household" is defined to mean "the inhabitants of a house considered collectively; a group of people (esp. a family) living together as a unit" (*Oxford English Dictionary, on-line edition*) and "the people of a house collectively" (*Macquarie Dictionary, on-line edition*).
- 50 There is therefore, as the council submits, woven into the fabric of any "household", the necessary element of cohesion between the occupants of the dwelling. Or put another way, the necessity to live together as a unit. This is because a "household" is, in my opinion, more than a random collection of individuals conveniently located under one roof, living wholly separate lives with limited or no social interaction. This is not to say that living together as a unit cannot nevertheless occur between unrelated occupants of a home. Such arrangements are commonplace in share-households. And while the occupants will not engage with each other in the same way that a family would, they will nevertheless live as a unit, dividing household chores and bills, and typically engaging in a degree of social activity.
- 51 I agree with the council that the proposed development is highly unlikely to engender the dwelling to be occupied as "a single household". Of course, just as characterising what constitutes a "dwelling" is a matter of degree, so too is the identification of the criteria constituting "a single household". The present case is finely balanced, but when regard is had to the various features of the proposed development, the better characterisation is that the occupants of only each room, and not the dwelling, will live as a separate household.
- 52 As stated above, I am not troubled by the fact that each room has its own telephone, television or ensuite. These features are commonplace in many bedrooms today. I am also not troubled by the fact that the common areas are to be cleaned and maintained by contractors and not the occupants of the building. Again, many households engage the services of a cleaner, a gardener and other contract workers to assist with routine domestic duties. The definition of "permanent group home" in the Standard Instrument expressly contemplates the provision of such services by the inclusion of the words "with or without paid supervision or care" and "payment for board and lodging".
- 53 But I am concerned by four aspects of the development that have led me to conclude that the tenants will not occupy the dwelling "as a single household":
- (a) first, is the absence of any area for the occupants to recreate or congregate together in a communal living room. Although the Town Planning Report annexed to the CDC states that the tenants of individual bedrooms will share "the outdoor recreation, lounge, dining, laundry, kitchen and parking facilities" (emphasis added),

nowhere on the plans is a lounge area visible and the "lobby" areas are too small for indoor socialisation to occur. The absence of such an indoor space is exacerbated by the fact that 22 of the 29 rooms have their own separate and exclusive outdoor space by way of a screened balcony or small terrace. Furthermore, the large rooms (those measuring 19.89m² or more) clearly envisage a lounge suite in the individual rooms (as is depicted on the plans). While it is not unusual for bedrooms to have access to confined outdoor areas (for example, terrace balconies), this feature, together with the absence of any genuine communal indoor area and the capacity of some rooms to have their own lounge suites, will undoubtedly have the effect of promoting the isolation of the individual occupants within the development and is inimical to the socialisation of the occupants with each other and, as a consequence, the tenants living together as a collective unit. The provision of an indoor area in which to socialise is, in my view, critical to the occupants living "as a single household". And for the reasons discussed below, I do not consider the kitchen and dining area to be adequate in this regard. Moreover, it is unlikely, in my view, that the communal outdoor area will be used for this purpose given the high proportion of individual private outdoor space;

- (b) second, and contrary to the description given in the Town Planning Report, each bedroom will have its own laundry by the provision of a "washing machine dryer combo". Although there is also a communal laundry, again, in my opinion, this is not suggestive of the occupants of the dwelling living as a single household. It can be reasonably inferred that most tenants will use their individual, and not the communal, laundry;
- (c) third, although the Town Planning Report states that "individual bedrooms cannot be used as separate dwellings as they do not have a kitchen", I am not sufficiently convinced that this will be the case. The plans clearly indicate that, unlike the communal kitchen, no built in cooking facilities exist in the individual rooms, only "tea making" facilities are provided. While tea making facilities fall well short of a kitchen (Warlam Pty Ltd v Marrickville Council [2009] NSWLEC 23; (2009) 165 LGERA 184 at [37]-[41]), the provision of a sink and drainage area plainly contemplates that some food preparation will occur in the rooms. Although what is encompassed by "tea making" is not spelt out in the plans, at the very least it must include an electrical socket, which can therefore accommodate a variety of electrical cooking and food preparation devices, including a microwave and/or a bar fridge. Accordingly, the fact that an oven and cooktop is not provided in individual rooms will not, in my view, prevent the tea making area from being used as a kitchen. The size of the communal kitchen is also problematic insofar as the plans depict only two ovens and cooktops and seating for a maximum of 12 persons at any one time. Given that the respondents estimate a maximum of 34 occupants, while not every occupant will wish to use the kitchen at the same time (or indeed at all on any given day), the small size of the kitchen is not, in my opinion, conducive to the

occupants functioning "as a single household" by cooking or sharing meals together. Thus, while I am willing to accept that the intention of the development is that regular meal preparation is not to be undertaken in individual rooms, this is unlikely to be achieved. As a consequence, another essential criterion of living "as a single household" is absent; and

(d) fourth, in my view "a single household" has, not dissimilar to the concept of a domicile, a degree of permanence about it. A household cannot operate cohesively as a unit if its members are transient and the time spent in the home is fleeting. As alluded to above, and as discussed further below, a minimum tenancy of three months is not indicative of persons occupying the dwelling "as a single household". It is more akin to an apartment or to a boarding house, the latter of which may, under the SEPP, be occupied by a number of separate households (see cl 47(1)).

54 *Therefore, even if the proposed development can be characterised as a "dwelling", its tenants will not, when taken as a whole, occupy it "as a single household" because, by reason of the features above, they will not live as a cohesive unit, but will instead live as discreet and individual households.*

Each unit has a kitchen (or kitchenette as the applicant refers to it), living/dining room area and a separate outdoor area. Only in the plans which the applicant attempted to submit in July 2019, was there any communal living space. However it would appear that, based on the above case, that this may still be insufficient for each block of 7-8 units to pass the test of being capable of being occupied as a single household.

The applicant has submitted that household bills will be shared, as will chores such as moving the bins to the collection area. Notwithstanding what would appear to be inherent difficulties in sharing bills where some households are characterised as 'low' income and others as 'very low' income, this is also considered by itself to be inadequate to enable each block of 7-8 units to be classified as a Group Home.

It is further noted that in contrast to the requirement outlined in *Blacktown City Council v Haddad [2012] NSWLEC 224* of:

'the necessity to live together as a unit. This is because a "household" is, in my opinion, more than a random collection of individuals conveniently located under one roof, living wholly separate lives with limited or no social interaction',

The applicant in their correspondence of 2 August 2019 (**Attachment 8**) advise that *'enforcing that individual tenants interact with people in other tenancies, they are unrelated tom is similar to a boarding house'.*

(c) third, is the dwelling to provide "permanent household accommodation"?

In response to the third test, the applicant provided the following response:

"Whether the dwellings will provide 'permanent household accommodation'

A minimum six month lease term is proposed for the residential tenancies within the development. This is included in the Plan of Management to govern the operation of the home(s) and secured through a condition attached to the approval."

In *Blacktown City Council v Haddad* [2012] NSWLEC 224, Pepper J advised at 58 that 'In my opinion, a minimum six months residential tenancy is required.'

As such there are no concerns raised with regard to the question of whether the accommodation is permanent.

(d) *fourth, is the dwelling to provide permanent household accommodation for people "with a disability or people who are socially disadvantaged"?*

In response to the third test, the applicant provided the following response:

"Whether the dwellings will provide 'permanent household accommodation' for people with a disability or who are socially disadvantaged"

The applicant confirms that eligibility for all of the proposed accommodation will be restricted to people with a disability or who are socially disadvantaged. State Environmental Planning Policy (Affordable Rental Housing) 2009 in Subclause 42(2) defines 'people with a disability' and 'socially disadvantaged' as follows:

- (a) *'a reference to people with a disability is a reference to people of any age who, as a result of having an intellectual, psychiatric, sensory, physical or similar impairment, or a combination of such impairments, either permanently or for an extended period, have substantially limited opportunities to enjoy full and active lives, and*
- (b) *a reference to people who are socially disadvantaged is a reference to:*
 - (i) *people who are disadvantaged because of their alcohol or drug dependence, extreme poverty, psychological disorder or other similar disadvantage, or*
 - (ii) *people who require protection because of domestic violence or upheaval.*

In order to ensure compliance with the above, all tenants considered for housing within the Group Homes at 26 George St will be required to applied for housing through the operator or be an approved applicant on the NSW housing Pathways waiting list.

The successful applicants will be required to comply with at least one of the following eligibility criteria:

- *Person or household with a 'very low' or 'low' income [NB: The applicant considers that people who are socially disadvantaged because of*

'extreme poverty', fall within the 'very low' and 'low' income brackets (those earning less than 80% of the NSW or Sydney median income, depending on where they live¹). Tenants who wish to apply for housing under this criterion would need to provide written evidence of their income. Households within the moderate income brackets will not be eligible];

- *Person or household with a disability, whether physical, intellectual or mental;*
- *Person or household requiring protection from domestic violence or upheaval, who are not in crisis and have suitable support arrangements in place;*
- *Person or household in recovery from alcohol or drug dependence, who have completed an approved detoxification program;*
- *People or households living with a psychological disorder or mental illness, who can sustain a community housing tenancy with suitable supports.*

*These eligibility criteria are included within the Plan of Management and will apply to the development over its lifetime (beyond the initial 10-year period with NCCH), see **Enclosure 2**. The Plan of Management can be secured as a condition of the approval.*

There is not housing available at prices that are sustainably affordable for people earning less than 80% of the median income for the NSW (being the low income threshold).

People who qualify for the NSW Housing Pathways are unable to afford market rental prices. The criteria for this waitlist is people that earn less than \$625 gross weekly income for a single adult, which is within the threshold of low income. These people are disadvantaged due to their limited income, they are unable to afford market rents and are at risk of homelessness. This can be reasonably characterised as extreme poverty."

However, on 19 July 2019, the applicant advised that:

'North Coast Community primarily house people on a low income so including people suffering drug dependence is of not (sic) real benefit to them. The change are as follows:

'In approving residents to occupy the Group homes the Operator will ensure that all Tenants are people with a disability or who are socially disadvantaged by being in extreme poverty. This will be achieved by requiring that all Tenants comply with at least one of the following eligibility criteria;

- *Person or household with a 'very low' or 'low' income.*
- *Person or household with a disability whether physical, intellectual or mental.*

For the avoidance of doubt it is not intended that the proposal will provide accommodation for people who are socially disadvantaged because of a diagnosed alcohol or drug dependence, psychological

disorder or other similar disadvantages or who require protection because of domestic violence or upheaval.'

When *Blacktown City Council v Haddad [2012] NSWLEC 224* was heard on 28 September 2012, the SEPP (ARH) 2009 definition of Permanent Group Home was as per the TLEP 2014 current definition and there was no further clarification as to 'people with a disability' or 'people who are socially disadvantaged'.

However the following points from the judgement are relevant:

- It is sufficient for the purposes of the definition of "permanent group home" that the accommodation is provided either to people with a disability or to those persons who are "socially disadvantaged";
- The grim reality of those who struggle to survive on low or even moderate incomes is that they are typically socially disadvantaged, lacking access to amenities that the more affluent in society too often take for granted, such as private transport, tertiary education, or safe and permanent accommodation. Indeed, the very SEPP governing this dispute is squarely directed to, as its title makes tolerably clear, the provision of affordable housing; and
- Given the stated mechanism in the Plan of Management of ensuring that only very low, low and moderate income households will be accepted as tenants in the proposed development, Pepper J found that the development would be used to provide accommodation to people who are "socially disadvantaged".

On 5 October 2012, following the judgment, the SEPP was amended to clarify what is intended by 'socially disadvantaged':

- '(i) people who are disadvantaged because of their alcohol or drug dependence, extreme poverty, psychological disorder or other similar disadvantage, or*
- (ii) people who require protection because of domestic violence or upheaval.'*

From the information submitted by the applicant, it would appear that the intent of the Group Homes will be more focussed on accommodating persons who would fall into the category of 'extreme poverty' with other classes of socially disadvantaged persons now excluded.

Extreme poverty is not defined. The applicant has submitted that 'low income' and 'very low income' households would be eligible as persons who are disadvantaged because of extreme poverty.

The SEPP states that '*household is taken to be a very low income household, low income household or moderate income household if the household:*

- (a) has a gross income that is less than 120 per cent of the median household income for the time being for the Sydney Statistical Division (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or*
- (b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.'*

However it does not distinguish 'very low' and 'low' incomes from moderate incomes.

NSW Family and Community Services states that people described as being on a 'very low' income are those earning less than 50% of the NSW or Sydney median income, depending on where they live and people earning more than 50% but less than 80% of the NSW or Sydney median income are described as earning a 'low' income.

The 2011 ABS Census data found that the median income in areas of NSW outside of Sydney is \$1,233 (\$64,116 per annum). These figures are updated each year.

The Department of Planning were contacted in the assessment of this application for some advice as to the interpretation of 'extreme poverty' but they were not in a position to advise.

It is therefore a matter for Council to determine whether they are satisfied that 'low' and 'very low' income households meet the definition of extreme poverty.

Conclusion of test

Based on the above test, it is not acceptable that the proposal satisfied the definition of 10 Group Homes, with each unit capable of being used as a separate dwelling.

The question then arises as to whether each unit (where there is 72 units proposed) can be considered to be Group Homes in themselves?

The initial advice to the applicant was that the development appeared to be 72 Group Homes. However it should be acknowledged that this was in the context of a RFI where there was insufficient information available to assess the application. The applicant was also requested at this time to provide information on the management and tenure of the development.

It is noted that the applicant changed the description to 72 Group Homes, but following their own legal advice (which has not been submitted) has reverted back to 10 Group Homes. No justification for same has been provided.

If Council are to consider the current application, or a subsequent application on the basis of being 72 Group Homes, they are advised to seek legal advice as to whether a development of up to 72 units can be considered as individual Group Homes.

The following is noted:

- Each unit has just 1-2 bedrooms and it is questionable as to whether this is the 'intent' of a Group Home;
- While a Group Home is a form of affordable housing, the provision of affordable housing does not necessarily imply that a development is best described as a 'Group Home';
- As referenced above Reynolds JA in *South Sydney Municipal Council v James* (1979) 35 LGRA 432 at 440, referred to a '*use and occupation more appropriately described in other categories of residential buildings.*' Council must consider if each unit could best be classified as a 'Group Home', or simply

- affordable rental housing in a residential flat building or manor housing development; and
- The applicant in their letter of 2 August clearly stated that the land use definition does not fit the NCCH's model for providing community housing.

Clause 1.2 – Aims of the Plan

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

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

It is considered that the development of the site for a legitimate Group Home would be consistent with the aims of the plans.

The site is flood affected, but this can be resolved with earthworks such that the development can be accommodated above the habitable flood level and that there will be no displacement of flooding outside the site.

Clause 2.3 – Zone objectives and Land use table

Clause 2.3(2) requires the consent authority to have regard to the objectives of a zone when determining a development application.

The proposal is located on a site which is zoned R2 Low Density Residential and RU2 Rural Landscape. In Zone R2 and Zone RU2, Permanent Group Homes are permitted with consent.

The objectives of the R2 Zone are:

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

The objectives of the RU2 Zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

The use of the site for a Group Home is permitted in these zones and is considered to be generally consistent with the objectives of the zone. Notwithstanding the density of development, it is considered that the concentration of development onto George Street and Martin Street and maintain the land to the east of the waterway will maintain the rural landscape character of the land.

Clause 4.3 - Height of Buildings

This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The maximum building height specified for the area zoned R2 is 9m (J) while the maximum building height for the area zoned RU2 is 10m (K).

The applicant has submitted plans (floor plans and perspective drawings) for 4 Group Home types, all two storey buildings containing either seven or eight units per Group Home, indicating that Stage 1 (only stage for which full approval is sought) will consist of Type 1 and 2. Stage 1 complies. Stages 2 and 3 would require separate future applications.

Clause 4.4 – Floor Space Ratio

The Floor Space Ratio (FSR) specified for the site zoned R2 (12.77% of site area) is 0.8:1. There is no FSR specified for the portion of the site zoned RU2 (87.23% of site area).

In Stage 1, a GFA of 564sqm is proposed on the area zoned R2 (3,639.45sqm) equating to a FSR of 0.15:1.

In Stage 2 (which is to be subject to a separate application) an additional 36 units are proposed, with 5 units wholly located within the R2 zone, and another 9 units partially located in this area. The applicant was requested to clarify the proposed GFA on R2 zoned land. While this detail has not been provided, from the plans, it

can be ascertained that this equates to approximately 303.12sqm of additional GFA in Zone R2, totalling 564sqm of GFA proposed on the area zoned R2.

With a total of 867.12sqm GFA in Zone R2, this would equate to a FSR of 0.24:1.

A total GFA of 3,199sqm is proposed on the overall site area zoned R2 and RU2 (2.85ha) equating to a FSR of 0.11:1.

Clause 5.10 - Heritage Conservation

The site does not contain a heritage item, is not located in a heritage conservation area or is it located in the vicinity of either. A review of Council's Aboriginal Cultural Heritage Mapping and Aboriginal Cultural Heritage Management mapping (predictive and confirmed locations) does not identify any constraints on or adjacent to the site.

In this regard the proposal is not considered to impact negatively on the provisions of this clause.

Clause 7.1 – Acid Sulfate Soils

While Stage 1 development is located wholly within the Class 5 area, the earthworks associated with Stages 1 and 2 are to be undertaken in this first stage of development (Phase 1 civil works involve earthworks, stormwater treatment and connection to infrastructure and will facilitate construction of Stage 1 and prepare the site for the construction of stage 2).

As the development involves excavation below 5m AHD, an assessment against Clause 7.1 is triggered. Council's Environmental Health (EH) Section have reviewed the application and advised that they are agreeable to an Acid Sulfate Soils Management Plan being approved prior to the issue of a construction certificate, in the event that a development is approved on the site.

Clause 7.2 - Earthworks

The proposal includes earthworks associated with flood management on the site. In accordance with this clause, Council is required to consider:

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

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

The application has been reviewed by Council's Development Engineering Unit and Stormwater Management Unit who are satisfied that the proposed earthworks meet the requirements of this Clause subject to the imposition of appropriate conditions on any consent issued.

Clause 7.3 – Flood Planning

In accordance with subclause 7.3(3):

'Development consent must not be granted to development on land at or below the flood planning level unless the consent authority is satisfied that the development:

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

The application has been reviewed by Council's Stormwater Engineering who provided advice on the proposal.

The site is located behind the East Murwillumbah levee, which provides protection from river flows up to approximately 1% AEP (1 in 100 year flood) level. However, once the river rises and closes the levee floodgates, local stormwater ponds at the low points behind the levee, including the subject site. The subject site is the major storage for trapped stormwater behind the levee. Therefore flood/storm water storage volume on the site is critical in avoiding increased flooding to neighbouring properties.

The following levels apply to the subject site (taken from the Tweed Valley Flood Study Update 2009):

Approximate Ground Level Range = 2m – 5m AHD

Design Flood Level = 4.8m AHD

Minimum Habitable Floor Level = 5.3m AHD

Probable maximum Flood Level = 9.3m AHD.

The proposal is classified as "Sensitive Development" under DCP-A3 Section A3.2.6 and therefore requires a high level evacuation route to land above Probable Maximum Flood (PMF) refuge subject to the recommendations of a Flood Response Assessment Plan (FRAP). A high level evacuation route is available via York Street. Provided the internal site roads/accesses are filled to above 4.8m AHD, the site can achieve a suitable evacuation route.

Group homes, by their nature, are likely to house vulnerable residents, some of which may require additional assistance to evacuate in a flood event. The initial FRAP submitted with the application addressed Stages 1 and 2 of the development only. The plan was also deficient with regard to the key information specified in Section A3.2.6 of DCP – A3, specifically in relation to reasonable assumptions as to the nature and needs of future occupants and the nomination of evacuation as the Flood Risk Management Approach for the development.

DCP - A3 generally requires any new residential land to be filled to the design flood level (as a minimum, for the entire building footprint). The subject proposal includes a number of units that are outside of the fill pad and structurally elevated above flood levels. As a minimum, to comply with DCP-A3 evacuation clauses, all units must have pedestrian access to the evacuation route above the Design Flood Level (DFL) of 4.8m AHD. The proposed dwellings are connected to the filled area, however an issue was raised with regard to access to Unit 3 (Stage 2) being above the DFL.

Considering the limitations on filling of the site, the connection to filled land, the likely low velocity of flood waters, and previous approvals on the site, Council's Stormwater Management Unit advised that a concession here is considered justified and there are no objections to the elevated buildings from a flooding perspective.

Based on the above, the applicant was requested to submit FI in relation to an updated FRAP which addresses the deficiencies in the plan submitted (unreasonable assumptions as to the nature and needs of future occupants and deferral of essential matters to a future 'body corporate') and confirmation that all units would have pedestrian access to the evacuation route above design flood level (4.8m AHD).

In response, the applicant has submitted an amended FRAP. The revised FRAP suggests the residents are not intended to be of a vulnerable demographic (as might typical be expected in group homes). It is considered that revised FRAP is a sound assessment of flood risk issues at the site and approaches to managing/mitigating these risks, subject to these assumptions.

However, an updated FRAP which addressed the target population is still outstanding.

Clause 7.4 - Floodplain risk management

This clause applies to:

- (a) *land between the flood planning level and the level of the probable maximum flood, and*
- (b) *land at or below the flood planning level,*

but does not apply to land subject to the discharge of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.

As set out in subclause 7.4(3):

Development consent must not be granted to development for the following purposes on land to which this clause applies unless the consent authority is satisfied that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land:

- (a) caravan parks,*
- (b) correctional centres,*
- (c) emergency services facilities,*
- (d) group homes,*
- (e) hospitals,*
- (f) residential accommodation (except for dwelling houses, secondary dwellings or dual occupancies) on land in Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone R5 Large Lot Residential,*
- (g) residential care facilities,*
- (h) tourist and visitor accommodation.*

Refer to the assessment for Clause 7.3.

Clause 7.6 - Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters. This clause outlines that consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

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

When the river is in flood, the floodgates are closed and the levee acts as a dam. In this scenario all stormwater falling in the levee catchment is stored on the subject site. Therefore, available storage volume on site is critical in ensuring that the proposal does not increase the frequency and magnitude of flooding on neighbouring properties behind the levee. It is acknowledged that this is a key constraint to the development of the site.

The engineering documents (including the Storm Water Management Plan) addressed only Stage 1 and 2 of the development, with no details provided for Stage 3.

Council's Stormwater Management Unit has advised that cumulative development scenarios incorporating importation of fill were investigated in the recent Murwillumbah CBD Levee and Drainage Study (Section 6.5.1 of this report has reference). The study suggested that increases in flood levels up to approximately

0.2m could be experienced if a footprint similar to the proposed development were filled (with imported fill). This is echoed in almost all of the public submissions made on the DA during its exhibition period.

The applicant has submitted a Storm Water Management Plan (SWMP) that includes calculations for pre/post development storage volume which demonstrates that the earthworks can be balanced so that no loss of storage will occur. This is achieved by balancing the proposed fill with cut on the adjacent side of the lot/drain. If this is done as outlined, the neighbouring properties will not be adversely affected. However, it falls to Council to ensure the development complies with this requirement. To ensure this, the applicant was requested to confirm that there was to be no fill imported to the site, with this to be enforced by way of a condition on any consent issue.

The subject site currently accommodates an open drain running north to south across the site from George Street to Reynolds Street. The open drain is classified as a "Natural Waterway" and is mapped as a first order stream on Council's GIS system. DCP-A5 generally promotes the retention of natural waterways. However, the open drain is significantly degraded, with little vegetation other than grass. (Refer to the assessment on Flora and Fauna). The applicant is proposing to realign this drain to allow for filling of the development pads, while managing stormwater on the site.

Stormwater quality treatment is proposed via bio-retention basin and tree-pod located in the carpark of the proposed development. MUSIC modelling has been utilised to size the basin and verify the efficacy of the treatment train. Whilst the MUSIC files have not been provided, Council's Stormwater Management Unit has advised that the basin sizing is close to the deemed to comply requirement of D7 and that the proposed treatment train is acceptable.

The applicant proposes onsite detention to mitigate peak flow rates from the development. Council's Stormwater Management Unit has advised that this is acceptable and can be formalised by conditions of consent and further assessed at section 68/Construction Certificate Stage.

Based on the above, the applicant was requested to submit Further Information in relation to the submission of revised engineering details which included stage 3 or alternatively amending the concept plan to include only stages 1 and 2. The applicant was also advised that while the SWMP indicated that the proposed earthworks can be undertaken without loss of flood storage on the site confirmation was required that the proposed earthworks are wholly contained onsite and that no fill is to be imported from elsewhere.

In response, the applicant submitted updated engineering documents which included Stage 3.

In relation to the proposed filling, the applicant has clarified that some fill is proposed to be imported to site but that this is to be placed above the DFL and therefore would not consume local flood storage.

The applicant has adopted RL 4.8m AHD as the upper ceiling of the local flood storage, based on the on this being the regional flooding DFL. Council's

Stormwater Management Unit has advised that the adopted level of RL 4.8m AHD is considered appropriate considering the following:

- the levee crest is approximately RL 5.03m AHD adjacent to the site,
- only long duration events have the volume to completely fill the local storage,
- it is unlikely that the floodgates (i.e. zero outflow) will be closed for the duration of long duration events, and
- it is highly unlikely that riverine flooding would reach the levee crest at the same time as the local storage level.

It is also advised that the proposed earthworks and minor filling can be performed without adverse impact on local flooding. Any consent issued is to be subject to conditions requiring verification that the volume of local flood storage is maintained.

Clause 7.10 - Essential Services

This clause requires development to connect to essential services. All essential services are available to service the proposed dwelling.

Whilst all of the information requested by Council's Water and Wastewater Unit has not provided, they have advised that sufficient has been provided to enable the outstanding information to be addressed through conditions of consent.

North Coast Regional Plan 2036 (NCRP)

The North Coast Regional Plan 2036 is a 20-year blueprint for the future of the North Coast which sets out the NSW Government's vision for the North Coast as the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities.

To achieve this vision the Government has set four goals for the region:

- The most stunning environment in NSW
- A thriving, interconnected economy
- Vibrant and engaged communities
- Great housing choice and lifestyle options.

The plan acknowledges that housing that meets the needs of residents on a range of incomes will be important in addressing affordable and social housing to help reduce social disadvantage and provide shelter.

The directions and actions of the plan include the following:

Direction	Action
Deliver greater housing supply	<ul style="list-style-type: none"> • Deliver an appropriate supply of residential land within local growth management strategies and local plans to meet the region's projected housing needs. • Facilitate housing and accommodation options for temporary residents by:

Direction	Action
	<ul style="list-style-type: none"> ○ preparing planning guidelines for seasonal and itinerant workers accommodation to inform the location and design of future facilities; and ○ working with councils to consider opportunities to permit such facilities through local environmental plans. ● Monitor the supply of residential land and housing through the North Coast Housing and Land Monitor.
Increase housing diversity and choice	<ul style="list-style-type: none"> ● Encourage housing diversity by delivering 40 per cent of new housing in the form of dual occupancies, apartments, townhouses, villas or dwellings on lots less than 400 square metres, by 2036. ● Develop local growth management strategies to respond to changing housing needs, including household and demographic changes, and support initiatives to increase ageing in place.
Deliver well-planned rural residential housing areas	<ul style="list-style-type: none"> ● Facilitate the delivery of well-planned rural residential housing areas by: <ul style="list-style-type: none"> ○ identifying new rural residential areas in a local growth management strategy or rural residential land release strategy endorsed by the Department of Planning and Environment; and ○ ensure that such proposals are consistent with the Settlement Planning Guidelines: Mid and Far North Coast Regional Strategies (2007) or land release criteria (once finalised). ● Enable sustainable use of the region's sensitive coastal strip by ensuring new rural residential areas are located outside the coastal strip, unless already identified in a local growth management strategy or rural residential land release strategy endorsed by the Department of Planning and Environment.
Deliver more opportunities for affordable housing	<ul style="list-style-type: none"> ● Deliver more opportunities for affordable housing by incorporating policies and tools into local growth management strategies and local planning controls that will enable a greater variety of housing types and incentivise private investment in affordable housing. ● Prepare guidelines for local housing strategies that will provide guidance on planning for local affordable housing needs.

The development of the site for Group Homes, which is a permissible use on the site, would be consistent with the directions of the plan. However as set out earlier in this report, it is questionable as to whether the proposal meets the definition of a Permanent Group Home.

State Environmental Planning Policies

SEPP (Affordable Rental Housing) 2009

In accordance with Clause 43 (Development in prescribed zones)

- (1) *Development for the purpose of a permanent group home or a transitional group home on land in a prescribed zone may be carried out:*
 - (a) *without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or*
 - (b) *with consent in any other case.*
- (2) *Division 1 of Part 2 of State Environmental Planning Policy (Infrastructure) 2007 applies in respect of development carried out by or on behalf of a public authority under subclause (1) and, in the application of that Division, any reference in that Division to that Policy is taken to be a reference to this clause.*

R2 is a nominated prescribed zone with Zone RU2 also prescribed being 'any other zone in which development for the purpose of dwellings, dwelling houses or multi dwelling housing may be carried out with or without consent under an environmental planning instrument.'

As such a permanent group home can be carried out with consent.

In accordance with Clause 46 (Determination of development applications)

- (1) *A consent authority must not:*
 - (a) *refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or*
 - (b) *impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home.*
- (2) *This clause applies to development for the purpose of a group home that is permissible with consent under this or any other environmental planning instrument.*

The applicant has submitted an assessment of the community need for a Group Home (refer to **Attachment 8**).

Submitted with the original application, this is framed around the development providing social and affordable housing:

"The North Coast Community Housing Company (NCCH) has been in operation for over 30 years as the major community housing provider on the North Coast of NSW. The organisation is a Tier 1 registered housing provider under the National Regulatory System for Community Housing. It is a company (limited by guarantee) registered under the Corporations Act 2001 and is a registered not for profit organisation.

NCCH have an agreement with RGBAH Holdings Pty Ltd to lease the 8 proposed blocks of units at 26 George Street, Murwillumbah, on a 5 plus 5 year basis. NCCH will use the units for social and affordable housing tenants.

NCCH navigate daily the Department of Family and Community Services, social housing waitlist (HOMES) in the allocation of housing within our local area.

Within the immediate area proposed for development, the Murwillumbah allocation zone is fifth highest in demand with 156 people requesting Murwillumbah placement as their first priority, and Tweed Heads being the most popular placement. Of the 156 total, 10% of those are classified as Priority, and the need for Elderly persons (HEP - 80 yrs, 55yrs Aboriginal elderly) sits at 3%.

A total of 77% of the Murwillumbah waitlist require 1 or 2 bedroom accommodation, with only 1 individual requiring a 5 bedroom - confirming the local need for smaller 1-2 bedroom dwellings.

This development will assist greatly in providing much needed social and affordable housing in Murwillumbah."

It should be noted that this recommendation for refusal is not based on insufficient need for social and affordable housing, or indeed for Group Homes.

Rather concern is raised as to whether the development as proposed can legitimately be considered to be a Permanent Group Home.

Council's Community Development Unit has provided the following advice:

- *Australia Council of Social Services defines poverty as:*

'people are in poverty when their household's disposable (after-tax) income falls below a level considered inadequate to achieve an acceptable standard of living. Rather than measure living standards directly (for example, by asking people whether they have to go without socially perceived necessities), we set a benchmark for the adequacy of household incomes by comparing them with middle or median incomes and calculate how many people fall below a benchmark set at one-half of the median'.

This benchmark is widely used in national and international poverty studies and is referred to as the 'international poverty line'.

- *\$1,004 - Median weekly household income – Murwillumbah and District.*
- *24.7% (937 households) of Murwillumbah and District are low income households (earning less than \$650 pw).*
- *Median Weekly Rental
\$280 – Murwillumbah
\$340 – Tweed*
- *15.8% (644 households) in housing distress in Murwillumbah and District*

(Housing stress refers to households in the lowest 40% of incomes who are paying more than 30% of their usual gross weekly income on housing costs)

- *45.8% (485 persons) are in rental stress in Murwillumbah and District*
- *Across Tweed households are paying between \$380 - \$940 for other living expenses in addition to housing costs.*

It is therefore recognised that there is a demand for Group Homes that would accommodate those social disadvantaged by poverty. It is submitted that any refusal of consent by Council cannot rely on a lack of demand for a Group Home where Council determines that 'low' and 'very low' incomes households are eligible categories.

SEPP (Coastal Management) 2018

The subject site is mapped as being within the Coastal Environment Area.

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

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

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

- (3) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

It is considered that the proposal, subject to meeting the definition of a Group Home, would satisfy the requirement of this clause.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with the application.

SEPP No. 55 - Remediation of Land

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

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose.

The application is supported by a report - *Contaminated Land Assessment, Border Tech, November 2005 (BT15143)*. This Report was submitted and previously assessed by Council's EH Section in the assessment of DA11/0292. In an assessment of the current application, the EH Officer advises that the report is generally in accordance with relevant NSW Environment Protection Authority contaminated land guidelines (*Consultants Reporting on Contaminated Sites 1997 and Sample Design Guidelines 1995*) and concludes that the site is suitable for residential use. Further Part 5.2.7 of the SEE indicates the site has not been subject to potentially contaminating activities since preparation of the report. On this basis no concerns are raised with regard to contamination.

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

The subject site is mapped as being affected by LEP Amendment 17 – Short term rental accommodation. This amendment does not have any significant impacts on the proposed development.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

While a Permanent Group Home does not fall under the categories of residential accommodation specified for this part, for the purposes of calculating the appropriate density, it is considered relevant to refer to the controls in this part, specifically the density controls for town houses.

It is acknowledged that town houses are not permissible in Zone RU2, and that Group homes are a different landuse, and as such the density controls serve as a useful guide only.

Control b in chapter 1 (Building types) specifies that in Zone 2(a) (equivalent to Zone R2 in the TLEP 2014), a lot size minimum of 1,350sqm is required:

- i *With dwellings at a density of no greater than 1 dwelling per 450sqm with a development lot area of 220sqm each.*
- ii *If the site is within 300m of a business zone then a density of 1 dwelling per 250sqm with a development lot area of 220sqm each.*

The southern corner of the site (Zone RU2) is located approximately 316m (as the crow flies) from Zone B3 Commercial core (Council offices). The R2 zone at its closest is approximately 425m from a business zone (Zone B5 – Business Development on Queen Street).

As town houses are not permitted on Zone RU2, but group homes are permitted in this zone with consent, it appears reasonable to allow the applicant to consider the total site area in the density calculations.

With a proposal for 72 units and a site area of 2.85ha, this equates to a density of 1 unit per 396sqm. In the initial RFI, the applicant was requested to submit revised proposal for a concept plan yielding no greater than 1 dwelling per 450sqm across the entire site, which would have the effect of reducing the development to 63 units.

The applicant chose not to amend the plans to reduce the density, instead they submitted the following argument in support of the 72 units:

- The development proposes a residential density of 1 dwelling per 396sqm of site area.
- While this is above the prescribed threshold in the DCP, the density objectives are met:
 - *Objective – To provide development capacity on larger lots within the residential areas*
 - *Applicant response – The subject site is a large lot in the centre of a residential area that has remained undeveloped. The applicant have taken the opportunity to develop the site and address issues such as flooding, flood conveyance. The development appropriately addressed these issues to ensure flood levels or flood conveyancing will not be impacted.*
 - *Objective – To retain the residential character in streets and suburbs*
 - *Applicant response – The development proposes a number of buildings of similar size and design to residential dwellings. The proposed group homes are setback from each other. Similar to adjoining properties. Each building with road frontage has direct access, via a separate driveway which is akin to standard residential dwellings. The development is in keeping with the surrounding residential uses and will retain the character of the area.*
 - *Objective – To create or retain quality residential and pedestrian friendly streetscapes.*

- *Applicant response – The development is located in an existing residential neighbourhoods. Currently the subject site represents a vacant parcel of land that fragments the residential neighbourhood, the proposed improves the visual connectivity of the suburb. The proposal complements the streetscape by proposing buildings that are of a similar size, scale and design to a residential dwelling. The development enhances the pedestrian experience of the area by construction of a new footpath.*
- *Objective - To provide an alternative form of medium density housing.*
 - *Applicant response - The development proposes an alternate form of medium density housing that is in high demand in Murwillumbah, see Social Impact Statement.*

It is considered that there is merit in the applicant's argument that the Group Homes blocks will present as large attached dual occupancies with the Gross Floor Area of the blocks in Stage 1 identified as 282sqm and the phototypes suggested for Stages 2 and 3 in the range of 282sqm – 368sqm; not dissimilar to the scale of a typical attached dual occupancy.

As above, as the density controls relates to town houses and can only be used as a guide. The site is constrained by flooding and as such, the developable area is confined to the western portion of the site, leaving the portion of the site to the east of the newly aligned drain free from development. Notwithstanding this, a comparison of the building footprints (block footprint) to the surrounding low density residential development indicates a similar development area and building separation. Refer to figure below.



Further the density of development in terms of the population increase is a factor to consider. The controls for town housing encourages a mix of dwelling sizes and diversity in the number of bedrooms. While there is no specified ratio, it would reasonably be expected that there would be a range of one to four bedroom units. In this application, all units are either one or two bedroom units (based on affordable housing demand) with a total provision of 98 bedrooms. It would not be unreasonable to expect that a compliant density of standard sized town houses (63 dwellings based on total site area) would provide for a higher population on the site.

On this basis, it is considered that the density of the development can be supported and would not result in a development that would be out of character with the low residential density of the area.

A2-Site Access and Parking Code

Access

The application proposed individual accesses from George Street for the Group Home blocks fronting York Street with a shared access to service the remainder of the blocks to the rear in Stage 2. A separate access is proposed from Martin Street

in Stage 2. Council's Traffic Engineer has reviewed the amended plans submitted in January 2019 and raised no issue with the proposed access.

Car Parking

Table 2a (Access and Parking Generation) does not nominate a parking rate for Group Homes but indicates that this is to be assessed on merits with access and parking facilities to be provided in accordance with AS2890.6. The application as initially submitted proposed 72 car parking spaces.

The application was referred to Council's Traffic Engineer for comment. Having reviewed the proposal, the Traffic Engineering Unit requested further information on how the parking assessment was developed with concern raised that 14 car parking spaces for 14 units in Stage 1 (some of which were 2 bedroom units) appeared to be inadequate with the expectation that being group homes there would be external service providers accessing the site.

The applicant was advised that the proposed car parking was inadequate, with no details on the calculations of the car parking demand, and no specific spaces allocated for visitors, support workers, health workers, etc, no provision for accessible spaces nor parking for service vehicles. The applicant was revised to submit FI on how the car parking assessment was undertaken and to make provision for sufficient car parking for visitors, support workers, health workers, etc; accessible car parking spaces and parking for service vehicles.

The applicant has responded that as there is no nominated rate for Group Homes, the assessment of demand has been based on merits. It is indicated that the rate of provision of 1 space per dwelling is in line with many residential development and that during the operational phase, car parking spaces would be allocated to a dwelling in accordance with demand. In the amended plans, provision was made for eight (8) additional spaces which the applicant advised would be identified on site and made available to visitors.

The applicant has not included a service bay submitting that the DCP does not require a service bay for multi-dwelling housing or residential flat buildings and that the likelihood of a service vehicle entering the development is low. It is submitted that the size of the units are such that a removal truck is unlikely to be required for moving in or out of the units and that parcel delivery vans can access the site in the absence of a separate service bay.

Assessment

While Table 2a (Access and Parking Generation) does not nominate a rate for Group Homes, the following rates may be used as a comparison:

Attached dwellings - 1 per each 1 bedroom unit, 1.5 per 2 bedroom unit, plus 1 space per 4 units for visitor parking.

Multi dwelling housing - 1 per each 1 bedroom unit, 1.5 per 2 bedroom unit, plus 1 space per 4 units for visitor parking.

Secondary dwelling – 1 space (regardless of number of bedrooms).

Whilst attached dwelling and multi dwelling housing require 1.5 spaces for 2 bedroom units, it is noted that secondary dwellings (deemed as affordable housing) require only 1 space, regardless as to whether the secondary dwelling provides for one or two bedrooms.

The proposed development consists of 46 one bed units and 26 two bed units. Based on the attached / multi dwelling housing rate this would generate a demand for 85 spaces for residents and 18 visitor spaces (103 spaces).

Based on the secondary dwelling rate, 72 spaces would be required for residents, noting that this make no allowance for visitors or support workers.

The applicant was advised on 6 March 2019 that while the application was for a Group Home development, that there was insufficient information provided to justify the reduced parking rates. The applicant was advised to submit FI in this regard or to provide additional parking.

As set out earlier in this report, the applicant proposed an additional 10 space on the site, but these were disconnected from the development requiring motorist to access the site by walking around George Street and York Street. The dislocation of such spaces away from the development would likely result in visitors using on-street parking closer to the development.

Given the affordable nature of the housing and the applicant's proposal that car parking would be allocated on a needs, this provision of car parking for residents is deemed to be acceptable.

On 14 June 2019, the applicant provided the following commentary:

"Tweed DCP, Section A2 Site access and parking code, does not nominate parking rate for Group Homes. Council have requested that the applicant apply the Multi-dwelling housing rate.

However, the provisions of the Tweed DCP are guidelines and are not statutory requirements in accordance with the Environmental Planning and Assessment Act 1979, para 4.42.

The Tweed DCP Section A2, Site access and parking code, does not nominate a parking rate for Group Homes. Further, Table 2: Numerical Provisions of Access Facilities & Parking Spaces (2a - Access & Parking Generation - Residential Accommodation Group) of Section A2 is clear (Item A5) that access and parking for Group Homes should be assessed on their merits. Accordingly, there is no requirement for the development to provide parking which is commensurate with multi-dwelling housing.

The development proposes 10 Group Homes comprising 46 x 1 bed suites and 26 x 2 bed suites. Parking is provided at a rate of 7.2 per Group Home and 1 per suite and 8 shared visitor spaces.

We request that Council considers that the development is for Group Homes and houses people who have a low or very low income. This makes it very

unlikely that tenants of either the 1 or 2 bed suites will have more than 1 car and therefore the multi-dwelling housing requirements are not applicable. Furthermore, the Affordable Rental Housing SEPP (Part 45 and Schedule 2) indicates that a minimum of 2 off-street car parking spaces would be acceptable for a complying Group Home development of up to 10 bedrooms. In this case, the applicant is proposing 10 Group Homes each with less than 10 bedrooms at a rate of 7.2 spaces per Group home plus visitor spaces."

It is acknowledged that the Development Control Plans do not carry the same weight as an Environmental planning Instrument and are to provide guidance only. As such the applicant has been given multiple opportunities to justify the proposed car parking provision.

The applicant proposes that the Group Homes will be made available to 'low' and 'very low' households. As such it is not unreasonable to assume that each of the 72 units will require access to a car parking space, leaving a total of eight spaces to be shared by all visitors, support workers, etc accessing the 72 units. This equates to 1 space per 9 units.

The applicant refers to the car parking standards in SEPP (ARH) as a minimum of two off-street spaces per Group Home up to 10 bedrooms. As noted by the applicant, this is in relation to complying development only. However it should further be noted that to be eligible as complying development.

A3 - Development of Flood Liable Land

An assessment on flooding is set out above in relation to the TLEP 2014.

A13 - Socio-Economic Impact Assessment

Section A13 – Socio Economic Impact Assessment of the Tweed DCP requires the preparation of a Socio-Economic Impact Assessment (SIA) for a development of 50 or more residential units. The applicant as originally submitted was accompanied by a Community Need Assessment (which addressed the need for social and affordable housing) but was lacking details on the social impact of the proposal or any details on the tenure, operation or management.

The applicant was requested to submit a SIA (in consultation with NCCH as the identified housing provider) addressing the following matters (as per TSC SIA Checklist):

- i. Further detailed information of housing, mix of clients and examples of best practice models of groups homes;
- ii. Further evidence of long term security of affordable housing;
- iii. Partnership approach and community networks to support future tenants;
- iv. Human/Community services/supports for future tenants;
- v. Access – Universal design evidence and social inclusion considerations;
- vi. Further analysis of the impacts in terms of magnitude, significance, duration, effect of group housing proposal.

The applicant was also requested to provide the following information:

- a) To submit, in association with NCCH, details of an operational plan of management for the development. This was to include details of the role of NCCH, intended support for tenants and details of proposed tenant management arrangements.
- b) The Community Need Statement submitted with the application states that NCCH has an agreement with the developer to lease eight proposed Group Homes on a 5 year plus 5 year basis (presumably Stage 1, 2 and part of Stage 3). The applicant was advised that security of tenancy for low-moderate income residents is critical and that Council had some concerns with the short term nature of this agreement given that the intent of Group Homes is for permanent accommodation of vulnerable groups of persons. The applicant was requested to confirm that arrangements will be made for the continued use of the units after this 10 year period with NCCH or another Registered Housing Provider.
- c) Confirmation of what management arrangements are in place for the remainder of Group Homes in Stage 3.

The submission of the SIA triggered an understanding of the applicant's misconception that the proposal would be used simply as a form of affordable housing. The SIA failed to reference Group Homes, and did not address the social impacts associated with same or the challenges that might be faced by residents in such a development.

In terms of increasing or decreasing the supply and demand of human services facilities, the SIA indicates that there will be no changes to the supply of or demand for community support/welfare services, health services and special services for high need/disadvantaged groups.

The applicant has since submitted that tenants will be restricted to low and very low income households and persons with a disability, excluding all other categories of socially disadvantaged persons identified in SEPP (ARH) definition of socially disadvantaged.

An updated SIA based on the applicant's latest nominated categories of persons to be accommodated is still outstanding.

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

There is no planning agreement or draft planning agreement relating to this site.

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

There are no matters of relevance in the Environmental Planning and Assessment Regulation.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The subject site is not impacted by this plan.

Coastal Zone Management Plan for the Tweed Coast Estuaries 2013

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is not located in close proximity to any of these creeks and as such this management plan does not apply to the subject application.

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

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

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

Flooding

As set out earlier, it is considered that flooding on the site can be addressed, though an updated FRAP which addresses the eligibility criteria of tenants is still outstanding.

Biodiversity

Council's Sustainability and Environment (S&E) Unit have reviewed the application and provided the following advice on the existing site conditions:

- The site is currently traversed by a degraded waterway channel – 1st order waterway.
- The *Tweed Vegetation Management Strategy 2004* (BRS 2009 Update) classifies vegetation across the site as '*highly modified/disturbed*'. A narrow unit of woody vegetation occurs along the length of the central waterway.

This community is dominated by the environmental weed species *Erythrina crista-galli* (Cockspur Coral Tree) that provides a dense low canopy restricting recruitment of local native species and development of a more diverse structural vegetation formation.

Low densities of native species recorded as saplings along the length of the watercourse include more common riparian pioneer species such as *Mallotus philippensis* and *Guioa semiglauca*. Sedge species such as *Eleocharis acuta*

(Common Spike Rush), *Juncus polyanthemus* (Rush) and *Persicaria* spp remain sparsely interspersed within the understory.

- One flora species listed as Vulnerable under the *Biodiversity Conservation Act 2016* was recorded on site - *Macadamia tetraphylla*, possibly grafted with *Macadamia integrifolia*. Due to the isolated nature of the plant and the close proximity to a boundary fence of an existing dwelling it is believed that this plant has been cultivated and is not of natural occurrence;
- The value of habitat remaining within study area is considered low due to the narrow and isolated nature of vegetation and lack of complex structural/floristic diversity. Remaining habitat is:
 - Dominated by a suite of environmental weed species;
 - Largely absent of fruiting and flowering native trees/shrubs and hollow bearing trees; and
 - Lacking ground habitat such as fallen logs and leaf litter.
- The low habitat value is evidenced by the low faunal diversity recorded during S&E inspection and ecological survey undertaken by Boyds Bay Environmental Services (2009) (15 common species across the allotment, no threatened species recorded).

High nutrient runoff from urban development, regular slashing and dispersal of environmental weeds from neighboring properties contribute to maintaining low biodiversity values on site. Notwithstanding, more mobile fauna may use habitat on site as:

- A 'stepping stone' to access other higher quality habitats in the locality;
- Temporary/seasonal refuge particularly for smaller avian passerines such as Red-browed Finch (*Neochmia temporalis*), Double-barred Finch (*Taeniopygia bichenovii*), Grey Fantail (*Rhipidura albiscapa*); and
- Occasional opportunistic foraging resource.
- The watercourse and surrounding pasture/floodplain may offer a limited foraging and refuge resource for more urban tolerant reptiles (Bearded Dragon (*Pogona barbata*)), wader/ground dwelling birds (Royal Spoonbill (*Platalea regia*), Buff-banded Rail (*Gallirallus philippensis*)), amphibians (*Litoria fallax*) and common small mammals (*Rattus sp.*).

Council's Sustainability and Environment (S&E) Unit have provided the following advice in terms of the potential impact of development:

- An information request was issued on the 19 September 2018 requesting detailed design of the proposed open re-aligned channel to the east of the development site. Reference was made to a number of contemporary best practice technical manuals and guidelines to inform the design process.
- In response the applicant prepared a draft landscape and typical channel design plan. Feedback based on the draft plans was provided back to the consultant from the S&E Unit and the NSW Natural Resources Access Regulator (NRAR).
- Following review of the final submitted plans, it would appear as though recommendations have been adopted and incorporated into the watercourse realignment design drawings (submitted 17 January 2019 Appendix A – Figure 2), engineering design and conceptual landscape plans.

On this basis S&E are satisfied that the proposed realignment of the waterway would not result in adverse environmental impact and that ecological conditions on the subject site may be improved and enhanced as a result of proposed landscape treatment and the provision of an appropriate buffer zone.

- It is noted that Stage 1 earthworks will involve partial construction of the waterway channel with the full length of the alignment completed at Stage 3. The engineering plans were modified to ensure an appropriate transition into the existing channel post Stage 1 construction.
- General terms of approval (GTA) were issued by NRAR on the 19 February 2019 referencing the statement of landscape intent and riparian design drawings dated January 2019.

The S&E Unit support the proposed Group Home development where conditions of consent are imposed to ensure appropriate design and treatment of the eastern waterway channel.

Car parking

This is addressed earlier in this report. It is considered that the applicant has not submitted sufficient information to justify such low level of visitor parking.

Social Impacts

As set out earlier, the applicant has most recently amended the proposal to restrict tenant eligibility to low and very low income households and persons with a disability (excluding all other categories of socially disadvantaged persons identified in SEPP (ARH) definition of socially disadvantaged such as people who are disadvantaged because of their alcohol or drug dependence, psychological disorder or other similar disadvantage, or people who require protection because of domestic violence or upheaval).

An updated SIA based on the applicant's latest nominated categories of persons to be accommodated is still outstanding.

(c) Suitability of the site for the development

Context and setting

Notwithstanding the flood prone nature of the land, which can be addressed through engineering solutions, it is considered that the site is a suitable site for the establishment of a Group Home development. The site is located on the edge of the urban area, with Stage 1 development approximately 800m walking distance from Murwillumbah Street. Murwillumbah District Hospital is approximately 350m from the site, with Murwillumbah East Primary School directly to the north of the site. The site adjoins Martin Watt Park to the south.

The site is surrounded by a mix of single and two story dwellings and dual occupancies on R2 zoned land with linear development on Charles Street forming an urban edge. It is considered that the physical form of the development, which has the appearance of large dual occupancy type development is not inconsistent with the pattern of development in the area.

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

As the application is for integrated development (controlled activity within 40m of a waterway) the required advertisement period was 30 days. The application was initially advertised from 18 July 2018 to 17 August 2018. However due to a typing error in the site notice and the notification letter which erroneously referred to the notification period expiring prematurely, the application was re-advertised from Wednesday 15 August to Friday 14 September 2018.

During this period, 52 submissions were received: Four in support of the proposal and 48 submissions objecting to the proposal. The main points raised are summarised below:

Flooding
<ul style="list-style-type: none"> The area is a flood zone and development of the area may/will divert floods and create new flood zones (eg in York Street, Charles Street);
<ul style="list-style-type: none"> The identification of RL 3.2m AHD as a measure for 'no adverse impact' is not sufficient to protect neighbouring properties;
<ul style="list-style-type: none"> The flooding and stormwater reports only address Stages 1 & 2;
<ul style="list-style-type: none"> No details of earthworks for Stage 3 have been provided;
<ul style="list-style-type: none"> During the March 2017 flood, the site acted as a storm surge containment. Flood modelling and projections need to consider real-life event of March 2017;
<ul style="list-style-type: none"> Existing flood issues on the site will not be addressed unless the existing pipes under George Street which discharge to Mayal Creek are lowered, the drain on site cleaned and flood gates installed at the entrance of Mayal Creek – consideration should be given to a pump as at Lavender Creek;
<ul style="list-style-type: none"> Notwithstanding filling and raising levels, future residents will be at risk of flooding;
<ul style="list-style-type: none"> One submission supports Stage 1 and 2 subject to filling being prohibited in the low lying stormwater floodwater as identified in Council's Tweed Valley Floodplain Risk Management Study and Plan;
<ul style="list-style-type: none"> Stage 3 will require filling of flood plain land and will result in neighbouring properties being severely impacted under smaller rain events;
<ul style="list-style-type: none"> Proposal is contrary to Council's policy not to allow development on Flood Plain areas;
<ul style="list-style-type: none"> Global warming and the associated increase in flood potential has not been considered;
<ul style="list-style-type: none"> The assessment uses the Australian Rainfall and Runoff Guidelines 1987 which is out of date and has been superseded by 2016 guidelines;
<ul style="list-style-type: none"> Questions if it is good planning policy to widen and realign an existing drainage channel to accommodate development of this scale encroaching onto rural zoned and flood prone land;
<ul style="list-style-type: none"> Inconsistencies in the Flood Emergency Strategy in terms of socio-economic profile and accessibility of future tenancies and questions raised with regard to future strata subdivision of the development;
<ul style="list-style-type: none"> Proposal is in conflict with Section A3 of Tweed DCP by relying on elevated platforms above land which will be below the flood design level –

<p>with the issue further exacerbated by the fact that the dwellings are for those who are socially disadvantaged;</p>
<ul style="list-style-type: none"> • Submission from University Centre for Rural Health on mental health impacts associated with flooding;
<p>Land Use Issues</p>
<ul style="list-style-type: none"> • Development should be restricted to the high ground and area of the site zoned for low density residential development;
<ul style="list-style-type: none"> • Development is not suitable for land zoned Rural Landscape RU2
<ul style="list-style-type: none"> • Suggestion that site would be more appropriate for accommodation for low income families thereby freeing up public housing for homeless persons or alternative a mix of private and affordable housing. Alternative suggestions to develop site as a playground, bmx track or botanical garden;
<ul style="list-style-type: none"> • The development is more appropriately described as a residential flat building having regard to the definition of Group Home and the number of dwellings in each 'Group Home' with residential flat buildings not permitted in Zone R2 or Zone RU2;
<ul style="list-style-type: none"> • The proposal represents an over development of the site with a density significantly in excess of 1 unit per 450sqm in Zone R2 as per Section A1 Tweed DCP;
<ul style="list-style-type: none"> • The density of development is contrary to the objectives for the RU2 zone;
<p>Traffic impacts</p>
<ul style="list-style-type: none"> • Connecting and surrounding roads cannot cope with associated increase in traffic;
<ul style="list-style-type: none"> • Potential traffic conflict issues resulting from proximity to Primary School (>350 students) and local park; <ul style="list-style-type: none"> ○ Safety of students cycling or walking to school ○ Existing demand for parking on York Street and potential impact on availability of on-street parking if development proceeds
<ul style="list-style-type: none"> • Limited access to site will result in traffic flow on Tumbulgum Road becoming congested;
<ul style="list-style-type: none"> • Insufficient car parking provided on site for residents, visitors, carers, medical/allied health professionals, support workers, etc. with resultant displacement of parking onto surrounding streets;
<ul style="list-style-type: none"> • No provision of traffic calming measures – eg speed humps to enforce 40Km/hr speed limit;
<ul style="list-style-type: none"> • Construction traffic will cause traffic and parking chaos on narrow, residential streets surrounding the site;
<ul style="list-style-type: none"> • Application should have been accompanied by a Traffic Impact Assessment, with particular regard to potential conflicts with Murwillumbah East Primary School;
<p>Social Impacts</p>
<ul style="list-style-type: none"> • No evidence of social benefits of residents living on high-density social housing - Prospective residents of the future development stand to be further disadvantages;
<ul style="list-style-type: none"> • High density developments compound challenges already faced by low socio-economic residents and create a pocket of vulnerability as opposed to lower density and more integrated solutions;

<ul style="list-style-type: none"> • An integrated/distributed approach to social housing provision is a more appropriate approach;
<ul style="list-style-type: none"> • Some submissions object to principle of accommodating Group Home residents on site: <ul style="list-style-type: none"> ○ Concerns raised in relation to the (unsupervised or otherwise) accommodation of socially disadvantaged persons close to a primary school (Murwillumbah East) ○ Concern re type of residents specified in some submissions as potentially being drug addicts, alcoholics, those on prison release programs, at risk youth, those with a disability, tenants with psychological disorders, poor people and victims of domestic violence ○ Potential increase in crime resulting in physical danger and break-ins ○ Concern re potentially unaccepted use of open space areas on site by residents (uses not specified) ○ Concern that residents will be walking past houses on their way into town centre as they won't have cars
<ul style="list-style-type: none"> • Queries whether emergency services have been advised of this development and the extra demand on their services if a situation arises;
<ul style="list-style-type: none"> • Development will over-extend administrations including Murwillumbah Police Station;
<ul style="list-style-type: none"> • Given the lack of accessibility to units, the future residents are likely to have non-physical disabilities and/or be socially disadvantaged;
<ul style="list-style-type: none"> • No details provided on management, potential residents, provision of support services or the potential impact on community services;
<ul style="list-style-type: none"> • No details provided on the future tenants which would enable a determination of the social impacts of the development;
<ul style="list-style-type: none"> • Inadequate support services will impact on surrounding properties particularly if tenants have complex mental health issues of disabilities that impact on their ability to live without assistance;
<ul style="list-style-type: none"> • Application for development of this scale should be accompanied by a Social Impact Assessment – justification that NCCH are a registered Tier One social housing provider is insufficient justification to avoid same;
<ul style="list-style-type: none"> • Potential increase in attendance at Primary School;
<ul style="list-style-type: none"> • Development is out of character with existing socio-economic profile/community dynamic of area;
<ul style="list-style-type: none"> • Residents would be transient;
<ul style="list-style-type: none"> • Lack on on-site open space will place pressure on existing parklands surrounding development (eg Martin Watt Park);
<p>Visual Impacts</p>
<ul style="list-style-type: none"> • The size, height and length of the development and lack of design diversity is not in keeping with the rural character of the area;
<ul style="list-style-type: none"> • Two storey development (with height of 9m on top of 3m of fill) will have an adverse visual impact and an unreasonable impact on existing residents - single storey development would be more appropriate;
<ul style="list-style-type: none"> • Dwellings in Stage 1 at junction of George Street and York street will have to be at least 5m above the York Street level after filling;
<ul style="list-style-type: none"> • Design of dwellings is out of character with 1950s/1960s architecture in the area;

<ul style="list-style-type: none"> • Units (even ground floor units with steps) are not suitable for residents with physical disabilities though a Group Home is defined as housing for people with a disability or those who are socially disadvantaged;
<ul style="list-style-type: none"> • Suggesting in one submission for ramps to living areas;
<ul style="list-style-type: none"> • Development (as a result of building height) will impact on views from adjoining properties and reduce the residential amenity of same
<ul style="list-style-type: none"> • Impact on residential amenity of adjoining properties in terms of traffic and noise pollution and considerable loss of privacy resulting from dwellings and car parking;
<ul style="list-style-type: none"> • Direct overlooking of properties on Martin Street residences and associated loss of privacy;
<ul style="list-style-type: none"> • Overshadowing and loss of light;
<ul style="list-style-type: none"> • Design is not sustainable or environmental responsive: <ul style="list-style-type: none"> ○ Stage 1 houses facing west and surrounded by concrete will be subject to extreme heat – will they have 24 hour air-conditioning? ○ No solar panels ○ Potential for community gardens, community green spaces not realised
<ul style="list-style-type: none"> • Design of development – archetypal, roof height, lot size and shape and topography will be out of character with the long established style of housing in the area;
<ul style="list-style-type: none"> • Style of development (first floor units over ground units) unsuitable for intended resident mix and will create atmosphere of anxiety;
<ul style="list-style-type: none"> • No footpath access from the site to the town centre;
<ul style="list-style-type: none"> • Lack of public transport in area;
<ul style="list-style-type: none"> • No recreational or community space within the development;
<ul style="list-style-type: none"> • An entrance off Reynolds Street may be preferable being higher than that off York Street;
<ul style="list-style-type: none"> • Each dwelling must have a ground floor level as per Tweed DCP - Section A1, Chapter 1 Control (e);
<ul style="list-style-type: none"> • Access via doors in a breezeway has potential safety implications given lack of visibility from the street;
<ul style="list-style-type: none"> • A landscape plan and Statement of Landscape Intent is required;
<ul style="list-style-type: none"> • Crime Prevention Through Environmental Design (CPTED) principles need to be addresses to ensure successful outcomes and the promotion of a safe community;
<p>Environmental Impacts</p>
<ul style="list-style-type: none"> • The deepening of the ditch (cut) will result in longer periods of standing water and create issues with mosquitos;
<ul style="list-style-type: none"> • Potential impacts on local wildlife who currently use the site for laying eggs, feeding and nesting, etc;
<ul style="list-style-type: none"> • Application should be accompanied by an Acid Sulphate Soil Investigation report and if necessary an Acid Sulphate Soils Management Plan given classification (Class 3) of soil in Stage 2 with the earthworks for Stage 1 and 2 completed together;
<ul style="list-style-type: none"> • Questions raised with regard to 'potential' unauthorised removal of vegetation on site;
<p>Other issues</p>
<ul style="list-style-type: none"> • Application should have been accompanied by a geotechnical assessment given the proposals to fill the land;

<ul style="list-style-type: none"> • Land contamination - further information is required to substantiate claim that there has been no change that would impact on 2005 contamination investigation outcomes – eg Statutory declarations, aerial photographs, etc;
<ul style="list-style-type: none"> • Inadequacy of the Wastewater system to cater for the development;
<ul style="list-style-type: none"> • Exposed nature of site and poor design will result in a demand for air-conditioning which will place additional burdens on persons with a disadvantaged background;
<ul style="list-style-type: none"> • Details regarding the type and use of the development are vague and appear to conflict with character of area;
<ul style="list-style-type: none"> • What happens in the future if the units are sold off by the developer?
<ul style="list-style-type: none"> • Lack of information on the proposed staging - Stage 2 earthworks will be necessary to construct Stage 1;
<ul style="list-style-type: none"> • Current residents face the prospect of losing value off their homes;
<ul style="list-style-type: none"> • No consultation has been undertaken with local residents;
<ul style="list-style-type: none"> • The information submitted with the application (Community Need statement) does not justify need for development of this scale in Murwillumbah – in terms of priority and choice of location;
<ul style="list-style-type: none"> • Potential flood impacts will increase home insurance premiums for existing residents;
<ul style="list-style-type: none"> • A number of deficiencies/errors in the application: <ul style="list-style-type: none"> ○ Reference to less than 70 persons being accommodated on site yet there are 72 units proposed with a mix of 1 and 2 bedrooms ○ Reference to middle-low income residents ○ Reference to it not being foreseen that any residents would have medical conditions or disabilities – which is nonsensical for any type of residential development.

Following the submission of FI, those who made initial submissions were renotified and provided with 14 days in which to make comments with an additional 17 submissions received. Of these, five submissions were from a single submitter with seven new objectors. The issues raised were similar to those raised in the original notification period. In addition, the following was submitted:

- Small changes made to the plans have not rendered the site suitable for such development;
- Applicant response to lack of car parking, accessibility and loss of privacy is inadequate;
- Applicant's case study submitted with Further Information is not a relevant comparison;
- Further Information has not addressed original submitters; concerns in relation to building in the flood zone, creating potential safety and community problems, and other architectural and engineering concerns;
- Opposition to the use of RU2 zoned land for this development and the height of the development proposed on the R2 zoned land;
- Proposal is dividing the community in terms of those opposing and supporting the development;
- Insufficient information is provided on how site will be managed;
- Noise in the area is already an issue without this development adding to it further;

- No footpath from site into town centre;
- Concentrating housing for socially disadvantaged persons will further isolate them – would prefer to see a more integrated multi-tenure approach with higher quality of design and improved sustainability performance;
- Proposal remains questionable in terms of permissibility with one objector challenging whether the proposal satisfies the definition of a Group Home; submitting that the development is more akin to a residential flat building (RFB) with RFBs prohibited in Zones R2 and RU2;
- Development cannot be classified as multi-dwelling housing (which is permissible in Zone R2) as the upper floor levels do not have access at ground level;
- Applicant proposes to provide social and affordable housing with SEPP (ARH) 2009 defining affordable housing as housing for very low, low and moderate income households – how do low and moderate income households satisfy the definition of ‘people who are socially disadvantaged’?;
- To be a Group Home, all dwellings must meet the specific occupant requirements – This has not been demonstrated;
- Density remains excessive and inconsistent with zone objectives and character of the area;
- If the portion of the site zoned RU2 was suitable for development, it would have been zoned R2 – with a previous request for rezoning of the site by the owner rejected by Council;
- SIA submitted with Further Information was undertaken without any community consultation or agency consultation – no details on the impacts on support agencies or the existing community, or how the specific needs of the potential residents are to be met;
- Further Information addresses a need for affordable housing but provides insufficient detail on tenant needs, social impacts or demonstrates that this is a Group Home by definition;
- There is insufficient information to enable Council to properly assess the application in terms of the likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality;
- Council should calculate density based on area of R2 land not the entire site, and there should be no variation to the density controls which have consistently been enforced;
- Car parking provision remains inadequate with overflow onto surrounding streets likely; and
- A deferral of the provision of an Acid Sulfate Soils Management Plan to Construction Certificate stage as requested by the applicant is contrary to the requirements of Clause 7.1 of the TLEP 2014.

A number of submitters continued to make additional submissions during the assessment period, with suggestions such as Council could consider purchasing the site to develop it as a community facility such as a parkland.

Applicant Response to submissions

The applicant provided the following response to the first set of submissions.

Flooding

- *The applicant has provided further information on Stage 3 including flood hydraulic assessment, network capacity, earthworks, and stage boundaries.*
- *A flood hydraulic report has been provided and determined that the development will not displace flood impacts to neighbouring properties.*

Land Use Issues

- *Further justification is provided regarding density and visual impact and is in accordance with Local Environment Plan.*

Traffic Impacts

- *Additional car parking has been provided to accommodate for visitors and support services.*
- *A number of submitters raised the issue of increasing pressure of the road network. The development will increase the number of trips to the residential area, however, it will not cause any adverse impacts on the existing road network. We are not aware of any evidence to demonstrate the surrounding road network, including Tumbulgum Road, currently experience any degree of congestion. If traffic around Murwillumbah Primary is of concern to future residents, there is an access route to the site that avoids it. Regarding safety of school students, the applicant has provided footpaths along the York Street frontage to improve pedestrian safety. This development does not trigger a Traffic Impact Report as there are no busy or state controlled roads adjacent to the development.*

Social Impacts

- *A social impact assessment has been prepared which addresses social impact and benefit of the development to surrounding residents and proposed residents. The report explains that the mixture of tenants within the site will be carefully considered, in terms of age, employment status, gender, ability.*
- *The Social impact assessment explores the fact that there is a high demand for one (1) bedroom dwellings, which explains the configuration of the dwelling types. One (1) bedroom dwelling are more suitable located in a clustered configuration rather than a distributed approach, as suggested by a submitter, which hinders the ability for NCCH to house as many people as possible. NCCH housing has demonstrated a high demand for the proposed housing type, as such this development is appropriate for the socio economic profile of the area.*
- *The applicant has provided a number of accessible dwellings and car parks to provide for a wider range of people in need.*
- *The applicant made changes to the layout of dwellings and provided an updated assessment of over shadowing of adjoining residences on Martin St and is now considered acceptable.*
- *The proposed development will be providing a community service for an area that has a demonstrated need for social housing. The development will house people who may not otherwise afford it. NCCH carefully review applications to*
- *Ensure the site will have a mix of people living there, which is reflective of all aspects of society. NCCH are an experienced housing provider which sets out to follow best practice for meeting the needs of tenants and the surrounding community.*

Visual Impacts

- *The applicant has provided a statement of landscape intent and the development now includes communal open space to provide residents with recreation and gathering spaces. It also addresses the privacy impact on neighbours.*
- *The proposed building height is of a standard building height for a residential neighbourhood and the surrounding dwellings, 2 storeys. A submitter has raised concern that fill will increase the building height, however the proposal will be 2 storeys above natural ground level, see Attachment 2. The proposal does not include long buildings, but small buildings the size of a typical dwelling. The proposal remains compliant and sympathetic the existing residential amenity. As the area develops, buildings are built in the current architecture style. The request for architectural design for 1950's/60's style building is arbitrary. The proposal has been carefully conceived to adhere to a high standard of design.*

Environmental Impacts

- *The applicant has assessed the development against Council's biting and midges code.*
- *An acid sulfate soils management plan will be conditioned as discussed with Council officers.*

The applicants indicated that they would be providing a more comprehensive response, but this is still outstanding.

Officer Comments on issues raised

Permissibility of development as a Group Home

This matter is dealt with in detail earlier in this report.

Flooding

It is considered that the proposed earthworks and realignment of the watercourse can address flooding issues, though it is noted that an updated FRAP which addresses eligible tenant category is still outstanding. An extract from the most recent FRAP is set out below:

"The core demographic indicators, (relative to this report) of residents expected at the development site are noted below. This information has been advised by the applicant, noting that the site's main intention is to provide affordable housing:

- **Age:** *Standard age profile of a residential community - all ages.*
- **Income Level:** *Middle to low groups. The development is for affordable housing.*
- **Medical:** *The site is not intended to be operated as a medical facility or provide staff medical care. The medical profile of residents occupying the site would therefore be expected to be similar to a standard freehold residential community. This could include:*

- *Residents reliant on prescription medication.*
- *Residents reliant on physical aid (i.e. wheel chair).*

It is therefore expected that residents would be self-reliant with regards to managing any of their diagnosed chronic illness (i.e. procuring and taking prescription medication).

Acute illness is unforeseeable with scope of potential illness expected to be similar to a standard freehold residential community.

Any change or clarification to these indicators will require a review and potential update to this report as noted in Section 1.2."

Communal Open Space

The amended plans submitted by the applicant in January 2019 have made provision for two (2) areas of communal open space, with the space in Stage 1 designed to be accessible. Any future issue of consent on the site, should require shared facilities such as BBQs, etc to be provided.

Accessibility

The applicant has amended the architectural plans to provide two accessible dwellings in Stage 1 (14.3%) and four in Stage 2 (11.1%). While this is still quite low in a development targeted at housing persons with a disability, it does appear that the applicant's focus is to be on accommodating persons who are socially disadvantaged, specifically those who would be classified as being subject to extreme poverty.

As the proposal is for concept approval for Stages 2 and 3, the possibility to seek an increased number of accessible units in these stages would remain (subject to issues with regard to permissibility being resolved).

Impacts on biodiversity

Council's S&E Unit have reviewed the application and consider that the realignment and subsequent rehabilitation of the riparian zone will improve biodiversity on the site.

Social Impacts

An updated SIA which addresses the applicant's most recent tenant eligibility criteria is still outstanding.

Car parking

Concern remains as to the adequacy of the proposed car parking provision. The applicant was provided multiple opportunities to increase the car-parking provision or to justify how 80 spaces were sufficient to cater for 72 one and two bedroom units, visitors and support workers. The applicant's proposal to provide 10 additional spaces on land opposite the school and accessible from George Street was rejected with pedestrian access from these spaces to the development

requiring motorists to walk over 100m around George Street to access the development.

On 19 July 2019, the applicant attempted to lodge amended plans to reduce the number of units from 62 to 72 which would have the effect of increasing the number of spaces available to non-residents. However having regard to the protracted response period, Council officers advised that the amended plans could not be accepted.

Loss of privacy

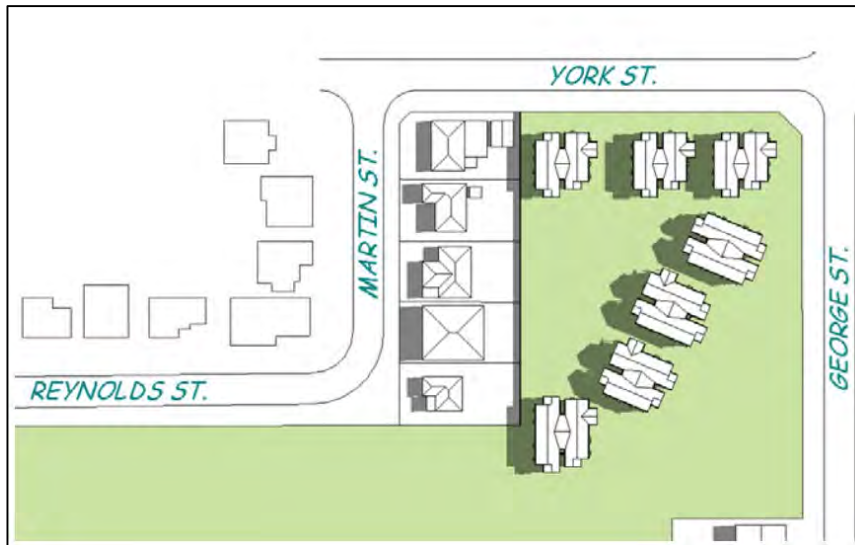
The amended plans include planting of screen trees and a 1.8m high lapped and capped fence on the boundary with Martin Street residences. The side setback between 7 and 9 Martin Street has also increased from 3.9m to 4.5m with screening on balconies.

Overshadowing

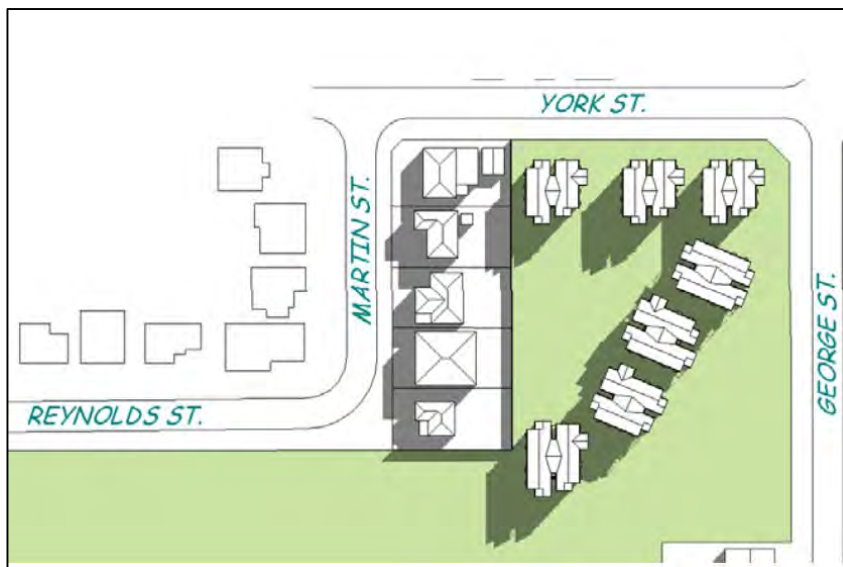
The applicant has submitted overshadowing diagrams. There will be no impact on adjoining residences in summer. In winter, there will be an increase in overshadowing in the rear gardens of properties at 7 and 9 Martin Street.



21 June – 9am



21 June – noon



21 June – 3pm



At least 50% of the rear garden of 7 and 9 Martin Street will receive a minimum of 2 hours solar access between 9am and 3pm. Further the proposed setback from the boundary has been increased to 4.5m.

Biting Midge and Mosquito Control

The applicant has advised that the development of the site will not pose a risk of attracting mosquitoes or biting midge to breed in the area. The watercourse on the site is proposed to be realigned and rehabilitated, but will only act as a conveyance path and will not allow for ponding water. It is submitted that following a storm

event after which water will flow through the site, any water remaining on site will be drained off within 24-48 hours. As such the site will not facilitate mosquito breeding, further the closest biting insect control area identified by Council's Biting Midge and Mosquito Control code is Terranora, 15km from the subject site.

Natural Resources Access Regulator

The application was referred to NSW Department of Water (Natural Resources Access Regulator) as the development involves a controlled activity under the Water Management Act 2000.

On 10 September 2018, Natural Resources Access Regulator advised that an initial review of the material provided indicates that additional information relevant to issuing the General Terms of Approval (GTA) is needed in order for NRAR to complete the assessment. They requested revised civil plans demonstrating the development has the appropriate setback from the 1st order watercourse on site and riparian rehabilitation in line with their guidelines is possible.

This request was included in the RFI issued to the applicant. Following receipt of the amended plans, NRAR issued GTA for the part of the proposed development requiring a Controlled Activity approval under the Water Management Act 2000.

Council's statutory obligations under section 4.47 of the EPA Act requires a consent, granted by a consent authority, to be consistent with the general terms of any approval proposed to be granted by the approval body.

The NRAR requests notification if any plans or documents are amended and these amendments significantly change the proposed development or result in additional works or activities (i) in the bed of any river, lake or estuary; (ii) on the banks of any river lake or estuary, (iii) on land within 40 metres of the highest bank of a river lake or estuary; or (iv) any excavation which interferes with an aquifer. NRAR will ascertain from the notification if the amended plans require review of or variation/s to the GTA. This requirement applies even if the amendment is part of Council's proposed consent conditions and do not appear in the original documentation.

The GTA issued by NRAR do not constitute an approval under the Water Management Act 2000. The development consent holder must apply to NRAR for a Controlled Activity approval after consent has been issued by Council and before the commencement of any work or activity.

(e) Public interest

It is recognised that there is a need for social and affordable housing in Tweed and Murwillumbah, and indeed likely to be a demand for Group Homes. It is also recognised that notwithstanding the flood prone nature of the site, that this site which is located on the edge of town could be developed for the purposes of a Permanent Group Home.

However too many questions remain unanswered with regard to whether the development as proposed satisfies the definition of a Group Home and whether the development can be appropriately managed to minimise impacts associated with the lack of car parking proposed.

OPTIONS:

Option 1

That Council refuse the application for the following reasons:

1. The proposal for the development of 10 Group Homes is not considered to satisfy the definition of a Permanent Group Home as set out in the *Tweed Local Environmental Plan 2014*, which classifies the land use as '*a dwelling*:
 - (a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and
 - (b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,

but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.'

It is considered that a building containing up to eight self-contained units does not constitute a 'dwelling' as that term is defined in the *Tweed Local Environmental Plan 2014* and further that the applicant has not demonstrated to the satisfaction of Council that each building will to be '*occupied by persons as a single household*'.

2. There is insufficient information provided with the application to appropriately determine the impacts of development in terms of the environmental impacts on both the natural and built environments, and social and economic impacts in the locality, specifically in relation to the provision of car parking, an agreed Plan of Management and an updated Flood Response Assessment Plan which addresses tenants' needs.

Option 2

That Council provide the applicant with further opportunity to amend the application to satisfy the definition of a Permanent Group Home and to address all other outstanding issues on the site including further car parking provision or a justification for the level of parking proposed, updated Flood Response Assessment Plan, details of how the development will be managed as a Permanent Group Home, and details of any support services to be provided to address the needs of residents.

Given the extended time frame involved in this application, the multiple opportunities already afforded to the applicant to demonstrate that the development proposed meets the definition of a Group Home, Option 1 is recommended.

CONCLUSION:

The subject application seeks concept approval for 10 Group Homes consisting of 72 self-contained units to be constructed in three stages. Full approval is also sought at this time for two (2) Group Homes consisting of 14 self-contained units.

As set out in the report, whilst Council is supportive of the provision of social and affordable housing, and recognises the need for same across the Shire and in Murwillumbah, serious

concerns are raised with regards to whether the development as proposed satisfies the definition of a Group Home.

The applicant was advised to withdraw the application and whilst it was initially advised by the applicant that the application would be withdrawn and new application submitted, the applicant has since requested that the application be determined.

Based on the information submitted by the applicant in terms of how the proposal meets the definition of a Group Home, and indeed the most recent statement of 2 August 2019 that the land use definition of a Group Home does not fit with the housing provider's model for providing community housing, there is no alternative but to recommend that the application be refused.

It is acknowledged that the applicant may seek to an extension of time to address these issues or to submit a new application, and on this basis, there is merit in Council adjudicating on the issue of whether 'low' and 'very low' income households would be classified as persons socially disadvantaged due to extreme poverty (which is undefined by SEPP (ARH) 2009.

Though there is little scope for Council to interpret the meaning of a 'dwelling' and as such any re-submission or new development application would need to demonstrate how a deviation from the more tradition model of a Group Home (in terms of individual tenancies) meets the definition of a Group Home.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Council may wish to get legal advice as to whether the proposal could be considered as a development of 72 Group Homes, should it wish to consider this approach.

The applicant may also available of their rights to appeal the decision of Council if the application is refused.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.	Request for Further Information dated 19 September 2018 (ECM 6025579)
Attachment 2.	Clarification of Further Information dated 6 March 2019 (ECM 6025580)
Attachment 3.	NCCH Social Housing Factsheet submitted 22 March 2019 (ECM 6025581)

- Attachment 4. Response letter to second Request for Further Information submitted on 9 April 2019 (ECM 6025582)
- Attachment 5. Draft Plan of Management submitted on 28 May 2019 (ECM 6025584)
- Attachment 6. Further Response letter to second Request for Further Information submitted on 14 June 2019 (ECM 6025585)
- Attachment 7. Applicant's letter to Council submitted on 2 August 2019 requesting application be determined (ECM 6025586)
- Attachment 8. Applicant's Community Need Statement (ECM 6025597)
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- 3 [PR-PC] Development Application DA19/0265 for a Two Lot Boundary Adjustment including Consolidation of 3 Closed Road Lots at Lot 1 DP 183130 No. 294 Bakers Road, Byangum; Lots 1-3 DP 1243056 No. 520-522 Bakers Road, Byangum; Lot 1 DP 583624 No. 522 Bakers Road, Byangum

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

Updated Summary of Report Since 1 August Planning Committee Meeting

The subject application for a two lot boundary adjustment was reported to the Planning Committee Meeting of 1 August 2019 with a recommendation for refusal. The recommendation for refusal had regard to legal advice received in relation to the proposal which advised that proposal could not be considered a *boundary adjustment* under Clause 4.1C of the Tweed Local Environment Plan 2014.

The Decision of Council at the Planning Committee Meeting of 1 August 2019 was:

- "1. Grant support for DA19/0265 to be assessed consistently with Councils previous interpretation of Clause 4.1(C)3 prior to receipt of the attached legal advice as this was the interpretation relied on by the applicant when the DA was submitted.
- 2 Advise the public that all DA's for boundary adjustments not already accepted by Council will be assessed on the new interpretation presented by the legal advice attached to this report.
3. Assess any DA's for Boundary adjustments that have already been accepted by Council before 01/08/19 on the interpretation of Clause 4.1(C)3 on their merits and using the interpretation publicly known at the time of their submission and
4. Report Development Application DA19/0265 for a two lot boundary adjustment including consolidation of 3 closed road lots at Lot 1 DP 183130, Lots 1-3 DP 1243056 and Lot 1 DP 583624 No. 520-522 Bakers Road, Byangum to the next

Planning Committee Meeting with draft conditions of consent which address the requirement to not provide an increase in future dwelling opportunities via a restrictive covenant applied to the future lots, which require unanimous support of Council to lift, to enable consideration for the application as proposed.

This report addresses Point 4 of the above decision by presenting to Council draft conditions of consent for the proposal that includes a restriction to be placed on the land to prevent to the opportunities for future dwellings.

Proposed Lot 12 is 95.5ha and therefore is large enough to permit future subdivision under Clause 4.1 of Tweed Local Environment Plan 2014 to create two lots which meet the minimum lot size of 40ha for the zone. Any lot created under Clause 4.1 would benefit from a dwelling entitlement under Clause 4.2B. As such, to prevent the increase for the opportunities for future dwelling as specified by the Decision of Council, any consent could be conditioned to try to prevent subdivision, including any further boundary adjustment, of proposed Lots 12 & 13 in perpetuity.

Development of an attached dual occupancy remains permissible for each of the proposed lots as is the current situation prior to any subdivision.

This application has highlighted an issue with the current wording of Clause 4.1C with respect to boundary adjustments. The intent of the clause is to allow an alteration of boundaries between undersized lots however the interpretation of the word *adjustment* by decisions of the Land and Environment Court severely restricts the application of this clause. To rectify this an amendment of Tweed Local Environment Plan 2014 is required to amend the wording of Clause 4.1C to allow boundary alterations to undersized lots where there will not be an opportunity for additional dwellings.

As such, an additional recommendation is included to amend the Tweed Local Environmental Plan 2014 accordingly.

Conditions are included in Option 2 at the end of this report. The remainder of this report is a copy of the original report presented to the Planning Committee Meeting of 1 August 2019 which outlines the reasons for the recommendation of refusal of the application.

Previous Summary of Report Presented to the Planning Committee Meeting of 1 August 2019

Consent is sought for a boundary adjustment between two rural zoned lots. The proposal includes the consolidation of three smaller lots (previous road reserves) into one of the lots.

The lots that are the subject of the boundary adjustment are as follows:

	Existing (ha)	Dwelling Entitlement	Proposed (ha)
Lot 1 DP583624	59.73	Yes	Lot 12 - 95.5
Lot 1 DP183130	38.64	Yes	Lot 13 - 3.62

The application is being made with respect to Clause 4.1C of the Tweed Local Environmental Plan which permits boundary adjustments between 2 or more lots where one or more of the resulting lots would be less than the prescribed minimum lot size.

The minimum lot size is 40ha and proposed Lot 13 would be less than the minimum lot size however will retain the existing dwelling entitlement. Proposed Lot 12 would be of a size that would permit future subdivision to create an additional compliant sized lot with a dwelling entitlement.

Prior to submission of the application, Council advised the applicant that it appears that the proposal may not be compliant with Clause 4.1C(3)(b) which does not permit a boundary adjustment where there may be an increase in the opportunities for dwellings on each lot. The applicant was advised that one view was that the proposal may create *opportunities* for additional dwellings as the proposal would result in a 95.5ha lot with the potential for further subdivision to create an additional lot with a dwelling entitlement.

The application addresses Clause 4.1C (3)(b) by stating that each of the proposed Lots 12 and 13 will benefit from one existing dwelling entitlement and as such there will be no increase in the number of dwelling entitlements, or opportunities for dwellings on each lot, as a result of the proposal.

The precise meaning of phrase “opportunities for dwellings” within the clause is unclear and lends itself to alternative interpretations. As such it was considered warranted to seek legal advice regarding the interpretation of this clause as it applies to this proposal, once it was determined that there were no other planning matters that would prevent the proposal from proceeding.

The request for legal advice also had regard to the meaning of the term *boundary adjustment* as the proposal would result in a substantial change to the subject lot boundary and the term *boundary adjustment* is not defined in the Environmental Planning and Assessment Act 1979 or the Standard Instrument.

Having regard to the legal advice received in relation to this application and the interpretation of Clause 4.1C of the Tweed Local Environment Plan 2014, it is considered that the proposal cannot be considered a *boundary adjustment* due to the substantial variation in lot size and configuration from the original lots.

Notwithstanding the view that the proposal does not constitute a boundary adjustment and therefore cannot be considered with respect to the provisions of Clause 4.1C, it is also considered that the proposal could create the opportunities for additional dwellings and therefore does not satisfy sub-clause (3)(b) of Clause 4.1C. Further detailed consideration of sub-clause (3)(b) however is a moot point in that it is considered that the proposal cannot be considered to be a *boundary adjustment* pursuant to Clause 4.1C.

The report includes a full assessment of the proposal with regard to matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

RECOMMENDATION:

That:

- A. Development Application DA19/0265 for a two lot boundary adjustment including consolidation of 3 closed road lots at Lot 1 DP 183130; No. 294 Bakers Road, Byangum; Lots 1-2 DP 1243056 No. 520-522 Bakers Road, Byangum; Lot 1 DP 583624; No. 522 Bakers Road, Byangum be refused for the following reasons:**
-

1. The development does not constitute a boundary adjustment under the provisions of Clause 4.1C of the Tweed Local Environment Plan 2014 and is therefore not permissible.
 2. The development is not considered to be consistent with Clause 4.1C(3)(b) in that the proposal will increase the opportunities for additional dwellings and is therefore not permissible.
- B. Council includes in the Strategic Planning Unit work program an amendment to the Tweed Local Environmental Plan 2014 (Clause 4.1(C)) to generally permit changes to boundaries of existing undersized lots that will not result in lots that could be further subdivided and create a dwelling entitlement.
- C. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:-
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

REPORT:

Applicant: N Baker and M Baker
Owner: Mr Neil G Baker & Mrs Michelle L Baker
Location: Lot 1 DP 183130; No. 294 Bakers Road, Byangum; Lots 1-3 DP 1243056 No. 520-522 Bakers Road, Byangum; Lot 1 DP 583624 No. 522 Bakers Road, Byangum
Zoning: RU1 - Primary Production and RU2 - Rural Landscape
Cost: N/A

Background

Consent is sought for a boundary adjustment between two rural zoned lots. The proposal includes the consolidation of three smaller lots (previous road reserves) into one of the lots.

The existing and proposed lots are detailed in below:

	Existing (ha)	Dwelling Entitlement	Proposed (ha)
Lot 1 DP583624	59.73	Y	Lot 12 - 95.5
Lot 1 DP183130	38.64	Y	Lot 13 – 3.62
Lot 1 DP 1243056	4356.0m ²	N	Amalgamated with Lot 12
Lot 2 DP 1243056	2749.0m ²	N	Amalgamated with Lot 12
Lot 3 DP 1243056	854.2m ²	N	Amalgamated with Lot 12

Existing Lot 1 DP583624 (59.73ha) has a Dwelling Entitlement as it meets the minimum lot size of 40ha prescribed by the Tweed Local Environment Plan 2014 (TLEP).

Existing Lot 1 DP183130 (38.64ha) does not currently contain a dwelling however benefits from a Dwelling Entitlement as confirmed by resolution of Council at the Planning Committee meeting of 6 September 2018.

Prior to submission of the application, the applicant met with Council Officers to discuss a preliminary design concept for the proposal and the applicant was advised that Council considers that the proposal may not be compliant with Clause 4.1C(3)(b) of the TLEP which states:

- (3) *Despite clause 4.1, development consent may be granted for the subdivision of land by way of an adjustment of boundaries between adjoining lots where the size of one or more of the lots resulting from the subdivision would be less than the minimum lot size shown on the [Lot Size Map](#) in relation to the land if the consent authority is satisfied that the subdivision will not result in:*
- (a) *an increase in the number of lots, or*
 - (b) ***an increase in the number of dwellings or opportunities for dwellings on each lot, or***
 - (c) *an increase in the possibility of land use conflict, or*
 - (d) *an adverse impact on the environmental values or agricultural viability of the land.*

The proposal would result in a 95.5ha lot capable of being further subdivided to create an additional lot with a dwelling entitlement. The applicant was advised that it is considered that the proposal may create *opportunities* for additional dwellings and that legal advice would be required with regard to the interpretation of Clause 4.1C prior to the determination of any such proposal.

Site Description

The subject lots comprise of cleared grazing land with scattered paddock trees. The land is undulating varying in height from RL 5m AHD along the boundary with the Tweed River to RL70m AHD and contains existing waterways, farms dams and gullies.

Existing Lot 1 DP583624 (59.73ha) contains a house and various farm buildings including a piggery. The lot has 1.4km frontage with the Tweed River and 822m frontage to Bakers Road and is used for agricultural activities including cattle grazing. The lot entirely encloses another parcel of land being Lot 1 DP392040 which does not form part of this application. A Right of Carriageway burdens Lot 1 DP583624 (59.73ha) to provide access to the enclosed lot (Lot 1 DP392040).



Figure 1 Detail of existing structures on Lot 1 DP583624 (59.73ha) and Lot 1 DP392040 (not part of this application)

Aerial imagery indicates that the piggery has been in existence since at least 1983 and that the dwellings (including the dwelling on Lot 1 392040) and some of the farm buildings have been in existence since at least 1962.

Existing Lot 1 DP183130 (38.64ha) is vacant and does not contain a dwelling or other structures. The lot has 1323m frontage to Bakers Road and unformed farm access on the eastern portion of the road frontage. The lot is used for grazing purposes and contains two farm dams.

The subject lots are mapped as bushfire prone and Lot 1 DP583624 (59.73ha) is partially mapped as being flood affected. The site is located in the Drinking Water Catchment area and the Bray Park Weir is located 360m from the northern portion of proposed Lot 12.

The subjects lots are identified as being predictive for Aboriginal Cultural Heritage under Council Aboriginal Cultural Heritage Management Plan (ACHMP) and a portion of proposed Lot 12 is mapped a being a Place of Heritage Significance under the ACHMP.

Proposal

The existing boundary between the subject lots is proposed to be altered to increase current Lot 1 DP583624 (59.73ha) by 35.77ha to create proposed Lot 12 being 95.5ha which includes the consolidation of the three smaller lots (previous closed road reserves) being:

- Lot 1 DP 1243056 4,356m²
- Lot 2 DP 1243056 2,749m²
- Lot 3 DP 1243056 854.2m²

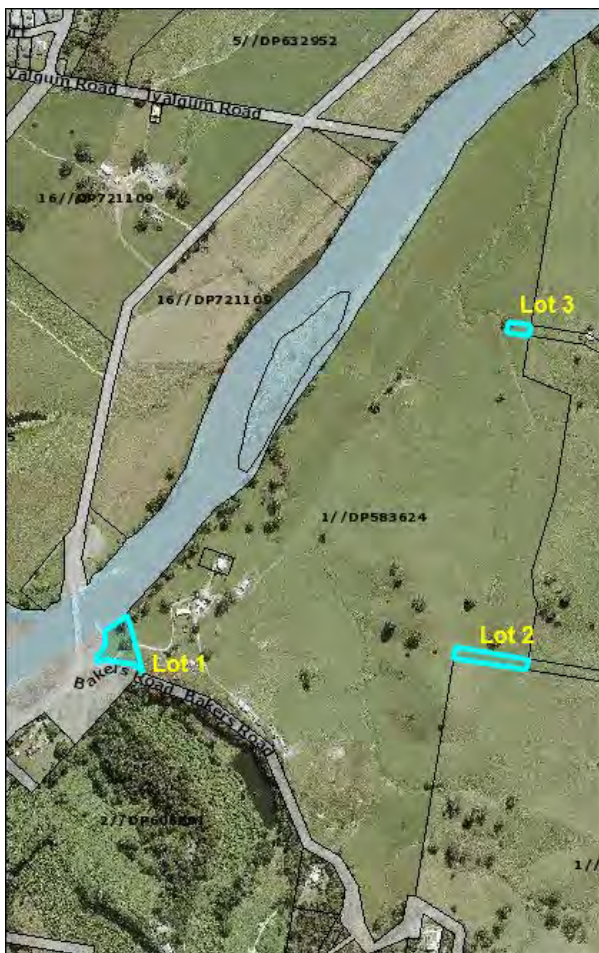


Figure 2 Lots in DP1243056 to be consolidated into proposed Lot 12.

Current Lot 1 DP183130 (38.64ha) is proposed to decrease in size by 35.02ha to create proposed Lot 13 being 3.62ha. No works are proposed to facilitate the proposal other than that required to establish formal access to proposed Lot 13. The relative change to the lot sizes is indicated below:

	Existing (ha)	% Change	Proposed (ha)
Lot 1 DP583624	59.73	59.8% increase	Lot 12 - 95.5 (includes 0.79 ha of consolidated lots)

	Existing (ha)	% Change	Proposed (ha)
Lot 1 DP183130	38.64	90.6% decrease	Lot 13 – 3.62

The effect of the boundary adjustment is shown below:

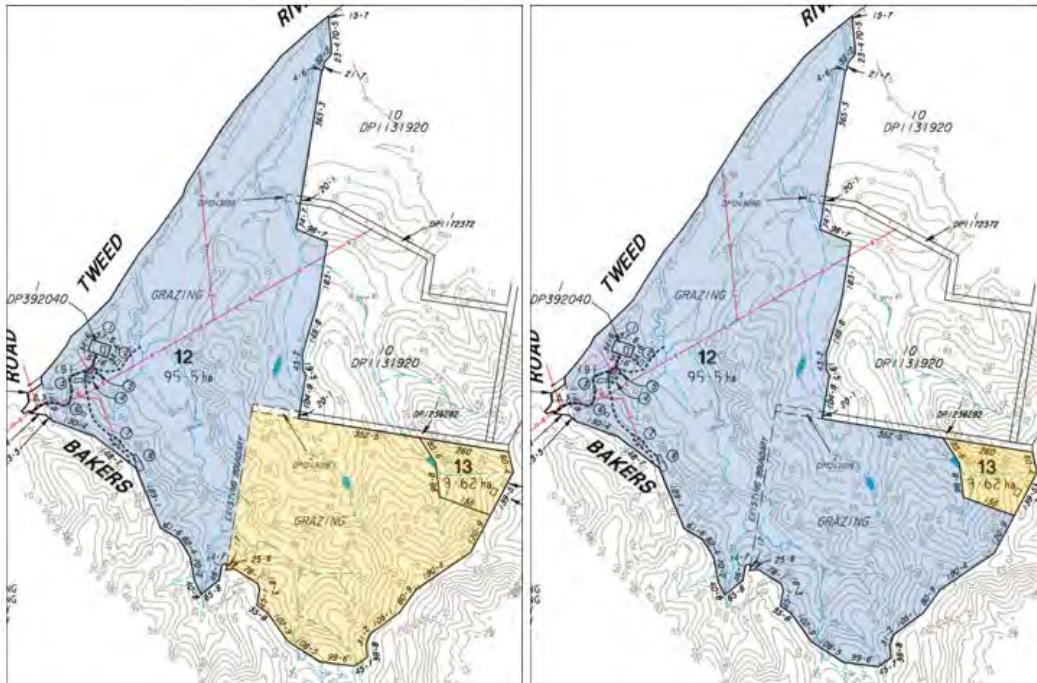


Figure 3 Existing and proposed lot configuration.

The applicant has stated that the objective of the proposal is to improve the financial viability of the land whilst maintaining a large farm holding. Proposed Lot 13 is to be used for rural living and minor agricultural purposes and a proposed dwelling site is shown on the plans with access from Bakers Road.

Proposed Lot 12 will contain the existing dwelling, farm buildings, piggery and farm dams. No works are proposed to the existing buildings and access for proposed Lot 12 and the proposed will not require the removal of any vegetation.

ASSESSMENT

The application is seeking approval under the provisions of Clause 4.1C Exceptions to minimum subdivision lot size for boundary adjustments of the Tweed Local Environment Plan 2014 (TLEP):

4.1C Exceptions to minimum subdivision lot size for boundary adjustments

- (1) *The objective of this clause is to permit boundary adjustments between 2 or more lots where one or more of the resulting lots would be less than the minimum lot size shown on the Lot Size Map in relation to that land.*
- (2) *This clause applies to land in the following zones:*
 - (a) *Zone RU1 Primary Production,*
 - (b) *Zone RU2 Rural Landscape,*
 - (c) *Zone R5 Large Lot Residential.*
- (3) *Despite clause 4.1, development consent may be granted for the subdivision of land by way of an adjustment of boundaries between adjoining lots where the size of one or more of the lots resulting from the subdivision would be less than the minimum lot size shown*

- on the Lot Size Map in relation to the land if the consent authority is satisfied that the subdivision will not result in:
- (a) an increase in the number of lots, or
 - (b) an increase in the number of dwellings or opportunities for dwellings on each lot, or
 - (c) an increase in the possibility of land use conflict, or
 - (d) an adverse impact on the environmental values or agricultural viability of the land.
- (4) In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:
- (a) the existing uses and approved uses of other land in the vicinity of the subdivision,
 - (b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
 - (d) whether or not the subdivision is likely to be incompatible with a use of land in any adjoining zone,
 - (e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
 - (f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land.
- (5) This clause does not apply in relation to a subdivision under the Community Land Development Act 1989 or the Strata Schemes Development Act 2015.

With respect to the objectives of this Clause under item (1) above, it is noted that the minimum lot size applicable to the site is 40ha and existing Lot 1 DP183130 is currently less than the minimum lot size at 38.64ha. This lot is proposed to be reduced by the boundary adjustment create proposed Lot 13 with an area of 3.62ha.

The application has provided an assessment against the provisions of Clause 4.1C(3)(b) and includes the following statements:

“...it is clear that there are no additional lots created as the proposal is for a two (2) into (2) two lot boundary adjustment.”

“Proposed lots 12 and 13 will benefit from (1) Dwelling Entitlement each... As such, no increase in the number of Dwelling Entitlements (or opportunities for dwellings on each lot) will occur as a result of this application.”

Council Officers were unsure if the proposal may create the opportunity for additional dwellings via the potential or opportunity for further subdivision of Lot 12 being 95.5ha, to create an additional lot with a dwelling entitlement.

The precise meaning of phrase “opportunities for dwellings” within sub-clause (3)(b) is unclear and lends itself to alternative interpretations as indicated above. As such it was considered warranted to seek legal advice regarding the interpretation of this clause as it applies to this proposal, once it was determined that there were no other planning matters that would prevent the proposal from proceeding.

The request for legal advice also had regard to the meaning of the term *boundary adjustment* as the proposal would result in a substantial change to the subject lot boundary and the resultant lots vary significantly in size to the original lots. The term *boundary adjustment* is not defined in the Environmental Planning and Assessment Act 1979 or the Standard Instrument.

Legal advice was subsequently received that determined that any assessment of a boundary adjustment between lots under Clause 4.1C should consider the meaning of the term *adjustment*. The term *adjustment* implies that any alteration of boundaries should be minor in extent with regard to the repositioned boundary and the existing and resultant lot size and shape.

This reasoning is supported by NSW Land and Environment Court decisions which have determined that *boundary adjustments* are considered to be minor adjustments to boundaries and should not result in wholesale changes to the overall lot configuration. The case of *Johnson v Coffs Harbour City Council* [2018] NSWLEC 1094 relates to a proposed boundary adjustment in which the Commissioner considers the meaning of the terms “adjusting the boundary” and “boundary adjustment”. The Commissioner reviewed previous cases in which the term boundary adjustment is considered and noted that:

- Adjusting means something that is slight or marginal;
- The meaning of “adjusting” depends on the degree of alteration that is sought in the context of the site as a whole; and
- “Boundary adjustment” does not encompass any and all alterations of a boundary and resulting parcels should bear some resemblance of the lots which existed prior to the boundary adjustment.

A copy of the *Johnson v Coffs Harbour City Council* [2018] NSWLEC 1094 is attached to this report as it includes a comprehensive review of previous cases in which the meaning of the phrase “boundary adjustment” is considered.

With regard to the subject proposal, the proposed boundary alteration is cannot be considered to represent a slight or marginal adjustment of boundaries. The proposal results in substantial changes to the existing lots noting that proposed Lot 12 results from a 59.8% increase in site area and proposed Lot 13 is created by decreasing the existing lot area by 90.6%.

With regard to the context of the site as a whole, as per the second item above, proposed Lot 12 increases from 60.7% of the total site area to 96.3% whilst proposed Lot 13 decreases from 39.3% to 3.7% of the total site area.

Accordingly, with consideration to the legal advice provided in respect to this application, and the meaning of the term boundary adjustment as considered by previous Land and Environment Court cases, the proposal is not considered to meet the test of a *boundary adjustment* as per the provisions of Clause 4.1C.

Notwithstanding the view that the proposal does not constitute a boundary adjustment and therefore cannot be considered with respect to the provisions of Clause 4.1C, the question of whether the proposal creates *opportunities* for additional dwelling was also considered by the legal advice received in respect to the application.

The legal advice indicates that the proposal could create the opportunities for additional dwellings. The inclusion of the word *opportunities* in sub-clause (3)(b) implies that there should be consideration of future outcomes contingent on other things happening, such as a further permissible subdivision. In other words, consideration should be given to what may be possible following the outcome of any proposal.

In accordance with the Clause, Council must be satisfied that the proposal will not result in an increase in the *opportunities* for dwellings on each lot. With respect to the legal advice

received, Council considers that the proposal creates the opportunity for additional dwellings via the further permissible subdivision potential of proposed Lot 12 and therefore does not satisfy Clause 4.1C(3)(b).

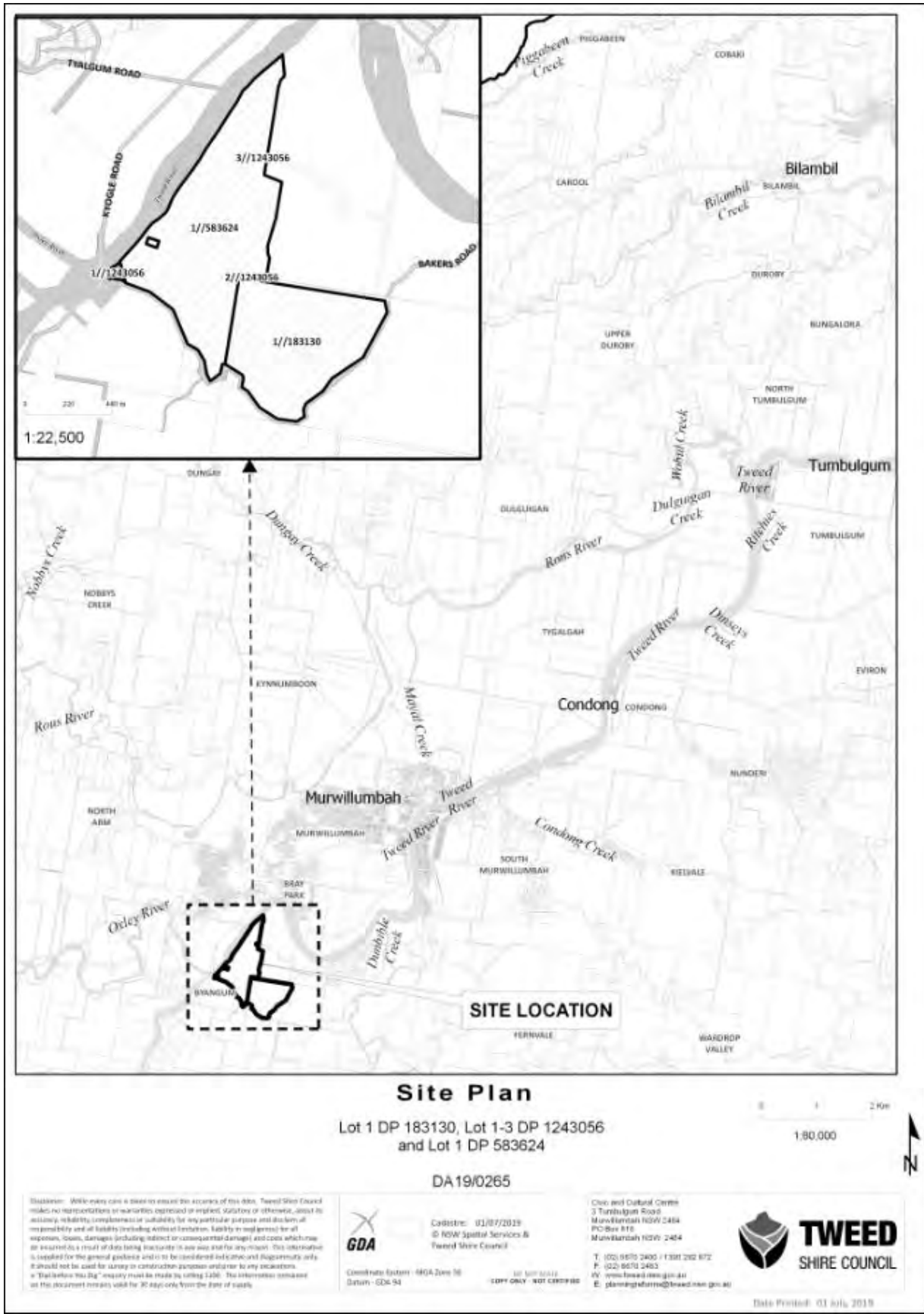
The applicant advised Council, subsequent to Council seeking legal advice, that they sought legal advice prior to the lodgement of the application however this legal advice was not submitted with the application nor has it been submitted at the time of compiling this Report. With reference to the legal advice received by the applicant, the application has stated the legal advice states, in part:

“As a result of the lawful subdivision, there would be one existing dwelling on one of the proposed lots and an entitlement for a dwelling on the other lot (subject to consent authority approval). In those circumstances there is no change to the present position and there is no increase in opportunities for dwellings on each lot.”

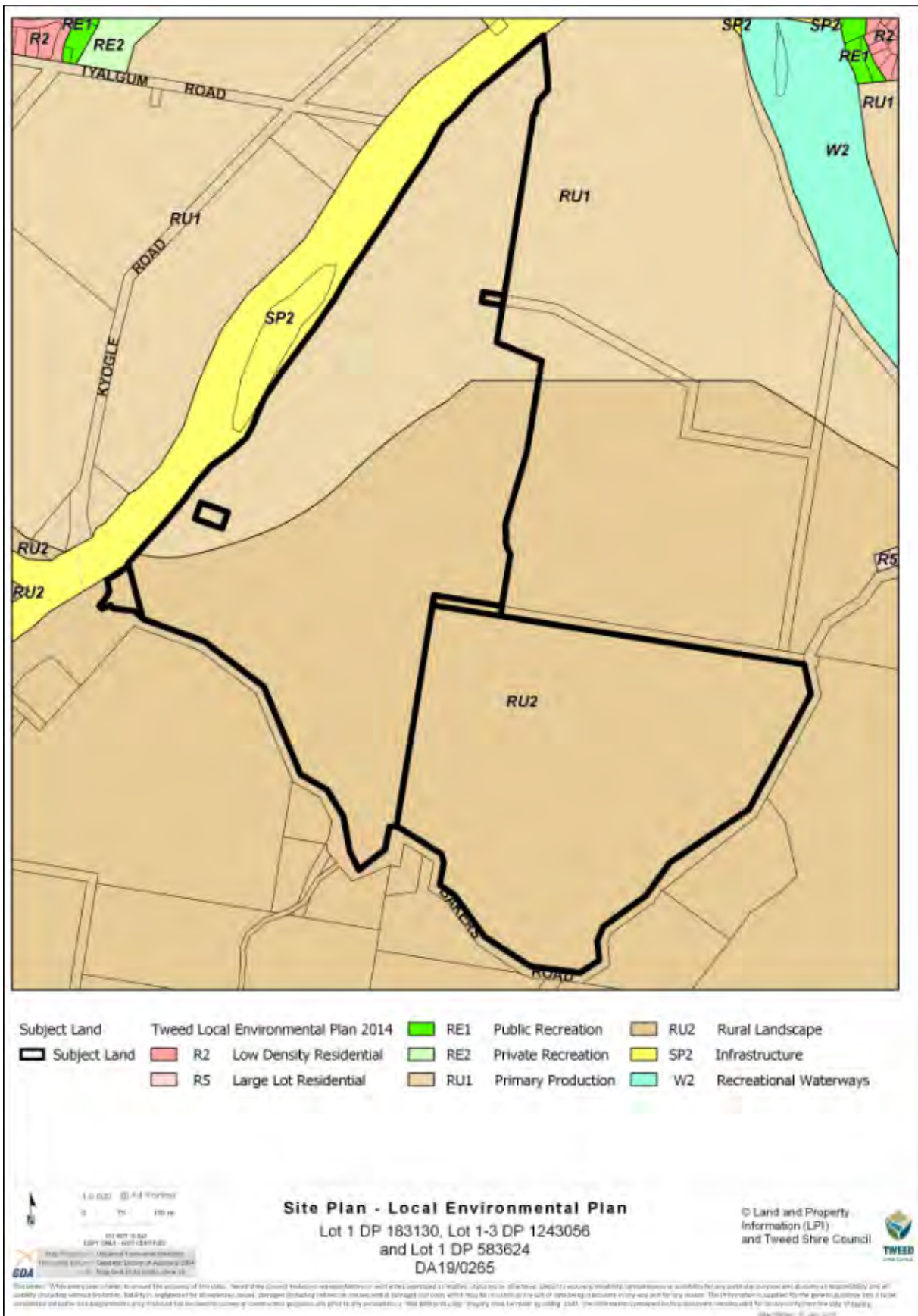
“There has been one further issue raised by a Council officer in relation to the application. In summary, it is suggested that the larger of the residue lots will be of a size that some future subdivision application may successfully result in its subdivision into two lots (both being larger than 40ha) and that thereby the current proposal has created an increased opportunity for dwellings on that lot. Whilst the argument has some superficial attraction it cannot be maintained.”

Further detailed consideration of sub-clause (3)(b) however is a moot point in that it is considered that the proposal cannot be considered to be a boundary adjustment pursuant to Clause 4.1C.

SITE DIAGRAM



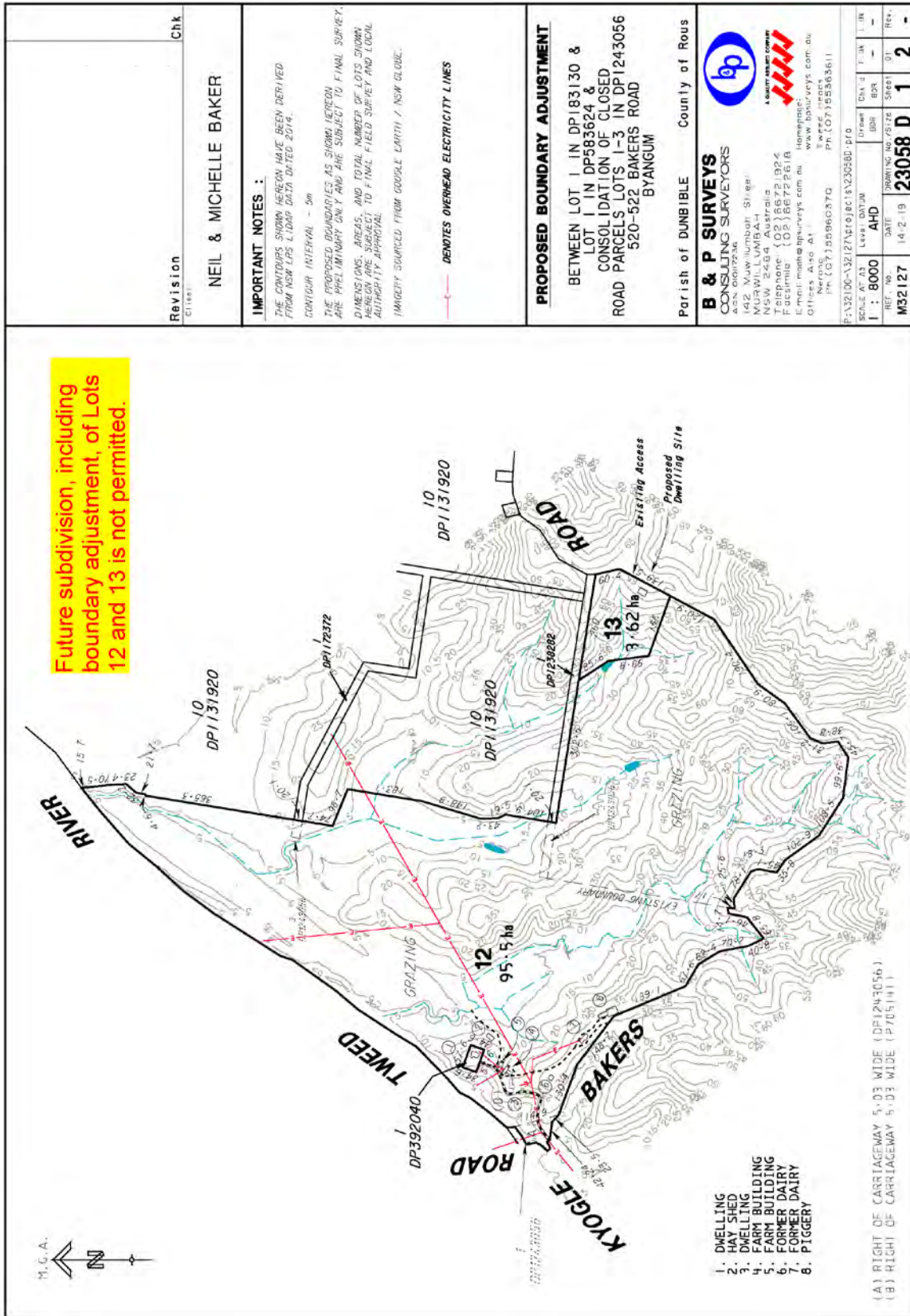
LEP ZONING

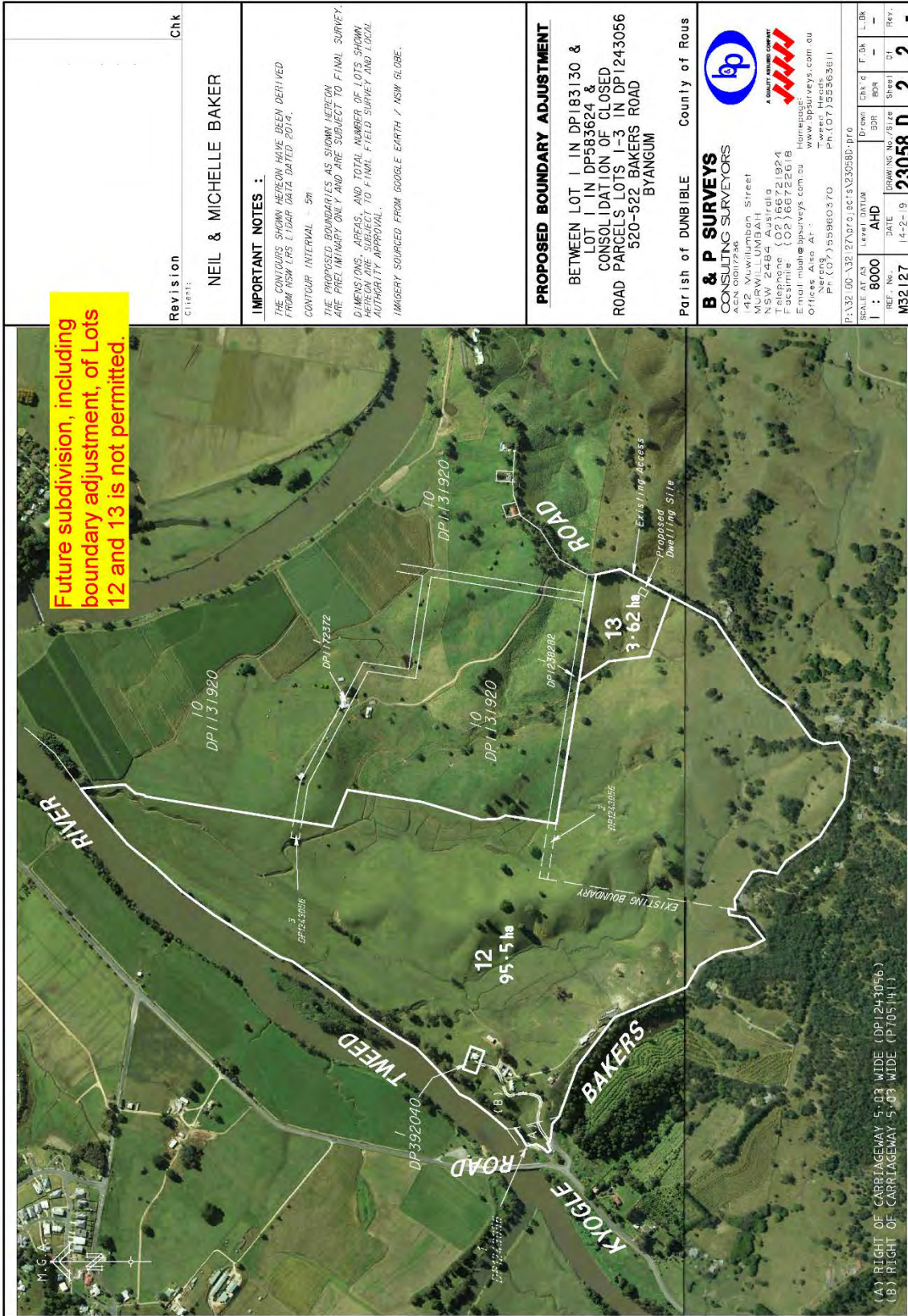


AERIAL IMAGERY



DEVELOPMENT PLANS





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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

The particular aims of this Plan are as follows:

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

The proposed boundary adjustment relates to rural land use for agricultural purposes. The plan aims to, among other things, encourage a sustainable local economy and agriculture. Fragmentation of available agricultural land could be viewed as being inconsistent with the aim of encouraging sustainable agriculture.

The proposal relates to the creation of a large lot that is capable of further permissible subdivision and the creation of a small lot with limited agricultural potential. It could be therefore argued that the proposal could lead to further fragmentation of

agricultural land, via the potential for further subdivision, which would be inconsistent with the aims of the plan.

However this application relates specifically to the alteration of lot boundaries to create a small lot for rural residential purposes and a large lot for the continuation of existing agricultural activities. The proposal is unlikely to result in detrimental impacts to the environment or the environmental and cultural values of the land.

Regardless of permissibility with specific clauses of the Plan, is it considered that the proposed alteration of lot boundaries is generally consistent with the Aims of the Plan.

Clause 2.3 – Zone objectives and Land use table

The proposal relates to land that is zoned RU1 Primary Production and RU2 Rural Landscape. The objectives of these zones are as follows:

RU1 Primary Production

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To protect prime agricultural land from the economic pressure of competing land uses.*

Land zoned RU1 is not directly affected by this proposal in that this portion of land is not directly affected by proposal alteration of boundaries. No change of use of land zoned Primary Production is proposed and the land will be continued to be used for agricultural purposes consistent with the current situation. The proposal is considered to meet the objectives of the RU1 zone.

RU2 Rural Landscape

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

The reduction of the 38.64ha lot to a 3.62ha lot would appear to be inconsistent with the zone objectives of encouraging sustainable primary industry as proposed Lot 13 would have limited agricultural potential. The reduction in the size of the lot would also limit further potential compatible land uses including agri-tourism.

The enlargement of the existing 59.73ha would appear to be consistent with the aims of the plan in that the stated intent of the proposal is to the continued agricultural uses of the land.

The proposal is consistent with the rural landscape character noting that the locality comprises of a range of lot sizes utilized for rural residential and agricultural purposes.

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

The application is seeking a boundary adjustment under Clause 4.1C Exceptions to minimum subdivision lot size for boundary adjustments. Consideration of Clause 4.1C(1) and 4.1C(3)(b) is provided in an earlier section of this report with respect to legal advice received regarding the interpretation of these clauses with respect to the subject application.

To reiterate, the proposal cannot be considered to be a boundary adjustment pursuant to Clause 4.1C as the term adjustment indicates something that is *minor* in its extent. The proposal is not considered to be a minor alteration of boundaries as resultant lots vary significantly from the original lots.

Irrespective of the inconsistency of the proposal with Clause 4.1C(1), the proposal was also determined not to comply with 4.1C(3)(b) as the creation proposed Lot 12 being 95.5ha, results in the opportunity for additional dwellings via the potential for the lot to be further subdivided to create an additional lot with a dwelling entitlement.

Regardless of the conclusion that the proposal cannot be considered a boundary *boundary adjustment* pursuant to Clause 4.1C(1), consideration of the remaining provisions of Clause 4.1C is provided below.

(3) *Despite clause 4.1, development consent may be granted for the subdivision of land by way of an adjustment of boundaries between adjoining lots where the size of one or more of the lots resulting from the subdivision would be less than the minimum lot size shown on the [Lot Size Map](#) in relation to the land if the consent authority is satisfied that the subdivision will not result in:*

(a) *an increase in the number of lots, or*

The proposal will not result in an increase in the number of lots. The proposal relates to a boundary adjustment between two adjoining lots and no new lots are created.

(b) *an increase in the number of dwellings or opportunities for dwellings on each lot, or*

This item is addressed in detail above in which it is considered that the proposal will result in the opportunities for additional dwellings.

(c) *an increase in the possibility of land use conflict, or*

The subject lots are currently used for cattle grazing with a rural dwelling located on Lot 1 DP283624. Proposed Lot 12 (95.5ha) will continued to be used for the current agricultural activities (grazing).

Proposed Lot 13 (3.62ha) is of sufficient size and dimensions to allow the development of a dwelling with appropriate buffers to agricultural activities (grazing) on adjacent lots. The plans show a proposed dwelling site on proposed Lot 13 with a minimum separation to boundaries of approximately 60m. As such it is considered that the proposal is unlikely to increase the possibility of land use conflict.

- (d) *an adverse impact on the environmental values or agricultural viability of the land.*

The proposal is unlikely to adversely impact the agricultural viability of the land, however it is noted that the range of agricultural activities able to be conducted on proposed Lot 13 will be diminished due to its reduced size from 38.64ha to 3.62ha.

The proposal unlikely to result in adverse impacts the environmental values of the land, currently used for grazing purposes noting that the development of dwelling house is permissible on the current vacant lot (38.64ha) which will be reduced to create proposed Lot 13 at only 3.62ha.

Part of proposed Lot 12, along the boundary with the Tweed River, is identified on the NSW Office of Environment and Heritage Biodiversity Values Map however no vegetation removal is proposed and the altered lot boundaries are not on land identified on in the Biodiversity Values Map. As such the proposal is considered not to have an adverse impact of the land.

- (4) *In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:*

- (a) *the existing uses and approved uses of other land in the vicinity of the subdivision,*

The site is currently utilised for grazing purposes. Land in the vicinity of the subject site is utilized primarily for agricultural and rural residential purposes. Smaller rural residential lots are located in the locality in size from 2000m² to 3.25ha.

- (b) *whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,*

The predominant land use within the locality is agricultural and rural residential uses. The proposed subdivision (boundary adjustment) is unlikely to have a significant impact on adjacent agricultural and rural residential uses in the locality, however, proposed Lot 13 at 3.62ha will not be a viable agricultural lot.

- (c) *whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),*

The proposal is not incompatible with the agricultural and rural residential uses of the locality.

- (d) *whether or not the subdivision is likely to be incompatible with a use of land in any adjoining zone,*

Two land zonings being RU1 and RU2 apply to proposed Lot 12 (95.5ha) which is consistent with the current situation. No change of use is proposed for proposed Lot 12. Proposed Lot 13 will be zoned RU2 and is not adjacent to any zone boundaries. Residential lots (1000m²) zoned R5 Large Lot Residential are located approximately 240m from the subject site and are unlikely to be adversely impacted by the proposal.

- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),*

No incompatibility is anticipated.

- (f) *whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land.*

The subject site comprises of grazing land with scattered paddock trees. The land is undulating varying in height from RL 5m AHD along the boundary with the Tweed River to RL70m AHD and contains existing waterways, farms dams and gullies. The proposed realignment of boundaries does not intersect with the existing boundary to the Tweed River. The proposed boundary adjustment does not raise any concerns with regard to physical constraints of the land. A full assessment of natural and physical constraints of the land is provided in a later section of this report under Section 5 Subdivision Manual of the TDCP 2008.

Clause 4.3 - Height of Buildings

Not applicable as no buildings are proposed.

Clause 4.4 – Floor Space Ratio

Not applicable as no buildings are proposed.

Clause 4.6 - Exception to development standards

No exceptions to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

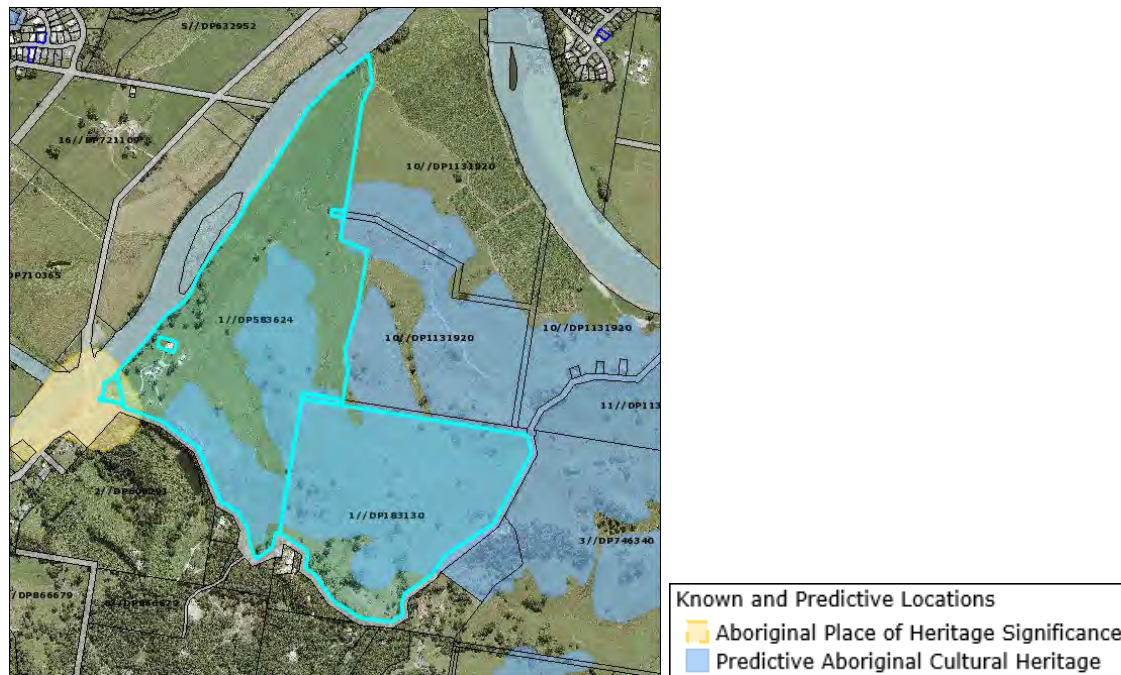
Not applicable as this application relates to a boundary adjustment only.

Clause 5.5 – Development within the Coastal Zone

Not applicable as the site is not located in the Coastal Zone.

Clause 5.10 - Heritage Conservation

The subject site is not within a Heritage Conservation Area nominated under this plan. The site is identified on mapping under the Aboriginal Cultural Heritage Management Plan (ACHMP) as being an Aboriginal Place of Heritage Significance and Predictive for Aboriginal Cultural Heritage.



The land is considered to be a significantly modified site due to past and current clearing and grazing activity. It is noted that the boundary proposed to be altered, is not on land which is mapped as being an Aboriginal Place of Heritage Significance.

The land mapped as being an Aboriginal Place of Heritage Significance is affected by the consolidation of Lot 1 DP 1243056 however no works are proposed to facilitate the consolidation and no change to the current situation is proposed in relation to land identified as an Aboriginal Place of Heritage Significance. It is further noted that development consent is not required for lot consolidation.

As no works are proposed to facilitate the proposal, it is unlikely that the proposal will result in the disturbance of items of heritage significance.

The application was reviewed by Councils Strategic Planning Unit with regard to Heritage conservation matters and it was considered that as no works are proposed on land mapped as either an Aboriginal Place of Heritage Significance or Predictive for Aboriginal Cultural Heritage, referral to the Tweed Byron Local Aboriginal Land Council was not warranted.

Any subsequent applications for a dwelling house will be required to consider the heritage conservation values of the land.

The proposal is considered to be compliant with the provisions of this clause. Detailed consideration of the proposal with respect to the Aboriginal Cultural Heritage Management Plan (ACHMP) is provided in a later section of this report.

Clause 5.11 - Bush fire hazard reduction

The site is mapped as bushfire prone. The proposal does not affect the provisions of this clause. A full assessment of suitability of the proposal with regard to the bushfire hazard of the land is provided in a later section of this report.

Clause 7.1 – Acid Sulfate Soils

The site mapped as possibly containing Class 1, 4 & 5 Acid Sulfate Soils. No works are proposed to facilitate this proposal and as such Acid Sulfate Soils are not considered to be a constraint for the application.

Clause 7.2 - Earthworks

The application relates to a subdivision in which no works are proposed. As such the proposal is considered to be compliant with the provisions of this clause.

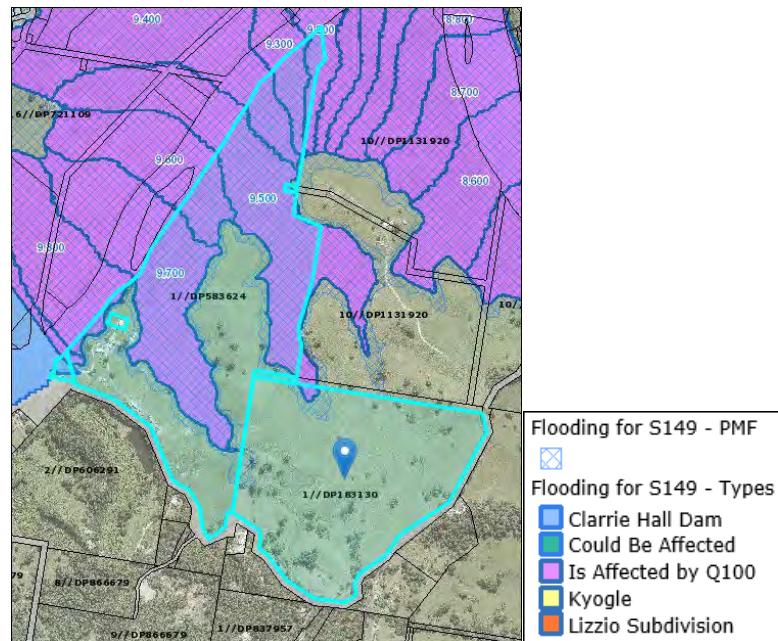
Clause 7.3 – Flood Planning

The objectives of this clause are:

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

The subject lots are mapped as being flood affected with a Design Flood Level of RL 9.9m AHD. The existing dwelling on Lot 1 DP583624 is on land that is not mapped as flood affected and the proposed dwelling site on proposed Lot 13 is not flood affected.

No works are proposed to facilitate the proposal and as such it is considered that the proposal is compatible with the flood hazard of the land and will not result in significant adverse impacts on flood behaviour or the environment.



Clause 7.4 - Floodplain risk management

Not applicable. The proposal does not relate to a risk adverse use listed under this clause.

Clause 7.5 - Coastal risk planning

Not applicable as the site is not identified on the Coastal Risk Planning map.

Clause 7.6 - Stormwater Management

Not applicable as this clause relates to stormwater management in urban zones.

Clause 7.7 - Drinking Water Catchments

The site is identified in the Drinking Water Catchment Map. The relevant provisions of this clause are as follows:

- (3) *Before determining a development application for development on land to which this clause applies, the consent authority must consider the following:*
 - (a) *whether or not the development is likely to have any adverse impact on the quality and quantity of water entering the drinking water storage, having regard to the following:*
 - (i) *the distance between the development and any waterway that feeds into the drinking water storage,*
 - (ii) *the on-site use, storage and disposal of any chemicals on the land,*
 - (iii) *the treatment, storage and disposal of waste water and solid waste generated or used by the development,*

- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development is designed, sited and will be managed to avoid any significant adverse impact on water quality and flows, or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

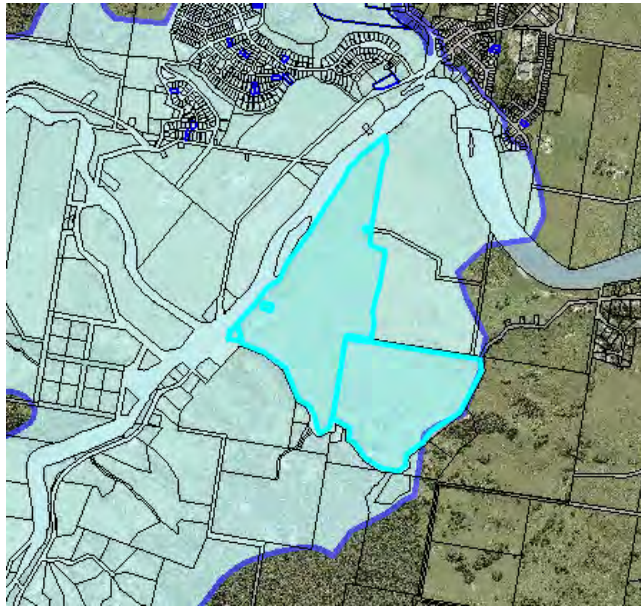
The site shares a boundary with the Tweed River and the Bray Park Weir is located 360m from the northern portion of proposed Lot 12. The application was supported by an On-site Sewage Management Assessment Report and it is considered that the proposed lots are able to satisfactorily manage the treatment and storage of wastewater generated by any existing or proposed residential development without impacting water quality.

The application was referred to the Water and Wastewater Unit for comment with respect to potential impacts on the drinking water quality and storage. The Water and Wastewater Unit noted that the past and current land use practices and farming operations, including the piggery, contribute to pollution of the water supply weir downstream of the site. No change of land use is proposed with respect to this boundary alteration and so this is considered to be a matter separate to this application.

With regard to the nearby weir the Water and Wastewater Unit also provided the following comments:

A study is currently in progress to determine a possible solution to the increased likelihood of salt water inundation of Bray Park Weir which is the main water supply for the Tweed District. The property in question abuts the weir pool and there is potential for solution to impact the adjoining properties in some way including minor inundation of low lying land.

It is noted that any changes to the Bray Park Weir may impact the subject site, however this proposal is unlikely to impact water quality and flows and therefore is compliant with the provisions of this clause.



Clause 7.8 – Airspace operations

The site is not mapped as being within an area subject to airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

Not applicable.

Clause 7.10 - Essential Services

The site is not connected to Council's water or sewerage infrastructure. The submitted On-site Sewage Management Assessment Report indicates that proposed Lot 13 is capable of accommodating an on-site sewage management system for any future dwelling. On-site sewage management for the existing dwellings on proposed Lot 12 are adequate and remain unchanged.

Telecommunications and electricity services are available to the area.

Existing access to propose Lot 12 is to remain unchanged and Council's Subdivision Engineers are satisfied that suitable access, in accordance with Council's controls, is able to be achieved for proposed Lot 13.

North Coast Regional Plan 2036 (NCRP)

The North Coast Regional Plan 2036 is the key strategic planning strategy that sets the intended direction for growth and development on the North Coast over the next 30 years. The NCRP sets out four primary Goals and associated Directions and Actions to achieve those goals.

Direction 11: *Protect and enhance productive agricultural lands* is applicable to the proposal as the site is partially identified as Regionally Significant Farmland through the Northern Rivers Farmland Protection Project 2005 as referenced with in this Direction. Action 11.2 of the NCRP proposes to update the Northern Rivers Farmland Protection Project 2005 and includes interim criteria for the assessment

of any non-agricultural uses of land identified as important farmland within Appendix B.

This application does not propose any change of use of land mapped as Regionally Significant Farmland and accordingly is considered to be not inconsistent with the strategic intent of the North Coast Regional Plan.

State Environmental Planning Policies

SEPP (Coastal Management) 2018

The site is partially mapped as being within the Coastal Environment Area identified in the Coastal Management SEPP and as such clause 13 is applicable to the proposal.

The objectives of Clause 13 are as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*
- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

The proposed boundary realignment does not impact upon land mapped as being within the Coastal Environment Area. The proposal is not likely to cause an adverse impact on coastal environmental values or coastal processes and as such is considered to be compliant with the provision of the SEPP.

SEPP No. 44 - Koala Habitat Protection

This policy applies to land in relation to which a development application has been made that has an area of more than 1 hectare and as such is applicable to the proposal. The aims and objectives of SEPP 44 are set in clause 3 as follows:

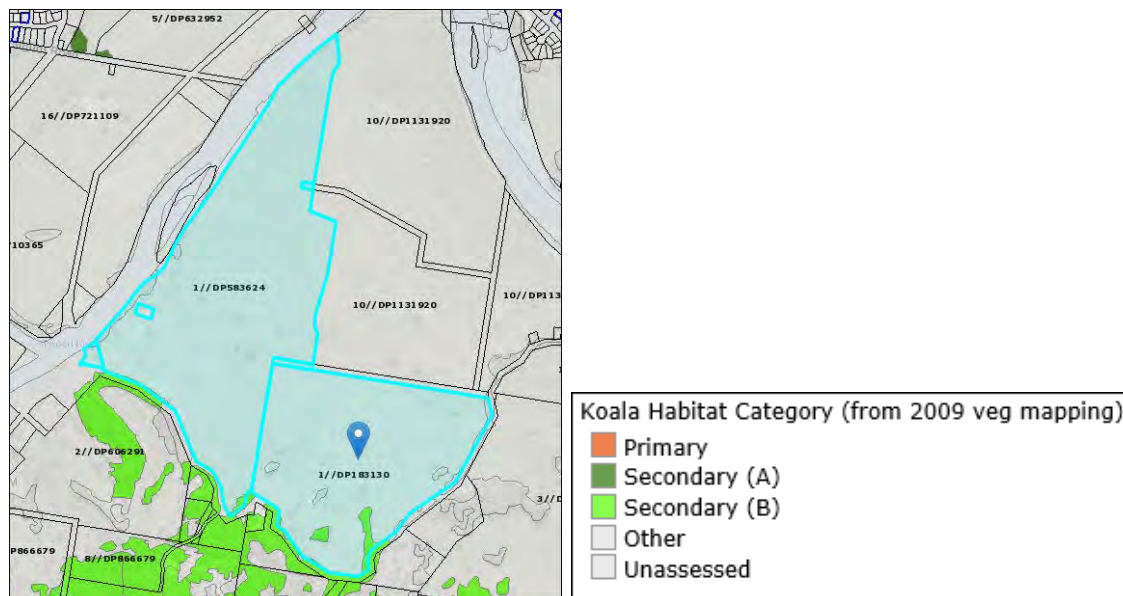
3 Aims, objectives etc

This Policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:

- (a) *by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and*
- (b) *by encouraging the identification of areas of core koala habitat, and*
- (c) *by encouraging the inclusion of areas of core koala habitat in environment protection zones.*

Prior to the issue of any consent for a development application, Council must consider if the land to which the application relates is potential or core koala habitat.

The land has been historically cleared and has been used as grazing land for more than 50 years. Council's vegetation mapping does not indicate that the site supports primary koala habitat. The land is not considered to be potential or core koala habitat and as such a plan of management is not required for the proposal.



SEPP No. 55 - Remediation of Land

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

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

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

Aerial imagery indicates that the site has been substantially cleared of vegetation from at least 1962 and there is no evidence of cropping.

The subject lots are currently use for cattle grazing. A piggery is located on current Lot 1 DP583624 (59.73ha) which is located approximately 260m from the existing dwelling on the lot and approximately 1000m from the proposed dwelling site on proposed Lot 13.

Council's Environmental Health Unit have reviewed that application and conducted a desk top analysis of potential contamination of the site. No evidence of potential contamination was uncovered and it is considered that no further investigation is warranted with regard to potential contamination of the site.

It is considered that the site is suitable for the proposed agricultural and rural residential purposes with regard to potential contamination of the site and the provisions of this SEPP have been satisfied.

SEPP (Primary Production and Rural Development) 2019

The aims of this policy are set out in Clause 3 and are as follows:

- (a) *to facilitate the orderly economic use and development of lands for primary production,*
- (b) *to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,*
- (c) *to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (d) *to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,*
- (e) *to encourage sustainable agriculture, including sustainable aquaculture,*
- (f) *to require consideration of the effects of all proposed development in the State on oyster aquaculture,*

- (g) *to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.*

The SEPP sets out provisions relating to state significant agricultural land, farm dams, livestock industries (not grazing), aquaculture development and rural land sharing communities. The site is not identified as state significant agriculture land under this policy, nor is the development related to the above uses.

Schedule 4 of the SEPP includes standard provisions relating to primary production and rural development for non-standard local environment plans. The site is subject to the provisions of Tweed Local Environment Plan 2014 which is based on the Standard Instrument and therefore is not applicable to the proposal. Further consideration of this SEPP is not required.

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

There are no draft environmental planning instruments that apply to the proposed development.

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

Tweed Development Control Plan 2008

A2-Site Access and Parking Code

The application proposes to upgrade an existing farm access from Bakers Road for proposed Lot 13. An Intersection Sight Distance Plan was submitted for the existing access location which indicated that removal or trimming of some mature trees within the road reserve would be required to achieve acceptable sightlines.

The location of the driveway access was reviewed by Council's Development Engineering Unit and Council's Sustainability & Environment Unit. The Sustainability & Environment Unit expressed concern regarding the proposed vegetation removal however the Development Engineering Unit considers that an a repositioned access located 3-5m north of the existing access would be acceptable and reduce the need for vegetation removal.



Figure 4 **Red line** = existing access location for proposed Lot 13
Blue line = alternate location to avoid the need to remove the large existing gum tree.

The existing access for proposed Lot 12 currently traverses Lot 1 DP1243056 (First Title Creation of Road Closer). This lot is to be amalgamated with proposed Lot 12. No changes are proposed to the existing access driveway for proposed Lot 12 which is considered to be acceptable.

The proposal is considered to be acceptable with regard to access and the provisions of Section A2.

A3-Development of Flood Liable Land

The subject lots are mapped as being partially flood affected with a Design Flood Level of RL 9.9m AHD. Clause 3.10 Rural Areas of Section A3 apply to the site.

The controls with regard to subdivision state:

A flood free dwelling site must exist on each new allotment created. The construction of a flood free dwelling will be permitted only where it can be demonstrated that such work will not have any adverse effects on flood waters in the locality.

Where a flood free access exists to the land being subdivided the proposed subdivision, as far as practicable, be designed so that a flood free access is provided to the proposed lots.

The existing dwelling on Lot 1 DP583624 is on land that is not mapped as flood affected and no changes are proposed to the existing access. The proposed dwelling site on proposed Lot 13 is not mapped as being flood affected and flood free access is provided. The construction of any future dwelling is unlikely to result in any adverse effect on flood waters. The proposal is compliant with Section A3.

A5-Subdivision Manual

The aims of the Subdivision Manual are:

- *Present Council's strategic plan objectives of the development of subdivisions;*
- *Achieve the highest quality and "best practice" of subdivision development on the Shire;*
- *Implement the policies and provisions of the NSW State Government in terms of seeking to achieve quality of subdivision planning and development;*
- *Provide guidelines and development standards for the development of subdivisions.*

Section A5.5 Rural Subdivision Guidelines and Development Standards as well as the provisions contained in Section 5.4 are applicable to the proposal.

Physical Constraints

- *Flood liable land*

As discussed in an earlier section of this report, the proposed dwelling site for proposed Lot 13 not mapped as flood affected and flood free access is proposed.

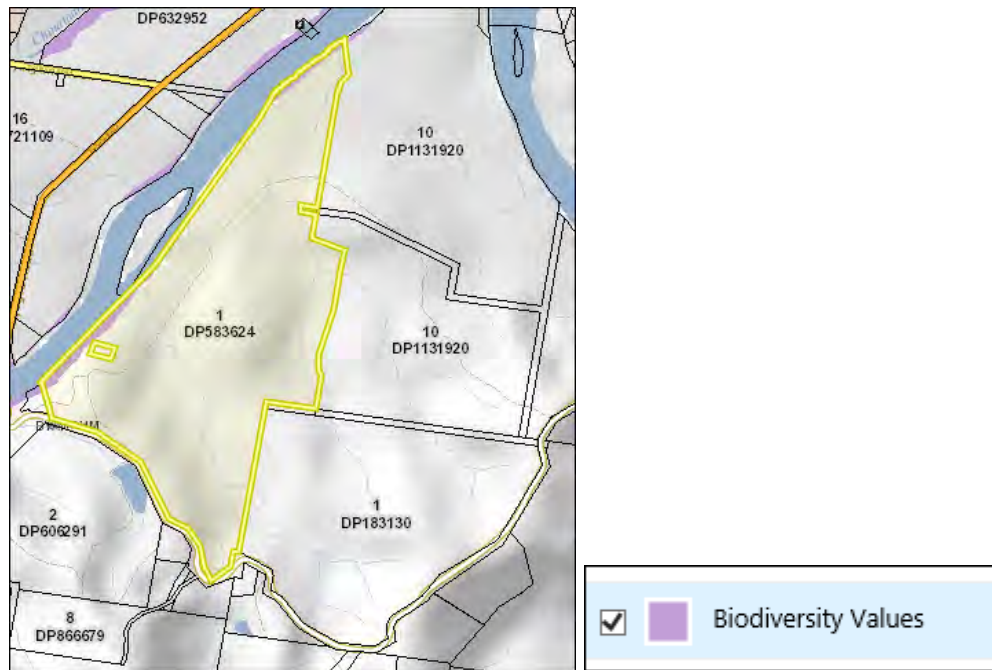
There is no fill or works proposed that will result in an adverse impact on flood waters.

- *Bushfire Risk*

The subject site is mapped as bushfire prone and the application was accompanied by a bushfire threat assessment report. The existing dwelling on proposed Lot 12 is not on land mapped as bushfire prone and the proposed dwelling site on proposed Lot 13 is located on land mapped as being with the Vegetation Buffer.

The application was accompanied by a Bushfire Assessment Report and the application was referred to the Rural Fire Service in accordance with Section 100B of the Rural Fires Act 1997. The RFS have issued General Terms of Approval in relation to Water and Utilities. The General Terms of Approval relate to the proposed subdivision only and any further application for a dwelling will be required to address the requirements of 'Planning for Bushfire Protection 2006'.

The proposal is considered to be acceptable with regard to bushfire hazard of the land.



- *Landscape visual character*

No subdivision works are proposed other than that required to ensure adequate access is provided to proposed Lot 13.

Any future dwelling on proposed Lot 13 would be subject to a separate application for approval. The appropriate siting of dwelling with regard to visual character will be assessed at this time and will need to consider the provisions of Council's Draft Scenic Landscape Strategy as the land is identified on Scenic Landscape Strategy mapping.

It is considered that the proposed subdivision is compatible with the landscape visual character of the locality and the proposed dwelling site for proposed Lot 13 is acceptable subject to further development approvals.

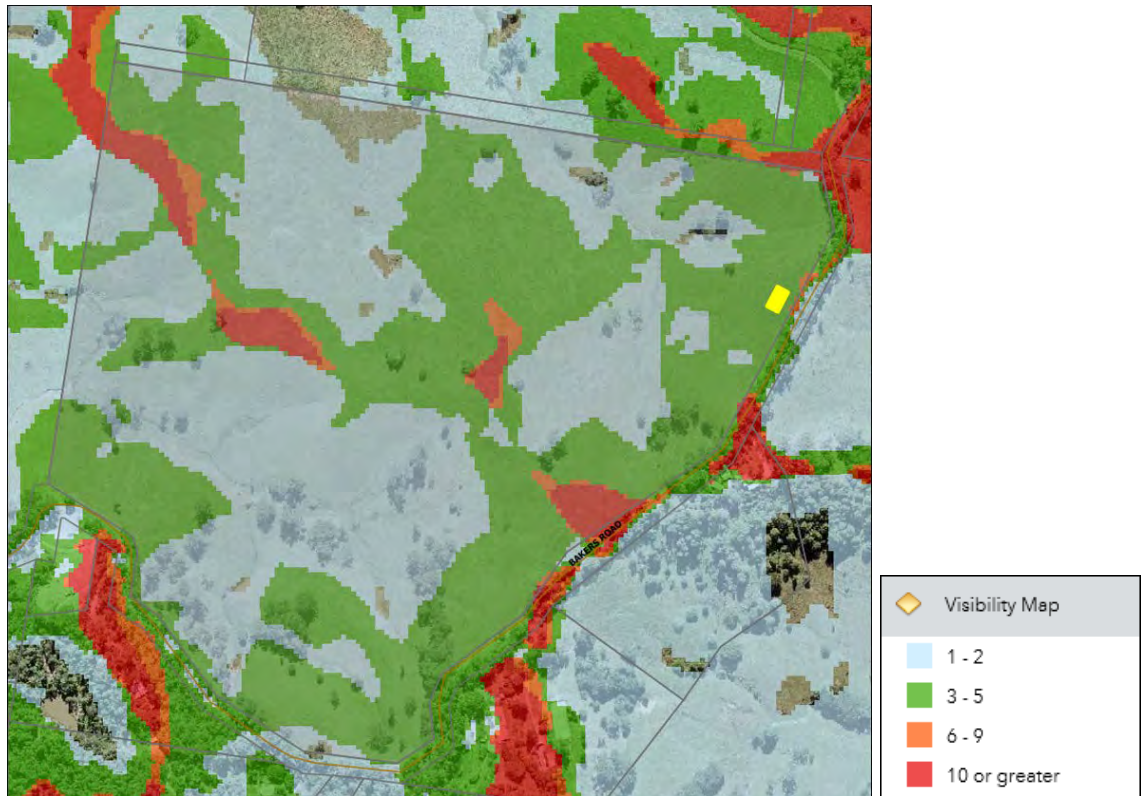


Figure 5 Extract from Draft Scenic Landscape Interactive Mapping tool indicating proposed dwelling site on proposed Lot 13

- *On-site effluent disposal*

The applicant has provided an on-site sewage design / site and soil assessment HMC 2019.028 dated March 2019. The report findings demonstrate that suitable land will be available on proposed Lot 13 for on-site sewage management to service a future dwelling.

Council records indicate the effluent disposal bed attached to the septic tank at Lot 1 DP392040 (the existing lot enclosed by proposed Lot 12) is located outside the boundary. It appears the effluent disposal bed is located on proposed Lot 12. This situation is currently being rectified noting that an application for a replacement on-site sewage system for the dwelling on Lot 1 DP392040 has recently been approved by Council.

- *Rural Watercourses and drainage*

Existing Lot 1 DP583624 (59.73ha) has a 1.4km boundary with the Tweed River and the subject site is traversed by a number of low order streams and contains several farm dams. The boundaries of proposed Lot 13 cross a lower a low order stream and will be adjacent to an existing farm dam which will be located on proposed Lot 12.

As mentioned previously, no works are proposed to facilitate the boundary adjustment and no change to existing farming activities are proposed. The subdivision will not alter the drainage layout and any future dwellings on proposed Lot 13 will be able to manage stormwater effectively and easements for drainage will not be required.

- *Rural Subdivision Structure/ Lot Layout*

Lot layout should consider environmental constraints and encourage and promote the continuation of agricultural uses of the land. In accordance with the requirements of this Section, each of the proposed lots:

- Have access to a road reserve;
- Have a flood free dwelling site noting there is no change to the existing dwelling located on proposed Lot 12;
- Is able to comply with Planning for Bushfire Protection 2006;
- Is capable of accommodating appropriate on-site sewerage management systems;
- Is of an appropriate size to allow for adequate separation of dwellings to rural activities.

The applicant has stated that the objective of the proposal is to increase the financial viability of the land and whilst maintaining a large land holding for farming operations and that proposed Lot 13 (3.62ha) is to be used for rural living and “*minor agricultural uses*”. It is arguable that the creation of proposed Lot 13 is not consistent with the provisions of encouraging and promoting the continuation of agricultural uses of the land noting the limit potential for agricultural uses of this lot.

- *Rural Movement Network*

No new roads are proposed. An existing Right of Carriageway on Lot 1 DP583624 (59.73ha) benefiting Lot 1 DP392040 will remain unchanged by the proposal. No changes are proposed to the existing access for proposed Lot 12 and suitable 2 wheel drive standard access is achievable for the proposed dwelling site on proposed Lot 13. The proposal is acceptable in this regard.

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

There are no planning agreements or draft planning agreements that apply to the proposed development.

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

Clause 92(1)(b) Applications for demolition

Not applicable.

Clause 93 Fire Safety Considerations

Not applicable. No changes to existing buildings is proposed.

Clause 94 Buildings to be upgraded

Not applicable. No changes to existing buildings is proposed.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand. It is considered that the proposal represents an appropriate development on land zoned for residential use and achieves an adequate spatial separation from the coastal foreshore. The proposal is generally consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

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

Context and Setting

The proposed boundary realignment and consolidation of lots, does not result in any change of use of the land noting that a dwelling is permissible on the current vacant Lot 1 DP183130 (38.64ha). The surrounding rural land uses are a mix of agricultural and rural residential uses. Current lot sizes in the surrounding rural zone varying in size from 59.7ha (subject lot) to 2000m². Two lots of approximately 3.5ha a located adjacent to current Lot 1 DP183130 (38.64ha) on Bakers Road. The proposal is therefore considered to be consistent with the context and setting of the rural location.

Heritage – Aboriginal Cultural Heritage

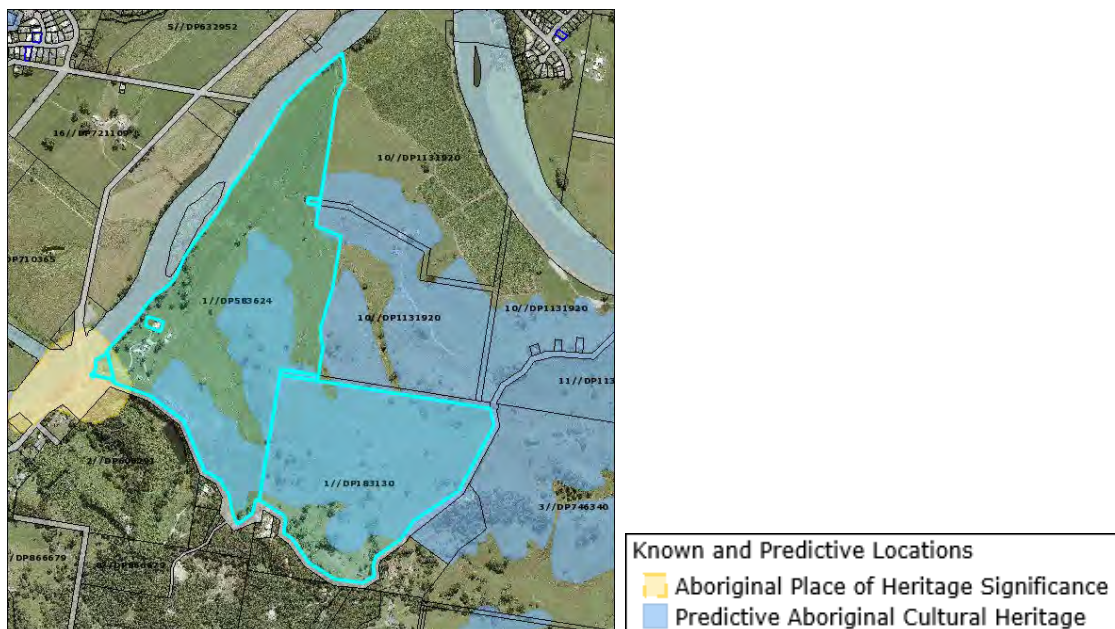
The site is identified on mapping under the Aboriginal Cultural Heritage Management Plan (ACHMP) as being an Aboriginal Place of Heritage Significance and Predictive for Aboriginal Cultural Heritage.

Lot 1 DP 1243056 is mapped as being an Aboriginal Place of Heritage Significance under the ACHMP and is the current access for current Lot 1 DP583624 (59.73ha) to Bakers Road. This lot (closed road reserve) is to be amalgamated into proposed Lot 12 and no works are proposed to the existing access. An AHIMS Basic Search of the subject lots (including a 50m buffer) did not reveal any Aboriginal sites or places recorded or declared in or near the subject lots (recorded on file).

As this portion of land is to remain unchanged from the existing situation, the proposal is considered to be consistent with objectives of the ACHMP in this regard.

The boundary alteration and proposed Lot 13 relates to land mapped as Predictive for Aboriginal Cultural Heritage. Section C6.2 of the ACHMP applies to the assessment of development applications on land mapped as an area of Predictive Aboriginal Cultural Heritage and includes a Risk Matrix Table (table C3) to assist in the assessment of risk of harm to Aboriginal cultural heritage items or places.

The existing land use may be described as a significantly altered environment comprising of cleared grazing land. A lot boundary is proposed to pass through land mapped as Predictive Aboriginal Cultural Heritage however no physical works are associated with the creation of this boundary. As such the creation of proposed Lot 13 is considered to be Low Risk with regard to the potential disturbance of Aboriginal cultural heritage items or places. The recommendations for low risk proposals are to adopt a precautionary approach toward the preservation of Aboriginal Cultural Heritage values. There is no requirement for an Aboriginal cultural heritage assessment and referral to the Tweed Byron Local Aboriginal Land Council was not considered to be warranted.



Farmland of State or Regional significance

The subject site is partially mapped as Regionally Significant Farmland under the Northern Rivers Farmland Protection Project 2005. The aim of the Farmland Protection Project is to protect significant farmland from future rezoning for residential purposes. The proposal does not relate to dwellings on Regionally

(e) Public interest

The proposal relates to the reorganisation of lot boundaries and no physical or environmental impacts have been identified. The proposal therefore is considered to be in the public interest.

OPTIONS:

Option 1.

- A. Refuse the application in accordance with the initial recommendation, and
- B. That Council includes in the Strategic Planning Unit work program an amendment to the Tweed Local Environmental Plan 2014 (Clause 4.1(C)) to generally permit changes to boundaries of existing undersized lots that will not result in lots that could be further subdivided and create a dwelling entitlement.

Option 2.

- A. Approve the application subject to the following conditions:

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 3 months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 95 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act, 1979 and Section 95 of the Regulations as amended.

- A. Provide to Council for approval, wording for a Restriction under Section 88B of the Conveyancing Act that prohibits in perpetuity any further subdivision of proposed Lots 12 & 13, including boundary adjustment, that would create additional lots with a dwelling entitlement. The wording of the restriction is to state that the restriction burdens both lots and benefits Tweed Shire Council and cannot be removed except by a unanimous vote of Council.

Burdened: Lots 12 and 13
Benefit: Tweed Shire Council

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No. 23058D Sheets 1 & 2, as amended in red, prepared by B & P Surveys and dated 14 February 2019, except where varied by the conditions of this consent.
[GEN0005]
2. The subdivision is to be carried out in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design and Construction Specifications.
[GEN0125]
3. Future subdivision, including boundary adjustment, of Lots 12 and 13 is not permitted.
[GENNS01]

DURING CONSTRUCTION

4. Should any Aboriginal object or cultural heritage (including human remains) be discovered all site works must cease immediately and the Tweed Byron Local Aboriginal Land Council (TBLALC) Aboriginal Sites Officer (on 07 5536 1763) are to be notified. The find is to be reported to the Office of Environment and Heritage. No works or development may be undertaken until the required investigations have been completed and any permits or approvals obtained, where required, in accordance with the National Parks and Wildlife Act, 1974.
[DUR0025]
5. Commencement of work, including the switching on and operation of plant, machinery and vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm
No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.
[DUR0205]
6. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:
 - Noise, water or air pollution.
 - Dust during filling operations and also from construction vehicles.
 - Material removed from the site by wind.[DUR1005]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

7. Prior to issue of a Subdivision Certificate, all works/actions/inspections etc required by other conditions or approved Management Plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

8. A Restriction as to user over proposed Lot 12 and Lot 13 is to be created under Section 88B of the Conveyancing Act 1919 in accordance with that approved by Council under Schedule A of this consent.

The Section 88B Instrument creating the Restriction is to benefit Council and shall include a provision enabling the Restriction to be revoked only by a unanimous vote of Council.

[PSC0805]

9. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

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

Furthermore, prior to the issue of a Subdivision Certificate, each lot shall have its' address number displayed in accordance with Council's procedure on street numbering.

[PSC0845]

11. Prior to registration of the Plan of Subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) Submission of all documentation electronically (in pdf format), plus the original Plan of Subdivision (and original Admin Sheets) prepared by a registered surveyor together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) All detail as tabled within Tweed Shire Council's Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

12. The production of written evidence from the local telecommunications supply authority certifying that the provision of telecommunications at the boundary of (or within) both allotments has been completed, unless agreed otherwise by Council.

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

The NBN letter must reference:

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

[PSC1165]

13. Electricity (rural subdivisions)

The production of written evidence from the local electricity supply authority certifying that the reticulation and ENERGISING OF LOW VOLTAGE electricity has been provided to each allotment (unless agree otherwise by Council and the local electricity supply authority).

All associated electricity supply works must be designed by an authorised Level 3 Accredited Service Provider and works undertaken by an authorised Level 1 Accredited Service Provider.

An acceptable letter from the local electricity supply authority is Essential Energy's *"Notice of Arrangement"*.

Unless agreed otherwise by Council, the letter from the local electricity supply authority must reference:

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

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

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

Where is it agreed by both Council and the local electricity supply authority for an allotment to be serviced by existing high voltage overhead electricity instead of low voltage, a POSITIVE COVENANT shall be imposed advising that the registered proprietor of the Lot burdened shall have to carry out additional works, including installation of substations to provide low voltage supply prior to any dwelling being erected on the Lot burdened.

[PSC1175]

14. Prior to registration of the Plan of Subdivision, application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve, including (but not limited to) the construction of a new, vehicular access in accordance with Council's Development Control Plan - Section A2 "*Site Access and Parking Code*" and Council's "*Driveway Access to Property - Design Specification*" (*current version*) servicing proposed Lot 13 off Bakers Road.

The driveway to proposed Lot 13 shall be located to minimise the disturbance to existing vegetation (including sight lines) and is to be endorsed by Council's Sustainability and Environment Unit. The driveway shall be sealed from the edge of Bakers Road to the property boundary.

[PSCNS01]

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

[PSCNS02]

16. Prior to the issue of subdivision certificate the applicant shall install the on-site sewage management system within existing Lot 1 DP392040 boundaries as approved under application SEP19/0058 to the satisfaction of Council and obtain approval to operate the new system as installed.

[PSCNS03]

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

Water and Utilities

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

1. Any alteration to the electricity network required to service the subdivision shall comply with either section 4.1.3 of 'Planning for Bush Fire Protection 2006' or the requirements of Essential Energy NSW.

and

- B. That Council includes in the Strategic Planning Unit work program an amendment to the Tweed Local Environmental Plan 2014 (Clause 4.1(C)) to generally permit changes to boundaries of existing undersized lots that will not result in lots that could be further subdivided and create a dwelling entitlement.

Option 1 is recommended.

CONCLUSION:

The proposed boundary alteration is unlikely to result in a significant impact on the physical landscape or the environmental or cultural values of the land. The proposal is considered to be generally consistent with the existing rural character of the land.

The interpretation of the provisions of Clause 4.1C of the TLEP has been considered with respect to legal advice provided in relation to this application and it is considered that the application cannot be considered to be a boundary adjustment pursuant to the provisions of Clause 4.1C. The proposed alteration to the lot boundaries is beyond what could reasonably be considered to be an *adjustment* to the boundary as the resultant lots vary significantly in size and shape to the original lot layout.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application, such an appeal may have budget implications for Council.

c. Legal:

Yes, legal advice has been received and is attached.

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Legal advice dated 2 July 2019 (ECM 6024021)

4 [PR-PC] Development Application DA17/0564.01 for an Amendment to Development Consent DA17/0564 for Dwelling Alterations and Additions at Lot 1 DP 1241037 No. 125 River Street, South Murwillumbah

SUBMITTED BY: Building and Environmental Health

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: Provider

SUMMARY OF REPORT:

Updated Summary since 1 August 2019

This report is submitted in response to the following resolution of Council dated 1 August 2019:

"That Development Application DA17/0564.01 for an amendment to Development Consent DA17/0564 for dwelling alterations and additions at Lot 1 DP 1241037 No. 125 River Street, South Murwillumbah be supported in principle and request a further report and conditions to be presented to Council for determination."

The draft conditions as requested are included as Updated Option 2, noting that this report recommends Option 1 for refusal.

It is not recommended that compliance action be taken against the property owner, builder or certifier as information provided as to the cause of the breach of the consent is not clear or conclusive.

It is proposed that a letter will be sent to the Principal Certifying Authority suggesting that they modify their processes and issue a stop work notice should a similar situation occur. It is noted that the roof framework was complete prior to the frame inspection being requested, so there was little the certifier could have done in this instance to resolve the matter.

Original Summary

The report to Council dated 1 August 2019 detailed that Council received a development application for an amendment to Development Consent DA17/0564 for dwelling alterations and additions at Lot 1 DP 1241037, No. 125 River Street, South Murwillumbah.

The original approval (DA17/0564) was granted with a variation of 968mm to the 9m height limit prescribed by Clause 4.3 of the Tweed Local Environment Plan (TLEP) 2014.

The current proposed amendment to the consent seeks to further vary the 9m height limit, by obtaining retrospective approval for the use of the structure with a maximum height of 11.853m, 1.885m higher than the previously approved height variation and 2.853m higher than the maximum height limit prescribed by Clause 4.3 of the LEP. The increased building height consists wholly of the roof form, with the existing approved floor and ceiling heights being maintained.

In addition, the application seeks approval for other minor works, some of which are already constructed, however this report will focus primarily on the proposed height variation.

The height variation is considered to be a significant breach of the 9m height limit prescribed by Clause 4.3 of Council's Local Environment Plan (LEP) 2014. The as-constructed-building exceeds the LEP height limit by up to **32%** and is not considered to be consistent with the five part test for consent authorities to consider when assessing an application to vary a standard as set out by the Land and Environment Court.

From Council's review of the evidence available, the works are considered to be the result of unauthorised construction, which could have been rectified at an earlier stage had the conditions of consent been adhered to and a stop works notice issued at the framing stage.

The assessment of the proposal concludes that the variation provides no improved architectural value to the building and that compliance with the originally approved height variation is not unreasonable or unnecessary in this instance.

Further, had the current building height been applied for prior to being constructed, it would not have been supported by Council Officers. It is therefore considered that the application warrants a recommendation for refusal.

This development application is referred to Council for determination as requested by Councillors Allsop, Owen and Cherry.

RECOMMENDATION:

That:

- 1. Development Application DA17/0564.01 for an amendment to Development Consent DA17/0564 for dwelling alterations and additions at Lot 1 DP 1241037 No. 125 River Street, South Murwillumbah be refused for the following reasons:**
 - 1. Pursuant to the Environmental Planning and Assessment Act, Section 4.15 (1)(a)(i) The proposed development is contrary to the provisions of the Tweed Local Environment Plan 2014, in respect to the following:**

- (a) The proposal is not consistent with the objectives of Clause 4.3 (1);
 - (b) The proposal is not consistent with Clause 4.3 (2) which prescribes a 9m height limit for this locality; and
 - (c) The proposal is not consistent with Clause 4.6, in that compliance with an already varied development standard is not considered unreasonable or unnecessary in this instance.
 2. Pursuant to Section 4.15(1)(a)(iii) The proposal is not consistent with Section A1 of Council's Development Control Plan Clause 3.2, which prescribes a 9m height limit for residential dwellings.
 3. Pursuant to Section 4.15(1)(b) The proposal provides for an unwarranted departure from the building height development standard.
 4. Pursuant to Section 4.15(1)(e) The proposal is considered not to be in the public interest given the works have been constructed without consent, and were avoidable.
2. ATTACHMENTS 4, 5 and 6 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
- (e) *information that would, if disclosed, prejudice the maintenance of law*

REPORT:

Applicant: Ms R Trickey
Owner: Ms Ruth E Trickey
Location: Lot 1 DP 1241037 No. 125 River Street, South Murwillumbah
Zoning: R2 - Low Density Residential
Cost: \$320,000

Background:

APPLICATION DETAILS

The original development consent (DA17/0564) was granted for alterations and additions to an existing dwelling and included a variation to the Tweed Local Environment Plan (LEP) 2014 Building Height Standard.

The modification application that is the subject of this report, seeks retrospective approval for works constructed not in accordance with the Council approved plans for DA17/0564.

Works already constructed:

Roof

- 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 1.885m higher than approved. The new maximum roof height is 16.630m AHD, the previously approved maximum roof height was 14.75m AHD.

Ground floor

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

First Floor

- Relocation of internal walls to bathroom and bed 3 to allow for relocated vanity; and
- Increased size of a window by 800mm in ensuite bed 1.

Works not yet constructed:

Roof

- It 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.

The modification application also seeks to alter conditions 1 and 6 of the original consent.

The proposed amendment to the consent seeks to further vary the 9m height limit, by obtaining retrospective approval for the use of the structure with a maximum height of

11.853m, **1.885m higher** than the approved height variation and **2.853m higher** than the maximum height limit prescribed by Clause 4.3 of the LEP. The increased building height consists wholly of the roof form, with the existing approved floor and ceiling heights being maintained (See Figure 1 below).

SITE DETAILS

The subject site is legally described as Lot 1 DP 1241037 No. 125 River Street, South Murwillumbah. The site has an area of 993.2m² and is a regularly shaped allotment with frontage to River Street.

The site is currently improved by an elevated single storey dwelling undergoing alterations and additions both approved under DA17/0564, and the owner is now seeking retrospective approval for unauthorised works under DA17/0564.01.

The site is flood affected with a Design Flood level of 7.3m AHD identified for the site. The minimum habitable floor level for the building is 7.8m AHD. The proposed modification maintains the previously approved habitable floor level.

The site adjoins the Tweed River to the rear or west, a three storey residential flat building to the south and a single residential dwelling to the north.

The predominant land use pattern within the area is low density residential living, with development in the area a mixture of single and two storey dwellings.

HISTORY OF THE APPLICATION

The application was referred to Council's Planning Committee meeting on 1 August 2019. At this meeting Council resolved that the proposal be supported in principle and requested that a further report and conditions be presented to a subsequent Council meeting.

The original approval (DA17/0564) was granted with a variation of 968mm to the 9m height limit prescribed by Clause 4.3 of the Tweed Local Environment Plan (TLEP) 2014. The applicant addressed Clause 4.6 of the LEP, citing that compliance with the building height development standard was unreasonable or unnecessary.

Specifically, the applicant cited that the variation was warranted in order to achieve the minimum habitable floor levels prescribed by Section A3 of the Tweed Development Control Plan 2008 and also arguing that the 968mm variation was minor.

The proposed amendment to the consent now seeks to further vary the 9m height limit, by obtaining retrospective approval for the use of the structure. The structure now has a maximum height of 11.853m, **1.885m higher than the approved height variation** and **2.853m higher than the 9m building height limit** prescribed by Clause 4.3 of the TLEP 2014. The increased building height consists wholly of the roof form and maintains the existing floor levels (8.2m AHD) and the finished ceiling height (10.90m AHD).

Council officers do not support this variation, and are of the view that compliance with the existing approved height is not considered unreasonable or unnecessary given flooding considerations were already satisfied in the original variation, and the extent of the proposed variation should no longer be considered 'minor'.

As set out later in this report, the amended Clause 4.6 variation request is considered to be unreasonable having regard to the already approved height variation and it is recommended that Council refuse the request.



Figure 1 – Portion of the already constructed roof above the 9m height limit.

The original development consent had specific conditions imposed to ensure that the approved works were constructed with a maximum height of 14.745m AHD. These conditions include:

- 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

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

6. *The proposed alterations and additions shall not exceed a maximum height of RL 14.745m AHD, as indicated on the approved plans.*
27. *During construction the Principal Certifying Authority is to be provided with a Registered Surveyors floor level certificate at each floor platform stage (before any concrete pour) and when the roof framework is in place, to confirm the height of the building is proceeding in accordance with the approved plans/consent conditions.*

It is the role of the Principal Certifying Authority to ensure that conditions of consent are adhered to, including the production of specific documents to Council as required (engineering, surveying etc.). The certifying authority is also responsible for ensuring works are constructed in accordance with the approved plans.

UNAUTHORISED WORKS INFORMATION

Council has undertaken various investigations in terms of the unauthorised works.

Whilst information provided by the owner states that the further building height encroachment is a result of errors made by the builder, the Private Certifier states:

"It was mentioned numerous times the overall height for the development due to the change in roof pitch to the owner who advised on a number of occasions that it was still under the maximum height limit for the subject site and this would be addressed within the section 96 application to Council."

The Principal Certifying Authority (private) conducted a framing inspection on 11 September 2018, in which the framing report states that the frame was satisfactory and that a 'Section 96 was requested for changes made from Development Approval Stamped Plans, including increased building height'. With the benefit of hindsight, a stop works notice may have been a more appropriate action to take.

The increased building height was directly non-compliant with condition No. 6, which specifies a maximum building height in Australian Height Datum (AHD). The Certifier provided the following response to Council with regard to the floor level certificates required by condition 27:

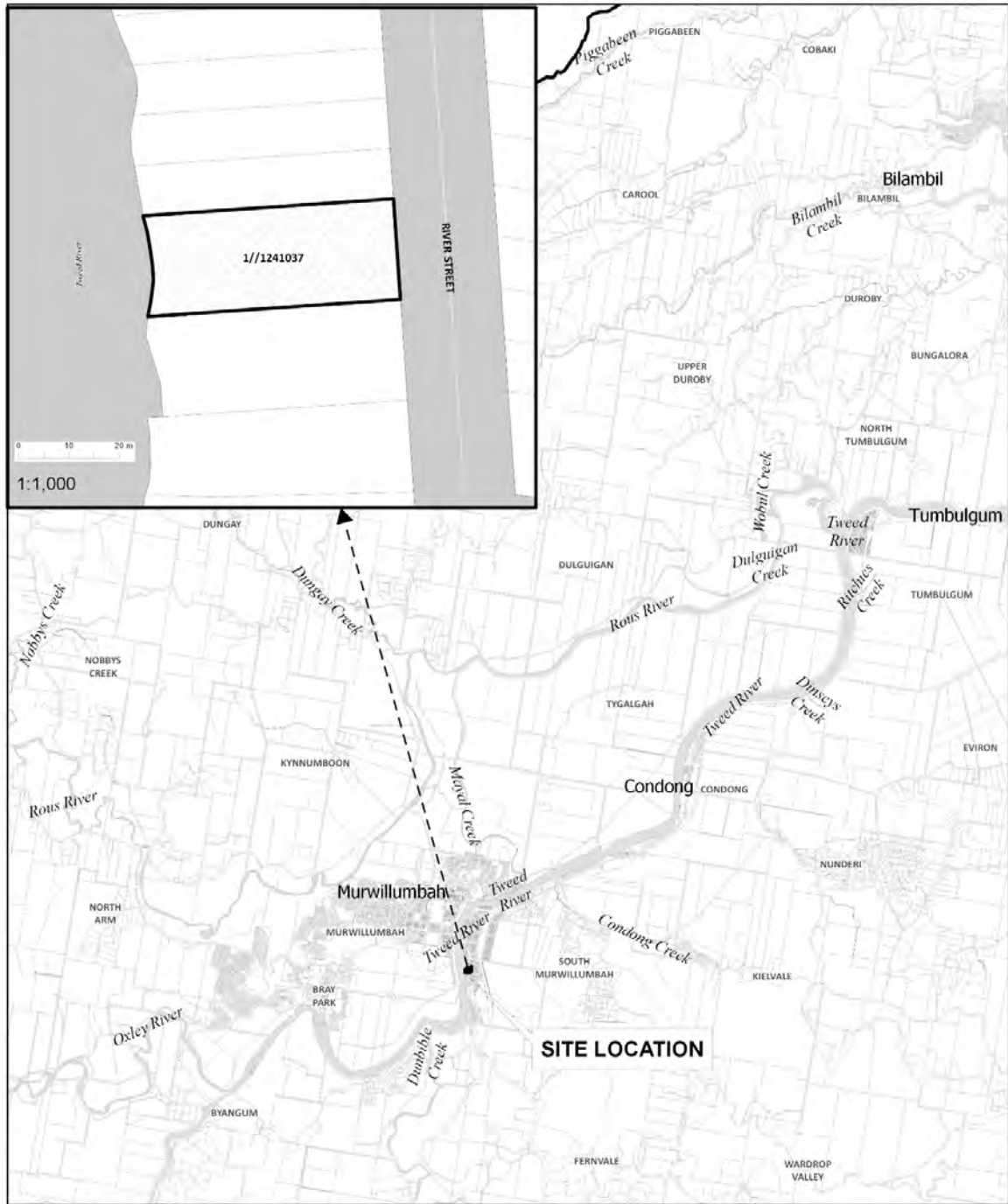
"I have contacted the previous builder regarding the surveyor certificates, he advised that the level for the slab and first floor were taken however he never received them from the surveyor as it was during the period that the dispute between himself and the owner took place and he was no longer the builder so he didn't finalise the surveyor certificates."

In the attached landowners' response to a Council issued Show Cause Notice, the owner cites that numerous non-compliances, including the building height, were first observed at the framing stage. This then led to numerous contractual issues and eventually legal disputes between the owner and the builder.

The owner states that, while they were aware the building was not being constructed at the correct height, they were not aware of the actual building heights until a survey was conducted after the builder had ended his contractual obligations.

The owner has also provided a petition from nearby residents in support of the structure.

SITE DIAGRAM:



Site Plan

Lot 1 DP 1241037

125 River Street, SOUTH MURWILLUMBAH



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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastre: 03/07/2019
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TWEED
SHIRE COUNCIL

Date Printed: 03 July, 2019

AERIAL PHOTOGRAPH:



1:500 A4 Portrait
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Map Projection: Universal Transverse Mercator
Horizontal Datum: Geostatic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56
GDA

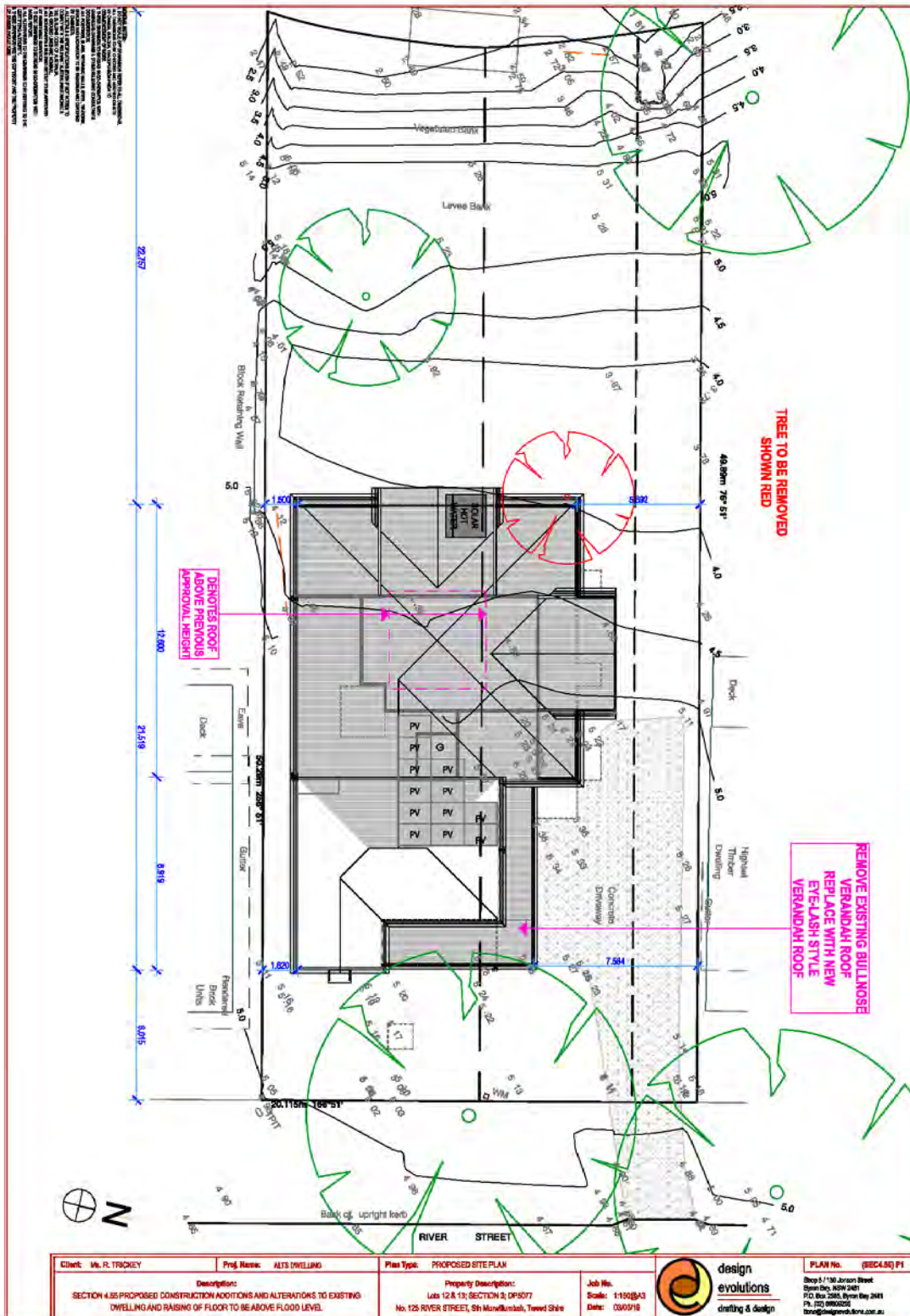
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Aerial Photography April 2018
Lot 1 DP 1241037
125 River Street, SOUTH MURWILLUMBAH
DA17//0564.01

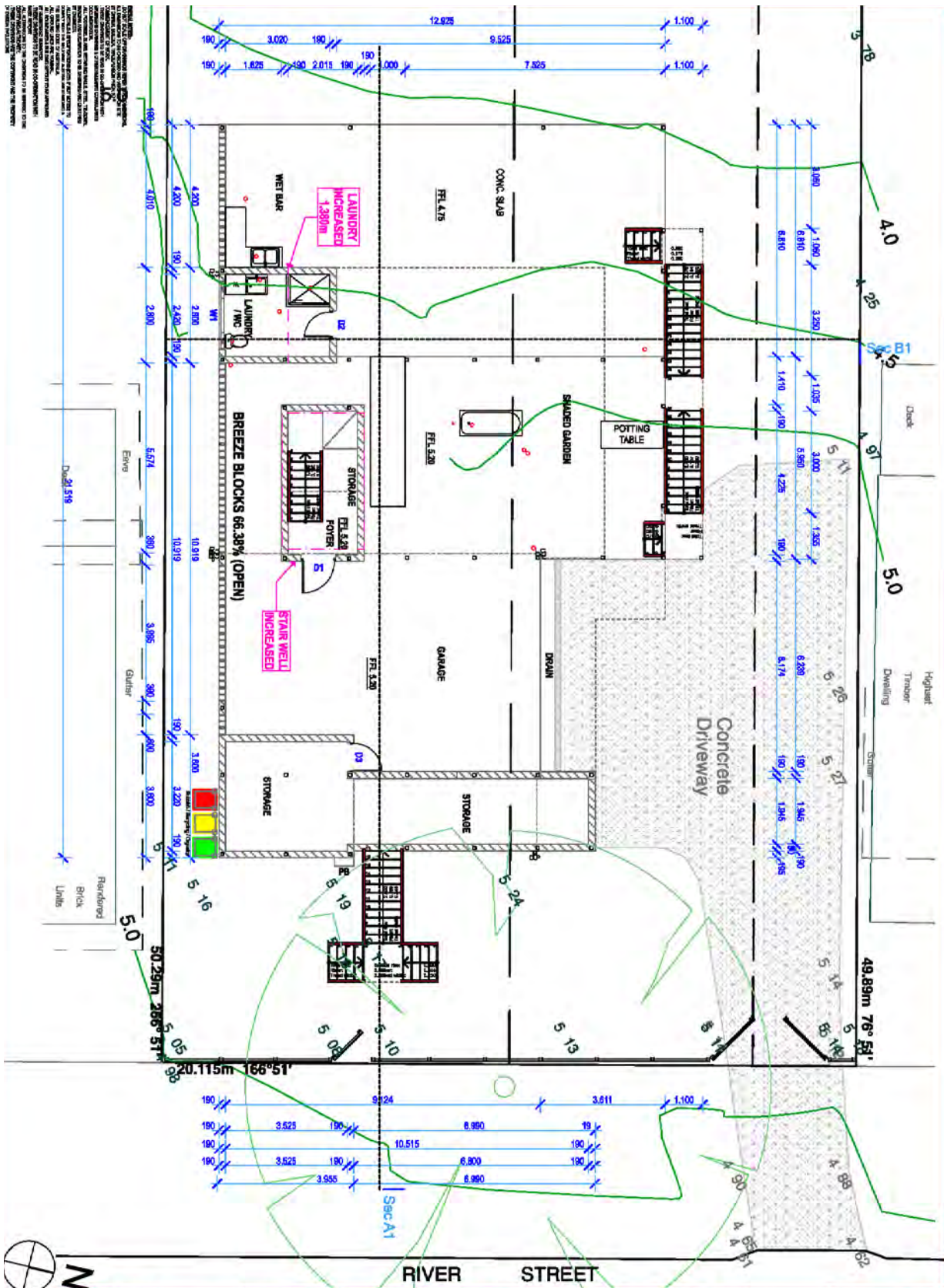
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Author: S. Spill - 010 Data Provided: 06 July 2018

DEVELOPMENT/ELEVATION PLANS:



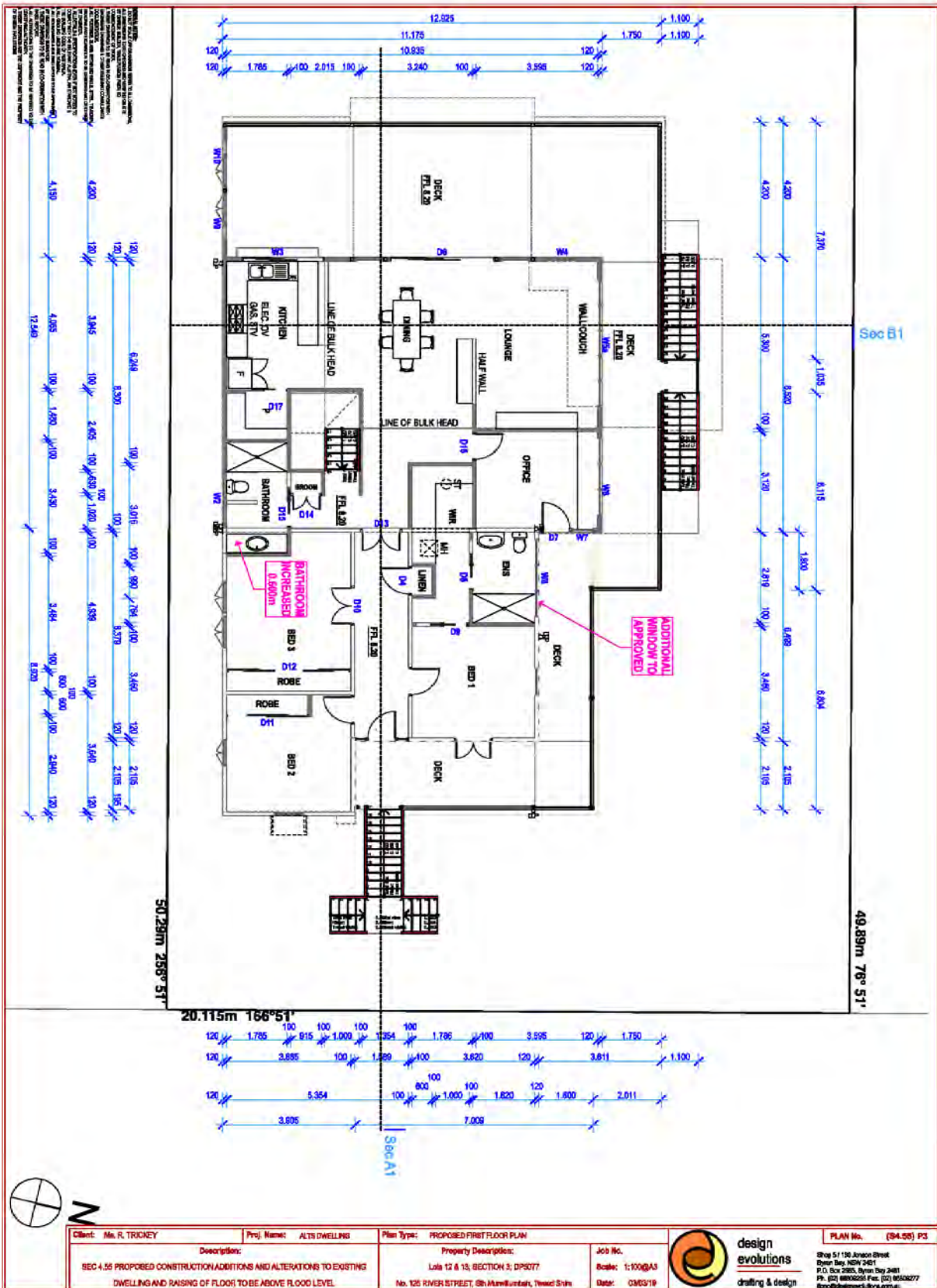
Client: Mr. R. TRICKEY	Proj. Name: ALTS DWELLING	Plan Type: PROPOSED SITE PLAN	Job No.:	PLAN No. (BEC4.84) P1
Description: SECTION 4.85 PROPOSED CONSTRUCTION ADDITIONS AND ALTERATIONS TO EXISTING DWELLING AND RAISING OF FLOOR TO BE ABOVE FLOOD LEVEL.		Property Description: Lots 12 & 13; SECTION 3; DP8077 No. 125 RIVER STREET, 8th Mile/Unstah, Tweed Shire	Scale: 1:100(BA3) Date: 03/09/18	Sheet 5 of 106 3000 Byron Way P.O. Box 2485, Byron Bay 2481 Ph: (02) 99892226 Email: info@designevolutions.com.au
design evolutions drafting & design				

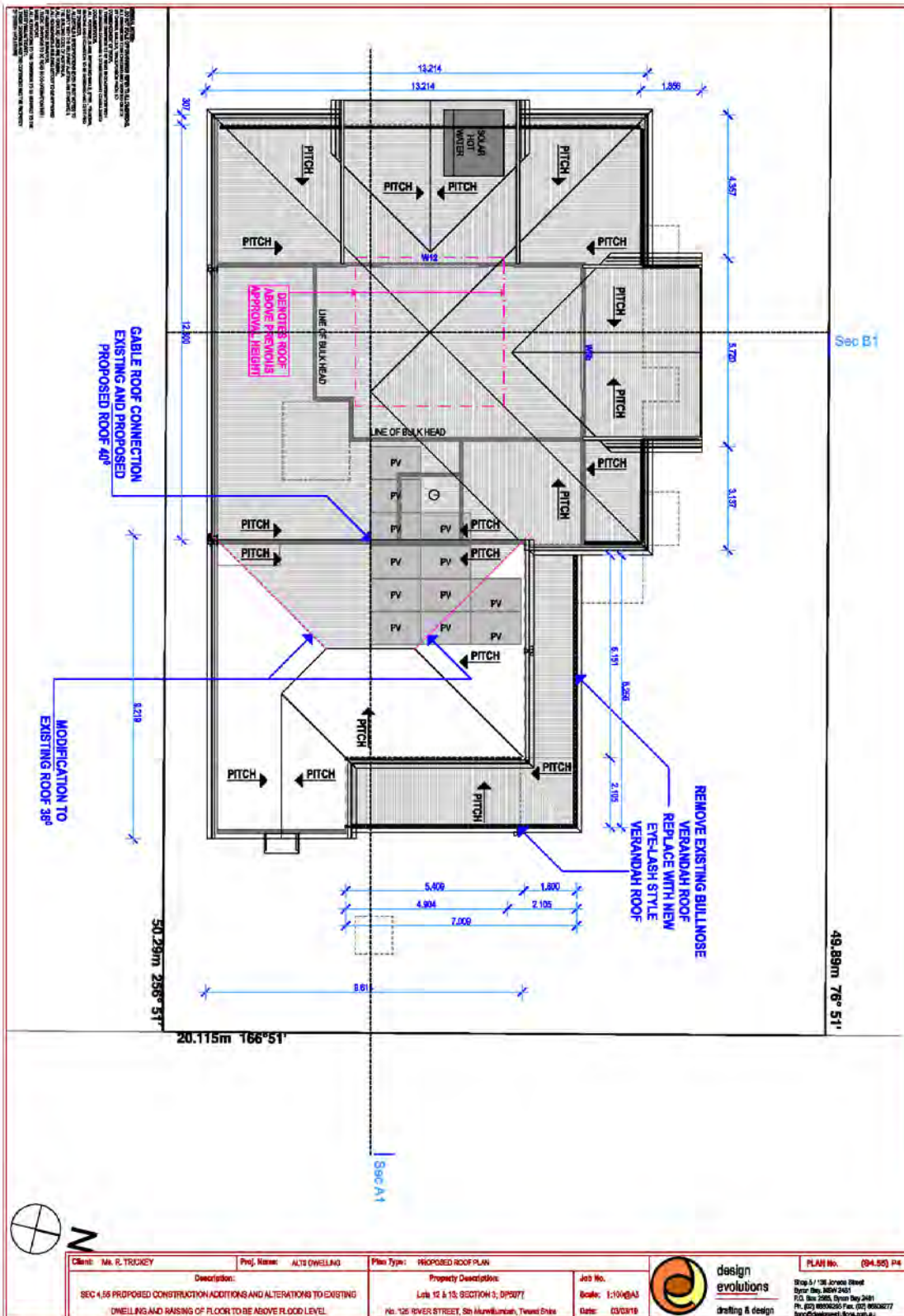


Client: Mr. R. TRUCKEY	Proj. Name: ALTS DWELLING	Plan Type: PROPOSED GROUND FLOOR PLAN	PLAN No. (54.55) P2
Description: SEC 4.55 PROPOSED CONSTRUCTION ADDITIONS AND ALTERATIONS TO EXISTING DWELLING AND RAISING OF FLOOR TO BE ABOVE FLOOR LEVEL		Property Description: Lots 12 & 13, SECTION 3, DP9077 No. 125 RIVER STREET, Sea Mawla, Dunedin, Tairāwhiti	Job No. Scale: 1:100 @ A3 Date: 03/09/19

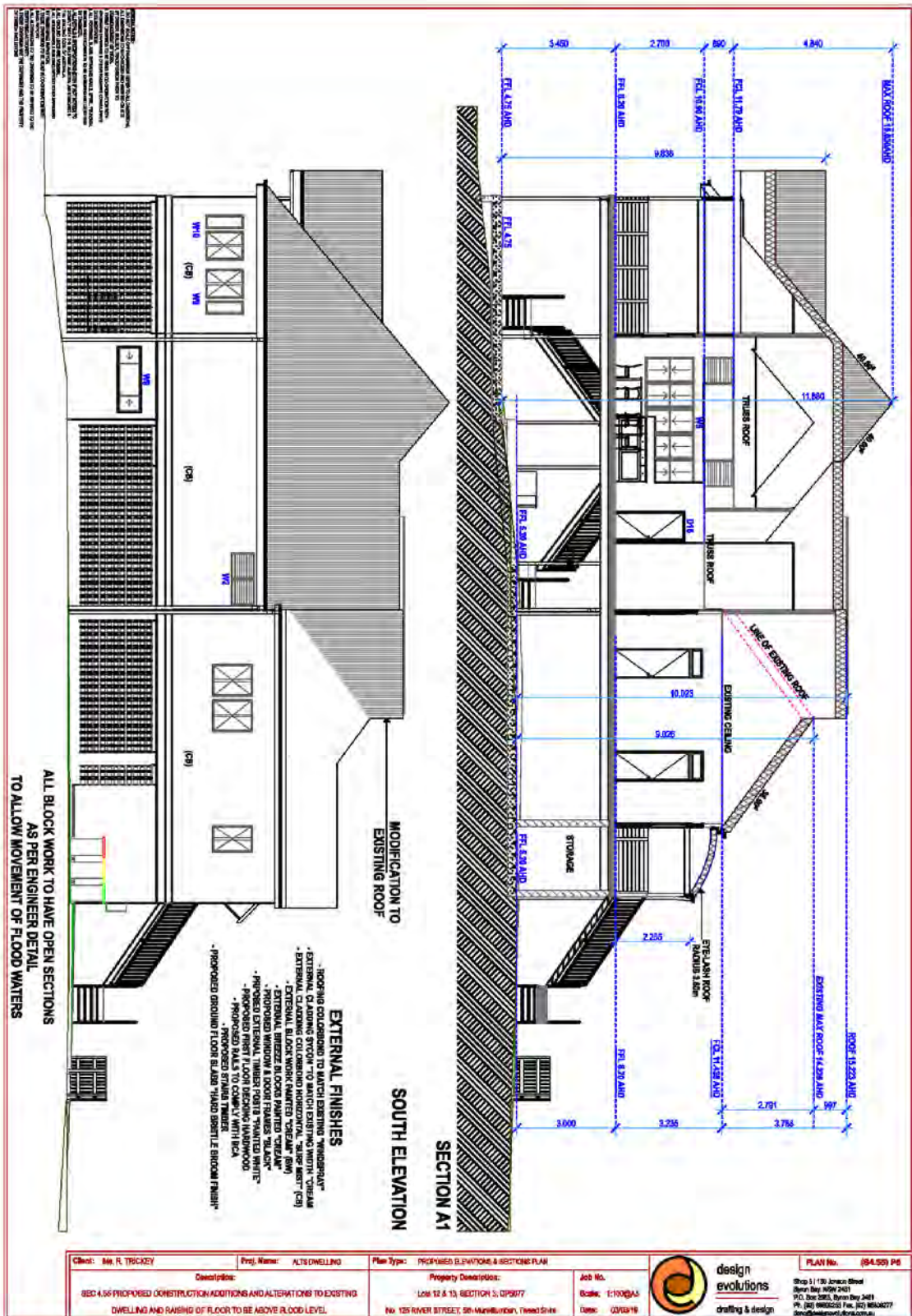
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Client: Mr. R. TRICKEY	Proj. Name: ALTS DWELLING	Plan Type: PROPOSED ROOF PLAN	PLAN No. (94-55) P4
Description: SEC 4.56 PROPOSED CONSTRUCTION ADDITIONS AND ALTERATIONS TO EXISTING DWELLING AND RAISING OF FLOOR TO BE ABOVE FLOOD LEVEL.		Property Description: Lots 12 & 13, SECTION 3, DP9077 No. 126 ROVER STREET, Shillington, Tweed Shire	Job No. [redacted] Scale: 1:100 @ A3 Date: 03/03/18
		design evolutions drafting & design	Shop 5 / 158 Jerrard Street Sydney NSW 2041 P.O. Box 2085, Sydney NSW 2041 Ph: (02) 95502650 Fax: (02) 95502677 info@designevolutions.com.au





CONSIDERATIONS UNDER SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Council officers have made the following assessment in respect of Section 4.55 (1A) of the Act:

Section 4.55 modification of consents-generally:

(1A) Modifications involving minimal environmental impact

- (a) The proposed variations are considered not to create any major additional environmental impact beyond that which was originally assessed;
- (b) The proposed increase in roof height (up to 1.855 metres) is considered to be substantially the same development (alterations and additions to an existing dwelling) for which the consent was originally granted;
- (c) In accordance with Tweed Development Control Plan 2008 Section A11, the proposal has not been notified; and
- (d) One (1) submission in the form of a petition has been received in respect of this application. This submission has been considered in this assessment.

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

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

Tweed Local Environmental Plan 2014

This section of the report will focus on the specific clauses for consideration relevant to this modification application. The clauses are 1.2, 2.3, 4.3, 4.6 and 7.3.

Clause 1.2 – Aims of the Plan

The aims of the plans as set out under section 1.2 of this plan are as follows:

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

- (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
- (i) *to conserve or enhance areas of defined high ecological value,*
- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposal is generally consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The site is zoned R2 Low Density Residential. A dwelling house is permitted with consent in this zone. The objectives of Zone R2 are as follows:

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

The proposal is consistent with these objectives.

Clause 4.3 - Height of Buildings

This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum building height specified for the site is 9m.

The plan defines **building height (or height of building)** as meaning:

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The proposed modification seeks to increase the already varied maximum building height of 9.968m to 11.880m. The maximum extent of the variation is 2.853m (approx. 32%). Please refer to Figure 1 of this report for further detail.

The non-compliant portion of the building consists solely of the roof.

Clause 4.6 - Exception to development standards

As set out below, the applicant seeks to vary this development standard in accordance with Clause 4.6. The applicant is seeking to rely on this clause to vary the height limit of 9m specified for the site, in accordance with Clause 4.3 – Height of Buildings. The applicant's Clause 4.6 request is attached in full in **Attachment 2**.

In accordance with subclause 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.*

The applicant has provided a written response to Clause 4.6 of the TLEP 2014 (see Attachment 2 of this report).

- (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*

The matters required by sub clause 3 are not considered to be satisfied.

The original Clause 4.6 request approved under the original development application DA17/0564, cited that in accordance with sub clause 3, compliance with the building height standard was unnecessary due to the following:

- (a) The development is required to have a minimum habitable floor level of 7.8m AHD to comply with Development Control Plan Section A3 – Development of flood liable land. Compliance with this development code results in some of the dwelling exceeding 9m in height, to create suitably sized living space;
- (b) The variation was considered minor – 968mm; and
- (c) The development height was consistent with surrounding development, mainly being a residential flat building over 10m in height.

The amended Clause 4.6 written statement submitted with the modification application DA17/0564.01 also cites the above points in response to sub clause 3.

In response to the main points justifying further contravention of the development standard, the following should be noted:

- (a) The original variation to the height standard satisfied the design requirements of Section A3 with respect to flooding. It is therefore considered that noting flooding constraints is not sufficient environmental planning grounds to justify further contravention of the development standard;

- (b) The proposed variation is now 2.583m above the 9m height limit for this locality or 32%. A variation of this scale is not considered to be minor; and
- (c) The previous variation to clause 4.3 maintained a maximum height that was less than the adjoining residential flat building and thereby considered to remain consistent with the bulk and scale of surrounding development. The proposed variation now seeks to gain approval for a maximum building height greater than the adjoining residential flat building and significantly greater than surrounding single residential dwellings. The requested variation on this basis is not considered to be consistent with surrounding development given the scale of the variation.
 - (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;*

The proposed development is not considered to be in the public interest, being inconsistent with the objectives of Clause 4.3 – Height of Buildings.

The previous contravention of the development standards approved under the original development consent - DA19/0564, was considered to satisfy the objectives of the clause. Further contravention to rectify illegal works is not considered consistent with the objectives.

Specifically, the proposal is considered to be inconsistent with the following Objectives of Clause 4.3. The objective is in italics and is followed by the assessing officer's comments in relation to the objective.

- (a) *to establish the maximum height for which a building can be designed:*

The proposal further increases an already approved variation to the 9m building height standard. The requested variation of 2.853m above 9m is considered a significant contravention of the maximum height limit. If supported the height contravention compounds the opportunity for the development standard to become abandoned or destroyed by the Council's own actions in granting consent, departing from the standard (NSW Land and Environment Court (LEC) 5 Point Test – Point 4).

- (b) *to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity:*

The originally approved 9.968m high structure related to the land's capability to provide and maintain an appropriate urban character and level of amenity. The further contravention of the development standard is not considered to maintain an appropriate urban character. The alterations to the roof form are also not consistent with the architectural character of the locality.

- (c) *to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities:*

The proposal does not allow for taller development in structured urbanised areas.

- (d) *to encourage greater population density in less car-dependant urban areas:*

The proposed height variation does not encourage greater population density nor is the site in a less car dependant urban area.

- (e) *to enable a transition in building heights between urban areas comprised of different characteristics:*

The site is zoned low density residential – R2, and is located within an established residential locality consisting of predominantly single residential dwellings. Where the previous application was of a height less than the adjoining residential flat building and provided a transition between the building and nearby single dwellings, the proposed amendment is now higher than the adjoining building and does not provide this same transition.

- (f) *to limit the impact of the height of a building on the existing natural and built environment:*

The proposed amendment is considered to create an undesirable impact on the built environment of the locality.

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

The further increase to the maximum building height will result in additional overshadowing impacts on the natural and built environment.

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

As set out in Planning Circular PS18-003 whether the variation to a development standard is greater than 10%, the concurrence of the secretary may be assumed by the consent authority (being the elected members but not a delegate of Council).

- (5) *In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.*

Land and Environment Court (LEC) 5 Point Test

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded:

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

As discussed above, it is considered that the objectives of Clause 4.3 are not satisfied by the increased breach of the 9m building height standard. A concession of 968mm or 10.7% was already granted however the variation is now 2.853 m or 32% above current limits.

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

Not Applicable – The underlying objectives and purpose of the standard are largely relevant to the development.

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

The applicant claims in response to Clause 4.6 that flooding constraints, surrounding development and the minor nature of the variation warrants compliance with the development standard being unreasonable or unnecessary.

As discussed above, the previous development approval DA17/0564 allowed a breach of the 9m height limit based on the same reasoning. It is considered that the proposed amendment fails this test as it does not:

- Improve flooding resilience as the floor levels remain the same;
- Relate to surrounding development as it is now significantly higher than all single dwellings in the locality; or
- The breach of up to 2.853m above the 9m height limit is not considered to be a minor variation, as opposed to the previous breach of 968mm – which was.

The proposed variation is also a result of unauthorised works not constructed in accordance with the approved plans. In addition to the above it is considered the objectives of clause 4.3 would not be defeated if compliance was required.

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

Not Applicable – This standard has not been abandoned. It should be noted however that approval of this variation may contribute to a cumulative effect

and result in the development standard being abandoned or destroyed in the area.

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

Not Applicable – The site is zoned R2 and currently accommodates a single dwelling with 9m being the standard height limit applied in this zone.

Based on the above and the applicant's Clause 4.6 written request, it is considered that there are not sufficient environmental planning grounds to support the variation and that the objectives of Clause 4.3 are not satisfactorily met by further contravention of an already varied development standard. In this regard it is recommended that the Clause 4.6 request should not be supported.

Clause 7.3 – Flood Planning

The subject site is mapped as being within the 7.3m AHD design flood level. As addressed within the original development application, the dwelling is required to have a minimum habitable floor level of 7.8m AHD, which it achieves.

State Environmental Planning Policies

The proposed application raises no implications on any relevant SEPPS.

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

Not Applicable.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The previous heads of consideration remain unchanged other than the specific clauses addressed below.

Part A, Section 3.2 Building Height, Control C1

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.

The applicant is seeking to further vary a previously approved height variation under Clause 4.6 of the LEP. This is addressed earlier in this report.

With regards to Section A1, it is considered that such a variation (2.853m) cannot be supported. Specifically, the variation does not maintain Objective 1 of the Clause, which states:

O1. *To ensure the height of buildings is appropriate to the residential scale and character of the street and the local area.*

The requested modification results in the building now being higher than the adjoining residential flat building, as well as being considerably higher than nearby single residential dwellings. It is therefore considered that the illegal works seeking a retrospective use approval are not of an appropriate residential scale or consistent with the character of the local area (see Figures 2 & 3 below).





Figure 2 – The already constructed works at No. 125 River Street





Figure 3 - Residential dwellings within the street.

Part A, Section 4.4 Building Form

O1. To minimise the visual impact and bulk of development when viewed from adjoining properties, the street, waterways and areas for public recreation purposes.

The increased building height results in a direct visual impact when viewed from the adjoining Residential flat building. The visual impact is a result of the structure being exaggerated by the roof which presents itself with considerable bulk and not in keeping with the context of roof form within the locality.

C1. Building siting, height, scale, and roof form must to relate to the surrounding development, topography and the existing site conditions.

The surrounding area consists of mainly elevated single storey dwellings which maintain the 9m height limit (See Figure 3), with the exception of the residential flat building adjoining the subject site. It is considered that the increased building height and resulting roof form are not in keeping with context and design character surrounding development.

The previously approved development application had a maximum height which was less than the adjoining residential flat building and was more in keeping with the height context of the area. The proposal is now positioned higher than the adjoining residential flat building and significantly higher than residential development within the locality. The proposal is therefore considered to not relate to the surrounding development.



Figure 4 - The subject site and adjoining residential flat building when viewed from the Commercial Road Boat Ramp

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

There is no planning agreement or draft planning agreement relating to the site or the proposal.

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

Not Applicable.

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

Tweed Coast Estuaries Management Plan 2004

The site is not located adjacent to any coastal estuaries covered by this plan.

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

The site is not located with the Cobaki or Terranora Broadwater areas to which this plan applies.

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

Context and Setting

The site is zoned R2 Low Density Residential with the proposed modification to the development consent seeking retrospective approval for the use of alterations and additions not carried out in accordance with the approved plans.

The proposal is seeking to further vary the height standard for the site to gain retrospective approval for illegal works which increase the approved maximum height. The variation consists purely of the roof form and does not contain any habitable space. The roof form is considered to not be in keeping with the architectural context of surrounding development.

The extent of the height variation is now 2.853m compared to the previously approved variation of 968mm. The building is now significantly higher than all single residential dwellings within the locality, and higher than the adjoining residential flat building.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The site is zoned R2 Low Density Residential. The unauthorised works maintains the low density character of the locality, however the roof form does not relate to surrounding development.

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

The original application was notified with no objection received. The S4.55 application (the subject application) was not notified but was accompanied by a petition of support.

Public interest

The works are considered contrary to the public interest given the works have been constructed without consent, were avoidable and if supported may contribute to future argument that the development standards have been virtually abandoned or destroyed by the council's own action in granting consents departing from the standard.

OPTIONS:

1. Refuse the application, subject to the reasons for refusal provided in this report.
2. Approves Development Application DA17/0564.01 for an amendment to Development Consent DA17/0564 for dwelling alterations and additions at Lot 1 DP 1241037 No. 125 River Street, South Murwillumbah subject to the conditions of consent being amended as below and also that Council writes to the Principal Certifying Authority of this development suggesting that they modify their processes and issue a stop work notice should a similar situation occur.

1. Delete Condition No. 1 and replace it with Condition No. 1A which reads as follows:

- 1A. 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.
03/03/19	P1 - P7
15/05/19	CSP, P8 to P10

2. Delete Condition No. 6.

3. Add new Condition No. 44.1 which reads as follows:

- 44.1. An application is to be made to Council for a Building Information Certificate within 30 days of this consent. This application is to be accompanied by a certificate from a structural engineer that details the structural adequacy of the roof structure or clearly details any remedial works that are required to be carried out.

For the reasons outlined in the original report, Council Officers recommend Option 1.

CONCLUSION:

In consideration of the planning issues raised, the proposal is considered to be a significant contravention of the LEP building height standard.

The written request from the applicant addressing Clause 4.6 of the LEP is not well founded and does not satisfy the Land and Environment Court's five part test for consent authorities to consider when assessing an application to vary a standard.

Furthermore, had the original development application sought approval for this variation, it would not have been supported. It is recommended that this request should be refused.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application, such an appeal may have budget implications for Council.

c. Legal:

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- | | |
|-------------------------------------|---|
| Attachment 1. | Submitted Statement of Environmental Effects and written response to Clause 4.6 (ECM 5977383) |
| Attachment 2. | Original Consolidated Development Consent DA17/0564 (ECM 5977384) |
| <i>(Confidential)</i> Attachment 3. | Owners petition in support of the development (ECM 5977385) |
| <i>(Confidential)</i> Attachment 4. | Land owners response to Council issued Show Cause letter (ECM 5977416) |
| <i>(Confidential)</i> Attachment 5. | Private Certifiers explanation to unauthorised works (ECM 5977417) |
| <i>(Confidential)</i> Attachment 6. | Certifiers inspection documentation (ECM 5977418) |
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5 [PR-PC] Rural Land Strategy - Response to Public Exhibition and Final Draft for Adoption

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

ROLE: **Leader**

SUMMARY OF REPORT:

Council has considered the draft Rural Land Strategy (RLS) on a number of occasions leading to its re-exhibition in February/March 2019.

In accordance with Council's resolution of 15 August 2019, a revised draft Rural Land Strategy (RLS) is attached which reflects:

- Changes to actions agreed at the Councillor Workshop of 2 August 2019;
- A summary of, and response to feedback received during exhibition; and
- Amendments clarifying content and editorial corrections.

The changes agreed at the Workshop relate to the 25 amendments to actions in the Implementation Plan (Part 2b) of the RLS as re-exhibited.

There has been significant community interest in the RLS arising from the re-exhibition, resulting in two well attended Community Conversations convened by Council, and an independent community event convened by the Murwillumbah Chamber of Commerce.

A summary of, and response to, submissions and other feedback is attached to this report; the key themes in the submissions included:

- Housing actions under Policy Direction 5 Greater diversity of rural housing;
- Process and justification for changes as exhibited;
- Lot size and subdivision options;
- Community consultation; and
- Agriculture.

Implementation of the RLS will require endorsement by Council of an implementation strategy which identifies priorities, sequencing of actions, and resourcing. The involvement of key stakeholders and delivery partners as appropriate will be important in ensuring that where possible the views and aspirations of the community are considered. The use of a reference or consultative group will play an important role in this process.

This report seeks Council's endorsement of the RLS and the preparation of an implementation strategy and reporting framework utilising a consultative group consisting of representatives of rural landowners, rural industries, associated interest groups including rural tourism and the Aboriginal community, and relevant government agencies and delivery partners.

RECOMMENDATION:

That:

- 1. The attached draft Rural Land Strategy be adopted as amended and discussed in this report;**
- 2. An implementation strategy is prepared which includes establishment of a consultative group representative of rural landowners, rural industries, associated interest groups including rural tourism and the Aboriginal community, government agencies and delivery partners where appropriate and reported back to Council for endorsement;**
- 3. A notice be published in the Tweed Link notifying of the adoption of the Rural Land Strategy, and**
- 4. A copy of the Rural Land Strategy is forwarded to the Director General of the Department of Planning, Industry and Environment (DPIE) or their delegate for their information and endorsement.**

REPORT:

This report:

- Provides a summary of submissions and feedback received in response to re-exhibition of the Draft Rural Land Strategy (RLS) during the period 19 February to 19 March 2019;
- Provides an outline of the process for the implementation of the Strategy;
- Presents a final draft Strategy which incorporates changes as listed in the attachments to this report; and
- Presents a draft Strategy for adoption once changes endorsed by Council are incorporated.

Reporting and exhibition background

During the period 7 November 2017 to 28 February 2018 a draft Rural Land Strategy was publically exhibited.

On 3 May 2018 a report to Council recommended adoption of the Strategy; Council resolved to defer the matter for further consideration.

On 12 December 2018 Council resolved that:

“Council places on exhibition the Draft Rural Land Strategy as amended in Attachments 1 to 5 of this report for a minimum period of 28 days commencing in February 2019 and the results of this exhibition to be reported back for final determination.”

During the period 19 February to 19 March 2019 the draft strategy was re-exhibited.

On 21 March 2019 Council endorsed a number of recommendations, including that the development of the draft strategy be suspend for a period.

Subsequently, further independently convened community and interest group meetings were conducted.

On 2 August 2019 Council convened an independently facilitated workshop for councillors to work through the 25 amendments included in the re-exhibition version.

On 15 August 2019 Council considered a report which addressed the resolutions of 21 March 2019 and the Councillor workshop of 2 August 2019. Council resolved that a report be brought to Council that reflects the agreements reached at the 2 August workshop, and provide an outline of the process for the implementation of the plan.

This report is in response to these resolutions.

Re-exhibition amendments

The amended version which included 25 amendments proposed by Councillors was placed on public exhibition from 19 February to 19 March 2019.

The 25 amendments were broadly categorised as:

- *Editorial changes not likely to significantly change the action:* These changes help to clarify the intent of the action, or seek to reprioritise the action, 9 in total;
- *Changes to the intent of the action:* These changes seek to change the action by proposing further investigations prior to determining whether to proceed with the action, 7 in total, and
- *Deletion of actions:* These changes remove nine actions listed under Policy Direction 5 Greater Diversity of Rural Housing, 9 in total.

Community engagement

There was significant public interest in the RLS arising from the re-exhibition, which related predominantly to those actions under Policy Direction 5 Greater diversity of rural housing.

Two Community Conversation events were convened by Council in the Murwillumbah Auditorium on Wednesday 6 March 2019, with more than 72 people attending.

The focus of these sessions was to briefly work through each of the nine actions proposed for deletion, summarise those actions proposed to be amended, and allow the community opportunity to express their thoughts and views. Survey forms were provided to attendees, the results of which are provided in Attachment 5.

In addition to the Community Conversations, a number of independently facilitated meetings were conducted at various locations during the exhibition period; one being held in Murwillumbah by the Murwillumbah Chamber of Commerce on Friday 8 March 2019.

A further meeting convened by the Chamber was held on Friday 26 April 2019 in Burringbar at which the Director Planning and Regulation and Director Sustainable Communities and Environment were in attendance, and a meeting with the Tweed Rural Sustainable Alliance at the Murwillumbah RSL Club on Tuesday 6 August at which the General Manager and Senior Strategic Planner attended.

Submissions and feedback

Responses from the community, government agencies, and organisations have been received and summarised in the attachments to this report; responses were received through:

- Formal written submissions (Attachment 4);
- Response to forms provided at Community Conversations (Attachment 5);
- Council's Your Say Tweed website (Attachment 6), and
- Proforma survey provided by the Murwillumbah Chamber of Commerce compiled at its facilitated meeting of Friday 8 May 2019 (Attachment 7).

Formal written submissions

104 submissions were received; 92 from private parties, and 12 from the following agencies and organisations:

- Destination Tweed;
- North Coast Local Land Services;

- Combined Tweed Rural Industry Association (2);
- Department of Primary Industries – Agriculture (2);
- Office of Environment and Heritage;
- Geological Survey of New South Wales;
- NSW Canegrowers Association;
- Gold Coast City Council;
- Byron Shire Council, and
- Rous County Council.

A detailed review of submissions can be viewed in Attachment 4; however, the following key themes are discussed further below:

- Housing actions under Policy Direction 5 Greater diversity of rural housing (89 responses, including 6 supporting deletions);
- Process and justification for changes as exhibited (38 responses);
- Lot size and subdivision options (20 responses);
- Agriculture (18 responses), and
- Community consultation (18 responses).

Housing actions under Policy Direction 5 - Greater diversity of rural housing

The majority of submissions raised concern about the deletion of the nine actions proposed under Policy Direction 5.

Respondents provided advice on a range of matters, including details of personal circumstances and the benefits additional housing would provide, both to the welfare of the owners and their families and the upkeep of the property. The ability to generate supplementary income was a regular theme, as was allowing aging in place and opportunity to generate a regular income stream from the property.

While some respondents thought that every landowner should have the opportunity to have a dual occupancy (detached) or secondary dwelling, the majority of comments (83) were focused about the benefits of additional housing. Six respondents supported deletion of the nine housing actions.

Submissions which raised concerns about the deletion of housing actions included comments typical of those below:

“Farmers are ageing rapidly, they need the assistance of their family members to assist in the running of the farms. The option of an extra dwelling on the farm would help with this”, and

“Some proposed actions may not directly promote the vision and policy directions or could be expanded. By way of example, ‘Policy Direction 5 – Greater diversity of rural housing’ has limited supporting actions that seek to generate greater housing diversity, other than investigating small lot clusters and investigating rural village fringe areas”.

Process and justification for changes as exhibited

A large number of submissions (38) raised concerns that due process had not occurred and amendments had been made without justification or consideration of previous community

responses in earlier stages of the project, which led to generation of the previous version of the RLS. This has led to the preference for the previous version of the RLS and/or the dissatisfaction within the rural community about the process which led to the recent amendments.

Submissions which summarised the comments concerning process included:

“It was not and is not the obligation or responsibility of rural landholders to explain why the recommendations should be reinstated - it was and remains the obligation and the responsibility of Council to explain why the recommendations were rejected”, and

“There is no commentary in the exhibition material explaining the rationale behind the changes and deletions which are fundamental to achieving the objectives of the Strategy and delivering sustainable and balanced rural land use outcomes”

Lot size and subdivision options

The relationship between the quality of the land and its productive agricultural potential was raised in submissions as an opportunity to isolate the highest quality soil and landscapes and allow subdivision for rural residential purposes of the remaining rural land.

Early in the development of the RLS, consultants preparing the Stage 1 and 2 documents provided advice that there was a very poor correlation between property size and economic viability. Likewise, how the land is utilised is not solely dependent upon the quality of the soil; examples of a range of agricultural pursuits, including horticulture, aquaculture, and the use of bio-organic farming practices have been reported to improve the productivity of the soil.

Resource access was a concept the Department of Primary Industries (DPI) has emphasised as a necessary approach to ensuring that rural land is available to be utilised for agricultural purposes, and in particular purposes not currently recognised, which is an important consideration in ensuring that land is available for use when new technology, plant species and farming practices become available.

Rural Tweed is one of the most diverse rural produce areas in New South Wales, and as such the ability of landowners to derive a productive use of the land should not be limited by the sterilisation of agricultural land by its conversion to rural residential development.

Notwithstanding this, the RLS is proposing that a supply and demand analysis be undertaken as the first step in determining if further subdivision of rural land should occur. This approach is seen as a more strategically focused approach which would ensure the protection of the rural landscape.

Submissions which summarised the concerns about lot size and subdivision included:

“Viable and productive rural land should not be subdivided – but rural land which cannot be used economically for viable and productive agriculture can be subdivided. The MLS should only apply to viable and productive rural land holdings - regardless of the total size of a rural land holding”, and

“Council is out of step with surrounding shires and must realise that rural land owners need the right to have a flexible and merit based subdivision of land under the current 40 ha minimum size”.

Agriculture

The productive use of agricultural land, maintenance of properties and security of income to support these activities were common comments in submissions. The concept that an additional dwelling could be utilised by family members, workers, or just as a source of income to support ongoing occupation and maintenance was a key theme linking housing and agricultural land use practices.

Submissions which raised concerns about use of the land for agricultural purposes are summarised in the following responses:

“The community overall would be better served if there were more people shifting into the rural area without diminishing existing viable and productive agricultural land”, and

“The majority of farmers are struggling, they are having to work off farm just to survive. They need to have the ability to produce an extra income stream to enable them to work their farms. This will increase productivity, control weeds and rebuild the rapidly deteriorating infrastructure such as buildings and fences”.

Community consultation

A number of submissions raised concerns that there had not been adequate community consultation and engagement.

While concern was raised about the lack of recognition of feedback received during previous stages of the project, concern was also raised about the general lack of awareness in the community of the strategy.

Notwithstanding these concerns, the extent of community reaction to the re-exhibition of the draft strategy as demonstrated in local newspaper articles, attendance at the Community Conversations, and privately convened meetings provided opportunity for the community to be informed and respond to the re-exhibition version.

The re-exhibited version of the RLS was on public exhibition from 19 February to 19 March 2019; however, the overall reach of community engagement through all stages of the project is summarised below:

• On exhibition	310 days
• Community conversations (throughout rural Tweed, including CTRIA)	35
• Council reports	16
• Councillor workshops	8
• Venues where hardcopies were available while on exhibition	10
• Agencies, organisations and councils informed	20
• Attendees at information sessions	381
• Submissions received	492
• Viewings of re-exhibition version (February 2019) on Council’s website	482
• Views of videos on social media	15,404

A full summary of community engagement can be found in Appendix 6 of the RLS. Apart from the diverse range of approaches taken to create awareness and generate responses, the

Reference Panel members who represent a broad cross-section of the community (including the Combined Tweed Rural Industry Association, and Canegrowers Association) were fully aware of the ongoing development of the strategy throughout the duration of the project.

Comments received which summarise the majority of submissions raising concerns about community engagement included:

“Have not given majority of rural property owners in the shire enough time and notice of the last minute amendments”, and

“The council has failed to meet the Community Engagement Strategy (CES) standards in respect of the amendments proposed”.

Council report of 3 May 2018 – Additional information

In the report to Council of 3 May 2018, a detailed response was presented to issues raised during public exhibition. Subjects discussed in this report which are also of relevance to the feedback received during the re-exhibition in 2019 included:

- Minimum lot size, the 40 hectare rule and further subdivision;
- Increased flexibility in the RU1 and RU2 zones;
- Small lot clusters, R5 Large Lot Residential and subdivision;
- Subdivision for primary production purposes;
- Allotments split by infrastructure, and
- Dwellings constructed without consent.

Independently facilitated Council workshop

On Friday 2 August 2019, Council convened a workshop independently facilitated by Clare Brown, of Urbis and recognised planning legislation and facilitation expert.

Present for the whole or majority of the meeting were all councillors, with the exception of Councillor Polglase; also present were the General Manager, Director Planning and Regulation and Council officers.

The purpose of the meeting was to work through amendments to all 25 actions made in the re-exhibition version of the RLS with the aim of achieving an agreed position on each action, and a way to progress the strategy.

The final draft RLS, as provide in Attachment 1 and the revised actions reflect the outcomes of this workshop.

Changes to the draft RLS

Attachments 2 and 3 list in detail all changes made to the re-exhibition version of the RLS.

A summary of changes agreed at the August Councillor Workshop and changes as re-exhibited in February and March 2019 is provided in Attachment 2.

Changes identified following public exhibition and other editorial changes, corrections and updates have been incorporated without highlighting; however, a detailed list of changes is provided in Attachment 3.

Several additional pages have been added to the RLS to clarify the context, both within the state planning hierarchy, and within the context of the implementation of the Strategy.

An additional page has been added at the end of the Implementation Plan (Part 2b) to demonstrate the sequencing and how housing related actions are related.

Changes have been made to update the document to reflect recent changes to legislation and to make grammatical spelling corrections.

The draft RLS (Attachment 1), has incorporated all of these changes. Changes made to the Implementation Plan (Part 2b) are highlighted and pending endorsement of Council will be incorporated into the final adopted version.

Summary of changes previously exhibited

- *Editorial changes not likely to significantly change the action:*
 - Amendments **2, 3, 4, 5, 6, 7, 8, 12, 25.**
- *Changes to the intent of the action:*
 - Amendments **1, 9, 10, 11, 13, 14, 15.**
- *Deletion of action:*
 - Amendments **16, 17, 18, 19, 20, 21, 22, 23, 24.**

Summary of changes proposed at 2 August 2019 Councillor Workshop

- *Accept editorial changes not likely to significantly change the action:*
 - Amendments **2, 3, 4, 5, 6, 7, 8, 12, 25.**
- *Accept changes to the intent of the action:*
 - Amendments **1, 9, 10, 11, 13, 14.**
- *Deletion of actions:*
 - Amendments **19, 23.**
- *Reinstate pre-exhibition text:*
 - Amendments **15, 21.**
- *Reinstate pre-exhibition text and amend:*
 - Amendments **16, 17, 18, 20, 22, 24.**

Implementation

141 actions are listed in the Implementation Plan (Part 2b); each action has been allocated a timeframe designed to identify its priority for implementation. Due to the number of actions, and the diversity of issues addressed, a detailed implementation strategy will be required which identifies the process, priorities and resourcing.

Key stakeholders have been identified in the Implementation Plan and will vary depending on the nature of the action, and where actions are related, sequencing of 'linked' actions will need to occur to ensure that resourcing is appropriately allocated.

Development of an implementation strategy will benefit from the input of representatives of relevant community, industry and agency. While such a reference or consultative group would provide assistance in developing an understanding of priorities and process, and at times

partner in implementation, resourcing will remain the responsibility of Council where Council is the delivery partner.

Pending adoption of the RLS, an implementation strategy will be prepared and reported to Council for endorsement. It is anticipated that the process for implementation of the RLS will involve:

1. Establishment of a reference/consultative group;
2. Validation of the delivery partners, timeframes, cost implications and delivery pathways for all actions;
3. Selection of short term actions;
4. Prioritisation of short term actions;
5. Grouping of actions, where possible, which utilise the same implementation pathways;
6. Understanding of prerequisite actions and sequencing of actions;
7. Confirmation of available human and financial resources and timeframes;
8. Development of work plan with delivery partners for implementation;
9. Establishment of benchmarks and deadlines;
10. Implementation, and
11. Reporting and monitoring.

It should be noted that while actions have been ranked into broad categories of 'short', 'medium' and 'long' term, until an implementation strategy has been developed which addresses the process above, it is not possible to ascertain the ability to implement all short term actions within the 1-2 year timeframe.

OPTIONS:

1. Adopt the Rural Land Strategy with amendments as detailed in this report, or
2. Re-exhibit the draft Rural Land Strategy with any changes as resolved by Council, or
3. Defer for further consideration.

Option 1 is recommended.

CONCLUSION:

The Rural Land Strategy has been extensively consulted and is now updated to reflect the amendments reached by Council at the 2 August 2019 workshop and incorporated feedback received during public exhibition as detailed in the attachments.

The Rural Land Strategy provides the broader strategic intent and direction for the future of rural lands reflecting the nine Policy Directions previously adopted by Council.

Pending adoption by Council, development of an implementation strategy will be a necessary next stage which will occur in consultation with the community and utilise a reference/consultative group.

Amendments to the revised Rural Land Strategy, as detailed in this report, are not considered to require re-exhibition. As such, this report seeks Council adoption of the Rural Land Strategy, as attached and detailed in this report.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

While an indicative cost is provided in the Implementation Plan (Part 2b of the draft Strategy) until such time as an endorsed implementation plan is resolved by Council no scheduling or detailed estimate of budgetary implications can be provided.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult - We will listen to you, consider your ideas and concerns and keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.	Draft Rural Land Strategy (ECM 6027138)
Attachment 2.	Amendments as discussed at independently facilitated councillor workshop 2 August 2019 (ECM 6026436)
Attachment 3.	Amendments made after public exhibition 19 February to 19 March 2019 (ECM 6026447)
Attachment 4.	Summary and Response to Submissions (ECM 6026448)
Attachment 5.	Community Conversations - Summary of Feedback (ECM 6026449)
Attachment 6.	Your Say Tweed - Summary of Feedback (ECM 6026450)
Attachment 7.	Murwillumbah Chamber of Commerce community meeting 8 March 2019 - Summary of Feedback (ECM 6026451)

6 [PR-PC] Strategic Planning and Urban Design Workplan

SUBMITTED BY: Strategic Planning and Urban Design

nhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

ROLE: **Collaborator** **Leader**

SUMMARY OF REPORT:

The Strategic Planning and Urban Design Unit (SP&UD) reports their workplan annually for Council to endorse its planning priorities for the coming year. This allows Council to consider the full list of ongoing and emerging projects and to resolve the land use planning priorities across a range of focus areas, including:

- Strategic Planning;
- Local Environmental Plans;
- Development Control Plans
- Locality and/or site specific master plans;
- Ongoing implementation of strategic plans;
- State planning requirements; and
- Routine planning matters.

The workplan this year, as in recent years, is beyond capacity. This requires SP&UD to find a balance of operational planning projects, such as planning proposals and amendments to DCPs, and a range of more consultation intensive strategic projects.

Projects are allocated a priority based on timeframe requirements, such as the Local Strategic Planning Statements and the Community Participation Plan, and/or the priorities of the Council. Currently there is a focus on a range of key strategic projects which have been ongoing for a number of years.

SP&UD is currently well advanced in a number of these strategic projects, which with concerted resourcing and support, should be completed within the next 6-9 months. Ten high priority strategic projects have been identified as follows:

- Local Strategic Planning Statement (LSPS);
- Community Participation Plan (CPP);

- Rural Land Strategy;
- Scenic Landscape Strategy;
- Kingscliff Locality Plan;
- E zones mapping and methodology consultation;
- Fingal Head Locality Plan;
- Chinderah Locality Plan;
- Small Smart Sustainable Housing; and
- Wardrop Valley.

As outlined in the report, the priority focus will be on the completion of these strategic projects. Achieving this will then enable other projects on the waiting list to be resourced.

RECOMMENDATION:

That:

- 1. The Strategic Planning and Urban Design Unit Workplan 2019-2020 and the 10 top priority projects as outlined in this report be endorsed; and**
- 2. A six month workplan review be reported to Council, around March/April 2020 outlining progress and re-allocation of priority projects.**

REPORT:

Background

Council adopted the current 2018-19 workplan at their meeting of 6 September 2018 and as revised 4 October 2018.

The regular review of the Strategic Planning and Urban Design (SP&UD) workplan provides an update on the progress of priority projects and sets the priority direction for the following year.

By way of update, the Priorities of the 2018-19 workplan and their progress include:

- Kingscliff Locality Plan: exhibition completed and final locality plan being drafted for re-exhibition;
- Scenic Landscape Strategy: publicly exhibited and being finalised;
- Rural Lands Strategy: publicly exhibited and reported back to Council. Currently being updated for further reporting to Council;
- Aboriginal Cultural Heritage Management Plan: adopted;
- Fingal Head building height review DCP amendment: completed and adopted;
- Fingal Head Locality plan: commenced the first stage community consultation;
- Chinderah Locality Plan: about to commence, incorporating the community round table consultation;
- Completion of three planning proposals: PP15/0006 - River Retreat Caravan Park; PP18/0001 - Zoning amendments; and PP18/0002 - Water Extraction (prohibiting future uses); and
- Dunloe Park Master Planning: progressing with design and servicing currently under review.

In addition a number of additional projects have been completed or commenced, including:

- Knox Park amenities design: completed;
- Queen Street Toilet Block upgrade through matched grant funding with the Heritage Branch: completed;
- Relocation of the Animal Pound investigations and planning proposal: in progress; and
- Small, Smart, Sustainable Village: phase 1 concept design has commenced.

Despite Council's position not to initiate any new planning proposals before June 2019 and various resolutions of Council, a number of projects remain un-resourced due to competing priorities, including:

- The Local Growth Management Strategy;
- Review of the Murwillumbah DCP (Murwillumbah Regional Locality Plan);
- Voluntary Planning Agreements Policy;
- Progression of an Affordable Housing Policy / Strategy;
- Review of the Tweed Urban and Employment Land Release Strategy (TUELRS); and
- Review of the Development Control Plan A1 (Housekeeping).

2019-2020 Workplan update

It is proposed the 2019-20 first and second quarter will focus on a number of ongoing strategic projects and emerging priorities, as discussed with Councillors at their Workshop of 7 August 2019 and as follows:

State planning actions

The Community Participation Plan (CPP) and the Local Strategic Planning Statement (LSPS) are requirements of the State Government to be completed within set timeframes.

The CPP will be undertaken in consultation with the Communications and Customer Experience Unit in parallel with the review of the *Community Engagement Strategy* to ensure the requirements of the DPIE are built into the engagement framework. The CPP is to be completed by December 2019.

Preparation of the LSPS, to be completed by June 2020, is a project that requires a whole-of-organisation commitment to complete the requirements and guidelines of the Department of Planning, Industry and Environment (DPIE) and ensure the actions are integrated into the Integrated Planning and Reporting Framework.

The LSPS will play a key role in future land use planning decisions as summarised below:

- Council must consider its LSPS when amending the LEP;
 - Where an LEP has been updated in line with the LSPS, spot rezoning proposals should occur less frequently;
- Will be part of the strategic merit test for a Gateway Determination by DPIE;
- Will provide more certainty about Council's future land use intentions;
- Will translate strategic planning priorities into LEP and DCP controls ensuring that planning authorities can make decisions which reflect the direction identified in the LSPS; and
- Could be used by a consent authority for decision making, as it will be a key input to local planning controls.

Other examples of when an LSPS could be used include:

- To explain changes and the rationale for zoning, development standards and other controls of an LEP or DCP;
- To support delivery of strategies for economic growth in the Council area where Council has clearly defined its employment centres and the nature of uses appropriate for these locations, or identifying areas where Council is seeking to encourage new or innovative employment generating uses;
- To show future amenity/sustainability outcomes, such as green corridors and areas of environmental significance; and
- To assist in identifying sites or areas of local importance for further investigation and/or potential future protection.

Resources will be devoted to both plans to ensure preparation and exhibition these important plans by the required timeframes.

Council will also be engaged in the development of the Tweed Heads Action Plan by the Department of Planning, Industry and Environment (DPIE). This is a State level plan identified in the North Coast Regional Plan (NCRP) to ensure coordination of the growth of regional cities (Direction 7).

Ongoing strategic plans

The Rural Land Strategy (RLS), Scenic landscape Strategy (SLS) and Kingscliff Locality Plan (KLP) are all well advanced, having now completed community consultation phases. These strategic plans are proposed to be completed as a priority, at which point their focus will then shift to implementation.

Other priority projects either commenced or soon to commence include:

- Site assessments and planning for the relocation of Council's existing Animal Pound;
- The E zones review mapping and methodology preliminary consultation, noting that the subsequent planning proposal to incorporate the E zones into the LEPs will also have further formal consultation;
- Wardrop Valley Planning proposal which seeks to provide further industrial land (PP19/0002); and
- Planning proposal to remove Water Extraction from the LEP (PP18/0004).

Planning Proposals

In addition to the workplan priorities, a previous Council resolution placed a moratorium on accepting further planning proposals, which is now concluded. A number of planning proposals either have been, or are expected to be lodged, as listed in Figure 1 *Workplan 2019-2020 1st and 2nd quarter* following. It is noted the list of planning proposals is likely to expand and require action.

Planning proposals are funded on a cost recovery basis in accordance with the current fees and charges. Where appropriate Council may engage an external consultant to undertake planning proposal assessment and preparation, freeing up some resources for strategic projects. It is proposed to reactive the use of external consultants where suitable for the project. This is part of our long standing project management practice.

Council initiated planning proposal projects will require funding from general revenue allocation in the 2019-2020 financial year.

As noted above, objectives of the LSPS include providing a strategic framework to guide the consideration and updating of planning controls, including planning proposals. In future years the LSPS should reduce the need for spot rezoning planning proposals.

The Short Term Rental Accommodation (STRA) planning proposal has been kept alive waiting the legislative directions from the DPIE on their Policy position, which is to allow STRA for 365 days per year.

The DPIE has just released a new suite of information for public exhibition, including:

- A regulatory framework discussion paper;
- Draft Code of Conduct for the industry;

- Draft Fair Trading Amendment (Code of Conduct for Short Term Rental Accommodation) Regulation 2019;
- Draft State Environmental Planning Policy (Short Term Rental Accommodation) 2019;
- Draft Environmental Planning and Assessment (Short Term Rental Accommodation) Regulation 2019; and
- Short Term Rental Fire Safety Standard.

Submissions close 11 September 2019. This planning proposal has been updated in the work plan since the Councillor workshop.

Resourcing

The full list of projects and resource allocations and priorities is shown in *Figure 1 Workplan 2019-2020 1st and 2nd quarter* following.

The majority of the key projects involve extensive and ongoing consultation. In order to meet this need and progress the key projects in a timely manner, one full time communications resource has been allocated to the Strategic Planning and Urban Design unit for the next 12 months. This resource has been included in the resourcing allocated in the following Figure 1, indicating the workplan remains at capacity. For this reason the approach for the next six months is to focus on 10 priority projects, as follows:

Local Strategic Planning Statement (LSPS)	Rural Land Strategy
Community Participation Plan (CPP)	Kingscliff Locality Plan
E zones mapping and methodology consultation	Fingal Head Locality Plan
Scenic Landscape Strategy	Chinderah Locality Plan
Small Smart Sustainable Housing	Wardrop Valley Planning Proposal

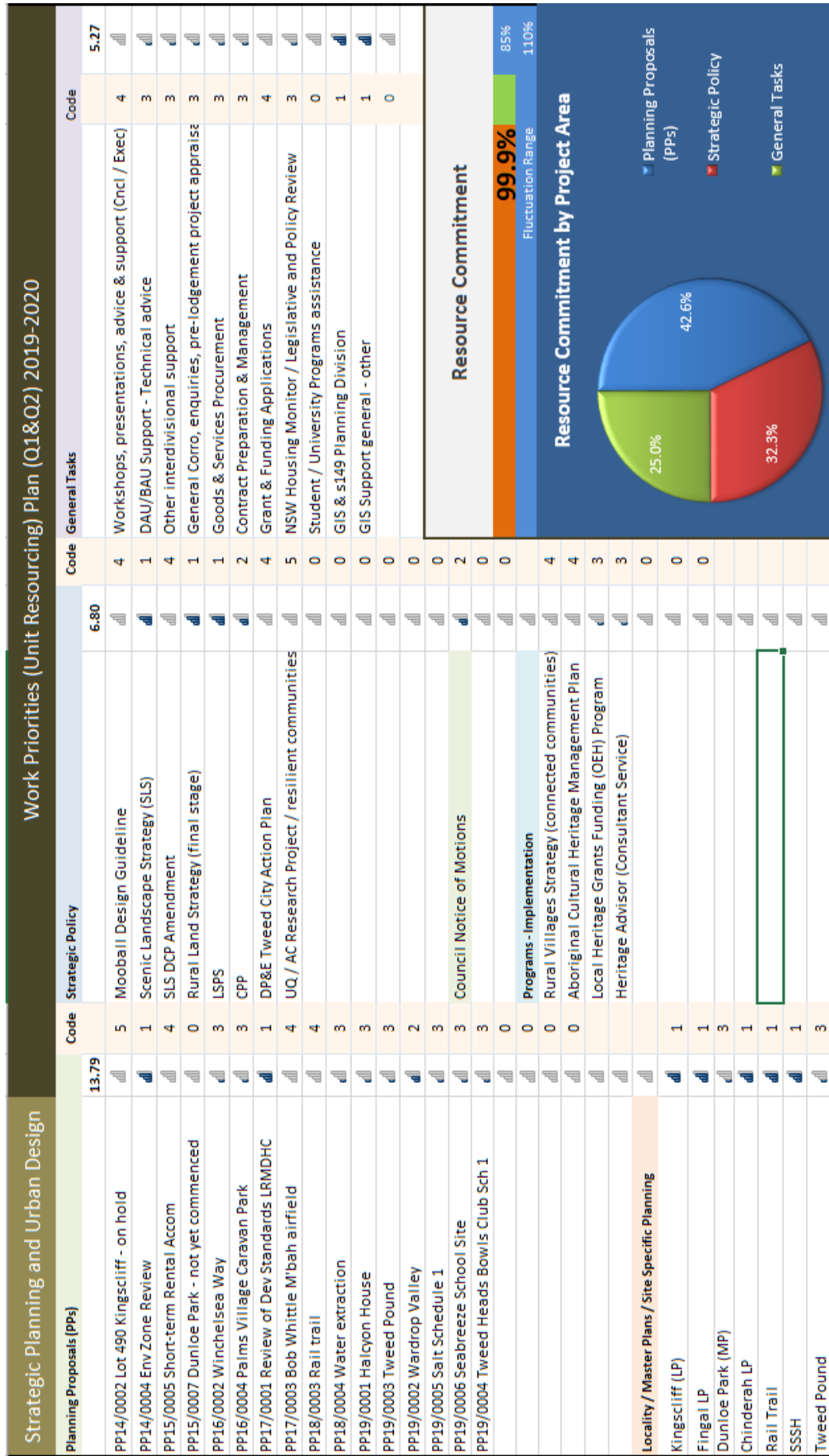


Figure 1 Workplan 2019-2020 1st and 2nd quarter

Projects currently waiting and un-resourced

A number of projects have previously been identified on the workplan, which due to competing resources, remain un-resourced as listed following:

Planning Proposals

- ACHMP Sensitive Lands (TSC)
- Housekeeping LEP review (TSC): required LEP maintenance
- Heritage Housekeeping review (TSC): required LEP maintenance

Development Control Plans

- DCP A1 Parts B and C review and housekeeping: required DCP maintenance
- Murwillumbah DCP review and regional locality plan: required DCP maintenance
- DCP sustainable initiatives: Notice of Motion
- DCP Greening South Tweed: Notice of Motion

Strategic Planning

- Local Growth Management Plan (including TUELRs review)
- Affordable housing
- Dark Sky Policy: Notice of Motion

Locality Plans: arising from Rural Villages Strategy

- Tumbulgum LP
- Burringbar LP
- Tyalgum LP
- Uki LP

These projects remain on a waiting list. It is anticipated that should a number of the 10 top projects be completed within the first and second quarter, these projects may be added to the workplan and prioritised. As such it is recommended that a six month workplan review be reported to Council, around March/April 2020.

OPTIONS:

1. Council adopts the revised Strategic Planning and Urban Design Unit Workplan 2019-2020 and the 10 top priority projects as outlined in this report; or
2. Amends or defers the workplan or part thereof.

Option 1 is recommended.

CONCLUSION:

The Strategic Planning and Urban Design workplan is at capacity, with many more projects than can be adequately resourced. In previous years projects have been ranked as priority 1, 2 or 3 and/or moratoriums placed on some projects on the workplan to allow other, more strategic projects to proceed. No one approach is perfect and each year the work plan is

tailored to meet the objectives and priorities of Council and the current legislative planning framework.

Council cannot indefinitely place a moratorium on planning proposals, as such it is proposed this now be lifted. Notwithstanding, there are key high priority strategic projects requiring completion in the coming 1st and 2nd quarter. Should this be achieved it may then be possible to reallocate resources to some of the projects on the waiting list.

As such, it is proposed the 2019-2020 workplan will focus on 10 key priority strategic projects for the next 6 months, as follows:

- Local Strategic Planning Statement (LSPS)
- Community Participation Plan (CPP)
- Rural Land Strategy
- Scenic Landscape Strategy
- Kingscliff Locality Plan
- E zones mapping and methodology consultation
- Fingal Head Locality Plan
- Chinderah Locality Plan
- Small Smart Sustainable Housing
- Wardrop Valley

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Council initiated planning proposals will require funding from general revenue allocation in the 2019-2020 financial year.

All strategic projects are able to proceed within the current budget allocations.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult - We will listen to you, consider your ideas and concerns and keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

7 [PR-PC] Fire and Rescue NSW - Fire Safety Inspection Reports

SUBMITTED BY: Building and Environmental Health

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Making decisions with you
2.1	Built Environment
2.1.1	Building Certification - To control and regulate the built environment to achieve good housing design and compliant buildings.

ROLE: **Provider**

SUMMARY OF REPORT:

Fire and Rescue NSW conduct inspections of buildings to ensure that fire safety provisions are adequate and all fire safety equipment is being properly maintained. These can be random inspections or can be conducted at the request of owners, residents or the local authority.

10 fire safety inspection reports have been received from Fire and Rescue NSW.

The inspections are an overview of the fire safety provisions at the time of the inspection and are undertaken without the benefit of past construction plans or conditions of development consent. For this reason, Schedule 5 Clause 17 (2) of the *Environmental Planning and Assessment Act, 1979* provides for Fire and Rescue NSW to refer the matter to the local authority to conduct a more detailed fire safety assessment of a building.

Schedule 5 Clause 17 (2) requires that these reports are tabled for Council's information and allows Council to issue fire safety orders if rectification works are not adequately completed.

Council's Building Surveyors have ensured that any fire safety matter raised by Fire and Rescue NSW, and any other fire safety matter identified by Council, have been adequately resolved. As all rectification works have been completed fire safety orders are not required.

RECOMMENDATION:

That:

- 1. Council receives the 10 fire safety audit reports from Fire and Rescue NSW and notes that all the matters raised in the reports and subsequent Council inspections have now been addressed; and**

2. **Council advises Fire and Rescue NSW of action taken in this matter and that no fire safety orders are to be issued.**

REPORT:

Fire and Rescue NSW conduct inspections of buildings in NSW to determine if the fire safety provisions are suitable, are being maintained and are compatible with their systems.

These inspections are a fire safety overview of the building and are carried out without the benefit of past construction plans or conditions of development consent. For this reason Schedule 5 Clause 17 (2) of the *Environmental Planning and Assessment (EP&A) Act 1979* provides for a subsequent referral to the local authority to conduct a more detailed review of the building and determine whether it will exercise its powers to give a fire safety order.

10 separate fire safety inspection reports were received from Fire and Rescue NSW from random inspections of properties in Tweed Shire and are tabled for Council's information as required by Schedule 5 Clause 17 (2) of the *EP&A Act, 1979*.

The reports were received between September and October 2018. Given the volume of work required to adequately research and inspect each of these properties, a request for an extension of time to present this report to Council was approved by Fire and Rescue NSW.

The reports list items of concern that Fire and Rescue NSW considered may have been non-compliant with the Building Code of Australia and recommended that Council inspect and appropriately address any additional deficiencies identified on the premises.

Table 1: addresses of properties and issues identified by Fire and Rescue NSW.

Report No.	Property	Fire and Rescue Issues
BFS18/1918 (4119)	7 Murphy's Road, Kingscliff	<ul style="list-style-type: none"> • Maintenance of fire safety measures
BFS18/313 (2674)	18-20 Stuart Street, Tweed Heads	<ul style="list-style-type: none"> • Maintenance of fire safety measures • Locked fire doors
BFS18/306 (2668)	9 Gunnamatta Avenue, Kingscliff	<ul style="list-style-type: none"> • Maintenance of fire safety measures
BFS18/308 (2670)	27-37 Bells Boulevard, Kingscliff	<ul style="list-style-type: none"> • Maintenance of fire safety measures
BFS18/307 (2669)	25 Bells Boulevard, Kingscliff	<ul style="list-style-type: none"> • Maintenance of fire safety measures • Access and egress
BFS18/1920 (4121)	150 Marine Parade, Kingscliff	<ul style="list-style-type: none"> • Maintenance of fire safety measures
BFS18/1917 (4118)	32 Kingscliff Street, Kingscliff	<ul style="list-style-type: none"> • Maintenance of fire safety measures • Doors not provided with smoke seals
BFS18/1919 (4120)	13 Murphy's Road, Kingscliff	<ul style="list-style-type: none"> • Maintenance of fire safety measures
BFS18/312 (2673)	685-707 Casuarina Way, Casuarina	<ul style="list-style-type: none"> • Maintenance of fire safety measures
BFS18/1916 (4117)	42 Boundary Street, Tweed Heads	<ul style="list-style-type: none"> • Maintenance of fire safety measures

Full copies of these reports are included as Attachments 1-10 of this report.

Action taken by Council:

Council staff have actively engaged with the building owners and body corporates of each building to assess these properties against the requirements of the Building Code of Australia.

In some buildings, additional deficiencies were identified and correspondence was sent to the property owners outlining the rectification works required.

In all cases, the building owners have completed the rectification works required, in order to ensure compliance with the Building Code of Australia.

As a result of satisfactory works undertaken, no fire safety orders are required to be issued.

OPTIONS:

That:

1. Council receives the 10 fire safety audit reports from Fire and Rescue NSW and note that all the matters raised in the reports and subsequent Council inspections have now been addressed;
2. Council advises Fire and Rescue NSW of action taken in this matter and that no fire safety orders are to be issued; and
3. Council determines an alternative course of action.

As all rectification works have been satisfactorily completed, options 1 and 2 are recommended.

CONCLUSION:

All 10 Fire and Rescue NSW fire safety inspection reports have been followed up by Council's Building Surveyors. In some cases additional items of non-compliance were identified, however, follow up inspections found that all matters were satisfactorily resolved.

Council can now advise Fire and Rescue NSW that there are no outstanding or non-compliant matters and that no fire safety orders will need to be issued.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable

d. Communication/Engagement:
Inform - We will keep you informed

UNDER SEPARATE COVER/FURTHER INFORMATION:

- | | |
|----------------|---|
| Attachment 1. | Report BFS18/1918 (4119) 7 Murphy's Road, Kingscliff (ECM 6024310) |
| Attachment 2. | Report BFS18/313 (2674) 18-20 Stuart Street, Tweed Heads (ECM 6024311) |
| Attachment 3. | Report BFS18/306 (2668) 9 Gunnamatta Avenue, Kingscliff (ECM 6024322) |
| Attachment 4. | Report BFS18/308 (2670) 27-37 Bells Boulevard, Kingscliff (ECM 6024325) |
| Attachment 5. | Report BFS18/307 (2669) 25 Bells Boulevard, Kingscliff (ECM 6024326) |
| Attachment 6. | Report BFS18/1920 (4121) 150 Marine Parade, Kingscliff (ECM 6024327) |
| Attachment 7. | Report BFS18/1917 (4118) 32 Kingscliff Street, Kingscliff (ECM 6024329) |
| Attachment 8. | Report BFS18/1919 (4120) 13 Murphy's Road, Kingscliff (ECM 6024331) |
| Attachment 9. | Report BFS18/312 (2673) 685-717 Casuarina Way, Casuarina (ECM 6024333) |
| Attachment 10. | Report BFS18/1916 (4117) 42 Boundary Street, Tweed Heads (ECM 6024334) |
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8 [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

SUBMITTED BY: Director

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: Provider

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes there are no variations for the month of August 2019 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

In accordance with that Planning Circular, no Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
