



**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 6 June 2019**

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

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 Evaluation

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

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

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

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

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

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

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

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

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

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

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

(3A) **Development control plans**

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

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

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

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

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

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

(6) **Definitions**

In this section:

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

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## Items for Consideration of the Planning Committee:

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2	[PR-PC] Development Application DA18/0652 for the Demolition of Existing Dwelling, Tree Removal and Construction of a Mixed Use Development Comprising a Dwelling, Shop Top Housing Unit, Shops and Signage at Road 713 & Lot 5 DP 8107 Kyogle Road, Uki; Lot 4 DP 8107 No. 1470 Kyogle Road, Uki	54
3	[PR-PC] Development Application DA02/1983.19 for an Amendment to Development Consent DA02/1983 for the Use of Property for Filming and Producing a Television Program at Lot 77 DP 755715 Dungay Creek Road, Dungay; Part Lot 74 DP 755715 No. 366 Dungay Creek	139
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## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA18/1030 for the Demolition of Existing Structures and Erection of Dual Occupancy (Detached) at Lot 311 DP 246199 No. 43 The Quarterdeck, Tweed Heads

**SUBMITTED BY:** Development Assessment and Compliance

mhm



Making decisions with you  
*We're in this together*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

**ROLE:** **Provider**

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#### SUMMARY OF REPORT:

The proposal is for demolition of an existing dwelling, removal of vegetation and erection of a dual occupancy (detached). The dual occupancy units will each consist of four bedrooms and double garages. Existing access via Leeward Terrace will remain for dwelling 2 and new access is proposed from The Quarterdeck for dwelling 1.

The applicant seeks variations to Council's Tweed Development Control Plan 2008 Section A1 (DCP A1) dual occupancy control for minimum area of a site of 900m<sup>2</sup> with a site area of 778.6m<sup>2</sup> and the development control relating to the level of cut permitted within the building envelope. Justification for these variations is provided within this report and is supported.

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

The application was notified for a period of 14 days from Monday 28 January 2019 to Monday 11 February 2019. Council received three submissions which are detailed within this report.

This development application is referred to full Council for determination due to the proposed variation to the dual occupancy control for minimum area of a site being 900m<sup>2</sup>.

## **RECOMMENDATION:**

**That Development Application DA18/1030 for the demolition of existing structures and erection of dual occupancy (detached) at Lot 311 DP 246199 No. 43 The Quarterdeck, Tweed Heads be approved subject to the following conditions:**

### **GENERAL**

**1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos DA04, DA06, DA07, DA08, DA09, DA12, DA13, DA14, DA15, DA16, DA17, prepared by Armstrong & Co architects and dated 03/04/19, 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. Sewer manholes are present on this site. Manholes are not to be covered with soil or other material.**

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

[GEN0155]

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

[GEN0300]

**6. If asbestos containing material is to be removed then prior to demolition work commencing a sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm by 300mm shall be erected in a prominent visible location on the site. The sign shall remain in place until all asbestos has been removed from the site.**

[GEN0345]

**7. If asbestos containing material is to be removed then prior to the commencement of construction of the new structure or use of the site a 'clearance inspection' shall be conducted for the site and a 'clearance certificate' issued by a licensed asbestos assessor or competent person which states that the site 'does not pose a risk to health and safety from exposure to asbestos' in accordance with Clause 474 of the Work Health and Safety Regulation 2017. A copy of this certificate shall**



be forwarded to the **Principal Certifying Authority** and Council within 7 days of completion of the 'clearance inspection'.

[GEN0350]

8. All existing trees within the road reserve are to be retained and protected during construction. Where existing trees within the road reserve cannot be adequately retained and protected, approval from Council's General Manager or their delegate is required to remove street trees and they are to be replaced with a similar species in a 45L pot in accordance with Council's Development Design Specification D14.08.03C Tree Planting and Location (for distances away from infrastructure such as light poles and driveways) and Standard Drawing 'Tree and Shrub Planting Details' Dwg. No. SD701 (including the installation of root barrier) to the satisfaction of Council's General Manager or their delegate.  
[GEN0355]
9. All works shall comply with AS2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2017.  
[GEN0360]
10. Prior to demolition of the structure is commenced all asbestos material shall be identified and removed from the site by an asbestos removalist who is licensed to carry out the work by WorkCover NSW. All asbestos waste shall be disposed at a facility that is licensed to receive asbestos waste (all receipts related to disposal must be kept on site and provided to a Council Authorised Officer upon request).  
[GEN0365]
11. Both proposed strata lots shall connect to the existing sewer junction at front of the property on The Quarterdeck road verge.  
[GENNS01]
12. Geotechnical investigations and assessment of the subject site shall be in accordance with the recommendations and requirements as specified in the Pacific Geotech Consulting Geotechnical Engineers, dated November 2018, except where varied by the conditions of this consent.

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

[GENNS02]

13. Vegetation removal shall be limited to those trees identified as 'Trees to be removed' on Dwg. No. DA06 dated 20 November 2018 prepared by Armstrong & Co Architects and described as tree numbers 1, 2, 8, 13 and 14 in Arboricultural Impact Assessment Report (AIAR) dated 02 October 2018 prepared by Peter Gray. All other native trees identified in the AIAR occurring on the subject site shall be afforded adequate protection during the construction stage and retained for the life of the development unless otherwise approved by Council's General Manager or delegate.  
[GENNS03]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

14. Prior to issue of Construction Certificate the applicant is to submit to Council's General Manager or his delegate a list of the finished building materials and colours (including colour product photo images) for approval.

[PCC0175]

**15. Section 7.11 Contributions**

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

**Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 7.11 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.**

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

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

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

<b>(a) Tweed Road Contribution Plan: 1.3 Trips @ \$921 per Trips (\$815 base rate + \$106 indexation) CP Plan No. 4 Sector1_4</b>	<b>\$1,197</b>
<b>(b) Open Space (Casual): 1 ET @ \$624 per ET (\$502 base rate + \$122 indexation) CP Plan No. 5</b>	<b>\$624</b>
<b>(c) Open Space (Structured): 1 ET @ \$714 per ET (\$575 base rate + \$139 indexation) CP Plan No. 5</b>	<b>\$714</b>
<b>(d) Shirewide Library Facilities: 1 ET @ \$933 per ET (\$792 base rate + \$141 indexation) CP Plan No. 11</b>	<b>\$933</b>
<b>(e) Bus Shelters: 1 ET @ \$71 per ET (\$60 base rate + \$11 indexation) CP Plan No. 12</b>	<b>\$71</b>
<b>(f) Eviron Cemetery: 1 ET @ \$135 per ET</b>	<b>\$135</b>

	(\$101 base rate + \$34 indexation) CP Plan No. 13	
(g)	Community Facilities (Tweed Coast - North) 1 ET @ \$1539 per ET (\$1,305.60 base rate + \$233.40 indexation) CP Plan No. 15	\$1,539
(h)	Extensions to Council Administration Offices & Technical Support Facilities 1 ET @ \$2187.14 per ET (\$1,759.90 base rate + \$427.24 indexation) CP Plan No. 18	\$2,187.14
(i)	Cycleways: 1 ET @ \$526 per ET (\$447 base rate + \$79 indexation) CP Plan No. 22	\$526
(j)	Regional Open Space (Casual) 1 ET @ \$1215 per ET (\$1,031 base rate + \$184 indexation) CP Plan No. 26	\$1,215
(k)	Regional Open Space (Structured): 1 ET @ \$4264 per ET (\$3,619 base rate + \$645 indexation) CP Plan No. 26	\$4,264

[PCC0215/POC0395/PSC0175]

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

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

**BELOW IS ADVICE ONLY**

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

Water: 0.6 ET @ \$13,926 = \$8,355.60  
Sewer: 1.0 ET @ \$6,690 = \$6,690

[PCC0265]

17. Details from a Structural Engineer are to be submitted to the Principal Certifying 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.

[PCC0935]

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

[PCC0945]

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

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

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

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee. The Section 68 Application must be approved by Council prior to the associated Construction Certificate being issued.

[PCC1145]

20. 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]

21. 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]

22. 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.

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

[PCC1310]

23. **A detailed plan of landscaping is to be submitted and approved by Council's General Manager or delegate prior to the issue of a Construction Certificate. The detailed plan of landscaping should be reflective of the Landscape Concept Plan dated 14 November 2018 prepared by Plummer & Smith and shall meet the following plant selection criteria:**
- a. **A minimum of 80% locally occurring Australian native species and maximum of 20% non-locally occurring Australian native species to apply to all trees.**
  - b. **A minimum of 80% locally occurring Australian native species and maximum of 20% Australian native or exotic species to apply to other plants (shrubs, ground cover and similar).**
  - c. **No environmental weed species.**

[PCNS01]

#### **PRIOR TO COMMENCEMENT OF WORK**

24. **The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.**
- [PCW0005]
25. **An application is to be made to Council to temporarily “cap off” the existing building sewerage house drainage from Council's sewerage system, prior to any demolition work commencing. A Plumbing and Drainage Works on Private Land <<http://www.tweed.nsw.gov.au/Controls/Forms/Documents/SewerSepticForm.pdf>> application form shall be submitted to Tweed Shire Council and payment of fees in accordance with Councils adopted fees and charges.**
- [PCW0045]
26. **The erection of a building in accordance with a development consent must not be commenced until:**
- (a) **a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and**
  - (b) **the person having the benefit of the development consent has:**
    - (i) **appointed a principal certifying authority for the building work, and**
    - (ii) **notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and**
  - (c) **the principal certifying authority has, no later than 2 days before the building work commences:**
    - (i) **notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and**
    - (ii) **notified the person having the benefit of the development consent of**

any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
  - (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

27. 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]

28. 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]

29. 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]

30. 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]

31. 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]

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

[PCW1005]

33. 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]

- 34. All pre-construction arboricultural management measures as specified in the Arboricultural Impact Assessment Report (AIAR) dated 02 October 2018 prepared by Peter Gray shall be satisfactorily implemented prior to commencement of works.**

[PCWNS01]

## **DURING CONSTRUCTION**

- 35. 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]

- 36. 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]

- 37. 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]

- 38. 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]

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

[DUR0395]

- 40. 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 2017.**

[DUR0415]



41. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2017.

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

[DUR0645]

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

[DUR0905]

43. 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]

44. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

[DUR1015]

45. 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]

46. 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]

47. 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]

48. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials.

[DUR2205]

49. Written notice shall be provided to the 'regulator' at least 5 days before the removalist commences licensed asbestos removal work in accordance with Clause 466 of the Work Health and Safety Regulation 2017.

[DUR2840]

50. A supervising Project Arborist with a minimum Australian Qualification framework (AQF) level 5 in Arboriculture shall be engaged to:

- a. Oversee all tree removal and any earthworks (including piling) within the tree protection zone of all trees identified to be retained and protected
- b. Carry out mitigation/remediation works during the construction period in general accordance with the *Australian Standard AS4970 - 2009 Protection of trees on development sites*.

[DURNS01]

51. A suitably qualified ecologist who holds a fauna survey licence is required to manage wildlife onsite during all tree removal operations. Fauna management methods employed should be generally consistent with the Draft Queensland Code of Practice for the Welfare of Wild Animals Affected by Clearing and Other Habitat and Wildlife Spotter/Catchers (Hangar & Nottidge 2009). Where translocation is required the proponent shall seek any relevant permits from the state regulating agency (NSW Office of Environment & Heritage). It is the responsibility of the proponents to ensure all relevant licences have been obtained prior to any fauna interactions.

[DURNS01]

52. During the construction period and with respect to vegetation and fauna management measures the applicant must comply with any directions given by:

- a. Project Arborist;
- b. Qualified ecologist; and/or
- c. Council's General Manager or delegate.

[DURNS01]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

53. 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]

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

[POC0205]

55. 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]

56. 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]

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

[POC1055]

**58. An arboricultural certification report prepared by the Project Arborist ((Minimum AQF Level 5 Arborist) shall be submitted to Council prior to the issue of occupation certificate demonstrating compliance with:**

- a. Condition 1 of this consent and Arboricultural Impact Assessment Report (AIAR) dated 02 October 2018 prepared by Peter Gray;**
- b. *Australian Standard AS4970 - 2009 Protection of trees on development sites;* and**
- c. Any other tree management measure to protect retained vegetation as directed by Council's General Manager or delegate or Project Arborist during the construction period.**

[POCNS01]

**59. All approved landscaping requirements must be completed in accordance with the approved detailed plan of landscaping to the satisfaction of the General Manager or delegate prior to the issue of occupation certificate. Landscaping must be maintained at all times to the satisfaction of Council's General Manager or delegate.**

[POCNS01]

**REPORT:**

**Applicant:** Supaprumm Pty Ltd  
**Owner:** Supaprumm Pty Ltd  
**Location:** Lot 311 DP 246199 No. 43 The Quarterdeck, Tweed Heads  
**Zoning:** R2 - Low Density Residential  
**Cost:** \$900,000

**Background:**

The site is known as Lot 311 DP 246199 No. 43 The Quarterdeck, Tweed Heads. The site has a land area of 778.6 square metres, contains an existing dwelling and detached carport both of which are to be demolished. Vehicle access to the site is via a right of way (ROW) over the site and neighbouring property No. 41, which is located at the rear (east) of the site.



*Figure: Aerial of the site and surrounds.*

It is to be noted that the property directly to the south contains an attached dual occupancy with a site area of 700m<sup>2</sup>, with several other dual occupancies located within close proximity on similar sized sites.



Figure: Infrastructure layers, sewer located in ROW at rear of site.

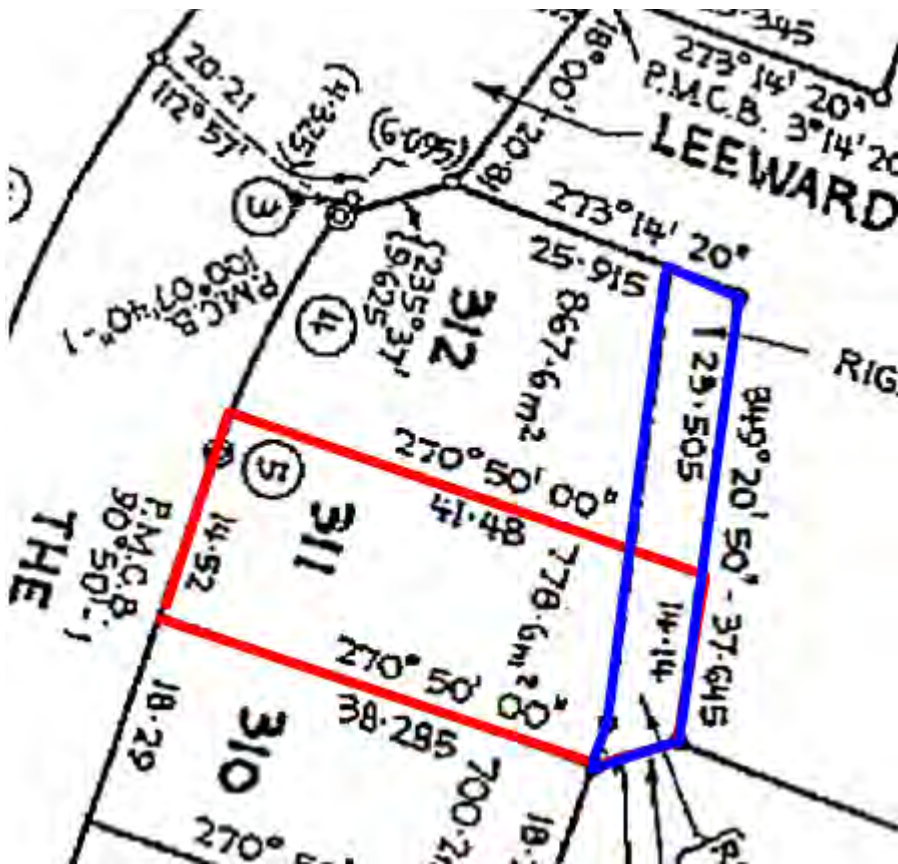
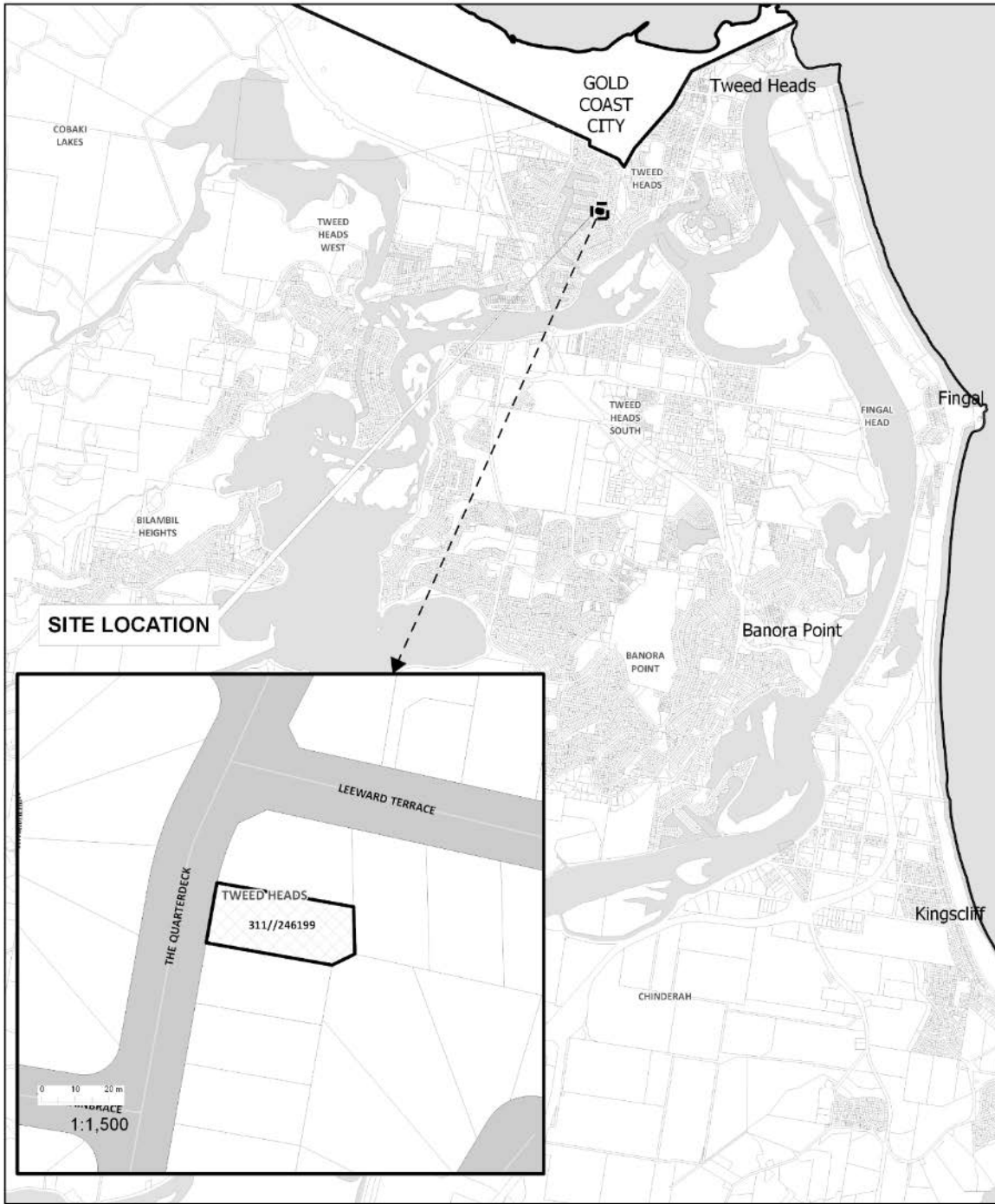


Figure: Plan of 88B illustrating ROW in Blue, subject site is Red.

**SITE DIAGRAM:**



**Site Plan**

Lot 311 DP246199  
43 The Quarterdeck, TWEED HEADS 2485



Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Dig before You Dig' enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.

**GDA**   Cadastre: 18/07/2018  
© NSW LPI & Tweed Shire Council  
Coordinate System - MGA Zone 56  
Datum - GDA 94

Civic and Cultural Centre  
3 Tumbilgah Road  
Murwillumbah NSW 2484  
PO Box 616  
Murwillumbah NSW 2484  
T: (02) 6670 2400 / 1300 292 872  
F: (02) 6670 2483  
W: www.tweed.nsw.gov.au  
E: planning@tweed.nsw.gov.au



Date Printed: 24 May, 2019



**AERIAL PHOTOGRAPH:**



1:2,000 @ A4 Portrait  
0 20 40m  
GDA  
Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geocentric Datum of Australia 1994  
Grid: Map of Australia, Zone 56

**TWEED**  
SHE COUNCIL  
Civic and Cultural Centre  
3 Timbalgum Road  
Murwillumbah NSW 2484  
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W www.tweedshire.nsw.gov.au  
© 2018/19/20/21/22/23/24/25/26/27/28/29/30/31

**Aerial Photography April 2018**

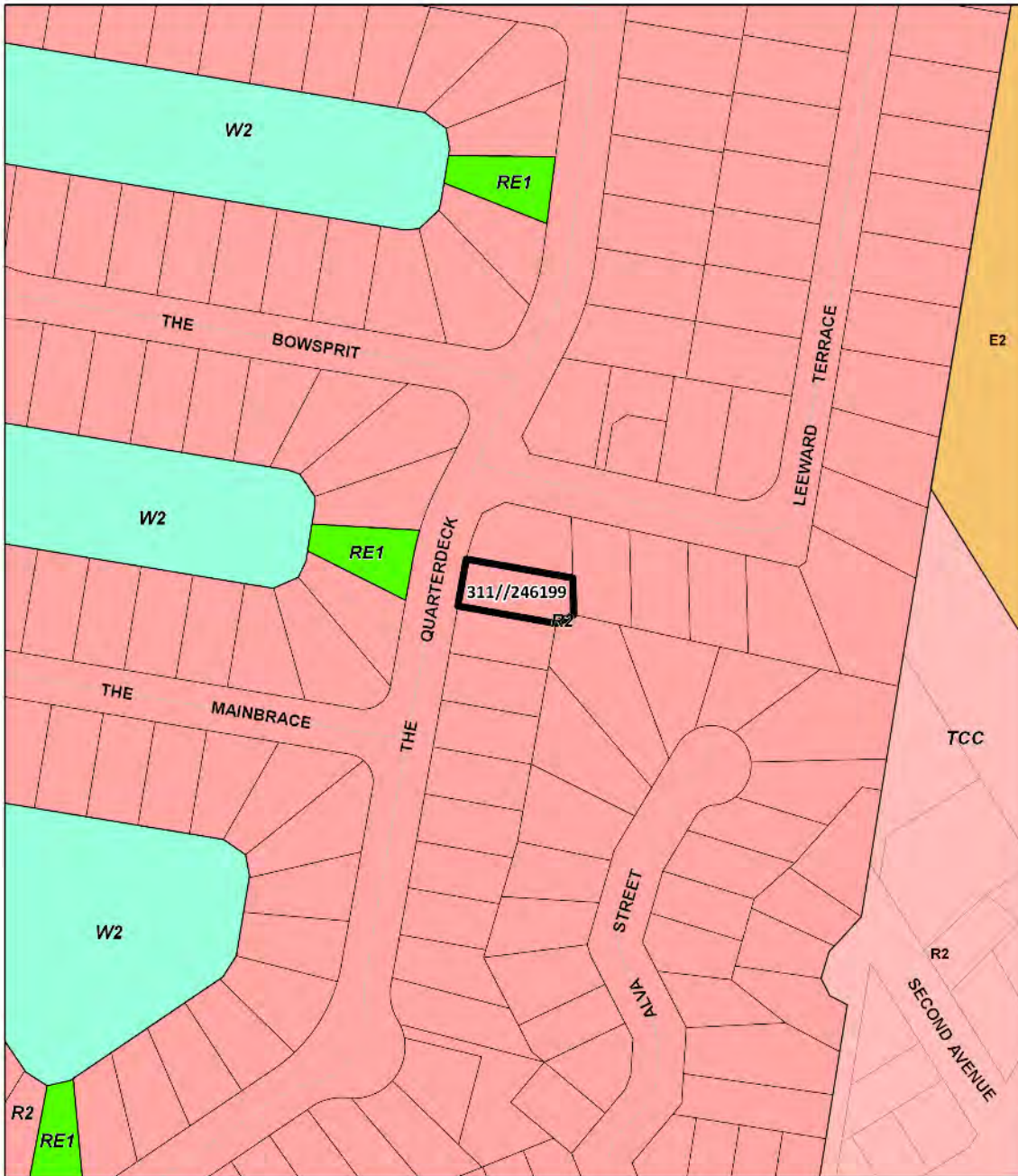
Lot 311 DP246199  
43 The Quarterdeck, TWEED HEADS

© 2018 Imagery - Tweed Shire Council  
© Cadastre - Tweed Shire Council  
*Boundaries shown should be considered approximate only.*

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all Liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before You Dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.



ZONING PLAN:



Subject Land

Subject Land

Land Zoning (LZN 2012)

E2, Environmental Conservation  
 R2 Low Density Residential

Tweed Local Environmental Plan 2014

R2 Low Density Residential  
 RE1 Public Recreation  
 W2 Recreational Waterways  
 TCC Tweed City Centre LEP 2012

1:12,000 @ A4 Portrait  
 0 20 40 m

Site Plan - Local Environmental Plan

Lot 311 DP246199  
 43 The Quarterdeck, TWEED HEADS

© Land and Property Information (LPI) and Tweed Shire Council

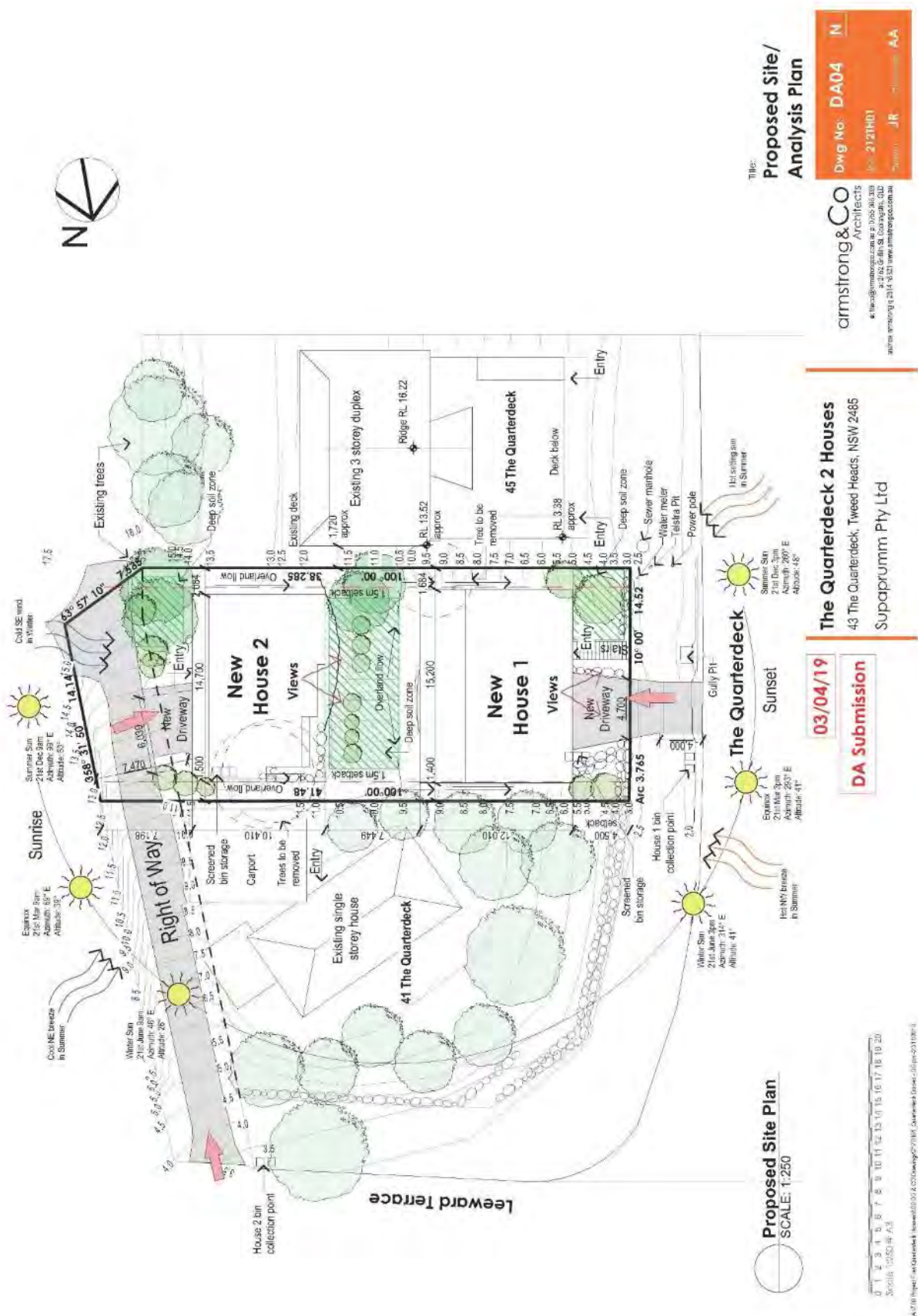


GDA  
 Map Information: Universal Transverse Mercator  
 Datum of Datum: Australian Datum of 1994  
 Grid: MGA 56 Easting Zone 56

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DEVELOPMENT PLANS:



Proposed Site/  
Analysis Plan

Dwg No: DA04 N  
No: 212TH01  
Author: JR

armstrong & Co  
Architects  
Level 2, 100/101 Pacific Highway North, Tweed Heads NSW 2485  
Phone: 07 5531 4333 www.armstrongco.com.au

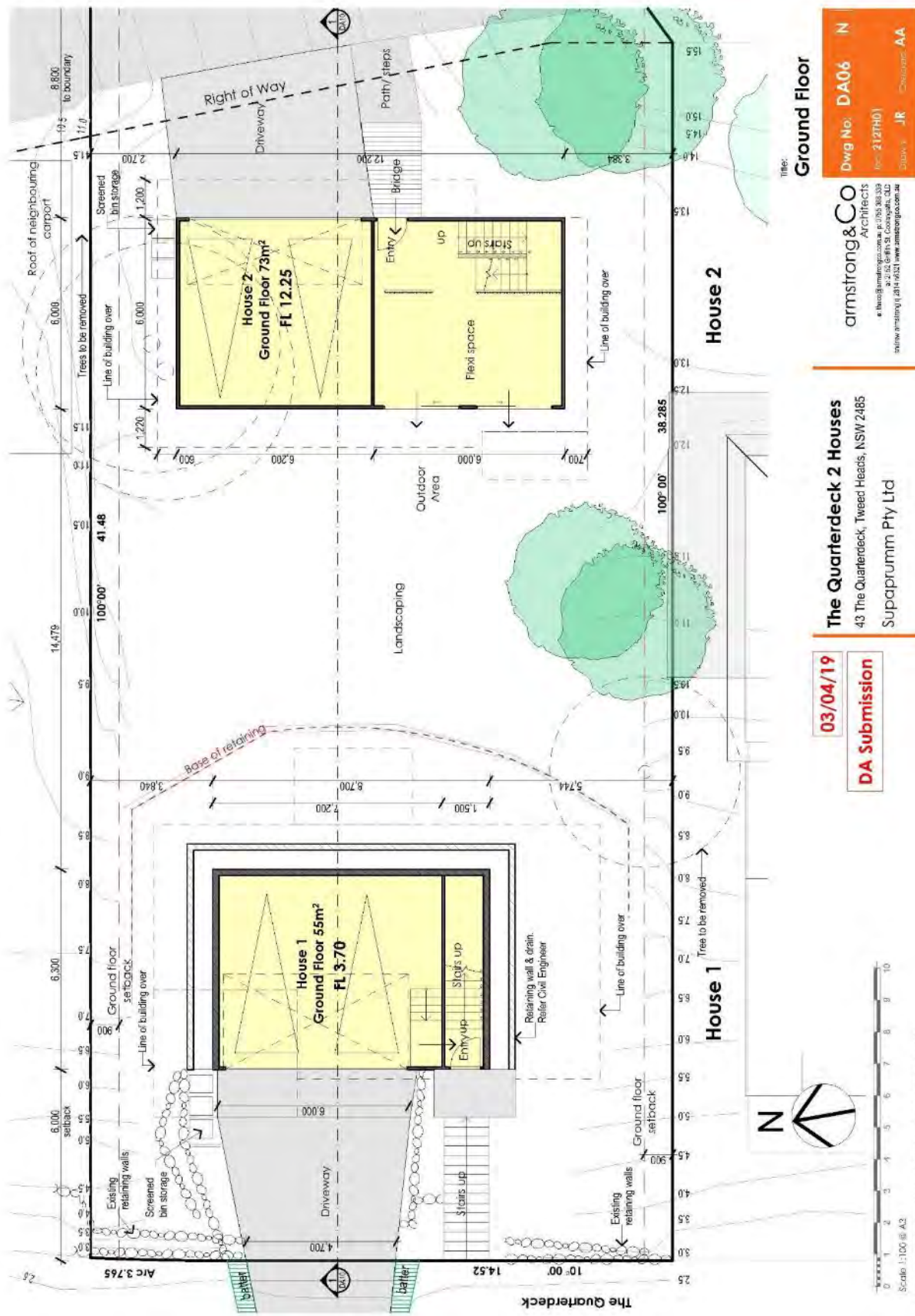
The Quarterdeck 2 Houses  
43 The Quarterdeck, Tweed Heads, NSW 2485  
Supacrumm Pty Ltd

03/04/19  
DA Submission

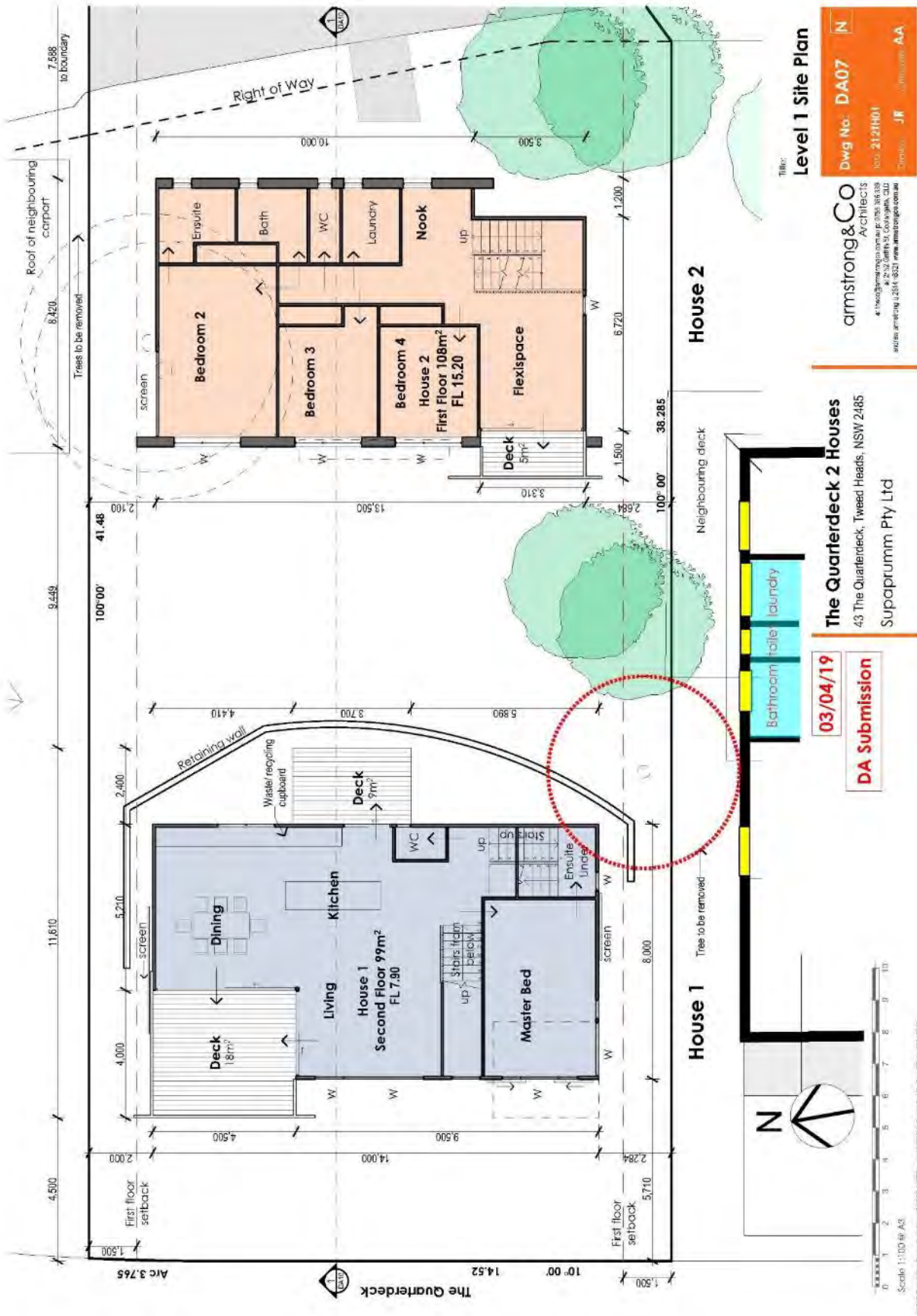
Proposed Site Plan  
SCALE: 1:250



A 3D Model of the Quarterdeck, Tweed Heads NSW 2485, is available at: www.armstrongco.com.au







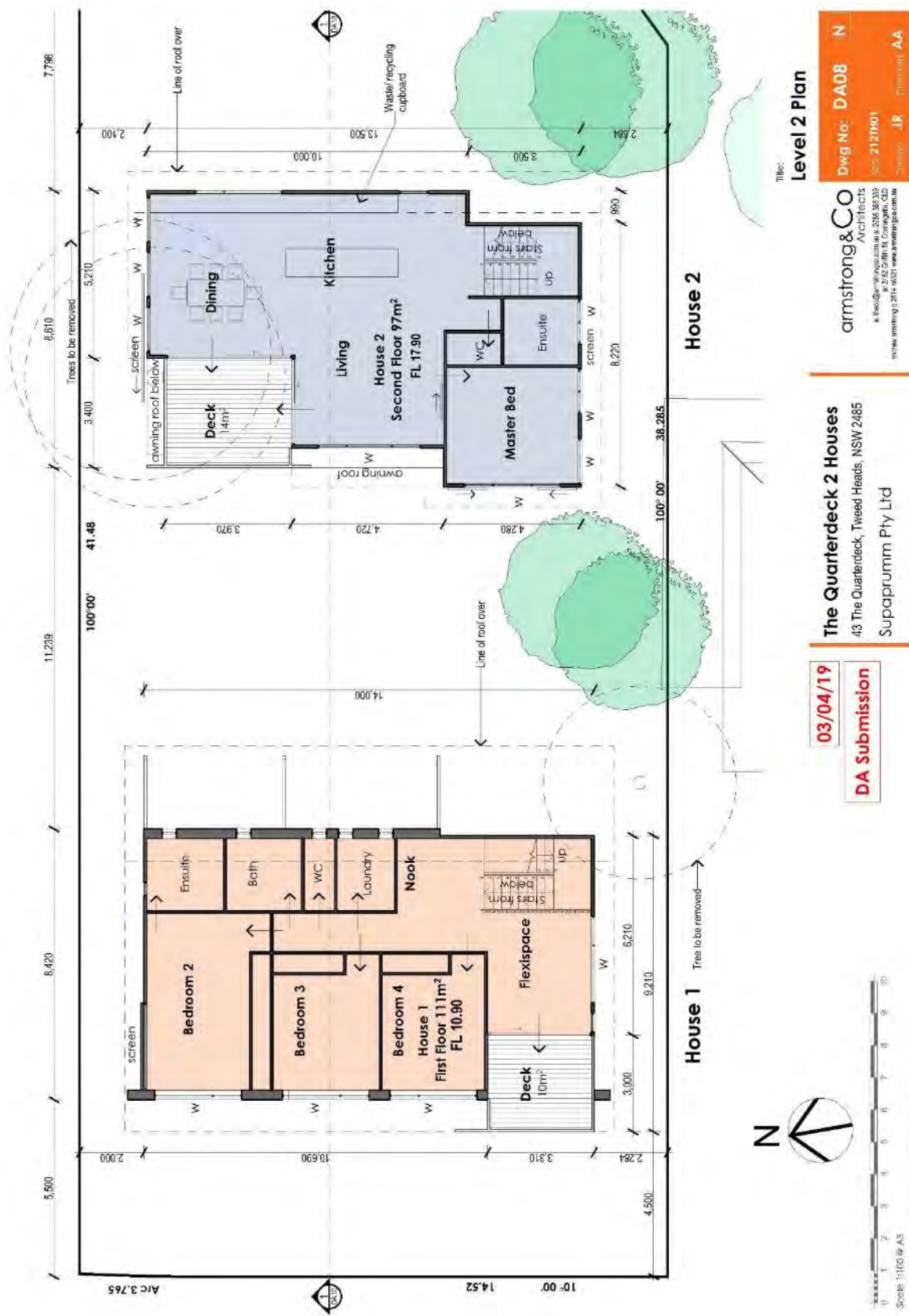
AS220 Project: The Quarterdeck 2 Houses (03/04/19) - DA07 - 03/04/19  
 Date: 03/04/19

**03/04/19**  
**DA Submission**

**The Quarterdeck 2 Houses**  
 43 The Quarterdeck, Tweed Heads, NSW 2485  
 Supaprurmm Pty Ltd

**armstrong&Co** Architects  
 47 Woodbridge Road, Tweed Heads NSW 2485  
 Phone: 07 5531 1234  
 Website: www.armstrongandco.com.au

**Level 1 Site Plan**  
 Title: Level 1 Site Plan  
 Dwg No: DA07  
 Date: 21/2/2019  
 Drawing: JF  
 Checked: AA

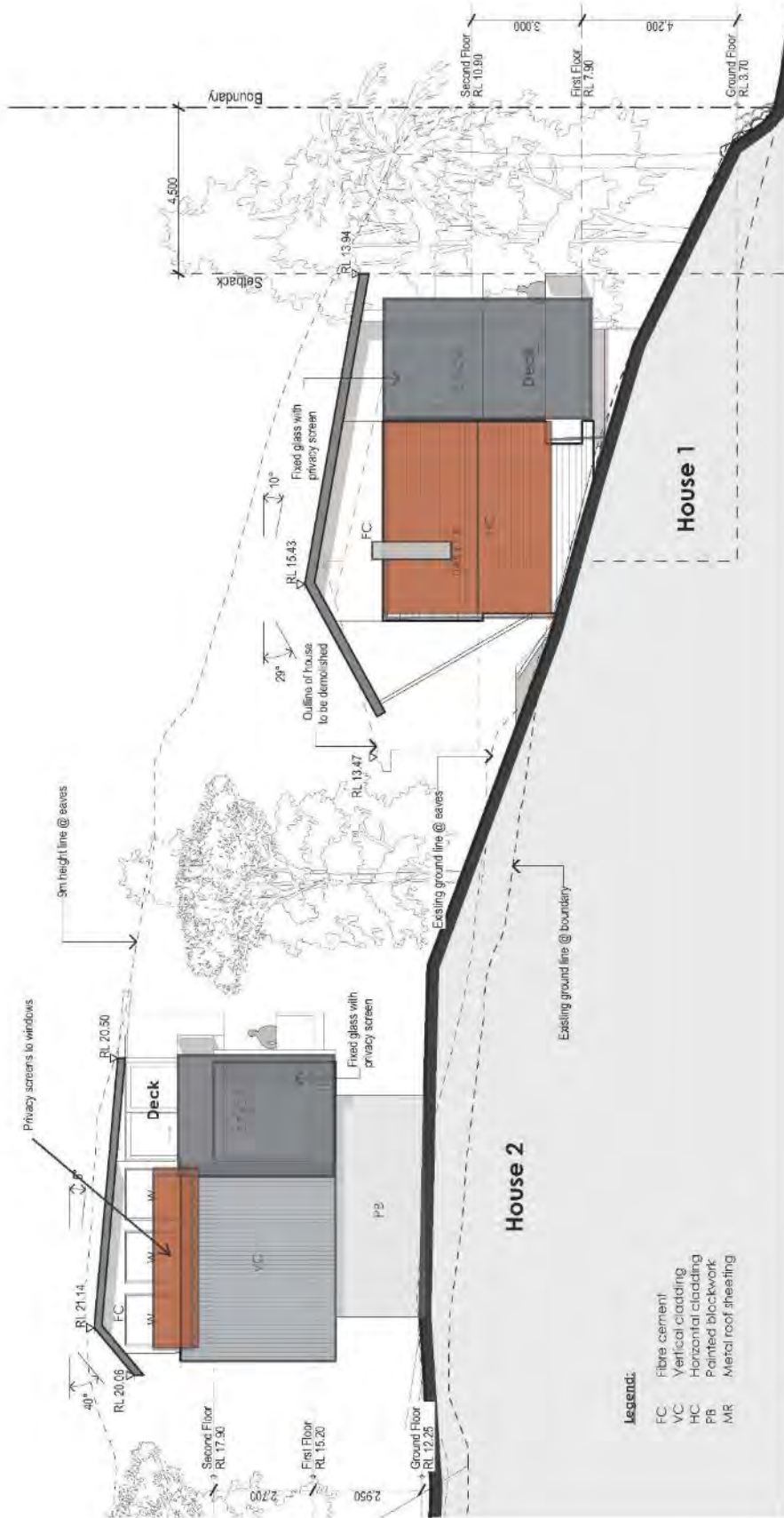


**03/04/19**  
**DA Submission**

**The Quarterdeck 2 Houses**  
43 The Quarterdeck, Tweed Heads, NSW 2485  
Supaprurmm Pty Ltd

**armstrong & CO** Architects  
a fireco@armstrongandco.com.au • 0155 382339  
www.armstrongandco.com.au

**Level 2 Plan**  
Dwg No: DA08  
Title: N  
Drawn: JR  
Checked: AA



North Elevation  
SCALE: 1:100

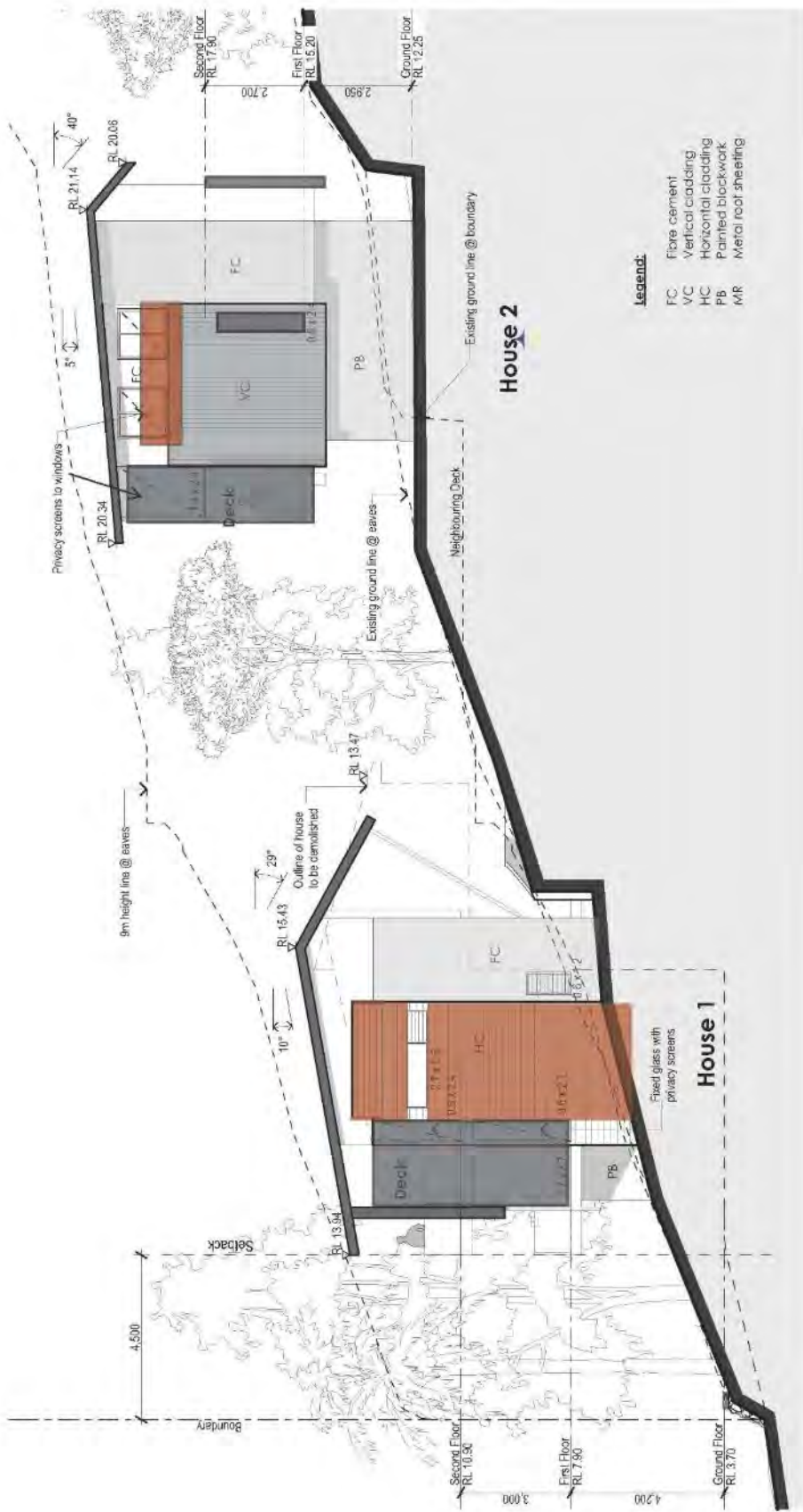
03/04/19  
DA Submission

**The Quarterdeck 2 Houses**  
43 The Quarterdeck, Tweed Heads, NSW 2485  
Supaprumm Pty Ltd

**armstrong&co** ARCHITECTS  
 Title: **North Elevation**  
 Dwg No: **DA12 N**  
 2/55 Griffiths St, Coolangubra, QLD  
 Phone: 07 5531 2814 Email: [info@armstrongandco.com.au](mailto:info@armstrongandco.com.au)  
 Sydney JR Brisbane AA







**South Elevation**  
SCALE: 1:100



**03/04/19**  
**DA Submission**

**The Quarterdeck 2 Houses**  
43 The Quarterdeck, Tweed Heads, NSW 2485  
Supaprimum Pty Ltd

**armstrong & CO**  
Architects  
11 Macquarie Street, Sydney, NSW 2000  
Tel: 02 9252 0018  
www.armstrongandco.com.au

**South Elevation**  
Dwg No: DA13 N  
Date: 21/11/18  
Author: J.R.  
Checker: A.A.



**03/04/19**

**DA Submission**

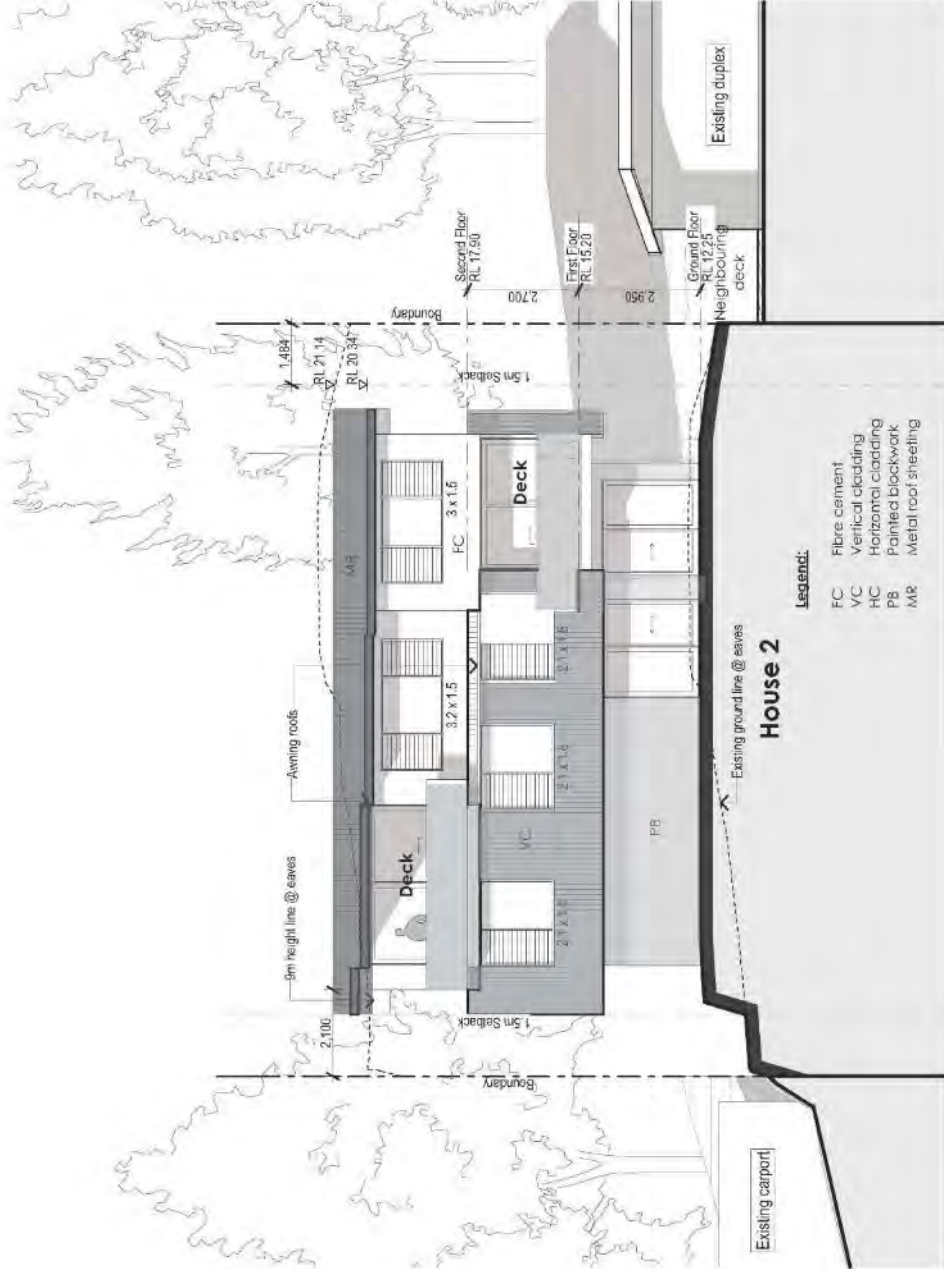
**armstrong & CO**  
Architects  
e: haco@armstrongandco.com.au t: 02 95 94 94 98  
w: 95 94 94 98  
p: 2/15 (off) St. Chokkappa, QLD  
Phone: JR  
Architect: AA

Dwg No: DA14 N

**The Quarterdeck 2 Houses**  
43 The Quarterdeck, Tweed Heads, NSW 2485  
Supaprum Pty Ltd

**House 1 West Elevation**





House 2 West elevation  
SCALE: 1:100



03/04/19  
DA Submission

**The Quarterdeck 2 Houses**  
43 The Quarterdeck, Tweed Heads, NSW 2485  
Supaprum Pty Ltd

THE: **House 2 West Elevation**

**armstrong & CO** Architects  
160/240-242/244 Stirling Street, Perth, WA 6000  
Tel: 08 9442 1111  
www.armstrongco.com.au

Dwg No: **DA15** N  
Proj: **2127HD1**  
Drawn: **JR** Checked: **AA**





House 1 East Elevation  
SCALE: 1:100

03/04/19  
DA Submission

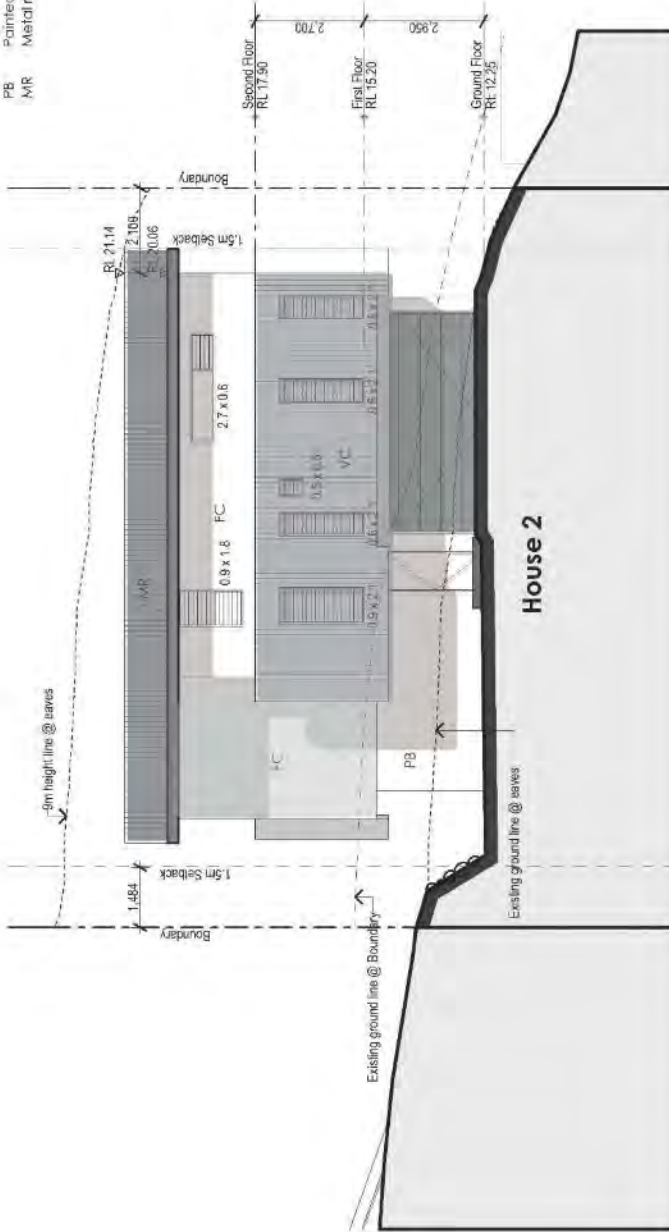
The Quarterdeck 2 Houses  
43 The Quarterdeck, Tweed Heads, NSW 2485  
Supaprumm Pty Ltd

Title:  
House 1 East  
Elevation

armstrong&co ARCHITECTS  
 a head@armstrongandco.com.au p 0755 381 338  
 a 2/55 Griffiths St, Coolangubra, QLD  
 Mobile 0755 381 338 www.armstrongandco.com.au  
 Dwg No: DA16 N  
 Job No: 2120001  
 Date: 03/04/19  
 Author: JR  
 Checker: AA



- Legend:**
- FC: Fibre cement
  - VC: Vertical cladding
  - HC: Horizontal cladding
  - PB: Painted blackwork
  - MR: Metal roof sheathing



**House 2 East Elevation**  
SCALE: 1:100



SCALE: 1:100 @ A3  
K:\2019\proj\1304\1304.dwg, k:\2019\proj\1304\1304.dwg, 03/04/2019 10:27:02

**03/04/19**  
**DA Submission**

**The Quarterdeck 2 Houses**  
43 The Quarterdeck, Tweed Heads, NSW 2485  
Supatrum Pty Ltd

**armstrong&co**  
Architects  
1 The Quarterdeck, Tweed Heads, NSW 2485  
Phone: 07 5531 4321 | www.armstrongco.com.au

Title: **House 2 East Elevation**

Dwg No. **DA17** N  
No. **2127H01**  
Drawing: **JR** / **AA**

**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 a dual occupancy - detached 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 proposed development will provide residential housing with a minimal environmental impact, within the R2 Low Density Residential zoning. The proposal is considered to be in accordance with the zones objectives, by contributing to the variety of residential housing permissible with consent.

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

These clauses are not relevant as the application does not propose a subdivision.

Clause 4.3 - Height of Buildings

The subject site is mapped as having a maximum height limit of 9m. The proposed three level dual occupancy has a maximum height of 8.2m and is compliant with the control.

Clause 4.4 – Floor Space Ratio

The site area is 778.6m<sup>2</sup> and is mapped as having a FSR of 0.8:1. Note car parking and balconies are excluded from the calculations.

**Dwelling 1**

Ground level: 7.7m<sup>2</sup> (parking not included in GFA)  
Second level: 99m<sup>2</sup>  
Third level: 111m<sup>2</sup>  
Total GFA: 217.7m<sup>2</sup>

**Dwelling 2**

Ground level: 34.8m<sup>2</sup> (parking not included in GFA)  
Second level: 108m<sup>2</sup>

Third level: 97m<sup>2</sup>  
Total GFA: 239.8m<sup>2</sup>

Total area for both dwellings : 457.5m<sup>2</sup>

FSR of 0.58:1 which is compliant with the prescribed maximum (0.8:1) for the site.

Clause 4.6 - Exception to development standards

Not applicable as no exceptions to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

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

Clause 5.10 - Heritage Conservation

The site is not within a heritage conservation area or a heritage item identified under this plan.

The site is not identified as an Aboriginal Place of Heritage Significance or predictive for Aboriginal Cultural Heritage under Council's Aboriginal Cultural Heritage Management Plan.

Nevertheless the precautionary principle will be applied with regard to minimisation of harm and the standard condition of consent with respect to Aboriginal cultural heritage items will be imposed on the consent (DUR0025).

Clause 5.11 - Bush fire hazard reduction

The site is not mapped as bushfire prone.

Clause 7.1 – Acid Sulfate Soils

The site is mapped as possibly containing Class 3 and 5 acid sulfate soils. A review of the proposal concurs with the applicants' comments that excavations will be above RL5.0m and therefore ASS material will not be intercepted.

Clause 7.2 - Earthworks

A geotechnical report was provided by the applicant and assessed by Council staff and considered acceptable subject to condition referencing the Geotechnical Report. The report covers earthworks, construction recommendations, foundation and drainage.

Subject to the report and recommended conditions, the proposal is considered not to have a detrimental impact on the drainage pattern of the land.

Subject to standard conditions of consent, the proposal is compliant with the provisions of this clause. An acid sulfate management plan is not required for the proposed works.

Clause 7.3 – Flood Planning

The site is not mapped as being flood affected by the Q100, however, it is affected by the PMF. Dual occupancy development are excluded from PMF requirements. No further consideration required.

Clause 7.4 - Floodplain risk management

Not applicable.

Clause 7.5 - Coastal risk planning

Not applicable as the site is not mapped within the Coastal Risk Planning map.

Clause 7.6 - Stormwater Management

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

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

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

It is considered that the development maintains ample permeable area suitable for the infiltration of water and will connect to Council's stormwater system in the Quarterdeck road reserve and therefore will not impact adjoining properties. Subject to standard conditions of consent, the proposal is compliant with the provisions of this clause.

Clause 7.8 – Airspace operations

The subject site is mapped as being within an area affected by the Gold Coast Airport Obstacle Limitation Surface (Inner Horizontal Surface 49.5mAHD). The proposed dwellings with a maximum height of approximately 8m (site RL 13mAHD) will not penetrate the limitation operations surface.

Clause 7.9 - Development in areas subject to aircraft noise

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

Clause 7.10 - Essential Services

All essential services are available to the site including Council's water and sewer infrastructure.

The proposal is compliant with the provisions of this clause.

**North Coast Regional Plan 2036 (NCRP)**

The NCRP 2036 established the following vision for the area:

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

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

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

Consideration of the planning principles, which will guide growth on the North Coast, is required to be undertaken in determining an application. The site is mapped as an Urban Growth area and within the coastal strip.

*Principle 1: Direct growth to identified Urban growth areas*

*Urban growth areas have been identified to achieve a balance between urban expansion and protecting coastal and other environmental assets. They help maintain the distinctive character of the North Coast, direct growth away from significant farmland and sensitive ecosystems and enable efficient planning for infrastructure and services.*

Complies - the proposed development is for the construction of a detached dual occupancy within the Urban Growth Area. The site is within an established residential area and is located within the Coastal strip and outside farmland areas.

*Principle 2: Manage the sensitive coastal strip*

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

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

The development site is mapped under this plan as being within the coastal strip and within an established residential subdivision. The proposed development does not represent an expansion of existing urban growth boundaries nor result in impacts on a natural hazards or farmlands.

*Principle 3: Provide great places to live and work in a unique environment*

*Making cities and centres the focus of housing diversity, jobs and activities makes communities more vibrant and active, reduces pressure on the environment, and makes it easier for residents to travel to work and access services.*

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

The site is located within an established residential area and is within 15 minutes walk of public transport.

The proposed development is considered to comply with the planning principles of the NCRP 2036, goals and overarching vision of being the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities.

### **State Environmental Planning Policies**

#### **SEPP (Coastal Management) 2018**

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

#### **14 Development on land within the coastal use area**

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
  - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
    - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
    - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
    - (iv) *Aboriginal cultural heritage, practices and places,*
    - (v) *cultural and built environment heritage, and*
  - (b) *is satisfied that:*
    - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
    - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
    - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
  - (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
- (2) *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**

There are no draft LEPs applicable to the proposal.

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

#### Tweed Development Control Plan

#### Section A1 – Residential Development Code

The development generally complies with all of the development controls except for the following.

#### ***Dual Occupancies***

*C3 Dual occupancy developments on residentially zoned land must be located:*

- On sites with a minimum area of 900m<sup>2</sup>, or*
- On a minimum area of 450m<sup>2</sup> if the land is within the Medium Density Residential zone.*
- On a minimum area of 500m<sup>2</sup> if the land is within the Low Density Residential zone and within 300m of a business zone.*

The objectives state:

*O1. To ensure development responds to the characteristics of the site and the qualities of the surrounding built and natural contextual environment.*

*O2. To achieve environmentally, economically and socially sustainable development.*

*O3. To encourage innovative design for all forms of residential development which is of a high standard of architectural design and merit.*

*O4. To provide a diversity of housing types and sizes within residential areas that meet the needs of the wide range of family and household types and encourages greater availability of varied and affordable housing.*

*O5. To provide opportunity for small lot housing which is sensitively designed to mitigate amenity impacts on the subject block and adjoining development.*

The site is zoned R2 Low Density Residential with an area of 778.6m<sup>2</sup> and is located approximately 500m from a business zone. As such a variation of 121.4m<sup>2</sup> (900m<sup>2</sup> – 778.6m<sup>2</sup>) or 13.48% is required. Acceptance of the variation is dependent on compliance with other controls and impacts. It is noted that there are only two

variations proposed which are considered unlikely to impact on the natural and built environment; one relating to size of site and the other being cut and fill.

The proposal is considered to be consistent with the objectives by responding to the steep sloping nature of the site, is considered to have minimal/acceptable impacts on the environment. Further, it is considered to be of innovative design that responds to the site and neighbouring development and is of architectural design and merit; provides for housing variety within an established residential area; and is sensitively designed to mitigate potential impacts on the site and neighbouring development.





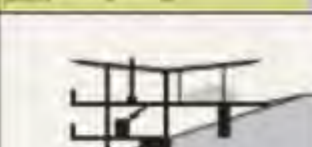
The applicant states that the whilst the site area is less than prescribed, the development provides for additional housing needs in a low density environment, designed addressing the constraints of the site, and is not out of character as there are approximately 10 dual occupancies in close proximity with the neighbouring site containing a dual occupancy on a lot of 700m<sup>2</sup>.

The variation to the development control is supported in this instance.

## **2.1 Topography, cut and fill**

### **Controls**

- C1. Where earthworks are proposed within the building footprint, construction shall be generally consistent with the requirements in Table 1 of the DCP A1-Part A (page 25).*

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

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

Table 1 - Cut and Fill Requirements

The objectives state:

O1. To maintain the integrity of the topographic and scenic landscapes of the Tweed by limiting the extent of excavation, cut, fill and site benching.

O2. To moderate the effects of building height, bulk and mass on sloping land.

O3. To ensure that the building siting, design and construction method is appropriate for site slope.

O4. To mitigate the issues of overlooking, overshadowing and drainage arising from level changes particularly at lot boundary interface.

The site has an average slope of 15 degrees, therefore 3 metres of cut is permitted within the building footprint. The application proposes a maximum height of cut of 5.3m therefore a variation of 2.3m is proposed. The variation is considered to be acceptable in this instance due to the following:

- The proposed design of the dwellings is consistent with the “appropriate structures” and “indicative diagram” provided with the development control;
- The amount of cut is required to provide for a driveway and garage for dwelling 1. Development control C3 permits cut in excess of 1 m to allow for compliant driveways and garages;
- The level of cut reduces the overall height of dwelling 1, reducing bulk and mass and potential visual and privacy impacts on the streetscape and neighbouring properties;
- The building design and construction method is consistent with Council’s requirements illustrated with the control; and
- The level of cut reduces the building height of dwelling 1 which has positive effects on reduced overshadow, improved privacy. Stormwater drainage is unlikely to be an issue as the site level at the property boundary is unchanged from the natural level. Council’s engineers did not raise this as an issue with the lawful point of discharge to The Quarterdeck, and a condition requiring a Section 68 application is recommended.

#### Section A2 - Site Access and Parking Code

The proposal is required to provide two parking spaces for each unit. The proposal includes a double garage per dwelling. Sufficient space is provided in each driveway for the parking of an additional vehicle. It is therefore considered compliant.

A condition is recommended relating to a S138 for the driveway for Dwelling 1 within Council’s Road Reserve.

The proposal is considered to be compliant with the provisions of the Section A2 of the DCP.

#### Section A11 - Public Notification of Development Proposals

The subject application was notified to adjoining property owners in accordance with this DCP with a submission period of 14 days from Monday 28 January 2019 to Monday 11 February 2019. During this time three submissions were received in relation to the application, the details of these submissions are addressed later within this report.

#### A16 - Preservation of Trees or Vegetation

Council’s Biodiversity Planner reviewed the proposal and the Arboricultural report dated 2 December 2018 and raised no objection to the proposal subject to conditions.

The proposal would see the removal of five local native trees and the retention of seven local native trees. Although the twelve trees qualify as ‘prescribed vegetation’ defined under Tweed Development Control Plan – Section A16 Preservation of Trees or Vegetation (DCP A16), the site does not support mapped Preferred Koala Habitat nor Preferred Koala Food Trees. A search for evidence of Koala (canopy observation, pellet search and visual inspection of the trunks of

trees for scratch trace) was carried out by Council's Biodiversity Planning officer. The search failed to return any sign of Koala utilisation/occupation onsite.

The five trees to be removed are identified on the following plan as: No. 1, 2, 8, 13, and 14.

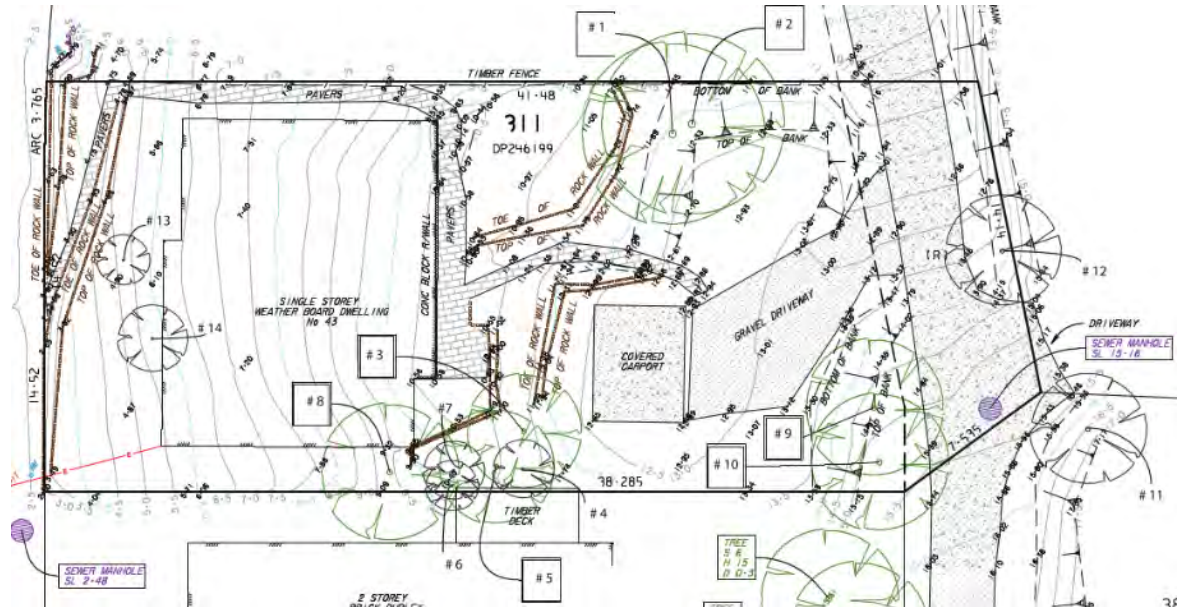


Figure: Plan illustrating the twelve trees

Council officers have recommended appropriate conditions referencing the Arboricultural report and also requiring the provision of a landscape plan to be submitted to Council for approval.

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

No.

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

Clause 92(1)(b) Applications for demolition

Demolition of the existing dwelling and detached car port is proposed, appropriate conditions have been recommended.

Clause 93 Fire Safety Considerations

No.

Clause 94 Buildings to be upgraded

No.

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

None applicable.

### **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 subject site is not in an area to which this plan applies.

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

The subject site is located approx. 350m from the Terranora Inlet. The proposal relates to residential development within an established residential area. The proposal is not inconsistent with the intent of this plan.

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

#### **Context and Setting**

The proposed development is not considered to have any significant impact upon the residential amenity for residents of adjoining properties. The proposal is considered reasonable and appropriate, given the locality within an established residential locality. The proposed dual occupancy does not compromise the existing or desired future character of the area, and is consistent with developments of a similar nature within the locality.

#### **Access, Transport and Traffic**

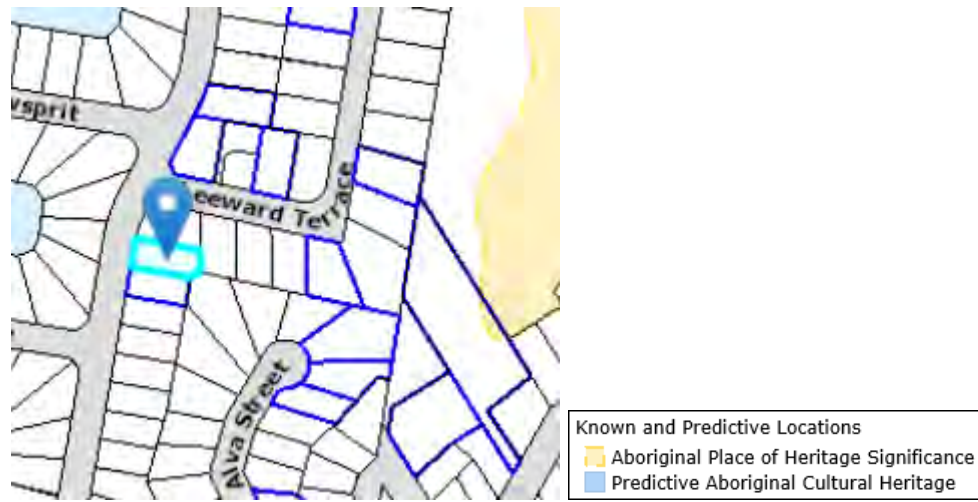
The proposal is not considered likely to generate significant volumes of traffic so as to be detrimental to the character of the area. The subject site is considered to be able to accommodate the additional traffic and parking requirements generated by this dual occupancy lot within an established residential area.

A double car garage is provided for each dwelling and the plans demonstrate the driveway is able to accommodate parking for an additional vehicles.



Heritage – Aboriginal Cultural Heritage

The site is *not* mapped as being a predictive location for Aboriginal Cultural Heritage under Council’s Aboriginal Cultural Heritage Management Plan. Nevertheless the precautionary principle is adopted and a standard condition of consent requiring appropriate actions with respect to Aboriginal Cultural Heritage will be imposed on the consent (DUR0025).



Construction

The construction of the proposed development will be subject to standard conditions being included on any consent issued. It is noted that Council’s Building Unit have reviewed the application and had no objection to its development subject to conditions of consent. The development phase of the proposal may present some interruption to the ambience of the surrounding area but this is temporary in nature and it is considered that potential amenity impacts can be adequately ameliorated through appropriate conditions of consent.

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

Surrounding Landuses/Development

The subject site is located within an established residential area. There are multiple dual occupancy developments within close proximate to the site, with one located next door at 45 The Quarterdeck. The proposed dual occupancy (detached) development is relatively consistent with other developments within the immediate locality.

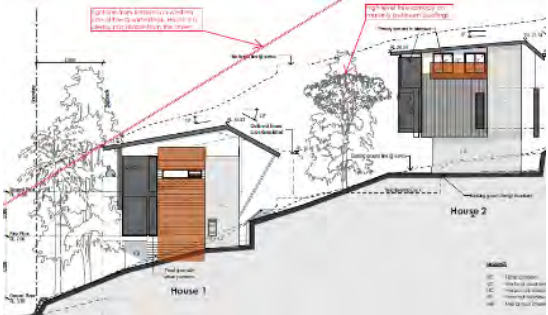
Availability of Utilities and Services

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

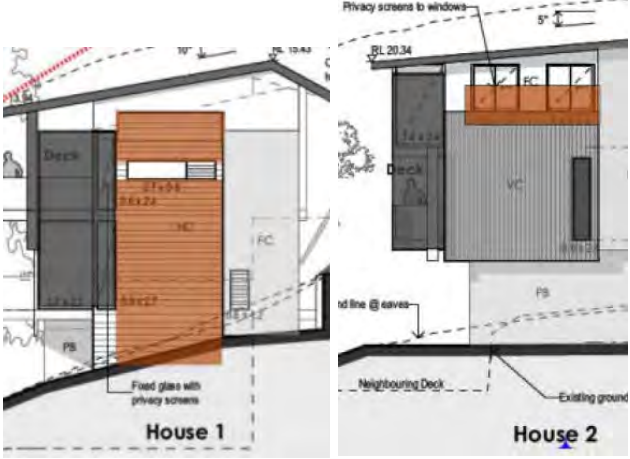
**(d) Any submissions made in accordance with the Act or Regulations**

The subject application was notified to adjoining property owners in accordance with this DCP with a submission period of 14 days from Monday 28 January 2019

to Monday 11 February 2019. During this time three submissions were received in relation to the application, these are discussed below.

Summary of Submissions	Response
<p>Exceeds the development guidelines, overdevelopment, will set a precedent. Whilst there are other duplex units within the area the area is primarily single residences.</p>	<p>The applicant provided the following comment, which is agreed with by Council officers.</p> <p><i>“Whilst there is a non-compliance with Part A – General, Section C3 in relation to the 900m<sup>2</sup> minimum lot size requirement for dual occupancy development, the proposal has been designed to optimise the development potential of the site. This design cannot set an undesirable precedent as the site has unique topographical features and each application must be considered on its planning merits. The land has two vehicular access points which allows for the dwellings to be adequately separated, increasing ventilation and privacy. The site is steep which has resulted in smaller footprints to reduce earthworks and maximise sunlight. See Figure 1 prepared by Armstrong &amp; Co Architects which indicates the minimal footprint.</i></p> <p><i>The site may not be compliant in area however the dwellings have been designed to maximise the comfort of the occupiers as well as maintain amenity to the adjoining properties.”</i></p> <p>The application on merit is considered to be acceptable, with the development designed to minimise impacts on the streetscape and neighbouring properties.</p>
<p>Visual bulk out of character (no.30).</p>	<p>The applicant provided the following comment, which is agreed with by Council officers.</p> <p><i>“Three submitters raised concern over the bulk and scale of the development and the impact on the existing character of the area. Concern was raised that the scale is imposing as both dwellings can be seen from The Quarterdeck.</i></p> <p><i>The R2 Low Density Residential zone allows for dual occupancy development. Designing the dwellings separately, each having individual vehicular access is less intrusive than dual occupancy development at street level. Given the topography of the land, House 2 is not visible from The Quarterdeck and the design will appear as a single dwelling. In addition to this, several mature trees have been retained which maintain the current character of the site.”</i></p> 



Summary of Submissions	Response
	Figure: illustrating second dwelling not visible from the opposite side of The Quarterdeck.
<p>Traffic congestion.</p> <p><i>"If the 2 new dwellings are approved at least one will be a rental property and could have 2,3,4 or more residents in each dwelling with 2 or more cars per dwelling and associated traffic movements with these cars."</i></p>	<p>There is currently no evidence to support this claim. Traffic and parking is not calculated in terms of where a house is rented or owner occupied. Both dwellings provide for compliant on-site parking spaces with Council's standards.</p>
<p>Privacy impacts (no. 45).</p> <p><i>"* The scale of the two buildings is very imposing. We are very concerned as to the affect of such a large building right on our fence line. We will also find it incredibly difficult to find any privacy in our out door space and home. We feel these 2 houses will be looking directly into our home from every angle. Our bathrooms, kitchen, laundry, bedrooms all feature on this side of our property. We also have a bedroom and bathroom on level one of our property which will also become at risk to being over looked."</i></p>	<p>The applicant provided the following comment which is agreed with by Council officers. In addition the development complies with setbacks and provides privacy screens on balconies and windows achieving a high level of privacy to neighbouring properties.</p> <p><i>"Two submitters raised privacy as a concern. The dwellings have been designed to minimise windows on the northern and southern elevations. The windows that are on these elevations have been fitted with privacy screens to protect the amenity of the adjoining properties as well as the future occupiers of the dwellings."</i></p>  <p>Figures: Privacy screens.</p>
<p>Overshadowing (no. 45).</p> <p><i>"* The application identifies that our home and small court yard at the rear will be in some form of shadowing for the entire day. This will also reduce the natural air flow and sunlight through our home upon which we rely on to cool and heat our property. We live in a duplex with a common wall, therefore our property only has one side of the building with window openings to allow air flow and sunlight in."</i></p>	<p>The application complies with maximum height and setback requirements.</p> <p>The applicant provided the following comment and plans that illustrate that the proposal does not increase the level of overshadowing on the deck. It is noted from the plans that majority of shadowing on the deck is created by the objectors own building of topography of the site (the deck is approximately 2m below the natural ground).</p> <p><i>"Concern was raised that the rear courtyard of the adjoining property will lose sunlight throughout the day and the windows will no longer receive adequate sunlight and ventilation. Figures 3 and 4 prepared by Armstrong &amp; Co Architects indicate the footprint of the existing dwelling as well as the outline of the existing dwelling to be demolished compared to the proposed House 1. The resultant impacts are very similar. The</i></p>

Summary of Submissions	Response
<p><i>We feel this will be a direct impact on the existing flow and light.”</i></p>	<p><i>existing courtyard is located approximately 2 metres below ground level and gaining sunlight into that area currently is problematic. However, it must be noted that a tree is proposed to be removed along this southern boundary and this will aid in receiving additional sunlight and natural ventilation into the neighbouring property. Proposed House 1 will not further diminish the current amenity within the neighbouring property.”</i></p>
<p>Noise (no. 45).</p> <p><i>* Increase noise generated and the impact from the occupants of 2 x 4 bedroom homes will be excessive and incredibly difficult to manage.</i></p> <p><i>* We are concerned that this property is going to be used for Airbnb/holiday bookings purposes. If this is the case the impact on our lovely quiet street will be massive.</i></p>	<p>The applicant provided the following comment which is agreed with by Council officers.</p> <p><i>“Concern was raised from one submitter in relation to the increase in noise from the residents of the new dwellings and the potential use of the dwellings for Airbnb/Holiday Accommodation.</i></p> <p><i>Dual occupancy development is permissible on this site. The level of noise will not exceed the expected level of noise generated in any residential area. Whilst there may be concern that the property will be leased, the management of this is with the owners of the property and/or the managing agent.</i></p>
<p>Colours and Materials (no.34).</p> <p><i>“As a property owner of 34 The Quarterdeck which is opposite this proposed development I would like to draw your attention to the lack of detail regarding</i></p> <p><i>The external colours of these buildings.</i></p> <p><i>The colour of the Metal Roof Sheeting is not shown, nor is the colour of the buildings facing the Quarterdeck.</i></p> <p><i>I would have to object to the use of White on these surfaces, the building at number 45 is painted white all over and with the sun shining on it, from my property opposite it is blinding. No consultation was ever sought on the exclusive use of white on this building at number 45.”</i></p>	<p>The applicant provided the following comment which is agreed with by Council officers.</p> <p><i>“One submitter raises concern over the colours of the dwellings, in particular House 1 and the reflection of light from the white walls. In response to this concern, the applicant has amended the materials and colours on western elevation to include horizontal cladding in a dark monument colour. The Colorbond metal roof sheeting will also be dark Colorbond, minimising reflectivity to adjoining properties.”</i></p> <p>A condition is recommended requiring colours and materials to be submitted to Council for approval (PCC0175).</p>
<p>Car parking (no. 30).</p> <p><i>“If the 2 new dwellings are approved at least one will be a rental property and could have 2,3,4 or more residents in each dwelling with 2 or</i></p>	<p>The applicant provided the following response which is agreed to by Council officers.</p> <p><i>“Section A2 of Tweed Development Control Plan 2008, specifies parking rates of 2 spaces per dwelling for dual occupancy development. The proposed development will provide a new driveway access for</i></p>

Summary of Submissions	Response
<p><i>more cars per dwelling and associated traffic movements with these cars. The site does not have any extra car parking spaces or space for vehicles to manoeuvre on site or space for parking of trailers, boats or caravans on the site."</i></p>	<p><i>House 1 from The Quarterdeck accessing a double garage. House 2 provides a garage for 2 cars being accessed via the right of way from Leeward Terrace. In addition to this there is adequate parking within the driveways to provide for an additional 2 cars per dwelling.</i></p> <p><i>Therefore, the requirements of Section A2 of TDCP2008 have been achieved. The increase in traffic as a result of one additional dwelling will be minimal. The introduction of a driveway opening onto The Quarterdeck will not create additional congestion as the proposal provides adequate onsite parking in excess of Council's requirements."</i></p>
<p>ROW affected by proposal and traffic increase, which will affect parking onto The Quarterdeck.</p>	<p>The ROW is currently accessed and used by the existing single dwelling on the site. The traffic and parking over the ROW to the site will remain unchanged as only one of the two dwellings will have access over the ROW. Dwelling 1 will have access via The Quarterdeck. As stated previously compliant parking is provided to both dwellings.</p>
<p>Leaves in stormwater drains entering canal (no.34).</p> <p><i>"with all the massive trees in this area the fallen leaves are carried into the storm water drains which flow under The Quarterdeck and end up in the Canal Waterway beside our property. At low tide the smell of the rotting leaves is most unpleasant and certainly does not help the water quality of this waterway.</i></p> <p><i>Some attention should be given to preventing the fallen leaves from enter the storm water system of this property."</i></p>	<p>The issue raised in a not an issue that should be directed at the application to resolve particular as every property in the area contains trees that contribute and not solely created by the subject site. However, the application requires the removal of three trees.</p>
<p>Demolition (no. 34 and no.45).</p> <p><i>"I also don't see any information on how the termite infestation of the existing building will be controlled during the demolition and development of this property."</i></p> <p><i>** We also have concerns over the correct removal of posable asbestos from the pre-existing dwelling.</i></p> <p><i>* We also have concerns over the correct removal and management of</i></p>	<p>Council officers raised not concerns in relation to the demolition and have provided conditions in relation to demolition.</p>

Summary of Submissions	Response
<i>termites within the pre-existing dwelling."</i>	



Figure: Aerial of the properties that made submissions objecting to proposal.

**Public Authority Submissions Comment**

The application was not nominated as integrated development and did not require referral to any external authorities. No submissions from public authorities were received in relation to the proposal.

**(e) Public interest**

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

**OPTIONS:**

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

**CONCLUSION:**

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

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

The applicant has the right to appeal any determination by Council in the NSW Land and Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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2 [PR-PC] Development Application DA18/0652 for the Demolition of Existing Dwelling, Tree Removal and Construction of a Mixed Use Development Comprising a Dwelling, Shop Top Housing Unit, Shops and Signage at Road 713 & Lot 5 DP 8107 Kyogle Road, Uki; Lot 4 DP 8107 No. 1470 Kyogle Road, Uki

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you  
*We're in this together*

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

**ROLE:** Provider

**SUMMARY OF REPORT:**

Consent is sought for the demolition of an existing dwelling, tree removal, earthworks and the construction of a two storey mixed use development comprising a dwelling, shop top housing unit, shops and signage, the development is over Lots 4 and 5 DP 8107, No.1470 Kyogle Road, Uki.



Figure 1: Perspective extracted from DA Plans

Development Details:

	<b>Lot 4</b>	<b>Lot 5</b>
<b>Residential component</b>	Proposed 2 bedroom residential use. The residential component is contained entirely on the upper level.	Proposed 4 bedroom residential use. The residential component is proposed at ground level (rear of the shop) and the first floor.

	<u>Lot 4</u>	<u>Lot 5</u>
	TLEP 2014 definition: Shop Top Housing	TLEP 2014 definition: Dwelling house
<b>Residential GFA</b>	70m <sup>2</sup> + 37m <sup>2</sup> deck (external living)	191m <sup>2</sup> + 64m <sup>2</sup> deck (external living)
<b>Retail/Commercial Use</b>	Workshop and shop front for 'A Tinkers Cuss'	Shop for 'Illusive wood design'.
	TLEP 2014 definition: Shop and Light Industry (see expanded definitions in the background section)	TLEP 2014 definition: Shop (see expanded definitions in the background section)
<b>Commercial/shop GFA</b>	30m <sup>2</sup> shopfront + 27m <sup>2</sup> workshop	93m <sup>2</sup> shop
<b>TOTAL GFA for site</b>	127m <sup>2</sup>	284m <sup>2</sup>
<b>Hours of operation</b>	The current business operates only 2 days per week for a few hours each. However the application seeks consent for: <ul style="list-style-type: none"> <li>9:00am – 4.00pm (up to 3 days per week).</li> </ul> The consent has been conditioned to allow:  <i>The consent has been conditioned to allow operation of the business from 8am to 5pm 7 days</i>	The business includes on-line sales which can occur at any time however hours of operation of the shop/display would be: <ul style="list-style-type: none"> <li>9:30am – 3:30pm Thursday – Saturday.</li> <li>Open 10am-2pm every second Sunday.</li> <li>Closed Monday-Wednesday.</li> </ul> <i>The consent has been conditioned to allow operation of the business from 8am to 5pm 7 days</i>
<b>Staff numbers</b>	1	1-2 staff onsite (business is proposed to be operated by the residents)

The site is within the Uki Village Heritage Conservation Area, the site/building is not listed as a heritage item or contributory building.

The fundamental issue with the application as proposed was the instability of the Milsoms Lane (and adjacent bank of the Tweed River). The application as lodged with Council included substantial stormwater works within the Milsoms Lane Road Reserve. However throughout the assessment process the application has been amended and Geotechnical Reports have determined that the application is acceptable. Based on this, Council is able to support the application. The officers' recommendation is for approval.

The application was integrated development under the Water Management Act, as works occurred within 40m of a natural waterway. General Terms of Approval have been issued.

The application was referred to the NSW RFS under 79BA. Conditions have been issued.

The proposal was identified as advertised development under the Environmental Planning and Assessment Regulation, 2000 and will be on public exhibition from Wednesday 5 September 2018 to Friday 5 October 2018. During this period two letters of support and one submission were received.

The subject application was called up to Council for determination by Councillors Allsop and Polglase.

**RECOMMENDATION:**

That Development Application DA18/0652 for the demolition of existing dwelling, tree removal and construction of a mixed use development comprising a dwelling, shop top housing unit, shops and signage at Road 713 & Lot 5 DP 8107 Kyogle Road, Uki; Lot 4 DP 8107 No. 1470 Kyogle Road, Uki be approved subject to the following conditions:

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans listed in the below table, as amended in red, except where varied by the conditions of this consent.

Plan title	Plan number	Dated	Drawn by
Existing site demolition Plan	A-101 (F)	16 May 2018	Christian Zambelli
Proposed Site Plan	A-102 (F)	16 May 2018	Christian Zambelli
Proposed External works	A-111 (F)	16 May 2018	Christian Zambelli
Proposed External works	A-112 (F)	16 May 2018	Christian Zambelli
Proposed cut and Fill	A-121 (F)	16 May 2018	Christian Zambelli
Lot 4 - Proposed ground plan	A-201 (F)	16 May 2018	Christian Zambelli
Lot 4 - Proposed Level 1 Plan	A-202 (F)	16 May 2018	Christian Zambelli
Lot 4 - Proposed Roof Plan	A-203 (F)	16 May 2018	Christian Zambelli
Lot 5 - Proposed ground plan	A-204 (F)	16 May 2018	Christian Zambelli
Lot 4 - Proposed Level 1 Plan	A-205 (F)	16 May 2018	Christian Zambelli
Lot 4 - Proposed Roof Plan	A-206 (F)	16 May 2018	Christian Zambelli
Lot 4 & 5 Streetscape Elevations	A-301 (F)	16 May 2018	Christian Zambelli
Lot 4 - Southern and Western elevations	A-302 (F)	16 May 2018	Christian Zambelli
Lot 4 - Northern and Eastern elevations	A-303 (F)	16 May 2018	Christian Zambelli



<b>Plan title</b>	<b>Plan number</b>	<b>Dated</b>	<b>Drawn by</b>
Lot 4 - Southern and Western elevations	A-304 (F)	16 May 2018	Christian Zambelli
Lot 4 - Northern and Eastern elevations	A-305 (F)	16 May 2018	Christian Zambelli
Lot 4 Street Façade elevation	A-322 (F)	16 May 2018	Christian Zambelli
Lot 5 Street Façade elevation	A-324 (F)	16 May 2018	Christian Zambelli
Lot 4 AA & BB Sections	A-401 (F)	16 May 2018	Christian Zambelli
Lot 5 CC & DD Sections	A-402 (F)	16 May 2018	Christian Zambelli
Lot 5 Section EE	A-403 (F)	16 May 2018	Christian Zambelli
Pathway easement section	A-413 (F)	16 May 2018	Christian Zambelli
Lot 4 & 5 Pathway easement details	A-503 (F)	16 May 2018	Christian Zambelli
Letter: Response to Traffic Item in Council's Request 1470 Kyogle Road, Uki - Proposed shop-top dwelling development		13 December 2018	Bitzios Consulting
Attachment 2 to Bitzio's letter dated 13 December 2018	PP3314 ( Swept path, 6 pages)	6/12/2018	Bitzios Consulting

[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. Any business or premises proposing to discharge wastewater containing pollutants differing from domestic sewage must submit a Liquid Trade Waste

**Application Form to Council.** The application is to be approved by the General Manager or his delegate prior to any discharge to the sewerage system. A Liquid Trade Waste Application fee will be applicable in accordance with Council's adopted Fees and Charges.

[GEN0190]

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

[GEN0300]

6. **Bushfire Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

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

[GEN0320]

7. **Bushfire 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) New construction shall comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2009 'Construction of buildings in bush fire prone area' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas - 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection' 2006'.

[GEN0335]

8. Prior to the commencement of construction of the new structure or use of the site a 'clearance inspection' shall be conducted for the site and a 'clearance certificate' issued by a licensed asbestos assessor or competent person which states that the site 'does not pose a risk to health and safety from exposure to asbestos' in accordance with Clause 474 of the Work Health and Safety Regulation 2017. A copy of this certificate shall be forwarded to the Principal Certifying Authority and Council within 7 days of completion of the 'clearance inspection'.

[GEN0350]

9. All works shall comply with AS2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2017.

[GEN0360]

10. Prior to demolition of the structure is commenced all asbestos material shall be identified and removed from the site by an asbestos removalist who is licensed to

carry out the work by WorkCover NSW. All asbestos waste shall be disposed at a facility that is licensed to receive asbestos waste (all receipts related to disposal must be kept on site and provided to a Council Authorised Officer upon request).  
[GEN0365]

11. The inspection opening for the sewer junction in trafficable areas shall be modified to a sewer inspection opening with trafficable lid, constructed flush with the proposed driveway surface.

[GENNS01]

## PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

### 12. Section 7.11 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 7.11 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

- (a) Tweed Road Contribution Plan:  
16.49425 Trips @ \$2529 per Trips \$25,028.40  
(\$2,239 base rate + \$290 indexation)  
(\$16,685.60 has been subtracted from this total as this development is deemed an 'Employment Generating Development')  
CP Plan No. 4  
Sector12b\_4
- (b) Extensions to Council Administration Offices  
& Technical Support Facilities \$473.52  
0.2165 ET @ \$2187.14 per ET  
(\$1,759.90 base rate + \$427.24 indexation)  
CP Plan No. 18

[PCC0215]

13. 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:

**Lot 4**

Water: 0.087 ET @ \$13,926 = \$1,211.60

Sewer: 0.117 ET @ \$6,690 = \$782.70

**Lot 5**

Water: 0.386 ET @ \$13,926 = \$5,375.40

Sewer: 0.479 ET @ \$6,690 = \$3,204.50

**Total S64 Charges**

Water: 0.473 ET @ \$13,926 = \$6,587.00

Sewer: 0.596 ET @ \$6,690 = \$3,987.20

[PCC0265]

14. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional runoff or ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

15. A detailed Plan of Landscaping containing no priority weed species and with a minimum 80% of total plant numbers comprised of local native species to the Tweed Shire is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The landscaping plan should include works within the adjacent road way along the river frontage edge of the newly sealed access road along Milsons Lane. This area is to be comprised of low growing local natives. Local native species are to comprise appropriate species selected from the Tweed Shire Native Species Planting Guide available online at: <http://www.tweed.nsw.gov.au/Controls/NativeSpeciesPlanting/Landing.aspx>

[PCC0585]

16. A Traffic Control Plan in accordance with AS1742 and the latest version of the NSW Government Roads and Maritime Services (RMS) publication "Traffic Control at Work Sites" shall be prepared by an RMS accredited person and shall be

submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

17. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include (but not limited to) engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works:

- (a) Removal of the existing rock retaining wall in Milsoms Lane to facilitate the construction of retaining walls within the property boundaries of Lots 4 & 5 DP 8107.
- (b) A reinforced concrete footpath 1.2 metres wide is to be constructed on a compacted base between Lot 4 and Lot 5 DP 8107 linking into the footpath along the Kyogle Road frontage.
- (c) The footpath along the Kyogle Road frontage is to be upgraded to a minimum 1.2m wide reinforced concrete footpath.

The proposed / upgraded footpaths are to be in accordance with Tweed Shire Council Standard Drawing SD013 Footpaths.

- (d) The existing driveway on Kyogle Road is to be removed and the area replaced with upright kerb matching into the existing kerb on Kyogle Road.
- (e) Driveway entrance into proposed car park on Milsoms Lane
- (f) Milsoms Lane is to be upgraded with a two coat bitumen seal along the property boundary of Lots 5 & 6 DP 8107 linking into the existing bitumen seal on the laneway near the boundary of Lots 6 & 7 DP 8107. The width of the two coat seal is to match into the existing seal on Milsoms Lane.
- (g) A Traffic Control Plan in accordance with AS1742 and the latest version of the NSW Government Roads and Maritime Services (RMS) publication "Traffic Control at Work Sites" shall be prepared by an RMS accredited person and shall be submitted to Council with the Section 138 application. Safe public access shall be provided at all times.
- (h) Sedimentation and erosion control measures are to be shown on the plans and adequately maintained throughout the works.

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following:

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

- **Traffic Control Plan (as applicable)**

Where Council is requested to issue a Construction Certificate for subdivision works associated with this consent, the abovementioned works can be incorporated as part of the Construction Certificate application, to enable one single approval to be issued. Separate approval under Section 138 of the Roads Act 1993 will then NOT be required.

[PCC0895]

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

[PCC0945]

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

- (a) The Construction Certificate Application for Building Works shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate Water Sensitive Urban Design principles and where practical, integrated water cycle management.

[PCC1105]

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

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

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

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

[PCC1145]



21. **Erosion and Sediment Control shall be provided in accordance with the following:**
- (a) **The Construction Certificate Application must include a detailed Erosion and Sediment Control Plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.**
  - (b) **Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - “Code of Practice for Soil and Water Management on Construction Works”.**
- [PCC1155]
22. **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]
23. **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]
24. **In accordance with Section 68 of the Local Government Act, 1993 any premises proposing to discharge wastewater into Councils sewerage system other than domestic sewage, shall submit to Council a completed Liquid Trade Waste Application for a Liquid Trade Waste Services Agreement. The Application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate to discharge to Council's sewerage system.**
- [PCC1255]
25. **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]

26. All roof water from the development is to be piped to Kyogle Road. Yard and carparking areas that cannot grade to Kyogle Road are to drain toward Milsoms Lane as dispersed overland flow. Flow spreaders and energy dissipation devices shall be installed as necessary to mitigate any areas of concentrated stormwater flow toward Milsoms Lane, with details shown in the Construction Certificate application. Impervious surfaces in the yard and carparking areas are to be minimised.
- [PCCNS01]
27. The development shall be designed to avoid any increased risk of slope instability in Milsoms Lane. The design shall be certified as such by a qualified and experienced geotechnical engineer.
- [PCCNS02]
28. A Construction Management Plan shall be submitted with the Construction Certificate application detailing how the construction shall be carried out such that loadings and vibrations from plant, equipment, stockpiles, and the like do not increase the likelihood of slope instability in Milsoms Lane, and are in accordance with recommendations from a qualified and experienced geotechnical engineer.
- [PCCNS03]
29. Approval of the development does not permit any post-construction increase in heavy vehicle usage of Milsoms Lane to service the development. All deliveries and servicing employing heavy vehicles are restricted to the Kyogle Road frontage, unless prior approval is obtained from Council's Manager Roads and Stormwater.
- [PCCNS04]
30. The Stormwater Management Plan submitted to Council under S68 of the Local Government Act shall include details of how all possible stormwater is directed to the Kyogle Road frontage of the site. Stormwater that remains discharging to the Milsoms Lane frontage should be minimised. For any substantial stormwater discharge to Milsoms Lane the SWMP shall detail any necessary measures to mitigate the effects on Milsoms Lane using measures such as onsite detention, infiltration or the like.
- [PCCNS04]
31. The applicant shall submit to Council an amended parking plan. The plan shall include the provision of three (3) onsite parking spaces on Lot 4 and on Lot 5 DP8107. The spaces shall have a width of 3.0m each in accordance with the letter titled Response to Traffic Item in Council's Information request 1470 Kyogle Road, Uki - Proposed shop-top dwelling development, dated 13 December 2018. The amended plans are to be submitted to Council, to the satisfaction of the General Manager or their delegate prior to Issue of Construction Certificate.
- [PCCNS05]

#### **PRIOR TO COMMENCEMENT OF WORK**

32. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

33. An application is to be made to Council to temporarily “cap off” the existing building sewerage house drainage from Council's sewerage system, prior to any demolition work commencing. A Plumbing and Drainage Works on Private Land <<http://www.tweed.nsw.gov.au/Controls/Forms/Documents/SewerSepticForm.pdf>> application form shall be submitted to Tweed Shire Council and payment of fees in accordance with Councils adopted fees and charges. [PCW0045]
34. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
  - (b) the person having the benefit of the development consent has:
    - (i) appointed a principal certifying authority for the building work, and
    - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
  - (c) the principal certifying authority has, no later than 2 days before the building work commences:
    - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
    - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
    - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
    - (ii) notified the principal certifying authority of any such appointment, and
    - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work. [PCW0215]
35. 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]
36. 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]

37. 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]

38. 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]

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

[PCW0665]

40. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

41. A Dilapidation Report detailing the current general condition (including the structural condition) of the adjoining buildings/sites and infrastructure is to be prepared and certified by a suitably qualified and experienced structural engineer. The Report (supported by recent photos) is to be submitted to and accepted by the Principal Certifying Authority prior to commencement of ANY works on the site.

[PCW0775]

42. 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]

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

[PCW1005]

44. 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

45. 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]

46. 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]

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

[DUR0025]

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

**Monday to Saturday from 7.00am to 6.00pm**

**No work to be carried out on Sundays or Public Holidays**

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

[DUR0205]

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

**A. Short Term Period - 4 weeks.**

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

[DUR0215]

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

[DUR0375]



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

[DUR0395]

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

[DUR0405]

53. **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]

54. **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]

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

[DUR0445]

56. **To ensure the development is correctly positioned on the site, a report prepared by a registered surveyor is to be submitted to the principal certifying authority at footings/formwork stage and at the completion of the structures indicating that the development has been correctly positioned on the site in accordance with the approved development consent plans/consent conditions.**

[DUR0495]

57. **All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2017.**

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

[DUR0645]

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

[DUR0675]

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

[DUR0905]

60. 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]

61. Landscaping of the site shall be carried out in accordance with the submitted/approved Landscaping Plans.

[DUR1045]

62. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.

[DUR1685]

63. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.

[DUR1695]

64. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.

[DUR1705]

65. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.

[DUR1725]

66. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

67. The proponent must not undertake any work within the public road reserve without giving Council's Development Engineering Unit 48 hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken. [DUR1845]
68. 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]
69. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection. [DUR1925]
70. 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]
71. 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]
72. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed. [DUR2245]
73. During construction, a "Satisfactory Inspection Report" is required to be issued by Council for all s68h2 permanent Stormwater Quality Control Devices, prior to backfilling. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection. [DUR2445]
74. 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]
75. 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]

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

[DUR2535]

77. 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]

78. 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]

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

- a) Surface treatment over the sewer pipe shall be limited to soft landscaping, noninterlocking paving, concrete slab with construction joints along the alignment of the sewer easement (or one metre from the sewer if no easement exists) 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.
- b) 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.
- c) 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]

80. All trees along the Milsons Lane road reserve immediately adjacent to the work zone are to be provided adequate protection throughout the construction phase of the development in accordance with Australian Standard AS4970-2009 Protection of Trees on Development Sites and in particular, adequate tree protection fencing is to be provided and maintained for the during of construction phase.

[DURNS02]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

81. 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]

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

[POC0205]

83. A final occupation certificate is not to be issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been assessed by a properly qualified person and was found, when it was assessed, to be capable of performing to at least the standard required by the current Fire Safety Schedule for the building.

[POC0225]

84. 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]

85. All landscaping work is to be completed in accordance with the approved plans prior to the issue of a final occupation certificate for the building.

[POC0475]

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

[POC0745]

87. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

88. Submission to the Principal Certifying Authority, Certification for the structural integrity of any retaining structures in excess of 1.2m erected on the site by a suitably qualified Structural Engineer.

[POC0815]

89. Upon completion of all works on the site and prior to the issue of an Occupation (including interim) Certificate, a further dilapidation report is to be prepared and

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

A copy of the dilapidation report is to be provided to the Principle Certifying Authority/Council.

[POC0825]

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

[POC0985]

91. 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]

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

[POC1055]

93. Prior to the issue of an Occupation Certificate, documentary evidence is to be provided demonstrating a 1.2m wide easement for public access has been created over the footpath linking the car park in Milsoms Lane to the existing footpath on Kyogle Road is registered with NSW Land and Property Services. Tweed Shire Council are to be listed as the Authority to release or remove the easement.

[POCNS01]

94. External living areas located at the rear of the proposed residential uses on both Lots 4 and 5 which are within 4m of a side boundary are to be suitably screened from adjoining properties. Details of proposed screening is to be submitted for the written satisfaction of Councils General Manager or delegate prior to the issue of an occupation certificate.

[POCNS02]

95. Prior to the issue of an occupation certificate signage for each on-site parking space stating "reverse-in only" shall be installed. Evidence of the signage is to be submitted to Council and approved to the satisfaction of the General Manager or their delegate.

[POCNS03]

## USE

96. 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]



97. The  $L_{Aeq, 15 \text{ min}}$  noise level emitted from the premises shall not exceed the background noise level ( $L_{A90}$ ) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends. [USE0165]
98. 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]
99. Hours of operation of the two retail shops is 8am to 5pm 7 days. All deliveries and pickups relating to the business are to occur within the approved hours. [USE0185]
100. 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]
101. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer. [USE0245]
102. All commercial / industrial / residential wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate. [USE0875]
103. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW. [USE1035]
104. The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of to the satisfaction of Council's General Manager or his delegate as outlined in the Liquid Trade Waste Services Agreement and General Conditions of Approval. [USE1055]
105. Footpath trading activities shall not be carried out unless a Footpath Dining License Agreement has been approved by the General Manager or his delegate. [USE1105]

106. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[USE1510]

**GENERAL TERMS OF APPROVAL UNDER THE WATER MANAGEMENT ACT 2000**

<b>Condition Number</b>	<b>Details</b>
	<b>Design of works and structures</b>
<b>GT0009-00010</b>	Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Natural Resources Access Regulator, and obtained, for a controlled activity approval under the Water Management Act 2000.
<b>GT0019-00003</b>	Any proposed excavation on waterfront land must be undertaken in accordance with a plan submitted as part of a controlled activity approval, to be approved by Natural Resources Access Regulator.
	<b>Erosion and sediment controls</b>
<b>GT0014-00007</b>	A. The consent holder must ensure that any proposed materials or cleared vegetation, which may: i. obstruct water flow, or ii. wash into the water body, or iii. cause damage to river banks, are not stored on waterfront land, unless in accordance with a plan held by Natural Resources Access Regulator as part of a controlled activity approval. B. When the carrying out of the controlled activity has been completed, surplus materials must be removed from waterfront land.
<b>GT0021-00004</b>	The proposed erosion and sediment control works must be inspected and maintained throughout the construction or operation period of the controlled activity and must not be removed until the site is fully stabilised.
	<b>Plans, standards and guidelines</b>
<b>GT0002-00553</b>	A. This General Terms of Approval (GTA) only applies to the proposed controlled activity described in the plans and associated documents found in Schedule 1, relating to Development Application 18.0652 provided by Council to Natural Resources Access Regulator. B. Any amendments or modifications to the proposed controlled activity may render the GTA invalid. If the proposed controlled activity is amended or modified, Natural Resources Access Regulator, Parramatta Office, must be notified in writing to determine if any variations to the GTA will be required.
<b>GT0005-00212</b>	A. The application for a controlled activity approval must include the following plan(s): - i. Detailed Civil Construction and Drainage Plans; ii. Erosion and Sediment Control Plans; iii. Landscape Plans; iv. Stormwater Management Plans; and v. Detailed Stormwater Outlet Structure Plans. B. The plan(s) must be prepared in accordance with Natural Resources Access Regulator's guidelines located on the website <a href="http://www.industry.nsw.gov.au/water/licensingtrade/approvals/controlled-activities">www.industry.nsw.gov.au/water/licensingtrade/approvals/controlled-activities</a> .

GT0010-00006	All documents submitted to Natural Resources Access Regulator as part of an application for a controlled activity approval must be prepared by a suitably qualified person.
GT0012-00004	Any proposed controlled activity must be carried out in accordance with plans submitted as part of a controlled activity approval application, and approved by Natural Resources Access Regulator.
GT0030-00006	The application for a controlled activity approval must include plans prepared in accordance with Natural Resources Access Regulator's guidelines located on the website <a href="https://www.industry.nsw.gov.au/water/licensingtrade/approvals/controlled-activities">https://www.industry.nsw.gov.au/water/licensingtrade/approvals/controlled-activities</a> .
	<b>Rehabilitation and maintenance</b>
GT0023-00001	Vegetation clearance associated with the proposed controlled activity must be limited to where the controlled activity is to be carried out, as shown on the approved plan(s).
	<b>Reporting requirements</b>
GT0016-00003	The consent holder must inform Natural Resources Access Regulator in writing when any proposed controlled activity carried out under a controlled activity approval has been completed.

**REPORT:**

**Applicant:** Ms C Wilson and Mr B Esposito  
**Owner:** Mr Brendan J Esposito & Ms Carla R Wilson  
**Location:** ROAD 713, Lot 5 DP 8107 Kyogle Road, Uki & Lot 4 DP 8107 No. 1470 Kyogle Road, Uki  
**Zoning:** RU5 - Village  
**Cost:** \$817,000

**Background:**

Consent is sought for the demolition of an existing dwelling, tree removal, earthworks and the construction of a two storey mixed use development comprising a dwelling, shop top housing unit, shops and signage, the development is over lots 4 and 5 DP 8107, No.1470 Kyogle Road, Uki.

**Development Details:**

	<u>Lot 4</u>	<u>Lot 5</u>
<b>Residential component</b>	Proposed 2 bedroom residential use. The residential component is contained entirely on the upper level.  TLEP 2014 definition: Shop Top Housing	Proposed 4 bedroom residential use. The residential component is proposed at ground level (rear of the shop) and the first floor.  TLEP 2014 definition: Dwelling house
<b>Residential GFA</b>	70m <sup>2</sup> + 37m <sup>2</sup> deck (external living)	191m <sup>2</sup> + 64m <sup>2</sup> deck (external living)
<b>Retail/Commercial Use</b>	Workshop and shop front for 'A Tinker's Cuss'  TLEP 2014 definition: Shop and Industry (see expanded definitions in the background section)	Shop for ' <i>Illusive wood design</i> '.  TLEP 2014 definition: Shop (see expanded definitions in the background section)
<b>Commercial/shop GFA</b>	30m <sup>2</sup> shopfront + 27m <sup>2</sup> workshop	93m <sup>2</sup> shop
<b>TOTAL GFA</b>	127m <sup>2</sup>	284m <sup>2</sup>

Demolition:

The proposed demolition work involves the removal of the existing dwelling (which is currently used partially as a shop, illusive wood design), carport and other associated structures, including retaining walls and fencing which are currently onsite.

Tree Removal:

The site has garden areas containing shrubs and some medium sized trees. This vegetation is proposed to be removed to facilitate the proposed development.

Access:

Vehicular access would be via Milsoms Lane with a total of six (6) car parking spaces provided. This includes three (3) spaces on Lot 5 and three (3) spaces on Lot 4. The parking requires a variation to Section A2, of one parking space. This is discussed further within this report.

A pedestrian pathway would be provided over the common boundary extending from Kyogle Road to Milsoms Lane. An easement would be created over this pathway prior to the Occupation Certificate being issued.

Pedestrian access is also available along the footpath which runs along the Kyogle Road frontage of the site. The footpath would be upgraded in accordance with Council's requirements and awnings provided. Following this upgrade, a continuous footpath would be available from the disabled car park that is provided for the village in The Buttery car park, to the shopfronts.

The development is designed to ensure that the proposed uses on each lot can function independently. Each lot will be serviced individually but retain a common pedestrian pathway through the site.

Tweed LEP 2014 definitions and permissibility:

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

**shop means** premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises.

Note. Shops are a type of retail premises—see the definition of that term in this Dictionary.

**retail premises** means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) (Repealed)
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

Note. Retail premises are a type of commercial premises—see the definition of that term in this Dictionary.

commercial premises means any of the following:

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

Retail premises (with the exception of *specialised retail premises*) are permissible with Council consent.

Both sites include a shop located along the Kyogle Road frontage.

**light industry** means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:

- (a) high technology industry,
- (b) home industry,
- (c) artisan food and drink industry.

Note. Light industries are a type of industry—see the definition of that term in this Dictionary.

**industry** means any of the following:

- (a) general industry,
- (b) heavy industry,
- (c) light industry,

but does not include:

- (d) rural industry, or
- (e) extractive industry, or
- (f) mining

Industry (excluding: General industries and Heavy industries) is permissible with Council consent.

The workshop located on Lot 4 is defined as an industry.

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

Lot 4 proposes a shop top housing unit and is permissible with consent.

**dwelling house** 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.

Note. Dwelling houses are a type of residential accommodation—see the definition of that term in this Dictionary.



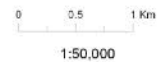
Lot 5 proposes a dwelling house and is permissible with consent.

**SITE DIAGRAM:**



**Site Plan**

Lot 5 DP 8107 and Lot 4 DP 8107  
1470 Kyogle Road Uki



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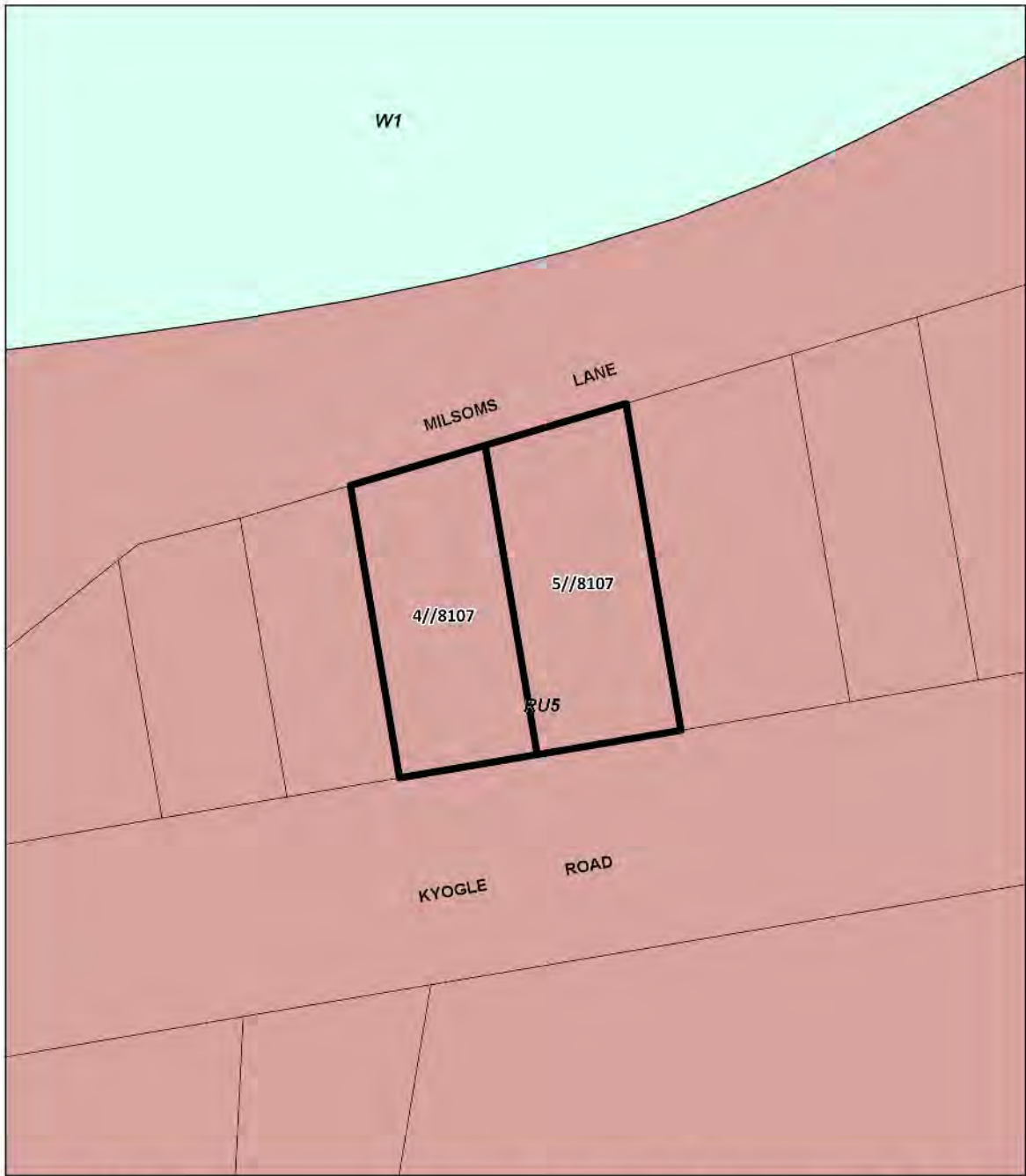
  Cadastre: 18/07/2018  
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Coordinate System - MGA Zone 56  
Datum - GDA 94

Civic and Cultural Centre  
3 Tumbulgum Road  
Murwillumbah NSW 2484  
PO Box 818  
Murwillumbah NSW 2484  
T: (02) 6870 2400 / 1300 292 872  
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W: [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au)  
E: [planningreferrals@tweed.nsw.gov.au](mailto:planningreferrals@tweed.nsw.gov.au)



Date Printed: 12 March, 2019


**ZONING:**




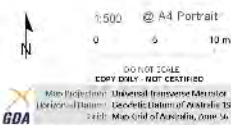
Subject Land

 Subject Land

Tweed Local Environmental Plan 2014

 RU5 Village

 W1 Natural Waterways



**Site Plan - Local Environmental Plan**

Lot 5 DP 8107 and Lot 4 DP 8107  
1470 Kyogle Road UKI

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**AERIAL IMAGERY:**




1:500 @ A4 Portrait  
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Map Projections: Universal Transverse Mercator  
Data Source: Geospatial Data Australia 1994  
Web: <http://www.gda.gov.au/>



City and Cultural Centre  
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Murwillumbah NSW 2484  
PO Box 913  
Murwillumbah NSW 2484



TWEED  
SHIRE COUNCIL  
111 RIVERVIEW DRIVE  
MURWILLUMBAH NSW 2484  
P.O. BOX 913  
MURWILLUMBAH NSW 2484

**Aerial Photography April 2018**

Lot 5 DP 8107 and Lot 4 DP 8107  
1470 Kyogle Road UKI

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*Boundaries shown should be considered approximate only.*

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DEVELOPMENT PLANS:

**REAL PROPERTY DATA**

1470 & 1472 KYOGLE ROAD  
 TRENDSHIRE COUNCIL  
 DP 8107  
 PROPERTY NUMBER: 433, 434, 435, 436  
 LAND NUMBER: LOT 4, LOT 5  
 SITE AREA - LOT 4: 382sqm  
 SITE AREA - LOT 5: 434.5sqm  
 SITE COVERAGE: LOT 4: 27%  
 SITE COVERAGE: LOT 5: 50%

**LOT 3  
DP 8107**  
 No. 1474  
 SINGLE STOREY WEATHERBOARD RESIDENCE

**LOT 4  
DP 8107**  
 WORKSHOP  
 BACK FRONT  
 94.07m<sup>2</sup> (FL. 25.50m)

**LOT 5  
DP 8107**  
 161.76m<sup>2</sup>  
 SINGLE STOREY TERRACE SHOP

Lot 5 is to contain only three (3) parking spaces (a width of 3.0m each) in accordance with a letter-titled Response to Traffic Item in Council's Information request 1470 Kyogle Road, Uki - Proposed shop-top dwelling development, dated 13 December 2018.

In accordance with this consent amended plans are to be submitted to Council, to the satisfaction of the General Manager or their delegate prior to issue of Construction Certificate.

**LEGEND**

- BK 1 → → →
- BN
- CONCRETE PATHWAY/SLAB
- COLUMN TYPE - REFER STRUCT BRGS DETAILS AND FLOOR PLANS
- BRIDGE/SEWER/PIPE REFER CIVIL BRGS DETAILS
- EXISTING
- LANDMARK - REFER TO LANDMARK DRAWING/SLIP
- ISH HOLE
- WATER METER
- PAVE FINISHMENT - 100mm WIDE PEDESTALIAN ACCESS TO COMPLY WITH AS/NZS 1:2009
- PAVED DRIVE/PROVIDING STOPS FOR MOTOR VEHICLES (REFER TO PLAN FOR MARKING DETAILS IN ACCORDANCE WITH AS/NZS 1:2009 PART 7.1.1)
- POWER POLE - EXISTING REFER NOTES
- REINFORCING WALL - REFER NOTES
- R/W
- ROW
- SEWER LINE
- SGM
- CONCRETE SURFACE - GRANITE/SLIP
- TOP OF WALL LEVEL, AS NOTED
- WATER USE
- TREE - EXISTING AND NEW

**NOTES**

1. USE FINISHING IN THE ACTIVITY AND COMPLIANCE WITH THE LOCAL COUNCIL THROUGH A PERFORMANCE SOLUTION THAT HAS BEEN REQUESTED BY THE OWNER.
2. ALL CONSTRUCTION WORKS AND PROPOSED PERMITS SHALL BE COMPLETED WITHIN THE LOCAL OVERHEAD POWER LINES (REFER TO PLAN).
3. THE DRAWING TO BE REVAL IN CONJUNCTION WITH DETAIL SURVEY INFORMATION.
4. OVERALL SETBACK DIMENSION TO SIDE WALL TO OUTSIDE FACE OF 600mm STEEL WALL.
5. DIRECTIONAL SIGNAGE INSTALLED TO DIRECT CUSTOMERS TO BICYCLE REPAIRS ADJACENT VEHICLE REPAIRING.
6. CUSTOMERS MUST BE ADVISED APPROXIMATE CAR PARKING OFF LOCATION (REFER DRAWING CURRENTLY NOTED IN CONU BLOCK INCASMENTS SETOUT RELATING TO CHANGE OF RETAINING WALL TYPE TO BE COMPLETED BY SUPPLIER /INSTALLER PRIOR TO UNDERPINNING WORKS.

CLIENT: **CARLA WILSON**

DESIGNER: **CHRISTIAN ZAMBELLI**  
 email: c.zambelli@trendshire.com.au

PROJECT NUMBER: **P\_047**

DATE: **16 MAY '18**

SCALE: **1:200@A3**

LOCATION: **1470 & 1472 KYOGLE RD, UKI NSW 2484**

THE DRAWING: **LOT 4 & 5 PROPOSED SITE PLAN**

APPROVAL: **A-402 (F)**

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**LEGEND**

BA1	BALCONY/TERRACE OVERHANG 600
EA1	ES'S AS TREE TO BE PRESERVED
FA0	FISHBONE
FA1	FENCE/TIMBER
GA1	WALL CLADDING LINE, SPONGE BASED
FA2	FRAMING SCREEN
RA1	RAMMLED FINISH
ST1	STAIR
TR1	TIMBER TRUSS/SASH
TR2	TRUSS/ROOF CLADDING, POLYCARBONATE, POLYCARBONATE WITH CLEAR GLASSY TRUSS
TR3	TRUSS WITH TRUSS
TR4	TRUSS WITH TRUSS, POLYCARBONATE WITH CLEAR GLASSY TRUSS
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**03 NORTHERN ELEVATION**  
SCALE 1:100

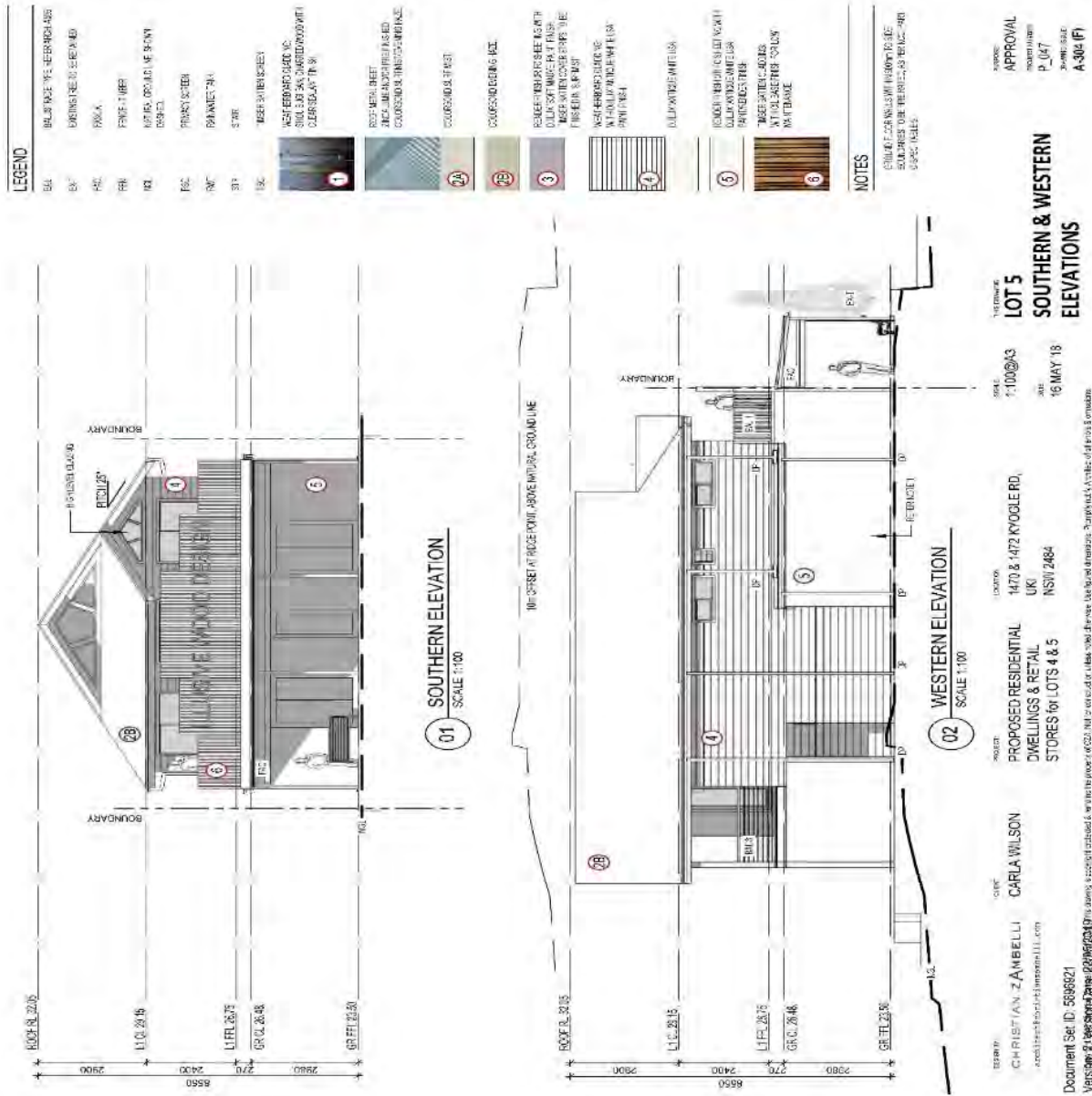
**04 EASTERN ELEVATION**  
SCALE 1:100

**PROJ:** PROPOSED RESIDENTIAL DWELLINGS & RETAIL STORES FOR LOTS 4 & 5  
**CLIENT:** CARLA WILSON  
**ARCHITECT:** CHRISTIAN ZAMBELLI ARCHITECTS/CHRISTIANZAMBELLI.CO.UK  
**DATE:** 02/05/2019

**SCALE:** 1:100 @ A3  
**DATE:** 16 MAY 18

**LOT 4**  
**NORTHERN & EASTERN ELEVATIONS**

**APPROVAL:** P\_047  
**DATE:** A-303 (F)



**03** NORTHERN ELEVATION  
SCALE 1:100

**04** EASTERN ELEVATION  
SCALE 1:100

**LEGEND**

01	QUALITY CLIMATE RESISTANT ANODIZED ALUMINUM FINISH (UPPER PART)
02	QUALITY CLIMATE RESISTANT ANODIZED ALUMINUM FINISH (LOWER PART)
03	REVERSHINE ART-GLOSS WITH DUAL COAT PAINT FINISH. TUBERATED COVERS THIS COAT. FINISH IS "SUNSHINE"
04	REVERSHINE ART-GLOSS WITH DUAL COAT PAINT FINISH. TUBERATED COVERS THIS COAT. FINISH IS "SUNSHINE"
05	REVERSHINE ART-GLOSS WITH DUAL COAT PAINT FINISH. TUBERATED COVERS THIS COAT. FINISH IS "SUNSHINE"
06	REVERSHINE ART-GLOSS WITH DUAL COAT PAINT FINISH. TUBERATED COVERS THIS COAT. FINISH IS "SUNSHINE"

**NOTES**

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- REVERSHINE ART-GLOSS WITH DUAL COAT PAINT FINISH. TUBERATED COVERS THIS COAT. FINISH IS "SUNSHINE"

**APPROVAL**  
 PROJECT NUMBER: P\_047  
 DRAWING TITLE: A-305 (F)

**PROPOSED RESIDENTIAL DWELLINGS & RETAIL STORES FOR LOTS 4 & 5**  
 1470 & 1472 KYOGLE RD, UKI NSW 2484  
 SCALE: 1:100 @ A3  
 DATE: 16 MAY '18

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

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

**Tweed Local Environmental Plan 2014**

Clause 1.2 – Aims of the Plan

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

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

- (i) to conserve or enhance areas of defined high ecological value,*
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, and the fact that the land use is permissible in the subject zone.

#### Clause 2.3 – Zone objectives and Land use table

The subject site is zoned RU5 – Village under the Tweed LEP 2014. The objectives of the RU5 zone are:

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

The proposed development incorporates a range of uses comprising shops, light industry and residential. All uses are permissible with consent and it is noted that both of the proposed commercial uses (A Tinker's Cuss and Illusive Wood Design) currently operate within the Uki Village).

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

Not applicable as no subdivision is proposed.

#### Clause 4.3 - Height of Buildings

The objectives of this clause are as follows:

- (a) to establish the maximum height for which a building can be designed,*
- (b) to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- (c) to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- (d) to encourage greater population density in less car-dependant urban areas,*
- (e) to enable a transition in building heights between urban areas comprised of different characteristics,*
- (f) to limit the impact of the height of a building on the existing natural and built environment,*
- (g) to prevent gross overshadowing impacts on the natural and built environment.*

This clause goes on further to advise 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 site is mapped on the *Height of Buildings Map* associated with Clause 4.3 as having a maximum height limit of 10.0m. The development proposes a height of 8.350m and 8.550m for lots 4 and 5 respectively. Accordingly, complies with clause 4.3.

#### Clause 4.4 – Floor Space Ratio

The objectives of this clause are as follows:

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

This clause goes on to further state that the maximum floor space ratio (FSR) for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area. In this instance the applicable floor space ratio is 2:1.

The proposed development includes a mixed use on each of the existing lots (being Lot 4 and Lot 5).

Lot 4 has a land area of 392m<sup>2</sup> and a proposed floor area of 127m<sup>2</sup>. Accordingly results in an FSR of 0.32:1

Lot 5 has a land area of 432.5m<sup>2</sup> and a proposed floor area of 284m<sup>2</sup>. Accordingly results in an FSR of 0.65:1

Both lots comply with this clause.

#### Clause 4.6 - Exception to development standards

Not applicable – the subject application does not seek an exception to development standards.

#### Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable – the subject application does not seek consent for any miscellaneous permissible uses.

### Clause 5.10 - Heritage Conservation

The subject site is not mapped under the Tweed Aboriginal Cultural Heritage Management Plan. However it is noted that a known Aboriginal Place of Heritage Significance is located approximately 100m from the site. Accordingly, precautionary conditions have been applied with this regard.

The subject site is mapped within a Heritage Conservation Zone (Uki Village).

The objectives of this clause are as follows:

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

This clause goes on to state that the consent authority, must before granting consent in respect of an application within a heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

The site is captured within the Uki Heritage Conservation Area.

To satisfy Clause 5.10, Council must consider the effect of the proposed development on the heritage significance of the area.

The building is not listed as a specific Heritage item under the Tweed LEP 2014. The building is not noted as a building of heritage significance under the Tweed DCP Section A18 - Heritage.

The applicant submitted a Statement of Heritage Impact (SOHI). The Statement of Heritage Impact was referred to Council's Heritage Consultant who has supported the proposed development. Heritage is discussed further under the Section A18 Heritage assessment within this report.

### Clause 5.11 - Bush fire hazard reduction

This clause outlines that 'Bush fire hazard reduction work authorised by the *Rural Fires Act 1997* may be carried out on any land without development consent.'

It is noted that the subject development site is mapped as being bushfire prone by virtue of being located within the vegetation buffer. Appropriate conditions of consent (as recommended by the NSW Rural Fire Services) will be imposed. The development satisfies this clause.

### Clause 7.1 – Acid Sulfate Soils

The site is unclassified on the Acid Sulfate Soils map.



### Clause 7.2 - Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The site is relatively flat at the Kyogle Road frontage and slopes away at the rear towards Milsoms Lane. Levels range from RL 23m along the Kyogle Road boundary falling to RL 20m at Milsoms Lane.

A fall of 3m is located at the rear over a distance of 14m providing a gradient of 20%.

Excavations up to 3.5m deep into the existing soil profile will be required for the car park construction. Retaining walls are required for to support the excavations. The required earthworks are not considered to result in a detrimental impact in any regard. Appropriate conditions have been applied.

### Clause 7.3 – Flood Planning

The objectives of this clause are as follows:

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

Council relies upon historic flood records in rural villages such as Uki. The highest recorded flood level in DCP-A3 table 9.1 is 22.4m AHD and a minimum habitable floor level of 23.2m AHD is adopted. The March 2017 flood event reached approximately 22.14m AHD. The lowest habitable floor level proposed is 23.5m AHD and therefore acceptable. The proposed development is considered to satisfy Clause 7.3.

### Clause 7.4 - Floodplain risk management

Not applicable to the subject application.

### Clause 7.5 - Coastal risk planning

The subject land is not identified as being subject to coastal risk.

### Clause 7.6 - Stormwater Management

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

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

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

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

The lawful point of discharge for the site is Milsoms Lane which is adjacent to the Tweed River. The original application proposed to direct stormwater from the car park directly opposite into the Tweed River. This was not supported by Council given Geotechnical constraints. Accordingly the application was amended and all roof water is to be piped to Kyogle Road, with some minor overflow expected to the rear of the site.

The application was referred Council's Flooding and Stormwater Engineering Unit who advised the following:

*"the proposed alternative stormwater layout could achieve a reasonable outcome and could be an acceptable solution to the LPOD issue, subject to assessment of detailed plans".*

As per the recommendation of the Engineering unit, the application is considered to satisfy 7.6. Conditions with this regard have been applied.

#### Clause 7.7 - Drinking Water Catchments

The objective of this clause is to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages.

- (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.*

The clause goes on to stage that:

- (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 proposed development will treat water and discharge to Kyogle Road. It is not considered that all applicable measures will be in place and there will be no impact on quality or quantity of water entering drinking water storage areas.

#### Clause 7.8 – Airspace operations

Not applicable – the subject site is not located within an area subject to aircraft operations.

#### Clause 7.9 - Development in areas subject to aircraft noise

Not applicable – the subject is not mapped within an ANEF contour.

#### Clause 7.10 - Essential Services

The subject site is located within an established area with all requisite essential services considered to be available. These include water and sewer reticulation, stormwater drainage, electricity and adequate vehicular access. Where required, appropriate conditions of consent would be applied to ensure that development is undertaken in accordance with Council requirements. The proposal does not negatively impact upon the provisions of this Clause.

#### Other Specific Clauses

There are no other specific clauses applicable to the subject application.

#### **North Coast Regional Plan 2036 (NCRP)**

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

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

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

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

The site is mapped as an Urban Growth area.

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

Principle 1: Direct growth to identified Urban growth areas  
*Urban growth areas have been identified to achieve a balance between urban expansion and protecting coastal and other environmental assets. They help maintain the distinctive character of the North Coast, direct growth away from significant farmland and sensitive ecosystems and enable efficient planning for infrastructure and services.*

Assessment:

Complies - the proposed development is for the construction of two residential dwellings and two commercial premises. Each unit offers a differing accommodation option (being a 4 bedroom and 2 bedroom) and is located within the village centre of Uki. The area is located outside of sensitive coastal and farmland areas.

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

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

Assessment:

The development site is not mapped under this plan as being within the sensitive coastal strip.

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

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

Assessment:

As discussed above the site is located within the Uki Village which offers a range of retail and commercial premises.

The proposed development is considered to comply with the planning principles of the NCRP 2036, goals and overarching vision of being *the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities*.

**State Environmental Planning Policies**

**SEPP No. 55 - Remediation of Land**

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

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

A SEPP 55 assessment has been included in the SEE submitted with the application. This assessment concludes that contamination is not likely to be an issue associated with the application.

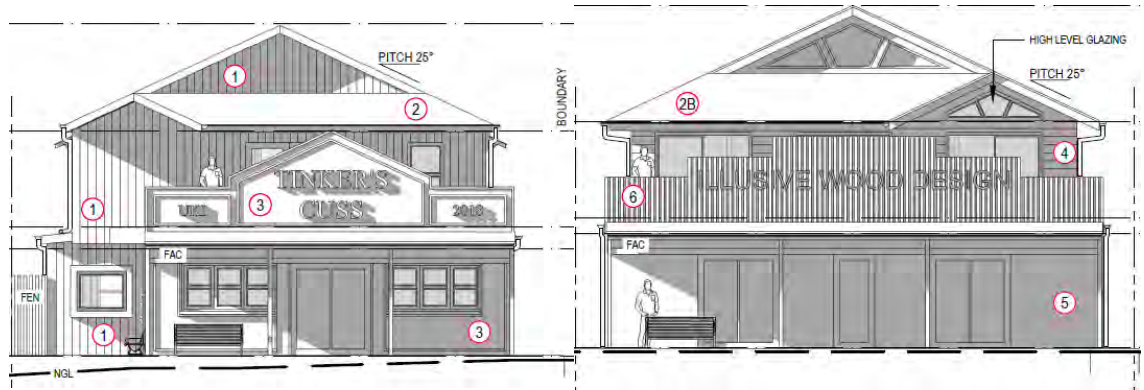
The application was referred to Council's Environmental Health Unit for review, who advised that the report titled "Preliminary Contamination Site investigation 1470 Kyogle Road, Uki Ecostream July 2018 (Amended September 2018, 18195)" includes the appropriate residential levels and assesses analysis results with these Levels. The report is acceptable and SEPP 55 is satisfied.

**SEPP No. 64 – Advertising and Signage**

This Policy aims:

- (a) *to ensure that signage (including advertising):*
  - (i) *is compatible with the desired amenity and visual character of an area, and*
  - (ii) *provides effective communication in suitable locations, and*
  - (iii) *is of high quality design and finish, and*
- (b) *to regulate signage (but not content) under Part 4 of the Act, and*
- (c) *to provide time-limited consents for the display of certain advertisements, and*
- (d) *to regulate the display of advertisements in transport corridors, and*
- (e) *to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.*

The proposed development includes a single building identification sign for each site:



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

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

1. Character of the area:  
The proposal as submitted appears compatible with the existing character of the Uki village area.
2. Special Areas:  
The site is located within a Heritage Conservation Area. The signs are well designed and suitable having regard to the character of the area and the location of the site adjacent to a heritage item.
3. Views and vistas:  
The proposed advertising is located on the front façade of the proposed development, the signage will not obscure or compromise important views.
4. Streetscape, setting or landscape:  
The scale of the proposal, including its proportions and form is considered appropriate for the streetscape and setting of the Uki village area. The proposal is not considered to create unsightliness, nor does it protrude above surrounding buildings and structures in the area. It is therefore considered to be consistent with these criteria.
5. Site and building:  
The proposal as submitted appears compatible with the scale and proportion of the area, including from a heritage perspective. It is considered that the proposal's size and design respects the proposed built form and does not detract from any important features of the site. The proposed advertising signage is consistent with the requirements under Schedule 1, part 5.
6. Associated devices and logos with advertisements and advertising structures:  
The proposal does not contain any safety devices, platforms or lighting devices due to its design. As mentioned above, the proposed signage simply displays name of each of the proposed businesses.
7. Illumination:  
No illumination is proposed.

8. Safety:

The proposal is not considered to reduce the safety for any public road, pedestrians or cyclists as it does not protrude into the sight lines of the subject site or that of any adjoining lots. It is not considered to obscure any sightlines from public areas and does not encroach onto the footpath or car park of the subject site.

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

SEPP (Vegetation in Non-Rural Areas) 2017

The subject land is within an RU5 Village zone and therefore the Policy applies. The removal of six (6) medium sized trees is proposed as part of the Development Application therefore a separate permit is not required. Tree removal is further discussed within the Flora and Fauna assessment.

SEPP (Building Sustainability Index: BASIX) 2004

The proponent has provided an acceptable BASIX certificate (Basix Certificate No. 925394S and 92575S ) and any approval will be conditioned for compliance.

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

There are no draft Environmental Planning Instruments applicable to the subject site.

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

Tweed Development Control Plan

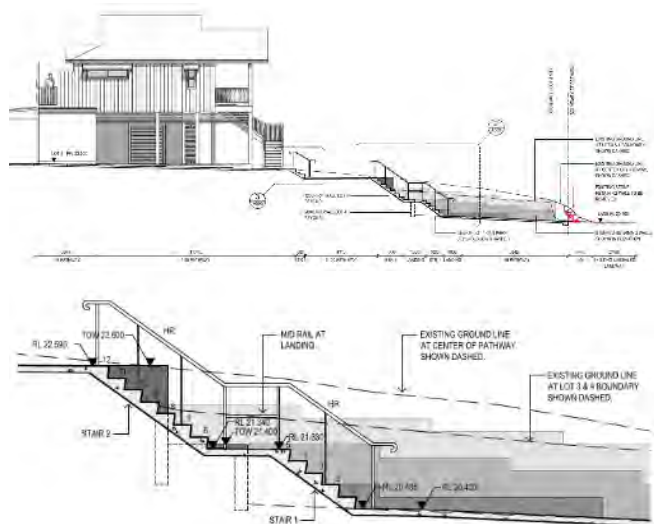
A1-Residential and Tourist Development Code

As the development includes residential uses Section A1 applies. The development is generally compliant with the controls and objectives of Section A1. However, seeks a variation to provisions for cut and fill (and retaining walls).

The extent of cut and fill has been minimised and is provided to achieve suitable grades for the car parking area and pedestrian access to the front of the site. The majority of this work is located at the rear of the site where it can be suitably managed to ensure that adjoining properties will not be affected.

The works include excavations up to 3.5m deep into the existing soil profile. Retaining walls are required for to support the excavations. The required earthworks are not considered to result in a detrimental impact in any regard. Appropriate conditions have been applied.





DCP A1 advises that retaining walls are to be no higher than 1.2m. The proposed application includes retaining walls to a maximum height of 1.6m for the rear car park. Council's Engineers have reviewed the application and are satisfied that the height and location of the retaining walls (closer than 900mm to the side boundaries) will not have a negative impact on surrounding properties.

### A2-Site Access and Parking Code

Existing vehicle access:

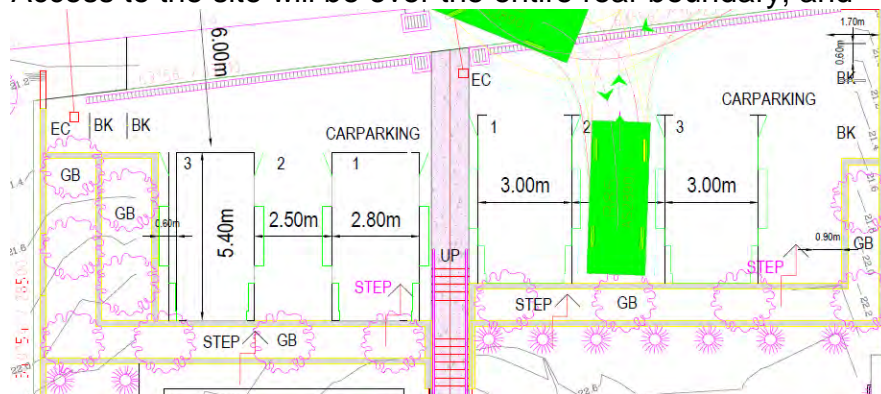
The site is currently accessed by an existing bitumen driveway located on Kyogle Road and a concrete driveway on Milsoms Lane

Proposed access:

The proposed development includes the removal of both accesses and new vehicle access is proposed from Milsoms Lane to the proposed carpark.

The proposed works are comprised of the following:

- Removal of the existing driveway on Kyogle Road, including the reinstatement of the kerb;
- Demolishing the existing rock retaining wall located on the rear boundary of the site;
- Excavations up to 3.5m in height to accommodate onsite parking;
- Access to the site will be over the entire rear boundary; and



- Construction of new retaining walls.

Existing pedestrian access:

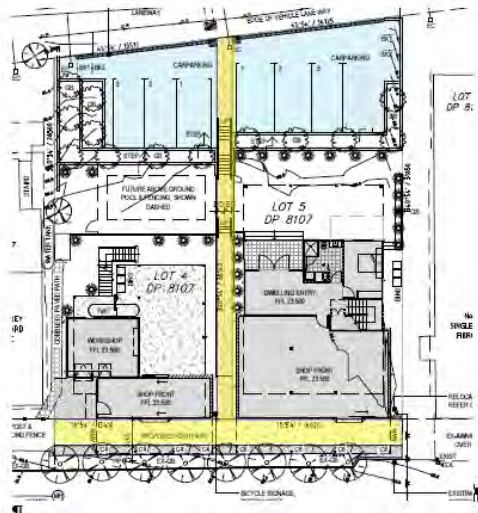
An existing footpath is located along the site frontage on Kyogle Road and currently is constructed of fine gravel as shown below.



Proposed pedestrian access (highlighted yellow in the below image):

The development includes the following:

- A proposed footpath which is shared over Lots 4 and 5 as shown on the site plan. The footpath will link the proposed car park on Milsoms Lane to the existing footpath on Kyogle Road. An easement will be required over this footpath to burden and benefit each lot.
- The existing footpath on Kyogle Road (currently constructed of fine grade) will be upgraded to Council's standards (1.2m wide concrete footpath).



Parking / Manoeuvring:

DCP A2 – Site access and car parking specifies the following car parking requirements for a workshop, shop and residential dwellings:

Lot	Proposed Use	DCP rate	Required	Required
4	2 bedroom shop top housing;  <b>Shop; and</b>	1.5 spaces / 2 bedroom unit  1/100m <sup>2</sup> GFA staff and 3.5/100m <sup>2</sup> for customers	<b>1.5 spaces</b>  30sqm: 4.5/100 x 30 = <b>1.35 spaces</b> (staff and customers)	<b>3.075 spaces</b> <b>(1.05 spaces for customer)</b>
	<i>Workshop (defined under the TLEP 2014) as a light industry.</i>	1/120m <sup>2</sup> GFA	27sqm: 1/120 x 27 = <b>0.225</b>	
5	4 bedroom Dwelling; and  <b>shop</b>	1 space per dwelling +  1/100m <sup>2</sup> GFA staff and 3.5/100m <sup>2</sup> for customers	The site is not able to accommodate driveway parking for a vehicle. Accordingly, it is assumed <b>2 spaces</b> would satisfy this intent  93sqm: 4.5/100 x 93 = <b>4.185 spaces</b> (staff and customers)	<b>6.185 spaces</b> <b>(3.255 spaces for customer)</b>

**TOTAL ONSITE PARKING REQUIRED 9.26**

*Table 1: Locality Specific Customer Parking Concession Areas*  
This table (under Section A2) allows up to 50% reduction for customer parking in Uki.

*Rate required – 50% reduction for customers* = **7 (7.1) spaces**

**Table 1: Locality Specific Customer Parking Concession Areas**

Area 4. Rural Villages (Zone) of Uki (RU5), Burringbar (RU5), Mooball (RU5), Stokers Siding (RU5), Tyalgum (RU5), Chillingham (RU5), Kunghur (R5), Bilambil (RU5) and Kielvale (RU5)	The minimum number of customer car parking spaces required may be reduced by 50% of that shown in Table 2C and 2G
--	---

The development includes the provision of six (6) onsite spaces. The application was lodged with seven (7) spaces thus satisfying the numerical requirements of A, however Council's Traffic Engineer advised that the layout did not demonstrate vehicles could enter and exit the site in a forward direction. Accordingly, Council

advised that a concession to the numerical requirements for parking could be considered to allow vehicles to enter and exit in a forward direction. This is discussed further below.

Manoeuvring:

The car park layout does not demonstrate that vehicles can leave the site in a forward direction.

As mentioned above, the following information was requested from Council's Traffic Engineer:

*"a reduction in car parking numbers is acceptable to enable a 3m wide configuration to allow vehicles to leave the site in a forward direction"*.

Traffic Consultants Bitzios Consulting provided the following advice on 13 December 2018:

*"It is understood that Council's intention with reducing on-site car parking supply in favour of providing wider car parking spaces is to increase separation of parking manoeuvres from the top of the Tweed River embankment on Milsoms Lane opposite the subject site and to allow drivers to observe the top of embankment by enabling forward egress from the site. Bitzios agrees with this intention.*

*Swept path analysis was undertaken to determine if wider bays would allow for entering and existing the on-site car parking spaces in a forward gear, wholly within the site. However, while the wider bays reduced the manoeuvring distances related to entry and exit of each car parking space, **forward entry and exit wholly within the site was not achievable.***

*Notwithstanding, an **alternate solution is proposed which is consistent with Council's intention of forward egress from the site and increased separation of parking manoeuvres from the top of the Tweed River embankment.** This solution involves installation of signage for each on-site car parking space stating "reverse-in only". Based on supplied survey data and the swept path analysis, this proposed arrangement should provide a minimum 1m clearance between the extent of parking manoeuvres and the top of the embankment, and also allows vehicles to exit the site in a forward gear."*

Council's Traffic Engineer has supported this alternate solution. Accordingly, the variations to DCP Section A2 are supported.

Conditions have been applied to ensure an updated parking plan is submitted Prior to Issue of Construction Certificate to reflect the proposed 6 parking spaces and a separate condition has been applied requiring signage to nominate "reverse-in only" to be approved by Council prior to occupation of the building.

Further to the above the applicant submitted to Council a Traffic Impact Assessment which include calculated trip rates. The rates were endorsed by Council's Traffic Engineer.

### A3-Development of Flood Liable Land

Council relies upon historic flood records in rural villages such as Uki. The highest recorded flood level in DCP-A3 table 9.1 is 22.4m AHD and a minimum habitable floor level of 23.2m AHD is adopted. The March 2017 flood event approximately reached 22.14m AHD. The lowest habitable floor level proposed is 23.5m AHD and therefore acceptable.

Emergency Response Provisions of DCP-A3 section A3.2.6 requires certain residential development to provide high level evacuation route or PMF refuge. It is unclear if the subject site could provide either. However, the proposal includes only 1 x dwelling per lot and is therefore exempt from this requirement.

### A4-Advertising Signs Code

Signage is limited to integrated business identification signage for each building.

The objective for signage within the 'Heritage and Conservation Areas' is to *ensure that advertising signs are designed and located so as to compliment the building or area which has been identified as significant.*

The proposed signage has been addressed in the Statement of Heritage Impact submitted with the application. It concludes that the signage design complies with the early to mid-20<sup>th</sup> century buildings within the commercial/retail core of Uki Heritage Conservation Area. Accordingly, the proposal complies with the relevant requirements of the Tweed DCP Section A4.

### A11-Public Notification of Development Proposals

In accordance with Section A11 the subject application was advertised and notified for a period of 14 days from Wednesday 5 September 2018 to Friday 5 October 2018. During this period two letters of support and one submission were received. The submission is discussed further within this report.

### A15-Waste Minimisation and Management

A Waste Management Plan was submitted with the proposed application. The plan included a demolition work plan and waste management controls for both during construction and operation of the site once development. The plan is consistent with A15.

### A16-Preservation of Trees or Vegetation

The site contains garden areas of shrubs and trees which are proposed to be removed. The trees include medium sized trees (greater than 5 metres in height) that require a permit to be removed. These include three (3) *Syzygium austral* (lilly pilly), two (2) *Beaucarnea recurvate* (pony tail palms) and a *Melaleuca Bracteata* (black tea tree) Vegetation removal is necessary to enable the site to be developed in accordance with Tweed DCP Section B20 - Uki Village and to ensure that an asset protection zone is provided in accordance with Planning for Bush Fire Protection 2006.

Removal of these trees is considered suitable given the small size of the property, the constraints that keeping them would impose on the design and bushfire considerations.

### A18 - Heritage

#### Part A – Introduction and context

The aim of this Section is to guide the planning and design of development in association with a heritage item, within or adjoining land which comprises a heritage item or within a heritage conservation area to ensure protection and conservation of heritage items and areas and mitigation of any potential negative impacts on their heritage significance.

#### Uki Heritage Conservation Area (Uki HCA)

The DCP advises that the village is significant aesthetically for its surviving early buildings located on the eastern bank of the south arm of the Tweed River. The character of the Uki HCA is formed by its collection of early 20th century timber buildings set in the significant landscape featuring the spectacular back drop of Wollumbin/Mt Warning in close proximity.

The DCP lists the following as key features of the Uki HCA:

1. Wollumbin (Mt Warning) and surrounding mountain ranges combine with dense mature vegetation to dominate Uki's character and provide a sense of being enclosed and of being within a landscape rather than within a village.
2. Streets and dwelling patterns are restrained by topography resulting in an organic settlement pattern within the narrow valley.
3. Residential areas respond to the undulating topography and landscaped character and dwellings are commonly obscured by extensive vegetation cover where mountains and landscaping are visually prominent.
4. Within the village lies a legible town centre and retail core whose scale and form is representative of an early 20th century rural settlement and includes the Uki Buttery, Post Office, General Store, School, and Church.
5. The retail core is located on a flatter area of land within the HCA and runs parallel to the Tweed River.
6. Consistent verandahs, awnings, and entries along the retail core addressing Kyogle Road which provide a village main street form and pedestrian amenity and atmosphere.
7. Residential front and boundary "fencing" is frequently comprised of vegetation only, with a typically relaxed/informal entry sequence where the garden entry takes precedence as the 'front door'.
8. Consistency of material and lightweight construction approach.

9. Buildings step with topography.

And the following General Objectives apply:

1. Promote an understanding of the significance of the heritage conservation area.
2. Ensure the heritage items are conserved.
3. Ensure the significance of the contributory items, landscaping and views are retained and maintained.
4. Conserve the historic fabric and minimise the collective impact on the significance of the heritage conservation area.
5. Ensure alterations, additions and infill development are carefully designed to sympathetically integrate with the streetscape and character of the heritage conservation area.
6. Encourage sympathetic, contemporary design of infill development that preserves the grain of the prevailing pattern of development, characteristic building form, materiality and style evident in the streetscape character of the heritage conservation area.
7. Protect and encourage the mix of residential and village commercial/retail uses within the HCA including ensuring that retail premises continue to provide a fine grained built form and a range of services with active street frontages.
8. Respect the scale and rural character of the built form within Uki village that has evolved in response to topography, subdivision patterns, and the significant landscape setting.

The applicant submitted a SOHI which supports the proposed development. In short the SOHI advises the following:

*“The subject property has been assessed as not being a contributory item to the Uki heritage conservation area.*

*The current proposal to demolish the existing structures, and to construct two double-storey mixed use buildings (commercial and shop top housing/dwelling) with eight at-grade car spaces directly accessible off Milsoms Lane, at the rear of the property is supported.*

*The key findings of this statement of heritage impact are:*

- *The subject property meets three heritage values, which are the following:*
  - *Criteria a – historical - the former historical uses of the property were associated with early industry and commerce in Uki, such as a bakery, billiards, barber and possibly saddler. More recently the*



*building was used as a tick office. The structure was originally one of a row of sheds and residences called 'Rotten Row' by the locals. This name could either have referred to shoddy buildings, or more likely a sly reference to the buildings and their use in comparison with Hyde Park's high class Rotten Row.*

- *Criteria b – associational – the property was first developed by David Cleaton Marshall, known as the 'Father of Uki'. The buildings he developed on the property in c.1906 were removed in the 1950s and the property was then associated with Lloyd and Mary Roberts for the next sixty years.*
- *Criteria e – research – there is research potential in the property relating to an oral history provided by the former owner, Mrs Mary Roberts, who was also a member of the Uki Historical Society. Information regarding removal of the original buildings and their replacement with the existing residence confirms the archaeological potential for the property. If these remains still exist, and they may only be partially intact due to the current building constructed on the property, the archaeological information would contribute to the cultural history of Uki. It could shed light on the former historical uses of the property, reported to be many, including a blacksmiths shop and boarding house in the 1950s. The significance of these remains would meet the threshold for Local level significance for Uki.*
- *The current residence itself does not have heritage value due to its many alterations and additions and current aesthetics.*
- *The new designs have been assessed herein as being complementary to the Uki heritage conservation area, whereas the existing structure does not contribute to it.*
- *The proposed works and proposed designs are acceptable to the heritage values of the property and to the Uki heritage conservation area and recommended for approval with the following four recommendations:*

**Recommendation 1:**

*A copy of the completed oral history with Mary Roberts is to be retained with a copy of this report, A copy should be provided to the Uki Historical Society (to remain publically accessible). A copy of this report is also to be provided to the Uki Historical Society.*

**Recommendation 2:**

*After demolition of the residence and prior to excavation for new residences, the excavation works are to be monitored by an archaeologist. Any archaeological remains and relics are to be recorded and either retained underground or for movable items, removed, cleaned catalogued and analysed in an archaeological report that discusses the works. In line with this recommendation, a Section 140 Excavation permit for monitoring will be required from the Office of Environment and*

**Recommendation 3:**

*During demolition, if feasible, original materials such as chamfer boards, are to be retained and reused or salvaged and stored.*

**Recommendation 4:**

*Include heritage interpretation referring to Rotten Row, David Cleaton Marshall and Mary and Lloyd Roberts in the fit out of the shopfronts to be installed as part of the new buildings. Information for signage can be obtained from this report and/or sourced from the Uki Historical Society.*

*Discussions are also recommended with Tweed Shire Council regarding renaming the precinct 'Rotten Row' with appropriate signage for this heritage conservation area.*

The application was referred to Council's Heritage Advisor who advised the following:

*"The drawings and SOHI provided with the proposal for two shops with residential have been reviewed and demonstrate the previous heritage advice has been incorporated. Further, the history and significance have been thoroughly researched, and the SOHI provides a comprehensive analysis of the history and significance aspects.*

*As recommended in the SOHI, encouragement is given to interpretation of the precinct as 'Rotten Row' either by Council's future improvements in the locale (noted) or by the property owners in seeking to provide increased heritage interpretation at their property.*

*The proposal to remove the existing dwelling and structures does not impart detrimental impact on the cultural heritage significance of the Uki Conservation Area.*

*Due to the level of modification and the lack of original fabric evident in the existing buildings, an archival record is not recommended to be requested.*

*Generally, the heritage aspects are not detrimentally impacted and approval of the appropriate design is supported".*

Additionally the following comments were made in relation to proposed conditions of consent:

*"As recommended in the SOHI, encouragement is given to interpretation of the precinct as 'Rotten Row' either by Council's future improvements in the locale (noted) or by the property owners in seeking to provide increased heritage interpretation at their property.*

The assessing officers has recommended under the options section of this report that Council writes to the land owner and invites them to include details within the proposed site of the "Rotten Row" to provide increased heritage interpretation. These "advertisements" may be subject to separate consent (if not exempt development).

The Rotten Row (extract from advertising the applicant undertook prior to lodgement of the subject application).

## The Rotten Row

**Brendan Esposito**

You may soon notice some activity in the main street of Uki at 1470 currently occupied by Illusive Wood Designs (beside the Fair-Trade Shoppe).

As the owner, I will be lodging a development application (DA) shortly to re-develop the site. The current house at 1470 exists across two lots of land and has been assessed as having no heritage value and will be removed in a safe and considerate fashion. This will be replaced with two dwellings, one on each lot. The proposed re-development complies with the Tweed Shire Council's (TSC) Rural Villages Strategy, heritage guidelines and the Uki Development Control Plan. The proposed development also adheres to the Uki Locality Plan for the main street precinct.

Aesthetically, the planned shop-top dwellings will be very much in keeping with Uki's heritage village street scape. As well as adding to the attractions and visual appeal of Uki's main street, the dwelling on lot 5 will be offering housing ownership to a young Uki family (a rare thing in this day and age) and an expansion to their existing well established and respected local family business. Lot 4 will incorporate a small shop front (with small two-bedroom apartment above, offering accommodation for rent) and will be an expansion of the sharpening and tool repair service currently operating out of 1474. The shop front will be offering bespoke and custom-made metal items produced by a collective of local blacksmiths and metal workers.

A streetscape plan of what will occupy the site is shown here.

Almost three years planning and work has been undertaken to date with preliminary talks with council, discussion with heritage and traffic consultants, architects, past residence of the property and our local historical society I'd like to acknowledge the valuable assistance of these parties including advice from the Uki Residence Association and in particular the Uki and South Arm Historical Society. As part of this acknowledgement, all historical evidence gathered from this exercise will be provided to the Historical Society.

As part of the ongoing planning I would love to hear your thoughts regarding this proposed development in the main street of Uki. If you're interested the architectural drawings and the commissioned Statement of Heritage Impact (SOHI) can be made available (by appointment) for perusal and discussion. Please feel free to call with any queries, questions or comments, or indeed, any stories or history you may recall regarding what was once known as Uki's "Rotten Row".

**Brendan Esposito: 0488299971**



CHRISTIAN ZAMBELLI

### Part C Assessment:

#### **Streetscape character, siting and setbacks**

#### Controls:

- C1. Any alteration addition or infill development must be consistent with the front setbacks of the neighbouring heritage or contributory items.*

The development includes 2 new buildings. The buildings are consistent with the setbacks along Kyogle Road.

- C2. Faux historic details should not be replicated or applied as they will not be of any heritage value and can confuse the understanding of 'new' and 'old'.*

The subject application does not seek consent to replicate any materials.

- C3. Zero side lot boundaries are not appropriate for any residential heritage item or conservation area.*

Not applicable to the subject application.

- C4. Maintain existing side driveway access where this is a feature.*

Not applicable to the subject application.

- C5. Outbuildings may be located in the side or rear setbacks where this is consistent with the siting pattern of the heritage conservation area.*

Not applicable to the subject application.

Alterations and additions:

- C6. *Alterations and additions should not result in the destruction of highly visual and significant elements such as verandahs, awnings, fenestration, chimneys, windows, doorways, gables, parapets or other roof forms or architectural detailing.*

Not applicable to the subject application.

- C7. *Alterations and additions should not mimic design features and materials and should be recognisable as new work of a different period.*

Not applicable to the subject application.

- C8. *No additions are permitted forward of the established building line. Notwithstanding, new decks or verandahs may be considered to the front of dwellings where they are sympathetic with the character of the heritage item or heritage conservation area and align with the predominant front setback of decks and verandahs in the immediate vicinity.*

Not applicable to the subject application.

- C9. *Generally alterations and additions should be located at the rear of the building, lower than the established ridge height and not significantly alter or dominate the street facade, as shown in figure 2.4.*

Not applicable to the subject application.

- C10. *Additions to the side of a building are only appropriate where they do not compromise the ability for driveway access to the rear, where this is part of the established pattern.*

Not applicable to the subject application.

Infill development:

- C11. *Infill development within the vicinity of a heritage item or within a conservation area should respect and complement the built form character of those items in terms of scale, siting and setback patterns, dominant height features, external materials, colours and finishes.*

The applicant has advised that the proposed two (2) storey infill development is consistent with the setback with the existing building street alignment and the adjacent heritage Item. It is noted that the adjoining heritage Item is only single storey, however the design of the proposed development has been undertaken in consultation with Council's Heritage Advisor who advised "*Generally, the heritage aspects are not detrimentally impacted and approval of the appropriate design is supported*".

*C12. Infill development on the site of a heritage item, object or place shall provide a curtilage suitable to the significance of that item, object or place.*

Not applicable – the site is not a heritage item.

Uki HCA controls:

*C37. Residential development reinforces the organic settlement pattern and landscaped character of the hill slopes by maintaining the generous landscaped separation between dwellings, existing setbacks, light weight building materials and fencing character.*

The applicant's SEE advises that the lightweight building materials will be used in the two new buildings which combine dwellings with commercial shopfronts. Given the dual use of the new buildings, and their location at the end of the main street commercial area for Uki, there is not existing generous landscaped separation between dwellings. The existing front setbacks will be maintained.

*C38. Commercial uses maintain and reinforce the existing streetscape rhythm characterised by zero shop front setback to Kyogle Road and footpath awnings with posts to the kerbside.*

As advised previously the existing setbacks along Kyogle Road will be maintained and the development is comprised of two (2) commercial/retail premises at ground level. It should be noted that "Illusive wood design" is currently operating as a shop from part of the dwelling (approved under DA13/0558). Additionally the following perspective was submitted with the application. The development is considered to reinforce the existing streetscape.



### **Scale, form and height**

Alterations and additions:

- C1. Ensure that alterations, additions and infill development respect the scale and form of the building, the conservation area and/or the streetscape.*
- C2. Where alterations or additions are proposed higher than existing built form, new development shall be setback from the street frontage and behind the significant roof ridge line to maintain the streetscape scale and form.*
- C3. Alterations, additions and infill development should integrate with the established height features, including floor level, verandah articulation, parapet levels, window proportions and roof heights.*

- C4. Shall not alter the scale and proportions of windows, doors, materials and other key features.*
- C5. Adaptive uses of a building should be chosen which suit the size of the building and not require substantive additions or changes.*
- C6. Larger additions can be successful when treated as a separate entity to retain the character of the original building in its own right.*
- C7. Any additions within the roof spaces are not visible from the street and must be consistent with the overall massing and roof form.*

The above controls are not applicable as the development is not for additions/alterations.

Infill development:

- C8. Design of infill development within a conservation area shall be sympathetic to the scale, form, and rhythm of the established development and not be overwhelming in its built form.*

The proposed development is not considered to overwhelm the adjoining/adjacent Heritage Building. The perspectives submitted with the application clearly demonstrate that whilst the development is two stories it is in keeping with scale of the surrounds and Council's Heritage Advisor has supported the design of the development.



- C9. In main street and village conservation areas infill development shall be consistent with key height features, including floor, parapet and verandah levels.*

Again, the development has been supported by Council's Heritage Advisor and is considered in keeping with the Uki HCA. The applicant's SEE advises that the development complies with the control. The issues of height, parapet and verandahs were discussed with the Heritage Advisor throughout the design process.

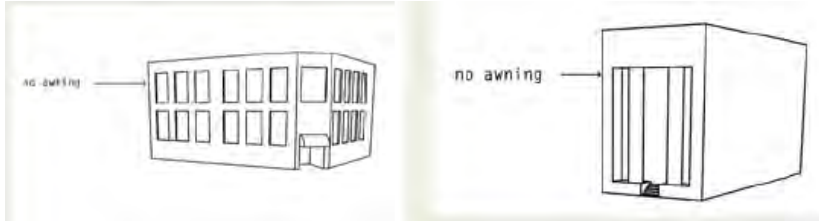
- C10. Height and scale of infill development should not obscure or dominate an adjoining or adjacent heritage item.*

The former ES&A Bank has a height of 31.8m RL and the building on the adjoining site will have an RL of 31.85m and 32.05m RL on adjacent Lot 4.

The scale of the new buildings are for two stories however the development is not considered to dominate the streetscape (see image above).

## Uki Village HCA

*C19. Retain and reinforce the predominant one and two storey, lowset, streetscape character. Higher development be set back and designed in accordance with the principles of Figure 4.3 and 4.4.*



See comment above re height and scale.

## Roofs, chimneys and parapets

Alterations and additions:

No clauses applicable to the subject application.

Infill development:

*C9. Infill buildings within a conservation area should be designed sympathetically with the predominant roof forms and materials of the area.*

The proposed buildings have shallow pitched rooflines with central and offset gables. The applicant's SEE advises that the design has been achieved to allow combined dwellings and commercial shopfronts to have sympathetic signage and styles. Again, the design has been supported by Council's Heritage Advisor.

Uki HCA:

*C10. Existing patterns and rhythms of traditional roof forms within groups of contributory buildings are to be retained.*

Please see comment above.

*C11. Existing iron materials within contributory groups are to be retained.*

Not applicable to the subject application.

## Access, garages and carports

Infill development

*C12. The design and placement of garages and carports in infill development is sympathetic to the established garaging and access pattern of the heritage conservation area.*



The application does not propose any carports or garages. The development includes grass crete at grade parking at the rear of the site.

Uki HCA:

*C31. Within the retail core the rear laneway shall be the primary access for vehicle servicing and parking.*

Complies.

### **Verandahs**

General

*C1. Verandah materials are typically timber. Glass balustrades or metal pool style fencing to front verandahs is not characteristic of the heritage conservation area and will not be supported.*

Complies.

*Infill development:*

*C7. No replication or new introduction of historic features, such as bullnose verandahs, decorative fretwork of ironwork on infill buildings within a conservation area as this lacks historic context. These features may be reinstated to a historic building, where it can be shown they previously existed.*

Noted.

*C8. Verandahs in association with infill development are sympathetic with the scale, form, height and materials of the conservation area features.*

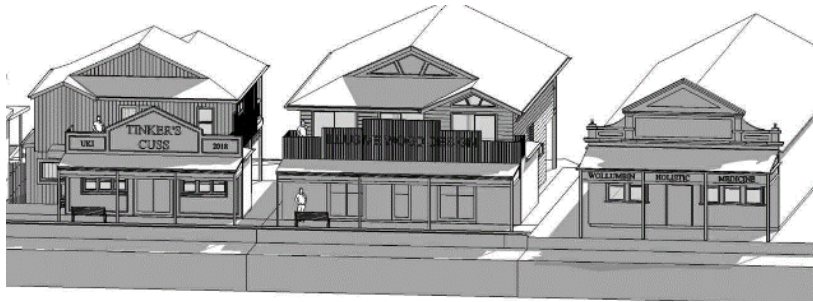
Complies. Refer to plans.

### **Doors, windows and skylights**

*Infill development:*

*C12. Infill development shall respect the scale, proportions and dimensions of door and window features that are characteristic of the HCA.*

The scale of openings on the site is in keeping with the surrounding area. See below front facades. The applicant's SEE advises that the pattern of rectangular windows and entries are included at the façade of the new buildings to be consistent with the characteristics of other commercial buildings with the Uki HCA and the adjoining/adjacent Heritage Building.



## Materials, finishes and colours

Infill development:

*C10. Infill development must not replicate period details of original buildings but rather demonstrate respect for the material suite, design detailing and colours to ensure new development is sympathetic and integrates within the heritage conservation area.*

The development is not considered to replicate the period details. The development is considered to integrate well to the heritage conservation area and will include colours and materials that are sympathetic. As advised previously Council's Heritage Advisor recommends approval of the application.

*C11. The use of typical colour schemes for infill development within a conservation area may be used where appropriate. Where not appropriate colours may be representative of the current period whilst respecting the traditional scheme composition.*

The proposed development includes colours that have been supported by Council's Heritage Advisor as being representative of the current times however respect traditional colour schemes.

The development is comprised of the following:

Specifically,

- weatherboard cladding will be *shou sugi ban*, charred wood with a clear sealant finish, or will have a Dulux 'soft mauve' paint finish;
- FC sheeting will have a Dulux 'soft mauve' paint finish or a Dulux 'antique white' finish;
- timber batten cover strips will be finished in 'surfmist'; and timber batten cladding will have an oil base finish.

Additional detail is available on the plans.

*C12. Colour and tone are effective as a unifying element to interpret characteristic heritage conservation area materials and colour within infill development.*

See comment above.

Conclusion:

Council's Strategic Planning Unit has considered the proposed development from a Heritage perspective and support the application.

B20-Uki Village

The aims of B20 are to:

- Facilitate the implementation of the objectives and provisions relating to the Uki Village with regard to the Tweed LEP 2000 and other codes, policies and plans applicable to Uki;
- Provide controls to protect the identified heritage values and significant character of the village of Uki and encourage contemporary design that responds appropriately to that character;
- Encourage a broad range of community, commercial and service uses to support the village community;
- Integrate planning, design and decision making associated with development initiated by the private and public sectors; and
- Enable appropriate consideration of proposed development applications to be made by applicants, the community and Council.

The DCP identifies various land use precincts for the village. The subject site is located within the Main Street Precinct, the objectives of which are:

- O4. To retain the traditional business and community role of the village and surrounding rural area.*
- O5. To promote the vitality of the precinct by encouraging new development that incorporates a mix of commercial (and/or community) and residential uses.*

The proposal is consistent with the objectives of this precinct as it retains existing established businesses in the village and provides a mix of residential and commercial uses.

The DCP contains Design Elements to guide the future development of the village. These design elements include controls for Land Use Planning, Urban Design, Movement and Access, Infrastructure and Environment. Each design element contains objectives, performance criteria and acceptable solutions designed to achieve these objectives.

An assessment has been undertaken against the elements' performance criteria and acceptable solutions. The proposal is generally consistent with the relevant criteria with a variation justified for vegetation removal. This is required to achieve compliance with Planning for Bushfire Protection 2006 and to provide a design which responds to the site constraints and to achieve other controls of the DCP. The variation to B20 is discussed below.

*A5 Existing mature vegetation is to be retained and incorporated into new development where possible. Mature vegetation that is lost due to new development is to be replaced within any proposal.*

Assessment comment:

The applicant's SEE advises that *vegetation removal is necessary to enable the site to be redeveloped with access to the rear in accordance with Tweed DCP Section A18 - Heritage - and to ensure that an asset protection zone is provided in accordance with Planning for Bush Fire Protection 2006. This is important, not only for the proposed development, but for bush fire safety purposes for the existing dwelling on the site.*

The reasons for vegetation removal are considered justified.

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

The site is not affected by a planning (or draft) planning agreements under Section 7.4.

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

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

The site is not located within an area subject to the Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

The proposal includes demolition works. Accordingly, the application has been considered in accordance with Clause 92(1). Appropriate conditions have been included.

Clause 93 Fire Safety Considerations

Clause 93 Environmental Planning & Assessment Regulation 2000.

“Clause 93 Fire safety and other considerations

- (1) This clause applies to a development application for a change of building use for an existing building, being a development application that does not seek the rebuilding, alteration, enlargement or extension of the building.”

Clause 93 does not apply as the proposal includes building works.

Clause 94 Buildings to be upgraded

Clause 94 Environmental Planning & Assessment Regulation 2000.

Pursuant to Clause 94 of the regulation a consent authority is to take into consideration the following:

94. Consent authority may require buildings to be upgraded

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

- (a) the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls, or
- (b) the measures contained in the building are inadequate:
  - (i) to protect persons using the building, and to facilitate their egress from the building, in the event of fire, or
  - (ii) to restrict the spread of fire from the building to other buildings nearby.

This clause is not applicable as no additions/alterations are proposed.

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

The site is not located under any coastal zone management plans.

**Tweed Shire Coastline Management Plan 2005**

The subject site is not located within an area that is affected by the Tweed Shire Coastline Management Plan 2005.

**Tweed Coast Estuaries Management Plan 2004**

Not applicable to the subject site.

**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 in proximity to either the Cobaki or Terranora Broadwater to which this plan relates, this Plan is not considered relevant to the proposed development.

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

**Context and Setting**

The site is located in central Uki Village, which is characterised by a mix of retail and commercial uses traditionally expected within a village that serves the outlying rural areas. The village is identified as a heritage conservation area under Tweed Local Environmental Plan 2014.

The property is bound by a single storey commercial building to the east, which contains 'The Fair Trade Shoppe' and a single storey dwelling to the west. The building containing The Fair Trade Shoppe is a Local Heritage Item under the Tweed LEP 2014.

To the north, on the opposite side of Milsoms Lane, is the Tweed River. Opposite the site on Kyogle Road is the Uki Public School and the Holy Trinity Church of England. The church is also a Local Heritage Item.

#### Access, Transport and Traffic

##### Vehicle:

The subject site currently fronts and is accessed via Kyogle Road. Kyogle Road is a sealed rural collector road in reasonable condition in the location of the Village of Uki.

The site currently backs onto Milsoms Lane. Milsoms Lane is a gravel track located behind the shops and residences fronting Kyogle Road.

The proposed works include the removal of the existing driveway on Kyogle Road, works in Milsoms Lane to demolish the existing rock retaining wall and excavations up to 3.5m in height to facilitate access and onsite parking. The proposed retaining walls are located within the property boundary although excavation and works to construct the walls will be required in the Milson Lane road reserve.

##### Pedestrian:

An existing footpath is located along the site frontage on Kyogle Road and is currently constructed of fine gravel. This is required to be upgraded to Council's standards i.e. 1.2m wide reinforced concrete footpath for low maintenance. A condition of consent has been recommended for the upgrade.

Additionally, a footpath is proposed between Lot 4 and Lot 5. The footpath links the proposed car park on Milsoms Lane to the existing footpath on Kyogle Road. A condition of consent has been applied requiring an easement for public access over the path.

#### Flora and Fauna

The subject application seeks consent to remove 4 local native trees. The applicant submitted a Proposed Landscape Plan Dwg. No. A-104 (F) dated 16 May 2018 prepared by Christian Zambelli

Based on the sweep path plans, and that substantial upgrade to Milsoms Lane is not be required, impact on riparian vegetation to the north would likely be negligible.

The proposed vegetation removal is acceptable and consistent with applicable policies. All relevant conditions have been applied with this regard.

#### Geotechnical Assessment and Stormwater Management

Geotechnical issues were identified by Council during the assessment of the subject application. Following is a summary of reports submitted to Council, a conclusion on the geotechnical advice is following:

GI1 was provided in response to a request for information initiated from the Roads and Stormwater Unit assessment of the proposal to pipe the development's stormwater under Milsoms Lane and discharge down the embankment to the Tweed River:

*“Further detail of the proposed culvert under Milsoms Lane and its associated discharge to the Tweed River is required. The adjacent riverbank is steep and prone to erosion. An assessment of the need for scour protection/stabilization on the bank is required and the scope of any works must be defined.”*

GI1 “details the results of a geotechnical investigation for the proposed stormwater culvert discharge...” from the development.

GI1 is based on site investigations by geotechnical engineers but is qualified as follows:

*“Access to the culvert discharge area was restricted due to the steeply sloping terrain, and the investigation was limited to hand augering of one borehole only and dynamic cone penetrometer (DCP) testing.” The height and steepness of the river embankment, and the presence of a previous rock revetment adjacent to Milsoms Lane were noted observations.*

No recommendations appear to have been made based on the actual field tests, noting that the borehole only extended to a depth of 0.4m and found very stiff clay and no groundwater.

As such, Section 5 - Results and Recommendations is “based on experience with similar conditions”. The report assesses “a ‘possible’ to ‘likely’ likelihood of instability” given the slope and prevailing geology. This conclusion is generally agreed, given Council's experience in such conditions, and the evidence of previous slope revetment.

The report goes on to state that “the discharge of stormwater onto the embankment face in its current condition would further increase the likelihood of instability”. Again this is generally agreed, hence the RFI requesting further assessment and mitigation measures.

The statement from GI1 that seems to have been most concerning for Council officers is this:

*“it is evident that the risk of failure of the embankment is of an unacceptable level, even in its current condition and therefore any increase in likelihood would be unacceptable. In such instance it is recommended that future development along this vicinity of Milsoms Lane consider mitigation measures to protect the existing embankment”.*

This assessment appears based on the consequences (cost) to private development, Milsoms Lane, and the infrastructure contained within it (sewerage), should the embankment fail.

GI1 then recommends mitigation measures for the development, being a rock berm that traverses the embankment from the discharge point to the river's edge, to



prevent further slippage and erosion. It would involve vegetation removal and potentially reconstruction of the existing rock revetment.

G11 was submitted to Council with a covering letter from Ingen Consulting (4/12/18), the applicant's civil engineers, stating that the proposed slope mitigation measures would render the development economically unviable. It requested that Council, as the asset owner, undertakes slope stabilisation to permit further development along the laneway. Council officers' position is that the laneway is fit for current uses and no upgrades are proposed. At this point the Development Engineering recommendation was for refusal of the application.

Based on a likely refusal of the application, the applicant provided further information to try and address the instability issues in Milsoms Lane.

Ingen amended the stormwater design to direct the majority of development runoff (roof areas) to Kyogle Road, such that only the rear yard and carparking is directed to Milsoms Lane. In a memo compiled by Council's Engineering unit dated 23/1/19 it was agreed in principle that this would rectify the stormwater issues associated with the potential embankment instability, but that overall risk to the lane still needed to be addressed satisfactorily.

G12 confirmed that without the stormwater discharge culvert under Milsoms Lane, the instability risk remains "possible to likely" – that is, the development will not worsen existing conditions. G12 concludes that this risk is now "acceptable", however G12 was silent on any impacts of additional vehicle loadings on the laneway due to construction or operational phases of the development.

G13 clarified that the scope of G11 was to "specifically comment (on) the effects of stability caused (from) the proposed stormwater culvert". In response to Council's request to comment on the inconsistency between the "unacceptable" risks from G11 and "acceptable" risks in G12, G13 clarifies that "these risks are "existing" and it is considered the proposed development ... will not change these existing risks". G13 confirmed that no geotechnical assessment of the existing condition of Milsoms Lane had been undertaken, and that the risks of slope instability would not change due to the amended development.

### **Conclusion:**

The Roads and Stormwater Unit accepts the position that the development, with its modified stormwater proposal will not significantly change the existing instability risk to Milsoms Lane. Milsoms Lane will continue to provide low volume traffic access to the properties it services, as well as Council infrastructure. The development may increase traffic on the laneway, however this is unlikely to increase instability risks. Should future instability become evident, it will be Council's imperative to rectify it, to preserve Council infrastructure and private access via the road reserve.

The following conditions have been applied as Prior to issue of a Construction Certificate:

- All roof water from the development is to be piped to Kyogle Road. Yard and carparking areas that cannot grade to Kyogle Road are to drain toward Milsoms Lane as dispersed overland flow. Flow spreaders and energy

dissipation devices shall be installed as necessary to mitigate any areas of concentrated stormwater flow toward Milsoms Lane, with details shown in the Construction Certificate application. Impervious surfaces in the yard and carparking areas are to be minimised;

- The development shall be designed to avoid any increased risk of slope instability in Milsoms Lane. The design shall be certified as such by a qualified and experienced geotechnical engineer;
- A Construction Management Plan shall be submitted with the Construction Certificate application detailing how the construction shall be carried out such that loadings and vibrations from plant, equipment, stockpiles, and the like do not increase the likelihood of slope instability in Milsoms Lane, and are in accordance with recommendations from a qualified and experienced geotechnical engineer; and
- Approval of the development does not permit any post-construction increase in heavy vehicle usage of Milsoms Lane to service the development. All deliveries and servicing employing heavy vehicles are restricted to the Kyogle Road frontage, unless prior approval is obtained from Council's Manager Roads and Stormwater.

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

Topography

The site is relatively flat at the Kyogle Road frontage and slopes away at the rear towards Milsoms Lane. Levels range from RL 23m along the Kyogle Road boundary falling to RL 20m at Milsoms Lane. A fall of 3m is located at the rear over a distance of 14m providing a gradient of 20%.

Site Orientation

The subject site comprises two (2) parcels of land described as Lots 4 and 5 DP 8107 (No. 1470 & 1472) Kyogle Road, Uki. It also includes part of the Kyogle Road reserve as it is proposed to construct shop awnings over the pedestrian footpath along the frontage of the site.

Lots 4 and 5 DP 8107 are both a regular rectangular shape and have frontages to Kyogle Road to the south and Milson Lane to the north (rear).

Property details			
Lot	Area	Kyogle Road frontage	Milsoms Lane frontage
4	393m <sup>2</sup>	13.41m	13.51m
5	434.5m <sup>2</sup>	14.02m	14.125m
Total	827.5m <sup>2</sup>	27.43m	27.63m

The subject site contains a single storey fibro dwelling which is located over the common boundary of Lots 4 and 5. A carport and shade shelter associated with this dwelling is located on Lot 5. Part of the dwelling is used for displaying custom made timber furniture (Illusive Wood Design).

Vehicular access to the carport on the site is from Kyogle Road, however a concrete driveway is also constructed from Milsoms Lane onto Lot 5. There is no formal vehicular access point(s) to Lot 4.

The site is relatively flat towards its southern (Kyogle Road) boundary where the dwelling is located and then slopes down to Milsoms Lane.

The site contains established gardens and a paved path at the rear.

### Stormwater

The lawful point of discharge for the site is Milsoms Lane which is adjacent to the Tweed River. The application as lodged with Council proposed stormwater to be directed from the car park directly opposite into the Tweed River. This was not supported by Council given Geotechnical constraints and substantial works required within Milsoms Lane. Accordingly the application was amended.

The proposed parking is now to be constructed of grasscrete pavers to allow stormwater penetration and all roof water is to be piped to Kyogle Road, with some minor overflow expected to the rear of the site.

The application was referred Council's Flooding and Stormwater Engineering Unit who advised the following:

*"the proposed alternative stormwater layout could achieve a reasonable outcome and could be an acceptable solution to the LPOD issue, subject to assessment of detailed plans".*

The application is suitable for conditional approval and additional details will be provided to Council under a Section 68 application.

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

### Public Submissions Comment

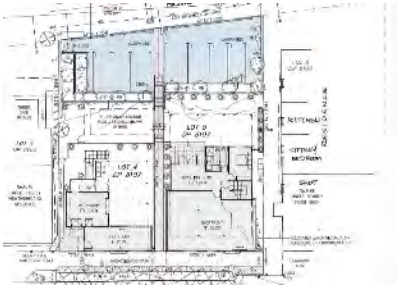
The application was advertised in accordance with Section A11 Public Notification of Development Proposals of the Tweed DCP 2008.


The advertising period was from Wednesday 5 September 2018 to Friday 5 October 2018. During this period, one submission was received (two letters of support were also received). The issues are outlined below, with the applicant's response following.

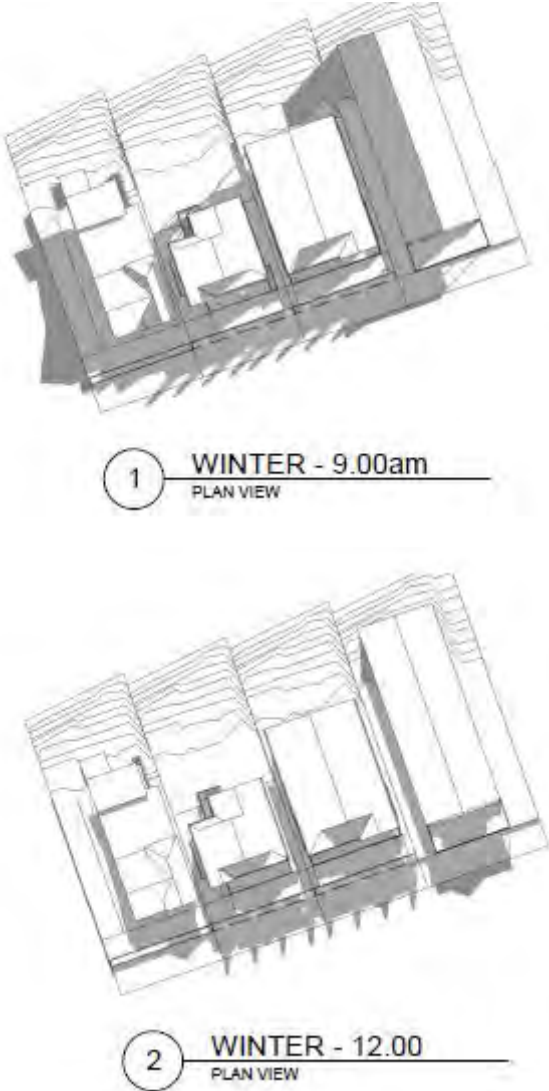
The primary objections are that the visual bulk of the building will significantly reduce access to light and sunlight, will devastate current views, significantly affect privacy, and will have severe effects on the amenity of the house.

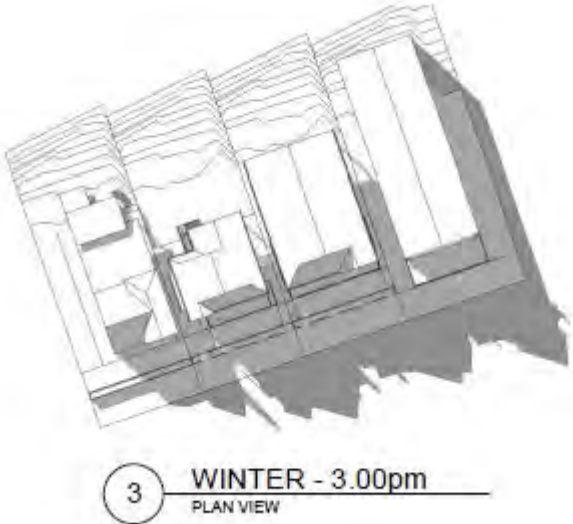
The submitter's property is adjacent to the eastern boundary of the subject site.

<b>Issue</b>	<b>Council response</b>
<b>Light/Amenity:</b> The kitchen window will have diminished light.	Based on available plans, the kitchen is adjacent to the proposed deck area for the dwelling on Lot 5




Issue	Council response
<p>The primary living space on the western side is a bedroom, sitting room and one of the rooms in which I work. It will have both its windows fully obscured by an 8.5m building less 1.5 metres from my boundary.</p> <p>I will have no light or view of the sky from my bed and no light or view of sky from the chair in front of my fireplace.</p> <p>This is based on an estimate that the angle from both those places to the edge of the roof on the proposed building is 30 degrees.</p> <p>That angle has been calculated by a building designer.</p> <p>I will lose a significant portion of both summer and winter light and sunlight.</p> <p>I will lose significant privacy as the kitchen will directly overlook my bedroom/sitting room. The kitchen has three large windows directly overlooking my bed. Numerical guidelines for the separation of dwellings exist in the Australia-wide guideline, AMCORD. AMCORD recommends a separation of 9m between</p>	<p>(which is to be screened along the eastern side) this area is also separated by a distance of approximately 3.5 metres.</p>  <p>Based on shadow diagrams this area of the building (kitchen) will not be overshadowed at all by the proposed development. There will be some diminished light. However the development is compliant and it is anticipated that any development on the adjoining site has the potential to slightly reduce lighting. It is not anticipated that there will be any significant impact on amenity.</p> <p>The sitting/bedroom of the objector's residence is located opposite the proposed ground floor bedroom and upper level kitchen.</p> <p>The proposed development is compliant with the required side setbacks. Accordingly a distance of approximately 3.5 metres will separate the two buildings at this point (based on scaled interpretation of the survey plan).</p> <p><u>Summary:</u></p> <p>There may be some reduction in natural light to the western elevation of the objector's sites. However the development is compliant with the height and FSR controls.</p> <p>Please see comments above regarding light.</p> <p>Additionally, the objector's site is located to the east of the development site. The shadow plans at mid-winter indicate that the objector's building shadows its own western elevation until after noon. The proposed development will overshadow part of the building from 3.00pm. It is noted that western side of the objector's building as it is shadowed by itself until the afternoon has limited direct sunlight currently. The impact in terms of shadowing from the proposed development meets the required standards.</p> <p>With regards to lose of privacy it is advised that at level 1 in the kitchen area – the proposed windows (3) are highset 300mm deep 1100mm long windows.</p>

Issue	Council response
<p>habitable rooms. (Wilson v Manly Council [2009] NSWLEC 1013 (21 January 2009). That has not occurred in this project design.</p> <p>I will likely receive a small amount of light from the more northerly of this bed/sitting/work room's windows as a result of light coming in underneath the proposed deck.</p> <p>I will likely receive no sunlight based on the court's view that "to be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5o" (The Benevolent Society v Waverley Council [2010] NSWLEC 1082)</p> <p>The Fair Trade Shop currently occupies three rooms at the front of the building. The west facing room will, like my living area, have virtually all its light, sunlight and views blocked. Currently, that isn't a problem as the room is being used for storage, but historically that room has been a bedroom, including when I first moved in, and a consulting room for</p>	<p>There is no impact for overlooking anticipated.</p>  <p>Additionally it is advised that the separation distance of 9.0m is generally shared over sites. Accordingly, 4.5m is assumed on each lot. The objector's property is not setback 4.5m and Lot 5 only has a frontage of some 14m.</p> <p><u>Summary:</u></p> <p>The intent is to minimise overlooking and impacts on privacy. It is not considered that the highset 300mm deep windows will have a significant impact.</p> <p>Noted.</p> <p>The development is to the west of the objector's site. The shadow diagrams indicate minimal overshadowing from the propose development and the development is below the prescribed height limit and compliant with the required setbacks.</p> <p>See comments above.</p>

Issue	Council response
<p>medical and alternative health practitioners.</p> <p>The loss of amenity will greatly limit future options for this space.</p> <p><b>Shadow Diagrams:</b></p> <p>I note too that the Sun Study plans are not oriented to true north but are approximately 9.5% west of true north. These Sun Study plans should be redone with the proper azimuth.</p> <p>This will show that the amount of light that the western side of my house will receive is even less than the current proposal indicates.</p> <p>Additionally, the plans fail to show the location of windows and living areas in this building making it impossible for Council to actually assess impacts on light, privacy and amenity.</p>	<p>The shadow plans as submitted to Council are indicative and are considered to demonstrate minimal impact from the proposed development. The subject site is located to the west of the objector's site and is compliant in terms of height and setbacks. See additional comments above.</p> 

Issue	Council response
	
<p><b>Height:</b></p> <p>DCP B20 for Uki Village, notes that heights “must conform to those of adjoining significant heritage items.”</p> <p>The plans characterise my home as a single story fibro shop. It is single storey but it is one of the best examples of heritage architecture in Uki, and the proposal does not, as it must, conform to the height of this building. I note that the DCP does not restrict this requirement solely to streetscape.</p> <p>It should also be noted that as a single story heritage home, I cannot add a second story to this house.</p>	<p>The development was referred to Council’s Heritage Advisor, who supports the proposed development. The following comments were provided with this regard:</p> <p><i>The drawings and SOHI provided with the proposal for two shops with residential have been reviewed and demonstrate the previous heritage advice has been incorporated. Further, the history and significance have been thoroughly researched, and the SOHI provides a comprehensive analysis of the history and significance aspects.</i></p> <p><i>As recommended in the SOHI, encouragement is given to interpretation of the precinct as ‘Rotten Row’ either by Council’s future improvements in the locale (noted) or by the property owners in seeking to provide increased heritage interpretation at their property.</i></p> <ul style="list-style-type: none"> <li>• <i>The proposal to remove the existing dwelling and structures does not impart detrimental impact on the cultural heritage significance of the Uki Conservation Area.</i></li> <li>• <i>Due to the level of modification and the lack of original fabric evident in the existing buildings, an archival record is not recommended to be requested.</i></li> <li>• <i>Generally, the heritage aspects are not detrimentally impacted and approval of the appropriate design is supported.</i></li> </ul>



Issue	Council response
	 <p data-bbox="791 504 1493 571">Refer to comments above and heritage assessment within the report.</p>
<p data-bbox="352 607 560 636"><b>Loss of views</b></p> <p data-bbox="352 658 756 864">loss of a dramatic view of Wollumbin – a view not available anywhere else in the house and one that this building has had for over 100 years.</p> <p data-bbox="352 887 762 1162">There is no question that Wollumbin is an icon of this area. My current view takes in the whole of Wollumbin and Mt Uki and The Sisters in front of it. This will be completely lost if this proposal proceeds.</p> <p data-bbox="352 1184 762 1424">I have glimpses of Wollumbin through trees from my kitchen window and an equally limited view if I lean over one corner of my verandah, but this loss will clearly be devastating.</p> <p data-bbox="352 1447 762 1722">No assessment of the impact of this development on my views has occurred. I request that Council require, as you are entitled to do, diagrams showing likely impacts on privacy and views (see DCP 20, Uki Village).</p>	<p data-bbox="791 607 1493 813">There is no doubt that Mount Wollumbin is an icon and some views may be lost as a result of the development. However the development is compliant with height and density controls under the TLEP 2014 and applicable sections of the DCP, no variation with this regard is anticipated.</p> <p data-bbox="791 835 1493 902">The site is zoned RU5 Village and a range of permissible uses could be developed on the site.</p> <p data-bbox="791 925 1493 992">Additionally, it is noted that the submission advises that:</p> <p data-bbox="791 1014 1493 1111"><i>“My current view takes in the whole of Wollumbin and Mt Uki and The Sisters in front of it. This will be completely lost if this proposal proceeds”</i></p> <p data-bbox="791 1133 855 1162">And</p> <p data-bbox="791 1184 1493 1281"><i>“I have glimpses of Wollumbin through trees from my kitchen window and an equally limited view if I lean over one corner of my verandah”</i></p> <p data-bbox="791 1303 1493 1400">Notwithstanding this an assessment of the view sharing principles has been undertaken and is provided following this table.</p> <p data-bbox="791 1422 1493 1518">It is also noted that the subject site includes significant vegetation and any views would most likely be filtered.</p> <p data-bbox="791 1541 962 1570">Site images:</p>  

Issue	Council response
	
<p><b>Streetscape:</b></p> <p>While a two story façade conforms with the character of the streetscape it does not conform with the character or reality of sides of buildings in the commercial area of Uki. The only two story buildings on this side of the street in Uki do not loom above residences.</p> <p>The bulk of this proposed 2 story building, less than a metre from my boundary will completely dominate a western side of a residence that currently has views of residences but no visual, light or sunlight obstructions.</p> <p>Currently, there is a sense of openness on the western side of the building that I do not have on the eastern side. If this proposal is permitted there will be a severe sense of enclosure on both sides.</p>	<p>The development is compliant with the mapped height limit under the TLEP 2014, DCP Section A1 and B20. The development is not considered to appear out of character with the surrounding area or the adjoining properties. See below a street perspective as extracted from the proposed plans for the subject application.</p> <p>More images are contained with the SOHI.</p>  <p>The development is setback a minimum of 910mm to the side boundary at ground level and 1.52m at the first floor. The development is compliant with the controls.</p> <p>Additionally it is noted that there is approximately 3.5m of building separation.</p> <p>The site is located within an RU5 zone in the Uki Village town centre. The development is considered suitable for the site and area. It is anticipated that development will occur.</p>
<p><b>Site Cover:</b></p> <p>The DCP, Part A, indicates that site coverage for a block this size can be a maximum of 55%.</p>	<p>Section A1 of the DCP states that the maximum areas for impervious surfaces are: - 70% of the allotment - on lot sizes less than 500m<sup>2</sup>; or</p>

Issue	Council response
<p>The level of coverage, which I understand to include the house footprint and hard surfaces is much great than that. Including the required parking spaces means that approximately site coverage is approximately 90%.</p>	<p>60%of the allotment - on lot sizes greater than 750m<sup>2</sup>.</p> <p>The site is comprised of two land parcels which have been designed to operate independently, though share parking and access.</p> <p>Lot 4 = 392sqm            Lot 5 = 432sqm            Total = 824sqm</p> <p>The proposed parking area is grass cell pavers, which has a permeable calculation of 0.5.</p> <p>The proposed buildings, 1.2m footpath, grass cell parking area and paved path on Lot 4 wide footpath are comprised of impermeable area which equates to an area of 464.4sqm, therefore represents a total impervious calculation of approximately 56% which is compliant with Section A1.</p>
<p><b><u>Access:</u></b></p> <p>The proposed use of Milson's lane for 7 to 8 cars is, I understand, a requirement of Council.</p> <p>I strongly object to this. Milson's lane is commonly (and primarily) used by pedestrians, children, bicyclists and dog walkers to access Uki beach and the reserve along the Tweed. It is extremely narrow, with precipitous drops of around 14 metres at lots 4 and 5. Currently, between 0-2 cars a day use that lane past the bitumen (which ends at my lot 6). Such a significant increase in road traffic that is envisaged is dangerous for everyone. Plans indicate that access to the parking areas will be forward meaning cars will have to back out.</p> <p>There is no line of sight to see pedestrians coming and the width of the lane makes</p>	<p>The application has been considered by Council's Traffic Engineer. The development has been supported to have six (6) onsite parking spaces and will be sign posted to ensure vehicles reverse onto the site to allow exit in a forward direction.</p> <p>Milsoms Lane is a Road Reserve and is for vehicular access.</p>

Issue	Council response
<p>backing out with an SUV or vehicle very risky.</p> <p>Even in my driveway, which is a slightly wider section of road, utes and SUVs – even ones who are familiar with my driveway –require several turns before they can leave. Most days there is adequate parking on Kyogle Road or a the Buttery. On the monthly market day, there is no access to Milson’s lane in any event.</p>	

**View sharing**

*To ensure dwellings respect important views from living areas and rooms within the existing neighbouring dwellings and employs the principles of view sharing.*

In addition to the above objectives, having regard to the planning principles established in *Tenacity Consulting v Warringah Council* (2004) NSWLEC, a four step assessment of view sharing is detailed below:

1. The first step  
*is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour bridge or North Head) are valued more highly than views without icons.*

*Whole views are valued more highly than partial views, eg, a water view in which the interface between the land and water is visible is more valuable than one in which it is obscured.*
2. The second step  
*is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant.*

*Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*
3. The third step  
*is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas. The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the opera house. It is usually more useful to*

*assess view loss qualitatively as negligible, minor, moderate, severe or damaging.*

4. The fourth step *is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance, with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that questions is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

Applying the above principles to Kyogle Road, it is considered that the view to Mount Wollumbin is valuable.

It is noted that the view is obtained over the subject sites side boundary and is obscured. It is noted that the current view from the adjoining property is obtained across the development site(s) and a number of other sites from a standing (leaning) or possibly a sitting position from inside the adjoining dwelling, whilst currently valuable given the distance, that the view is over a side boundary, is obscured by vegetation and separation the view loss in this instance is described as minor. In regards to the reasonableness of the proposal, it is largely compliant with the applicable development standards contained with the Tweed LEP 2014 and the Tweed DCP 2008.

It is therefore considered that the proposal does not significantly or unreasonably reduce the amenity enjoyed by the occupants of the adjoining land.

**Applicant's response to submission:**

SUMMARY OF OBJECTION	APPLICANTS RESPONSE
The primary objections are that the visual bulk of the building will significantly reduce access to light and sunlight, will devastate current views, significantly affect privacy, and will have severe effects on the amenity of the house.	The objector's submission goes into further detail regarding these matters which is addressed below. In summary, we are of the opinion that the proposal satisfactorily addresses Councils code and policy requirements.
The kitchen window will have diminished light. My primary living space on the western side is a bedroom, sitting room and one of the rooms in which I work. It will have both its windows fully obscured by an 8.5 m building less 1.5 metres from my boundary. I will have no light or view of the sky from my bed and no light or view of sky from the chair in front of my fireplace. This is based on an estimate that the angle from both those places to the edge of the roof on the proposed building is 30 degrees. That angle has been calculated by a building designer.	<p>The objector's property is adjacent to the eastern boundary of the subject site. The sitting/bedroom of the objector's residence is located opposite the proposed ground floor bedroom and upper level kitchen. A distance of approximately 3.5 metres separates the two buildings at this point (based on scaled interpretation of the survey plan).</p> <p>The kitchen is adjacent to the proposed deck which partially screened along the eastern side and is also separated by a distance of approximately 3.5 metres.</p> <p>The proposed mixed-use building on Lot 5 meets Councils building setback requirement as there are no windows of the living room facing the adjacent dwelling.</p>



<p>I will lose a significant portion of both summer and winter light and sunlight. I will lose significant privacy as the kitchen will directly overlook my bedroom/sitting room. The kitchen has three large windows directly overlooking my bed. Numerical guidelines for the separation of dwellings exist in the Australia-wide guideline, AMCORD. AMCORD recommends a separation of 9m between habitable rooms. (<i>Wilson v Manly Council</i> [2009] NSWLEC 1013 (21 January 2009)). That has not occurred in this project design.</p> <p>I will likely receive a small amount of light from the more northerly of this bed/sitting/work room's windows as a result of light coming in underneath the proposed deck. I will likely receive no sunlight based on the court's view that "to be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5°" (<i>The Benevolent Society v Waverley Council</i> [2010] NSWLEC 1082)</p>	<p><u>Overshadowing</u></p> <p>In relation to sunlight access, Tweed DCP Section A1 Part C requires that:</p> <p><i>For neighbouring properties ensure:</i></p> <ul style="list-style-type: none"> <li>o <i>sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21, and</i></li> <li>o <i>windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.</i></li> </ul> <p><i>Where existing overshadowing by buildings is greater than this, sunlight is not to be further reduced by more than 20%.</i></p> <p>The proposal complies with the sunlight access requirements of the DCP with respect to impact on areas of private open space.</p> <p>With respect to the impact on living areas, based on the floor layout provided by the objector, the western portion of their building contains a shop, bedroom/sitting room, kitchen and storage area. There is no indication of the location of a main living room.</p> <p>The shadow diagrams indicate that the western side on the objectors building, adjacent to the subject site, is slightly shadowed by itself at 12pm in winter. There is no impact from the proposed building at this time. By 3pm, the proposed building would shadow the front (approximate) half on the objectors building. This would affect the shop and bedroom/sitting room, but not the kitchen or rear room. There would be no impact from the proposal to the objectors access to sunlight from their northern or eastern windows.</p> <p>In this regard, it is submitted that overall, the objectors building would retain a suitable level of solar access throughout the day and the proposal is satisfactory with respect to overshadowing considerations.</p> <p><u>Privacy and Building Separation</u></p> <p>The proposed kitchen windows are narrow (600mm deep) and located 1500mm above floor level to their underside. They are deliberately designed and positioned this way to provide light into the proposed dwelling whilst limiting potential privacy impacts to the</p>
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	<p>neighbours.</p> <p>The occupant of the proposed dwelling would be looking above the adjacent building, rather than into it.</p> <p>Councils requirements for building separation controls are contained in Tweed DCP Section A1. In his regard, the assessment of the relevant controls indicates compliance (refer to Appendix K of the Statement of Environmental Effects).</p> <p>Consequently, it is submitted that opportunities for overlooking and impacting on privacy would be minimal and acceptable given that the proposed setbacks satisfy the requirements of Councils DCP.</p> <p>As discussed, shadow impacts are within acceptable limits given compliance with the DCP.</p>
<p>I note too that the Sun Study plans are not oriented to true north but are approximately 9.5% west of true north. These Sun Study plans should be redone with the proper azimuth. This will show that the amount of light that the western side of my house will receive is even less than the current proposal indicates. Additionally, the plans fail to show the location of windows and living areas in this building making it impossible for Council to actually assess impacts on light, privacy and amenity.</p>	<p>This issue has been reviewed by the project architect who has advised that the proposed development is in accordance with Council's permissible works. To provide the level of accuracy suggested by the objector, a full 3D topography of the mountains would need to be done in order to get a true representation of the local site. This would be an extensive sun study to undertake and in this instance is not reasonable or justified. The shadow diagrams provided are an indicative representation of the shadows being cast by the proposed development.</p>
<p>DCP B20 for Uki Village, notes that heights "must conform to those of adjoining significant heritage items." The plans characterise my home as a single story fibro shop. It is single storey but it is one of the best examples of heritage architecture in Uki, and the proposal does not, as it must, conform to the height of this building. I note that the DCP does not restrict this requirement solely to streetscape. It should also be noted that as a single story heritage home, I cannot add a second story to this house.</p>	<p>The buildings were designed in close consultation with Councils Heritage Advisor and the overall design examined as part of the Statement of Heritage Impact. It is submitted that the proposal is satisfactory in this regard and meets the Acceptable Solutions contained in Tweed DCP Section B20 - Uki.</p>
<p>The loss of amenity, privacy and light is exacerbated by the loss of a dramatic view of Wollumbin – a view not available anywhere else in the house and one that this building has had for over 100 years.</p>	<p>The objector's residence enjoys filtered views through existing vegetation on Lot 5. This is achieved as the existing dwelling on the subject site is located towards the western portion of the properties, over the common boundary of Lot 4</p>



<p>There is no question that Wollumbin is an icon of this area. My current view takes in the whole of Wollumbin and Mt Uki and The Sisters in front of it. This will be completely lost if this proposal proceeds. I have glimpses of Wollumbin through trees from my kitchen window and an equally limited view if I lean over one corner of my verandah, but this loss will clearly be devastating.</p> <p>No assessment of the impact of this development on my views has occurred. I request that Council require, as you are entitled to do, diagrams showing likely impacts on privacy and views (see DCP 20, Uki Village).</p>	<p>and 5. Therefore, there is currently a large setback to the objector's land.</p> <p>Lot 5 DP 8107 has a dwelling entitlement in its own right. The property has a width of 14.02 metres. Therefore, for any redevelopment to occur on this land, the building must be located closer to the common boundary with the land to the east. By providing a 2 storey structure, the depth of the building can be smaller than for a similar floor space in a single story building. This reduces potential amenity impacts at the rear portion of the site.</p> <p>It is submitted that any redevelopment on the site is going to have an impact on existing views. This is unavoidable, and it is not reasonable to deny the construction of a dwelling on the land because the adjoining site has taken advantage of views that they have historically had due to the absence of development close to the common boundary.</p> <p>It is further submitted that the proposal is acceptable in this regard as:</p> <ul style="list-style-type: none"> <li>• By providing a 2 storey building, the depth of the structure can be reduced compared to a single storey building with a similar floor space.</li> <li>• Reducing the height of the building to single storey would have a greater impact as the depth of the building would need to increase. A single storey building would also impact these views as its height would be still above the adjoining properties windows, but more windows would be potentially affected.</li> <li>• Views from some areas of the objectors property would be opened up by the removal of vegetation as part of this proposal, which is required for bush fire protection purposes.</li> </ul>
<p>While a two story façade conforms with the character of the streetscape it does not conform with the character or reality of sides of buildings in the commercial area of Uki. The only two story buildings on this side of the street in Uki do not loom above residences. The bulk of this proposed 2 story building, less than a metre from my boundary will completely dominate a western side of a</p>	<p>The sense of openness that is achieved on the western side of the objectors residence is due solely to the fact that the existing dwelling is located on the western portion of subject land, over the common boundary of Lots 4 and 5. As discussed, both lots have their own dwelling entitlement and it is reasonable to allow both lots to be developed for the uses proposed, which is in accordance with the Tweed LEP 2014</p>

<p>residence that currently has views of residences but no visual, light or sunlight obstructions. Currently, there is a sense of openness on the western side of the building that I do not have on the eastern side. If this proposal is permitted there will be a severe sense of enclosure on both sides.</p>	<p>and Tweed DCP Section B20 - Uki. The setbacks proposed, and the height of the buildings are something that can be reasonably be expected within the main street precinct of a village centre.</p>
<p>The Fair Trade Shop currently occupies three rooms at the front of the building. The west facing room will, like my living area, have virtually all its light, sunlight and views blocked. Currently, that isn't a problem as the room is being used for storage, but historically that room has been a bedroom, including when I first moved in, and a consulting room for medical and alternative health practitioners. The loss of amenity will greatly limit future options for this space.</p>	<p>The setbacks of the proposal complies with all relevant requirements, and is entirely suitable for the main street area of the village centre. It is submitted that the proposal cannot be refused on the basis of a future unknown use, particularly when the proposal has been designed in accordance with current policy.</p>
<p>The DCP, Part A, indicates that site coverage for a block this size can be a maximum of 55%. The level of coverage, which I understand to include the house footprint and hard surfaces is much great than that. Including the required parking spaces means that approximately site coverage is approximately 90%.</p>	<p>The proposal has been assessed under Part C of Tweed DCP Section A1 as the proposal includes a shop as well as a dwelling. It has been demonstrated that the proposal complies with the maximum impervious surface area requirement. Notwithstanding, the objectors understanding that site coverage includes all hard surface areas is not correct. It is noted that the car park will be constructed from Grass Cel.</p>
<p>The proposed use of Milson's lane for 7 to 8 cars is, I understand, a requirement of Council. I strongly object to this. Milson's lane is commonly (and primarily) used by pedestrians, children, bicyclists and dog walkers to access Uki beach and the reserve along the Tweed. It is extremely narrow, with precipitous drops of around 14 metres at lots 4 and 5. Currently, between 0-2 cars a day use that lane past the bitumen (which ends at my lot 6). Such a significant increase in road traffic that is envisaged is dangerous for everyone. Plans indicate that access to the parking areas will be forward meaning cars will have to back out. There is no line of sight to see pedestrians coming and the width of the lane makes backing out with an SUV or vehicle very risky. Even in my driveway, which is a slightly wider section of road, utes and SUVs – even ones who are familiar with my driveway -require several turns before they can leave. Most days there is adequate parking on Kyogle Road or at</p>	<p>Traffic and car parking has been assessed in detail in the Traffic Impact Assessment and found to be satisfactory. The use of Milsoms Lane for access is entirely appropriate and results in the removal of a crossover from Kyogle Road, which is a classified road.  It is good traffic planning practice to provide an alternative access to a classified road, if an alternative public road is available.</p>
<p>the Buttery. On the monthly market day, there is no access to Milson's lane in any event.</p>	

It is considered that the issues raised in the submission do not warrant refusal of the application.

**(e) Public interest**

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

**OPTIONS:**

1. That Council approves the application subject to conditions and write to the applicant and invite them to include details onsite of the “Rotten Row” to provide increased heritage interpretation. These “advertisements” may be subject to separate consent (if not exempt development).
2. That Council approves the application subject to conditions.
3. That Council refuses the application for reasons specified.

The assessing officer recommends option 1.

**CONCLUSION:**

The proposed development has been considered in accordance with the relevant provisions of the NSW Environmental Planning and Assessment Act 1979 and on balance is suitable to be determined by way of approval.

The development is not considered to result in a significant impact to the amenity or uses of the surrounding sites. Appropriate conditions have been applied.

Adequate documentation has been provided by the applicant, and a full assessment has been undertaken based on all relevant issues. The proposal is considered suitable and appropriate for the subject site, given its permissibility under the sites zoning.

Community views were considered as part of the assessment in accordance with Council’s Development Control Plan and the NSW Environmental Planning and Assessment Act 1979 requirements for public notification.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

The applicant has rights of appeal to the NSW Land and Environment Court in respect of any Council determination.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**3 [PR-PC] Development Application DA02/1983.19 for an Amendment to Development Consent DA02/1983 for the Use of Property for Filming and Producing a Television Program at Lot 77 DP 755715 Dungay Creek Road, Dungay; Part Lot 74 DP 755715 No. 366 Dungay Creek**

**SUBMITTED BY: Development Assessment and Compliance**

mhm



Making decisions with you  
*We're in this together*

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

**ROLE: Provider**

**SUMMARY OF REPORT:**

In November 2018 Council received a Modification to the film site "I'm a Celebrity Get Me Out Of Here" (Council reference DA02/1983.19). The modification specifically seeks to modify a relatively new condition (Condition 1.6) of the consent which was drafted and imposed on the applicant at the 15 December 2016 Council Meeting:

- 1.6 Within 90 days of the approval of DA02/1983.17 a traffic counter shall be in place at the gate of the property from the commencement of preproduction until the end of the wrap period. The results are to be submitted to Council demonstrating that no more than **80 vehicles a day** have accessed the site.

The applicant has been self-reporting the results from the traffic counter since July 2017. To date the self-reporting of breaches has resulted in the following Penalty Infringement Notices (PIN's):

- \$6,000 PIN for Granada exceeding the 80 vehicles per day in November 2017
- \$6,000 PIN for Granada exceeding the 80 vehicles per day January 2018

At the Planning Committee Meeting August 2018 Council also resolved that:

*Council work with the applicant to review options for traffic management at the subject site. This could involve a further modification of DA02/1983 to increase the allowable traffic associated with the development or better traffic management (more buses) to accommodate the development as required.*

The current modification has been lodged as a result of the above resolution and specifically states:

*"It is proposed to modify the condition to enable a temporary increase in traffic during the busiest times for the UK and German shows. This is essentially two weeks or so during November and January respectively. The proposed modification retains the 80 vehicles per day for the majority of the year, but enables a temporary increase for a maximum of 35 days to cater for the busy period. This is essential for the production.*

*Further, in order to avoid any confusion or misinterpretation as to how the vehicle numbers are calculated, and what constitutes a 'vehicle accessing the site', it is proposed to clarify this by incorporating a description in an amended Site Management Plan. Pursuant to Section 2.2 of the Site Management Plan, Council's approval to these changes is requested.*

*The applicant made a presentation to Council at a Workshop on 12 July 2018, which included a 'Traffic Numbers Case Study: The Walk In' which highlighted filming events that occur both off and on-site during the busy times, outlined the logistics in providing transport to the site and what happens during those times when things don't go to plan such as during wet weather, when helicopter transport cannot be used."*

To enact this change the applicant proposes Condition 1.6 could be amended to read:

- 1.6 *Within 90 days of the approval of DA02/1983.17 a traffic counter shall be in place at the gate of the property from the commencement of preproduction until the end of the wrap period. The results are to be submitted to Council demonstrating that:*
- i. no more than 80 vehicles a day have accessed the site for a period of 330 days in any year (331 days in a leap year), and*
  - ii. no more than 100 vehicles a day have accessed the site for a period of 35 days in any year.*

***The method for counting the vehicles that are included in these limits is to be in accordance with the Site Management Plan (Amendment 5, September 2018).***

Council's Traffic Engineer has reviewed the proposed amendment and has indicated that Dungay Creek Road is capable (from a safety and capacity perspective) of accommodating the proposed traffic. It was recognised that the Condition appears to have been imposed by Council from an amenity perspective and therefore the subject application was notified to the adjoining neighbours. No submissions were received following the exhibition period between Wednesday 21 November 2018 and Wednesday 5 December 2018.

Therefore it is recommended that Condition 1.6 be modified to reflect the applicants' request albeit with slightly different phrasing than that requested to ensure a clearer interpretation.

The applicant's self-reported vehicular breaches to Condition 1.6 for the 2018/2019 are detailed in the recommendation section of this report should Council wish to issue further penalty infringement notices. Such penalty infringement notices are not recommended as DA02/1983.19 was lodged on 13 November 2018 seeking the increase in vehicles.



**RECOMMENDATION:**

That Development Application DA02/1983.19 for an amendment to Development Consent DA02/1983 for the use of property for filming and producing a television program at Lot 77 DP 755715 Dungay Creek Road, Dungay; Part Lot 74 DP 755715 No. 366 Dungay Creek Road, Dungay; Lot 93 DP 755715 No. 486 Dungay Creek Road, Dungay be approved subject to the following amendments to conditions:

1. Delete Condition 1.6 and replace it with a new Condition 1.6A which reads as follows:

***1.6A Within 90 days of the approval of DA02/1983.17 a traffic counter shall be in place at the gate of the property from the commencement of preproduction until the end of the wrap period. The results are to be submitted to Council demonstrating that:***

- i. Vehicular ingress to the site is limited to 80 each day for 330 days each year and a limit of 100 is to enter the site no more than 35 days each year.***

***Within 90 days of the approval of DA02/1983.19 the applicant is to submit a revised Site Management Plan (for approval under staff delegation) which removes the reference to exclude multiple trips from a single vehicle (Site Management Plan in Section 8.1 - 9) and to include a statement that "Temporary advisory signage is to be installed on Dungay Creek Road, approved by Council, during days when expected traffic generation is expected to exceed 80 entering vehicles per day, advising motorists accordingly."***

**REPORT:**

**Applicant:** Granada Productions Pty Ltd T/A ITV Studios Australia Pty Ltd  
**Owner:** Mr Craig D Parker & Ms Ellen L Parker  
**Location:** Lot 77 DP 755715 Dungay Creek Road, Dungay; Part Lot 74 DP 755715 No. 366 Dungay Creek Road, Dungay; Lot 93 DP 755715 No. 486 Dungay Creek Road, Dungay  
**Zoning:** RU2 - Rural Landscape and 7(d) Environmental Protection (Scenic/Escarpment)  
**Cost:** Nil

**Background:**

Council is in receipt of a S4.55 Modification Application to amend the subject Development Consent for the Granada Productions Pty Ltd T/AS ITV Studios site located at the upper end of Dungay Creek Road, Dungay ('I'm a Celebrity Get Me Out of Here').

Lots 74 and 77 are primarily zoned Rural Landscape RU2 within the current Tweed Local Environmental Plan (LEP) 2014 with a small part of Lot 77 zoned 7(d) Environment Protection Scenic Escarpment under Tweed LEP 2000 as a deferred matter. Lot 93 is zoned primarily 7(d) Environment Protection Scenic Escarpment, with a small portion in its south zoned RU2 Rural Landscape.

The following table details the long history of the subject application which started in December 2002 when the original application was approved with a condition to time limit the development as the applicant at the time considered the activity would be completed by 1 June 2004 and consequently the development consent was time limited to that date.

<u>DA NUMBER</u>	<u>REQUEST</u>	<u>SPECIFIC CONDITIONS</u>
DA02/1983  Lodged 29/11/2002	<ul style="list-style-type: none"> <li>• Temporary use of subject land to June 2004</li> <li>• Use of an existing cleared paddock for car park area, catering facilities, cold rooms and amenities</li> <li>• Provision of a technical base being a modular building</li> <li>• Construction of filming platforms for a studio</li> <li>• Use of land adjacent to the creek as a camp area</li> <li>• Construction of scaffolding and swinging bridges for use by crew during production</li> <li>• Re-arranging existing rock in the creek to create small pool areas</li> <li>• Use of existing shed as site office and workshop</li> </ul>	Approved 20/12/2002  Lapses 1 June 2004
DA02/1983.02  Lodged 05/02/2003	<ul style="list-style-type: none"> <li>• Amend plans for proposed buildings, internal roads and tracks.</li> <li>• An additional suspension bridge in the vicinity of pool C.</li> </ul>	Approved 13/03/2003
DA02/1983.04  Lodged 27/05/2004	<ul style="list-style-type: none"> <li>• Provide a new campsite, constructing a walk track and additional suspension bridge</li> </ul>	Approved 29/09/2003
DA02/1983.05  Lodged 27/05/2004	<ul style="list-style-type: none"> <li>• Time extension from June 2004 to June 2005 (an extension of 12 months)</li> <li>• Erection of a permanent (colorbond) shed</li> </ul>	Approved 07/07/2004  Lapses 1 June 2005



<b>DA NUMBER</b>	<b>REQUEST</b>	<b>SPECIFIC CONDITIONS</b>
DA02/1983.06 Lodged 31/05/2005	<ul style="list-style-type: none"> <li>Time extension from June 2005 to June 2006 (an extension of 12 months)</li> </ul>	Approved 12/08/2005  Lapses 1 June 2006
DA02/1983.07 Lodged 31/10/2005	<ul style="list-style-type: none"> <li>Time extension from June 2006 to June 2008 (an extension of 24 months)</li> </ul>	Approved 16/12/2005  Lapses 1 June 2008
DA02/1983.08 Lodged 06/06/2006	<ul style="list-style-type: none"> <li>Condition to erect permanent shed granted under DA02/1983.05 be deleted as it was never constructed. Replaced with temporary building structures</li> <li>Disabled access be provided within 7 days if a person with a disability is employed</li> </ul>	Approved 19/07/2006
DA02/1983.10 Lodged 22/09/2006	<ul style="list-style-type: none"> <li>Approval for additional temporary portable buildings to be brought onsite for use during pre-filming and filming.</li> </ul>	Approved 13/10/2006
DA02/1983.12 Lodged 03/04/2007	<ul style="list-style-type: none"> <li>Time extension from June 2008 to June 2011 (an extension of 36 months)</li> <li>Amend conditions 34B and 34C to allow commencement of a Community Liaison Committee if deemed necessary by Council</li> </ul>	Approved 10/12/2007  Lapses 1 June 2011
DA02/1983.14 Lodged 27/08/2010	<ul style="list-style-type: none"> <li>Time extension from 1 June 2011 to 1 June 2014 (an extension of 36 months)</li> <li>Inclusion of environmental conditions relating to provision of a Habitat Restoration Plan and a Flora and Fauna Assessment report to Council prior to 2011 filming session commences</li> </ul>	Approved 10/12/2007  Lapses 1 June 2014
DA02/1983.16 Lodged 23/12/2013	<ul style="list-style-type: none"> <li>Time extension from 1 June 2014 to 1 June 2017 (an extension of 36 months)</li> </ul>	Approved 12/03/2014  Lapses 1 June 2017
DA02/1983.17 Lodged 20/10/2016	<ul style="list-style-type: none"> <li>Time extension from June 2017 to June 2020 (an extension of 36 months).</li> <li>Amend the site layout plan to reflect the present requirements for site structures and improvements, these include, the configuration of temporary buildings in the support areas, and two permanent structures (a shed and a small retaining wall).</li> <li>Applicant agrees to inclusion of Environmental Management Plan (EMP) with environmental matters to be resolved within the next compliance audit. i.e. additional restoration area to be established to compensate for the site that is being used during filming.</li> </ul>	Approved December 2016  Lapses 1 June 2020
DA02/1983.18 Lodged 22/02/2018	<ul style="list-style-type: none"> <li>Retaining wall works</li> </ul>	Approved June 2018
DA02/1983.19 Lodged 13/11/2018	<ul style="list-style-type: none"> <li>CURRENT proposed amendment to Condition 1.6 to alter the number of permitted vehicles associated with the filming</li> </ul>	See recommendation to support a change to Condition 1.6 as requested by the applicant

The current modification is solely related to Condition 1.6 of the consent which limits the permitted number of vehicles accessing the filming site.

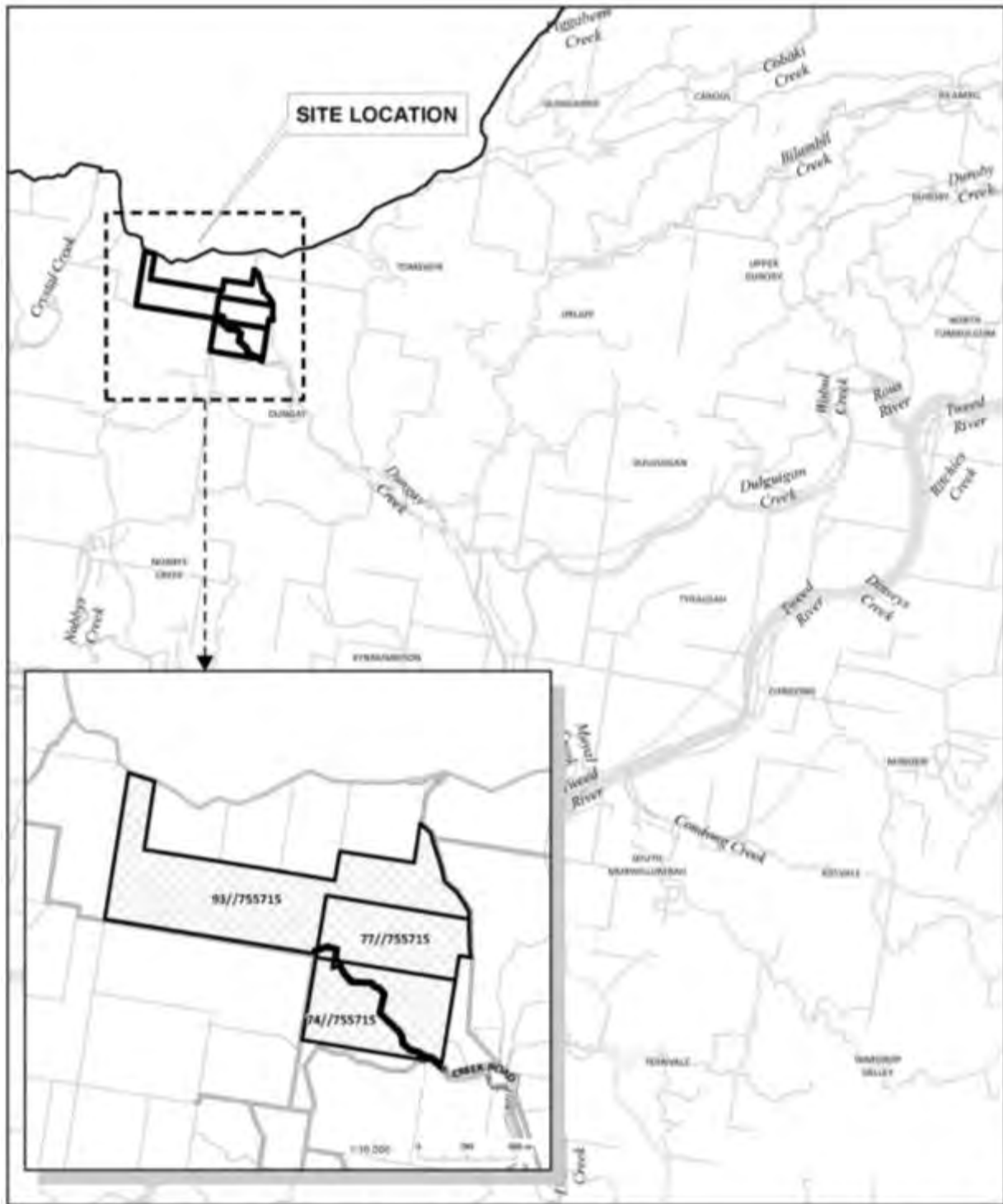
The applicant has stated that:

*"The proposed modification is intended to ensure that minor exceedances that occurred in the past do not continue. For the busy production times in January and November each year (for approximately 2 weeks in each of these months), minor traffic increases are necessary to ensure that production can occur and the development consent can be implemented.*

*The Case Study that was presented to Council, which is contained in Annexure C, demonstrates the logistical issues to minimising traffic during these busy periods. Traffic and transport would continue to be managed in accordance with the Site Management Plan, ensuring that traffic safety is addressed.*

*In the overall context of the approved development, the proposal is a temporary small increase over a short non-contiguous period, ensuring that potential impacts are not for an extended timeframe."*

**SITE DIAGRAM**



**LOCALITY PLAN**

Lot 74 DP 755715, Lot 93 DP 755715, Lot 77 DP 755715  
No. 366 Dumyrs Creek Road, Dumyrs

**Disclaimer:** While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty as to the accuracy, reliability, suitability or otherwise, of any information, advice or recommendations contained in this report. It is the responsibility of the client to ensure that the information is accurate, complete, current and suitable for their purposes. The information is provided for general guidance only and should not be used as a basis for any decision. The information is provided for general guidance only and should not be used as a basis for any decision. The information is provided for general guidance only and should not be used as a basis for any decision.

**GDA** Geomatics 80 June 2018  
© Dept of Lands & Water NSW  
Geomatics System: MGA Zone 56  
Datum: GDA 83

Civic and Cultural Centre  
5 Tambourine Road  
Murrumbidgee NSW 2466  
PO Box 810  
Murrumbidgee NSW 2466  
T: (02) 4616 2400 / 1300 297 811  
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AERIAL:



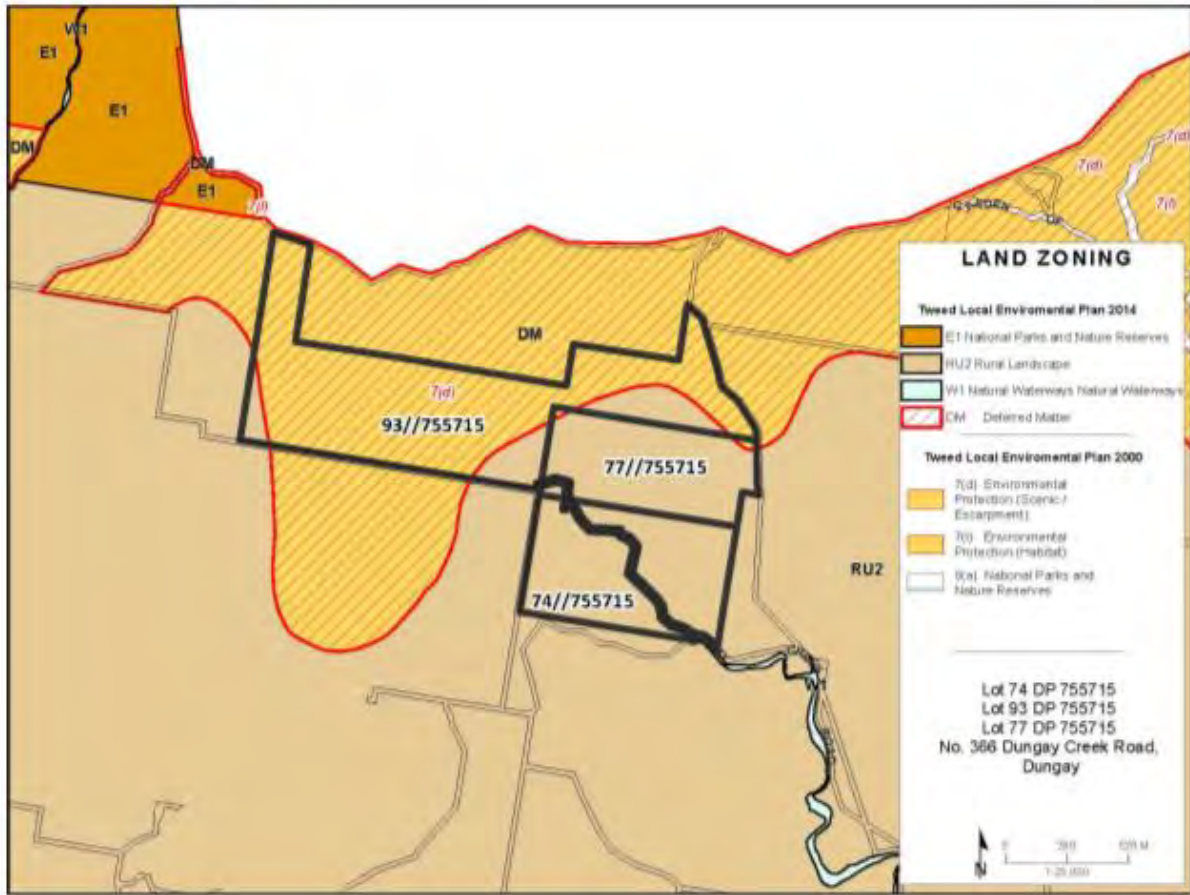
SOURCE: Aerial Imagery taken  
May 2015 by AAM and LPI

**Aerial Imagery**  
Lot 74 DP 755715, Lot 93 DP 755715, Lot 77 DP 755715  
No. 366 Dungay Creek Road, Dungay

<p><small>Disclaimer: Aerial imagery used is taken in accordance with the provisions of the Act. Tweed Shire Council does not warrant or represent in writing, accuracy or reliability of information about the accuracy, reliability, completeness or suitability for any particular purpose and whether of topographical and/or building, including structural, technical, building or engineering, for all purposes, known, unknown, foreseen or unforeseen, arising from their use. This information is supplied for the general public and is to be considered indicative and approximate only. It should not be used for purposes of construction purposes and prior to the construction of a "hard surface" the user should be made to follow the relevant standards and specifications of the relevant authority for all work with the use of maps.</small></p>	<p><b>Cadastre: 80 November, 2010</b> © Land and Property Information (LPI) © Topographic Survey (LPI) Boundaries shown should be considered approximate only.</p>	<p>Scale: 1:50,000 @ A1 Format 40 x 60 cm Scale: 1:50,000 @ A1 Format 40 x 60 cm</p>	<p><b>Arts and Culture Centre</b> 1 Tweedgate Way Murumbidgee NSW 2584 90 544 014 Murumbidgee NSW 2584 T 02 6470 0200   F 02 6470 0170 P 02 6470 0420 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	
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**ZONING PLAN:**



**CONSIDERATIONS UNDER SECTION 4.15 and 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

Section 4.55 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- “(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations.”*

Furthermore, S 4.55 (3) states:

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the **reasons** given by the consent authority for the grant of the consent that is sought to be modified*

**Minimal Environmental Impact**

Council's Traffic Engineer has stated that"

- "I am not aware of the basis for the limitation of 80 vpd to the site and assume this was applied on amenity rather safety or capacity grounds.*
- The DA and previous amendments to DA 02/1983 to the best of my knowledge do not limit truck sizes or movements. Therefore, all additional movements may be by articulated vehicle, which may not be suitable on Dungay Creek Road due to their swept path requirements, however previous submitted vehicle breakdown indicates that there are only up to 8 deliveries received each day.*
- The development generates, when operating, as a percentage of background volumes on Dungay Creek Road, a significant increase. It is noted that in December 2016 at no. 282, volumes varied from 124vpd to 216vpd. It would be expected that the lower volumes are indicative of days when the Site is not in operation.*
- The speed limit is currently 60km/h on Dungay Creek Road which is lower than normally would be expected on rural roads.*
- Crash history on Dungay Creek Road is very low with only one crash reported at the intersection of Campbells Road in 2013*

- *There has been no assessment of the suitability of Dungay Creek Road for heavy vehicles usage. However, this DA is not necessarily for an increase in heavy vehicle usage.*
- *The proposal increases vehicle trips on Dungay Creek Road by up to 40 each day, being 20 in and 20 out, which is approximately a 20% increase in average daily traffic. A general observation is that increases of 10% are not discernible to adjacent residences.*
- *Based on seal width, the indicative vehicle volumes (D1.25 table D1.11) for Dungay Creek Road would be less than 250 vpd. However, it is noted that this development does not operate for the full year and is temporary in nature. The proposal does not significantly depart from the indicative volumes for a rural road with a varying seal width of 4-5 metres.*

### **Summary**

*The proposed increase to 100 vehicles a day from 80 vehicles per day for 35 days per year is not significant given its temporary nature and is supported subject to the recommendation to vary Condition 1.6 and seek an amended site management plan."*

### **Substantially the Same Development**

Section 4.55(1A) of the Act relating to modifications involving minimal environmental impact states:

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

- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

The SEE advises that:

Having regard to the fact that the proposed modification is for a traffic increase that is short term and no other changes to the development are proposed and the key principles discussed above, it is submitted that the threshold question is satisfied on the basis that:

- *The development as a whole, being for filming and producing a television program, will remain unchanged.*
- *The proposed modifications will not alter the statutory or policy compliance of the proposal, create any other material difference and do not give rise to any significant environmental impacts.*
- *The siting, bulk and scale of the buildings remains the same.*
- *The likely impact of the modification is minor.*
- *The change to traffic numbers is limited to an increase for 35 days per year (ie. less than 10% of the year).*
- *No other changes to the nature, scale, intensity and operational details of the development will occur.*



Accordingly it is submitted that the proposed modification will not represent a substantial change to the originally approved development and that the proposed modification to the consent will represent substantially the same development as the development for which the consent was originally granted.

### **Concurrence or Integrated Authority Consultation**

The Act provides for consultation with state government authorities in the event that conditions to be amended are those imposed by or of interest to such agencies.

The activity operates under a Part 3A Permit under the Rivers and Foreshore Improvement Act 1948. The traffic changes do not affect the permits and as such formal consultation in relation to the proposed amendment is not required.

### **Advertising and Consideration of Submissions**

The proposed amendment was notified for a period of 14 days from Wednesday 21 November 2018 and Wednesday 5 December 2018.

No submissions were received.

## **Section 4.15 of the Environmental Planning & 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 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
- (v) any coastal zone management plan (within the meaning of the [Coastal Protection Act 1979](#)),  
that apply to the land to which the development application relates,*

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

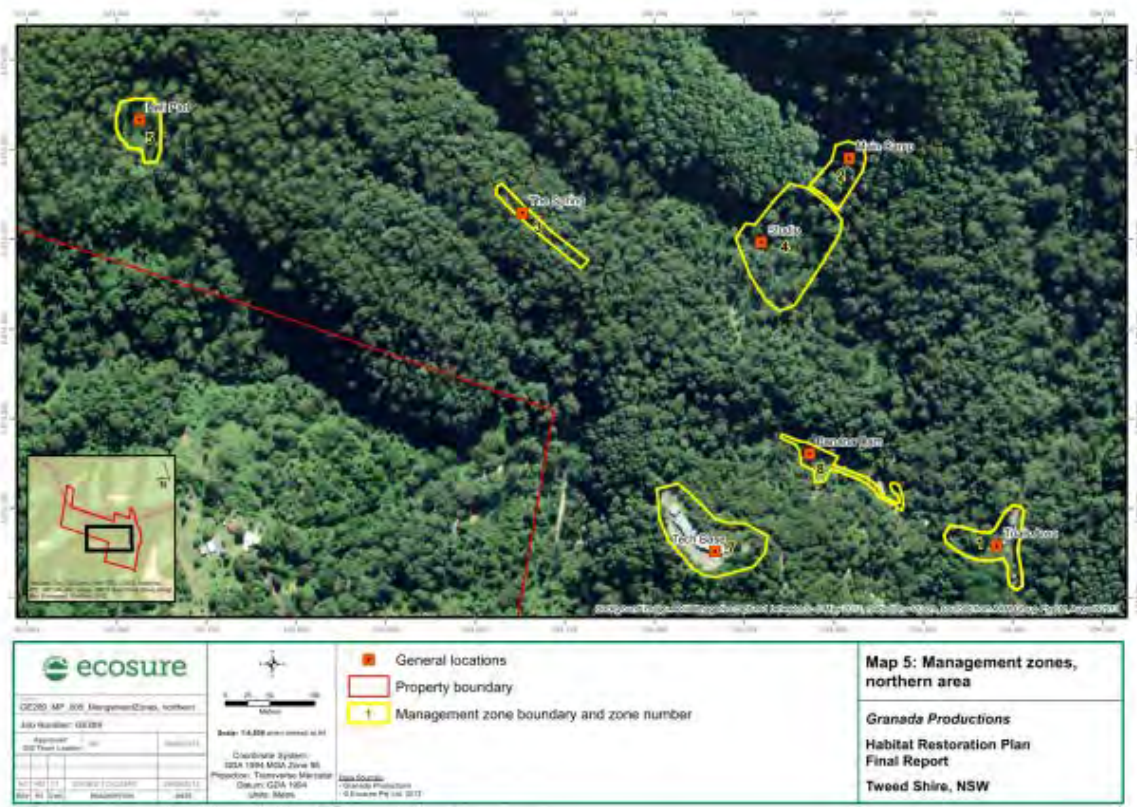
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

Comment:

The subject site is affected by both Tweed LEP 2000 and Tweed LEP 2014.

The original assessment of the application assessed the use as an innominate land use and under Tweed LEP 2000 the application was considered against the original 1(a) Rural and 7(d) zone objectives.

Today, LEP 2000 only applies to the 7(d) portions of the site which affect the helipad No. 2 site only as shown below in the western part of the site:



All other parts of the filming activities occur within LEP 2014 land zoned RU2 Rural Landscape.

The subject application makes no physical changes to the site.

## Tweed Local Environmental Plan 2014

### Clause 1.2 – Aims of the Plan

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

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

The proposed amendment of the approved filming activity at the subject site by increasing the permitted vehicular traffic is considered minor and will not affect the overall suitability of the proposal having regard to the aims of the LEP.

### Clause 2.3 – Zone objectives and Land use table

The RU2 Rural Landscape zone objectives 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.*

As outlined above, the proposed application does not increase the physical footprint associated with the filming activities. The application seeks to increase traffic permissibility. Therefore despite the Tweed LEP being amended since 2002 the original consent is valid and can be modified.

This report demonstrates that the application meets the S 4.55 tests and furthermore due to the temporary nature of the filming application the subject application meets the zone objectives.

### **Tweed Development Control Plan**

#### **A2-Site Access and Parking Code**

The S4.55 Minimal Impact Assessment concludes that:

*The proposed increase to 100 vehicles a day from 80 vehicles per day for 35 days per year is not significant given its temporary nature and is supported subject to the recommendation to vary Condition 1.6 and seek an amended site management plan.*

The proposed application is monitored under the site management plan for all traffic related activities. This S4.55 modification will require a further amendment to the management plan to reflect signage for higher traffic volume days to ensure the public can understand the 35 affected days of the years.

#### **A11-Public Notification of Development Proposals**

The proposed S4.55 application was notified in accordance with this section of the Development Control Plan. No submissions were received.

### **Public Interest**

Granada Productions is a well-run organisation which has worked cooperatively with Council staff to date. The provision of the amended condition 1.6 to increase vehicle activity (with an amended Site Management Plan) will enable Granada some flexibility to operate as required by the shows continuing success.

The ongoing social/economic benefits of the development must continue to be considered in terms of balancing any negative issues raised by the development. The proposed increase in traffic is considered acceptable on merit and is not considered to be in conflict with the broader public interest given its temporary nature (35 days a year only) and is accordingly recommended for approval.

### **OPTIONS:**

1. That Development Application DA02/1983.19 for an amendment to Development Consent DA02/1983 for the use of property for filming and producing a television program at Lot 77 DP 755715 Dungay Creek Road, Dungay; Part Lot 74 DP 755715 No.

366 Dungay Creek Road, Dungay; Lot 93 DP 755715 No. 486 Dungay Creek Road, Dungay be approved subject to the following amendments to conditions:

1. Delete Condition 1.6 and replace it with a new Condition 1.6A which reads as follows:

*1.6A Within 90 days of the approval of DA02/1983.17 a traffic counter shall be in place at the gate of the property from the commencement of preproduction until the end of the wrap period. The results are to be submitted to Council demonstrating that:*

- i. Vehicular ingress to the site is limited to 80 each day for 330 days each year and a limit of 100 is to enter the site no more than 35 days each year.*

*Within 90 days of the approval of DA02/1983.19 the applicant is to submit a revised Site Management Plan (for approval under staff delegation) which removes the reference to exclude multiple trips from a single vehicle (Site Management Plan in Section 8.1 - 9) and to include a statement that "Temporary advisory signage is to be installed on Dungay Creek Road, approved by Council, during days when expected traffic generation is expected to exceed 80 entering vehicles per day, advising motorists accordingly."*

2. Refuse the S4.55 Application and issue additional penalty infringement notices for breaches to Condition 1.6 for the 2018/2019 filming season as follows:

- \$6000 PIN for 6 breaches in November 2019;
- \$6000 PIN for 3 breaches in December 2019;
- \$6000 PIN for 8 breaches in January 2019.

Option 1 is recommended.

## **CONCLUSION:**

The original assessment of the application concluded by providing that:

*"The subject land is considered to be suitable for the proposed development. The environmental attributes of the site have made it desirable as a location for the proposed filming. These attributes are valued by the applicant and as such will be protected through environmental management measures within a plan for the site.*

*The remediation of the land following completion of the development will be of benefit. It is considered that the addition of activity in the Dungay Creek area will be able to be undertaken in a manner to limit nuisance to other residences."*

These comments are still concurred with and furthermore the economic impacts as a result of the continuation of the production are considered beneficial to the community and to the Shire as a whole. Subsequently, this application is recommended for approval.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Should the applicant be dissatisfied with the determination they have a right to appeal the decision in the Land & Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.	DA02/1983.19 Site Management Plan which is conditioned to be amended (ECM 5896933)
Attachment 2.	DA02/1983.19 Traffic Numbers Case Study (ECM 5896934)

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## 4 [PR-PC] North Byron Parklands SSD8169 Mod 1

**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:** **Leader**

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### SUMMARY OF REPORT:

Following a five year trial period for the approved North Byron Parklands Cultural Event Site at Yelgun, a State Significant Development (SSD) application was lodged with the Department of Planning & Environment (the Department) for the ongoing use of the site for outdoor cultural events.

Tweed Shire Council (TSC) provided comments on the SSD application to the Department. Given that the majority of the SSD is within Byron Shire (i.e. the northern boundary of the site is adjacent to the Tweed Shire / Byron Shire boundary), Council's comments largely focussed on potential off-site impacts including (but not limited to): traffic; noise; flooding; waste management; and waste water treatment.

In March 2019 the NSW Independent Planning Commission (IPC) granted approval for the North Byron Parklands Cultural Event Site (SSD8169). The approval granted consent for cultural events on the subject site for up to 20 events per year, including:

- two large events up to five event days each, including:
  - A large winter event (ie Splendour), with up to 50,000 patrons per day; and
  - A large summer event (ie Falls), with up to 35,000 patrons per day;
- three medium events days, with up to 25,000 patrons per day;
- five small event days, with up to 5,000 patrons per day; and
- two minor community event days, with up to 1,500 patrons per day.

The approval provides for a staged increase in patronage for the large winter / summer events. A number of conditions were applied for the proponent to meet should they wish to progress to the next stage. This includes the submission of a Performance Evaluation Report (PER) for the approval of the Planning Secretary.



The proponent has recently submitted a proposed modification (SSD8169 Mod 1) seeking approval to amend Condition A7, which currently only permits the large winter event (Splendour) to progress straight to Stage 2 (42,500 patrons) if they are able to satisfy the relevant PER conditions. The proponent is requesting the inclusion of the large summer event (Falls Festival) to progress to Stage 2 (30,000 patrons).

The Department has invited TSC to provide comments on the Mod 1. Council officers have reviewed the proposed modification with no objections. Attachment 1 is a copy of Council's draft submission to this effect.

The intention of this report is to seek Council's endorsement of the attached draft submission on the proposed SSD8169 Mod 1.

**RECOMMENDATION:**

**That:**

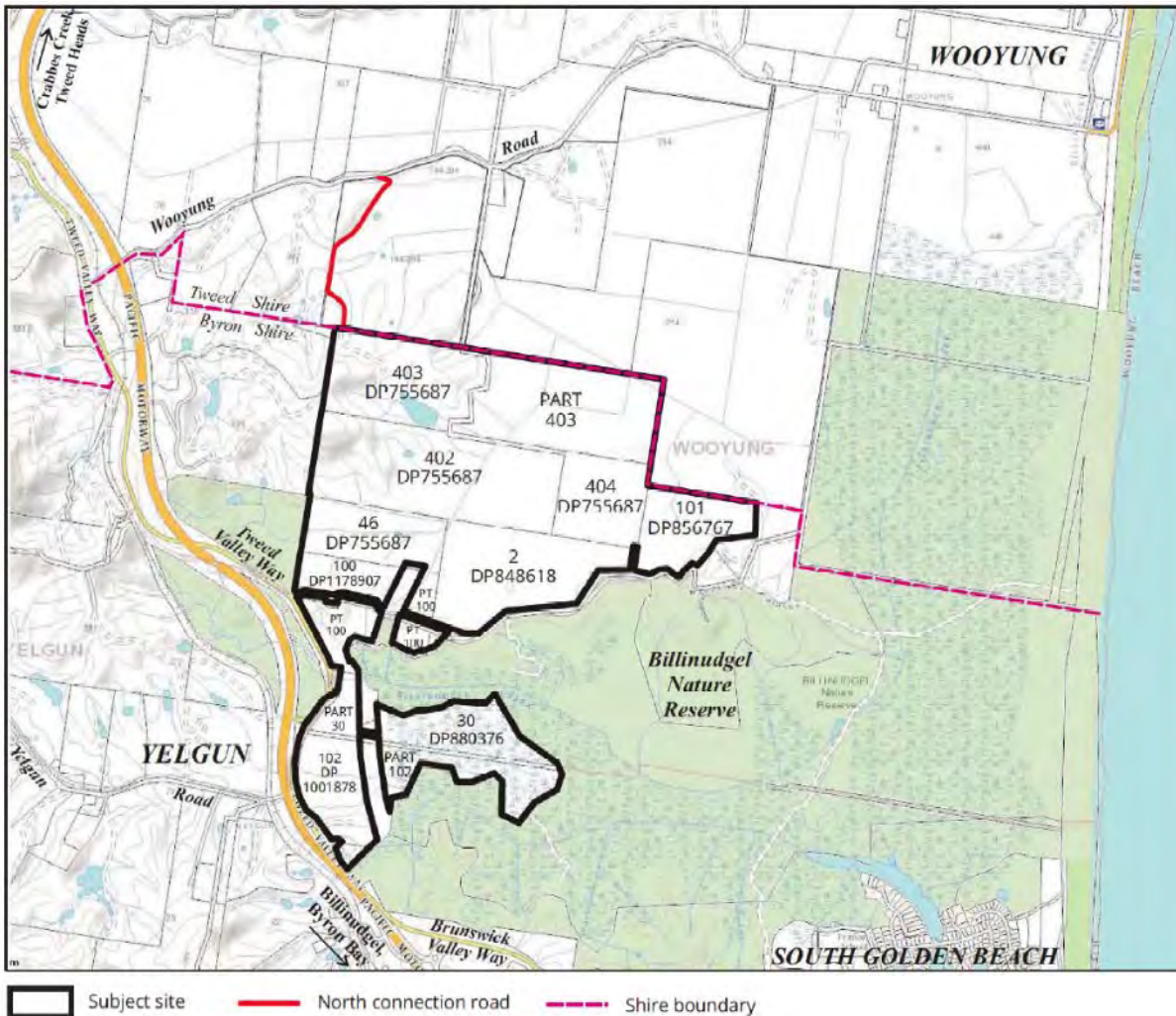
- 1. Council endorses the comments contained within this report and the draft submission in Attachment 1 of this report; and**
- 2. The endorsed submission be forwarded to the Department of Planning and Environment with regard to the proposed modifications of the North Byron Parklands Cultural Event Site Approval (SSD8169 Mod 1).**

**REPORT:**

**Background**

In July 2009 the North Byron Parklands (NBP) project was declared a major project to which Part 3A of the EP&A Act applied, under State Environmental Planning Policy (Major Development) 2005.

The proponent sought approval for a Concept Plan and Project Application (Stages 1 and 2 only) for a cultural events site at Yelgun in September 2010.



**Figure 1 – Location Plan**

Under delegation of the Minister for Planning & Infrastructure, the Planning Assessment Commission (PAC) granted approval to the Concept Plan and the Project Approval in April 2012, capping the maximum number of patrons at 35,000 per day, rather than 50,000.

The Project Approval allowed the subject site to be used for cultural, educational and outdoor events with ancillary camping and car parking for three outdoor events per calendar year over a five year trial period concluding at the end of 2017.

Several modifications of the Concept Approval and the Project Approval were approved, including the extension of the trial period for an additional 20 months (August 2019).

In December 2017, the proponent submitted their proposed State Significant Development application (SSD 8169) and Concept Plan Mod 5.

In summary, the proposal involved undertaking outdoor events on the site for up to 20 event days per year, comprising:

- two large events up to five event days each, including:
  - A large winter event (ie Splendour), with up to 50,000 patrons per day; and
  - A large summer event (ie Falls), with up to 35,000 patrons per day;
- three medium events days, with up to 25,000 patrons per day;
- five small event days, with up to 5,000 patrons per day; and
- two minor community event days, with up to 1,500 patrons per day.

Further, approval was sought for the progressive growth of one of the large events (i.e. Splendour in the Grass) to 42,500 patrons and then 50,000 patrons a day, subject to meeting traffic-related key performance indicators (KPIs).

The proposal also involved:

- temporary camping associated with outdoor events, with capacity for up to 30,000 campers a day (for certain events);
- development of a conference centre and associated accommodation (as per the approved concept plan), with capacity for up to 180 attendees and accommodation for up to 120 guests a day;
- continued use of existing site infrastructure and facilities;
- development of additional site infrastructure and facilities, including:
  - an administration building and golden view bar;
  - event area facilities and works, including:
    - amphitheatre regrading works;
    - drainage improvements;
    - potable water infrastructure;
    - sewerage infrastructure and amenities;
    - electrical and telecommunications infrastructure;
    - security fencing;
  - on-site and off-site road and transport facilities and works; and
- continued habitat restoration and vegetation management works.





Figure 3 – SSD Masterplan

Whilst the SSD provided an overall assessment of the abovementioned issues, TSC officers largely limited their assessment to potential offsite impacts, given that the majority of the event site is located outside of the Tweed Shire boundary.

In this regard the SSD included several allotments within the Tweed Shire Local Government Area (LGA), to facilitate the northern access road to Wooyung Road (Gate E) and the Primary Assembly Area for emergency evacuations.

Issues initially raised by TSC officers included: traffic impacts (particularly on Wooyung Road); noise impacts; flooding and stormwater; waste management; potable water supply; waste water treatment; emergency services; bushfire emergency evacuation; and patron numbers.

Following a long assessment process, which included several rounds of comments from TSC with regard to the proponent's responses to issues raised by various agencies, the Department recommended approval of the SSD to the IPC.

The IPC held a public meeting to hear submissions from the general public and met with the various agencies including TSC. In March 2019, the IPC granted approval to SSD8169.

## Proposal

North Byron Parklands have recently submitted a proposed modification (SSD8169 Mod 1), which the Department has forwarded to several agencies, inviting TSC to provide comment on Mod 1.

With regard to Mod 1, the proponent has noted the following:

*“Condition D9 of the consent provides for the staged increase in patronage for the large winter event and large summer event, as outlined in the following table.*

**Table 1:** *Progressive Staging for Large Events*

Event	Maximum Number of Patrons		
	Stage 1	Stage 2	Stage 3
Large Winter Event	35,000 patrons	42,500 patrons	50,000 patrons
Large Summer Event	25,000 patrons	30,000 patrons	35,000 patrons

*Conditions D10 to D15 further outline the requirements for progression to the next stage for both the large winter event and large summer event. In summary, progression to the next stage requires Parklands to demonstrate that an event at the previous stage capacity has been successfully managed to the satisfaction of the Planning Secretary of the Department of Planning & Environment (the Department). To demonstrate this, the conditions require Parklands to prepare and submit a Performance Evaluation Report (PER) to the Secretary that considers, amongst other things, a number of key performance indicators (KPI's). The conditions outline a similar progression process for both the large winter event and large summer event.*

*Condition A6 further provides that the large winter event and large summer event are to commence at Stage 1 capacities outlined in Table 1 above, except in accordance with a staged approval from the Secretary provided in accordance with Conditions D9 to D15.*

*In acknowledgement that existing events have already been undertaken at the Stage 1 capacities, Condition A7 expressly provides that the large winter event may commence at a capacity of 42,500 patrons, subject to meeting the following requirements:*

- *Parklands has previously held an event at the site with a capacity of 35,000 patrons;*
- *Parklands has met the KPIs and other PER requirements; and*
- *The Secretary has approved Parklands' request for progression to the next stage.*

*However, Condition A7 does not include reference to the large summer event, despite existing Falls Festival events being undertaken at the Stage 1 capacity”.*

The proponent considers that the omission of the Falls Festival event from Condition A7 was an oversight of the Department, given the number of existing conditions that provide for the staged progression of the large summer event in a similar manner to the large winter event. The proposed modification of Condition A7 is as follows (with amendments shown in bold):

- A7. Notwithstanding Condition A6, the Applicant may commence the large winter event at a capacity of 42,500 patrons, **and/or the large summer event at a capacity of 30,000 patrons**, subject to meeting the following requirements:
- (a) the Applicant has previously held an event at the site with a capacity of:
    - 35,000 patrons **in relation to the large winter event; or**
    - **25,000 patrons in relation to the large summer event;**
  - (b) the Applicant has met the requirements in conditions D16 and D17; and
  - (c) the Planning Secretary has approved the Applicant's request to progress to the next stage as required by Condition D14.

The proposed amendment of Condition A7 is the only change being requested by the proponent.

An assessment of the proposed Mod 1 has been undertaken by Council officers. The provisions of Conditions D10 to D15 remain unchanged and require the proponent to satisfactorily address the progression requirements and submit a PER for the approval of the Planning Secretary for the Falls Festival event, as they currently have to do for the Splendour event.

Amongst other things, the PER's must address the KPI's noted in Condition D16, which relate to traffic and noise management:

- D16. The Applicant must address the KPIs in Table 6 in a PER required under Condition D17. The Planning Secretary may amend the KPIs identified in Table 6 for future events after considering the results of the PER required in Condition D17.

**Table 6** Key performance indicators for a large event

Issue	Key Performance Indicators
Traffic Management	<ul style="list-style-type: none"> <li>• A minimum level of service (LoS) C is to be maintained at the Yelgun interchange including merges and diverges.</li> <li>• The level of service for local traffic and through traffic on the Tweed Valley Way should not fall below a LoS D, with a maximum of LoS E for no more than 4 hours a day.</li> <li>• Queue lengths on the link road between Tweed Valley Way and the Yelgun interchange must be limited to a maximum of 60 metres.</li> <li>• Queue lengths on the interchange ramps must not be within 210 metres of the start of the ramp.</li> <li>• On-site queuing is not to extend onto the Pacific Highway or the Tweed Valley Way at any time.</li> </ul>
Noise Management	<ul style="list-style-type: none"> <li>• Overall compliance with the noise limits in Table 8 for the duration of a large event.</li> <li>• Effectiveness of noise mitigation, management and response measures, including monitoring results contained within the Noise Impact Report required under Condition D46.</li> </ul>

It should be noted that the provisions of Condition D13 require the Department to consult with: Roads and Maritime Services; Byron Shire Council; Tweed Shire Council; and the NSW Police Force, when considering any PER and request form the proponent to progress to the next stage for the large events.

Given that the proposed amendment does not result in any significant change to the development, no objections are raised to the proposed amendment of Condition A7. Attachment 1 incorporates a submission to the Department to this effect.

#### OPTIONS:

1. Council endorses the wording of the Draft Submission to the Department of Planning & Environment for North Byron Parklands Cultural Event Site (SSD8169 Mod 1), which will then be forwarded to the Department as a final submission; or

2. Council endorses the wording of the Draft Submission, subject to any additional comments being incorporated into the final submission to be forwarded to the Department of Planning & Environment; or
3. Council resolves to not support the proposed modifications of the North Byron Parklands Cultural Event Site (SSD8169 Mod 1).

Council officers recommend Option 1.

**CONCLUSION:**

The proposed SSD8169 Mod 1 is not considered to raise any significant concerns. The proposed amendment to include the Falls festival event in Condition A7 is not considered to result in any intensification of the use. Rather it simply allows the proponent to progress through to Stage 2 capacity (30,000 patrons) for the large summer event, if they are able to demonstrate to the Department that they satisfy the relevant conditions for Stage 1.

**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:**

Attachment 1.

Draft Submission to the Department of Planning and Environment (ECM 5897404)

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## 5 [PR-PC] 2018-2019 Local Heritage Assistance Fund Program

**SUBMITTED BY:** Strategic Planning and Urban Design

mh



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

---

### SUMMARY OF REPORT:

This report provides feedback on the 2018-19 Local Heritage Assistance Fund Grants program. It provides a summary of each of the projects funded and the successful outcomes achieved through the funding, both for the property owners and for the maintenance and improvement of a number of properties within the Tweed Shire that are of heritage significance.

Funding this year was awarded to one heritage listed item and five properties within heritage conservation areas. The improvements to property that occurred through the program have resulted in maintenance and ongoing protection of the heritage significance characteristic of each of the properties, will be of benefit to the immediate streetscape and broader localities, and have facilitated a better understanding of heritage significance and appropriate heritage maintenance.

### RECOMMENDATION:

**That:**

1. The summary of the outcomes of the 2018-19 Local Heritage Assistance Fund Grants program, as attached to this report, are noted; and
2. Council supports the continuation of the Local Heritage Assistance Fund and Heritage Advisor Program.

## REPORT:

### Background

This is the fifth year of the Local Heritage Assistance Fund (LHAF) program. The aim of the LHAF is to encourage positive conservation work and best practice management and conservation of heritage items and property within heritage conservation areas in the Tweed Shire. The LHAF is part funded by Council and the NSW Office of Environment and Heritage (OEH). The program is managed by Council and is facilitated through the provision of grants on a minimum dollar for dollar basis to owners of heritage items and places within heritage conservation areas. Grant money assists property owners undertake positive heritage conservation work within the parameters of the annual funding program.

### The 2018-19 grants program

The LHAF grant program is open to all properties which are heritage items or are within a heritage conservation area as identified under the Tweed Local Environmental Plan 2014. A personally addressed invitation letter was mailed directly to all owners of these properties on 19 July 2018 and a call for applications was advertised in the Tweed Link on 24 July 2018.

Multiple phone and front counter enquiries were received while the application period was open. Eleven applications were submitted. Whilst the number of applications decreased slightly from previous years, the steady flow of enquiries during the time that applications were open and the 11 applications that were ultimately received shows that keen interest in the program remains, with awareness of and demand for the heritage programs remaining high.

Panel assessment of the applications was undertaken in accordance with the *Local Heritage Assistance Fund Grants Protocol*, with eight applications considered suitable to receive funding. One application was deemed incomplete so was ineligible to receive a grant.

A report on the awarding of the grants was considered and endorsed by the Executive Leadership Team (ELT) at their meeting of 5 September 2018. Successful applicants were advised the following day, with two of the eight declining the grant leaving an additional \$3500 to be reallocated. ELT recommended that the procedure for reallocation of funds, should any offers be declined, would entail the panel reassessing those unsuccessful applicants on the standby list.

The two applications on the standby list were re-visited by the panel however on review were not considered suitable. It was therefore decided to reallocate the remaining \$3500 between those recipients who had already accepted, with the resulting benefit to each recipient of receiving more money towards a higher quality project considered a better overall outcome for the program.

In accordance with the grant acceptance agreement and conditions, recipients were required to submit:

- Notification of commencement of works by 23 November 2018;
- Progress report and photos by 8 February 2018; and
- Final reports for acquittal by 12 April 2018.

Five of the six grant recipients completed their projects and submitted their final report by March 2019. The sixth had been delayed by weather interruptions and had not fully completed

their project, but had provided Council with proof of payment for a significant proportion of the works to an amount beyond that needed to meet the minimum dollar for dollar contribution requirement of the grant conditions.

The funding of works to these six heritage properties have made a significant contribution towards their maintenance, appearance and generally towards the understanding and appreciation of heritage in the Tweed Shire.

A total of \$18,000 was paid in grants towards a total cost of improvement works of \$48,805. This figure is commensurate to the total cost of improvements over previous years of the program and reflects the heightened awareness and sentiment for appropriate heritage conservation and management within the Tweed Shire.

Grants are offered on a minimum dollar for dollar basis and all funding is to be acquitted at the end of each financial year. In accordance with the grant conditions imposed by the funding body, a final report and project acquittal was submitted to the Heritage Branch of OEH in May 2018.

The outcomes of the LHAF grants will be promoted on the Council website, further encouraging the participation of property owners in future years and promoting the broader understanding of heritage.

A summary of each of the six completed projects is provided in Attachment 1, which describes the scope of works for each project and includes photographs of the improvements made.

#### 2019-20 grants program

Council has applied for funding from OEH to continue the LHAF grants program into the next financial year, however at the time of writing the funding is yet to be announced. Notwithstanding, Council has previously resolved to continue to support the program and it is included as a budget item on the long term financial plan.

Accordingly Council will continue and run the LHAF grants program 2019-20, within the limits of current budgeted allocations.

#### **OPTIONS:**

Council receives and notes the Local Heritage Assistance Fund projects summary and recommendations set out in this report.

#### **CONCLUSION:**

Over the term of its operations, the LHAF program has contributed over \$160,000 in improvements to properties which are heritage listed or located within heritage conservation areas. This is a significant contribution towards their maintenance, appearance and generally towards the understanding and appreciation of our Shire's heritage.

The LHAF program, along with the separately funded Heritage Advisor service, continues to increase the level of awareness and consideration of the Heritage of the Tweed Shire.

The Heritage Strategy provides the guiding framework and key actions for the heritage management programs over the 2017-2020 period.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

The Local Heritage Assistance Fund program is a permanent budget item in Council's long term financial plan, and a total sub of \$18,000 is allocated.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

Summary of the 2018-2019 Local Heritage Assistance Fund Grant Program (ECM 5894929)

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**6 [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 May 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.

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