



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 4 July 2019

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 Evaluation

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

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

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

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

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

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

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

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

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

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

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

(3A) **Development control plans**

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

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

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

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

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

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

(6) **Definitions**

In this section:

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

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Items for Consideration of the Planning Committee:

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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA18/0663 for a Mixed Use Including Shop Top Housing Office and Boarding House Development at Lot 4 Section 5 DP 4043 No. 25 Beryl Street, Tweed Heads

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

Council is in receipt of a development application which now seeks approval for a mixed use development at No. 25 Beryl Street, Tweed Heads. The plans for the development have been changed twice by way of amended plans throughout the assessment of the application. The final version of the application now seeks approval for a five storey mixed use development, comprising of ground vehicular access and parking for 13 spaces, ground and first level commercial spaces (63m² and 35m² respectively), 3 hotel suites (1 x 3 bedroom and 2 x 2 bedrooms), five boarding rooms, and six residential apartments.



The subject application has been exhibited three times to reflect the various amended plans throughout the assessment process. During which time six submissions were received. The matters raised by the objectors are addressed later in this report.

The proposal was not required to be referred to any external agencies however internally, the application was reviewed by Council's Building Unit, Environmental Health Unit, Development Engineering Unit, Traffic Engineer, Stormwater and Flooding Engineers, Waste Water Unit and Strategic Planning Unit. The application was supported by the relevant units subject to the imposition of conditions of consent.

The subject site is zoned B3 Commercial Core under Tweed City Centre LEP 2012 (TCCLEP2012). The site comprises of a single allotment which is regular in shape and features a lot width of 15.086m. The land is currently vacant and was once previously occupied by a single dwelling house. Land to the north of the site comprises of a two storey shop top housing development that consists of a commercial premises (orthodontic clinic) at the ground floor and residential flats above. Land to the south is occupied by a three storey residential flat building that is under a strata title arrangement.

It is noted that the subject application includes a variation to the development standards under Clause 6.6 TCC LEP2012. As such the applicant has submitted an application under Clause 4.6 to vary this development standards.

Clause 6.6(2) requires a minimum building street frontage of 20m in land zoned B3 Commercial Core for any building to be erected on the land.

The subject site comprises of a 15.086m frontage which represents a 4.194m (or 24.57%) variation. Whilst the site does not strictly comply with the prescribed minimum street frontage, there are other provisions under Clause 6.6 that allow the consent authority to grant development consent despite the land not qualifying with the minimum building street frontage under Clause 6.6(2). The proposed development has been considered under these other provisions which states that if the development is consistent with the aims and objectives of the TCCLEP2012 and due to the physical constraints of the site or an adjoining site or sites, it is not possible for the building to be erected with at least one street frontage of 20 metres or more, that development consent can be granted.

Historically Council has had concerns with non-compliance with Clause 6.6 when the proposed development is considered to represent an under development of the site. In this instance the proposed 5 storey building at 17.6m high compared to a 34m allowable height limit is nearing a development type and height envisaged by the planning instruments which govern the site.

The applicant has suitably demonstrated that the development is consistent with the aims of the plan, objectives of the zone as well as the objectives of Clause 6.6. Further, it has been demonstrated that the tenure of land to the south is fragmented under a strata title arrangement and that the land owner to the north is not in a position to consolidate their lot with the subject site. Therefore, the adjoining lands are constrained and the subject site forms an isolated lot with no opportunity for any development in its current form if strict compliance with Clause 6.6(2) was to be enforced. For this reason, it is recommended that the development be consented to despite not adhering to the prescribed numerical requirements of this Clause.

The proposed development is legally defined as a variety of uses with a variety of applicable controls. The boarding rooms specifically have discounted car parking provisions in accordance with State Planning Instruments. Having regard to all the applicable planning provisions the proposed development is generally consistent with TCC LEP2012 as well as the Apartment Design Guideline (ADG) referenced within SEPP 65, as well as Section A2 and Section B2 of the Tweed DCP 2008 in regard to parking. The development is considered to be within the broader public interest and therefore the application is recommended for approval subject to conditions of consent as outlined below.

RECOMMENDATION:

That Development Application DA18/0663 for a mixed use including commercial, office, hotel suites, boarding house and shop top housing at Lot 4 Section 5 DP 4043 No. 25 Beryl Street, Tweed Heads be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the original Statement of Environmental Effects, except where varied by the amended Statement of Environmental Effects of 19 February 2019 except where varied by the amended development received by Council on 3 May 2019 (including a hotel management plan), and the following plans:**

Document/Plan Title	Drawn By	Job No	Ref No	Dated
Site Plan	Into Architecture	-	DA02B	03/05/2019
Ground Floor Plan	Into Architecture	-	DA03B	03/05/2019
Level 1 Floor Plan	Into Architecture	-	DA04B	03/05/2019
Level 2 Floor Plan	Into Architecture	-	DA05A	14/01/2019
Level 3 Floor Plan	Into Architecture	-	DA06B	03/05/2019
Level 4 Floor Plan	Into Architecture	-	DA07B	03/05/2019
Roof Plan & Site Plan	Into Architecture	-	DA08A	03/05/2019
Section A	Into Architecture	-	DA09B	03/05/2019
Section B	Into Architecture	-	DA10B	03/05/2019
Elevations North and South	Into Architecture	-	DA11B	03/05/2019
Elevations East and West	Into Architecture	-	DA12B	03/05/2019
Elevations Streetfront	Into Architecture	-	DA13B	03/05/2019
Colours and Materials	Into Architecture	-	DA19A	03/05/2019

Landscape Plan	Into Architecture	-	DA L-01	27/06/2018
Landscape Plan	Into Architecture	-	DA L-02	27/06/2018
Stormwater Notes and Drawing Schedule	Demlakian Engineering	218032	SW00 (P2)	29/06/2018
Stormwater Design	Demlakian Engineering	218032	SW01 (P3)	29/01/2019
Sediment and Erosion control Plan	Demlakian Engineering	218032	SW02 (P3)	29/01/2019
Sediment and Erosion Control Details	Demlakian Engineering	218032	SW03 (P2)	29/06/2018

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0065]

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

[GEN0115]

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

[GEN0135]

5. 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. All works shall comply with the Work Health and Safety Regulation 2017.

[GEN0360]

7. Individual boarding rooms are not permitted to be strata subdivided. To this extent 5 boarding rooms (as nominated on the stamped approved plans) are to remain under one (1) management scheme.

[GENNS01]

8. The driveway is to be constructed (subject to submission and approval under s138 Roads Act) to council's requirements and be at least 3.5m wide at the boundary and splay to 6.5m wide at the kerb.

[GENNS02]

9. A vertical speed hump is to be installed and maintained within the driveway on the subject lot within 2m of the nature strip.

[GENNS03]

10. The approved parking is according to the following land use/schedule:

- 10 parking Spaces allocated to Residential component;
- Two spaces allocated to Commercial Office and;

- One space allocated to Boarding House component.

[GENNS04]

11. No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed without prior consent of Tweed Shire Council (as statutorily required).

[GENNS05]

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:

Hotel, Boarding & Apartment Component
45.19 Trips @ \$921 per Trips \$41,619.99
(\$815 base rate + \$106 indexation)

Commercial Component
11.76 trips @ \$921 per Trips \$10830.96 – 40% (\$4332.38) = \$6,498.576

Total TRCP due: \$48,118.56

(\$4332.38 has been subtracted from this total as this development is deemed an 'Employment Generating Development')

CP Plan No. 4
Sector1_4

(b) Open Space (Casual):

8.75 ET @ \$659 per ET
(\$502 base rate + \$157 indexation)
CP Plan No. 5

\$5,766

<p>(c) Open Space (Structured): 6.4584 ET @ \$754 per ET (\$575 base rate + \$179 indexation) CP Plan No. 5</p>	<p>\$4,870</p>
<p>(d) Shirewide Library Facilities: 8.75 ET @ \$985 per ET (\$792 base rate + \$193 indexation) CP Plan No. 11</p>	<p>\$8,619</p>
<p>(e) Bus Shelters: 8.75 ET @ \$75 per ET (\$60 base rate + \$15 indexation) CP Plan No. 12</p>	<p>\$656</p>
<p>(f) Eviron Cemetery: 8.75 ET @ \$140 per ET (\$101 base rate + \$39 indexation) CP Plan No. 13</p>	<p>\$1,225</p>
<p>(g) Community Facilities (Tweed Coast - North) 8.75 ET @ \$1624 per ET (\$1,305.60 base rate + \$318.40 indexation) CP Plan No. 15</p>	<p>\$14,210</p>
<p>(h) Extensions to Council Administration Offices & Technical Support Facilities 8.75 ET @ \$2195.88 per ET (\$1,759.90 base rate + \$435.98 indexation) CP Plan No. 18</p>	<p>\$19,213.95</p>
<p>(i) Cycleways: 8.75 ET @ \$555 per ET (\$447 base rate + \$108 indexation) CP Plan No. 22</p>	<p>\$4,856</p>
<p>(j) Regional Open Space (Casual) 8.75 ET @ \$1282 per ET (\$1,031 base rate + \$251 indexation) CP Plan No. 26</p>	<p>\$11,218</p>
<p>(k) Regional Open Space (Structured): 6.4584 ET @ \$4500 per ET (\$3,619 base rate + \$881 indexation) CP Plan No. 26</p>	<p>\$29,063</p>
<p>(l) Tweed Heads Master Plan: 13 MDU @ \$1047 per MDU (\$1,047 base rate + \$0 indexation) CP Plan No. 27</p>	<p>\$13,611</p>

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:

Water: 5.452 ET ET @ \$13,926 = \$75,924.60

Sewer: 8.688 ET @ \$6,690 = \$58,122.70

[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 landscape plan shall be submitted with the Construction Certificate application, the plan is to be generally in accordance with the stamped approved landscape plan however demonstrate that the selected species do not comprise of priority weed species and that a minimum 80% of total plant numbers comprised of local native species to the Tweed Shire. 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. 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) Vehicular access

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]

17. **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]

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

- a) **The Construction Certificate Application for Building Works shall include a detailed design plans 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.**
- d) **Specific Requirements to be detailed within the Construction Certificate application include:**
 - i) **Detailed design plans for stormwater management devices;**
 - ii) **Detailed design plans for earthworks and finished carpark levels;**
 - iii) **Consider to include inlet baskets on the proposed carpark pits to decrease the sediment load on the proposed infiltration areas.**

[PCC1105]

19. **Disposal of stormwater by means of infiltration devices must be carried out in accordance with Section D7.09 of Tweed Shire Councils Development Design and Construction Specification - Stormwater Quality.**

Surcharge overflow from the infiltration area to the street gutter must occur by visible surface flow, not piped.

[PCC1125]

20. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) Disposal of stormwater by means of infiltration devices must be carried out in accordance with Section D7.09 of Tweed Shire Council's Development Design and Construction Specification - Stormwater Quality.
- (c) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (d) The infiltration rate for sizing infiltration devices shall be 3m per day:
 - * As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (e) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (f) Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (g) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (h) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (i) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (j) All infiltration devices are to be designed to withstand loading from vehicles during construction and operation of the development.
- (k) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

21. 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]

22. 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]

23. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be equal or less than the pre-development condition flowrates. This can be achieved by On site stormwater detention (OSD) utilising above and or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook" except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.

All stormwater must initially be directed to the DCP. Details are to be submitted with the Section 68 stormwater application.

[PCC1165]

24. Medium density mixed use developments with a combination of residential and non-residential development will be required to provide two water services at the road frontage; one bulk water meter for the residential component of the development and one meter for the non-residential component of the development. Individual metering beyond this point shall be managed by occupants. Application for the meters shall be made to the supply authority detailing the size in accordance with Plumbing Code of Australia (PCA) and BCA requirements.

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

[PCC1185]

- 25. 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]

- 26. 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]

- 27. Prior to issue of a Construction Certificate, the applicant is required to demonstrate the proposed stormwater pipe provides the minimum vertical clearance to the existing water main in Beryl Street in accordance with WSAA03-2011.3.1. A Construction Certificate shall NOT be issued by a Certifying Authority unless this requirement has been met.**

[PCCNS01]

- 28. Prior to the issue of a construction certificate a detailed contaminated land site investigation prepared by a suitably qualified person in accordance with NEPM Schedule 1, Part 4 Asbestos Materials in Soil, shall be provided to Council to the satisfaction of the General Manager or his delegate. The report shall demonstrate that the site is free of contamination, or provide a remediation action plan for the site detailing those works required to make the site suitable. All works shall comply with the approved plan.**

[PCCNS02]

- 29. A parking and manoeuvrability plan is to be provided to the PCA. The plan shall include detailed line marking and suitably demonstrate the parking space dimensions and vehicle manoeuvrability complies with AS2890.1. To this extent line marking detail shall ensure the following:**

- Tandem parking spaces 9 and 11 on the stamped approved plan are to be allocated to either Apt 2, 3 or 4 (one of the 3 bed apartment).**
- Tandem parking spaces 10 and 12 on the stamped approved plan are to be allocated to either Apt. 2, 3, 4 (one of the 3 bed apartment).**

- **Bicycle storage spaces are to be nominated and provide an area to suitably store a minimum of 10 bikes.**

[PCNS03]

PRIOR TO COMMENCEMENT OF WORK

- 30. 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]

- 31. 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]

- 32. 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]

33. 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]

34. 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]

35. 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]

36. 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]

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

(a) The person must, at the person's own expense:

- (i) preserve and protect the building / property from damage; and
- (ii) if necessary, underpin and support the building in an approved manner.

(b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

38. A Dilapidation Report detailing the current general condition (including the structural condition) of the adjoining buildings/sites, infrastructure and driveways 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]

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

[PCW0955]

40. 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]

41. 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]

42. 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

43. 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]

44. 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]

45. 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]

46. 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]

47. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.
L_{Aeq, 15 min} noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
 - B. Long term period - the duration.
L_{Aeq, 15 min} noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.
[DUR0215]
48. 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]
49. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:
- (a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
 - (b) The chute shall be located in a position approved by the Principal Certifying Authority.
 - (c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.
[DUR0385]
50. 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]
51. 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]
52. 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]

53. 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]

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

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

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

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

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

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

[DUR0435]

- 55. 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 the development has been correctly positioned on the site in accordance with the approved development consent plans/consent conditions and has been located clear of any easements/sewer main.**

[DUR0495]

- 56. 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]

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

[DUR0815]

- 58. 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]

59. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of an Occupation Certificate. [DUR0995]
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. 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]
62. 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]
63. 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]
64. 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]
65. 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]
66. 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]

67. 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]
68. 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]
69. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate. [DUR2425]
70. 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]
71. 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]
72. 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]
73. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
74. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged. [DUR2525]
75. 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]

76. **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]

77. **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]

78. **A hose tap shall be provided adjacent to each grease arrester for the purpose of cleaning the arrester. The water supply shall be fitted with a RPZD for the purpose of back flow prevention.**

[DUR2675]

79. **The Applicant shall submit the appropriate 'Application for Water Service Connection' form to Council's Water Unit to facilitate a property service water connection for proposed Lot 4 Sec 5 DP 4043, from the existing water main in Beryl Street. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.**

[DUR2800]

80. **All trees that are nominated to be retained (including those on adjoining lands) are to be protected in accordance with the minimum tree protection standards prescribed under AS4970-2009.**

[DURNS01]

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. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.**

The street number is to be on a white reflective background professionally painted in black numbers 75-100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

[POC0265]

- 85. 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]

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

[POC0435]

- 87. 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]

- 88. 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]

- 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, infrastructure and roads. 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. A total of 13 off-street parking spaces are to be provided, linemarked and maintained for the development. The parking space dimensions and manoeuvring areas are to comply with AS2890.1 and AS2890.2 the Building Code of Australia and the Commonwealth Disability Discrimination Act. Of the 12 spaces, 1 parking spaces for persons with disabilities are to be provided in accordance with AS1428.1.

[POCNS01]

94. A Plan of Management must be provided and approved by Tweed Shire Councils General Manager or his delegate. The approved plan of management is to be followed by the boarding house manager(s) and put on display and available at all times to lodgers. The plan is to outline ongoing management that ensures safety and wellbeing of the lodgers, how operations minimise impacts on surrounding neighbours, and complies with the Boarding House Act 2012.

[POCNS01]

95. A Plan of Management must be provided and approved by Tweed Shire Councils General Manager or his delegate. The approved plan of management is to be followed by the hotel manager(s) and put on display and available at all times to hotel patrons. The plan is to outline ongoing management that ensures safety and wellbeing of the patrons, how operations minimise impacts on surrounding neighbours.

[POCNS02]

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. 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]

98. 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]
99. 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]
100. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.
[USE0435]
101. All commercial / industrial / residential wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate.
[USE0875]
102. The boarding house accommodation shall be operated in accordance with the requirements of Local Government Act (General) Regulation 2005, Schedule 2, Boarding Houses Act 2012 and the Boarding Houses Regulation 2013.
103. The boarding house accommodation shall be operated in accordance with the requirements of Public Health Regulation 2012 Clause 45 and 46.
104. Prior to commencement of operation of the boarding house component, an inspection is to be arranged with Council's environmental Health Officer (Boarding Houses Act 2012 Section 16).
[USENS01]
105. No backpacker's accommodation, is permitted in any part of the building.
[USENS02]
106. No boarding room is to be occupied by more than 2 adult lodgers.
[USENS03]
107. The communal living room nominated on the stamped approved plans is not to be used as a boarding room or bedroom. This room is to be available to all boarding house lodgers occupying the building and used for recreation purposes only.
[USENS04]
108. The total number of occupants permitted to be occupying all boarding rooms at any one time is limited to 10 persons.
[USENS05]

REPORT:

Applicant: Mr SB Miner
Owner: Mr Benjamin R Gilmour & Mr Scott B Miner
Location: Lot 4 Section 5 DP 4043 No. 25 Beryl Street, Tweed Heads
Zoning: B3 Commercial Core
Cost: \$2,900,000

Background:

Site Description

The subject site is described as Lot 4, Section 5 DP 4043 No 25 Beryl Street, Tweed Heads. The site is currently vacant and was previously occupied by a single dwelling house which was destroyed by fire (in 2007). The site is relatively flat and contains no vegetation. The land is 596.7m² in area and is regular in shape with a lot depth of 40.234m and width of 15.086m.

The site is located within the Tweed City Centre and is surrounded by an eclectic mix of old and new development which contributes to a transitional urban form. The immediate surrounding area comprises of a mix of commercial buildings and single dwelling houses to the north and east, residential flat buildings and single dwellings houses to the west and south west. Tweed Police Station is located directly opposite the subject site and Tweed Mall is located 200m north east of the site.

Land to the north of the site comprises of a well-established two storey shop top housing development with a ground floor commercial premises occupied by an orthodontic clinic and residences above. Land to the south is occupied by a well-established three storey residential flat building that is under a strata title arrangement. Immediately west of the site is a single dwelling house.

Within a 500m radius of the site are several retail and commercial premises, schools and public recreation areas including Jack Evans Boat Harbour and the Coolangatta and Tweed Heads coastal foreshore environment.

There are no easements or encumbrances that affect the land for the purposes of the proposed development.

Proposal

The proposed development comprises of a 5 storey mixed use development incorporating 63m² of ground floor commercial space, 35m² office and three hotel suites at Level 1, six residential apartments made up of 3 x 3 bedroom apartments and 3 x 2 bedroom apartments together with 5 Boarding Rooms. Ground level access and parking is provided for 13 vehicles, and 10 bicycles. The development includes the provision of landscaping at the rear setback of the site. There is a large tree located adjacent to the rear boundary on the adjoining land, it is proposed that the tree be retained as part of the development.

Assessment

On 14 July 2017, the applicant attended a Development Assessment Panel (DAP) meeting to discuss opportunities and constraints for a mixed use development at the subject site. The

architectural plans tabled at the meeting included 4 boarding rooms, 7 apartment and a 59m² ground floor office component. At the meeting, concerns were raised over the development's performance against the TCC LEP2012 having regard to the non-compliant building street frontage (under Clause 6.6(2)) and advice was provided regarding the provision of first floor commercial uses in accordance with Clause 6.8. To this extent, it was noted that building separation, the provision of basement car parking and more usable landscape areas could be achieved if lot consolidation with adjoining lands were to occur. Furthermore, the density of development on the land would potentially be able to increase in line with maximum building heights if lot consolidation were to occur to provide a compliant building street frontage and larger developable area.

The subject application was lodged on 23 August 2018 and included documentary evidence in the Statement of Environmental Effects (SEE) which indicates that pursuit of lot consolidation was considered by the applicant however adjoining land owners declined any invitations to enter into a joint development venture. Therefore, the subject application has been assessed on its merits in its current form with a non-compliant building street frontage.

Following a preliminary assessment of the proposal, Council issued a request for information which raised concerns regarding the proposed density of development and its performance against the strategic intent of the site within the Tweed City Centre (noting that the development standards imply a higher density of development for this site compared to what is being proposed). In addition, it was requested that further information be provided to respond to issues pertaining to stormwater, parking provisions, building design (in terms of floor to ceiling heights for the first floor of the development, and also to reconsider the amount of commercial floor area within the ground floor tenancy, it was also requested that a cost summary report be submitted. In addition, it was suggested that if the applicant were to pursue the subject DA, that they consider addressing additional matters for consideration under the Clause 4.6 variation application in line with NSW Land and Environment Court practice notes on preparing an application to vary development standards under Clause 4.6 of the LEP.

In the same letter, the applicant was also provided a summary of the objection matters raised as a result of the notification/public exhibition process (which resulted in initially four submissions being received) for consideration and response.

On 19 February 2019, the applicant submitted an amended DA package which included changes to the design of the building (and subsequent changes to the stormwater management plan), a cost summary report and a supplementary statement of Environmental Effects (including an expanded Clause 4.6 application to vary development standards).

The amended design included the following key elements:

- Increase in the ground floor commercial/ business tenancy from 40m² to 70.8m²;
- Increase to glazed façade width to the street elevation;
- Modification to car parking layout and number of spaces provided on site; and
- Modification to ceiling heights to the first floor component of the development to provide an overall additional height of 200mm to the development.

The above amended plans were re-exhibited and notified to adjoining land owners (including the original objectors) from Wednesday 6 March 2019 to Wednesday 20 March 2019 and during this time no submissions were received. In addition, the amended plans were re-considered by internal officers and no objections were raised.

On 3 May 2019, the applicant submitted a further amended DA package which included changes to the design of the building to ensure all proposed uses were permissible (as the ground and first floor area in the B3 commercial zone must be used for commercial purposes.

The amended design included the following key elements:

- Deletion of Residential Apartment #1 & Boarding House Rooms 1-5 from Level 1;
- Provision of Three Hotel Suites and 1 x 35m² Commercial Office on Level 1;
- Reversion to 13 car parking spaces (as per Original DA submission); and
- Reversion to 3.1 m Floor-to-Floor Heights to Residential Levels.

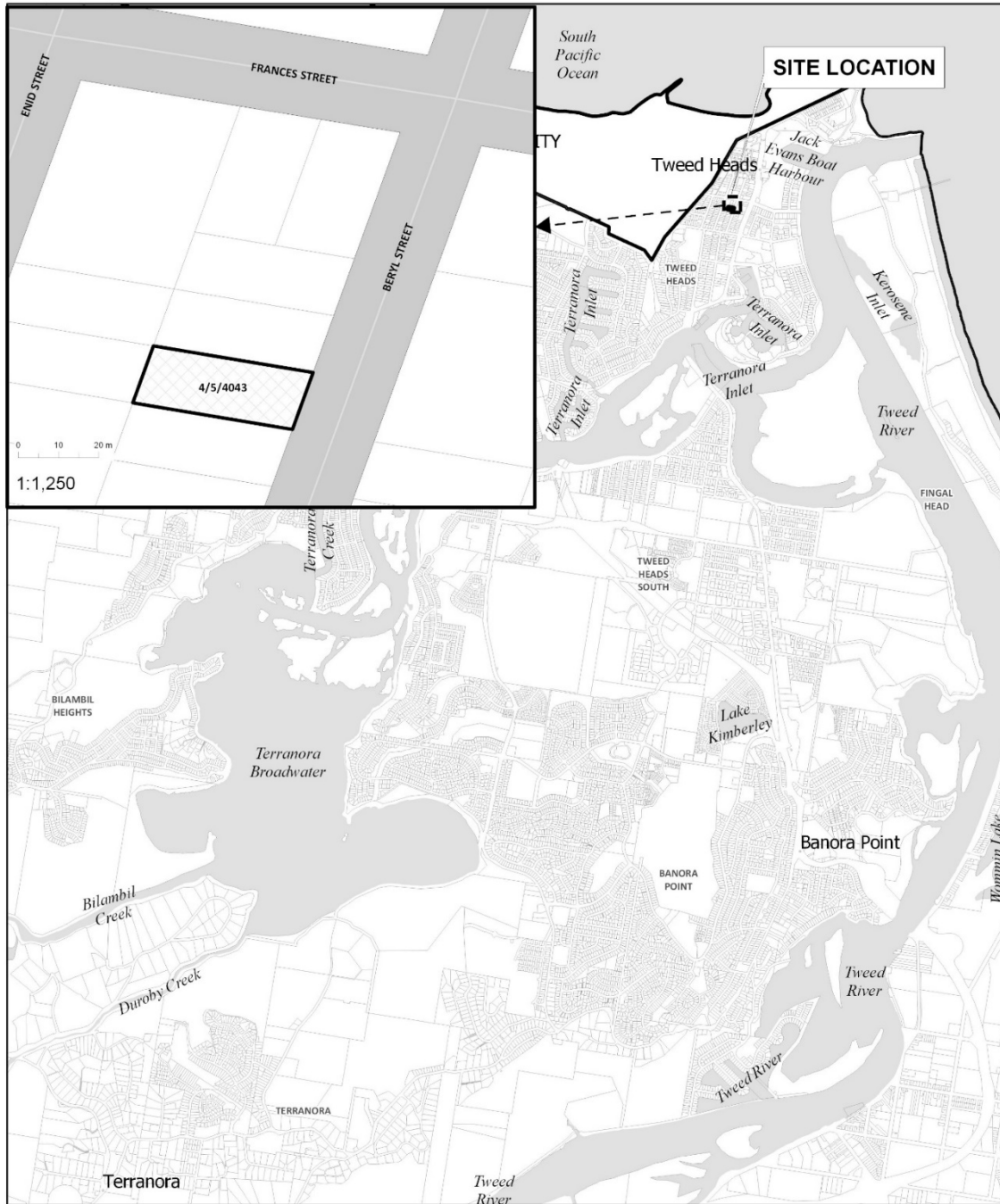
This results in a development comprising the following elements:

Description	m2
Ground Level Commercial	63
Level 1 Commercial	35
Level 1 Hotel Suite 1 (2 bed)	64.8
Level 1 Hotel Suite 2 (2 bed)	68.9
Level 1 Hotel Suite 3 (3 bed as kids activity could be third bedroom)	100.7
Level 2 Boarding Room (1 bed) Marked Room 6	24.2
Level 2 Boarding Room (1 bed) Marked Room 7	22.5
Level 2 Boarding Room (1 bed) Marked Room 8	18.3
Level 2 Boarding Room (1 bed) Marked Room 9	24.2
Level 2 Boarding Room (1 bed) Marked Room 10	24.6
Level 2 Shop Top Housing Apartment (3 bed) Marked Apartment 2	105.7
Level 3 Communal Living Space	14
Level 3 Shop Top Housing Apartment (2 bed) Marked Apartment 5	81
Level 3 Shop Top Housing Apartment (2 bed) Marked Apartment 6	84
Level 3 Shop Top Housing Apartment (3 bed) Marked Apartment 3	106.3
Level 4 Shop Top Housing Apartment (2 bed) Marked Apartment 7	113.2
Level 4 Shop Top Housing Apartment (3 bed) Marked Apartment 4	118.4
SUB TOTAL	1,068.80
GRAND TOTAL (including circulation spaces)	1,260.5
FSR	2.11 : 1

The amended plans were re-exhibited and notified to adjoining land owners (including the original objectors) from Wednesday 29 May 2019 to Wednesday 12 June 2019 and during this time two submissions were received in regards to parking and concern pertaining to an objectors concern surrounding a possible future licenced premises given the introduction of a hotel definition. In addition, the amended plans were re-considered by internal officers and no objections were raised however recommended conditions were amended to reflect the changed plans.

A detailed assessment of the amended plans has been undertaken having regard to the relevant matters for consideration under Clause 4.15 of the Act and on balance, despite some variations to the State Apartment Design Guidelines and the provisions of Clause 6.6 of the TCCLEP2012 (as previously mentioned and discussed in further detail below) the development is considered to have sound planning merit and is therefore recommended for approval.

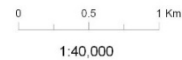
LOCALITY PLAN:



Site Plan

Lot 4 Sec 5 DP 4043

25 Beryl Street, TWEED HEADS



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Cadastre: 19/06/2019
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Coordinate System - MGA Zone 56
Datum - GDA 94

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3 Tumbalum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484

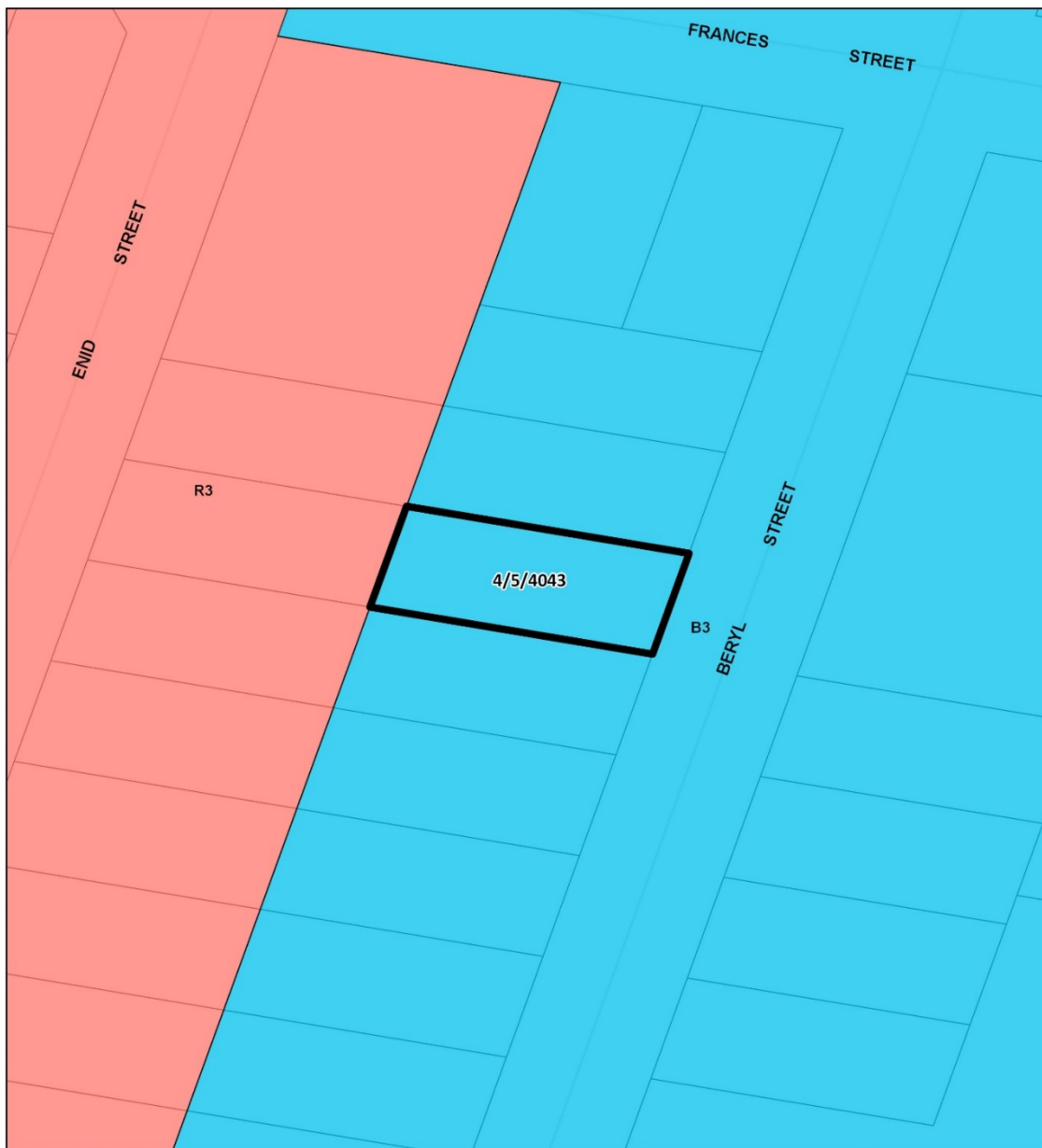
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TWEED
SHIRE COUNCIL

Date Printed: 19 June, 2019

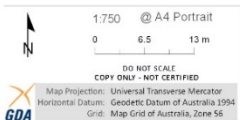
ZONING:



Subject Land
 Subject Land

Land Zoning (LZN 2012)

- B3 Commercial Core
- R3 Medium Density Residential



Site Plan - Local Environmental Plan
 Lot 4 Sec 5 DP 4043

25 Beryl Street, TWEED HEADS

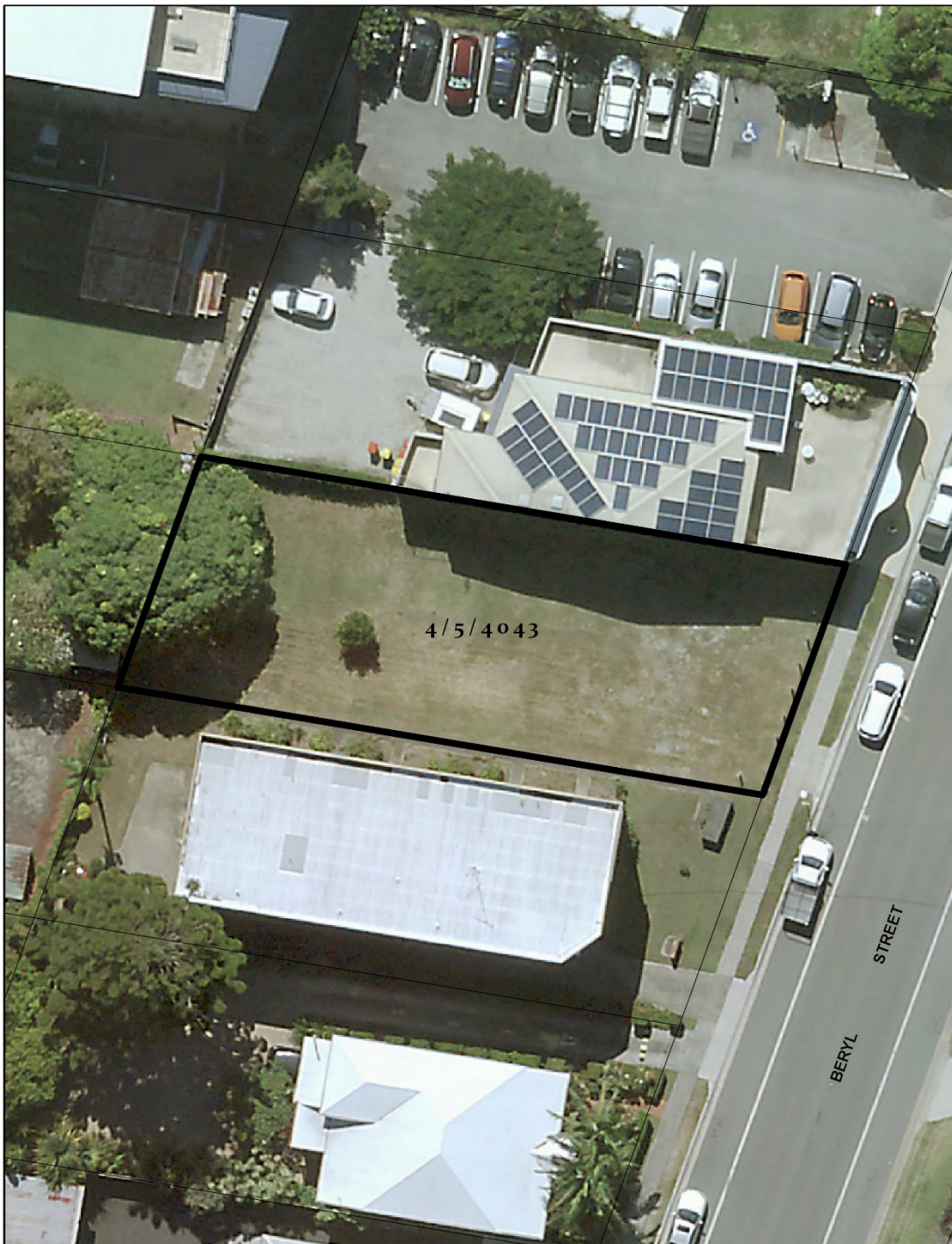
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Date Printed: 19 June, 2019

AERIAL:



1:300 @ A4 Portrait
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 GDA
 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geocentric Datum of Australia 1984
 Grid: Map Grid of Australia, Zone 56

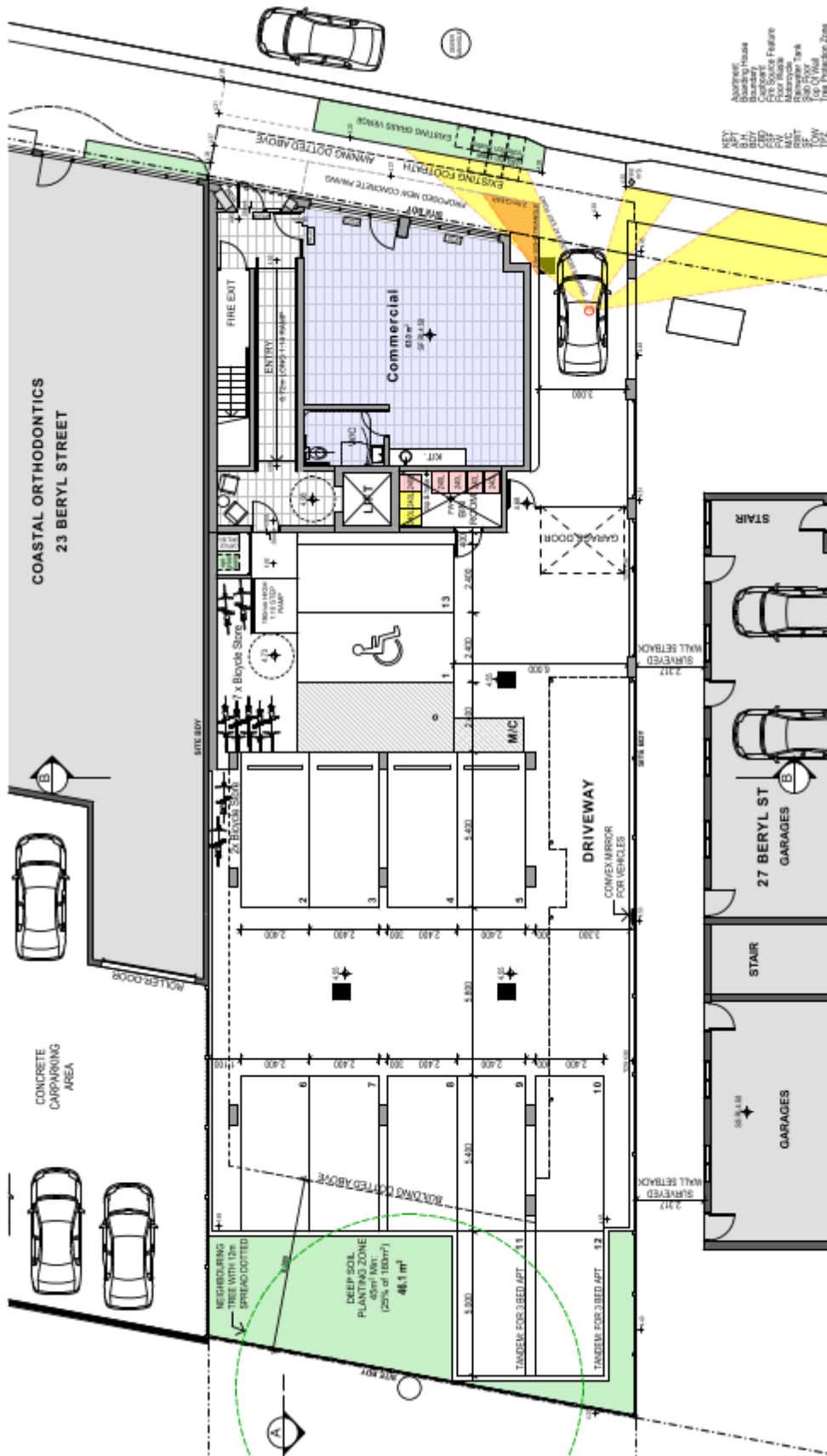
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Aerial Photography April 2018
 Lot 4 Sec 5 DP 4043
 25 Beryl Street, TWEED HEADS

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 Author: S.Scott - GIS
 Date Printed: 19 June, 2019

DEVELOPMENT/ELEVATION PLANS:



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PROJECT TITLE
 25 Beryl St. Mixed-Use Building

PROJECT ADDRESS
 Lot 4 Section 5 DP 4043
 25 Beryl St. Tweed Heads NSW 2485

DRAWING TITLE
 GROUND FLOOR PLAN

SCALE
 1:125 @ A3

DATE
 3/05/2019

DRAWING NO & REVISION
 DA03B

REV.
 1 - DEVELOPMENT APPLICATION ISSUE
 2 - 17 CAR SPACES & INCREASED COMMERCIAL
 3 - 17 CAR SPACES & FIRST FLOOR COMMERCIAL USE

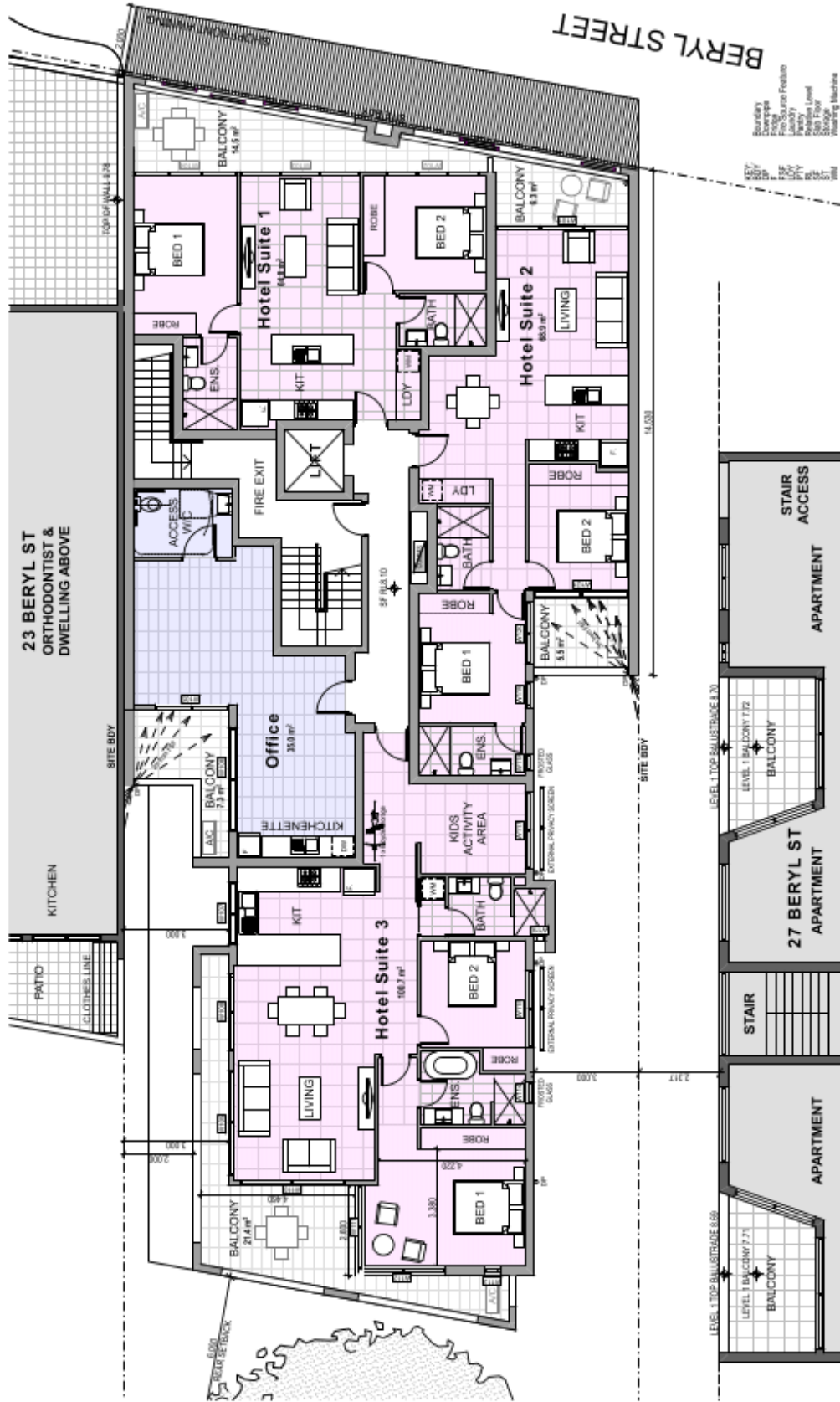
DATE
 28/09/18
 14/07/19
 03/06/21

STATUS
 DEVELOPMENT APPLICATION

ON ORIGINAL @ A3

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Abbreviations:
 APT: Apartment
 B.H.: Boarding House
 C.D.P.: Child Day Centre
 C.F.S.: Caravan Field Station
 C.P.: Caravan Park
 C.P.S.: Caravan Park Site
 M.C.: Motor Caravan
 M.C.P.: Motor Caravan Park
 R.T.P.: Residential Trailer Park
 T.O.W.: Trailer
 T.W.P.: Trailer Park
 T.P.Z.: Tree Protection Zone



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25 Beryl St. Mixed-Use Building
 Lot 4, Section 5, DP 4043
 25 Beryl St, Tweed Heads NSW 2485

LEVEL 1 FLOOR PLAN
 SCALE: 1:100 @ A3
 DATE: 3/05/2019
 DRAWN: SM

27 BERYL ST APARTMENT
 LEVEL 1 TOP BALUSTRADE 8.68
 LEVEL 1 BALCONY 7.71
 BALCONY

APARTMENT
 STAIR

27 BERYL ST APARTMENT
 LEVEL 1 TOP BALUSTRADE 8.70
 LEVEL 1 BALCONY 7.72
 BALCONY

APARTMENT
 STAIR ACCESS

23 BERYL ST ORTHODONTIST & DWELLING ABOVE
 KITCHEN
 PATIO
 CLOTHES LINE

23 BERYL ST

DA04B
 DEVELOPMENT APPLICATION

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REVISIONS:
 1. DEVELOPMENT APPLICATION ISSUE 27/04/19
 2. STAIR HEIGHTS RE-IMAGINED CEILING HEIGHT 14/07/19
 3. FIRST FLOOR COMMERCIAL HOTEL & OFFICE USE 08/06/19

BOUNDARY
 Boundary
 Dwelling
 Pro-Square Feature
 Laundry
 Robe
 Robe Level
 300 Floor
 Stair
 Stair Well
 Washing Machine

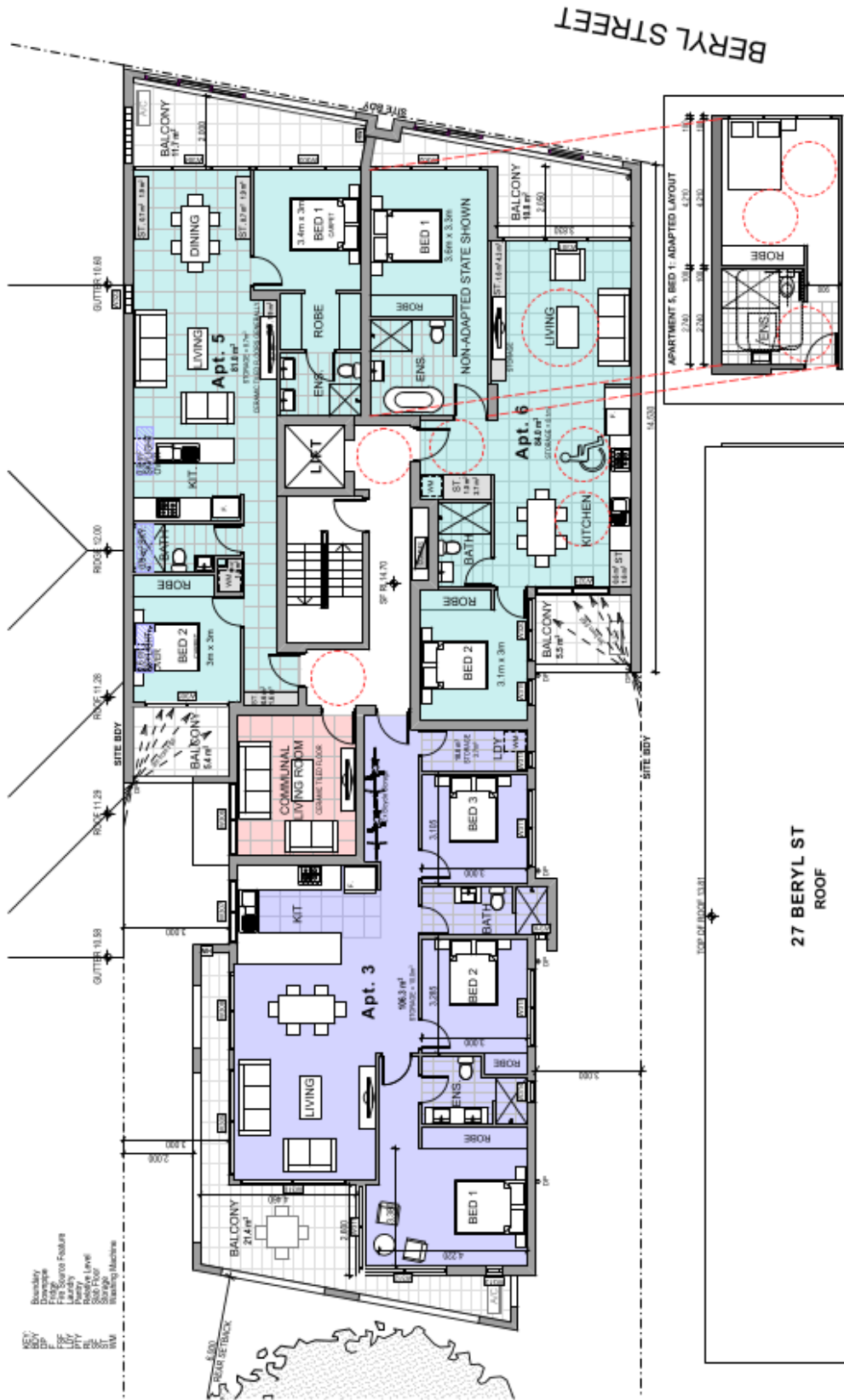
REV
 1
 2
 3

DATE
 3/05/2019
 14/07/19
 08/06/19

SCALE
 1:100 @ A3

DRAWING NO & REVISION
 DA04B

STATUS
 DEVELOPMENT APPLICATION



27 BERYL ST ROOF

25 Beryl St, Mixed-Use Building
LEVEL 3 FLOOR PLAN

PROJECT TITLE: LEVEL 3 FLOOR PLAN
 DRAWING TITLE: LEVEL 3 FLOOR PLAN
 PROJECT ADDRESS: Lot 4 Section 5 CP 4243
 25 Beryl St, Tweed Heads NSW 2485

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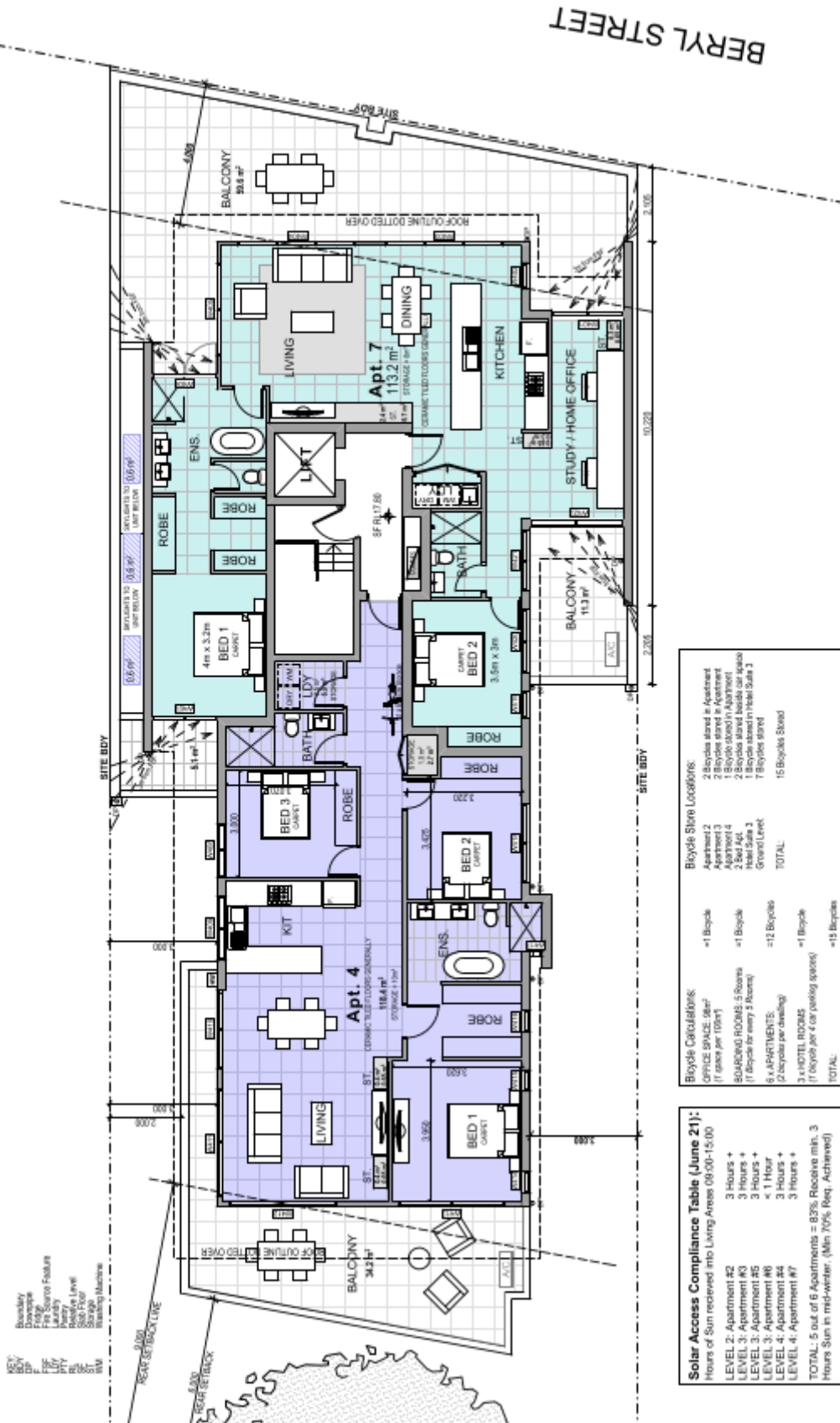
SCALE: 1:100 @ A3
 DATE: 3/05/2019
 DRAWN: SM

DESCRIPTION:
 DEVELOPMENT APPLICATION ISSUE
 FLOOR LEVEL INCREASED BY 300mm
 W302 ADDED TO APTE 6 FOR SOLAR ACCESS

DATE: 27/06/19
 DRAWING NO. & REVISION: DA06B

STATUS: DEVELOPMENT APPLICATION
 ON ORIGINAL @ A3

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PROJECT TITLE
25 Beryl St. Mixed-Use Building

DRAWING TITLE
LEVEL 4 FLOOR PLAN

SCALE
1:100 @ A3

DATE
3.05/2019

DRAWN
SM

REV.

NO.	DESCRIPTION	DATE
1	DEVELOPMENT APPLICATION ISSUE	20/08/18
2	FLOOR LEVEL INCREASED BY 20cm	14/01/19
3	SOLAR ACCESS & BI-CYCLE NOTES UPDATED	08/06/19

DA07B

STATUS
DEVELOPMENT APPLICATION

Bicycle Calculations:

OFFICE SPACE: 96m ² (7 spaces per 100m ²)	=1 Bicycle
ROBBER ROOMS: 5 Rooms (7 bicycles for every 4 Rooms)	=1 Bicycle
6 x APARTMENTS: (2 bicycles per dwelling)	=12 Bicycles
3 x HOTEL ROOMS (7 bicycle per 4 car parking spaces)	=1 Bicycle
TOTAL:	=15 Bicycles

Bicycle Store Locations:

Apartment 2	2 Bicycles stored in Apartment
Apartment 3	2 Bicycles stored in Apartment
Apartment 4	2 Bicycles stored in Apartment
Hotel Suite 1	1 Bicycle stored in Hotel Suite 1
Hotel Suite 3	1 Bicycle stored in Hotel Suite 3
Ground Level	7 Bicycles stored
TOTAL:	15 Bicycles Stored

Solar Access Compliance Table (June 21):

Hours of Sun received into Living Areas 09:00-15:00

LEVEL 2: Apartment #2	3 hours +
LEVEL 3: Apartment #3	3 hours +
LEVEL 3: Apartment #5	3 hours +
LEVEL 3: Apartment #6	< 1 Hour
LEVEL 4: Apartment #4	3 hours +
LEVEL 4: Apartment #7	3 hours +

TOTAL: 5 out of 6 Apartments = 83% Receive min. 3 Hours Sun in mid-winter. (Min 70% Req. Achieved)

PROJECT TITLE
25 Beryl St. Mixed-Use Building

DRAWING TITLE
LEVEL 4 FLOOR PLAN

SCALE
1:100 @ A3

DATE
3.05/2019

DRAWN
SM

REV.

NO.	DESCRIPTION	DATE
1	DEVELOPMENT APPLICATION ISSUE	20/08/18
2	FLOOR LEVEL INCREASED BY 20cm	14/01/19
3	SOLAR ACCESS & BI-CYCLE NOTES UPDATED	08/06/19

DA07B

STATUS
DEVELOPMENT APPLICATION

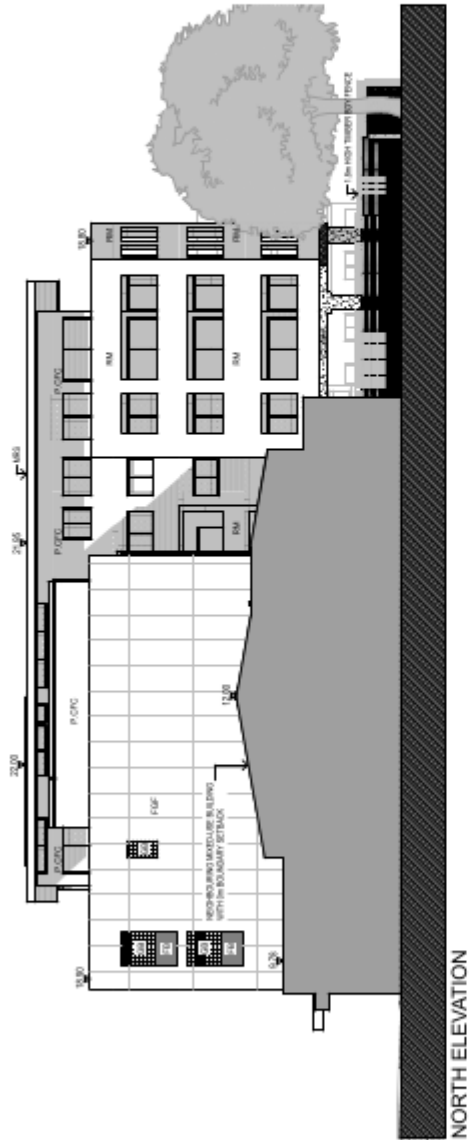
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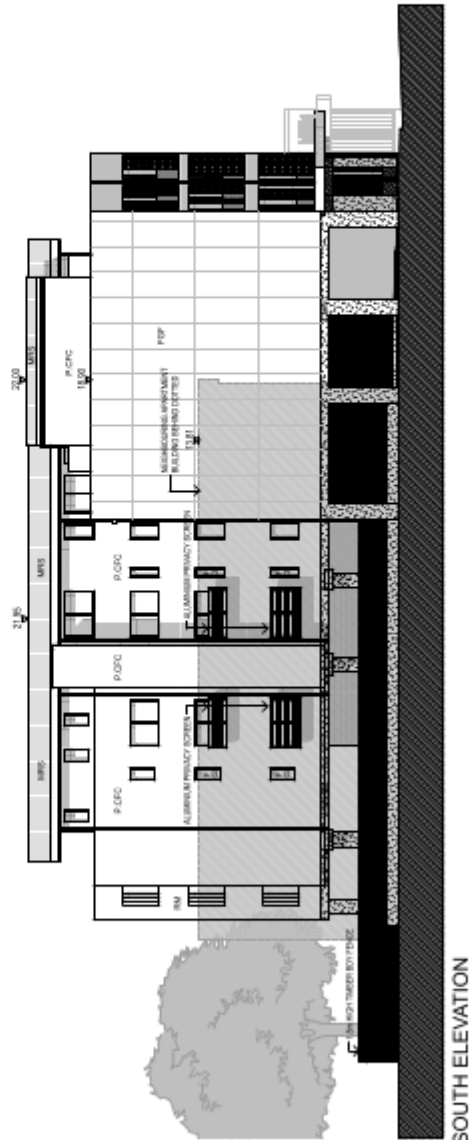
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ON ORIGINAL @ A3

- KEY:**
 CONCRETE
 FACE BRICK
 GLASS BLOCKS
 PAINTED COMPRESSED FIBRE CEMENT
 INDENSED BRICKWORK
 FB
 P
 GB
 P.C.F.C.
 RM



NORTH ELEVATION



SOUTH ELEVATION

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PROJECT TITLE
 25 Beryl St. Mixed-Use Building

PROJECT ADDRESS
 Lot 4, Section 5 DP 4543
 25 Beryl St. Tweed Heads NSW 2485

0 1 2 3 4 5 CH ORIGINAL @ A3

DRAWING TITLE
 ELEVATIONS NORTH & SOUTH

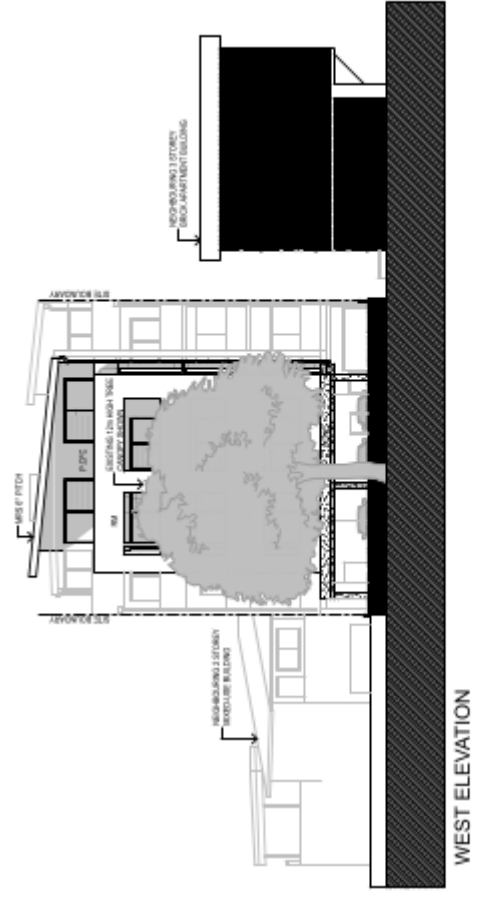
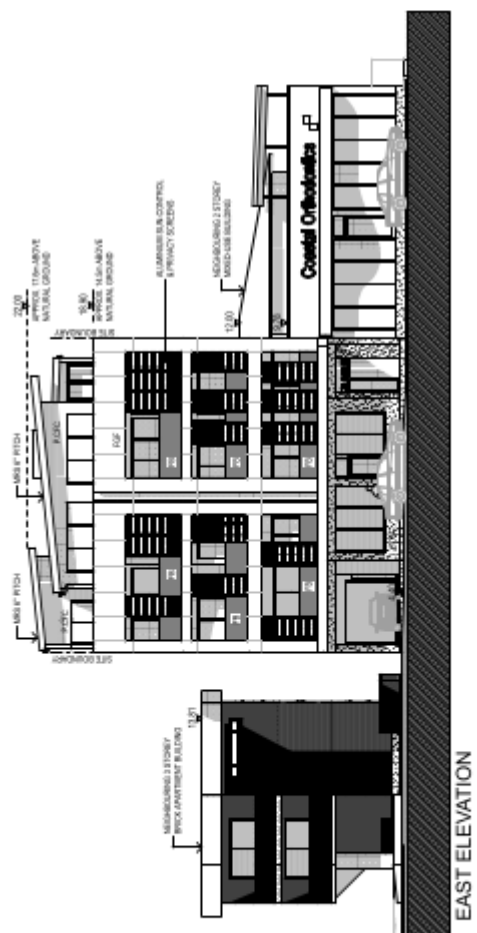
REV. DESCRIPTION
 1 DEVELOPMENT APPLICATION ISSUE
 2 BUILDING ZONE TALLER TOP LEVEL 1 CEILING HEIGHT 2.70 TO 3.00
 3 FLOOR & ROOF LEVELS & GLASS BRICK WALL TOLLS 00/00/01

SCALE 1:200 @ A3
DATE 3/05/2019
DRAWN SM

DRAWING NO & REVISION
DA11B

STATUS DEVELOPMENT APPLICATION

KEY:
 CONG. CONCRETE
 GGL GRASS
 GLASS GLASS WINDOW
 FGLR GRANITOLAS FACADE
 FDF FIBRE CEMENT
 MRS METAL ROOF SHEETING
 P-CG PAINTED COMPRESSED FIBRE CEMENT
 BR BRICK



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PROJECT TITLE
25 Beryl St. Mixed-Use Building

PROJECT ADDRESS
 Lot 4, Section 5 DP 4043
 25 Beryl St. Tweed Heads NSW 2485

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DRAWING TITLE
ELEVATIONS EAST & WEST

SCALE
 1:200 @ A3

DATE
 3.05.2019

DRAWN
 SM

REV. DESCRIPTION DATE
 1. ORIGINAL 18.08.18
 2. BUILDING 20% TALLER FOR LEVEL 1 CEILING HEIGHTS 19.08.18
 3. FLOOR & ROOF LEVELS TO SUIT COMAK & BEEL USE. 08.09.18

DRAWING NO. & REVISION
DA12B

STATUS
 DEVELOPMENT APPLICATION

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

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

Tweed City Centre Local Environmental Plan 2012

Clause 1.2 – Aims of the Plan

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

The particular aims of this Plan are as follows:

- (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents,*
- (b) to promote employment, residential, recreational, arts, social, cultural and tourism opportunities in Tweed City Centre,*
- (c) to encourage the responsible sustainable management and conservation of Tweed City Centre's natural and environmentally sensitive areas, the built environment and cultural heritage,*
- (d) to promote development that is consistent with the principles of ecologically sustainable development,*
- (e) to promote the economic revitalisation of Tweed City Centre,*
- (f) to strengthen Tweed City Centre as a multi functional and innovative regional centre that encourages employment and economic growth,*
- (g) to protect and enhance the vitality, identity and diversity of Tweed City Centre,*
- (h) to facilitate building design excellence appropriate to a regional city in Tweed City Centre.*

The proposed development is located within the Tweed City Centre Commercial core. The development provides a suitable range of land uses which are permitted in the zone. The proposed built form is generally consistent with the changing character of the area in terms of bulk and scale. Whilst it is acknowledged that the development is not of the maximum scale and height that is forecasted by the local development standards that apply to the site, the development provides a suitable urban form that respects the context and setting of the site and its immediate surrounds. Furthermore, the development provides additional employment opportunities with ground and first floor commercial uses together with an appropriate mix of residential accommodation typologies including hotel suites, boarding houses (in line with state initiatives to increase the supply and diversity of affordable rental in appropriately located commercial centres) and standard apartments as shop top housing.

As such, the development meets the aims of the plan as far as meeting strategic principles, policies and actions, promotion appropriate land uses in the Tweed City Centre, encouraging the responsible sustainable management and conservation of the built environment, promoting economic revitalisation and acknowledging appropriately design buildings that respond to function of the Tweed City Centre as a regional city.

Clause 1.4 Definitions

Under this clause the proposed development would constitute various development definitions, thus forming a **Mixed Use development**.

The detailed land uses are outlined further below.

commercial premises means any of the following:

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

hotel or motel accommodation means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that:

- (a) comprises rooms or self-contained suites, and
- (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

Note.

Hotel or motel accommodation is a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.

residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,
- (b) boarding houses,**
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,**

but does not include tourist and visitor accommodation or caravan parks.

boarding house means a building that:

- (a) is wholly or partly let in lodgings, and
- (b) provides lodgers with a principal place of residence for 3 months or more, and
- (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and

(d) *has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers, but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

Note.

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

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

Note.

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

The above development types are permissible with consent in the zoning which applies to the land.

Clause 2.3 – Zone objectives and Land use table

The subject site is zoned B3 Commercial Core. The objectives of this zone area as follows:

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

Boarding House, Commercial Premises, Hotels or Motel Accommodation, and Shop Top Housing, are permitted land uses in the B3 Commercial core zone.

3 Permitted with consent

Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Home industries; Hotel or motel accommodation; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Shop top housing; Tank-based aquaculture; Any other development not specified in item 2 or 4.

Therefore the provision of a mixed use development containing the above described land uses in an accessible location such as the subject site is considered to be an appropriate development that is conducive to the objectives of the zone.

Clause 4.3 - Height of Buildings

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

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

The proposed development has a maximum stated height of 17.36m which complies.

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 City Centre.*

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

The maximum permitted for the subject site is 3.25:1 however pursuant to Clause 4.4(2A), given the site is zoned B3 Commercial Core and less than 1,000m² (the subject site features a land area of 596.7m²), the maximum permitted floor space ratio is reduced to 2.25:1.

The proposed gross floor area for the development is 1068.8m² which results in a floor space ratio of 2.11: 1 which complies.

Clause 4.6 - Exceptions to development standards

The objectives of this clause are as follows:

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

This clause provides a mechanism by which development standards may be varied under the local planning instrument. In this instance, the applicant has proposed to vary the standards contained in Clause 6.6(2) of the LEP.

The variation is addressed below:

Variation to Clause 6.6 - Minimum building street frontage

The objectives of this Clause are outlined in Clause 6.6(1) as follows:

- (a) to ensure that, visually, buildings have an appropriate overall horizontal proportion compared to their vertical proportions,*
- (b) to provide appropriate dimensions and spacing to ensure adequate privacy between any residential component and the adjoining land use,*
- (c) to provide appropriate dimensions for the design of car parks levels and ensure access is reasonably spaced along roads and lanes,*
- (d) to encourage larger development of commercial office, business, residential and mixed use buildings provided for under this Plan.*

Clause 6.6(2) states:

Development consent must not be granted to the erection of a building on land in Zone R3 Medium Density Residential, Zone B2 Local Centre, Zone B3 Commercial Core or Zone B4 Mixed Use that does not have at least one street frontage of 20 metres or more.

Clause 6.6(3) states:

Despite subclause (2), the consent authority may grant development consent to the erection of a building on land referred to in that subclause if it is of the opinion that:

- (a) due to the physical constraints of the site or an adjoining site or sites, it is not possible for the building to be erected with at least one street frontage of 20 metres or more, and*
- (b) the development is consistent with the aims and objectives of this Plan.*

The subject site is zoned B3 Commercial core zone and therefore the minimum building frontage of 20m under Clause 6.6(2) applies. The subject site features a street frontage of 15.086m which represents a variation of 4.194m or 24.57%. The variation is greater than 10% and therefore is referred to Council as the consent authority for determination in accordance with Planning Circular PS18-003.

The applicant has lodged an application to vary the development standard under Clause 4.6 and includes a written response to matters outlined in each section of Clause 4.6. Detail of the applicant's response to the relevant matters for consideration under Clause 4.6 are contained below:

Clause 4.6(3)(a) considerations - compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Applicant's submission:

The contextually responsive development is consistent with the zone objectives and the minimum building street frontage standard objectives. See further discussion below:

Zone Objectives

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*

Comment: The proposed development incorporates retail/ business, affordable rental accommodation and residential accommodation which will serve the needs of people who live in, work in and visit the local area. The proposal is consistent with this objective.

- *To encourage appropriate employment opportunities in accessible locations.*

Comment: The subject property is located within an accessible location well serviced by public transport. The development encourages/ generates employment opportunities through the provision of ground floor retail/ business floor space, the ability to adaptively reuse the first floor for commercial uses in the future, the need for Strata Managers/ cleaners/ gardeners for the building and the employment of a boarding house manager. The proposal is consistent with this objective.

- *To maximise public transport patronage and encourage walking and cycling.*

Comment: The development will be well serviced by public transport reducing the dependency on private vehicles as encouraged by SEPP ARH. The proposal is consistent with this objective.

- *To encourage upper floor residential or tourist accommodation that does not compromise the commercial use of the land.*

Comment: The proposal provides for a mixture of permanent residential and boarding house style accommodation on this site with the ability to adaptively reuse the first floor for commercial uses in the future ensuring this objective is not defeated. The ground floor retail/ business floor space has been maximised with the proposed quantum considered acceptable given the constraints imposed by the inability to consolidate with adjoining properties. The proposal is consistent with this objective.

The consent authority can be satisfied that the development is permissible with consent in the zone and consistent with the zone objectives as outlined.

Minimum building street frontage standards and objectives

- *To ensure that, visually, buildings have an appropriate overall horizontal proportion compared to their vertical proportions,*

Comment: The proposed building has a compliant FSR and sits some 16 metres below the maximum prescribed building height for the site. In this regard, the proposed building has an appropriate overall horizontal proportion compared to its vertical proportions and to that extent will sit comfortably within the existing and desired future streetscape.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that observers would not find the buildings overall horizontal proportion compared to its vertical proportions offensive, jarring or unsympathetic in an existing and desired future streetscape context. This objective is satisfied.

- *To provide appropriate dimensions and spacing to ensure adequate privacy between any residential component and the adjoining land use,*

Comment: The proposal maintains a street wall to Beryl Street with 3 metre setbacks behind this street wall alignment ensuring the ability to create 6 metre wide (3 metre each side) light and ventilation void setbacks to future adjoining development. Such setbacks are considered appropriate noting the orientation of the sites and allotment depths which will dictate the orientation of apartments to the front and rear of the sites as is currently proposed.

In relation to privacy we rely on Section B (plan DA10A) which shows the location of the proposed fixed externally integrated privacy screens to prevent direct overlooking between the subject development and the apartments at No. 27 Beryl Street. This objective is satisfied.

- *To provide appropriate dimensions for the design of car parks levels and ensure access is reasonably spaced along roads and lanes,*

Comment: The proposal provides appropriately for car parking and layout as detailed in the Council correspondence of 5th December 2018. The driveway is positioned to maintain maximum spacing to the driveways located on both immediately adjoining properties. This objective is satisfied.

- *To encourage larger development of commercial office, business, residential and mixed use buildings provided for under this Plan.*

Comment: The adjoining property to the south is occupied by a 3 storey Strata Subdivided residential flat building. The nature of development and fragmented ownership prevents consolidation at this time. Our client has made an attempt to enter into negotiations for a consolidated scheme with

the owner of No. 23 Beryl Street to the north however such request has been declined as detailed in the email correspondence at Annexure 1. This objective has been appropriately considered and to that extent is not defeated.

The applicant has also addressed matters set out in the 'five part test' established by the NSW Land and Environment Court. The five different ways in which an objection may be well founded and that approval of the objection may be consistent with Clause 4.6(3)(a) considerations are discussed as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard:

Applicant's submission:

Desirable Mixed-Use Building Form:

It has been demonstrated that efforts to enter into negotiations with the owner of 23 Beryl Street (for the purposes of an amalgamated development) have been unsuccessful, and that the owner of 23 has declined further negotiations. As a result, we are left with the challenge of planning a development that best serves the existing and future needs of the local community whilst respecting the local context of the site, enhancing the streetscape and contributing to the architectural merit of the precinct.

The built form outcome of the proposed Mixed-Use shop-top housing, office and boarding house development will achieve a better outcome than the alternative development options. A smaller residential-only development with lower FSR and fewer dwellings has been ruled out, as has the option of pursuing no development of the site at all.

Building Proportions & Scale:

The proposed development respects and relates to both the existing shop-top housing development immediately to the North (23 Beryl Street) and the existing residential flat building immediately to the South (27 Beryl Street) in terms of its overall height, scale and setbacks.

The street front elevation (DA13) demonstrates that the proposed building form responds to the existing built-form context of the site whilst acknowledging the desired future character of the streetscape. The proposed building form and scale is in character with its existing surrounds and uses forms and materials that respond to neighbouring developments in a contemporary manner.

Building Proportions & Aesthetics:

Document DA19 - Colours & Materials, demonstrates the utilisation of a number of materials in the external treatment of the development that combine to form a high-quality contemporary urban aesthetic that will positively contribute to the Beryl St streetscape.

- *Dark brown natural clay brick compliments the orange brick of 27 Beryl Street*

- *Natural Anodised aluminium external sun control & privacy louvres add layering to and break-down the scale of the facade*
- *Lightweight cladding panels with expressed joints provide visual interest and pattern to external walls*
- *A centre vertical recess in the front facade adds visual interest and relief to the building, expressing vertical proportions that balance the buildings horizontal balcony openings.*

Building Setbacks & Active Pedestrian Frontage:

- *The ground floor commercial space is built to the street boundary as per 23 Beryl street, extending the existing commercial street frontage and pedestrian street activation.*
- *An awning extends for the full width of the street frontage, providing shelter to pedestrians on the footpath and encouraging pedestrian traffic.*

Commercial Space Width in the Street Frontage:

A single 3m wide driveway has been located on the Southern side of the building frontage to replicate the existing southern location of the 27 Beryl Street driveway, to minimise the width of the driveway crossing and to maximise the width of the commercial street frontage.

- *Car parking is located behind the ground floor commercial space on grade. Had a basement carpark been pursued, the width of a ramp down to the basement would have prohibited an adjacent aisle and row of perpendicular parking spaces. A car lift arrangement would be cost prohibitive and the process of piling for basement excavation near the boundary would potentially cause damage to existing neighbouring buildings. It has been demonstrated that the required number of vehicles can be accommodated at grade, hidden from public view behind the building.*
- *The 3m wide driveway and single width garage door presents to the street in the same way that a development with a basement carpark would. From the street, there is no perceptible visual difference between a development with on-grade or basement car parking.*
- *Of the approx. 15m Street Frontage width:*
 - *8.7m (58% of the frontage) presents as commercial space*
 - *2.9m (19% of the frontage) presents as the residential entry*
 - *3.4m (23% of the frontage) presents as the single driveway*
 - *Great effort has been made to maximise the ground floor commercial component of the development both in its area and street frontage width and to realise the most efficient and practical use of the site*

Horizontal & Vertical Building Proportions:

The building and site width of 15.086m (being 24.57% below the minimum 20m frontage standard), is proportionally scaled with the a parapet height of 14.1m and a building height of 17.1m (where a maximum building height of 34m is permitted), ensuring an appropriate overall horizontal proportion compared to their vertical proportions.

Horizontally proportioned openings in the facade have been created on levels 1 -3 to further emphasise the horizontal proportions of the building. The ground floor facade is treated with different materials and is visually separated from the upper floors due to the streetfront awning that shelters pedestrians. Similarly, the uppermost floor is set back from the front boundary behind a parapet and is treated with light-weight, visually recessive colours and materials.

Boarding House Component:

- *The mixed-use, shop-top housing development typology has allowed for the inclusion of a 10 room boarding house component. This allows for the permanent rental (minimum 3 month lease terms) of a range of studio and 1 bedroom boarding house rooms, each with their own internal bathroom, kitchen and clothes-washing facilities.*
- *Each boarding house room also has a small balcony for the benefit of occupants to maximise natural ventilation and to enjoy high-quality living spaces.*
- *The boarding house component of the development has been designed with lift access (for elderly and disabled residents) and contains a room that can be adapted to accommodate a person with a disability.*
- *The boarding house component of the development is well located in Tweed Heads with a short 300m level walk away from Tweed Mall Shopping Centre and the main bus stops located outside. It is envisaged that the boarding house component will cater for the rental accommodation need of local workers, students, retirees and people with disabilities that may be less vehicle-dependent and who wish to live in close proximity to a great range of services and amenities.*

Desirable FSR & Density & Dwelling Yield:

Despite the reduced width of the site and the inability to amalgamate with neighbouring land owners, a significant amount of commercial space and number of dwellings have been proposed for the site:

- *The FSR of the proposed Development is 2.1:1*
- *17 dwellings (7 apartments + 10 boarding house rooms) are proposed*

By way of comparison, 52 apartments were approved on a nearby site (36-40 Enid Street, Tweed Heads) exactly three times the size of 25 Beryl Street. That development yielded $52/7 = 17.3$ dwellings per lot. The same number of dwellings per lot (17) on top of the ground floor commercial component at 25 Beryl Street has been realised.

Another comparison can be made to the site: 2-6 Sands Street, Tweed Heads. On This 614m² site (comparable to the 594m² subject site), a 6 Storey Mixed-Use building was constructed comprising 2 small ground floor commercial suites and car parking with 15 residential dwellings above. Despite 25 Beryl Street not having a 20m lot frontage, a larger commercial area and a greater number of dwellings have been proposed on a smaller, more challenging site.

2. The underlying objective or purpose of the standard is not relevant to the development

Applicant's submission:

This underlying standard objectives of building size, proportion, density, residential amenity and pedestrian connectivity have all been achieved in the proposed development proposal notwithstanding the non-compliance with the standard.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required

Applicant's submission:

As proposals to consolidate the site with the neighbouring land owner of 23 Beryl St were declined, If compliance was required, 25 Beryl Street would likely remain an undeveloped vacant lot for several more years. Non-development of the site would be contrary to the objectives of the standard.

4. The standard has been virtually abandoned or destroyed by the Councils own actions in granting consents departing from the standard and/or

Applicant's submission:

This is not the case. We have made efforts to comply with the standard by amalgamating sites with 23 Beryl Street but have met with refusal by the owner. Efforts to negotiate with the individual unit owners of 27 Beryl Street have not been successful. However, the objectives of the standard are fully achievable.

5. The zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.

Applicant's submission:

This is not the case.

Clause 4.6(3)(b) considerations – whether there is sufficient environmental planning grounds to justify contravening the development standard

Applicant's submission:

In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It is considered that that there are sufficient environmental planning grounds to justify the variation sought namely the particular built form and land owner circumstances associated with both immediately adjoining sites which prevents

any reasonable attempt to consolidate adjoining properties to achieve a minimum 20 metre frontage.

Clause 4.6(a)(ii) considerations - Claim for variation being within the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Applicant's submission:

The subject property is zoned B3 Commercial Core pursuant to the provisions of Tweed City Centre Local Environmental Plan 2012 (TCCLEP 2012) with the stated zone objectives as follows:

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

A range of uses are permissible in the zone including commercial premises (retail and business premises), tourist and visitor accommodation, shop top housing and boarding houses. Notwithstanding, the boarding house component of the development is made pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH). Accordingly, the proposed land uses are permissible with consent in the zone.

Having regard to the zone objectives we note:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*

Comment: The proposed development incorporates retail/ business, affordable rental accommodation and residential accommodation which will serve the needs of people who live in, work in and visit the local area. The proposal is consistent with this objective.

- To encourage appropriate employment opportunities in accessible locations.*

Comment: The subject property is located within an accessible location well serviced by public transport. The development encourages/ generates employment opportunities through the provision of ground floor retail/ business floor space, the ability to adaptively reuse the first floor for commercial uses in the future, the need for Strata Managers/ cleaners/

gardeners for the building and the employment of a boarding house manager. The proposal is consistent with this objective.

- *To maximise public transport patronage and encourage walking and cycling.*

Comment: The development will be well serviced by public transport reducing the dependency on private vehicles as encouraged by SEPP ARH. The proposal is consistent with this objective.

- *To encourage upper floor residential or tourist accommodation that does not compromise the commercial use of the land.*

Comment: The proposal provides for a mixture of permanent residential and boarding house style accommodation on this site with the ability to adaptively reuse the first floor for commercial uses in the future ensuring this objective is not defeated. The ground floor retail/ business floor space has been maximised with the proposed quantum considered acceptable given the constraints imposed by the inability to consolidate with adjoining properties. The proposal is consistent with this objective.

The consent authority can be satisfied that the development is permissible with consent in the zone and consistent with the zone objectives as outlined.

Council Officer Assessment

With respect to the applicant's justification above, it is considered that the proposed variation to Clause 6.6(2) does not impact the development's performance against the objectives of this Clause. This has been well articulated in the detailed Clause 4.6 submission by the applicant (as outlined above). Furthermore, the applicant has demonstrated that the land tenure constraints apply in this circumstance as far as adjoining land to the south being under strata title and therefore under fragmented ownership, and the land owner to the north declining offers for consolidation/purchase of land (evidence that this is the case has been submitted to Council as part of the DA).

Based on the above considerations, Council officers consider that the applicant has justified the development's performance against the aims and objectives of the TCCLEP2012, objectives of the zone and the objectives of Clause 6.6. Further, the nature of the subject site being a narrow infill lot together with the tenure constraints for adjoining sites, in this circumstance it is not possible for the building to be erected with at least one street frontage of 20 metres or more and therefore if Council was not supportive of the proposal, the subject site would form isolated land and result in a much lower density of development to occur, which is not in line with the objectives of the plan, the zone or Clause 6.6. For this reason, whilst a Clause 4.6 has been submitted, the claims submitted in the applicant's submissions provide sound justification for Council to consider a variation pursuant to Clause 6.6(3) of this Clause.

Notwithstanding this, considering the matters raised under Clause 4.6 considerations and the provisions of Clause 6.6 including the 'Five Part Test', it has been demonstrated adequately that there are sufficient planning grounds to justify the contravention of Clause 6.6(2) and therefore compliance with the standard is unnecessary in this case.

As such, the proposed variation is considered to be worthy of support.

Clause 5.10 - Heritage Conservation

The objectives of this clause are as follows:

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

A search of the proposed development site has been undertaken on the NSW Government Office of Environment & Heritage website through the Aboriginal Heritage Information Management System (AHIMS) tool, which has identified that there are no Aboriginal sites recorded or Aboriginal places declared at or near the proposed development site. Further, there are no known or predictive places of Aboriginal Cultural Heritage and the site is noted listed as a local Heritage Item under Schedule 5 of TCCLEP2012 nor is it located within a heritage conservation area. In this regard the proposal is not considered to impact negatively on the provisions of this clause.

Clause 6.1 – Acid Sulfate Soils

The objective of this Clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject site is mapped to contain Class 2 Acid Sulfate Soils and the proposal involves only minor excavation works (no basement car park). Notwithstanding, a Preliminary Acid Sulfate Soil Investigation prepared by HMC Environmental Consulting Pty Ltd dated November 2018 (referenced HMC2018.237). The report identifies that neither groundwater nor Acid Sulfate Soils will be intercepted as part of the proposed excavation works. Therefore, the development satisfies the objectives of this Clause.

Clause 6.2 – Flood Planning

The objectives of this Clause are as follows:

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

The subject site is a vacant lot and comprises of a relatively flat topography, with site levels between RL 4m and RL 4.4m AHD. Design Flood Level (DFL) for the

area is RL 2.6m AHD. Given the site levels are above the DFL, the subject site is not affected by the 1% flood event.

The site is still considered flood liable due to it being affected by the PMF event at RL 5.5m AHD. The habitable component of the development starts at the first floor of the development, to which finished floor levels (FFL's) are a minimum of RL 8.1m AHD which is well above the PMF level.

Based on the above consideration, Council can be satisfied the development meets the objectives of this Clause.

Clause 6.3 - Floodplain risk management

The objectives of this clause are as follows:

- (a) *in relation to development with particular evacuation or emergency response issues, to enable evacuation of land subject to flooding in events exceeding the flood planning level,*
- (b) *to protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events.*

The proposed land use is not that which is affected by this Clause.

Clause 6.6 – Minimum building street frontage

The objectives of this Clause are outlined in Clause 6.6(1) as follows:

- (a) *to ensure that, visually, buildings have an appropriate overall horizontal proportion compared to their vertical proportions,*
- (b) *to provide appropriate dimensions and spacing to ensure adequate privacy between any residential component and the adjoining land use,*
- (c) *to provide appropriate dimensions for the design of car parks levels and ensure access is reasonably spaced along roads and lanes,*
- (d) *to encourage larger development of commercial office, business, residential and mixed use buildings provided for under this Plan.*

Clause 6.6(2) states:

Development consent must not be granted to the erection of a building on land in Zone R3 Medium Density Residential, Zone B2 Local Centre, Zone B3 Commercial Core or Zone B4 Mixed Use that does not have at least one street frontage of 20 metres or more.

Clause 6.6(3) states:

Despite subclause (2), the consent authority may grant development consent to the erection of a building on land referred to in that subclause if it is of the opinion that:

- (a) *due to the physical constraints of the site or an adjoining site or sites, it is not possible for the building to be erected with at least one street frontage of 20 metres or more, and*

(b) *the development is consistent with the aims and objectives of this Plan.*

As previously discussed in this report, the applicant has submitted an application under Clause 4.6 to vary the standards under Clause 6.6(2) of the LEP. The provision of Clause 6.6(2) require a minimum street frontage of 20m for erection of a building on land zoned B3 Commercial Core (the nominated zone for the subject site). The subject site features a street frontage of 15.086m which represents a variation of 4.194m or 24.57%.

Council officers have considered the justification submitted to vary the development standard as well as the provision of Clause 6.6(3) which permits the consent authority to grant development consent to the erection of a building on land if it is of the option that:

- (a) *due to the physical constraints of the site or an adjoining site or sites, it is not possible for the building to be erected with at least one street frontage of 20 metres or more, and*
- (b) *the development is consistent with the aims and objectives of this Plan.*

The subject site is currently vacant and adjoining lands and constraints by their tenure. In particular, land to the south forms an existing strata building and land to the north comprises of a well-established commercial building (orthodontic clinic). Despite the applicant's efforts to consolidate the subject site and the northern lot, the adjoining northern land owner declined an invitation to joint venture in this regard (a copy of the advice from the adjoining land owner to the north has been submitted with the DA). Land to the south is fragmented in terms of its tenure due to the nature of the building being under strata title. As such, in the absence of lot consolidation, the lot is isolated and development in accordance with Clause 6.6(2) is not possible.

Notwithstanding the variation to Clause 6.6(2), the applicant has provided sound justification that demonstrates that the development is consistent with the aims of the TCCLEP2012, the objectives of the zone and the objectives of Clause 6.6.

Council officers have also considered the proposal and are satisfied that the development meets the aims and objectives of the plan (see previous discussion in this report under Clause 1.4) as well as the aims of the Environmental Planning & Assessment Act 1979 as far as:

- Promoting the orderly and economic use and development of land;
- Promoting the delivery and maintenance of affordable housing; and
- Promoting good design and amenity of the built environment.

As such, Council can be satisfied that the development satisfies the matters for consideration under Clause 6.6(3) and that development consent can be granted for the proposal without adversely affecting the developments performance against the objectives of this Clause.

Clause 6.8 – Ground floor and first floor development in certain business zones

The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in certain business zones (B3 Commercial Core and B4 Mixed Use zones).

Clause 6.8(3) states:

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

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

The proposed development is consistent with the provision of Clause 6.8(3)(a) and Clause 6.8(3)(b) by way of providing ground floor and first floor commercial floor area that suitably activates the street. The first floor also accommodate 3 hotel suites which further ensures compliance with these provisions.

Therefore, Council can be satisfied that the proposed development meets the objective of this Clause.

Clause 6.9 - Airspace operations

The objectives of this Clause are as follows:

- (a) to provide for the effective and ongoing operation of the Gold Coast Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport,*
- (b) to protect the community from undue risk from that operation.*

Pursuant to Clause 6.9(2), Council officers have reviewed the proposed RL's for the development (proposed maximum RL is 21.95m AHD) for the development and determined that it will not penetrate the OLS layers which apply to the site (RL 49.5 AHD).

Clause 6.10 – Design excellence

This clause applies to development involving the erection of a new building or external alterations to an existing building on land to which this Plan applies and under the provision of this Clause, development consent must not be granted for development unless the consent authority considered the development exhibits design excellence.

Council officers have considered the proposal having regard to the criteria established under Clause 6.10(3) of the LEP. In addition, as discussed later in this report, the development has been considered having regard to relevant provisions of the Apartment Design Guideline (ADG) under SEPP 65 – Design Quality of Residential Flat Buildings as well as Section A1 and Section B2 of Tweed DCP 2008. On balance, the proposal is considered to be an appropriate urban design

outcome for the site and responds to the strategic design and planning objectives for the Tweed City Centre despite its constraints in terms of lot width.

Further detail of the development's performance against the provisions of this Clause is contained below.

Matters for Consideration under Clause 6.10 of TCCLEP2012	Planning assessment comment
<p>Clause 6.10(3)(a) - whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved.</p>	<p>The proposed built form incorporates appropriate visual interest through use of a mix of materials, articulation in the pitched roof line, screening of balconies and setbacks to upper levels of the building. The material and colour selection is of a high quality and integrates well with the surrounding character of the area.</p>
<p>Clause 6.10(3)(b) – Whether the form and external appearance of the development will improve the quality and amenity of the public domain.</p>	<p>The proposed urban form comprises of ground floor commercial uses that provide an active street frontage and integrates with the adjoining commercial building north of the subject site. The provision of all-weather protection is provided to the public domain further enhancing the pedestrian amenity for the site and locality.</p>
<p>Clause 6.10(3)(c) – Whether the development detrimentally impacts on view corridors.</p>	<p>The subject site does and surrounds does not benefit from significant view corridors. The proposed development is of a bulk and scale that is consistent with existing mixed use buildings further north of the subject site, within the Tweed City Centre precinct. The development responds to the streetscape character of Beryl St in terms of its location and siting on the land.</p>
<p>Clause 6.10(3)(d) – The requirements of the Tweed City DCP.</p>	<p>An assessment of the development's performance against Section B2 (Tweed City Centre) of TDCP 2008 is contained later in this report. On merit, the proposal is considered to meet the requirements of the Tweed City DCP.</p>
<p>Clause 6.10(3)(e) – how the development addresses the following matters:</p> <ul style="list-style-type: none"> (i) the suitability of the land for development, (ii) existing and proposed uses and use mix, (iii) heritage issues and streetscape constraints, (iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form, 	<p>Based on the merits of the proposal in terms of bulk, scale, design as well as proposed land use, the subject site is deemed suitable for the proposed development.</p> <p>The subject site is currently vacant and the proposed mix of uses are considered to appropriately respond to the locality of the site and the zone objectives. The proposed use of this floor for predominantly hotel suites is a favourable land use given its contribution to housing stock within the area and its performance</p>

Matters for Consideration under Clause 6.10 of TCCLEP2012	Planning assessment comment
<ul style="list-style-type: none"> (v) bulk, massing and modulation of buildings, (vi) street frontage heights, (vii) solar access controls, (viii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity, (ix) the achievement of the principles of ecologically sustainable development, (x) pedestrian, cycle, vehicular and service access, circulation and requirements, (xi) The impact on, and any proposed improvements to, the public domain. 	<p>against the objects of the EP&A Act 1979, and aims of the TCCLEP2012.</p> <p>The subject site is not located within a heritage conservation area and whilst it is acknowledged that the development fails to comply with some provisions under Clause 6.6 of the TCCLEP2012 in regard to minimum building street frontage, the proposed vertical height and horizontal width of the building are proportionate to each other and the width of the site. Therefore, having regard to the design merits of the proposal (bulk, scale, material selection, colour, articulation, roof form etc), the proposal is considered provides a balanced approach to respecting the current streetscape character whilst establishing an appropriate density that is consistent with the desired future character of the area in line with relevant development standards and controls that apply to the site and surrounds.</p> <p>The proposed development is considered to have an acceptable interaction with surrounding development in terms of minimising impact to residential amenity to the south, providing a zero street and northern side setback to facilitate continuation of ground floor commercial uses that integrates with the existing ground floor commercial uses on adjoining land to the north of the site whilst appropriately separating the subject building from the existing residential development to the rear of the site. The proposed urban form responds to the transitional character of the area and establishes an appropriate standard of urban form in terms of architectural design.</p> <p>The proposed bulk, scale and modulation of the building is appropriate within the area given the context of the site and surrounding development. The proposed development responds to existing neighbouring built form whilst delivering a bulk and scale that is consistent with the desired density for the site (having regard to the 34m height limit for the site). The design contains a strong base, middle and top element to the building with adds visual interest and reduces the perceived bulk of the middle from the public domain and street interface. It further allows for solar penetration and building separation</p>

Matters for Consideration under Clause 6.10 of TCCLEP2012	Planning assessment comment
	<p>for the proposed residential units and existing surrounding residential units.</p> <p>As mentioned above, the distinct setbacks and articulation to the base, middle and top building provides an appropriate vertical height at the street frontage. Therefore, the proposed development is considered to provide an appropriate level of articulation and scaling at the street front to aid pedestrian amenity.</p> <p>The proposed development complies with solar access controls. Some variations are observed to adjoining properties in terms of solar penetration however on merit, the variation is supported – see ADG assessment later in this report.</p> <p>The proposed development complies with these elements of design via compliant BASIX certification and in line with ADG requirements as discussed later in this report.</p> <p>The proposed development meets the ESD principles as far as providing :</p> <ol style="list-style-type: none"> a. improved social infrastructure through the provision of additional affordable housing stock; b. delivering a development that enhances pedestrian orientated movement/transport (in lieu of vehicle use) due to its mix of uses within a location with short proximity to existing supportive amenities c. providing employment opportunities during construction and through the provision of commercial uses; d. facilitating a new building that is capable of adaptive reuse for the ground floor and first floor components through ceiling heights that will allow for flexibility of uses to cater for future demand in land use; and e. Providing energy efficient design and construction commitment including the provision of water saving devices, gas hot water systems, energy efficient lighting and insulation in the construction systems to achieve thermal insulation. <p>The proposed development satisfies the relevant provisions under Section B2 and</p>

Matters for Consideration under Clause 6.10 of TCCLEP2012	Planning assessment comment
	<p>A2 of the DCP in terms of access and parking. Compliance with the relevant standards for sight lines, circulation and access will be enforced through conditions of consent.</p> <p>The development provides an appropriate ground floor use with all-weather shelter via an awning to the public domain. The proposed ground floor component integrates well with adjoining commercial development north of the site and aids a pedestrian orientated movement from the private land to the public interface.</p>

North Coast Regional Plan 2036 (NCRP)

North Coast Regional Plan

The North Coast Regional Plan 2036 is the key strategic planning strategy that sets the intended direction for growth and development on the north coast over the next 30 years. In this plan, Tweed Heads is identified as a Regional City and an area where significant growth is intended to occur by focussing jobs, housing and services within the existing city centre. The plan seeks managing and supporting growth in Tweed Heads, with increasing housing density and diversity and delivering economic opportunities and jobs growth as a regional priority.

The development includes the provision of housing diversity through hotel suites, boarding house style rooms and shop top housing components with appropriate commercial components at the ground and first floor of the building thus providing connectively to the rest of the core retail and commercial centre in the Tweed City Centre.

On merit, the proposed development generally meets the strategic intent of the North Coast Regional Plan.

State Environmental Planning Policies

SEPP (Coastal Management) 2018

Under this policy, the subject site is mapped as being within the Coastal Environment Area.

An assessment of the proposal having regard to Clause 13 is contained herein.

The objectives of these Clauses are as follows:

13 *Development on land within the coastal environment area*

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has*

considered whether the proposed development is likely to cause an adverse impact on the following:

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

The subject site is an established urban lot located 537m landward of the nearest waterbody. The proposed development will not impede access to any foreshore environment and will not cause an adverse impact on the environmental values or natural coastal processes. The proposed building will not result in overshadowing, wind funnelling or the loss of public views.

The site is not mapped as being a place or Aboriginal Cultural Heritage in Council Aboriginal Cultural Heritage Management Plan. A detailed assessment has been undertaken of the built form of the development and the proposal is considered to be generally consistent with the existing bulk, scale and size of residential development within the locality.

Based on the above considerations, the provisions of the SEPP are deemed to be satisfied.

SEPP No. 55 - Remediation of Land

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

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

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The subject site is currently vacant and therefore no current or previous land uses give rise to potential contamination. It is however noted that a dwelling once occupied the subject land and was destroyed by fire in 2006. Therefore, to ensure that no remnant contaminants resulting from Asbestos remains on the land, Councils Environmental Health Officers have recommended conditions of consent to require a detailed site contaminated land site investigation to be prepared by a suitably qualified consultant in accordance with the NEPM Schedule 1, Part 4 Asbestos material in Soil. The report is to be submitted to Council and suitably demonstrate site acceptability which Council knows can be met given the type of possible contaminates.

Subject to compliance with recommended conditions of consent, Council can be satisfied that the matters for consideration under this policy have been taken into account as part of the assessment of the proposed development.

SEPP No. 65 - Design Quality of Residential Flat Development

The Policy provides guidelines to improve the design quality of residential apartment development and aims:

- (a) *to ensure that it contributes to the sustainable development of New South Wales:*
 - (i) *by providing sustainable housing in social and environmental terms, and*
 - (ii) *by being a long-term asset to its neighbourhood, and*
 - (iii) *by achieving the urban planning policies for its regional and local contexts, and*
- (b) *to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- (c) *to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*

- (d) *to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions, and*
- (f) *to contribute to the provision of a variety of dwelling types to meet population growth, and*
- (g) *to support housing affordability, and*
- (h) *to facilitate the timely and efficient assessment of applications for development to which this Policy applies.*

This SEPP applies to the submitted application as the development is for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component and:

- (a) the development consists of the erection of a new building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

Clause 28 of the SEPP requires the consent authority to consider each of the nine design quality principles and the publication *Apartment Design Guide* when determining a development application to which this SEPP applies. The applicant has provided a Design Verification Statement addressing these principles and a consolidated assessment is provided against these principles and Code below:

Schedule 1: Design quality principles

- Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

The main features of this site is its flat topography and proximity to the Tweed City Centre and with good access to main road corridors and public transport nodes.

The ground and first floor commercial uses contributes to an active street frontage and will provide services in a desirable location for the local area as well as accommodation and residences in the apartments above. The provision of ground

floor commercial uses integrates well with the transitional character of the area which comprises of a mix of single storey commercial uses, shop top housing, residential flat building and mixed use buildings.

The site is located within proximity to other commercial uses and 200m south west of Tweed Mall. The proposed building and its uses will contribute to the local housing stock (including the provision of affordable housing options) in a location that is conducive to a 'walkable' centre due to its short proximity to existing commercial, retail and recreational uses as well as schools, churches and medical centres.

- Principle 2: Built form and scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

The proposed height and scale of the development is conducive to the surrounding character of the area. The proposal represents a 5 storey, 17.3m high development with zero street setback to the primary street frontage. The uppermost floor of the proposed development has been designed to create a visual 'base, middle and top' in the building thus adding visual interest and an appropriate level of articulation to reduce the perceived bulk and scale. The proposal will deliver an increase in housing stock and whilst it could be considered as not achieving the maximum desired density based on maximum building height standards permitted for the site, the development maintains an appropriate scale and character having regard to the immediately surrounding developments which comprise of three storey residential flat buildings, single storey dwellings and single and two storey commercial buildings.



Figure 1: Existing streetscape character looking south from subject site down Beryl St (away from main commercial core)



Figure 2: Existing streetscape character looking north from the subject site up Beryl Street (toward commercial core)

The provision of a five storey (17.3m building height) mixed use building with a high quality design and streetscape interface is conducive to the emerging character of the area and is generally consistent with desired future character of the area.

To this extent, it is noted that the merits of the proposal are such that the development includes ground and first floor commercial uses which contributes to an active streetscape and in the absence of a lot amalgamation (as would normally be required for the proposal to achieve minimum street frontage under Clause 6.6(3) of the LEP, the vertical and horizontal length of the building are considered to be proportionate to each other thus meeting the objectives of Principle 2 in terms of bulk and scale.

- Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities are sustained by existing or proposed

infrastructure, public transport, access to jobs, community facilities and the environment.

The maximum permitted density for the development relies on the maximum floor space ratio prescribed under Clause 4.4 of TCCLEP2012. Under this clause the maximum permitted floor space ratio for the subject site is 2.25:1. The proposed FSR is 2.11: 1 which complies with the provisions of Clause 4.4 and is also considered to be relative to the maximum permitted under this Clause.

The development includes appropriate setbacks to allow for solar amenity and visual privacy between the proposed development and existing as well as future developments on adjoining sites. The design and density of the development facilitates adequate solar penetration and natural ventilation to the development. Given the constraints for lot amalgamation to otherwise occur (as would be required in order to achieve compliance with Clause 6.6(3) of the LEP, the proposed density is considered to appropriately respond to the existing context of the site and surrounds as well as the desired future character of the local area.

- Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Several energy efficient measures have been incorporated into the development. These include thermal insulation, optimising passive lighting and ventilation through solar orientation and the use of energy efficient fixtures and fittings. These are committed in the BASIX Certification for the proposal.

The design of the building reflects passive solar design principles and suitably responds to the sites orientation. Living areas are open plan and feature north/south openings allowing cross ventilation through apartments. External living areas contain are of an easterly aspect benefiting from prevailing ocean breezes thus providing natural cooling in the summer.

- Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, and provides for practical establishment and long term management.

A landscape plan is included in the DA package which demonstrates landscaping treatment in the rear 6m setback with Deep Soil Zone underneath to support large tree growth and separate the development from adjoining developments. The provision of Deep Soil Zone in the western setback of the development will suitably respond to the climate of the area by allowing some vegetation growth to shade and screen the external building at this elevation, providing some cooling in the summer months. The proposed landscape scheme provides a suitable integration between the proposed built form and desired 'greenscape' character for rear setbacks in a relatively dense urban area.

- Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

An active street frontage is provided so to integrate the proposed building with other commercial and retail uses within a walkable distance to the subject site. The mix of land uses contribute to a highly amenable design and function of the building for both residents and the local community (visitors). The provision of visual and acoustic privacy has been incorporated into the design so to optimise opportunity for passive surveillance to the street whilst protecting privacy between residents.

- Principle 7: Safety and security

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

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

The development incorporates principles of crime prevention through environmental design (CPTED) by way of passive surveillance over the street from balconies, active street frontages for ground floor uses, and highlight pedestrian entry points visible from the street. Appropriate illumination of external areas will be enforced by recommended conditions of consent and a review of the plans indicate that opportunities for entrapment are minimised by the overall design and siting of the building.

- Principle 8: Housing diversity and social interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

The development includes the following dwelling types:

- 3 hotel suites;
- 5 x self-contained studio type suits (for boarding house use);
- 3 x 2 bedroom apartments; and
- 3 x 3 bedroom apartments.

The proposed dwelling mix is considered to respond to the local needs in terms of affordable housing stock and dwelling mix. The location of the site is within proximity to local open space and community infrastructure.

- Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

The façade comprises of a good composition of building elements, bulk and scale, colour and texture. The selection of colour references the older style brick apartments which surround the site thus providing a transitional character from old to new.

The provision of balconies provide visual cavities in the façade of the development and use of lighter material on the upper most storey provides a distinct 'top' to the building, and this combined with increased setbacks and stepped walls reducing its overall bulk to this component of the building.

The base of the building includes robust material such a soft form concrete, cement render, concrete blocks and large commercial glass windows which is considered to visually ground the building and provide a distinct character and presentation in the existing streetscape.

Apartment Design Guide

This Design Code contributes to the development of place-based plans that are oriented specifically to local issues. It reinforces the need for local government to

have a clear vision, which reflects the community's needs and wants for the future of their area.

Furthermore it is advised that the design code gives direction for defining local development controls, which support and facilitate good residential flat design. It provides design guidelines, which assist in establishing consistent minimum standards across local government areas. It will also assist planners in assessing the design merit of proposed development.

The assessment under DCP Section A1 and the SEPP 65 Design principles establishes that the proposal is worthy of support and it is recommended that conditional consent be issued for the proposed development. It is considered that the proposal has been generally designed in accordance with and assessed against the requirements of SEPP 65.

Under this document the proposed development would constitute elements of shop top housing and perimeter block apartments.

Part 2- Developing the controls

This part of the Apartment Design Guide explains the application of building envelopes and primary controls including building height, floor space ratio, building depth, separation and setbacks. It provides tools to support the strategic planning process when preparing planning controls rather than applying specific design controls. In this instance it is noted that the proposal would be subject to some of these controls through the TCCLEP2012 (building height and floor space ratio) while the remainder of the controls are administered either through Development Control Plan Section A1 – Residential and Tourist Development Code (building depth and building separation) or site specific controls under Section B16 - Tweed city Centre of the DCP. These are addressed in detail elsewhere in this report under the specific assessments of these various documents.

Part 3 Siting the development

This part provides guidance on the design and configuration of apartment development at a site scale. Objectives, design criteria and design guidance outline how to relate to the immediate context, consider the interface to neighbours and the public domain, achieve quality open spaces and maximise residential amenity.

3A Site analysis

A site analysis plan demonstrating winter and summer sun orientation, prevailing breezes, available views and beach access/pedestrian walks has been submitted as part of this application. This is considered to adequately demonstrate that site conditions have been considered in the formulation of the proposed development design.

3B Orientation

Objective 3B-1: Building types and layouts respond to the streetscape and site while optimising solar access within the development

The building has been designed to complement the streetscape and includes primary open space areas with predominantly northern and eastern aspects. Living areas are contiguous to principal private open space areas and feature openings at eastern and northern aspects.

Objective 3B-2: Overshadowing of neighbouring properties is minimised during mid winter

The subject site is located within a commercial zone and therefore enjoys the benefit of a zero setback control for front and side boundaries. Given the subject site is currently vacant and due to the orientation of the subject lot, an overshadowing impact will be unavoidably observed to land immediately south of the subject site. This land contains a three storey residential flat building comprising of five residential units.

Under the ADG, living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter and the adjoining communal open space area is to achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space area for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter). Whilst the proposed building achieves compliance with the minimum solar penetration required, the impact to adjoining properties results in a departure from the numerical requirement of this guideline. In particular, the proposed development departs from the minimum amount of sunlight access to living rooms and private open space areas for the adjoining southern building. In considering whether a departure from the ADG in regard to overshadowing of living areas and private open space areas can be supported, the following planning and design merit considerations have formulated a qualitative assessment of this variation:

- Despite the subject site benefitting from primary development controls that permit a zero setback at the southern boundary, an increased setback of 3m is provided for part of the building at this location to maximise building separation, visual privacy and reduce the overshadowing impacts to north facing balconies and living room windows on the adjoining southern property. As a result of this design solution together with a relatively modest building height (having regard to the maximum permitted for the site), solar access is maintained to 50% of the north facing private open space areas (balconies) for apartments in the adjoining building.
- The southern building contains two east facing balconies which are allocated to one unit. These balconies currently experience overshadowing for most of the day (from 9am – 3pm in winter) and the shadow is experienced from the east of the subject building itself. Therefore, the proposed development does not increase the overshadowing impact to these units.
- The subject site is zoned to permit a density of development that would unavoidably impact existing surrounding developments in terms of overshadowing, and this is a direct result of up scaling densities of land in line with strategic planning objectives for the Tweed City Centre and surrounds. Whilst it is acknowledged that the development departs from development

standards that encourage a wider lot frontage, it is likely that even a building with a compliant lot frontage, would have the same or worse overshadowing impacts than that proposed given the likely separation from the southern boundary would not be greater than 3m. Furthermore, the vertical height of the development would likely increase to reflect the horizontal length of the building design thus casting similar or potentially longer shadows to the south.

- In addition to the above 'alternate scenario' considerations, an assessment as to whether there is opportunity to ameliorate the overshadowing impacts through a reduced building height or further increase the setbacks for the proposed building and it was concluded that due to the orientation of the subject site, that even a three storey building would likely cast similar shadows to the proposed development and therefore a reduced density of development would not improve the developments performance against overshadowing impacts. It would however further deviate from the desired scaling and density for development on the subject site given its zoning and development standards that apply to the land.
- Shadow diagrams demonstrate communal open space areas will maintain compliance with the minimum amount of solar access required under this Section of the ADG,

As such, whilst an impact is observed to the southern adjoining building (in particular, to the central portion of the building), this impact is unavoidable for any development that would occur on the subject site due to the orientation of the site.

In considering the merit of this issue; the proposed building height is modest having regard to the maximum permitted for the site. In addition, the proposed building separation from the southern boundary is maximised as far as possible and these design elements reduce the overshadowing impact to benefit the rear portion of the adjoining building. However, it is like that any form of development of the subject site (beyond a two storey development), would adversely impact opportunity for solar penetration to the central part of the adjoining flat building.

For the above reasons, the overshadowing impacts to the southern adjoining building are not considered to have sufficient planning merit to warrant refusal of the development on these grounds alone.

3C Public domain interface

The proposed development is considered to be appropriate when considering the public domain interface. The proposed street elevation is treated with weather protection improvements (awning) at the ground level commercial component and this, together with a mix of building materials to represent a distinct 'top', 'middle' and 'base' for the development, represents an appropriate built form that is conducive to an amenable public domain interface. In particular, the base of the building contains robust building materials to establish its character in the streetscape, with colour selections being that which replicate the surrounding built form. A highlight entry is provided to the street elevation for both the residential and commercial components of the building, aiding pedestrian activity. The use of glass shop fronts allows for passive surveillance from the public domain into commercial ground floor uses and

visa versa. It also adds a light weight finish to the ground floor component of the building creating transparency between the public domain and the building.

3D Communal and public open space

The proposed development does not include a formalised communal open space area. The applicant has sought a variation to this component of the development based on the location of the site being within proximity to public open space recreation areas, recreational waterways as well as coastal beaches and foreshores.

In considering the objectives of this Section of the ADG, it is considered that the provision of public open space and foreshore areas within walking distance of the subject site (as per **Figure 3 below**) adequately caters for the proposed development without comprising the amenity or function of the development. The provision of landscaping is still provided for within the rear setback of the site and balconies and principal private open space areas for the apartments are greater than the minimum required. The ADG provides that in such circumstances as this, where the site is a small lot, in a Business zone and in a dense urban area, communal open space can be offset through larger balconies and the provision of high quality public open space and facilities within proximity to the site. Therefore, whilst not strictly complying with the numerical requirements for communal open space onsite, the development still satisfies the objectives of this section of the ADG.



Figure 3: Public and Private Recreation Areas/Open Space Areas within proximity to the subject site

3E Deep soil zones

The subject site is less than 650m² and therefore no minimum dimension for nominated deep soil zone is required. However, in accordance with the ADG, a minimum of 7% of the site should be dedicated Deep Soil zone.

The proposed development includes a landscaped rear setback with a total area of 46.1sqm which equates to 7.7% of the site therefore complying with this Section of the ADG.

3F Visual privacy

This element of the Guide details that visual privacy allows residents within an apartment development and on adjacent properties to use their private spaces without being overlooked and balances the need for views and outlook with the need for privacy. This control further outlines that degrees of privacy are also influenced by a number of factors including the activities of each of the spaces where overlooking may occur, the times and frequency these spaces are being used, the expectations of occupants for privacy and their ability to control overlooking with screening devices.

Objective 3F-1 and the associated design criteria are outlined below (it is noted that the 'up to 25m (5 storeys)' control would apply in this instance):

Objective 3F-1
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy

Design criteria

1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Building height	Habitable rooms and balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties

The development comprises of a five storey mixed use development with zero setbacks to side boundaries. The design includes a ground floor commercial space, a first floor office space, 3 hotel suites, 5 boarding rooms and 3 x 2 bedroom apartments and 3 x 3 bedroom apartments (total 6 apartments) spread over Level 2 to Level 4 which forms shop top housing.

The layout of units are such that they are separated by a solid wall construction at the side boundary (as permitted in a B3 zone). Where separation occurs, a minimum setback of 3m to the building and 2m to the balcony is provided.

The proposed 2m setback to balcony space is observed at the northern side boundary which adjoins commercial development. The location of the 2m setback maintains compliance with the minimum separation distance required given there is no built form where the balcony is located which would otherwise give opportunity for cross viewing. Further, the construction material is rendered concrete and the location of the balcony is such that is secondary private open space to the primary private open space area orientated to the rear and features a 6m setback from the boundary (see **Figure 4** below).



Figure 4: Location of balconies which feature a 2m side setback at northern side boundary (adjoining commercial 2 storey commercial building)

The proposed 6m rear setback establishes a compliant separation distance between the subject habitable rooms (and balconies) and adjoining habitable rooms (associated with the single dwelling to the rear). It is noted that the land to the rear is zoned R3 medium density and therefore may be subject to an increased density of development in line with the R3 zone. If this were to occur, the minimum rear setback for the development would be 6m (as per Section A1 of the DCP) therefore achieving a total separate between developments of 12m, which is greater than the minimum required under this Section of the ADG (9m).

The proposed 3m side setback for windows to habitable rooms at the southern boundary contributes to a total separation distance of 5.317m (2.317m northern side setback established for existing residential flat building on the southern adjoining lot). The window openings which orientate to the south of the proposed building are located within passive living areas (bedrooms and bathrooms) and therefore are considered to be non-habitable rooms for the purposes of this control therefore complying with the minimum separation distance required under this Section of the ADG. It is further noted; to ameliorate privacy, design features of these windows include a privacy screen to prevent cross-viewing. In addition, the location of the window are offset from balconies and habitable rooms to residential units on the southern adjoining lot to further protect the amenity of residences.

As such, based on the above design merits, the development is considered to satisfy the minimum requirements under this Section of the ADG.

3G Pedestrian access and entries

Objective 3G-1: Building entries and pedestrian access connects to and addresses the public domain.

Objective 3G-2: Access, entries and pathways are accessible and easy to identify.

Objective 3G-3: Large sites provide pedestrian links for access to streets and connection to destinations.

The proposed development provides a direct interaction with the Beryl Road streetscape. The building provides clear and legible access for residents and visitors from the street and an appropriate level of building treatment is provided to create an amenable transition between the public and private interface.

3H Vehicle access

The proposal provides for a one way vehicle access point at street level from Beryl Street. The proposed access driveway is 3m wide which complies with the minimum required under AS 2890.1.

The proposed vehicle entry and exit complies with sightline requirements under AS2890.1 however it is noted that there is a column at the southern corner of the site which could impact sightlines for exiting vehicles and oncoming pedestrian traffic. This matter was raised by Councils Traffic Engineer whom has recommended a special condition of consent to require traffic calming device to be installed. In addition, the driveway is to be constructed to provide at least 3.5m distance at the boundary of the site and a splay to 6.5m wide at the kerb.

Subject to compliance with recommended conditions of consent, the proposed vehicle access arrangements are considered to be satisfactory.

3J Bicycle and car parking

The proposed bicycle and car parking provisions for this development have been assessed having regard to site specific controls that apply in Section B2 (Tweed City Centre) of TDCP 2008. Where this DCP is silent on a particular land use, the applicant has adopted rates under Section A2 (Site Access and Parking Code).

A breakdown of the vehicle and bicycle parking requirements in provided below:

Land Use	DCP car parking Requirements	DCP bicycle parking requirements	Proposal	Car Parking provisions
Boarding Houses (Section A2 TDCP 2008)	1/6 beds + 0.5/ staff	Residents: 1/ units Visitor: 1/8 units	5 rooms	0.83 space

Land Use	DCP car parking Requirements	DCP bicycle parking requirements	Proposal	Car Parking provisions
General Office Development (Section B2 TDCP2008)	1 space/70sqm	1 space/100sqm GFA	63 36 <hr/> 98	1.4 space
Hotel Suites 2 x 2 bed 1 x 3 bed	1 space per hotel room (TSC view this as per suite) 1 space per 4 employees	1 space per 4 car parking spaces	3 suites	3 spaces
Attached Dwellings (Section B2 TDCP2008)	1 space/ 1 and 2 beds 1.5 space/3 beds 1 space/10 bed (visitors)	2 spaces/ dwelling	3 x 2 bed 3 x 3 bed	3 spaces 4.5spaces

TOTAL REQUIRED: 12.73 SPACES, Rounded up to 13 spaces.

There are 13 spaces provided at the ground level.

Carparking

The proposed number of car parking spaces complies with the minimum required under the relevant sections of the DCP. It is however noted that two of the spaces are in a tandem arrangement and therefore these spaces are required to be allocated to the 3 bedroom units. Conditions of consent are recommended in this regard.

It is further noted that where future uses of ground and first floor commercial space change to retail the provision of additional vehicle parking could be levied under Councils Section 7.11 plan No 23. Therefore, whilst the number of car parking spaces caters for the minimum required under the current proposed land uses, Council can be satisfied that additional parking can be accounted for under Plan 23 (should a change of use come about in the future under a separate DA).

Bicycle Parking

The development includes potential storage for 15 bikes within the storage areas and units themselves.

In considering the provision of bicycle parking provided together with the design and layout of the proposal, it is firstly acknowledged that the location of the site is such that alternate means of transport such as cycling is a favourable transport modality for the proposed building and the various uses within the building. However, the internal layout and design of the ground floor car parking area and apartments is such that a variation to the number of bicycle spaces could be supported. The entire development is accessible via a lift and the internal circulation areas for apartments are reasonably generous thus providing opportunity for residents to transport and store their bikes within the apartments. Overflow bicycle storage can still be provided in the store area nominated on the ground floor parking plan spaces.

Overall, the merits of the proposal are such that a variation to the number of bicycle parking storage spaces in the ground floor car parking area does not warrant refusal of the application.

Part 4 Designing the building

Amenity

4A Solar and daylight access

Under this Section of the ADG, at least 70% of apartments in a building should receive a minimum of 3 hours direct sunlight. Shadow diagrams submitted with the application demonstrates that 5 out of 6 apartments (83%) will receive 3 or more hours of sunlight during mid-winter which complies with this Section of the ADG.

4B Natural ventilation

All apartments achieve natural cross ventilation through the provision of openings to living rooms which orientate to the north and east of the building, together with many of the bedrooms having sliding doors openings to balconies also.

4C Ceiling heights

The proposed development features appropriate ceiling heights ranging from 3.3m finished ceiling heights (for ground floor commercial use). The first floor also comprises of a 3.3m finished ceiling height despite being for residential use. This is provided in line with the ADG provisions which encourages the design of buildings to be such that they can be adapted for reuse and in this instance, provide first floor commercial uses (as also required under Section 6.8 of the TCCLEP2012).

Residential development (Level 2- 5) contains finished ceiling heights of 2.8m which is greater than the minimum required (2.7m).

The proposal is considered to be acceptable with respect to the above.

4D Apartment size and layout

This control contains the following objectives:

Objective 4D-1: The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity

Objective 4D-2: Environmental performance of the apartment is maximised

Objective 4D-3: Apartment layouts are designed to accommodate a variety of household activities and needs

There are a number of design criteria relevant to these objectives which are outlined below:

Design criteria											
1.	<p>Apartments are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²
Apartment type	Minimum internal area										
Studio	35m ²										
1 bedroom	50m ²										
2 bedroom	70m ²										
3 bedroom	90m ²										
2.	<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p>										

The proposed residential units comply with the minimum internal areas specified above. The smallest unit covers an area of 81m² and is a two bedroom unit (noting that the boarding rooms and hotel suites are not defined as residential apartments for the purpose of the ADG and therefore are not included in the calculated internal area under this control).

Windows are provided to each habitable room and are considered to be compliant with the above.

Design criteria	
1.	Habitable room depths are limited to a maximum of 2.5 x the ceiling height
2.	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window

Ceiling heights for habitable rooms are a minimum 2.8m (which is compliant with the Building Code of Australia) and therefore maximum permitted habitable room depth is 7m. The proposed habitable room depths fully complies with the above criteria. It is however noted that one (1) combined open plan room layout (for dining, living and kitchen) exceeds the maximum habitable room depth of 8m (9.9m proposed) from any window/opening. The departure from the criteria is observed for Apartment 6 (see **Figure 5** below) however it is noted that this apartment has been designed for adaptability and therefore internal circulation areas are afforded a larger floor space to accommodate wheelchair access. For this reason, a variation to the maximum permitted habitable room depth for the combined living/lounge and kitchen area is acceptable in this circumstance.

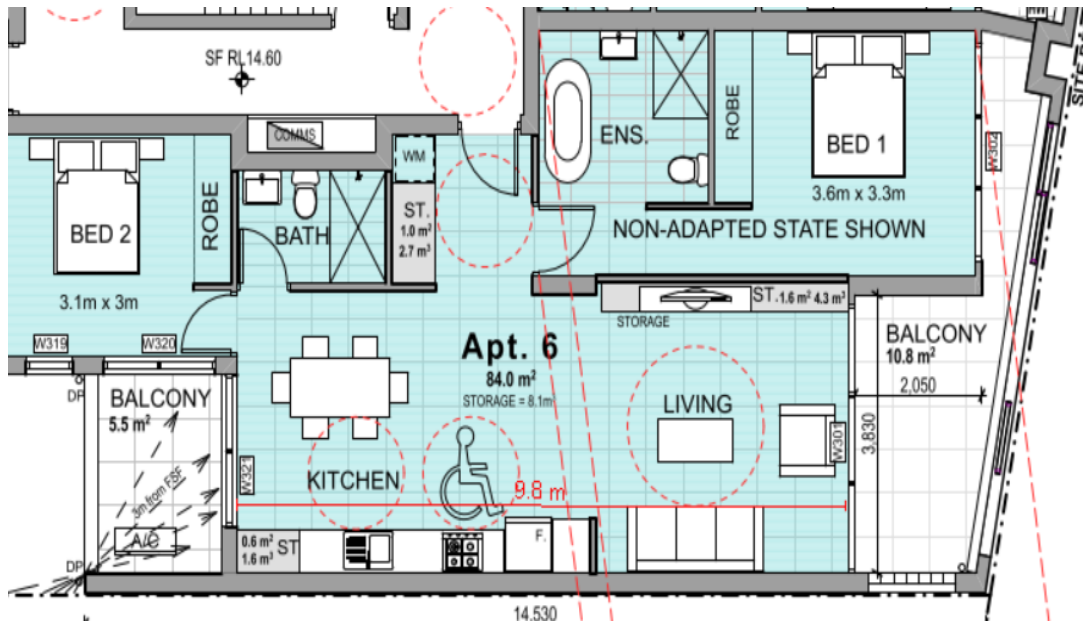


Figure 5: Floor plan layout for Apartment 6 kitchen/living area showing distance from window to window and departure from maximum distance of 8m

All other combined living, dining and kitchen areas comply with the maximum habitable room depth of 8m from an opening. Therefore, on merit despite a variation to Apartment 6 combined living, lounge and kitchen, the development generally complies with the criteria established in Point 1 and Point 2 above.

Design criteria	
1.	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)
2.	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)
3.	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments
4.	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts

Master bedrooms have not been nominated though the proposal, however it is considered that each unit has at least one bedroom which is at least 10m² and the 9m² control is also achieved for smaller rooms. A minimum dimension of 3m is provided to all bedrooms also.

The stipulated widths of 4m are provided to all units.

The development is considered to be acceptable when assessed against the requirements of 4D.

4E Private open space and balconies

The design criteria under this control stipulate that all apartments are required to have balconies with a minimum depth and area dependant on the number of bedrooms proposed.

It is noted that the subject application achieves the minimum depth and area required under this control. The Design Criteria goes on to state that for apartments at ground level, a private open space is to be provided instead of a balcony. It is noted that in this proposal comprises of a ground floor commercial use and therefore no ground floor private open spaces are required.

Beyond this, the development is considered to be in accordance with the objectives of this control, including having the private open space appropriately located to enhance liveability for residents, and these spaces being incorporated into the architectural design of the building, and therefore is considered to be acceptable from a safety perspective.

4F Common circulation and spaces

The Design Criteria under this control outlines that “the maximum number of apartments off a circulation area on a single level is eight.”

The proposal includes one apartment and five boarding rooms on Level 2. Each level contains lift access as well as stair access and separate entry is provided to each via an external walkway.

Each unit has access to the ground floor carpark and Beryl Street entryway via stairway or lift access.

The development is acceptable in this instance.

4G Storage

The submitted application has identified that individual residential storage is provided to each unit per the required rates and therefore the development complies with this Section of the ADG.

4H Acoustic privacy

This relates to protecting sound transmission between external and internal spaces. In response to this control it is noted that in the main, the proposal co-locates walls of rooms with a similar use alongside each other. This is considered to minimise acoustic privacy issues in the proposal. Beyond this, in the event of approval, conditions of consent with respect to maintaining amenity would be applied.

4J Noise and pollution

With respect to noise and pollution the site comprises of a ground floor commercial use and the remainder of uses (being residential) located on Level 1- Level 4.

The development is unlikely to have adverse impact on existing residential developments given the nature of the uses, the proposed built form and the existing built form of surrounding properties.

In regard to external noise sources, the subject site is located within 100m of Wharf Street which is a main road corridor within the Tweed City Centre. Therefore, pursuant to NSW Governments ‘Development near Rail Corridors and Busy Roads

– Interim Guideline and SEPP (Infrastructure) 2007, it is recommended that conditions of consent be imposed to ensure that the development is able to achieve LAeq levels in accordance with the prescribed criteria under Clause 102(3) of SEPP (Infrastructure) 2007.

It is considered that subject to compliance with recommended conditions, the development satisfies the objective of minimising noise impact to existing surrounding development as well as protecting the amenity of the proposed residential land uses from external noise sources (such as busy roads).

Configuration

4K Apartment mix

This essentially relates to the provision of a mix of apartments with different numbers of bedrooms in a development. In this instance it is noted that the development includes the provision of hotel suites, boarding rooms as well as residential apartments. The residential apartments comprise of 3 x 2 bedroom and 3 x 3 bedroom units. The variety of bedroom sizes and apartment layouts suitably respond to market demands and provide flexible use of space (includes demonstrated design for accessibility). The provision of 2 and 3 bedroom apartments allows for affordable housing options that cater to a broad demographic of households. The development is considered compliant with this section of the guide.

4L Ground floor apartments

Ground level components of the development comprise of commercial floor areas, activating the street frontage in line with the objectives of this design criteria. It is noted that whilst the ADG acknowledges opportunity for ground level apartments with direct access to the street, in this case, due to the mixed use zoning, such apartments would not be suitable. Notwithstanding, the proposed uses maintain the objectives of this section and therefore complies.

4M Facades

The façade of the development has been designed to provide visual interest along the street. This is considered to be achieved through the provision of balconies and various protrusions to these elevations which are designed through horizontal and vertical elements.

Building entry is clearly legible and prominence is given to the main elements of the development along Beryl Street through integrative building design with the existing streetscape character. Furthermore, the development establishes an urban form that is consistent with the desired future character of the street in terms of uses and zero building setbacks from the street.

4N Roof design

The roof design proposed as part of this application is considered to be acceptable in terms of design and have been well integrated into the overall design of the proposal.

4O Landscape design

The objective of this control is to ensure that landscape design is viable and sustainable and that it contributes to the streetscape and amenity.

The proposed development includes the provision of landscaping and a landscape concept plan and landscape design intent statement is provided with the application. In accordance with the criteria in this Section of the ADG, the provision of mature tree planting is provided within the landscaping rear setback. The landscaping scheme also includes ferns and ground cover which will aid screening of views from the hardstand area at the rear of the site from adjoining properties and also aid a soften the built form through the provision of soft 'greenscaping' within the rear setback. The provision of landscaping with the rear setback will also provide natural shading to the western extent of the site.

4P Planting on structures

It is noted that the deep soil areas have not been situated above the basement carpark and the development does not include any landscape beds on vertical or horizontal elements of the building.

4Q Universal design

The proposal is considered to be acceptable with respect to the universal design objectives. In particular a variety of apartments with adaptable designs have been proposed.

4S Mixed Use

The proposal relates to a mixed use development, with residential accommodation by way of Shop Top Housing and Boarding Houses being provided together with commercial premises to the ground level. This is considered to be located in an appropriate part of the Tweed City Centre given the site zoning and the site specific DCP controls.

4T Awnings and signage

An awning has been proposed along the primary street elevation. The proposed awning integrates with the ground floor façade and existing development further north of the site along the Beryl Street Road streetscape. The submission of plans in this regard demonstrates the provision of the awning is well located and complements and integrates with the building design whilst providing a high level of pedestrian amenity.

Performance

4U Energy efficiency

This control relates to the passive design and natural ventilation elements of the proposal. The submitted application is considered to be acceptable with respect to these matters. In particular each unit is provided with generous terrace/balcony

areas with glassed doors which would facilitate ventilation through the units. Furthermore, the proposal incorporates BASIX Certification with respect to energy efficiency.

4V Water Management and conservation

On site water storage has been proposed as part of this application which is considered to adequately address this component of the Guide.

4W Waste Management

The development application includes a Waste Management Plan which address both construction and operational waste management of the site.

Waste management provision include an onsite bin store which suitably accounts for the likely amount of waste to be generated (according to DCP calculations). It is noted that refuse areas have been identified to the ground level parking area and waste collection would occur at this location.

4X Building maintenance

The proposal is not considered to contravene the objective outlined under this element of the guide. The proposal is considered to be acceptable from a building maintenance perspective.

Part 5 Design review panels

Not applicable to the subject application.

SEPP (Building Sustainability Index: BASIX) 2004

The Building Sustainability Index (BASIX) aims to deliver equitable, effective water and greenhouse gas reductions across NSW. It is considered to be a driving policy in the delivery of high quality and sustainable planning and development in the state.

The application has been accompanied by a current BASIX certificate and therefore is deemed to comply with the provisions of this SEPP.

SEPP (Infrastructure) 2007

Clause 102 of the SEPP applies to land which is located on or adjacent to a road corridor subject to high annual average daily traffic volume and that is considered to be adversely affected by road noise or vibration.

Before determination a development application to which Clause 102 applies, and if the development is residential accommodation, the consent authority must take into consideration whether appropriate measures will be taken to ensure the building is attenuated to achieve the limited noise criteria as established in subclause 102(3) of the SEPP.

Given the subject site is located within 100m of Wharf Street which appear to be a significant carrier road within Tweed City Centre, it is recommended that conditions of consent be imposed to require a Noise Impact Assessment to be completed prior to the issue of a Construction Certificate. The assessment is required to demonstrate that the construction is achievable in order to satisfy indoor noise levels for residential accommodation as outlined in Clause 102(3) of the policy.

Subject to compliance with recommended conditions of consent, the provisions of Clause 102 of the policy are considered to be satisfied.

SEPP (Affordable Rental Housing) 2009

The aims of this policy are as follows:

- (a) *to provide a consistent planning regime for the provision of affordable rental housing,*
- (b) *to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
- (c) *to facilitate the retention and mitigate the loss of existing affordable rental housing,*
- (d) *to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*
- (e) *to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*
- (f) *to support local business centres by providing affordable rental housing for workers close to places of work,*
- (g) *to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.*

The proposed development includes 5 boarding rooms on the second floor of the development. Under TCCLEP2012 Boarding Houses are a permitted land use in the B3 Commercial Core zone. In addition, Boarding Houses are provided for as a housing typology that has been standardised under SEPP (Affordable Rental Housing) 2009 (ARH SEPP) to achieve more diversity in housing typologies and addressing housing affordably in the state.

Where an LEP does not permit a housing typology under the lands zoning, if the land is a prescribed zone under the ARH SEPP, it would facilitate its permissibility and effectively over-ride the local plan. In this instance, the subject site is zoned B3 Commercial Core and boarding Houses are permitted in the zone.

Notwithstanding, Division 3 of the ARH SEPP provides a set of controls and standards for Boarding House developments within certain residential and business zones. Whilst the subject zoning of the land is not prescribed land to which Division 3 applies, given the development is a permissible land use under TCCLEP2012, in the absence of specific controls for boarding house development within the Tweed DCP 2008, the applicant has relied on the standards in the ARH SEPP to guide the design and planning of the proposed boarding house component of the development.

Applicable Clauses under Division 3 of the SEPP are outlined below. The developments performance against those Clauses are also provided in the planning assessment comment section of the table below:

Clause	Standard	Planning assessment comment
Clause 29(2) - generally	Clause 29(2) states that the consent authority must not refuse consent a development to which this Division applies on any of the grounds listed below in the circumstance that the development delivers the minimum outcomes prescribed under each subclause (as outlined below)	It is noted that the subject site is zone B3 and therefore the provisions contained under this Clause do not strictly apply to the development. Therefore, the development falls back on relevant standards and controls under the respective state and/or local policies (i.e. Apartment Design Guideline (ADG), Tweed City Centre Local Environmental Plan (TCCLEP2012) or Development Control Plan (DCP)). The development's performance against the applicable policy is described in the planning assessment below in order to demonstrate the merits of the proposed development against the relevant state or local policy as well as the provisions of each subclause below.
Clause 29(2)(a) – Building Height	The SEPP states that the consent authority must not refuse consent to a development on the grounds of building height if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land.	The proposed development is below the maximum height permitted under Clause 4.3 of TCCLEP2012.
Clause 29(2)(b) – Landscaped area	The SEPP states that the consent authority must not refuse consent to a development on the grounds of landscape area if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located.	The provision of landscaping and landscaped area has been considered having regard to the design criteria established in the ADG and is acceptable.
Clause 29(2)(d) – Private Open Space	The SEPP states that the consent authority must not refuse consent to a development on the grounds of private open space: if at least the following private open space areas are provided (other than the front setback area): (i) one area of at least 20 square metres with a minimum dimension of 3 metres is	The proposed boarding rooms feature their own private open space areas. Under the provisions of this Clause, the combined private open space area would exceed the 20 square metres required under subclause (i) and the provision of each boarding room containing its own separate private open space is

Clause	Standard	Planning assessment comment
	<p>provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation.</p>	<p>considered to be a more favourable outcome in terms of amenity.</p> <p>For this reason, the proposed private open space dimensions are considered to be acceptable despite the variation to Room 8) for Private Open Space.</p>
<p>Clause 29(2)(c) – Solar Access</p>	<p>The SEPP states that the consent authority must not refuse consent to a development on the grounds of solar access where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.</p>	<p>The proposed development has been considered having regard to the design criteria for solar access as outlined in the ADG and is acceptable in this regard. Therefore no reductions in solar access are required to be considered pursuant to Clause 29(2)(c).</p>
<p>Clause 29(2)(e) – Parking</p>	<p>The SEPP states that the consent authority must not refuse consent to a development on the grounds of parking if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site.</p>	<p>The proposed development is not proposed to be carried out by or on behalf of a social housing provider and therefore a minimum of 0.5 parking spaces is required per room. It is however noted that the subject site is not zoned for the purpose to which Division 3 applies. Section B2 (Tweed City Centre) of the DCP does not contain specific controls for Boarding Houses and therefore the applicant has relied on Section A2 (Site Access and Parking Code) of the DCP for the calculation of car parking. Table 2A of the DCP requires 1 parking space per 6 beds + .05 space per staff.</p> <p>The applicant advises that no staff will be on site. Therefore, based on the number of rooms 0.83 spaces are required for the Boarding Rooms component of the development. The development includes 13 spaces and the assessment of the number of spaces based on the various components of the development has deemed the parking provision to be acceptable in line with the applicable number of spaces required. Further discussion on parking is provided later in this report.</p>
<p>Clause 29(2)(f) - Accommodation Size</p>	<p>The SEPP states that the consent authority must not refuse consent to a</p>	<p>The minimum area for the boarding room is 18.3sqm (capable of supporting more than a single lodger) which complies with this</p>

Clause	Standard	Planning assessment comment
	<p>development on the grounds of accommodation size if:</p> <p>each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <ul style="list-style-type: none"> (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or (ii) 16 square metres in any other case. 	<p>Clause. It is noted that the ADG requires a minimum area of 35sqm for a 'studio' room and therefore the proposed room sizes do not strictly comply with the provisions contained under the ADG. However, given the nature of the use of these room (short term rental accommodation) and the overall objectives of the SEPP (Affordable Rental Housing) 2009 it is considered that the proposed room sizes are conducive to their function as a 'boarding room' and provide an appropriate form of development that delivers affordable rental housing. For this reason, whilst Council is not bound to the provisions of Clause 29(2)(f) due to the site not being zoned for the purpose to which Division 3 of SEPP (Affordable Rental Housing) 2009 applies, it is considered that the proposed room sizes are conducive to the general design requirements prescribed under the SEPP in the absence of any other specific controls in Section A1 and Section B2 of the DCP.</p>
<p>Clause 30 standards for boarding houses</p>	<p>Clause 30 state that a consent authority must not consent to development to which this Division applies unless it is satisfies of each of the following:</p> <ul style="list-style-type: none"> (a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided, (b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres. (c) no boarding room will be occupied by more than 2 adult lodgers, (d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger, (e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be 	<p>The proposed development satisfies the provisions of this Clause. In particular, the following is noted:</p> <p>Comment: One communal living room is provided;</p> <p>Comment: No boarding room has an area greater than 25sqm (maximum 24.5sqm proposed);</p> <p>Comment: No boarding room will be occupied by more than 2 lodgers (condition recommended to enforce this outcome);</p> <p>Comment: Adequate kitchen facilities are available for each room for use by lodgers;</p> <p>Comment: The applicant has stated that the boarding rooms will not have capacity to accommodate more than 10 lodgers and therefore not boarding house manager room is required (a condition of consent is recommended to limit the number of occupants to a maximum of 10).</p> <p>No comment</p>

Clause	Standard	Planning assessment comment
	<p>provided for a boarding house manager,</p> <p>(f) (Repealed)</p> <p>(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,</p> <p>(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.</p>	<p>Comment: Ground floor component of the building is commercial use and therefore development complies.</p> <p>Comment: The development has 10 boarding rooms generating a requirement for 2 motorcycles and 2 bicycle spaces. The development incorporates 2 motorcycle spaces and storage for 11 bicycles in accordance with this standard.</p>
Clause 30AA	A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.	Not applicable – the zoning is not applicable to the subject site.
30A Character of Local Area	A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.	<p>The proposed mixed use development includes the provision of ground floor commercial uses, shop top housing and boarding houses; all of which are permissible in the zone. The proposed built form is consistent with the expected bulk and scale for a 5 storey mixed use building, and is reflective of existing built form within the local area.</p> <p>The development adopts an appropriate orientation, height, setbacks, building envelopes and roof designs which is consistent with the existing streetscape character of the area. Accordingly, it is considered that the proposal is compatible with its surroundings when viewed from the public domain and reflects an appropriate form for the existing streetscape as well as desired future character of the area.</p>

Based on the planning merit described in the above table, the proposed boarding house component of the development is considered to be an appropriate land use in the zone and generally consistent with the standards and guidelines contained under Division 3 of the ARH SEPP. The boarding rooms suitably respond to the objectives of both the zone and the ARH SEPP as far as providing a diversity of

housing stock in an appropriate location in close proximity to amenities (including employment opportunities). Furthermore, the provision of a new building with Boarding Rooms that also contains other residential and commercial land uses reflects an appropriate mixed of land uses that contributes to the overall increase in affordable housing stock within the Tweed City Centre, whilst maintaining high quality development and housing opportunities for a broad range of demographics. As such, Council can be satisfied that subject to compliance with recommended conditions of consent, the proposed boarding rooms are suitable in terms of their design and layout and can be appropriately managed in line with the aims of this policy.

SEPP (Vegetation in Non-Rural Areas) 2017

The subject site is mapped to be located within land affected by this policy. However, it is noted that the development does not seek approval for the clearing or removal of vegetation. The site is currently vacant and no significant stands of vegetation exist on the land.

Land to the rear of the site contains a 12m height and 12m canopy spread, is a significant feature to the land. This tree is proposed to be retaining and appropriate conditions are recommended to ensure that tree protection zones can be maintained and protected during construction.

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

There are no draft Environmental Planning Instruments that are relevant to the proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Section A1 is not considered to apply to this development as residential development controls for this development type are addressed in the site specific DCP (Section B2 for Tweed City Centre) as well as SEPP 65 Design Quality of Residential Flat Development which includes the ADG.

As previously mentioned in this report, there are no local provisions for boarding house developments and therefore a merit assessment of this component has been undertaken having regard to SEPP (Affordable Rental Housing) 2009.

In this regard, a detailed assessment of the proposal against the abovementioned controls is provided elsewhere in this report.

In any case, the subject application is considered to be an appropriate response to the applicable requirements of this DCP.

A2-Site Access and Parking Code

Parking

An assessment of the proposed car and bicycle parking having regard to this Section of the DCP (as it applies) is contained below. It is noted that within this DCP, the subject site is mapped to be within Area 1 (Tweed City Centre) and therefore Section B2 of the DCP takes precedent. Therefore, where the ARH SEPP or site specific DCP (i.e DCP B2 Tweed City Centre) is silent on car parking requirements for a particular land use, the requirements under Section A2 of the DCP has been adopted. To this extent, the ground floor commercial and residential accommodation (shop top housing) has been considered under Section B2 of the DCP. Car and bicycle provisions for the Boarding House component is outlined below.

Land Use	DCP car parking Requirements	DCP bicycle parking requirements	Proposal	Parking provisions
Boarding Houses	1/6 beds + 0.5/ staff	Residents: 1/2 units Visitor: 1/8 units	05 rooms	0.83

The proposed number of spaces provided across the site complies with the minimum required. Furthermore, the development includes the provision of one accessible space as one of the required spaces.

As previously mentioned in this report, the layout of parking includes stacked tandem parking spaces. However, it is limited to two spaces so that no more than one vehicle has to move to allow egress of another which is permitted under Section A2.2.3 of the DCP. To this extent conditions of consent are recommended to ensure that each set of stacked parking spaces are allocated to 3 bedroom apartments so to ensure the manoeuvrability of vehicles can be co-ordinated within a single apartment.

Access

The proposal provides for a one way vehicle access point at street level from Beryl Street. The proposed access driveway is 3m wide which complies with the minimum required under AS 2890.1.

The proposed vehicle entry and exit complies with sightline requirements under AS2890.1 however it is noted that there is a column at the southern corner of the site which could impact sightlines for exiting vehicles and oncoming pedestrian traffic. This matter was raised by Council's Traffic Engineer whom has recommended a special condition of consent to require traffic calming device to be installed at close proximity to the entry/exit crossover location to ensure the slowing down of vehicles to give way to pedestrian traffic. In addition, another separate condition has been recommended to require the driveway is to be constructed to provide at least 3.5m distance at the boundary of the site and a splay to 6.5m wide at the kerb. Based on the DA plans, it would appear this condition can be accommodated in the detailed construction certificate plans.

Subject to compliance with recommended conditions of consent, the proposed vehicle access arrangements are considered to be satisfactory.

A3-Development of Flood Liable Land

The aim of this section of the DCP is to set detailed standards for land development in order to minimise the adverse effect of flooding on the community.

The subject site is located at Tweed Heads, with a Design Flood Level of 2.6m AHD. Given the site levels, the subject site is not affected by the 1% flood event.

The site is still considered flood liable due to it being affected by the PMF event at 5.5m AHD however the habitable component of the development starts at the first floor at 8.1m AHD which is well above the PMF level. As such, Council can be satisfied the proposed development is consistent with the aims of Section A3 of the DCP.

A4-Advertising Signs Code

No advertising or signage is proposed as part of this DA.

A11-Public Notification of Development Proposals

In accordance with Section A11 of the DCP, the subject application was neighbour notified for a period of 14 days from Wednesday 5 September 2018 to Wednesday 19 September 2018. During this time four submissions were received.

A summary of the objection matters and a planning response to those matters is contained later in this report.

It is noted that on 20 February 2019, in response to Council's request for additional information and amended plans, an amended DA was lodged. The amended DA included the following key changes to the building design, layout and use:

- An adjustment to the overall height of the building (200mm),
- Increase to the ground floor business tenancy (to 70.8sqm);
- Increase to glazed façade width to the ground floor tenancy at the street elevation of the building;
- Modification to car parking layout and number of spaces provided on site; and
- Update to stormwater management plan.

Given the extent of concerns raised during the original notification process and the proposed external changes to the building, in accordance with Section A11 of the DCP, the DA was re-advertised and notified to adjoining property owners (including the original objectors) for a further 14 days from Wednesday 6 March 2019 to Wednesday 20 March 2019.

During this time no submissions were received.

Amended plans were again received in May 2019 to introduce hotel suites on Level 1 to ensure all uses proposed remained permissible. These plans were exhibited again 29 May 2019 to 12 June 2019 and a further two submissions were received concerned with car parking and the possibility of a future liquor licence at the site. These submissions are detailed further below.

A15-Waste Minimisation and Management

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

The applicant has provided a Waste Management Plan which includes details relating to both the construction phase and the ongoing operational phase of the proposed development and the proposal is considered to be acceptable.

A16-Preservation of Trees or Vegetation

As mentioned previously in this report. The proposed development does not seek Council consent for the removal of any trees. An existing tree located on the adjacent land to the rear of the site is to be retained as part of the development and a condition of consent is recommended to secure this outcome.

B2-Tweed City Centre

The subject site is located in the City Centre Support Precinct in the northern city centre character area of the above policy. This Section of the DCP outlines the following Character Statement with respect to this precinct:

"The City Centre Support Precinct is located to the south of the City Centre Core and adjoins the Ridgeline and Razorback Precinct, the Tweed River Precinct and the Civic/ Campus Precinct and the Southern Boat Harbour Precinct.

The objective for future development in this precinct is to allow for a similar range of land uses to the City Centre Core although at a lower density and without the extent of active street front uses as in the City Centre Core.

Future development on consolidated allotments will be up to 10 storeys fronting Wharf Street and 14 fronting Pearl Street with residential land uses only to the west of Beryl Street and Boyd Street. The objective for future development west of Beryl Street and Boyd Street is to create a residential precinct with high quality urban design and buildings that respond to the topography of the land. Buildings up to 10 storeys will be encouraged along Thomson Street on consolidated sites to reinforce the ridgeline and define the State border. Some medium density buildings between Angela Street and Florence Street will function as an interface between City Centre Support Precinct and lower density Ridgeline and Razorback Precinct."

Having regard to the provisions of this precinct, it is considered that the proposed development would be generally in accordance with the above by virtue of being a 5 storey mixed use building comprises of ground floor commercial uses to activate the street frontage. Whilst the development does not meet the density which is intended under the prescribed development standards in TCCLEP2012, the scale of development is consistent to be consistent with the 'support' function of the precinct given its location is secondary to the primary function area of the 'city centre core'.

DCP Section B2 also has controls in regards to building form, pedestrian amenity and access parking and servicing which are relevant to this application.

Section 3.0 Building Form

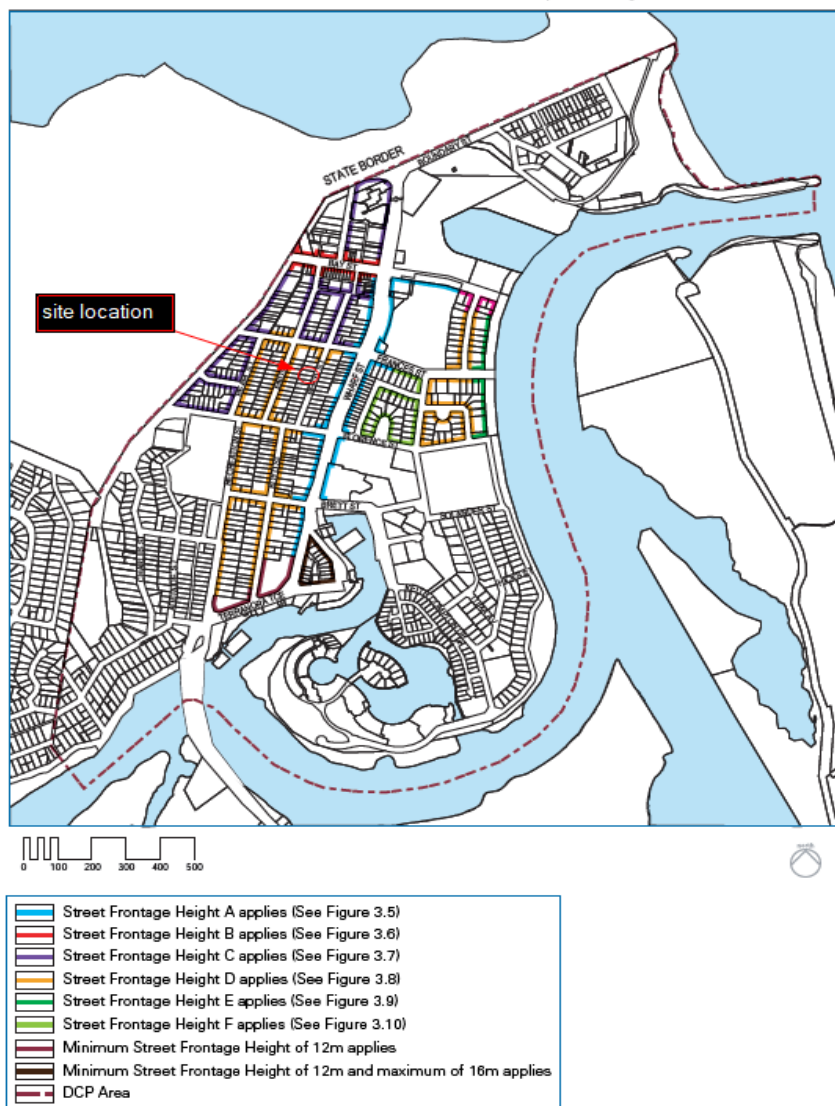
3.1 Building Alignment and Setbacks

It is noted that this section of the DCP outlines a 0m setback along Beryl Street at the proposed development location which is complied with in the subject application.

3.2 Street frontage heights

Street frontage heights are not prescribed for the subject site under Figure 3-4. The proposed street frontage height is considered to be acceptable in terms of bulk and scale.

FIGURE 3-4: STREET FRONTAGE HEIGHTS – NORTH



3.3 *Building Depth and Bulk*

3.0 Building form

TABLE 3-1: TABLE OF MAXIMUM BUILDING DEPTH AND GFA PER FLOOR

LAND USE ZONE	BUILDING USE	CONDITION	MAXIMUM GFA PER FLOOR	MAXIMUM BUILDING DEPTH (EXCLUDES BALCONIES)
Commercial core	Non-residential	Above SFH	1,200m ²	25m
	Residential and serviced apartments	Above SFH	900m ²	18m
Mixed use	Non-residential	Above SFH	900m ²	25m
	Residential and serviced apartments	Above SFH	700m ²	18m
Residential and other zones	All uses	Above SFH	700m ²	18m

SFH: Refers to maximum permissible Street Frontage Height

Note: On large, consolidated allotments, where multiple structures may be constructed above the street frontage height, development applications need to demonstrate appropriate building bulk, scale and separation. .

900m²-1200m² max. GFA per floor (depending on use)

The subject site is not affected by a maximum street frontage height and under Section 3.3 (Control C) it states that where no street frontage is specified in Figure 3-4 and the building height exceeds 22m, the maximum GFA per floor must comply with Table 3-1. Therefore given the proposed height is below 22m no maximum GFA per floor applies.

The proposed maximum building depth is 14.2m which is less than the maximum prescribed under Table 3-1.

3.4 *Mixed use buildings*

The proposal is considered to comply with the requirements outlined under this control, including the provision of flexible building layouts with ceiling heights of 3.3m to ground floor and first floor areas are proposed.

3.5 *Building design and materials*

The proposal is considered to be acceptable in terms of materials used and would contribute positively to the streetscape and public domain at this location.

3.6 *Landscape design*

The application is supported by a landscape design plan which includes a landscaped rear setback. The provision of landscaping is considered to be generally consistent with this Section of the DCP. However, special conditions of consent are recommended to ensure native species are selected. Subject to compliance with recommended conditions, the development satisfies the objectives of this Section of the DCP.

3.7 *Planting on structures*

No planting on structures us proposed.

4. Pedestrian Amenity

The provisions of this portion of the DCP relate to permeability, active street frontages, safety and security, awnings and vehicle footpath crossings and advertising and signage which are considered to be relevant to this application.

The subject site is not identified for any specific site permeability controls. The development achieves active street frontages, as detailed within the Tweed City Centre LEP controls (see elsewhere in this report). It is also considered that adequate safety and security is provided through casual surveillance via overlooking of public space from the residential units.

It is noted that active street frontages and awnings are required and provided at the Beryl St elevations in accordance with the provisions of this plan. No signage is proposed.

5. Access, Parking and Servicing

The subject application was referred to Council's Traffic Engineer and Development Engineering Unit with respect to parking and access provisions. The access provisions are outlined in detail under the DCP Section A2 assessment above and are considered acceptable subject to the application of recommended conditions of consent.

This Section of the DCP contains specific vehicular parking rates.

5.3 On-site parking

The objectives of this control include provisions to provide adequate space for parking and manoeuvring of vehicles, to encourage economic growth in the city centre and to recognise the complementary use and benefit of public transport and non-motorised modes of transport such as bicycles and walking.

Land Use	DCP car parking Requirements	DCP bicycle parking requirements	Proposal	Car Parking provisions
Boarding Houses (Section A2 TDCP 2008)	1/6 beds + 0.5/ staff	Residents: 1/ units Visitor: 1/8 units	5 rooms	0.83 space
General Office Development (Section B2 TDCP2008)	1 space/70sqm	1 space/100sqm GFA	63 <hr/> 36 98	1.4 space
Hotel Suites 2 x 2 bed 1 x 3 bed	1 space per hotel room (TSC view this as per suite) 1 space per 4 employees	1 space per 4 car parking spaces	3 suites	3 spaces

Land Use	DCP car parking Requirements	DCP bicycle parking requirements	Proposal	Car Parking provisions
Attached Dwellings (Section B2 TDCP2008)	1 space/ 1 and 2 beds 1.5 space/3 beds 1 space/10 bed (visitors)	2 spaces/ dwelling	3 x 2 bed 3 x 3 bed	3 spaces 4.5spaces

TOTAL REQUIRED: 12.73 SPACES, Rounded up to 13 spaces.

There are 13 spaces provided at the ground level.

The proposed number of spaces provided for the attached dwellings and ground floor commercial (office) component of the development complies with the minimum required. It is noted that four spaces are provided in a tandem arrangement and therefore conditions of consent are recommended to require these spaces to be provided for the 3 bedroom units.

6. *Environmental Management*

The subject application includes proposed measures to be undertaken to achieve compliance with Basix which is demonstrated to the file.

The applicant has suitably addressed site and contextual orientation of the building to enhance thermal comfort, optimise natural ventilation and maximise solar access. In addition, the applicant has addressed how the development performs against principles of sustainability (through a Design Verification Statement in accordance with SEPP 65 requirements).

Having regard to the above, the proposed development is considered to be generally acceptable having regard to Environmental Management measures as outlined by this DCP.

7. *Residential Development Controls*

7.2 *Housing choice and mix*

A choice of apartment types and residential land uses have been provided to this development. It is noted that the bedroom mix is provided as follows:

- 3 hotel suites;
- 5 x 1 bedroom or studio rooms to be used as boarding rooms;
- 3 x 2 bedroom units; and
- 4 x 3 bedroom units.

This is considered to be acceptable with respect to this clause.

7.3 Residential design for a subtropical climate

The subject application is considered to be acceptable with respect to natural ventilation, shading and balconies and terraces as outlined elsewhere in this report.

8. Controls for special areas

The subject site is not identified as being a special area under the provisions of this DCP. As such the controls contained within Section 8 are not applicable to the subject development.

The development as proposed is considered to be generally compliant with the provisions of Council's DCP Section B2 and is assessed as being an appropriate development on the subject site, having regard to the above assessment of the matters contained in this DCP.

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

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

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

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

The subject land is within the coastal policy area affected by the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*. The proposed development is consistent with the objectives, strategies and actions of the policy.

Clause 92(1)(b) Applications for demolition

Not applicable.

Clause 93 Fire Safety Considerations

Not applicable. The proposal relates to a new building.

Clause 94 Buildings to be upgraded

Not applicable. The proposal relates to a new building.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand. It is considered that the proposal represents an appropriate development on land zoned for residential use and achieves an adequate spatial separation from the coastal foreshore. The proposal is generally consistent with the objectives of the Management Plan.

Coastal Zone Management Plan for the Tweed Coast Estuaries 2013

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

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

Context and Setting

The proposed development is conducive to the locality of the site within the Tweed City Centre commercial core precinct. The site is currently vacant and the proposed development provides a suitable mixed use development in the B3 Commercial Core zone. The overall height, bulk and scale of the complies with relevant EPI's that apply to the land and provides a design which suitably responds to the transitional character of the area as far as delivery an up-scaled density of residential and commercial land uses to the site without causing unacceptable impact on the amenity of surrounding sites given they comprise of lower scale residential and commercial densities. As such, Council can be satisfied that whilst the development does not strictly comply Clause 6.6(2) of TCCLEP2012, on merit, the development provides an appropriate built form that responds to the context of the existing surrounding area whilst satisfying the objectives of the zone and delivering an appropriate density of the development that aligns with a functional commercial core within the Tweed City Centre therefore satisfying 6.6(3).

Amenity

It is acknowledged that the development will have some amenity impact to the adjoining residences further south of the subject site given the site is currently vacant. To this extent, where amenity impacts have been observed in terms of overshadowing to private open space and living room windows, a qualitative assessment of the proposed impacts vs an alternate scenario for reduced or higher densities and built form revealed that the overshadowing impacts are unavoidable and a reduced height, increase setback or compliant building street frontage are unlikely to resolve impacts due to the orientation of the site and the location of private open space areas and windows on the southern lot. Notwithstanding this,

the design of the proposed building as far as possible reducing the amenity impacts through an increased building separation at the southern boundary so to protect visual privacy, facilitate as much solar penetration as possible as well as natural ventilation to both the existing southern building as well as the proposed development.

On merit, the extent of impacts are considered to be acceptable given the developments overall performance against SEPP 65, the aims and objectives of the TCCLEP2012 as well as the zone objectives. In addition, the development satisfies the relevant development controls that apply under Section B2 of the DCP.

Conditions of consent have been recommended to regulate any potential for amenity impacts to the surrounding areas and overall on merit, the proposal is considered to be in line with the strategic planning objectives for the area and its built form is conducive to the context and setting of the site and its surrounds.

Access, parking and Traffic

Council's Traffic Engineer has reviewed the proposed and noted that the proposed access and parking provisions are considered to be acceptable having regard to the relevant matters for consideration under Section A2 and Section B2 of the TDCP2008 as well as AS2890.1.

Where potential impacts to sightlines from exiting vehicles have been identified, special conditions of consent have been recommended to require additional design measures to mitigate those impacts.

The development will increase traffic generation to the site given the land is currently vacant and the proposal includes a mix of uses. However, having regard to the zoning of the land and the proposed land uses, the impact to local traffic and road networks is considered acceptable subject to the levying of Section 7.11 TRCP under Plan No 4.

The charges are to be levied according to the following trip generation rates (as scheduled under Table 3.6 of the TRCP Plan No 4.

Land Use	Required Rate	Proposed development	TRIP calculation
Commercial Premises (office)	16 trips /100sqm GLA*	98sqm GFA (73.5 GLA/100 x16 trips)	11.76 less 40% Employ Gen Discount which is given later
Hotel Suites	5 trips per 100 GLA	234.4m2 x 0.75 = 175.8 (GLA)/100 x 5	8.79
Multi Dwelling houses	3.9 trips/ household unit	5 boarding rooms 6 apartments	42.9
Less credit			-6.5
TOTAL			56.95 Trips (11.76 for commercial less the 40% later)

*GLA is calculated as being an assumed 75% of GFA (as per Notes (a) under Table 3.6.1A of Plan No 4.

Construction

The construction of the proposed development will be subject to standard amenity and hours of operation conditions being included on any consent issued. It is noted that Council's Building Unit and Environmental Health Unit have reviewed the application and recommended standard conditions of consent with respect to the construction phase of the proposed development.

This phase of the proposal will present some interruption to the ambience of the surrounding area, however this is temporary in nature and the amenity of the surrounding area can be adequately protected via appropriate conditions of consent.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposed infill mixed use development is suitable for the subject site and is considered to provide for an appropriate scale and density having regard to the site constraints and opportunities. Currently, the site remains vacant and therefore the development delivers opportunity for employment, additional housing and amenable uses within the existing Tweed City Centre.

Given the subject site is currently vacant, there is likely to be some impacts to nearby residential apartments which currently enjoy 100% solar access from the northern aspect of their sites (due to the subject development site being vacant and land to the rear of the subject site comprises of a single dwelling), as well as impacts resulting from additional vehicles accessing the site from the street.

Notwithstanding the above, these impacts have been considered on their merits and it is considered that the design of the development is such that the impacts are minimised as far as possible. In addition, conditions of consent are recommended to secure an amenable acoustic environment for nearby residential units (within the development and adjoining the development site).

As such, Council can be satisfied the subject site is suitable for the development having regard to the zoning of the land and the surrounding land uses and development which is occurring within the vicinity of the site.

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

The subject application was neighbour notified for a period of 14 days from Wednesday 5 September 2018 to Wednesday 19 September 2018. During this time four submissions were received.

A summary of the objection matters and a planning response to those matters is contained later in this report.

Issue/Concern	Planning response
Traffic	<p>Objections have been raised in regard to additional traffic that is likely to be generated by the development.</p> <p>Council officers have considered the additional traffic impacts and accept that there will be a greater amount of traffic beyond that current generated from the site (due to it being vacant). However, the site is located within proximity to major road corridors within Tweed City Centre and therefore the sites location and zoning is such that it is more than capable of supporting the proposed development and associated traffic impacts. Tweed shire Council has a road contribution plan (TRCP) which applies levies under Section 7.11 of the Act. These levies are collected by Council and are payable by the developer prior to the commencement of any works. The levies will apply to the proposed development so to account for any additional traffic generated by the development and allow Council to maintain and upgrade public road infrastructure through the local government area to respond to the growing needs of the community as a result of development of land.</p>
Noise	<p>Objections have been raised in regard to additional noise generated from the development.</p> <p>Currently, the site remains vacant and therefore there will be additional noise impacts resulting from construction and the ongoing use of the building given the land is currently vacant. However, the proposed development is located within a B3 Commercial zone. The development includes residential accommodation and ground floor commercial floor area. The provision of these types of uses on a land that is zoned for such is considered to have minimal impact to the area in terms of noise and therefore no specific requirements would apply to the proposal in terms of acoustic testing. Notwithstanding, conditions of consent are recommended to ensure that use of the building mitigate any potential adverse noise impacts in the future and also to limit construction noise (and hours) in accordance with NSW Environmental Protection Authority (EPA) guidelines.</p> <p>The site is located within proximity to a road corridor that could be considered as noise generating (Wharf Street) and therefore pursuant to Clause 102 of SEPP (Infrastructure) 2007, conditions of consent have been recommended to ensure that the design of the building is capable of achieving a certain criteria for internal acoustic amenity. This may include the provision of additional glazing and building treatment that would further improve the acoustic environment and mitigate any potential for sound travel from residential units.</p>
Impact of construction to adjoining buildings	<p>Conditions of consent have been recommended to require a dilapidation report to be prepared so to ensure that any impacts from construction of the proposed building are compensated for by the developer.</p> <p>The dilapidation report would involve a pre development inspection which reports on the condition of nearby building and a post development inspection. It is considered that the provision of this report would suitably protect adjoining land owners from being burdened with costs resulting from damage to adjoining buildings from the construction works.</p>
Queries regarding proposed land use and its operation	<p>Concerns have been raised regarding the use of the boarding house component as hotel/motel operations. Under TCCLEP2012 a boarding house is defined as follows:</p> <p><i>boarding house means a building that:</i></p> <p>(a) <i>is wholly or partly let in lodgings, and</i></p>

Issue/Concern	Planning response
	<p>(b) <i>provides lodgers with a principal place of residence for 3 months or more, and</i></p> <p>(c) <i>may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and</i></p> <p>(d) <i>has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers, but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.</i></p> <p>The design of the boarding houses are consistent with the above land use definition and the applicant has advised that the proposed boarding rooms will be privately run (i.e. not proposed to be social housing or operated as not-for-profit organization) and will not involve and onsite boarding house manager. The boarding house will need to be managed by one operator which may be subcontracted to a management group and must accord the Boarding House Act 2012. Conditions of consent have been recommended to restrict the use of the boarding houses for any backpacker's accommodation or hotel or motel accommodation. In addition, special conditions have been imposed to ensure that a plan of management is in place for the effective operation of the boarding rooms in accordance with statutory requirements. No strata subdivision of the boarding rooms will be permitted so to ensure that the tenure of the boarding rooms is not fragmented.</p>
<p>Overshadowing to the south</p>	<p>The proposed separation between buildings is a minimum 3m for the majority of the southern building line. There is a minor encroachment for a protruding wall and to the front of the building which comprises of a solid wall construction for 14.53m. However, this area of the building has a negligible impact to the southern building in terms of overshadowing given existing balconies and east facing windows at this elevation of the southern building are in shadow from the building itself.</p> <p>In considering the merits of the proposal, the above described design merit in terms of building separation is considered to favour the southern building in terms of solar penetration given the subject site is located within a commercial zone and therefore enjoys the benefit of a zero setback control for front and side boundaries.</p> <p>Furthermore, the subject site is currently vacant and due to the orientation of the subject lot, an overshadowing impact will be unavoidably observed to land immediately south of the subject site. As previously discussed in this report, detailed shadow diagrams have been provided for the shadows cast to these southern residential units during winter months. The shadow diagrams demonstrate a minimum of three (3) hours of solar access will be maintained to private open space areas and adjacent living room windows of the rear 2 apartments in the adjoining southern residential unit building between 9am and 3pm on 21st June. In addition, as mentioned above, the diagrams demonstrate that the east facing private open space areas and windows are already in shadow from the actual building itself and therefore the proposal does not give rise to additional overshadowing impacts in this regard. The diagrams also demonstrate that a minimum of three (3) hours of solar access will be maintained to the rear landscaped space at ground level of the adjoining residential unit building between 9am and 3pm on 21st June. As such, as outlined previously in this report, whilst an impact is observed to the southern adjoining building, this impact is unavoidable for any reasonable development that would occur on the subject site in line with the zoning of the land and the range of permitted land uses (Noting a lower scale development less than 3 storeys in height is not conducive to the zone objectives). Furthermore, the proposed building height is modest having</p>

Issue/Concern	Planning response
	<p>regard to the maximum permitted on the land, and; the proposed building separation from the southern boundary is maximised to reduce the overshadowing impact to an acceptable level.</p>
<p>Height of Building</p>	<p>An objection has been raised regarding the proposed height of building not being consistent with the objectives of Clause 4.3 of the TCCLEP2012.</p> <p>Under Clause 4.3 the maximum building height for the subject site is 34m and the proposed building height is 17.3m which is considerably less than the maximum permitted under this Clause. The maximum building height and FSR implies a certain scale and density of development that is considered to be conducive to the B3 Commercial zone. However, the subject site is constrained in terms of lot width and therefore the scale and density inferred under the planning controls which apply to the site are not achievable due to the lot width constraints and the existing adjoining development (and associated impacts in terms of privacy, solar access and also to an extent – streetscape outcomes). As such, the proposed 5 storey height is considered to be an appropriate height of building that reflects the horizontal length of the building on the subject site. Comparatively, so to establish the intended density for this site and the alternate scenario for development of land in accordance with the planning controls that apply; if the land had a compliant street frontage of 20m (noting that the street frontage is 24.57% less than the minimum required under Clause 6.8(3) of the TCCLEP), it is very likely that the overall height of the development could significantly increase to reflect a vertical proportion that responds to a wider building frontage. To this extent, the minimum increase in height would be by at least 4.5m (approximately 2 storeys). Even in this scenario, the height would still be below the maximum permitted building height prescribed under Clause 4.3 of the TCCLEP2012.</p> <p>The proposed height of the building is appropriately proportioned to reflect the urban character of the area and maintain an appropriate level of amenity, provides a density that is proportionate to the capabilities of the land in terms of its zoning and location. Further, the design of the development is such that it maximises separation from the southern adjoining building which contains residential units and has the greatest overshadowing impact. Therefore from a planning perspective, the development limits impact on the existing built environment and as far as possible prevents gross overshadowing impacts on the surrounding built environment.</p> <p>For these reasons, based on the merits of the proposal, the development has been assessed to be consistent with the prescribed development standard and the overall objectives of Clause 4.3.</p>
<p>Stormwater impacts- Infiltration</p> <p>Queries regarding proposed detention area and impact on current stormwater drainage system in Beryl Street.</p>	<p>The infiltration component of the proposed development is likely to result in minor volume of water penetrating into the sub-surface layers. This is also quite likely to be less volume of infiltration than the current undeveloped, bare site. These infiltration systems are designed to capture a small quantity of flows only, and then the runoff will surcharge the pits in the carpark and pond over the carpark area, before discharging into Beryl St via a kerb adaptor. These practice are consistent with Council's Development Design Specifications DD7 – Stormwater Quality.</p> <p>The development cannot discharge any runoff flow that exceed the existing, pre-development conditions for all storm event up to the 1% storm (or the 1 in 100 year event). This has been secured through recommended conditions of consent (see PCC1165). The applicant is proposing On Site Detention (OSD) of stormwater runoff within the carpark surface via bunded area and orifice in stormwater pits to achieve</p>

Issue/Concern	Planning response
	<p>compliance. The OSD will achieve a max. depth of 130mm with a total detention volume of 30m³. The applicant has submitted a stormwater model in the DRAINS software that supports the above strategy. This type of management is well established in the industry and also meets Council guidelines.</p>
<p>Privacy Impacts</p>	<p>Concerns have been raised regarding privacy between the proposed apartments and apartments on the southern adjoining lot.</p> <p>In considering the matters raised, the design merit of the proposal is considered to suitably protect the amenity of the southern units as well as the proposed apartments in terms of privacy. To this extent, the following is noted:</p> <ul style="list-style-type: none"> • The building achieves a 3m setback to the southern adjoining boundary except for the front portion of the building which comprises of a zero setback. However, at this location, a solid wall construction is proposed with no openings that would give rise to cross viewing opportunity. • Windows and openings on the southern elevation of the building (which face the adjoining residence) comprise of windows to bathrooms or bedrooms, which are considered to be passive use areas (as opposed to living, kitchen and balconies). Further, where there is potential for cross viewing from bedroom windows, they are fitted with privacy screens to ameliorate this issue. • In addition to the above point regarding privacy screens, the proposed siting of finished floor levels are established to offset existing floor levels of the flat building to the south. Therefore sight lines from proposed southern windows (at standing height) do not have a direct view into sightlines from external balconies of the adjoining flat building which orientates north. • No balconies feature a primary orientation to the southern aspect. Where balconies are exposed to the southern aspect of the site, they contain a solid wall construction or are suitably setback to avoid opportunity for cross viewing. • It has been noted as part of the assessment that the balcony for Apt 7 on Level 4 which is orientated to the south has a 2.2m opening at the southern boundary however the proposed height of this apartment is greater than the existing building to the south and therefore there is no opportunity for cross viewing at this location, Furthermore, the primary orientation of this balcony is to the west and therefore sightlines are more likely to be established toward the rear of the subject site. <p>Based on the above design features, it is considered that the development is acceptable in terms of protecting privacy between the subject building and adjoining residences to the south.</p>
<p>Non-compliant frontage</p>	<p>An objector has noted that the development has a non-compliant building street frontage under Clause 6.6(2) of the TCCLEP2012.</p> <p>As outlined within the body of this report, the provisions of Clause 6.6 permit the consent authority to grant development consent on land that does not meet the requirements of Clause 6.6(2) (20m street frontage) if the consent authority forms an opinion that due to physical constraints of the site or an adjoining site or sites, it is not possible for the building to be erected with a 20m frontage and the development is consistent with the aims and objectives of the TCCLEP2012 (see Cluse 6.6(3) of TCCLEP2012). An extensive assessment of the developments performance against not only the aims and objectives of the TCCLEP2012</p>

Issue/Concern	Planning response
	<p>but also the objects of the Act, the objectives of the B3 Commercial Core zone as well as the objectives of Clause 6.6 has been undertaken. In addition, the applicant has demonstrated that the tenure of land is such that it constrains any possibility for lot consolidation so to achieve compliance with the minimum building street frontage. Therefore the development site remains an isolated site and would be sterilised from <i>any</i> development opportunity occurring if strict compliance with Clause 6.6(2) were enforced. Therefore, it is accepted that the development satisfies the Clause 6.6(3)(a) and (b) provisions and that development consent can be granted despite not meeting the minimum building street frontage requirements.</p>
<p>Financial/Economic Impacts</p>	<p>Objections have been raise regarding the impact of the proposed development on the value of the property due to it being inconsistent with the character of the street and having adverse impact on privacy and solar amenity. Objections have also been raised regarding the financial impacts of the development on land owners to the south as a result of purchasing blinds, curtains, artificial heating/cooling supply as a result of the proposed development.</p> <p>The proposed development has been assessed on its merits having regard to the relevant matters for consideration under Section 4.15(1) of the Act. The matters raised in regard to financial or economic impacts such as that described above are not a statutory consideration under the Act. Where impacts have been identified, the extent of impacts have been assessed and merit has been applied to determine that despite those impacts, on balance, the development is still worthy of support.</p>
<p>Tree Protection Measures</p>	<p>An objector has noted that tree retention of the existing tree on the adjoining site is favourably and queried what measures could be employed to make sure it is protected.</p> <p>It is noted that the tree is located adjacent to landscape area which forms a large setback from the proposed building. Therefore the tree (and its root protection zones) are unlikely to be encroached upon as a result of the development. However, to secure this outcome, special conditions of consent have been imposed to require tree protection measures to be employed in accordance with relevant Australian Standards during construction.</p>
<p>Floor Space Ratio is greater than the prescribed council requirement</p>	<p>The proposed Floor Space Ration (FSR) is less than the maximum prescribed under Clause 4.4 of the TCCLEP2012. Refer to previous discussion in this assessment report for further detail of the developments performance against the provisions of this Clause.</p>
<p>Density is too high for the size of the block</p>	<p>As previously discussed in this report and also within this section (see comments on 'Height of Building') the proposed density is considered to be acceptable having regard to the layout of the site and its surrounds. Appropriate site analysis has been undertaken as part of the design of the development and detail of which was submitted as part of the DA. As such, the development is considered to suitably respond to the site in terms of bulk and scale.</p>
<p>Is a 50% coverage the allowed footprint for the site size and does it comply?</p>	<p>The proposed development complies with the floor space ratio and minimum landscape area calculations prescribed under the ADG. Design controls for developments of this nature do not include a maximum site coverage. Rather, they are prescribed based on land use, building separation, maximum building height, maximum Floor Space Ratio, minimum landscape area and the like.</p>

Issue/Concern	Planning response
Does car parking comply?	The proposed number of parking spaces complies with the minimum required under Section A2 and Section B2 of the DCP (refer to previous discussion in this report).
The development does not include any external fire stairs.	The proposed development includes an internal stairway that would serve as a fire exit in the event of a fire. Conditions of consent are recommended to require the development to comply with the BCA and this includes fire safety provisions. Furthermore, Councils Health and Building Surveyor has reviewed the proposal and raised no objections to the design on fire safety grounds. As such, Council can be satisfied that the internal stairway is acceptable and that compliance with the BCA will be conditioned on the consent. Further detail regarding the developments performance against BCA provisions would be required for the certification process of the development.
The proposed development is not consistent with the existing streetscape character	<p>A detailed assessment of the proposal has been undertaken having regard to the existing and future character of the area. It is noted that the area is characterised by an eclectic mix of land uses and is clearly in a transitional phase in terms of urban form and density.</p> <p>The proposed development is below the maximum density permitted for the site. However, responds to the context of the site and surrounds in terms of its bulk and scale. As such, the development has been considered to have sound planning merit and responds to the opportunities and constraints of the land. For this reason, the development is considered to be suitable for the site in terms of streetscape.</p>
Apartments might be used illegally for Air BNB	<p>The boarding rooms will be managed under the Boarding House Act 2012. In addition, the land use sought for these rooms would prohibit their use for Air BNB and, conditions of consent have been recommended to restrict any other forms of accommodation (i.e. backpackers, hotel or motel etc) beyond the approved boarding house use for these units.</p> <p>In regard to the remaining residential accommodation; they are sought to form Shop Top Housing and not Tourist and Visitor Accommodation and therefore their use for Air BNB is not envisaged under the proposed DA. Any use or operation outside of the approved development would be the subject of a compliance matter depending on the statutory requirements for such use to occur on the land. As such, given the proposal is not for Tourist and Visitor Accommodation and the development consent is sought for Shop Top Housing, Council cannot apply this issue as a merit based consideration to warrant refusal of the DA.</p>

It is noted that on 20 February 2019, in response to Council's request for additional information and amended plans, an amended DA was lodged. The amended DA included the following key changes to the building design, layout and use:

- An adjustment to the overall height of the building (200mm),
- Increase to the ground floor business tenancy (to 70.8m²);
- Increase to glazed façade width to the ground floor tenancy at the street elevation of the building;
- Modification to car parking layout and number of spaces provided on site; and
- Update to stormwater management plan.

Given the extent of concerns raised during the original notification process and the proposed external changes to the building, in accordance with Section A11 of the DCP, the DA was re-advertised and notified to adjoining property owners (including

the original objectors) for a further 14 days from Wednesday 6 March 2019 to Wednesday 20 March 2019. During this time no submissions were received.

In May 2019 the applicant lodged amended plans to incorporate hotel suites at level 1 to ensure all proposed uses were permissible under the LEP. The amended plans were re-exhibited between 29 May and 12 June 2019.

Two further submissions were received:

The first was concerned with the lack of onsite parking and the lack of available parking in the area since the Tweed Heads Police Department relocated to their new site nearby. The site has 13 onsite parking spaces and this strictly meets the required onsite parking for the uses proposed. The hotel suites and boarding rooms require very little car parking having regard to Tweed DCP Section A2 and B2. The application complies with the required onsite parking provisions. There is also a public car park nearby which can be utilised by the general public. Therefore parking is considered satisfactory having regard to the merits of the case having regard to the applicable parking rates.

The second objection was concerned that with the introduction of a hotel suite the proposed commercial spaces would be converted to a licensed premises. The following response was provided to the submission:

The Tweed City Centre LEP 2012 groups hotels and motels together with the following legal definition:

hotel or motel accommodation means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that:

- (a) comprises rooms or self-contained suites, and*
- (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,*

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

The proposed plans show a commercial space on the ground floor with 63m²

That commercial space is not proposed as a café or restaurant (which would be required to support a liquor licence) and therefore if the objective was to obtain a liquor licence future applications would be required.

If the application is approved by Council there will be conditions binding the development to the requested commercial use.

(e) Public interest

The proposed development is generally consistent with relevant environmental planning instruments and Council policy requirements. The proposal is considered suitable for the subject site, given its permissibility at this location. The subject site is zoned to provide for a mixed used development comprising of a range of

residential, and business uses. The proposed uses will contribute to additional housing stock and employment opportunities within the regional City Centre of Tweed Heads. The development represents a design and level of articulation that establishes a high quality streetscape outcome in terms of bulk, scale and building material selection thus establishing a strong precedent for future development within the vicinity of the site. In addition, the vertical height and width of the development is proportionate to the opportunities and constraints available for the site and suitably responds to the existing surrounding developments. As such, it is considered that the development has adopted an integrative approach to respond to the transitional character of the area that comprises of a mix of urban forms and densities. Given the proposed uses, design and location of the development; it is considered to be an appropriate urban form that is in the local and broader public interest.

OPTIONS:

1. Approve the development application subject to recommended conditions of consent; or
2. Refuse the development application for specified reasons.

Option 1 is recommended.

CONCLUSION:

The proposed development has been considered in accordance with the relevant statutory obligations under Section 4.15 of the Environmental Planning and Assessment Act 1979, and on balance is considered to be suitable for determination by way of approval.

The development is not considered to result in adverse impact to the built and environmental amenity of the area and to secure this outcome, appropriate conditions have been applied.

The proposal is considered suitable and appropriate for the subject site, given its permissibility in the B3 Commercial Core zone. In addition, matters of public interest have been considered and addressed as part of the assessment. It is considered that on balance, the development has sound planning merit and is worthy of support.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: Provider

SUMMARY OF REPORT:

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

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

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

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

Amended plans were provided which: removed the bins and landscaping from the right of way, provided improved detail of the proposed earth works within the right of way which also assisted in satisfying safety concerns, reduced building height of dwelling 1 and 2 so they are compliant with the 9m building height, privacy screens have been provided on the eastern elevation of dwelling 1 balconies. A geotechnical report, stormwater management plan and

bushfire report prepared by suitably qualified persons were provided and assessed by Council staff and considered to be acceptable, these reports have been conditioned.

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

RECOMMENDATION:

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

GENERAL

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

[GEN0005]

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

[GEN0115]

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

[GEN0135]

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

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

[GEN0155]

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

[GEN0300]

6. Bushfire Design and Construction

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

- (a) Construction shall comply with Australian Standard AS3959-2009 'Construction of buildings in Bush Fire-prone areas', Bushfire attack Level (BAL) 12.5 for each dwelling.
- (b) The development is to be completed in accordance with the Bushfire threat Assessment Report prepared by Bushfire Certifiers dated 10 January 2018 Ref:8/002.

[GEN0335]

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

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

[GENNS01]

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

[GENNS01]

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

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

[GENNS02]

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

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

[GENNS02]

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

[GENNS03]

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

Stage 1 relates to the construction of dwelling number 1.

Stage 2 consists of the construction of dwelling number 2.

Stage 3 consists of the construction of dwelling number 3.

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

[GENNS04]

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

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

16. Section 7.11 Contributions

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

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

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

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

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

Stage 2

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

(d)	Shirewide Library Facilities: 1 ET @ \$985 per ET (\$792 base rate + \$193 indexation) CP Plan No. 11	\$985
(e)	Bus Shelters: 1 ET @ \$75 per ET (\$60 base rate + \$15 indexation) CP Plan No. 12	\$75
(f)	Eviron Cemetery: 1 ET @ \$140 per ET (\$101 base rate + \$39 indexation) CP Plan No. 13	\$140
(g)	Community Facilities (Tweed Coast - North) 1 ET @ \$1624 per ET (\$1,305.60 base rate + \$318.40 indexation) CP Plan No. 15	\$1,624
(h)	Extensions to Council Administration Offices & Technical Support Facilities 1 ET @ \$2195.88 per ET (\$1,759.90 base rate + \$435.98 indexation) CP Plan No. 18	\$2,195.88
(i)	Cycleways: 1 ET @ \$555 per ET (\$447 base rate + \$108 indexation) CP Plan No. 22	\$555
(j)	Regional Open Space (Casual) 1 ET @ \$1282 per ET (\$1,031 base rate + \$251 indexation) CP Plan No. 26	\$1,282
(k)	Regional Open Space (Structured): 1 ET @ \$4500 per ET (\$3,619 base rate + \$881 indexation) CP Plan No. 26	\$4,500

Stage 3

(a)	Tweed Road Contribution Plan: 2.6 Trips @ \$1570 per Trips (\$1,317 base rate + \$253 indexation) CP Plan No. 4 Sector9_4	\$4,082
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(b) Open Space (Casual): 1 ET @ \$659 per ET (\$502 base rate + \$157 indexation) CP Plan No. 5	\$659
(c) Open Space (Structured): 1 ET @ \$754 per ET (\$575 base rate + \$179 indexation) CP Plan No. 5	\$754
(d) Shirewide Library Facilities: 1 ET @ \$985 per ET (\$792 base rate + \$193 indexation) CP Plan No. 11	\$985
(e) Bus Shelters: 1 ET @ \$75 per ET (\$60 base rate + \$15 indexation) CP Plan No. 12	\$75
(f) Eviron Cemetery: 1 ET @ \$140 per ET (\$101 base rate + \$39 indexation) CP Plan No. 13	\$140
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(i) Cycleways: 1 ET @ \$555 per ET (\$447 base rate + \$108 indexation) CP Plan No. 22	\$555
(j) Regional Open Space (Casual) 1 ET @ \$1282 per ET (\$1,031 base rate + \$251 indexation) CP Plan No. 26	\$1,282
(k) Regional Open Space (Structured): 1 ET @ \$4500 per ET (\$3,619 base rate + \$881 indexation) CP Plan No. 26	\$4,500

[PCC0215/POC0395/PSC0175]

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

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

BELOW IS ADVICE ONLY

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

Stage 1

Water = Nil

Sewer = Nil

Stage 2

Water = 0.4 ET @ \$13,926 = \$5,570.40

Sewer = 1.0 ET @ \$6,690 = \$6,690

Stage 3

Water = 0.8 ET @ \$13,926 = \$11,140.80

Sewer = 1.0 ET @ \$6,690 = \$6,690

[PCC0265]

18. Prior to construction certificate of Stage One, details from a Structural Engineer are to be submitted to the Water Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

19. Prior to construction certificate of Stages Two and Three, Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

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

[PCC0945]

21. For developments containing less than four attached or detached strata dwellings having a Building Code classification of 1a, each premises must be connected by means of a separate water service pipe, each of which is connected to an individual Council water meter to allow individual metering. Application for the

meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1175]

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

[PCC1195]

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

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

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

[PCC1310]

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

Note:

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

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

[PCC1335]

25. Prior to Construction Certificate of Stage One, the applicant is required to physically locate the actual location of the 150mm diameter sewer pipeline infrastructure on Lot 3 DP 371134. A Construction Certificate shall NOT be issued by a Certifying Authority unless the Certifying Authority is satisfied that plans show the actual location of the sewer pipelines, actual depth of the sewer dead end and actual depth of the sewer manholes.

26. Prior to Construction Certificate of Stage One, plans shall be provided to the Water Authority to demonstrate that the dwelling structures shall meet the Tweed Shire Council Development Design Specification D15 - Work in Proximity. Plans shall show that footings are located external to the sewer easement and also located below the sewer zone of influence.

[PCCNS01]

27. Safety rails, compliant with the Building Code of Australia are to be provided along the existing retaining wall (adjacent to the driveway) or any new constructed retaining walls where height exceeds 1.0m in height.

[PCCNS02]

28. Safety rails, compliant with the Building Code of Australia are to be provided along the existing retaining wall (adjacent to the driveway) or any new constructed retaining walls where height exceeds 1.0m in height.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

30. The erection of a building in accordance with a development consent must not be commenced until:

(a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and

(b) the person having the benefit of the development consent has:

- (i) appointed a principal certifying authority for the building work, and**
- (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and**

(c) the principal certifying authority has, no later than 2 days before the building work commences:

- (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and**
- (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and**

(d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:

- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and**

- (ii) notified the principal certifying authority of any such appointment, and
- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

32. Residential building work:

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

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

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

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

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

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

[PCW0235]

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

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

[PCW0245]

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

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

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

[PCW0255]

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

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

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

[PCW0985]

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

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

[PCW1170]

DURING CONSTRUCTION

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

[DUR0005]

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

[DUR0015]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

45. Excavation

(a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.

- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property. [DUR0425]
46. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR0445]
47. The development is to be carried out in accordance with the current BASIX certificate/s and schedule of commitments approved in relation to this development consent. [DUR0905]
48. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:
- Noise, water or air pollution.
 - Dust during filling operations and also from construction vehicles.
 - Material removed from the site by wind.
- [DUR1005]
49. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings. [DUR1875]
50. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains. [DUR1945]
51. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times. [DUR2015]
52. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site. [DUR2185]
53. All waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section 15 - Waste Minimisation and Management. [DUR2195]
54. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate. [DUR2425]
-

- 55. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:**
- (a) internal drainage, prior to slab preparation;**
 - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;**
 - (c) external drainage prior to backfilling.**
 - (d) completion of work and prior to occupation of the building.**
- [DUR2485]
- 56. Plumbing**
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.**
 - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.**
- [DUR2495]
- 57. An isolation cock is to be provided to the water services for each dwelling in a readily accessible and identifiable position.**
- [DUR2505]
- 58. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.**
- [DUR2545]
- 59. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:**
- * 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**
 - * 50°C in all other classes of buildings.**
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.**
- [DUR2555]
- 60. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.**
- [DUR2705]
- 61. The Applicant shall submit the appropriate 'Application for Water Service Connection' form to Council's Water Unit to facilitate a property service water connection for proposed Lot 3 DP 371134, from the existing water main in Byangum Road. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.**
- [DUR2800]
- 62. Works in the vicinity of public infrastructure must comply with the following requirements;**

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

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

63. Prior to issue of an Occupation Certificate, all works/actions/inspections etc required at that stage by other conditions or any approved Management Plans or the like shall be completed in accordance with those conditions or plans.
[POC0005]
64. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).
[POC0355]
65. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:
 - (a) The use of any accommodation shall be limited to only the people permitted by the restrictions of occupation provisions under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.
[POC0860]
66. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.
[POC1045]

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

[POC1055]

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

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

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

[POCNS01]

USE

69. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

70. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

71. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

72. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.

[USE0435]

73. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[USE0735]

74. All wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate.

[USE0875]

- 75. All commercial / industrial / residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.**

[USE0875]

REPORT:

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

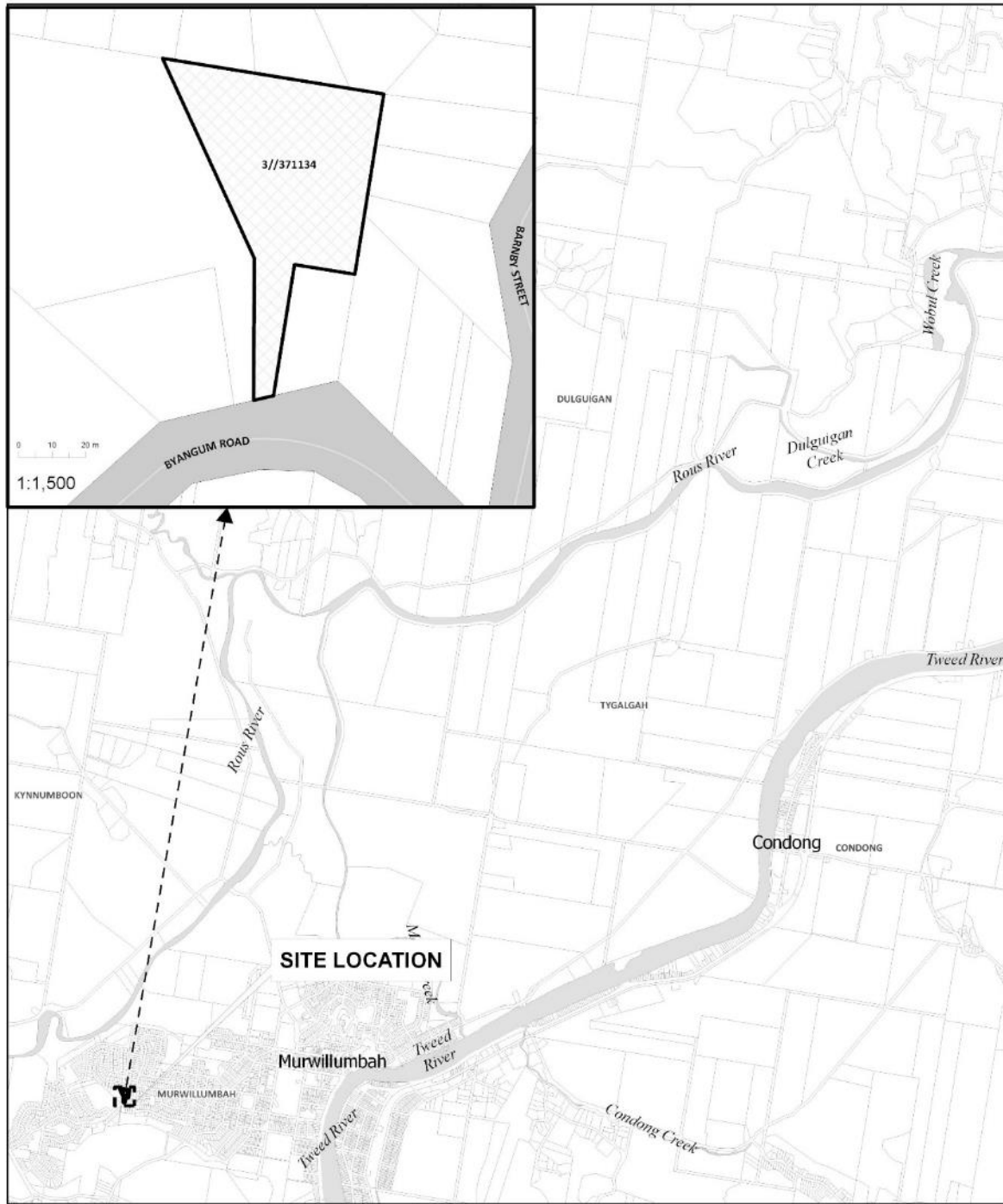
Background:

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



Figure: Aerial of the site and surrounds.

SITE DIAGRAM:



Site Plan

Lot 3 DP 371134

141 Byangum Road, MURWILLUMBAH



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Coordinate System - MGA Zone 56
Datum - GDA 94

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Civic and Cultural Centre
3 Turnbullum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484

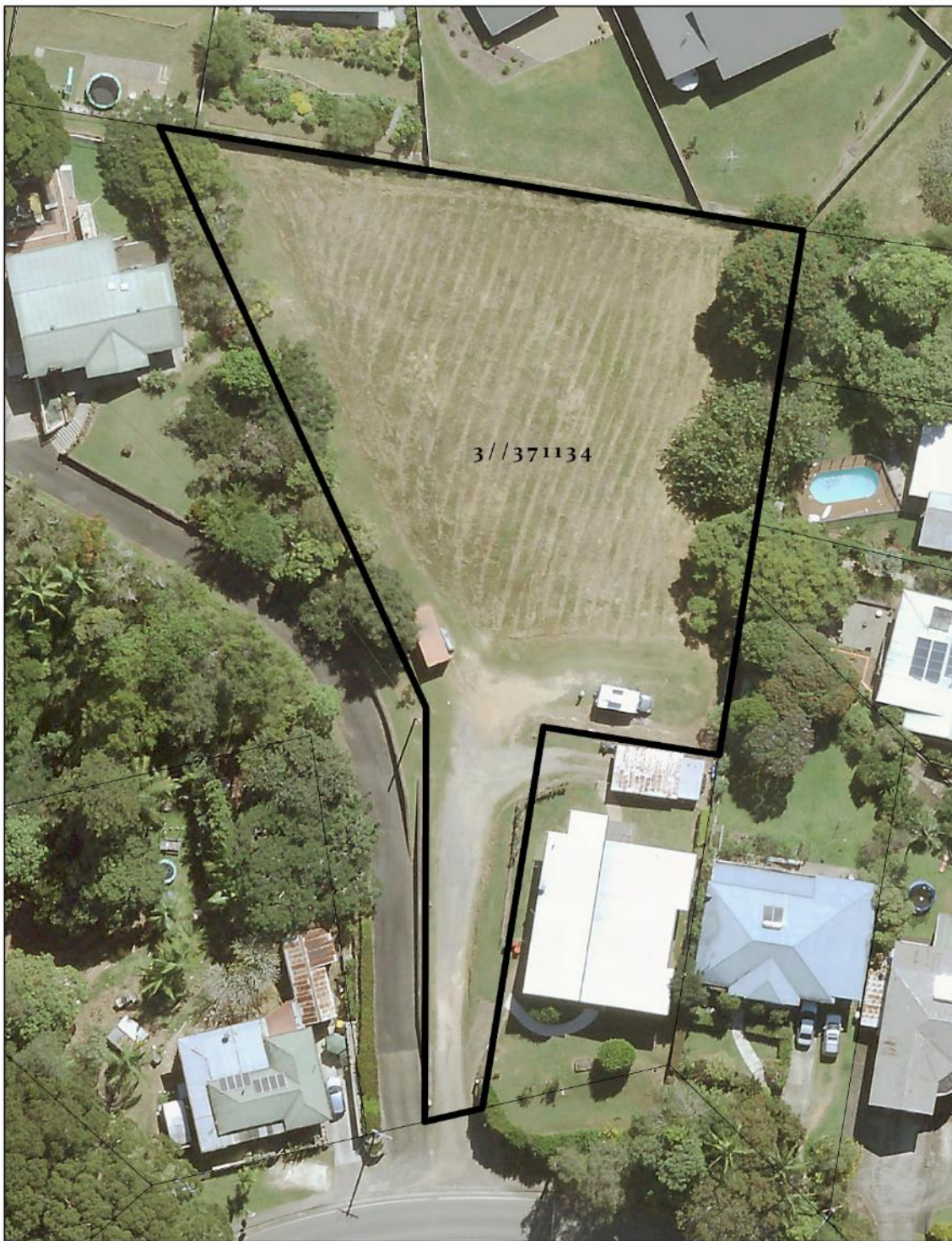
T: (02) 6670 2420 / 1300 292 872
F: (02) 6670 2483
W: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au



TWEED
SHIRE COUNCIL

Date Printed: 19 June, 2019

AERIAL PLAN:



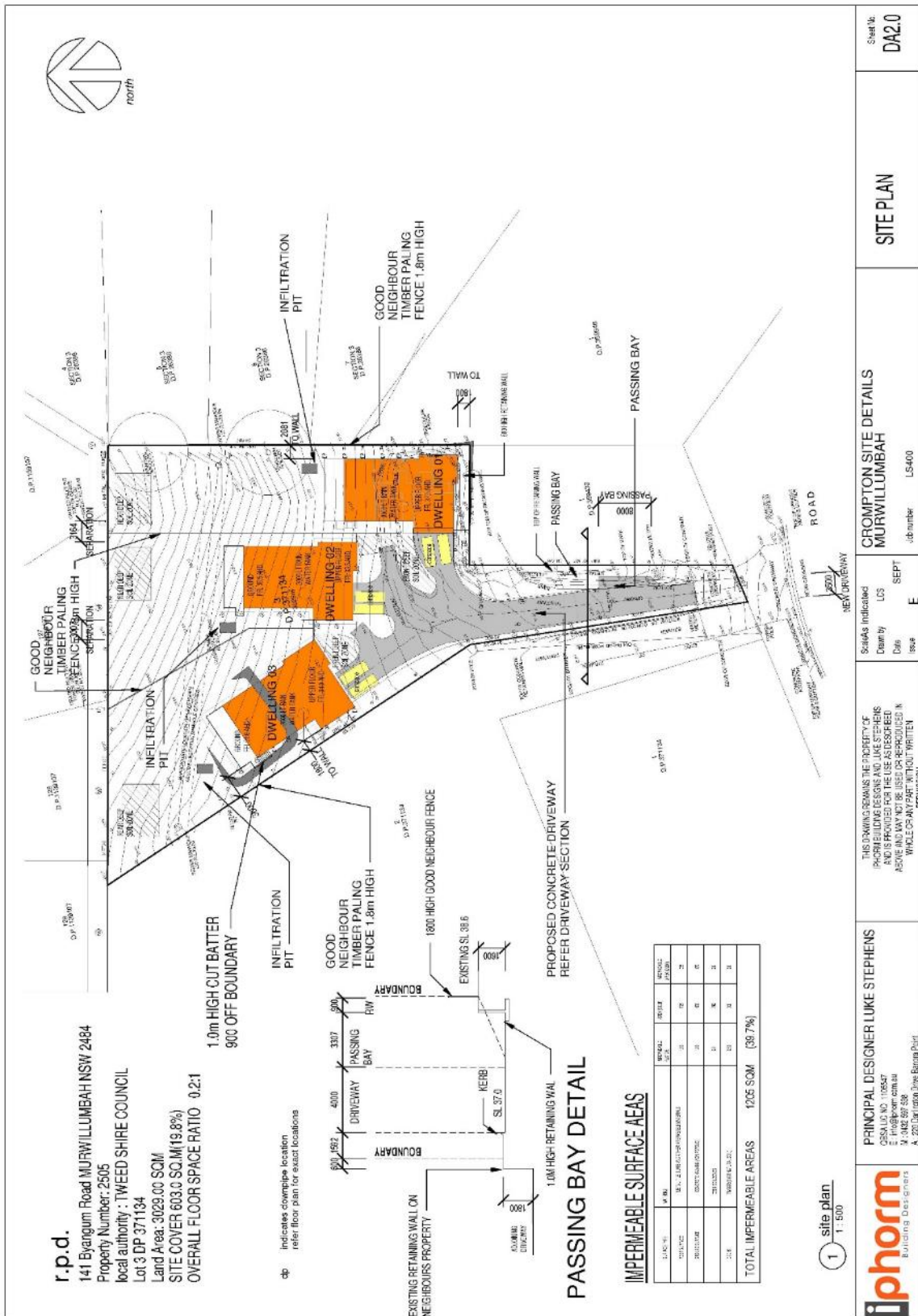
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Map Production: Universal Transverse Mercator
Horizontal Datum: Geospatial Datum of Australia 1994
GDA
GDA
Civic and Cultural Centre
3 Tambulung Road
MURWILLUMBAH NSW 2464
PO Box 516
TWEED
MURWILLUMBAH
T (02) 6670 3480 | 1300 282 872
F (02) 6670 3429
E planning@twec.nsw.gov.au
www.twec.nsw.gov.au

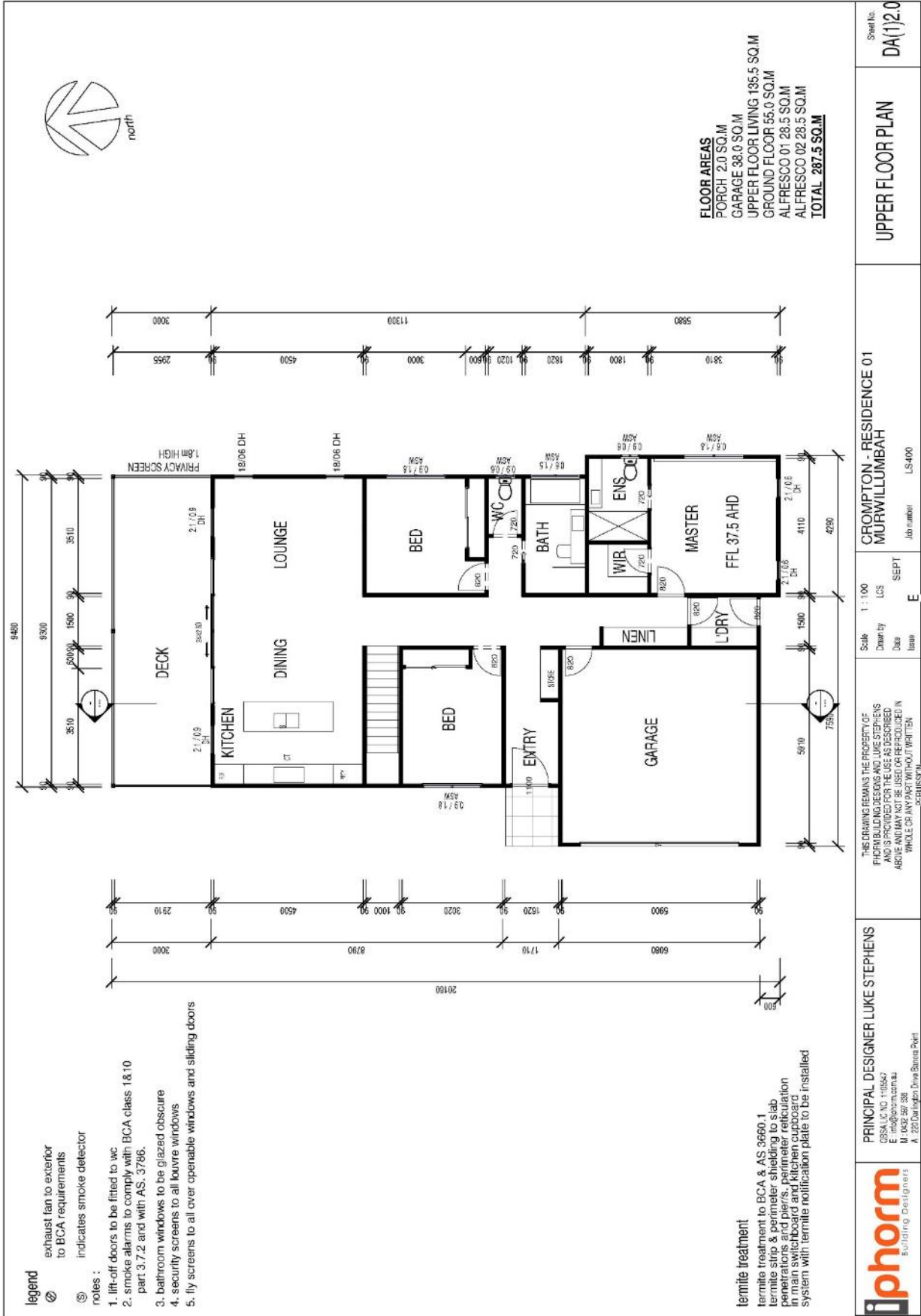
Aerial Photography April 2018
Lot 3 DP 371134
141 Byangum Road, MURWILLUMBAH

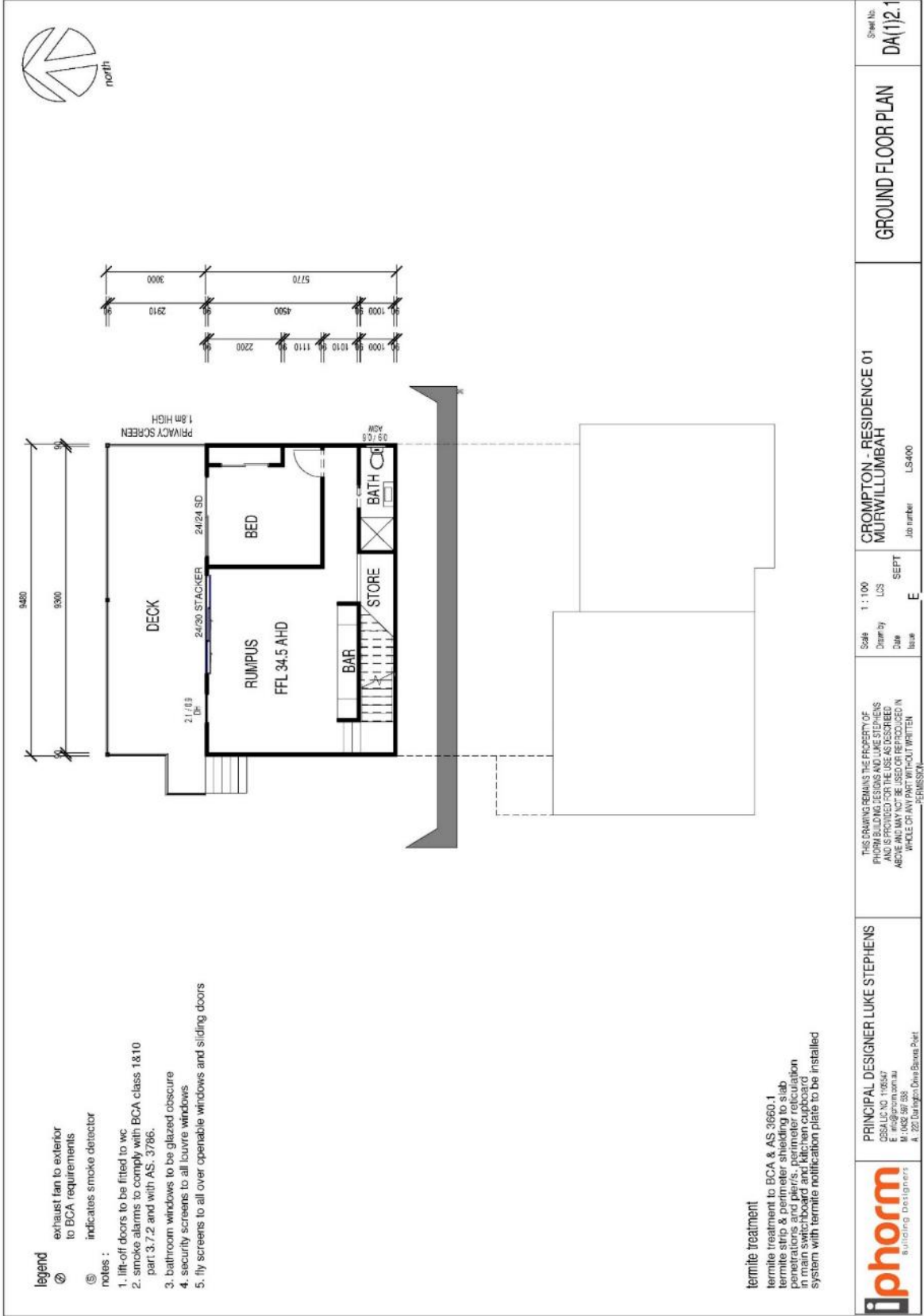
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Author: S.Scott - GIS Date Printed: 15 June, 2019

DEVELOPMENT PLANS:







legend

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

notes :

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

termite treatment

termite treatment to BCA & AS 3660.1 termite strip & perimeter shielding to slab penetrations and piers, perimeter reticulation system with termite notification plate to be installed



PRINCIPAL DESIGNER LUKE STEPHENS
 CRSLIC NO. 108547
 14/08/2018
 A. 222 Darlings Drive Strathfield NSW

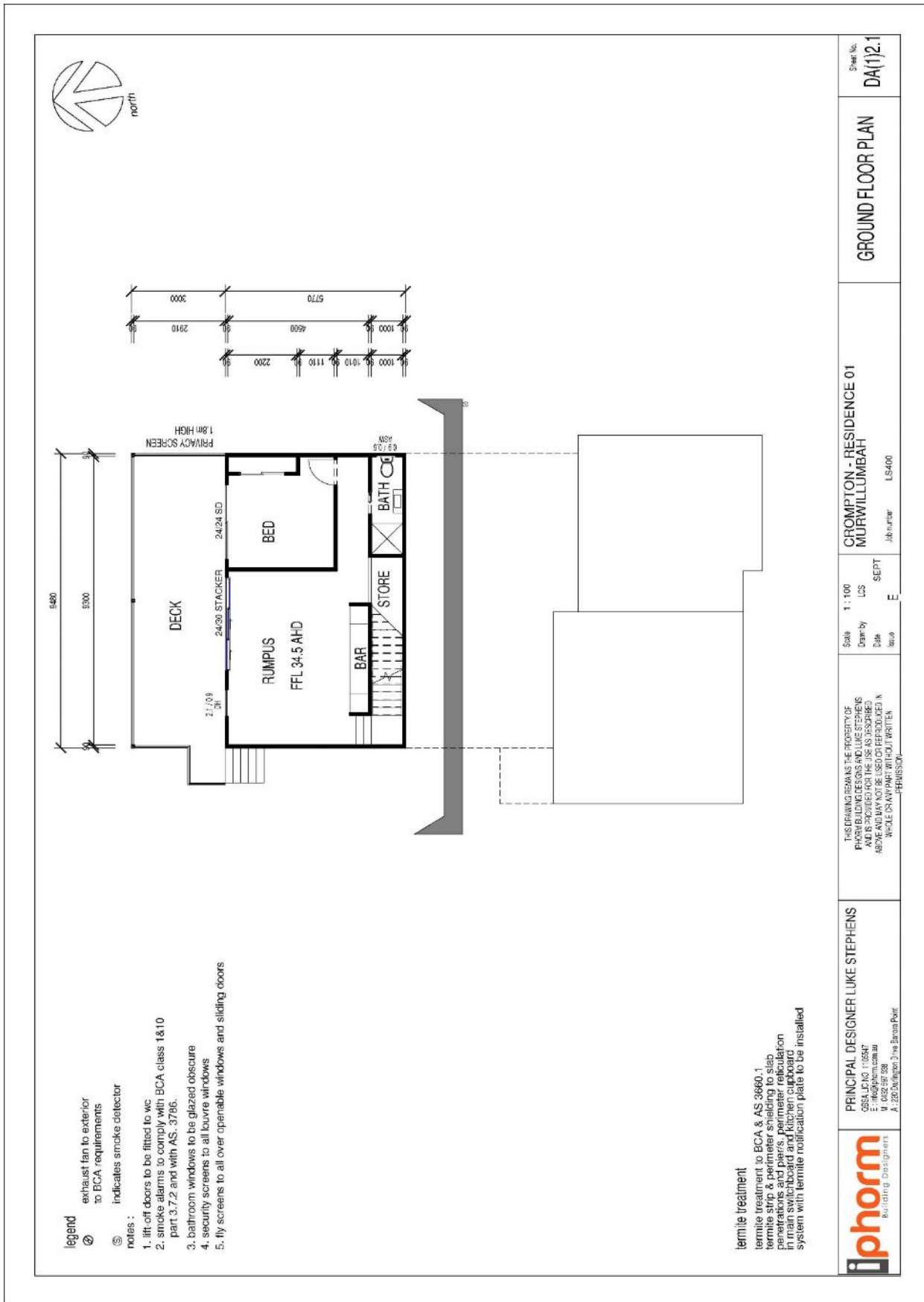
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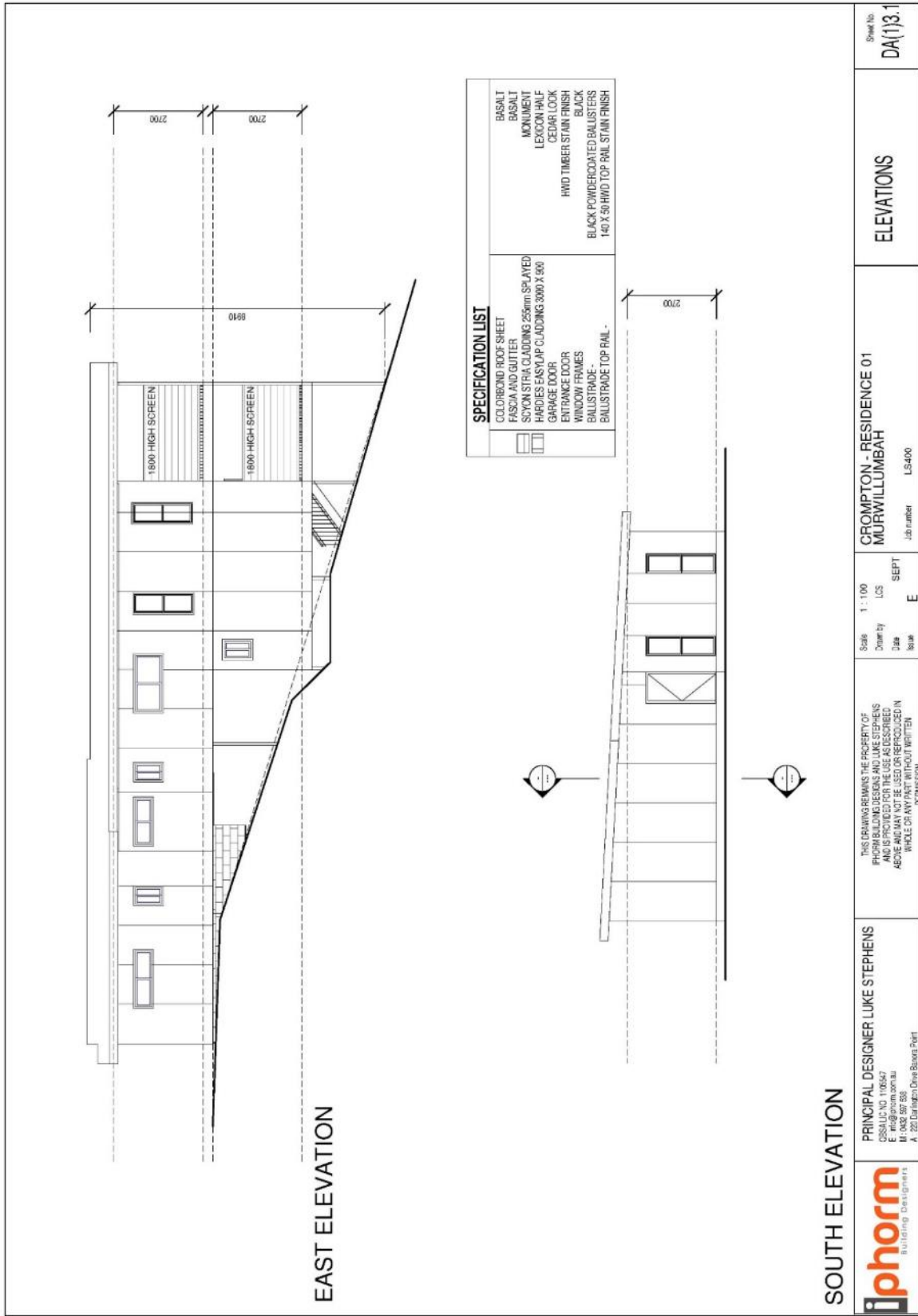
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 Date 15/08/18
 Issue E

CROMPTON - RESIDENCE 01
MURWILLUMBAH
 Job number LS400

GROUND FLOOR PLAN

Sheet No: **DA(1)2.1**



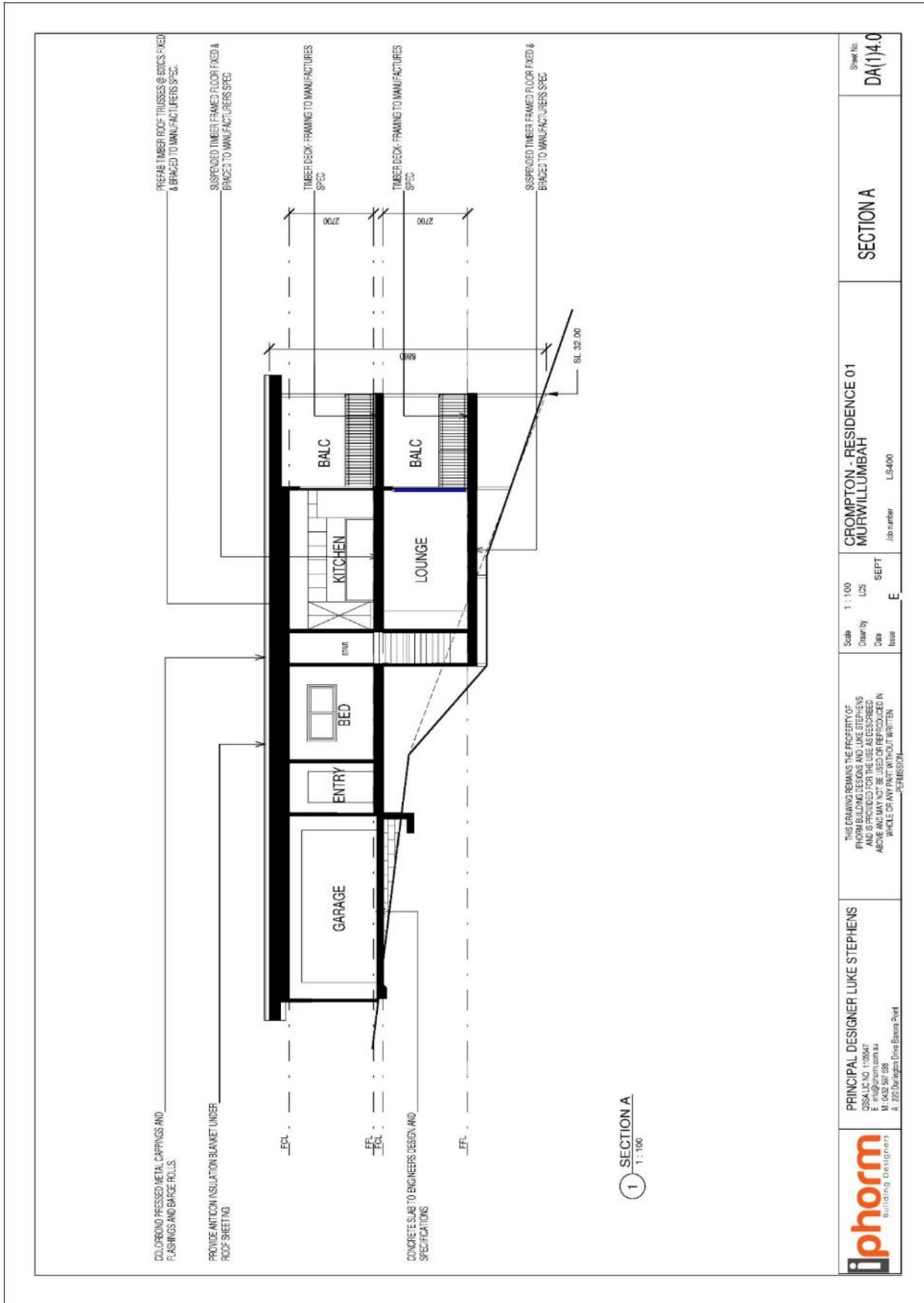


EAST ELEVATION

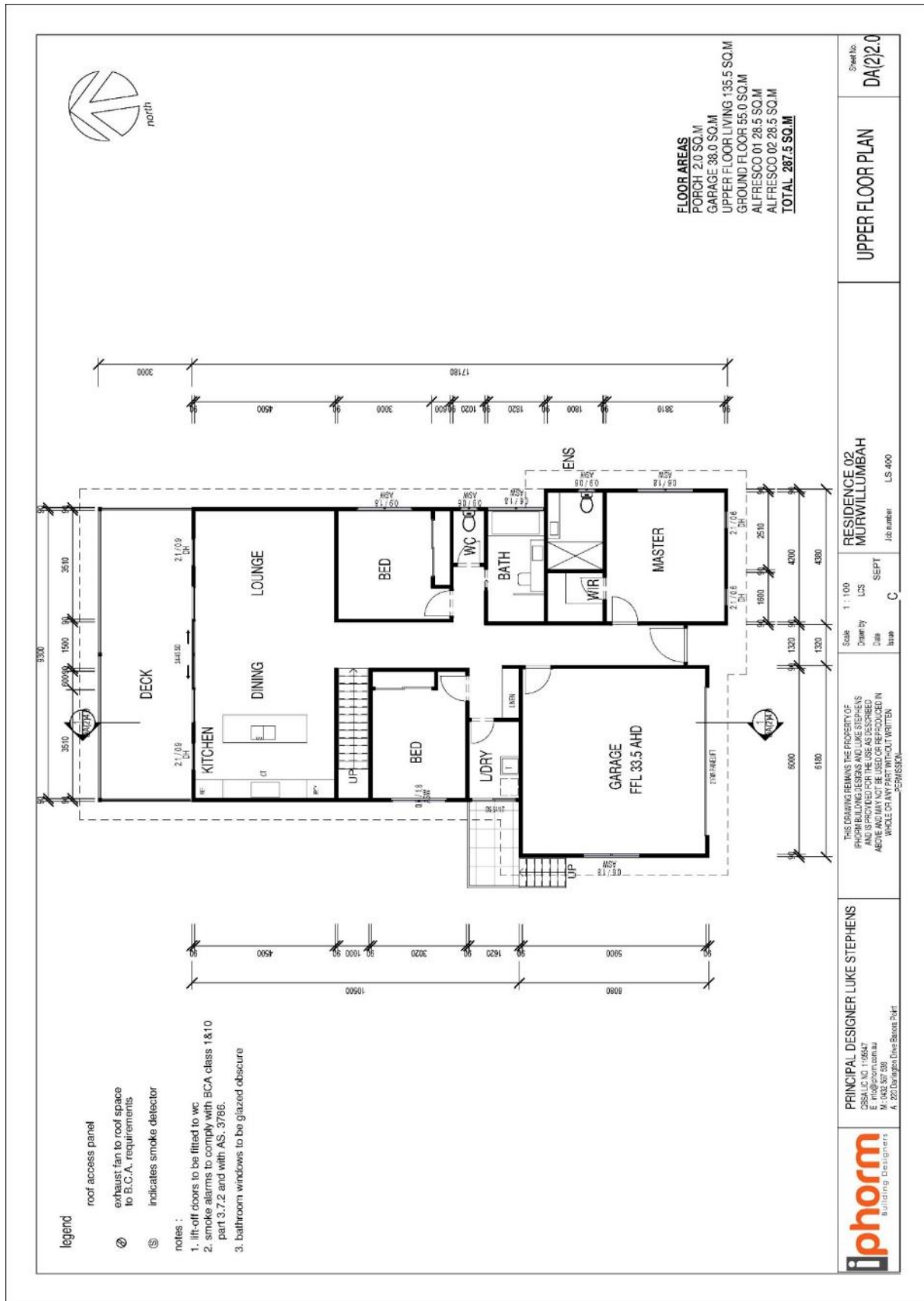
SOUTH ELEVATION

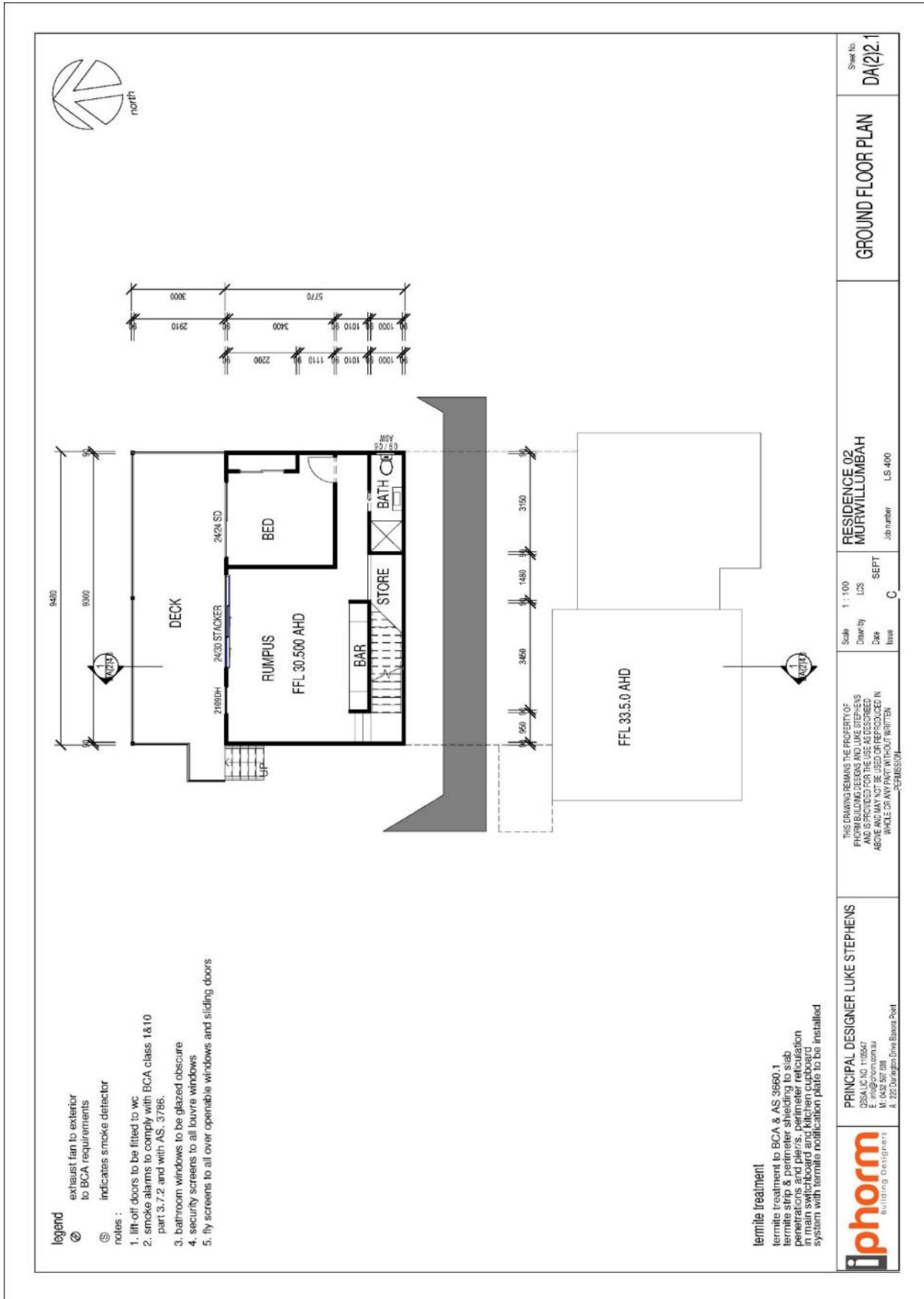
SPECIFICATION LIST	
COLORBOND ROOF SHEET	BASALT
FASCIA AND GUTTER	BASALT
SYPHON STRIA CLADDING 255mm SPLAYED	MONUMENT
HARDIES EASYLAP CLADDING 3000 X 900	LEXICON HALF
GARAGE DOOR	CEDAR LOCK
ENTRANCE DOOR	HWD TIMBER STAIN FINISH
WINDOW FRAMES	BLACK
BALLUSTRADE -	BLACK POWDERCOATED BALLUSTERS
BALLUSTRADE TOP RAIL -	140 X 50 HWD TOP RAIL STAIN FINISH

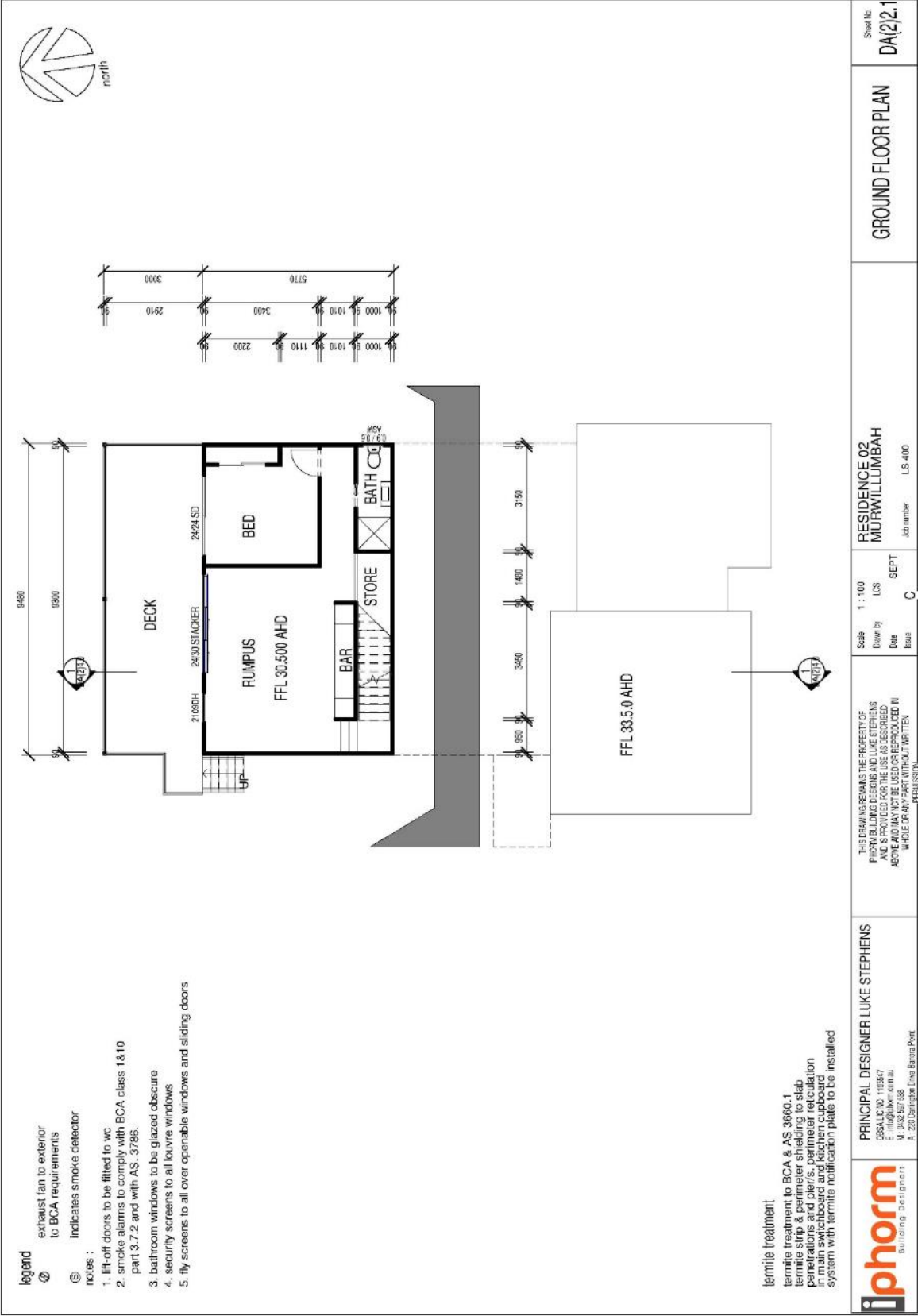
 Building Designers	PRINCIPAL DESIGNER LUKE STEPHENS CSSA LIC NO 119542 E: luke@iphorm.com.au M: 0433 397 535 A: 222 Darraigh Drive Mount Pleasant	Scale 1 : 100 Drawn by LCS Date Scale E	CROMPTON - RESIDENCE 01 MURWILLUMBAH Job number LS400	ELEVATIONS	Sheet No DA(1)3.1
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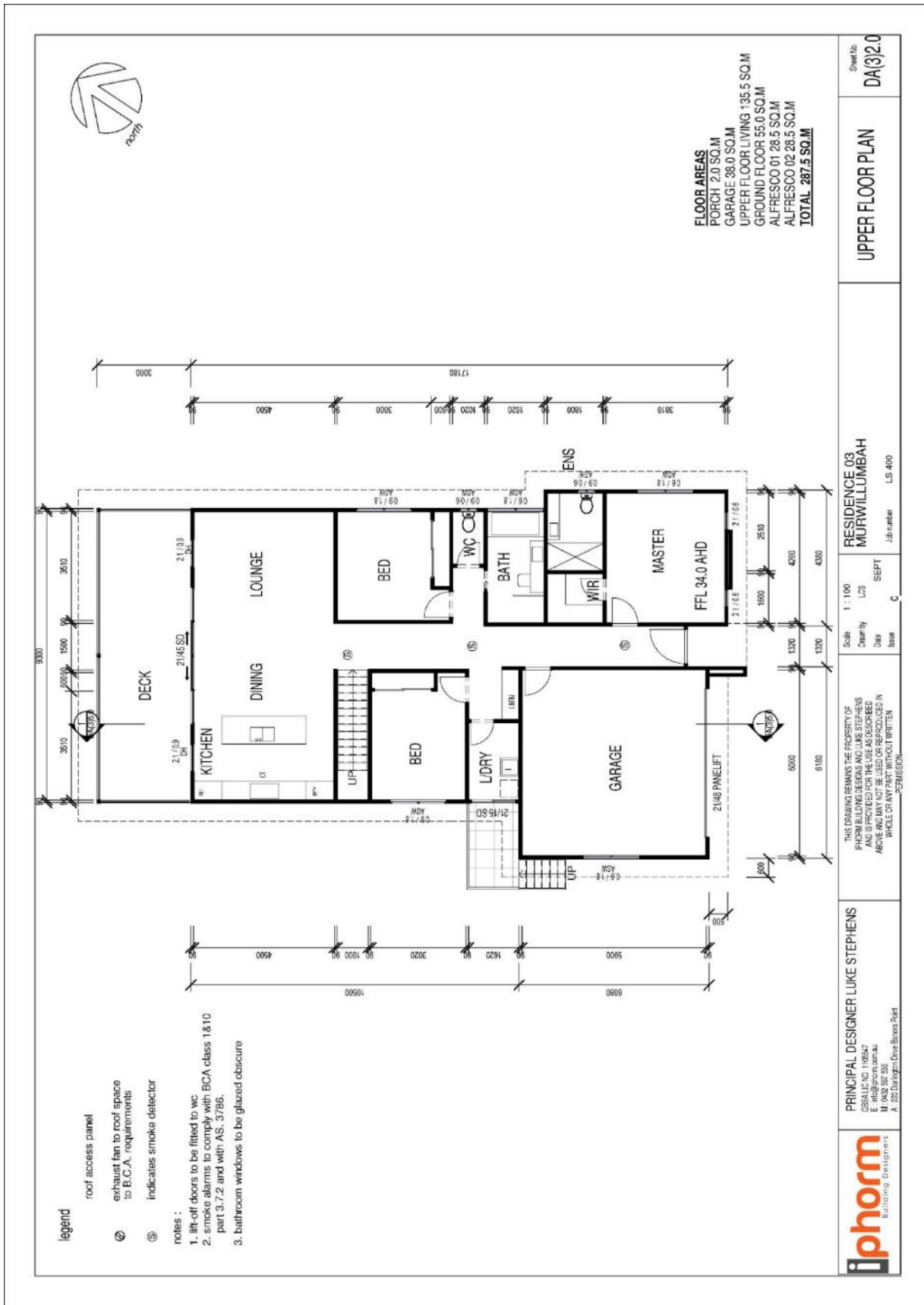


	PRINCIPAL DESIGNER LUKE STEPHENS IPHORM DESIGNERS 1/155/167 155/167 DUNDAS STREET M. 0832 597 038 A. 222 Darlingston Drive Ebenezer Park	THIS DRAWING REMAINS THE PROPERTY OF IPHORM BUILDING DESIGNERS AND LUKE STEPHENS AND IS PROVIDED FOR THE USE AS DESCRIBED ABOVE AND MAY NOT BE USED OR REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION.	Scale: 1:100 Drawn by: LUS Check by: SEPT Issue: E	CROMPTON - RESIDENCE 01 MURWILLUMBAH Job number: LS-400	SECTION A	Sheet No: DA(1)4.0
	SECTION A					









FLOOR AREAS
 PORCH 2.0 SQ.M
 GARAGE 38.0 SQ.M
 UPPER FLOOR LIVING 135.5 SQ.M
 GROUND FLOOR 55.0 SQ.M
 ALFRESCO 01 28.5 SQ.M
 ALFRESCO 02 28.5 SQ.M
TOTAL 287.5 SQ.M

Sheet No.
DA(3)2.0

UPPER FLOOR PLAN

Scale
 1 : 100
 Drawn by
 LCS
 Date
 SEPT
 Issue
 C

Project Name
**RESIDENCE 03
 MURWILLUMBAH**

Job Number
 LS 400

PRINCIPAL DESIGNER
LUKE STEPHENS
 CONSULTING ENGINEER
 F 0823 997 538
 M 0823 997 538
 A 222 Durington Drive Smeaton Park
 NSW 2330



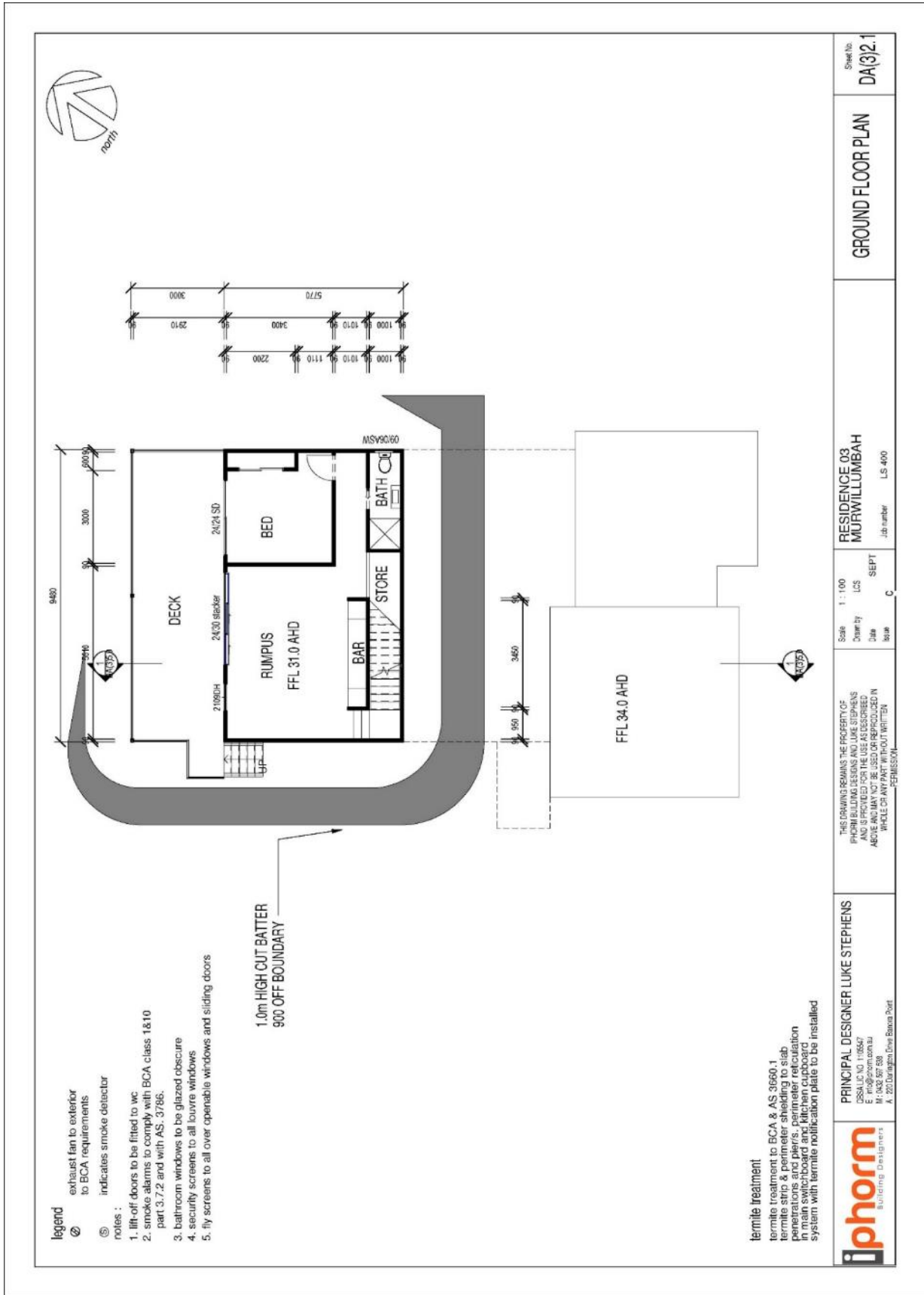
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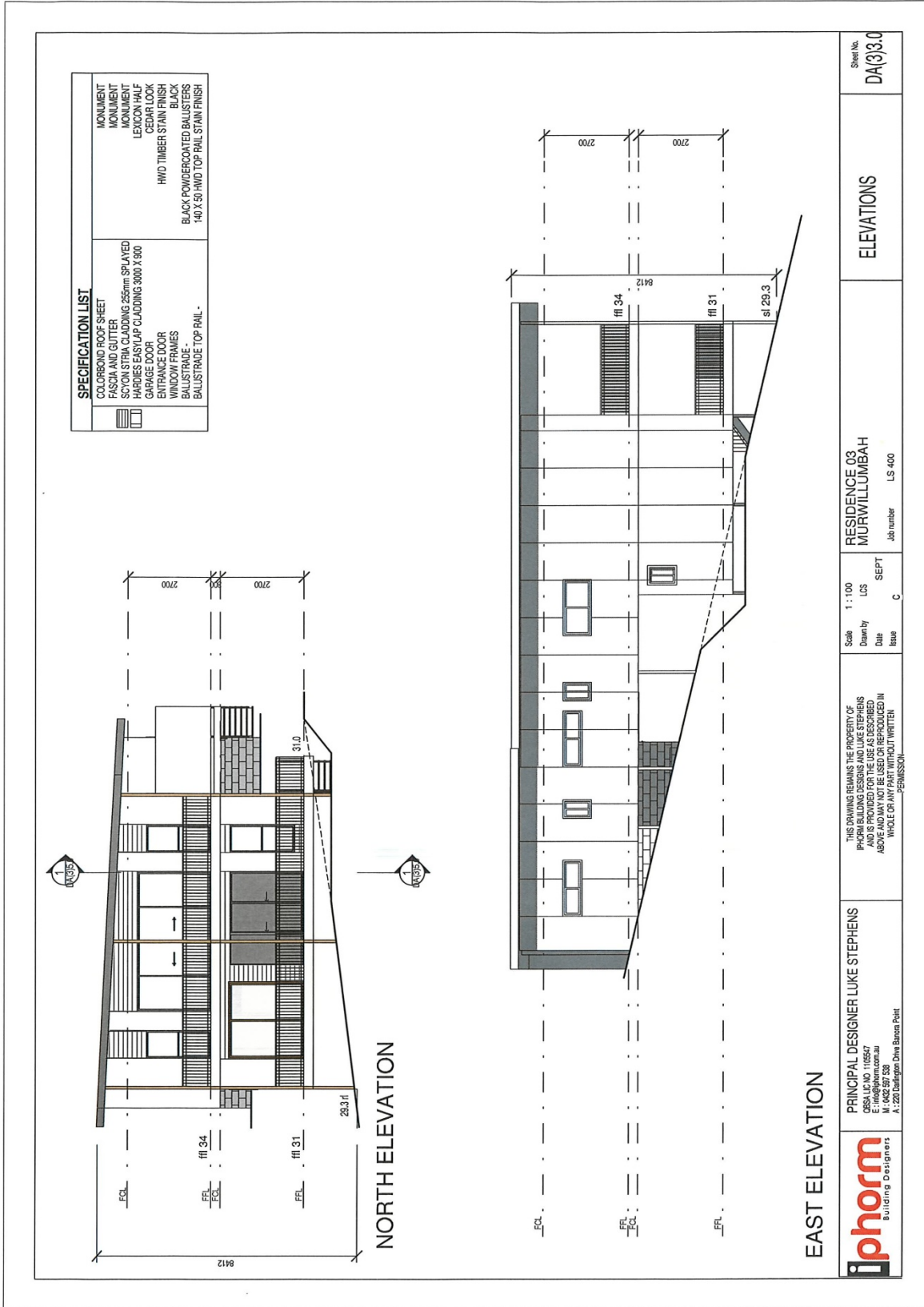
legend

- roof access panel
- exhaust fan to roof space to B.C.A. requirements
- indicates smoke detector

notes :

1. lift-off doors to be fitted to wc
2. smoke alarms to comply with BCA class 1&10 part 3.7.2 and with AS. 3786.
3. bathroom windows to be glazed obscure





SOUTH ELEVATION

WEST ELEVATION

SPECIFICATION LIST

COLOREXOND ROOF SHEET FASCIA AND GUTTER SCYON STRIA CLADDING 255mm SPAYLED HARDES EASY-LAP CLADDING 3000 X 900 GARAGE DOOR ENTRANCE DOOR WINDOW FRAMES BALUSTRADE - TOP RAIL -	MONUMENT MONUMENT BASALT LEXICON HALF CEDAR LOCK HWD TIMBER STAIN FINISH BLACK POWDERCOATED BALUSTERS 140 X 50 HWD TOP RAIL STAIN FINISH
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<p>phorm Building Designers</p>	PRINCIPAL DESIGNER LUKE STEPHENS CBSALICHO 116547 E: info@phorm.com.au P: 082 591 338 A: 220 Ballinyan Drive Epsom Park	THIS DRAWING REMAINS THE PROPERTY OF PHORM BUILDING DESIGNERS AND IS PROVIDED ON THE BASIS AS DESCRIBED ABOVE AND MAY NOT BE USED OR REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION	Scale 1 : 100 Drawn by LCS Date SEPT Issue C
RESIDENCE 03 MURWILLUMBAH Job number LS 400		ELEVATIONS	
		Sheet No. DA(3)4.1	

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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

Clause 2.3 – Zone objectives and Land use table

The objectives of the R2 Low Density Residential zone are:

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

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

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

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

Clause 4.3 - Height of Buildings

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

Clause 4.4 – Floor Space Ratio

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

Clause 4.6 - Exception to development standards

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

Clause 5.4 - Controls relating to miscellaneous permissible uses

The development does not relates to a miscellaneous permissible use.

Clause 5.10 - Heritage Conservation

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

Clause 5.11 - Bush fire hazard reduction

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



Figure: The subject site and bushfire layer.

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

Clause 7.1 – Acid Sulfate Soils

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

Clause 7.2 - Earthworks

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

Clause 7.3 – Flood Planning

The site is not prone to flooding.

Clause 7.5 - Coastal risk planning

The site is not within the coastal hazard.

Clause 7.6 - Stormwater Management

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

Clause 7.8 – Airspace operations

Not Applicable.

Clause 7.9 - Development in areas subject to aircraft noise

Not Applicable.

Clause 7.10 - Essential Services

The provision of essential services is considered to be available.

North Coast Regional Plan 2036 (NCRP)

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

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

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

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

State Environmental Planning Policies

SEPP (Coastal Management) 2018

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

The objectives of each clause are as follows:

13 *Development on land within the coastal environment area*

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

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

SEPP (Building Sustainability Index: BASIX) - 2004

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

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

Not Applicable.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

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

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

A2-Site Access and Parking Code

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

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

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

A5-Subdivision Manual

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

Access to lots (including right of way access)

Every lot shall have feasible access from a street.

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

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

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

Battle-axe or Hatchet Shape Allotments

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

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

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

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

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

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

A11-Public Notification of Development Proposals

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

A15-Waste Minimisation and Management

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

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

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

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

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

Clause 92(1)(b) Applications for demolition

Demolition is not proposed.

Clause 93 Fire Safety Considerations

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

Clause 94 Buildings to be upgraded

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

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

Tweed Shire Coastline Management Plan 2005

Not Applicable.

Tweed Coast Estuaries Management Plan 2004

Not Applicable.

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

Not Applicable.

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

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

Context and Setting

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

(c) Suitability of the site for the development

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

Surrounding Landuses/Development

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

Flora and Fauna

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

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

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

Summary of Submissions	Response
<i>Any adjustment (levelling) as this will seriously impeded our access to our driveway;</i>	Council's Traffic Engineer and Driveway Engineer have reviewed the proposal and advised that a 138 certificate is not required as the works are not within the road reserve. A site meeting was held between the applicant and the owner of No. 139 Byangum road to discuss earthworks within the right of way. The meeting concluded with the owners of No. 139 Byangum road being satisfied that access into their property from the right of way would be maintained at current standard or improved.
<i>The placement of the bin bay (9 bins), impedes vision of our driveway as well as the hygiene issue as the bins will</i>	The applicant has agreed to relocate the garbage bins relating to each residence, which are to be placed at

Summary of Submissions	Response
<i>placed in a very close proximity (3-4 metres from our dining and kitchen) as well as visually displeasing (value) to our residence.</i>	their respective residence. Therefore will not be stored adjacent to the driveway access and residence at No. 139 Byangum Road.
<i>The planting of Franginpani trees (5-6 m tall/ and grow just as wide), Tuckeroo trees (8-15m tall/3-5 m wide) and Lilly Pillies(5m tall/2 m width) along the Right of Carriageway, as it will seriously impede vision and any traffic movement as the driveway is not wide enough to sustain traffic and significant Flora.</i>	The applicant has agreed to remove the vegetation from the proposal. An amended landscape plan has been provided which identifies the removal of vegetation in the right of way.
<i>Any Flora planted along the retaining wall between 141 Byangum Road and 143 Byangum Road as there is a water metre and a Telstra line running along that wall;</i>	An amended landscape plan has been provided which identifies the removal of vegetation in the right of way and retaining wall.
<i>Requesting a covenant (?) that there is no parking upon the Right of Way due to the safety issues with the movement of eight cars upon the driveway (2 per unit plus our two cars)- Can this be done in regards to building (i.e. no trade parking on Right of Way?);</i>	A condition is recommended stating that no parking within the right of way.
<i>Visitor car parking for us and the three units?</i>	Section A2 of the DCP requires visitor parking for four units, with the development being for only three dwellings visitor parking is not applicable to the development. However, it is noted that each dwelling provides four vehicle spaces with only 2 spaces required, therefore effectively providing two visitor parking spaces per unit of six visitor parking spaces overall.
<i>Who maintains the Right of Carriageway and because it is a development, does the developer shoulder the costs?</i>	Maintenance of the right of carriageway is shared by all parties.
<i>The safety concerns in regards to the steepness of our driveway upon turning into the driveway and the fact that you cannot see any car, bike, children etc until you have crested up on the driveway.</i>	The development proposes to amend the current driveway within the site, by a slight reforming of the access removing the hump located approximately 11.7m in from the road.

Summary of Submissions	Response
	<p>The following points are made towards adequacy of the access.</p> <ul style="list-style-type: none"> • A passing bay (approximately 9 in length) is also proposed to assist in reduce safety or traffic impacts. • The width of the driveway at the road reserve is 6m, with would enable two vehicles to be entering and exiting at the same time. • The portion of the driveway within the road reserve has a length of 7m to the property boundary with an entrance width of 11m, which also enables the passing of two vehicles. • Compliant pedestrian sight triangles are provide. • The ultimate peak traffic volumes accessing the site is considered to be low (3.12 trips per peak hour, compared to a domestic property of 2.4 trips in peak hour). • Sight distance from the driveway to the east is approx. 125m and to the west >200m which is in excess of that desired under AS2890.1 and council's Driveway Policy. The access is not in a prohibited location as defined by AS2890.1 s3.2.3 <p>Council's Traffic Engineer, Driveway Engineer and Development Engineer raised no objection to the driveway.</p>
<p><i>The safety concerns in regards to the fact that there will be eight cars (plus visitors) utilising the Right of Way and the bottom of the driveway coming in and out of an already congested road and a dangerous corner.</i></p>	<p>As above.</p>
<p><i>The fact that the residence of 143 Byangum Road and 145 Byangum Road will be using that same corner to turn into their residence and that the bottom of the driveway of 141, 143 and 139 Byangum Road all use the same</i></p>	<p>As above.</p>

Summary of Submissions	Response
<i>driveway (at the initial entrance of the driveway) and the impact that has on an already dangerous corner (add bin collection of an additional six bins, plus postal delivery);</i>	
<i>The question of the distance from fire hydrant in road to furthest unit (?);</i>	A fire hydrant is not required as static water consisting of three 5,000 litre water tanks are required in accordance with the Bushfire Report.
<p><i>Tweed LEP 2014 Permissibility. Council's Subdivision manual states that battle-axe blocks should not be used for multi dwelling housing.</i></p> <p><i>A5 Subdivision manual states that battle axe blocks should not be used for multi dwelling housing and further states:</i></p> <p><i>May only be used where they can achieve adequate amenity for residents and neighbours and enhance community safety in situations that include - overlooking parks - this development does not provide frontage to major streets - this development does not.</i></p>	Council's Subdivision manual is a development guide, which can be varied subject to a merit assessment. The proposal is considered to be acceptable on merit subject to the detailed assessment within this report.
<i>The lot has been identified as being bush fire prone on the Tweed Shire Council Map.</i>	The site is partially affected by bushfire buffer and a bushfire report has been provided by a suitably qualified expert that recommends among other requirements the construction of the dwellings to be at BAL 12.5. The bushfire report is to be conditioned.
<i>Slope gradient - steeply sloping (Geo Tech report) 18 degree gradient, Class P.</i>	A Geotechnical report written by a qualified engineer was submitted and assessed by Council's Development Engineer and considered acceptable. The Geotechnical report is to be conditioned.
<i>"Considering the severity of flood impact upon the region in recent years, the further development of such land to provide a higher density is in the greater interest of the community at</i>	The site is not prone to flooding. The development complies with lot size, FRS etc. The density is greater than 1/450m ² being at around 1/1000m ² and is considered acceptable.

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

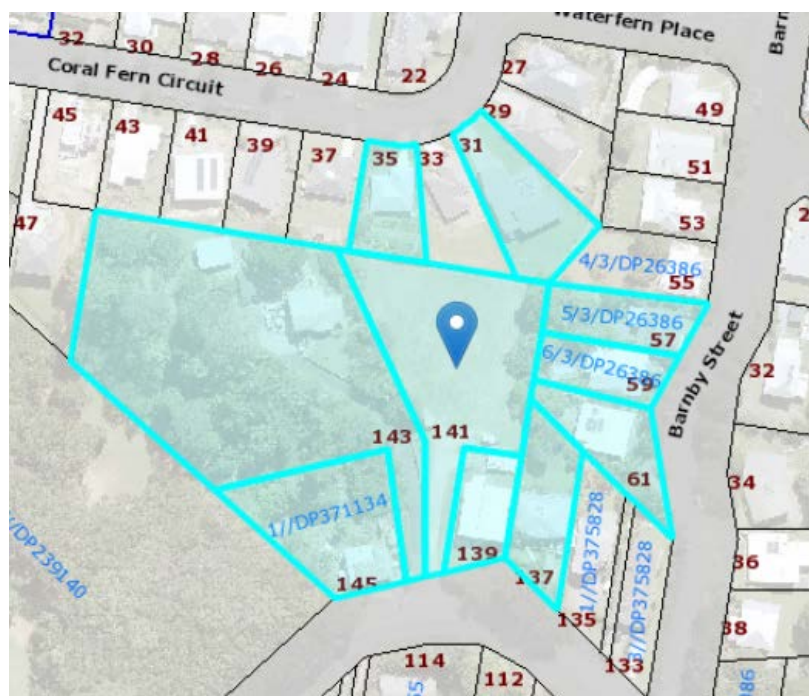


Figure: Site and properties that objected to the proposal

(e) Public interest

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

OPTIONS:

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

Council officers recommend Option 1.

CONCLUSION:

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

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

3 [PR-PC] Development Application DA18/1056 for a Secondary Dwelling over Existing Shed and Carport at Lot 22 Section 8 DP 30043 No. 34 Hastings Road, Bogangar

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

On 7 January 2019, Council received a development application (DA) for the construction of a secondary dwelling over an existing shed at the rear of the subject site. Approval is also sought for the construction of a carport to the front of the site.

The applicant is seeking a variation to the rear setback requirements for the secondary dwelling, proposing a minimum rear setback of 1.5m where 3m is required for a two storey structure (as set out in Control C10 of Section 3.1 of Tweed Development Control Plan 2008 (DCP) - Section A1 Part A).

The applicant is also seeking a variation to the requirement that roofed external living areas are located a minimum setback of 3m from the rear boundary to allow for a roofed verandah to be located within 1.5m of the rear boundary (Control C11 of Section 3.1 of DCP Section A1 has relevance). Though not specified in the application, a variation is also required to the total area of outbuildings (which includes a carport) to allow for an area of approximately 86m² where a maximum of 60m² is specified (Control C4 of Section 6.2 of DCP Section A1 has relevance).

A variation is required to the car parking requirements in Section A2 of the DCP which requires the provision of one car parking space for a secondary dwelling. However State Environmental Planning Policy (Affordable Rental Housing) 2009 precludes Council from refusing a development for a secondary dwelling on the basis that no car parking is provided for same.

The applicant was issued with a Request for Further Information on 25 February 2019 and requested, inter alia, to amend the plans to comply with the minimum 3m rear setback

requirement, to address the potential for overlooking and to submit updated shadow diagrams which identified the extent of private open space area and windows of adjoining properties which would be affected.

Though the applicant has submitted updated shadow diagrams, they have chosen not to amend the plans, submitting further justification for the proposed variations.

The applicant has submitted that the DCP controls are a guide and that the proposal complies with the objectives for the rear setback control which relate to the provision of private open space and rear lot landscape patterns. It is submitted by the applicant that the 1.5m setback is consistent with the existing pattern of development in the area and that the overshadowing impacts meet with the relevant solar access controls in Section 4.3 of Section A1 of the DCP.

The applicant advises that there are no windows on the rear elevation and that a timber privacy screen is to be fitted to the end of the roofed deck. It is submitted that natural ventilation will not be impacted with the 1.5m setback no difference than that required for a two storey side setback, with a 3m corridor created between the proposal and the motel/backpacker development to the rear.

In relation to the rear deck located less than 3m from the rear boundary, the applicant has submitted that the roofed deck will meet the objectives of this control with privacy screening to be installed to reduce privacy impacts and no overshadowing to occur. It is submitted that the reduced setback is acceptable given the established site and the existing two storey unit development to the rear of the subject site.

The application was notified from Wednesday 30 January 2019 to Wednesday 13 February 2019. During this time, four submissions were received, all objecting to the proposal. The main issues raised are as follows:

- Impact on natural ventilation to properties to the west (side boundary);
- Loss of privacy for properties to the west;
- Loss of sunlight and sky views and associated devaluation of adjoining properties;
- Overshadowing diagrams submitted with DA are insufficient to determine extent of overshadowing;
- The Statement of Environmental Effects (SEE) accompanying the DA is misleading and deficient, particularly in respect of overshadowing impacts;
- The applicant has not demonstrated that an alternative (compliant) design is not possible or justification for the current proposal;
- The proposal includes the conversion of a shed to a habitable use, with said shed being located in the zone of influence of a sewer mains which may have an impact on other property owners serviced by this sewer; and
- The existing garage has been converted to use as a Family Day Care business, concern raised that the carport will be used as a roofed external play area for the children in care – requests an acoustic barrier screen be provided.

The applicant has submitted a response to the issues raised in the submissions which are addressed later in this report.

Having regard to the medium density residential (R3) zoning of the site, the height of the proposed secondary dwelling (6.27m where the maximum building height is 13.6m), the existing pattern of development in the area which is typified by limited rear setbacks and the

extent of the impacts associated with the reduced setback, it is considered reasonable to support the reduced setback.

The variation to the provision of a roofed external area within 3m of the rear boundary can also be supported having regard to the provision of privacy screens and the location of the dwelling in the rear garden of the principle dwelling (which will have an impact in terms of managing acoustic impacts associated with the deck). Nevertheless, it is recommended that a condition on any consent issued in relation to the provision of an additional privacy screen within the 3m setback area be included.

Councillors Milne and Cherry requested that this application be called up for Council determination.

RECOMMENDATION:

That Development Application DA18/1056 for a secondary dwelling over existing shed and carport at Lot 22 Section 8 DP 30043 No. 34 Hastings Road, Bogangar be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects (undated) and the following plan prepared by Parameter Designs and dated 18 March 2019, except where varied by the conditions of this consent:**

Plan No 2224D, Sheet 1 - Site Plan

Plan No 2224D, Sheet 5 - Secondary dwelling & carport floor plans

Plan No 2224D, Sheet 6 - Secondary dwelling & carport elevations

Plan No 2224D, Sheet 7 - Secondary dwelling section

Plan No 2224D, Sheet 8 - Carport section.

[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. 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]

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

[GEN0135]

6. **The car port shall remain open on three sides and shall not be enclosed or fitted with a door, gate or enclosing device or any kind.**

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. **An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, 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]

8. **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]

9. **Prior to the issue of a Construction Certificate, amended plans for the secondary dwelling shall be submitted to the Principal Certifying Authority providing for a privacy screen with a minimum height of 2.4m above finished floor level on the front (south-eastern) elevation of the verandah for a distance of 1.5m from the north eastern side elevation as annotated on the stamped plans.**

10. **Prior to issue of Construction Certificate the applicant is to submit to the Principal Certifying Authority a list of the finished building colours for the secondary dwelling for approval.**

Acceptable colours for the weatherboard are white, cream, light sandstone, pastel shades of blue, brown and purple/magenta. The roof of the secondary dwelling and carport shall match that of the existing dwelling.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

11. **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]

12. 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]

13. 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]

14. 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]

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

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

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

[PCW0255]

DURING CONSTRUCTION

16. 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]

17. 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]

18. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.
L_{Aeq, 15 min} noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
 - B. Long term period - the duration.
L_{Aeq, 15 min} noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence. [DUR0215]
19. 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]
20. 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]
21. 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]
22. 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]
23. 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]
24. 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]

25. 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]
26. In the event that excavation on site extends more than 1 metre below the natural ground level, all works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.
- [DUR1075]
27. 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]
28. 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]
29. 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]
30. Air conditioning units and the like shall be located, installed and operated so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2017.
- [DUR2835]
31. Works in the vicinity of public infrastructure must comply with the following requirements;
- a) No portion of any structure may be erected within any easement or within one metre where no easement exists for public infrastructure over the subject site. All structures shall be designed and sited such that all structure loads will be transferred to the foundation material outside of the zone of influence of any public infrastructure.
- [DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

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

[POC0205]

34. 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]

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

[POC0435]

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

[POC1045]

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

[POC1055]

USE

38. 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]

39. 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]

40. 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]

41. Upon receipt of a noise complaint related to the use of the secondary dwelling that Council deems to be reasonable, the 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]

- 42. The shed must not be used for human habitation or occupation, and must only be used in association with the use of the principal dwelling.**

[USE0475]

- 43. Subdivision of the development, including strata subdivision, is not permitted.**

[USE1255]

REPORT:

Applicant: G Davis and T Davis
Owner: Mr Greg F Davis & Mrs Thereza L Davis
Location: Lot 22 Section 8 DP 30043 No. 34 Hastings Road, Bogangar
Zoning: R3 - Medium Density Residential
Cost: \$65,000

Background:

Application details

Council is in receipt of a development application for the construction of a secondary dwelling over an existing shed at the rear of the subject site. Approval is also sought for the construction of a carport to the front of the site.

The proposed secondary dwelling has a Gross Floor Area (GFA) of 51.26m² and consists of studio layout with an open plan bedroom/living area with separate bathroom with a roofed verandah on the southern elevation, overlooking the rear garden of the subject property. The proposed secondary dwelling is to be constructed over the existing shed such that the finished floor level is 2.8m above the existing ground level with a maximum building height of 6.27m.

The secondary dwelling is to be accessed by way of an external stairs and is located 1.5m from the north-western side boundary and 1.5m from the rear boundary.

The application is seeking the following variations to the Tweed Development Control Plan 2008 with respect to the proposed secondary dwelling:

- A variation to the rear setback requirements proposing a minimum rear setback of 1.5m where 3m is required for a two storey structure (Control C10 of Section 3.1 of Section A1 - Part A);
- A variation to the requirement that roofed external living areas are located a minimum setback of 3m from the rear boundary to allow for a roofed verandah to be located within 1.5m of the rear boundary (Control C11 of Section 3.1 of Section A1); and
- A variation to the total area of outbuildings to allow for an area of approximately 86sqm (shed and carport) where a maximum of 60sqm is specified (Control C4 of Section 6.2 of Section A1).

The application also seeks approval for the construction of a double carport in the front setback of the existing dwelling on site. It appears that the existing double garage on the site has been converted for use for home based child care, and that this car port will provide two car parking spaces to service the existing principal dwelling.

Site details

The site is legally described as Lot 22 Section 8 DP 30043 and is more commonly known as No. 34 Hastings Road, Bogangar. The site is regular shaped with a frontage of approximately 16.7m to Hastings Road and a length of 36.57m and an area of approximately 613.4m².

The site is relatively level and accommodates a single storey dwelling with a shed structure to the rear.

The site is located in a medium density residential zone which accommodates a mix of single dwellings, multi-unit developments and tourist accommodation.

The site is adjoined by No. 32 Hastings Road to the southeast which accommodates a single storey single dwelling, by No. 36 Hastings Road to the northwest which accommodates three attached two storey units. The site is adjoined by Nos. 75 - 77 Tweed Coast Road to the rear which accommodates a two storey motel/backpacker development.

Correspondence from objectors indicates that the owners are operating a home based child care service¹ from the site.

¹ As set out in SEPP (Educational Establishments and Childcare Facilities) 2017, **home-based child care** means:

- (a) *a family day care residence (within the meaning of the Children (Education and Care Services) National Law (NSW)); or*

Note. A family day care residence is a residence at which a family day care educator educates and cares for children as part of a family day care service—see the Children (Education and Care Services) National Law (NSW).

- (b) *a dwelling used for the purposes of a home based education and care service (within the meaning of the Children (Education and Care Services) Supplementary Provisions Act 2011), at which the education and care service is provided at any one time to no more than 7 children (including any child of the person providing the service) all of whom are under the age of 13 years and no more than 4 of whom are children who do not ordinarily attend school.*

SITE DIAGRAM:



Site Plan

Lot 22 Sec 8 Plan 30043
34 Hastings Road Bogangar



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Coordinate System - MGA Zone 56
Datum - GDA 94

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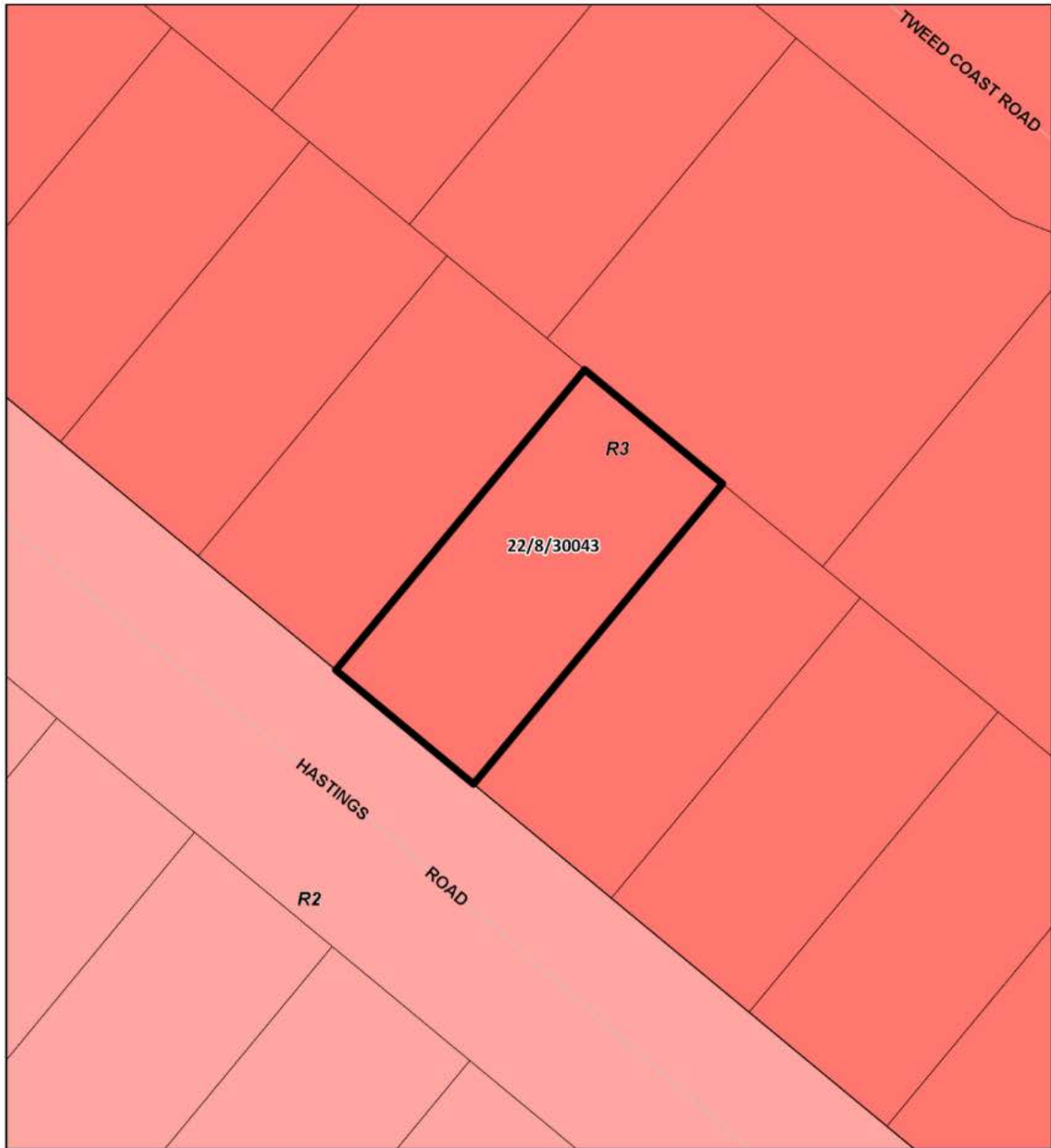
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TWEED
SHIRE COUNCIL

Date Printed: 17 June, 2019

ZONING MAP:



Subject Land

Subject Land

Tweed Local Environmental Plan 2014

R2 Low Density Residential

R3 Medium Density Residential

1:500 @ A4 Portrait
 0 4.5 9 m
 DO NOT SCALE
 COPY ONLY - NOT CERTIFIED
 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geocentric Datum of Australia 2014
 Grid: Map Grid of Australia, Zone 58

Site Plan - Local Environmental Plan

Lot 22 Sec 8 DP 30043
 34 Hastings Road Bogangar

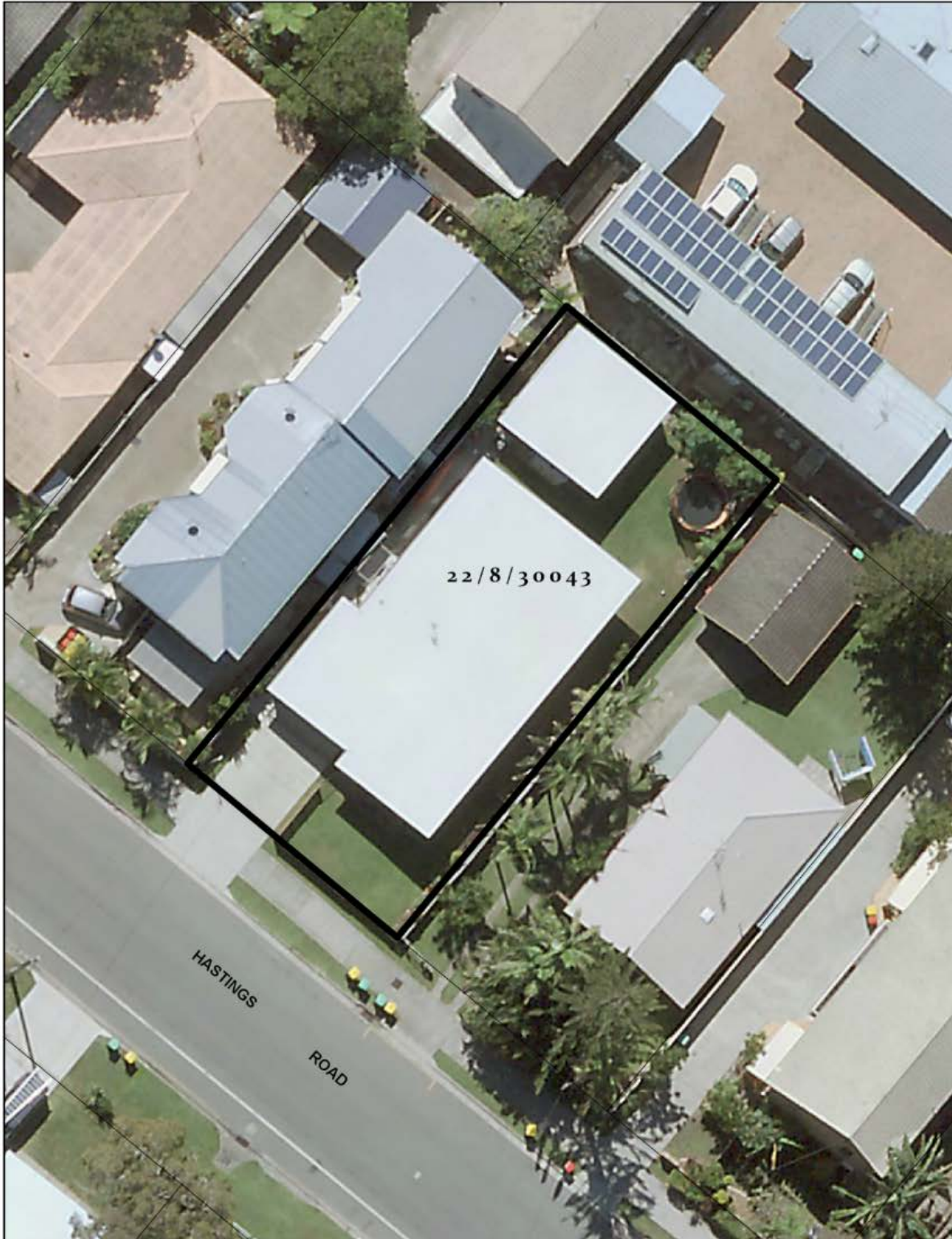
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AERIAL PHOTOGRAPH:



1:300 A4 Portrait
0 3 6m
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Map Projection: Universal Transverse Mercator
Horizontal Datum: Geoidetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56
GDA

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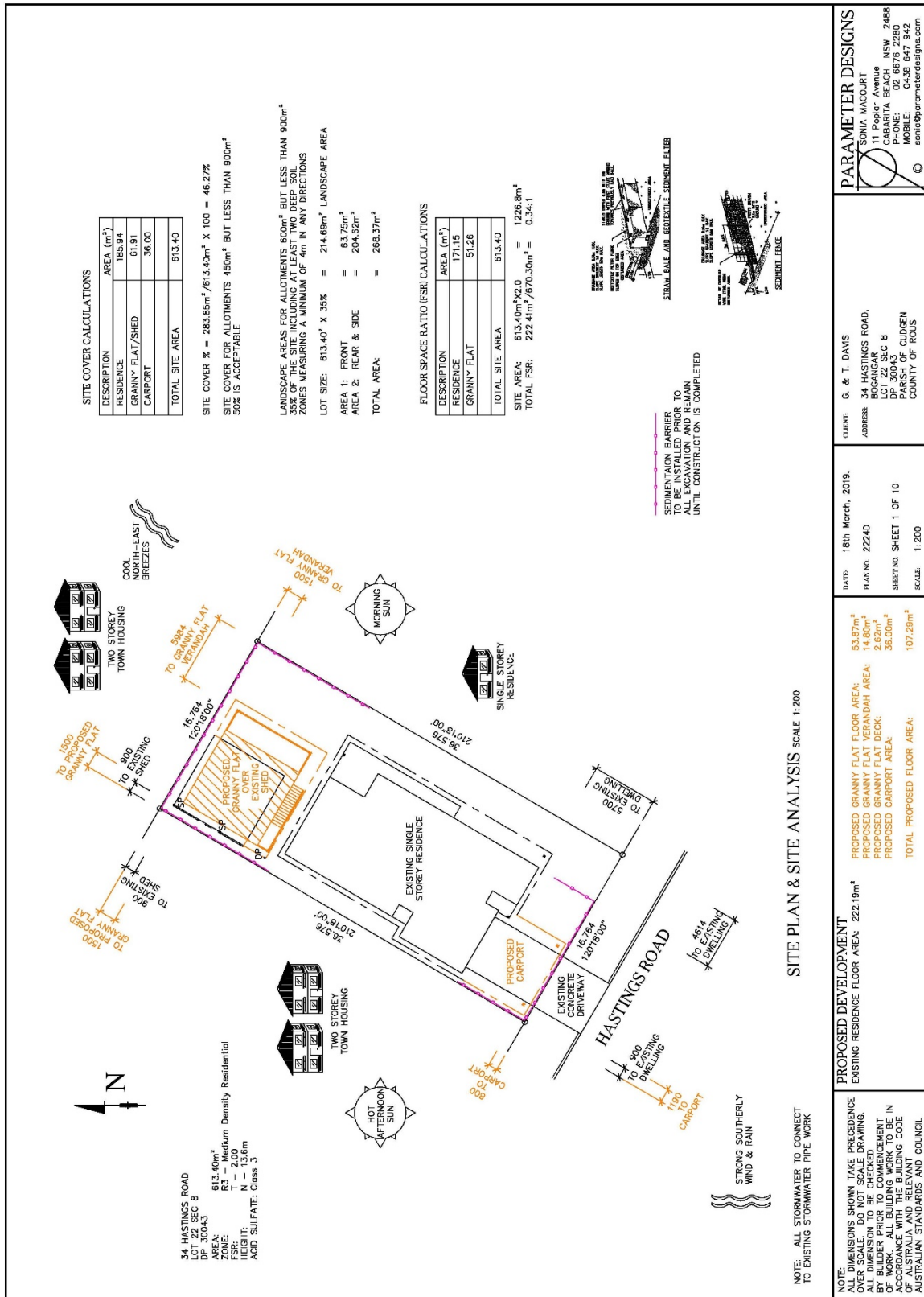
Aerial Photography April 2018

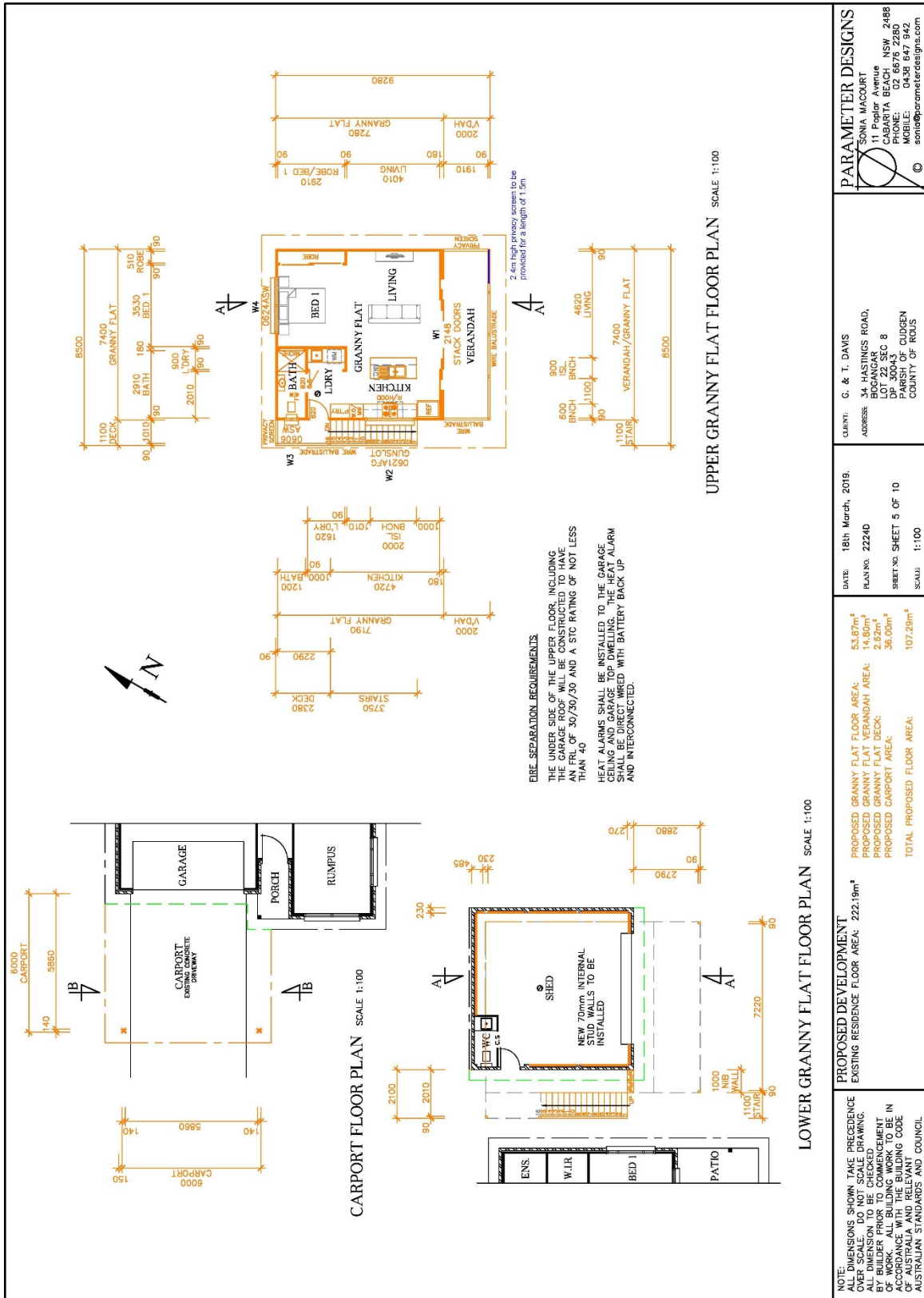
Lot 22 Sec 8 DP 33043
34 Hasintings Road Bogangar

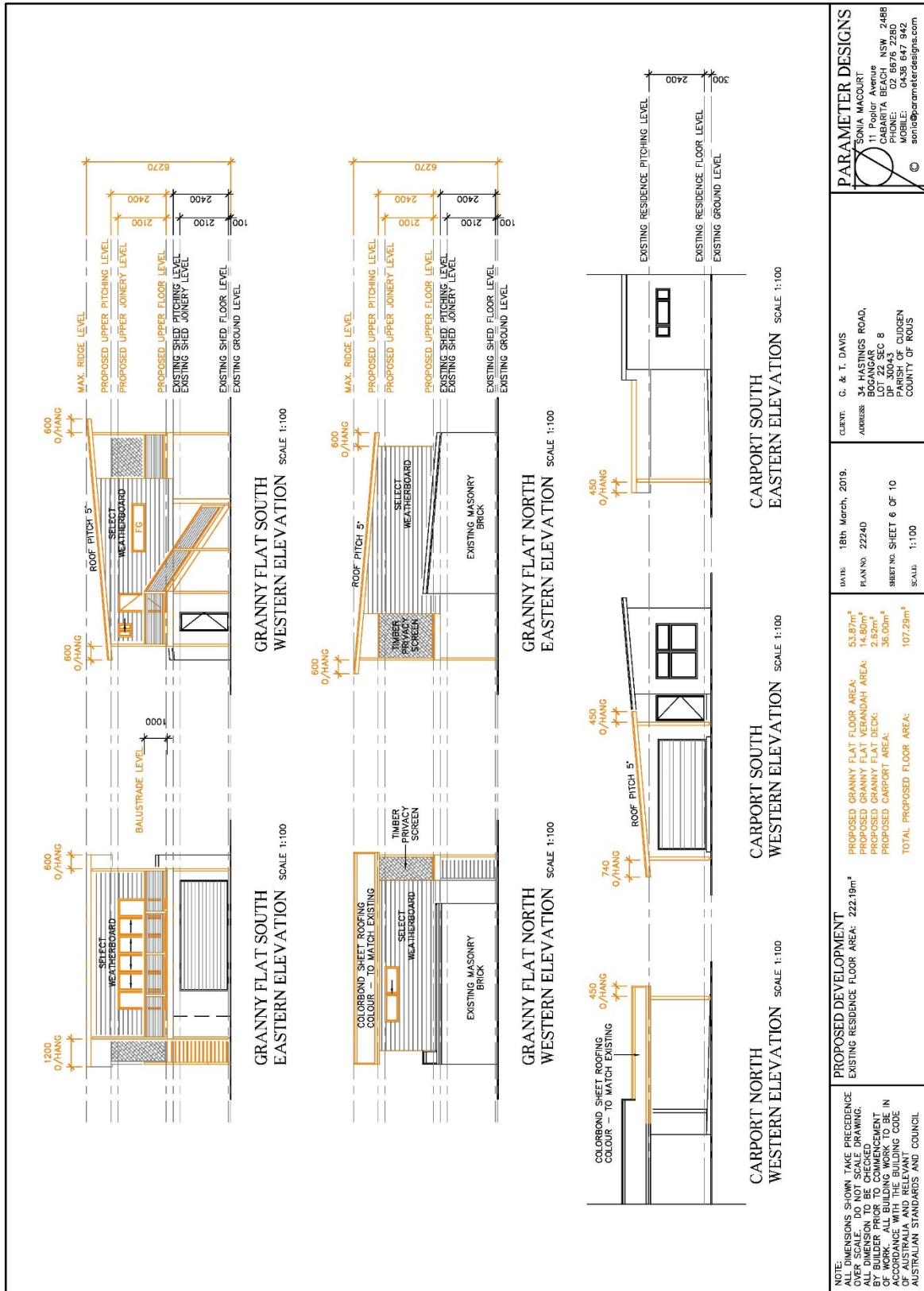
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Author: S.Scott - GIS Date Printed: 17 June 2018

DEVELOPMENT PLANS:







<p>PARAMETER DESIGNS SONIA MACCOURT 11 Poplar Avenue CAGARITA BEACH NSW 2488 AUSTRALIA MOBILE: 0438 647 982 sonia@parameterdesigns.com</p>	<p>CLIENT: C. & T. DAVIS ADDRESS: 34 HASTINGS ROAD, BOGANBAR DUNDAS NSW 2483 PARISH OF CUDGEN COUNTY OF ROUS</p>	<p>DATE: 18th March, 2019. PLAN NO: 2224D SHEET NO: SHEET 6 OF 10 SCALE: 1:100</p>	<p>PROPOSED GRANNY FLAT FLOOR AREA: 53.87m² PROPOSED GRANNY FLAT VERANDAH AREA: 14.80m² PROPOSED GRANNY FLAT DECK: 2.62m² PROPOSED CARPORT AREA: 36.00m² TOTAL PROPOSED FLOOR AREA: 107.29m²</p>	<p>PROPOSED DEVELOPMENT: EXISTING RESIDENCE FLOOR AREA: 222.19m²</p>	<p>NOTE: ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DIMENSIONS TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND AUSTRALIAN STANDARDS AND COUNCIL</p>
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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:

- (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 development of a secondary dwelling is permitted with consent in Zone R3. While the applicant is seeking a variation to the rear setback requirement for a two storey secondary dwelling, it is considered that the proposal will not result in unreasonable overshadowing or adverse impacts on adjoining properties as a result of this variation.

Clause 2.3 – Zone objectives and Land use table

The site is zoned R3 – Medium Density Residential. The objectives of the zone are as follows:

- To provide for the housing needs of the community within a medium density residential environment.

- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is permitted with consent and generally meets the objectives of the zone.

Clause 4.3 - Height of Buildings

This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum building height specified for the site is 13.6m. The height of the proposed secondary dwelling is 6.27m and the height of the proposed car port is 3.45m.

Clause 4.4 – Floor Space Ratio

The maximum FSR specified for the site is 2:1. The principle dwelling has a GFA of 171.15m² and the proposed secondary dwelling a GFA of 51.26m². With a site area of 613.4m², this equates to Floor Space Ratio (FSR) of 0.36:1.

Clause 4.6 - Exception to development standards

The application does not seek an exception to the development standards.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Subclause 5.4(9) relates to secondary dwellings and specifies that the total floor area of the secondary dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

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

With a GFA of 51.26m², the proposal complies.

Clause 7.1 – Acid Sulfate Soils

The site is identified as acid sulfate soils class 3.

Development consent is required for works more than 1 metre below the natural ground surface or works by which the water table is likely to be lowered more than 1 metre below the natural ground surface.

Disturbance of the soil is limited to excavation for the supports for the verandah and the access stairs and supports for the car port.

A standard condition can be imposed on any consent issued requiring the submission of an Acid Sulfate Soils Management Plan for minor works if excavation extends below 1m.

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.

Standard conditions of consent can be provided in this regard. The proposal is considered to be acceptable with respect to the requirements of this clause.

Clause 7.10 - Essential Services

The site is currently serviced by roads, reticulated water and sewer, electricity.

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 four 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 is located 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 secondary dwelling 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.

Complies - 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.

Complies - The site is located within an established residential area and is within 2 minutes' walk of public transport.

The proposed development is considered to generally comply with the planning principles of the NCRP 2036, and its goals and overarching vision.

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

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

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its

contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose.

The development for the use of the site for residential use was approved in 2014, with aerial photographs on Council's GIS identifying the site as vacant prior to this.

Given the existing use of the site, there are no concerns in relation to contamination.

SEPP (Affordable Rental Housing) 2009

Division 2 of the Affordable Rental Housing SEPP relates to the development of secondary dwellings. Clause 20 of the SEPP confirms that Division 2 applies to Zone R3.

Clause 22 relates to development which may be carried out with consent:

22 Development may be carried out with consent

- (1) *Development to which this Division applies may be carried out with consent.*
- (2) *A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.*

The proposal would result in two dwellings on the site; being the principal dwelling (existing) and the secondary dwelling (proposed).

- (3) *A consent authority must not consent to development to which this Division applies unless:*
 - (a) *the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and*
 - (b) *the total floor area of the secondary dwelling is no more than 60m² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.*

The GFA of the secondary dwelling is 51.26m². The GFA of the principal dwelling and secondary dwelling is significantly lower than the maximum permissible under the LEP being 0.36:1 where maximum of 2:1 is permitted.

- (4) *A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:*
 - (a) *site area if:*

- (i) *the secondary dwelling is located within, or is attached to, the principal dwelling, or*
 - (ii) *the site area is at least 450m²;*
- (b) *parking: if no additional parking is to be provided on the site.*

The secondary dwelling is detached from the principal dwelling and the area of the site is 613.4m². It appears that the applicant has converted the existing garage and is using this for home based child care and that this is not available for parking. However the application includes the construction of a double carport which will service the parking need of the principal dwelling. As such there is no provision made for car parking for the secondary dwelling.

- (5) *A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).*

The development does not parking any additional parking for the secondary dwelling, with the two spaces in the new carport required to service the principal dwelling.

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*

C10. *Secondary dwellings require a minimum setback from the rear boundary of 1.5m where single storey and 3 metres where two storey.*

C11. *Roofed external living areas are to be setback a minimum of 3.0m from the rear boundary.*

The applicant is seeking to construct a carport in the front setback on the basis that it complies with **Control 7**.

The carport supports are located 1.19m from the side boundary though the outer edge of the roof is 450mm from the boundary. In support of this the applicant has submitted the following:

- Nowhere in the DCP does it specify that that the 900mm setback is to be measured from the outer edge of the roof;
- The side setback of a building is generally measured from the wall, which would equate to the support post of a carport;
- The eaves of the carport will match those of the dwelling, which is in compliant with the side setback requirements for eaves in Section A1; and
- Precedent has been established with Council recognising the setback has been taken from the post and not the outer projection of the roof.

This is considered a reasonable interpretation and as such the proposal can be considered to be compliant with this control.

It is recommended that a condition be included on any consent issued requiring the car port to remain open on at least two sides with no closing device or gate fitted to the road frontage.

The applicant is seeking a variation to **Controls C10** and **C11**, with the proposed first floor secondary dwelling located 1.5m from the rear boundary rather than the 3m specified (**Control C10**). The provision of a roofed external area (deck) at the first level located 1.5m from the rear boundary is also in contravention of the controls above (**Control C11**).

In support of variations to these two controls, the applicant has submitted the following:

"The proposed development is located within an established area of Bogangar with the proposed secondary dwelling to be located over an existing shed which is setback 900mm from side and rear boundary. The proposed secondary dwelling has been step in to a minimum of 1500mm from the rear boundary a variation of 1500mm to the required 3000mm rear boundary setback under C10.

It is considered that the proposed development while not consistent with this controls complies with the relevant principles and objectives;

P2. Rear setbacks incorporated as an area of private open space contribute to the rear lot landscape pattern. The proposed rear setback of 1500mm is located over an existing shed which is setback 900mm from the rear

boundary, therefore the proposed development will have no impact on the existing landscape pattern of the site.

03. *To provide appropriate separation between dwellings for sunlight access, ventilation, visual and acoustic privacy and access to the rear of the allotment. The subject property backs onto a large two storey unit development and has been step back over the existing shed to provide additional sunlight access and ventilation to the proposed secondary dwelling.*

The proposed development will increase visual and acoustic privacy between the subject property and existing unit development as the proposed rear wall has no windows openings proposed.

04. *To minimise overlooking and overshadowing to the site and of adjoining allotments.*

As discussed previously, the property to the rear been a two storey unit development will not be impacted through overlooking and overshadowing by the proposed secondary dwelling. Refer to the submitted shadow diagrams which comply with DCP A1. Also the proposed development will provide additional privacy between the subject property and existing unit development.

05. *To facilitate a landscaping setting for residential buildings and retention of the rear yard landscape zone.*

The proposed development been located over an existing shed will have no impact on the landscape zone within the rear yard."

Following a request to increase the setback to comply with this condition, the applicant submitted updated shadow diagrams and the following justification for the reduced rear setback:

- The DCP is to be used as a guide only, and the proposal should be subject to a merit assessment against the principles and objectives behind the controls;
- The objectives to the control relate to overshadowing, privacy and natural ventilation while the principles relate to private open space and rear lot landscape patterns;
- It is submitted that the proposal is consistent with the two storey development to the rear (Nos. 75-77 Tweed Coast Road) which the applicant states has a 1.5m rear setback, and that from aerial imagery it appears that majority of rear lot setbacks in the area are 1.5m;
- The increase in overshadowing of the units at No. 36 Hastings Road is minimal and is within the limits specified in the controls for overshadowing set out in Section 4.3 of the DCP;
- The two storey development at No. 36 Hastings Road currently overlooks the subject site and the rear external and internal living areas of the dwelling – the proposal will screen the applicant's private open space from view from outside the site;
- There are no windows proposed on the north-eastern elevation of the proposed secondary dwelling facing Nos.75-77 Tweed Coast Road and the verandah will be fitted with a privacy screen on this elevation;

- Natural ventilation will not be affected with the 1.5m setback being no different from that which be expected with a 1.5m side setback which is permissible, though in this instance the two storey element is only 9m long,

In interpreting the rear setbacks as 1.5m as set out above, the applicant appears to have measured the rear setbacks on the aerial imagery as being from the eaves. A review of planning/building applications in the area identified the following rear approximate setbacks:

- No. 36 Hastings Road – 3.25m;
- No. 38 Hastings Road – no record found but appear to be in line with No. 40 Hastings Road (approximately 2.5m);
- No. 40 Hastings Road – 2.55m; and
- No. 30 Hastings Road - >3m (from strata plan).

Nevertheless, the precedent set by existing developments (most approved prior to the current DCP) are not relevant.

Set out below is an assessment of the proposal against the principles for the setbacks controls in the DCP.

Principles

P2. *Rear setbacks incorporated as an area of private open space contribute to the rear lot landscape pattern.*

As acknowledged by the applicant, the previous approval of a shed at this location has removed this area from the private open space provision and has established the rear lot pattern of development.

Objectives

O1. *To establish the desired spatial framing of the street, define the street edge and enable a transition between public and private space.*

This objective is not applicable as this relates primarily to the front and side setbacks.

O2. *To provide flexibility for steeply sloping and corner allotments to best address streetscape, solar orientation and location for outdoor amenity areas and access points.*

This objective is not applicable to the subject site with its relative level and mid-block.

O3. *To provide appropriate separation between dwellings for sunlight access, ventilation, visual and acoustic privacy and access to the rear of the allotment.*

To assess the proposal against this objective, it is necessary to look at the controls for overshadowing, ventilation and privacy.

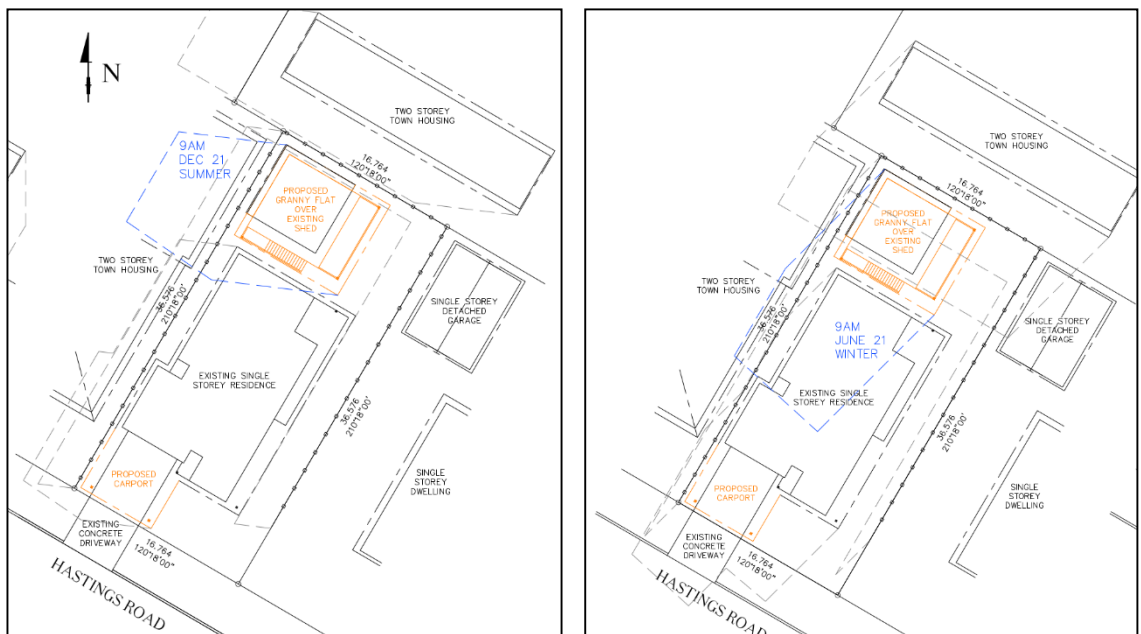
The controls for overshadowing of neighbouring properties which are set out in Section 4.3 of Section A1 of the DCP are as follows:

C4 For neighbouring properties ensure:

- i. Sunlight to at least 50% of the principle area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21; and
- ii. Windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June; and
- iii. Where existing overshadowing by buildings is greater than this, sunlight is not to be further reduced by more than 20%.

The applicant has submitted updated shadow diagrams which identify the rear building line of the units on No. 36 Hastings Road and the development at Nos.75 - 77 Tweed Coast Road. However it is noted that the development at No. 36 Hastings Road as shown on the plans appears to be closer to the boundary fence than the development constructed.

The development at No.36 Hastings Road consists of 3, two storey units with bedrooms on the first floor and open plan living/kitchen/dining are on the ground floor with glass doors accessing the rear yards. The principal windows to the ground floor space are located on the front elevation of the units.



Figures: Shadow diagrams for 9am December 21 and 9am June 21

Solar access to Private Open Space on neighbouring properties

The units at No. 36 Hastings Road have limited private open space, being limited to rear yard (with a depth of approximately 3.1m - 3.4m based on approved plans or 1.4m - 2m based on shadow diagrams). At present the existing boundary fence and single storey dwelling casts a shadow on the full extent of the rear yards at 9am, with the rear yards substantially overshadowed at 12 noon in summer. By the afternoon, the units will start to self-overshadow the rear yards.

In winter (June 21), the rear yards are substantially overshadowed at 9am by the existing fence and existing dwellings on the subject site. By 12 noon in winter, the yard is overshadowed by the units.

It is not considered that the reduced rear setback will add significantly to the overshadowing impact. In the assessment against the open space control, consideration must be given to the limited depth of the rear yards on this adjoining property (3.1m – 3.4m) and the orientation of the lot which is significant in reducing the extent of solar access that these units currently receive. It is further noted that the maximum building height on the site is 13.6m. With a proposed height of 6.27m, the proposed secondary dwelling is significantly lower than the maximum permissible height.

As such, it is not considered that the overshadowing is unreasonable or that it will be exacerbated by the reduced setback.

The property to the rear (Nos. 75-77 Tweed Coast Road) is not affected by overshadowing between 9am and 3pm.

Solar access to principal windows on living areas on neighbouring properties

In terms of solar access to the living areas, it is noted that the units have open plan ground floor living areas, which will receive solar access in the afternoons from the front elevation windows.

Ventilation

In terms of ventilation, it is noted that the development to the rear (Nos. 75 - 77 Tweed Coast Road) is setback approximately 2.8m from the shared boundary. With the length of the secondary dwelling which is within the 3m setback limited to 9m, it is considered that the resultant ventilation would be no worse than that enabled within the standard two storey side setback.

Visual and acoustic privacy

In term of visual privacy, there are no windows on the rear elevation and the applicant has provided a privacy screen to the rear elevation of the verandah. To address concerns in relation to oblique views from the verandah into Nos. 75 – 77 Tweed Coast Road, any consent issued can be conditioned to include a privacy screen with a length of 1.5m along the front of the verandah (which is located within the specified 3m setback).

In terms of acoustic privacy, the main concern is the location of the deck less than 3m from the rear boundary (rather than the actual secondary dwelling itself).

It is noted that the area of the verandah is limited and as such the capacity of same for entertaining is limited. Nevertheless, this is the sole private amenity area associated with the secondary dwelling and a condition of consent can be imposed in relation to noise generation associated with the deck and that any air conditioning units be located away from the rear building line. Proximity of the secondary dwelling to the principal dwelling is likely to be a factor in deterring anti-social behaviour associated with the use of the deck.

Access to the rear of the allotment has already been reduced with the approval of the shed.

O4. *To minimise overlooking and overshadowing to the site and of adjoining allotments.*

As addressed above, the overshadowing is within range specified by the controls in Section 4.2.

O5. *To facilitate a landscape setting for residential buildings and retention of the rear yard landscape zone.*

This objective is not applicable to the subject site given the previous approval for a shed at this location.

O6. *To maintain views and vistas along canal foreshores.*

This objective is not applicable to the subject site.

Based on the analysis above, it is considered reasonable to support a variation to Control **C10** and Control **C11** of Section 3.1 of the DCP to allow for a reduced rear setback of 1.5m and to allow for the provision of a roofed external area within 3m of the rear boundary.

Section 4.3 Solar Access and Natural Ventilation

As discussed above, consideration was given to overshadowing impacts in assessing the impact of the reduced setback. It is also important to consider the overshadowing impacts from the proposal itself; the construction of a second storey secondary dwelling and a car port.

The applicant has submitted shadow diagrams for June 21 for 9am, 12 noon and 3pm. As outlined earlier, the existing development on the subject site currently impacts on No. 36 Hastings Road in terms of overshadowing, with the rear yards not likely to currently receive 2 hours of sunlight.

While the secondary dwelling may exacerbate this slightly, regard must be had to the following:

- the medium density residential (R3) zoning of the sites in question;
- the height standard of 13.6m which applies to the site (with the secondary dwelling being significantly below this at 6.27m);
- the compliant side setback for the secondary dwelling;
- the orientation of the lots and development on the lots; and
- the limited depth of the rear yards (which are located in what could be interpreted as the side setback).

On this basis, it is considered that the additional overshadowing is reasonable and unavoidable.

In terms of solar access to the living areas, the principal windows to the ground floor open plan living areas are to the front elevation and will not be impacted by the proposal.

Section 4.5 Visual and Acoustic Privacy

The following controls are relevant in the assessment of potential visual and acoustic privacy impacts:

- C1.** *Terraces, balconies, living room and kitchen windows are to avoid a direct view into neighbouring dwellings or neighbouring private open space.*
- C2.** *Decks, verandahs, terraces, balconies and other external living areas within 4 metres from a side or rear boundary may require a privacy screen unless it can be demonstrated that there will be negligible overlooking and/or privacy impacts, as demonstrated on a site analysis.*

Notwithstanding a proposal for a privacy screen on the northern end of the first floor deck to the secondary dwelling, there is potential for a direct view from the wider deck area into windows of the motel units on Nos. 75 - 77 Tweed Coast Road. As such, it is recommended that a private screen to be provided along the front of the deck area for a length of 1.5m (within the specified 3m rear setback).

There are no windows on the elevation of the secondary dwelling facing Nos. 75-77 Tweed Coast Road, with a high level window only on the rear elevation facing No. 36 Hastings Road. A privacy screen is to be provided at the top of the external access stairs to screen views from the access stairs.

With the provision of an additional screen on the deck area which encroaches into the rear setback area (which can be managed by condition and which will minimise views into Nos. 75 – 77 Tweed Coast Road), it is considered that the visual and acoustic privacy of adjoining properties will not be adversely affected.

Section 6.2 Outbuildings

Section 6.2 of Section A1 sets out the controls for outbuildings, with the following control being relevant to this proposal.

- C4.** *The total area for outbuildings on a site (including carport) is:*
 - i. 50m² for lots up to 450m²;*
 - ii. 60m² for lots greater than 450m² and up to 900m²;*
 - iii. 100m² for lots greater than 900m²;*
 - iv. These size restrictions do not apply on non-urban zoned land or rural living (large lot residential) land.*

The applicant has not sought a variation to Control C4 (ii), with the total area of the outbuildings (including the new car port) equating to 86m² (where the existing shed is 44m² and the carport is 42m²). This represents a 43% (26m²) exceedance of the control.

The objectives for this control are:

- O1.** *To provide for uses complementary to a dwelling house.*
- O2.** *To ensure outbuildings are of an appropriate scale and compatible in design and materials with the existing dwelling house.*

- O3.** *To maintain the existing or reinforce the desired future character and streetscape of the area and preserve the amenity of the existing dwelling house and any neighbouring properties.*
- O4.** *To ensure that deep soil zones and significant trees or vegetation are not adversely impacted.*
- O5.** *To make allowance for contemporary living designs that comprise free standing outbuildings for residential uses such as; studios, parent/kids retreat, study/home office, bedroom, living / entertainment space, but not including a dwelling.*

In considering the variation against the above, it is noted that:

- The shed is existing with only the carport proposed, which is a complementary use to the dwelling;
- The carport meets with the carport controls set out earlier in this part and are of a design that is compatible with the dwelling;
- There are current no carports in the immediate area, however it is not considered that the carport will adversely impact on the character or streetscape of the area, being a lightweight structure and complementary to the design of the dwelling;
- The carport will not impact on the amenity of the dwelling or adjoining properties;
- The carport is located over an existing landscaped area, however this is not of sufficient width to be classified as deep soil zone; and
- No significant vegetation removal is required to accommodate the car port.

It is further noted that the proposed development is significantly below the FSR specified for the site and the site coverage and landscape provision controls are satisfied. As such a variation to the total outbuilding area is supported.

Section A2 - Site Access and Parking Code

DCP A2 provides for the consideration of on-site access and vehicle parking, to ensure that sufficient facilities are provided and the road network is not compromised, whilst ensuring consistency with ESD principles.

Access

There is no alteration to the site access.

Parking

When considering the requirements of Table 2a – Access & Parking Generation – Residential Accommodation Group of DCP Section A2, dwelling houses are to be provided with one space per dwelling plus provision for the parking of another vehicle in the driveway (i.e. 2 spaces per dwelling). A secondary dwelling requires the provision of one space.

The car port will accommodate two cars. As it appears that the existing garage has been converted and is being used for home based child care, the carport will service the existing dwelling with no parking provided for the secondary dwelling. However this is allowed under SEPP (Affordable Rental Housing).

Section A3 - Development of Flood Liable Land

The site is affected by the PMF. The levels on the site are between RL 5m-6m AHD with the Design Flood level closest to the site identified at RL2.9m AHD. Further the proposed secondary dwelling is at first floor level (over the existing shed).

Section B19 - Bogangar/Cabarita Beach Locality Plan

The site is located within the catchment area of the Bogangar/Cabarita Beach Locality Plan. The objectives of the plan are to create a village that exhibits the following characteristics:

Economic Development: A viable and attractive “niche market” for tourists, retail and commercial investors and the local community will be established. Commercial activity consistent with local community and visitor needs is to be provided.

Land Use: The compact village form is retained and enhanced through appropriate forms of infill development and protection of environmental attributes.

Open Spaces: A network of parks and public places are available which reinforce the coastal character of the village and provide extensive opportunities for community interaction and a broad range of activities.

Environmental Hazards: New development is adequately protected from environmental hazards such as flooding, bushfire risk and coastal processes.

Community and Recreation Facilities: A high quality and safe public environment will be maintained. Any improvements undertaken within public land will compliment and be sympathetic with the surrounding natural environment.

Environmental Management: Ecologically significant areas and the natural processes occurring therein are protected from any impact arising from existing and future developments.

Movement and Linkages: A people friendly environment will exist, with pedestrian linkages through the village centre and to primary pedestrian destinations such as the beach and foreshore will be established. Appropriate and safe management of pedestrian, cycle and motor vehicle traffic will be established. Adequate car parking facilities will be available.

Built form: New buildings will respect the streetscape and the amenity and character of adjoining developments. New developments should respond favourably to the climate through the incorporation of energy efficient design principles. New developments will exhibit high quality urban design and architectural merit consistent with the beach character of the area.

Mixed Use development: The town centre will be characterised by mixed-use commercial/residential and/or tourist developments which will provide life and vitality to the central area.

Commercial streetscapes: Streetscapes in commercial zones should exhibit a continuity of active building frontages built to the street edge, while also maintaining a diversity of façade elements. Monotonous repetition of façade elements will be avoided. Any Streetscape improvements undertaken within commercial areas will contribute positively to the visual appeal of the area and compliment the function of the locality.

Residential streetscapes: Streetscapes in residential zones will exhibit a variety of façade and roof forms, set amidst landscaped surrounds. Entrances to all buildings will be clearly identifiable from the street and casual supervision of the street and other public places will be available from all buildings.

Landscaping: The landscaping of public areas and private developments will be of a high standard and contribute positively to the urban streetscape. Public landscaping is to be made up of endemic plant species.

Views: Important view corridors to the Beach along Pandanus Parade and Palm Avenue will be respected by new developments. Design of new developments will preserve and compliment these view corridors.

The proposal is generally consistent with the objectives as they relate to a development of this nature.

Precincts

The subject site is located in the Residential B Precinct. The DCP states that Residential B Precinct is to comprise of predominantly multi dwelling units and tourist accommodation. However the site with a site area of 613.4m² is too small to accommodate a multi-dwelling development (Minimum site area of 1,000m² required in Zone R3).

The objectives of Residential B Precinct are to:

- *Encourage medium density residential development consistent with the objectives of the existing 2(b) zone.*
- *Ensure outstanding innovative urban design is achieved in medium density development.*
- *Ensure development is undertaken in accordance with the development guidelines outlined within this Section as well as Section A1 – Multi-Dwelling Housing.*
- *Ensure development of the area is undertaken so that it is sympathetic to its surroundings and compliments adjoining precincts.*

Section B19.15

The controls in Section B19.15 applies to residential buildings (multi-dwelling units and tourist accommodation) and the residential components of mixed use buildings. These controls predominantly relate to multi-unit development and have less relevance for secondary dwellings and carports. Nevertheless a condition in relation to the schedule finishes (colours) for the weather board finish can be included in any consent issued.

Colours

Lighter colours and shades are preferred as these harmonise with colours of the coastal environment and surrounding development. Acceptable dominant colours of buildings are white, cream, light sandstone, pastel shades of blue, brown and purple/magenta. A combination of colours can provide visual interest to the urban landscape.

Dark colours such as black and charcoal and expansive areas of dark tinted glazing should be avoided, as these are not characteristic of the locality. All shades of grey should be avoided as they appear unattractive during overcast weather conditions.

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

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

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

Clause 92(1)(b) Applications for demolition

Minor demolition proposed to add the secondary dwelling to the existing shed – standard conditions to be applied.

Clause 93 Fire Safety Considerations

This clause is not applicable as there is no change in use.

Clause 94 Buildings to be upgraded

This clause is not applicable.

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

Tweed Shire Coastline Management Plan 2005

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

Tweed Coast Estuaries Management Plan 2004

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

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

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

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

Context and Setting

The site is located in an established residential area and the development of a secondary dwelling is compatible with existing land uses in the area (Zone R3).

The area is characterised by a mix of single dwellings and older dual occupancies and 'flat' developments. Setback to the rear of the site, the secondary dwelling will have limited visibility from the street. While there are not generally any carports in the front setbacks along the street, the proposal meets with the controls in the DCP, the structure is lightweight and is consistent with the design of the dwelling.

Solar Access

This is addressed earlier in the report under the DCP assessment.

Views and vistas

The objectors raise concerns with the loss of open views/sky views from adjoining properties as a result of the secondary dwelling – particularly the units at No. 36 Hastings Road.

It is acknowledged that the proposed secondary dwelling will be visible from the rear of Unit 3 at No. 36 Hastings Road, with the existing shed located directly to the rear of this unit.

However this is a result of the existing pattern of development, whereby the units at No. 36 Hastings Road were orientated to face the side boundaries, with limited setbacks to the rear elevations of the units which impacts in terms of the private amenity space provided and the access to sky light.

While the proposal seeks a variation to the rear setback, the side setback requirement of 1.5m is met, with the encroachment into the rear setback not impacting on No. 36 Hastings Road in terms of visual impact.

The DCP encourages view sharing, however this is in relation to views of significance such as water views, iconic views, etc. The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. In this instances, views from the rear of the units at No. 36 Hastings Road are of limited scenic value, being the existing shed and dwelling on the subject site.

In terms of the loss of sky views, this is an inevitable impact of development in a medium density residential, particularly where the units at No. 36 Hastings Road have been orientated to look onto the adjoining sites within limited rear setbacks.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The site is located in an established medium density residential area where the construction of a secondary dwelling is permitted with consent.

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

The application was notified from Wednesday 30 January 2019 to Wednesday 13 February 2019. During this time, four submissions were received, all objecting to the proposal. The main issues raised are as follows:

- Impact on natural ventilation/breezes to adjoining properties;
- Loss of privacy for properties to the northwest with direct overlooking into living areas;
- Loss of sunlight and sky views and associated devaluation of adjoining properties;
- Overshadowing diagrams submitted with DA are insufficient to determine extent of overshadowing, and concerns are raised that insufficient solar access will be provided to living areas and private open space of adjoining properties;
- The Statement of Environmental Effects accompanying the DA is misleading and deficient, particularly in respect of overshadowing impacts;
- The applicant has not demonstrated that an alternative (compliant) design is not possible or justification for the current proposal;
- The proposal includes the conversion of a shed to a habitable use, with said shed being located in the zone of influence of a sewer mains which may have an impact on other property owners serviced by this sewer;
- The existing garage has been converted to use as a family day care centre in 2017 without consultation with neighbours or Council;
- Concern raised that the carport will be used as a roofed external play area for the children in care – requests an acoustic barrier screen be provided; and
- The applicants did not discuss the application with their neighbours prior to lodging the application.

The majority of these issues have been addressed earlier in this report.

It is noted that the assumption that approval is being sought for the shed to be converted to residential use is incorrect. The proposed secondary dwelling is limited to the new first floor only. Nevertheless, a condition should be included on any consent issued clarifying that no residential use or occupation of the shed is permitted.

In relation to the sewer on the site, the application has been reviewed by the Water & Wastewater unit who have advised that:

- *There is an existing sewer pipeline which runs parallel to the rear boundary of the lot, but it is not located in the subject lot;*
- *Councils GIS records based on physical inspections indicates the sewer is approximately 1.9m deep adjacent to the subject lot; and*

- *It is assumed the sewer pipe is approx. 1m offset from the rear boundary on the adjacent lot indicating that the proposed structure is offset approx. 2.5m from the sewer pipeline. Based on this information the footings of the proposed structure shall be located below the sewer zone of influence.*

In relation to the use of the garage for home based child care, it is noted that Clause 29 (Home based child care – exempt development) of SEPP (Educational Establishments and Child Care Facilities) 2017 states:

*Development carried out by or on behalf of any person for the purpose of home-based child care **is exempt development** for the purposes of this Policy if it is not carried out on bush fire prone land.*

Note 1. No standards are specified for this development. However, exempt development must comply with the general requirements in clause 17.

Note 2. The elements that must comprise this type of development are specified in the definition for this development in the Standard Instrument (see also the note to clause 5 (1) of this Policy). If all the elements are not present, the development is not development to which this clause applies.

As per Clause 5(1) home-based child care means:

- (a) *a family day care residence (within the meaning of the Children (Education and Care Services) National Law (NSW)), or*

Note. A family day care residence is a residence at which a family day care educator educates and cares for children as part of a family day care service—see the Children (Education and Care Services) National Law (NSW).

- (b) *a dwelling used for the purposes of a home based education and care service (within the meaning of the Children (Education and Care Services) Supplementary Provisions Act 2011), at which the education and care service is provided at any one time to no more than 7 children (including any child of the person providing the service) all of whom are under the age of 13 years and no more than 4 of whom are children who do not ordinarily attend school.*

(e) Public interest

The proposal is generally considered to be in the public interest in providing for affordable rental housing in an established residential area.

Section 64 and Section 7.11 Development Contributions

There are no S64 or S7.11 Development Contributions liable for a secondary dwelling or a car port.

OPTIONS:

1. Approve the application subject to conditions for the following reasons:
 - a) The development proposal 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.

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.
2. Refuse the application and provide reasons.

Option 1 is recommended.

CONCLUSION:

This development application seeks approval for the construction of a secondary dwelling over an existing shed at the rear of the subject site and for the construction of a carport to the front of the site.

The site is located in a medium density residential zone where the proposal complies with the development standards set out in the Tweed Local Environmental Plan 2014.

The application seeks a number of variations to the DCP including a variation to the rear setback requirement for the secondary dwelling, the requirement that roofed external living areas are located a minimum setback of 3m from the rear boundary and to the maximum total area of outbuildings.

Four objections were received which primarily raised issue with the reduced rear setback and the potential impact of the development in terms of overshadowing, loss of privacy, loss of views and loss of ventilation.

However, having regard to the medium density residential (R3) zoning of the site, the height of the proposed secondary dwelling (6.27m where the maximum building height is 13.6m), the existing pattern of development in the area which is typified by limited rear setbacks and the extent of the impacts associated with the reduced setback, it is considered reasonable to support the application subject to the imposition of appropriate conditions.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application, such an appeal may have budget implications for Council.

c. Legal:

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

4 [PR-PC] Lot 156 Creek Street Hastings Point - Consideration of Buffers, Potential Subdivision Configuration and Residual Riparian Lands

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

ROLE: Provider Advocate

SUMMARY OF REPORT:

The purpose of this report is to seek Council's in principle endorsement of a conceptual subdivision configuration and subdivision outcomes over Lot 156 DP 628026 Creek Street Hastings Point. The proposed configuration would include the creation of 12 allotments including the creation of 10 new residential allotments, allocation of an allotment to the existing dwelling and creation of residual allotment for environmentally sensitive riparian lands fronting Cudgen Creek for environmental protection to be dedicated to Council (approx.16.3ha).

The *TSC Preferred Site Plan (Figure 2)* and *TSC Preferred Subdivision Configuration (Figure 3)* are the outcome of a co-ordinated approach between Council's Strategic Planning and Urban Design, Natural Resource Management Unit, Engineering Services and Water and Waste Water Unit in consultation with Palm Lake Resort Pty Ltd. Working through a number of conceptual schemes has sought to simultaneously address potential flooding impacts that were identified during previous court proceedings. The proposal also seeks to:

- Achieve a simple lot configuration of regular shape and size that will be more compatible with the existing character of the Creek Street precinct and facilitate the construction of detached low density residential housing.
- Respond to the sites significant ecological values through the provision of buffer zones and perimeter road layout pattern to achieve an appropriate interface.
- Enable long term protection and rehabilitation of core coastal habitat and ecological buffer zones.

Achieving this subdivision layout will however require part of the developable footprint to extend beyond the 75m environmental buffer line, but will remain wholly exclusive of the 50m environmental buffer line.

Notwithstanding this partial buffer incursion, the concept proposal involves the dedication of ecologically sensitive riparian lands for environmental protection accounting for 16.3 ha or 94.5% of the total site area.

If Council provides in-principle support for this site subdivision configuration as the preferred outcome the landowner proponent (Palm Lake Resort Pty Ltd) has indicated that they will withdraw the current development application (DA17/0101) for a 17 lot community titled subdivision (16 residential lots and 1 community lot) in favour of a new development application for the 12 lot Torrens titled subdivision (11 residential lots and 1 dedicated residual riparian lot).

The land owner proponent has also indicated that they would undertake further consultation with Creek Street residents prior to the lodgement of a revised development application. The dedication of the residual environmentally significant riparian lands would be facilitated through a planning agreement along with any agreed establishment and on-going maintenance costs.

Whilst in-principle support of the preferred conceptual subdivision configuration does not predetermine the outcome of an amended or revised development application, it does provide a greater level of certainty to both the land owner proponent, Council's technical officers and the Hastings Point community of what is deemed an acceptable scale and configuration of development appropriate to the site in consideration of the existing land use zone and site constraints. This would then form the basis of the land owner proponent's preparation of a revised subdivision proposal with supporting technical information fulfilling the requirements of a designated development application.

RECOMMENDATION:

That:

- 1. The Tweed Shire Council Preferred Site Plan (Figure 2) and Preferred Subdivision Configuration (Figure 3) is supported for the purpose of informing a new land owner initiated development application over Lot 156 DP 628026 for 11 lot Torrens titled allotments (11 residential lots and 1 dedicated residual riparian lot). This includes a relaxation of the 75m environmental buffer line in the south east and south west corners of the developable envelope to 50m;**
- 2. The lodgement of any future development application be preceded by the withdrawal of the existing DA17/0101 and consultation between the land owner proponent and local residents;**
- 3. Any future development application include the dedication of the residual environmentally significant riparian lands (approximately 16.3ha) to Council which along with any agreed rehabilitation and on-going maintenance costs would be facilitated through a planning agreement. In order to provide the rehabilitation and enhancement of degraded habitat, a detailed rehabilitation plan would form part of a future development application involving an establishment period plus 5 years maintenance commitment by the developer;**

- 4. Any future subdivision development application make provision for:**
- (a) The establishment of a drainage reserve adjoining Creek Street (approximately 36m wide) and between the development site and the western most existing allotment along Creek Street (approximately 18m from allotment to edge of road reserve);**
 - (b) A minimum 13.0m road reserve to form the interface edge of the development;**
 - (c) A maximum yield of 12 allotments including 10 new residential allotments, creation of an allotment relating to the existing dwelling and creation of a singular residual allotment for environmental protection;**
 - (d) Restriction of site fill to achieve minimum required design floor level and stormwater fall;**
 - (e) Each lot to demonstrate it can supply gravity sewerage to the existing main in the lot or if this is not possible, to install a private pressure sewerage system with an individual pressure sewer pumping station on each residential lot to connect to Councils existing gravity sewerage system; and**
 - (f) Provide water supply services to meet Tweed Shire Council specifications to the lot with the construction of a 100mm water reticulation main from the lot along Creek Street to connect to the existing 250mm trunk water supply main Tweed Coast Road.**

REPORT:

Background

Figure 1 identifies Lot 156 DP 628026 known as 40 Creek Street Hastings Point which is currently in part zoned R1 Residential under the Tweed Local Environmental Plan 2014 (TLEP 2014) with the balance of the site being nominated as ‘deferred matter’ defaulting to 7(a) Environmental Protection (Wetlands and Littoral Rainforest) and a small part of 2(e) 2(e) Residential Tourist under Tweed Local Environmental Plan 2000 (TLEP 2000). The land deferred from LEP 2014 was a result of the Review of Environmental Zones by the Department and the removal of environmental zones from the LEP 2014.

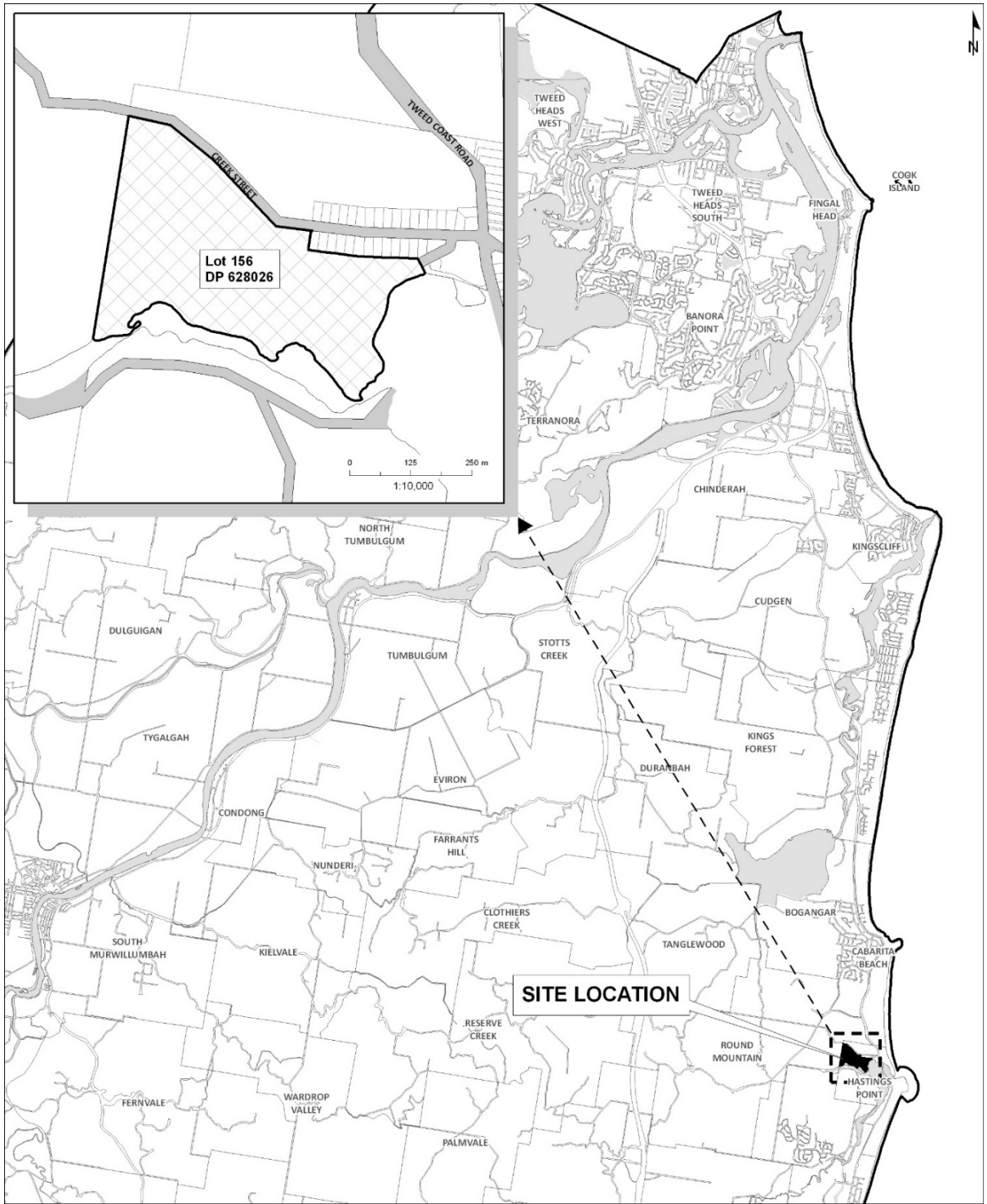
Given the site’s historic residential land use zoning over part of the site, it has been the subject of a number of alternate residential and tourist development proposals of varying scales of density. Table 1 below provides a recent chronology of development history.

Table 1 – Lot 156 Development History

Year	Application	Description	Determining Authority	Outcome
2017	DA17/0102	Development Application - 17 lot community title subdivision (16 residential lots and 1 community lot)	TSC	Not determined
2016	PP16/0006	Planning Proposal - Lot 156	DP&E	Gateway refused
2015	DWY15/0465	Driveway Access to Property Application - 20 lot subdivision and associated works	TSC	Not determined
2015	DA15/0201	Development Application - 17 lot community title subdivision - including 16 residential lots and 1 balance lot which is to become association property containing the roadway, services and environmental land	TSC	Not determined
2013	DA13/0189	Development Application - 22 lot subdivision and associated intersection upgrade to Creek Street and Tweed Coast Road	TSC	Refused
2010	DA10/0228	Development Application - 45 lot residential subdivision (Department of Planning Application MP06_0153)	DPE	Refused
2008	CC08/0728 DWY08/0379 SEW08/0448 SWD08/0572	Construction Certificate – dwelling Driveway access, sewer application, stormwater application	TSC	Approved 25/08/2008
2007	DA07/0600	Development Application - dwelling	TSC	Approved 24/01/2008

Achieving a compatible development outcome across this site has to date been problematic for differing land owners due to the key constraints across the site including flooding, access, environmental buffers and amenity based interface issues with existing residential properties resulting in development proposals across this site being met with strong local community opposition.

Figure 1 – Lot 156 DP 628026 Locality Plan



Locality Plan

HASTINGS POINT - DRAFT Locality Based Development Code
 Tweed Development Control Plan Section B23
 Lot 156 DP 628026

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 3100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastre: 13 September, 2010
 Dept. of Lands & Tweed Shire Council
 Coordinate System - MGA Zone 56
 Datum - GDA 94
 Date Printed: 13 September, 2019
 Author: JBatchelor - Planning Reforms Unit
 Filepath: Z:\ESRI\PRUPOLICIES & STRATEGIES\DCP\SECTION B23\MXD\Lot 156 - LocalityPlan_A4P.mxd

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Planning Context

In 2010 Council adopted the Hastings Point Locality Based Development Code (Hastings Point Code), that has since become Section B23 of the Tweed Development Control Plan 2008. The role of this document is to provide development controls as well as strategic recommendations with respect of the future use of land in Hastings Point locality. More specifically this includes identification of development constraints and development guidelines that apply to Lot 156.

Following the Department and Planning's refusal of a 45 lot residential development proposal (DA10/0228) across the site lodged while the Hastings Point Locality Plan was still being developed, and Council's refusal of a 22 lot subdivision (DA13/0189), Council considered it appropriate to utilise the specialist studies provided by the landowner and DPE's reasons for refusal determination to better inform the strategic framework for this site.

As a consequence, on 6 November 2014 Council resolved to amend the Tweed DCP Section B23 Hastings Point by providing recommendations regarding the size and location of the developable footprint of Lot 156 through suitable protection and buffers for land of environmental quality and clarifying the desired character of the built form and engineering design. The DCP B23 amendment came into effect on 15 September 2015 following the required statutory processes.

In early 2015 Council commenced implementation of the strategic recommendations of the updated Hastings Point Code through Amendment No.11 to the Tweed LEP 2014 (Planning Proposal 14/0001). The intent of the planning proposal was in part to reduce the developable footprint over Lot 156 as a result of increased environmental buffers in association with the sensitive coastal landscape and vegetation.

Parallel to this process, the landowner lodged a development application seeking consent to subdivide the subject site into sixteen residential lots and one community lot – a development proposal (DA15/0201) in March 2015. The layout of the road and lot configuration was of an irregular shape and inconsistent with the updated Hastings Point Code by way of identified buffers and development footprint. In the final stage of the DA process and in response to Council's deemed refusal, the landowner lodged an appeal with the Land and Environmental Court (*Walter Elliot Holdings Pty Ltd v TSC*) which was ultimately discontinued on the applicants' request on 22 November 2016. Following this discontinuance, the applicants have submitted a new development application (DA 17/0102) while the planning proposal was still being considered by the DPE.

Notwithstanding DPE's acknowledgment of the environmental constraints Council received a planning proposal gateway determination dated 6 April 2017 advising that the planning proposal would not proceed on the basis of inconsistency with the DPEs' *E-Zone Review Final Recommendations*, lack of demonstrated negotiated outcome with the land owner and that at the time two development applications (DA15/0201 & DA 17/0102) across the site were yet to be determined which the DPE deemed should be finalised prior to any change to planning controls sought. Although the deemed refusal appeal of DA15/0201 was withdrawn, DA15/0201 & DA 17/0102 are both still current and yet to be determined.

Although the deemed refusal appeal was ultimately withdrawn, the preparations for the Land and Environment Court proceedings involved Council's engagement of a number of specialist consultants in the drafting of the *Statement of Facts and Contentions* which have provided

more site specific technical information, particularly relating to constraints on site influencing the developable footprint.

In particular advice provided by Marten's Engineers on the flood and stormwater now identifies some inconsistencies with the Tweed DCP Section B23 Hastings Point. This most notably relates to the structure plan and developable footprint as it applies to Lot 156 which indicatively illustrates allotments directly adjoining Creek Street, a location identified as an overland flow path during flooding events.

Alternate Site Planning and Subdivision Configuration

Following a series of non-conforming development applications and resultant legal proceedings, Council officers have undertaken a co-ordinated approach to investigate alternative subdivision options to mediate the identified constraints and suggest a developable footprint configuration which would be deemed a more acceptable outcome within the sites context. The purpose of this is to advise the land owner proponent of a more preferred site planning approach which could then inform the formulation of a new development application across the site.

To date this has been a co-ordinated approach between Council's Strategic Planning and Urban Design, Natural Resource Management Unit, Engineering Services and Water and Waste Water Unit in consultation with Palm Lake Resort Pty Ltd where a range of desk top options have been investigated with the aim of simultaneously addressing potential flooding impacts, environmental constraints and buffer overlays that were identified during a previous court proceeding, whilst achieving a simple lot configuration of regular shape and size that will be more compatible with the existing character of the Creek Street precinct and facilitate the construction of detached low density residential housing.

The *TSC Preferred Site Plan (Figure 2) and TSC Preferred Subdivision Configuration (Figure 3)* embodies the following key design principles and strategies:

- Overlay of a 75m buffer derived from Tweed DCP Section B23 Hastings Point which aligns with the SEPP (Coastal Management) 2018 Coastal Wetland Area mapping;
- Setting back the subdivision from Creek Street to create a drainage reserve for overland flows (36m between road reserves) improving localised flood and stormwater regime / impacts;
- Set back the subdivision from the western most house along Creek Street to create a drainage reserve for overland flows and provide setback and landscape opportunities to mitigate amenity based impacts including level differentials (18m setback between road reserve and existing western allotment);
- Creation of a ring road (minimum 13.0m road reserve) which serves as a defining interface edge to the environmental buffer area, increases bushfire separation to future dwellings and improves water and sewer serviceability;
- Creation of 12 allotments including 10 allotments internal to the ring road, creation of an allotment around the existing dwelling and creation of a residual allotment of approximately 16.3ha for environmentally significant riparian lands;
- Provides a road frontage access to the existing dwelling;
- Regularises the lot configuration with regularly sized and orientated, more suitable for housing and consistent with the lot size and shape along Creek Street;
- Results in allotments (due to shape and orientation) that are more amenable to passive and flood resilient housing design;

- Restriction of site fill to achieve minimum required stormwater fall; and
- Enables the Torrens titled subdivision.

Whilst the majority of the developable footprint fits within the 75m buffer lines, the preferred scheme would require the consideration of a reduced environmental buffer offset in both the south-west and south east corners of the development envelope in order to achieve the more regularised subdivision layout. The buffer distances in this location are approximately 50m.

In addition the location and size of any stormwater detention basins would need to be an outcome of a subdivision design specific stormwater management plan. Whilst there is opportunity to design some of these basins within the development footprint (75m buffer), there may be a physical size and /or engineering need that necessitates location part of these basins outside of the 75m buffer but contained within the 50m buffer.

Whilst this scheme only represents a desktop level of design interrogation and would be the subject of more rigorous engineering design and specialist consultant investigations to progress, it has been co-ordinated between Council's Strategic Planning and Urban Design, Natural Resource Management Unit, Engineering Services and Water and Waste Water Unit and as such has had due regard for flooding, ecological buffers, access, water and waste water servicing issues which are discussed in more detail below.

Flood considerations

Lot 156 is subject to flood inundation and has an identified design flood level of 2.6m. As identified within previous development applications the site levels range between less than 2.0m AHD up to 2.5m AHD. The most recent development application sought to introduce localised fill to a maximum of 3.9m AHD. Whilst this fill would elevate the developable area above the design flood level, the resultant flood and amenity impacts of the differential site levels on surrounding residential areas of Creek Street were deemed unacceptable.

Based on these principle objections, the *TSC Preferred Site Subdivision Configuration (Figure 2)* has sought to establish a drainage reserve adjoining both Creek Street and between the western side of the existing Creek Street allotment and the development site to create an overland flow path. Informal advice from Martens Engineers in relation to the preferred desktop configuration indicated that establishing a drainage reserve in this location would in principle substantially improve the movement of water across the site from the north-west to the south east, thereby reducing the impacts of the proposed filled subdivision on all adjacent land.

Fill importation can be minimised in the proposed layout, to accommodate adequate grades in stormwater services, the location of treatment devices, and the revised drainage reserve.

In addition the above subdivision and housing design measures, the overall reduction of the overall site yield to include 10 additional housing allotments in addition to the existing single dwelling presents less risk and opportunity to design to accommodate shelter in place. This would be an expectation of any development across this site given Creek Street is not a high level road evacuation route.

Notwithstanding the abovementioned subdivision and house design strategies, the land owner proponent would be required to undertake all required flood and stormwater impact investigations as part of the development application process and address the range of

concerns and requests for information that have previously been tabled to substantiate or justify any subdivision alternatives.

Ecological buffers

Section B23 of DCP 2008, provides the following ecological buffer zones on the subject site:

1. A 75m buffer to the intertidal and salt marsh extents of Christies Creek.
2. A 75m buffer to areas of high wetland conservation value (as mapped by Australian Government Department of Environment and Heritage).
3. A 75m buffer to the intertidal and salt marsh extents identified to the western edge of the site.
4. A 20m buffer to existing terrestrial native vegetation located within the eastern, south western and western parts of the site.
5. A 100m buffer to SEPP 14 Coastal Wetland areas.

Figure 4 below represents an overlay of these buffers and the resultant developable footprint as documented within Section B23 of DCP 2008. Although an indicative structure plan over Lot 156 is also represented within Section B23 of DCP 2008, the illustrated lot configuration, including frontage and access to Creek Street, would now be largely inconsistent with flood advice received during court proceedings relating to DA15/0221 and thereby would unlikely to be approved in that configuration.

As such, in addition to the ecological buffers when combined with the further limitation of establishing an overland flow path across the northern and eastern extent of the site, the developable footprint is further reduced. In undertaking a series of different desktop design investigations it was revealed that designing an efficient subdivision and allotment layout within the limitations of both a 75m buffer and an overland flow drainage reserve could not be achieved. The key design constraint is the resultant curving buffer lines which translates into curved roads and irregular shaped allotments which are difficult to service and build on and result in undersized allotments. This is evident with the land owner proponent's subdivision proposal submitted as part of DA15/0212 which despite attempts to 'fit' the subdivision within these constraints led to buffer incursions, no drainage reserve provided and a poor allotment design in terms of lot size and shape overall.

As illustrated within *TSC Preferred Site Plan (Figure 2)* and *TSC Preferred Site Subdivision Configuration (Figure 3)*, whilst the majority of the preferred subdivision fits within the 75m buffer (68.2%), part of the western and south east corner of the development site which account for approximately 31.8% of the developable footprint area would extend beyond the 75m buffer line but would be wholly contained within a 50m buffer line. This incursion into part of the 75m buffer line to some extent is balanced with parts of the development envelope being in excess of the 75m buffer. However to achieve a more regular subdivision layout which results in a defining ring road, and regular sized and shaped allotments would require a variation to existing 75m buffer line controls. Based on the TSC preferred site configuration, the extent of the variation is reflected in Table 2 below:

Table 2 – Preferred Site Concept Area Schedule

	Area	% as a proportion
Total Site Area	17.77ha	100
Total developable footprint area	1.1ha	6.19% of site area
Total residual allotment area for environmental protection	16.3ha	94.5% of site area
Development footprint within the 75m buffer line	0.75ha	68.2% of development footprint
Development footprint outside of the 75m buffer line	0.35ha	31.8% of development footprint
Development footprint within 50m buffer line	1.1ha	100%

Although part of the *TSC Preferred Site Subdivision Configuration* extends into the 75m buffer (18%), one of the key outcomes would be the creation of a substantial residual allotment (approx.16.3ha) of environmentally significant riparian lands proposed to be dedicated to Council for environmental protection in perpetuity which accounts for approximately 94.5% of the total site area. In order to provide the rehabilitation and enhancement of degraded habitat, a rehabilitation plan would form part of any future development application to typically include an establishment period plus 5 years maintenance.

It is noted that the duration of the maintenance phase as discussed during this collaborative design process is less than that prescribed under DCP Section A19 – Biodiversity and Habitat Management due to the following:

- The expected scope of restoration works, given the need to maintain open areas suitable for Bush-stone Curlew as identified in previous ecological assessment reports;
- Discussions commenced prior to the DCP A19 coming into effect; and
- It is considered that performance outcomes may be achieved within a well managed 5 year maintenance period due to the level of resilience of the core habitat areas (i.e. an expected rapid positive response to assisted habitat restoration).

Access and traffic

Previous development applications have sought community titled proposals largely on account of an inability to provide minimum road reserve width which is 13.0m for a local street, instead opting for a narrower access driveway to maximise lot size and yield.

Following an overlay of ecological constraints and integration of a drainage reserve fronting Creek Street, the *TSC Preferred Site Subdivision Configuration* has been able to nominate a 13.0m road reserve including a 6.0m pavement width with a 3.5m verge on either side. Whilst it is likely that the need for the actual verge will increase on account for some road side battering to mediate level changes, a 13.0m road reserve would serve a number of advantages including:

- Facilitation of a regular Torrens title subdivision;
- The ring road forming a public interface and accessible edge to the development footprint rather than a private property interface;
- Ring road serves as a bushfire buffer and point of access for emergency services around its perimeter;
- Verge provides good opportunity for street tree planting and landscaping; and

- The ring road configuration is more readily able to accommodate electrical, water and sewer servicing.

It has also been acknowledged that a reduced allotment yield would generate less traffic movements along Creek Street and its intersection with Tweed Coast Road. In review Council's Engineering Division has indicated in-principle support for the TSC preferred site subdivision configuration. Notwithstanding this in-principle support, any future development application would need to substantiate an alternate scheme with the required technical studies and design documentation.

Water and Waste Water Considerations

Feedback from Council's Water and Waste Water Unit indicated a preference for subdivision site configurations which included a looping road network for ease of constructing and maintaining and achieving adequate mains pressure water servicing.

Given the relatively flat nature of the site and longitudinal grades to Tweed Coast Road, it has been indicated that gravity to the development would be unlikely, particularly in the absence of significant amounts of site fill. As such the only feasible way of servicing such a subdivision would be via the installation of individual pressure sewer pumps for each of the allotments at the developer's expense.

Notwithstanding this in-principle support for the *TSC Preferred Site Subdivision Configuration*, any future development application would need to substantiate an alternate scheme with the required technical studies and design documentation.

Figure 2 – TSC Preferred Site Plan

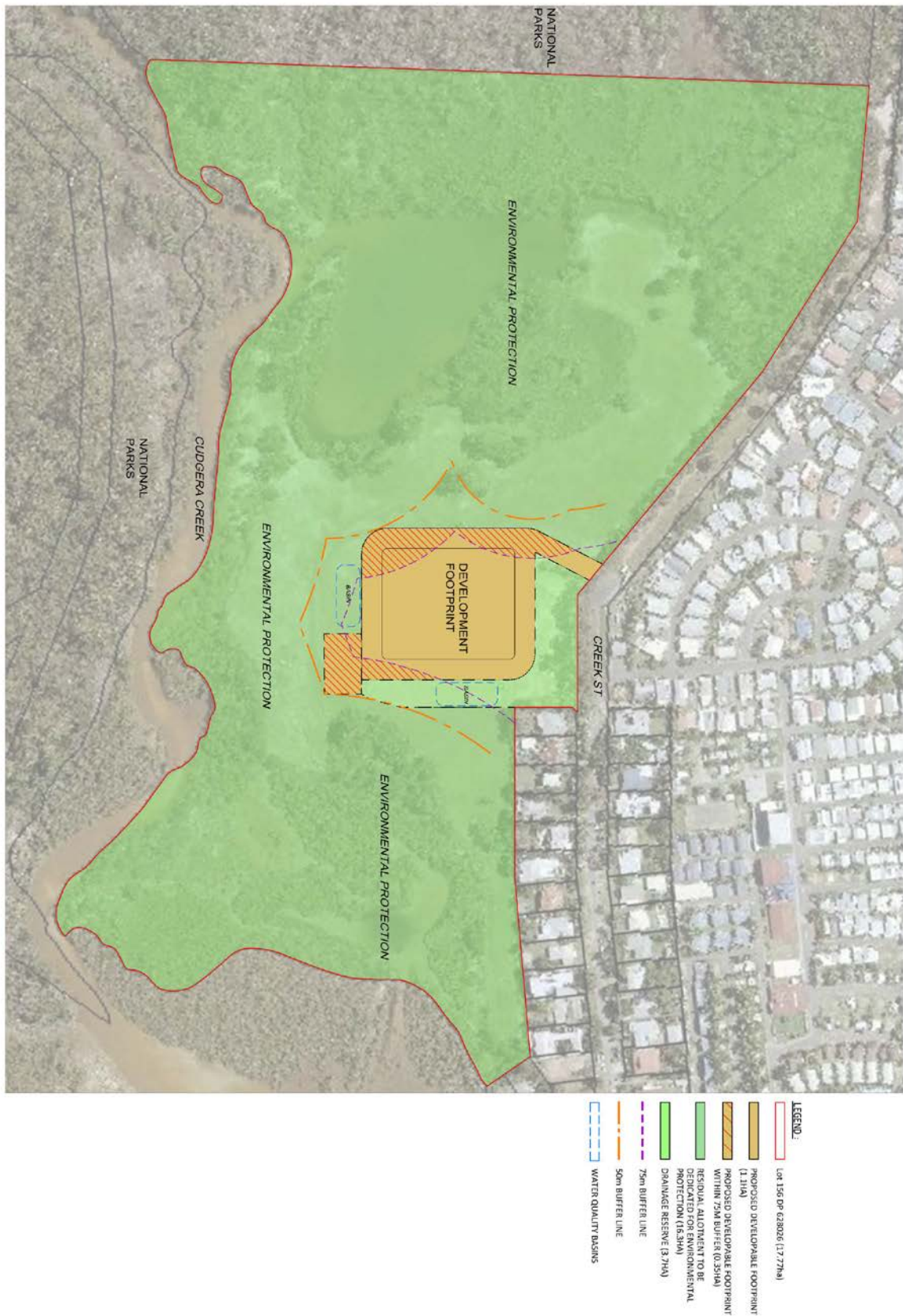


Figure 3 – TSC Preferred Site Subdivision Configuration



- LEGEND**
- ALLOTMENTS
 - PROPOSED BUILDING FOOTPRINT
 - 75m BUFFER LINE
 - 50m BUFFER LINE
 - 10m DETRACK LINE
 - NEW ROAD PAVEMENT (13.0m RW)
 - ROAD VASKE (3.5m)
 - WATER QUALITY BASINS

Figure 4 – Vegetation community and 75m buffer overlay



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

Vegetation Communities

- | | | | | |
|--|--|---|--------------------------------|----------------------------|
| Type 1 Saltmarsh Communities | Type 3a Coastal Pink Bloodwood Forest to Woodland | Type 4 Mangrove Low Closed Forest to Woodland | Type 6 Substantially Cleared | Threatened Species Habitat |
| Type 2 Swamp Oak Closed Forest to Woodland | Type 3b Coastal Swamp Mahogany Open Forest to Woodland | Type 5 Broad-leaved Paperbark/Swamp She-oak Closed Forest to Woodland | Type 7 Open Waterbody /Estuary | |

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

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Vegetation Communities & Threatened Species Habitat

Source: Vegetation mapping derived from Henry James 2009 and updated by Tweed Shire Council in 2017
Affected Properties:
 Lot 156 DP 628026
 No 40 Creek Street, Hastings Point

Council File |PP16/0006
 revised |30/01/2017

Cadastre: 01 February, 2017
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 Boundaries shown should be considered approximate only.

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 Filepath: Z:\E:\RVP\POLICIES & STRATEGIES\PLANNING PROPOSALS\PP16\0006 Lot 156 Hastings Point\8130\Vegetation_Communities.mxd Author: J.Baldwin - Strategic Planning & Urban Design Unit Date Printed: 01 February, 2017

OPTIONS:

1. Provide in-principle support to the preferred site subdivision design approach to be used as the basis to inform a revised land owner proponent initiated subdivision development application.
2. Defer consideration to seek further clarification on Council nominated issues.
3. Do not provide in principle support.

Council officers recommend Option 1.

CONCLUSION:

A review of subdivision design options over Lot 156 DP 628026 has been undertaken in co-ordination between Council's Strategic Planning and Urban Design, Natural Resource Management Unit, and Engineering Division as well as in consultation with the land owner proponent, Palm Lake Resort Pty Ltd.

The purpose of the Council led design review was to mediate a preferred site subdivision design approach which considers the complex site constraints in a manner more compatible with the existing character of the Creek Street precinct.

The proposed TSC preferred site plan and subdivision concept plan embodies many key site planning and design principles including:

- Integration of a drainage reserve to assist cross site overland flow.
- A ring road serving as a bushfire buffer which also forms a public rather than private interface to adjoining environmentally significant areas.
- An overall reduced allotment yield in comparison to previous development applications.
- Regularly sized allotments which would be easier to design and build on.

However to achieve these subdivision design outcomes necessitates a partial variation to the Hastings Point DCP required 75m environmental buffer line. The variation involves a design that extends part of the south eastern and south western corners of the development footprint beyond the 75m environmental buffer area. A variation to the buffer is considered appropriate due to the following:

- The incursion only amounts to a small percentage of the overall site area.
- The resultant subdivision design is considered more compatible with the existing Creek Street character.
- Inclusion of the overland flow area to potentially improve flood and stormwater regime of the area.
- Creation of a substantial residual allotment (approx.16.3ha) of environmentally significant riparian lands to be dedicated to Council for environmental protection.
- The delivery of a habitat restoration program to improve the ecological integrity and function of the buffer zones and core habitat areas.

This report recommends providing in principle Council support to the TSC preferred site plan and subdivision concept (Figures 2 and 3). The concept plan will then be provided to the

proponent for their consideration in the preparation of a potential revised subdivision development application.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

The landowner proponent have indicated a willingness to consult with the local community prior to the lodgement of a new subdivision development application.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

5 [PR-PC] Planning Proposal PP19/0003 Amendment to Permit the Staged Development of a New Long-term Tweed Pound and Rehoming Centre

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

ROLE: **Provider**

SUMMARY OF REPORT:

This report provides Council with the opportunity to reconsider the Tweed Local Environmental 2014 (LEP) amendment resolved on 4 April 2019 relating to the relocation and establishment of a new Council pound and rehoming centre.

The first of two prior reports considered by Council culminated with the making of an LEP amendment on 18 January 2019 for No.719 Eviron Road, Eviron and, owing to uncertainty about its suitability, a neighbouring property at No.751 Eviron Road was then identified and was the subject of the second report on 4 April 2019. Both of these reports identified potential constraints to the development of the land, which generates complexities surrounding design and construction costs and their eventual operating and economic suitability.

Whilst one amendment has been completed, the resolution of the April report has some way to go, with the planning proposal currently being prepared for a NSW planning Gateway determination. An opportunity exists to reconsider the planning amendment approach previously endorsed and whether there is a more flexible and certain approach better suited to public infrastructure and service delivery.

This report recommends adopting the Part 5 environmental planning assessment pathway under the *Environmental Planning and Assessment Act 1979* (NSW) by allowing the development without consent. Whilst it is fundamentally a system of self-assessment it has more exacting and stringent provisions than its Part 4 development application counterpart and requires the determining authority to take into account “to the fullest extent possible all matters affecting or likely to affect the environment”. In conjunction with this, it is recommended that the amendment allow this development on any land, so that in the event neither sites are deemed to be suitable a further delay and cost is not incurred by repeating the process for a third or more times.

RECOMMENDATION:

That in relation to the Planning Proposal PP19/0003 Amendment to Permit the Staged Development of a New Long-term Tweed Pound and Rehoming Centre:

- 1. The preparation of a draft planning proposal seeking an amendment to the Tweed Local Environmental Plan 2014 on the terms discussed within this report, relating to a Council pound and rehoming centre, is endorsed;**
- 2. Once finalised, the draft planning proposal is to be referred to the NSW Department of Planning and Environment for Gateway Determination, in accordance with s3.34 of the Environmental Planning and Assessment Act 1979;**
- 3. On receipt of the Minister's Gateway Determination Notice to continue, any Gateway conditions or other identified study or work is to be duly completed and included within the material for public exhibition;**
- 4. Public exhibition is to occur for a period of not less than 28 days; and**
- 5. Submissions received during public exhibition are to be reported to Council at the earliest time and detailing the issues raised and a recommended planning response.**

REPORT:

Council has previously considered two separate reports each seeking and being approved for amendments to the Tweed Local Environmental 2014 to permit a Council pound on lands owned by Council.

The first of these reports culminated with the making of an amendment on 18 January 2019 for No.719 Eviron Road, Eviron and, owing to uncertainty about its suitability, a neighbouring property at No.751 Eviron Road was then identified and was the subject of the second report on 4 April 2019. Both of these reports identified potential constraints to the development of the land, which generates complexities surrounding design and construction costs.

Whilst one amendment has been completed the resolution of the April report has some way to go, with the planning proposal currently being prepared for a NSW planning Gateway determination. An opportunity exists to reconsider the planning amendment approach previously endorsed and whether there is a more flexible and certain approach better suited to public infrastructure and service delivery.

The infrastructure and service delivery constraints faced by most councils, surrounding the need to meet essential service delivery standards and expectations of their communities, relates largely to constrained budget capacity, high expectation surrounding environmental management, complicated and protracted procurement and land acquisition practices and both time consuming and costly planning amendment processes.

Improving certainty within these often tight operating parameters can be achieved by adopting a planning pathway that is better tailored to public infrastructure works. This occurs automatically for a limited class of specific public infrastructure development under the NSW Government's Infrastructure SEPP however, it falls short of capturing the wider range and some less frequently occurring or bespoke infrastructure, ordinarily carried on by local councils.

Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW) for development permitted without consent is the alternative planning pathway. Whilst it is fundamentally a system of self-assessment it has more exacting and stringent provisions than its Part 4 development application counterpart and requires the determining authority to take into account "to the fullest extent possible all matters affecting or likely to affect the environment".

In addition to allowing development of a council pound and rehoming centre under the Part 5 assessment pathway the amendment can also permit this land use on any land. This would provide Council with greater certainty of being able to find an alternative site should the current two sites fail the tests of suitability or feasibility, as well as allowing greater flexibility in the construction design phase as it would remove the often expensive and lengthy development approval timeframes associated with amending a development consent.

Allowing public infrastructure works to be carried out under Part 5 is a common practice for many public infrastructure authorities, be that schools, water reticulation and supply systems, reservoirs, replacement of buildings within an existing correctional centre, maintenance depots, visitor information centres or amenities on land being a public reserve, the Tugun Bypass, the Tweed's Rail Trail and many others identified within individual LEPs and the Infrastructure SEPP, and it provides a very robust and tested environmental assessment regime.

In light of the above it is recommended that Council adopt the Part 5 planning pathway in concert with permitting a Council pound and rehoming centre on any land. This is a mutually exclusive land use that relates to the Council only, it is not a land use that will be open to other entities or persons to pursue.

Precisely how the amendment will be enabled in the Tweed LEP is the role of Parliamentary Counsel however, it is envisaged that it will be a separate new clause or an amendment to the current council infrastructure clause to expand the range of permissible development without consent to include a council pound and rehoming centre on any land. If for some reason the Parliamentary Counsel believes this cannot be achieved then the default position will fall to the current resolution surrounding the nomination of an identified site and or allowing the development with consent.

OPTIONS:

1. Proceed with the recommendation provided in this report which is to endorse the proposed amendment to the Tweed Local Environmental Plan 2014 for a Gateway Determination; or
2. Do not proceed with the recommended Tweed Local Environmental Plan 2014 amendment, as proposed. This would mean proceeding with the current Council resolution for a site specific amendment and the making of a development application.

Staff recommend Option 1.

CONCLUSION:

There are two important elements discussed within this report and that bear on a consideration of the proposed course of action; firstly, the tenuous nature of the sites under investigation for a Council pound and rehoming centre and the risk factors in delivering it. Secondly, whether there is support for allowing the development under the Part 5 assessment pathway and on any land.

Based on what has been said about these aspects it is concluded that the better practice for Council to adopt in the prevailing circumstances is to pursue an amendment that allows the intended Council pound and rehoming centre on any land without consent, activating the Part 5 assessment pathway. This will enable greater certainty about delivering this community asset and in doing so will reassure the Tweed community about the importance and priority of animal welfare.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Would not have any impact over and above the previously resolved position.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

Inform - We will keep you informed.

The draft planning proposal would be placed on public exhibition for a minimum of 28 days, Submissions received during public exhibition would be reported to Council with recommended planning responses to concerns raised.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Council Report of 4 April 2019 on Planning Proposal
PP19/0003 a Site-Specific Amendment to Lot 30 DP 820048
No. 751 Eviron Road, Eviron (ECM 5919716)

6 [PR-PC] Planning Proposal PP19/0004 and PP19/0005 for Site Specific Amendment to Lot 12 DP 803451 No. 22-38 Florence Street Tweed Heads and Lot 3 SP 74283 and 5 SP 83483 No. 49-61 Bells Boulevard, Kingscliff

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

ROLE: Provider

SUMMARY OF REPORT:

Strategic Planning & Urban Design Unit has received two planning proposals over two different sites to facilitate *medical centre* land uses via Schedule 1 Additional Permitted Use amendments to the Tweed City Local Environmental Plan 2012 (TCLEP 2012) and Tweed Local Environmental Plan 2014 (TLEP 2014). The inclusion of a *medical centre* as an additional permitted use over the two subject sites, being within the existing part floor area of the Tweed Heads Bowls Club (currently zoned RE2 Private recreation under TCLEP 2012) and across existing retail units within the Salt precinct (currently zoned SP3 Tourist under TLEP 2014), will provide additional land use flexibility to deliver medical services to the local community.

Two planning proposals will be required, to amend both the TCLEP 2012 and the TLEP 2014. Each site will require a separate planning proposal for amendment to the applicable LEP. The planning proposals once prepared will be forwarded to NSW Planning & Environment subject to Council's endorsement. The planning proposal intent for each site is as follows:

- (a) Amendment to the TCLEP 2012 for Lot 12 DP 803 3451 No. 22-38 Florence Street, known as Tweed Heads Bowls Club, which is currently zoned RE2 Private Recreation, to include *medical centre* as an additional permitted use over part of the existing floor area, and
- (b) Amendment to the TLEP 2014 Lot 3 SP 74283 and Lot 5 SP 83483 No. 49-61 Bells Boulevard, Kingscliff, which is currently zoned SP3 Tourist, to include *medical centre* as an additional permitted use over part of the existing floor area.

This report provides a discussion on the strategic planning intent underpinning the identified need for the proposed amendments to TCLEP 2012 and TLEP 2014 which would form the basis of a planning proposal with respect to the above sites and in doing so seeks Council's endorsement to proceed.

RECOMMENDATION:

That:

- 1. The intent of the amendments to Tweed Local Environmental Plan 2014 and Tweed City Local Environmental Plan 2012 detailed in this report are endorsed;**
- 2. The planning proposals once prepared are to be referred to the NSW Department of Planning & Environment for a Gateway Determination, in accordance with s3.34 of the *Environmental Planning & Assessment Act 1979*;**
- 3. On receipt of the Minister's Gateway Determination Notice to proceed all, if any, Gateway conditions or other identified study or work is to be duly completed and included within the material for public exhibition;**
- 4. Public exhibition is to occur consistent with the Gateway Determination and for a minimum of 28 days.**

REPORT:

Background

The Tweed City Centre Local Environmental Plan 2012 (TCLEP 2012) and Tweed Local Environmental Plan 2014 (TLEP 2014) are the principal planning instruments affecting land use within the Shire by way of prescribing what purpose land may or may not be used for. The LEPs consists of a written component and a suite of maps including the Land Zoning Map.

Council is in receipt of two planning proposals over two different sites to facilitate *medical centre* land uses as Schedule 1 Additional Permitted Use amendment to the TCLEP 2012 and TLEP 2014. The intent of the planning proposals to enable *medical centre* as an additional permitted use over the two subject sites, which will provide additional land use flexibility to deliver medical services to the local community within the floor area of existing buildings.

These sites, described in more detail within this report, will require separate planning proposals seeking specific amendments to the TCLEP 2012 and TLEP 2014.

Subject to Council resolving to proceed with the preparation of the planning proposals they will be forwarded to the NSW Department of Planning and Environment (DPE) seeking a Gateway Determination and enabling agency consultation and public exhibition. The planning proposals, will be prepared by Council in accordance with relevant guidelines, consistency with the *Environmental Planning and Assessment Act 1979* (the "Act"), broader regional and State policy framework, and relevant planning circulars, Ministerial s 9.1 (former s117) Directions and practice notes.

It is anticipated that the planning proposals will take approximately nine to twelve months concurrently to complete. Each of the land owner proponents will be required to enter into a cost agreement to ensure costs of preparing and facilitating the planning proposal will be met.

Land subject to this planning proposal

Two sites are subject to this planning proposal. For ease of interpretation and assessment against the local and State planning frameworks, each site is discussed individually and referred to herein as an 'Item'.

It is proposed to implement the intended outcomes through site-specific amendments to Schedule 1 Additional Permitted Use of each LEP. These amendments will not trigger amendments to development standards such as; height of buildings, floor space ratio and lot size.

ADDITIONAL PERMITTED USE AMENDMENTS

1. Tweed Heads Bowls Club, Tweed Heads

<p>Item 1 Lot 12 DP 803451</p> <p>Street address: 22-38 Florence Street, Tweed Heads</p> <p>Proposed amendment: Additional permitted use to enable a medical centre to be permitted with consent.</p>	
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The Tweed Heads Bowls Club is currently zoned RE2 Private Recreation under the TCLEP 2012 and operationally functions as a registered club and includes a range of uses including bowling greens, food and beverage uses, functions, entertainment and well as administrative uses relating to the club.

Initial meetings with the Tweed Heads Bowls Club representative and planning consultant indicated a preference for the site to be rezoned from RE2 to B4 Mixed Use to accommodate a wide range of commercial, retail, entertainment and residential uses whilst retaining the primary use of the site as a registered club. Planning staff preliminary advice was that the consideration of a rezoning of the site to B4 Mixed Use would need to be preceded by a broader strategic process which would provide context and strategic justification to support any future LEP zoning and development standard amendments for that scale and diversity of land use.

Ideally this review would be in the context of a broader master plan that jointly considered the surrounding locality including the Council and library, Tweed Hospital, boat harbour and medium density residential areas, known as the *Civic/campus* and *Boat Harbour* precincts within the Tweed City Centre Development Control Plan (TCDCP). It was further advised that that given the uncertain timing and future planning around the hospital site Council has not independently commenced this Master Planning review but notes opportunity to undertake such a review as part of the Tweed Heads Action Plan being initiated by the DPE. In this regard, pursuing a planning proposal of the site from RE2 to B4 Mixed Use to include consideration of retail and commercial premises would at this point be pre-emptive of the broader strategic process.

Following the above advice, the Tweed Heads Bowl's Club lodged a planning proposal request (email from DAC Planning 13/12/2018) to amendment Schedule 1 of the TCLEP 2012 to include the following range of land uses:

- Medical centre;
- Retail premises;
- Commercial premises;
- Child care centres;
- Community facilities;
- Entertainment facilities;

- Information and education facilities;
- Recreation facilities (indoor);
- Respite day care centres; and
- Seniors housing.

However a number of these requested uses are currently permitted with consent within the TCLEP 2012 RE2 Private Recreation zone including:

- Centre based child care centres;
- Community facilities;
- Entertainment facilities;
- Information and education facilities;
- Recreation facilities (indoor); and
- Respite day care centres.

In addition, seniors housing could be enabled through the SEPP (Housing for Seniors or People with a Disability) 2004.

The request for retail and commercial uses as additional permitted uses, as discussed above is considered pre-emptive of an overarching vision and strategic direction to inform planning outcomes across this precinct. It is also noted that there are currently a number of vacant commercial and retail uses within the immediate vicinity of the site. This includes lands owned by Tweed Heads Bowls Club to the immediate north of the subject site currently zoned B4 Mixed Use. As such consideration of retail and commercial as additional permitted uses within the Tweed Heads Bowls Club site is not currently supported. However, the suitability of these uses may be considered in the context of a future community consulted strategic planning or master plan process.

Notwithstanding the above comments around the need for greater strategic direction to inform planning decisions, consideration of a medical centre is considered justifiable for the following reasons:

- The principal RE2 Private Recreation use of the site as a registered club would be retained;
- There is a shortfall of suitably sized floor space currently zoned to permit medical centre services within the immediate area;
- The land use would be wholly contained within the existing building envelope of the Tweed Heads Bowls Club and would utilise underused and vacant floor area within the existing club footprint;
- High walkable catchment to both the existing hospital and surrounding medium density residential, including seniors housing, areas;
- Compatible site and surrounding land uses would minimise any amenity based impacts and contribute to co-location of a number of community and health related services within an area that has an aging demographic profile; and
- Opportunity to cross-utilise existing car parking (subject to traffic assessment).

Having reviewed the above considerations, the site and its context it is considered the inclusion of *medical centre* as an additional permitted use is justified. Amending Schedule 1 to permit an additional use (*medical centre*) will not require amendment to any other development standard applying to this land.

2. No. 49-61 Bells Boulevard, Kingscliff

<p>Item 1 Lot 3 SP 74283 and Lot 5 SP 83483</p> <p>Street address: No. 49-61 Bells Boulevard, Kingscliff</p> <p>Proposed amendment: Additional permitted use to enable a medical centre to be permitted with consent.</p>	
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The Salt Village precinct is currently zoned SP3 Tourist under the TLEP 2014 and includes a range of tourist accommodation and related uses which include function centres, food and beverage uses, restaurants, pub, retail and commercial uses including a small supermarket and a surf club. *Medical centres* are currently prohibited within SP3 zone.

The planning proposal request (DAC Planning May 2019) seeks to add *medical centre* as an amendment to Schedule 1 Additional Permitted Use to the TLEP 2014. This would apply only to Lot 3 SP 74283 and Lot 5 SP 83483 being the commercial tenancies on the southern side of the Salt Village commercial complex, with frontage to Gunnamatta Avenue and the Mantra Resort access driveway, within common property under the Strata Scheme.

Whilst there is a range of uses currently permitted, consultation as part of the draft Kingscliff Locality Plan (KLP) identified that as the areas surrounding the Salt village are predominantly medium and low density residential and there is a growing need to meet the day-to-day requirements of permanent resident as well as the tourist population. This was supported by submissions received in response to the draft KLP seeking consideration of currently undeveloped land as B4 Mixed Use. In response a number of the strategies within the draft KLP seek to facilitate further opportunity for retail and commercial-based uses targeting the permanent residential population and providing additional local employment opportunities. The provision of health care services is suitable in this context.

In this regard, a planning proposal to facilitate the inclusion of *medical centre* to Schedule 1 as an additional permitted, within the existing floor area of the Lot 3 SP 74283 and Lot 5 SP 83483, is considered justifiable for the following reasons:

- There is an identified need to facilitate a broader range of land uses to meet the needs of the local permanent residential as well as visitors which includes provision of health care services (*medical centre*);
- There is a shortfall of currently zoned and suitably sized floor space within the immediate area appropriate for *medical centre* services;
- The land use would be wholly contained within an existing tenancy and would utilise vacant floor area;
- The site is located within a high walkable catchment to both the existing Salt village centre and surrounding residential areas;
- Compatible site and surrounding land uses would minimise any amenity based impacts and contribute to the broadening of community and health related services within the immediate area that has a diverse demographic profile; and

- Opportunity to cross-utilise existing car parking (subject to traffic assessment) within the Salt Precinct already allocated for the commercial floor area.

Having reviewed the above considerations, the site and its context it is considered the proposal a *medical centre* to as an additional permitted use is justified. Amending Schedule 1 to permit an additional use (*medical centre*) will not require amendment to any other development standard applying to this land.

OPTIONS:

1. Proceed with preparation of a planning proposal to amend each of the TCLEP 2012 and TLEP 2014 Schedule 1 Additional permitted use to facilitate *medical centre* and forward the planning proposals for a Gateway Determination, or
2. Proceed with part or none of the recommended amendments.

Option 1 is recommended.

CONCLUSION:

This report seeks Council support to undertake minor amendments to the TLEP 2014 and TCLEP 2012 Schedule 1 to facilitate *medical centre* as a permitted use specific to the sites discussed.

The intent of the planning proposals is to provide additional flexibility to deliver medical services to the respective local communities within the floor area of existing buildings.

Whilst the amendments to both LEPs are very similar, separate planning proposals will be required to amend each LEP. Both land owner proponents will be required to enter a cost agreement.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The planning proposals would be funded through a cost agreement with each land owner.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil

7 [PR-PC] Short Term Rental Accommodation - Update on Compliance Actions for Alleged Unauthorised Short Term Rental Accommodation

SUBMITTED BY: Development Assessment and Compliance

mhm



People, places and moving around
Who we are and how we live

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.1 People
- 3.1.4 Compliance Services - To support a safe and healthy built and natural environment through the enforcement of local government rules and regulations.

ROLE: **Provider**

SUMMARY OF REPORT:

Council considered a notice of motion regarding short term holiday letting at its meeting of 5 April 2018. The following was resolved:

“That Council defers taking any widespread action against any unauthorised or non-compliant short term holiday let (STHL) uses, until the release of new, anticipated State Government STHL legislative and planning policy controls, except in those circumstances where it can be demonstrated that such uses are having an unreasonable impact on the amenity of adjoining or surrounding neighbours as determined by Council.”

The purpose of this report is to provide an update of short term holiday letting (STHL) in the Tweed Shire and to seek support from Council for a course of action to manage complaints about short term holiday letting activities.

On 17 August 2018, NSW Government made changes to sections of the *Fair Trading Act 1987*, however the accompanying planning legislation to give effect to any new regulation for short term holiday letting has not yet been released and it is still pending.

Since that time, Council has experienced a major increase in the number of short term holiday letting complaints. A search has confirmed that Council has received over 68 complaints in the last 12 months. The complaints relate to the impacts on the amenity of adjoining or surrounding neighbours. Complaints from April 2019 are currently be investigated.

The volume of complaints received in respect of STHLs are higher in comparison to all other Compliance Unit matters (building and illegal land use), and in some circumstances require further ongoing work.

The investigation process and ongoing time management that is required to complete these matters is becoming very time consuming and prolonged. On some occasions, further enforcement action has been taken by way of penalty infringement notices (PINs) being issued. This has generated further ongoing investigations in those instances where owners who have received PINs dispute the matter with NSW State Revenue, requiring further assessment by Council.

In light of this increased compliance burden, Council's Compliance Unit has only got the resourcing capacity to deal with the STHL complaints in a sequential order, and managed with other competing compliance priorities.

RECOMMENDATION:

That:

- 1. ATTACHMENT 2 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
(a) personnel matters concerning particular individuals (other than councillors).**
- 2. Due to a major increase in complaints regarding unauthorised short term holiday letting activity, Council's Compliance Unit will continue to investigate and deal with these complaints sequentially in order of the date of receipt of the complaint; and**
- 3. A report be brought back by the officers to the September Planning Committee Meeting providing an update in the progress in dealing with these matters.**

REPORT:

On 17 August 2018, NSW Government made changes to sections of the Fair Trading Act 1987, however the accompanying planning legislation to give effect to any new regulation for short term holiday letting has not yet been released and it is still pending.

Since that time, Council's Planning Compliance Officer has experienced a major increase in the number of continued short term holiday letting complaints. A search has confirmed that Council has received over 68 complaints in the last 12 months. (Confidential Attachment 2 to this report provides further details on the recording of these complaints). The complaints relate to the impacts on the amenity of adjoining or surrounding neighbours. Complaints from April 2019 are currently be investigated. A copy of a standard letter issued by Council in response to these complaints is provided in Attachment 1 to this report.

The volume of complaints received in respect of STHLs are higher in comparison to all other Compliance Unit matters (building and illegal land use), and in some circumstances require further ongoing work.

The investigation process and ongoing time management that is required to complete these matters is becoming very time consuming and prolonged. On some occasions, further enforcement action has been taken by way of penalty infringement notices (PINs) being issued. This has generated further ongoing investigations in those instances where owners who have received PINs dispute the matter with NSW State Revenue, requiring further assessment by Council.

In light of this increased compliance burden, Council's Compliance Unit has currently only got the resourcing capacity to deal with the STHL complaints in a sequential order, and are being managed with other competing compliance priorities.

OPTIONS:

1. That complaints regarding unauthorised short term holiday letting activity will be dealt with as resources permit and sequentially in order of the date of receipt of the complaint.
2. That Council continues to take action on complaints where it can be demonstrated that such uses are having an unreasonable impact on the amenity of adjoining or surrounding neighbours as determined by Council.

Option 1 is recommended.

CONCLUSION:

This report has been prepared in response to continuing major increase in the number of complaints regarding short term holiday letting.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Legal expenses may be incurred if any enforcement action is taken in respect to alleged unauthorised STHL use.

c. Legal:

Council has a duty of care as a regulator to ensure that compliance complaints are appropriately dealt with.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Standard letter that is being initially sent to property owners undertaking short term holiday letting (ECM 5935264)

(Confidential) Attachment 2. Selected period of complaints from 13 June 2018 to 13 June 2019 (ECM 5935266)

8 [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

SUBMITTED BY: Director

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: Provider

SUMMARY OF REPORT:

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported/refused.

RECOMMENDATION:

That Council notes there are no variations for the month of June 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.
