Land and Environment Court
New South Wales

Case Title:	Tweed Business and Residents Focus Group Inc v Northern Region Joint Regional Planning Panel
Medium Neutral Citation:	[2012] NSWLEC 166
Hearing Date:	19 July 2012
Decision Date:	26 July 2012
Jurisdiction:	Class 4
Before:	Biscoe J
Decision:	(1) Declaration that development consent to development application DA 11/0257 for demolition of the existing police station and the adjoining two residences and construction of a new two-storey police station and basement carparking on land described as Lot 701 DP 1002309 is invalid; (2) Order restraining the third and fourth respondents, their servants and agents from acting on the said development consent; (3) Costs reserved. Parties are within two working days to approach the Registry to have the matter listed as soon as possible to determine the issue of costs and are to file and serve written submissions on costs by two working days before the costs hearing.
Catchwords:	JUDICIAL REVIEW – challenge to validity of development consent on ground that, in breach of s 79A(2) Environmental Planning and Assessment Act 1979, two requirements of development control plan as to contents of notification letters to adjoining and affected owners not complied with – legal principles international and domestic concerning public participation and notification – whether compliance with notification requirements – jurisdictional fact

	or conditions precedent to exercise of power to determine development application - if development consent otherwise invalid whether order should instead be made under s 25B Land and Environment Court Act 1979.
Legislation Cited:	Environmental Planning and Assessment Act 1979 ss 5, 23G, 79, 79A, 123 Land and Environment Court Act 1979 ss 25A – 25E Land and Environment Court Rules 2007 r 4.2 Tweed Shire Development Control Plan 2008 cll A11.1.5, A11.2.1, A11.2.2
Cases Cited:	Abebe v Commonwealth of Australia [1999] HCA 14, 197 CLR 510 Area Concrete Pumping Pty Ltd v Inspector Barry Childs (WorkCover) [2012] NSWCA 208 Bennett v Hurstville City Council [2012] NSWLEC 108 Chase Oyster Bar Pty Ltd v Hamo Industries Pty Ltd [2010] NSWCA 190, 78 NSWLR 393 Corporation of the City of Enfield v Development Assessment Commission [2000] HCA 5, 199 CLR 135 Craig v State of South Australia [1995] HCA 58, 184 CLR 163 Csillag v Woollahra Council [2011] NSWLEC 17, 181 LGERA 141 Doueihi v Canterbury City Council [2003] NSWLEC 267 Gedeon v Commissioner of the NSW Crime Commission [2008] HCA 43, 236 CLR 120 Hoxton Park Residents Action Group Inc v Liverpool City Council [2011] NSWCA 349, 184 LGERA 104 Hoxton Park Residents Action Group Inc v Liverpool City Council (No 3) [2012] NSWLEC 43 Johnson v Lake Macquarie City Council

	[1996] NSWLEC 196, 91 LGERA 331
	Kirk v Industrial Court of New South Wales [2010] HCA 1, 239 CLR 531
	Lesnewski v Mosman Municipal Council [2005] NSWCA 99, 138 LGERA 207
	Litevale Pty Ltd v Lismore City Council (1997) 96 LGERA 91
	Minister for Immigration and Multicultural Affairs v Yusuf [2001] HCA 30, 206 CLR 323
	Project Blue Sky Inc v Australian Broadcasting Authority [1998] HCA 28, 194 CLR 355
	Scurr v Brisbane City Council [1973] HCA 39, 133 CLR 242
	Simpson v Wakool Shire Council [2012] NSWLEC 163
	Timbarra Protection Coalition Inc v Ross Mining NL [1999] NSWCA 8, 46 NSWLR 55
Texts Cited:	Rio Declaration on Environment and Development (1992) Principle 10
	Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability (2012)
Category:	Principal judgment
Parties:	Tweed Business and Residents Focus Group Inc (Applicant) Northern Region Joint Regional Planning Panel (First Respondent) Tweed Shire Council (Second Respondent) UGL Services Pty Ltd (Third Respondent) The State of New South Wales (Fourth Respondent)
Representation	
- Counsel:	Mr M Seymour with Mr B Dean (Applicant) Submitting appearance (First Respondent) Submitting appearance (Second Respondent) Mr I Hemmings (Third and Fourth Respondents)

- Solicitors:	National Seniors Lawyers Pty Ltd (Applicant) Department of Planning and Infrastructure (First Respondent) HWL Ebsworth (Second Respondent) Henry Davis York (Third and Fourth Respondents)
File number:	40102 of 2012

JUDGMENT

1 The applicant, Tweed Business and Residents Focus Group Inc, claims that a development consent is invalid because, in breach of s 79A(2) of the *Environmental Planning and Assessment Act* 1979 (**EPA Act**), it was not notified in accordance with the provisions of the Tweed Shire Development Control Plan 2008 (**DCP**) in that the notification letters prescribed by the DCP did not contain significant information mandated by the DCP. The facts and issues are of narrow compass.

2 The development application was expressed to be for the "Demolition of existing police station and the adjoining two residences [and] Construction of a new two storey police station and basement parking", at Lot 701 DP 100239, 152-154 Marine Parade, Kingscliff (**the Site**). The Statement of Environmental Effects (**SEE**) accompanying the development application indicated that the Site housed the Kingscliff police station and two freestanding police owned residences and that the proposed new development was for the new Tweed Byron Command.

3 Development consent was granted on 24 November 2011 by the first respondent, the Northern Region Joint Regional Planning Panel. The development application was lodged with the second respondent, Tweed Shire Council, by the third respondent, UGL Services Pty Ltd, on behalf of the fourth respondent, the State of New South Wales (through the New South Wales Police Force). Pursuant to s 23G of the EPA Act, the development consent function of the Council was conferred on the Panel which, in the exercise of that function, was taken to be the Council. The Panel and the Council have entered submitting appearances save as to costs. UGL and the State contest the proceedings: it is convenient hereafter to refer to them as the respondents.

4 Section 79A(2) of the EPA Act provides:

> A development application for specified development (other than designated development or advertised development) must be

notified or advertised in accordance with the provisions of a development control plan if the development control plan provides for the notification or advertising of the application.

5 Under cl A11.2.1 of the DCP, notice of the proposed development was required to be sent by letter to adjoining owners and owners considered by the Council to be detrimentally affected. In compliance with this requirement, the Council sent notification letters to owners and residents of land adjacent to or in the immediate vicinity of the Site.

6 Clause A11.2.2 of the DCP mandated what was to be contained in the notification letters including the following:

(a) address of the site (Lot No. Deposited Plan, and House No.);

...

(c) a brief description of the proposal expressed as informatively as possible in a short statement;...

7 The applicant contends that in breach of s 79A(2) of the EPA Act, the notification letters did not comply, and could not reasonably be understood to comply, with those two requirements of cl A11.2.2 of the DCP.

8 It assists understanding of the issues to look at the copy plans annexed hereto and marked as follows, which were included in the SEE of accompanying the development application:

"A" plan of the Site showing the surrounding streets and the structures to be demolished.

"B" plan of the Site showing the surrounding streets and the proposed new police station to be constructed.

LEGAL PRINCIPLES – PUBLIC NOTIFICATION

9 Public participation in the development approval process is important if the best possible ecologically sustainable development outcomes are to be achieved. This principle is recognised internationally. Thus, Principle 10

of the Rio Declaration on Environment and Development produced at the United Nations Conference on Environment and Development in 1992 in Rio de Janiero, attended by 172 nations including Australia, states:

> Environmental issues are best handled with participation of all considered citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

10 The Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability produced at the 2012 World Congress on Justice, Governance and Law for Environmental Sustainability declares that: "Environmental sustainability can only be achieved in the context of fair, effective and transparent national governance arrangements and rule of law, predicated on: [among other things] ...public participation in decision-making, and access to justice and information, in accordance with Principle 10 of the Rio Declaration".

11 The real test of Rio Principle 10's significance lies in domestic law rather than international law. In New South Wales the principle is reflected in the objects of the EPA Act "to provide increased opportunity for public involvement and participation in environmental planning and assessment" and "to encourage ecologically sustainable development": ss 5(c) and 5(a)(vii). These statutory objects are given teeth by the public notification provisions of ss 79 and, in this case, 79A, and by provisions which facilitate access to environmental justice. The access provisions include s 123 of the EPA Act which gives open standing to bring judicial review proceedings to remedy or restrain a breach of the EPA Act, and r 4.2 of the *Land and Environment Court Rules* 2007 which empowers the Court not to order costs when judicial review proceedings brought in the public interest are unsuccessful.

12 Section 79A(2) of the EPA Act provides for a most important part of the public participation process, that of public notification or advertisement. It not only gives force to the statutory objects, it gives statutory force to the common law obligation to afford procedural fairness in the exercise of public power, a breach of which may be jurisdictional error: *Lesnewski v Mosman Municipal Council* [2005] NSWCA 99, 138 LGERA 207 at [57], [68]; *Bennett v Hurstville City Council* [2012] NSWLEC 108 at [16] per Biscoe J. As Craig J said of s 79A(2) in *Csillag v Woollahra Council* [2011] NSWLEC 17, 181 LGERA 141 at [33] – [34]:

> [33] ...First, it affords a form of procedural fairness by providing an opportunity to those who have an interest in or who may be affected by proposed development to learn of its detail before any decision is made. Secondly, it affords the opportunity to improve the process of decision making by enabling the consent authority to make a decision, fully informed of the potential consequences of development as perceived by the community.
>
> [34] This important statutory objective would be frustrated if the notification and advertisement of a given development application was inadequate to identify the place at which the proposed development was to be undertaken.

13 The following analysis shows that strict or substantial compliance with the public notification requirements of s 79A(2) of the EPA Act is a jurisdictional fact, that is, a condition precedent to the exercise of the power to determine a development application. The word "jurisdictional" is a little awkward when applied to an administrative decision-maker but is used in the sense of "authority to decide": *Abebe v Commonwealth of Australia* [1999] HCA 14, 197 CLR 510 at [24] per Gleeson CJ and McHugh J. A jurisdictional fact is a criterion, satisfaction of which enlivens the power of the decision-maker: *Corporation of the City of Enfield v Development Assessment Commission* [2000] HCA 5, 199 CLR 135 at [28]; *Gedeon v Commissioner of the NSW Crime Commission* [2008] HCA 43, 236 CLR 120 at [43]. To express it another way, a jurisdictional fact is an essential pre-condition to the exercise of power: *Chase Oyster Bar Pty Ltd v Hamo Industries Pty Ltd* [2010] NSWCA 190, 78 NSWLR 393 at [148], [96], [32].

14 Absence of a jurisdictional fact is a species of jurisdictional error: *Kirk v Industrial Court of New South Wales* [2010] HCA 1, 239 CLR 531 at [72]. A jurisdictional error is one which renders a decision invalid as being beyond power. A decision is invalid if, by reference to the statutory scheme, the Court discerns a legislative intention that the breach of the statute will invalidate that action under the statute: *Timbarra Protection Coalition Inc v Ross Mining NL* [1999] NSWCA 8, 46 NSWLR 55 at [37] (a jurisdictional fact case) and *Area Concrete Pumping Pty Ltd v Inspector Barry Childs (WorkCover)* [2012] NSWCA 208 at [77], [81] per Basten JA (a jurisdictional error case), both citing *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28, 194 CLR 355 at [93]. *Project Blue Sky* did not refer to jurisdictional error (or jurisdictional fact) and its invalidity test appears to have been subsumed into an essential element of jurisdictional error. A list of types of jurisdictional errors was compiled in *Craig v State of South Australia* [1995] HCA 58, 184 CLR 163 at 179, but the list is not exhaustive: *Minister for Immigration and Multicultural Affairs v Yusuf* [2001] HCA 30, 206 CLR 323 at [82], and it is not possible to mark the metes and bounds of jurisdictional error: *Kirk* at [71].

15 The proper approach to planning legislation requiring public notification is that substantial compliance with such requirements will generally be a pre-condition to the exercise of power to determine a development application, that is, a jurisdictional fact: *Scurr v Brisbane City Council* [1973] HCA 39, 133 CLR 242 at 255-256; *Hoxton Park Residents Action Group Inc v Liverpool City Council* [2011] NSWCA 349, 184 LGERA 104 at [27]. A minor non-compliance may not be sufficient for invalidity: cf *Lesnewski* at [60]. In order to attain the public participation object of the EPA Act consistently with a provision such as s 79A(2), "strict or substantial compliance is required as a pre-condition to consideration of an application": *Johnson v Lake Macquarie City Council* [1996] NSWLEC 196, 91 LGERA 331 at 341 per Stein J.

16 If the beneficial effect of public notification is defeated by inaccurate or incomplete information in it, the notification will be misleading and hence

invalid: *Doueihi v Canterbury City Council* [2003] NSWLEC 267 at [30] per McClellan CJ citing *Litevale Pty Ltd v Lismore City Council* (1997) 96 LGERA 91 (NSWCA).

FIRST GROUND: THE ADDRESS

17 Section 79A(2) of the EPA Act mandates that a development application must be notified in accordance with the DCP. Clause A11.2.2(a) of the DCP mandates that the notification letters include the "address of the site (Lot No. Deposited Plan, and House No.)".

18 The development application stated that the address of the Site was 152 - 154 Marine Parade, Kingscliff. The SEE stated that the address was 154 Marine Parade, Kingscliff.

19 However, the notification letters gave the address of the Site as "Lot 701 DP 1002309, Pearl Street Kingscliff".

20 The applicant submits that "Pearl St" is not the address of the Site and that its address is Marine Parade; therefore the notification letters do not comply with the DCP, and s 79A(2) of the EPA Act is breached.

21 As can be seen in the SEE plans annexed to this judgment, the Site is roughly triangular in shape and bound by public roads on all three boundaries. As described in the SEE, the northern boundary of the Site is a 103.58 metre frontage to Marine Parade, the western boundary is a 57 metre frontage to Pearl Street, and the southern boundary is a 116.3 metre frontage to Kingscliff Street. Plans accompanying the SEE note the western frontage as Pearl Street (see annexures A and B to this judgment). The entrance to the police station and to one of the two freestanding residences on the Site are from Marine Parade. The entrance to the other residence on the Site is from Kingscliff Street. There is no entrance to the Site from the western frontage.

22 The applicant contends that in fact the western frontage of the Site is not Pearl Street but an "unnamed lane". This is said to be because (a) Pearl Street is located and sign-posted on the other (southern) side of Kingscliff Street; and (b) the "unnamed lane" is not sign-posted at all and has landscaping across its southern end at Kingscliff Street so that vehicular access is not possible from its southern end. In my view, the width and other features of the contentious western frontage are such that it should be described as a street rather than as a lane. It is asphalted and wide enough for two-way traffic and has pedestrian verges. It presents as a continuation of Pearl Street but for the landscaped area at its southern end which precludes vehicular access from that direction. In my view, in the absence of a contrary street sign, it could reasonably be understood to be part of Pearl Street.

23 The DCP does not say that the address for the purpose of cl A11.2.2(a) is the address on the Council's records. However the address as recorded in the Council's records is expressly recognised in two other clauses of the DCP. First, cl A11.1.5 of the DCP defines "Owner" as "the name and address of the proprietor as registered in Council's property record". Secondly, cl A11.2.1 provides that notice of a development application is to be sent to (inter alia) "all persons who, according to Council property rating records, own land immediately adjoining the application site".

24 According to the Council's rating records and NSW Land and Property Information, the address of the Site is "Pearl Street". According to a letter of 18 April 2012 from the Council's solicitors to the applicant's solicitors, "the smallest road frontage" is used by the Council for address and rating purposes.

25 According to NSW Police online records and the telephone White Pages, the address of the Kingscliff police station is 154 Marine Parade, Kingscliff.

26 According to a Google search for Kingscliff police station, its address is 156 Marine Parade, Kingscliff: 156 is incorrect because that is the number of an apartment block to the west of a fire station, which is itself to the west of the Site.

27 As regards numbers physically attached to the front of buildings, the position is as follows. The number 152 is attached to the existing residence on the Site to the east of the police station, both of which are accessed only from Marine Parade. No number is physically attached to the police station, immediately to the west of that residence. Continuing west along Marine Parade there is the "unnamed lane" (the applicant's contention) or Pearl Street (the respondents' contention); then a fire station on the corner, which has no number physically attached to it; then an apartment block to which is physically attached the number 156. Thus, the physically attached numbers go from 152 to 156, with the police station and the fire station between.

28 A similar issue of more than one address arose in *Csillag*. There the development site was a penthouse in a large apartment building at Double Bay with frontages to both New South Head Road and Edgecliff Road. Woollahra Municipal Council's rating records recorded the address as 325 New South Head Road; its property database recorded the address as either 325 or 335 New South Head Road for the western and eastern arms of the apartment building respectively. However, its heritage records recorded the address as 353 Edgecliff Road. The street number affixed to the gatepost at the Edgecliff Road entry was 353. The development application nominated the address as 335 New South Head Road. Craig J formulated the following test at [41]:

> ...I have concluded that the provisions of the DCP pertaining to notification and advertisement are to be interpreted in the purposive manner that I have earlier indicated. The information either advertised or notified must be sufficient in its identification of the land to which the development application pertaining to apartment 15 relates so that those reading the advertisement or notification letter could reasonably understand where on this site the development was contemplated.

His Honour also said at [51]:

> ...I can accept that if a given site or property has a single address that is recorded by a Council for rating purposes, the fact that a small section of the community identifies the site by a means other than its "official" address would not ordinarily require that the latter be the subject of advertisement required by a plan such as the DCP.

29 The DCP required the notification letters to contain the "address of the site (Lot No. Deposited Plan, and House No.)". The essential requirement is that the address of the site must be notified. The words in parentheses may be examples or alternatives of how this can be done rather than cumulative requirements. Of course, there may be no house number.

30 The notification letters gave the correct lot number and deposited plan number and indicated that the address was the site of the existing Kingscliff police station. The point of contention is that they gave the street address as Pearl Street. The applicant contends that the address of the Site was in Marine Parade (although the applicant does not contend for a particular number in Marine Parade). The Kingscliff police station was in fact known by two different addresses: 154 Marine Parade and Pearl Street, depending on the source of information: see above at [24] – [25]. In my view, looking at the notification letters as a whole, the recipients would have understood the letters' reference to "Pearl Street", read in conjunction with the reference to the police station, to be the western frontage of the Site: see above at [22]. The reference in the notification letters to the Kingscliff police station provides something extra in communicating to them the address of the Site. That is because a police station has a special identity which distinguishes it from the general ruck of development sites, particularly in a small community such as Kingscliff and particularly where the notification letters were only sent to owners and residents of adjacent land or land in the immediate vicinity. In that respect, a development at the address of a police station bears some comparison to, although it is not as striking an example as, say, a notification of a development in Hyde Park, central Sydney, to owners of nearby properties.

31 In my opinion, the references in the notification letters to the correct lot and DP number, to Pearl Street — being the address in the Council records — and to the Kingscliff police station, were sufficient to identify the address of the Site to recipients of the notification letters, being owners of adjacent land or land in the immediate vicinity.

32 Accordingly, I do not accept the address ground of challenge.

SECOND GROUND: DESCRIPTION OF THE PROPOSAL

33 Clause A11.2.2(c) of the DCP required the notification letters to contain "a brief description of the proposal expressed as informatively as possible in a short statement".

34 The words "as informatively as possible" set the bar quite high, although they are tempered by the requirements that the description be brief and the statement short.

35 The description of the proposal in the development application is:

> Demolition of existing police station and the adjoining two residences. Construction of a new two storey police station and basement parking.

36 The description of the proposal in the notification letters is:

> demolish the existing Police Station and construct a new two (2) storey Police Station at Lot 701 DP 1002309, Pearl St Kingscliff.

37 Thus, the notification letters omitted to say that the two residences on the Site were also to be demolished and that the new police station was to have basement carparking. The applicant submits that s 79A(2) of the EPA Act was thereby breached.

38 The context is that the SEE accompanying the development application indicates that the Site has an area of 3,802 square metres. The SEE

includes plans showing that the existing single storey police station occupies only a small part of the Site and that the two existing single-storey police owned residences also each occupies only a relatively small area of the Site (Annexure A hereto). In contrast, the SEE includes plans showing that the proposed new two-storey police station would cover most of the Site including the footprints of the existing police station and two residences (Annexure B hereto) and that it would have basement carparking. The explanation for the much larger new police station appears to lie in the SEE's description of the proposed development as being designed as the new location of the Tweed Byron Command, suggesting a larger requirement than that of a local police station.

39 In my opinion, by reason of the said omissions outlined at [37] above, the notification letters do not satisfy the requirements of cl A11.2.2(c) of the DCP. Those reading the notification letters could reasonably but erroneously understand that only the existing police station – and not the two residences on the Site – were to be demolished and that the new police station would not intrude on the footprints of the existing residences. It is necessary to describe the proposal as including not only demolition of the police station but also the two residences in order to adequately indicate that the proposed new police station would be very much larger than the old and hence have a greater intensity of use. Similarly, it is necessary to describe the proposal as also including an underground storey (the basement) in order to adequately indicate still greater intensity of use of the Site. For good measure, it should also be indicated that the new police station is for the Tweed Byron Command. In my opinion, without this information, the notification letters do not satisfy the requirement of cl A11.2.2(c) that they contain "a brief description of the proposal expressed as informatively as possible in a short statement". Therefore there is a breach of s 79A(2) of the EPA Act.

40 Accordingly, I uphold the description ground of challenge.

INVALIDITY

41 The next question is whether the breach would invalidate the development consent. In my opinion it would on the basis of the legal principles analysed above at [9] – [16], subject to consideration of Division 3 of Part 3 (ss 25A - 25E) of the *Land and Environment Court Act* 1979.

SECTION 25B LAND AND ENVIRONMENT COURT ACT

42 Section 25E of the *Land and Environment Court Act* imposes a duty on the Court to consider making an order under Division 3 of Part 3 of that Act instead of declaring or determining that a development consent to which that Division applies is invalid in whole or in part. Sections 25B and 25C provide:

> **25B Orders for conditional validity of development consents**
>
> (1) The Court may, instead of declaring or determining that a development consent to which this Division applies is invalid, whether in whole or in part, make an order:
> (a) suspending the operation of the consent in whole or in part, and
> (b) specifying terms compliance with which will validate the consent (whether without alterations or on being regranted with alterations).
>
> (2) Terms may include (without limitation):
> (a) terms requiring the carrying out again of steps already carried out, or
> (b) terms requiring the carrying out of steps not already commenced or carried out, or
> (c) terms requiring acts, matters or things to be done or omitted that are different from acts, matters or things required to be done or omitted by or under this Act or any other Act.
>
> **25C Orders for validity of development consents**
>
> (1) On application by the Minister or any other consent authority for an order under this subsection on the grounds that the terms specified under section 25B have been substantially complied with and that it is not proposed that the relevant development consent be regranted with alterations, the Court may make an order:
> (a) declaring that the terms have been substantially complied with, and

(b) declaring that the consent is valid, and
(c) revoking the order of suspension.

(2) On application by the Minister or any other consent authority for an order under this subsection on the ground that the terms specified under section 25B have been substantially complied with and that the development consent has been regranted with alterations as referred to in section 103 of the *Environmental Planning and Assessment Act 1979*, the Court may make an order:
(a) declaring that the terms have been complied with, and
(b) declaring that the development consent has been validly regranted, and
(c) declaring that the suspended development consent has been revoked, and
(d) revoking the order of suspension.

43 The respondents submit that an order should be made under s 25B. The applicant opposes the making of such an order.

44 The process of suspension of a development consent and validation under ss 25B and 25C was recently discussed by me in *Hoxton Park Residents Action Group Inc v Liverpool City Council (No 3)* [2012] NSWLEC 43 at [30] – [41]. A significant difficulty in making a s 25B order and a subsequent validation order under s 25C is being able to craft appropriate orders which will not only lead to a validation of either the original consent or the regranted consent, but to do so in a way which does not impede or frustrate the objects of the statutory notification requirements breached and the intended statutory process for consideration and determination of a development application: *Simpson v Wakool Shire Council* [2012] NSWLEC 163 at [100]. In that case, Preston CJ declined to make a s 25B order, reasoning at [101] – [103]:

> 101 In the circumstances of this case, I do not consider that it would be appropriate to suspend the operation of the development consent on terms that the Council give notice of the development application in accordance with DCP 8 and s 79A(2) of the EPA Act and then reconsider and redetermine the development application taking into account any submissions received in response to the notification.
>
> 102 As I have observed earlier, compliance with the mandatory requirements for notification of development applications is in the public interest. Public participation in the development process is crucial to the integrity of the planning system under the EPA Act and promotes the objects of the EPA Act.

> It is not to be viewed as a technical and tokenistic speed hump designed to slow but not divert or prevent the inexorable passage of a development application along the highway to approval. To the contrary, if notification is undertaken in accordance with the statutory requirements, the consent authority's consideration and determination of the development application might change.
>
> 103 One cannot know who might make submissions in response to being notified, what the content of their submissions might be, how cogent or compelling their submissions might be, or how the Council might consider and weigh their submissions. The matters the Council as consent authority is obliged to consider under s 79C of the EPA Act, the facts and circumstances of the matters, and the relative weight to be assigned to the matters, might all change as a result of the new submissions and the Council's consideration of them. There is utility in having the process of notification, submission, consideration and determination of the development application undertaken in accordance with the EPA Act. This should be done not in the shadow and servitude of a suspended existing development consent pending validation but in the light and freedom of a development application that has become undetermined by reason of the existing development consent being set aside.

45 I respectfully agree and apply this reasoning in the present case.

46 In *Csillag* Craig J did make an order under s 25B suspending the operation of a development consent on terms requiring re-notification and re-advertising of a development application and subsequently, an order under s 25C declaring that the development consent had been validly regranted. However, in that case, where the address was insufficiently described, the nature of the proposed development and its impacts were different to the present case. There the proposed development involved alterations and additions to one apartment in a residential flat building. The impacts, if any, would be limited to relatively few people and the proposed alterations and additions were relatively small in their scope of works and costs. It was in those circumstances that his Honour considered it appropriate to make a s 25B order: at [59]. In contrast, the proposed development in the present case is of a large police station on a large site in a prominent position in a prominent street and likely to have significant impacts on

many people, whether they own or reside on land in the vicinity or pass by or enter the Site.

47 For these reasons, I do not consider it appropriate to make an order under s 25B.

COSTS

48 The active parties have requested that costs be reserved and the submitting parties have submitted save as to costs. Costs will be reserved.

ORDERS

49 The orders of the Court are as follows:

(1) Declaration that development consent to development application DA 11/0257 for demolition of the existing police station and the adjoining two residences and construction of a new two-storey police station and basement carparking on land described as Lot 701 DP 1002309 is invalid.

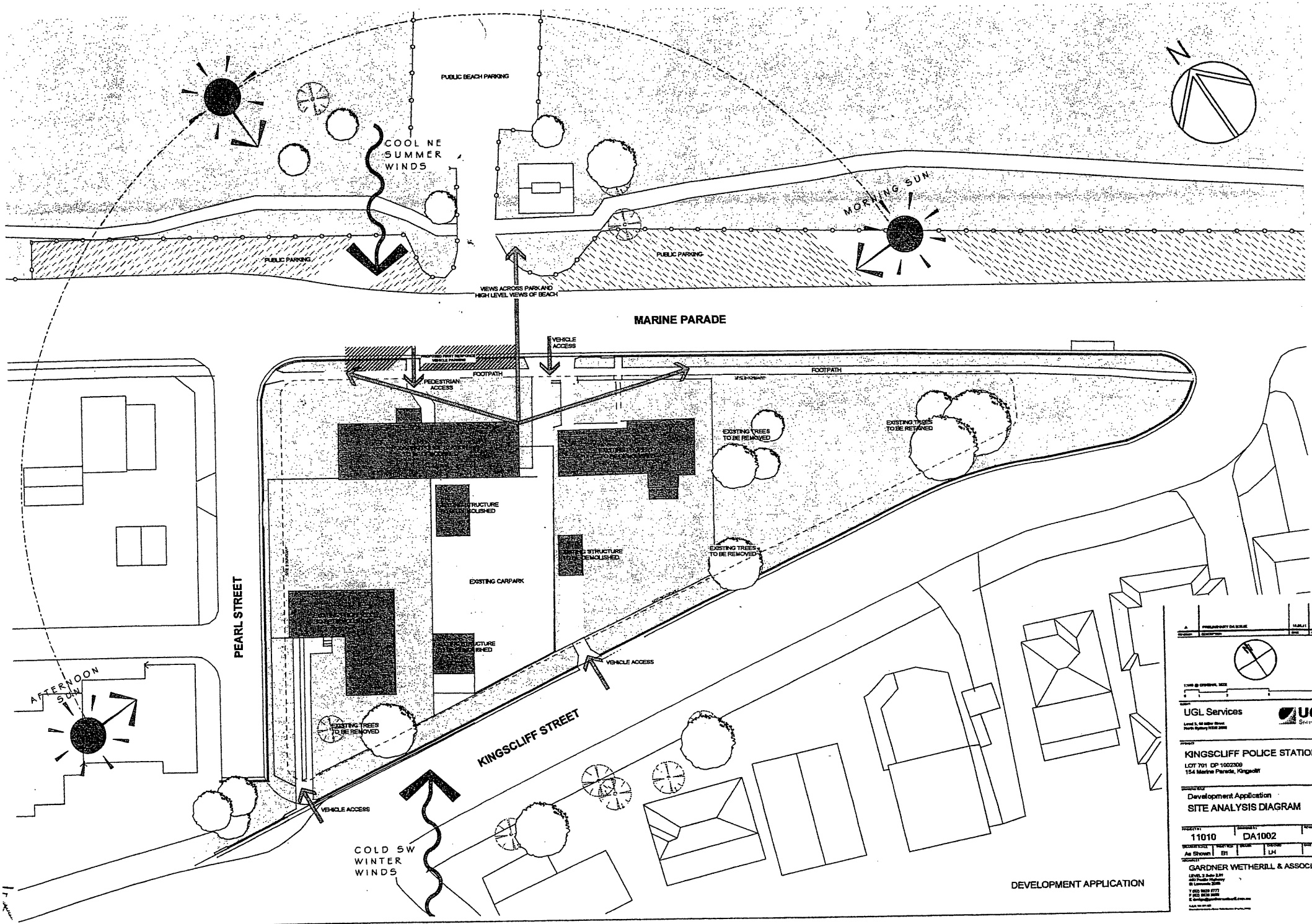
(2) Order restraining the third and fourth respondents, their servants and agents from acting on the said development consent.

(3) Costs are reserved. The parties are within two working days to approach the Registry to have the matter listed before me as soon as possible to determine the issue of costs and are to file and serve any evidence and submissions on costs by two working days before the costs hearing.

I CERTIFY THAT THIS AND THE 19 PRECEDING PAGES ARE A TRUE COPY OF THE REASONS FOR THE JUDGMENT OF THE HONOURABLE JUSTICE P.M. BISCOE.

Associate

Date 26 July 2012


PUBLIC BEACH PARKING
COOL NE SUMMER WINDS
MORNING SUN
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PUBLIC PARKING
VIEWS ACROSS PARK AND HIGH LEVEL VIEWS OF BEACH
MARINE PARADE
VEHICLE ACCESS
FOOTPATH
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PEDESTRIAN ACCESS
EXISTING TREES TO BE REMOVED
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COLD SW WINTER WINDS
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UGL Services
KINGSCLIFF POLICE STATION
LOT 701 DP 1002309
154 Marine Parade, Kingscliff
Development Application
SITE ANALYSIS DIAGRAM
11010
DA1002
As Shown
B1
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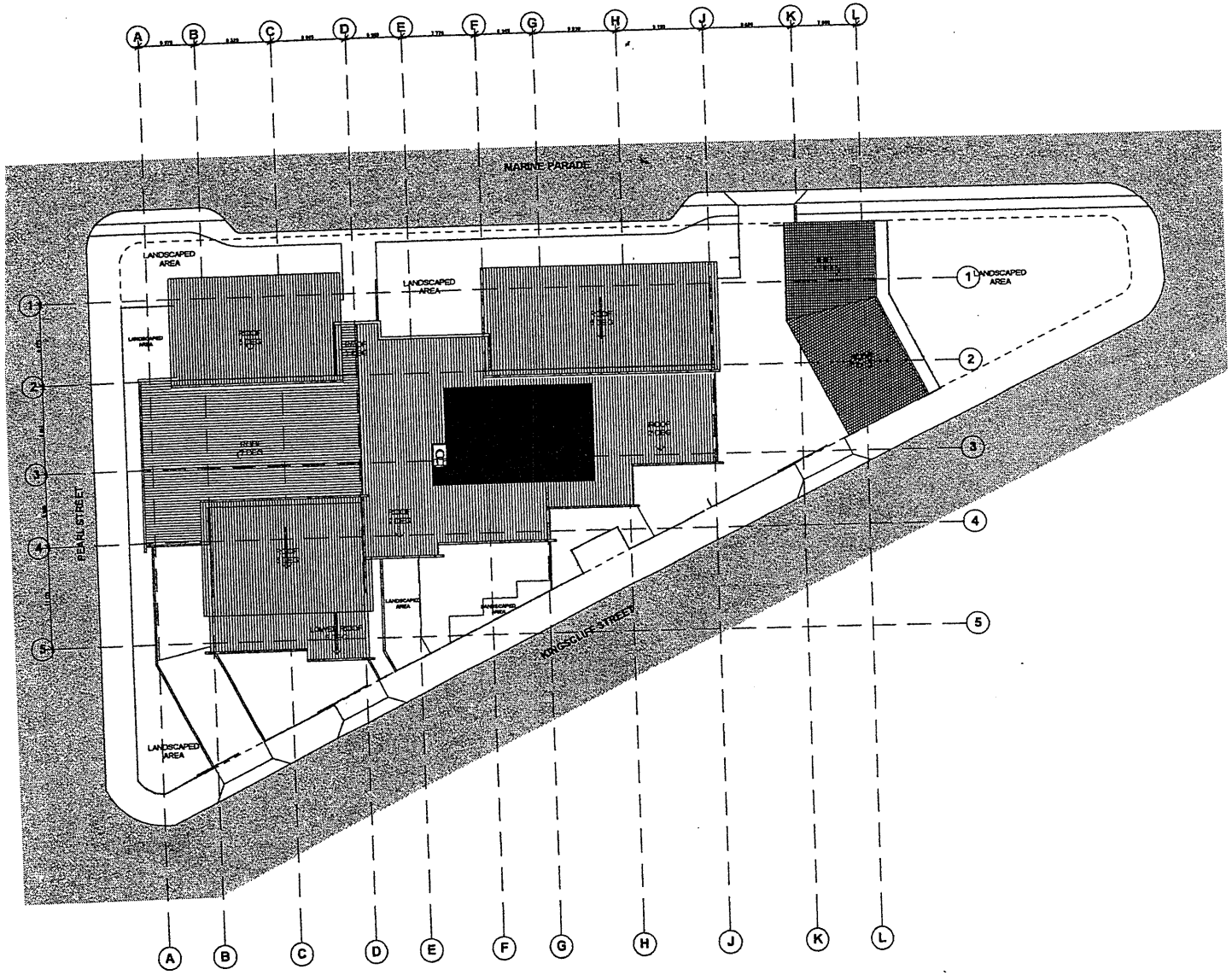
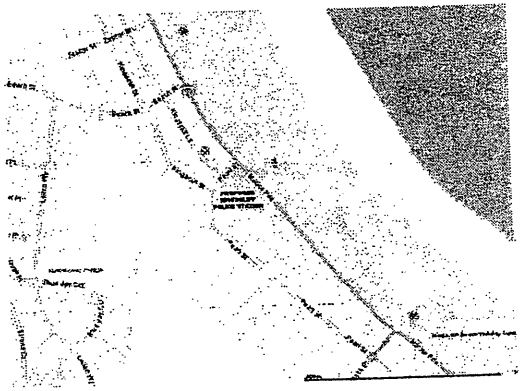
GARDNER WETHERILL & ASSOCIATES
DEVELOPMENT APPLICATION

ANNEXURE A



1 Plan - Roof
SCALE - 1:200



LOCATION PLAN
NOT TO SCALE

ANNEXURE B

UGL Services

KINGSCLIFF POLICE STATION
LOT 701 DP 1002309
154 Marine Parade, Kingscliff

Development Application
Site Plan

Project No	Drawing No	Revision
11010	DA1001	A
Scale @ A1	Plot Date	Drawn	Checked
As Shown	81		LH

GARDNER WETHERILL & ASSOCIATES

DEVELOPMENT APPLICATION