

Mayor: Cr K Milne

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

Agenda

Planning Committee Meeting Thursday, 5 December 2019

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 Evaluation

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

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

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

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

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

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

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

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

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

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

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

(3A) **Development control plans**

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

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

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

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

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

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

(6) **Definitions**

In this section:

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

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REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

1 [PR-PC] Pocket Herbs Noise Assessment - Lot 3 DP 1191598 No. 67 Howards Road, Burringbar

SUBMITTED BY: Building and Environmental Health

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
- 3.1.6 Environmental Health - To support public health and environmental safety through education, inspections and enforcement of government rules and regulations

ROLE: Provider

SUMMARY OF REPORT:

On 1 April 2014 Council development consent was granted under delegated authority for DA13/0712, relating to land described as Lot 3 DP 1191598, No. 67 Howards Road Burringbar, for the purpose of a micro herb production facility including two greenhouses, two pump sheds, potting shed/office, water tank, driveway access and associated earthworks.

The facility, Pocket Herbs & Produce, has been operating since 2016 and noise concerns have consistently been raised with Council by adjoining and adjacent residents.

Council has been working with the operator and adjoining/adjacent residents to manage noise and protect amenity. A number of reports have been prepared for Council regarding noise impacts generated from Pocket Herbs.

On 3 August 2017 Council Report 'Pocket Herb Noise Assessment – Lot 3 DP 1191598 No. 67 Howards Road, Burringbar' was considered at Council's Planning Committee Meeting. Council resolved the following in respect of this item:

"That Council, in respect of the compliance actions taken in respect of DA13/0712, relating to land described as Lot 3 DP 1191598, No. 67 Howards Road Burringbar, receives and notes this report on the alleged noise impacts from the operation and endorses the following:

1. *Operator to prepare and submit to Council an Operation Management Plan reflecting the mitigation measures for operation of Greenhouse 1, identified in the Noise Impact Assessment prior to 7 September 2017;*
2. *Operator to provide a further Noise Impact Assessment including monitoring at each of the residences, identified in the Noise Impact Study Rev1 dated 180517, identifying all noise sources emanating from the use of the subject site, and including measured background levels, measured dBALAeq 15min levels and measured dBC levels for each day/evening/night period. NIA to include recommendations for further mitigation where identified and submit this to Council prior to 7 September 2017; the results of this verification shall be the subject of a further report to Council;*
3. *Operator is required to submit to the satisfaction of Council a Noise Impact Assessment prior to the installation of any fans into Greenhouse 2 that demonstrates noise from the operation of Greenhouse 2 will not exceed the approved noise criteria. The assessment is to include the potential cumulative impacts (combined impacts) from the operation of both greenhouses and the mechanical plant equipment on site; the results of this assessment are to be reported back to Council for further review and determination of compliance actions;*
4. *Operator is not permitted to operate greenhouse 2 until Council is satisfied that there will be no noise impacts above the approved noise criteria and written approval has been issued by Council;*
5. *Subject to prior Council approval in points 3 and 4, Operator is required to notify Council of the intended date of operation of Greenhouse 2. Within 30 days from the commencement of operation of greenhouse 2 the operator is required to provide verification testing against the approved noise criteria for the operation of both greenhouses and include recommendations for further mitigation where required; and*
6. *Operator to be advised that acoustic enclosure of the generator, water boiler and any mechanical plant equipment on site is considered necessary and is to be completed by 1 October, 2017.”*

On 7 February 2019 Council Report 'Pocket Herb Noise Assessment - Lot 3 DP 1191598 No. 67 Howards Road, Burringbar' was considered at Council's Planning Committee Meeting. Council resolved that:

- a. *Council provides written approval to use Greenhouse 2 for a trial period of 6 months in accordance with part '4' of the Council resolution of 3 August 2017;*
- b. *Council officers liaise with the site owners to ensure that “Within 30 days from the commencement of operation of greenhouse 2 the operator is required to provide verification testing against the approved noise criteria for the operation of both greenhouses and include recommendations for further mitigation where required;”*
- c. *Council officers to undertake noise logging at the two nearest impacted residences to Pocket Herbs for a period of 6 months and noise logging is to include one 2 week monitoring assessment by an independent consultant. The*

assessment is to use logging equipment, with audio recording capability and data analysis methodology that will determine compliance with the current consent conditions.

- d. *Council officers respond to community noise complaints in the trial period and undertake any compliance action under the POEO Act as required.*
- e. *During the trial period the proponent provide a log book identifying all noise related activities and the neighbours be invited to provide a log of their experienced noise.”*

Council has received a verification report from the site owners’ acoustic consultant (Attachment 1 to this report) and an independent report from an acoustic consultant commissioned by Council (Attachment 2 to this report) regarding noise from the Pocket Herbs & Produce facility. Both identified use of the misters in Greenhouses 1 and 2 as being potentially problematic regarding noise disturbance.

If noise associated with use of the misters is appropriately managed, it is considered that the facility will be able to demonstrate compliance with the *Protection of the Environment Operations Act 1997* and development consent DA13/0712.

The purpose of this report is to provide Council with an update on the progress on the 7 February 2019 resolution, and to seek Council endorsement of a preferred strategy regarding Greenhouse 2 and the ongoing operations of Pocket Herbs, which is linked to the resolutions of 3 August 2017 and 7 February 2019.

RECOMMENDATION:

That Council, in respect of DA13/0712, relating to land described as Lot 3 DP 1191598, No. 67 Howards Road Burringbar:

- 1. Receives and notes this report on the noise assessment and actions taken on noise impacts from the operation of Pocket Herbs; and**
- 2. That the following further actions are undertaken and reported back to Council prior to Council granting approval to use Greenhouse 2 on a permanent basis:**
 - a) Within 90 days of the date of the resolution of this Item, the site owners are to confirm that they have made suitable arrangements to ensure that the misters currently used for Greenhouses 1 and 2 do not generate offensive noise under the *Protection of the Environment Operations Act 1997*;**
 - b) In respect of Point 1 (a) the site owner is to pay for, and submit an acoustic report from an independent consultant to Council demonstrating that the operation does not generate offensive noise under the *Protection of the Environment Operations Act 1997*; and**
 - c) Council provides written approval to continue to use Greenhouse 2 under a trial period for a further period of 90 days in accordance with part ‘4’ of the Council resolution of 3 August 2017 for the purposes of the further noise monitoring.**

REPORT:

Background

Description of Subject Site

The subject site is known as Lot 3 DP 1191598, Parish Murwillumbah. The site is accessed from Howards Road, via Cudgera Creek Road. Under Tweed Local Environmental Plan the land is zoned RU2 Rural Landscape.

The site is generally surrounded by rural holdings, rural residential and agricultural uses.

The location of the operation in the context of adjacent dwellings is provided in Photo Plate 1. The closest dwelling to Greenhouse 2 is located at 75 Howards Rd and is located within 50 m of the subject property.



Photo Plate 1: Pocket Herbs & Produce, Howards Road, Burringbar

Approvals and Compliance History

On 1 April 2014 Council development consent was granted for DA13/0712 relating to land described as Lot 3 DP 1191598 for the purpose of a micro herb production facility including two greenhouses, two pump sheds, potting shed/office, water tank, driveway access and associated earthworks.

The original proposal did not include the operation of horizontal air flow fans (HAF fans) inside of the greenhouses on a 24 hour and 7 day basis. However general conditions were applied to the consent to allow Council to respond to any noise concerns in a manner that is currently underway.

The operation of fans 24 hours a day does not breach the hours of operation which are currently 7am – 5pm, however it is still important that a noise nuisance cannot be created.

Noise Complaints

The facility has been operating since 2016 and has been the subject of frequent noise complaints relating to the 24 hour operation of fans inside of the greenhouses. It has been alleged that the fan noise is impacting on adjacent residences during night time hours outside of the approved operation hours. It has also been alleged that noise, generally associated with plant and equipment other than HAF fans, is impacting on adjacent residences during approved operation hours.

Council Resolution of 7 February 2019

On 7 February 2019 a Council report titled 'Pocket Herb Noise Assessment - Lot 3 DP 1191598 No. 67 Howards Road, Burringbar' was considered at Council's Planning Committee Meeting. Council resolved the following in respect of this item:

- "a. Council provides written approval to use Greenhouse 2 for a trial period of 6 months in accordance with part '4' of the Council resolution of 3 August 2017;*
- b. Council officers liaise with the site owners to ensure that "Within 30 days from the commencement of operation of greenhouse 2 the operator is required to provide verification testing against the approved noise criteria for the operation of both greenhouses and include recommendations for further mitigation where required;"*
- c. Council officers to undertake noise logging at the two nearest impacted residences to Pocket Herbs for a period of 6 months and noise logging is to include one 2 week monitoring assessment by an independent consultant. The assessment is to use logging equipment, with audio recording capability and data analysis methodology that will determine compliance with the current consent conditions.*
- d. Council officers respond to community noise complaints in the trial period and undertake any compliance action under the POEO Act as required.*
- e. During the trial period the proponent provide a log book identifying all noise related activities and the neighbours be invited to provide a log of their experienced noise."*

Council officers have been working closely with the site owner and surrounding residents to advance each of these resolved items. Table 1 summarises the status of the resolved items.

Table 1: Status of items in the Council resolution 7 February 2019

Item No.	Item	Status and Comments
a.	Council provides written approval to use Greenhouse 2 for a trial period of 6 months in accordance with part '4' of the Council resolution of 3 August 2017	Completed.
b.	Council officers liaise with the site owners to ensure that "Within 30 days from the commencement of operation of greenhouse 2 the operator is required to provide verification testing against the approved noise criteria for the operation of both greenhouses and include recommendations for further mitigation where required"	<p>The verification testing was carried out 10 April 2019. 'Noise Emission Verification Test Report, 67 Howards Road, Burringbar' (CRG Acoustics, 4 November 2019) was forwarded to Council (Attachment 1 to this Business Paper report), which concluded:</p> <p><i>"The bulk of activity observed is in compliance with the numeric criteria, with the exception of the use of the mister in either Shed 1 or 2 assessed at Locations 1 - 4, and the potting plant and compressor when assessed at Location 3, adjacent to the chicken coop. Location 3 was identified as a location unlikely to be occupied by a person, and was assessed to acquire a line of sight to the rear of the potting shed. Noise from the potting shed was within compliant levels, assessed at Locations 2, and 4, and for this reason, it is submitted that noise from the potting machine is acceptable, subject to the roller door being closed.</i></p> <p><i>It is noted that mister noise can only be practically controlled through limitation of hours of use, and this element was addressed in the Noise Management Plan, as being limited to the following hours:</i></p> <ul style="list-style-type: none"> • <i>Monday, Wednesday, Friday 7am – 12pm (midday);</i> • <i>Saturday 8am – 12pm;</i> • <i>No more than 2 hours of continuous use.</i> <p><i>The plant items that operate most commonly are the HAF Fans, which comply with the criteria, due to installation of low noise fans, and control of fan speeds.</i></p> <p><i>Overall, it is concluded that the bulk of noise emissions tested from the operation are in compliance, with the exception of the mister."</i></p> <p>Please note, Sheds 1 and 2 above are Greenhouses 1 and 2 respectively.</p>
c.	Council officers to undertake noise logging at the two nearest impacted residences to Pocket Herbs for a period of 6 months and noise logging is to	<p>Noise logging was carried out between 17 April and 17 October 2019.</p> <p>Data was assessed by JTA Health, Safety & Noise Specialists. 'Environmental Noise Assessment, Pocket Herbs & Produce' (JTA, November 2019) was forwarded to Council (Attachment 2 to this Business Paper report) , which concluded:</p> <p><i>"The results of the environmental noise assessment determined that Pocket Herb & Produce activities can currently exceed with the</i></p>

Item No.	Item	Status and Comments
	include one 2 week monitoring assessment by an independent consultant. The assessment is to use logging equipment, with audio recording capability and data analysis methodology that will determine compliance with the current consent conditions.	<p><i>Intrusiveness and Amenity noise levels on occasion at NSRs at adjacent rural residential land uses during the day time period, 0700-1800.</i></p> <p><i>Based on the combination of the factors discussed in Section 6.3, the likelihood of Pocket Herb & Produce emitting offensive noise levels without the mister, is low. When taking into consideration the mister, the likelihood of Pocket Herb & Produce emitting offensive noise levels is low to moderate.</i></p> <p><i>Further action is recommended to determine if feasible and reasonable noise mitigation measures are available to be implemented to reduce site noise emissions from the mister. Further action should be considered for the excavator and, if required, for other site noise sources as well as management controls to achieve acceptable noise outcomes.</i></p> <p><i>Based on the results of the assessment the relevant DA conditions associated with the operation of the facility were found to be generally compliant. Some conditions are outside the scope of this assessment or not applicable such as DA conditions 18 and 19.</i></p> <p><i>DA condition 43. States the following:</i></p> <p><i>43. 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.</i></p> <p><i>Compliance with DA condition 43. can be differed to the outcomes of Section 7.1.1 above and Section 6.3."</i></p>
d.	Council officers respond to community noise complaints in the trial period and undertake any compliance action under the POEO Act as required.	<p>Two specific noise complaints were recorded in Council's electronic records system during the trial period for Greenhouse 2.</p> <p>The first complaint was made to the operator, which was responded to by the operator.</p> <p>The second complaint was made to Council, which was responded to by Council officers at the resident's property.</p>
e.	During the trial period the proponent provide a log book identifying all noise related activities and the neighbours be invited to provide a log of their experienced noise.	<p>During the trial period residents maintained Resident Noise Diaries and the operator maintained Operator Noise Records.</p> <p>Diaries and Records were forwarded to JTA to assist with the assessment.</p>

Discussion

Acoustic Assessment

JTA Health, Safety & Noise Specialists (JTA) was engaged by Tweed Shire Council to perform analysis of a proportion of noise data obtained during a six month noise logging project and prepare a report ('acoustic consultant report'), in accordance with the Council resolution.

Noise loggers were deployed at two nearby properties in close proximity to the Pocket Herbs & Produce facility, which recorded noise levels and audio for the duration of the monitoring period.

The analysis of the noise data was conducted in accordance with the requirements of the *NSW EPA Noise Policy for Industry, 2017*, with additional references to development consent conditions (DA13/0712) and the *Protection of the Environment Operations Act 1997*.

The NSW Noise Policy for Industry, 2017 ('policy') sets out its policies to ensure noise impacts associated with particular industrial developments are evaluated and managed in a consistent and transparent manner. The noise levels in the policy differentiate between noise impacts during the day, evening and night. More stringent levels are applied for evening and night-time periods as it is widely accepted that noise is generally more disturbing in the evening and night as noise sensitive activities occur at those times.

A noise trigger level provides a benchmark or objective for assessing a proposal or site. It is not intended for use as a mandatory requirement. The noise trigger level is a level that, if exceeded, would indicate a potential noise impact on the community, and so 'trigger' a management response.

Acoustic Consultant Report

The noise environment at the nearby properties was influenced by activities and operations from Pocket Herbs & Produce. The primary noise sources which exceeded the intrusiveness noise level and amenity noise level were the 14L mixer, forklift and excavator. Other equipment was also audible during the assessed periods, however was found to generally be less than the intrusiveness and/or amenity noise levels or were dominated by extraneous noises.

Fixed plant noise sources associated with the Greenhouse 2 component of the Pocket Herbs & Produce facility was found to be inaudible over extraneous noise sources during the night time period. Random samples were selected from various nights of the assessed two weeks, with no facility noise sources audible. During the day time period no Greenhouse 2 fixed plant noise sources exceeded the trigger noise level.

Measured noise levels associated with the Pocket Herbs & Produce facility can exceed the intrusiveness and amenity noise levels on occasion. The exceedances only occur during the operational hours of the facility between 7am and 5pm on weekdays. The portion of time the facility exceeds the amenity noise levels at the adjacent properties ranges between 1% to 4% over a week during operational hours only. The number of events that exceed the intrusiveness noise level ranges between 8 to 10 times per week.

The likelihood of Pocket Herbs & Produce emitting offensive noise under the *Protection of the Environment Operations Act 1997* without the misters, is low. When taking into consideration the misters, the likelihood of Pocket Herbs & Produce emitting offensive noise is low to moderate.

Further action is recommended to determine if feasible and reasonable noise mitigation measures are available to be implemented to reduce site noise emissions from the misters. Further action should be considered for the excavator and, if required, for other site noise sources as well as management controls to achieve acceptable noise outcomes.

Based on the results of the assessment the relevant DA conditions associated with the operation of the facility were found to be generally compliant. DA condition 43 states the following:

43. *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.*

Compliance with DA condition 43 is inherently linked with the *Protection of the Environment Operations Act 1997*, and has not yet been determined.

Operator Requirements

The acoustic consultant report found the facility exceeds the amenity noise levels at the adjacent properties ranges between 1% to 4% of the time during operational hours only. If Council were to pursue formal regulatory action with the information currently available, the likelihood of success is considered to be low.

Substantial professional resources have been allocated to investigation of noise sources at the Pocket Herbs & Produce facility. Both the Noise Emission Verification Test Report, 67 Howards Road, Burringbar ('verification report') and the acoustic consultant report identify the mister as being potentially problematic regarding noise disturbance.

If noise associated with use of the mister is appropriately managed, it is considered that the facility will be able to demonstrate compliance with the *Protection of the Environment Operations Act 1997* and development consent DA13/0712. Appropriate management may include removal of the misters from operations, or replacement of the misters with items of plant that comply with the intrusive noise level.

Should neither of these options be possible, the operator may be able to demonstrate compliance by further restricting use via permitted time periods and days under the Operational Noise Management Plan. Should this option be pursued it may be more difficult to demonstrate compliance, and may require further work by acoustic professionals and further reporting to Council.

OPTIONS:

Option 1

That Council, in respect of DA13/0712, relating to land described as Lot 3 DP 1191598, No. 67 Howards Road Burringbar receives and notes this report on the noise assessment and actions taken on noise impacts from the operation of Pocket Herbs and that the following

further actions are undertaken and reported back to Council prior to Council granting approval to use Greenhouse 2 on a permanent basis:

- a) Within 90 days of the date of the resolution of this Item, the site owners are to confirm that they have made suitable arrangements to ensure that the misters currently used for Greenhouses 1 and 2 do not generate offensive noise under the *Protection of the Environment Operations Act 1997*;
- b) In respect of Point 1 (a) the site owner is to pay for, and submit an acoustic report from an independent consultant to Council demonstrating that the operation does not generate offensive noise under the *Protection of the Environment Operations Act 1997*; and
- c) Council provides written approval to continue to use Greenhouse 2 under a trial period for a further period of 90 days in accordance with part '4' of the Council resolution of 3 August 2017 for the purposes of the further noise monitoring.

Option 2

Council refuses to grant approval for the use of GH2.

Option 1 is recommend as:

- it is considered likely that suitable arrangements may be made to ensure that the misters do not generate offensive noise; and
- various positive and significant actions have been undertaken by the operator to mitigate noise sources.

Importantly, should offensive noise be generated by Pocket Herbs in the future compliance action under the *Protection of the Environment Operations Act 1997* may be taken.

CONCLUSION:

Council received a verification report and an acoustic consultant report from acoustic professionals regarding noise from the Pocket Herbs & Produce facility. Both identified use of the misters as being potentially problematic regarding noise disturbance.

If noise associated with use of the misters is appropriately managed, it is considered that the facility will be able to demonstrate compliance with the *Protection of the Environment Operations Act 1997* and development consent DA13/0712.

The operator has been cooperative with regards to mitigating noise impacts. Fans in greenhouses have been replaced, other equipment has been replaced, acoustic enclosures have been constructed and changes have been made to work practices.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Any decision by Council to take legal action will incur costs not currently accounted for in the Building and Environmental Health Unit budget. It should also be noted that noise investigations and noise mitigation actions taken by Council officers has been extensive.

c. Legal:

Protection of the Environment Operations Act 1997.

d. Communication/Engagement:

Inform - We will keep you informed.

Throughout the assessment process consultation with effected parties and the operator of the facility has been undertaken and this will continue with the aim to resolve matters to the satisfaction of all parties.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.	Noise Emission Verification Test Report, 67 Howards Road, Burringbar (CRG Acoustics, 4 November 2019) (ECM 6151807)
Attachment 2.	Environmental Noise Assessment, Pocket Herbs & Produce (JTA, November 2019) (ECM 6151808)

2 [PR-PC] Development Application DA13/0712.01 for an Amendment to Development Consent DA13/0712 for a Micro Herb Production Facility including Two Greenhouses, Two Pump Sheds, Potting Shed/Office, Water Tank, Driveway Access and Associated Earthworks at Lot 3 DP 1191598 No. 67 Howards Road, Burringbar

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you

We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: Provider

SUMMARY OF REPORT:

UPDATED SUMMARY OF REPORT SINCE COUNCIL MEETING OF 24 OCTOBER 2019

This modification application was originally reported to the Council Meeting of 24 October 2019 at which it was resolved:

"RESOLVED that that this item be deferred for consideration after the Acoustic report currently being prepared for this site is finalised by Council to allow the assessment of any additional noise impacts."

As detailed in the report of 24 October 2019 (included below), operations at the subject site have been the subject of noise logging and assessment. The monitoring and management of noise issues at the site relates primarily to the use of Greenhouse 2 and the noise generated from the use of some plant and equipment. These matters are separate to the matters to which this modification report relate.

Noise monitoring at the site has now been completed (mid October 2019) and the associated acoustic consultants' report was submitted to Council on 22 November 2018. The results of the noise logging and recommendations of the acoustic consultant report are the subject of a separate report to Council on this Business Paper. The Pocket Herbs Noise Assessment Council Report of 5 December 2019 recommends that Council seeks further independent testing of the Greenhouses to determine how the current misters can be modified to ensure

that they do not generate offensive noise under the Protection of the Environment Operations Act 1997.

This modification application does not relate to the operation of Greenhouse 2 or directly relate to the use of misters. This modification application primarily seeks approval for the use of existing structures constructed without prior approval and to rectify inconsistencies with current operations and the approved site plan. Any noise associated with the use of the existing structures would have been captured in the acoustic monitoring and assessment.

The new items included in this modification application include additional growing pods and garden beds representing a relatively minor increase of 1.77% of the total growing area of the site. Activities associated with the additional growing area (i.e. any potential use of misters) will be subject to the recommendations of Council regarding the future use of misters and the provisions of the Protection of the Environment Operations Act 1997.

This application also includes approval for the use of an existing bore for irrigation purposes subject to a licence approval from Water NSW. The use of the existing bore has not been identified as being a noise generating item and is considered to be able to comply existing conditions of consent and the Protection of the Environment Operations Act 1997.

Accordingly, it is recommended that this modification application be approved subject to the recommended modified conditions of consent.

The remainder of this report remains unchanged from the original report presented to Council at the meeting of 24 October 2019.

SUMMARY OF REPORT:

Council is in receipt of a Section 4.55 Application to amend the development consent for a micro herb production facility operated by Pocket Herbs and Produce at 67 Howard Road Burringbar.

Development Consent DA13/0712 was approved by Council under delegated authority on 1 April 2014 and the facility began operation in 2016. This application was initially lodged to seek approval for the use of two soil bays, staff canteen and two storage containers constructed without development consent. The application was modified 25 February 2019 to seek approval for additional garden beds and plant pods as well as the use of an existing bore for irrigation purposes.

The existing structures constructed without prior development approval are ancillary to existing site operations and are to be the subject of a Building Information Certificate.

This application also seeks to amend the site plan to reflect actual site layout and to include water tanks and a composting toilet that was the subject of the original application but not included on the approved site plan. As the current layout does not comply with previous stormwater approvals, the amended consent will require a new S68 stormwater approval.

The application was referred to Essential Energy with regard to the proximity of existing structures to an electricity easement. Rectification works and certification required to be undertaken by the applicant at the request of Essential Energy resulted in delays in the assessment of this application. Essential Energy are now satisfied with the location of all structures on site.

The additional growing area being the new proposed garden beds (19m²) and plant pods (approximately 55m²) represent a relatively minor increase (1.77%) to the existing approved greenhouses totalling 4,187m². The use of these areas is consistent with the current approval for a rural industry (micro-herb production). The use of these areas is not considered to generate additional unacceptable environmental impacts and therefore are considered worthy of approval.

The application was referred to the Natural Resource Access Regulator (NRAR) with regard to the new additional garden beds and grow pods in proximity to a water way. Extensive delays in NRAR providing a response to the application have further extended the assessment timeframe for this application. NRAR have provided comments stating that they have no objections to the location of the garden beds or growing pods.

The conversion of an existing bore for irrigation purposes is the subject of separate water licence application with Water NSW and is currently being assessed by Department of Planning, Industry and Environment. In accordance with previous water extraction development approvals, it is considered that the use of the existing bore for irrigation purposes requires development approval as it is associated with a use that required development consent being the existing approval rural industry DA13/0712. Additional conditions of consent are recommended that require compliance with any water licence issued and monitoring of water extraction volumes.

The operations at the site have been the subject of several Council reports addressing noise impacts from current site operations. The most recent of these reports was considered by Council on 7 February 2019 in which it was resolved to undertake noise logging and assessment to determine compliance with current consent conditions. Noise monitoring is ongoing in accordance with this resolution and is being addressed separately to this application.

It is considered that the matters relating to this modification application do not result in significant additional noise impacts noting that many of the structures are existing and subject to current noise monitoring and assessment activities.

The applicant has shown a willingness to work with Council to negotiate achievable outcomes in relation to operational issues associated with the site.

RECOMMENDATION:

That Development Application DA13/0712.01 for an amendment to Development Consent DA13/0712 for a micro herb production facility including two greenhouses, two pump sheds, potting shed/office, water tank, driveway access and associated earthworks at Lot 3 DP 1191598 No. 67 Howards Road, Burringbar be approved subject to the following amended conditions and new additional conditions.

1. The following new conditions are to be added:

- 1.1 The development shall be completed in accordance with the following additional plans and Modification Report dated March 2018 (as amended in red):**

- Amended site plan submitted 7 March 2019 (Page 1);
- Plan of additional structures dated 14 March 2018;
- Photographs dated 14 March 2018;
- Staff canteen building - Floor plan dated 14 March 2018;
- Staff canteen Section 1-1 dated 14 March 2018;
- Staff canteen Elevations A & 1 dated 14 March 2018;
- Staff canteen Elevations B & 2 dated 14 March 2018.

3.1. A Building Information Certificate is to be obtained for the following structures as indicated on Plan of additional structures dated 14 March 2018:

- Block work soil bays (item 1);
- Pump houses (item 2);
- 6 x 22,000 litre water tanks (item 3);
- Staff canteen (item 4);
- Generator shed (item 5);
- Shipping container (item 6);
- Insulated container (item 7);
- Hardstand area and soil bay (item 8) ;
- Composting toilet (item 9).

The Building Information Certificate application is to include:

- i) structural engineers certification in respect of the structures, and
- ii) demonstrate and/or provide certification the structures satisfy the requirements of the BCA - 2016.

9.1. Prior to the issue of a Building Information Certificate, permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) Details of stormwater management 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) Specific Requirements to be detailed include:
 - (i) Runoff from all hardstand areas, (including driveway and hardstand parking areas and excluding roof areas) must be treated to remove oils, sediments and gross pollutants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 - Stormwater Quality, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Building Certificate.

- 9.2. Within 90 days of the issue of this amended development consent, a detailed Surface Water Management Plan developed by a suitably qualified person shall be submitted for consideration and approval by Council's General Manager or delegate. The Surface Water Management Plan should include, but not be limited to:**
- Detailed baseline data on water quality of the 3rd order stream intersecting the property (sampling points within the 3rd order stream should include, but not be limited to, the upstream boundary of the property, within the property, and downstream of the property);
 - A detailed description of the water management system on site (including surface water, storm water, waste water);
 - Detailed plans, including design objectives and performance criteria for the:
 - Permanent sediment and erosion control measures for all existing anthropogenic structures and disturbance/activities within the riparian zone;
 - Detailed performance criteria for the following, including trigger levels* for investigating any potentially adverse impacts associated with the operation:
 - The water management system;
 - Downstream surface water quality;
 - A program to monitor and report on:
 - The effectiveness of the water management system;
 - Reporting procedures for the results of the monitoring program;
 - A plan to respond to any exceedances of the performance criteria, and mitigate any adverse surface water impacts of the operation.

***Note: Trigger levels for investigation should additionally include post rain events.**

- 9.3. Within 30 days of the date of issue of this amended development consent, a drinking water quality management plan or drinking water quality assurance program prepared in accordance with the Private Water Supply Guidelines NSW Health 2016 and the Public Health Regulation 2012 shall be prepared and maintained on site. All activities shall comply with the adopted assurance program and the program shall be made available to Council's Authorised Officer upon request.**

- 12.1 This consent approves the use of an existing bore for irrigation purposes in association with the approved Rural Industry. The Applicant is to maintain all relevant licences and permits from State Agencies (e.g. Water NSW) as statutorily required while ever acting on this consent. The State licences are to cover the extraction amount authorised by this consent being up to a maximum of 20ML strictly for onsite irrigation purposes only.**

The use of the bore for irrigation purposes shall not commence until all relevant State licenses are issued. A copy of any State licences shall be provided to Council once issued.

12.2 Groundwater volumes extracted from the site are to be continuously recorded in perpetuity whilst extraction operations for irrigation purposes are on-going. The following is required at a minimum:

- (a) A digital flow meter is to be installed and maintained at each extraction bore used for irrigation extraction so that pumping times and pumping volumes can be recorded. Data from the bores are to be downloaded at routine time intervals and kept for future reference.**
- (b) A digital flow meter is to be installed and maintained within the pump line at the point where water is pumped to the tanks. Data from the pumped line meter is to be downloaded at routine intervals and kept for future reference.**
- (c) Access to the bores and monitoring equipment by Council or its representatives shall be available upon request at any time.**

REPORT:

Applicant: Pocket Herbs & Produce Pty Ltd
Owner: Hydrogarden Australia Pty Ltd
Location: Lot 3 DP 1191598 No. 67 Howards Road, Burringbar
Zoning: RU2 Rural Landscape
Cost: \$18,000.00

Background:

Council is in receipt of a Section 4.55(2) application to amend the development consent for a micro herbs production facility at the subject site. Development Consent DA13/0712 was granted by Council under delegated authority on 1 April 2014 and approved a rural industry comprising of the following key elements as included in the Statement of Environmental Effects lodged with the original application:

- *Greenhouse 1 = 1 x 72m x 32m x 5.2m high;*
- *Greenhouse 2 = 1 x 56m x 25.6m x 5.2m high;*
- *Pump Sheds (x2) to contain tanks and control equipment and for storage. Tanks will need to be located in suitable pit(s) to enable recirculation.*
 - *Sizes 1 x 10m x 6m and 1 x 11m x 10m (inc. storage);*
- *Potting shed / Office = 1 x 30m x 15m;*
- *Water Tank = Size 8.63m diameter (135,000L), to hold treated water from dam for use in the hydroponic systems. A few other various size tanks will be used to collect roof run off from other sheds;*
- *Toilet facility – 1 x Clivus Multrum Waterless Composting toilet;*
- *Access driveway approximately 120m in length and of bitumen and gravel finished surface, suitable for small rigid vehicle turn-a-round;*
- *Car parking = 16 car parks accessed from the proposed driveway;*
- *Operate seven (7) days a week and MUST pack on Sundays.*

Greenhouse 1 was completed in 2016 and construction of Greenhouse 2 has been completed but is yet to become operational. The facility has been operating since 2016 and noise concerns have been raised with Council by adjacent residences.

In response to the community concerns the operator was required by Council to commission a Noise Impact Study (NIS). The NIS indicated that the operation needed to implement a number of measures to minimise noise impacts and protect the amenity of adjacent residences.

Since preparation of the NIS, Council has been working with the operator and adjacent residents to manage noise and protect amenity. A number of reports have been prepared for the elected Council regarding noise from on-site operations. The most recent report was considered by Council on 7 February 2019. Part of the resolution that followed was:

"Council officers to undertake noise logging at the two nearest impacted residences to Pocket Herbs for a period of 6 months and noise logging is to include one 2 week monitoring assessment by an independent consultant. The assessment is to use logging equipment, with audio recording capability and data analysis methodology that will determine compliance with the current consent conditions."

Council subsequently installed the equipment at the residences and noise logging commenced in early April 2019.

Site visits, maintenance, calibration checks, data collection and remote monitoring have occurred regularly since logging commenced. Noise logging is expected to continue to November 2019. An acoustic consultant will carry out a detailed analysis of data and provide advice to Council regarding compliance with the *Protection of the Environment Operations Act* and the development consent.

Operations at the site were expanded to include the production of edible flowers subject to DA17/0347 approved 22 February 2018. Construction of the plant shelter approved by DA17/0347 is complete and the production of the edible flowers has commenced.

During the assessment of DA17/0347 it was noted that there were inconsistencies between the approved site plan for DA13/0712 and actual physical layout of the site. Additionally it was noted that the site contained additional ancillary structures, notably concrete stock piling bays located adjacent a waterway. As a means of rectifying these inconsistencies the consent for DA17/0347 was imposed with the following condition:

"9. Prior to the issue of a construction certificate for the plant shelter, an application is required to be submitted to Council to seek approval for the stockpiling bays and any other unapproved structures that are not exempt development and are not shown on the plans for DA13/0712."

This application is lodged to comply with the above condition of consent and seeks to obtain approval for the use of the stockpiling bays and other ancillary unapproved structures associated with current operations of the micro herb facility.

History of this application

This application was initially submitted to Council on 3 April 2018. The application was referred to Essential Energy with regard to the electricity easement located on site. Essential Energy identified encroachments into an existing electricity easement and requested additional information and compliance reports regarding existing encroachments into the electricity easement. Essential Energy advised that the proposal was acceptable on 4 July 2019 subject to relocation of the existing composting toilet and works in relation to an existing power pole.

The applicant advised Council on 26 February 2019 that they wish to amend the modification application to seek approval for additional raised garden beds and plant pods. Water NSW informed Council on the 5 March 2019 that an application was received by Water NSW to convert an existing stock and domestic bore to irrigation purposes and to install a pump on the stream for irrigation purposes. As the use of the water bore is for irrigation purposes in association with an activity that needs development approval (rural industry) it was considered that the use of the water bore also requires development approval.

As such the application was amended as follows:

- Four fixed raised garden beds;
- Additional relocatable growing pods;
- Relocation of the composting toilet (to comply with Essential Energy requirements); and

- Use of an existing licensed bore for irrigation purposes.

The amended application was re-notified on 9 April 2019 and referred to the Natural Resource Access Regulator (NRAR) with regard to additional structures (fixed raised garden beds) in proximity to a waterway. Comments from NRAR were received by Council on 18 August 2019.

The assessment of this application has been protracted primarily due delays in the submission of information and certification to satisfy Essential Energy requirements and the delayed response from NRAR.

Site details:

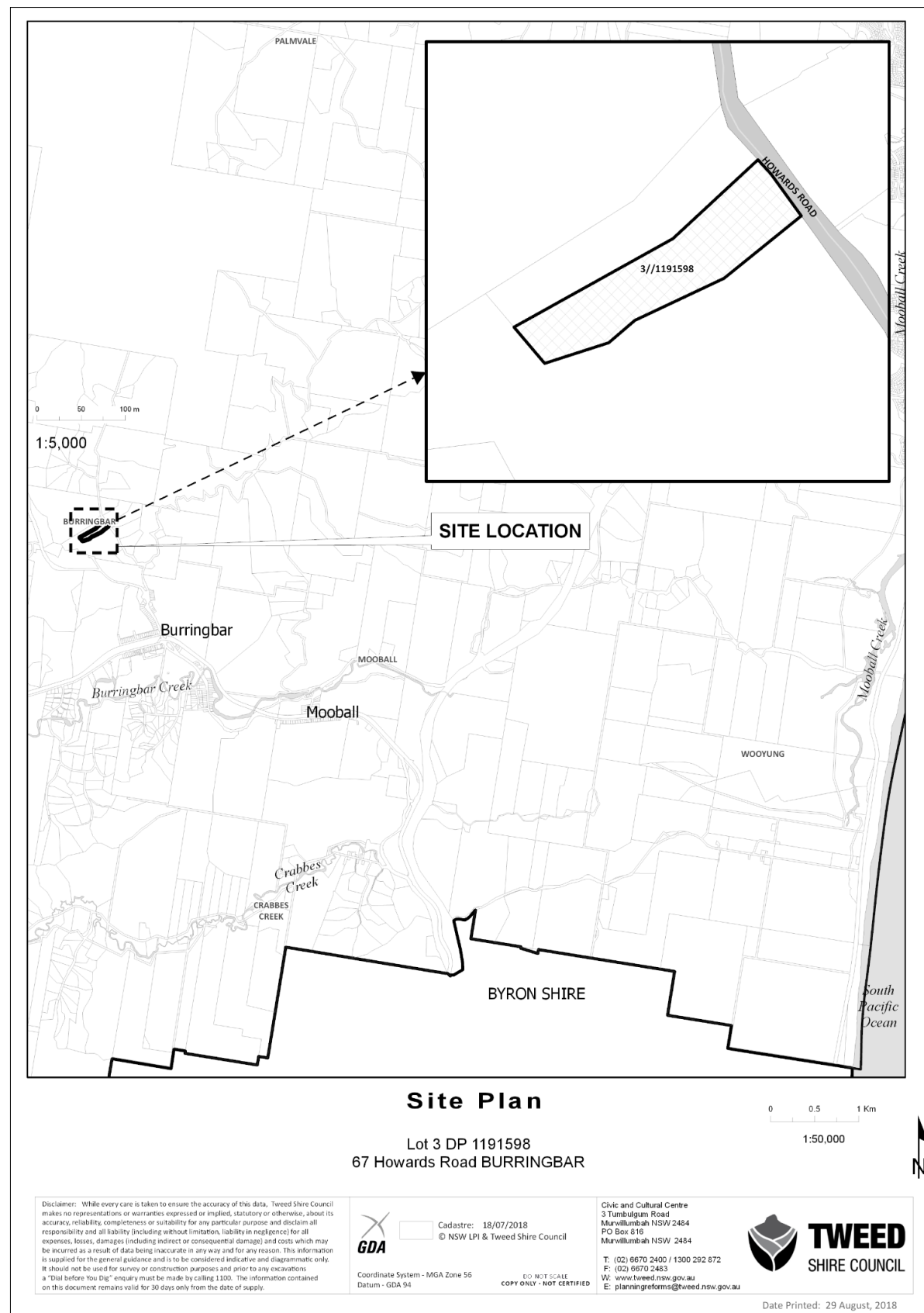
The subject site is 2.27ha (22,700m²) and is roughly rectangular in shape with an 80m frontage to Howards Road. The site is bisected by a perennial stream (Third Order stream) that meanders through the rear portion of the lot. The micro herb production facility is contained on the front portion of the lot which is relatively flat. The land at the rear of the lot beyond the perennial stream is elevated approximately 25m above the stream and contains stands of mature trees.

A two storey dwelling is approved for the rear of the site subject to DA16/0097 granted by Council on 4 February 2016. A construction certificate is yet to be issued for the dwelling which is proposed to be located at the rear of the site which is separated from the existing micro herb production facility by the third order stream.

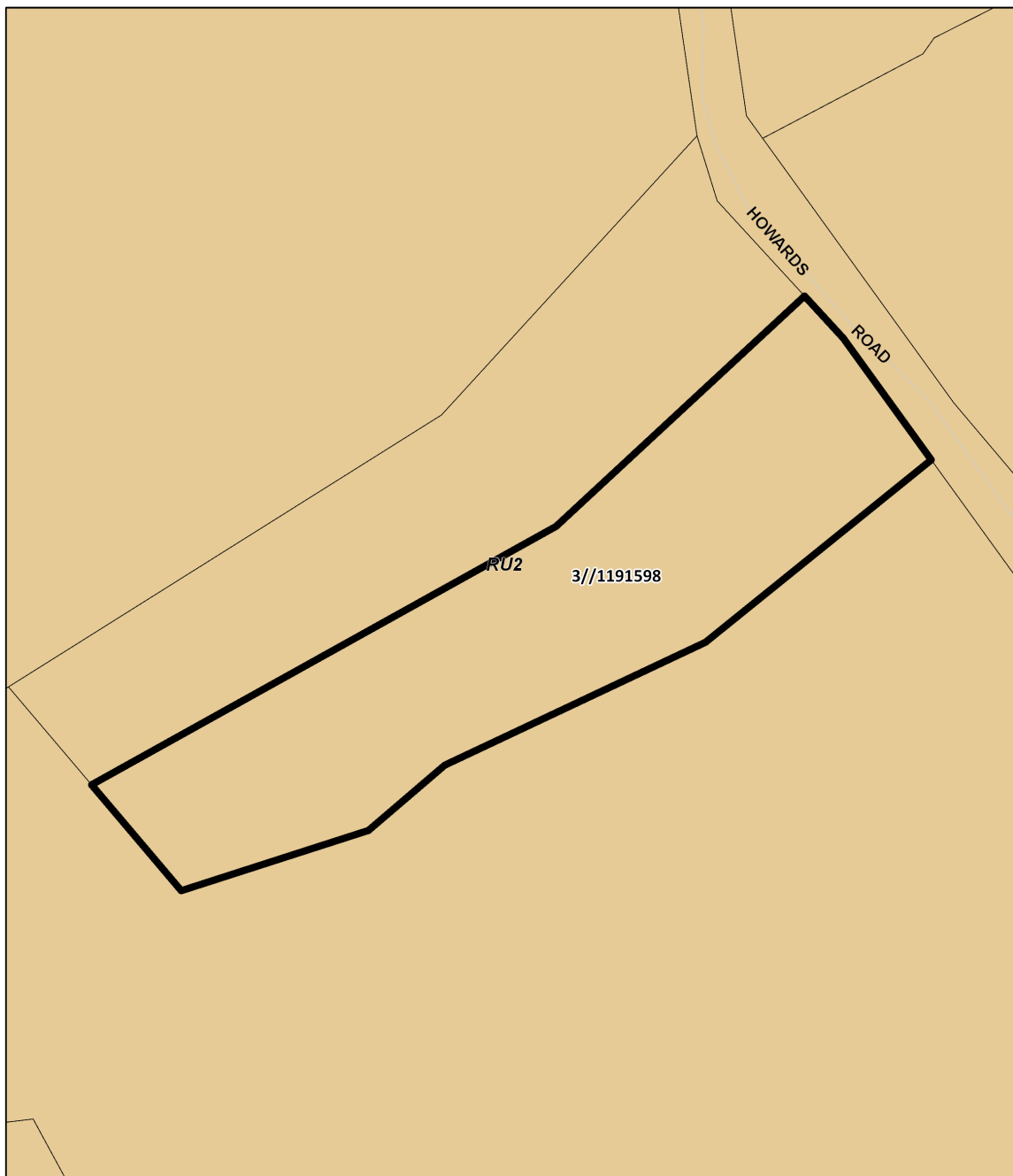
Development Approval DA18/0386 granted by Council under delegated authority on 16 January 2019 approved a private bridge required to access the approved dwelling. The bridge replaces a previous bridge in the same location that was washed away in the April 2017 flood event.

The structures that are the subject of this modification application are located within the development footprint of the existing approved micro herb production facility.

SITE DIAGRAM:

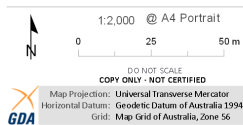


ZONING MAP:



Subject Land
 Subject Land

Tweed Local Environmental Plan 2014
 RU2 Rural Landscape



Site Plan - Local Environmental Plan

Lot 3 DP 1191598
 67 Howards Road BURRENBAR

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 Information (LPI)
 and Tweed Shire Council



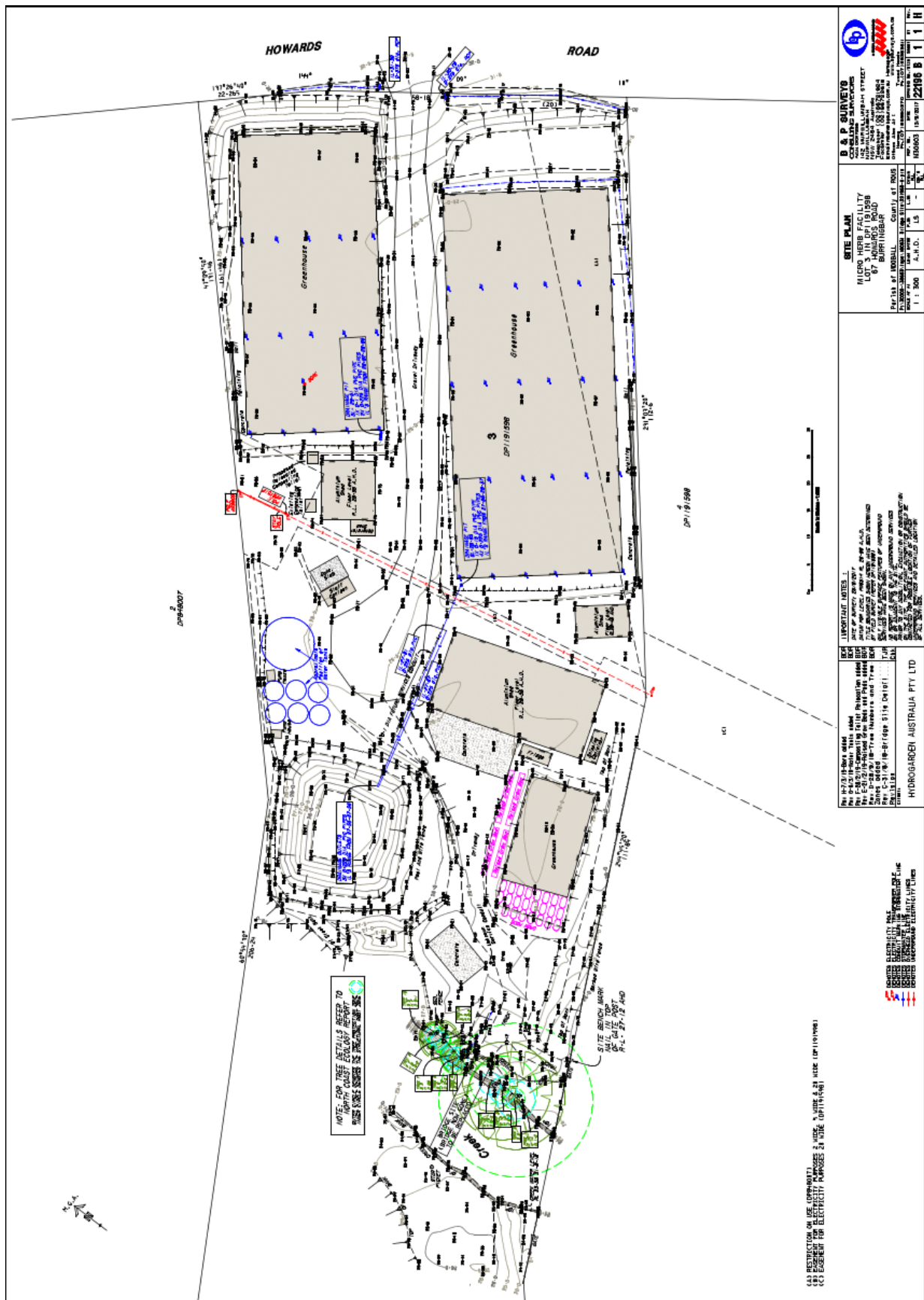
Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaim all responsibility and 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 1100. The information contained on this document remains valid for 30 days only from the date of supply.

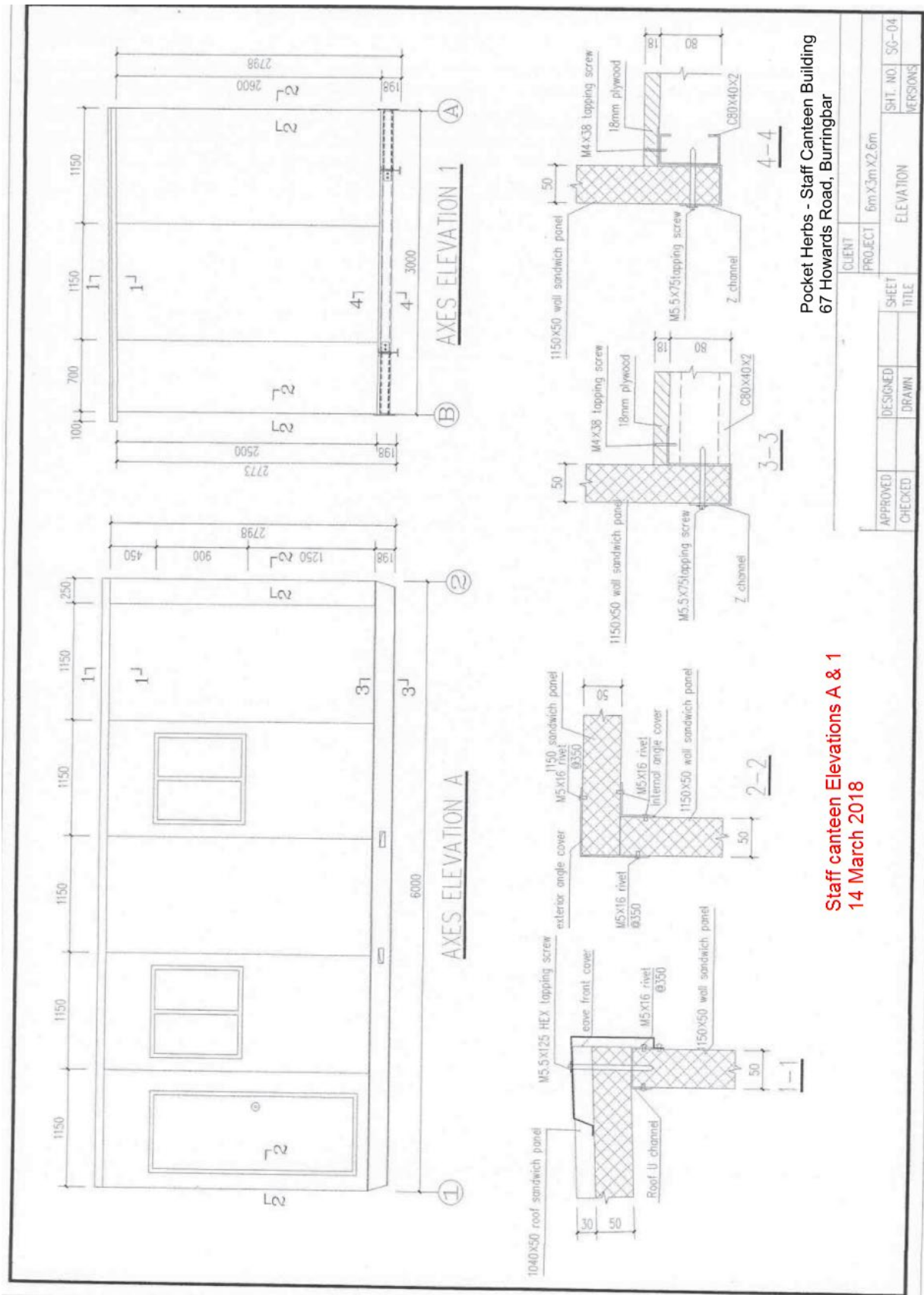
Date Printed: 29 August 2018

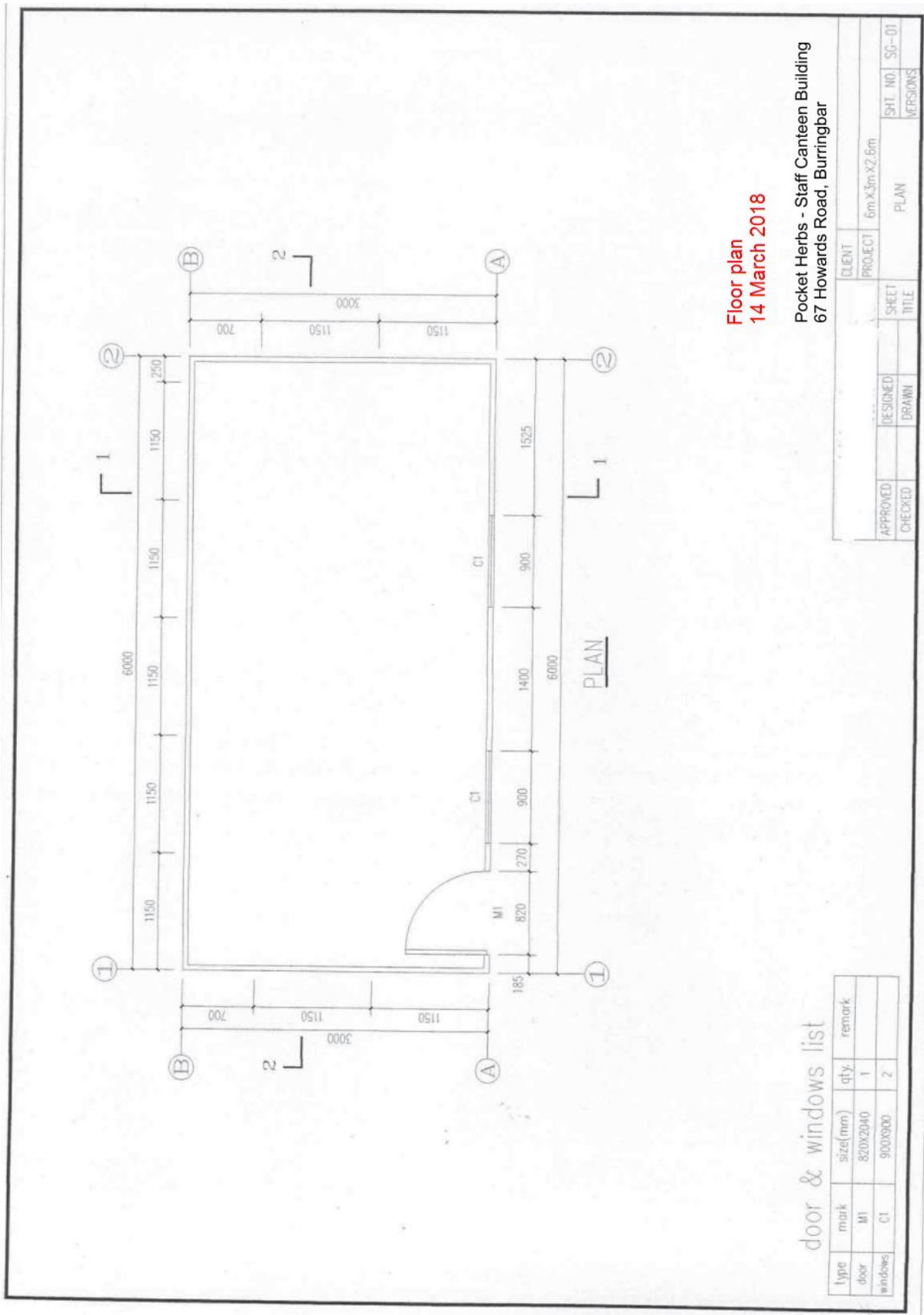
AERIAL:



DEVELOPMENT PLANS







Current site operations

The site is approved for the production of micro herbs and edible flowers. Adjoining residents have voiced their concerns to Council regarding impacts from the development (noise, traffic and environmental). To provide some clarity regarding site operations, the applicant has provided the following summary:

- Herb seed is purchased via on line companies and collected from the post office or on occasion a TOLL van will deliver from one supplier;
- Hydroponic soil is delivered once per fortnight in an 8 metre truck;
- Hydroponic soil is stored in the covered soil bay behind the seedling shed and a mini excavator is used to push the soil into the nominated bay areas;
- Nutrients delivered (once per fortnight);
- Other infrequent deliveries of materials may occur (pots and sleeves – approx. once per year; cartons – approx. once every 6 weeks);
- Seeds are potted in the seedling shed;
- Herbs mature in the greenhouse;
- Herbs packed for transport via small pantech truck to transport company twice a day for three days a week plus one extra trip on Fridays which equates to 7 loads per week;
- Usually 9 staff on site at a time but up to 14 at any one time at busy periods;
- Hours of staff generally 7.30am – 4pm (majority 8am – 3pm);
- Greenhouse fans on during above work hours and are at reduced levels overnight as per operational plan;
- Construction of Greenhouse 2 has been completed;
- Excess herbs (beyond sales) are placed (via forklift) in the free standing soil bay at the rear of the site and the material is then re-used as hydroponic soil; and
- Rain water is captured from the roofs of the greenhouses and other structures and stored in the dam. Water is pumped into holding tanks and treated prior to irrigation of crops.

The above activities are consistent with a horticultural activity and visits to the site have confirmed that this is a generally accurate representation of activities at the site.

Proposed modifications

This modification application seeks approval for the following:

- The use of a number of ancillary structures constructed without development consent being soil bays, staff canteen, insulated container and shipping container;
- Four new fixed raised garden beds (two 9m x 1m and two 10m x 1m);
- Additional relocatable growing pods;
- Relocation of the composting toilet (to comply with Essential Energy requirements);
- Use of an existing licensed bore for irrigation purposes; and
- An amended site plan which shows the location of the additional items and the location of composting toilet and water tanks approved by DA13/0712 that were not shown on the original approved plans.

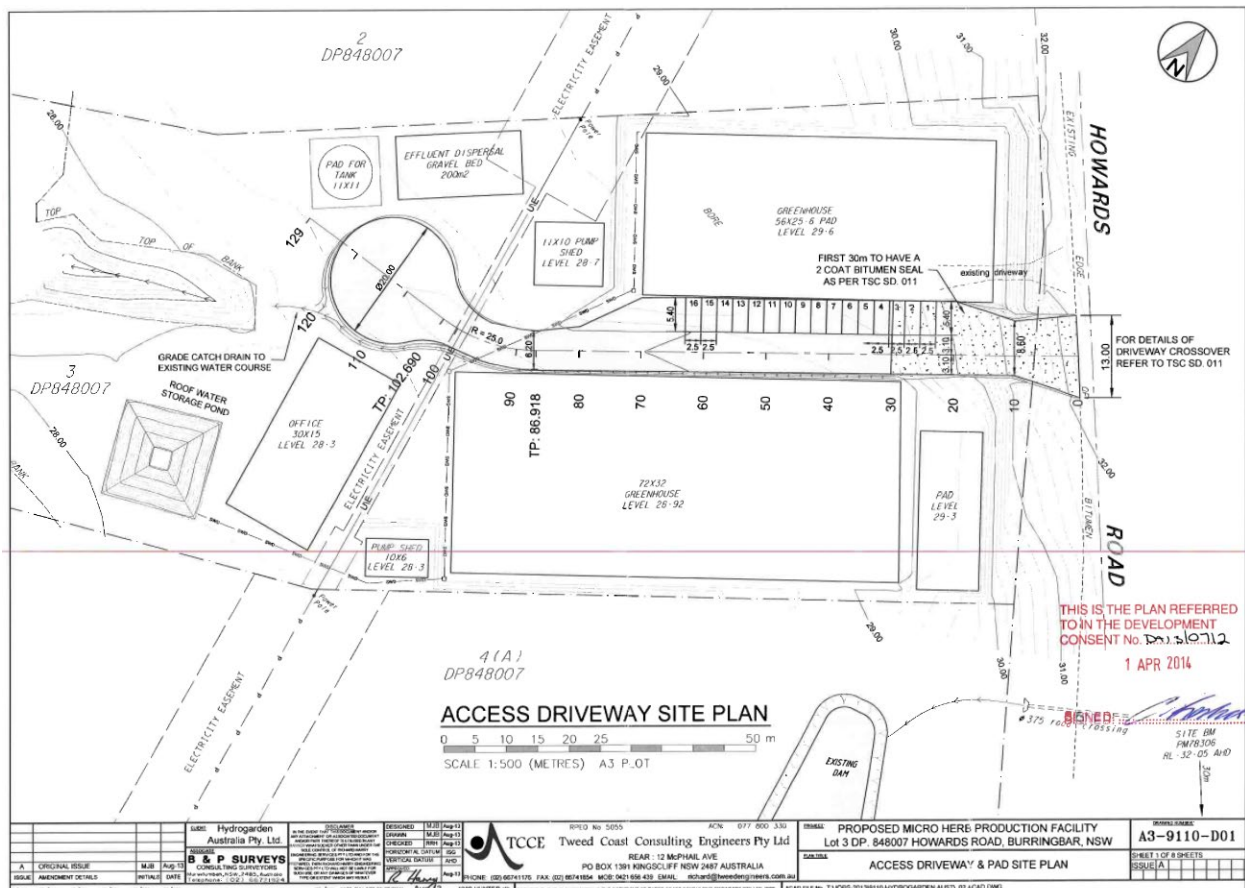


Figure 1 Approved site plan DA13/0712

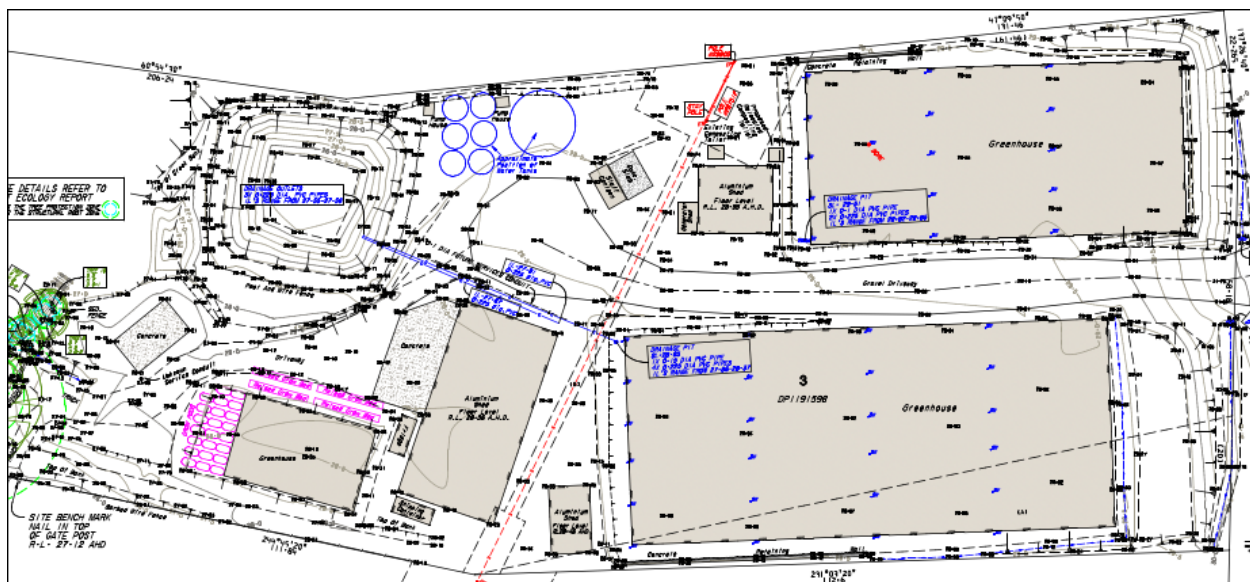


Figure 2 Existing site layout for approval including new garden beds (shown in pink)

Notable differences from the approved site plan and the amended site plan relate to the location of the dam and the location of the main potting shed/office. The dam was relocated at the time of construction to avoid telecommunications infrastructure. A notice informing Council of the telecommunications infrastructure works was provided by Telstra in September 2015 (ECM 3813230). The alternate location of the storage pond has been reviewed by the Natural Resource Access Regulator (NRAR) with regard to proximity to the waterway and no additional works or action is required by (NRAR) in relation to the location of the water storage pond.

The existing items that are the subject of this application are shown on the plan below and are identified as follows:

1. Soil bay;
2. Pump houses x 2;
3. Water tanks x 7;
4. Staff canteen;
5. Generator shed;
6. Shipping container;
7. Insulated container;
8. Concrete hardstand and soil bay; and
9. Composting toilet.

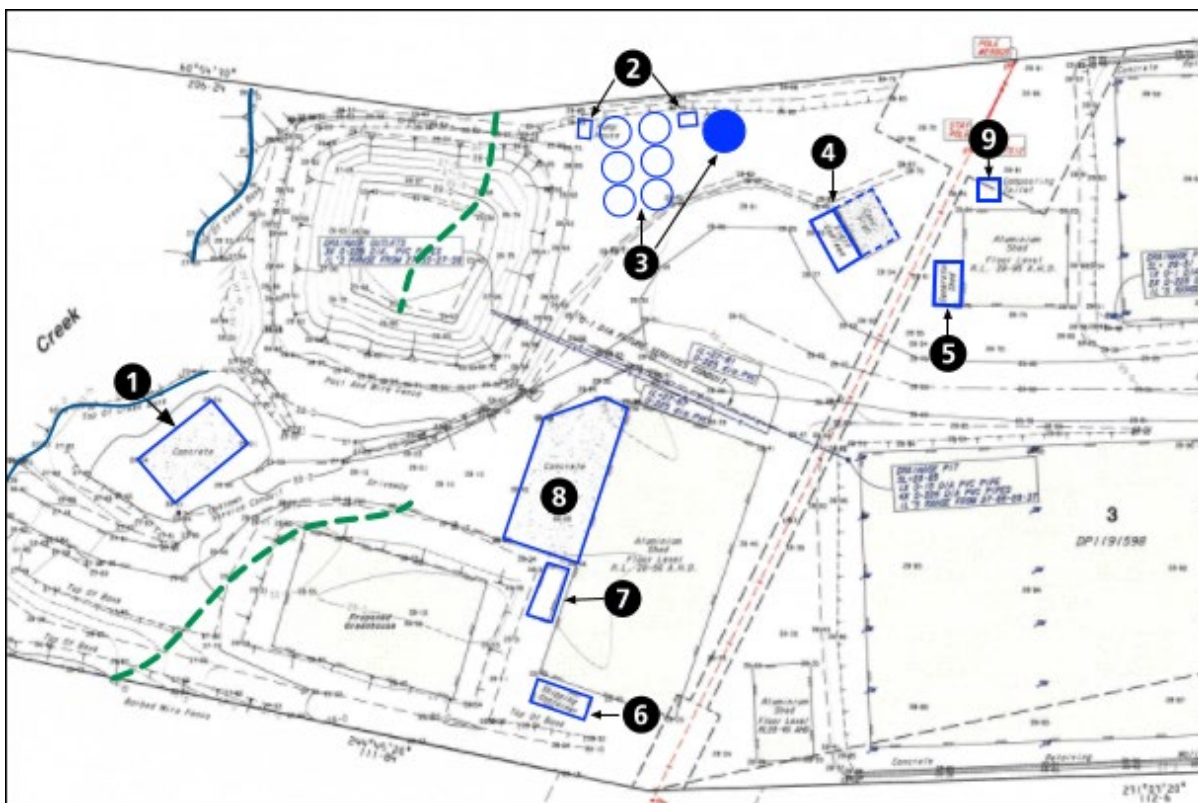



Figure 3 Location of existing structures that are the subject of this application

 <p>1 Soil Bay 10 m x 6 m</p>	 <p>3 Water Tanks 6 x 22,700 litre</p>	 <p>6 Shipping Container 6m x 2.44m x 2.59m (high)</p>
 <p>2 Pump Sheds x 2 2.1m long x 1.5m wide 1.6m high (both)</p>  <p>2</p>	 <p>3 Water Tank 1 x 212,000 litre</p>	 <p>7 Insulated Container 6m x 2.55m x 2.66 (high)</p>
<p>PHOTOGRAPHS 14 March 2018</p> <p>DA 13/0712 - Modification Application March 2018</p> <p>Pocket Herbs and Produce Lot 3 DP 1191598 67 Howards Road, Burringbar</p>	 <p>4 Staff Canteen 8m x 3m Prefabricated building Hardstand area 8m x 4.2m Hardstand shelter 8m x 4.2m x 2.65m (approx and variable)</p>	 <p>8 Hardstand Area 18m x 8 m (variable) Soil Bay 6.6m x 4.8m</p>
 <p>5 Generator Shed 2.95m x 4.67m x 2.5m (high)</p>	 <p>9 Composting Toilet 2.1m x 2.25m Overall Height = 4.1m</p>	

The application includes the following statement with regard to some of the above structures:

"It should be noted that some of the items described as being part of the development in the Statement of Environmental Effects for DA 13/0712, were not shown on the approved plans. Notably, the composting toilet and all of the water tanks, although a tank pad was shown, and various size water tanks are included in the development description in the original Statement of Environmental Effects.

Some of the structures on the site would not normally require approval as they are clearly incidental to the approved development, however, they are included to ensure that there is no question in the future concerning their legality."

The water tanks and the composting toilet were included in the Statement of Environmental Effects and On-site sewage management report for the original application but were not shown on the plans. These items represent structures and so should have been the subject of a Construction Certificate. This application seeks to rectify this by inclusion on an amended site plan. A Building Information Certificate application will be required for these structures.

The pump houses and generator shed were completed as a condition of consent which required the acoustic treatment or shielding of mechanical plant and equipment to minimise potential noise impacts. Ideally these items should have been included in a construction certificate application for the site. As such these items are to be included in the Building Information Certificate application.

The soil bays, staff canteen, insulated container and shipping container were not included in the original application. These items do not meet the exempt provisions for development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) and so require development approval. This application seeks to rectify

this by seeking approval for the use of these structures and a Building Information Certificate will be required for these structures to ensure structural adequacy.

Existing structures

A detailed assessment of each of the existing items identified on the amended plan is provided below.

1. Soil bays

The soil bays are located adjacent to the creek and are constructed from concrete block work measuring 10m x 6m. They are used to store used growing material from the micro herb production process which is then used for the cultivation of the edible flowers.



Any application that involves work within 40m of a water way requires referral to Department of Primary Industries - Water in accordance with *Water Management Act 2000*. DPI Water (currently known as Natural Resources Access Regulator) were notified (ECM 161208401) of the location of the soil bays during the assessment of DA17/0347 for the plant shelter. It was queried if a Controlled Activity Approval (CAA) would be required for the soil bays (noting that the soil bays were not included in the application for DA17/0347 which was referred to DPI Water). Natural Resources Access Regulator (NRAR) advised that a CAA can only be issued for *proposed* works and a CAA does not cover the use of a previously constructed structure.

NRAR advised that they do not require removal of the structures and compliance action in relation to works on waterfront land without a controlled activity approval has been undertaken.

Soil material from the soil bays has the potential to be mobilised during rain and wind events. It is considered that potential adverse impacts resulting from the use of the soil bays could be managed by the imposition of appropriate mitigation and management measures. The amended consent will be conditioned requiring a Surface Water Management Plan that includes a monitoring program for the adjacent stream and mitigation strategies to address any adverse surface water impacts from the operation of the site.

2. Water pump houses

Two pump houses are included on the site plan adjacent to the existing water tanks located at a minimum distance of approx. 1.5m from the northern side boundary. The pumps draw water from the roof water storage pond to the water tanks for treatment and storage prior to

being used for irrigation purposes. The pump houses were constructed to protect the pumps (which are incidental to the water tanks) and comply with condition 45 of DA13/0712 which states:

45. *All externally 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 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 mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.*



The operation of the pumps is subject to the provisions of an approved Operational Noise Management Plan for the site to ensure unacceptable noise impacts are not generated by the pumps for adjoining residents. Subject to existing conditions of consent the pump houses are not considered to have any adverse impacts on the site or adjoining properties.

3. *Water tanks*

The plans for DA13/0712 show a water tank on an 11m x 11m pad adjacent to the northern side boundary of the site. The Statement of Environmental Effects noted that “A few other various size tanks will be used to collect roof run off from other sheds” however these were not specifically identified on the approved site plan.

The amended plans indicate that 6 x 22,700 litre tanks have been installed adjacent to the large 212,000 litre water tank indicated on the original plans by the 11m x 11m pad. The tanks do not meet the provisions for exempt development under the Codes SEPP due to the capacity of the tanks being greater than 10,000 litres permitted as exempt development.



Vegetation screening is provided along the boundary of the adjacent property to ameliorate visual amenity impacts. The pumps associated with the water tanks are enclosed as an acoustic attenuation measure as discussed above. It is considered that water tanks are unlikely to have any adverse impacts on the site or adjoining properties.

4. *Staff canteen*

A prefabricated staff canteen measuring 3m x 8m with an approximate height of 2.8m and an associated covered external amenity area (approx. 25m²) has been constructed adjacent to the internal driveway turn around area. The canteen is located a minimum of 14m from the northern side boundary and approximately 44m from a dwelling on the adjoining property. Vegetation screening is provided along the boundary of the adjacent property to ameliorate visual amenity impacts. Landscaping has been provided around the canteen to soften the visual impact of the structure.

The area is used for staff breaks and water is provided by the main clean stock rain water tank which is separate from the irrigation water tanks. Premises that serve the public or employees and use rainwater for drinking and/or cooking must comply with the NSW *Public Health Act 2010* and have a quality assurance program following the NSW Private Water Supply Guidelines. The amended consent will imposed with a condition to ensure compliance with this requirement.



5. *Generator shed*

A 2.95m x 4.67m shed has been constructed adjacent to the approved 11m x 10m shed to house the generator. The shed is located approx. 20m from the nearest boundary and is located at least 50m from the dwelling on an adjoining property. The shed was constructed

to ameliorate noise impacts from the generator to satisfy condition 45 of DA13/0712 as reference previously in this report. The generator shed is not considered to have any adverse impacts on the site or adjoining property.



The generator shed is consistent with the definition of a farm building (machinery shed) and is compliant with the provisions for exempt development pertaining to farm buildings as contained in clauses 2.31 and 2.32 of the Codes SEPP.

farm building means a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling [from Tweed Local Environment Plan 2014].

Subdivision 16 Farm buildings from State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

2.31 Specified development

The construction or installation of a farm building used for the purpose of an agricultural activity and not used for habitable purposes is development specified for this code if it is:

- (a) constructed or installed on land in Zone RU1, RU2, RU3, RU4 or RU6, and*
- (b) not constructed or installed on or in a heritage item or a draft heritage item or in an environmentally sensitive area.*

2.32 Development standards

- (1) The standards specified for that development are that the development must:*

- (a) be not higher than 7m above ground level (existing), and*
- (b) not have an area of more than:*
 - (i) if it is a stockyard—0.5ha, or*
 - (ii) if it is any other building—200m² (if situated on a lot of 2ha or more) or 50m² (if situated on a lot of less than 2ha), and*
- (c) be located at least 20m from the primary road frontage of the lot and at least 10m from the other lot boundaries, and*
- (d) not be constructed or installed within 50m of a dwelling on an adjoining property, and*
- (e) be located at least 50m from a waterbody (natural), and*
- (f) to the extent it is comprised of metal components—be designed by, and constructed in accordance with the specifications of, a professional engineer, and*
- (g) to the extent it is a silo—not be fitted with a motorised fan for aeration or drying purposes.*

- (2) If the development is a shipping container, there must not be more than 1 shipping container per lot.*

To ensure compliance with item (f) above, the generator shed is to be included in the application for a Building Information Certificate as required by any amended consent issued.

6. & 7. *Insulated container and shipping container*

An insulated container and shipping container are located adjacent to the approved 30m x 15m shed labelled as office in the approved plans. The containers provide storage for various materials, equipment and consumables required for the operation of the site. The storage containers do not meet the provisions for Farm Buildings under the Codes SEPP and as such consent is required for the containers.



The containers are located approx. 15m and 6m from the southern site boundary and 75m from and adjoining dwelling. The containers are used for storage purposes only and are not a source of any noise generation activity. Vegetation screening has been planted along the southern site boundary in accordance with DA17/0347 for the plant shelter and as such visual impacts are minimised. The containers are considered unlikely to have any impact adverse impacts on the site or surrounding locality.

8. *Hardstand area and additional soil bay*

A hardstand area with an approx. area of 140m² is located adjacent to the 30m x 15m shed labelled as 'office' on the stamped plans for DA13/0712. A soil bay measuring approx. 6.6m x 4.8m constructed from timber and corrugated steel and partly covered with a shade cloth awning is located on the hardstand area. The soil bay may be considered as a farm building however does not meet the provisions for exempt development and as such requires approval.



The soil bay is required for the day to day operations of the facility and is used to store growing medium (soil) delivered to the site approximately once every two weeks and a mini-excavator is used to push the soil into the bays. The soil is then transferred by hand as needed to the main potting shed for use in the potting process for the growing of the micro-herbs.

The soil bay is located approx. 27m from the nearest boundary and approx. 70m from the nearest dwelling in on an adjoining property. Noise generated from the use of soil bay is limited to use of the mini-excavator one per fortnight following delivery of the soil and is consistent with the approved operations of the site as an agricultural activity.

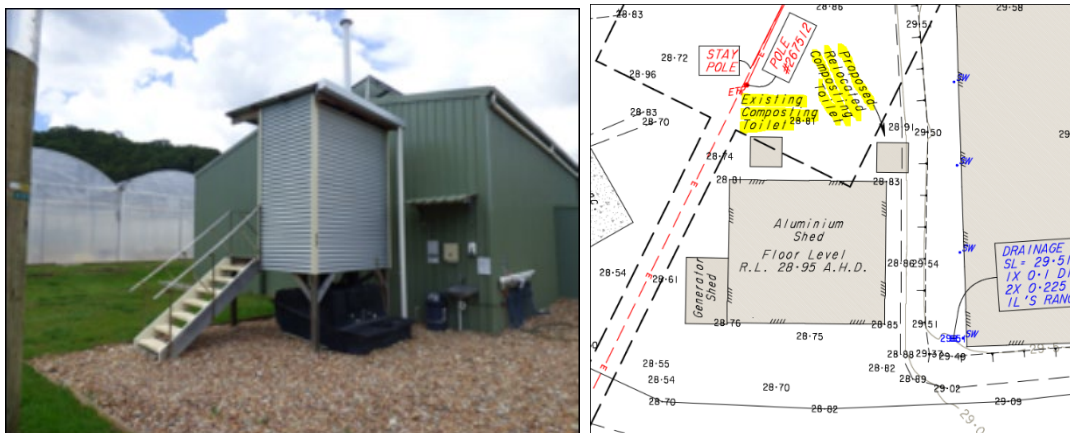
With regard to the hardstand area it is noted that condition 9 of the current consent DA13/0712 states relates to stormwater quality treatment and states:

9(c)(i) Runoff from all hardstand areas, (including driveway and hardstand parking areas and excluding roof areas) must be treated to remove oils, sediments and gross pollutants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 - Stormwater Quality, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.

Stormwater Drainage Works approval SWD14/0418 ancillary to DA13/0712 was issued by Council on 1 October 2014. During the assessment of DA17/0347 for the plant shelter it was revealed that the stormwater management of the site was not in accordance with the approved stormwater management plan. As this modification application the seeks approval for a modified site plan and the use of additional hardstand areas it is considered appropriate that the amended consent is conditioned to require a new stormwater management plan that is consistent with the current site layout.

9. Composting toilet

A composting toilet was originally constructed in the vicinity of the staff canteen and located approx. 12m from the northern side boundary. References to the a toilet facility were made in the Statement of Environmental Effects and the On-site Sewerage Management Report submitted with the original application for DA13/0712 however the location of the toilet was not shown on the plans.



The composting toilet was originally constructed within an electricity easement on site and has since been relocated (approx. 7m to the northeast) external to the electricity easement to comply with a request from Essential Energy.

The application was referred to Essential Energy in accordance with Clause 45 of the State Environmental Planning Policy (Infrastructure) 2007. With regard to the location of the composting toilet Essential Energy have advised that they are satisfied with the new location.

The current composting toilet and management of the on-site sewage system is consistent with the OSSM report and On-site Sewage Management System (SEP140078) and is unlikely to have any adverse impacts on the site or surrounds.

New items

The application was amended on 26 February 2019 to seek approval for the following items as part of the modification application:

- Four fixed raised garden beds;
- Additional relocatable growing pods; and
- Use of an existing licensed bore for irrigation purposes.

All of the above items are considered to be ancillary to the existing rural industry approved by DA13/0712 and as such were considered to be able to be included in the modification application.

Fixed raised garden beds and plant pods

Four fixed raised garden beds are proposed adjacent to the existing plant shelter approved under DA17/0347. The garden bed are located within the development foot print of the existing rural industry and no earthworks are require to facilitate the construction of the garden beds. The dimension of the garden beds are as follows:

- Two garden beds 9m long x 1m wide x 0.6m high.
- Two garden beds 10m long x 1m wide x 0.6m high.

The proposed additional plant pods are similar to those already used for the growing of edible flowers in the approved plant shelter (DA17/0347). The pods are relocatable and the installation does not require any additional earthworks.



Figure 4 Plant pods

The applicant has provided the following statement in relation to the use of the garden beds/plant pods:

"The pods/beds are needed to grow more longer term plants already produced onsite. The plants will be harvested for flowers and/or fresh cut using the same manual methods currently employed such as scissors and snippers.

Irrigation will be via an extension of the current system in the next door plant structure or hand watered when necessary. These items are maintenance free and no additional deliveries are needed as the media and plants have long life spans. We will be propagating from cuttings and seed so again, no additional deliveries required. Current staff members will look after the pods/grow beds. Some foliar feeding will be required as per the existing farm activities as and when required for pest control etc. using organically registered products."

The garden beds/plant pods are located approximately 90m from the adjoining dwelling to the north and approximately 70m from the adjoining dwelling to the south. The use of the existing garden beds/plant pods are not considered to contribute significantly to existing noise generating activities on site. Any potential noise generated from use of the garden beds/plant pods will be subject to the provisions of existing Operational Noise Management Plans for the site.

Use of an existing licensed bore for irrigation purposes

Council was informed by Water NSW that the site operator has made an application to Water NSW to convert a bore for stock and domestic to irrigation purposes. Approval of the existing bore was issued by NSW Water on 23 July 2012.

As the use of the bore is proposed to be changed to irrigation purposes in association with an activity that requires approval (existing rural industry) it was considered that the use of the bore also requires development consent. As the use of the bore is for irrigation purposes is ancillary to the rural industry approval DA13/0712, it was considered that this use of the bore could be considered under this modification application.

The existing bore is located within Greenhouse 2 approximately 14.5m from the northern side boundary and 55m from the front boundary. The applicant has provided the following information in relation to the use of the bore:

- The depth of the existing bore is 42m;
- Application has been made to Water NSW for extraction of 20 mega litres per year;
- The existing pump is a spear pump located at 42m depth and is not audible;
- The pump will be activated manually;
- The water is for onsite irrigation purposes only and will not be removed from site; and
- The bore is to be used as a supplementary water source required in case rainfall events are not sufficient to restock existing onsite water storage.

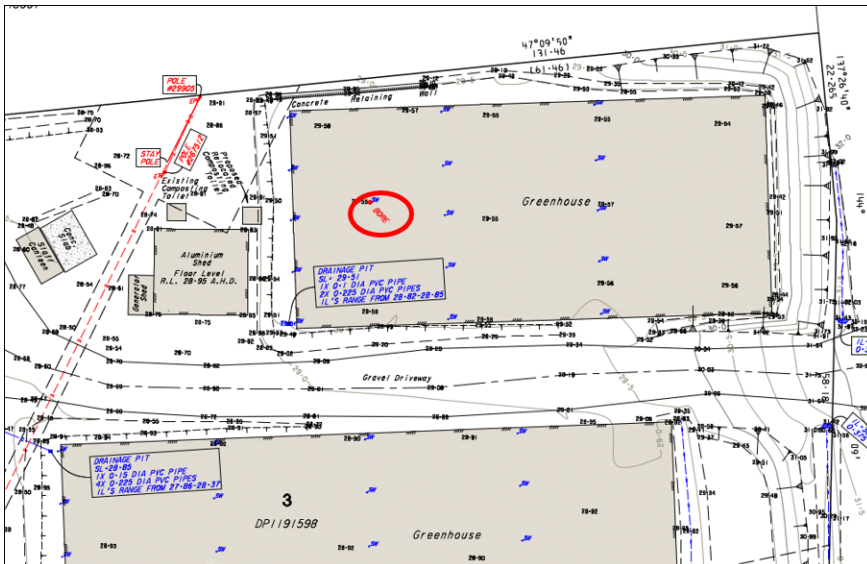


Figure 5 Location of existing bore indicated by red circle

The use of the bore for irrigation purposes is to supplement existing onsite storage capacity in times of low rain fall. Existing onsite storage capacity is approximately 1.4ML provided by 6 x 22,700 litre tanks and one 212,000 litre tanks as well as the existing storage pond. The water extracted from the bore will be diverted to the water tanks prior to treatment and distribution as per current methods.

The application to convert the existing bore for irrigation purposes is being reviewed by Department of Planning, Industry and Environment (DPIE) separate to this application. The applicant has been requested by DPIE to provide additional technical information regarding water quality and pump testing before further consideration of the application can be undertaken. Following submission of the requested information, DPIE will undertake assessment of the application with regard to groundwater level drawdown and quality impacts on neighbouring bores and the environment (surface water, the alluvial aquifer and the basalt aquifer) to determine if the application can be granted.

Development approval of the use of the bore in association the approved rural industry is subject to approval by Water NSW of the application for the conversion of the bore to irrigation use by Water NSW. The amended consent will include new conditions to prevent use of the bore for irrigation purposed without the required Water NSW approvals. Additional conditions are recommended that require continual monitoring and record keeping of water volumes extracted.

Considerations under Section 4.55 and 4.15 of the Environmental Planning and Assessment Act 1979 (previously Sections 96 and 79C respectively):

This application was lodged as a Section 4.55(2) modification. Section 4.55(2) of the Act states that in order to grant consent, the consent authority must consider the following:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has*

- not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Furthermore, S4.55(3) states:

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

Item (a) - substantially the same development

The site is approved for the purposes of a rural industry. The items that are the subject of this application are incidental or ancillary to the operations at the site as summarised below.

Item	Use
Soil bays	Used for storage of growing material for the horticultural activity.
Pump houses	Incidental to the water tanks required for irrigation of the crops. Housing of the pumps was completed as a condition of the original consent.
Water tanks	Envisaged in the original approval however not included on the plans.
Staff canteen	Amenity area for staff noting that the original application stated up to 18 staff would be at the site at any one time.
Generator shed	Completed as a condition of consent.
Storage containers	Storage for equipment related to site operations.
Composting toilet	Envisaged in original approval however not shown on plans.
Raised gardens beds	Relatively minor extension of plant growing area in addition to existing operations.
Plant pods	Relatively minor extension of plant growing area in addition to existing operations.
Use of existing bore for irrigation purposes	Irrigation of crops is ancillary to existing rural industry.

The use of the structures are consistent with the approved activities at the site and do not represent an intensification of the current approved use.

The addition of the new garden beds and plant pods is a relative minor extension of existing approved activities and the proposal remains substantially the same as approved being a rural industry relating to the growing of micro-herbs.

The use of the existing bore for irrigation purposes is to provide a supplementary water supply to existing onsite water storage. The use is consistent with the approved use of the site as a rural industry growing crops (micro-herbs) requiring irrigation.

As such it is considered that the development as modified is substantially the same development to that originally approved.

Item (b) – consultation with external authorities

Essential Energy

The application was referred to Essential Energy in accordance with clause 45 of State Environmental Planning Policy (Infrastructure) 2007 regarding the proximity of structures to an existing electricity easement on site.

Essential Energy noted that shed and the composting toilet have been constructed with the electricity easement and required the relocation of the toilet which has been completed.

Essential Energy also required a report prepared by an appropriately qualified electrical contractor that clearance requirements were met and evidence that electrical protection is sufficient. This required some rectification works including relocating stays to existing electrical poles. The subsequently applicant submitted an Electrical Reticulation - Stay Removal Plan which also showed existing encroachment into the electricity easement (ECM 5960171). Essential Energy advised on 4 July 2019 that the plan was satisfactory noting that one encroachment will remain however this was deemed to be acceptable (ECM 5960171).

It is noted that further works are being undertaken on site with regard to electrical infrastructure however these works are being undertaken on behalf of Essential Energy and relate to the supply of electricity to the broader locality and not specifically to Pocket Herbs.

Natural Resource Access Regulator (NRAR)

The soil bays are located within 40m of a waterway and the location of these were discussed with DPI Water during the assessment of DA17/0347 for the plant shelter (noting that the soil bays were existing at this time and not the subject of DA17/0347). Controlled Activity Approvals are required for works within 40m of a waterway however DPI Water advised that in this instance a Controlled Activity Approval (CAA) cannot be obtained for the structures as the works have already been completed. It is noted that a CAA relates to development works only and not the ongoing activities from development.

DPI Water did not require removal of the soil bays and advised that the structures do not raise any ongoing concerns (ECM 161208401).

The application was amended 26 February 2019 to include the raised garden beds and plant pods adjacent to the existing approved plant shelter. As these items related to work within 40m of a waterway, the application was referred to the Natural Resource Access Regulator for review (23 March 2019). NRAR provided comments 18 September 2019 stating that NRAR has no objections to the proposal and noting that no additional earthworks were required for the garden beds and plant pods. Furthermore, no additional approvals were required from NRAR and no further consideration from NRAR is required.

Item (c)(i) & (ii) – notification

The application was notified to adjoining residents with a submission period of 14 days from Wednesday 2 May 2018 to Wednesday 16 May 2018. During this time six submissions were received in relation to the proposal.

The application was re-notified with regard to the amendments to the application with an additional 14 day submission period from Tuesday 16 April 2019 to Tuesday 30 April 2019. During this time three submissions were received.

Item (d) - consideration of submissions

The current development and site operations have caused some community concerns and this is reflected in the submissions received for this modification application. Some of the items raised in the submissions relate to the appropriateness of the current approval and not expressly to the items that are the subject of this modification application which are considered to be ancillary structures to the existing approved operations.

Nevertheless all items raised in the submissions are summarised below.

Initial submission received May 2018	
Issue	Council Response
Existing greenhouse fans not included in the modification Noise from fans	<p>The existing approved greenhouse and fans are not the subject of this modification application.</p> <p>The operation of the fans is subject to an approved Operational Noise Management Plan (ONMP) which was implemented following noise complaints and in accordance with conditions of consent. The ONMP regulates the use of the fans to comply with the requirements of the Noise Policy for Industry produced by the NSW Environmental Protection Authority.</p> <p>Noise monitoring for compliance with the ONMP is ongoing.</p>
Substantially the same development	<p>The water tanks, pump house, composting toilet, generator shed were envisaged in the original development application and approval however were not included on the approved plans. This application seeks to rectify this by including these items on the approved plans. These items are considered to be consistent with the original approval.</p> <p>This application also seeks approval for the use of the additional structures being staff canteen, soil bays and associated hardstand areas and storage containers. These items are considered to be ancillary to the original approved operations for a micro-herbs facility and are directly related to site operations. As such it is considered that the modification of the existing approval to include these additional structures does not substantially alter the consent as originally approved being a micro-herbs production facility.</p>
Over development of site and associated amenity impacts	<p>As mentioned above, the water tanks, pump house, composting toilet, generator shed were envisaged in the original development application and approval and the additional structures that this application seeks approval for the use of is limited to the staff canteen, soil bays and associated hardstand areas and storage containers.</p>

Initial submission received May 2018	
Issue	Council Response
	<p><i>Amenity</i></p> <p>Screening vegetation has been planted along the boundaries of the site adjacent to land containing dwellings and as such the additional structures are unlikely to result in an unacceptable visual impact.</p> <p>Use of the soil bays may result in some noise generation activities associated with the delivery of soil and moving of soil for operational activities by a mini-excavator. The application has stated that the use of the mini-excavator associated with the soil bays occurs approx. once every two weeks. This use is not considered to result in an unacceptable noise impact and is consistent with the approved agricultural activity.</p> <p>The staff canteen is located approx. 44m from the nearest dwelling and its use is not considered to result in unacceptable noise impacts on adjoining dwellings. Existing conditions of consent relating to amenity are sufficient to manage potential impacts from the use of the staff canteen.</p> <p><i>Overdevelopment</i></p> <p>The additional structures are not associated with an intensification of use of the site but rather are required to support existing operations.</p> <p>The additional structures are located within the existing developed portion of the site and did not require any vegetation clearing or additional earthworks. The total area of additional structures is approximately 288m² which represents approximately 1.25% of the total site area or approximately a 7% increase in the total floor area of development on the site. The additional structures are unlikely to result in any additional environmental impacts subject to conditions of consent</p>
SEE submitted with original application not accurate representation of the site.	The assessment of modification applications is limited to the specific items that are the subject of the proposed modification (in this instance an approved site plan and ancillary structures). A modification application cannot be used to review an existing approval.
Noise impacts of existing operations	<p>Cumulative noise impacts have been considered as part of this assessment and it is considered that use of the additional structures will not result in unacceptable additional noise impacts. Existing conditions of consent and the Operational Noise Management Plan are sufficient to manage any potential noise impacts from the site.</p> <p>Noise associated with operation of the approved greenhouses (and associated fans) are not the subject of this modification application.</p>
Existing approval not consistent with the objectives of the RU2 zone	As mentioned previously the site has an approval for the existing rural industry and this application relates to the use of some ancillary structures that are consistent with the approved use of the site.

Initial submission received May 2018	
Issue	Council Response
Site not operating in accordance with original consent	Council is satisfied that operations at the site are consistent with the current conditions of consent and the Operational Noise Management Plan.
Proximity of water tank pump houses to the boundary.	The water pumps are incidental to the water tanks the plans indicate that a water tank was approved adjacent to the northern side boundary. The water pump houses were constructed to comply with Condition 45 of the consent which required mechanical plant to be acoustically treated or shielded prevent the emission of offensive or intrusive noise. The pump houses are located a minimum of approx. 1.5m from the boundary and 31.5m from the adjoining dwelling. Operation of the water pumps is subject to the provisions of the approved Operational Noise Management Plan.
Potential run off from soil bays to the adjacent creek and other site runoff	The potential for runoff from the soil bay creating an adverse impact on the adjacent creek has been considered. Any amended consent will be imposed with a condition requiring a Surface Water Management Plan be prepared for the site which includes a monitoring program and mitigation strategies. The consent will also require a new stormwater management plan to be submitted which reflects the current site layout.

Additional submission period April 2019	
Issue	Council Response
An unregulated commercial bore will impact adjoining properties by way of noise and traffic	<p>The conversion of the existing bore for irrigation purposes is being assessed by the Department of Planning Industry & Environment (DPIE) and if the proposal is found to be acceptable will be subject to a water licence from Water NSW.</p> <p>The use of the bore is to supplement current onsite water storage capacity in times of low rainfall. The water is to be used for on-site irrigation only and is not for transporting off site.</p> <p>The use of the bore will be subject to conditions of development consent to allow monitoring of the water extraction.</p>
Impact of water extraction on water ways and water resources	The application for the conversion of the existing bore to irrigation purposes is being assessed by the DPIE and will have regard to the groundwater level drawdown and quality impacts on neighbouring bores and the environment (surface water, the alluvial aquifer and the basalt aquifer) to determine if the application can be granted. The development consent will require monitoring equipment to be installed to ensure any water extraction complies with all water licences and approvals.
Addition of four garden beds and relocatable pods contributes to over development of site and associated impacts	<p>The addition of the four garden beds (19m²) and additional relocatable pods represent (approximately 55m²) a minor increase (1.77%) to the existing approved greenhouses totalling 4,187m².</p> <p>The garden beds and grow pods will be located within the existing development footprint and no additional earthworks are required for the items. The use of these items is consistent with current operations is not expected to result in any significant additional noise impacts. Any potential noise generation associated with the use of the pods will be subject to existing noise mitigation measures.</p>

Item 3 - Reasons for granting the original consent

The original consent was issued on the 1 April 2014 before Council had to nominate reasons for approving applications. However the assessment report included the following statements regarding the proposals consistency with the applicable environmental planning instruments and development control plans and having regard to the public interest of the proposal.

Reason 1

A rural industry development is permitted with consent in the RU2 Zone. The proposed development is considered to be consistent with the objectives of the zone through providing for a range of compatible uses, being in this instance a micro-herb production development.

The consent as modified remains consistent with the above statement being permissible within the zone and compatible with the zone objectives. The development remains a compatible land use for the zone being a sustainable primary industry.

Reason 2

The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The development is considered to be generally in the public interest, being a rural industry development located on an appropriately zoned site.

The development as modified remains consistent with the above statement being considered to be in the public interest subject to the conditions of consent. This report includes an assessment of the modified proposal against the applicable planning instruments and development controls plans and it has been determined that the proposal as modified conforms to the relevant controls subject to the modified the conditions at the end of this report.

Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (previously s79C)

(1) *Matters for consideration—general*

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

(a) the provisions of:

- (i) any environmental planning instrument, and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
- (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),*

- that apply to the land to which the development application relates,*
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest.*

Item (a)(i) – Any environmental planning instrument

TLEP 2014 Clause 1.2 – Aims of the Plan

The original application was assessed under the provisions of the Tweed Local Environment Plan 2000 and the Draft TLEP 2014.

- (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, as amended, remains consistent with the aims of the TLEP 2014 in that it represents sustainable economic development that is permissible within the zone.

Exempt and Complying Codes SEPP

The Codes SEPP includes exempt provisions applicable to farms buildings, water tanks and hardstand areas. In this instance the water tanks do not meet the development standards for exempt development and the hardstand area is not associated with a driveway and as such the exempt provisions do not apply.

It appears that the generator shed meets the exempt provisions for a farm shed as indicated in an earlier section of this report and as such development approval is not required. However as the generator shed was completed as a condition of consent, a Building Information Certificate will be required for the structure to ensure it is structurally adequate.

Rural Lands SEPP 2008 (Repealed)

This application was lodged 3 April 2018 prior to the repeal of this SEPP. An assessment of application against the provisions of Rural Lands SEPP was undertaken for the original application. The proposed modification to amend the site layout and seek approval for the use of the additional ancillary structures does not substantially alter the development as originally approved. Accordingly the proposal is consistent with the original assessment of the provisions of the Rural Land SEPP.

State Environmental Planning Policy (Primary Production and Rural Development) 2019

Since the lodgement of this application, the SEPP Primary Production and Rural Development SEPP came into force and repealed the Rural Lands SEPP 2008. The provisions of the SEPP relate to development on State Significant Agricultural Land, aquaculture, livestock industries and farm dams.

The site is not identified as State Significant Agricultural Land under this Policy. The site contains a water storage pond/farm dam however the water storage pond is existing and this modification application does not relate to the water storage pond. As such the provisions of this SEPP are not applicable to this modification application.

Since the approval of the original consent on 1 April 2014, the North Coast Regional Environmental Plan 2036 has been adopted. The proposed amendment is relatively minor in nature and the proposal as modified remains substantially the same as that originally approved and is considered to be generally compliant with the provisions of NCREP 2036.

Item (a)(iii) - Tweed Development Control Plan

A11-Public Notification of Development Proposals

The modification application was advertised in accordance with this section of the Development Control Plan. Submissions have been received and considered in relation to the proposed amendment. These submissions are addressed in an earlier section of this report.

Item (b) – Likely impacts of the development

The likely impacts associated with the proposed amendments relate principally to noise, visual amenity and environmental impacts. The water tanks and composting toilets formed part of the assessment of the original application whilst the housing for the pumps and generator shed were completed to satisfy a condition of consent and are not like to generate any additional impacts.

Noise

The use of the soil bays, storage containers and staff canteen as well as the new garden beds and growpods are unlikely to generate an unacceptable additional noise impacts other than what may reasonably be expected from a rural industry. The use of these areas will be subject to current and ongoing noise monitoring and mitigation measures that apply to the entire site.

Visual amenity

Visual amenity of the existing approved development was a matter of concern raised in the submissions for this application (although not directly related to this modification application). Where structures are located adjacent to property boundaries (storage containers) suitable screening vegetation has been planted to mitigate visual impacts from neighbouring dwellings.

Environmental impacts

The storage containers and staff canteen are unlikely to generate addition unacceptable impact on the environment or surrounding locality. Water quality of the adjacent creek has been considered with respect to the use of the soil bays and their proximity to the creek. To ensure that the water quality of the creek is not impacted by the operations of the micro-herb facility a condition is to be imposed which requires a Surface Water Management Plan to be developed for the site to safe guard the water quality of the stream. The production facility will also be required to submit a new stormwater management plan which reflects the current layout of the site and accounts for additional hardstand areas.

There is no change proposed to an existing condition of consent which prohibits the discharge of waste water from the facility to the surrounding environment.

As mentioned previously, the use of the existing water bore for irrigation purposes is subject to the provisions of any water licence (if issued). Potential environmental impacts association with the use of the bore for irrigation purposes is being assessed by DPIE prior to any water licence approval being issued (if issued). Monitoring equipment will be required to be installed on the bore to ensure its use is compliant with approvals or licences.

The proposed new conditions and existing conditions of consent are considered to be sufficient to safeguard the environment and surrounding locality.

Item (d) - Any submissions

Submissions have been considered in an earlier section of this report. Some of the matters raised in the submissions do not form part of the statutory assessment requirements for this modification application. Where appropriate, the matters raised in the submissions are able to be managed by existing conditions of consent and the imposition of additional conditions as included within this report.

Item (e) - Public interest

The impact of the proposed modification has been considered during the assessment of this application and it is considered that subject to conditions of consent the proposed modifications are unlikely to generate unacceptable impacts.

Whilst it is acknowledged that the existing approved development has been the subject of noise complaints by adjoining residents, the applicant is working with Council's Environmental Health Unit to reduce noise impacts from the site. Current operations at the site are subject ongoing monitoring and assessment.

The proposed modification to DA13/0712 relates primarily to ancillary structures associated with the current operations of the micro herb production facility. The additional garden beds

and grow pods represent a relatively minor increase in growing area of approximately 1.77%. This is contained within the existing development footprint and so is considered to be acceptable.

The use of the existing water bore for irrigation purposes is subject to the issue of a water license and is being assessed by DPIE separate to this application.

Subject to conditions of consent the proposed modification of the site is not considered to be in conflict with the public interest in that the proposal rectifies inconsistencies between the current development and approved development.

OPTIONS:

1. Approve the 4.55 Application in accordance with the recommendation.
2. Refuse the 4.55 Application for reasons specified.

Council officers recommend Option 1.

CONCLUSION:

The proposed modifications do not represent any substantial change to existing site operations. All existing structures and new structures (19m² garden beds) are ancillary to the existing approved use of the site for a rural industry – micro herb production.

Primary community concerns regarding noise from existing operations are being addressed separately to this application. This matters that are the subject of this modification application are unlikely to create further unacceptable noise impacts.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may appeal any Council determination of this application under Class 1 of the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

3 [PR-PC] Development Application DA18/1052 for a Telecommunications Facility at Lot 1 DP 528102 No. 47 Terranora Road, Banora Point

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: **Advocate**

SUMMARY OF REPORT:

A development application was received by Council on 21 December 2018 proposing the construction of a 24m high monopole with the installation of antennae above, this taking the overall height of the telecommunication facility to 35m at Lot 1 DP 528102, to be constructed on the premises, No. 47 Terranora Road, Banora Point (Council owned land).

It is noted that telecommunication infrastructure is presently located on site, attached to an existing Council reservoir, however this is to be relocated to the proposed monopole as part of this application.

The application has been lodged by CPS Global on behalf of Vodafone, Optus and Telstra (the Carriers).

The site is located approximately 250m from the grounds of Banora Point Public School, a local primary school with over 600 students. A significant number of submissions have been received from stakeholders at the Banora Point Public School (staff and families of students) objecting to the proposal on health related grounds and the proximity of the proposed mast to the school, while it is also noted that these object on the basis of two pre-schools located nearby also.

The applicant relies on the expert advice of national and international authorities such as the Australian Radiation Protection and Nuclear Safety Authority (ARPANSA) and the World Health Organisation (WHO) for overall assessment of health and safety impacts. The Australian Communications and Media Authority (ACMA) adopted a technical standard for continuous exposure of the public to radiofrequency (RF) electromagnetic emissions (EME) from mobile phone base stations. The standard, known as the *Radiocommunications*

(*Electromagnetic Radiation – Human Exposure*) Standard 2003, was prepared by the ARPANSA and is based upon recommendations of ICNIRP (International Commission for Non-Ionising Radiation Protection), an agency associated with the WHO. Mobile carriers must comply with the Australian Standard on exposure to EME set by the ACMA.

As set out in NSW Land & Environmental Court judgement in *Telstra Corporation Limited v Hornsby Shire Council* [2006] NSWLEC 133 Australian Standard RPS3 is an authoritative and scientifically credible standard to protect the health and safety of people and the environment from the harmful effects of radiofrequency fields in the frequency range of 3kHz to 300 GHz. It is not appropriate for a consent authority to set aside or disregard such an authoritative and scientifically credible standard as the Australian Standard RPS3.

The applicant has submitted EME level predications at various distances within 500m of the proposed facilities, and to the nearest school/preschools and church. These readings demonstrate that the maximum predicted level from the proposed facility will be 2.54% of the ARPANSA exposure limit and that the levels at the adjacent school and preschool would range from 0.4% (Cherubs Preschool) to 0.92% (Little grommets Child Care).

The Australian Government Department of Communications have also issued a factsheet with information on communications towers, radio transmitters and safety for schools, teachers, students and parents.

From a visual perspective, the application has also been accompanied by a Visual Impact Assessment prepared by Planit Consulting which concludes that the proposal would have a 'not significant' visual impact. While there are some issues with this assessment, it is considered that at an overall height of 33.4m, it is evitable that the structure cannot be fully visually absorbed into the landscape and it is likely that the structure may be visible in the landscape from certain viewpoints. However the proposal is considered to be generally acceptable with respect to visual amenity.

The application was referred to Council's Environmental Health Unit, Building Unit, Water and Wastewater Unit, Strategic Planning and Urban Design Unit and Sustainability and Environment Units. While further information was required with respect to aspects of the proposal arising from these referrals it is noted that all units are now satisfied with the development as proposed, with recommended conditions of approval being provided. Externally, the application was referred to Gold Coast Airport Pty Ltd who have also provided comment on this application

Prior to the lodgement of the application, the applicant undertook pre-lodgement Community consultation as required by Council's resolution of May 2010, though the extent of the consultation did not extend to a community meeting as recommended in the resolution.

Furthermore, as the subject site is Council owned land, landowners consent was required to be obtained prior to lodgement of the application. At the Council meeting of 6 December 2018, elected Council resolved to issue landowners consent for this development application.

The application was advertised and notified for a period of 14 days from Wednesday 16 January 2019 to Wednesday 30 January 2019 though it is noted that late submissions were accepted on this application (latest submission received 1 March 2019). Through the exhibition period approximately 35 individual submissions and four petitions containing a total of approximately 585 signatures were received, all opposing the development.

As outlined above, the objections have raised concerns with the potential health impacts, and in particular the proximity to Banora Point Public School and two Day Care Centres. Objections were also received with respect to the visual impact of the development, devaluation of property values as a result of the development, the site selection process, noise from existing infrastructure on site, whether the infrastructure is to facilitate 5G, the absence of a public meeting undertaken by the proponent as part of pre-lodgement consultation and the timing of public exhibition of the application (outside of school term time). These matters are addressed in more detail in the report.

The proposal is recommended for conditional approval based on the submitted information and the assessment contained in this report.

RECOMMENDATION:

That Development Application DA18/1052 for a telecommunications facility at Lot 1 DP 528102; No. 47 Terranora Road Banora Point be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans:**

- **Site and Locality Plans (Drawing No. 240259 - P1 Rev L), prepared by CPS Global and dated 4 November 2019;**
- **Site Setout Plan (Drawing No. 240259 - P2 Rev L), prepared by CPS Global and dated 4 November 2019;**
- **Antenna Layout (Drawing No. 240259 - P2A Rev L), prepared by CPS Global and dated 4 November 2019; and**
- **Site Elevation (Drawing No. 240259 - P3 Rev L), prepared by CPS Global and dated 4 November 2019,**

except where varied by the conditions of this consent.

- 2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.** [GEN0005]
- 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.** [GEN0115]
- 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.** [GEN0135]
- 5. 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.** [GEN0300]
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.

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.

[GEN0375]

- 6. All works shall not disrupt the continued provision of Water Supply services for Tweed Shire Council.
 - 7. The applicant shall remove all of their telecommunications equipment including antennas, radio communications dishes, cable ladders and associated steelwork from the water reservoir. It is a requirement of the lease that when the lease expires all equipment is to be removed and the lessee is required to make good, at its own cost, any damage to the property.
 - 8. A minimum distance of three metres clearance between the telecommunications equipment and all reservoir infrastructure shall be provided to allow Council to circumnavigate the reservoir with a vehicle and/or crane structure.
 - 9. The height of cable tray shall be a minimum of 2.4 meters clearance to ground level and supporting columns shall be of sufficient distance to allow ride on mowers and/or utility vehicles to manoeuvre under and around the proposed infrastructure for Council to maintain the existing lot.
 - 10. The telecommunications facility shall be designed to ensure that neither the staircase nor the reservoir roof access areas will have EME levels above ARPANSA RPS3 public limit and can therefore be safely accessed by Tweed Shire Council at all times.
- [GENNS01]
- 11. Any use of a crane or other equipment on this site that may exceed a top RL of 49.5 metres AHD would intrude into the prescribed airspace of Gold Coast Airport, and therefore represent a "controlled activity" under the Airports (Protection of Airspace) Regulations. The proponent must obtain approval for any temporary penetration of the airspace, via an application to be submitted to Gold Coast Airport Pty Ltd at least 6 weeks before the intended commencement of the controlled activity.
- [GENNS02]
- 12. The pole and all possible elements of the structure shall be painted in the same or as close to matching colour as the adjacent water reservoir. Maintenance painting shall occur at regular intervals throughout the life of the structure so that the colour is retained.
- [GENNS03]
- 13. Tree removal shall be limited to those trees identified as Tree 3 and Tree 4 as shown in Figure 3 of the Arborist Report provided by TPZ Project Arborist dated 1 November 2019 for 47 Terranora Road Banora Point. No other vegetation shall be removed to facilitate or maintain the development unless otherwise approved by Council's General Manager or delegate.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

- 14. Prior to the issue of a Civil Construction Certificate for each stage of the project, a Construction Management Plan shall be submitted to and approved by the Principal Certifying Authority. A copy of the approved plan shall be submitted to Council. The Plan shall address, but not be limited to, the following matters where relevant:**

- a) Hours of work;**
- b) Contact details of site manager;**
- c) Traffic and pedestrian management;**
- d) Noise and vibration management;**
- e) Construction waste management;**
- f) Erosion and sediment control; and,**
- g) Flora and fauna management.**

Where construction work is to be undertaken in stages, the proponent may, subject to agreement with the Principal Certifying Authority, stage the submission of the Construction Management Plan consistent with the staging of activities relating to that work. The proponent shall submit a copy of the approved plan to Council.

- 15. A Traffic Control Plan in accordance with AS1742 and the latest version of the NSW Government Roads and Maritime Services (RMS) publication "Traffic Control at Work Sites" shall be prepared by an RMS accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate for Subdivision Works. Safe public access shall be provided at all times.** [PCC0125]
- 16. 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 existing water reservoir and associated infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate. Such structural engineers design details are to confirm that the fence-proposal has been designed to take account of all site issues including the site's soil and load bearing characteristics, wind and other applied loadings, long term durability of all components and compliance with Tweed Shire Council's policies and specifications for "Easements" and "Works in Proximity".** [PCC0865]
- 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.** [PCC0935]
- 18. 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 works in proximity to water infrastructure, prior to the issue of a construction certificate.** [PCC0945]
- 19. 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.** [PCC1195]

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]

20. The proposed infrastructure in proximity to Council's Water Assets on the Setout/ Works Plan submitted are considered to be preliminary and are subject to change to meet Council requirements.
21. Prior to construction certificate, information will be provided to Council to outline how the applicant proposes to undertake the removal of the existing telecommunications equipment from the Reservoir, to ensure the protection of the Council asset. A minimum of a detailed program of work including timeframes, pre-dilapidation report of the scope of work, Safe Work Method Statement (SWMS), insurance(s), staff's induction tickets, Crane Lift plan (if required) and a redline drawing of the equipment to be removed will be submitted to Council for approval. Particular attention should be paid to repair works that may be required on Council's reservoir as a result of the removal and fulfilment of lease conditions. All documentation will be subject to change to meet Council requirements prior to commencement of the removal works.
22. Prior to construction certificate, the detail design plans of the layout, elevated cable infrastructure and any other proposed works in proximity to the reservoir infrastructure assets shall be provided to Council for review and approval.
23. Prior to construction certificate, information will be provided to Council to outline how the applicant proposes to undertake the construction of the new telecommunications facility. A detailed program of work including construction method, timeframes including where there may be interruptions to Council accessing the reservoir site, and protection of existing Council assets, shall be provided to Council. The document shall include a requirement for the applicant to contact the delegated Officer from Councils Water Unit with 48 hours' notice to confirm where Council access to the reservoir will be interrupted. All documentation will be subject to change to meet Council requirements prior to commencement of the works.
24. Prior to construction certificate the Radio Frequency (RF) Drawings for the proposed facility produced by an independent National Association of Testing Authorities (NATA) Certified assessor shall be provided to Council.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

25. 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.
26. The erection of a building in accordance with a development consent must not be commenced until:

[PCW0005]

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
- [PCW0215]
27. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0225]
28. 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]
29. Prior to start of works Council and all affected property owners shall be given a minimum of ten working days written advance notice.
- [PCWNS01]
30. Prior to commencement of any on-ground development works, final tree protection fencing and tree protection measures shall be inspected by Council's Biodiversity Planner to ensure compliance with *Australian Standard Protection*
-

of Trees on Development Sites AS4970-2009 and the Arborist Report provided by TPZ Project Arborist dated 1 November 2019 for 47 Terranora Road Banora Point.

[PCWNS05]

DURING CONSTRUCTION

31. 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]

32. 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]

33. 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 5.00pm

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]

34. 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]

35. 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]

36. 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]

37. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the

site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2017.

[DUR0415]

38. 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]

39. 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]

40. 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]

41. 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]

42. 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]

43. 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]

44. The exportation of waste (including fill or soil) from the site must be in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the Office of Environment and Heritage "*Waste Classification Guidelines*". Excavated material shall be disposed of at an approved landfill facility unless material has been demonstrated to be the subject of a resource recovery exemption under Clause 51A of the *Protection of the Environment Operations (Waste) Regulation 2014*.

[DURNS01]

45. All works on the existing Water Reservoir shall be conducted in the presence of an Officer from Councils Water Unit at the applicant's expense. The applicant is to contact Council with 48 hours' notice to arrange inspections.
46. Where public safety is at risk due to damage or contamination of water or sewer infrastructure, it is the responsibility of the applicant to immediately notify Council. Cost to undertake emergency works shall be borne in full by the applicant/developer. If additional works to repair or relocate water or sewer infrastructure due to the damage are required, arrangements and cost shall be borne in full by the applicant/developer.
47. During construction all arboricultural management works are to be undertaken in accordance with Australian Standard Protection of Trees on Development Sites AS4970-2009 and the Arborist Report provided by TPZ Project Arborist dated 1 November 2019 for 47 Terranora Road Banora Point.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

48. 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.
49. 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).
50. 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).
51. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.
52. Prior to the issue of a final Occupation Certificate, all conditions of consent are to be met.
53. Prior to the issue of occupation certificate or immediately prior to the commissioning of telecommunication facility (whichever occurs first), the nominated Project Arborist shall provide to Council's General Manager or delegate a certification report that includes the following information:
 - a. Confirmation that all works have been undertaken in accordance with Australian Standard *AS4970 - 2009 Protection of trees on development sites*, industry best standards, and the Arborist Report provided by TPZ Project Arborist dated 1 November 2019 for 47 Terranora Road Banora Point and details of any remedial actions recommended by the Project Arborist to avoid/minimise disturbance of existing vegetation.
 - b. Brief assessment of the condition of the trees identified to be retained, details of any deviations from approved essential tree protection management actions/measures and if applicable, evaluation of any remedial

actions undertaken to mitigate impact on existing vegetation as a result of project works.

[POCNS05]

USE

54. 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]
55. 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]
56. 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]
57. In the event that the telecommunications facility is no longer required or the equipment becomes obsolete, it is to be removed and the site restored, to a condition that is similar to its condition before the facility was constructed.
58. The installation of the communications infrastructure must be in compliance with the following:
 - (a) ARPANSA, Australian Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency fields - 3khz to 300GHz, in Radiation Protection Standard RPS3 2002, ARPANSA ; Australian, clause 5.7, pages 28-29, as amended from time to time: and
 - (b) The Australian Communication Industry Forum Code 'ACIF' C564:2004 (December 2004).
59. The applicant is to provide certification to the General Manager or his delegate of the operation of the telecommunications facility in accordance with the approved electromagnetic energy (EME) levels within thirty (30) days after the operation of the tower, and again at a twelve month interval.
60. The telecommunications facility is not to cause adverse radio frequency interference with any airport, port or Commonwealth Defence navigational or communications equipment.

[USENS01]

REPORT:

Applicant: CPS Global
Owner: Tweed Shire Council
Location: Lot 1 DP 528102; No. 47 Terranora Road Banora Point
Zoning: R2 - Low Density Residential
Cost: \$150,000.00

Background:

Application details

The application seeks approval for the construction of a telecommunication facility on Council owned land at No. 47 Terranora Road, Banora Point. It is noted that telecommunication infrastructure is presently located on site, attached to the reservoir, however this is to be relocated to the proposed monopole as part of this application.

Development consent is sought for:

- The erection of a 24m monopole;
- The installation of nine (9) panel antennae on turret on top of the monopole resulting in an overall height of 35m;
- The installation of 5 new radiocommunication dishes; and
- Ancillary equipment associated with the safe operation of the facility, such as elevated cable ladder.

The proposal as initially submitted was for the antennas to be colour matched to its background however under this assessment it is considered appropriate to match the colour of the structure to the same as the adjacent reservoir.

The proposal requires the removal of two trees as follows;

- One *Callistemon viminalis* (weeping bottlebrush), with a trunk diameter of 300mm and a overall height of 4m, and
- One *Schefflera actinophylla* (umbrella tree), with a trunk diameter of 600mm (at base) and an overall height of 6m.

The proposed development will require some incursions into the Tree Protection Zone of two large (22m & 25m) local native *Araucaria cunninghamii* (hoop pine) located adjacent to the proposal. However, following realignment of the proposed service cable ladder, impacts to these mature Hoop Pine have been minimised and appropriate arboricultural management measures are to be undertaken. The proposed development shall therefore not have a significant impact the mature hoop pines on site.

Site selection

The applicant has that the current facility on the reservoir operates under a co-location agreement between three carriers (Vodafone, Optus, and Telstra) to service a specific target coverage area.

The *Telecommunications Act 1997* and *SEPP Infrastructure* require that all carriers consider co-location and upgrading of the existing facilities as a priority. In this regard, the submitted

application is considered to be in accordance with this, as the proposed development is for the co-location of three carriers and also represents an upgrade to the existing facilities on site.

In any event, a number of alternative sites have been investigated by the proponent through the assessment of this application. Six sites which presently contain telecommunication infrastructure ranging in distance from 1.8km to 3.7km from the subject site were discounted due to their distance from the target coverage area, the presence of the carriers at those sites already and limitations in upgrading those sites.

The proponent has identified seven alternative sites while four community suggest sites were also investigated. These are identified below:



Alternative Sites Map

These sites have been discounted mainly on the basis of not meeting or only partly meeting the required coverage area, however reasons such as unlikelihood of support from the landowner based on preliminary investigations or increased visual impact have also been identified.

In conclusion, the applicant has advised of the following with respect to site selection;

'The current facility on the reservoir operates under a co- location agreement between all three carriers to service a specific target coverage area within the broader network.'

The proposal is for the relocation of the existing equipment on the reservoir onto a new shared structure, thereby avoiding the need for additional facilities in the area.

As mentioned in the submitted SEE, the existing sites in the area are unable to compensate for the lack of coverage that will result from the loss of the existing facility at 47 Terranora Road. The existing sites are simply too far away, which results in diminished signal strength due to topographical constraints, creating coverage deficiencies around the target location.

The existing structure is a water tower on a ridge. No alternative existing structures of comparable height and elevation are available for co-location opportunities that would provide sufficient replacement coverage.

Considering the above, all possible co-location options have been investigated and exhausted.'

Site details

The subject site is legally described as Lot 1 DP 528102 and is known as No. 47 Terranora Road, Banora Point.

The site covers an area of approximately 2,685m² and is Council owned, being identified as operational land. The site contains water infrastructure by way of a reservoir, with ancillary structures also located on site.



Subject Site

It is noted that presently, there are telecommunications infrastructure erected on this reservoir. This application has been lodged in order to relocate the telecommunication infrastructure from the reservoir which the submitted application has advised is required by Council as landowner.

The site is elevated and contains some mature vegetation in proximity to the proposed telecommunication facility. The proposal requires the removal of two trees being one *Callistemon viminalis* (weeping bottlebrush) and one *Schefflera actinophylla* (umbrella tree).

The site is generally located within a low density residential area, though it is noted that Banora Point Primary School is located approximately 250m to the north of the site.

Strength of the Electromagnetic field

The below are considered to be relevant when assessing the strength of the electromagnetic field associated with the proposed development. The facility would need to operate within the exposure standards in:

1. The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) standard (the Radiation Protection Standard for Maximum Exposure levels to Radiofrequency Fields – 3KHz to 300GHz (ARPANSA Standard));
2. Radiocommunications (Electromagnetic Radiation - Human Exposure) Standard 2003; and
3. Any other standards endorsed by the Commonwealth Government and the Australian Communications and Media Authority (ACMA).

The Radiocommunications (Electromagnetic Radiation - Human Exposure) Standard 2014 was prepared by ARPANSA and adopted by AMCA in 2014. It is consistent with that recommended by ICNIRP (International Commission for Non-Ionising Radiation Protection), an agency associated with the World Health Organisation (WHO).

The Standard operates by placing a limit on the strength of the signal (or RF EME) that mobile carriers can transmit to and from any network base station. The standard is not based on distance restrictions or the creation of buffer zones, but setting a signal strength with a significant safety margin which cannot be exceeded. All mobile carriers must comply with the Australian Standard.

The applicant has advised that the maximum strength of the electromagnetic field that the facility would produce is 2.54% of the ARPANSA mandated exposure limit (based on the maximum level of radiofrequency (RF)/electromagnetic cumulative energy (EME) at 1.5m above the ground from the antennae).

The applicant has submitted an Environmental EME Report for the site using the ARPANSA prediction methodology. This shows that the maximum environmental EME level will be 2.54% of the ARPANSA public exposure limits.

It is noted that the existing telecommunication infrastructure on site is calculated at 2.48% of the public exposure limit.

Pre-lodgement (Community) Consultation

Set out below is a summary of the pre-lodgement consultation undertaken by the applicant.

Sep 2015 – The applicant attended a Development Assessment Panel (DAP) meeting for advice with respect to lodging a Development Application.

The applicant was issued with a copy of Council's resolution in relation to pre-application consultation requirements for development applications for telecommunications facilities:

This resolution requires that pre-lodgement consultation be undertaken as per the below;

*RESOLVED that where Tweed Shire Council is the consent authority for the installation of Telecommunication networks the provider/applicant/proponent be requested to undertake the following community consultation **before** submitting any Development Application(s) for the installation of Mobile Towers and all supporting equipment within the shire;*

- advertisements in the Tweed Link in two consecutive publications,
- two independent newspapers,
- a community meeting held within the area that could be affected by the proposal,
- letter box drops to the surrounding homes/businesses etc. that could be affected,
- door knocks to the surrounding area that could be affected

and that this preliminary consultation forms part of the Development Application (as supplementary written information and includes copies of all correspondence - inwards and outwards regarding the consultation process undertaken), when finally submitting the Development Application to Council for review/processing/consideration.

A review of the submitted application demonstrated that a community meeting was not held in this regard.

Public submissions received as part of this application have raised objections to the lack of a community meeting being held, while it is also questioned whether door knocks were undertaken, with one submission advising that persons contacted (by the objector) on Terranora Road and Pioneer Parade had not been door knocked.

Further objections are raised with respect to the public consultation being undertaken in relation to a different development design than that now proposed, with it being noted that no pre-lodgement consultation was therefore undertaken with respect to the actual design proposed.

In considering any of the above, it is noted that while the pre-lodgement consultation was not undertaken in accordance with the above resolution, the above are not considered to be a substantive planning matters which would warrant refusal of the application.

Council staff are required to assess the development proposal based on the merits of the proposal when assessed against the provisions of the Environmental Planning & Assessment Act 1979 rather than refusing specifically based on a previous Council resolution.

Oct 2017 – Notification letters were delivered to 250 dwellings surrounding the site in addition to door knocks to homes immediately surrounding the site.

Two A1 size signs were erected on the site.

A notice was published in the Tweed Link dated 10 October 2017 and 17 October 2017 as well as Tweed Daily News on 14 October 2017.

The notification material contained links to a Radio Frequency National Site Coverage (RFNSA) website/consultation page.

Through this exhibition, 23 written submissions and a petition with over 100 signatures was received by the proponent.

These submissions raised the following issues:

- Potential impact on visual amenity;
- Health Concerns; and
- Impact on Property Values

Oct 2018 – A letter was sent to the submitters by the proponent advising of the issues raised through the submission period, what steps they had taken since consultation and advising that a DA was to be lodged with Tweed Shire Council.

It is noted that as part of this, the proposed monopole was reduced by 6m in height (from 41m to 35m) with slimline antenna and low-reflective materials also proposed.

This letter also advises that EME level from the proposed development (at 2.48% of public exposure limit) will be less than under the existing infrastructure on the reservoir (2.66% of public exposure limit).

Planner Note: The Development Application as lodged indicates different EME levels than those identified above as outlined elsewhere within this report.

Dec 2018 – The applicant was issued landowners consent and the Development Application was lodged.

Post- lodgement Community Consultation

Subsequent to the lodgement of the application, the public exhibition of the application and a request for further information being issued to the applicant, further community consultation was undertaken by the proposed as identified below;

July 2019 – The proponent held a meeting with Geoff Provest MP and also with Banora Point Public School Representatives.

Development History

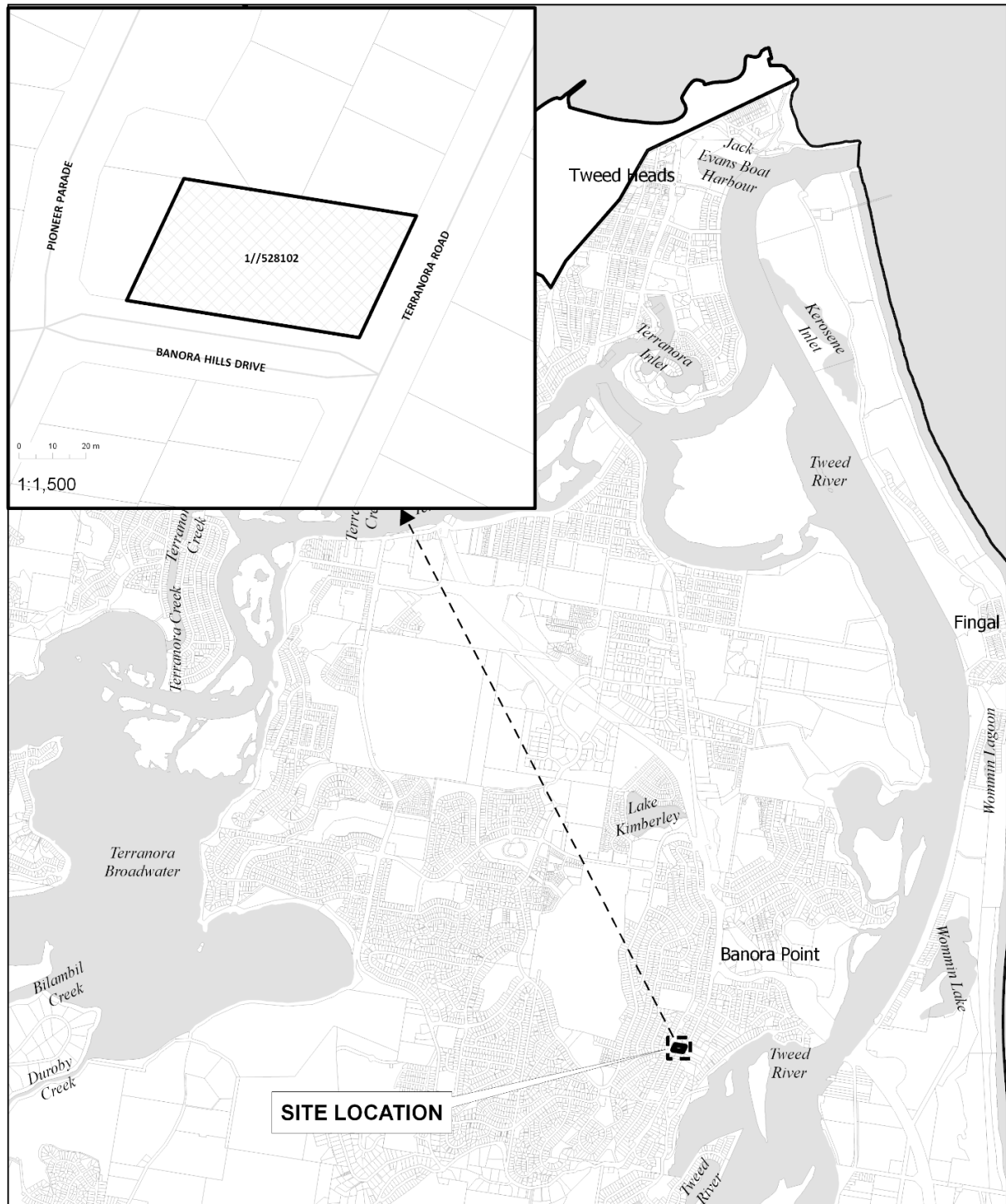
There is no previous development history on this site. It is noted that current telecommunication infrastructure was established on site without the need for development consent, based on the legislation in place at that time. The below is a summary of this;

- A lease was issued by Council in 1995 for Optus over Council owned land Lot 1 DP 528102. Under the provisions of the 'Telecommunication Act 1991', 'Environmental Planning and Assessment Act 1979', 'Development Act 1989' and 'Telecommunications National Code (1994)', the installation of the telecommunication device occurred onsite as exempt development. Therefore, a Development Application was not required;
- A lease was issued by Council in 1997 for Vodafone over Council owned land Lot 1 DP 528102. Under the provisions of the 'Telecommunication Act 1991', 'Transport and Communications Legislation Amendment Act 1991',

'Telecommunication National Code (1994)' and 'Telecommunication (Exempt Activities) Regulations 1991', the additions to the telecommunication device occurred onsite as exempt development. Therefore, a Development Application was not required; and

- A lease was issued by Council in 1998 for Telstra over Council owned land Lot 1 DP 528102. Under the provisions of the 'Telecommunication (Low-impact Facilities) Determination 1997' the additions to the telecommunication device occurred on site as exempt development. Therefore, a Development Application was not required.

SITE DIAGRAM:



Site Plan

47 Terranora Road, Banora Point
Lot 1 DP 528102

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Coordinate System - MGA Zone 56
Datum - GDA 94



Cadastral: 20/11/2019
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TWEED
SHIRE COUNCIL

Date Printed: 20 November, 2019



2018 Aerial Imagery



47 Terranora Road, Banora Point
Lot 1 DP 528102

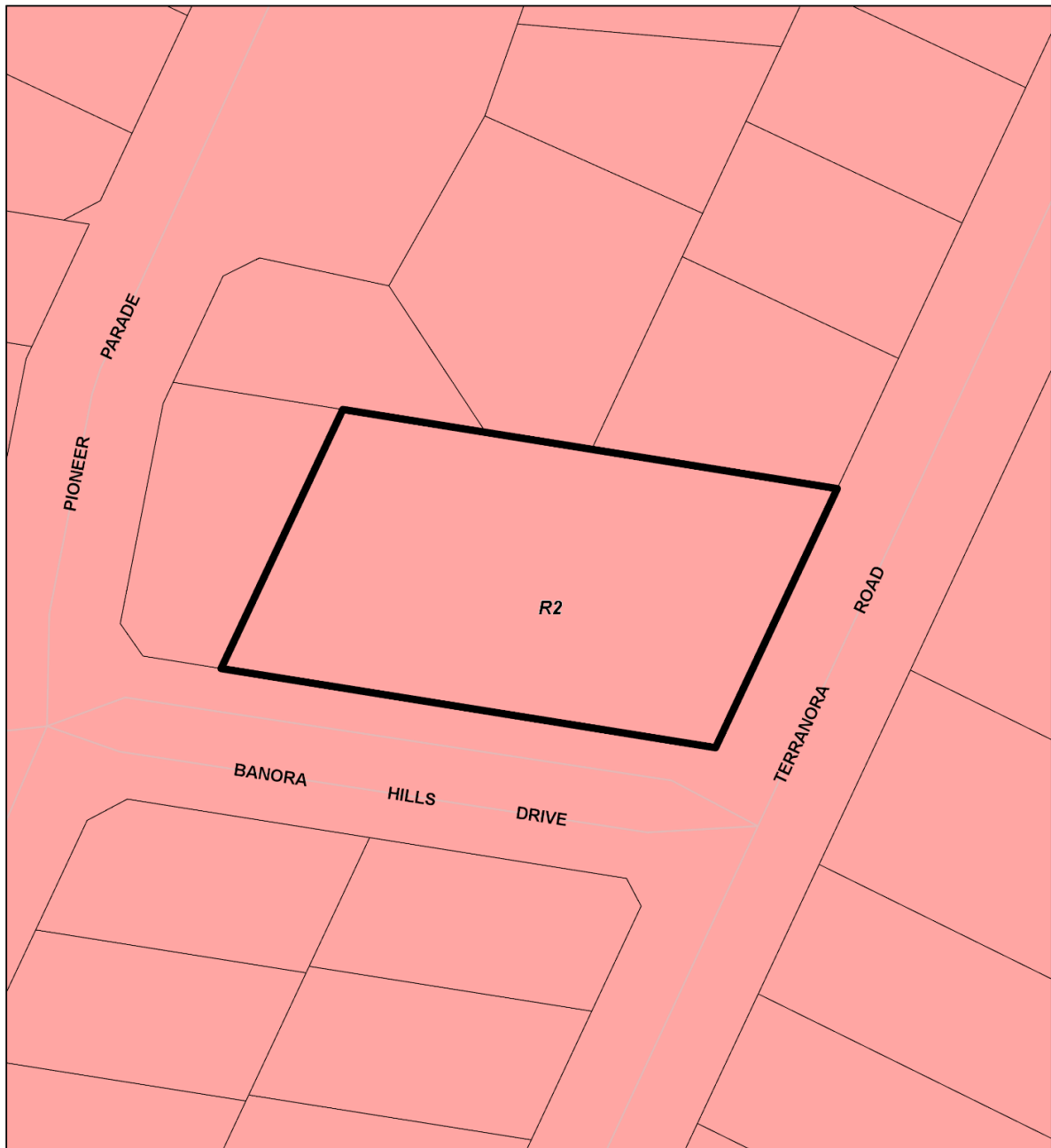
© 2018 Imagery - Tweed Shire Council
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*Boundaries shown should be
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Imagery can have parallel misalignment
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Author: S. Scott - GIS

Date Printed: 20 November 2019

ZONING:

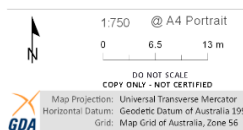


Subject Land

 Subject Land

Tweed Local Environmental Plan 2014

 R2 Low Density Residential



Site Plan - Local Environmental Plan

47 Terranora Road, Banora Point
Lot 1 DP 528102

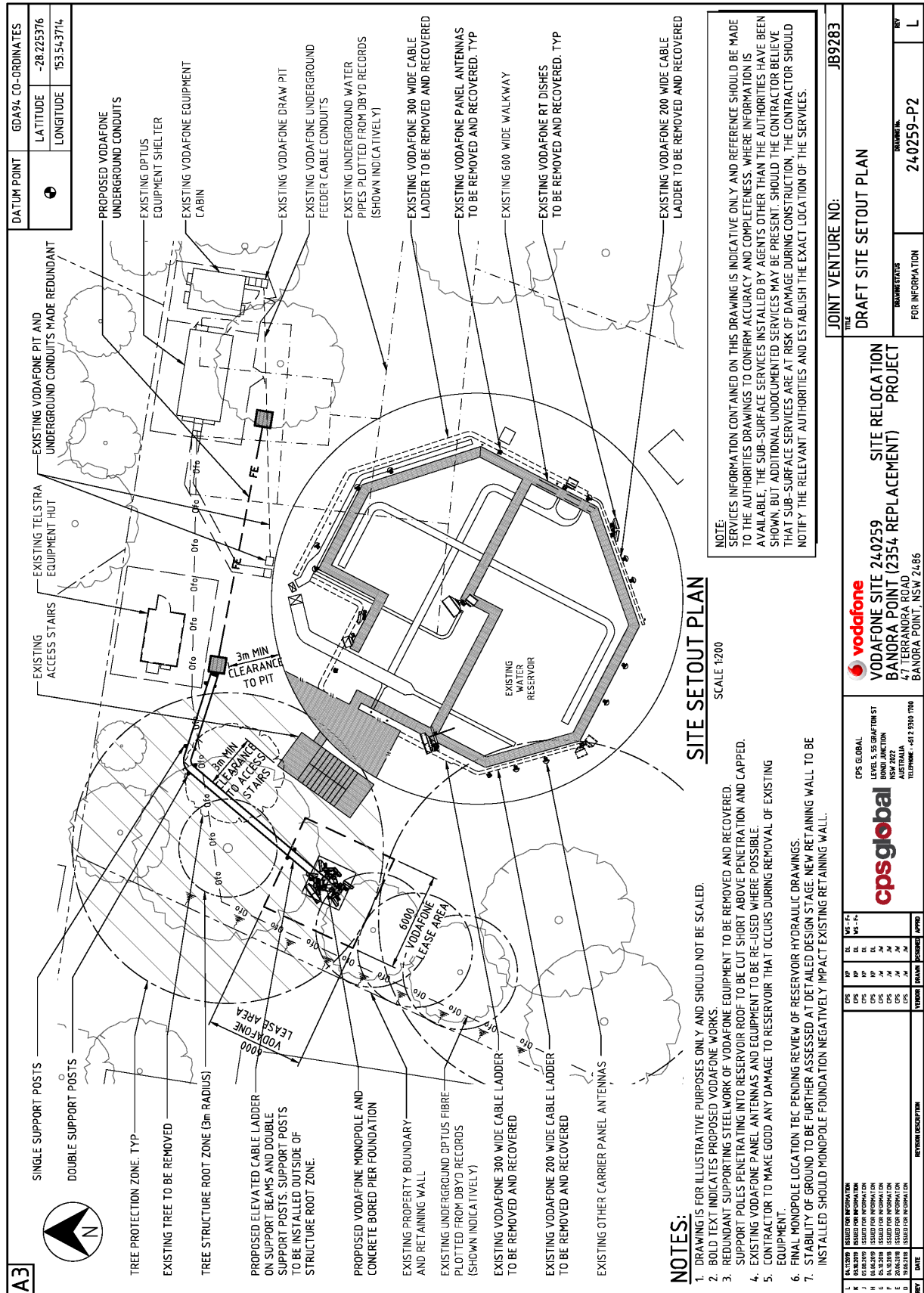
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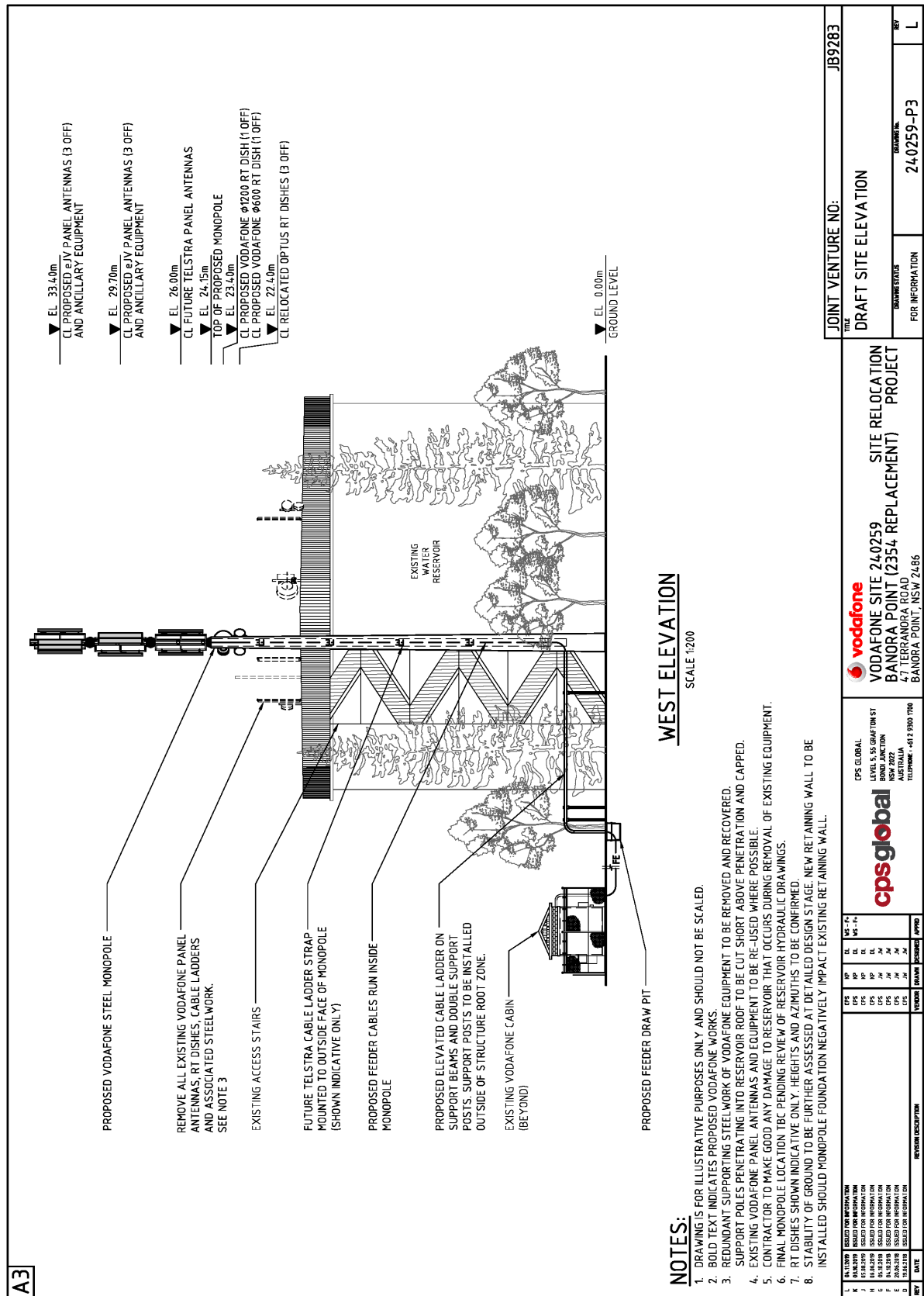
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Date Printed: 20 November, 2019









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 proposal is generally consistent with the aims of the aims of the plan. The provision of a telecommunications network will encourage a sustainable, local economy, enable local businesses to operate in the area and provide telecommunications connectivity to the local community in this area.

The proposal is considered to be acceptable having regard to this clause.

Clause 1.4 – Definitions

Under this LEP, the proposed development is defined as a **telecommunications facility**, defined as follows;

telecommunications facility means:

- (a) any part of the infrastructure of a telecommunications network, or
- (b) any line, cable, optical fibre, fibre access node, interconnect point equipment, apparatus, tower, mast, antenna, dish, tunnel, duct, hole, pit, pole or other structure in connection with a telecommunications network, or
- (c) any other thing used in or in connection with a telecommunications network.

A telecommunications facility is permitted with consent in the R2 Low Density Residential zone.

Clause 2.3 – Zone objectives and Land use table

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

The proposal is located on a site which is zoned R2 – Low Density Residential.

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 subject application is considered to meet the above objectives by way of providing a facility or service to meet the day to day needs of the community.

It is noted that, irrespective of the proposed development being permissible with consent under the Tweed Local Environmental Plan 2014, under SEPP (Infrastructure) 2007 consent can be granted for telecommunications facility in any zone with development consent.

Clause 4.3 - Height of Buildings

This clause relates to the height of a building. As defined in the *Environmental Planning and Assessment Act 1979*, a **building** *includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the Local Government Act 1993.*

Further the LEP defines **building height (or height of building)** as meaning:

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but **excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.***

It is noted that the submitted application identifies that the subject development is a form of communications device which is excluded from the 'building height' definition. As such, the proposal is considered to be acceptable with respect to this clause.

Therefore this clause does not apply to the installation of telecommunications structures or associated equipment.

Clause 5.10 – Heritage conservation

The objectives of this clause are as follows:

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

The subject site is not mapped as containing any heritage items or as being located in a Heritage Conservation Area.

The application was reviewed with respect to Aboriginal Cultural Heritage by Council's Strategic Planning Unit who provided the following comment;

'The site does not contain any heritage items and is not mapped as either known Aboriginal place of Heritage Significance or Predictive Aboriginal Cultural Heritage within the Aboriginal Cultural Heritage Management Plan 2018 (ACHMP).

The DA is supported by email correspondence with the Tweed Byron Local Aboriginal Land Council (TBLALC) noted that no cultural heritage assessment is required and that their own Due Diligence is sufficient for this proposal.

The DA is supported by an Aboriginal Heritage Information Management System (AHIMS) search. It is noted this is called an "extensive search: in their SEE but is only a 50m buffer. The ACHMP notes that a suitable AHIMS search is relevant to the scope of the work but requires a minimum 100m buffer. Whilst this is not met, or extensive, in this instance this is considered adequate.

Given the site is not mapped and no further assessment requirements have been required by the TBLALC, there are no further Aboriginal cultural heritage or heritage requirements.'

A standard condition is to be provided to any consent issued which would provide for any instance where an Aboriginal object or cultural heritage is discovered. This condition is worded as follows;

- # 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.

The proposal is considered to be acceptable with respect to heritage conservation subject to the recommendations of this report being formalised as a condition of development consent in the event of approval.

Clause 7.1 – 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 development area exhibits Class 5 Acid Sulfate Soils as per Council's GIS system.

Given the extent of soil disturbance likely and that the proposal is not considered to be likely to lower any water table. It is considered that the proposed development would not result in any unacceptable impacts with respect to acid sulphate soil disturbance.

The subject application was reviewed by Council's Environmental Health Unit who have raised no concerns with respect to acid sulfate soils on the site, advising the following;

'The site is class 5 on the ASS Planning Maps. Elevated hilltop site. Whilst deep footings are required, ASS not likely to be disturbed and no dewatering required.'

The proposal is considered to be acceptable with respect to the provisions of this clause.

Clause 7.8 – 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.

This application was referred to the planning consultant operating on behalf of Gold Coast Airport Pty Ltd (GCAPL) who has advised that *'the matter was examined by GCAPL during earlier stages of preparing the application, and found to be below the OLS'*

Further comments received requested that Council apply a condition on any consent issued which requires the proponent to notify Gold Coast Airport of the details of any proposed cranes to be used during erection of the tower for their assessment. Such a condition would be applied in the event of approval.

Having regard to the advice above the application is considered to be acceptable with respect to the requirements of this clause.

Clause 7.9 - Development in areas subject to aircraft noise

The objectives of this clause are as follows—

- (a) to prevent certain noise sensitive developments from being located near the Gold Coast Airport and its flight paths,

- (b) to assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings,
- (c) to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport.

The application was reviewed by Council's Environmental Health Unit with respect to aircraft noise, with the following comment being provided;

'The site is located within the 20 – 25 ANEF. No occupancy is proposed. Workers may be exposed to aircraft noise for brief periods during maintenance works etc. NFAR.'

The proposal is therefore considered to be acceptable having regard to aircraft noise.

Clause 7.10 – Essential Services

This clause outlines that consent must not be granted to development unless Council is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available when required. In this instance it is considered that, of the services outlined under this clause, the supply of electricity and suitable vehicular access are applicable to this application. The site is considered to be adequately serviced with these services.

North Coast Regional Plan 2036 (NCRP)

The North Coast Regional Plan 2036 (NCRP) is the NSW Department of Planning and Environment's visionary strategic document to guide land use planning priorities and decisions in the North Coast of NSW until 2036. It contains high level priorities for the region, and specific goals and actions for individual government areas. These include protecting the region's distinct social and cultural character, its biodiversity and environmental values, and its typical built character. It is also a goal of the plan to deliver a thriving, interconnected economy.

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 subject application has been reviewed with respect to contamination by Council's Environmental Health Unit who have provided the following information;

- **'Contaminated Land**

It is noted the site currently contains a water supply tower and telecommunications facilities of various Telcos. The SEE Part 5.4.6 states:

As per the Section 10.7 Certificate, Council has not been notified by the Environment Protection Authority (EPA) that the land is significantly contaminated land within the meaning of the Contaminated Land Management Act 1997.

Council has not by resolution, adopted a policy which may restrict development of the subject land in respect of potential contamination of that land.

A search has been made under the EPA contaminated land record of notices and no results were found in the suburb of Banora Point.

Any contaminated soils exposed during the proposed works will be remediated in accordance with the relevant guidelines under SEPP No. 55 and the necessary soil disposal permits will be arranged.

This is not considered a satisfactory response. However a review of Council records indicates:

ECM – nil identified.

No CDS within 200m.

1962 aerial – difficult to scale, but no small cropping or agriculture evident in this location.

1976 aerial – construction of residential roads etc evident. No cropping.

There does not appear to be a trigger for further examination, especially considering the existing site uses.'

Based on the above, the proposal is considered to be generally acceptable having regard to contamination.

SEPP (Infrastructure) 2007

Division 21 of this SEPP relates to the provision of telecommunications and other communications facilities.

The proposed development is classified under Division 21 as development that requires consent from Council. The SEPP stipulates:

115 Development permitted with consent

- (1) *Development for the purposes of telecommunications facilities, other than development in clause 114 or development that is exempt development under clause 20 or 116, may be carried out by any person with consent on any land.*
- (2) *(Repealed)*
- (3) *Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines concerning site selection,*

design, construction or operating principles for telecommunications facilities that are issued by the Director-General for the purposes of this clause and published in the Gazette.

In accordance with subsection (3), before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Secretary for the purposes of this clause and published in the Gazette.

NSW Telecommunications Facilities Guidelines including Broadband

The purpose of the NSW Telecommunications Facilities Guidelines including Broadband is to:

- (a) Provide a guide to the State wide planning provisions and development controls for communication facilities in NSW contained in SEPP (Infrastructure) 2007;
- (b) Provide guidance to assist the facilitation of the rollout of broadband in NSW.

Principles for the design, siting, construction and operation of telecommunication facilities that apply to all proposed telecommunications facilities in NSW are contained in this document.

- Principle 1:** A telecommunications facility is to be designed and sited to minimise visual impact.
- Principle 2:** Telecommunications facilities should be co-located wherever practical.
- Principle 3:** Health standards for exposure to radio emissions will be met.
- Principle 4:** Minimise disturbance and risk, and maximise compliance.

An assessment of the proposal against these principles is set out below in Table 1:

Table 1: Assessment of the proposal against the NSW Telecommunications Facilities Guidelines

Principle	Assessment
<i>Principle 1: A telecommunications facility is to be designed and sited to minimise visual impact</i>	
<i>a) As far as practical, a telecommunications facility that is to be mounted on an existing building or structure should be integrated with the design and appearance of the building or structure.</i>	The proposal does not relate to a telecommunication facility that is to be mounted on an existing building or structure. Therefore this principle is not considered to be applicable to the proposed development. It is noted that the application is to the relocate telecommunications facility from an existing building due to safety reasons.
<i>(b) The visual impact of telecommunications</i>	The proposed development is not located on top of an existing building, however it is

Principle

facilities should be minimised, visual clutter is to be reduced particularly on tops of buildings, and their physical dimensions (including support mounts) should be sympathetic to the scale and height of the building to which it is to be attached, and sympathetic to adjacent buildings.

Assessment

considered that the visual impact associated with the proposal is required to be minimised, as per this principle.

This is addressed in more detail later in this report where it is determined that the visual impact of the structure is considered to be acceptable. By their nature, telecommunications equipment is generally located at elevated locations or on tall structures, meaning that some visual impact is unavoidable. However, having regard to the existing vegetation in the area and the distance from significant public viewing locations the proposed location is considered reasonable.

To minimise the visual impact further, a condition has been included in the recommendation requiring that the pole and other elements of the structure are to be painted to match the adjacent water reservoir on site.

- (c) *Where telecommunications facilities protrude from a building or structure and are predominantly backgrounded against the sky, the facility and their support mounts should be either the same as the prevailing colour of the host building or structure, or a neutral colour such as grey should be used.*

The proposed mast will be predominantly backgrounded against the sky only in close proximity to the site. Of greater significance is the potential visual impact that the mast would have in longer distance views. On this basis, it is recommended that the development be painted similar to the adjacent water reservoir on site.

- (d) *Ancillary facilities associated with the telecommunications facility should be screened or housed, using the same colour as the prevailing background to reduce its visibility, including the use of existing vegetation where available, or new landscaping where possible and practical.*

Ancillary equipment associated with the proposed telecommunications facility are already located on site as part of the existing telecommunication infrastructure.

Principle	Assessment
e) <i>A telecommunications facility should be located and designed to respond appropriately to its rural landscape setting.</i>	The telecommunication facility is not located in a rural setting. In any event, it is considered that the proposed development has been located and designed to minimise visual impacts. It is considered that the proposed facility would not result in a significant visual impact on the rural landscape setting.
(f) <i>A telecommunications facility located on, or adjacent to, a State or local heritage item or within a heritage conservation area, should be sited and designed with external colours, finishes and scale sympathetic to those of the heritage item or conservation area.</i>	The proposed facility is not located on, or adjacent to a State or local heritage item, or within a heritage conservation area. The proposal is considered acceptable in this regard.
(g) <i>A telecommunications facility should be located so as to minimise or avoid the obstruction of a significant view of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land.</i>	A detailed visual amenity analysis of the proposed development has been undertaken elsewhere in this report. The proposal is considered to be generally acceptable with respect to significant views.
(h) <i>The relevant local government authority must be consulted where the pruning, lopping, or removal of any tree or other vegetation would contravene a Tree Preservation Order applying to the land or where a permit or development consent is required.</i>	As set out elsewhere in this report, Council's Sustainability and Environment Unit have reviewed the proposal and considered that it can be supported subject to the imposition of appropriate conditions.
(i) <i>A telecommunications facility that is no longer required is to be removed and the site restored, to a condition that is similar to its condition before the facility was constructed.</i>	It is recommended that a condition be included requiring the removal of the structure should the equipment become obsolete.

Principle	Assessment
(j) <i>The siting and design of telecommunications facilities should be in accordance with any relevant Industry Design Guides.</i>	The proposal is considered to be generally acceptable when reviewed against the Precautionary Approach Checklist set out in <i>Industry Code C564: 2011 Mobile Phone Base Station Deployment</i> (commonly referred to as the Deployment Code).
Principle 2: Telecommunications facilities should be co-located where possible	
(a) <i>Telecommunications lines are to be located, as far as practical, underground or within an existing underground conduit or duct.</i>	The proposal will cater for the co-location of three carriers. The proposed development relates to the relocation of infrastructure from an existing reservoir on site to a specific telecommunications tower at this location.
(b) <i>Overhead line, antennae and ancillary telecommunications facilities should, where practical, be co-located or attached to existing structures such as buildings, public utility structures, poles, towers or other radio-communications equipment to minimise the proliferation of telecommunications facilities and unnecessary clutter.</i>	The subject development is identified as complying with the maximum human exposure levels as detailed elsewhere in this report.
(c) <i>Towers may be extended for the purposes of co-location.</i>	
(d) <i>The extension of an existing tower must be considered as a practical co-location solution prior to building new towers.</i>	
(e) <i>If a facility is proposed not to be co-located the proponent must demonstrate that co-location is not practicable.</i>	
(f) <i>If development is for a co-location purpose, then any new telecommunication facility must be designed installed and operated so that the resultant cumulative levels of radio frequency emission of the</i>	

Principle	Assessment
<p><i>co-located telecommunication facilities are within the maximum human exposure levels set out in the Radiation Protection Standard.</i></p> <p><i>Note: Co-location is 'not practicable' where there is no existing tower or other suitable telecommunications facility that can provide equivalent site technical specifications including meeting requirements for coverage objectives, radio traffic capacity demands and sufficient call quality.</i></p>	
<p>Principle 3: Health standards for exposure to radio emissions will be met</p>	
<p>(a) <i>A telecommunications facility must be designed, installed and operated so that the maximum human exposure levels to radiofrequency emissions comply with Radiation Protection Standard.</i></p>	<p>The applicant has submitted an Environmental EME Report for the site using the ARPANSA prediction methodology. This shows that the maximum environmental EME level will be 2.54% of the ARPANSA public exposure limits.</p> <p>It is noted that the existing telecommunication infrastructure on site is calculated at 2.48% of the public exposure limit.</p>
<p>(b) <i>An EME Environmental Report shall be produced by the proponent of development to which the Mobile Phone Network Code applies in terms of design, siting of facilities and notifications. The Report is to be in the format required by the Australian Radiation Protection Nuclear Safety Agency. It is to show the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and demonstrate</i></p>	<p>It is also considered appropriate that a condition be included in the consent reiterating that the proposed facility must be designed, installed and operated so that the maximum human exposure levels to radiofrequency emissions comply with Radiation Protection Standard.</p>

Principle
*compliance with the Mobile
Phone Networks Code.*

Assessment

Principle 4: Minimise disturbance and risk, and maximise compliance

(a) *The siting and height of any telecommunications facility must comply with any relevant site and height requirements specified by the Civil Aviation Regulations 1988 and the Airports (Protection of Airspace) Regulations 1996 of the Commonwealth. It must not penetrate any obstacle limitation surface shown on any relevant Obstacle Limitation Surface Plan that has been prepared by the operator of an aerodrome or airport operating within 30*

The proposed facility was referred to Gold Coast Airport Pty Ltd for comment given its proximity to Gold Coast Airport. Council have received a response advising that the proposal does not penetrate the Obstacle Limitation Surface (OLS).

The proposal is considered to be acceptable having regard to the above matter.

Principle	Assessment
<i>kilometres of the proposed development and reported to the Civil Aviation Safety Authority Australia</i>	
(b) <i>The telecommunications facility is not to cause adverse radio frequency interference with any airport, port or Commonwealth Defence navigational or communications equipment, including the Morundah Communication Facility, Riverina.</i>	The submitted application has advised that the base station is designed to create no electrical interference problems with other radio based systems and complies with the requirements of relevant Australian Standards in this regard. Proposal is considered acceptable in this regard.
(c) <i>The telecommunications facility and ancillary facilities are to be carried out in accordance with the applicable specifications (if any) of the manufacturers for the installation of such equipment.</i>	The applicant has advised that the proposal would be developed in accordance with the relevant Australian Standards.
(d) <i>The telecommunications facility is not to affect the structural integrity of any building on which it is erected.</i>	The proposal is not to be erected on an existing building and will therefore not affect structural integrity as outlined above.
(e) <i>The telecommunications facility is to be erected wholly within the boundaries of a property where the landowner has agreed to the facility being located on the land.</i>	The telecommunication facility itself will be located entirely within Council owned Lot 1 DP 528102, for which the relevant owners consent has been obtained to submit this application.
(f) <i>The carrying out of construction of the telecommunications facilities must be in accordance with all relevant regulations of the Blue Book – ‘Managing Urban Stormwater: Soils and Construction’ (Landcom 2004), or its replacement.</i>	This matter can be appropriately addressed through the imposition of appropriate conditions of development consent.

Principle	Assessment
(g) <i>Obstruction or risks to pedestrians or vehicles caused by the location of the facility, construction activity or materials used in construction are to be mitigated.</i>	This matter can be appropriately addressed through the imposition of conditions of development consent, including the submission and approval of a construction traffic management plan.
(h) <i>Where practical, work is to be carried out during times that cause minimum disruption to adjoining properties and public access. Hours of work are to be restricted to between 7.00am and 5.00pm, Mondays to Saturdays, with no work on Sundays and public holidays.</i>	This matter can be appropriately addressed through the imposition of conditions of development consent, including a restriction on construction work to between 7.00am and 5.00pm Monday to Saturday.
(i) <i>Traffic control measures are to be taken during construction in accordance with Australian Standard AS1742.3-2002 Manual of uniform traffic control devices – Traffic control devices on roads.</i>	As above, this matter can be appropriately addressed through the imposition of conditions of development consent, including the submission and approval of a construction traffic management plan.
(j) <i>Open trenching should be guarded in accordance with Australian Standard Section 93.080 – Road Engineering AS1165 – 1982 – Traffic hazard warning lamps.</i>	There is not anticipated to be any open trenching outside of the site.
(k) <i>Disturbance to flora and fauna should be minimised and the land is to be restored to a condition that is similar to its condition before the work was carried out.</i>	Council's Sustainability and Environment Unit has undertaken a detailed assessment of the proposed development with regard to potential impact upon flora and fauna. This is detailed elsewhere in this report with it being considered that the proposal is generally acceptable in this regard.
(l) <i>The likelihood of impacting on threatened species and communities should be identified in consultation with relevant state or local government authorities and disturbance to identified</i>	The proposal is not considered likely to have a significant impact upon the local population of those threatened species known or likely to occur onsite.

Principle	Assessment
<i>species and communities avoided wherever possible.</i>	
<i>(m) The likelihood of harming an Aboriginal Place and / or Aboriginal object should be identified. Approvals from the Department of Environment, Climate Change and Water (DECCW) must be obtained where impact is likely, or Aboriginal objects are found.</i>	The site is not identified in Council's Aboriginal Cultural Heritage Management Plan mapping as either a known or predictive site of heritage significance. Nevertheless, it is recommended that a condition be included in any consent issued with regard to unexpected finds.
<i>(n) Street furniture, paving or other existing facilities removed or damaged during construction should be reinstated (at the telecommunications carrier's expense) to at least the same condition as that which existed prior to the telecommunications facility being installed.</i>	The proposed development is not located in close proximity to any street furniture or the like identified. In this regard there is considered to be no anticipated negative impacts.

Conclusion:

Having regard to the assessment provided above, the proposed development is considered to be generally consistent with the four principles set out in the NSW Telecommunications Facilities Guidelines. Therefore, the proposal is assessed as complying with the provisions of Clause 115(3) of the Infrastructure SEPP.

SEPP (Coastal Management) 2016

The State Environmental Planning Policy (Coastal Management) 2018 commenced on 3 April 2018 and guides development in coastal areas, including land adjacent to beaches, estuaries, coastal lakes, coastal wetlands and littoral rainforests. It promotes appropriate and sensitive development in our coastal areas, recognising they are some of the most socially, environmentally and economically valuable lands in NSW.

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

13 Development on land within the coastal environment area

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*

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

It is considered that the proposal is consistent with the provisions of this clause.

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

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

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

Tweed Development Control Plan

Section A2 - Site Access and Parking Code

Access to the site is via an established driveway crossover to Terranora Road that currently services the infrastructure on site. There is no proposal to create any new accesses.

The DCP does not set out any car parking requirements for telecommunications equipment. Car parking requirements associated with the development would be limited to maintenance and inspections. It is considered that there is adequate area at the ground keeping sheds and adjacent to the site to accommodate any such car parking. The proposal is not considered to compromise the provisions or objectives of Section A2.

Section A11-Public Notification of Development Proposals

The application was advertised and notified for a period of 14 days from Wednesday 16 January 2019 to Wednesday 30 January 2019 though it is noted that late submissions were accepted on this application. Submissions received are detailed elsewhere in this report.

Section A16 - Preservation of Tree or Vegetation

The proposal includes the removal of two trees being a weeping bottlebrush and a umbrella tree. The impact on flora and fauna, and in particular the impact on trees, is set out in more detail later in this report. Appropriate conditions of consent have been applied, particularly with regard to tree protection measures and limiting the vegetation removal to those trees identified.

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

There is no planning agreement or draft planning agreement relating to the site or the proposal.

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

Clauses 92(1)(b) (Applications for demolition), 93 (Fire Safety Considerations) and 94 (Buildings to be upgraded) are not relevant.

(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 site is approximately 2km from the coast and not located within a specific area identified under that Plan. The site is not located adjacent to any coastal estuaries covered by this plan.

Tweed Coast Estuaries Management Plan 2004

The site is not located adjacent to any coastal estuaries covered by this plan (Cudgen, Cudgera and Moobal Creeks).

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

The site is not located with the Cobaki or Terranora Broadwater areas to which this plan applies.

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

Flora and Fauna

The application has been reviewed by Council's Sustainability and Environment Unit who provided the following advice:

'Summary

- The monopole requires the removal of two (2) trees being one (1) *Callistemon viminalis* (weeping bottlebrush) and one (1) *Schefflera actinophylla* (umbrella tree);
- The monopole construction will require some incursions into the Tree Protection Zone of two (2) very large local native *Araucaria cunninghamii* (hoop pine) located adjacent to the proposed monopole; and
- Providing conditions of consent are adhered to, the proposed development is not anticipated to have a significant adverse impact on the environment.

Site Assessment

- The site comprises the water reservoir, an existing equipment shelter for the existing telecommunication facilities, water pump station isolated mature and juvenile trees and managed lawn;
- No threatened flora or fauna were observed on site;
- Only a small number common urban tolerant bird species were observed on-site including Noisy Miner, Australian Magpie and Rainbow Lorikeet. No nesting birds or stick nests were observed; and
- Most prominent ecological features within the immediate area surrounding the proposed development are two very large (>800 dbh) *Araucaria cunninghamii* (hoop pine) located to the west of the existing water reservoir. Both trees appeared generally healthy, although the hoop pine to the north east has a supposed phototropic lean to the west.

Ecological Legislative Constraints

No significant ecological legislative constraints apply across the site.

Ecological Impact Assessment

Following review of the amended Arborist Report provided by TPZ project Arborist dated 7 June 2019 it has been identified that the proposed removal of one *Callistemon viminalis* (weeping bottlebrush) and one *Schefflera actinophylla* (umbrella tree) is required. The proposed removal of these two trees is not anticipated to have a significant adverse impact on the environment.

The most significant ecological features on-site are the two mature 'very large (trunk diameter greater than 800 mm) local native *Araucaria cunninghamii* (hoop pine) located to the north and south of the proposed monopole.

Following negotiations between the applicants arborist, Council's Water Unit and S&E Unit (providing conditions of consent are adhered to and appropriate arboricultural management measures are followed in accordance with the

arboricultural report), the proposed development shall not have a significant impact the mature hoop pines to be retained.

Arborists Report

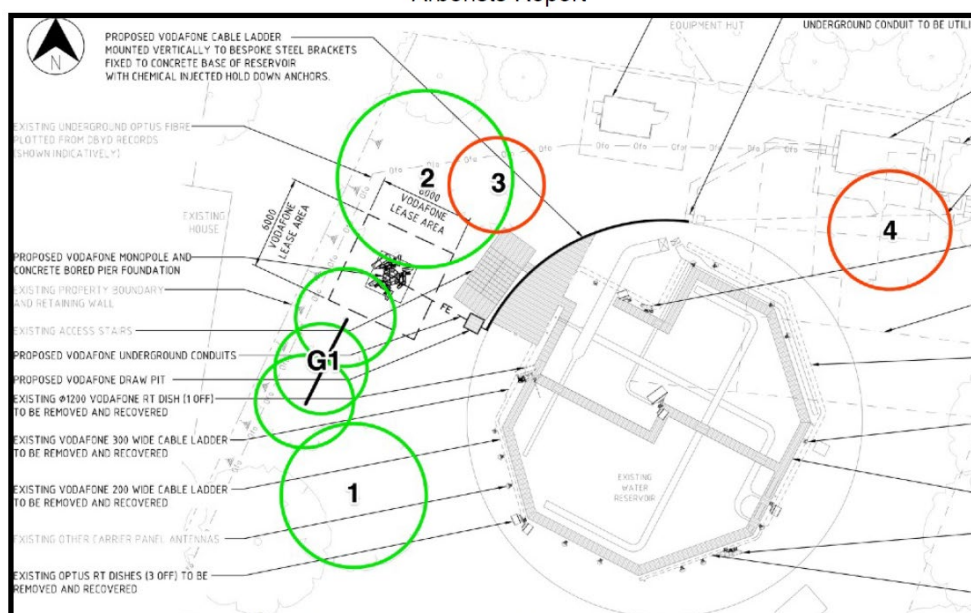


Fig. 3: Shows assessed trees in relation to the proposed work.

Arborists Report

No	Species	DBH (mm)	Height (m)	Spread (m)	Structure	Vitality	Form	TPZ (m)	SRZ (m)	Notes	Proposed
1	Araucaria (Hoop Pine)	900	25	15	Good	Fair	Good	11	3	Relatively one-sided canopy: appears to have been pruned/lopped in the past to facilitate access.	Retain
2	Araucaria (Hoop Pine)	800	22	10	Good	Good	Fair to Poor	9.5	3	Significant lean towards the adjacent property. Lean appears to be phototropic. Some surface root damage noted, likely a result of mowing.	Retain
3	Callistemon (Weeping Bottlebrush)	300	4	2	Poor	Fair to Poor	Fair to Poor	N/A	N/A	Heavily lopped in the past. Significant branch failure has left a large wound at the main stem. 50% of canopy lost. Dieback throughout.	Remove
4	Schefflera (Umbrella Tree)	600 (at base)	6	4	Poor	Good	Poor	N/A	N/A	Multiple leaders from base.	Remove
G1	Melaleuca x 4	250	5	5	Fair	Fair	Poor	3.5	2	All trees in group lean phototropically toward the adjacent property.	Retain

Conclusion

Due to the limited amount of proposed vegetation removal, and the proposed management measures to avoid and minimise impacts to retained vegetation, the proposed development is not anticipated to have a significant adverse impact on the environment providing conditions of consent are adhered to.'

Based on the above, the application is considered to be acceptable having regard to flora and fauna considerations, subject to the imposition of recommended conditions of approval.

Electromagnetic Radiation

Two Australian Government agencies, the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and the Australian Communications and Media Authority (ACMA) are responsible for regulating RF EME.

As set out in the *Australian Government Department of Communications Factsheet – Communications towers, radio transmitters and safety - Information for schools, teachers, students and parents*:

‘ARPANSA is an independent Australian Government agency charged with protecting Australians from exposure to EME. ARPANSA is responsible for advising what safe levels of EME exposure are. ARPANSA has developed a public health standard which sets limits for human exposure to RF EME. The limits are set well below the level at which adverse health effects are known to occur and include a wide safety margin to protect the public. The exposure standards take into account the many sources of RF EME present in the modern environment.

The ACMA licenses the operation of Radiocommunications transmitter. Licences require transmitters to comply with the exposure limits set out in the ARPANSA standard.’

All transmitters must operate below ARPANSA’s public exposure standard which is also known as the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2003* (as updated).

To demonstrate compliance with the standard, ARPANSA created a prediction report using a standard methodology to analyse the maximum potential impact of any new telecommunications facility and carriers are obliged to undertake this analysis for each new facility and to make it publicly available. The ARPANSA created compliance report demonstrates the maximum signal strength of a proposed facility assuming that it is handling the maximum number of users 24 hours a day. This illustrates the greatest possible impact at peak usage.

The predicted EME levels resulting from the facility are shown below.

Distance from the site	Existing configuration			Proposed configuration		
	Electric field (V/m)	Power density (mW/m ²)	Percentage of the public exposure limit	Electric field (V/m)	Power density (mW/m ²)	Percentage of the public exposure limit
0-50m	3.23	27.7	0.52%	4.89	63.5	0.77%
50-100m	6.32	106.0029	2.047%	4.43	52.043	0.86%
100-200m	7.14	135.19	2.48%	7.75	159.22	2.54%
200-300m	5.2	71.86	1.28%	7.75	159.29	2.53%
300-400m	3.53	33.0	0.58%	5.85	90.66	1.42%
400-500m	2.66	18.83	0.33%	4.36	50.4	0.79%

Maximum cumulative EME level for the proposed configuration

Location	Height range	Electric field (V/m)	Power density (mW/m ²)	Percentage of the public exposure limit
Little Grommets Child Care	0-3 m	4.51	53.99	0.92%
Tweed Church of Christ	0-3 m	4.28	48.5	0.81%
Banora Point Primary School	0-3 m	4.11	44.86	0.76%
Cherubs Preschool	0-3 m	3.061	24.86	0.4%

Calculated EME levels extracted from EME Report

As set out above, the ARPANSA prediction report for the proposed facility estimates that maximum environmental EME level will be 2.54% of the ARPANSA exposure limits.

Further, the NSW Land & Environmental Court in *Telstra Corporation Limited v Hornsby Shire Council [2006] NSWLEC 133* determined that the Australian Standard RPS3 is an authoritative and scientifically credible standard to protect the health and safety of people and the environment from the harmful effects of radiofrequency fields in the frequency range of 3kHz to 300 GHz. It is not appropriate for a consent authority to set aside or disregard such an authoritative and scientifically credible standard as the Australian Standard RPS3. Nor is it appropriate for a consent authority to pioneer standards of its own. The creation of new standards is the responsibility of other authorities with special expertise, such as ARPANSA.

The same logic applies to Council in the determination of this application. Though a significant number of the objections to this application have raised the issue of potential health concerns, Council is obliged to use the ACMA's Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2003 in the assessment of the application.

Reference is made in a number of the objections to the NSW Department of Education Policy on Mobile Telecommunications Facilities (PD/2005/0148/V01). The Department of Education adopts a policy of 'prudent' avoidance by not endorsing the installation of any mobile telecommunications facilities on school

property. The policy notes that while the department cannot state a specific separation distance between a proposed mobile telecommunications facility and a school, the department has a 'preference' for a distance of at least 500 metres from the boundary of the property.

It should be noted that this is a policy of the Department of Education and relates to their advice to departmental schools only. The specification of a 'preferred' separation distance appears to be based on a precautionary approach. However, the policy has no statutory status in the assessment of development applications for mobile telecommunications facilities.

Given the concern around communications towers, radio transmitters and safety for schools, the Australian Government Department of Communications have issued a factsheet with information for schools, teachers, students and parents (this document is included in Attachment 1). This factsheet specifically addresses the question of whether mobile phone transmitters should be located a specified number of metres from schools:

*'Because transmitter must operator below the ARPANSA standard, there is no particular advantage locating these away from schools. **In fact, poor location of the transmitters can affect the performance of mobile handsets, requiring more power to be emitted from the handset to connect with nearby transmitters. This is potentially of greater concerns as handsets are used near the body.***

Based on the above, there are no grounds to refuse the application on the basis of fears associated with EME. The applicant has demonstrated that the proposed facility will be well below the standards set by ARPANSA and ACMA, which already contain a significant safety factor.

Visual Impact

The proposed development relates to the development of a telecommunications facility with a maximum height of 35m (top of antennae), with the proposed monopole having a height of 24m. It is further noted that the telecommunications facility is located on elevated land, having a height of approximately 60m AHD.

Council have prepared a Draft Scenic Landscape Strategy to provide an assessment framework and suite of management principles that ensure that the unique scenic landscape qualities of the Shire are recognised and that any adverse impacts on those qualities by development or land use is avoided or minimised to the greatest extent possible.

The draft strategy was reported to Council on 21 June 2018 and it was resolved to proceed to exhibition of the draft document. Subsequent to this, the Draft Scenic Landscape Strategy was placed on public exhibition with the submission period closing on 19 June 2019.

As the draft strategy has not yet been formally adopted, it is not a relevant policy or guideline in the assessment of this application. Nevertheless, some of the

information on viewing locations and view analysis collated in the preparation of the Draft Strategy is useful in the assessment of the visual impact of the proposal.

A photomontage has been prepared as part of this application which demonstrates the proposed development from various points on Terranora Road, Pioneer Parade and Banora Hills Drive.



View of proposal from Pioneer Parade (north-west)



View of proposal from Banora Hills Drive (south-west)



View of proposal from Terranora Road (north-east)

The application was also referred to Council's Strategic Planning Unit for comment with respect to the proposal.

The application as originally submitted contained a Land and Visual Impact Assessment (LVIA) dated April 2018. Upon review of this document, it was determined that additional information was required and in response an amended LVIA (dated March 2019) was submitted to Council for consideration. The following comment has been provided with respect to the updated LVIA:

'The amended LVIA concludes that there is minimal visual impact, and concludes that any impact is considered to be reasonable and not incompatible with the urban fringe landscape character and visual nature of the area. It does not propose or discuss any additional mitigation or management measures.'

Where the amended LVIA discounts certain points or corridors from being visible due to the distance from the subject site, it cites the following:

From research undertaken in regards 10 viewing distances by the naked eye, dust, water vapour and pollution in the air will rarely allow visibility greater than a distance of 20 kilometres in a straight line on a clear day. The curvature of the Earth further reduces this distances substantially when viewing distances at ground level. It has been calculated that at sea level, the horizon is only 4.8 kilometres away.

The subject site is approximately 60 metres above sea level, and the structure itself would be 35 metres high resulting in the top of the tower bring approximately 95m above sea level. The above justification in terms of the horizon being 4.8km away at sea level is therefore of little relevance when assessing the extent to which this proposed structure would be visible within

the landscape. The viewing locations may for the most part be at sea level, but the line of sight is upwards so the curvature of the earth plays little role, and in many locations the structure would pierce the dominant skyline. The eye is naturally drawn to irregularities in the landscape such as this, regardless of its slim line form.

Based on the above, the amended LVIA does not provide a satisfactory or reasonable assessment of the visual impact associated with the proposal when viewed from the additional viewing locations requested by the Further Information request.

Notwithstanding the above, and the limited assessment provided to determine actual visual impact of the proposal, it is acknowledged there are few reasonable measures available to mitigate the visual impact of such a tall structure on elevated land for which there is limited opportunity for redesign or relocation.

In that regard, should the application be determined by way of granting consent, it is recommended the following conditions be included on any consent to provide some level of mitigation.'

Further to the above assessment, the following considerations are relevant:

- The mast will be seen as a monopole with a frame mounted antennae; and
- The signals transmitted between the base station antennae and mobile phones need to be unimpeded and therefore antennae generally need to be elevated, being either at an elevated location (such as the top of a hill) or attached to a high mast, indicating that some visual impact is inevitable.

On this basis, the visual impact associated with the proposal are considered to be reasonable and not incompatible with the urban nature of the area. Furthermore, the proposal would not result in an unacceptable visual impact on the surrounding area.

Construction

There will be some short term impacts associated with the proposed construction including the transportation of the prefabricated monopole sections, equipment and construction machinery to the site and the installation of the monopole, equipment units and the antennae. It is considered that this element of the development can be adequately address through the provision of appropriate conditions on any consent issued.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposal is considered to be compatible with the surrounding landuses and development. As outlined earlier in this report, the submissions to the proposal did identify significant concern with regard to the proximity of the proposal to residential

development and educational facilities. However the proposal meets with the ACMA's Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2003, and as such the development cannot be deemed to be incompatible on health-related grounds.

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

The application was advertised and notified for a period of 14 days from Wednesday 16 January 2019 to Wednesday 30 January 2019 though it is noted that late submissions were accepted on this application, with the latest submission received dated 1 March 2019.

In total, 35 submissions were received and petitions containing approximately 585 signatures were received by Council, all of which were in opposition to this development proposal.

The issues raised in the submissions are outlined below. It is noted that all of the objections centre around or at least reference health issues related to the electromagnetic energy levels associated with the proposal, in particular (though not limited) to its proximity to a public school and two preschools.

Objections were also received with respect to the visual impact of the development, devaluation of property values as a result of the development, the site selection process, noise from existing infrastructure on site, whether the infrastructure is to facilitate 5G, the absence of a public meeting undertaken by the proponent as part of pre-lodgement consultation and the timing of public exhibition of the application (outside of school term time).

In total four petitions were received:

- The staff of Banora Point Primary School have submitted a petition (33 signatures) objecting to the proposal on the basis of electromagnetic energy health concerns. Issues are also raised with respect to Tweed Shire receiving and processing the application during school holidays, as well as questioning how current telecommunication infrastructure was erected on the reservoir.

In response to this, it is noted that the DA was lodged with Council in December 2018, with public consultation then being undertaken as early as practicable in January 2019. Late submissions were accepted on this application. The erection of existing infrastructure did not require Council planning approval, and is detailed under the 'history' section of this report.

- One of these (214 signatures) from staff and parents of children attending Banora Point Primary School does not identify a specific objection to the proposal, simply identifying that they are opposed to the development and seeking that it be refused by Tweed Shire Council and search for an alternative site.
- Another (230 signatures) identifies that it is to stop a 35m mobile tower within 250m from a primary school and two day care centre which would indicate the objection is on health/electromagnetic energy grounds.

- The final petition (108 signatures), objects to the proposal on the basis that the tower is located in a medium density residential area close to a school and day care centre and also with respect to property devaluation.

The issues raised through the public exhibition are detailed further below:

1. Proximity of the telecommunications mast to Banora Point Primary School and two child care centres as well as residences
 - i. Department of Education advises that telecommunication towers should not be within 500m of a school
 - ii. Concerns with regard to exposure of children/students to EME – links of exposure to cancer, tumours, miscarriages, etc.
 - iii. Unknown potential for negative health impacts is too uncertain to allow development to proceed

Planners Note: EME considerations are detailed elsewhere in this report (see '*summary*' '*strength of the Electromagnetic field*' and '*electromagnetic radiation*' for further detail) with it being noted that the proposal is considered to be acceptable with respect to electromagnetic energy levels.

2. Visual Impact of the tower
 - i. Negative visual impact from telecommunications facility being visible from objectors property
 - ii The development is unsuitable in a residential area

Planners Note: Visual impact of the proposed development has been considered elsewhere in this report, with it being considered that the development is generally acceptable in this regard. It is not considered that the application warrants refusal on this basis.

3. Devaluation of Property

Planners Note: This is not considered to be a substantive planning assessment matter which would warrant refusal of the application.

4. Insufficient consideration of alternative sites

Planners Note: Further Information was requested from the applicant from Council staff with respect to consideration of sites. In response to this, further consideration of site selection was undertaken (detailed under 'Site selection' section of this report) with it being considered that adequate site selection has been undertaken in this instance.

5. Two submissions raise concerns with respect to noise which emanates from an air conditioning unit on the back of the existing Vodafone infrastructure on site

Planners Note: This unit is not subject to the provisions of this application as it is already installed and operating on site. However this matter has been referred to Council's Environmental Health Unit for further investigation.

6. No community meeting was held by the proponent as part of pre-lodgement consultation.

Planner Note: This is addressed under the 'pre-lodgement consultation' section of this report with it being considered that this does not warrant refusal of the application.

7. Health concerns with respect to the telecommunications facility being used for 5G network.

Planner Note: The applicant has advised in response to this submission that the facility does not presently propose any 5G infrastructure, however any future upgrades would limit radiofrequency as per the ARPANSA Standards. It is not considered that refusal of the application would be warranted on this basis.

8. Timing of public exhibition of DA during school holidays.

Planners Note: The application was lodged in December 2018 following the Council resolution to grant landowners consent for the Development Application. Subsequent to this the application was publically exhibited at the next available opportunity in January 2019, though it is noted that late submissions were accepted on the application up to March 2019.

The applicant's response to the issues raised are attached in Attachment 1.

These issues raised through public consultation are considered to be addressed within this report and are not considered to warrant refusal of the application.

(e) Public interest

Consideration must be given to the public interest in providing acceptable levels of coverage in the area. The proposal is put forward by three licensed carriers who are replacing telecommunication infrastructure on the subject site. It is recognised that mobile phones now form an integral part of the communications network with residents, businesses, workers and visitors in an area often reliant on mobile phones for communication and on a reasonable standard of service.

The applicant has demonstrated that the proposal will meet the EME exposure limits set by the ACMA.

While the construction of a 35m high mast and associated antenna, the visual impacts are considered to be acceptable having regard to the location of the site, the retention of trees on the site which will assist in ameliorating the impact and subject to a condition requiring the approval of a schedule of finishes and colours which provide for a low contrast to the existing built background (reservoir).

On this basis, it is considered that the approval of the application is in the overall public interest.

OPTIONS:

1. Approve the application subject to conditions for the following reason:

- a) The proposal has been assessed with respect to *State Environmental Planning Policy (Infrastructure) 2007* and the associated guidelines published by the Department of Planning for site selection, design, construction or operating principles for telecommunications facilities and is considered to be consistent with these principles and to be in the public interest.

2. Refuse the application, and provide reasons.

Option 1 is recommended.

CONCLUSION:

Two key issues in the assessment of this application has been consideration of EME levels and visual impacts. Both are important considerations, though the public submissions opposing the development have been predominantly based on a fear of potential health impacts.

Telstra Corporation Limited v Hornsby Shire Council [2006] NSWLEC 133 referred to earlier in this report provides some guidance on the question of fear of that a telecommunications facility will emit electromagnetic energy that will harm the health and safety of residents, rationality and the law.

In determining the impact of a proposed development on the amenity of an area, the consent authority may consider the community responses to the proposed development as set out in the submissions.

‘However, in considering the community responses, an evaluation must be made of the reasonableness of the claimed perceptions of adverse effect on the amenity of the locality. An evaluation of reasonableness involves the identification of evidence that can be objectively assessed to ascertain whether it supports a factual finding of an adverse effect on the amenity of the locality.’

‘A fear or concern without rational or justified foundation is not a matter which, by itself, can be considered as an amenity or social impact pursuant to s79C(1) (now s4.15(1)) of the EPA Act.’

In *Telstra Corporation Limited v Hornsby Shire Council*, it was found that the residents’ perceptions of an adverse effect on the health and safety of residents and on the environment by exposure to RF EME emitted from the proposed base station were without justification in objective, observable, likely consequences. The claimed effects were considered to unsubstantiated and without reasonable evidentiary foundation:

‘The concerns expressed by the residents as to RF EME emitted from the proposed base station do not relate to intangible matters. Rather, the concerns relate to matters which are capable of measurement and testing against established standards to see whether the concerns are justified or not: Telstra Corporation Ltd v Pine Rivers Shire Council & Ors [2001] QPELR 350 at 364. Testing against the relevant Australian Standard RPS3 proves that concerns are not justified.’

The court ruled that in these circumstances, little, if any, weight can be given to the residents’ perceptions and that this has been the consistent conclusion of other courts and tribunals

which have determined other cases involving unsubstantiated community perceptions of adverse effects on amenity from exposure to RF EME from a proposed development.

Having considered the proposal against the NSW Telecommunications Facilities Guidelines (SEPP Infrastructure) it is recommended that the application be approved subject to the recommended conditions.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Nil

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:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Applicant's response to issues raised in objections & Copy of Australian Government Department of Communications factsheet (ECM 6151891)

4 [PR-PC] Development Application DA19/0462 for the Demolition of Dwelling and Garage and Construction of 3 Storey Residential Flat Building Comprising 5 x 3 Bedroom Units at Lot 28 DP 21680 No. 44 Sutherland Street Kingscliff

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 for the demolition of an existing dwelling and garage and construction of a three storey residential flat building at No. 44 Sutherland Street, Kingscliff (with dual frontage to Hungerford Lane). The residential building will comprise of five units with basement parking with access from Hungerford Lane. Two units each are proposed for levels one to two and the fifth unit will be a single penthouse apartment that has a reduced footprint from the units below.



3D View from North

Proposed residential flat building at No. 44 Sutherland Street, Kingscliff

The application was notified and three submissions were received in relation to the proposed height of the building, the impact the building will have on the streetscape and character of the area, the level of compliance the building has with the numerous applicable controls (setbacks especially), and the impact the development will have on the adjoining properties. The applicant was requested to consider the issues raised in the submissions as well as Planning Officers' concerns regarding overshadowing of the development on the property to the south.

The applicant produced additional overshadowing diagrams to demonstrate that the orientation of the site and permissible height limit would naturally create a level of overshadowing on the property to the south. Despite this the applicant showed that the adjoining development to the south will receive a minimum of 3 hours of solar access to the windows of living areas on June 21 between the hours of 9am and 3pm. In particular, the impact of shadowing to the ground floor unit of the adjoining southern development would be similar from a two or three storey development, as indicated below.

A three storey development will only result in an increase to the overshadowing of the upper level of the adjoining development. The shadow diagrams demonstrate that the side setback distance for the proposed development will improve solar access to the ground floor unit, when compared to a two storey development setback 1.5m off the side boundary. Therefore, regardless of the building height, the lower storey unit on the adjoining southern property will be overshadowed in some form however, the proposal will allow for a compliant amount of solar access.

The amended proposal is compliant with the statutory height limit of 9m prescribed by Tweed Local Environment Plan 2014

The development is generally compliant with the other applicable DCP controls (variation sought to the Hungerford Lane setback to match existing setbacks in Lane) and a comprehensive assessment of the bulk and scale of the amended proposal has determined that the residential flat building is consistent with the current and desired character of residential development in Kingscliff.

The proposal has been assessed against the Apartment Design Guide (ADG) as prescribed by State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development. The building has been designed to be generally consistent with the Design Criteria prescribed by the Apartment Design Guide with the exception of building separation distances (side setbacks) and the provision of communal open space.

The subject site is a narrow infill site (17m wide) within the medium density zone and the side setback controls as prescribed by the ADG are considered to be not appropriate to small infill sites. Strict adherence to the ADG side setback controls renders the site undevelopable for the allowable scale and density permitted by Council's LEP. On merit, the proposal has been designed to achieve the privacy and solar access objectives of the building separation controls and in this respect the proposal is considered to be acceptable. The proposal complies with the setback controls in the DCP and as such is consistent with other small residential flat buildings in the locality with regard to building separation distances.

With regard to the provision of communal open space the applicant has requested a 100% variation to the numerical control and the development does not provide any communal open space. The ADG acknowledges that some developments may not be able to achieve the required area of communal open space, in which case demonstrated proximity to public open

space is deemed to be an acceptable outcome. As such, the proposal is relying on the adjacent Kingscliff foreshore area to provide for passive outdoor recreation space for residents of the apartment building. The variation is thus supported whilst also noting that the DCP does not require communal open space for developments with ten units or less.

The design of the building is of a high quality and of an appropriate built form for the urban coastal locality. The proposal is deemed to be an appropriate development for the site as assessed against the relevant legislation and development control plans. As such the proposal is being recommended for approval, subject to conditions of consent.

This application is being reported to Council as it was called up by Councillors Milne and Cherry.

RECOMMENDATION:

That Development Application DA19/0462 for the demolition of dwelling and garage and construction of 3 storey residential flat building comprising 5 x 3 bedroom units at Lot 28 DP 21680; No. 44 Sutherland Street Kingscliff 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 18464 CD - A200 - Issue C - Ground + Basement prepared by Gibson Architects and dated 31/10/2019,
 - Plan Nos 18464 CD - A201 Issue A - Plan Level 1 + 2 prepared by Gibson Architects and dated 30/05/2019,
 - Plan Nos 18464 CD - A400 Issue A - External Elevations prepared by Gibson Architects and dated 30/5/2019,
 - Plan Nos 18464 CD - A400 Issue P9 - External Elevations Option 1B (External Paint Elevations 14/05/2019) prepared by Gibson Architects,
 - Plan Nos 18464 CD - A401 Issue A - Street/Lane Elevations prepared by Gibson Architects and dated 30/5/2019,
 - Plan Nos 18464 CD - A500 Issue A - Detailed Sections prepared by Gibson Architects and dated 30/5/2019,
 - Plan Nos 18464 CD - A501 Issue A - Detention Tank Sections prepared by Gibson Architects and dated 30/5/2019,
 - Plan Nos 18464 CD - A502 Issue A - Sections For Excavations prepared by Gibson Architects and dated 30/5/2019,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. 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. All works shall comply with AS2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2017.
[GEN0360]
6. Prior to demolition of the structure is commenced all asbestos material shall be identified and removed from the site by an asbestos removalist who is licensed to carry out the work by WorkCover NSW. All asbestos waste shall be disposed at a facility that is licensed to receive asbestos waste (all receipts related to disposal must be kept on site and provided to a Council Authorised Officer upon request).
[GEN0365]
7. All dwellings shall connect to the existing sewer junction located in Hungerford Lane.
[GENNS01]
8. A reflux valve shall be required on any sewer fixtures located within the basement.
[GENNS01]
9. Upon completion of demolition to slab level and prior to any construction works, sub-slab testing shall be undertaken in accordance with Council's Pre Demolition Testing Guideline by a suitably qualified person. Should testing reveal contaminants of potential concern associated with chemical termite treatment that exceed acceptable levels, remediation and validation of the site shall be carried out in accordance with the Remedial Action Plan for Lot 28 DP 216810, 44 Sutherland Street Kingscliff, prepared by HMC Environmental Consulting (ref: HMC2019.113) dated May 2019.
[GENNS02]
10. Demolition shall be undertaken in accordance with the revised Site Demolition and Removal Management Plan approved by the General Manager or delegate.
[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. The developer shall provide 12 parking spaces including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to the Principal Certifying Authority with the Construction Certificate for Building Works.

[PCC0065]

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, Tumbulgun Road, Murwillumbah and Brett Street, Tweed Heads.

- | | |
|--|----------|
| (a) Tweed Road Contribution Plan:
13 Trips @ \$1354 per Trips
(\$1,137 base rate + \$217 indexation)
CP Plan No. 4
Sector6_4 | \$17,602 |
| (b) Open Space (Casual):
3.375 ET @ \$659 per ET
(\$502 base rate + \$157 indexation)
CP Plan No. 5 | \$2,224 |
| (c) Open Space (Structured):
3.375 ET @ \$754 per ET
(\$575 base rate + \$179 indexation)
CP Plan No. 5 | \$2,545 |
| (d) Shirewide Library Facilities:
3.375 ET @ \$985 per ET
(\$792 base rate + \$193 indexation)
CP Plan No. 11 | \$3,324 |
| (e) Bus Shelters:
3.375 ET @ \$75 per ET
(\$60 base rate + \$15 indexation)
CP Plan No. 12 | \$253 |
| (f) Eviron Cemetery:
3.375 ET @ \$140 per ET
(\$101 base rate + \$39 indexation)
CP Plan No. 13 | \$473 |
| (g) Community Facilities (Tweed Coast - North)
3.375 ET @ \$1624 per ET
(\$1,305.60 base rate + \$318.40 indexation)
CP Plan No. 15 | \$5,481 |

- (h) Extensions to Council Administration Offices
& Technical Support Facilities
3.375 ET @ \$2195.88 per ET \$7,411.10
(\$1,759.90 base rate + \$435.98 indexation)
CP Plan No. 18
- (i) Cycleways:
3.375 ET @ \$555 per ET \$1,873
(\$447 base rate + \$108 indexation)
CP Plan No. 22
- (k) Regional Open Space (Casual)
3.375 ET @ \$1282 per ET \$4,327
(\$1,031 base rate + \$251 indexation)
CP Plan No. 26
- (l) Regional Open Space (Structured):
3.375 ET @ \$4500 per ET \$15,188
(\$3,619 base rate + \$881 indexation)
CP Plan No. 26

[PCC0215/POC0395/PSC0175]

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: 2.35 ET @ \$11,091 = \$26,063.90

Sewer: 4.0 ET @ \$7,173 = \$28,692.00

[PCC0265]

14. A detailed Plan of Landscaping containing no priority weed species and with a minimum 80% of total plant numbers comprised of local native species to the Tweed Shire is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. 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]

15. 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 frontages. 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: construction of driveway access from the Hungerford Lane frontage, being 6.5m wide at the kerb line and tapering to approximately 5.7m wide at the boundary.
- (b) All existing driveway accesses and laybacks (excluding driveway reconstruction as may be associated with the prior Item) are to be removed and kerb and guttering reinstated to match existing. All disturbed footpath areas are to be turfed. This is applicable to both road frontages.
- (c) It is acknowledged that the existing grassed footpath area of Hungerford Lane has an excessively steep crossfall.

If not impacted by existing underground services, this footpath area is to be lowered and the crossfall flattened to better match Council's standard 2.5% crossfall requirement, in conjunction with the previously referenced driveway work and the site excavation works.

The footpath area reshaping will need to taper smoothly back to merge with the existing footpath area profile at each adjacent property frontage.

- (d) Construction of concrete path paving 1.2m wide for the full frontage of the site to Sutherland Street.

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)

[PCC0895]

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

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

[PCC1105]

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

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

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

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

[PCC1145]

18. 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]

19. 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 200 l/s/ha. 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 S68 stormwater application.

The following advices and recommendations are provided for serious reconsideration of the proposed stormwater system, prior to preparation of CC drawings:

- The proposed combined OSD and stormwater re-use system is considered to be highly problematic. While the intention of providing both a water re-use system and OSD system are supported, the conceptual implementation of combining both in the one structure are not. Main concerns with the proposed combined system are:
 - The High Early Discharge (HED) chamber needs to build up with stormwater inflow above the internal weir level prior to any stormwater entering the 're-use storage' component area of the system. Therefore the storage component will only seldomly be topped up.
 - When the 're-use storage' area is topped up, it is likely to become a mosquito breeding ground, due to the cool, wet and stagnant conditions and easy access by insects due to the 4 x large grated openings to the overall tank storage area.
 - It is unclear whether the note on dwg. C-405 about the sump pump being *"Activated automatically by float switch, or manually."* is intended to facilitate the automatic and constant topping up of the storage area, just to enable the re-use on garden areas. This would be unnecessary.
- It is suggested that an alternative but separate OSD and stormwater re-use systems be provided, but still linked.

An example being part of the site (such as the western third, where the majority of landscaping is) be provided with rainwater tanks for water re-use and the overflow being directed to the OSD tank. The remainder of the site could then be directed straight to the OSD system. This concept is supported by the different roof pitches, and would enable a concise OSD-only system to be constructed. Rainwater tanks will need to be incorporated into the 'tight' design for this site but due to the variety of sizes and shapes available, should be able to be easily integrated.

- Other minor design-related matters for attention associated with the stormwater design are requested to be implemented as follows:
 - Confined spaces signage must be prominently displayed at all points of entry to the OSD system.
 - Inconsistent depiction of a small grated pit at the Hungerford Lane frontage, immediately prior to discharge of stormwater to the street, with dwgs C-401 and C-403 showing the pit, but dwg. C402 not. This pit is essential to ensure the pump-out line from the basement sump is not directly discharged to the K & G, as this could project stormwater discharge across the street. Gravity flow from the pit to the K & G is required.
 - The high level overflow pipe from the OSD system is required to be a fail-safe system so the pipe size will be required to accommodate at least the 1 in 100 year storm event.

[PCC1165]

20. Medium density/integrated developments, excluding developments containing less than four attached or detached dwellings and having a Building Code classification of 1a, will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage 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]

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

[PCC1195]

22. If the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first. Applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee. The arrangements and costs associated with any adjustment to water and wastewater infrastructure shall be borne in full by the applicant/developer.

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

[PCC1310]

23. The existing sewer junction shall be located and shown on construction plans prior to construction works. Should the sewer junction be located where the driveway is proposed, the applicant shall raise or lower the riser to surface level and ensure that the lid and surround is trafficable, as shown on TSC SD252. If the use of the existing sewer junction is not able to be maintained, the junction shall be required to be permanently removed by Council staff and an 'Application for Sewer Junction Installation' be lodged to Council Water and Wastewater Unit for Council to install a new sewer junction.

[PCCNS01]

24. The existing water meter and the proposed upgraded bulk water meter are to be shown on construction plans prior to construction works. Should the water be located where the driveway is proposed, the applicant shall lodge an Application for Water Meter relocation so that the water meter is not located in a trafficable location.

[PCCNS01]

25. Prior to the issuance of a Construction Certificate design detail of the return fencing is to be provided to Council that demonstrates a maximum fence height of 1.5m above the natural ground level, a solid wall no higher than 600mm and an openness ratio of 60% above the solid wall.

[PCCNS02]

26. Prior to the issue of a construction certificate the applicant is to provide a revised Site Demolition and Removal Management Plan to the satisfaction of Council's General Manager or delegate. The revised plan shall include:

- A statement that the slab on ground will not be removed or disturbed until sub-slab testing and reporting has been completed in accordance with Council's Pre Demolition Testing Guideline and the Remedial Action Plan for Lot 28 DP 216810, 44 Sutherland Street Kingscliff, prepared by HMC Environmental Consulting (ref: HMC2019.113) dated May 2019.
- Revised hours of 7am-6pm
- Reference NSW noise criteria

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

27. 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]

28. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved Management Plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

29. An application is to be made to Council to temporarily "cap off" the existing building sewerage house drainage from Council's sewerage system, prior to any demolition work commencing. A Plumbing and Drainage Works on Private Land <<http://www.tweed.nsw.gov.au/Controls/Forms/Documents/SewerSepticForm.pdf>> application form shall be submitted to Tweed Shire Council and payment of fees in accordance with Councils adopted fees and charges.

[PCW0045]

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. 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]

36. 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.

37. 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. [PCW0765]

38. 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. [PCW0775]

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.

39. 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. [PCW0985]

DURING CONSTRUCTION

40. 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]
41. 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]
42. 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 Biodiversity and Conservation Division of the NSW Department of Planning, Industry and Environment. 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]

43. 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]

44. 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]

45. 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]

46. 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]

47. 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]

48. 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]

49. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2017.

[DUR0415]

50. 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]

51. 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 Council's road reserve.

[DUR0435]

52. A survey certificate from a Registered Surveyor is to be submitted to the Principal Certifying Authority at garage slab or footing stage, prior to pouring concrete, to confirm that the approved driveway gradients will be achieved.

[DUR0475]

53. To ensure that the building is correctly positioned on the site, a report prepared by a registered surveyor is to be submitted to the principal certifying authority at footings/formwork stage and at the completion of the structures indicating that the building has been correctly positioned on the site in accordance with the approved development consent plans (setbacks) /consent conditions and has been located clear of any easements/sewer main.
[DUR0495]
54. 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]
55. 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]
56. All works shall comply with the Pre-Demolition Soil Contamination Investigation and Remediation Management Plan. Sub-slab contaminated material shall not be placed in or below the groundwater table. Upon completion of sub-slab remediation (placement) works on site, Council shall be provided with a post remediation validation report to the satisfaction of the General Manager or his delegate. Construction works shall not commence until this report is reviewed and approved by the General Manager or his delegate.
[DUR0685]
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 a Subdivision Certificate/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. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate. [DUR1015]
62. 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 an Occupation Certificate and/or prior to any use or occupation of the buildings. [DUR1875]
63. Where existing kerb or footpath is to be removed for driveway laybacks, stormwater connections, kerb ramps or any other reason, the kerb or footpath must be sawcut on each side of the work to enable a neat and tidy joint to be constructed. [DUR1905]
64. During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection. [DUR1925]
65. 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]
66. 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]
67. 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]
68. 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]
69. 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]
70. The Applicant shall submit the appropriate ‘Application for Water Service Connection’ form to Council’s Water Unit to facilitate a property bulk service water connection for Lot 28 DP 21680, from the existing water main in Hungerford Lane. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant. [DUR2800]

71. Swimming pool pumps, air conditioning units, heat pump water systems 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]

72. The exportation or importation of waste (including fill or soil) from or to the site must be in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW Environmental Protection Authority "Waste Classification Guidelines". Any excavated material shall be disposed of at an approved landfill facility unless material has been demonstrated to be the subject of a resource recovery exemption under the Protection of the Environment Operations (Waste) Regulation 2014.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0745]

74. 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]

75. 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]

76. The creation of a Positive Covenant and associated Restriction on Title relevant to the proposed On-site Stormwater Detention (OSD) system, by Transfer granting Easement or similar process.

Evidence of creation is to be provided to the PCA and Council prior to the issue of an Occupation Certificate (including interim).

The required terms can be sourced from the last edition of the 'Upper Parramatta River Catchment Trust On-site Stormwater Detention Handbook' and shall generally be:

- (a) **Positive Covenant over the subject land for the perpetual maintenance requirements associated with the OSD system.**

A detailed site-specific Maintenance Schedule is to be produced by the OSD designer and must form part of the Positive Covenant.

- (b) **A Restriction As To User to ensure the OSD system is not altered or prevented from operating in a safe and efficient manner.**

[POC0860]

- 77. 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]

USE

- 78. 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]

- 79. 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]

- 80. 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]

- 81. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2017.**

[USE1510]

REPORT:

Applicant: Ardill Payne & Partners
Owner: Sutherland Street Pty Ltd
Location: Lot 28 DP 21680; No. 44 Sutherland Street Kingscliff
Zoning: R3 - Medium Density Residential
Cost: \$3,013,734.91

Background:

Council is in receipt of a development application for the demolition of an existing dwelling and garage and construction of a three storey residential flat building at No. 44 Sutherland Street, Kingscliff (with dual frontage to Hungerford Lane). The site is located opposite Kingscliff Primary School.

Kingscliff Hill has a history of a predominantly two storey development nature with the odd three storey residential flat building. With the introduction of the Tweed LEP 2014 the height limit transferred to metres and the height in this area became 9m. Therefore the area could be generally categorised as an area going through a transition where the built form character may change as the older single and two storey buildings may get redeveloped in accordance with the development controls now in place.

The proposed 9m residential building will comprise of five units with basement parking with access from Hungerford Lane. Two units each are proposed for levels one to two and the fifth unit will be a single upper level apartment that has a reduced footprint from the units below.



Existing street view with 44 Sutherland, Kingscliff



3D View from North

Proposed building at No. 44 Sutherland Street, Kingscliff



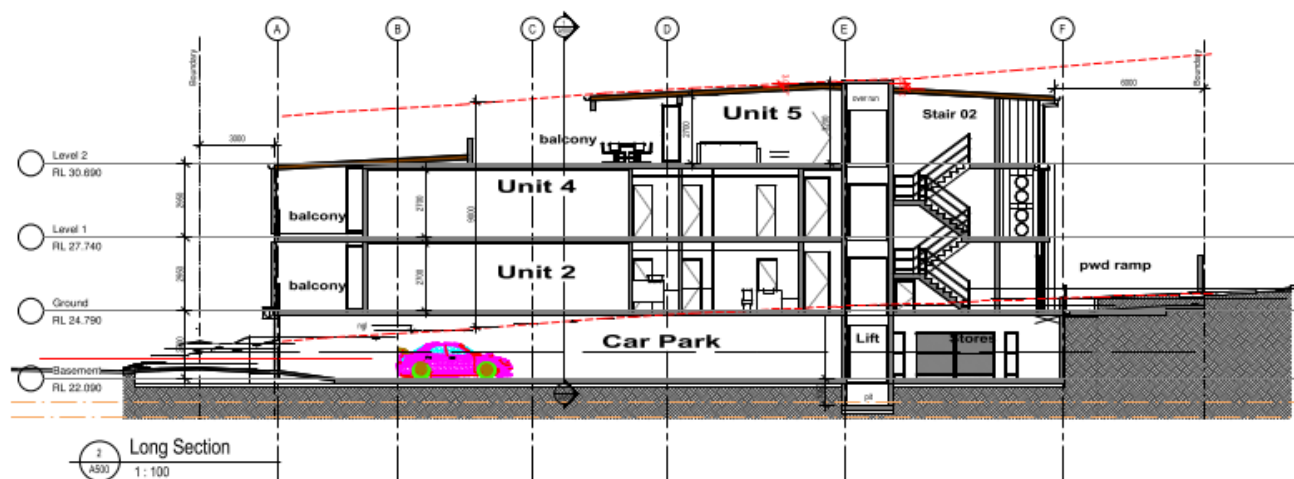
Existing streetscape Hungerford Lane – subject site in the middle on left of street



3D View from East

Proposed building as viewed from Hungerford Lane

The basement off Hungerford Lane will present as an exposed garage for the first portion of the site from Hungerford Lane before the excavation occurs and the garage becomes a true basement. At this part of the building it is important to note that there are only two levels of the building above and at no time does the building breach the 9m height limit measured from the existing ground level as shown on the below diagram which depicts the 9m with a red dotted line.



The basement will comprise stacked parking for two vehicles for Units 1 and 2, and freely available double spaces for each of the other three units. There are also two visitor spaces in the basement. The basement comprises refuse space, storage area and space for a possible stormwater detention tank.

Units 1 – 4 comprise of approximately 136m² with three bedrooms, two bathrooms, and a combined living dining area. There are generous eastern balconies with 21m² with privacy screens. The units are accessible via a lift or stairs that come off a common foyer area. On the northern elevation these units are setback 2m with insets at 3m. On the southern elevation these units are setback 3m with insets at 4m. Council's Development Control requires a 1.5m side setback.

Unit 5 comprises of approximately 144m² with three bedrooms two bathrooms, and a combined living dining area. There is a very generous eastern balcony with 79m² with a partial roof over. The unit is accessible via a lift or stairs that enters directly into the unit. On the northern elevation this unit is setback 2.1m with insets at 3m. On the southern elevation this unit is setback 3.1m with insets at 4m. Council's Development Control requires a 1.5m side setback.

The main wall of the development is setback 6 m from Sutherland Street. The open balconies are setback 3m from Hungerford Lane, while the main wall of the development is setback 6m from Hungerford Lane. Council's Development Control Plan requires 6m setbacks to both street frontages. The applicant has sought a variation to the Hungerford Lane setback on the basis that it matches the dominant 3m setback of other developments in the street.



The application was notified and three submissions were received in relation to the proposed height of the building, the impact the building will have on the streetscape and character of the area, the level of compliance the building has with the numerous applicable controls, and the impact the development will have on the adjoining properties. The applicant was requested to consider the issues raised in the submissions as well as Planning Officers' concerns regarding overshadowing of the development on the property to the south.

The applicant produced additional overshadowing diagrams to demonstrate that the orientation of the site and permissible height limit would naturally create a level of overshadowing on the property to the south. Despite this the applicant showed that the adjoining development to the south will receive a minimum of 3 hours of solar access to the windows of living areas on June 21 between the hours of 9am and 3pm. In particular, the impact of shadowing to the ground floor unit of the adjoining southern development would be similar from a two or three storey development, as indicated below.

A three storey development will only result in an increase to the overshadowing of the upper level of the adjoining development. The shadow diagrams demonstrate that the side setback distance for the proposed development will improve solar access to the ground floor unit, when compared to a two storey development setback 1.5m off the side boundary. Therefore, regardless of the building height, the lower storey unit on the adjoining southern property will be overshadowed in some form however, the proposal will allow for a compliant amount of solar access.

The amended proposal is compliant with the statutory height limit of 9m prescribed by Tweed Local Environment Plan 2014

The development is generally compliant with the other applicable DCP controls and a comprehensive assessment of the bulk and scale of the amended proposal has determined that the residential flat building is consistent with the current and desired character of residential development in Kingscliff.

The proposal has been assessed against the Apartment Design Guide (ADG) as prescribed by State Environmental Planning Policy 65 – Design Quality of Residential Apartment

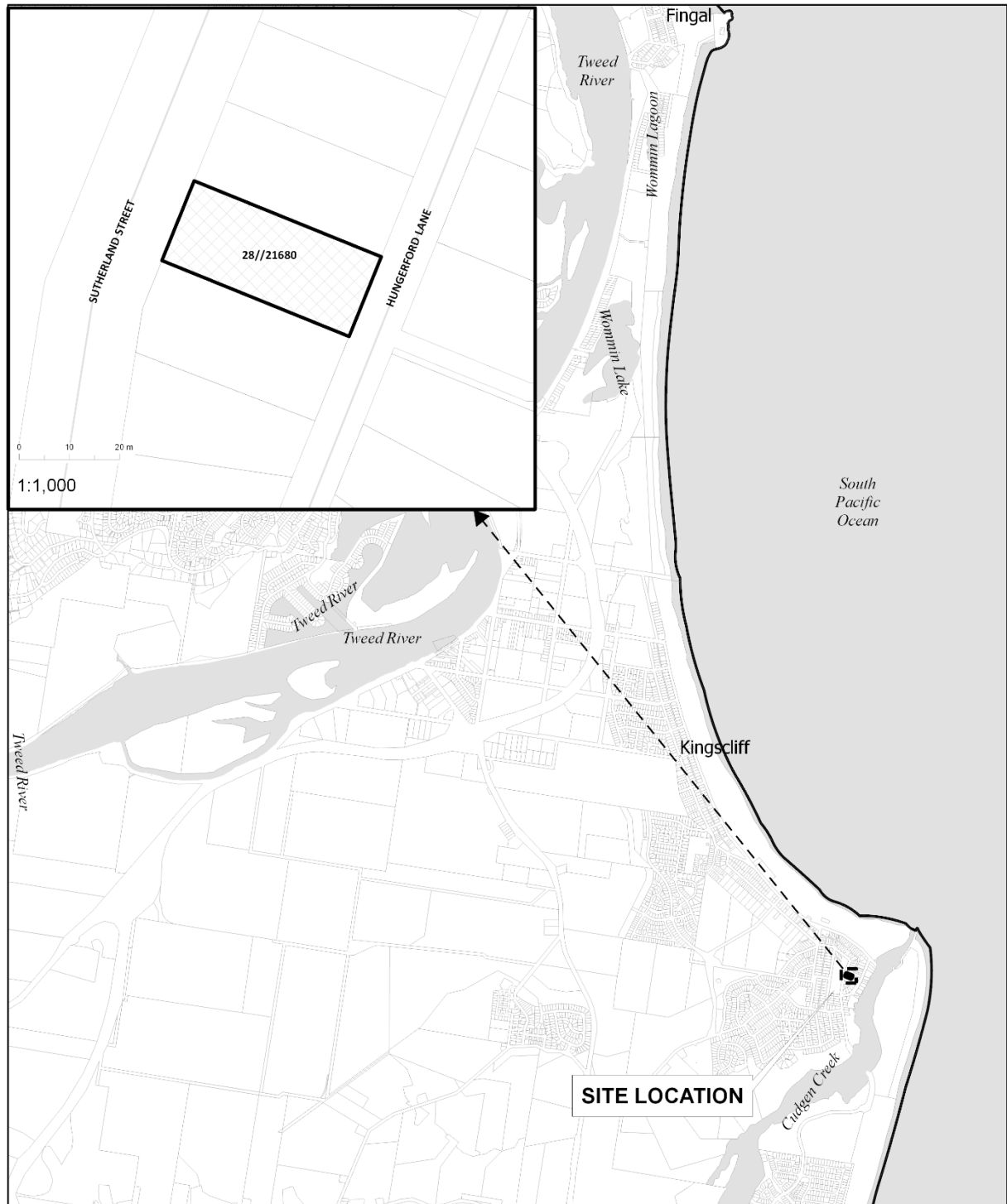
Development. The building has been designed to be generally consistent with the Design Criteria prescribed by the Apartment Design Guide with the exception of building separation distances (side setbacks) and the provision of communal open space.

The subject site is a narrow infill site (17m wide) within the medium density zone and the side setback controls as prescribed by the ADG are considered to be not appropriate to small infill sites. Strict adherence to the ADG side setback controls renders the site undevelopable for the allowable scale and density permitted by Council's LEP. On merit, the proposal has been designed to achieve the privacy and solar access objectives of the building separation controls and in this respect the proposal is considered to be acceptable. The proposal complies with the setback controls in the DCP and as such is consistent with other small residential flat buildings in the locality with regard to building separation distances.

With regard to the provision of communal open space the applicant has requested a 100% variation to the numerical control and the development does not provide any communal open space. The ADG acknowledges that some developments may not be able to achieve the required area of communal open space, in which case demonstrated proximity to public open space is deemed to be an acceptable outcome. As such, the proposal is relying on the adjacent Kingscliff foreshore area to provide for passive outdoor recreation space for residents of the apartment building. The variation is thus supported whilst also noting that the DCP does not require communal open space for developments with ten units or less.

The design of the building is of a high quality and of an appropriate built form for the urban coastal locality. The proposal is deemed to be an appropriate development for the site as assessed against the relevant legislation and development control plans. As such the proposal is being recommended for approval, subject to conditions of consent.

SITE DIAGRAM:



Site Plan

44 Sutherland Street, KINGSCLIFF
Lot 28 DP 21680

0 0.4 0.8 Km
1:35,000



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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastre: 18/11/2019
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3 Tumbulgun Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484

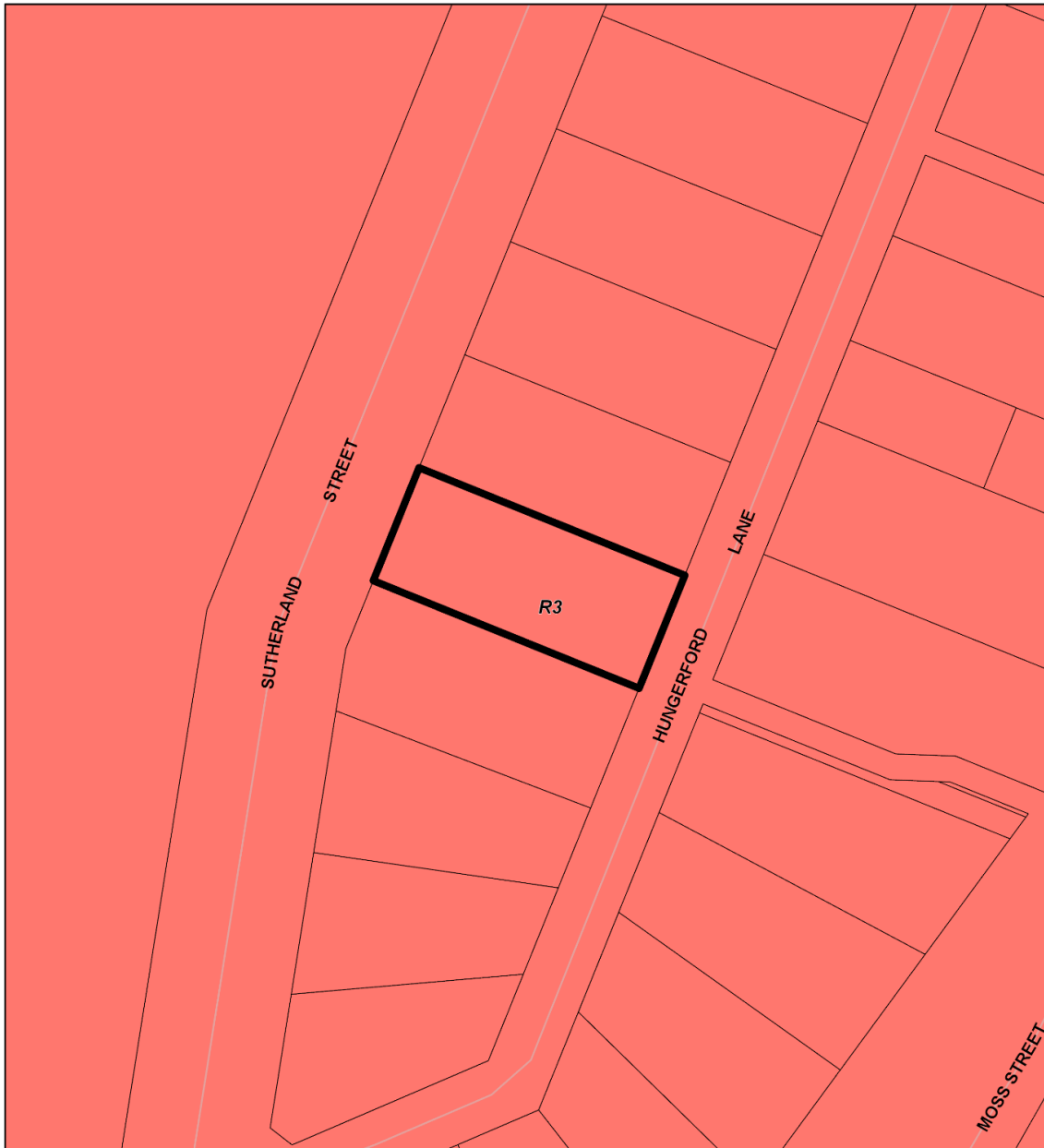
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E: planningreforms@tweed.nsw.gov.au



TWEED
SHIRE COUNCIL

Date Printed: 19 November, 2019


ZONING PLAN:

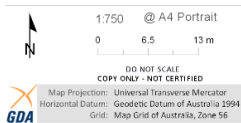


Subject Land

 Subject Land

Tweed Local Environmental Plan 2014

 R3 Medium Density Residential



Site Plan - Local Environmental Plan

44 Sutherland Street, KINGSCLIFF
Lot 28 DP 21680

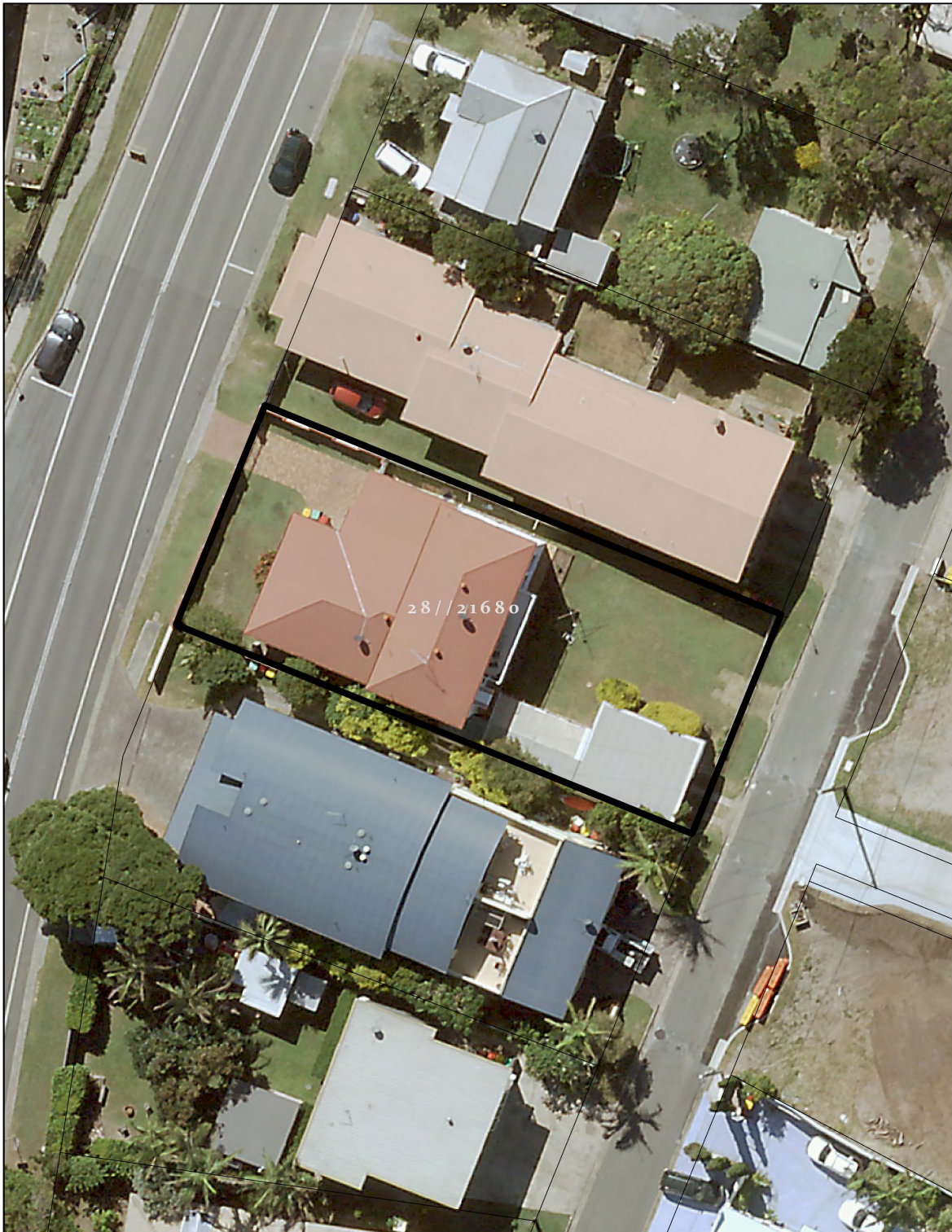
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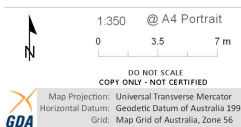
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AERIAL:



Aerial Photography April 2018



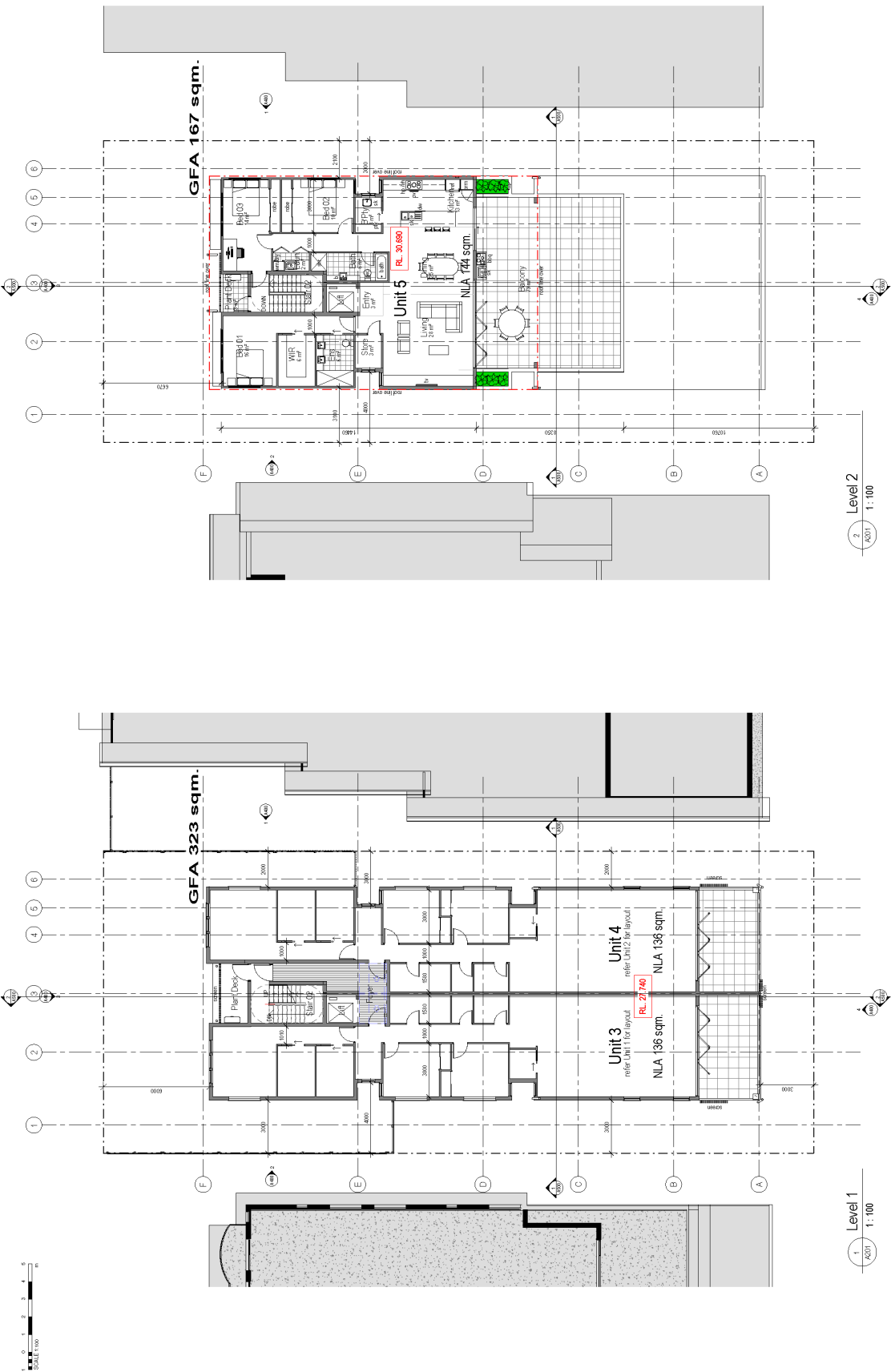
44 Sutherland Street, KINGSCLIFF
Lot 28 DP 21680

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

DEVELOPMENT/ELEVATION PLANS:





GA GIBSON ARCHITECTS Block C, Level 1, 184 Limestone Street, Ipswich QLD 4705 P.O. Box 301, Ipswich QLD 4705 T: 07 553 2222 F: 07 553 2223 E: info@gibsonarchitects.com.au ABN 42 138 824 698 gibsonarchitects.com.au		
Plans - Level 1 + 2		
PROJECT	18464CD A201	
SCALE	@ A1	
DATE	07.01.2019	
DESIGNER	G.E.	
Proposed Unit Complex Murphy Builders 44 Suburban Street, Kingscliff NSW 2467		
DATE	07.01.2019	
DESIGNER	G.E.	
REVISIONS		
NO.	DATE	DESCRIPTION
1	07.01.2019	Initial Design
2	07.01.2019	Final Design
3	07.01.2019	Final Design
4	07.01.2019	Final Design
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 E HDB@blissarchitects.com.au
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 84 Essex Road, Ipswich, MA 01437

GIBSON

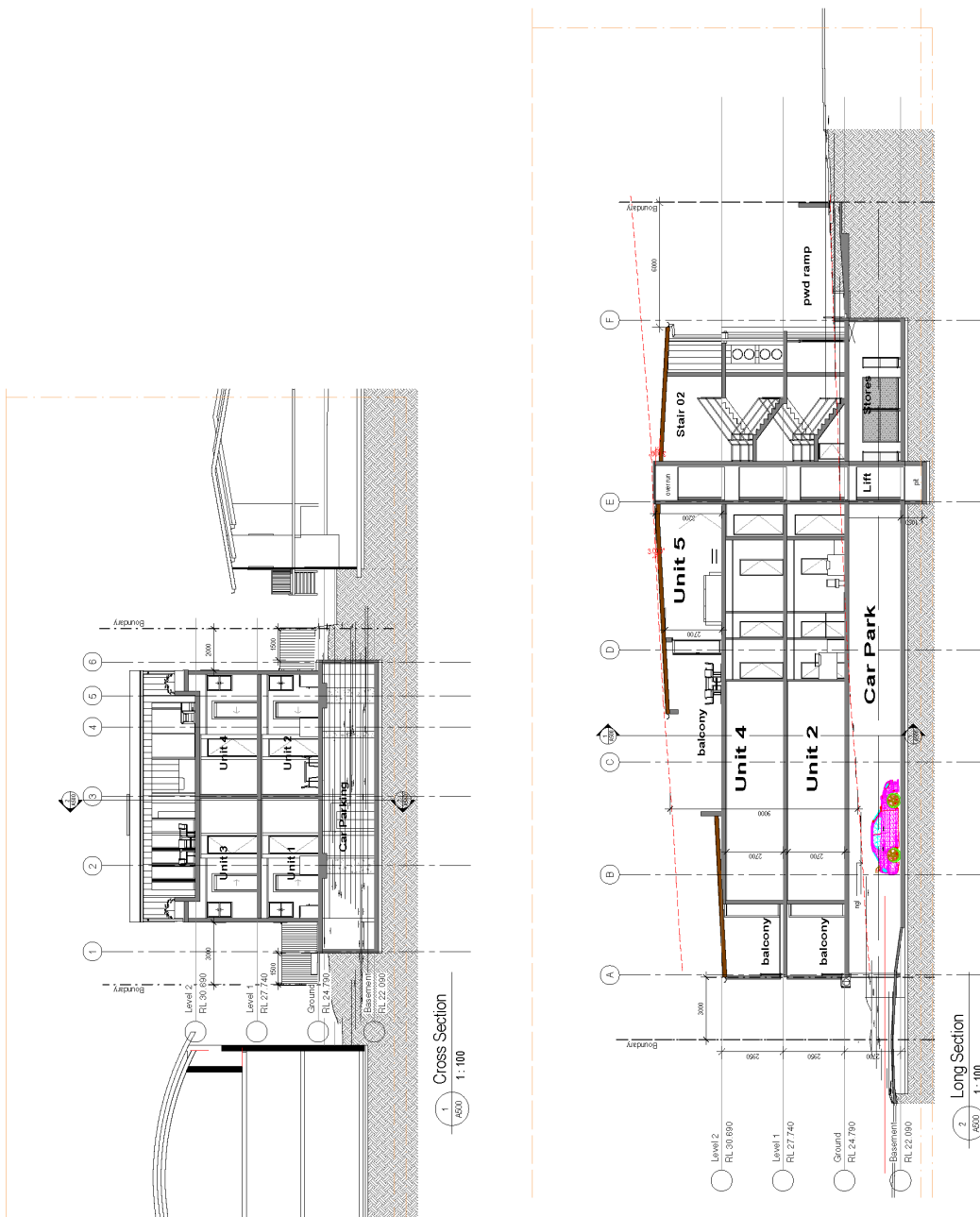
ARCHITECTS

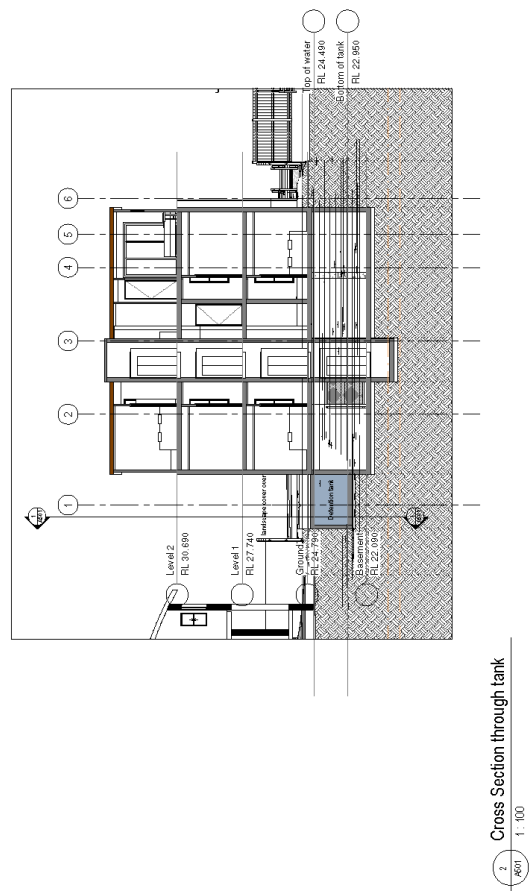
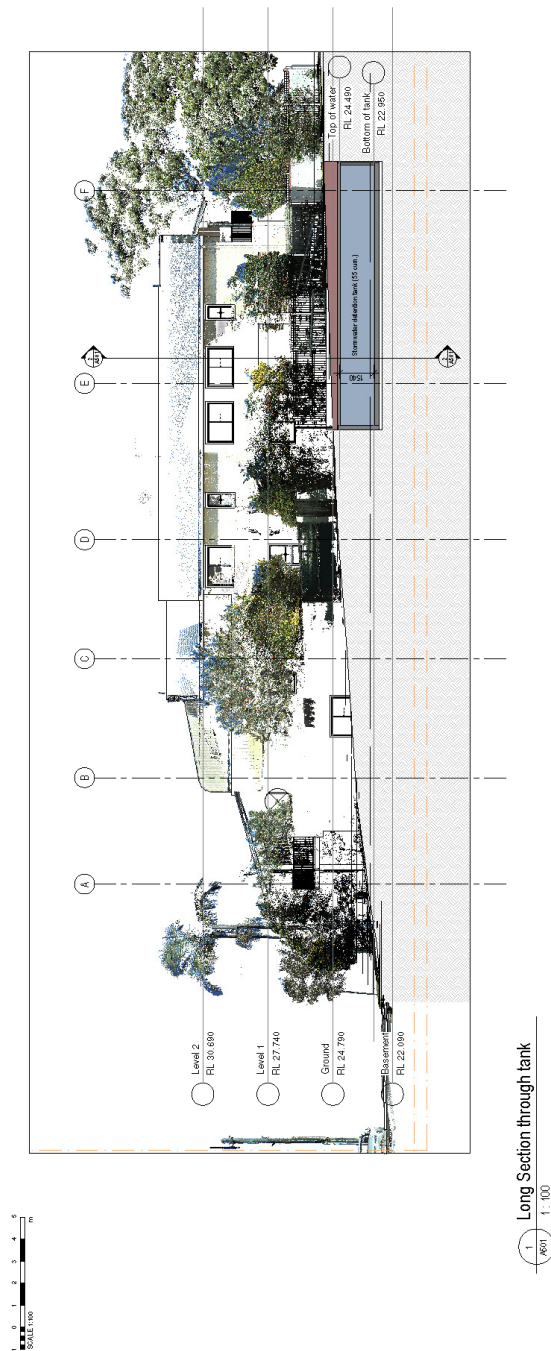
Comments	Sheet / Large Elevations	Date Recd.	10-6-2009	A401	Issue	A
<div style="display: flex; justify-content: space-between;"> <div> <p>PROJ: Proposed Unit Complex</p> <p>FOR: Murphy Builders</p> <p>AT: 44 Sutherland Street, Kingscliff NSW 2467</p> </div> <div> <p>SCALE: 1:100 @ A1</p> <p>DATE: 07/01/2019</p> <p>BY: G.E.</p> </div> </div>						
<div style="display: flex; justify-content: space-between;"> <div> <p>A D / Alteration</p> <p>P2 D / Preparation</p> <p>P3 D / Plotting</p> <p>P4 D / Check</p> <p>P5 D / Client change</p> <p>P6 D / Client change</p> <p>P7 D / Client change</p> <p>P8 D / Client change</p> <p>P9 D / Client change</p> <p>P10 D / Client change</p> <p>P11 D / Client change</p> </div> <div> <p>30.06.2019 G.E.</p> <p>20.06.2019 G.E.</p> <p>15.06.2019 G.E.</p> <p>01.06.2019 G.E.</p> <p>01.06.2019 G.E.</p> <p>24.04.2019 G.E.</p> <p>11.04.2019 G.E.</p> </div> </div>	<div style="display: flex; justify-content: space-between;"> <div> <p>DATE: 30.06.2019</p> <p>BY: G.E.</p> </div> <div> <p>DATE: 07/01/2019</p> <p>BY: G.E.</p> </div> </div>					


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<p>Definition Tank Sections</p>		<p>Scale No. 10-45-400 A501 Issue A</p>	
<p>PROJECT R/R AT</p>		<p>SCALE DATE G/E</p>	
<p>Proposed Unit Complex Murphy Builders 44 Sutherland Street, Kingsville, NSW 2467</p>		<p>1:100 07/01/2019 G/E</p>	
<p>A Draw P1</p>		<p>30.05.2019 G/E 28.05.2019 G/E</p>	
<p>AMEND DESCRIPTION</p>		<p>DATE BY</p>	



Black, C., Lee, J., & Lumsden, A. (Eds.). (2019). *Proposed Unit Complex*. Gibson Architects. ISBN 978-0-9950000-0-0.

PROJECT: Proposed Unit Complex
 DATE: 07.01.2019
 SCALE: 1:200
 ISSUE: A1

DRAWING: Sections for Excavations
 DRAWING NO.: 1846-ACD A502

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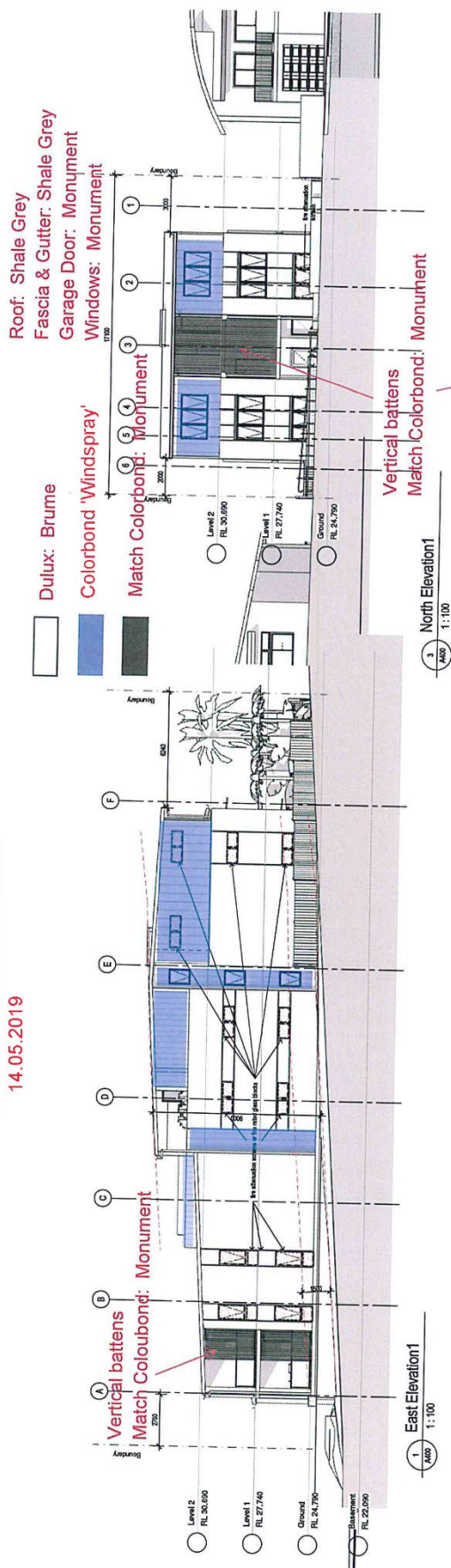
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44 Sutherland Street, Kingsgrove NSW 2207
 Author

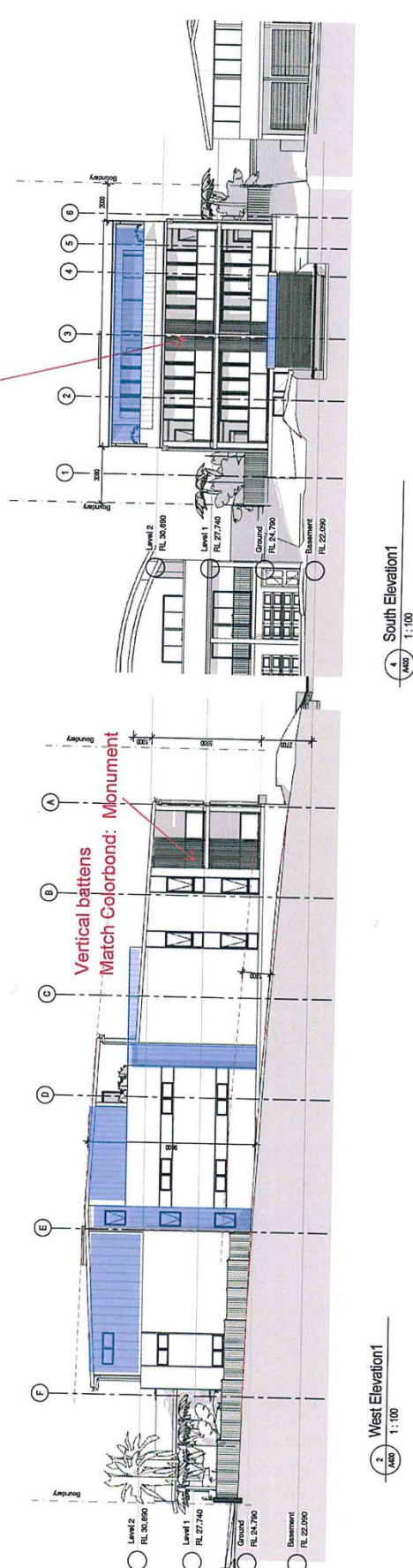
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EXTERNAL PAINT ELEVATIONS

14.05.2019



1 East Elevation1
A400 1:100



1 South Elevation1
A400 1:100

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Project: External Elevations (Option 1B)	
Client: 1846ACD A400	Scale: 1:100 @ A1
Project: Proposed Unit Complex	Date: 07.01.2019
Client: Murphy Builders	Drawn: GJE
44 Sturt Street, Kogarah, NSW 2247	
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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 particular aims of this Plan are as follows:

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

The proposal is considered consistent with the aims of the plan in that it is compatible with the principles of sustainable development and contributes to the provision of housing as envisaged by the medium density zoning.

Clause 2.3 – Zone objectives and Land use table

The objectives of the R3 zone are:

- *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 proposed five unit residential flat building is consistent the objective of providing medium density housing within the zone and contributes to the variety of housing types. The proposal is acceptable in this regard.

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

Not applicable. No subdivision is proposed.

Clause 4.3 - Height of Buildings

The site is subject to a maximum building height of 9m under this clause. The maximum height of the proposal is 9m which is compliant with the control.

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.*

The three storey development is considered to be of an appropriate height with respect to the size of the lot and the existing surrounding residential development. The proposal maximises the residential density for the site consistent with the medium density zoning and is of a high quality building design.

Clause 4.4 – Floor Space Ratio

The site is subject to a Floor Space Ratio of 2:1.

The gross floor area of each unit is:

Ground level –	Unit 1 -	136m ²
	Unit 2 -	136m ²
First level -	Unit 3 -	136m ²
	Unit 4 -	136m ²
<u>Second level -</u>	<u>Unit 5 -</u>	<u>144m²</u>
Total enclosed area -		688m ²

The FSR of the proposal is 1.007:1 which is compliant with the control.

Clause 4.6 - Exception to development standards

No exceptions to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable - The proposed development is not listed within this clause.

Clause 5.10 - Heritage Conservation

The objectives of this clause are as follows:

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

This is not identified as a heritage item nor is it located in a mapped heritage conservation area.

The site is not identified as a known or predictive location of Aboriginal Cultural Heritage under the Aboriginal Cultural Heritage Management Plan. An AHIMS search for the site did not indicate any Aboriginal sites or places are recorded or declared within 150m of the subject site.

A standard condition of consent that details appropriate actions to be taken in the event an Aboriginal cultural item is uncovered will be applied to the consent (DUR0025).

Clause 5.11 - Bush fire hazard reduction

The proposal does not impact on measures to reduce the bush fire hazard on the site nor does it contribute to the bush fire hazard.

Clause 7.1 – Acid Sulfate Soils

The subject site is mapped as Class 5 on Council's Acid Sulphate Soils Planning Constraints Map. Class 5 land requires development consent for works within 500m of adjacent Class 1,2,3 or 4 land that is below 45 metres AHD and by which the water table is likely to be lowered below 1 metre AHD on adjacent Class 1,2 3 or 4 land.

The proposal does not propose works that will impact the water table or disturb ASS as so is compliant with the provisions of this clause.

Clause 7.2 - Earthworks

Earthworks ancillary to the proposal involves the excavation of up to 2m to facilitate the construction of the basement car park. The earthworks (other than minor site regrading works) are limited to the foot print of the building and will not result in a detrimental impact on the environment or the locality. It is considered that standard conditions of consent are adequate to ensure compliance with the provisions of this clause.

Clause 7.3 – Flood Planning

The site is mapped as having an elevation of RL6m AHD which is above the flood planning level and so this clause is not applicable.

Clause 7.5 - Coastal risk planning

The objectives of this Clause are to avoid adverse impact from coastal hazard; ensure the use of land is compatible with the risks presented by coastal hazards; to enable the evacuation of land identified as coastal risk in an emergency and avoid increases to the severity of coastal hazards.

The subject site is not located with the coastal hazard line or land identified under DCP B25 Coastal Hazard 2100 max. As such, the proposed development is compatible for the land having regard to the objectives contained under this clause.

Clause 7.6 - Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on adjoining properties, native bush land and receiving waters and applies to land in residential, business and industrial zoned. This clause states:

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

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

A Stormwater Management Plan has been submitted which indicates that runoff from the driveway will be collected in an On-Site Detention system prior to release into the stormwater network. On site detention and infiltration pits are proposed to be used to mitigate the impacts of runoff into Council's drainage network.

A detailed assessment of the proposed stormwater drainage for the development has been undertaken and by Council's engineers and appropriate construction and management conditions have been recommended. Subject to compliance with the recommended conditions of consent, Council can be satisfied the proposal can comply with the objectives of this clause.

Clause 7.8 – Airspace operations

The site is affected by the Gold Coast Airports Obstacle Limitation Surface mapping with the site being within the RL 153m AHD. The proposal is considered unlikely to impact on the operation of the airport as the height of the proposed unit development is approximately RL 39m AHD.

Clause 7.9 - Development in areas subject to aircraft noise

The site is not affected by aircraft noise.

Clause 7.10 - Essential Services

The objective of this Clause is to ensure that essential services are available for the development. Specifically; supply of water, electricity, sewer disposal, stormwater drainage and disposal into Council trunk drainage system and vehicle access.

Council's Water infrastructure engineer and development engineers have considered the development in regard to access, water supply, access, sewer service and stormwater management (including treatment) for the site.

Subject to compliance with conditions of consent, the development is satisfactorily serviced by essential infrastructure and services to support the proposed land use on the site.

Other Specific Clauses

There are no other specific clause applicable to this application.

North Coast Regional Plan 2036 (NCRP)

The NCRP 2036 establishes the following vision for the area:

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

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

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

The site is mapped as an Urban Growth area and within the Coastal Strip identified in this plan.

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

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

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.

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

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

The application is for the construction of a three storey residential flat building comprising of five units. The proposal represents infill development within an established residential area and a full assessment of the NCRP 2036 is not warranted. However it is noted that the proposal satisfies Action 23.1 of the Plan which seeks to:

encourage housing diversity by delivering 40 per cent of new housing in the form of dual occupancies, apartments, townhouses, villas or dwellings on lots less than 400 square metres, by 2036.

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

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

The objective of this policy is to provide a state-wide planning approach to the remediation of contaminated land. In particular the SEPP aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Under Clause 7 of the policy, a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and;

- a) 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*
- b) 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 site and surrounding land is currently zoned for residential development, the site contains a two storey single dwelling. Initial assessment of the site indicates the subject site has not been subject to any potentially contaminating activities as listed under Table 1 of the *NSW Contaminated Lands Planning Guidelines*.

Demolition of the existing dwelling is proposed and pre-demolition testing has not been undertaken of the soil beneath the existing dwelling slab in accordance with Council's Pre-Demolition Testing Guide. Council officers advised that this could be deferred to after the granting of consent provided that application was supported by a remediation action plan (RAP) demonstrating acceptable methods for remediation and validation of the site.

A RAP was prepared and submitted in support of the application. The RAP has been prepared in general accordance with relevant guidelines and is considered acceptable for the proposal.

Conditions will be applied requiring sub-slab testing prior to demolition of the slab, and in the event that COPC are found, remediation and validation of the site shall be done in accordance with the RAP.

As such, Council can be satisfied development of the subject site will not raise any issues with regard to contamination and therefore further assessment in accordance with SEPP 55 – Remediation of Land is not required and the site is considered appropriate for the proposed development.

SEPP No. 65 - Design Quality of Residential Flat Development

This 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 policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

- (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.*

The proposed development is a new three storey residential flat building comprising of five dwellings and as such this policy applies.

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 proposal is considered to achieve the design quality principles as required under SEPP 65. A full assessment addressing these principles and an assessment against Apartment Design Guide (ADG) is provided below.

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 context for this development is an established coastal residential area adjacent to public open space located along a foreshore area. The predominant character

of the area is typified by older style two storey single residential dwellings and two to three storey residential flat buildings of varying ages and design. Consistent with the coastal location and other residential flat buildings along Sutherland Street, the building is orientated to the east and includes deep prominent balconies fronting Hungerford Lane to benefit from ocean views and an easterly aspect.

The area is undergoing some change as older single dwellings are replaced by small apartment buildings with contemporary design features such as spacious external living areas to respond to the sub-tropical coastal location. The subject development is a contemporary design that is appropriate for this coastal location and positively contributes to the existing and desired coastal residential character.

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 residential flat building is consistent in height and bulk of other small residential flat buildings along Sutherland Street and within proximity to the site. With a maximum height of 9m above natural ground level, the building is within the 9m height limit prescribed by the Tweed Local Environment Plan 2014.

The lift shaft is located toward the centre of the building with the top of the lift shaft being 9m above natural ground level and set back 12.58m from the Sutherland Street front boundary. Habitable rooms of the third level apartment are set back 6.65m from the Sutherland Street front boundary and 18.9m from the Hungerford Land frontage, and as such the appearance of this level is diminished from the street scape.

Building separation distances are consistent with the separation distances for other residential flat buildings within Kingscliff and Sutherland Street.

The proposal displays good articulation in the front and side elevations and internal amenity is maximised with minimum 2.7m internal ceiling heights, substantially sized balconies to each unit, eastern aspect of primary living areas and windows on two elevations.

It is considered that the built form and scale consistent with the locality and Principle 2.

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 site is within a R3 Medium Density Residential zone as identified by the Tweed Local Environment Plan 2014. The development provides five residential units on a 683m² lot which is appropriate for the medium density zone.

A high level of amenity is achieved for the residents of each apartment which provides external living areas and habitable rooms achieving an easterly aspect and views of the coast. Appropriate separation distances are provided from adjoining residential development so that the subject site and adjacent site receive adequate solar access.

The density achieved by the development is appropriate to the context of the locality with regard to access to facilities noting that the site is approx. 350m from the business precinct of Kingscliff.

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.

The proposed design displays the elements of energy efficient design principles including natural cross ventilation and solar access. Deep soil zones are provided at the front of the site and the development meets the BASIX Certificate requirements. Therefore the proposal is considered to achieve the intent of Principle 4.

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 detailed landscaping plan was submitted with the amended plan and is considered consistent with Principle 5. The plans demonstrate landscaping that positively contributes to the amenity of the residents and the landscape character of the streetscape.

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.

Each unit includes generous primary living spaces and a large balcony for each unit which contribute to a positive living environment. All bedrooms exceed the required minimum dimensions as specified by the Apartment Design Guide. The plans indicate that the proposal is able to comply with minimal internal storage spaces and additional secure storage is provided for each unit in the basement.

Shadow diagrams were submitted for the application which demonstrates that each unit will receive adequate solar access and as each unit has openings on three elevations, the layout facilitates good cross ventilation. The proposal affords good amenity for the residents and as such the proposal satisfies Principle 6.

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.

Each of the units are oriented to both street frontages and so provides opportunities for passive surveillance of the street. The pedestrian entrance from both Sutherland Street and Hungerford Lane are clearly visible and transitions from public to private areas are well defined. A pedestrian entrance is provided from the rear of the site adjacent to the visitor parking spaces. The proposal is considered to be consistent Principle 7.

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 proposal provides five three bedroom units and whilst the proposal does not provide a mix of apartment sizes, with the exception of unit 5, the number of units represents an appropriate density for the area and the apartments are arranged to maximise amenity on this relatively small infill site. Areas for casual social interaction are limited to access areas and communal circulation areas whilst the development relies on the site's proximity to a large expanse of public open space in lieu of communal open space. As the Apartment Design Guide provides flexibility with regard to the provision of communal open space where the site is adjacent to public open space, the proposal is considered to be acceptable in this regard.

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 built form displays a balanced composition comprising of a mix of horizontal and vertical elements within the street elevations. A mix of materials is used and the use of glass as structural and non-structural elements contributes to a light weight design compatible with the coastal location.

The external appearance is a logical reflection of the internal arrangement of the units and the recessed balconies and screened plant decks provide articulation and interest to the façade. Additionally balconies and varying materials and wall plates provide articulation to the Hungerford Lane frontage.

With respect to the above assessment the proposal is considered to be consistent with the design principles as specified in Schedule 1 of SEPP 65.

NSW Apartment Design Guide

The NSW Apartment Design Guide (ADG) aims to achieve better design and planning for residential apartment development, by providing benchmarks for designing and assessing these developments.

Parts 3 and 4 set out objectives, design criteria and design guidance for the siting, design and amenity of residential apartment development. It is noted that objectives, design criteria and design guidance in Parts 3 and 4 of the Apartment Design Guide that are referred to in SEPP 65 prevail over any inconsistencies with the DCP controls.

The proposed typology of the development pursuant to the NSW ADG is considered to be a *narrow infill apartment* building type. The development has demonstrated general compliance with the objectives and design guidance of the guideline. A full assessment under the ADG has been undertaken and is recorded on file.

The development plans propose variations to the Design Criteria with regard to communal open space and building separations distances. Below is a merit based discussion of parts of the development which fail to achieve compliance with the Design Criteria and Design Guidance.

Communal open space

<p>Objective 3D-1</p> <p>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping</p>
<p>Design criteria</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3) 2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)
<p>Design guidance</p> <p>Communal open space should be consolidated into a well designed, easily identified and usable area</p> <p>Communal open space should have a minimum dimension of 3m, and larger developments should consider greater dimensions</p> <p>Communal open space should be co-located with deep soil areas</p> <p>Direct, equitable access should be provided to communal open space areas from common circulation areas, entries and lobbies</p> <p>Where communal open space cannot be provided at ground level, it should be provided on a podium or roof</p> <p>Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room • provide larger balconies or increased private open space for apartments • demonstrate good proximity to public open space and facilities and/or provide contributions to public open space

The site is 683m² in area so 170.75m² of communal open space is required by the control.

The applicant notes that communal open space has not been provided on-site due to the relatively small number of units, small lot size, access to natural light, elevated views and proximity to public spaces.

The design guidelines note that where developments are unable to provide the required communal open space due to being a smaller lot, they should provide larger balconies or increased private open space for apartments and demonstrate a good proximity to public open space.

The applicant notes that the proposed design incorporates larger balconies being 21m² and larger still for the top floor apartment. The subject site is also approximately 200m from prominent open spaces and reserves within the Kingscliff locality. These spaces are easily accessed by foot from the site and provide greater amenity than that which would be afforded by communal open space.

Whilst the proposal falls short of achieving the design criteria for

communal open space, its design does provide for large balconies which are highly suitable and usable private open space areas. Accordingly, it is considered that these areas of private open space together with the sites proximity to prominent open spaces and public reserves, are an acceptable offset for satisfying the need for public open space.

Building separation

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

Design guidance

Generally one step in the built form as the height increases due to building separations is desirable. Additional steps should be careful not to cause a 'ziggurat' appearance

For residential buildings next to commercial buildings, separation distances should be measured as follows:

- for retail, office spaces and commercial balconies use the habitable room distances
- for service and plant areas use the non-habitable room distances

New development should be located and oriented to maximise visual privacy between buildings on site and for neighbouring buildings. Design solutions include:

- site layout and building orientation to minimise privacy impacts (see also section 3B Orientation)
- on sloping sites, apartments on different levels have appropriate visual separation distances (see figure 3F.4)

Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (figure 3F.5)

Direct lines of sight should be avoided for windows and balconies across corners

No separation is required between blank walls

The proposed development is a three level apartment building with sub-basement parking provided. The total height of the proposal is 9m. As such the minimum separation distances to boundaries are 6m for habitable rooms and balconies and 3m for non-habitable rooms.

Side Setbacks are as follows:

Ground floor:

Habitable room 3m (south) & 2m (north)

Balcony edge 3m (south) 2m (north)

Non habitable room/blank wall 3m (south) 2m (north)

Floors 2

Habitable room 3m (south) & 2m (north)

Balcony edge 3m (south) 2m (north)

Non habitable room/blank wall 3m (south) 2m (north)

Floor 3 – top level (maximum 9m above ground level)

Habitable room 3.1m (south) 2.1m (to study north)

Balcony edge 4m (south) 3 (north)

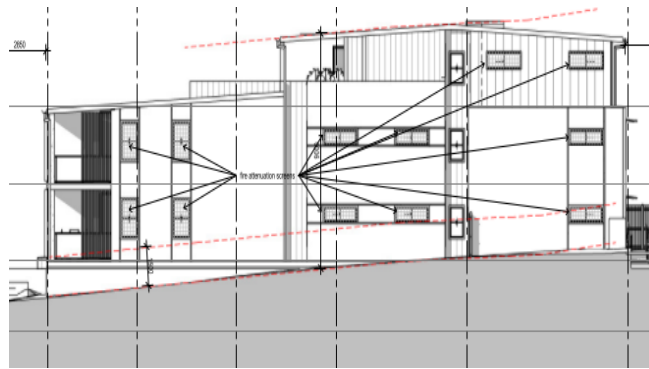
Non habitable room/blank wall 3.1 (south) 2.1m (north)

The objective of the controls are:

Adequate building separation distances are shared equitably between neighbouring sites. To achieve reasonable level of external and internal privacy.

Regardless of the variation to the numerical controls the proposal achieves reasonable levels of privacy via:

- Primary balconies are located to the Hungerford lane frontage of



Northern Elevation Privacy treatments and window positioning

the site overlooking the street and screens are provided along portions of the balconies where they are adjacent to the side boundary;

- Balustrades of top floor balconies are set back from the building edge to limit overlooking impacts;
- Primary windows to habitable rooms are minimal in size or screened where they face northern side boundaries.

Furthermore the objective states that separation distances are to be shared equally between neighbouring sites. The minimum side setbacks of the building to the north are approx. 2.6m to windows of habitable rooms. The RFB to the south is a similar design to the subject proposal and is setback approximately a minimum of 3m to the side boundary.

As such a minimum building separation distance of approx. 4.6m is achieved to the building to the north and approx. 6m to the building to the south. Articulation of the subject development and adjacent buildings result in separations distances that range from approx. 4.6m to 7.1m to the north and 6m to 7.1m to the south.

A 6m boundary setback as required by the control would result in an undevelopable building footprint within this relatively small infill site (17.099m x 40.234m). The proposed distance between the development and adjoining sites is consistent with the surrounding character of the area.

With consideration of the lot size, the proposed setbacks are considered acceptable and are consistent with the setback requirements of the DCP A1 Part C and other RFB developments within Kingscliff.

Furthermore the proposal, through additional detailed overshadowing diagrams, has demonstrated that it complies with the overshadowing requirements of the SEPP No. 65 - Design Quality of Residential Flat

Development, and The Tweed DCP Section A1- Part C. The proposed setbacks are therefore conducive to acceptable solar access for the adjoining allotments, particularly the allotment to the south.

Whilst the side boundary separation distances are less than the design criteria (6m), it is considered that given the allotment layout and the sensitive design of the development to maximise privacy and amenity, the variation can be supported.

With regard to the above assessment, the proposed variations to the provision of communal open space and building separations distances are supported. The variations will not result in an unacceptable impact for residents of the development or those of adjoining properties. Nor will the variations result in development that is inconsistent with surrounding built form. The proposed development is consistent in bulk and scale of other residential flat buildings in the locality and displays a high level of design quality.

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 (Certificate number: 1001368M) dated 22 May 2019 and therefore is deemed to comply with the provisions of this SEPP.

SEPP (Coastal Management) 2018)

The subject site is mapped as being within the Coastal Environment Area and Coastal Use Area under this plan and as such assessment against Clause 13 and 14 is required. 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.*

14 Development on land within the coastal use area

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
 - (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
- (2) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

The subject site is an established residential lot located adjacent to a foreshore area being separated from the foreshore recreational area by Hungerford Lane, Moss Street and Marine Parade. The proposed development will not impede access to the foreshore 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.

The provisions of the SEPP are deemed to be satisfied.

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

There are no draft Environmental Planning Instruments applicable to the proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code - Part C Residential Flat Buildings

The proposal is generally consistent with the description of Small Residential Flat Buildings as defined with Part C of Section A1 of the Tweed Development Control Plan 2008 being:

Small residential flat buildings usually contain six dwelling; two per floor, however they may contain a variation to this configuration. Carparking is generally underground and the building circulation spaces are located centrally within the building providing all dwelling with three external sides.

The stated objectives for Small Residential Flat Buildings are:

- *To provide more compact housing types within a small scale building form.*
- *To provide more housing choices.*
- *To create an urban building form and strong built edge along the street.*
- *To more efficiently use land in proximity to services and centres.*
- *To provide a residential flat building type for steep sites.*
- *To provide greater residential densities.*

The proposal is consistent with the objectives in that the built form is generally compact whilst providing a high level of amenity for residents. The setback of the development is consistent with the setback of adjacent developments fronting both Sutherland Street and Hungerford Lane thereby contribution to a strong built edge along both streets. The proposed five units provides a higher density outcome appropriate to the medium density zoning and the proximity to the Kingscliff commercial and retail precinct located approximately 350m to the north-west of the site.

The proposal is generally compliant with the controls for Small Residential Flat Buildings. The layout of the building is such that primary windows of living areas

are oriented towards the Hungerford Lane frontage of the site to benefit from ocean views. Where external living areas are adjacent to the side boundary they are suitably setback and screened to achieve visual privacy. Where windows face the side boundary they extend from bedrooms, are suitably setback and/or are screened. Windows extending from the living areas which face the side boundary of a size and setback that is unlikely to result in adverse privacy or overlooking implications any greater than what is to be expected from residential development. These windows along with the top level balcony can also be conditioned to receive a privacy treatment with detail submitted prior to a construction certificate.

The Controls state that developments comprising of more than 10 dwellings are to provide communal open space. The subject development consists of 5 dwellings and as such communal open space is not required in accordance with the controls.

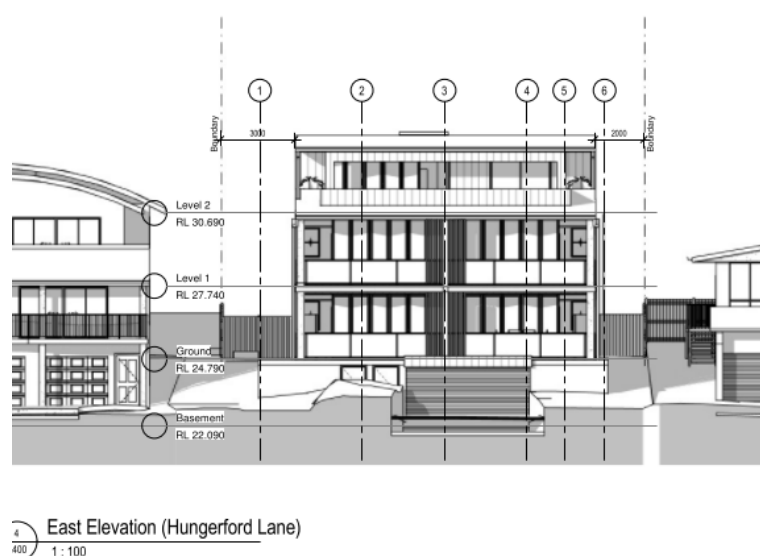
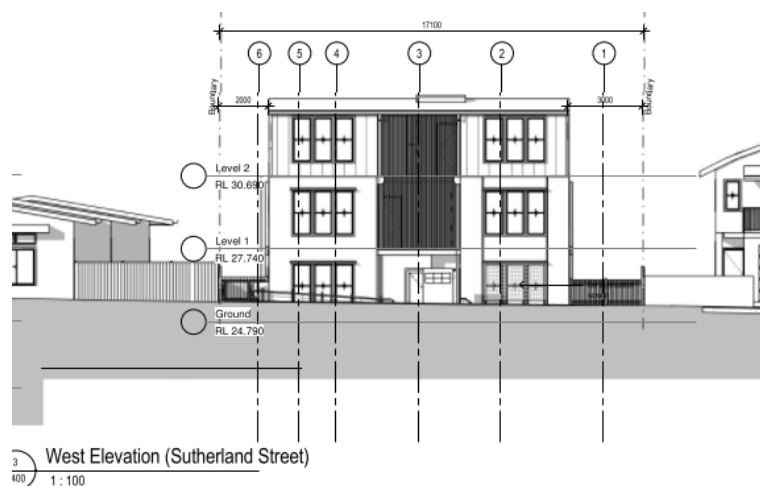
Whilst the proposal generally complies with the control for Small Residential Flat Building, some variations are noted, which are discussed in detail below. Additionally significant aspects of the development (overshadowing, streetscape, articulation etc.) have been discussed in detail below also.

Public Domain Amenity

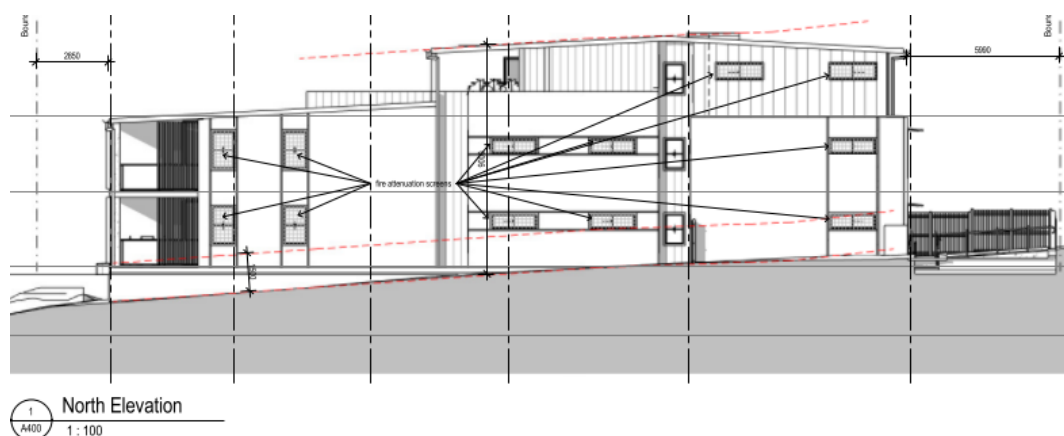
Streetscape

The proposal is considered to be consistent with the objectives and controls of streetscape. The proposal suitably address both street frontages and achieves the desired spatial framing while being consistent with surrounding development which features a mixture of older style 2 storey dwellings and residential flat buildings of varying designs. The proposal features a range of materials and wall plates to both street frontages which provides articulation and enhances the character of the existing streetscape. Additionally the upper level has been recessed back from both front facades to provide further articulation and to reduce the bulk of the structure when viewed from both street frontages.

Furthermore, the proposal provides clearly defined pedestrian access points to both frontages to ensure pedestrian amenity, access and safety.



Street frontage elevations of the proposed development



Elevation plan showing the recessed upper level

Impermeable Site Area

The controls state that a maximum of 65% of the site (or 443.95m²) are to be impervious. The plans indicate that 68.7% (or 469.8m²) of the site is impervious and therefore a minor variation is sought of 3.7% of 25.85m².

The objectives of the impermeable site area control are:

- *To promote residential development that is sympathetic with the existing topography, water cycle and amenity of the site and neighbourhood.*

- *To retain the lands ability to infiltrate stormwater*

A Stormwater Management Plan has been submitted for the proposal which indicates that on site detention and infiltration pits are proposed to be used to mitigate the impacts of runoff into Council's drainage network. A detailed assessment of the proposed stormwater drainage for the development has been undertaken and by Council's engineers and deemed to be acceptable.

With consideration of acceptable stormwater management and appropriate landscape areas provided to contribute to the amenity of the site the 3.7% variation to the control is considered acceptable.

Setbacks

Front Setbacks

The subject site has dual frontage to both Sutherland Street and Hungerford Lane with no defined rear boundary. Design Control 3(d) states:

d. Where a site has dwellings with frontages to two or more streets the street setbacks to these frontages are to be considered as front setbacks and there be 6m

The proposed development seeks minimum front setback distances of 6m to Sutherland Street and 3m to Hungerford Lane. A variation is therefore sought to the developments setback distance from Hungerford Lane. Both the lower storey basement car park and the first and second floor balconies are within the 6m setback. The objectives of the front setbacks (building lines) control are:

- *To establish the desired spatial proportions of the street and define the street edge;*
- *To enable transition between public and private space;*
- *To create a landscape setting for residential buildings;*
- *To ensure compatibility with other buildings in the street.*

The proposed setback to Hungerford Lane is consistent with the setback of adjoining development (See image below) and therefore maintains the desired spatial proportions of the street and defines the street edge. The proposal also include substantial deep soil zone planting to both street frontages and a landscaping plan demonstrating a suitable landscape setting. It is therefore considered that the proposed minimum 3m setback to Hungerford Lane is compatible with other buildings in the street and maintains the objectives of this Control.



Proposed development and adjoining development with the red line denoting the building line to Hungerford Lane.

Side Setbacks

The proposal complies with the side setback Controls, which permit a minimum side setback distance of 1.5m. The proposal presents a minimum side setback distance of 2m to the northern side and 3m to the southern side.

Building Separation

Building separation has been assessed and discussed in detail above under the SEPP 65 Apartment Design Guidelines listed above. The objectives of the Building Separation Control are:

- *To maintain privacy between dwellings*

The proposed developments separation from adjoining development is considered acceptable given the allotment is only 17.099m wide. The submitted plans also demonstrate that the development will not significantly impact on the privacy and solar access of adjoining allotments. The elevation plans demonstrate suitable privacy treatments and/or window sizing to side facing decks and windows. It is therefore considered that the proposed development will maintain an acceptable amount of privacy between dwellings.

With regards to the top level deck, it is considered that the proposed floor levels would look past adjoining development while the deck would also be orientated primarily to the east or street.

Additionally the shadow diagrams indicate that the adjoining development to the south will receive a compliant amount of solar access on the 21 June between 9am and 3pm.

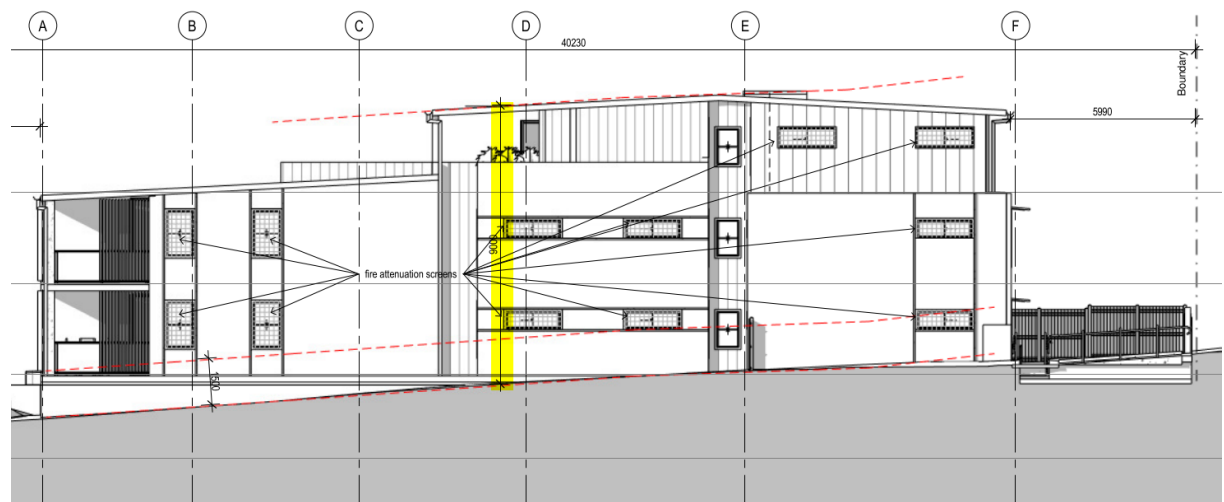
Height

The control states that maximum building height for Residential Flat Buildings is 12.2m. The proposal has a maximum height of 9m which is compliant with the LEP

control of 9m. It is noted that the LEP control takes precedence over the DCP control.

The submitted elevation plans and site survey indicate that the height above the natural ground level is accurate and that the development will not exceed 9m measured from the existing ground level. It shall be a condition of consent that a registered surveyor's certificate is provided during construction to ensure the development does not exceed 9m.

The upper storey is also recessed behind the level below and therefore reduces the overall bulk of the building when viewed from the street. In addition the basement car parking is below the natural ground level and therefore would not be visible or contribute to the building height, bulk or scale.



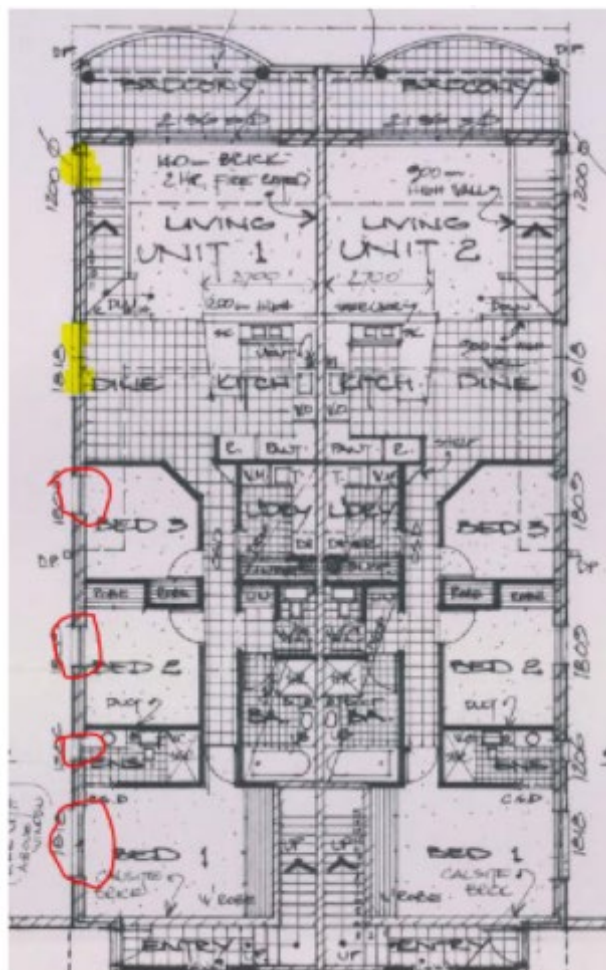
Elevation plan demonstrating the maximum building height above the existing ground level (highlighted).

The building displays a high level of design quality good articulation at all levels of the development. With consideration to the above assessment and demonstrated compliance with the LEP statutory height limit, the proposal is considered to be acceptable with regard to height.

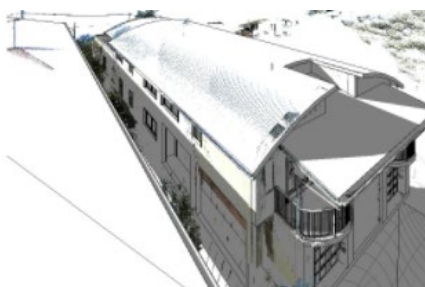
Building amenity

Detailed shadowing diagrams have been submitted which demonstrate that the adjoining development to the south will receive a minimum of 3 hours of solar access to the windows of living areas on June 21 between the hours of 9am and 3pm. In particular, the impact of shadowing to the ground floor unit of the adjoining southern development would be similar from a two or three storey development, as indicated below.

A three storey development will only result in an increase to the overshadowing of the upper level of the adjoining development. The shadow diagrams below also demonstrate that the side setback distance for the proposed development will improve solar access to the ground floor unit, when compared to a two storey development setback 1.5m off the side boundary. Therefore, regardless of the building height, the lower storey unit on the adjoining southern property will be overshadowed in some form however, the proposal will allow for a compliant amount of solar access.



Floor plan of the lower storey unit on the adjoining southern allotment.



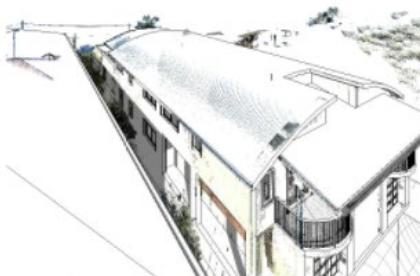
Southern Neighbour affect at 9:00 am Winter Solstice



Southern Neighbour affect at Noon Winter Solstice

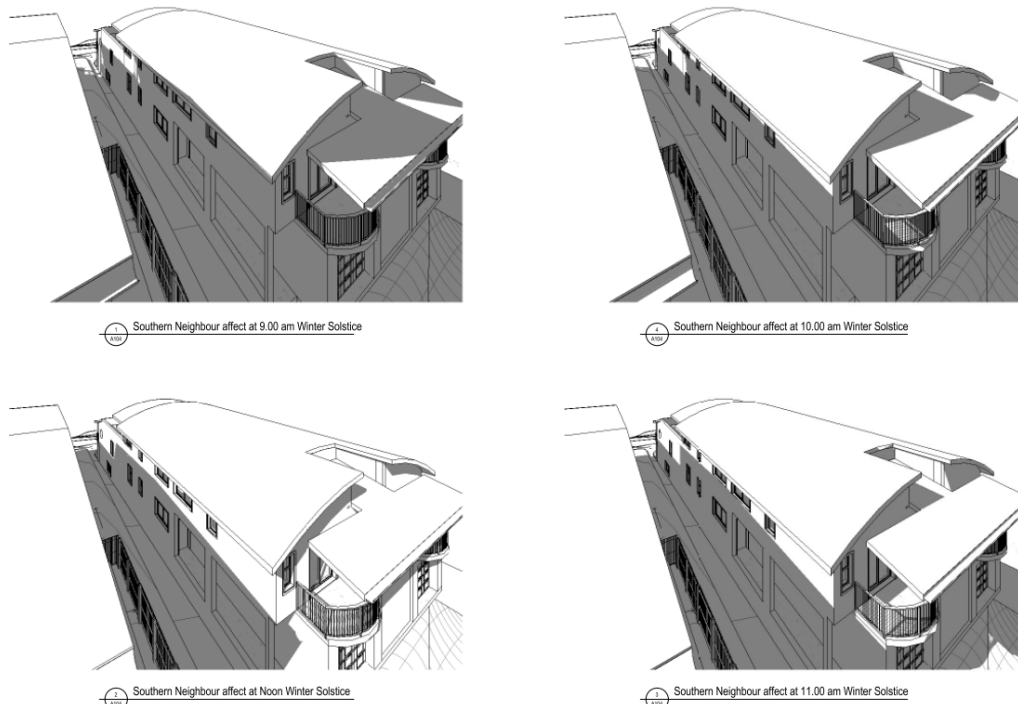
NOTE :

SHADOWS SHOWN ARE FROM A TWO LEVEL BUILDING ON THE SITE SAME LENGTH SAME GROUND FLOOR. SAME STREET FLOOR, 1000 mm SP4 SOUTH BOUNDARY + 400 mm FLOOR OVERHANG. COLLOID 17100 mm



Southern Neighbour affect at 3:00 pm Winter Solstice

Shadow cast on the adjoining development to the south by a two storey building with the same length and a reduced side setback, as the proposal.



Shadow cast on the adjoining development to the south by the proposed three storey development.

Fences and walls

The proposal includes 1.8m high return fence forward of the building line which does not comply with the 1.5m maximum height for return fences. The fence also does not achieve the required maximum solid fence height of 600mm and an openness ratio of 60% above the solid wall. This is to be addressed via a condition of consent which requires detailed fencing design to be included in landscape plans that are to be submitted to Council for approval prior to the issue of a construction certificate.

A2-Site Access and Parking Code

Section A2 specify two spaces per 3 bedroom unit plus provision for visitor parking at a rate of one (1) space per four (4) units is to be provided for Residential flat Buildings (see Item A12 in Table 2 of DCP).

Plans for the proposed five unit development show a total of 10 basement car parking spaces plus two visitor basement parking visitor spaces which complies with Council's numerical requirements for car parking.

A common driveway access to the development is provided via Hungerford Lane (rear lane) which is the preferred access arrangements for these types of development.

The proposal is considered satisfactory with respect to the provisions of A2.

A11-Public Notification of Development Proposals

The application was notified to adjacent property owners with a submission period of fourteen (14) days from Wednesday 7 August 2019 to Wednesday 21 August 2019. During this time there were three (3) submissions received in relation to the

application. A detailed assessment of these submissions is provided in a later section of this report.

A15-Waste Minimisation and Management

A Waste Management Plan (WMP) dated June 2019 was submitted in accordance with the provisions of Section A15, which include measures to minimise and manage waste during the demolition and construction phases of the development and also the operation phase of the residential development. Appropriate waste minimising and recycling measures are detailed for the demolition and construction phases of the development and the proposal is acceptable in this regard.

The residential development is to be service via separate bulk bins for recycling and general waste during its operational phases. The size of the waste and recycling bins are consistent with the generation rated for Multi-Unit Dwellings as detailed in Appendix B.

The waste storage room is located in the basement car parking level and allows for convenient access for residents and is of an adequate size to accommodate the appropriate sized bins. This has been deemed to be an acceptable arrangement by Council's Waste Unit following modifications to the plans to demonstrate kerbside services and adequate storage area.

As such waste management for the development considered to be consistent with the provisions of A15.

A18 - Heritage

The site is not mapped as being within a known or predictive plans for Aboriginal Cultural Heritage. As a precautionary measure to limit harm a standard condition of consent will be applied which details the appropriate actions to be taken in the event an Aboriginal cultural heritage item is disturbed during construction works.

B9-Tweed Coast Strategy

Section B9 provides a broad overview of major strategic planning issues relevant to the Tweed Coast.

This proposal does not contravene the intended urban structure, centres hierarchy or design principles of this plan.

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

There are no known planning agreements or draft planning agreements that affect the site.

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

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

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as detailed elsewhere

within this report as it does not propose any significant impact to coastal processes and will not restrict access to any foreshore areas nor result in any overshadowing of beaches or foreshores.

Clause 92(1)(b) Applications for demolition

The proposed development will include demolition of the existing dwelling and associated outbuildings. Appropriate conditions of consent will be imposed to require demolition in accordance with AS2601-1991. This will also include appropriate waste management, disposal and special requirements for asbestos removal/management where and if required.

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

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is located approximately 1.5km from the Cudgen creek. The proposal is considered unlikely to impact on the Cudgen Creek due to the separation distance and existing residential/urban development separating the site from the Cudgen Creek.

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

Not applicable. The site is not located with an area to which this plan applies.

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

Context and Setting

The site is within an established residential area and is elevated atop Kingscliff Hill. The upper levels of the development will benefit from views to the foreshore ocean.

The proposal has been determined to be consistent with the existing built character of the locality. The proposal represents infill residential development on an established residential lot. The impact of the development on the built environment with regard to bulk and scale and the predominant residential character have been considered as detailed in an earlier section of this report. It is considered that the proposal will not result in an unacceptable impact on the streetscape or public views and vistas.

The building design is considered to be of high quality and colours and materials are appropriate to the urban coastal environment. Subject to conditions of consent, is unlikely to result in an unacceptable impact on the natural or built environment.

Access, Transport and Traffic

The residential building provides vehicle access from Hungerford Lane which is the preferred access location. A 6.5m wide driveway crossover is provided to a basement car park. This arrangement is similar to other residential flat buildings in the locality.

The road network is considered to have the capacity to accommodate the proposal without any negative impacts on the road network.

Council's Development Engineers have reviewed the proposal and have considered that the proposal will not contribute to any issues of congestion or safety towards the primary school immediately across the road. A concrete path is also to be built across the full Sutherland Street frontage of the site, as an extension of the local paved network. Condition of consent has been imposed to reflect the comments from Council's Development Engineers.

Flora and Fauna

The subject site has been used for residential purposes for more than 35 years. The site contains some non-native landscaping trees and managed gardens that will be removed to facilitate the proposal. The site is not considered to represent significant habitat for native flora and fauna and the removal of the vegetation is unlikely to result in an unacceptable impact on native flora and fauna populations. The proposal is considered acceptable in this regard.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is located within an established medium density residential area which and is located approx. 165m south east of the commercial precinct of Marine Parade. Surrounding residential development is a mix of older style single dwelling houses and small residential flat building on lots ranging from 400m² to 1200m². The area is undergoing change in which older single dwelling houses are being replaced by small residential flat buildings.

The proposal has been considered with respect to the medium density zoning and existing adjoining residential development and it considered that the proposal will not result in an unacceptable impact on the amenity of adjoining residents. The proposal is considered suitable for the site and is consistent with existing development within the locality.

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

The application was notified to adjacent property owners with a submission period of fourteen (14) days from Wednesday 7 August 2019 to Wednesday 21 August 2019. During this time there were three (3) submissions received in relation to the application.

The submissions raised concerns primarily relating to the height of the building, the, architectural merit, non-compliances with the SEPP No.65 and DCP Section A1- Part C requirements and privacy and amenity impacts for nearby residents.

Issue	Applicants response	Councils response
Building height	<i>The building is completely compliant with the TLEP 2014 prescribed height limit of 9m.</i>	The submitted plans demonstrate that the proposed development is compliant with the 9m height limit prescribed by the TLEP 2014. In addition the detailed site survey indicates that the correct natural ground levels have been used in determining the overall height of the building. Conditions of consent shall be included to require a registered surveyor's certificate to ensure the height does not exceed 9m above the natural ground level. The height and bulk of the building have also been addressed previously in this report.
Insufficient Lot Size	<i>There is no prescribed minimum lot size for residential flat buildings</i>	Agree with applicant's response.

Issue	Applicants response	Councils response
Lift overrun	<i>The lift overrun is accommodated within the building footprint and within the building height restrictions</i>	Agree with applicant's response.
32 Sutherland Street is not a worthy comparison	<i>While this building is considered 'too high' for Kingscliff as identified within the draft Kingscliff locality plan, it remains within the streetscape and provides evidence that the proposed development is not inconsistent with the current built form, regardless of historical development. The proposed RFB is a much smaller building than 32 Sutherland Street and is compliant with the prescribed height limit and FSR. It is considered that the development is completely consistent with the communities desired future built form of Kingscliff, being compliant with the latest reiteration of the Kingscliff Locality Plan in regards to height.</i>	The proposal is consistent with the height controls of both the SEPP No.65 and DCP Section A1 Part C. It has also been discussed above that the proposal suitably addresses both streetscapes and present sufficient articulation to avoid unnecessary bulk and scale or impacts on public amenity. The proposal is therefore considered to be an acceptable outcome for the medium density zoned locality and is consistent in bulk and scale to nearby residential flat building developments.
Architectural Merit	<i>A single submission does not constitute the views of an entire community. The building has been designed by an architect and has many characteristics that are site sensitive creating an individual design that provides suitable architectural merit. The submission does not provide justification why the building is not considered to have an architectural merit.</i>	The proposal features a range of materials and colours and along with varying wall planes to the front facades, provides sufficient articulation. As has been discussed in detail above, the proposal is considered to be acceptable with respect to articulation or architectural merit.
Variations to side boundary setbacks	<i>Significant justification and precedent has been provided within SEE. The development will not adversely impact any neighbour's air, light and view lines due to orientation, setbacks and articulation. This is evident with the suite</i>	The proposal seeks variation to the SEPP No.65 ADG 3F-1 Building Separation which has been discussed in detail above. While the proposal is not numerically compliant with the guideline, the size of the block being 17.099m x 40.234m, make

Issue	Applicants response	Councils response
	<i>of plans provided and the accompanying commentary both within the SEE, supportive appendices and plans.</i>	compliance an unrealistic outcome. The proposal has also demonstrated that adjoining properties will maintain access to sufficient light, views and privacy.
Appendix H – Liveable Housing Design Guidelines and Design Quality Principles	<i>As the development has a minimum of 2 car parks per each dwelling unit (which is in excess of the requirements) should an owner require a disabled car park it can be converted from 2 side by side car parks to one (2.4 m x 5.4m) with a side circulation space (2.4 m x 5.4m). This is possible to all car parks except those which are tandem.</i>	Agree with applicant's response. The proposal satisfies the relevant policies with respect to car parking.

Disability Access

<i>The development is fully compliant to meet the silver level of the Liveable Housing Design Guidelines Design element 1; Dwelling Access</i>	Agree with applicant's response. Following an RFI from Council, the applicant has further demonstrated that the proposal is compliant with respect to disability access.
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Visitor space within gated area

<i>Access can be accommodated by residents when visitors arrive onsite considering any vehicle can wait outside the gate off the laneway within the property boundary until the gate is opened. This is a design aspect not afforded to other developments in the street. The DCP does not require visitor spaces to be outside gated car parks for residential development.</i>	Agree with applicant's response.
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Encroachment on Hungerford Lane Boundary

<i>The building is setback 6.5m from the Hungerford Lane boundary at ground level and 3m from the first floor balcony. There is no encroachment and</i>	Although the proposed developments setback to Hungerford Lane is not compliant with the 6m requirement (3m), as has been demonstrated above, this setback is consistent with adjoining
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<i>these setbacks mirror development on either side of the subject site.</i>	development and maintains the desired spatial framing to the street. The façade facing Hungerford Lane also features a range of materials and varying wall and roof forms to provide articulation and interest. The reduced setback is therefore considered acceptable.
Deck of proposed unit 5 overlooks 46 Sutherland Street.	
<i>It is considered due to proposed floor levels that Unit 5 would look past Unit 1/46 Sutherland Street. However, some side screening for privacy as proposed at the two lower levels can easily be added to the design if considered necessary. It is further noted existing vegetation upon 46 Sutherland street would provide adequate screening between the two properties</i>	Agree with applicant's response. The floor level of the proposed deck to unit 5 would result in the views from this area being out and over adjoining development rather than 'into' private internal and external living areas. Additionally, the orientation of the site and views to the coast are predominantly to the east over the Hungerford Lane frontage rather than over adjoining properties.
Drawings are unsatisfactory	
<i>The suite of plans provided with the application have been provided as prescribed by TSC DA process. Perspectives from a human height have not been requested nor required under the EP Act Regulations. It is considered that the suite of plans have met the desired intention of demonstrating that the development is in fact compatible with the immediate surrounding development and broader streetscape</i>	Agree with applicant's response. The submitted plans are considered suitable to allow for a thorough assessment of the application.
Existing patterns of the neighbourhood use Hungerford Lane for walking and cycling to village, beach and creek	
<i>Residents of the proposed RFB can externally access Hungerford Lane from Sutherland Street as addressed within amended plans provided to Council. The development will not compromise the ability of any pedestrians or cyclists within Hungerford Lane. NO public walkways will be compromised by this development completely</i>	Agree with applicant's response.

<p><i>within private land. Council policies do not seek any street activation of Hungerford Lane. It is further noted that the building does have a separate pedestrian access into the basement for access to the lift for the 5 units. Pedestrians will not rely upon the garage door for access.</i></p>	
<p>The building is climatically compromised – offset for improved northern solar access</p>	
<p><i>A detailed site analysis has been undertaken during the design process. With the collaboration of documents including a SEPP No.65 Appendix 1 Site Analysis (page 150) a checklist has been completed and submitted with the Development Application. An Architectural statement SEPP No.65- Design Quality of Residential Apartment Development specific to this proposal has also been completed and submitted with the DA. In addition Gibson Architects drawing IS464CD A10I, A10S has visually illustrated the Site Analysis.</i></p>	<p>Agree with applicant's response. The proposal is considered to demonstrate suitable solar access and meets the intended sustainability and liveability outcomes of SEPP No. 65.</p>
<p>Misleading colour scheme</p>	
<p><i>A schedule of finishes within Appendix D of the SEE has been provided in addition to the colour scheme upon the plans. Exact colour matching is difficult between drafting programs and individual paint companies. However if Council wish to change any colours this can be easily addressed by suitable conditions of consent.</i></p>	<p>Agree with applicant's response. The proposal includes detailed colour and external material finished. Conditions of consent can be included to seek further material and colour schedules prior to a Construction Certificate.</p>
<p>Accuracy of natural ground lines, setbacks and building heights</p>	
<p>Misleading colour scheme</p>	
<p><i>A schedule of finishes within Appendix D of the SEE has been provided in addition to the</i></p>	<p>Agree with applicant's response. The proposal includes detailed colour and external material finished. Conditions of</p>

<p><i>colour scheme upon the plans. Exact colour matching is difficult between drafting programs and individual paint companies.</i></p> <p><i>However if Council wish to change any colours this can be easily addressed by suitable conditions of consent.</i></p>	<p>consent can be included to seek further material and colour schedules prior to a Construction Certificate.</p>
<p>DAP Meeting</p>	
<p><i>The submitted application was in response to a February 2019 DAP meeting where an earlier draft of the RFB was presented. Changes to the original application have been made in recognition of Councils advice at this meeting to minimise variations to the nominated state and local provisions applicable to the subject site. The advice at the DAP meeting was taken on board as much as possible subject to other conflicting site constraints and opportunities.</i></p>	<p>Agree with applicant's response. The proposal has made the necessary changes as requested in the February DAP meeting. Assessment of the proposal demonstrates a generally complaint development that is considered acceptable.</p>
<p>Errors and omissions in the SEE text</p>	
<p><i>-The locality analysis was undertaken using mapping and site inspections and to the best of the authors ability depicts the character of the area.</i></p> <p><i>- In regards to the visual impact analysis, this analysis was intended to complement the suite of plans provided for the development that include 3D perspectives of the development having regard to existing development surrounding.</i></p> <p><i>- In regards to public car parking, the SEE does not state overflow parking will be available in Hungerford Lane. The development is fully compliant with onsite parking requirements. It is noted that due to the vehicle access being restricted to Hungerford Lane,</i></p>	<p>Agree with applicant's response.</p>

<p><i>street parking will be maintained along Sutherland Street for the Public School and vehicles associated with the development as necessary. This is considered a positive design aspect.</i></p> <p><i>- Council can advise of any necessary matters in regards to Water Supply and can condition any consent accordingly.</i></p> <p><i>- The Architect has been especially mindful of the streetscape articulation and specifically the building bulk and scale of the development. Clear legibility of the front entry to the development and landscaping to Sutherland street has assisted in the residential character of the proposal. Together with a recessive top storey set behind as parapet on the first storey and clad in lightweight cladding, and of darker materials, so that the development reads as a 2 storey building.</i></p> <p><i>To Hungerford Lane again the fact that the basement level has been pushed below the laneway as legally possible, the use of deep landscaping screening, and again the substantial recessing of the top most storey (well back from the principal setback) assists the residential scale.</i></p> <p><i>The building is honest in its expression, no false materials, add on or embellishments, but purely functional, considered and intended to read as a residential building.</i></p>	
Existing consents	

<i>The development consent DA13/0267 for 42 Sutherland Street lapsed on 7 July 2019. Not relevant.</i>	Agree with applicant's response.
Removalist Access	
<i>Both Hungerford Lane and Sutherland Street can cater for removalist vans. Issues associated with the installation of furniture can be suitably managed following construction similar to many RFBs of similar design. Due to the busier nature of Sutherland street it is intended that all furniture removals or deliveries come from Hungerford Lane, a low velocity, less busy one way thoroughfare. Due to the relatively shallow inclined basement access, furniture will easily be delivered or collected via the wide central car parking aisle way to a centrally placed and highly visible lift at its end serving all levels.</i>	Agree with applicant's response.
Waste Disposal Issues	
<i>Amended plans have demonstrated adequate areas for onsite waste management</i>	Agree with applicant's response. The proposal was referred to Council's Waste Unit, who supported the application subject to kerbside areas being identified and adequate space for bin storage, which has been provided.
Passive Management of Micro climate – Apartment Design Guidelines 2016 Part 4 Objective 4A-3	
<i>Sutherland Street faces west - north - west, not due west or worse still south - west, as such it will be exposed to afternoon sun but not extreme summer sun which sets south of west (summer solstice sundown is the site's latitude south of due west) but rather milder winter sun. Regardless sun exposure has been considered and 600mm deep projecting sunhoods (positioned directly above the bedroom windows to maximize shadowing) have</i>	Agree with applicant's response. The proposal is considered to be consistent with the objectives of this part.

<p><i>been utilized on 2 levels (80 % of the units). In addition the rooms off this façade are mainly night time use (bedrooms for sleeping) and will have less impact on occupant's living habits.</i></p>	
<p>Air conditioning/stacks and vents</p>	
<p><i>Air conditioning condensers are located off screened, dedicated plant decks (positioned one above the other to accommodate them all). Stacks and vents for plumbing / hydraulics will not be exposed on the building's façade but rather accommodated in internal riser ducts across the floor plate with vent pipes discharging through the roof, capped as short as possible and back from the edges so as not to be visible.</i></p>	<p>Agree with applicant's response.</p>
<p>Fencing</p>	
<p><i>Any fencing requirements of Council can be easily conditioned within any determination. Adjoining property owners can also be consulted, given any dividing fence is the responsibility of both landowners rather than a single property.</i></p>	<p>Agree with applicant's response. Boundary fencing is compliant with the requirements of the DCP Section A1 – Part C, with the exception of the return fence. It shall be a condition of consent that return fencing detail be submitted which does not exceed 1.5m in height and achieves the desired 60% openness ratio above the 600mm solid wall.</p>
<p>Articulation</p>	
<p><i>Due to the longer side facades careful attention has been taken to break down their scale into more single residential/homelike scale. Specifically the length has been broken into 3 sections with 2 x 1 metre indentations top to bottom with alternative lightweight and darker cladding (per the top storey). Not only does this reduce perceived scale but presents opportunities for non-fire protected windows in the recesses providing additional windows for views and</i></p>	<p>Agree with applicant's response. The proposal is considered to provide sufficient articulation to all facades through the use of varying materials, colours and walls form.</p>

<i>ventilation. Vertical and horizontal battens have also been employed to break up the side walls to smaller proportions.</i>	
Privacy	
<i>Adjustable/fixed powder coated aluminium screens have been employed to shield the side of the balconies (to units 1- 4) to assist privacy, reduce overlooking and control sun and breeze influences.</i>	Agree with applicant's response. Windows facing the western façade are to bedrooms and would more than likely be screened in some form. Decks to the western side would not be a desirable outcome for solar orientation and useability of an external living area.
Room Sizes	
<i>The design and marketing perception of these units is not the realm of the objector but the landowner. It is noted that the submission recognises that the development does have compliant room sizes.</i>	Agree with applicant's response.
Access Driveway	
<ul style="list-style-type: none"> <i>-The proposed driveway enables vehicles satisfactory entry and exit widths. Council are welcome to condition any consent to reduce the crossing if deemed appropriate.</i> <i>-The refuse room will be provided with a waste drain as required by Councils provisions.</i> <i>-A car wash is not required in accordance with Council provisions.</i> <i>-Amended plans have demonstrated bins can be accommodated on the street frontage.</i> 	Agree with applicant's response. The proposal has been referred to Council's traffic engineer and is deemed to be acceptable with regards to access and parking.
Construction Management	
<i>This matter can easily be addressed by a condition of consent.</i>	Agree with applicant's response. Relevant conditions shall be added to the consent.
Cumulative Impacts – Recognise Hungerford Lane as a mixed pedestrian and vehicle environment	
<i>The design does not inhibit the ability of the Lane to be used by pedestrians and cyclists despite the lack of a formal footpath. The proposal does not intend to provide any</i>	Agree with applicant's response.

<p><i>parking within the building line and the road reserve will be maintained for public access, unlike other residential developments on the eastern side of this Lane. Any reduced speed limit in Hungerford Lane would be welcomed by the landowner.</i></p>	
<p>Significant non-compliance with good design principles and SEPP No.65 Expectations</p>	
<p><i>The submission has stated that the development has 'significant' non-compliances with good design and SEPP 65 expectations. In reality the only variations requested to the SEPP provisions is building separation. As demonstrated by the accompanying documentation provided with the initial DA lodgement, minor amendments and additional commentary, the variation will not compromise the amenity of adjoining properties in regards to overshadowing, privacy and amenity, despite this variation.</i></p> <p><i>It is considered the development is worthy of Councils support, given the level of detail provided including additional overshadowing diagrams and commentary to address the three submissions lodged during the public notification period. The proposal is generally compliant with the various state and local provisions applicable to the site and RFB despite the orientation and sloping nature of the lot.</i></p> <p><i>It is also noted that the development only generated 3 submissions despite the level of public notification. Given the level of interest medium density attracts in Kingscliff, such an extremely low response must</i></p>	<p>Agree with applicant's response.</p>

<i>reflect the lack of opposition to the development by the immediate and wider population of Kingscliff.</i>	
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(e) Public interest

The proposal has been assessed and is considered to be suitable to the site; unlikely to cause any significant long term negative impacts to the surrounding built and natural environment and meets the objectives of the applicable State Environmental Planning Instruments, the Tweed Local Environment Plan 2014 and relevant DCPs. The application has been assessed by Council's technical officers; with no objections being raised subject to the attached conditions of development consent. The proposed residential flat building is therefore considered to warrant approval.

OPTIONS:

1. Approve the application subject to conditions.
2. Refuse the application for reasons specified.

Council officers recommend Option 1.

CONCLUSION:

It is considered that the residential flat building is appropriate for the site and the medium density zoning. The design of the proposal displays appropriate consideration to the existing character of the established residential locality, street scape and amenity for residents of the development and adjoining properties. An assessment against the provisions of SEPP No. 65 - Design Quality of Residential Apartment Development and Councils Development Control Plan 2008 has determined that the proposal is able to meet the objectives of the development controls. Issues raised by the public submissions have been considered as part of the assessment and where appropriate addressed via conditions of consent. As such the proposal is considered to be worthy of approval.

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:

Not Applicable.

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.

5 [PR-PC] Development Application DA13/0401.03 for an Amendment to Development Consent DA13/0401 for Integrated Housing Comprising of 12 Dwellings at Lot 14 DP 1252999 No. 4 Sunfish Lane (Private Road) Kingscliff (Previously known as Lot 35 DP 1145386 & Lot 36 DP 1145386 Cylinders Drive Kingscliff)

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:

A Section 4.55(1A) modification application was received by Council on 15 August 2019 seeking approval to modify the development consent issued under DA13/0401 for an integrated housing development comprising subdivision and the construction of 12 dwellings at Lot 14 DP 1252999 No. 4 Sunfish Lane (Private Road), Kingscliff (previously known as Lot 35 DP 1145386 & Lot 36 DP 1145386 Cylinders Drive Kingscliff).

The approval included small lot subdivision and the construction of seven different dwelling types, being a mix of single and two storey dwellings. The development was staged with the creation of six residential lots in Stage 1 and two residual lots which was to be further subdivided in Stage 2. Stages 1A, 1B, 1C, 1D, 1E and 1F was the construction of dwellings on each allotments created by the Stage 1 subdivision.

The consent was subject to a condition (Condition 97(h)) that a 'Restriction As To User' be created over the title of each allotment created limiting the dwelling house on the site to that approved under the integrated housing consent.

Consequently, the Section 88B Instrument associated with DP1222073 (created by the subdivision in Stage 1 and which identified the subject lot as part of a residual lot - Lot 3 DP1222073) include the following restriction:

"No dwelling house shall be constructed on the lots burdened unless it is as per the dwelling house approved under Tweed Shire Council Integrated Housing Consent DA13/0401."

Tweed Shire Council is nominated as the prescribed authority empowered to release, vary or modify the above restriction.

Lot 3 DP1222073 was later subdivided to create 3 new residential lots which included Lot 14 DP125299 (the subject lot), with the allotments still burdened by all restrictions created under DP1222073.

This current modification application seeks to modify the single storey dwelling approved on the subject lot under DA13/0401 as follows:

- Modify the roof detail by increasing the height of the dwelling on both side elevations to maintain a more continuous pitch across the roof plan;
- Replace the double garage with a single garage and carport with gates proposed across the carport entry from Sunfish Lane;
- Reconfigure the kitchen layout and increase fenestration onto courtyard/new car port area;
- Removal of brickwork from side elevations;
- Modify fenestration on Windsong Way elevation; and
- Amend the site fencing.

The footprint of the dwelling remains unchanged, as does the maximum building height of the dwelling. The proposed Gross Floor Area (GFA) increases by approximately 3m² as a result of part of the garage (car parking space) being incorporated into the kitchen area. However the modified Floor Space Area (FSR) remains compliant at 0.33:1.

The application was notified from Wednesday 4 September 2019 to Wednesday 18 September 2019. During this time, three submissions were received from other lot owners within the development. The issue raised in all submissions is that the proposed dwelling is not in accordance with the dwelling design approved under DA13/0401 and that any external modifications would detract from the development. One objector indicates that the approved dwelling design and restriction was influential in their decision to purchase their lot, while the other two submitters advise that the applicant was aware of the restriction when purchasing the subject lot and that any modification of the dwelling type would change the aspect of the total development.

There is a concurrent modification application (DA13/0401.02) on the site which seeks to modify the dwelling approved on 11 Sunfish Lane (Lot 7 DP1222073). This application is not yet determined with the applicants currently considering their options for moving forward with the application.

The proposed modified design is generally considered to be an improvement on the approved design for this lot; simplifying the roof design, improving solar access and more significantly replacing the double garage with a single garage and carport, which minimises the dominance of the garage to Sunfish Lane. As the dwellings approved with the development consists of a mix of seven dwelling types, including single and two storey dwellings, it is not considered that the minor modification of the design proposed here will detract from the overall design cohesion of the development.

Contrary to the control specified in the Tweed Development Control Plan 2008 (DCP) that the carport must not be enclosed on any of its sides, the carport will be enclosed on two sides

(adjoining the dwelling and the garage) and is to be fitted with a gate on the lane frontage. However, consideration must be given to the fact that the carport is replacing part of a double garage. It is considered that visual impact to the streetscape will be improved by replacing the double garage with a single garage and carport (even if it is enclosed on three sides and fitted with a gate).

While the applicant is not seeking to increase the building footprint, it is proposed the paved part of the rear setback area to provide a patio area. This will reduce the landscape area to 14% where a minimum of 15% is required by the DCP. However, this is supported given that the applicant meets the minimum specified deep soil zone requirements and when paved hardscaped areas are included in the calculations, an additional area of 9.5m² of external living area is to be provided to the rear and 13.6m² to the front.

The proposed change to the fencing is more likely to be discernible, with the same fencing approved across the development in accordance with the landscape plans approved post-determination. However, it should be noted that the s88B restriction pertains to the dwelling house only and not the fencing.

It is recommended that the application be approved subject to conditions and that Council approve the variation of the 'Restriction on the Use of the land'. The modified consent would be subject to a condition which would require the existing 'Restriction on the use of the land' on DP1222073 to be varied and sighted by Council prior to the issue of a Construction Certificate to allow for an amended dwelling type on the subject site (as approved by Council)). It should be noted that any such variation to 'Restriction on the use of the land' would relate to this lot only.

As the original approval relates to residential subdivision, the application is integrated development under the *Rural Fires Act 1997* and is subject to General Terms of Approval conditions from the NSW Rural Fire Service (RFS). These conditions must also be amended on any modified consent issued to recognise amended plans.

RECOMMENDATION:

That:

A. Development Application DA13/0401.03 for an amendment to Development Consent DA13/0401 for integrated housing comprising of 12 dwellings at Lot 14 DP 1252999 No. 4 Sunfish Lane (Private Road) Kingscliff (previously known as Lot 35 DP 1145386 & Lot 36 DP 1145386 Cylinders Drive Kingscliff) be approved subject to the following conditions:

- 1. Delete Condition No. 1 and replace with new Condition No. 1A which reads as follows:**

1A. The development shall be completed in accordance with the Statement of Environmental effects and Plans as listed in the table below. Except where varied by the conditions of this consent.

<i>Title</i>	<i>Prepared By</i>	<i>Dated</i>
<i>Location Plan (DA01 Issue A)</i>	<i>Aspect Architecture</i>	<i>26/06/2013</i>
<i>Site Design Response (DA04, Rev C)</i>	<i>Aspect Architecture</i>	<i>03/04/2014</i>

Site Coverage Diagram (DA05, Rev B)	Aspect Architecture	01/05/2014
Proposed Subdivision Plan (DA11, Rev A)	Aspect Architecture	26/06/2013
Proposed House Types (DA13, Rev B)	Aspect Architecture	01/05/2014
Building Plans and Sections (DA14, Rev E)	Aspect Architecture	01/05/2014
Building Plans and Sections (DA15, Rev E)	Aspect Architecture	01/05/2014
Building Plans and Sections (DA16, Rev D)	Aspect Architecture	01/05/2014
Building Plans and Sections (DA17, Rev A)	Aspect Architecture	01/05/2014
Elevations (DA20, Rev B)	Aspect Architecture	20/01/2014
Elevations (DA21, Rev B)	Aspect Architecture	20/01/2014
Elevations (DA22, Rev D)	Aspect Architecture	01/05/2014
<u>Site Plan - 4 Sunfish Lane (2019 09 – 01a)</u>	<u>Anstey Homes</u>	<u>01/07/2019</u>
<u>Ground Floor Dimension Plan - 4 Sunfish Lane (2019 09 – 06a)</u>	<u>Anstey Homes</u>	<u>01/07/2019</u>
<u>Ground Floor Plan - 4 Sunfish Lane (2019 09 – 04a)</u>	<u>Anstey Homes</u>	<u>01/07/2019</u>
<u>Elevations - 4 Sunfish Lane (2019 09 – 02a)</u>	<u>Anstey Homes</u>	<u>01/07/2019</u>
<u>Elevations - 4 Sunfish Lane (2019 09 – 02b)</u>	<u>Anstey Homes</u>	<u>01/07/2019</u>
<u>Sections - 4 Sunfish Lane (2019 09 – 03a)</u>	<u>Anstey Homes</u>	<u>01/07/2019</u>

[GEN0005]

2. Insert new Condition No. 26.1 which reads as follows:

26.1 Prior to the issue of a Construction Certificate for the dwelling on Lot 14 DP 1252999; No. 4 Sunfish Lane, evidence has been submitted to the General Manager or his delegate that the Variation of Restriction on the Use of Land tenthly referred to in DP 1222073 relating to Lot 14 in DP 1252999 has been registered.

[PCCNS02]

3. Delete Condition No. 107 and replace with new Condition No. 107A which reads as follows:

107A. The development proposal is to comply with the subdivision layout and details identified on:

- **the drawings prepared by Aspect Architecture, reference Job No. 13383 (Drawing No DA04(C) dated 03/04/2014, DA11(A) dated 26/06/2013, DA14(E) dated 01/05/2014, DA15(E) dated 01/05/2014, DA16(D) dated 01/05/2014 and DA17(A) dated 01/05/2014; except as modified by:**
- **the plan set for Lot 14 DP 1252999 prepared by Anstey Homes (Ref: 2019-09).**

4. Delete Condition No. 110 and replace with new Condition No. 110A which reads as follows:

110A. New construction on proposed Lots 2 to 10 (inclusive) shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of Planning for Bush Fire Protection 2006.

- B. Council approves the variation of Restriction on the Use of Land tenthly referred to in DP1222073 over Lot 14 in DP 1252999 so that it states:
"No dwelling house shall be constructed on the subject parcel unless it is as per the dwelling house approved under Tweed Shire Council Integrated Housing Consent DA13/0401 or as subsequently modified by Council."
- C. Council executes all necessary documentation under the Common Seal of Council.

REPORT:

Applicant: Anstey Homes Pty Ltd
Owner: Ms Jennifer J Everingham
Location: Lot 14 DP 1252999 No. 4 Sunfish Lane (Private Road) Kingscliff (previously known as Lot 35 DP 1145386 & Lot 36 DP 1145386 Cylinders Drive Kingscliff)
Zoning: R3 – Medium Density Residential
Cost: Not specified

Background:

Governing consent – DA13/0401

Development consent was issued on 30 June 2014 under DA13/0401 for an integrated housing development consisting of 12 dwellings at Lot 14 DP 1252999 No. 4 Sunfish Lane (Private Road) Kingscliff (previously known as Lot 35 DP 1145386 & Lot 36 DP 1145386 Cylinders Drive Kingscliff). The approval included small lot subdivision and the construction of seven different dwelling types, being a mix of single and two storey dwellings. The development was staged, consisting of the following stages:

Stage 1

- Creation of proposed Lots 4 - 9, including all applicable services and the applicable portion of the 6m Right of Carriageway (ROC) for access off Cylinder Drive;
- Creation of a residual allotment to contain future Lots 1 - 3 & 10 - 12, plus an 18m diameter temporary turnaround facility;
- A minimum of two on-site Visitor Parking bays, with at least one registered over either of Lots 4 - 9; and
- Extension of Windsong Way (including all essential services) to at least the frontage of proposed Lot 4, plus an 18m diameter temporary turnaround facility, if not already constructed by others.

Stages 1A, 1B, 1C, 1D, 1E and 1F covered the construction of dwellings on each allotments created by the Stage 1 subdivision for which separate Construction Certificates may be issued.

Stage 2

- Creation of Lots 1 - 3 & 10 - 12 from the residual allotment from Stage 1, including all remaining services;
- Completion of the 6m ROC access to service all allotments off Nautilus Way;
- Construction of Nautilus Way (including all essential services) for at least the frontage of the development site, plus an 18m diameter temporary turnaround facility, if not already constructed by others;
- Extension of Windsong Way (including all essential services) to intersect with Nautilus Way, if not already constructed by others; and
- A minimum of three on-site Visitor Parking bays for the entire development.

Stages 2A, 2B, 2C, 2D, 2E and 2F covered the construction of dwellings on each allotments created by the Stage 2 subdivision for which separate Construction Certificates may be issued.

The consent noted that the above stages may occur concurrently, inclusive of dwelling construction.

As the site is mapped as bushfire prone land, General Terms of Approval from NSW Rural Fire Service (RFS) were also included in the consent, with the conditions referencing the stamped plans.

Restriction on the Use of Land – approved dwelling design

Condition 97 of DA13/0401 relates to the creation of easements for services, Rights of Carriageway and restrictions applicable under Section 88 of the Conveyancing Act, with sub-condition (h) requiring:

“97(h) A Restriction As To User over the title of each allotment created limiting the dwelling house on the site to that approved under the integrated housing consent.”

Condition 97 further states that:

“Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.”

The s88B instrument associated with DP1252999 which includes the subject lot (being Lot 14 DP125299) does not specifically include this restriction. However it is included in the s88B associated with DP1222073 which also covers this lot (identified therein as the residual lot referred to as Lot 3 DP 1222073).

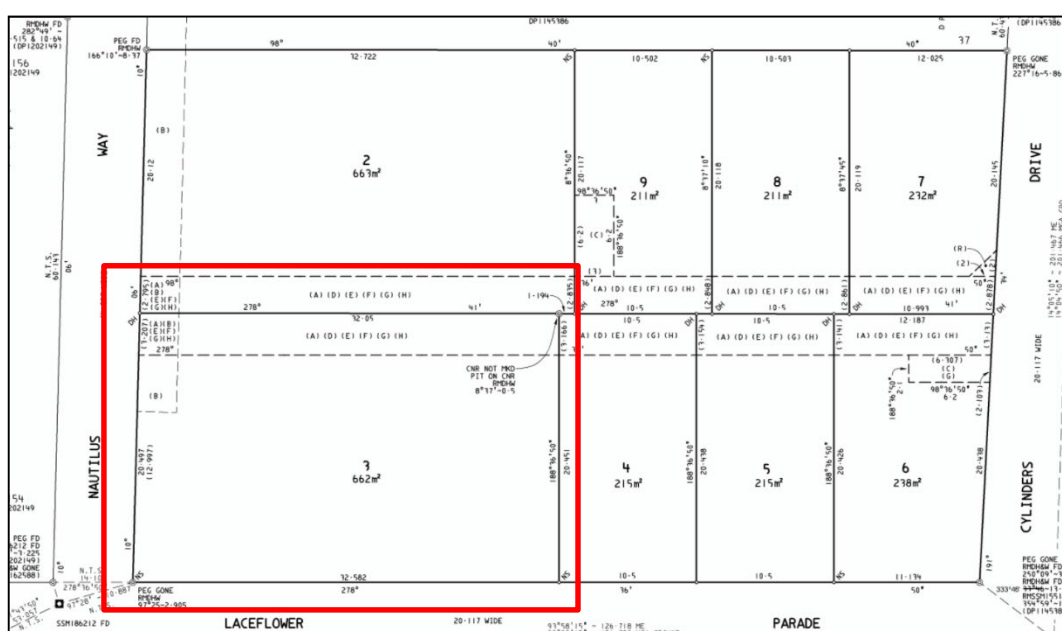
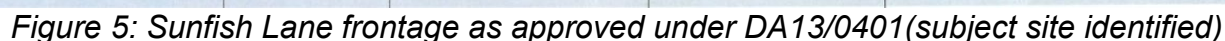
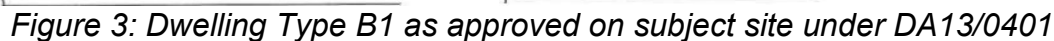


Figure 1: Extract from DP1222073 Plan

The terms of the Restriction on the Use of Land over the title are stated as follows:



Architectural section drawing of a building. The drawing shows a cross-section of the structure with various rooms and structural elements labeled. On the left, there is a section with a door labeled 'SW' and a window labeled 'SD'. Above this, there are rooms labeled 'WC B' and 'FLC'. A central section shows a brick wall. To the right of the brick wall, there is a large room labeled 'GD C' with a door labeled 'SD'. Above this, there are rooms labeled 'WC B' and 'FLC'. On the far right, there is a section with a door labeled 'EG' and a room labeled 'WC B'. A roof section is labeled 'Roof RS C'. The drawing also shows structural elements like walls, doors, and a brick wall section.

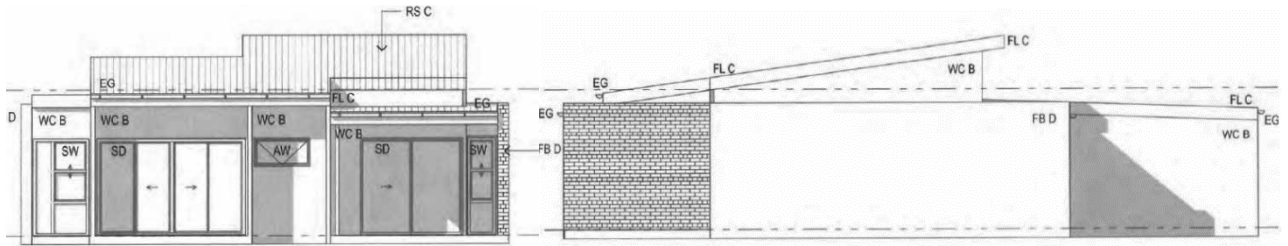


Figure 6: Schedule of colours and finishes for Dwelling Type B1 as approved (as per conditions of consent) under DA13/0401

A number of dwellings have already been constructed on the site, including one example of a Type B1 design:



Figure 7: Site photographs – view of Type B1 dwelling from Windsong Way



Figure 8: Site photographs – view of Type B1 dwelling from Sunfish Lane

Fencing

The stamped plans identified a 1.2m high fence on the Windsong Way frontage and a 1.8m high fence on the Sunfish Lane frontage.

A fencing and landscaping plan was later accepted to satisfy a condition of consent. Though the correspondence to the applicant on this focussed on the landscaping and planting species, the fence on the Windsong Way frontage was identified as 1.8m high good neighbour fencing.



Figure 9: Extract from stamped plans – Windsong Way frontage

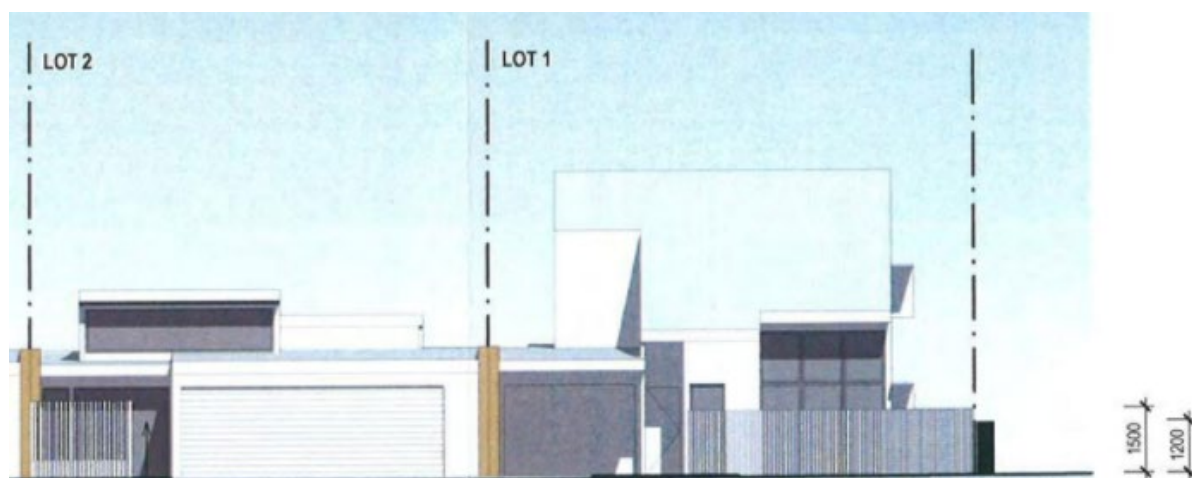


Figure 10: Extract from stamped plans – Sunfish Lane frontage

PREVIOUS MODIFICATIONS TO THE ORIGINAL DEVELOPMENT APPLICATIONS

There has been one modification application previously approved on the site (DA13/0401.01) and a second modification application still under consideration (DA13/0401.02).

Under DA13/0401.01, the developer sought to have the Section 64 and Section 7.11 development contributions recalculated. The application was initially refused by Council. However a subsequent court appeal resulted in a s34 agreement and the contributions being reduced.

Under DA13/0401.02, the owner of 11 Sunfish Lane; Lot 7 DP1222073 is seeking to modify the two storey dwelling type approved on the site. The modifications currently being sought

under this application are more significant than those identified in the current applicant with the applicant seeking to increase the building footprint. This application has not yet been determined with the applicants currently considering their options for moving forward with the application.

PROPOSED MODIFICATIONS

The applicant's description of the works as identified on the plans are somewhat confusing, but in essence the proposed modifications are as follows:

- Replace the approved double garage with a single garage and construct a carport which adjoins the garage and is integrated into the front courtyard area;
- Install gates on the carport entry from the lane;
- Reconfigure the kitchen and bathroom layout to add an additional 3.3m² of Gross Floor Area (GFA) and provide for a more open layout;
- Increase fenestration into courtyard/new car port area;
- Modify fenestration on Windsong Way elevation;
- Introduce bedroom window on western side elevation;
- Introduce sliding door on eastern elevation of garage to open into car port area;
- Provide awning over part of courtyard area and introduce paving (thereby reducing the deep soil zone in the rear setback from approximately 13m² to approximately 9.5m²);
- Removal of brickwork from side elevations;
- Relocate bin storage area from boundary to internal location on site;
- Relocate fencing on Windsong Way onto boundary for full extent of lot frontage (removing landscaped setback) and replace 1.8m high timber materials with 1.8m high rendered blockwork;
- Relocate fencing on Sunfish Lane onto boundary for full extent of courtyard (removing setback to courtyard); and
- Modify part of intersite boundary fencing to replace timber good neighbour fence with 1.8m high rendered wall fencing.

It is noted that the existing fencing on site does not accord with the landscape plans approved for the site – 1.8m high good neighbour fence with horizontal palings stained dark Jarrah.

The plans as original submitted with this modification application showed the carport gates opening onto the private lane, but the applicant subsequently modified the plans to provide a sliding gate to avoid encroachment onto the private lane.

A comparison of approved and proposed plans is shown over:

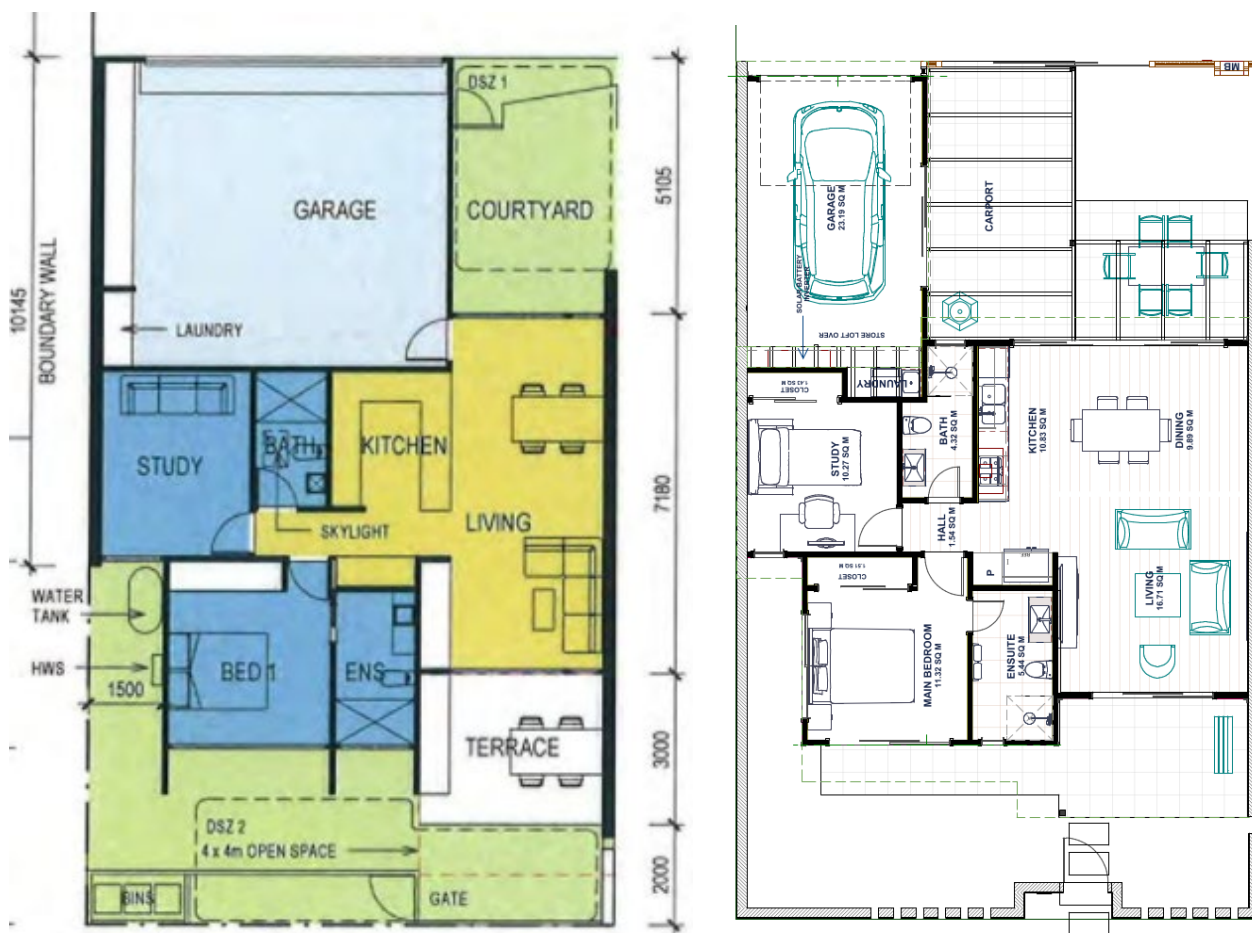


Figure 11A & B: Approved floor plan and proposed floor plan

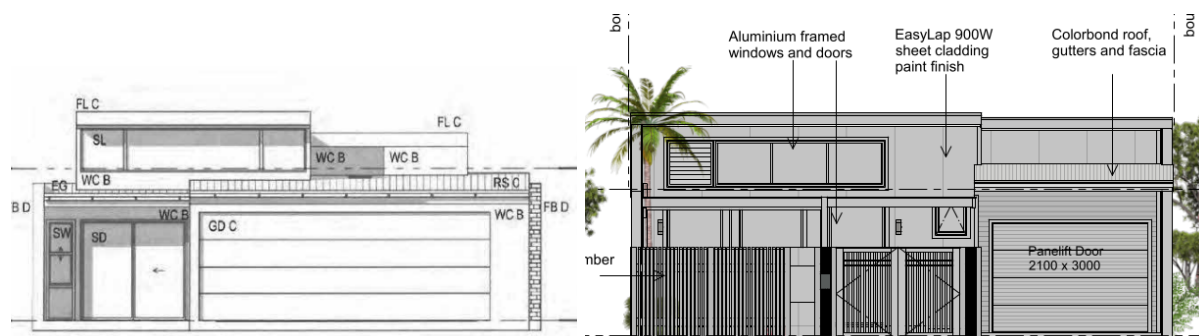


Figure 12A & B: Approved and proposed Sunfish Lane (northern) elevation – fencing not shown on stamped plans

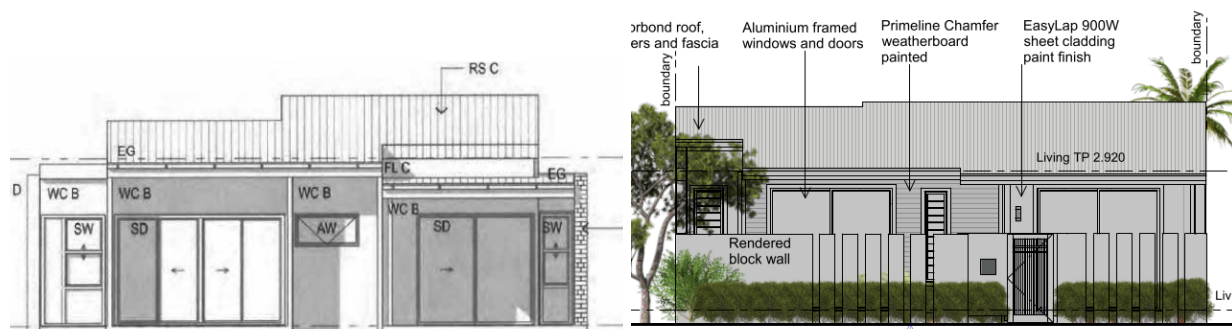


Figure 13A & B: Approved and proposed Windsong Way (southern) elevation fencing not shown on stamped plans

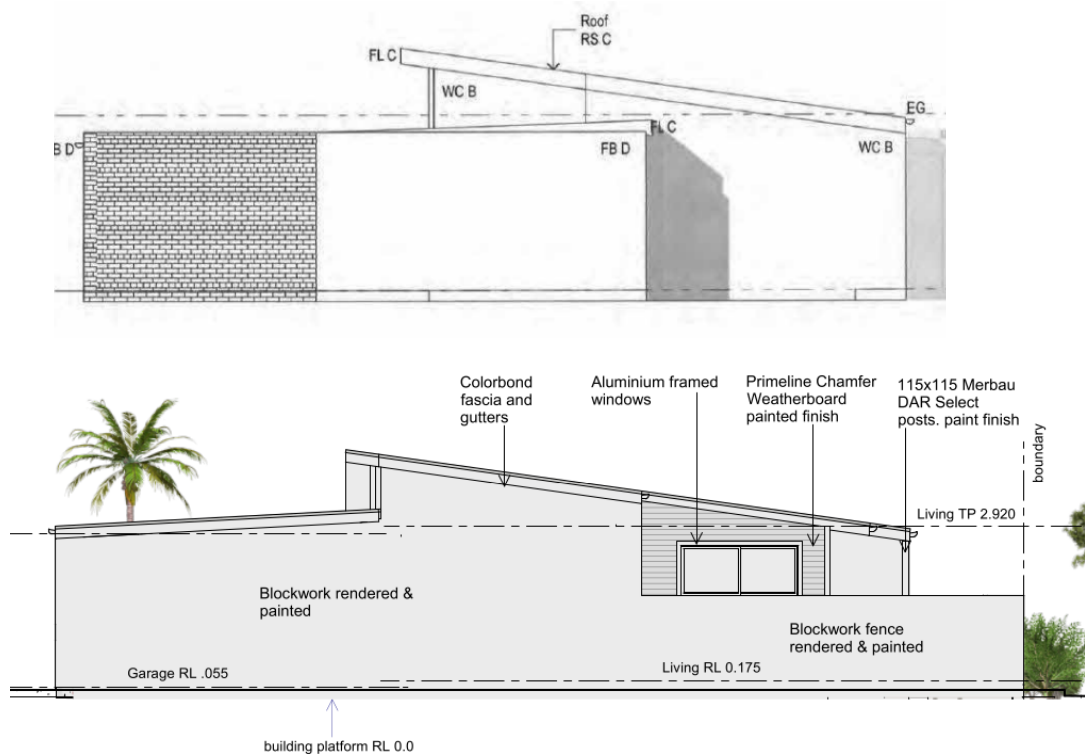
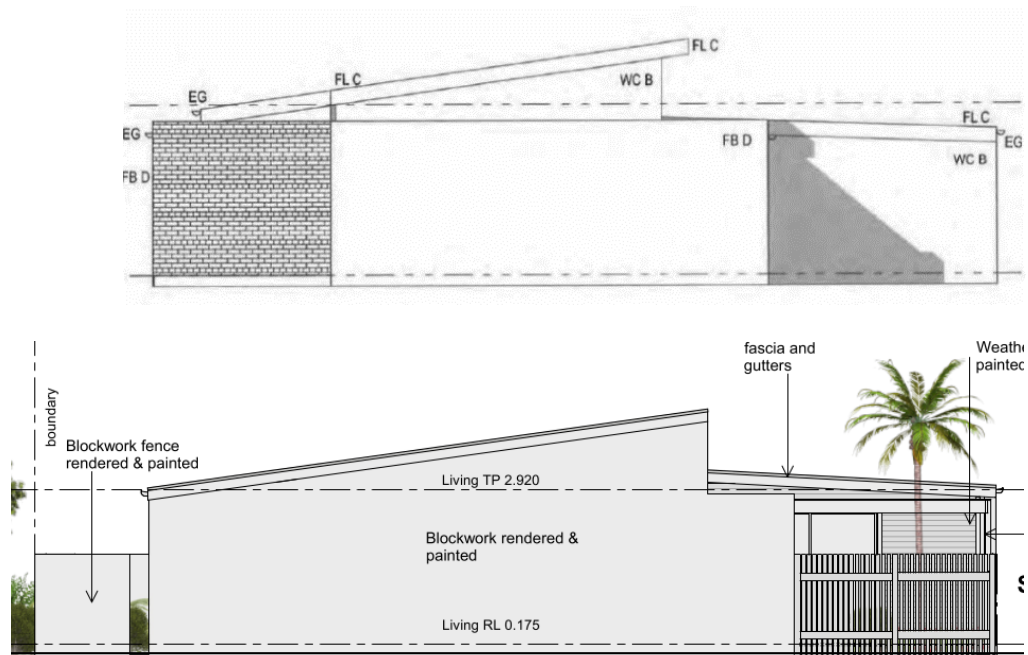




Figure 16: Artist's image of the modified plans

Conditions to be modified

In the event that this application is approved, Condition Nos 1 (stamped plans) and 107 (NSW RFS referenced plans) will need to be modified.

- 1. The development shall be completed in accordance with the Statement of Environmental effects and Plans as listed in the table below. Except where varied by the conditions of this consent.

Title	Prepared By	Dated
Location Plan (DA01 Issue A)	Aspect Architecture	26/06/2013
Site Design Response (DA04, Rev C)	Aspect Architecture	03/04/2014
Site Coverage Diagram (DA05, Rev B)	Aspect Architecture	01/05/2014
Proposed Subdivision Plan (DA11, Rev A)	Aspect Architecture	26/06/2013
Proposed House Types (DA13, Rev B)	Aspect Architecture	01/05/2014

<i>Building Plans and Sections (DA14, Rev E)</i>	<i>Aspect Architecture</i>	<i>01/05/2014</i>
<i>Building Plans and Sections (DA15, Rev E)</i>	<i>Aspect Architecture</i>	<i>01/05/2014</i>
<i>Building Plans and Sections (DA16, Rev D)</i>	<i>Aspect Architecture</i>	<i>01/05/2014</i>
<i>Building Plans and Sections (DA17, Rev A)</i>	<i>Aspect Architecture</i>	<i>01/05/2014</i>
<i>Elevations (DA20, Rev B)</i>	<i>Aspect Architecture</i>	<i>20/01/2014</i>
<i>Elevations (DA21, Rev B)</i>	<i>Aspect Architecture</i>	<i>20/01/2014</i>
<i>Elevations (DA22, Rev D)</i>	<i>Aspect Architecture</i>	<i>01/05/2014</i>

The above table would need to be modified to include the current modification plans, if the application is to be supported.

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

107. *The development proposal is to comply with the subdivision layout and details identified on the drawings prepared by Aspect Architecture, reference Job No. 13383 (Drawing No DA04(C) dated 03/04/2014, DA11(A) dated 26/06/2013, DA14(E) dated 01/05/2014, DE15(E) dated 01/05/2014, DA16(D) dated 01/05/2014 and DA17(A) dated 01/05/2014.*

Any approval of this application, would require this condition to be updated by NSW RFS to reference the new plans.

Condition 97 relates to the creation of easements for services, Rights of Carriageway and Restrictions As To User:

97. *The creation of Easements for services, Rights of Carriageway and Restrictions As To User (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:*

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.*
- (b) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006" Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.*
- (c) Creation of 3.0m Right of Carriageway over each allotment (as applicable) to form a 6.0m wide common access and service laneway between Cylinders Drive and Nautilus Way.*
- (d) Creation of a Right of Carriageway (or equivalent) over all on-site Visitor Parking bays and associated access to those bays to provide legal access for the general public to the Visitors Parking bays.*
- (e) Creation of a Right of Carriageway over the temporary turning areas on the residual allotment for Stage 1, to provide legal access for refuse vehicles and the general public.*
- (f) Extinguishment of the Right of Carriageway over the temporary turning area created over the residual allotment in Stage 1, for Stage 2.*
- (g) A Restriction As To User requiring that all roofwater from houses, buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principle Certifying Authority.*
- (h) A Restriction As To User over the title of each allotment created limiting the dwelling house on the site to that approved under the integrated housing consent.*

- (i) *A Restriction As To User (or equivalent) shall be created over proposed Lots 1 and 7 (when they are created) to ensure the required 2m x 2m “sight triangle” as specified in “AS2890.1 Off Street Car Parking” Figure 3.3 and Council’s “Driveway Access to Property Design Specification” is maintained.*

Pursuant to Section 88BA of the Conveyancing Act (as amended) the instrument creating the right of carriageway/easement to drain water shall make provision for the maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burden and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with consent of Council.

As per the above condition, a Restriction on the Use of Land was created which restricts the dwellings types to those approved under the original consent. In the event that the current application is approved, the restriction will need to be varied and a new condition is needed to require the s88B instrument relating to the subject site to be varied prior to the issue of a Construction Certificate.

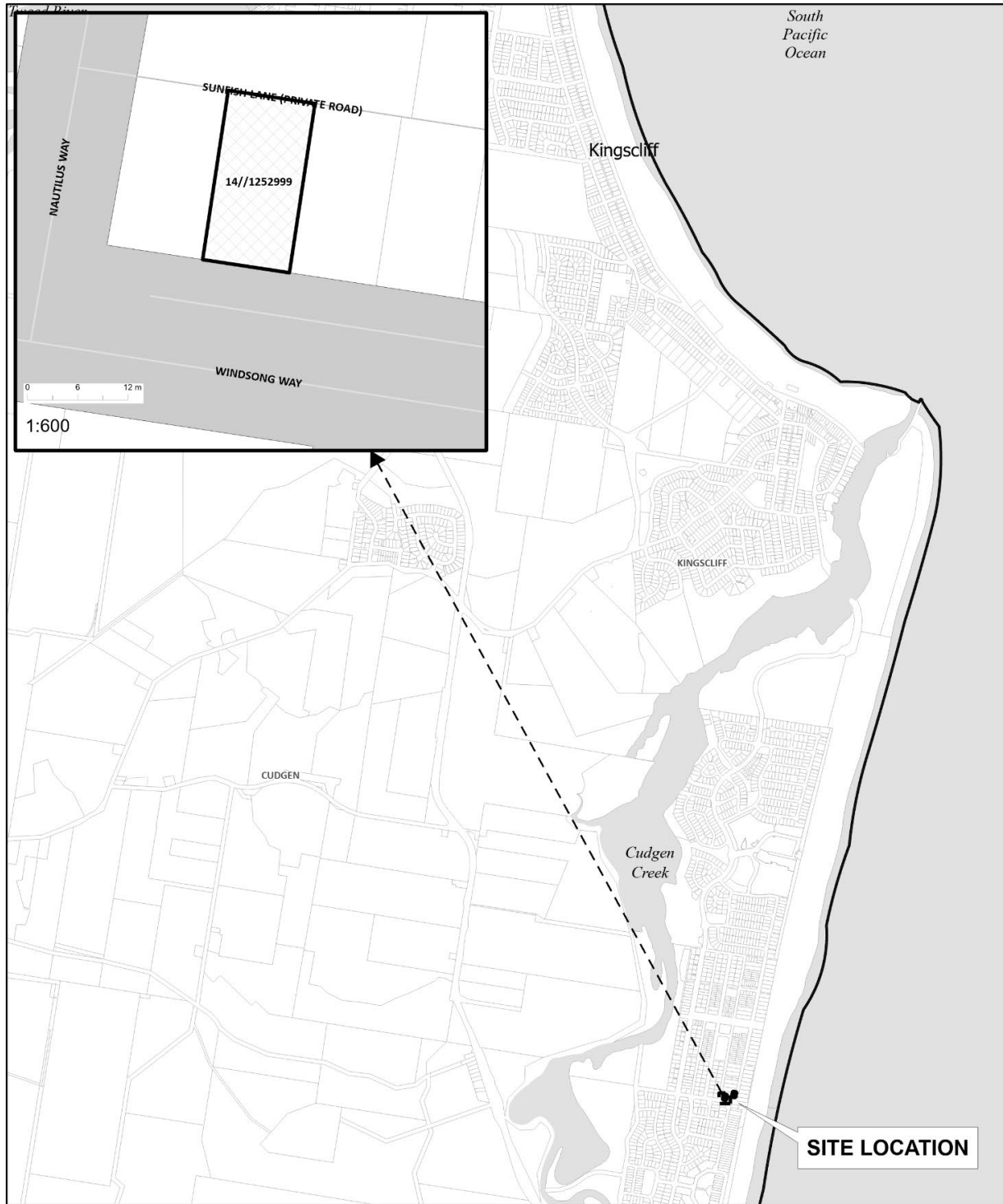
REFERRALS

The application was referred to Council’s Building Unit who raised no objection to the proposal.

As the original application included residential subdivision, the original application was integrated and the approval issued under DA13/0401 included conditions from the NSW Rural Fire Service (RFS).

The current application was referred back to the RFS who raised no objection to the proposed modifications and who modified their General Terms of Approval (GTA) accordingly.

SITE DIAGRAM:



Site Plan

Lot 14 DP 1252999

4 Sunfish Lane KINGSCLIFF

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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastre: 05/11/2019
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Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484

T: (02) 6670 2400 / 1300 292 872
F: (02) 6670 2483
W: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au




TWEED
SHIRE COUNCIL

Date Printed: 05 November, 2019

ZONING MAP:




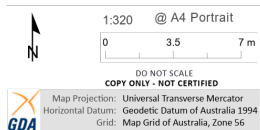
Subject Land

 Subject Land

Tweed Local Environmental Plan 2014

 R2 Low Density Residential

 R3 Medium Density Residential



Site Plan - Local Environmental Plan Lot 14 DP 1252999

4 Sunfish Lane KINGSCLIFF

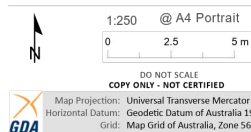
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Date Printed: 05 November, 2019

AERIAL PHOTOGRAPH:



Aerial Photography April 2018

Lot 14 DP 1252999

4 Sunfish Lane KINGSCLIFF

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Boundaries shown should be considered approximate only.
Cadastral accuracy should be checked.

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Author: C. Lees - GIS

Date Printed: 05 November, 2019



astey homes
 11111 GARDEN LANE • SUITE 100 • GARDEN CITY, CA 94545 • 925.255.1111

Fix: All NAILS 75 mm gal

FRAMES: (DOUBLE TOP PLATE)
 90 X 35 MGP12 H2 AT 450 CTS
 FRAME HT
 GndFI 2585 mm
 JOINERY HT
 GndFL 2100 mm

REBATE for 4mm Bracing Sheets
 see Engineers Drawings

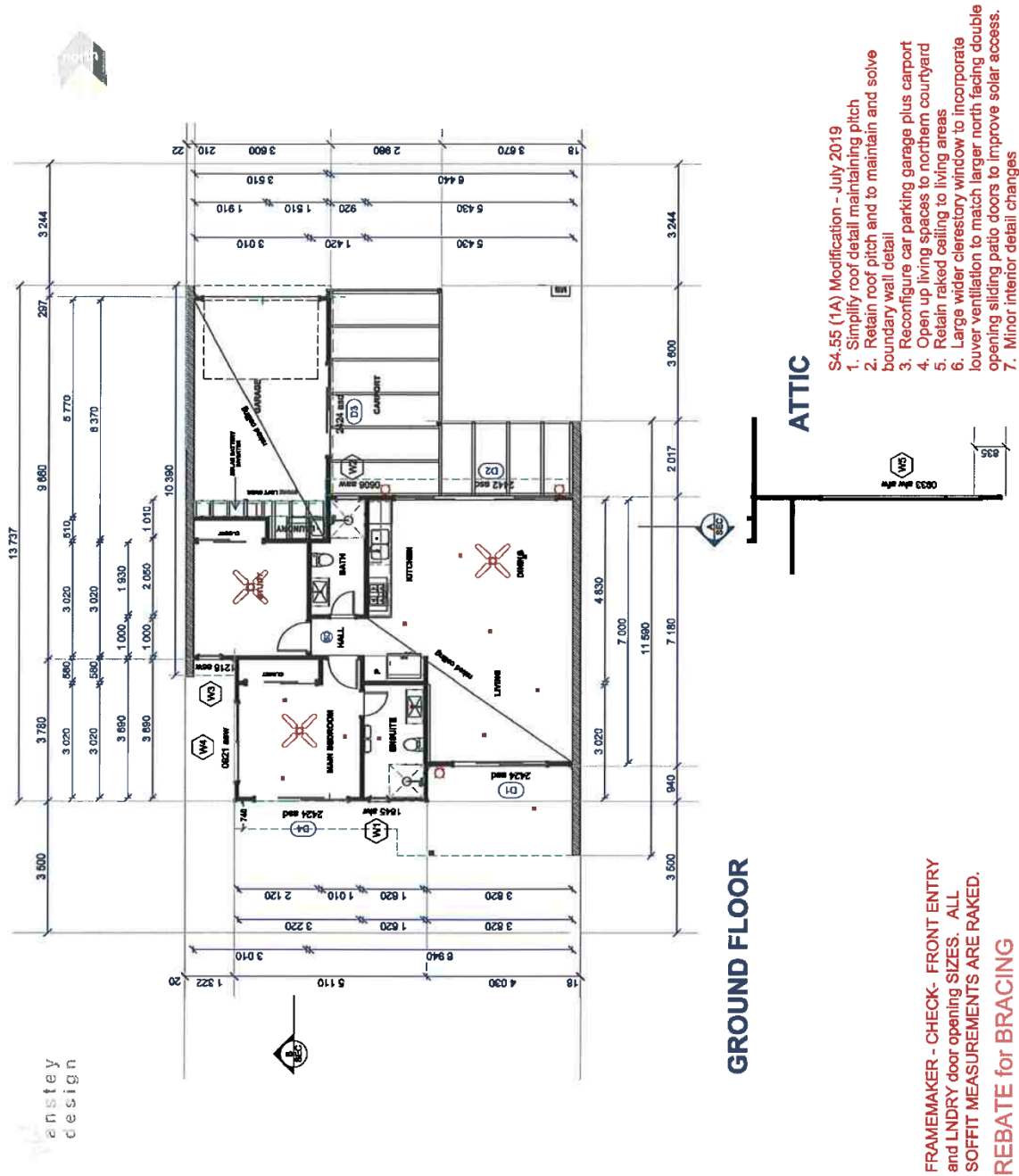
☉ Smoke Detector

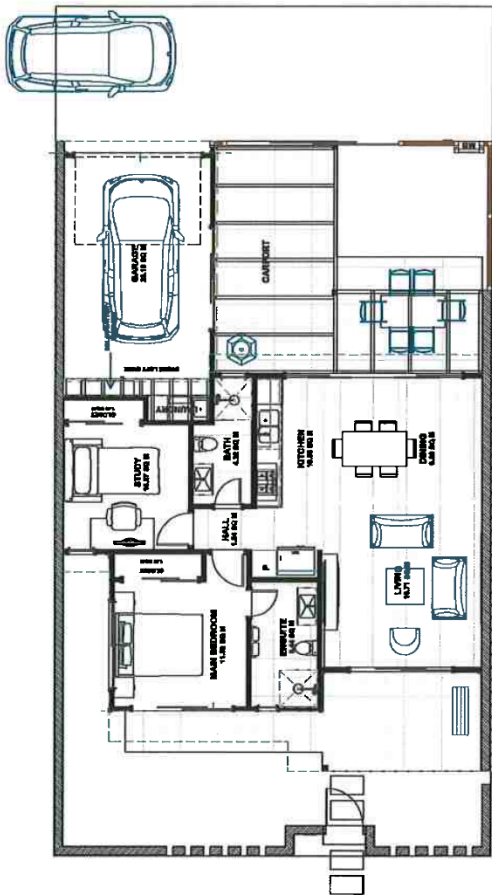
Proposed Residence for
Ms Jennifer Everingham

Lot 14 DP 1252999
4 Sunfish lane
KINGSCLIFF

FRAME- GRD FLR
ATTIC
DIMENSION PLAN
 PRINT DATE:11/4/2019
DATE 01 /07/2019 SCALE 1 : 100

2019 09 - 06a
 DESIGNED IN ACCORDANCE WITH THE MCC 2019





FLOOR PLAN

LEGEND - flooring type

	carpet
	tiles

- S4.55 (1A) Modification - July 2019
1. Simplify roof detail maintaining pitch
 2. Retain roof pitch and to maintain and solve boundary wall detail
 3. Reconfigure car parking garage plus carport
 4. Open up living spaces to northern courtyard
 5. Retain raked ceiling to living areas
 6. Large wider clerestory window to incorporate louver ventilation to match larger north facing double opening sliding patio doors to improve solar access.
 7. Minor interior detail changes



FLOOR AREAS -	
LIVING :	73.5 m2
GARAGE:	22.6 m2
PATIO:	19.3 m2
CARPORT	16.4 m2
TOTAL:	131.8 m2
GFA:	89.2 m2
ROOF AREAS -	
8° Main Roof -	94.5 m2
3° Garage Roof -	23.5 m2

Proposed Residence for
Ms Jennifer Everingham


Lot 14 DP 1252999
4 Sunfish lane
KINGSCLIFF

FLOOR PLAN

PRINT DATE:11/4/2019
DATE 01/07/2019 SCALE 1 : 100

2019 09 - 04a
DESIGNED IN ACCORDANCE WITH THE NCC 2019

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astey homes

11, CHANDRANATHAN STREET, SINGAPORE 429229
 TEL: 6750 1888

EXTERIOR FINISHES

Roof Sheets
Guttering
Downpipes
Windows
Patio Doors
BI Fold Doors
reveals
Ext Doors
Garage Door
V'Dah Posts
Handrails

COLORBOND
COLORBOND Quad
PVC 90mm, paint
Alumn Framed
Alumn Framed
Alumn Framed
87mm
Select (see schedules)
Panellift
115 x 115 lam hwd,
select finish
lam, select finish
at 1000mm min ht

Proposed Residence for
Ms Jennifer Everingham

Lot 14 DP 1252999
4 Sunfish lane
KINGSCLIFF

ELEVATIONS

PRINT DATE: 8/7/2019
DATE 01/07/2019 SCALE 1:100

2019 09 - 02a

DESIGNED IN ACCORDANCE WITH THE NCC 2018

North Elevation

Labels: 1800h timber fencing, boundary, Aluminium framed windows and doors, EasyCare 800W sheet cladding paint finish, Coloured roof gutters and fascia, Permit floor 2.120 x 3.000, Garage TP 2.223, Garage RL 0.085, building platform RL 0.0

East Elevation

Labels: Windseong way, boundary, Blockwork fence rendered & painted, Living TP 2.920, Blockwork rendered & painted, Living RL 3.175, building platform RL 0.0, Coloured fascia and gutters, Primexia Clamber Weatherboard painted finish, 115x115 Merbau DAR Solid posts, paint finish, Sunfish Lane

ANSTEY design

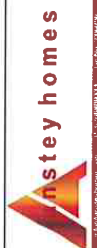
S4.55 (1A) Modification - July 2019

1. Simplify roof detail maintaining pitch
2. Retain roof pitch and to maintain and solve boundary wall detail
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5. Retain raked ceiling to living areas
6. Large wider clerestory window to incorporate louver ventilation to match larger north facing double opening sliding patio doors to improve solar access.
7. Minor interior detail changes

MAINTAIN EXISTING APPROVED EXTERNAL COLORS AND FINISHES

EAST ELEVATION

[illegible]



Roof Frame:
TRUSSES: to manufactures spec

Wall Frame:
STUDS 90x35 MGP12 H2
PLATES 90x35 MGP 12 H2 as nominated
LINTELS ALL NAILS GAL
FIX Bolt or Strap
BEAMS Lintels @ end + Ctr as nominated
V'Dah PLATE GL8 refer plan
FIX M10 bolt through
RAFFERS @3m ctrs

INSULATION
Wall: RhinoWrap LBD R1.1
Roof: Permastop 75mm sisal faced thermal blanket

FLOOR FRAME:
JOISTS Floor SJ240x70 T2, I Joist as drawn
JOISTS Deck H3 MGP12 UNO
POSTS 115x115 Kwila hwd
FIX ALL Fixings GALVANISED

Proposed Residence for
Ms Jennifer Everingham

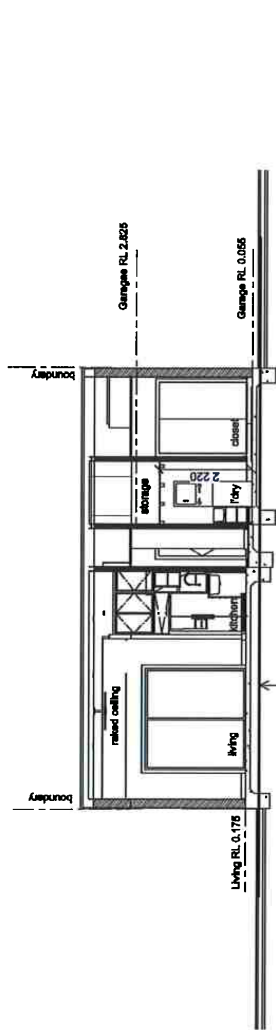
Lot 14 DP 1252999
4 Sunfish lane
KINGSCLIFF

SECTIONS
PRINT DATE: 8/7/2019
DATE 01 /07/2019 SCALE 1 : 100

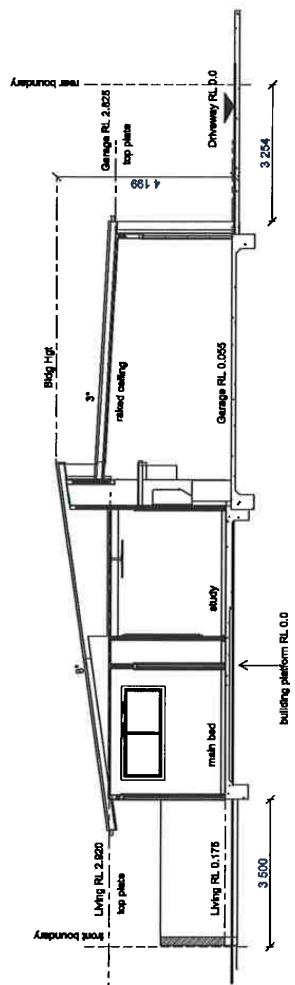
2019 09 - 03a
DESIGNED IN ACCORDANCE WITH THE MCC 2019

This Design and Drawings are the Property of MRS. JENNIFER EVERINGHAM

Reinforced Concrete
Slabs, Beams, & Footings
to engineers detail



SECTION A



SECTION B

- S4.55 (1A) Modification - July 2019
1. Simplify roof detail maintaining pitch
 2. Retain roof pitch and to maintain and solve boundary wall detail
 3. Reconfigure car parking garage plus carport
 4. Open up living spaces to northern courtyard
 5. Retain raked ceiling to living areas
 6. Large wider clerestory window to incorporate louver ventilation to match larger north facing double opening sliding patio doors to improve solar access.
 7. Minor interior detail changes

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 4.55 (Modification of consents - generally)

(1A) Modifications involving minimal environmental impact

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

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

Comment:

The modifications proposed in this application are considered to be of minimal environmental impact. The applicant is seeking to modify the roof but the maximum building height approved on the site will be maintained.

The increase in the Gross Floor Area is minimal (approximately 3.3m²) with no increase in the building footprint (area reallocated from garage to kitchen and bathroom). There are some modifications to the fenestration but this will enhance solar access and will not result in an additional overlooking or impact on neighbouring properties.

The application also seeks to modify the boundary fencing, and while the approved insets back from the Sunfish Lane boundary will be removed, the height is maintained. The height of the Windsong Way fencing is to be increased from 1.2m to 1.8m however this fence adjoins 90 degree car parking spaces where it is reasonable to consider the impacts from headlights and the fencing/landscape plans approved for the site has identified a 1.8m high timber fence at this location.

The application seeks to reduce the deep soil zone in the rear setback as a result of paving part of the courtyard however the reduction is minimal (approximately 3m²) and will increase the useability of the external living area.

As such it is considered that the proposed modifications are of minimal environmental impact and as such can be considered under a Section 4.55 application.

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

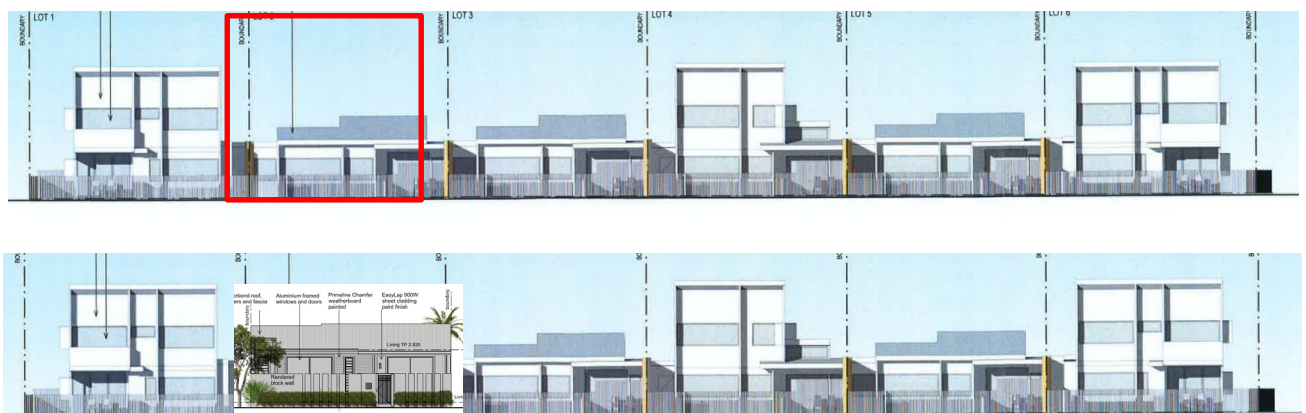
Comment:

The proposed modifications covered by this application is considered to fall within the scope of works which can be undertaken under a Section 4.55(1A) application in that the development as modified would be substantially the same as that approved under DA13/0401 – a two bedroom single storey dwelling.

(c) it has notified the application in accordance with:
(i) the regulations, if the regulations so require, or

(d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

The approved dwelling is one of seven dwelling design approved across the site. While the applicant seeks to modify the design, the alterations are not considered to be such that they would detract from the cohesion of the overall design or be inconsistent with the rest of the streetscape. A comparison of the approved and proposed streetscape is shown below:



Page 215

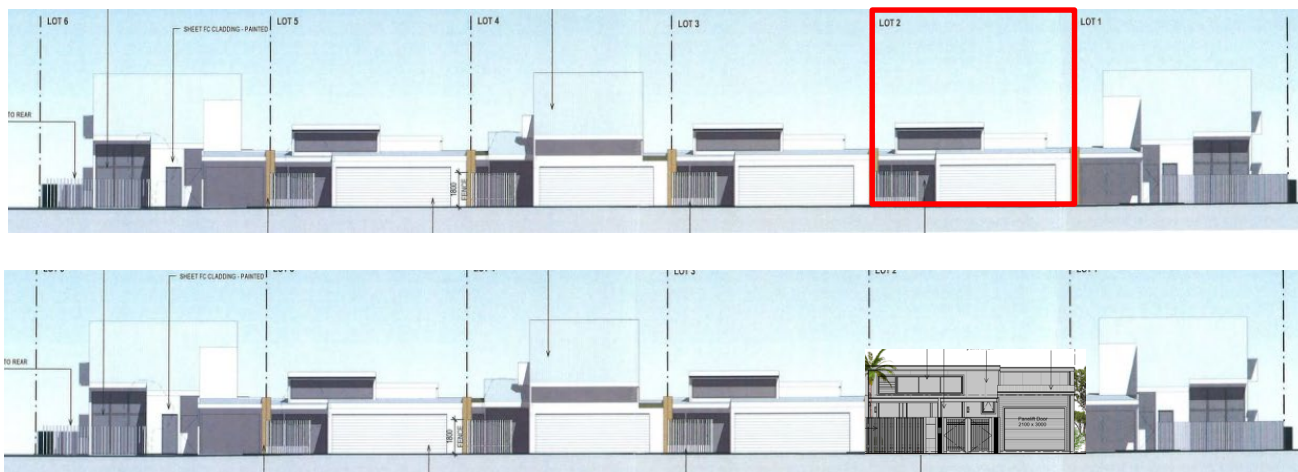


Figure 16: Approved and proposed Sunfish Lane frontage

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.*

The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Section 4.15 (1) (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*

Comment:

SEPP (Coastal Management) 2018

The site is identified as a Coastal Use area and Coastal Environment area in the State Environmental Planning Policy (Coastal Management). However it is not considered that the proposed modifications conflict with the relevant controls for these areas.

Local Environmental Plan

The original application was assessed in accordance with the Tweed Local Environmental Plan 2000 (TLEP 2000) where the site was zoned 2(e) Residential Tourist and the Draft TLEP 2014. The site is currently zoned R3 Medium Density Residential under the TLEP 2014. The proposed modifications to the design do not impact on compliance with the objectives of earlier the previous or current zoning.

While the application seeks to modify the roof design, there is no change to the maximum building height, which at 4.19m is substantially below the maximum building height permissible on the site (11m).

There is no increase in the building footprint, though the reallocation of floor area from the garage to the kitchen/bathroom will marginally increase the GFA and the FSR. Nevertheless there is no maximum FSR specified for the site.

- (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 Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

Comment:

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

- (iii) *any development control plan, and*

Comment:

The original application was assessed against Section B11 – Seaside City but this has since been repealed (13 April 2016). The original development was also assessed against the controls in Section A1 Part A which relate to small residential flat buildings. Merit assessment of the original DA against both these sections generally satisfied Council officers at that time that the development was suitable for the site.

Section B11 has since been replaced by Section A1 Part D of the Tweed Development Control Plan (DCP) 2000. Section A1 Part A also now makes reference to small lot housing. Therefore the current proposal has been assessed against the controls in Section A1 Part A and Part D.

Section A1 – Residential and Tourist Development Code

An assessment of the proposed modifications against the development controls for small lot housing has been undertaken and the proposal is considered to be generally consistent.

Part A - Preliminary - Section 3.1 - Streetscape

The replacement of a double garage with a single garage and car port will improve the building design and the streetscape character by reducing the dominance of the garage doors to the lane.

There is no increase in the overall maximum building height.

There will be a minor deduction in the rear deep soil zone as a result of paving the area adjoining the courtyard, but this relates to an area of approximately 3m² and will improve the useability of the external living area.

As set out earlier, the modifications to the design are consider to improve the design by simplifying the roof design and reducing the dominance of the double garage doors.

Part A – Small Lot Housing

There is no change to the lot size or the overall maximum building height.

The replacement of a double garage with a single garage and car port will improve the design and the streetscape character by reducing the dominance of the garage doors to the lane.

There will be a minor deduction in the rear deep soil zone as a result of paving the area adjoining the courtyard, but this relates to an area of approximately 3m² and will improve the useability of the external living area.

The approved dwelling is one of seven dwelling designs approved on the site. While the applicant seeks to modify the design, the alterations are not considered to be such that they detract from the cohesion of the overall design or be inconsistent with the rest of the streetscape.

Section 2.2 Landscaping, deep soil zones and external living areas

The applicant proposes to pave a portion of the rear deep soil zone (approximately 3m²) reducing the rear deep soil zone area to approximately 9.5sqm and the overall landscape area to 30.5m² (or 14%). There is no change to the front deep soil zone.

While this is a reduction from that shown on the stamped dwelling type plans, the landscape and fencing plans which were approved post-determination did include paving to allow for access from the street to the dwellings.

While the landscape area is 1% (or 2.15m²) less than the minimum specified for the site, it should be noted that the proposal includes paved external living areas with a roofed paved verandah of approximately 9.5m² to the rear and a paved area of approximately 13.6m to the front. It is also noted that the building footprint is not being changed.

Section 4.6 Garages, Driveways and Car Parking

The applicant is proposing to replace a double garage with a single garage and car port but this is considered to result in an improved design outcome.

The proposed garage door is set back approximately 300m from the street frontage, through the carport extends to the boundary. However it is noted that the approved plans allowed for the garage to be located on the boundary.

The proposed modifications will reduce the garage door width from 5.6m to 3m.

Contrary to the control specified in the DCP that the carport must have at least two sides open and cannot be fitted with a door, fence or gate, the carport will be enclosed on two side (adjoining the dwelling and the garage) and is to be fitted with a gate on the lane frontage.

While this is a variation to the DCP controls, consideration must be given to the fact that the carport is replacing part of a double garage. It is considered that visual impact to the streetscape will be improved by replacing the double garage with a single garage and carport (even if it is enclosed on three sides and fitted with a gate).

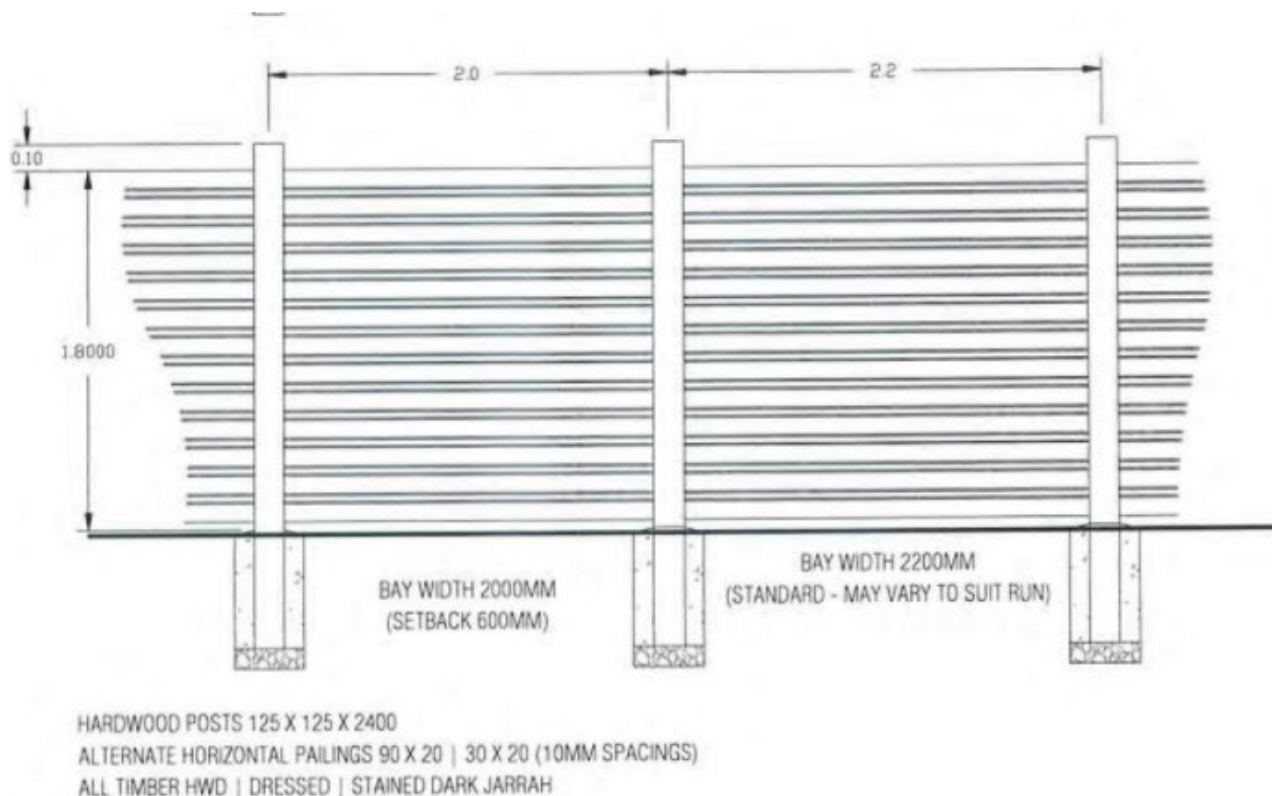
Section 6.1 Fences and walls

The controls in this section require that:

- C4. Front and return fences are to reflect the design character of the dwelling and be compatible with other fences and walls within the streetscape.*
- C5. Return fences (the side fence between the front boundary and front elevation of the house) are to be the same height and design as front fences.*
- C6. Front and return fences to a primary or secondary street frontage can be up to maximum height of 1.5 metres high with a maximum solid fence height of 600mm. Above the solid wall the fence is to have a minimum openness ratio of 60%. These height may be varied where topography necessitates a retaining wall as demonstrated on a site analysis.*
- C7. Front or return fences must not be timber paling or colourbond, except were integrated into a design theme that is consistent with the character of the dwelling and streetscape and incorporates appropriate articulation to allow for landscaping.*
- C8. Front fences are not to obscure a 2.0m x 2.0m splay when adjacent to a driveway.*
- C9. Front and return fences may be solid up to 1.8 metre if:*
 - i. Located on an arterial road or opposite an intersection where head lights shine into a dwelling; or*
 - ii. Where a swimming pool is located forward of the front building line; or*
 - iii. Where the allotment is oriented to the north, providing the most suitable location for private open space and external living areas; and*
 - Are justified by a site analysis;*
 - Include articulation and landscaping to the street(s);*
 - Must not be a solid unbroken wall and the solid component cannot be more than 50% of the street frontage; and*
 - Must not be colourbond or timber paling.*

The stamped plans on the original consent identified a 1.2m high fence on the Windsong Way elevation and a 1.8m high fence on the Sunfish Lane elevation.

Landscaping plans subsequently approved by delegation, identified for 1.8m high good neighbour fencing to the Windsong Way frontage set back behind a 1m landscape area with a 1.2m high fenced bin enclosure. Though it should be noted that all correspondence related to this plan satisfying condition 17 which related to landscaping only.



However a 1.8m high solid timber fence has been constructed to screen the dwellings constructed to date. The applicant proposes to replace this with a rendered block wall 1.8m high. The wall is solid in part, though more than 50% of the frontage (directly in front of the dwelling) is broken up into piers. Refer to figures earlier in this report.

While this is a variation to the controls above, the fence adjoins 90 degree on street parking, and it is reasonable to allow for 1.8m high fencing at this location to minimise impacts from headlights of parking cars. Further it replaces a 1.8m high fence shown on the landscape plans and is considered to be an improvement on what is existing.

The approved landscape/fencing plans show a similar 1.8m high timber fence on the Sunfish Lane frontage, which was to be offset from the boundary to allow for a landscaped setback. The applicant proposes to move the fence forward to the lot boundary, while retaining the height at 1.8m. As with Windsong Way, the fencing to Sunfish Lane which has been constructed to screen the dwellings constructed to date, is a solid timber fencing. This area is also being used for bin storage (despite the landscape plans nominating a bin storage area on the Windsong Way frontage).

The current proposal seeks to install a sliding gate on the carport. The Sunfish Lane fence is shown as 1.5m on the site plan, but as 1.8m on the elevations. The applicant also proposes to remove the landscaped setback. Given the requirement for the gate to the carport to have a sliding mechanism (cannot open into the carport or out onto the street), it would be unviable to require the rear fence to be setback when the sliding gate will have to remain in the boundary. Notwithstanding the removal of the landscaped setback, it appears that the modifications will result in an improved streetscape. As such the proposed fencing is considered acceptable.

Section A1 – Part D – Additional Site Specific Controls – Seaside City

The site is located in the Seaside City area within a coastal medium density housing precinct. Section 1.4 (Building Design Outside of the Mixed Use Precinct) advises that the architecture should be designed to respond to a subtropical coastal climate and reflect vernacular designs of the northern NSW. There are a number of controls set out with regard to building design, roofs and walls, with which the proposed modifications comply.

The Coastal Medium Density Housing area provides a transition between the coastal housing on the periphery of Seaside City and the denser coastal apartments within the Mixed Use Precinct. These developments are to be of medium density accommodation with a built form, proportions, scale, fenestration and symmetry of that of large coastal houses. The plan encourages courtyard building types to provide private, useable mid-lot open space for occupants. The plan sets out controls in relation to density, though there is no change to same under the current application.

(iia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

Comment:

There are no relevant planning agreements or draft planning agreements.

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,

Comment:

Clause 93 (which relates to Fire Safety Considerations) and Clause 94 (which relates to buildings to be upgraded) is not applicable.

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

The Tweed Shire Coastline Management Plan 2005 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. While the subject site is impacted by this plan, the works are not of a nature that would impact on the coastal zone area.

(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,

Comment:

The proposal will not create any additional demand on services or infrastructure or increase the demand for car parking. There is no increase to the overall building height or the building footprint. There is a slight increase in the GFA, though this is a result of space previously dedicated to car parking now being allocated to habitable areas.

(c) The suitability of the site for the development,

Comment:

The site is zoned R3 Medium Density Residential and there is an existing approval for an integrated housing development on the site. As such there is no issue with the suitability of the site for the works in question.

(d) Any submissions made in accordance with this Act or the regulations,

Comment:

Three submissions were received during the notification period. The key issues raised are addressed earlier in this report.

The development is integrated under the *Rural Fires Act 1997* – The application was referred to NSW RFS, who raised no objection to the proposal.

(e) The public interest.

Comment:

The works in themselves are minor in nature being alternations to a dwelling and the development as modified is substantial the same as that approved under the original approval.

On this basis, the proposal is not be considered to be contrary to the public interest.

Consideration of the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The original development consent on the site was issued in 2014, before Council had to nominate reasons for approving applications. However the assessment report had the following statement which read like a reason for approval and this has been re-assessed in determining the modification.

Reason 1

“Clause 4 (of the TLEP 2000) illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes. Strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is “the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”. Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ strategic and Pottsville village Strategy and to encourage sustainable economic development of the area which is compatible with the Shires’ environmental and residential amenity qualities.

The proposal is consistent with the aims of the plan.”

The proposed amendments are relatively minor and the proposal remains compliant with the provisions of the LEP and substantially compliant with those in the DCP as they apply today.

Reason 2

“The proposal is consistent with the zone objectives by providing medium density residential housing.”

This reason remains unchanged.

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

OPTIONS:

OPTION 1

- A. That Development Application DA13/0401.03 for an amendment to Development Consent DA13/0401 for integrated housing comprising of 12 dwellings be approved allowing for a change of dwelling design and fencing at Lot 14 DP 1252999 No. 4 Sunfish Lane (Private Road) Kingscliff (previously known as Lot 35 DP 1145386 & Lot 36 DP 1145386 Cylinders Drive Kingscliff).

- B. That Council approves the variation of Restriction on the Use of Land tenthly referred to in DP1222073 over Lot 14 in DP 1252999 so that it states:

“No dwelling house shall be constructed on the subject parcel unless it is as per the dwelling house approved under Tweed Shire Council Integrated Housing Consent DA13/0401 or as subsequently modified by Council.”

- C. That Council executes all necessary documentation under the Common Seal of Council.

OPTION 2

That Development Application DA13/0401.03 for an amendment to Development Consent DA13/0401 for integrated housing comprising of 12 dwellings seeking approval for a change of dwelling design and fencing at Lot 14 DP 1252999 No. 4 Sunfish Lane (Private Road) Kingscliff (previously known as Lot 35 DP 1145386 & Lot 36 DP 1145386 Cylinders Drive Kingscliff) be refused, and that Council provide suitable reasons for refusal.

Option 1 is recommended.

CONCLUSION:

The alterations sought under this application is considered to have minimal environmental impact and it is recommended that the modification application be approved subject to 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, which may involve legal costs for Council.

In Option 1, any costs associated with varying the S88B Instrument must be borne in full by the applicant.

c. Legal:

Not Applicable - no legal advice is required.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

6 [PR-PC] Development Application DA16/0852.01 for an Amendment to Development Consent DA16/0852 for a Dwelling House and Secondary Dwelling at Lot 2 DP 1201210 No. 5 North Hill Court Tanglewood

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 an application to modify Development Approval DA16/0852 for the construction of a dwelling and use of a secondary dwelling which was approved at the Planning Committee meeting of 3 May 2018.

The site has a long development assessment and compliance history originating from compliance issues associated with the unauthorised conversion and use of an approved art studio, workshop and storage area as a dwelling. Development Application DA16/0852 was lodged to rectify non-compliances by seeking approval for a new primary dwelling and the use of the existing structures as a secondary dwelling.

This modification application is being lodged to seek minor alterations to the plans for the primary dwelling and secondary. The alterations primarily comprise of a change in external colours and materials, altered roof form of the primary dwelling, changes to external living areas of both dwellings and alterations to layout of kitchens for both dwellings.

This application is being reported to Council with regard to potential visual impacts arising from the proposed modifications. Determination of the original application was deferred at the Planning Committee Meeting of 5 April 2019 for further consideration of mitigation measures of visual impacts arising from the proposed use of zincalume cladding. Consequently, the recommended conditions of consent included conditions that specified that external finishes are to be non-reflective.

This application is seeking to retain the zincalume cladding on the existing secondary dwelling which is considered to be inconsistent with the non-reflective conditions of consent. The

applicant asserts that zincalume is not reflective, does not negatively impact adjoining properties and the use of zincalume is part of the architectural design of the secondary dwelling. Furthermore, the applicant argues that the use of zincalume wall cladding is consistent with other buildings within the Shire. The applicant has amended the plans to remove the zincalume wall and roof cladding from the primary dwelling.

The application was notified to adjoining property owners and two submissions were received. Each of the submissions included objections to the retention of the zincalume cladding on the secondary dwelling due to visual impacts. Each of these submissions were investigated to determine the nature of the visual impact from the existing zincalume cladding.

For one of the submitters, it was determined there is no direct line of sight from the submitter's residence to the existing secondary dwelling and so the visual impact was limited to indirect views from other locations within the property and from Clothiers Creek Road.

The other submitter has a direct view of the secondary dwelling and the zincalume wall cladding along the northern portion of the dwelling. Following a number of site visits, it has been determined that the visual impact of the zincalume wall cladding is similar to that of other light coloured building materials (e.g. FC sheeting painted in shades of white). Furthermore it was noted that the primary internal and external living areas of the affected residence do not have a direct view of the existing secondary dwelling.

With consideration to the above, and further noting that zincalume dulls over time, it is considered reasonable to permit amendment of the consent to enable the retention of the existing zincalume cladding. All other proposed amendments to the plans comply with Council's Development Control Plan and are considered to be reasonable and acceptable.

RECOMMENDATION:

That Development Application DA16/0852.01 for an amendment to Development Consent DA16/0852 for a dwelling house and secondary dwelling at Lot 2 DP 1201210 No. 5 North Hill Court Tanglewood be approved subject to the following conditions.

- 1. Condition 1 be removed and replaced with new Condition 1A which references the new plans:**
 - 1A. The development shall be completed in accordance with the Statement of Environmental Effects, all supplementary material provided throughout the assessment of the original application and the Modification Report dated 3 June 2019 the following plans prepared by Bischoff Building Design dated 2 October 2019, except where varied by conditions of this consent.**
 - Site plan Drawing No. DA.2.02 Revision C;
 - Carport floor plan Drawing No. DA.3.01 Revision C;
 - Ground floor plan Drawing No. DA.3.02; Revision C;
 - Roof plan Drawing No. DA.3.03 Revision B;
 - Elevations Drawing No. DA.4.01 Revision C;
 - Elevations Drawing No. DA.4.02 Revision C;
 - Sections Drawing No. DA.5.01 Revision C;
 - Sections Drawing No. DA.5.02 Revision B;
 - Sections Drawing No. DA.5.03 Revision B;

- Granny flat floor plan Drawing No. DA.8.02 Revision C;
 - Granny flat roof plan Drawing No. DA.8.03 Revision C;
 - Elevations Drawing No. DA.8.04 Revision C;
 - Sections Drawing No. DA.8.05 Revision C;
 - Tool shed plans Drawing No. DA.9.01 Revision C.
2. Delete Condition 28 which previously specified that *“The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.”*
 3. Insert new Condition 44.1
 - 44.1. Any damage caused to the Right of Carriageway used to access the property during construction of the development shall be repaired to restore the ROC to its original condition.

REPORT:

Applicant: Ms LA Raussin and Mr PD Kirkland
Owner: Mr Peter D Kirkland & Ms Laetitia A Raussin
Location: Lot 2 DP 1201210 No. 5 North Hill Court Tanglewood
Zoning: RU5 Village
Cost: \$425,000.00

Background:

Council is in receipt of an application to modify Development Approval DA16/0852 which Council originally granted consent for the construction of a dwelling and use of a secondary dwelling at its meeting of 7 May 2018.

The site has a long development assessment and compliance history originating from compliance issues associated with the unauthorised conversion and use of an approved art studio, workshop and storage area as a dwelling. Development Application DA16/0852 was lodged to rectify non-compliances by seeking approval for a new primary dwelling and the use of the existing structures as a secondary dwelling.

Development Application DA16/0852 was originally reported to the Planning Committee meeting of 1 March 2018. The application was reported to Council due to compliance matters resulting from the history of unauthorised use of the site as well as the large number of submissions received from a single objector to the application.

Determination of the application was deferred to the Planning Committee meeting of 3 May 2018 so that matters relating to Aboriginal Cultural Heritage and noise and visual impacts may be further addressed. Of relevance to this modification application are matters relating to visual impacts from the zincalume steel wall cladding materials of the dwelling and secondary dwelling. Submitters to the original application objected to the use of the zincalume cladding due to the reflective properties of the material.

To mitigate potential visual impacts the following requirement was included in Condition 1 of the consent:

The roof and walls of both structures are to result in finishes that are non-reflective to avoid glare to adjoining properties.

Additionally the following condition was also included:

28. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

The applicant has been notified by Council's Building Surveyor that the existing zincalume cladding on the approved secondary dwelling and proposed zincalume cladding on the primary dwelling fails to comply with the above conditions.

Consequently the applicant has lodged this modification application to seek approval to retain the zincalume steel wall cladding on the existing secondary dwelling. The modification application also seeks approval for alterations to the approved plans for the primary dwelling (yet to be constructed). It is noted that the amended plans show that the zincalume cladding originally nominated for primary dwelling has been changed to a dark grey steel cladding (colour Monument).

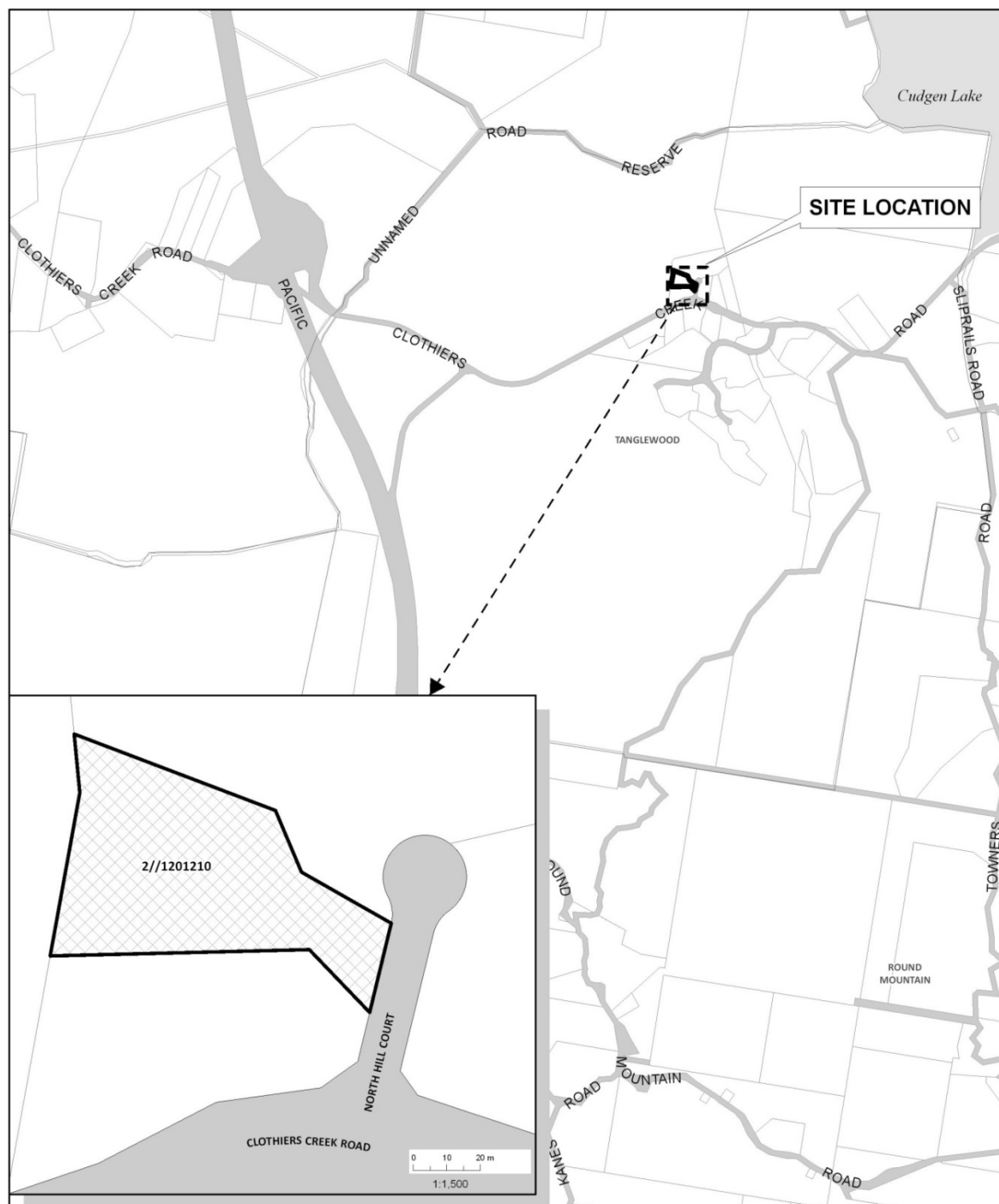
Site details:

The subject site is zoned RU5 Village and is 4,256m². The site is undulating with the primary dwelling site and secondary dwelling being elevated above the road and surrounding low lying wetland areas.

Access to the site is via a right of carriage way over the adjoining lot to the north being No. 7 North Hill Court, Lot 2 DP1201210. The site is mapped as being bushfire prone and is mapped as a place of Aboriginal Cultural Heritage Significance under Council's Aboriginal Cultural Heritage Management Plan.

Surrounding land comprises of dwellings on large rural village lots (ranging from 1.9ha to 4,040m²) and low lying wetlands.

SITE DIAGRAM:



Site Plan
 Lot 2 DP 1201210
 No. 5 North Hill Court, Tanglewood.

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TWEED
 SHIRE COUNCIL

Date Printed: 15 February, 2018

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Horizontal Datum: Geodetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56
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Aerial Photography 2015

Lot 2 DP 1201210
No. 5 North Hill Court, Tanglewood.

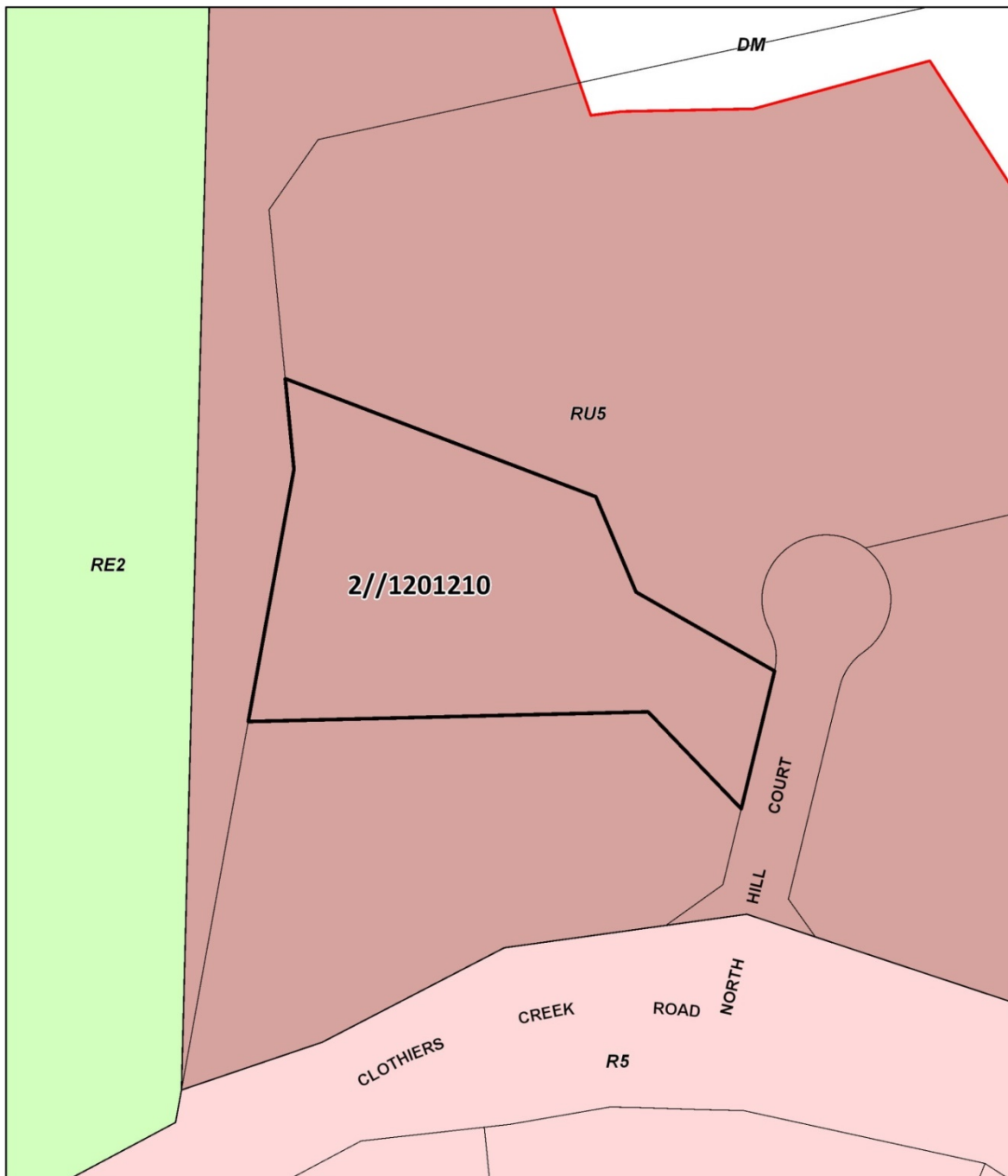
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Author: C. Lees - Information Technology

Date Printed: 15 February, 2018

ZONING MAP:

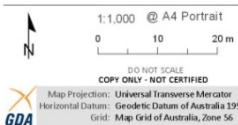


- Subject Land
 RE2 Private Recreation
 RU5 Village
 DM, Deferred Matter

Tweed Local Environmental Plan 2014

Zone

R5 Large Lot Residential



Site Plan - Local Environmental Plan

Lot 2 DP 1201210
No. 5 North Hill Court, Tanglewood.

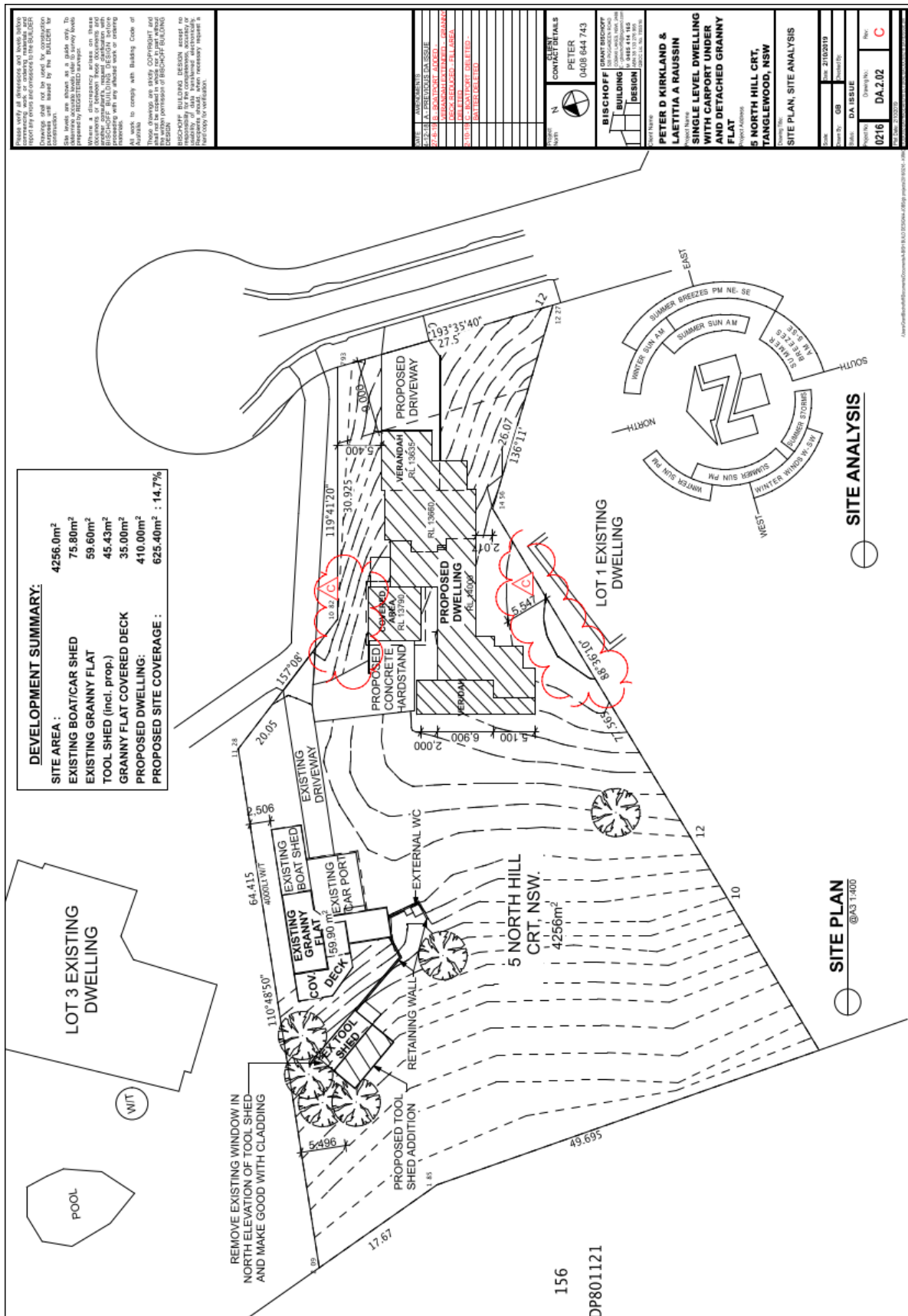
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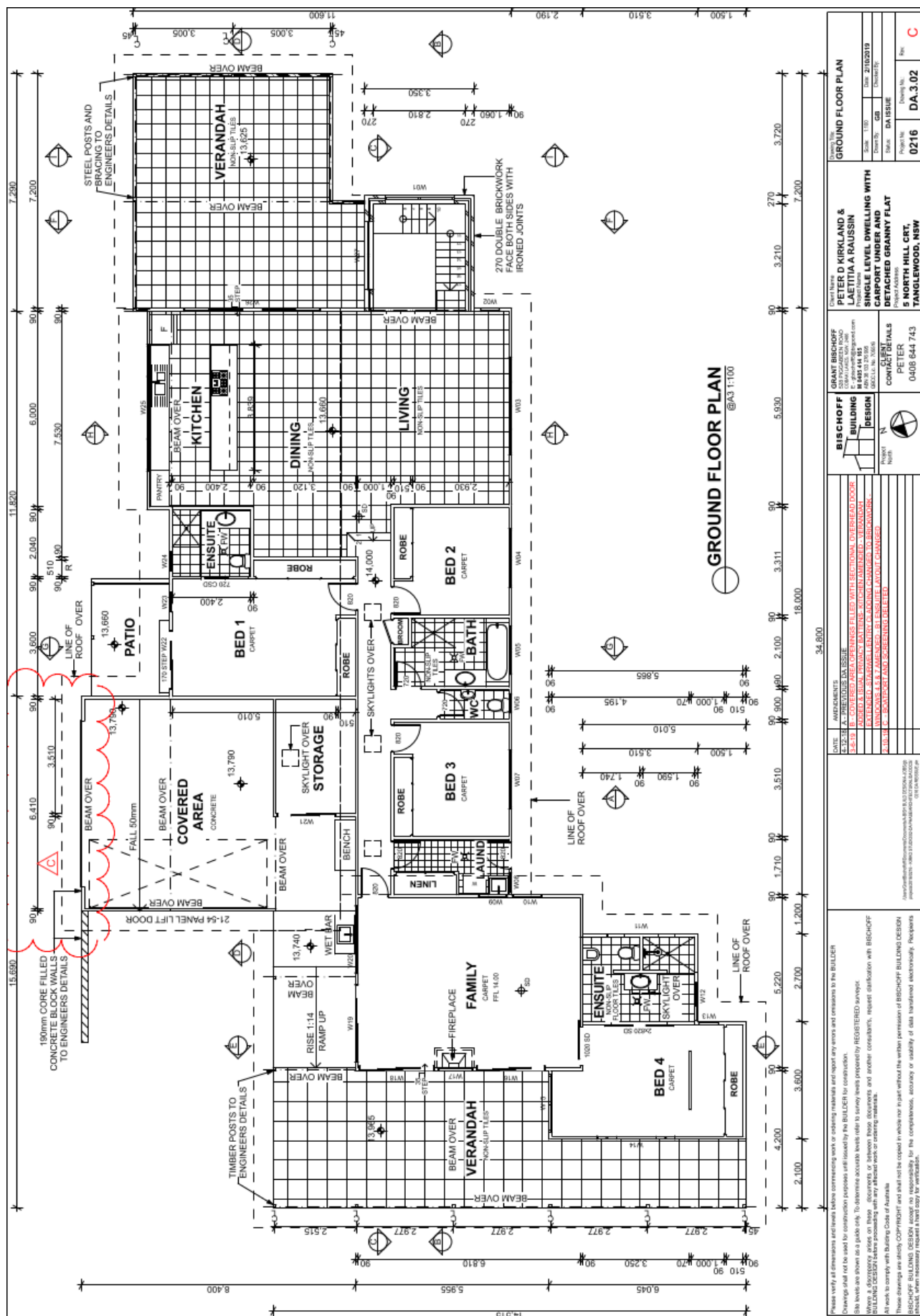


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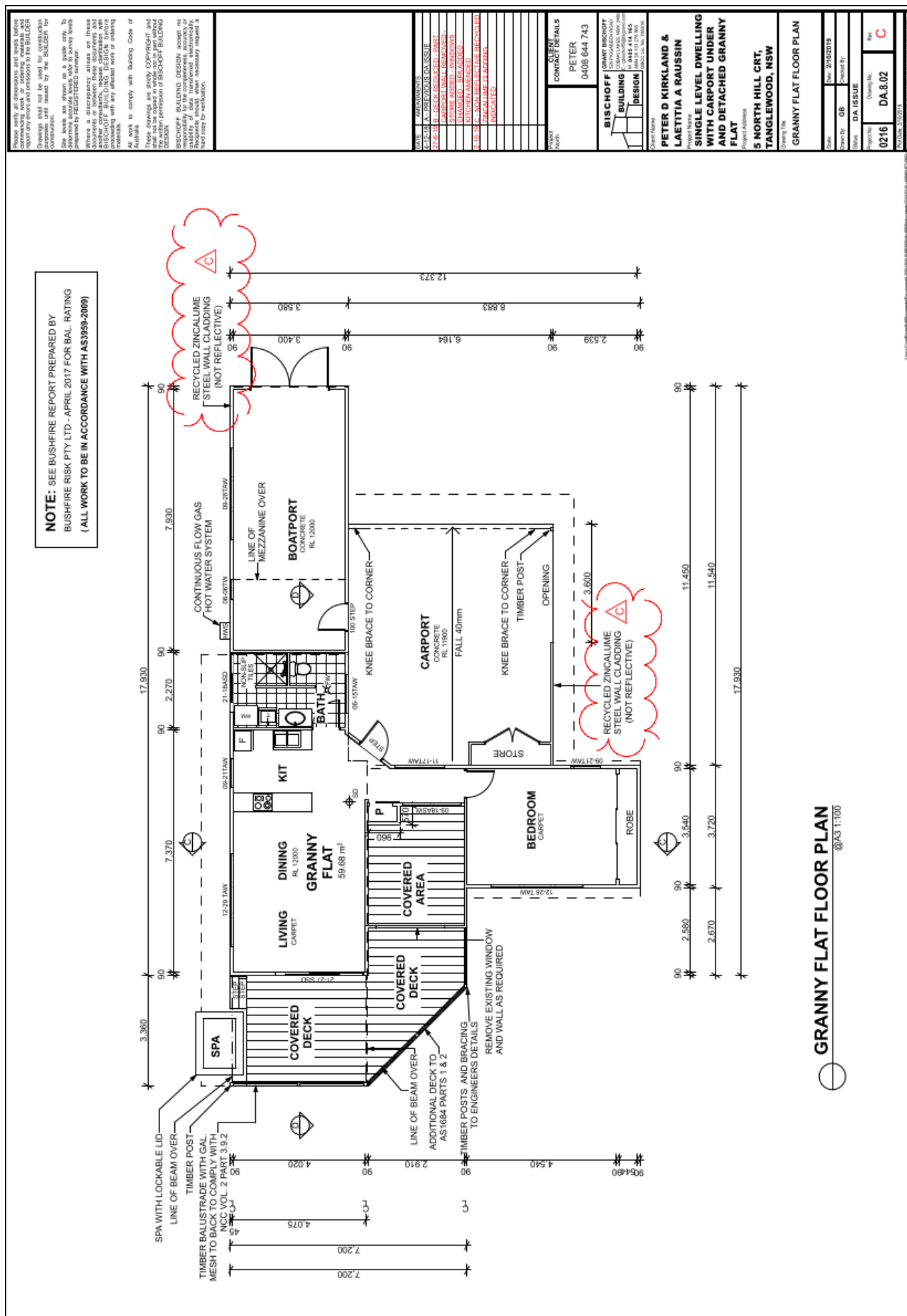
Date Printed: 15 February, 2018

DEVELOPMENT PLANS:





[illegible]



Proposed modifications

This modification application is seeking approval for the following items:

- Alterations to plans for the primary dwelling including altered roof form and window placement;
- Alterations to secondary dwelling including altered deck;
- New steel wall cladding to shed in dark grey colour to match primary dwelling; and
- Approval for the retention of the existing zincalume cladding on secondary dwelling.

Primary dwelling alterations

The details of the modifications to the plans of the primary dwelling are as follows:

- The approved patio adjacent to bedroom in the northern elevation will alter in shape and increase in size by approximately 1m. Privacy screening is to be added to the deck;
- Minor alterations to the layout of the kitchen and storage area including the addition of a skylight and the removal of some highlight windows to suit the new roof form;
- Rear verandah adjacent to the family room to be enlarged by 10m² on northern elevation;
- Modified roof form to the front and rear portions of the dwelling;
- Replacement of stone cladding on the building façade to brick;
- Alterations to some window placements and sizes;
- Enclosure of rear facing covered carport/workshop area; and
- Change in external colours and materials from zincalume wall cladding to dark grey (Monument) steel cladding. Roof sheeting is to be Colorbond steel roof sheeting in a mid grey colour (Dune). The rear of the dwelling is to be clad in New England Stringybark Lapboard cladding (natural colours - no change from existing approval).

Secondary dwelling alterations

The details of the modifications to the plans of the primary dwelling are as follows:

- Alterations to the layout of the kitchen;
- Existing storage area in carport added to the plans;
- Altered window in northern elevation from sliding window to awning style; and
- Alteration to the shape of the rear deck (western elevation) with a reduction in area of approximately 2m².

The plans show that the external cladding to the walls of the secondary dwelling are consistent with current existing cladding which is a recycled zincalume wall cladding. The existing zincalume cladding is considered to be inconsistent with the current conditions of consent which state that roof and walls are to be *non-reflective*.

The applicant has removed the proposed zincalume roof and wall cladding to from the plans for the primary dwelling in favour of painted steel cladding: Dune for the roof and Monument for the walls. The applicant has requested to retain the existing zincalume wall cladding on the existing secondary dwelling as it forms an integral part of the architectural style of the building.

Council has generally adopted the practice to classify any colours that have a Solar Absorbance of less than 0.32 as being reflective. This applies to lighter colours such as Surfmist and variations of white, cream and light grey. Zincalume is usually included in this category although zincalume products are not provided with a specific Solar Absorbance rating by the manufacturer. Zincalume is however provided a BCA and BASIX Solar Absorbance rating of Medium which is consistent with mid-range colours which have a Solar Absorbance rating of between 0.40 and 0.60 (e.g. colours Shale Grey, Dune, Windspray).

Solar Absorbance or Solar Reflection Index are measures of the thermal properties of materials and colours and not a specific measure of light reflectivity. Whilst Council has adopted the practice to use the low solar absorbance ratings to aid in reducing reflective glare impacts, there is no definitive measure or rating for light reflectivity or glare.

The primary area of concern with regard to glare impacts from the development is the north wall of the boat port which is oriented to the adjacent dwelling to the north. The wall of the boat port is located approximately 20m from the front entrance and 18m from the garage of the northern adjacent dwelling with a direct line of sight. This section is 3.4m high and does not have any eaves or shading devices. An existing 1.8m high fence shields from view all but a 1.6m high x 8m wide section of the north facing wall.



Figure 1 North wall of boat port indicated in yellow - potential source of glare

The adjoining dwelling to the south does not have a direct line of sight to the secondary dwelling due to an existing 1.8m fence. Furthermore any views to the secondary dwelling

from the southern adjacent property will be blocked by the construction of the primary dwelling.

The applicant has provided the following information in support of the zincalume cladding.

We had our hearts set on using zincalume iron wall sheeting, to give our home an architectural difference. But due to these rules, which I think are unfair since there are many buildings in the Tweed that have this cladding.

We have chosen another colour for the wall cladding on the new dwelling

It is our desire to keep the zincalume cladding on the detached dwelling and the tool shed. These two structures are existing and had been built before any other blocks on this subdivision were sold.

They create no impact on either neighbours

The neighbours to the north will have a restricted view as to all the plantings that myself the neighbours and have installed. Plus the future plantings intended to block these neighbours.

The issue with wall cladding is that it does not shine out. The sun, even in the peak of winter will not reflect light out, the angle reflects the light to the ground.

Council is stating that we cannot use colours of zinc, surfmist and shale grey. The new house to our south has surfmist walls and a shale grey roof that they were allowed to use.

The new house across the street from our block has surfmist walls and a zincalume roof that was approved and installed.

The soon to open Husk Distillery at Tabulgum has a new Zinc roof, which is a fabulous looking building.

Zincalume is part of the Australian countryside. It has been used from shearing sheds to banana packing sheds right across the countryside.

Now it is being used by architects in designer homes and retro renovations.

The applicant has also provided a letter in support of the use of the zincalume cladding from a local architect (reproduced below).

I understand that the proposal includes zincalume corrugated cladding to some areas of the elevations. In my opinion this choice poses no problem to surrounding properties in terms of reflectivity or glare. Indeed I have chosen clear finished corrugated zincalume sheet for the wall cladding for my own home in Federal, Byron Shire. We are only on one acre, less than the 1.4 acres of Peter and Laetitia's property, so some of our neighbour's houses are quite close. I have found that the zincalume cladding has never caused any reflectivity issues, dulls over time, and is actually less 'bright' than many timber clad homes painted in shades of white.

I can see from the documentation that there is extensive planting planned for the property also, which will create a further buffer to the neighbouring properties from the proposed new buildings.

Reflectivity is a complex and subjective issue. Sunlight shining directly on the surface of the wall may produce a direct reflected glare of the sun at certain times of the day and at certain times of the year for a short period of time due to the position of the sun. At these times the reflected glare will be directed to the ground and is not considered to be a significant impact.

The brightness of the light coloured zincalume cladding material during normal daylight hours may possibly be considered to be of greater significance. The plans indicate that the

zincalume cladding is recycled and the applicant has stated that the cladding does not have any coating to prevent the cladding from forming the natural patina over time. Recent photos of the secondary dwelling illustrate the dull patina the cladding forms over time.



Figure 2 Example of weathered/dull zincalume cladding on the secondary dwelling (southern elevation)

The below images show the effect of bright midday sunlight on the cladding which appears similar in brightness to neighbouring houses which are painted in white/light shades.



Figure 3 Image at midday in bright sunlight (left) and early morning shaded by trees (right)



Figure 4 Example of bright early sunlight on adjacent building

Any visual impacts from the exposed northern wall of the boat port may be mitigated by screen planting as shown by the above images. Furthermore the visual impact is limited to the entrance of the adjoining dwelling and front yard. The primary internal and external living areas and private open space (including pool) of the affected dwelling is oriented to the northeast and northwest and do not have a direct line of sight to the northern wall of the boat port.

It is considered reasonable to permit the existing cladding on the secondary dwelling to remain as the brightness of the cladding is similar to light coloured houses in the locality and any visual impacts may be mitigated with planting which appears to already have been partially undertaken.

To allow the existing zincalume cladding to remain, the conditions relating to low reflectivity will be removed from the consent noting that there are no standard ratings for light reflectivity of roof and wall cladding materials.

The remaining alterations proposed have been assessed against the Tweed Development Control Plan 2008 and are fully compliant with the controls.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 4.55 (2) Other Modifications

This application was lodged as a Section 4.55(2) modification. Section 4.55(2) of the Act states that in order to grant consent, the consent authority must consider the following:

(2) Other modifications

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with—
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be*

Furthermore, section 4.55(3) states:

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

Item (a) – substantially the same development

The modification application relates to some changes in the building design and external colours and materials. The changes are within the foot print of the existing approval. The consent as modified remains substantially the same consent being a dwelling and secondary dwelling.

Item (b) – consultation with external authorities

The application did not require referral to any external authorities.

The original application was notified to the Rural Fire Service under Section 4.14 of the Environmental Planning and Assessment Act (previously Section 79BA). The application is not integrated development and there is no requirement under the EP&A Act for the application to be referred to the Rural Fire Service. An assessment of the proposal with respect to bushfire risk is included in a later section of this report.

Item (c)(i) & (ii) – notification

The application was notified to adjoining property owners and previous submitters of DA16/0852. During the 14 day submission period from Wednesday 24 July 2019 to Wednesday 7 August 2019 two submissions were received.

Item (d) - consideration of submissions

Two submissions were received from adjoining property owners. Some of the matters raised in the submission do not directly relate to the changes proposed under this modification application. There is an ongoing history of neighbour conflict between the owners of the subject site and an adjoining property owner regarding the use of the secondary dwelling which is reflected in the submission. Nevertheless all matters raised in the submissions are addressed below.

Issue	Applicants response	Planning response
The existing boat port is being used for habitable purposes contrary to the approval	The boat port and garage do not have a connecting door to the granny flat and is being used as a storage area.	No changes to the approved boat port are proposed. Council has undertaken recent inspections of the boat port and are satisfied the space is being used for storage and not for habitable purposes.
Spa close to the boundary resulting in noise impacts	Spa is used once or twice a week and noise is limited to music and conversations.	No changes to the location of the spa is proposed. The location of the spa is compliant with Council controls and as detailed in the previous Council reports for the development, the noise appears to be associated with reasonable normal residential use.
Additional boat port	Boat port has been removed	The initial set of plans submitted for this modification application included an additional boat port attached to the primary dwelling. This additional boat port was not supported by

Council due to the proximity to the boundary and has since been removed from the plans.

Primary dwelling - Privacy screens on the north and west facing verandah as well as the kitchen window.

Fencing and plantings are proposed to block the view to the northern adjoining property. The adjoining house has been positioned to face the building area on the subject site. Privacy can be achieved by plantings.

Privacy screens have been added to the north facing deck.
The west facing verandah is oriented to the rear of the site and overlooks the adjacent wetlands. Views to adjoining properties from this verandah are shielded by the existing secondary dwelling and boundary fencing. The number of windows in the northern elevation near the kitchen have been reduced. The windows overlook the driveway and are unlikely to result in significant privacy impacts.

Shared driveway has been damaged due to construction works

The concrete driveway is deteriorating due to poor workmanship (reinforcing mesh placed too close to the surface).

A recent site visit revealed some deterioration to the surface of the driveway in some spots and the reinforcing mesh was visible. An additional condition of consent is proposed to be included that ensure any damage to the driveway resulting from construction works are to be made good (DUR 1875).

Glare from the zincalume walls is highly reflective resulting in visual impacts. The zincalume is visually prominent.

The aged zincalume on existing building is the same shade as Gull Grey (Colorbond colour) and not brighter. Plantings along the northern boundary have blocked the line of site to the secondary dwelling from the property to the north.
The shed and secondary dwelling is located approximately 500m from Clothiers Creek Road. The southern adjoining property does not have direct view to the secondary dwelling.

It is considered that the zincalume in its current form is not significantly brighter or more reflective than other dwellings in the locality that are light in colour. Any visual impacts may be mitigated by screen plantings as have partially been completed. The secondary dwelling is visible from a small section of Clothiers Creek Road. This due to the location of the secondary dwelling on a rise above the surrounding wetlands rather than specifically due to the cladding material.

Stormwater runoff from the lots

Stormwater is included on the plans as previously directed by Council.

No change proposed under this application. Stormwater runoff from each of the lots was considered as part of the original assessment of the subdivision. Stormwater management was considered as part of the original application and it is considered that existing standard conditions of consent regarding stormwater management are sufficient to appropriately address stormwater runoff from the development.

Windows to bathrooms on southern elevation may require frosted glass

The standard building practice is to use frosted windows in the bathroom areas. The sliding door to the ensuite is access to a private garden area.

The windows indicated are oriented to a side boundary. Privacy impacts are mitigated by the existing 1.8m high boundary fence and landscaping.

Item 3 - Reasons for granting the original consent

The original consent was issued on the 7 May 2018 before Council had to nominate reasons for approving applications. However the assessment report included the following statements regarding the proposals consistency with the applicable environmental planning instruments and development control plans and regard to the public interest of the proposal.

Reason 1

The proposal relates to residential development within the RU5 Village zone and the primary dwelling and secondary dwelling generally comply with the aims of the plan having regard to its nature and permissibility in the subject zone.

The development as amended remains consistent with the aims of Tweed Local Environment Plan 2014 and is permissible within the RU5 Village Zone.

Reason 2

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

The development as amended remains in the public interest as it relates to the provision of housing and complies with all the relevant planning instruments. The development as amended is not considered to result in any significant long term negative impacts to the surrounding built and natural environment and submissions to the proposal have been duly considered.

Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (previously s79C)

(1) *Matters for consideration—general*

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

(a) *the provisions of:*

- (i) *any environmental planning instrument, and***
- (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and***
- (iii) *any development control plan, and***
- (iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and***
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and***
- (v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),***

that apply to the land to which the development application relates,

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,***
- (c) *the suitability of the site for the development,***

- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

Item (a)(i) – Any environmental planning instrument

TLEP 2014 Clause 1.2 – Aims of the Plan

- (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, as amended, remains consistent with the aims of the TLEP 2014 in that it relates to the provision of housing that is permissible within the zone.

Item (a)(iii) - Tweed Development Control Plan

The amended plans have been assessed with respect to the relevant development controls of the Tweed DCP 2008, specifically Section A1 Part A. The proposed changes to the plans relate primarily to internal changes and changes to external colours and materials. The extension to the rear verandah is generally within the footprint of the original development and no change to existing approved setbacks are proposed.

The development as amended remains consistent with the control and no variations to the controls are proposed.

Item (b) – Likely impacts of the development

As discussed previously in this report, of primary consideration to the assessment of the amended development is the visual impact from the proposed retention of the existing zincalume cladding on the secondary dwelling.

It is considered that zincalume cladding is appropriate building material for the locality. As new zincalume cladding material ages it's 'brightness' or light reflective properties are considered to be similar to that of other light coloured building materials (FC cladding, steel etc.). Any visual impacts are able to be mitigated by plantings as have already been undertaken by the affected property owner.

Item (c) - suitability of the site for the development

The site remains suitable for the development as amended being a dwelling and secondary dwelling in a RU5 Village zone.

The site is mapped as being bushfire prone. The application relates to relatively minor interior and exterior alterations to the primary and secondary dwellings. The proposal remains consistent with the original bushfire report for the proposal noting that there are no changes to the setback to the bushfire hazard. The development as modified is able to comply with the existing bushfire protection measures prescribed by conditions of consent.

Item (d) - Any submissions

The application was notified to adjoining property owner and two objections to the proposal were received. These have been addressed in a previous section of this report. The matters raised in the submissions do not warrant refusal of the proposed modifications.

Item (e) - Public interest

OPTIONS:

1. Approve the 4.55 Application in accordance with the recommendation.
2. Refuse the 4.55 Application for reasons specified.

Council officers recommend Option 1.

CONCLUSION:

The proposed modifications do not represent any substantial change to existing approved dwelling and secondary dwelling. The changes to the internal layout and exterior are relative minor in nature. It is considered that the retention of the existing zincalume cladding on the secondary dwelling is reasonable as the building material is consistent with the built form of the locality. Potential visual impacts (glare) from the zincalume cladding is not considered to be significant and may be mitigated by vegetation screen planting.

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:

Not Applicable.

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.

7 [PR-PC] Helipads and Heliports Design and Assessment Guide

SUBMITTED BY: Building and Environmental Health

mbm



Making decisions with you

We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Leader**

SUMMARY OF REPORT:

In response to a Notice of Motion submitted to Council's meeting of 19 July 2018 in relation to noise associated with the use of helipads, Council resolved the following:

"Council requests that an options report, on a noise control policy associated with the use of helipads within the Shire, be brought forward to a future Council meeting".

Council officers prepared an issues paper *Management of Noise Associated with the Use of Helipads and Heliports* for Council's meeting of 17 April 2019.

The issues paper outlined how noise from helicopter activity is regulated in New South Wales, provided development assessment guidance for applicants, and outlined how an application for a helipad or helipad may be assessed.

In Council's meeting of 17 April 2019, Council resolved the following:

"Council defers this item for a Councillor Workshop to discuss key issues surrounding the assessment and regulation of noise associated with helipads and heliports".

A Councillor Workshop was held on 13 June 2019 that included a presentation and discussion with Council officers and an acoustic consultant with experience in the regulation and assessment of helicopters and associated noise.

An outcome of the workshop was the development of a guide that would bring together relevant legislation, best practice, and recommendations to ensure Council would receive well considered development applications and assist Council officers in the assessment, determination, and regulation of these developments.

A *Helipad and Heliport Design and Assessment Guide* (The Guide) has been prepared and a copy of this document is included as Attachment 1.

The Guide is supported by a *Development Application Checklist Helipads and Heliports* and a copy of this document is included as Attachment 2.

RECOMMENDATION:

That Council endorses the *Helipad and Heliports Design and Assessment Guide* and the *Development Applicant Checklist Helipads and Heliports* for use by applicants seeking development consent for a helipad or heliport.

REPORT:

In response to a Notice of Motion submitted to Council's meeting of 19 July 2018 in relation to noise associated with the use of helipads, Council resolved the following:

"Council requests that an options report, on a noise control policy associated with the use of helipads within the Shire, be brought forward to a future Council meeting".

Council officers prepared an issues paper *Management of Noise Associated with the Use of Helipads and Heliports* for Council's meeting of 17 April 2019.

The issues paper outlined how noise from helicopter activity is regulated in New South Wales, provided development assessment guidance for applicants, and outlined how an application for a helipad or heliport may be assessed.

Recommendations of that meeting were that Council:

1. *Considers the need for a Councillor Workshop to discuss key issues surrounding the assessment and regulation of noise associated with helipads and heliports;*
2. *Supports the creation of a development assessment guide for use by applicants seeking development consent for a helipad or heliport; and*
3. *Supports the use of the issues paper Management of Noise Associated with the Use of Helipads and Heliports dated April 2019 as a supporting document for staff involved in the assessment and regulation of helipads and heliports.*

In Council's meeting of 17 April 2019, Council resolved the following:

"Council defers this item for a Councillor Workshop to discuss key issues surrounding the assessment and regulation of noise associated with helipads and heliports".

A Councillor Workshop was held on 13 June 2019 that included a presentation and discussion with Council officers and an acoustic consultant with experience in the regulation and assessment of helicopters and associated noise.

During the workshop it was noted that the process for assessing an application for a helipad or heliport was complex and no one process could be applied to all sites. It was also acknowledged that these applications are not common in the Tweed Shire.

Council acknowledges the potential noise impacts helicopter activities can have on local communities. Community concerns about these impacts are not taken lightly.

An outcome of the workshop was the development of a guide that would bring together relevant legislation, best practice, and recommendations to ensure Council would receive well considered development applications and assist Council officers in the assessment, determination, and regulation of these developments.

A Helipad and Heliport Design and Assessment Guide has been prepared in consultation with Councillors and is supported by a *Development Application Checklist Helipads and Heliports* to assist applicants to prepare and lodge a complete application.

The Guide provides the Tweed community with an appreciation of the complexities of these development applications and ensure applicants are critically considering how their proposal may operate and what measures could be implemented to make the sound of the helicopter as non-intrusive as possible to the local community.

As new legislation or information is available, this document will be reviewed and updated.

A living internal procedure to assist staff involved in the planning, assessment, and regulation of helipads or heliports will also be implemented.

OPTIONS:

1. That Council endorses the *Helipad and Heliports Design and Assessment Guide* and the *Development Applicant Checklist Helipads and Heliports* for use by applicants seeking development consent for a helipad or heliport.
2. Resolve not to utilise the proposed guide and take no further action.

Option 1 is recommended.

CONCLUSION:

Council acknowledges the potential noise impacts that helicopter activities can have on local communities. Community concerns about these impacts are not taken lightly.

The Guide seeks to address these concerns whilst providing development assessment guidance for applicants seeking approval for a helipad or heliport.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.	Helipad and Heliports Design and Assessment Guide (ECM 6148522)
Attachment 2.	Development Application Checklist Helipads and Heliports (ECM 6150272)

8 [PR-PC] Request to Prepare a Planning Proposal - 824 Terranora Road Bungalora - Activity and Development Without Consent

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

ROLE: **Leader**

SUMMARY OF REPORT:

Council is in receipt of a planning proposal for the former hard rock quarry site at No. 824 Terranora Road, Bungalora. This report addresses the planning proposal request and findings from a routine site visit as part of the preliminary assessment for the planning proposal. During the site inspection a range of activity and development was identified which may have been undertaken without consent.

The primary matters of interest included:

- Modifications to a shed that appears inconsistent with the approved plans issued with development consent;
- A swimming pool; and
- Extensive and ongoing dumping of waste/fill.

While Council is not the Principle Certifying Authority for this development, matters relating to modifications to the shed and any ancillary development can be addressed by Council officers through normal compliance procedures.

However, due to the substantial volume and diversity of dumped material present across the site, current and ongoing dumping of material, advice that the site may be known to relevant government agencies, and Council's established position on such issues, it is recommended that no further work be undertaken on this planning proposal until all potentially illegal activity and development is resolved to the satisfaction of Council.

RECOMMENDATION:

That:

- 1. Council officers undertake all necessary investigations on Lot 1 DP 792256, 824 Terranora Road, Bungalora, regarding the legality of the fill, shed construction, pool and associated work and implement any required compliance actions as appropriate to the outcome of the assessment;**
- 2. No further work be undertaken on the planning proposal for 824 Terranora Road Bungalora until item 1 above is finalised;**
- 3. The applicant and the Department of Planning, Industry and Environment be advised of items 1 and 2 above; and**
- 4. A further report be brought back to Council advising of the outcomes of items 1, 2 and 3 above prior to seeking a resolution from Council to recommence work on this planning proposal.**

REPORT:

On 18 October 2019 Council received a request to prepare a planning proposal for Lot 1 DP 792256, at No. 824 Terranora Road, Bungalora, as seen in Figure 1. The request seeks to amend *Tweed Local Environmental Plan 2014* to provide a dwelling entitlement to the property.

Purpose of report

This report advises Council of:

- receipt of the request;
- preliminary assessment of the suitability of the request;
- activity and development that may have occurred without consent; and
- a recommendation not to proceed with the planning proposal request until matters raised in this report are resolved to the satisfaction of Council.

Property description

Area: 23.28 hectares
Zoning: RU2 Rural Landscape
Minimum Lot Size: 40 hectares
Previous landuse: Hard rock quarry (now ceased)



Figure 1 – Aerial image of 824 Terranora Road Bungalora

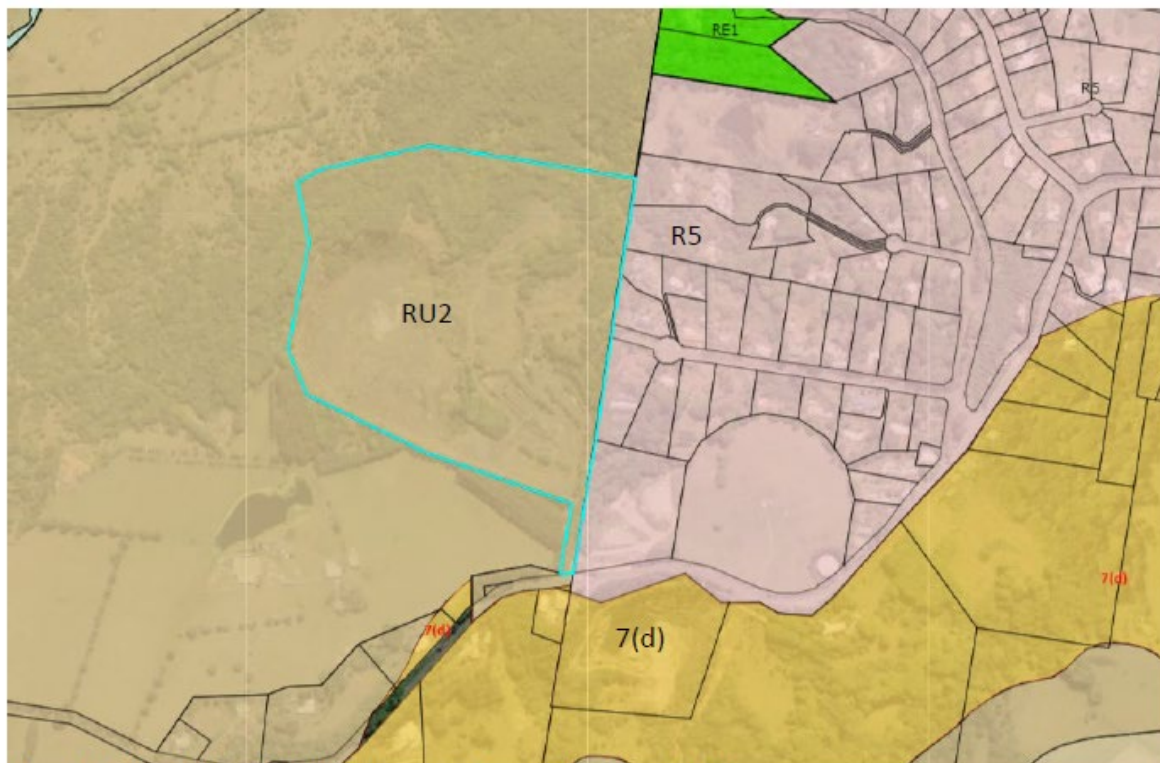


Figure 2 - Zoning of the subject site and surrounding context

Planning proposal request

The planning proposal seeks amendment to the Tweed Local Environmental Plan (LEP) 2014 to enable a single dwelling entitlement for the site.

The planning proposal seeks this amendment via a lot size amendment to 20 hectares or alternatively the inclusion of a dwelling house to the additional permitted uses Schedule 1 of the LEP 2014.

Site Inspection

As part of the routine preliminary assessment of the planning proposal request Council officers conducted a site inspection on Friday 15 November 2019.

During the inspection three matters were considered significant enough to require further investigation and resolution prior to proceeding with the planning proposal, namely:

- Construction of a shed;
- A swimming pool; and
- Fill of the quarry with material of unknown origin and apparently without consent.

Shed

On 29 August 2019 Council issued consent for a shed, (DA19/0502) the shed is classified as a Farm Building under *Tweed Local Environmental Plan 2014* (the LEP). The approved floor plan and external view of the shed, which appears to show a discrepancy between the approved plans and work currently under construction, is shown in the image following.

The LEP defines a farm building as meaning:

“a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling.”

In addition a swimming pool has been constructed on site. It is unclear at this time whether the appropriate consent is in place for the pool.

It is proposed that Council officers undertake a site inspection to ensure compliance with the conditions of consent and approved plans.



North east face of the 'shed'



Pool installed on site

Fill

Inspection of the site has also revealed that a substantial amount of fill, including what appears to be wood chip, building materials, soil containing plastics, material of aquatic origins, and concrete has been deposited at apparently random locations throughout the site.

The largest amount of fill appears to have been deposited in the base of the former quarry, with evidence of recent fill, substantiated by two loaded trucks arriving during the inspection.

The diversity of fill material from origins unknown is both significant in its extent and potential environmental impact, with anecdotal evidence of liquid waste having also been disposed of at the site.

Council's Environmental Health Unit has recently been advised that relevant government agencies may be aware of this situation.

Council previously endorsed position

Council has previously been presented with reports from officers relating to planning proposals for land upon which fill and other activities have occurred, where determination of consent for the fill requires further assessment. For both sites, No. 225 Terranora Road, and the Palms Shopping village Dry Dock Road, Council resolved to rectify any allegedly non-compliant activity prior to proceeding with processing of the planning proposal.



Example of fill material in the base of the quarry

Recommended actions

It is proposed that Council officers seek advice from the Environment Protection Authority regarding the scope and status of any investigation being undertaken, the status of any consent for fill, and to establish a pathway to resolving this matter to the satisfaction of Council.

Given the source and nature of the fill is to be investigated, Officers cannot rule out the potential for contamination. Under *State Environmental Planning Policy (SEPP) 55 Remediation of Land* Clause 6, contamination and remediation must be considered prior to amending a planning instrument.

Until such time as any activity or development undertaken without consent or any contamination is understood and remediated to the satisfaction of Council it is proposed that no further action on the request to amend the LEP be undertaken.

Council is required to make a determination whether to proceed or not with a planning proposal within 90 days (17 January 2020). If Council notifies that they do not support the request from the landowner, or has not indicated its support within 90 days of the proponent submitting their request, an applicant or landowner may ask the Department of Planning, Industry and Environment (the DPIE) to undertake a Rezoning Review. A Rezoning Review is conducted by the DPIE outside the control of Council.

Due to the extent of activity requiring detailed investigation, advice that the site may have come to the notice of relevant government agencies, and the pending Christmas holiday period, Council will not be able to meet the deadline for providing a response to the applicant within the required 90 days.

It is proposed that the applicant and the DPIE be advised that due to circumstances discussed in this report, Council will not be proceeding with this planning proposal request at this time

and will not proceed until all matters relating to the fill activity and development are resolved to the satisfaction of Council.

As such, should the landowner wish, they may seek the intervention of the DPIE through the Rezoning Review process. In accordance with the guidelines prepared by the DPIE, the landowner was verbally advised (during the site inspection) that this process may be available to them. Pending receipt of a resolution of Council, formal written notification will be sent to the applicant.

OPTIONS:

1. Defer further consideration of the request to prepare a planning proposal until such time as matters relating to all fill activities, shed and pool development are investigated and resolved to the satisfaction of Council, or
2. Council proceed with processing of the planning proposal.

Option 1 is the recommended approach.

CONCLUSION:

This report advises Council of the planning proposal request for a dwelling entitlement. As part of the initial site inspection concerns are raised about what appears to be current fill activity and development undertaken on the property. Compliance with any consent is to be further assessed.

Council has an established position of not proceeding with the processing of a request to prepare a planning proposal where activities and development may have occurred without consent.

It is a recommendation of this report that action be commenced to assess and resolve these and any other matters that may come to the attention of Council officers, and that these matters be resolved to the satisfaction of Council prior to considering whether to proceed with the planning proposal.

While 90 days has been established by the DPIE as the deadline to respond to the request to prepare planning proposal, due to the concerns discussed above, Council will not meet the deadline, and as such the proponent will be in a position to seek a Rezoning Review through the DPIE, independent of Council.

Notwithstanding this, given the potentially significant impact of the matters raised, it is recommended that work cease on this planning proposal until such time as all fill and development issues are resolved to the satisfaction of Council, and the DPIE and applicant be notified accordingly.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The landowner has not entered into a cost agreement at this time; however, an agreement will be required prior to undertaking further work on this project.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

9 [PR-PC] Draft Tweed Local Strategic Planning Statement - For Exhibition

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy

Looking out for future generations



Making decisions with you

We're in this together

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

ROLE: **Leader**

SUMMARY OF REPORT:

Preparation of the draft Tweed Local Strategic Planning Statement (LSPS) has progressed to the point where a draft Statement is being finalised for exhibition in early 2020.

The project has a tight statutory deadline of 1 July 2020 for Council to have its LSPS finalised.

Given the absence of a Council meeting in January 2020, this report seeks the resolution of Council to enable public exhibition of the draft LSPS in early February 2020, based on the background, purpose, report structure, draft key themes and draft planning priorities outlined in this report and the preliminary draft LSPS provided under separate cover to this report.

While an exhibition ready version of the draft LSPS is not currently available, it will be provided to Councillors for review in early 2020 prior to commencement of the public exhibition period.

The exhibition ready version of the draft LSPS will be prepared consistent with the information provided in this report and published in the normal professional style for Council documents.

During the exhibition period, broad community and stakeholder feedback will be sought, which will also allow Councillors the opportunity to provide further input.

Following exhibition a final version will be prepared which will consider submissions and will be reported to Council for consideration for endorsement to send the LSPS to the Department of Planning, Industry and Environment (DPIE) to be finalised.

RECOMMENDATION:

That:

- 1. Council endorse preparation of a draft Tweed Local Strategic Planning Statement (LSPS) consistent with advice in this report and that it be placed on public exhibition for a period of not less than 28 days, as early as possible in 2020;**
- 2. an exhibition ready version of the draft LSPS be provided to Councillors prior to public exhibition;**
- 3. following public exhibition, a further report detailing and responding to feedback received during the exhibition and any changes to the draft LSPS in response, be submitted to Council at the earliest time; and**
- 4. the LSPS be forwarded to the Department of Planning, Industry and Environment to be finalised before 1 July 2020 for publishing on the NSW Planning Portal, as required by section 3.9 of the *Environmental Planning and Assessment Act, 1979* (NSW).**

REPORT:

This report follows the information provided at the Councillor workshop of 13 November 2019 and provides an update on the progress of the draft Local Strategic Planning Statement (LSPS), including background, purpose, report structure, draft key themes, draft planning priorities and pending deadlines.

In response to the statutory deadline, being 1 July 2020, for the preparation of Tweed's first LSPS, and the absence of a Council meeting in January, this report has brought forward a request that Council endorse public exhibition of the draft LSPS in early 2020, based on the information provided in this report and the preliminary draft LSPS provided under separate cover to this report.

While an exhibition ready version of the draft LSPS is not currently available, it will be provided to Councillors for review in early 2020 prior to commencement of the public exhibition period.

The exhibition ready version of the draft LSPS will be prepared consistent with the information provided in this report and published in the normal professional style for Council documents.

Background

The requirement for all NSW councils to prepare a LSPS was introduced by the NSW Government in March 2018 under section 3.9 of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act), recognising the importance of strategic land use planning and the need for alignment between state and local government strategies and plans.

The LSPS will guide future land use planning and is required, under section 3.9 of the EP&A Act to set out:

- the 20-year vision for land use in the Tweed;
- the basis for strategic planning in the area, having regard to economic, social and environmental matters;
- the special characteristics which contribute to local identity;
- shared community values to be maintained and enhanced;
- the planning priorities for an area;
- the actions required for achieving those planning priorities; and
- how the Council will monitor and report on implementation.

Once established, the LSPS will provide a framework to:

- set out how growth and change will be managed;
- give effect to the North Coast Regional Plan 2036 (the Regional Plan);
- provide a foundation for future reviews of the Community Strategic Plan (CSP);
- shape how development controls in the Local Environmental Plans (LEPs) and Development Control Plan (DCP) evolve over time and guide future reviews of these plans (Council must consider the LSPS when amending its LEPs);
- inform other planning tools, such as contribution plans, to ensure that local facilities are provided as the community's needs change; and
- guide State agencies in their infrastructure planning and service delivery such as schools, hospitals and transport to support local communities.

The role of the LSPS is to provide a clear line of sight between State and Regional policy and local development controls. Its relationship to other land use strategies, plans and legislation is shown in **Figure 1**.



Figure 1 – Strategic Planning Hierarchy

The draft LSPS has been prepared taking into consideration:

- North Coast Regional Plan 2036 - directions and actions;
- Tweed Community Strategic Plan 2017-2027 – content and feedback provided by the community during public exhibition;
- Feedback received from recent community consultation on a range of projects, such as the Open Space Strategy, Rural Land Strategy, Scenic Land scape Strategy, Community Strategic Plan, Cultural Plan, Community Facilities Plan and others; and
- Internal review and response from across all units of Council.

The alignment of the LSPS themes and planning priorities with the Regional Plan, and Council's CSP has been tabulated in **Attachment 1**.

Whilst the LSPS is specifically a land use plan, the plan will have significant policy reach to ensure operational plans, Council land use priorities and service provision align with the LSPS and, in turn, with the CSP.

Content and Structure of draft LSPS

The structure of the draft LSPS is outlined in **Figure 2**.

Land-use Vision

The draft 20 year vision has been developed to reflect relevant elements of visions in both the Regional Plan, as well as the objectives and values in the Community Strategic Plan, as they relate to land use.

Themes

The LSPS identifies key themes to achieve the vision. Given the bridging role of the LSPS, linking the Regional Plan and Council's CSP, the four strategic goals of the Regional Plan have been adopted as the key *themes* of the LSPS being:

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

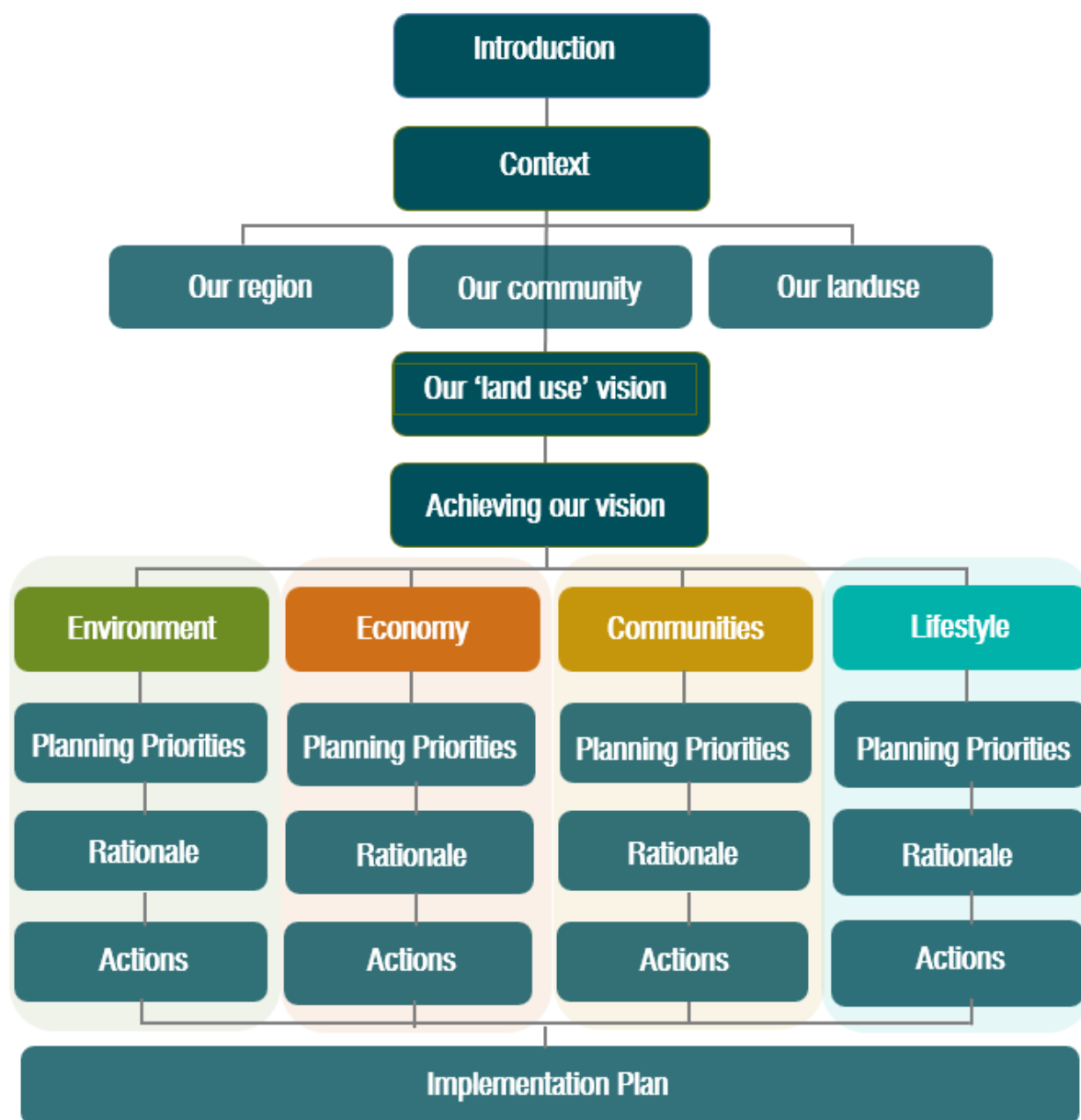


Figure 2 - Structure of the draft LSPS

Planning Priorities

Under the four themes, draft *planning priorities* have been identified to achieve the 20-year landuse vision. The draft planning priorities seek to articulate the priorities needed to achieve the vision of the four themes above.

Rationale and Actions

Each planning priority is supported by a rationale providing the strategic reasoning for its focus and the *actions* required to deliver on the planning priorities.

Draft Example

Theme:

Environment

Planning Priority:

Sustainable use of natural resources and transition to renewable energy.

Actions:

- 1. Amend the DCP to develop planning guidelines and controls which facilitate the uptake of electric vehicles.*
- 2. Investigate amending the LEPs and DCP to include incentives, such as design excellence mechanisms to deliver sustainable development and reduced reliance on non-renewable energy.*
- 3. Investigate the feasibility of generating hydroelectric power at Clarrie Hall Dam.*

Council staff are continuing to develop the draft LSPS, refining the Planning Priorities and Actions. An exhibition ready version of the draft LSPS is not currently available but will be provided to Councillors for review in early 2020 prior to commencement of the public exhibition period.

Project Timeline for Completion

The project timeline shown in **Figure 3** outlines the key steps required to meet the statutory deadline of 1 July 2020.

The draft LSPS has been widely circulated internally and also provided to the Department of Planning, Industry and Environment for review. Integration of the feedback received will occur throughout December and January. Preparation of the exhibition ready version must be finalised for public consultation as early as possible in February 2020.

	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Prepare LEP Review & Health Check												
Submit LEP Review & Health Check to DPIE												
Prepare draft LSPS												
Submit draft LSPS to DPIE for review												
Finalise draft LSPS for exhibition												
Public exhibition of LSPS												
Review submissions												
Prepare final LSPS												
Submit final LSPS to DPIE												
Final LSPS made												

Figure 3 – Project schedule

Failure to meet the 1 July 2020 deadline would be a breach of section 11A(b) of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW).

Next steps

- **Resolution of Council:** This report seeks the endorsement of Council to place a draft LSPS on public exhibition in February 2020 for a minimum of 28 days.
- **Finalisation of exhibition version:** Integration of the feedback received by internal units and DPIE to develop a final version for Councillor review prior to public exhibition.
- **Public exhibition:** Public exhibition as early as possible in 2020, for a minimum of 28 days. During the exhibition period, broad community and stakeholder feedback will be sought, which will also allow Councillors the opportunity to provide further input.
- **Report to Council:** A report will be prepared for Council which responds to submissions received, and following any changes to the draft LSPS, a final version will be presented to Council seeking a resolution to send the Statement to DPIE to have the document finalised.
- **Finalisation:** The LSPS will be submitted to DPIE to be finalised and published on the NSW Planning Portal.

OPTIONS:

1. Council endorses a draft Tweed Local Strategic Planning Statement to be placed on public exhibition for a minimum of 28 days as soon as possible in 2020; or
2. Defer for clarification or a further Councillor workshop.

Option 1 is recommended.

CONCLUSION:

In response to the statutory deadline, being 1 July 2020, for the preparation of Tweed's first LSPS, and the absence of a Council meeting in January, this report has brought forward a request that Council endorse public exhibition of the draft LSPS in early 2020, based on the information provided in this report and the preliminary draft LSPS provided under separate cover to this report.

While an exhibition ready version of the draft LSPS is not currently available, it will be provided to Councillors for review in early 2020 prior to commencement of the public exhibition period.

The exhibition ready version of the draft LSPS will be prepared consistent with the information provided in this report and published in the normal professional style for Council documents.

Following exhibition a final version will be prepared which will consider submissions and will be reported to Council for consideration for endorsement to send the LSPS to DPIE to be finalised.

COUNCIL IMPLICATIONS:

a. Policy:

The LSPS is a policy document that will facilitate and direct change to achieve the long term landuse vision for the Tweed.

b. Budget/Long Term Financial Plan:

Exhibition of the LSPS will have no budgetary implications; however, implementation will have ongoing budgetary implications across Council.

c. Legal:

Failure to make the LSPS before 1 July 2020 would be a breach of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Relationship between the LSPS, Regional Plan, and CSP.
(ECM 6149865)

10 [PR-PC] Small, Smart, Sustainable Housing Proposal - Enquiry by Design Workshop Report

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: Collaborator

SUMMARY OF REPORT:

The purpose of this report is to present Council with the *Small, Smart, Sustainable Housing Village Workshop Outcomes Report* (Please refer to Attachment 1 to this report) and to seek approval for the Consultant to proceed with the next phase of the project; preparing the concept plan, guided by the design principles gained from the input of workshop participants.

The Outcomes Report has been prepared by Council's consultant Deicke Richards following a one day enquiry by design styled workshop held on 23 August 2019 attended by Councillors, the Council project control group (PCG) and project delivery team (PDT). The workshop included a site visit to review site context followed by presentations made by design specialists and an overview of the affordable housing concept was presented by Councillor Cooper.

Four groups investigated different planning and design themes which generated four different sketch concepts based on workshop group discussions. Notably, the extent of land considered for the housing concept encompassed an area of the property; Lot 1 in DP1069561 that is currently being rezoned under PP19/0002 and is part of the Joint Venture partnership proposal between Council and the Dickinson Group for the Wardrop Valley enterprise employment land rezoning. The Outcomes Report, design principles and phase 2 concept plan is, for the purposes of this report, inclusive of the land under the PP19/0002.

The analysis of these workshop design ideas have now been distilled into a set of design principles and associated principles diagram which encapsulates the key and common ideas generated by the four workshop groups. The Outcome Report thereby provides a record and summary of the workshop and transparency around the development of the design principles to be used in the next project phase.

The next phase of the project will also include establishing the project's community reference group (CRG) in alignment with the project probity plan (August 2019). The purpose of the

CRG will be to further explore issues and themes around the *Small, Smart, Sustainable Housing Village* proposal and contribute to the social, operational, conceptual and technical thinking to inform the development of the concept plan. The appointment of the CRG members would follow an advertised expression of interest process. Facilitated by TSC staff it is envisaged that the CRG would comprise a mix of community representatives, social service provider representatives, affordable housing provider representatives as well as various environmental, design and built environment professionals.

RECOMMENDATION:

That Council endorses:

- 1. Design principles in the *Small, Smart, Sustainable Housing Village Workshop Outcomes Report*, prepared by Deicke Richards Pty Ltd, (as provided in Attachment 1 to this report) for the purpose of guiding the completion of a concept plan;**
- 2. Land over which the concept plan is to be prepared is to include the entirety of Lot 1 in DP1069561, Wardrop Valley Road, comprising that part of the property currently being rezoned under Planning Proposal PP19/0002;**
- 3. The General Manager instructs Deicke Richards Pty Ltd to proceed with preparing the concept plan for the land detailed in the Outcomes Report described above; and**
- 4. Establishment of the project's Community Reference Group (CRG) through an advertised expression of interest process.**

REPORT:

Background

At its Meeting of 7 February 2019, Council resolved to proceed with the first stage of a wider assessment and concept design of an affordable housing project on Lot 1 DP 1069561 ('the property') Wardrop Valley Road, Wardrop Valley. The extent of this property is depicted on Figure 01, and Figure 02 depicts that part of the property currently the subject of a rezoning under Planning Proposal PP19/0002.

Based on the specific input and guidance provided by Councillor Cooper, surrounding the overarching design brief for the project, a Request for Offer (RFO2019044) for the concept design of a Small Smart Sustainable Housing proposal was progressed. Based on this guidance and prior to the enquiry by design workshop the extent of the property under consideration for the project excluded that part of the land currently being rezoned under PP19/0002, as it is part of a separate master-planned development under a joint venture partnership between Council and the Dickinson Group and which is in-part linked with the Council 'Land-swap' project – a project arising from the March 2017 flood event that led Council to assist with the strategic relocation of certain local businesses, in partnership with the NSW government.

Relevantly, prior to the enquiry by design workshop, Councillor Cooper made a request of the Council's Project Manager to allow the consideration of the entire property and having regard to the nature of the land's topography and accessibility this was seen to be appropriate. As evidenced in the workshop outcomes that part of the property subject to PP19/0002 is the most readily accessible area and would facilitate a logical staging of the property's development should it proceed in future. This naturally overlaps with current rezoning of the land and is a matter that would need to be further investigated should the ultimate concept plan be progressed to a development phase.

Following a review of RFO submissions, at its meeting of 16 May 2019 Council resolved to award the Small Smart Sustainable Housing Concept Design contract to Deicke Richards (ABN 79 050 405 135) for lump sum amount of \$80,476 (inclusive of GST). As part of the contracted scope of design services are the following key design stages:

Concept Design:

- Site Analysis. Taking into account topography, microclimate, natural features (including flora and fauna), services, access and egress and planning constraints;
- Examination of Case Studies of similar projects in Australia and overseas;
- Design of concept layout for the entire site presented at a suitable scale, indicating site circulation, location of services and utilities, landscaping, environmental factors, dwellings and community facilities;
- Design of a sample floor plan which demonstrates how the base model could be modified to suit different needs; and
- Presentation of materials suitable for use in promoting the scheme to potential funding organisations.

Schematic Design:

- Development of a comprehensive site layout design. Including the articulation of material types, building methodologies and scale of work;

- Proof of Concept. Detailed examination of the feasibility of on-site waste water treatment, off-grid power solution and other proposed technical systems;
- Development of sample floor plans for Cost Estimate Preparation;
- Documentation suitable to enable an accurate cost estimate to be carried out; and
- Presentation of materials suitable for use in promoting the scheme to potential funding organisations or government.

The facilitation of the enquiry by design (EbD) workshop forms part of the concept design stage. The purpose of the EbD was to identify the key site contextual considerations including the identification of opportunities and constraints which would then be used to inform some conceptualise some ideas on how the project could be realised which would inform the subsequent concept layout and more detailed schematic design.

The EbD workshop as part of the concept design stage process is contextualised in the overall 'Key Project Steps' diagram (Figure 03).

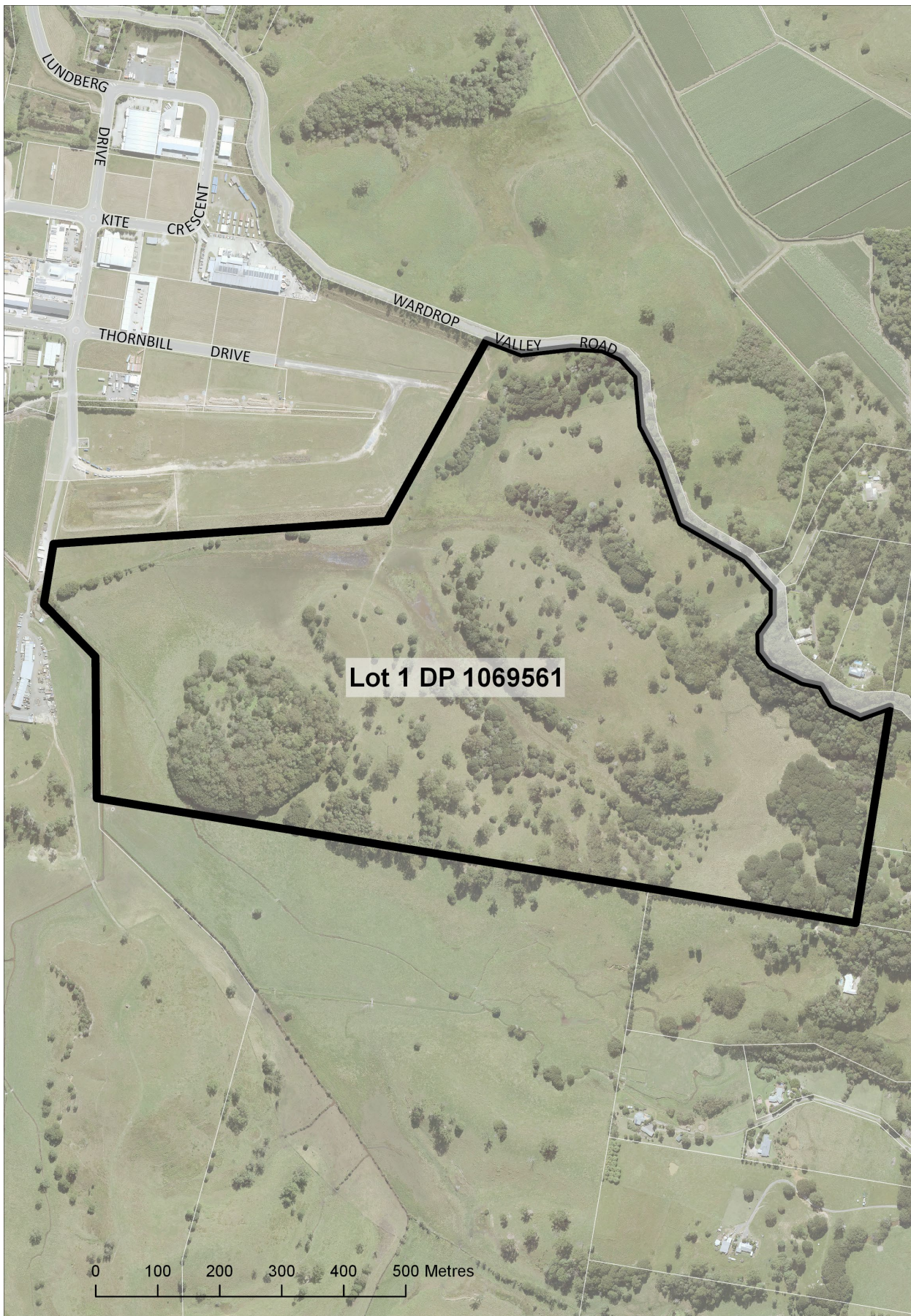


Figure 01 – Small, Smart Sustainable Village Site Plan – Lot 1 DP1069561

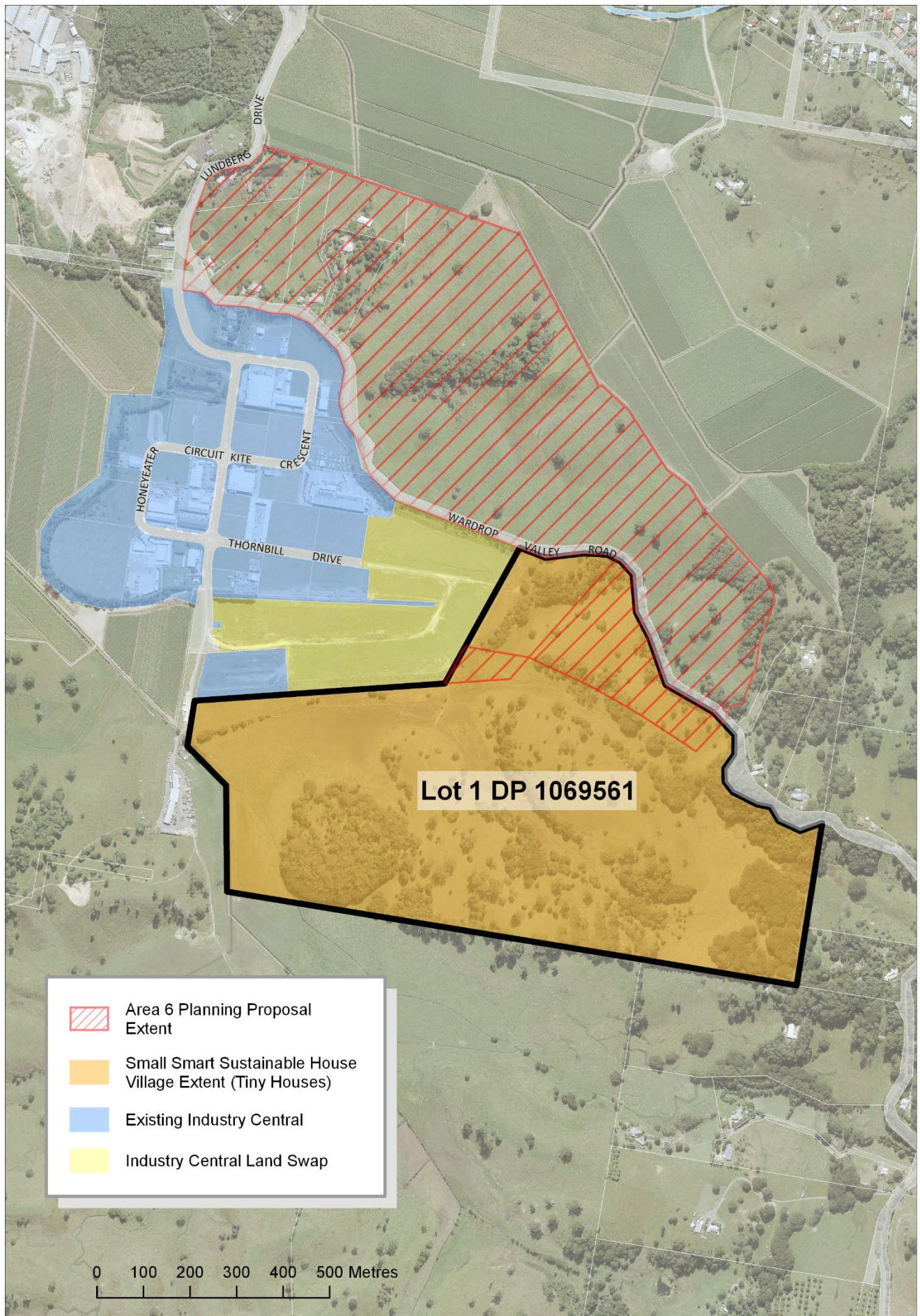


Figure 02 – Wardrop Valley Land use Context – Employment Rezoning hatched red

Small Smart Sustainable Village - Key Project Stages

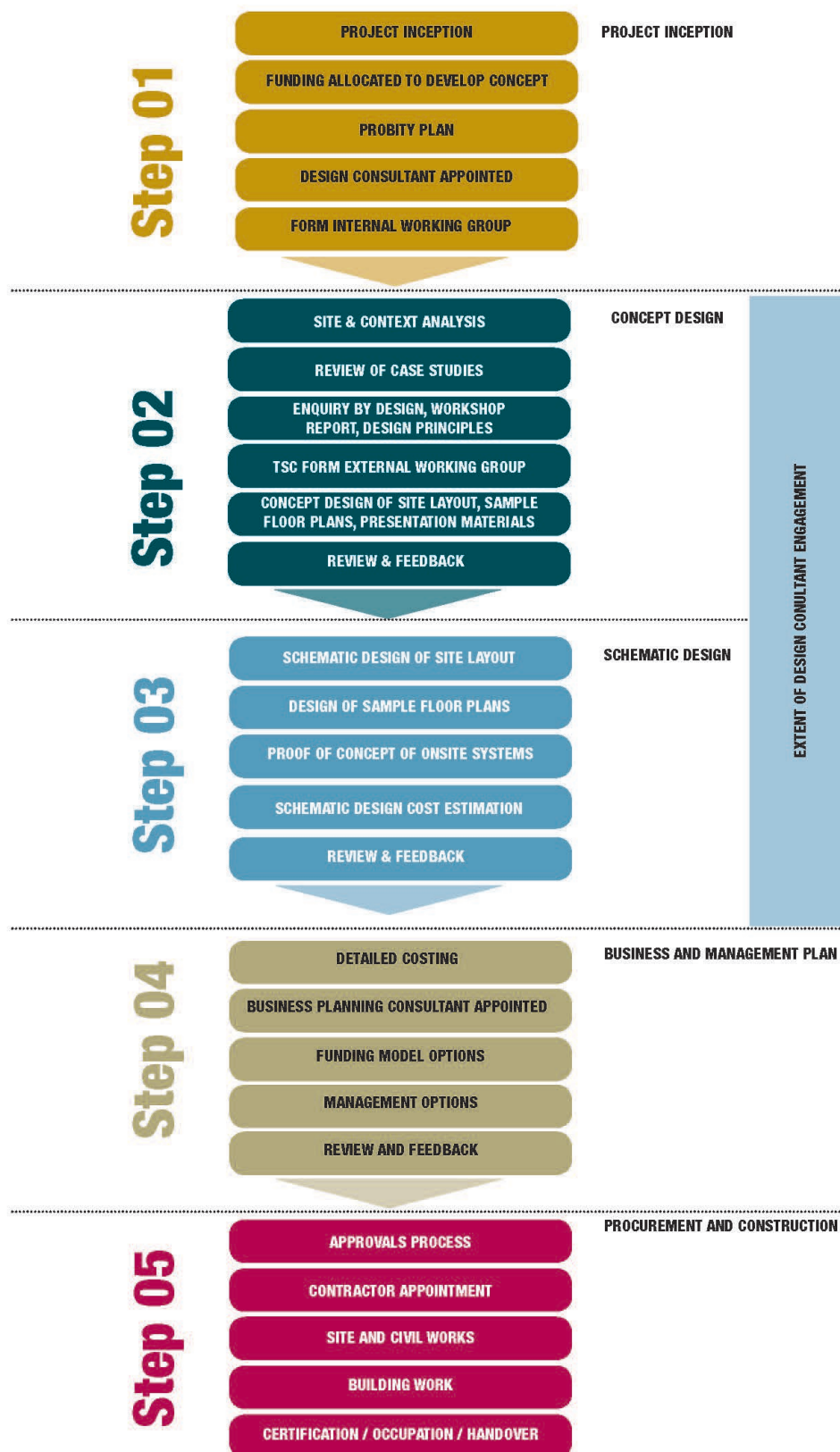


Figure 03 – Key Project Stages

Enquiry by Design Workshop

The Wardrop Valley Enquiry by Design Workshop was held on 23 August 2019 facilitated by design consultant Deicke Richards and attended by Tweed Shire Councillors, TSC officer's representatives who make up the Project Control Group and Project Delivery Group as defined within the projects probity plan. A full list of attendees is listed within the Outcomes Report.

The format of the workshop included a site visit by the workshop attendees to understand the context of the site including its undulating topography, vegetation cover, flood prone areas and site access opportunities. The site visit also afforded the opportunity to understand how the site relates to the existing Industry Central industrial estate and undeveloped lands the subject of a current planning proposal which is seeking to introduce a mixed use precinct and the extension of industrial uses which includes Council lands nominated for the industrial 'land swap'. The subject site with surrounding land use context is identified on Figure 01, above.

The briefing stage of the workshop included an overview of the project vision and concept by Councillor Cooper which included the following considerations:

- 100-200 modulated dwellings with a variety of building styles, sizes and colours;
- Off-grid sustainable design using green energy sources including solar power with battery backup;
- Communal horticultural space with opportunity for produce to be sold at markets;
- Community and public spaces with activities to foster sense of community and inclusion;
- Community facilities (Hall and/or workshops) managed by residents;
- Rainwater harvesting and reuse across the site;
- Compositing toilets and or On-site wastewater management; and
- Ability for modes of public transport to traverse the village.

In addition the design consultant team presented to the group on a range of site and design related issues including:

- Landscape and ecology;
- Integrated water management;
- Onsite wastewater management;
- Onsite energy solutions; and
- Small and affordable home case studies.

Each of the above presentations are summarised in the outcomes report.

Workshop attendees were divided into four facilitated groups based around four themes with the task of preparing an indicative concept plan and identify core planning and design principles. The four workshop group themes included:

- Productive Community;
- Connected Community;
- Sustainable Footprint; and
- Settlement Patterns.

Key discussions and findings for each of the workshop groups are summarised below.

Productive Community

The productive communities group explored the opportunities which may be available within the master plan to generate income and achieve a degree of economic as well as sustenance self-sufficiency. In doing so the group explored opportunities within farming, opportunities for 'production' of goods or produce on site, tourism as well as education and community programmes and events.

Central to the topic and theme of productive communities the group discussions centred around management and governance of not only the housing estate but also any economic activities which could be pursued on the site. Skill sharing for a variety of activities including self-build, offset planting, silviculture, cattle, recycling, eco-tourism, food production, maintenance and other commercial tech and arts pursuits were identified as clear opportunities. The group noted that given the relationship of occupants to the site, management and governance should be invested in the community of residents who live on the site rather than managed externally. In this regard looking at different tenure models including the options for residents to have a financial stake through investing or buying into the village, were explored.

The group felt that embedding diversity in terms of housing types as well as tenure arrangements would ensure the site would not become an isolated low income community was important. And through diversity there was opportunity for residents to be more connected physically, socially and economically to the Murwillumbah sub-region. As a stand-alone affordable housing proposal the group questioned the appropriateness of the sites location due to service proximity issues. Alternatively the group discussed other housing typologies such rural residential development which could be pursued across the site with profit generated to fund affordable housing project(s) elsewhere.

The groups sketch design nominated the higher ridges as development envelopes for housing, circulation, activity spaces with the lower areas being more suitable for food production.

Connected Community

One of the key challenges which the connected communities group addressed is the existing rural location of the site and its relative distance to travel to Murwillumbah being the region's main service centre. This was considered a key consideration given the likely future tenants of an affordable housing would require access to a range of support services.

The group considered future land use potential will be happening immediately surrounding the site with planning process in place for the business park, mixed use precinct, additional industrial land release as well as potentially another residential release area on the other side of the valley which would form cyclic relationship between Tweed Valley Way, Wardrop Valley Road and South Murwillumbah. So although the site is relatively disconnected now the area may be quite different in 5, 10, 20, 30 yrs.

Other key discussion points related to the opportunities for the site to connect with Murwillumbah noting opportunities for two-way relationship. Whilst Murwillumbah is the main service centre providing retail, commercial, social, education and employment opportunities to the surrounding region the subject site had the potential to offer back nature based open

space and recreation opportunities through walking and bike paths across its varied landscape. Achieving passive movement links towards South Murwillumbah would further assist with physical connectivity.

In consideration of these issues the concept design included retaining the more difficult land to build on as open space areas whilst seeking to include other surrounding sites (including privately owned land) as part of the overall settlement. The scheme also included a range of rural housing typologies including large lot residential for market which would in turn serve to offset costs of affordable housing.

Sustainable Footprint

The Sustainable Footprint group were challenged to explore what the ultimate sustainable community would look like on the site. In addition to also identify what the key environmental values are onsite and what measures or opportunities could be pursued to improve on these environmental values.

Given the site has a large portion of land deemed undevelopable due to the topographic constraints including slope and flooding the group saw opportunity to create stronger ecological connections through the site. This included new planted areas for Koala habitat and restored fresh water wetland areas for migratory birds. This was coupled with discussions around sustainable economic opportunities which included creating a food forest, growing turmeric and ginger, using flood prone areas for cultivating algae, producing hydrogen and creating compost.

In a more restrained approach the group nominated only one of the ridgelines for housing development allowing the other ridgelines to be used for regeneration and productive areas. In doing so this would also reduce the overall amount of road and cut and fill required across the site in general. The group recognised that the housing would need to be robust and designed to meet bushfire code standards. Suspended structural systems (post and beam) for houses were deployed rather than conventional slab on ground less suited to the sloping site.

The group also discussed a range of sustainable services to be integrated including off grid energy, water and waste water management. Rhizopods waste water system, permeable pavements, rainwater collection and grey water use all nominated as being achievable on the site.

Settlement Patterns

Where the connected communities group explored the sites relation to Murwillumbah more broadly, the settlement pattern group were challenged to explore connectivity across the site in relation to key contextual site opportunities and constraints.

The group discussed opportunities for active, community and public transportation with the design concept including a network of walking and cycle paths linking the different parts of the site as well as linking the site to areas outside of the site. The group also considered communal transportation in the form of community mini bus, small electric cars and ride/car share systems recognising potential financial constraints of future residents to own cars but also as a means to reduce vehicular dominance across the site by way of roads, driveways and garages.

The group also discussed environmental and sustainability initiatives as being central to the sites settlement pattern and development. This included opportunities for wetland restoration, retaining mature trees, vegetation regeneration, utilising natural land form for drainage and maximising potential for water sensitive urban design.

With a strong environmental and sustainability approach groups sketch included a landscape responsive siting of housing sites on the flatter ridge tops clustered around communal open space areas. The group indicated that housing could be a suspended prefabricated structural system reducing earthwork requirements utilising thermally responsive building materials. The sketch design nominated steeper land for reforestation and lower land for food production.

In terms of site access the group identified that a portion of land fronting Wardrop Valley Road to the immediate north, just outside of the defined site boundary but owned by Council presented the best opportunity. As the primary access to the site the group indicated that an area further south but also with access off Wardrop Valley Road provided opportunity for a more public interface including community facilities and workshops.

Outcomes Report and Design Principles

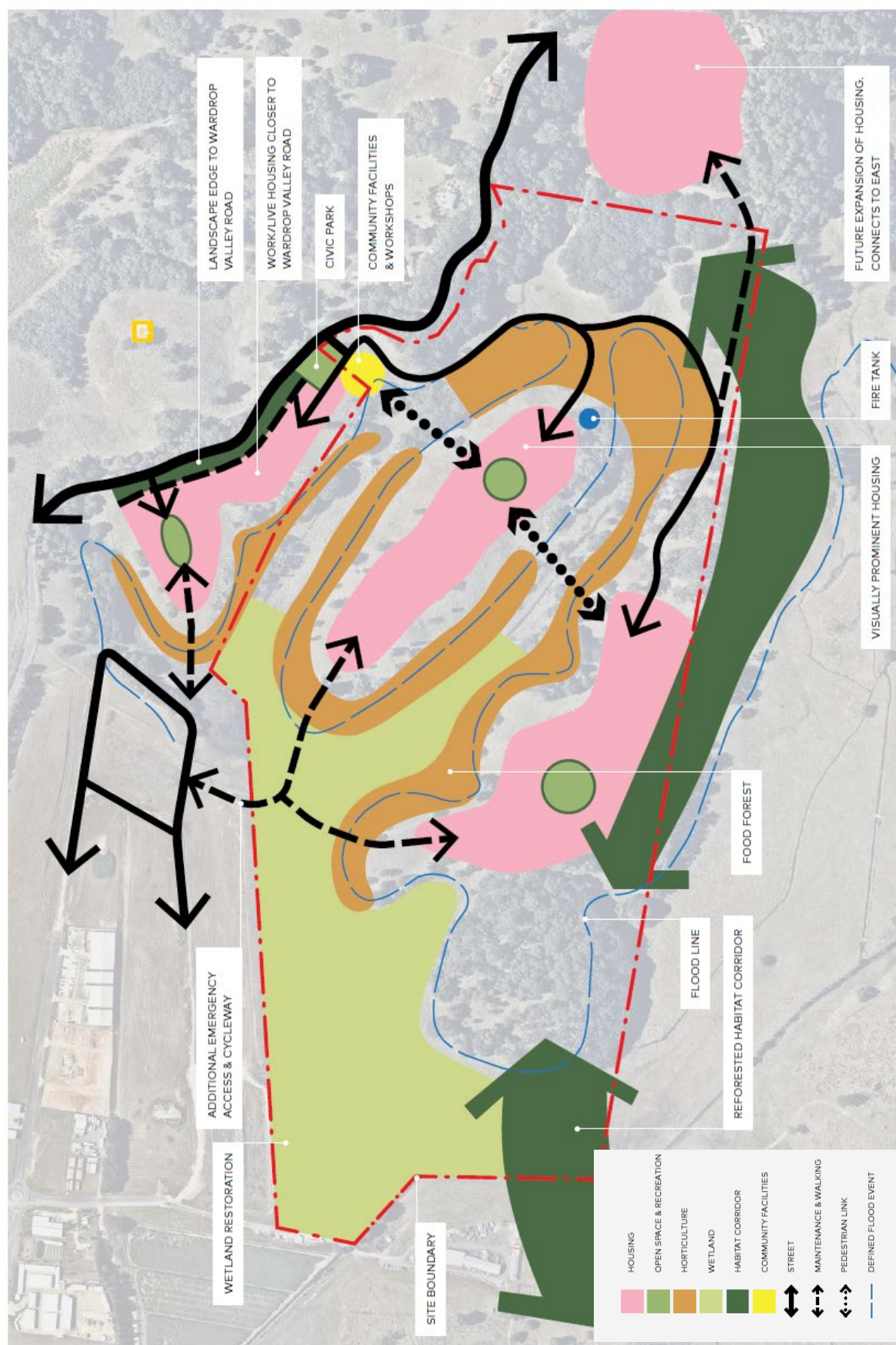
Following the enquiry by design workshop and analysis of workshop feedback, Council is now in receipt of the *outcomes report* as prepared by design consultants Deicke Richards. The intent of the report is to record the events and outcomes of the EbD workshop and importantly includes a series of summary design principles which would serve to guide the next concept and schematic design stages of the project.

The design principles as tabulated below represent the collaborative input of workshop attendees encapsulating the key and common ideas generated by the four workshop groups. Figure 03 is a diagrammatic representation of the design principles which also integrates the sketched outcomes and common themes of the four groups. Some of these common site design concepts including:

- All schemes respected the topography, vegetation and flooding areas;
- Access to the site difficult- road off Wardrop Valley Road;
- Internal access- loop road along ridges;
- Site boundary- three of four groups went beyond the site boundary to achieve connectivity through the site;
- Easiest place to build is on the 'additional' Council land off Wardrop Valley Road;
- All schemes used sloping land for agriculture;
- Flood areas used for regeneration;
- Housing off ridge line; and
- Off grid energy and water possible.

Design Principle	Comments
Innovation not experimentation	<ul style="list-style-type: none">- The community harnesses innovative principles to provide affordability, environmental custodianship and resilience for its residents.- Unproven principles are not harnessed when they have the potential to place residents at risk.
Community and Connection	<ul style="list-style-type: none">- Community facilities and activities support the sustainable housing community.

Design Principle	Comments
Affordability	<ul style="list-style-type: none"> - Community facilities / communal buildings which are funded and managed by the community for the community are highly visible on site and easily accessible by residents as well as visitors. - There are multiple points of connectivity to and within the site. - Connections support active transport including opportunities for car share, community transport, electric vehicles, passive movement including walking and cycling trails and emergency access. - Housing is affordable, compact, and resilient and touches the ground lightly. - Modular and relocatable housing models are supported within the community. - Housing diversity in type and size to meet varying resident and family needs and accessibility requirements. - House siting allows opportunities to extend as families grow. - Housing has good passive design and low running costs for occupants. - There are opportunities for creating income from home garden, home business.
Sustainability	<ul style="list-style-type: none"> - Energy is produced on site and includes a combination of solar and hydrogen. - Household water consumption is minimised and includes reduced water toilets. - Rainwater is collected and reused on site - Food is produced on site through a combination of horticulture, food forests and aquaculture. - Environmental values are enhanced through reforested habitat corridors, wetland restoration and erosion management.
Character	<ul style="list-style-type: none"> - The existing tranquil landscape character of the area is preserved and enhanced. - Housing character reflects the environmental and architectural values of the broader community.
Governance	<ul style="list-style-type: none"> - The community has a governance structure led by Council or a Not for Profit Organisation. - The community is managed through a community housing provider or co-operative. - Housing tenure supports sustainability and affordability objectives. There are opportunities for a mix of tenure including social rental, affordable rental, affordable home ownership (shared equity), market rental, short term rental.
Infrastructure	<ul style="list-style-type: none"> - In consideration of infrastructure cost efficiencies utilise existing or close proximity infrastructure connections where available including town water supply and a failsafe sewage connection. - Solar energy is produced and stored onsite.
Project delivery / buildability	<ul style="list-style-type: none"> - Project design and planning is fit for purpose. - Project concept to be fully costed. - Cost neutral to Council. - Staging / sequence of development to achieve cost efficiency. - Minimise site works / waste. - Fit for purpose project and risk management.



Community Reference Group (CRG)

Given the Outcomes Report and design principles now establish a base level of site context information and design concepts it is now timely to initiate the establishment of a community reference group.

As identified within the project Probity Plan (August 2019) the formation of the CRG will act as the conduit for stakeholders feedback about the project through to the Project Delivery Team (PDT). It is the intent that the CRG would act as a 'think tank' drawing expertise from the community and related fields to discuss project ideas and concepts which would in turn in part inform the concept and schematic design stages of the project.

The project Probity Plan specifies that the CRG would comprise of no more than 12 members which would be selected following an advertised 'expression of interest' process.

Whilst not an empowered decision making authority, it is envisage that the CRG would comprise members that have demonstrated skills, expertise and experience in a related field to the project. The CRG could include but not be limited to community representatives, social service representatives, affordable housing provider representatives as well as various environmental, design and built environment professionals.

The Probity Plan establishes that the CRG meetings would be facilitated by Council's Communications Officer who would assist members elect a Chairperson at the first meeting of each group. Minutes of the CRG meetings would be recorded and reported to the PDT. The operational duration of the CRG would be throughout the concept and schematic design stages or any other time as directed by the Project Control Group (PCG).

OPTIONS:

Option 1 – Proceed with preparing a concept design over the current site and establishment of a Community Reference Group.

Option 2 – Proceed with preparing a concept design over the current site, but excluding the land the subject of Planning Proposal PP19/0002 and establishment of a Community Reference Group.

Option 3 – Defer consideration to seek further clarification on Council nominated issues.

Council officers recommend Option 1

CONCLUSION:

An enquiry by design workshop has interrogated the Wardrop Valley Small, Smart, Sustainable Housing site context, design opportunities and constraints which has culminated in the identification of a set of design principles now documented within the *Small, Smart, Sustainable Housing Village Workshop Outcomes Report*. It is the intent that the workshop outcome design principles will be used to inform the next stage of the project which is developing a concept design and following that stage a more detailed schematic design with preliminary costing.

The key design principles centre on innovation, community and connection, affordability, sustainability, character, governance, infrastructure and project delivery.

Now that a base level of site context information and design principles have been formulated it is now timely to initiate the establishment of a community reference group. The purpose of the community reference group would serve as a stakeholder think tank whose feedback would in part inform the development of the projects concept and schematic design stages. Facilitated by TSC staff it is envisaged that the community reference group would comprise a mix of community representatives, social service representatives, affordable housing provider representatives as well as various design and built environment professionals.

This report recommends proceeding with concept and schematic design stages design in alignment with the contracted scope of design services and the commencement of the process to establish the community reference group.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

A lump sum contract of \$80,476.00 (inclusive of GST) has been awarded to Deicke Richards Pty Ltd to progress the Small, Smart, Sustainable Housing Village Proposal to concept and schematic design stages which will include a preliminary project costing of the preferred design. The production of this *Small, Smart, Sustainable Housing Village Workshop Outcomes Report* forms part of the commissioned scope of work.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.	Small, Smart, Sustainable Housing Village Workshop Outcomes Report (ECM 6148002)
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11 [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 November 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.
