

# NOTICE OF MEETING

Notice is hereby given that a meeting of

**MidCoast**Council

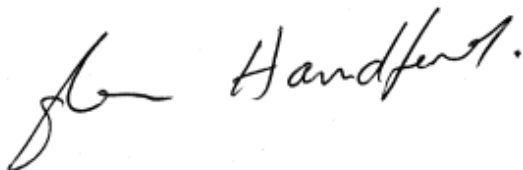
## DEVELOPMENT CONTROL UNIT

**Will be held at the Administration Centre, 4 Breese Parade, Forster**

**29 MARCH 2017 AT 2.00PM**

The order of the business will be as detailed below (subject to variation by Council)

1. Declaration of Pecuniary or Conflicts of Interest (nature of Interest to be Disclosed)
2. Apologies
3. Confirmation of Minutes
4. Matters Arising from Minutes
5. Address from the Public Gallery
6. Matters for Information
7. Close of Meeting



**Glenn Handford**  
**INTERIM GENERAL MANAGER**

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**CONSIDERATION OF OFFICERS' REPORTS:**

**DIRECTOR PLANNING & NATURAL SYSTEMS**

**1 DA 2014-2326-03- SEC 96 MODIFICATION - CHANGE CONDITIONS FOR EXISTING LIME MINE**

**Report Author** Aaron Kelly, Urban and Regional Planner

**File No. / ECM Index** DA 2014/2326/03

**Date of Meeting** 29 March 2017

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**DETAILS**

Date Received: 23 August 2016

Applicant: Martin's Lime Pty Ltd

Owner: Martin's Lime Pty Ltd

Land: Mereweather Lane, Tugrabakh  
Lot 29 DP 1039045 (Mining Lease 1584)

Mining Lease Area: 16.75m<sup>2</sup>

Zoning: RU1 Primary Production (GLEP 2010)

**SUMMARY OF REPORT**

1. Existing Operational 30,000 tonne extraction limit lime mine approved by Consent Order in the Land and Environment Court following mediation and agreement;
2. Two (2) previous Applications to Modify the Development Consent approved further extending operational period;
3. A further application has been made to modify the consent (the subject of this report). The application seeks a two (2) year extension to the operating period, an extension to operating days and hours and an increase in the number of haulage trucks permitted;
4. Three (3) Submissions received;
5. Issues relating to number of truck movements, condition and capacity of existing haulage route, impact on residential amenity and previous Court sanctioned requirements.

**SUMMARY OF RECOMMENDATION**

That approval be granted to modify the consent subject to condition.

**FINANCIAL/RESOURCE IMPLICATIONS**

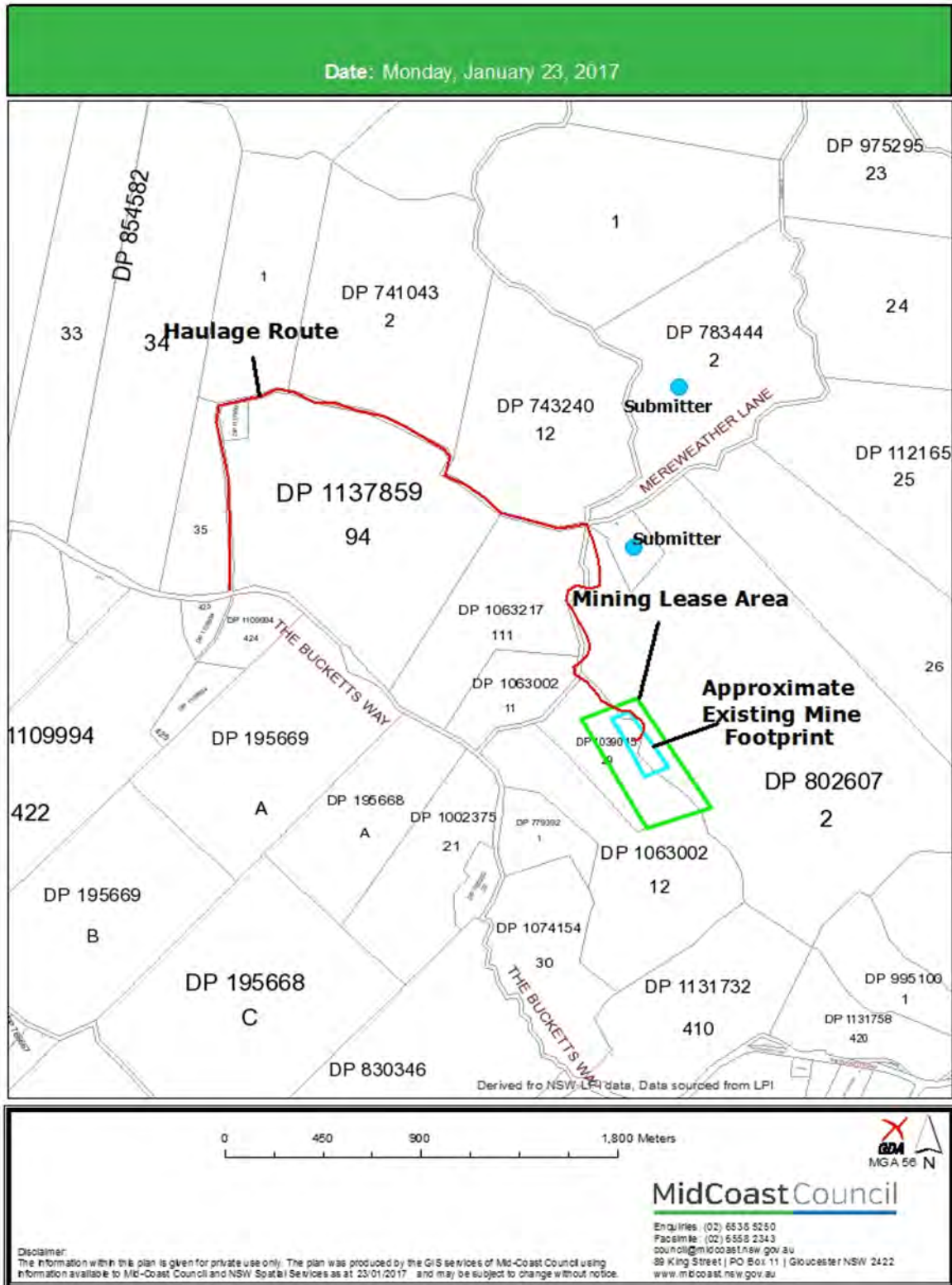
Any Land and Environment Court appeal has inherent cost and resource implications.

**LEGAL IMPLICATIONS**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court.

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# SUBJECT SITE AND LOCALITY



## BACKGROUND

### *Land and Environment Court Consent Order 2004*

The mine was initially granted approval through the Land and Environment Court by way of Consent Orders dated 2 April 2004. The Mine was restricted to the excavation, crushing and grinding of limestone product to 150 tonnes per day or 30,000 tonnes per year. A copy of the original consent is attached as Annexure A.

The primary notable feature of The Consent Order in 2004 was that it was approved subject to a Court Mediation between Council, the original Developer and the Appellants for the project. This mediation resulted in an agreement dated 15 September 2003. This agreement, among other stipulations, required that:

- A residents consultative committee (RCC) to be established;
- The following Conditions be included as part of the approval for the first 12 months of operation of the mine:
  - “2. *Hours of operation to be confined to 7am to 5pm Monday to Friday and 9am to 12 noon on Saturdays for minor maintenance only. No maintenance can be carried out on Sundays or on Public Holidays.*”
  - “3. *Haulage truck movements are not to exceed five (5) truck movements per day Monday to Friday. If any truck movement is required on a Saturday, then the proponent will obtain the prior consent from a representative of the Residents Of Mereweather Lane. No truck movements are permissible on Sundays or Public Holidays.*”
- The newly formed RCC, after a period of 12 months, had the sole right to reject any application to vary Conditions 2 and 3 above;
- A provision for the proponents obligations for land acquisition if required;

The ROC has since been dissolved with many of the ROC members having left the area. The mine operator had been in discussion with the ROC up until 2010 when attendance to meetings ceased and new owners moved into the area. Despite such, fair communication still exists with new residents.

### *Modification of Development Consent (1)*

The consent was modified by Gloucester Shire Council on 12 May 2014, by extending the operating period to 12 May 2015.

### *Modification of Development Consent (2)*

The consent was further modified by Gloucester Shire Council on 5 May 2015, by extending the operating period to 12 May 2017. Condition 9 of the consent was also modified by substituting reference to the ROC with reference to Gloucester Shire Council, to read as follows:

- ‘9. *Haulage Truck Movements are not to exceed five (5) truck movements per day Monday to Friday. If any truck movement is required on a Saturday, then the proponent will obtain the prior consent of Gloucester Shire Council. No truck movements are permissible on Sundays or Public Holidays.*

## PROPOSAL

This is an Application to further modify the Development Consent by seeking the following:

- An amendment to Condition 7 to permit further extension of Lime Mining Operations to 12 May 2019.

The Applicant cites the reasons for the modification is to allow the continued operation of lime mine activities while an Environmental Impact Statement (EIS) is prepared to support a future application for increased extraction and production limits.

- An amendment to Condition 8 of the Consent to extend operating days and hours to 6:30am to 5:30 pm Monday to Saturday. Condition No 8 as it currently reads is as follows:

*'8. Hours of operation to be confined to 7am to 5pm Monday to Friday and 9am to 12 noon on Saturdays for minor maintenance only. No maintenance can be carried out on Sundays or on Public Holidays.'*

The Applicant has stated that the current operational hours are restrictive to production and that a minor increase would have minimal impacts. The Applicant also argues that a 6:30am commencement time would not specifically involve excavation or crushing and would instead allow preparation for work to commence any given day at earlier times.

- An amendment to Condition 3 of the Consent to increase truck movements to a maximum of 75 movements per week. Condition 9 as it currently reads is as follows:

*'9. Haulage truck movements are not to exceed five (5) truck movements per day Monday to Friday. If any truck movement is required on a Saturday, then the proponent will obtain the prior consent of Gloucester Shire Council. No truck movements are permissible on Sundays or Public Holidays.'*

The Applicant has stated that the restriction of the current amount of heavy vehicle movements restricts the capacity of the mine to supply large quantities of road base and other materials for orders that need to be supplied in short periods of time and that by increasing this heavy vehicle movement limit these demands can be met.

## **SITE DESCRIPTION**

The subject site is an existing Mining Lease located over two (2) existing properties located some 10 kilometres from the Gloucester township between Mereweather Lane and the Bucketts Way North, Tugrahakh. Both of these existing lots also have a frontage to an unnamed and unformed road. The lease area over the site comprises an area of approximately 16.75 hectares the majority of which is heavily forested.

Currently over the lease area is an operating lime mine that been in operation since 2005. The lime extracted from the site is used for range of purposes including for construction and agricultural activities with overburden material for road base as secondary output to the primary lime mining. A number of buildings and mining based machinery have been established on the site including lime storage sheds, site office and amenities, refiners, crushing equipment and extraction vehicles.

The existing lime mine gains access to a private road off the nearby termination (end of Council maintained section) of Mereweather Lane. To this end, the haulage route for lime trucks is along Mereweather Lane gaining access to the Bucketts Way North for distribution.

## **REPORT**

The following matters are listed under Section 96 (1A) of the Environmental Planning and Assessment Act, 1979, as relevant in considering this application:

## **Section 96(1A) Environmental Planning and Assessment Act 1979**

For a Section 96(1A) modification of consent, Council must:

- a) Be satisfied that the proposed modification is of minimal environmental impact;
- b) Be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all); and
- c) Notify 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) Consider any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be;
- e) Consider such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

### ***Minimal Environmental Impact***

It is considered that the impacts resulting from any proposed modification to the consent will have minimal environmental impact. In supporting information submitted with the application the Applicant has stated that:

- The proposed modifications are only administrative and will not change the existing mining operations or capacity of the approved mine;
- The proposed development is substantially the same development as the development for which the consent was originally granted;
- The lime mine is currently operational with 6-8 employees and contractors.

Crucially, the production limits of the mine, a maximum of 30,000 tonnes per year or 150 tonnes per day will not be increased as part of this application to modify the Development Consent.

It is agreed that this Application to Modify the Development Consent meets the definition of a Section 96(1A) modification of consent for minimal environmental impact.

### ***Consistency of Development with Previous Approval***

It is considered that the proposed modifications propose a development substantially the same as the development for which consent was originally granted.

### ***Section 79C Considerations***

#### *Currency Period*

The Applicant seeks that the Currency Period of the approval be extended to 12 May 2019. The currency period has previously been modified on two separate occasions, with the operations currently approved up until 12 May 2017.

A site audit was conducted on 6 September 2016 with the intent of examining the current compliance and performance with the Conditions of the Court Order Development Consent and the various modifications made to the Consent. The existing lime mine was found to be operating satisfactorily in accordance with the consent

It is considered that the proposal to extend the operational period of the mine to 12 May 2019 is acceptable. The mine is currently operating with the proposed limits with acceptable impacts to surrounding residences.

### *Operating Hours and Days*

The Applicant seeks an amendment to the current Condition restricting operating hours and days and proposes hours of operation be 6:30am to 5:30pm Monday – Saturday.

Condition 8 was formed following Court mediation between Council, the original developer of the mine and the Appellant (Residents of Mereweather Lane) by agreement reached 15 September 2003, and currently reads as follows:

*“8. Hours of operation to be confined to 7am to 5pm Monday to Friday and 9am to 12 noon on Saturdays for minor maintenance only. No maintenance can be carried out on Sundays or on Public Holidays.”*

It is considered that the extension of operating times and days for excavation, crushing and grinding will have some impact on adjoining properties. The original approval identified that adjoining residents will be impacted upon and restriction on operating hours was agreed as a way of mitigating these impacts. The application to modify the consent has not provided adequate justification that the increase in operating hours will not adversely impact upon the amenity of adjoining residents and as such the increase in operating hours is not supported.

### *Truck Movements*

The Applicant seeks an amendment to the current Condition restricting truck movements to five (5) truck movements per day as well as a restriction of these movements on Saturdays.

Condition 9 of the consent was formed following Court mediation between Council, the original developer of the mine and the Appellant (Residents of Mereweather Lane) by agreement reached 15 September 2003. The condition originally read as follows:

*‘9. Haulage truck movements are not to exceed five (5) truck movements per day Monday to Friday. If any truck movement is required on a Saturday, then the proponent will obtain the prior consent from a representative of the Residents Of Mereweather Lane. No truck movements are permissible on Sundays or Public Holidays.’*

The Condition has since been modified and currently reads as follows:

*‘9. Haulage truck movements are not to exceed five (5) truck movements per day Monday to Friday. If any truck movement is required on a Saturday, then the proponent will obtain the prior consent of Gloucester Shire Council. No truck movements are permissible on Sundays or Public Holidays.’*

The Applicant seeks to further modify this condition to allow up to 75 truck movements Monday - Saturday.

The following justification has been provided by the applicant:

- The request to change the Condition to reflect the number of truck movements restricted on a weekly basis allows more flexibility for the mine operator to deliver large bulk quantities of material to meet demand quickly. As a result for example, there may be a large number of truck movements in three (3) days and limited to no truck movements in the next three (3) days;
- Maintaining a constant level of 75 truck movements per week from the lime mine is not technically feasible due to the lime mines restriction in tonnage output. For example, if the lime mine operated at 75 truck movements per week for a period of one (1) month the permitted extraction limit of 30,00 tonnes per year would be exhausted and the mine would not be permitted to extract more material;



- Mereweather Lane has previously been upgraded by the lime mine owners / operators as a consequence of utilizing Mereweather Lane as a haulage route;
- That as a result of the above that traffic safety would not be compromised if the number of truck movements per day/week were to be increased.

The haulage route to the lime mine gains access to The Bucketts Way North via a 2.8 kilometre section of Mereweather Lane. From Mereweather Lane a formed but unsealed private road with a length of approximately 1.5 kilometers gains access to the lime mine. Mereweather Lane also provides access to a number of rural dwellings.

The original consent required extensive upgrades to Merewether Lane which included:

- Road pavement sealing of Mereweather Lane for the full length of the haul route kilometers to the lime mine private road entrance;
- The replacement of a timber bridge with a concrete bridge located approximately one (1) kilometer from the Bucketts Way North and Mereweather Lane intersection;
- Road widening of the Bucketts Way North and Mereweather Lane intersection to cater for a type BAR standard (Basic right-turn treatment).

As a result of the above works Merriweather Lane currently has a minimum six (6) metre wide sealed pavement with sufficient space for two (2) way traffic including articulated vehicles.

A site inspection of the road conditions, particularly as it relates to Traffic Safety was carried out by Council's Engineering officers on 19 January 2017. It was determined that Mereweather Lane is in good condition and that the width of the road is sufficient to allow the passing of traffic.

It is considered that an increase in truck movements from what is essentially twenty-five (25) movements per week (based on 5 movements per day over 5 days of operation to seventy-five (75) per week with a 6 day operating period is a significant increase in truck movements.

This increase can be accommodated within the exiting design capacity of the road, however the increase in truck movements has the potential to impact on safety and the amenity of residents within the vicinity.

Mereweather Lane has a number of sharp bends and steep grades and it is considered for safety reasons that any significant increase in truck movements should only be permitted if the speed limit is reduced to 40 kp/h, however Council does not have the authority to vary speed limits.

The original EIS for the quarry also provided that 40 kp/h speed restrictions should be implemented in front of residences, to mitigate impacts associated with truck movements.

It is considered that the application to modify the consent does not provide justification to demonstrate that an increase in truck movements will not exacerbate noise and safety concerns. As such any increase in truck movements is not supported.

### ***Any Submissions Made in Accordance with the Act or Regulations***

A total of three (3) submissions were received as a result of Notification of the proposed Modification to the Development Consent, all which were from residents and/or landowners in Mereweather Lane.

One (1) such submission was in support of the Application and provided no objection to any part of the Application to Modify the Development Consent.

Two (2) of the submissions however were primarily concerned with the proposed Modification to operating days and hours and restriction of truck movements.

Whilst the Submitters do not necessarily have an objection to the increase in mine operating days as it relates to extraction or processing, it is the haulage of trucks on a Saturday along the haul route of Mereweather Lane that is of the most concern. Of note, both of these submissions agree to an extension of the operational period for the existing lime mine.

#### *Grounds of Submissions*

The submitters offer the following arguments objecting to extension of operating days to a Saturday:

a) Effect on residential amenity of increased truck movements and operations on a Saturday

The submitters argue that the predominant rural-residential amenity will be affected resulting in de-valuing of property in the area.

b) Traffic Safety Additional traffic on Mereweather Lane during public holidays

The submitters argue that Mereweather Lane is utilised by much more than local residents and traffic associated with the lime mine and that additional traffic occurs predominantly in holiday periods with tourists to experience views toward the top of Mereweather Lane and campers who camp on properties accessible from Mereweather Lane.

The submitters argue that Mereweather Lane is not a haul route and is unsafe for all road users with such a potential increase in truck movements stating that the road is too steep and not wide enough in certain sections to allow passing of traffic. The submitters indicate that it has been necessary for vehicles to reverse to allow sufficient passing of traffic. A submitter indicates a better option for haulage would be a separate route from the mine site directly south onto Bucketts Way North.

c) The approval of the Application and Council agreeing to modify conditions will create a precedent for an on-going EIS assessment.

The submitters also argue that by creating precedent with extended operating hours and increased haulage trucks that this proposal undermines EIS process where a significant facet of the development has been already agreed to.

The submitters offer the following arguments objecting to increase in truck movements to 75 trucks per week:

d) Noise

The submitters argue the increased noise resulting from the increase in the number of haulage trucks will be of a concern particularly due to steep inclines and declines along Mereweather Road requiring the use of exhaust brakes and empty trailers on the degraded Mereweather lane pavement.

e) The submitters argue that the current level of haulage trucks have caused significant damage to the road pavement in Mereweather Lane and that an increase in trucks will exacerbate this issue citing the requirement for trucks to change speed on inclines and declines in addition to edge pavements used when passing vehicles as current problems causing pavement damage.

- f) The submitters also argue that the expansion of operations of the current mine will cause other issues having serious impacts on the environment and residential amenity such as:
- Lime dust impacts from heavy vehicles and increased production;
  - Fugitive lime dust impacting drinking (tank) water;
  - Effects of blasting (residue, noise and vibration);
  - Effects on natural waterways and groundwater quality;
  - Effects on native flora and fauna;
  - Dust and noise pollution;

The submitters argue that the following Conditions are agreed to as part the request to modify Conditions:

- A. Agree to extend the operational approval of the mine to 12 May 2019.
- B. Operating hours remain on Monday to Friday in accord with current operating hours with special conditions applying to Saturday operations as follows:  
The mine may request special permission, for short term operation on Saturdays only, with the consent of Council and residents of Mereweather Lane. Council and residents are to be notified at least 48 hours prior to the request of any such operation. (By phone is sufficient)
- C. The number of haulage trucks may increase from 25 to 30 only, to allow the viable operation of the Lime Mine.  
The mine may request special permission, with the consent of Council and the residents of Mereweather Lane, to increase the number of truck movements to 40 per week. (By phone is sufficient)

#### *Response to Submissions*

##### a) Residential Amenity

It is partly agreed with the Submitters that the movement of trucks on days whereby there previously movements were not permitted will cause an undue increase in the potential to affect amenity as it relates to truck noise and traffic.

##### b) Traffic Safety

The response to traffic safety has been dealt with elsewhere in this report. It is considered that Mereweather Lane has been designated as a haulage route for the purposes of the lime mine. Council's inspections of Mereweather Lane observed suitable road conditions both in terms of road width and pavement, however for safety reasons, there should be no significant increase in truck movements.

##### c) EIS preparation

The operators of the mine have advised that a future application will be submitted to increase the production capacity of the mine. The increase in operations will result in the development being classified as designated development. An EIS will need to be prepared in support of any such application.

It is agreed that any increase in operating hours and truck movements will impact on baseline considerations for preparation of an EIS.

##### d) Noise

It is agreed with the Submitters that the increase to truck movements has the potential to create additional unwarranted noise impacts to dwellings along Mereweather Lane.

e) Road pavement

Inspections carried out by Council officers have revealed that Mereweather Lane is in good condition having been constructed of suitable pavement depth and standards to cater for the lime mine of which Mereweather Lane was constructed by the original developer from an unsealed gravel road.

f) Mine upgrade environmental considerations

It is considered that any future impacts of any proposed upgrade to the lime mine will be thoroughly considered by Council and numerous state agencies as part of the Designated Development and EIS process.

*Summary*

It is considered that the Submissions made in relation to this request to modify the conditions of the lime mine have some merit particularly as it relates to operating hours / days and an increase in truck movements. Of note, it is considered the original Consent Order, brokered by an agreement between the original Appellant's to the Application (the Residents of Mereweather Lane) cannot be ignored and that the agreement limiting truck movements and operating days was crucial in forming the consent.

The submissions received in relation to the Application generally prove to Council that concern due to operation of the lime mine and movement of trucks and operations resulting in the interference to residential amenity is still a major factor for Council to consider as part of any request to modify conditions.

**RECOMMENDATION**

It is recommended that the Section 96(1A) modification of the consent to DA 2014/2326-03 seeking modification of conditions of consent for an existing lime mine at Mereweather Lane, Tugrabakh (Lot 2 DP 1039045 and Lot 29 DP 802607) (Mining Lease 1584) be granted in the following manner;

1. Amending condition No.7 to read as follows:

*'7. The period during which the development may be carried out is limited to 12 May 2019.'*

## ANNEXURES

A: Copy of original consent.

### DEVELOPMENT APPLICATION No. 2003/593 – SCHEDULE OF CONDITIONS

Deferred Commencement Consent – This consent is issued pursuant to clause 80(3) of the Act. The consent shall not operate until the applicant satisfies Council, in accordance with the regulations, as to the matters specified in Conditions 1, 2 & 3. Sufficient evidence for this purpose must be lodged with Council within twelve (12) months of the date of this notification. This consent does not operate until these conditions have been fulfilled and Council has issued written notice to this effect.

1. ON SITE SEWAGE MANAGEMENT – The applicant shall provide details and gain approval from Council for an on-site sewage management system systems for the proposed development or equivalent.
2. ENVIRONMENTAL MANAGEMENT PLAN – The applicant shall provide an Environmental Management Plan (EMP) prepared by a person with suitable environmental qualifications. The EMP shall be reviewed and shall detail, though not be limited to, the following:
  - x i. firm extraction and rehabilitation schedules and procedures supported by detailed plans;
  - ✓ ii. topsoil handling guidelines;
  - x iii. detailed sediment and erosion control measures;
  - x iv. dust management, including the installation of first-flush systems on water storage tanks on existing dwellings that may be affected by dust from mining or transportation operations;
  - ✓ v. weed management;
  - x vi. fuel and oil management;
  - x vii. noise and vibration mitigation controls demonstrating that mining and transportation operations can be carried out in compliance with relevant guidelines published by the NSW Environment Protection Authority, including details of proposed regular monitoring and reporting procedures;
  - x viii. blasting management;
  - ix. incident management procedures;
  - x x. traffic management plan;
  - ✓ xi. environmental target and requirements;
  - ✓ xii. archaeological issues and management;
  - ✓ xiii. bushfire management and control;
  - ✓ xiv. weed removal and rainforest vegetation strategy
  - xv. water balance;
  - xvi. final landforms and rehabilitation plan;
  - xvii. truck wheel wash bay;
  - xviii. waste management; and
  - xix. vegetation establishment and maintenance plan

This plan shall be submitted to, and approved, by Council.

3. VIBRATION AND BLASTING IMPACTS – The applicant shall provide relevant structural certificates, from a suitably qualified engineer, to illustrate the existing structural condition of nearby dwellings that may be affected by blasting. The report is also to include the dwelling at 139 Mereweather Lane, which may be affected by vibration from haulage truck movements. The report should

assess the likely impact of blasting and vibration on those dwellings and whether blasting can be carried out within accepted environmental standards. The EMP shall include details of proposed regular monitoring and reporting of the structural condition of the affected dwellings.

4. The proposed development is to be carried out strictly in accordance with the details contained within the Environmental Impact Statement, dated 10 March 2003 prepared by Barrington Lime Pty. Ltd. submitted with the application, additional information provided to Council and any amendments arising through conditions to this consent.

\* ensure  
this is done

5. It is the applicant's responsibility and or operator's responsibility to advise Council prior to commencement of operations under this consent. The site will be inspected to ensure that all essential preliminary works have been completed.

6. The applicant shall meet the requirements of all public authorities having statutory responsibilities in respect of the proposed development. Prior to the commencement of any works forming part of, or preparatory to, the development, the applicant shall obtain and furnish copies of all statutory approvals granted by other authorities under any environmental protection legislation to Council. Copies of revised or new approvals are also to be furnished to Council throughout the life of the development.

7. This development consent is limited to a period of 10 years from the date of determination of this consent. Any extension to this time period is subject to further approval of Council.

No Haulage

8. Hours of operation to be confined to 7am to 5pm Monday to Friday and 9am to 12 noon on Saturdays for minor maintenance only. No maintenance can be carried out on Sundays or on Public Holidays.

9. Haulage truck movements are not to exceed five (5) truck movements per day, Monday to Friday. If any truck movement is required on a Saturday, then the proponent will obtain the prior consent from a representative of the Residents of Mereweather Lane. No truck movements are permissible on Sundays or Public Holidays.

10. The queuing of haulage trucks on Mereweather Lane prior to the approved hours of operation is prohibited.

11. A suitable sign must be erected at the entrance to the subject land clearly describing opening hours. The sign shall include details of the telephone complaints number of Council and the Environmental Protection Authority.

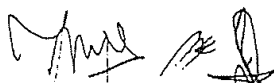
12. At least one month prior to commencement of each blasting activity, the applicant shall furnish to Council, the Department of Infrastructure, Planning and Natural Resources, the NSW Environmental Protection Authority, and the Department of Mineral Resources for their consideration one (1) copy each of the Environmental Management Plan and any amendments thereof.

13. A construction certificate is to be obtained prior to commencing construction works. The construction certificate application is to include detailed plans and specifications for the construction of the premises, road works and the like.
14. Detail plans and specifications showing full compliance with the Building Code of Australia shall accompany the Construction Certificate Application. A Construction Certificate shall be issued prior to the commencement of construction.
15. The issue of Compliance Certificates for the following matters or stages of construction (where applicable):
  - (i) when steel is in place and before concrete is poured (footings, slabs, beams, etc);
  - (ii) when pier holes have been excavated and before pouring concrete or the positioning of timber or steel poles/piles;
  - (iii) when framework is completed prior to covering;
  - (iv) when all plumbing has been installed prior to covering;
  - (v) when sewer drainage lines have been laid and prior to covering;
  - (vi) when all wet area flashing has been installed prior to covering;
  - (vii) when the building has been completed and before occupation.
16. All aspects of the building design shall comply with the applicable performance requirements of the BCA for a Class 10A building so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the ongoing benefit of the community. Compliance with the performance requirements can only be achieved by:
  - (i) complying with the deemed to satisfy provisions; or
  - (ii) formulating an alternate solution which:
    - a. complies with the performance requirements, or
    - b. is shown to be at least equivalent to the deemed to satisfy provision, or a combination of a) or b).
17. Upon completion of the building BUT prior to its occupation, a Final Fire Safety Certificate with respect to each critical and essential fire safety measure installed in the building is to be provided. Such certificate(s) are to be in accordance with Division 4 of Schedule 1 of the Environmental Planning and Assessment Regulation, 1994.
18. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
19. 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.
20. All site operations are to be under the control of a site manager whose duties shall include:
  - (i) Control of all persons/employees on the site;
  - (ii) The implementation and oversight of the conditions of this approval and any approval issued by a statutory authority or government agency.



The site manager is to be familiar with all approvals and conditions and is to retain on-site for inspection, a copy of all current approvals, the Environmental Management Plan (including earlier versions) and the Annual Reviews.

21. Prior to commencement of construction, the applicant shall appoint a Principal Certifying Authority, notify Council of the appointment and provide Council with at least 2 days notice of intention to commence.
22. Where the proposed development involves the disturbance or destruction of any existing survey monuments, those monuments affected will need to be relocated by a Surveyor registered under the Surveyors Act. A plan showing the relocated marks must then be lodged as a matter of public record at the Lands Title Office.
- \* 23. Compliance with the following requirements of the Commonwealth Department under the Environment Protection and Biodiversity Conservation Act 1999, viz:
  - (i) All *Cynanchum elegans* seedlings found within the proposed area of disturbance will be translocated to an appropriate position within the dry rainforest on the property;
  - (ii) Vegetative propagation material will be collected from every *Cynanchum elegans* sub-population to be removed from the proposed area of disturbance for propagating and when grown to a suitable stage will be replanted to appropriate positions within the dry rainforest on the property;
  - (iii) An ongoing weed removal and rainforest vegetation strategy will be implemented;
  - (iv) No hazard reduction burning will take place without prior consultation with an appropriately qualified officer of the NSW National Parks and Wildlife Service;
  - (v) Prior to quarry operations commencing, boundary fencing will be completed to exclude cattle from the dry rainforest vegetation, which provides habitat for the *Cynanchum elegans* population;
  - (vi) No dumping of rubbish or other waste material will occur in remnant rainforest;
  - (vii) No roads or tracks will be constructed into remnant rainforest.
24. Compliance with the following requirements of the NSW Roads and Traffic Authority, viz:
  - (i) The number of truck movements per day shall be capped at a maximum of four (4) vehicle movements per direction per day. This requirement is to be confirmed in a mine management plan and appropriate mechanisms put in place for monitoring the number of trips per day.
  - (ii) The intersection of the Bucketts Way and Mereweather Lane is to be designed constructed as a RTA Type BAR standard, to Council requirements for a 100kph design speed or the 85<sup>th</sup> percentile speed, whichever is greater. The westbound shoulder shall be 3.0 metres wide. Left turn in left turn out movements shall be designed to ensure that the design vehicle (27 tonne trucks) can turn into and out off Mereweather Lane without encroaching into the westbound lane. Sight distance at the intersection shall be in accordance with RTA/Austrroads standards.
  - (iii) Mereweather Lane shall be reconstructed and sealed from the Bucketts Way to past the three residences and on grades in excess of 12%. The





horizontal road alignments shall be improved where necessary. The seal shall be 5.5 metres wide with 1.5 metre gravel shoulders. All works shall be designed constructed to Council requirements.

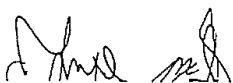
- (iv) All bridge drainage structures are to be reconstructed to meet appropriate loading standards to Council requirements.
- (v) Signs, line marking and traffic control devices shall be installed to appropriate standards and Council requirements. This shall include truck-turning signs on the Bucketts Way.
- (vi) Access to the site from Mereweather Lane shall be designed constructed to Council requirements.

Note: The RTA has advised that the conditions of development consent set by Council do not guarantee the RTA's final consent to the specific road work, traffic control facilities and other structures on the classified road network.

- 25. Compliance with the following requirements of the WorkCover Authority, viz:
  - (i) All work to be carried out in accordance with the Occupational Health and Safety Act, 1983 and any other relevant legislation.
- 26. Compliance with the following requirements of the NSW National Parks & Wildlife Service (NPWS), viz:
  - (i) A representative of the Forster Local Aboriginal Land Council be engaged to monitor all excavation works in this area and clearing works in the quarry area;
  - (ii) Should any aboriginal artefact be uncovered during excavation, then work in the vicinity shall cease immediately and the NSW NPWS be notified;
  - (iii) Any approval to proceed with the works would then require a license issued under Section 90 of the National Parks & Wildlife Act 1974;
- 27. Compliance with the following requirements of the Environment Protection Authority, viz:
  - (i) Excavation, crushing and grinding of limestone product shall not exceed 150 tonnes per day or 30,000 tonnes per year. Any proposal to exceed these thresholds will require a new development application and licensing under the Protection of the Environment Operations Act 1997.
- 28. Compliance with the following requirements of the Department of Infrastructure, Planning and Natural Resources, viz:
  - (i) No harvesting of water is permitted from any on-site structure unless it falls below the Maximum Harvestable Right Dam Capacity (MHRDC) for the site, and is not located on a river, as defined in the Water Act, 1912. The landowner must present evidence that any such harvesting occurs only from dams that fall below the MHRDC and are harvestable rights dams.
- 29. The applicant shall obtain a permit from the Department of Infrastructure, Planning and Natural Resources under Part 3A of the Rivers and Foreshores Improvement Act 1948. The General Terms of Approval for this permit, as advised to Council on 6 July 2003 (Department of Infrastructure, Planning and Natural Resources, 2 July 2003 Ref: ER4352), are attached and form part of this consent.

30. Compliance with the following requirements of the Department of Mineral Resources, viz:
- (i) The operator shall provide annual production data as requested by the Department of Mineral Resources in the manner required on the standard form supplied for that purpose.
31. The recommendations of the Flora and Fauna Impact Assessment, prepared by Natural Impact Ecological Solutions dated February 2003 be implemented by the applicant, viz:
- (i) There will be no damage to the *Cynanchum elegans* population, other than those sub-populations to be removed from the proposed area of disturbance, identified in Figure 7 and Table 15 of this report;
  - (ii) Translocation of seedlings and propagation from vegetative material collected from the *Cynanchum elegans* sub-population located in the proposed area of disturbance, identified in Figure 7 and Table 15 of this report;
  - (iii) There will be no removal of deadwood on the ground or dead hollow bearing trees for the purposes of firewood collection or general tidying up;
  - (iv) Undertake a weed removal and bush regeneration program over the life of the quarry;
  - (v) Ecological research and collection of plant material for the propagation of population of the *Cynanchum elegans* will be permitted for organisations and individuals approved by NPWS;
  - (vi) Manage fire in consultation with the Gloucester Rural Fire Service;
  - (vii) Fencing the boundary of the property to protect the *Cynanchum elegans* population from damage by cattle;
  - (viii) No dumping of rubbish or other waste material is permitted in remnant rainforest;
  - (ix) No roads or tracks are to be constructed into remnant rainforest.
32. The provision of on-site parking in conjunction with the proposed development. For the subject application the required car parking has been assessed at a minimum of 5 spaces.
33. All parking and loading/unloading bays, truck docks, driveways and turning areas are to be maintained clear of obstructions and under no circumstances are to be used for the storage of goods or waste materials.
34. A detailed landscape plan is to be submitted to and approved by Council prior to work commencing on site. This plan is to indicate the location of all paved and landscaped areas, type of species to be planted, and is to state the mature height and spread of all proposed trees, shrubs and ground covers. This plan shall have reference to the Environmental Management Plan.
35. Details of site fencing are to be submitted in conjunction with the landscape plan.
36. The landscaped area of the development shall be maintained at all times in accordance with the approved landscape plans and Environmental Management Plan.

37. The preservation of all trees within the proposed development, which are not directly affected by operational works, is paramount. In this regard the removal, lopping or topping of any tree will be subject to the approval of the Council.
38. A qualified ecologist is to be present on site during tree felling.
39. Mereweather Lane shall be widened for the entire length to the site entrance boundary. This road shall be of sufficient width to allow passing of articulated vehicles and shall be in accordance with Council standard engineering requirements.
40. The submission and approval, prior to commencement of works, of an Environmental Management Plan for engineering works in the development, in accordance with Councils Standard Conditions for Engineering Works.
41. The applicant shall install and use a truck wheel wash facility for all trucks leaving the site. The details of the facility shall be included in the Environmental Management Plan.
42. The submission and approval, prior to commencement of works, of an Erosion and Sediment Control Plan for construction works relating to the development, in accordance with Councils "Standard Conditions for Engineering Works" and any requirements of the Department of Land and Water Conservation. The plan should address, but not be limited to, the following matters:
- control and management of extraneous runoff to the development area;
  - the stripping of topsoil and respreading on batters and site drains;
  - minimum batter grades for site batters;
  - the seeding and fertilising of batters and site drains with a suitable pasture / fertiliser mixture when construction is completed;
  - temporary sediment control measures until revegetation is established.
- This plan shall be submitted with, and referenced to, the Environmental Management Plan.
43. The design and construction of stormwater drainage facilities in accordance with Councils Standard Conditions for Engineering Works.
44. The development and implementation of a soil and water management plan for the site in accordance with guidelines published by the Environment Protection Authority.
45. Consultation and compliance with the requirements of Gloucester Shire Council with respect to the provision of potable water and sewerage services.
46. All buildings erected on the subject land are to be of earth toned coloured materials having a low reflective quality.
47. Details of materials and colour selections are to be provided to Council for approval prior to issue of a Construction Certificate.



48. The shed shall be used for operational works only and shall not be used for human habitation.
49. Adequate bunding is to be provided in the following areas:
  - i. Around the fuel tank and filling area;
  - ii. Around the limestone loading area; and
  - iii. Operated in accordance with the Environmental Management Plan.

All bunding is to be designed, constructed and installed in accordance with the relevant Australian Standards, standard EPA requirements and the Environmental Management Plan.

50. All bunded areas are to be adequately roofed to minimise stormwater entering the bunded areas. The roofing is to incorporate at least a 12 degree overhang or otherwise be in accordance with the EPA requirements. This roof shall be constructed of non-reflective material.
51. In order to prevent liquids escaping the bunded areas all pipework must be located over the wall of the bund and hose couplings must be contained within the bunded area.
52. The proposed fuel tank is to be designed, installed and maintained in accordance with AS1940-1993, AS4452-1997 as applicable and any other relevant Australian standards.
53. Full details of the proposed bunding, fuel tank and truck wheel wash drainage is to be submitted to Council in the Environmental Management Plan and shall be inspected prior to use.
54. Prior to the issue of a Construction Certificate, a Compliance Certificate is to be submitted to Council certifying the adequacy of the design of the proposed bunding, fuel tank installation and truck wheel wash drainage.
55. An Asset Protection Zone (APZ) shall be located and maintained immediately surrounding all structures. The APZ shall consist of an Inner Protection Area (IPA) as follows:

Total upslope APZ                      20 metres

Total downslope APZ                    20 metres

56. Internal roads shall be constructed in accordance with the NSW Rural Fire Service, "Planning for Bushfire Protection" and Councils requirements. Should there be a discrepancy between Council and RFS requirements, the more stringent requirements shall prevail.
57. A water supply tank of minimum 20,000 litres capacity fitted with 65 mm storz outlet on gate or ball valve shall be provided for the exclusive purpose of firefighting. A permanently established minimum 3 kW petrol or diesel powered pumping system with plumbing and hoses capable of reaching around all structures shall be maintained. All taps and pipes for the system shall be minimum of 19 mm diameter. They shall be located away from buildings to

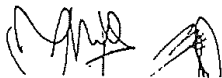
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## APPENDIX 1

### Residents Consultative Committee

The applicant shall:

- i) Participate and co-operate in a Residents Consultative Committee (RCC) to review the draft Environmental Management Plan and to monitor compliance with conditions of this consent during the term of the development. The RCC shall consist of one representative of each of the following three parties:
  1. The Residents of Mereweather Lane, being:
    - Mr TM and Mrs WJ Nye or their successors in title to land described as Lot 1 DP 802607, 288 Mereweather Lane Tugrahakh.
    - Mr P and Mrs R Thompson or their successors in title to land described as Lots 1 and 2 DP 741043, 139 Mereweather Lane Tugrahakh.
    - Mr DJ and Mrs J Robinson or their successors in title to land described as Lots 27 and 36 DP 854582 and Lot 101 DP 865849, 16 Mereweather Lane Tugrahakh.
  2. The Applicant, being Barrington Lime Pty Ltd or its successors in the development approved by Council under Development Application No. 2003/593.
  3. Gloucester Shire Council.
- ii) The Applicant shall at its own expense:
  - a) nominate a representative to attend all meetings of the RCC at all reasonable times and venues determined by Council;
  - b) provide the RCC with a copy of the draft Environmental Management Plan and with monitoring data as required by that Plan;
  - c) promptly provide the RCC with such other information as may be reasonably be requested concerning the environmental performance of the development;
  - d) provide an Annual Report to all members of the RCC detailing the measures the Applicant has adopted and the resources the Applicant has utilised over the preceding 12 months to ensure compliance with monitoring conditions;
  - e) routinely provide results of dust, noise vibration monitoring programs to all members of the RCC;
  - f) reimburse resident and Council members of the RCC for all reasonable expenses incurred in attending meetings and site inspections as may be required.



## APPENDIX 2

### Area of Affection – Land Acquisition

- a) Where noise or vibration or air quality criteria established in the Environmental Management Plan are regularly exceeded at any of the dwellings on the affected properties listed below, the applicant shall negotiate and purchase the property within six (6) months of a written request from the owners of property. This condition applies only in respect to the owners of the affected properties at 16 September 2003.

#### Affected Properties

Lot 1 DP 802607, 288 Mereweather Lane Tugrabakh (Owners: Mr TM and Mrs WJ Nye).

Lots 1 and 2 DP 741043, 139 Mereweather Lane Tugrabakh (Owners: Mr P and Mrs R Thompson).

Lots 27 and 36 DP 854582 and Lot 101 DP 865849, 16 Mereweather Lane Tugrabakh (Owners: Mr DJ and Mrs J Robinson).

- b) In respect to a request to purchase land arising under this condition, the Applicant shall pay the owner the acquisition price which shall take into account and provide payment for:
- i) A sum not less than the current market value of the owner's interest in the land at the date of this consent, as if the land was unaffected by the Barrington Lime Pty Ltd project the subject of this development application, having regard to:
    - 1) The existing use and permissible use of the land in accordance with the applicable planning instruments at the date of the written request; and
    - 2) The presence of improvements on the land and/or any Council approved building or structure which although substantially commenced at the date of request is completed subsequent to that date.

The sum outlined above does not include the value associated with the business operating on that land (e.g. annual turnover profit or goodwill) but is limited to physical structures and improvements only.
  - ii) The owner's reasonable compensation for disturbance allowance and relocation costs within the Gloucester Local Government Area, or within such other location as may be determined by Council in exceptional circumstances; and
  - iii) The owner's reasonable costs for obtaining legal advice and expert witnesses for the purpose of determining the acquisition price of the land and the terms upon which it is to be acquired.



- \* Notwithstanding any other condition of this consent, the Applicant may, upon request of the landowner, acquire any of the abovementioned properties affected by the project during the course of this consent on terms agreed between the Applicant and the landowner.
- \* c) In the event that the Applicant and any owner referred to in this condition cannot agree within the time limit upon the acquisition price and or the terms upon which it is to be acquired, then:
- i) Either party may refer the matter to Council, which shall request the President of the Australian Property Institute to appoint a qualified independent valuer or Fellow of the Institute, who shall determine, after consideration of any submissions from the owners, a fair and reasonable acquisition price for the land as described in sub-clause (b) and/or terms upon which it is to be acquired;
  - ii) In the event of a dispute of outstanding matters which cannot be resolved, the independent valuer shall refer the matter to Council, recommending the appointment of a qualified panel. Council, if satisfied that there is need for a qualified panel shall arrange for the constitution of that panel. The panel shall consist of:
    - 1) The appointed independent valuer.
    - 2) A Council nominee,
    - 3) The President of the Law Society of NSW or nominee.

The qualified panel shall determine a fair and reasonable acquisition price as described in sub-clause (b) above and or the terms upon which the property is to be acquired.
- d) The Applicant shall bear the costs of any valuation or survey assessment requested by the independent valuer, panel, or Council and the costs of determination referred to in sub-clauses (b) and (c).
- e) Upon receipt of a determination pursuant to sub-clauses (b) and (c), the Applicant shall, within 14 days, offer in writing to acquire the relevant land at a price not less than the determination. Should the Applicant's offer not be accepted by the owner within six (6) months of the date of such offer, the Applicant's obligations to purchase the property shall cease, unless otherwise agreed by Council.
- f) In the event that the Applicant and the landowner agree that only part of the land is to be transferred to the Applicant, the Applicant shall pay all reasonable costs associated with obtaining Council approval to any plan of subdivision and registration of the plan at the Office of the Registrar-General.

## **2 DA 238-2017 CHANGE OF USE FROM DWELLING TO CAFE & CONSTRUCT CAR PARK**

**Report Author Steve Andrews, Development Assessment Planner**

**File No. / ECM Index DA 238/2017 & PK 7728**

**Date of Meeting 29 March 2017**

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### **DETAILS**

Date Received: 24 November 2016 - Original submission  
16 December 2016 - Amended submission  
10 February 2017 - Amended submission

Applicant: G & L Stevenson

Owner: C D Stevenson

Land: 8 Memorial Avenue & 8 Church Lane, Stroud  
Lot 2, DP202634 & Lot A, DP160130

Area: 847.55m<sup>2</sup> & 531.3m<sup>2</sup> (respectively)

Property Key: 7728

Zoning: Ru-5 Village Zone, GLLEP 2014

### **SUMMARY OF REPORT**

- Development Application seeking consent for the change of use from a dwelling house to a café and the construction of off-street parking.
- Application notified to neighbouring property owners in accordance with Council's Policy and three (3) submissions were received.
- Proposed development generally considered to be consistent with the various relevant planning controls.

### **SUMMARY OF RECOMMENDATION**

Approval subject to conditions.

### **FINANCIAL/RESOURCE IMPLICATIONS**

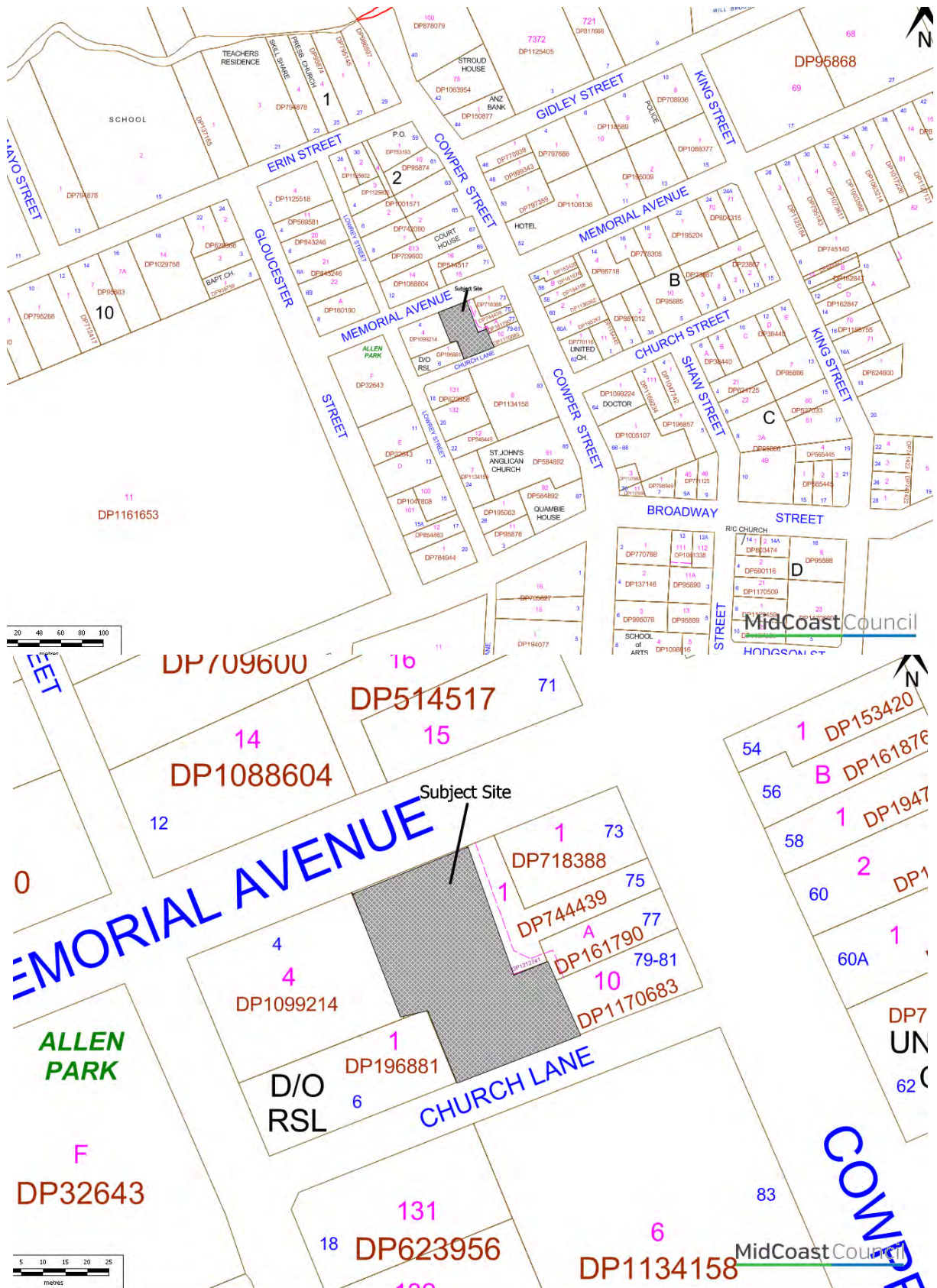
Cost of defending any appeal against Council's decision.

### **LEGAL IMPLICATIONS**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court requiring legal representation.



**SUBJECT SITE AND LOCALITY**



## **BACKGROUND**

BA 33/1971 - Building approval was granted 5 April 1971 for the construction of a single detached garage on the property that contained a single storey dwelling house.

BA 119/1976 - Building approval was granted 20 September 1976 for renovations to the existing single storey dwelling house.

The subject development application was submitted on 24 November 2016. Preliminary assessment disclosed a number of issues that required the submission of further information. The applicant submitted further information on 16 December 2016, in response to Council's email dated 8 December 2016. Following consultation with the applicant regarding a more suitable design for the proposed car park and stormwater management system, further amended plans were submitted 10 February 2017 and are the subject of this assessment report.

## **PROPOSAL**

To change the use of the building from a dwelling house to a café/restaurant. The proposed works include:

1. Interior alterations to create a commercial 24 hour kitchen, dining areas, shop area serving takeaway food, and associated facilities. An exhaust flue will extend above the existing roof line to the western side of the existing building.
2. Construct a low 10.0m x 8.0m deck off the rear of the building for outdoor dining.
3. Demolish the existing shed on the owner's adjoining rear property and construct a car parking area for nine (9) vehicles with direct access off Church Lane.
4. Enlarge the existing parking area (10m x 10m) off Memorial Drive suitable for use by a person with with a disability and also deliveries. Adjacent to this area and next to the main building, install outdoor refrigeration units, grease trap and hot water service.
5. Construct a ramp to the front entry door to enable access by persons with a disability.
6. Demolish the shade house and shed to the rear of the site.
7. Remove the shrubs from the rear of the site.
8. Erect picnic tables and benches to the Memorial Avenue frontage of the site.
9. Erect a business identification sign (10.0mx1.5m) above the front roof of the existing building that will be illuminated after dark.
10. The premises will be air conditioned when the need arises.
11. Construct fences to the eastern side boundary and to the western side of the site (with gate) so as to separate the car parking area from the rear of the site.

The proposed use and 24 hour kitchen will operate from 6.00am to 10.00pm dependant on customers and seasonal variations. The 24 hour kitchen is proposed to cover early morning and late night food preparation and baking. The proposed use will be conducted by an average of three (3) staff members and a maximum of seven (7) staff members at any one time. Seating for up to thirty (30) dining customers will be provided and functions will be catered on site.

Annexed marked 'A' is a copy of the proposed plans.

## **SITE DESCRIPTION**

The site is comprised of two (2) attached allotments in the one ownership. One (1) allotment (8 Memorial Avenue) is located on the south eastern side of Memorial Avenue and is occupied by a single storey dwelling house, a detached garage and various sheds and structures. The other allotment (8 Church Lane) is located to the rear of above allotment and contains a shed and with access off Church Lane. The site has a slight cross fall from eastern to western sides and contains limited vegetation in a managed landscape setting.

The eastern adjoining properties contain shops with frontage to Cowper Street and some with a rear residential component.

The western adjoining properties contain a Council Depot on one site and Council's Stroud Offices and Library on the other.

## REPORT

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

- a) ***The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; 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; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.***

### ***Great Lakes Local Environmental Plan 2014 (GLLEP 2014)***

The following consideration addresses the relevant provisions of the Plan.

#### Part 2 - Land use table

The site is located in an RU5 Village zone and the proposed use is permissible in the zone with development consent. The relevant objectives of the zone are to provide for a range of land uses, services and facilities that are associated with a rural village and to enable non-residential development that does not prejudice the established land use pattern within the village. The proposed use is considered to be consistent with the relevant objectives of the zone.

#### Part 4 - Principal development standards

This Part identifies various numerical development standards for proposed development. The relevant development standards are:

- 4.3 - Height of building - The relevant objectives of the standard are to ensure the scale of proposed buildings is compatible with the existing environmental character and the desired future urban character of the locality. The proposed works to the existing single storey building sit below the maximum height control of 8.5 metres, in the current built environment of one (1) and two (2) storey buildings. The proposed development is considered to be contextually appropriate and consistent with the relevant objectives of this clause.
- 4.4 - Floor space ratio - The relevant objectives of the standard are to ensure the scale of proposed development is compatible with the existing environmental character and desired future urban character of the locality. The maximum floor space ratio for the site is 0.4:1.00. The proposed development does not seek to increase the existing calculable floor area of the building (ie approximately 182.0m<sup>2</sup>, ie 0.22:1.00, based on the area of 8 Memorial Avenue and 0.13:1.00, based on the area of the site - both lots). The scale of the proposed development is considered to be contextually appropriate having regard to the desired environmental character of this heritage conservation locality and is consistent with the relevant objectives of this clause.

## Part 5 - Miscellaneous provisions

5.10 - Heritage conservation - The relevant objectives are to conserve the environmental heritage of the locality through conserving the heritage significance of heritage items and heritage conservation areas. The provisions of this clause require Council to consider the effect the proposed development would have on the significance of neighbouring heritage items and on the significance of the heritage conservation area, in which the site is located. In this regard the proposal was referred to Council's Heritage adviser who supports the proposed development subject to the following requirements:

- The deletion of the proposed parapet sign to the front of the building with more suitable alternatives that could include a pylon sign erected at ground level.
- The submission of a heritage based proposed external colour scheme.
- That all new fences to be of timber paling type.

Accordingly, subject to the above requirements, the proposed development is considered to be satisfactory having regard to the relevant objectives and provisions of this clause.

## Part 7 - Additional local provisions

7.2 - Earthworks - The objective of this provision is to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses and features of the surrounding land. The proposal includes limited excavation works to construct the development and install services. Issues of soil erosion, sedimentation and drainage impacts will be managed during and after construction and appropriate conditions are included in this report's recommendation. Accordingly, the proposed development will be consistent with the objective of this clause.

7.5 - Stormwater Management - The objective of this clause is to minimise the environmental impacts of stormwater on the site and adjoining properties, native bushland, groundwater, wetlands and receiving waters. The proposed car park area on 8 Church Lane will shed surface stormwater via a low swale to a raingarden that has an overflow piped to Memorial Avenue. The 10m x 10m parking slab to the 8 Memorial Avenue frontage should shed surface stormwater to a grassed swale on its western side that directs surface water to a pit within the site that connects to the pipe from the rear carpark that then drops into Council's stormwater system located under the road reserve. Appropriate conditions are included in this report's recommendation.

The proposed outcome would be consistent with the objective of this clause.

7.21- Essential services - This clause requires that development consent must not be granted to development unless the Council is satisfied that essential services (ie. water, electricity, sewage, stormwater drainage and road access) are available or that adequate arrangements have been made to make them available. The proposed development has access to all relevant necessary services subject to the conditions contained in this report's recommendation.

### ***State Environmental Planning Policy No 64 - Advertising and Signage. (SEPP 64)***

The aims of this Policy are to ensure signage is compatible with the desired amenity and visual character of an area; provides effective communication in suitable location and is of a high quality design and finish.

The proposed development seeks to erect a 10.0m x 1.5m business identification sign above the roof eave to the front elevation of the building. The sign will be illuminated after dark opening hours. Other minor moveable signage including tear drop flags, swooper flags and 'A' frames will be placed in the front yard only during opening hours.

Council's Heritage consultant does not support the location of the large business identification sign having regard to the heritage significance of the locality and suggests more suitable alternatives including free standing pole signage located at ground level. Accordingly, the proposed large business identification sign is not supported having regard to the relevant aims and provisions of SEPP64.

### ***Development Control Plan 2014 (DCP 2014)***

The aims of the Plan are to ensure good quality, sustainable development outcomes that maintain a high level of environmental amenity. The Plan is designed to allow flexibility in the application of its controls where strict compliance is considered unreasonable or unnecessary provided the relevant objectives of the Plan have been achieved.

#### Part 3 Character Statements

The proposed development is generally considered to be contextually appropriate and it will complement the desired character of this heritage conservation locality subject to the deletion of the proposed above eave signage to the front façade of the building.

#### Part 4 Environmental Considerations

The proposed development will not have any significant environmental impacts.

#### Part 6 Residential Apartment Buildings, Mixed Use Development & Business Premises

The provisions of this Part do not specifically address commercial or retail buildings that do not contain a residential component. The proposed development is considered to be contextually appropriate having regard to the objectives of the zone as well as the relevant objectives of this Part.

#### Part 8 Heritage

The intent of this Part is to encourage proposed development that does not visually detract from the significance of neighbouring heritage items or from the significance of a heritage conservation area, in which the site is located. In this regard the proposal was referred to Council's Heritage adviser who supports the proposed development subject to the following requirements:

- The deletion of the proposed parapet sign to the front of the building with more suitable alternatives that could include a pylon sign erected at ground level.
- The submission of a heritage based proposed external colour scheme.
- That all new fences to be of timber paling type.

Accordingly, subject to the above requirements, the proposed development is considered to be satisfactory having regard to the intent of this Part.

#### Part 10 Car Parking

The relevant objectives are to ensure that there is adequate and safe provision for access, manoeuvring and parking on site, to restrict vehicular access to buildings in a manner that is compatible with pedestrian movements and safety, to integrate vehicular access and parking facilities without compromising street character or landscaping and to provide an adequate level of on-site parking based on anticipated occupancy rates and proximity to alternate and active transport.

The proposed development will generate a demand for ten (10) off-street parking spaces. Nine (9) of these spaces will be provided in the proposed car park to the rear, on 8 Church Street and one (1) space suitable for use by a person with a disability will be provided to the frontage of 8 Memorial Avenue. Furthermore, at least three (3) on-street spaces will be available to the 8 Memorial Avenue frontage. It is recommended that both allotments comprising the site should be consolidated to ensure the off-street parking outcome relates to the proposed café use. Accordingly, the proposed development is considered to be consistent with the relevant objectives and provisions of this Part.

### Part 11 Water Sensitive Design

The relevant objectives are to reduce the consumption of potable water, to reduce waste water discharge into the receiving environment, to harvest wastewater and urban stormwater runoff where appropriate. The proposed car park area on 8 Church Lane will shed surface stormwater via a low swale to a raingarden that has an overflow piped to Memorial Avenue. The 10m x 10m parking slab to the 8 Memorial Avenue frontage should shed surface stormwater to a grassed swale on its western side that directs surface water to a pit within the site that connects to the pipe from the rear carpark that then drops into Council's stormwater system located in the road reserve. Appropriate conditions are included in this report's recommendation.

The proposed outcome would be consistent with the relevant objectives of this Part.

### Part 13 Landscaping and Open Space

The provisions of this Part are limited in respect to the proposed commercial use. The proposed development retains suitably sized and positioned open space to the front and rear of the building and will supplement landscaped areas to the perimeter of the proposed rear car park. The proposed outcome is considered to be consistent with the relevant objectives and controls in this Part.

### Part 14 Waste Management

The relevant objectives of this Part are to encourage sustainable waste management that includes re-use and recycling of commercial waste. The proposed use includes suitable waste management facilities. A waste management plan will be required as a condition of this report's recommendation.

### Part 15 Advertising and Signage

The relevant objectives of this Part are to provide opportunities for businesses to effectively and equitably communicate with the general public, to ensure that advertising signs do not detract from the visual environment and do not have an adverse effect on road safety. Being located in a heritage conservation area, proposed signage should be limited to only essential commercial signs.

The proposed development seeks to erect a 10.0m x 1.5m business identification sign above the roof eave to the front elevation of the building. The sign will be illuminated after dark opening hours. Other minor moveable signage including tear drop flags, swooper flags and 'A' frames will be placed in the front yard only during opening hours.

Council's Heritage consultant does not support the location of the large business identification sign having regard to the heritage significance of the locality and suggests more suitable alternatives including free standing pole signage located at ground level. Accordingly, the proposed large business identification sign is not supported having regard to the relevant objectives and assessment criteria in this Part and this aspect is addressed in this report's recommended conditions.

### ***Great Lakes Council Erosion and Sediment Control Policy***

The aim of this policy is to minimise erosion and sedimentation in catchments, resulting from the disturbance of the soil surface associated with building works, changes in land use and urban development, the installation of services and road construction and maintenance. This is to ensure that potential pollutants are not directed to natural and artificial water bodies.

The construction works associated with the proposed development will be managed to ensure that erosion and sediment control measures comply with the aims and requirements of the Policy thereby protecting the water quality of neighbouring natural and artificial water bodies. Appropriate conditions of consent are recommended.

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

***Context and Setting***

The proposed development relates positively with the local context and maintains a reasonable relationship with the heritage character, height and scale of neighbouring development, as viewed from the surrounding locality.

***Site Design and Internal Layout***

The site design, including its configuration and size, is considered suitable for the proposed development.

The proposed internal design layout of the building provides all necessary facilities to support the intended use.

***Views***

The proposed development will not unreasonably impact on the views and outlooks to/from the subject property.

***Privacy (Aural and Visual)***

The proposed development maintains a reasonable amenity relationship with neighbouring residential development in terms of privacy subject to the conditions contained in this report's recommendation that address potential noise.

***Overshadowing***

The proposed development will not cast unreasonable shadowing on neighbouring properties.

***Visual Impact***

The proposed development will not create an unreasonable visual impact on the neighbouring properties.

***Utilities***

Reticulated water, sewer, telephone and electricity are available to the site.

***Precedent and Cumulative Impacts***

The proposal, subject to the recommended conditions, does not set an undesirable precedent for future development in this historically significant village. The proposal is considered to be consistent with the current planning requirements for the locality.

***Section 94 Contributions***

Council's Great Lakes Wide Section 94 Plan applies to the proposed development. An appropriate condition is included in this report's recommendation.

**c) *The Suitability of the Site for the Development***

The topography and configuration of the site are suitable for the proposed use and scale of the development. Environmental issues are limited and satisfactorily addressed in the proposed design and adequate utility services are available.

The site is not susceptible to any natural hazards to a significant extent.

**d) Any Submissions Made in Accordance with the Act or Regulations**

The application was notified to neighbouring property owners in accordance with Council's Policy and three (3) submissions were received. The submissions referred to the following issues:

1. Traffic congestion in Memorial Avenue - Memorial Avenue services various uses and when vehicles are parked either side or when trucks service those uses it becomes congested and prone to an accident occurring. The proposed development will contribute to this unsatisfactory situation. Also one way traffic in the neighbouring Church Lane contributes to this problem.

Church Lane is a Lane not a Street and the additional traffic to/from the proposed car park will conflict with the persons and groups that use the Council library as well as the children using the neighbouring playground for parties and recreation.

**Comment:** Memorial Avenue has a made trafficable width of approximately 10.0 metres that can accommodate parked vehicles on both sides of the road whilst allowing a two (2) way traffic thoroughfare. The proposed development will accommodate up to ten (10) vehicles on site with ability for at least three (3) kerbside spaces to the property frontage. The existing truck servicing of the various other uses in Memorial Avenue is considered to be a circumstance that is separate to the assessment of the proposed development. The relationship to one-way traffic in Church Lane is not considered relevant to traffic issues in Memorial Avenue.

Access to/from the proposed car park off Church Lane is a reasonable design outcome given the lane accommodates only one-way traffic, has a safe pedestrian pathway delineated by bollards and there are clear lines of sight for motorists and pedestrians.

Accordingly, the neighbour's concerns are not supported.

2. Noise - The proposed use especially on the proposed rear deck will create unreasonable noise for neighbouring residents late at night. The neighbours question as to whether bands and loud music will occur and whether a bird aviary will be included.

**Comment:** The proposed development will accommodate up to thirty (30) seated customers, some of whom will dine within the building, others will dine on the proposed rear deck. The proposed use will operate from 6.00am to 10.00pm. The applicant has indicated no bands are planned and only low level soft music may be played. Given the proximity of the proposed deck to neighbouring residents it is recommended that the outdoor occupation of the proposed deck be limited, as a reviewable condition, to 8.00pm.

3. Overdevelopment - Neighbours consider that the existing development is not suitable for the proposed use and not consistent with the heritage significance of the village.

**Comment:** The existing site and building are considered suitable for the proposed use subject to the conditions included in this report's recommendation. The proposed use is permissible in the RU5 Village zone and is consistent with the underlying objectives to that zone. The proposed use is also considered to be appropriate having regard to the heritage significance of the village, as assessed by Council's Heritage advisor subject to the conditions included in this report's recommendation.

Accordingly, the concerns of the neighbour are not supported.



4. Concerns regarding the proposed deck - A neighbour questions whether the deck will be covered, will steps to ground level be provided, will the deck be fenced, will there be access to the car park, how many settings are proposed on the deck and will there be an bird aviary.

**Comment:** In response to the neighbour's questions, the proposed deck will not be covered, as the deck will be approximately 200mm above existing ground level steps will be provided from the deck to ground level but no fence (ie. balustrade) is required to the perimeter of the deck, direct access will be available to the car park, there is no proposed aviary and seating for up to thirty (30) customers will be available either in the proposed dining room and on the proposed deck. The proposed outcome is considered reasonable subject to the recommended conditions and accordingly the concerns of the neighbour are not supported.

5. Concerns regarding proposed fencing - A neighbour questions will the proposed fencing be on the common boundary, need for a survey, need to secure the property so as to limit their grand-children entering the current unfenced area, required for privacy and as there is no proposed fence to the rear of the subject property customer's children may wander through to Church Lane (to the rear).

**Comment:** In response to the neighbour's questions the location of proposed fencing to the common boundary is a matter to be resolved between neighbours under the Dividing Fences Act 1991. However, the proposed fencing should be 1.8 metre high timber paling to afford some degree of privacy between the proposed use and the adjoining properties, to provide a degree of security for the neighbour's grand-children and to be consistent with the desired heritage character of the village. Appropriate condition is included in this report's recommendation.

6. Concerns regarding proposed car park - A neighbour questions will it be gravel not bitumen, how many car spaces, headlight spill may cause a nuisance to neighbouring residents and will there be access from the proposed deck.

**Comment:** In response to the neighbour's questions Council requires the car park to be of an impervious sealed surface and designed to accommodate up to the approved number of vehicles. Headlight spill to neighbouring residents will be limited given the separation distance, existing buildings and required fencing discussed in item 5, above and the operating hours of the use. The proposed car park will be directly accessible from the proposed rear deck.

**e) *The Public Interest***

The proposal will not detract from the character of the existing streetscape or the general locality, nor will it undermine any of the social or economic values of the site or surrounding area. The proposal is considered to be consistent with the objectives of the relevant zone and will not have an unreasonable impact upon any neighbouring properties.

Accordingly, approval of the proposed development would not be contrary to the public interest.

**CONCLUSION**

The proposed development is considered to be suitable for the site having regard to the current urban development controls for the village and maintains a reasonable relationship with neighbouring developments.

Accordingly, the application is supported and recommended for approval subject to conditions that address the above assessed issues.

## RECOMMENDATION

It is recommended that development application DA 238/2017, for the change in use of a dwelling house to a café and associated car park on Lot A DP160130, 8 Memorial Avenue and Lot 2 DP202634, 8 Church Lane, Stroud be approved subject to compliance with the following conditions:

### GENERAL CONDITIONS

#### 1. Development in accordance with approved plans

The development must be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan type/Supporting Document	Prepared by	Dated
Site Plan (8 Memorial Avenue Stroud)	G Steevo	10.2.2017
Site Plan (8 Church Lane Stroud)	G Steevo	10.2.2017
Raingarden	G Steevo	10.2.2017
Site Plan (Combined)	G Steevo	10.2.2017

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

**Reason:** Information and to ensure compliance.

#### 2. Signage

The proposed above roof eave sign to the front façade of the building being deleted.

In this regard, more appropriate signage would include a pole sign erected at ground level, details of which shall be submitted to Council for prior approval.

**Reason:** To ensure that proposed signage is compatible with the desired heritage character of the village.

#### 3. Proposed Colour Scheme

The proposed external colour scheme should be sympathetic to the desired heritage character of the village and in this regard details, including paint manufacturers colour sample chips and reference numbers, shall be submitted to Council for prior approval.

**Reason:** To ensure that the proposed external colour scheme is compatible with the desired heritage character of the village.

#### 4. Proposed Boundary Fencing

A solid 1.8 metre high timber paling fence that is free of cracks and gaps must be provided along the eastern property boundary and extend from the rear of the existing building to the rear property boundary of 8 Memorial Avenue.

**Reason:** To ensure that proposed fencing is compatible with the desired heritage character of the village and to maintain a reasonable standard of residential amenity for neighbouring properties.

## 5. Compliance with Building Code of Australia

All building work must be carried out in accordance with the requirements of the National Construction Code as in force on the date the application for the relevant construction certificate or complying development certificate was made. In this regard the existing building shall be upgraded to meet the requirements of the National Construction Code (Sections D and E) for a Class 6 building. Details should be submitted to the certifying authority for approval.

**Reason:** Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

## 6. Adjustment to utility services

All adjustments to existing utility services made necessary by the development are to be undertaken at no cost to Council.

**Reason:** To ensure utility services remain in a serviceable condition.

### **PRIOR TO THE COMMENCEMENT OF ANY DEMOLITION WORK:**

The following conditions must be satisfied prior to the demolition of any building:

## 7. Waste management plan

Prior to the commencement of any demolition work, a waste management plan prepared in accordance with the requirements of Council's Waste Management Policy must be submitted to and approved by the certifying authority.

**Reason:** To ensure adequate and appropriate management of waste and recycling.

## 8. Standards for demolition work

All demolition works must be undertaken in accordance with the provisions of *Australian Standard AS 2601: The demolition of structures*. Prior to demolition, all services must be disconnected and capped off.

**Reason:** To protect public health and safety.

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

The following conditions must be complied with prior to the issue of any Construction Certificate:

## 9. Erosion and sediment control plan

Prior to the issue of a construction certificate, an erosion and sediment control plan prepared by a suitably qualified person in accordance with *"The Blue Book – Managing Urban Stormwater (MUS): Soils and Construction"* (Landcom) must be submitted to and approved by the certifying authority. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises must be undertaken through the installation of erosion control devices including catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams, and sedimentation basins.

**Reason:** To protect the environment from the effects of erosion and sedimentation.

## 10. S94 contributions

Prior to the issue of a construction certificate, a monetary contribution must be paid to Council in accordance with Section 94 of the *Environmental Planning and Assessment Act 1979*. The services and facilities for which the contributions are levied and the respective amounts payable under each of the relevant plans are set out in the following table:

Contributions Plan	Facility	quantity	unit	rate	amount
Great Lakes Wide	Headquarters Building	\$20,000	\$1 non res	@ \$0.001	= <b>\$20.00</b>

Contribution rates are subject to indexation. The rates shown above are applicable until 30 June following the date of consent. Payment made after 30 June will be at the indexed rates applicable at that time.

The Contributions Plan and the Standard Schedule for Section 94 Plans may be viewed on [Council's web site](#) or at Council's offices at Breese Parade, Forster.

**Reason:** Statutory requirement to be paid towards the provision or improvement of facilities and services.

## 11. Stormwater Quality Treatment (Swale and Raingarden)

Prior to the issue of a construction certificate, final engineering plans and specifications for the stormwater management system associated with the proposed car parking area on 8 Church Lane, including a swale draining into a raingarden must be submitted to and approved by Council. The swales and raingarden must meet the following criteria:

### Swales

- Northern swale must be 2m wide at the base, by 20m long, and 20cm deep. The ancillary swale on the western side of the car park is to have a minimum base width of 500mm.
- Both swales shall receive runoff from the sealed car parking area.
- Be constructed at a grade of 1-5%.
- The end of the swales shall be connected to the raingarden.

### Raingarden

- Have a filter surface area of 5m<sup>2</sup> and positioned along the contours. The raingarden is to receive overflow from the swale that collects runoff from the car park.
- Have a minimum of 800mm fall from the raingarden inlet to the outlet discharge point into the stormwater system.
- Be consistent with the specifications contained in Great Lakes Council's Fact Sheet 'Designing a raingarden: Water Sensitive Design section, Great Lakes Development Control Plan' (April 2014) containing (from the base) 150mm of washed 5mm gravel housing a 90mm slotted drainage pipe, 100mm of course washed sand with particle size of 1mm, 400mm of sandy loam filter media and 100mm of depth for water detention. The top of the garden is to be finished a minimum of 50mm (freeboard) above the maximum water level water collection.
- Contain filter media of uniform sandy loam texture consistent with the specifications contained in Great Lakes Council's Fact Sheet 16 'Filter Media for Raingardens: Guidance for Water Sensitive Provisions of the Great Lakes Development Control Plan' (April 2014).

- e) Have a 90mm slotted drainage pipe at the base of the raingarden to be laid on a 1:100 grade. The underdrain is to be connected to a 225mm sewer grade pipe connected to the existing trunk drainage. All drainage works must be installed by a suitably qualified person and in accordance with the requirements of Australian Standard AS/NZS 3500.3: Plumbing and drainage – Stormwater drainage.
- f) Contain an overflow pipe finished 100mm above the sandy loam filter media and topped with a grated cap so that the raingarden retains 100mm of water following rainfall. The overflow pipe from raingarden is to be a 225mm.
- g) Inlet pipes to the raingarden from the swale are to contain rock protection to prevent erosion.
- h) Have 50% of the raingarden area planted with a minimum of 2 species from Great Lakes Council's Fact Sheet 15 'Local Plant Selection for Raingardens, Guidance for Water Sensitive Provisions of the Great Lakes Development Control Plan' (April 2014), at densities indicated in the fact sheet. The remaining area is to be planted with species of the owners choosing which are suited to intermittently dry and wet conditions.
- i) Be protected by sediment and erosion control measures during construction and be connected to the stormwater and planted after all hardstand areas have been paved / sealed and cleaned.
- j) Be lined with a 0.75mm HDPE impermeable liner or equivalent to avoid exfiltration of water into surrounding soils.

**Reason:** To ensure water quality requirements as contained in the Water Sensitive Design section of the Great Lakes Development Control Plan are met.

## 12. Stormwater Quality Treatment (Swale and Pit)

Prior to the issue of a construction certificate, final engineering plans and specifications for the stormwater management system associated with the parking area to the frontage of 8 Memorial Avenue, including a grass swale on the western side connected to a grated pit within the property that is connected to the 225mm sewer grade stormwater pipeline from the rear car park that then connects to Council's stormwater management system.

**Reason:** To ensure the effective treatment and disposal of stormwater.

## 13. MidCoast Water approval

Prior to the issue of a construction certificate, a Certificate of compliance from MidCoast Water, stating that satisfactory arrangements have been made and all payments finalised for the provision of water supply and sewerage to the development, must be submitted to the certifying authority.

**Reason:** To ensure suitable water and sewage disposal is provided to the development.

## 14. Driveway levels applications

Prior to the issue of a construction certificate, two Driveway Levels Applications must be submitted to Council for approval (one for the Church Lane car park and one for the Memorial Ave frontage). The Driveway Levels Application Forms must be completed and submitted to Council together with the application fee and all required plans and specifications.

Driveways must be constructed by a qualified/licensed contractor at no cost to Council in accordance with the driveway levels and construction standards issued by Council.

**Reason:** To ensure works within Council's road reserve are constructed to a suitable standard for public safety.

## 15. Traffic management plan

Prior to the issue of a construction certificate, a traffic management plan including measures to be employed to control traffic (inclusive of construction vehicles and pedestrian movement) during construction of the development, must be submitted to and approved by the certifying authority. The traffic control plan must be designed in accordance with the requirements of the Roads and Traffic Authority's Manual, *Traffic Control at Work Sites Version 2* and *Australian Standard AS 1742.3: Manual of uniform traffic control devices - Traffic control for works on roads*.

The plan must incorporate measures to ensure that motorists using the road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to construction on the site or adjacent to the site.

The traffic and pedestrian control plan must be prepared by an accredited person trained in the use of the current version of *RTA Traffic Control at Work Sites manual*.

The approved Construction traffic management plan must be implemented prior to the commencement of work.

**Reason:** To ensure public safety during the construction of the development.

## 16. Car parking

Prior to the issue of a construction certificate, plans and specifications detailing access, parking and manoeuvring on the site must be submitted to and approved by the certifying authority. Vehicular access, parking and manoeuvring must be in accordance with *Australian Standard AS/NZS 2890.1: Parking facilities: Off-street car parking*. Plans must include the following items:

- a) Car park and driveway layout;
- b) Pavement description (ie being concrete/ bitumen or a similar hard paved surface);
- c) Site conditions affecting the access;
- d) Existing and design levels;
- e) Drainage (pipes, pits, on-site detention, etc.);
- f) A physical barrier across the full road frontage of the property suitable to prevent vehicular access at locations other than the approved driveways;
- g) Accessible car parking space/s designed in accordance with Australian Standard AS/NZS 2890.6: *Parking facilities - Off-street parking for people with disabilities*;
- h) Line-marking and signs.

The engineering plans and specifications must be designed by a qualified practising civil engineer. The civil engineer must be a corporate member of the Institution of Engineers Australia or must be eligible to become a corporate member and have appropriate experience and competence in the related field.

**Reason:** To ensure suitable vehicular access and manoeuvrability is provided within the development.

## 17. Land to be consolidated

Prior to the issue of a construction certificate, the two (2) existing allotments that form the subject site must be consolidated into one allotment and evidence of the lodgement with the Register General of the NSW Land and Property Information must be submitted to the certifying authority.

**Reason:** To ensure development is not constructed over lot boundaries.

## 18. Bond required to guarantee against damage to public land

Prior to the issue of a construction certificate, a Damage Bond Application form together with payment of a bond in the amount of \$2000 and an administration fee of \$320 must be submitted to Council. The bond is payable for the purpose of funding repairs to any damage that may result to Council assets from activities/works associated with the construction of the development and to ensure compliance with Council standards and specifications.

A final inspection will be carried out by the responsible Council officer and the bond (minus any fees required for additional inspections) will be considered for refund:

- a) once all works, including landscaping, driveway construction, turfing etc, have been completed, and
- b) following issue of an occupation certificate by the certifying authority.

The damage bond is reviewed periodically and therefore the fee and bond amount payable will be determined from Council's current fees and charges document at the time of lodgement of the damage bond.

**Reason:** Protection of public assets.

## 19. Food premises fitout

Prior to the issue of a construction certificate, plans and specifications for the fit-out of the food premises must be submitted to and approved by the certifying authority. The food premises must be constructed to comply with the requirements of the *Food Act 2003, the Food Standards Code and the Australian Standard AS 4674: Design, construction and fit-out of food premises* and include the following details:

- a) A hand washing basin that is of an adequate size to allow hands and arms to be easily cleaned must be installed in all parts of the premises where open food is handled. Small domestic type hand wash basins are not adequate in commercial situations. The hand wash basins must be in addition to any wash-up sinks.
- b) Hot and cold water to the hand wash basins must be delivered through a hands free mixer tap. The hand basins must be provided with liquid soap and single-use towels at all times.
- c) All cupboards, benches and shelving must be constructed of materials that are smooth, impervious to moisture and able to be easily cleaned. Particular attention must be made to the underside of the benches to ensure that they are constructed so they are impervious and can be easily cleaned.
- d) Ceiling, wall and floor finishes in the food premises must comply with *Australian Standard AS 4674: Design, construction and fit-out of food premises*.
- e) Ceiling lights must be either installed flush with the ceiling surface or designed free from any features (such as ledges) that would harbour dirt, dust or insects or make the fitting difficult to clean.
- f) Coving must be installed at the intersection of floors with walls in the food premises in accordance with *Australian Standard AS 4674: Design, construction and fit-out of food premises*. Coving must be integral to the surface finish of both floor and wall and installed in such a manner as to form a continuous uninterrupted surface.
- g) Either a floor waste with a solids trap and stand alone tap or a cleaners sink (sluice sink) must be provided. Cleaners sinks must be provided with an adequate supply of hot and cold water and be located away from food preparation areas.

**Reason:** To ensure public health and safety.

## **PRIOR TO THE COMMENCEMENT OF ANY WORK ASSOCIATED WITH THIS CONSENT**

The following conditions must be satisfied prior to the commencement of any building construction work:

### **20. Construction certificate required**

Prior to the commencement of any building construction work (including excavation), a construction certificate must be issued by a certifying authority.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 6591 7222.

**Reason:** Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

### **21. Notification of commencement and appointment of principal certifying authority**

Prior to the commencement of any building construction work (including excavation), the person having the benefit of the development consent must appoint a principal certifying authority and give at least two (2) days' notice to Council, in writing, of the persons intention to commence construction work.

**Reason:** Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

### **22. Site access**

Public access to the site and building works, materials and equipment on the site is to be restricted, when building work is not in progress or the site is unoccupied. The public safety provisions must be in place prior to the commencement of any demolition, excavation or building works and be maintained throughout construction.

**Reason:** To ensure public health and safety during the construction of the development.

### **23. Erosion & sediment measures in accordance with approved plans**

Prior to the commencement of work, erosion and sediment controls must be installed in accordance with the approved erosion and sediment control plan and must be maintained for the duration of the project.

**Reason:** To protect the environment from the effects of erosion and sedimentation.

### **24. Pollution prevention sign**

Council's "PREVENT POLLUTION" sign must be erected and maintained in a prominent position at the frontage of the property so that it is clearly visible to the public for the duration of construction work.

Council's "PREVENT POLLUTION" sign can be purchased at Council's Customer Enquiry Counter at the Forster, Tea Gardens and Stroud administration buildings.

**Reason:** To increase industry and community awareness of developer's obligations to prevent pollution and to assist in ensuring compliance with the statutory provisions of the Protection of the Environment Operations Act 1997.



## 25. Site construction sign

Prior to the commencement of work, a sign or signs must be erected in a prominent position at the frontage to the site.

- 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 work site is prohibited.

The 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.

**Reason:** Prescribed condition under the *Environmental Planning and Assessment Regulation 2000*.

## 26. Approval required for works within the road reserve - Section 138 Application

Prior to the commencement of work, approval from Council must be obtained for all works within the road reserve in accordance with Section 138 of the *Roads Act 1993*. Three (3) copies of engineering construction plans must accompany the application for works within the road reserve. These plans must be in accordance with Council's adopted engineering standards.

**Reason:** To ensure compliance with Council's specifications for engineering works and allow the connection of bio retention outflow to Council's trunk drainage system.

## CONDITIONS TO BE SATISFIED DURING DEVELOPMENT WORK

The following conditions must be complied with during any development work:

### 27. Construction times

Construction and/or demolition works, including deliveries on or to the site must not unreasonably interfere with the amenity of the neighbourhood and must occur only in accordance with the following:

Monday to Friday, from 7 am to 6 pm.

Saturday, from 8 am to 1 pm.

No construction and/or demolition work, including deliveries are to take place on Sundays or Public Holidays.

**Reason:** To maintain amenity during construction of the development.

### 28. Construction dust suppression

All necessary works must be undertaken to control dust pollution from the site. These works must include, but are not limited to:

- a) restricting topsoil removal;
- b) regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion);
- c) alter or cease construction work during periods of high wind;
- d) erect green or black shadecloth mesh or similar products, 1.8m high around the perimeter of the site and around every level of the building under construction.

**Reason:** To maintain amenity during construction of the development.

### **29. Builders rubbish to be contained on site**

All builders rubbish is to be contained on the site in a suitable waste bin/enclosure. Building materials must be delivered directly onto the property. Footpaths, road reserves and public reserves must be maintained clear of rubbish, building materials and other items at all times.

**Reason:** To ensure that materials and waste do not adversely affect traffic or pedestrian safety and amenity.

### **30. Maintenance of sediment and erosion control measures**

Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

**Reason:** To protect the environment from the effects of erosion and sedimentation.

### **31. Compliance with waste management plan**

During demolition and/or construction of the development, waste disposal must be carried out in accordance with the approved waste management plan.

**Reason:** To ensure waste is minimised and recovered for recycling where possible.

### **32. Removal of asbestos**

All asbestos wastes associated with demolition/renovation works must be disposed of in accordance with the requirements of the WorkCover Authority and the following requirements:

- a) If asbestos is present in an amount greater than 10m<sup>2</sup>, then the demolition and removal must be undertaken by a WorkCover licensed demolition contractor who holds the appropriate WorkCover licence (e.g. Asbestos Demolition Licence) for the material to be demolished.
- b) All asbestos must be removed from the site and be disposed of at an approved licensed waste facility. All asbestos waste must be delivered to an approved licensed waste facility in heavy duty sealed polyethylene bags.
- c) The bags are to be marked "Caution Asbestos" with 40mm high lettering. Twenty four (24) hours' notice must be given to the waste facility prior to disposal.
- d) Receipts of the disposal of all asbestos to a licensed waste facility must be provided to Council prior to the issue of an occupation certificate.

**Reason:** To protect public health and safety and to ensure the correct disposal of asbestos waste.

### **33. Burning of felled trees prohibited**

The burning of trees and vegetation felled during clearing of the site is not permitted. Where possible, vegetation is to be mulched and reused on the site.

**Reason:** To maintain amenity and environmental protection.

### **34. Vibrating compaction rollers**

Vibrating compaction rollers must not be used unless a report prepared by a qualified geotechnical engineer has been submitted to and approved by the certifying authority which demonstrates that such use will not result in adverse structural impacts to adjoining properties.

**Reason:** To avoid damage to adjoining properties from vibration impacts.

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

The following conditions must be satisfied prior to any occupation or use of the building:

### **35. Works to be completed**

The building/structure or part thereof must not be occupied or used until an interim occupation/final occupation certificate has been issued in respect of the building or part.

**Reason:** To ensure compliance with the development consent and statutory requirements.

### **36. Completion of car parking areas and provision of signs**

Prior to the issue of an occupation certificate, the car parking areas must be constructed in accordance with the approved plans and be fully line-marked. Signs must be erected clearly indicating the availability of off-street parking and the location of entry/exit points, visible from both the street and the subject site.

**Reason:** To ensure that adequate parking facilities for the development are provided on site.

### **37. Sealed driveway in accordance with approved Driveways Level Application**

Prior to the issue of a final occupation certificate, a driveway must be constructed from the edge of the road formation to the property boundary in accordance with the approved Driveway Levels Application. Written confirmation from Council must be obtained stating that the constructed driveway is to Council's satisfaction.

**Reason:** To ensure suitable vehicular access to the development.

### **38. Internal driveway in accordance with the approved plans**

Prior to the issue of a final occupation certificate, a driveway must be constructed from the property boundary to the proposed car spaces in accordance with the approved plans.

**Reason:** To ensure suitable vehicular access is provided to the development.

### **39. MidCoast Water approval**

Prior to the issue of a final occupation certificate, a certificate of compliance from MidCoast Water, stating that satisfactory arrangements have been made and all payments finalised for the provision of water supply and sewerage to the development, must be submitted to the principle certifying authority.

**Reason:** To ensure suitable water and sewage disposal is provided to the development.

### **40. Mechanical ventilation**

Prior to the issue of a final occupation certificate, certification from a mechanical engineer must be submitted to the principal certifying authority confirming that the mechanical ventilation system complies with *Australian AS/NZS 1668.1 AS/NZS 1668.2: The use of Ventilation and Air-conditioning in buildings*.

**Reason:** To ensure public health and safety.

#### **41. Soundproofing of mechanical equipment**

Mechanical plant and equipment (including but not limited to refrigeration/freezer plant and air conditioning units) shall only be permitted to be installed on the western side of the building that is on 8 Memorial Avenue.

Prior to the issue of a final occupation certificate, all mechanical equipment must be adequately soundproofed so as not to create offensive noise as defined under the *Protection of the Environmental Operations Act 1997* and regulations.

**Reason:** To maintain the acoustic amenity of surrounding properties.

#### **42. Compliance of Swale and Raingarden to Plans**

Prior to the issue of any occupation certificate, written certification by the builder or plumber is to be submitted to the certifying authority that construction levels and drainage lines have been installed in accordance with the approved stormwater drainage plans and conditions.

**Reason:** To ensure compliance with Council's water quality objectives and comply with the Water Sensitive Design section of the Great Lakes Development Control Plan and ensure that the swales and raingarden are constructed in accordance with approved plans and standards and conditions of consent.

#### **43. Health inspection**

Prior to the issue of an occupation certificate, a final inspection of the premises must be undertaken by Council's Environmental Health Officer.

**Reason:** To ensure public health and safety.

### **ONGOING USE**

The following conditions must be satisfied during the ongoing use of the development:

#### **44. Ongoing maintenance of food premises**

The food premises must at all times comply with the requirements of the *Food Act 2003*, the Food Standards Code and *Australian Standard 4674 - 2004 Design, construction* and fit-out of food premises.

**Reason:** To maintain public health and safety.

#### **45. Operation of car parking area**

All car access driveways, turning areas, parking spaces and bicycle parking must be provided and maintained in accordance with the approved plans. All driveways and turning areas must be kept clear of obstructions that prevent compliance with this condition.

**Reason:** To ensure that adequate and parking facilities and safe manoeuvring areas are provided on site.

#### **46. Loading and unloading not to occur on the street**

All loading and unloading must take place within the curtilage of the property.

**Reason:** To maintain public safety and amenity.

#### 47. Illumination of Signs and Outdoor Areas

The level of illumination and/or lighting intensity used to illuminate signs and outdoor areas must be minimised and the design is to ensure that excessive light spill or nuisance is not caused to any nearby premises.

**Reason:** To ensure signs are consistent with Council's controls and so that residential premises are not affected by inappropriate or excessive illumination.

#### 48. Sign quality

All signs must be neat and professionally sign written. Signs must be maintained in a structurally sound, neat and attractive condition.

**Reason:** To ensure that signs are consistent with Council's controls.

#### 49. Hours of operation (reviewable condition)

The approved hours of operation for the use of the development are restricted to the times and/or locations set out in the following table:

Location/Day	Start Time	Finish Time
Internal Café areas - Monday to Sunday	7.00 am	9.00 pm
Rear Deck - Monday to Sunday	7:00am	8:00pm
Deliveries - Monday to Sunday	7.00am	6.00pm

In accordance with Section 80A (10B) of the *Environmental Planning and Assessment Act 1979*, this condition is a reviewable condition. Upon the condition being reviewed, the approved hours of operation may be varied in accordance with the recommendations of the review. The purpose of this reviewable condition is to enable the extended operating hours to be reviewed should complaints be received regarding noise or other disorderly or antisocial behaviour.

**Reason:** To protect the amenity of adjoining premises.

#### 50. Seating capacity (reviewable condition)

The café/restaurant is restricted to 30 seated patrons at any time. In accordance with Clause 98D of the *Environmental Planning and Assessment Regulation 2000*, a sign must be displayed in a prominent position in the building stating the maximum number of persons that are permitted in the building.

In accordance with Section 80A (10B) of the *Environmental Planning and Assessment Act 1979*, this condition is a reviewable condition. Upon the condition being reviewed, the approved number of seated patrons may be varied in accordance with the recommendations of the review. The purpose of this reviewable condition is to enable the approved number of seated patrons to be reviewed should complaints be received regarding noise or other disorderly or antisocial behaviour.

**Reason:** Statutory requirement and to protect the amenity of adjoining premises.

#### 51. Amplified music

Amplified music must not be permitted on the deck area.

**Reason:** To maintain the residential amenity of the neighbouring properties.

## 52. Noise

Noise associated with the premises including all associated mechanical plant and equipment must not be a source of "offensive noise" at the nearest affected premises:

"offensive noise" is defined under the *Protection of the Environment Operations Act 1997* as noise:

- a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:
  - i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
  - ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulation.

**Reason:** To maintain acoustic amenity to adjoining properties.

## 53. Odour

Odour associated with the premises must not be a source of 'offensive odour' at the nearest affected premises:

"offensive odour" is defined under the *Protection of the Environment Operations Act 1997* as an odour:

- a) that, by reason of its strength, nature, duration, character or quality, or the time at which it is emitted, or any other circumstances:
  - i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
  - ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- b) that is of a strength, nature, duration, character or quality prescribed by the regulations or that is emitted at a time, or in other circumstances, prescribed by the regulations.

**Reason:** To maintain the amenity of neighbouring properties.

## 54. Maintenance - Raingarden and Swales

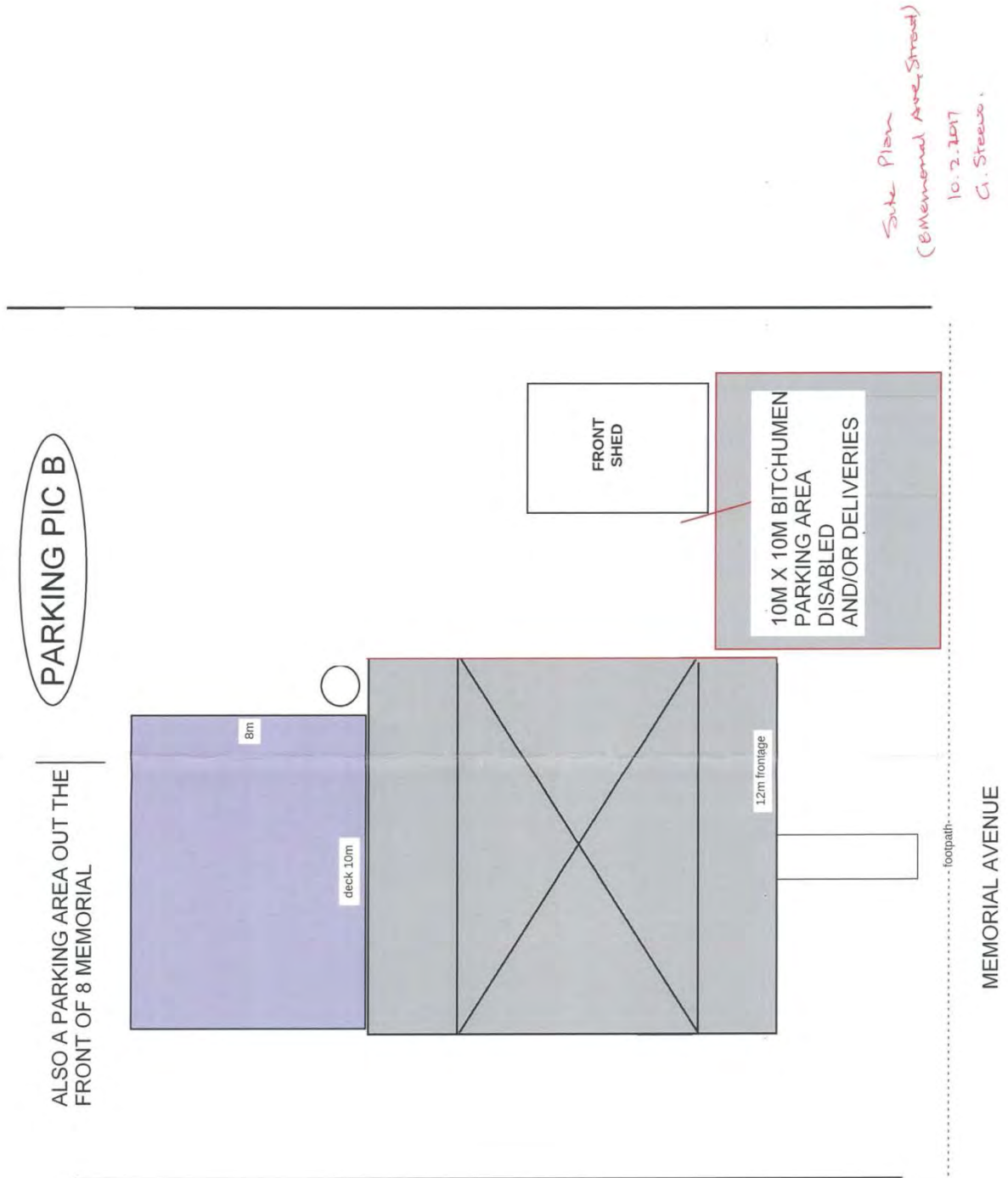
The raingarden shall be maintained by the owner in perpetuity including free draining filter media and approved plant species and densities (including the removal of weeds) and protection from erosion and scour within the raingarden.

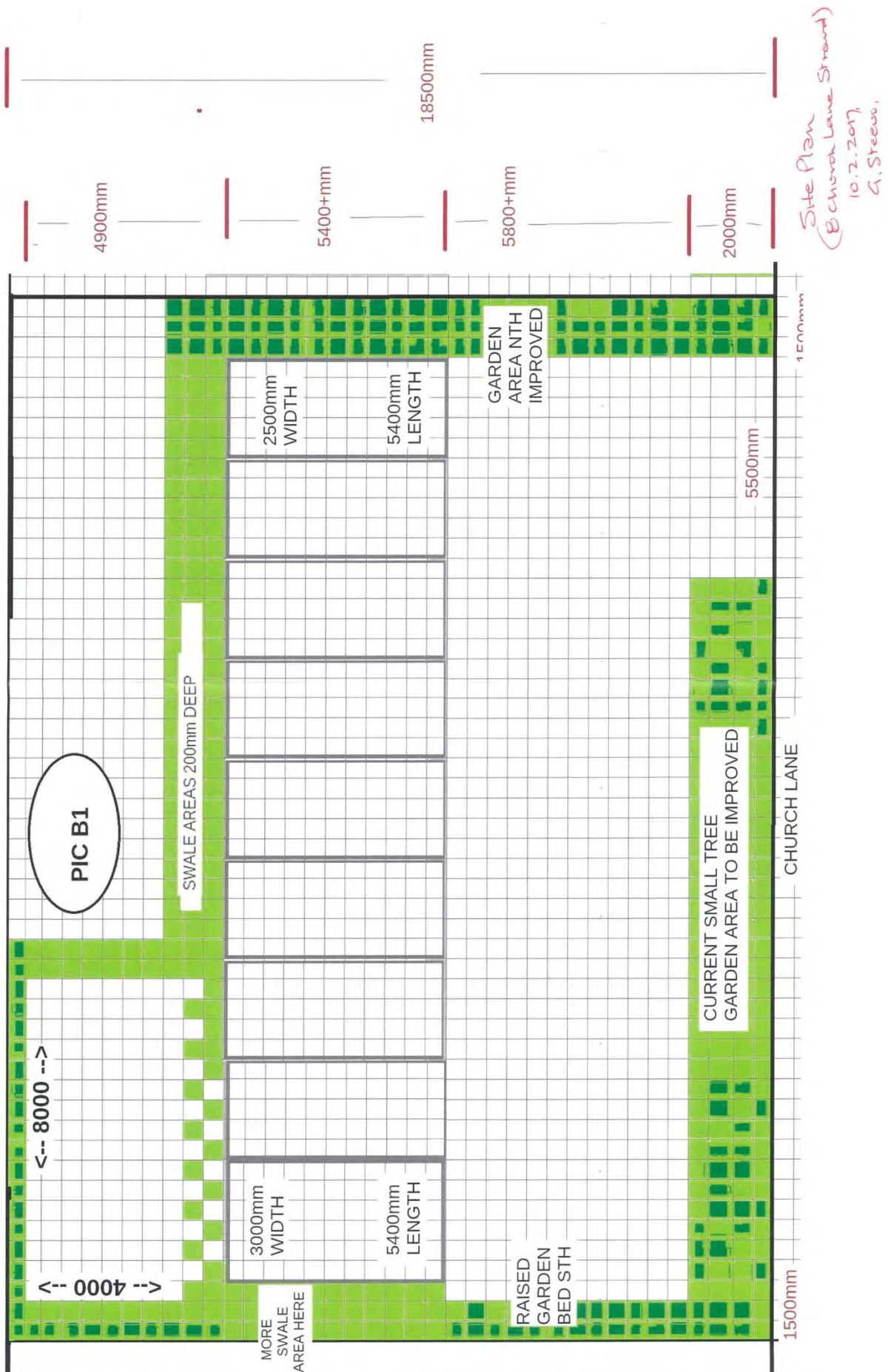
The swales and the vegetation within shall be maintained in perpetuity by the owner.

**Reason:** To ensure that ongoing compliance with the Water Sensitive Design section of the Great Lakes Development Control Plan.

**ANNEXURES:**

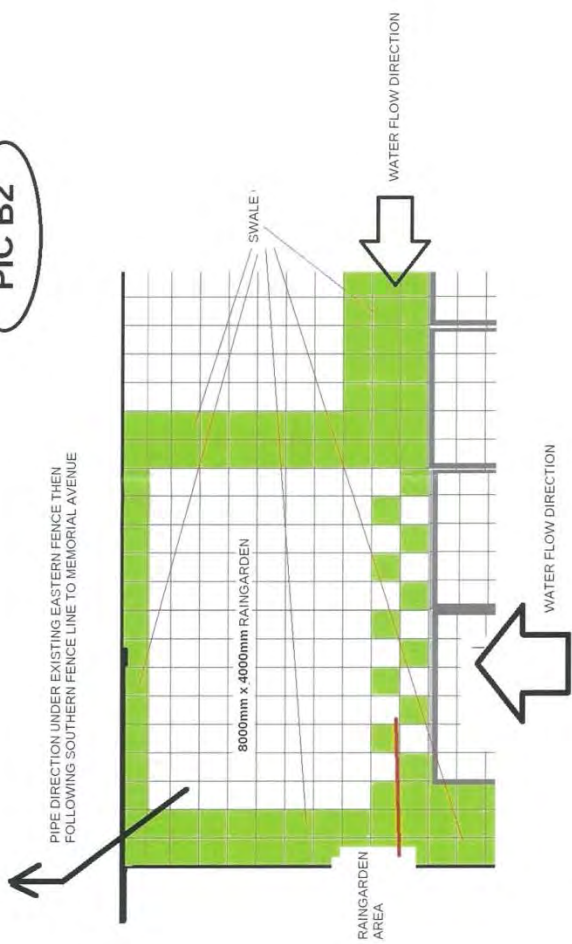
A: Plans of Proposed Development



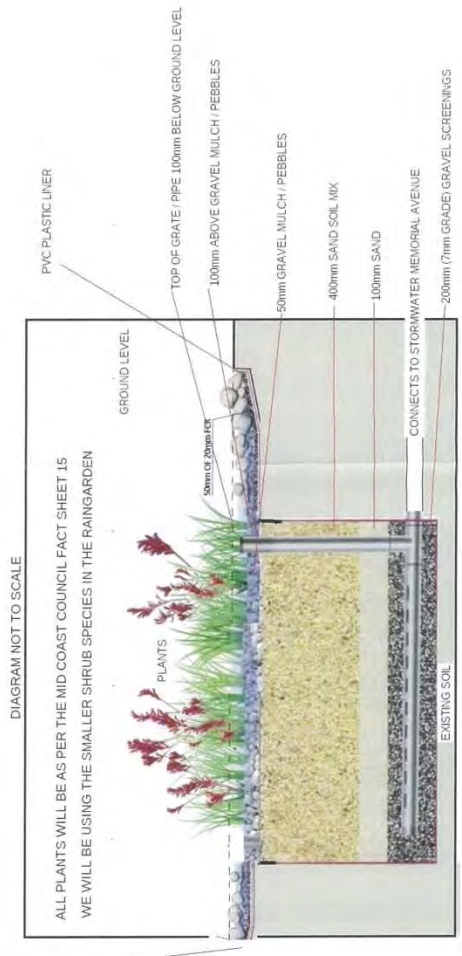




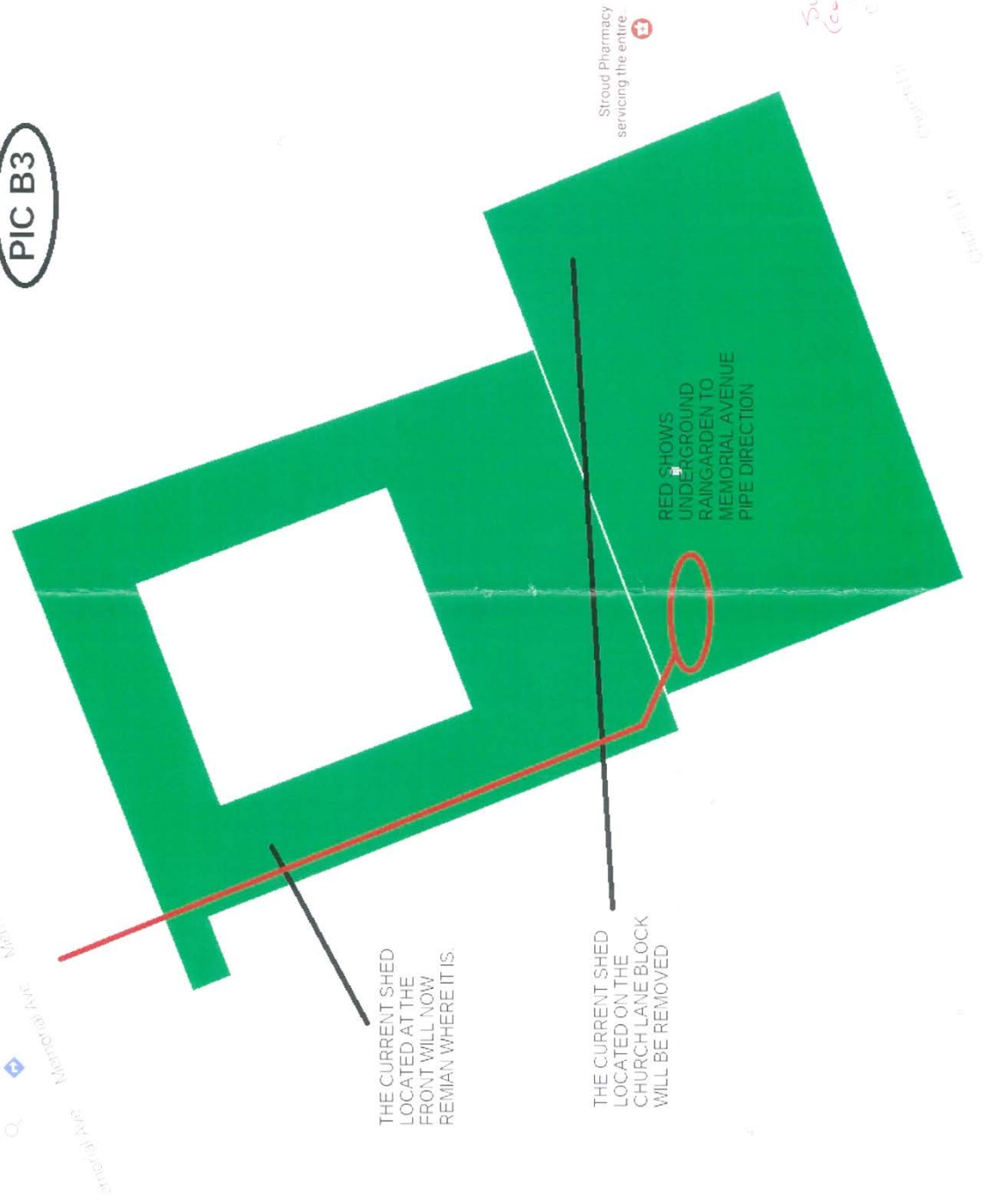
**PIC B2**



PVC PLASTIC LINER FROM BASE OF SWALE 200mm FLOW DIRECTION



*Ramgarden*  
*10.2.2017.*  
*C. Stevo.*



### **3 DA 249-2017 - DWELLING - 118 PATSYS FLAT RD SMITHS LAKE**

**Report Author** David Underwood, District Building Surveyor

**File No. / ECM Index** DA249/2017

**Date of Meeting** 29 March 2017

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#### **DETAILS**

Date Received: 29 November 2016

Applicant: Mr James Allison

Owner: Mr and Mrs Allison and Mr and Mrs Marshall

Land: Lot 3 DP 215985, 118 Patsys Flat Road, Smiths Lake

Area: 1582m<sup>2</sup>

Property Key: 12070

Zoning: RU5 Village under GLLEP 2014

#### **SUMMARY OF REPORT**

The proposed development involves the construction of a pavilion style single storey dwelling with detached carport located to the front of the proposed residence. The development application was notified to surrounding properties with three (3) submissions received. The issues raised in the submissions will be discussed in the report.

#### **SUMMARY OF RECOMMENDATION**

It is recommended that Development Application No. 249/2017 for the construction of a pavilion style single dwelling house with a detached carport at Lot 3 DP 215985, 118 Patsys Flat Road, Smiths Lake be approved subject to conditions.

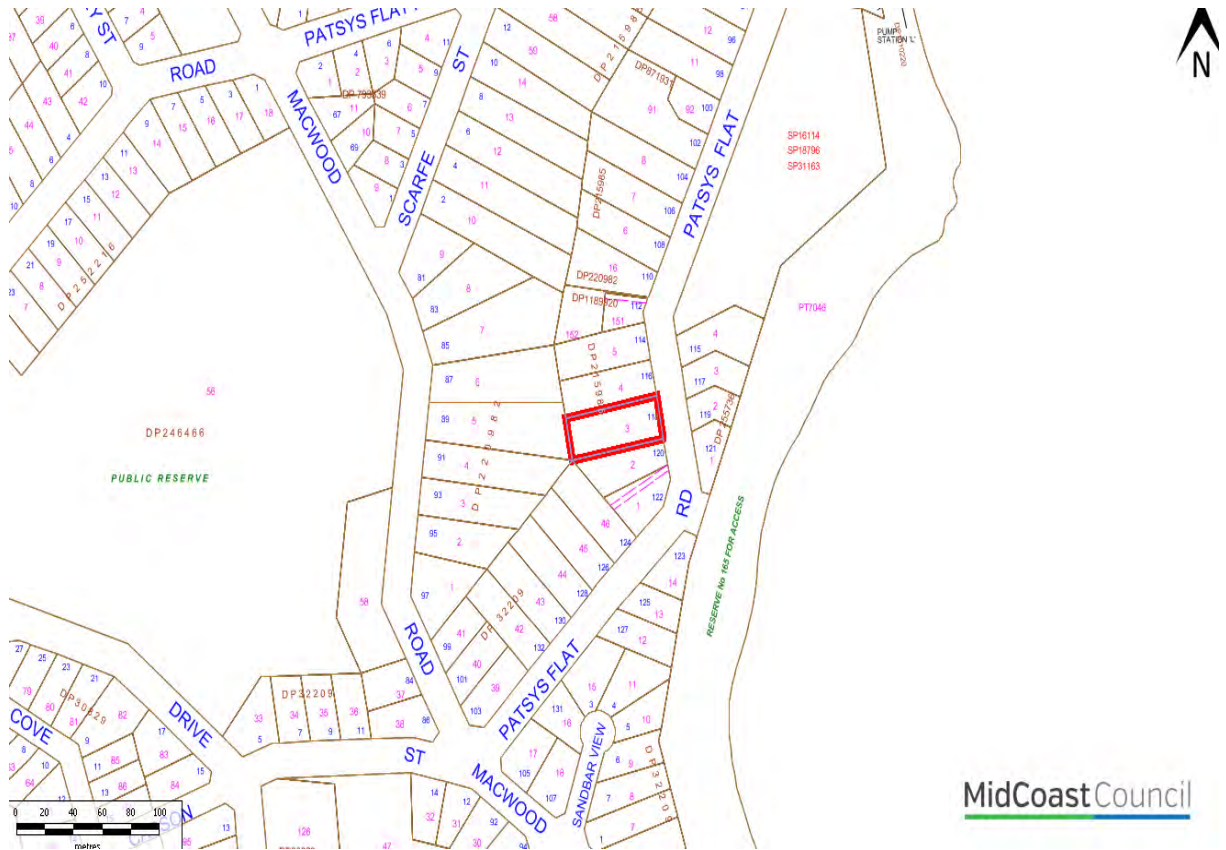
#### **FINANCIAL/RESOURCE IMPLICATIONS**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

#### **LEGAL IMPLICATIONS**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

## SUBJECT SITE AND LOCALITY



## BACKGROUND

- 29 November 2016 Development application received by Council
- 9 December 2016 Further information letter sent to applicant, requesting amended plans prior to neighbour notification being undertaken.
- 12 December 2016 Application referred to internal departments of Council for consideration.
- 23 January 2017 Amended plans received
- 31 January 2017 Development application neighbour notified.
- 10-17 February 2017 Three (3) objections received.

## PROPOSAL

The proposed development involves the construction of a pavilion style single storey dwelling with detached carport located to the front of the proposed residence. The development will be constructed of materials consisting of steel framed construction with metal sheet cladding for roof and walls.

## SITE DESCRIPTION

The subject site is located to the western side of Patsys Flat Road Smiths Lake. The sites in this area of Patsys Flat Road, are quite large with the subject allotment having an area of 1583 square metres. The site is heavily vegetated and has a gradual rise from front to rear.

## REPORT

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

- a) *The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; 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; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.*

### **Great Lakes Local Environmental Plan 2014 (GLLEP 2014)**

Under GLLEP 2014 the development site is zoned RU5 Village. Mapping indicates that there is a 0.4:1 Floor Space Ratio (FSR) requirement and a maximum height of dwellings of 8.5m. The objectives of the RU5 zone are:

- To provide for a range of land uses, services and facilities that are associated with a rural village.
- To provide for a range of land uses, services and facilities that are associated with a coastal village.
- To enable non-residential development that does not prejudice the established land use pattern within the village.

Dwellings are permitted with consent on the land. The proposed dwelling is not expected to conflict with objectives of the village zone, which applies to the locality, being a coastal village. The proposed dwelling will achieve compliance with the Floor Space Ratio requirements and the maximum height requirements, given that the development is for a single storey dwelling on a large allotment.

### **State Environmental Planning Policy**

*State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)* applies to all land within the coastal zone as defined in the *Coastal Protection Act 1979* and accordingly applies to the subject site to the extent of requiring Council to consider the matters listed in Clause 8 of the Policy. In this regard, the proposal is considered acceptable in relation to the scenic qualities of the coast, given that the height of the dwelling is consistent with others in the locality.

### **Development Control Plan No.**

Assessment of the proposed development with regards to Council's Development Control Plan (DCP) requirements raised the following items;

#### **1) General Building Design - Section 5.4**

##### **Objectives**

- *To provide a high quality design of new residential development that responds to the environment in which it is located.*

## **Controls**

1. *Garages and carports must have a minimum 500mm setback from the front building line of the dwelling for which it is provided.*
2. *Garages and carports and open car parking spaces must be setback at least 6m from the front property boundary.*
3. *Building entries/front doors should be directly visible from the street and preferably part of dwelling frontage.*
4. *Colour and materials are to be sympathetic to the existing character of the street and natural setting of the locality. Highly reflective materials should be avoided. On sloping sites in built up areas, reflective, white and other light coloured roof materials should be avoided to reduce glare impacts to adjoining properties.*

## **Comment:**

- 1) *Whilst the carport is not located 500mm behind the building line of the dwelling, it is not uncommon in the Smiths Lake village where open style carports are located in front of the residence. Given the topography of Smiths Lake it is often considered that allowing a carport toward the frontage of the site results in less overall impact on the allotment, particular given that compliant driveway access grades are required. In this instance it is felt that allowing an open carport to the front of the residence is not out of character with the village setting and given the open nature of the carport structure and consistent roof design, does not detract from the overall streetscape impact.*
- 2) *Whilst the front entry door is not directly visible from the street, entry stairs have been provided to access the external decks and act as an entrance to the dwelling. This together with windows to habitable rooms facing the street results in a reasonable presentation of the development on the streetscape.*
- 3) *The proposed use of Zinalume materials to the roof and wall raises concerns with regards to Council's DCP requirements given the highly reflective nature of the material. Given the topography and the residential nature of the area it is not considered the use of Zinalume is supported. The use of Colorbond colours which have a lower reflectivity would be more sympathetic to neighbouring dwellings yet will still suit the modern design of the proposal. As a result a condition will be imposed in the development consent as follows;  
"Prior to the issue of a construction certificate, details of the external material and colour of the roof and walls must be submitted to and approved by the certifying authority. Metal roof and wall sheeting must painted or be of a coloured metal that minimises reflection and is sympathetic and compatible with the building and surrounding environment. Zinalume finish or off-white colours are not permitted".*

## **2) Primary road setbacks - Section 5.5.2.1**

1. *Where there are existing neighbouring houses within 40m, the primary road setback should be an average of the setbacks of the nearest two neighbouring houses, with the same primary road frontage.*
2. *Garages, carports and open car parking spaces must be setback at least 6m from the primary road frontage.*
3. *A reduced primary road setback may be considered when the side and rear boundaries of an allotment are located within (in whole or part) the coastal planning area. It must be demonstrated that the reduced setback does not detrimentally impact upon the amenity of adjoining properties, streetscape or vehicular access and egress from the site.*

**Comment:**

*Whilst the average setback calculated by the applicant indicates a required setback of 18.250m, it is considered that to insist on achieving this setback, by pushing the development back further on the site will only increase the level of impact on the heavily vegetated allotment. Whilst some existing dwellings in this area of Patsys Flat road are located toward the rear boundary, to get optimum views of Sandbar, the owner indicated that he wanted to minimise the impact on the site which he considered was more important than trying to optimise the view.*

*As the proposed front wall of the dwelling is to be located 13.80 metres from the front boundary, and the carport having a 6 metre setback, it is considered that these proposed setbacks are not inconsistent with the existing village and allow suitable separation from the front boundary.*

**3) Detached garages and carports - Section 5.10**

**Objectives**

*Detached garages, carports and other outbuildings are located and designed so that they do not dominate the streetscape or adversely affect the adjoining properties.*

**Controls**

**Front Setback Controls**

- 1. Detached garages, carports, sheds and other outbuildings must be setback at least 6m from the front property boundary.*
- 2. Detached garages, carports, sheds and other outbuildings must have a minimum 500mm setback from the front building line of the dwelling for which it is provided.*

**Comment:**

*As the carport is setback 6 metres from the front boundary it is consistent with the requirements; however as its not 500mm behind the front of the dwelling a variation is proposed. Given the open nature of the carport and as other precedents have been set in the village a variation is supported.*

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

**Context and Setting**

It is considered that the proposed single storey dwelling results in a development which is consistent with the surrounding locality. Smith's Lake has a range of varying architectural designs and the use of a pavilion style building, attached by a walkway, is not out of character with the village setting. The concept of separate buildings to break up built form is even required in Council's DCP under general design which states, "*Built form is to be articulated into a series of linked massing elements*" As a result the proposed design addresses Council design requirements.

**Site Design and Internal Layout**

The design of the development is considered suitable for the subject site and with the use of a bearers and joist type system reduces the extent of cut and fill which would be otherwise required for a less suited design.

## **Views**

The proposal was neighbour notified extensively with no issues raised with regards to view loss. As the proposal is for a single storey residence on a site which is permissible for an 8.5 metre high two storey dwelling, the design has allowed for adequate view sharing.

## **Privacy (Aural and Visual)**

Given the single storey nature of the design together with the orientation of external windows and decks, it is considered that the proposal will not unreasonably impact on the privacy of the surrounding dwellings.

## **Overshadowing**

The development is single storey with the southern pavillion having a maximum length of 11.8 metres. It is considered that the level of overshadowing on the property to the south would be minimal. The required minimum 2 hours of sunlight to indoor and outdoor living areas would be achieved, in accordance with the requirements of the DCP.

## **Visual Impact**

The development is an architectural designed residence which will contribute positively to the streetscape setting.

## **Utilities**

Utilities are available to the subject site.

## **Drainage**

A water sensitive design proposal has been submitted and approved for the proposal which meets the requirements of Council's DCP.

## **Flora and Fauna**

The application was referred to Council's Natural Systems Section who have commented as follows:

*"The development does appear to be appropriately located and does preserve the majority of trees on the land, including all of the more significant specimens for threatened species and urban biodiversity.*

Council's Senior Ecologist has also stipulated conditions to be imposed which include the requirement for a tree marking program for the site. This program will allow Council's Ecologist to ensure sensitive tree removal is undertaken for the development footprint and associated asset protection zones for bushfire protection.

## **Cumulative Impacts**

It is not felt that approval of the subject development will create negative cumulative impacts for the locality.



**c) The Suitability of the Site for the Development**

The subject site is bushfire prone and as such will be required to be constructed to comply with the relevant bushfire protection requirements.

**d) Any Submissions Made in Accordance with the Act or Regulations**

The application was notified to adjoining owners in accordance with Council's Policy and three (3) submissions were received. The submissions referred to the following issues:

1. The footprint of 2 pavillions side by side on a long block is out of character with the locality.

**Comment:** *The concept of separate buildings to break up built form is required in Council's DCP under general design which states, "Built form is to be articulated into a series of linked massing elements". In addition as the development footprint leaves a large portion of the site undeveloped it is considered that the overall design is not unreasonable for the subject site.*

2. As our dwelling is setback some 13 metres, we are likely to be affected by loss of amenity and sunshine by the proposal being located 6 metres from the street and adjacent to our northern boundary.

**Comment:** *The sitting of the carport 6 metres from the front boundary and pod 2, adjacent to the neighbour's northern boundary, being 18 metres from the front property line is not considered to unreasonably impact on the amenity of the southern property. Particularly as the proposed development is a single storey dwelling and carport, on a site where it is permissible to build a two storey dwelling.*

*The southern neighbouring dwelling is situated 13 metres from the front boundary therefore the carport structure is the only portion of the development, on the southern side of the site, which is located forward of the southern dwelling. Given that the carport is an open type structure which is non-habitable, it is considered that the impact on the neighbour is reasonable in a residential setting.*

3. Location of rainwater tanks being too close to our boundary and what impact this will have on our property.

**Comment:** *This issue has been discussed with the owner who indicated that he would be happy to locate the water tanks 900mm off the southern side boundary if the neighbours were concerned with the tanks. As a result the plans will be amended in order to ensure a 900mm setback is achieved. It should be noted however; that a 450mm setback is permissible in the State Governments Exempt requirements where the water tank is not more than 10,000 litres in capacity.*

4. We're concerned that as our building is some 50 years old who would be responsible should the building affect our foundations.

**Comment:** *The proposed dwelling is to be constructed on piers with a bearer and joist flooring system. This method of construction minimises the cut and fill required on the site. In regards to the carport, whilst this will be a slab on ground system the level of the land at this point will only require minimal cut and fill. If in the unlikely event damage was to occur to an adjoining property this would be a civil matter between adjoining land owners.*

5. The buildings being so close to the road will create an unwelcome visual intrusion quite out of place with the rural environment of Patsys Flat Road.

**Comment:** *The site is located in a residential coastal village area. Whilst the sites are large, and some dwellings are setback to take advantage of views, the development is considered consistent with many dwellings in the Smiths Lake village, including some existing residences along Patsys Flat road.*

6. Why can't the building be located further up the hillside, thereby preserving the longstanding rural character of this part of Smiths Lake village.

**Comment:** *Whilst pushing the development further back on the site would provide a greater setback from the street, the overall impact on the site would be increased given additional tree clearing and greater excavation would be required. Given that the setbacks proposed are not inconsistent with properties in the village it is felt that Council could not sustain a defence of a refusal of the application in The Land and Environment Court based on refusal of the proposed setbacks.*

**e) The Public Interest**

Approval of the development will not pose negative implications with regards to public interest.

**CONCLUSION**

Whilst the proposal does not strictly achieve the numeric average setback of the adjoining dwellings, as required in the DCP, it is considered that as the development is consistent with the character of the Smiths Lake village and meets the objectives of the DCP that the application should be supported subject to conditions of consent.

**RECOMMENDATION**

That Development Application No. 249/2017, for construction of a pavilion style single storey dwelling with detached carport located at Lot 3 DP 215985, 118 Patsys Flat Road, Smiths Lake be approved subject to conditions of consent.

**GENERAL CONDITIONS**

**1. Development in accordance with approved plans**

The development must be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

<b>Plan type/Supporting Document</b>	<b>Plan No. &amp; version</b>	<b>Prepared by</b>	<b>Dated</b>
Drawing List	Drawing No. 16096 001	Stephen Sainsbury Architect	20.01.17
Neighbourhood Plan	Drawing No. 16096 102	Stephen Sainsbury Architect	20.01.17
Site Plan - Site Works	Drawing No. 16096 104A	Stephen Sainsbury Architect	20.01.17

<b>Plan type/Supporting Document</b>	<b>Plan No. &amp; version</b>	<b>Prepared by</b>	<b>Dated</b>
Site Plan	Drawing No. 16096 104B	Stephen Sainsbury Architect	20.01.17
Site Plan - Lot	Drawing No. 16096 104C	Stephen Sainsbury Architect	20.01.17
Floor Plan	Drawing No. 16096 105	Stephen Sainsbury Architect	20.01.17
Floor Plan (Carport)	Drawing No. 16096 105	Stephen Sainsbury Architect	20.01.17
BASIX Commitments Plan	Drawing No. 16096 108	Stephen Sainsbury Architect	20.01.17
Site Drainage Plan	Drawing No. 16096 111	Stephen Sainsbury Architect	20.01.17
Rain Garden Drainage Section	Drawing No. 16096 112	Stephen Sainsbury Architect	20.01.17
Elevations North and South	Drawing No. 16096 201	Stephen Sainsbury Architect	20.01.17
Elevations Pod 1	Drawing No. 16096 202	Stephen Sainsbury Architect	20.01.17
Elevations Pod 01 & 02	Drawing No. 16096 203	Stephen Sainsbury Architect	20.01.17
Elevations Pod 2	Drawing No. 16096 204	Stephen Sainsbury Architect	20.01.17
Section 01	Drawing No. 16096 401	Stephen Sainsbury Architect	20.01.17
Section 02	Drawing No. 16096 402	Stephen Sainsbury Architect	20.01.17

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

**Reason:** Information and to ensure compliance.

## 2. Compliance with National Construction Code Series- Building Code of Australia

All building work must be carried out in accordance with the requirements of the *National Construction Code Series - Building Code of Australia* as in force on the date the application for the relevant construction certificate or complying development certificate was made.

**Reason:** Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

## 3. Insurance requirements under *Home Building Act 1989*

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 has been given documentary evidence or written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
  - i) the name and licence number of the principal contractor, and
  - ii) if the contractor is required to have a contract of insurance for any authorised works, a Statement of Cover with the name of the insurer by which the work is insured under Part 6 of that Act .
- b) in the case of work to be done by an owner-builder:
  - i) the name of the owner-builder, and
  - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates has been given the notice of the updated information.

**Reason:** Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

## 4. Notification of *Home Building Act 1989* requirements

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:

- a) in the case of work for which a principal contractor is required to be appointed:
  - i) the name and licence number of the principal contractor, and
  - ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
  - i) the name of the owner-builder, and
  - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above 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.

**Reason:** Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

## **5. Adjustment to utility services**

All adjustments to existing utility services made necessary by the development are to be undertaken at no cost to Council.

**Reason:** To ensure utility services remain in a serviceable condition.

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

**The following conditions must be complied with prior to the issue of any construction certificate:**

### **6. Structural details**

Prior to the issue of a construction certificate, structural drawings prepared by a suitably qualified and experienced structural engineer must be submitted to and approved by the certifying authority. The plans must include details for:

- a) All reinforced concrete floor slabs and/or beams or raft slab (having due regard to the possible differential settlement of the cut and fill areas.
- b) Footings of the proposed structure.
- c) Structural steel beams/columns.

**Reason:** To ensure structural stability and safety.

### **7. Plans of retaining walls and drainage**

Prior to the issue of a construction certificate plans and specifications of retaining walls or other approved methods of preventing the movement of soil, where excavation or fill exceeds 600mm above or below the existing ground level, must be submitted to and approved by the certifying authority, Adequate provision must be made for drainage in the design of the structures.

**Reason:** To ensure site stability and safety.

### **8. MidCoast Water approval**

Prior to the issue of a construction certificate, a Certificate of compliance from MidCoast Water, stating that satisfactory arrangements have been made and all payments finalised for the provision of water supply and sewerage to the development, must be submitted to the certifying authority.

**Reason:** To ensure suitable water and sewage disposal is provided to the development.

### **9. Driveway levels application**

Prior to the issue of a construction certificate, a Driveway Levels Application must be submitted to Council for approval. A Driveway Levels Application Form must be completed and submitted to Council together with the application fee and all required plans and specifications.

Driveways must be constructed by a qualified/licensed contractor at no cost to Council in accordance with the driveway levels and construction standards issued by Council.

**Reason:** To ensure works within Council's road reserve are constructed to a suitable standard for public safety.

## 10. Construction of buildings in bushfire-prone areas

Prior to the issue of a construction certificate, plans and specifications detailing the construction of the buildings to Bushfire Attack Level 29 (**BAL 29**) as defined in *Australian Standard AS 3959- Construction of buildings in bushfire-prone areas and section A3.7 Addendum Appendix 3 of "Planning for Bush Fire Protection"* must be submitted to and approved by the certifying authority.

**Reason:** To ensure the development complies with bush fire construction standards.

## 11. External roofing and wall material and colour

Prior to the issue of a construction certificate, details of the external material and colour of the roof and walls must be submitted to and approved by the certifying authority. Metal roof and wall sheeting must be painted or be of a coloured metal that minimises reflection and is sympathetic and compatible with the building and surrounding environment. Zinalume finish or off-white colours are not permitted.

**Reason:** To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

## 12. Bond required to guarantee against damage to public land

Prior to the issue of a construction certificate, a Damage Bond Application form together with payment of a bond in the amount of \$2000 and an administration fee of \$320 must be submitted to Council. The bond is payable for the purpose of funding repairs to any damage that may result to Council assets from activities/works associated with the construction of the development and to ensure compliance with Council standards and specifications.

A final inspection will be carried out by the responsible Council officer and the bond (minus any fees required for additional inspections) will be considered for refund:

- a) once all works, including landscaping, driveway construction, turfing, etc, have been completed, and
- b) following issue of an occupation certificate by the certifying authority.

The damage bond is reviewed periodically and therefore the fee and bond amount payable will be determined from Council's current fees and charges document at the time of lodgement of the damage bond.

**Reason:** Protection of public assets.

## 13. Waste management plan

Prior to the issue of a Construction Certificate, a waste management plan prepared in accordance with the requirements of Council's Waste Management Policy must be submitted to and approved by the certifying authority.

**Reason:** To ensure adequate and appropriate management of waste and recycling.

## 14. Final Landscape Plan

A Final Landscape Plan and Schedule shall be submitted to the certifying authority for approval prior to the issue of a Construction Certificate.

The Final Landscape Plan and Schedule shall clearly show:

- a) The location of the approved dwelling, and associated features such as driveways, paths, rain-gardens and utilities
- b) The locations of all trees that are to be retained; comprising the trees identified in these conditions
- c) The proposed protection measures to be deployed to protect trees to be retained from harm and impacts associated with the development (eg. protection fencing, exclusion areas, hand-installation of stormwater and sewer connections in the critical root zone of trees to be retained, etc)
- d) The use of predominantly native flora species that grow in coastal locations and littoral rainforests in the Pacific Palms locality
- e) Details of plant species to be used in landscaping including quantities, densities and height and spread at maturity
- f) Details of planting locations
- g) Details of planting procedure and maintenance
- h) The planting of at least four (4) appropriate local native tree species (such as Tuckeroo, Cheese Tree, etc), particularly on site boundaries to assist soften the development and provide urban habitat for wildlife. These trees are to be planted in the front building setback.

**Reason:** To provide landscaping to the subject land for local amenity and to partially compensate for the removal of trees from the land.

#### **PRIOR TO THE COMMENCEMENT OF ANY WORK ASSOCIATED WITH THIS CONSENT**

**The following conditions must be satisfied prior to the commencement of any building construction or subdivision work:**

##### **15. Construction certificate required**

Prior to the commencement of any building or subdivision construction work (including excavation), a construction certificate must be issued by a certifying authority.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 6591 7222.

**Reason:** Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

##### **16. Notification of commencement and appointment of principal certifying authority**

Prior to the commencement of any building or subdivision construction work (including excavation), the person having the benefit of the development consent must appoint a principal certifying authority and give at least two (2) days' notice to Council, in writing, of the persons intention to commence construction work.

**Reason:** Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

## 17. Site access

Public access to the site and building works, materials and equipment on the site is to be restricted, when building work is not in progress or the site is unoccupied. The public safety provisions must be in place prior to the commencement of any demolition, excavation or building works and be maintained throughout construction.

**Reason:** To ensure public health and safety during the construction of the development.

## 18. Installation of erosion & sediment control measures

Prior to the commencement of work, erosion and sediment controls must be in place in accordance with Great Lakes Council Erosion and Sediment Control Policy and "*The Blue Book – Managing Urban Stormwater (MUS): Soils and Construction*" (Landcom). In particular, the following erosion and sediment control measures must be installed:

- a) Silt fence or sediment barrier.
- b) Temporary driveway from the edge of road to the building site.
- c) Temporary downpipes immediately upon installation of the roof covering.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

**Reason:** To protect the environment from the effects of erosion and sedimentation.

## 19. Pollution prevention sign

Council's "PREVENT POLLUTION" sign must be erected and maintained in a prominent position at the frontage of the property so that it is clearly visible to the public for the duration of construction work.

Council's "PREVENT POLLUTION" sign can be purchased at Council's Customer Enquiry Counter at the Forster, Tea Gardens and Stroud administration buildings.

**Reason:** To increase industry and community awareness of developer's obligations to prevent pollution and to assist in ensuring compliance with the statutory provisions of the Protection of the Environment Operations Act 1997.

## 20. Trees to be protected

Prior to the commencement of work, trees that are to be retained must be protected by a fence so as to minimise disturbance to existing ground conditions within the dripline of the trees. The fence must be constructed:

- a) with a minimum height of 1.2 metres,
- b) outside the dripline of the tree,
- c) of steel star pickets at a maximum distance of 2 metres between pickets with orange barrier mesh, or similar, attached to the outside of the fence and continuing around its perimeter to enclose the tree

The fence must be maintained for the duration of the site clearing, preparation and construction works and signs must be erected to clearly identify the area as a restricted access zone.

**Reason:** To ensure the health and safety of trees during the construction of the development.



## **21. Toilet facilities - sewerred areas**

Prior to the commencement of work, toilet facilities must be provided at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be a standard flushing toilet connected to a public sewer.

**Reason:** To maintain public health.

## **22. Site construction sign**

Prior to the commencement of work, a sign or signs must be erected in a prominent position at the frontage to the site.

- 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 work site is prohibited.

The 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.

**Reason:** Prescribed condition under the *Environmental Planning and Assessment Regulation 2000*.

## **23. Marking of the location of the approved dwelling**

The registered proprietor of the land, or their agents, shall accurately mark on the land with survey pegs, the accurate location of the external façade of the approved dwelling.

**Reason:** To appropriately identify the location of approved structures for the purposes of tree protection and management

## **24. Tree marking program**

After the marking of the footprint of the structures required in the conditions of consent, Council's Tree Senior Ecologist shall inspect the land and conduct a tree removal marking program. The officer shall mark on the land with an "X" in spray-paint all trees that are approved for removal for the approved development and its asset protection zones (APZ). If any hollow-bearing trees require removal, they shall be marked with an "X" and an "H".

No works shall commence on the land, including tree removal, until such time as Council has advised the registered proprietor in writing that the approved tree marking program has been satisfactorily completed.

**Reason:** To ensure that tree clearing is appropriately minimised and managed.

## **CONDITIONS TO BE SATISFIED DURING DEVELOPMENT WORK**

**The following conditions must be complied with during any development work:**

## **25. Construction times**

Construction and/or demolition works, including deliveries on or to the site must not unreasonably interfere with the amenity of the neighbourhood and must occur only in accordance with the following:

Monday to Friday, from 7 am to 6 pm.

Saturday, from 8 am to 1 pm.

No construction and/or demolition work, including deliveries are to take place on Sundays or Public Holidays.

**Reason:** To maintain amenity during construction of the development.

## **26. Builders rubbish to be contained on site**

All builders rubbish is to be contained on the site in a suitable waste bin/enclosure. Building materials must be delivered directly onto the property. Footpaths, road reserves and public reserves must be maintained clear of rubbish, building materials and other items at all times.

**Reason:** To ensure that materials and waste do not adversely affect traffic or pedestrian safety and amenity.

## **27. Maintenance of sediment and erosion control measures**

Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

**Reason:** To protect the environment from the effects of erosion and sedimentation.

## **28. Compliance with waste management plan**

During demolition and/or construction of the development, waste disposal must be carried out in accordance with the approved waste management plan.

**Reason:** To ensure waste is minimised and recovered for recycling where possible.

## **29. Survey of building location**

A survey certificate prepared by a registered surveyor must be submitted to the certifying authority at the following stages of the development:

- a) Prior to the construction of footings or first completed floor slab showing the area of land, building under construction and boundary setbacks.

**Reason:** To ensure compliance with the approved plans.

### **30. Asset Protection Zone (APZ)**

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

**Reason:** To provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building.

### **31. Utilities with regard to bushfire protection**

Electricity and gas services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'. All above ground water and gas service pipes external to the building are required to be metal, including and up to any taps.

**Reason:** To ensure compliance is achieved with Planning for Bushfire Protection.

### **32. Landscaping with regard to bushfire protection**

Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

**Reason:** To ensure compliance with Planning for Bushfire Protection 2006.

### **33. Tree removal**

Only trees on the subject land that are on the approved dwelling, carport and driveway footprint or within 2-metres of that footprint and those trees marked on the land for removal by Council's Senior Ecologist (in accordance with these conditions) are approved for removal for the construction of the approved development.

All other trees on and near the land shall be protected from harm during the approved construction and subsequently managed in accordance with the relevant statutory controls.

**Reason:** To manage the removal of trees for the approved development.

### **34. Procedure for the removal of trees**

During the physical removal of the approved trees to be removed, the following shall be adopted at all times:

- Tree removal shall be conducted by licensed and qualified arborists or tree removal contractors.
- Tree removal personnel shall inspect the crown, foliage and trunks of trees that require removal immediately prior to any felling to investigate the presence of Koalas. If a Koala is detected, the tree and no other surrounding trees shall be cleared until the animal has dispersed of its own free will from the area.
- Removal of approved trees shall be conducted using dismantling and lowering only (or other appropriately sensitive techniques) and in a manner that protects trees that are to be retained on and adjacent to the land.
- Removal of approved trees shall be conducted in a manner that avoids the movement of machinery in the root zones of trees that are to be retained.

Trees and vegetation removed from the subject land shall be commercially re-used (logs or mulch), used in site landscaping (as mulch or edging or cover for terrestrial fauna) or retained and utilised by the occupier of the lot for the purpose of fuel for internal wood combustion heaters or stoves. Windrowing and pile-burning shall be avoided, except with the consent of the NSW Rural Fire Service.

**Reason:** To protect significant trees and minimise the impacts of the development on native vegetation.

### **35. Management of Trees to be retained**

Trees to be retained on the land are defined as those trees on and near the subject land other than those approved in these Conditions for removal.

The construction of the approved dwelling (and associated works) shall be conducted in a manner that avoids impact, harm or removal of trees that are to be retained. Stockpiles, machinery and equipment shall not be used or placed in the root zones of trees that are to be retained. Landform modification (cut/ fill) shall not occur in the primary root zones of trees that are to be retained.

Those trees that are to be retained shall be protected from direct and indirect harm associated with any aspect of the approved construction.

No trees outside the area of the subject land shall be harmed or removed without the written approval of Council. All fruiting Forest Oaks must be afforded continual and active protection as they comprise food trees for the threatened Glossy Black Cockatoo.

Retained trees shall be managed in accordance with the relevant instruments and legislation.

**Reason:** To protect trees that are to be retained.

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

**The following conditions must be satisfied prior to any occupation or use of the building:**

### **36. Works to be completed**

The building/structure or part thereof must not be occupied or used until an interim occupation/final occupation certificate has been issued in respect of the building or part.

**Reason:** To ensure compliance with the development consent and statutory requirements.

### **37. Implementation of the Approved Final Landscape Plan**

The Registered Proprietor of the land, or their agents, shall fully implement all of the required actions outlined in the approved final landscape plan as per the instructions set-out in that plan. The final occupation certificate shall not be issued until such time as the required landscaping set-out in the final landscaping plan has been appropriately established.

**Reason:** To appropriately conduct landscaping on the subject land.

**38. Sealed driveway in accordance with approved Driveways Level Application**

Prior to the issue of a final occupation certificate, a driveway must be constructed from the edge of the road formation to the property boundary in accordance with the approved Driveway Levels Application. Written confirmation from Council must be obtained stating that the constructed driveway is to Council's satisfaction.

**Reason:** To ensure suitable vehicular access to the development.

**39. Internal driveway in accordance with the approved plans**

Prior to the issue of a final occupation certificate, a driveway must be constructed from the property boundary to the proposed car spaces in accordance with the approved plans.

**Reason:** To ensure suitable vehicular access is provided to the development.

**40. BASIX Compliance**

Prior to the issue of a final occupation certificate, all of the required commitments listed in the BASIX certificate must be fulfilled.

**Reason:** Prescribed condition under the Environmental Planning and Assessment Regulation 2000.

**41. House numbering**

Prior to the issue of a final occupation certificate, the street number must be displayed at the main driveway entrance approved for the property. The street number for this property is 118.

**Reason:** To ensure proper identification of buildings.

**42. Bushfire mitigation requirements**

Prior to the issue of an interim occupation certificate, the following bush fire mitigation requirements must be incorporated into the completed development:

- a) The new building works are to be constructed in accordance with Bushfire Attack Level 29 (BAL 29) as defined in Australian Standard AS 3959- Construction of buildings in bushfire-prone areas and section A3.7 Addendum Appendix 3 of "Planning for Bush Fire Protection".

**Reason:** To improve bush fire safety.

**43. MidCoast Water Certificate of Attainment**

Prior to the issue of a final occupation certificate, a certificate of attainment from MidCoast Water, stating that satisfactory arrangements have been made for the provision of MidCoast Water Services to the development, must be submitted to the principal certifying authority.

**Reason:** To ensure suitable water and sewage disposal is provided to the development.

#### 44. Stormwater treatment system

Prior to issue of any occupation certificate, the raingarden must be constructed in accordance with the approved Site Drainage Plan (111) and Raingarden Drainage Section (112), including any amendments contained on these plans and conditions. The raingarden must meet the following criteria:

- a) Have a minimum filter surface area of 8m<sup>2</sup> and positioned along the contours. The raingarden is to receive overflow from a 10KL rainwater tank collecting a minimum 100% of the roof area. Runoff from the driveway area is to be directed to adjoining landscaped areas with a 1-2% cross fall.
- b) Have a minimum of 800mm fall from the raingarden inlet to the outlet discharge point into the stormwater system.
- c) Be consistent with the specifications contained in Great Lakes Council's Fact Sheet 'Designing a raingarden: Water Sensitive Design section, Great Lakes Development Control Plan' (April 2014) containing (from the base) 150mm of washed 5mm gravel housing a 90mm slotted drainage pipe, 100mm of coarse washed sand with particle size of 1mm, 400mm of sandy loam filter media and 100mm of depth for water detention. The top of the garden is to be finished a minimum of 50mm (freeboard) above the maximum water level water collection.
- d) Contain filter media of uniform sandy loam texture consistent with the specifications contained in Great Lakes Council's Fact Sheet 16 'Filter Media for Raingardens: Guidance for Water Sensitive Provisions of the Great Lakes Development Control Plan' (April 2014).
- e) Have a 90mm slotted drainage pipe at the base of the raingarden is to be laid on a 1:100 grade and connected to the table drain. Drainage lines within the road reserve must be sewer grade or other approved equivalent and connected to the table drain with scour protection. All drainage works must be installed by a suitably qualified person and in accordance with the requirements of Australian Standard AS/NZS 3500.3: Plumbing and drainage – Stormwater drainage.
- f) Contain an overflow pipe and UNI Pit finished 100mm above the sandy loam filter media and topped with a grated cap / gill cover plates so that the raingarden retains 100mm of water following rainfall.
- g) Inlet pipes to the raingarden from the rainwater tank are to contain rock protection to prevent erosion.
- h) Have 50% of the raingarden area planted with a minimum of 2 species from Great Lakes Council's Fact Sheet 15 'Local Plant Selection for Raingardens, Guidance for Water Sensitive Provisions of the Great Lakes Development Control Plan' (April 2014), at densities indicated in the fact sheet. The remaining area is to be planted with species of the owners choosing which are suited to intermittently dry and wet conditions.
- i) Be protected by sediment and erosion control measures during construction and be connected to the stormwater and planted after all hardstand areas have been paved / sealed and cleaned.

**Reason:** To ensure water quality requirements as contained in the Water Sensitive Design section of the Great Lakes Development Control Plan are met.

#### **45. Compliance of Raingarden to Plans**

Prior to the issue of any occupation certificate, written certification by the builder or plumber is to be submitted to the certifying authority that construction levels and drainage lines have been installed in accordance with the approved stormwater drainage plans and conditions.

**Reason:** To ensure compliance with Council's water quality objectives and comply with the Water Sensitive Design section of the Great Lakes Development Control Plan and ensure that the raingarden is constructed in accordance with approved plans and standards and conditions of consent.

#### **46. Raingarden Maintenance**

Prior to issue of any occupation certificate a permanent notice identifying the location of the raingarden is to be displayed in the metre box or other visible locations on the property.

The raingarden shall be maintained by the owner in perpetuity including free draining filter media and approved plant species and densities (including the removal of weeds) and protection from erosion and scour within the raingarden.

**Reason:** To ensure that ongoing compliance with the Water Sensitive Design section of the Great Lakes Development Control Plan.

#### **47. Removal of Invasive Environmental Weeds**

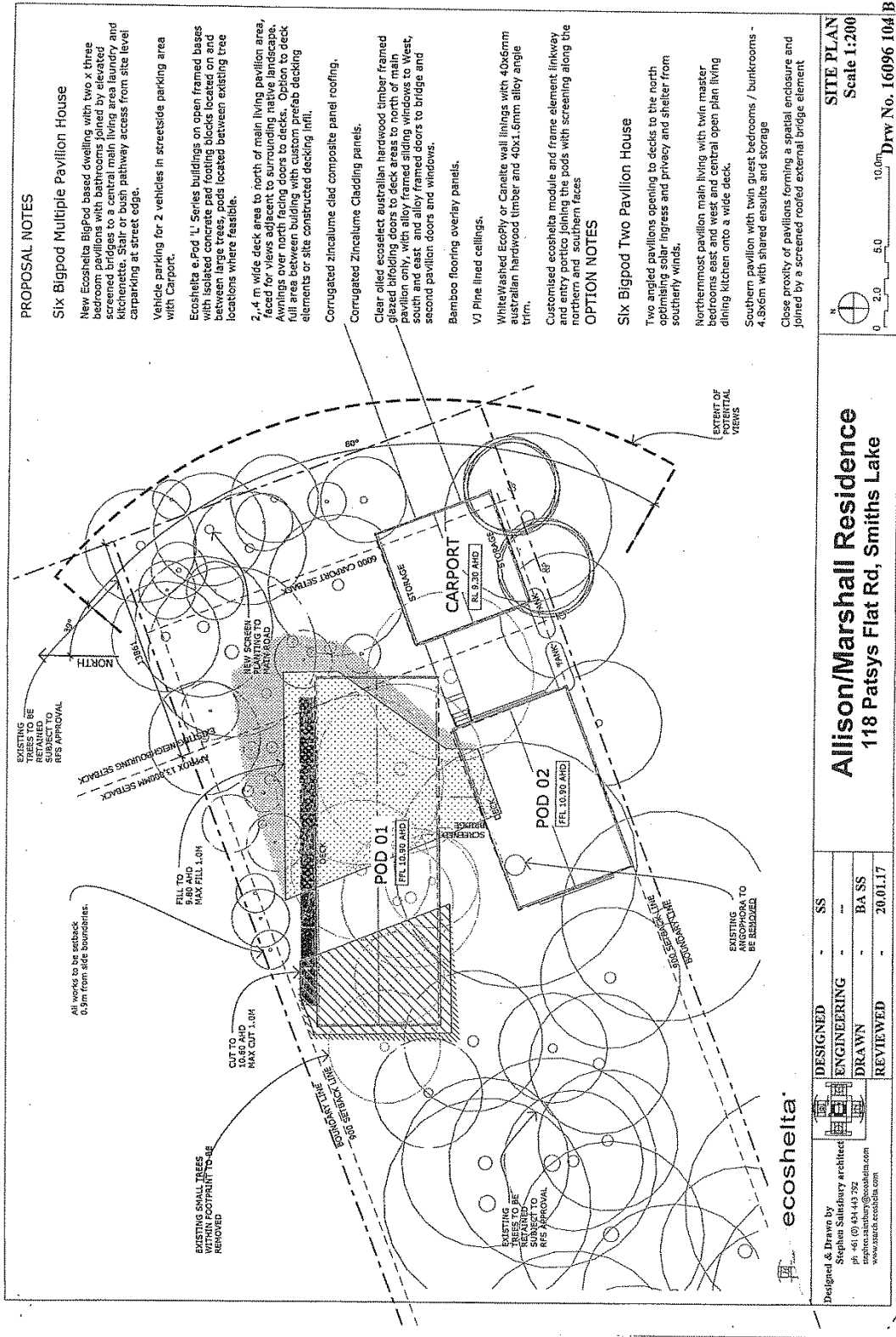
The Registered Proprietor of the land, or their agents, shall fully suppress and control the occurrences of Morning Glory, Fishbone Fern, Senna, Asparagus Fern, Bitou Bush and Lantana on the subject land. Weed control techniques shall be best management practice and coordinated in a manner that protects native vegetation on the subject land.

An occupation certificate shall not be issued until such time as a written statement has been provided by a qualified Bushland Regenerator that the subject land is free of the weed species identified in this condition and any other noxious weed.

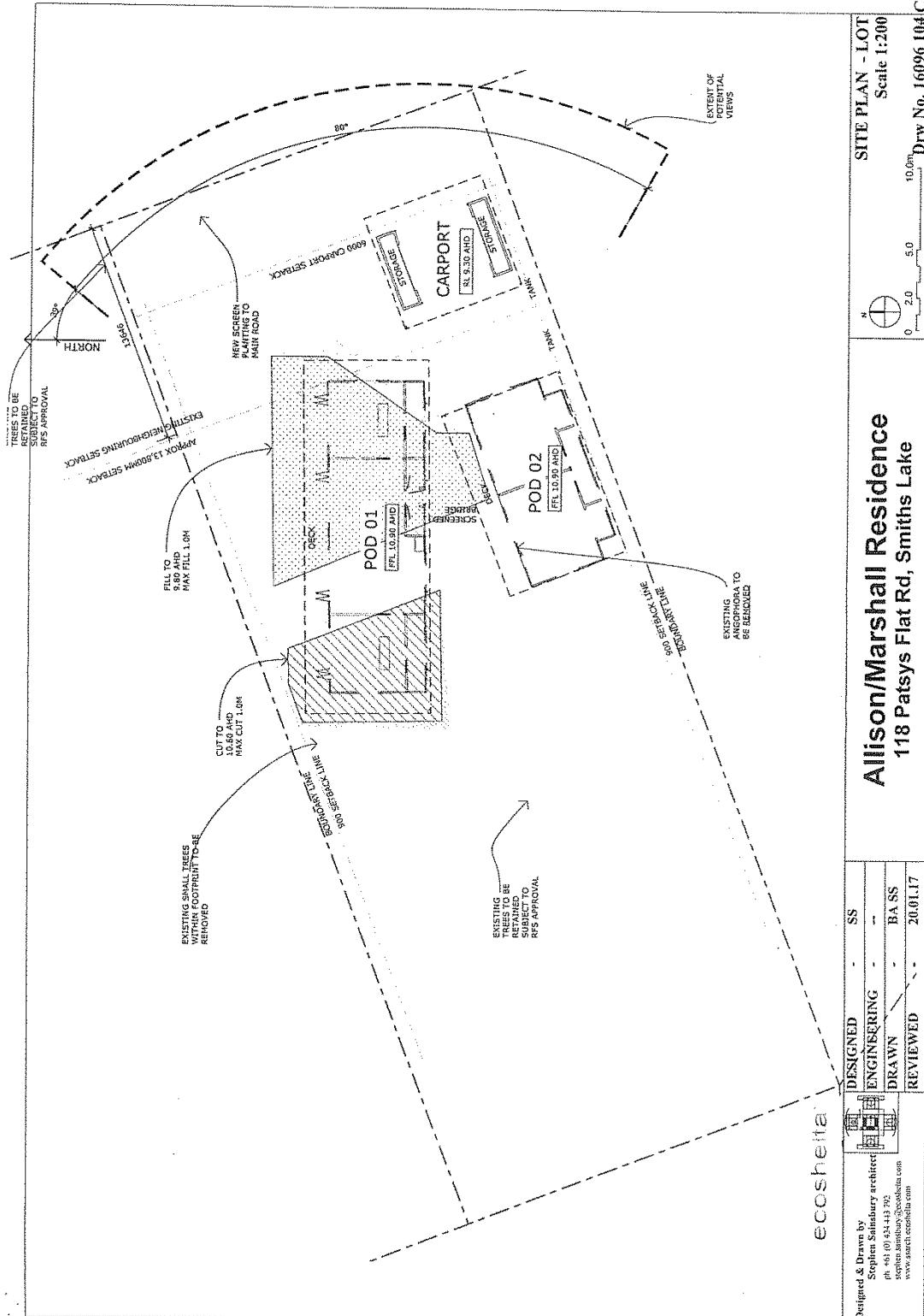
**Reason:** To reduce the incidence of priority weeds on the subject land.

**ANNEXURES:**

**A: Site Plans and Elevations**





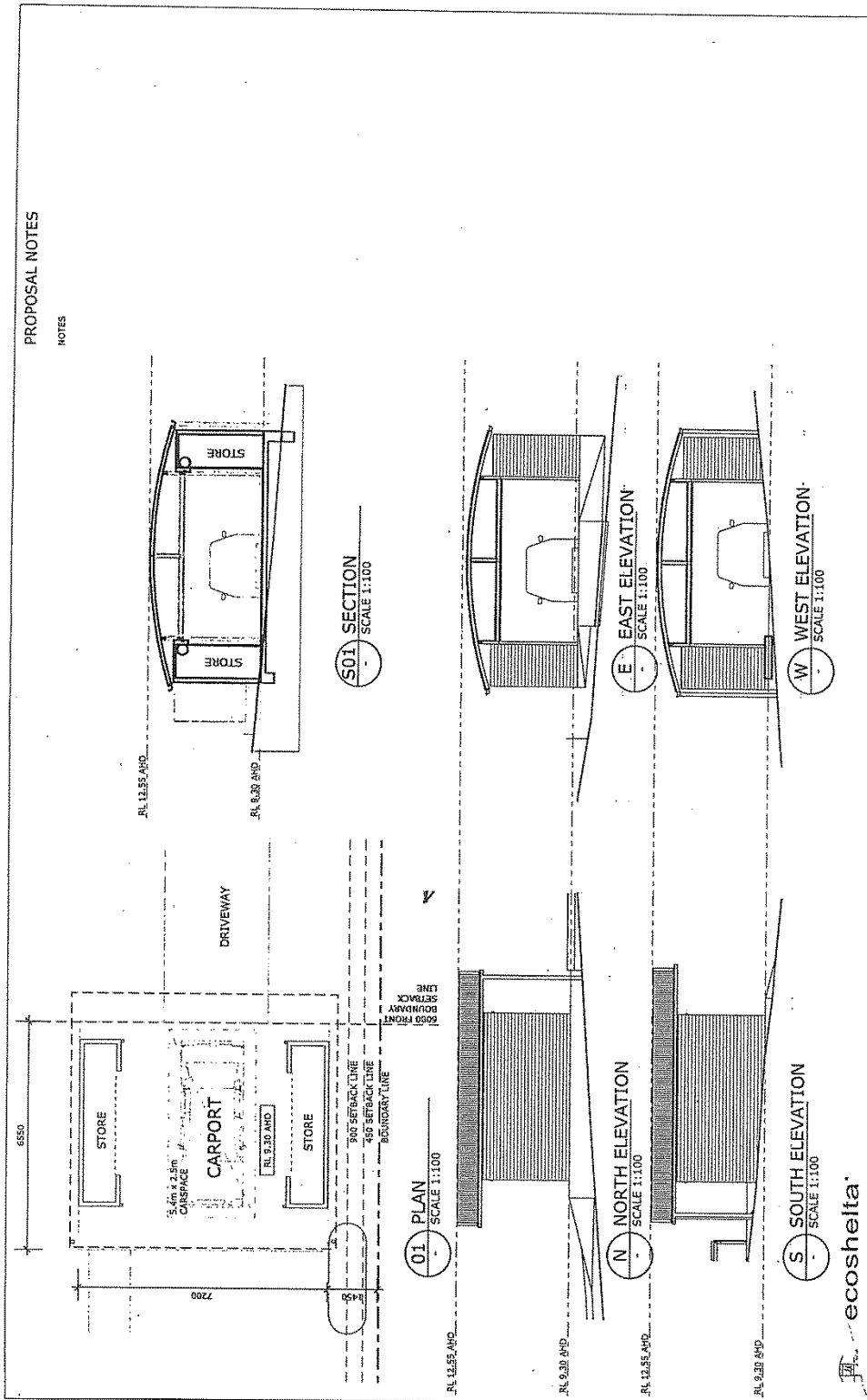


**SITE PLAN - LOT**  
Scale 1:200  
10.0m  
0 2.0 5.0

**Allison/Marshall Residence**  
118 Patsys Flat Rd, Smiths Lake

DESIGNED	-	SS
ENGINEERING	-	-
DRAWN	-	BA SS
REVIEWED	-	20.01.17

ecosheita  
 Designed & Drawn by  
 Stephen Sainsbury architect  
 ph +61 (0) 434 443 793  
 stephen.sainsbury@ecosheita.com  
 www.sasarch.com/stephen



PROPOSAL NOTES  
NOTES

**FLOOR PLAN**  
Scale 1:100

0 1.0 2.5 5.0m  
Drw No. 16096 105

**Allison/Marshall Residence**  
118 Patsys Flat Rd, Smiths Lake

DESIGNED	SS
ENGINEERING	BA SS
DRAWN	20.01.17
REVIEWED	

Designed & Drawn by  
Stephan Sainsbury architect  
ph +61 (0)234 443 792  
stephan.sainsbury@ecosheita.com  
www.ssech.ecosheita.com

**PROPOSAL NOTES**

**Six Bigpod Two Pavilion House**

New Ecoshelta BigPod based dwelling with a two bedroom pavilion with bathrooms joined by elevated screened bridges to a central main living area laundry and kitchen. The pavilion has two bedrooms and ensuite at each end. Stair and bush pathway access from site level carparking at nominal street level.

Vehicle parking for 2 vehicles in streetside parking area with Carport.

Ecoshelta e.Poc 'L' Series buildings on open framed bases with isolated concrete pad footing blocks. Minor cut and fill, less than 1.0m to create a level construction platform and to lower pavilions and decking.

2.4 m wide deck area to north of main living pavilion area, faced for views adjacent to street and overlooking landscape. Awnings over north facing doors to deck. Open to deck full area between building with custom precast decking elements or site constructed decking infill.

Corrugated zincalume clad composite panel roofing.

Corrugated Zincalume Cladding panels.

Clear oiled eucalypt Australian hardwood timber framed glass and bridging doors to deck areas to north of main living pavilion. 1.8m wide timber framed sliding windows to West, south and east. Timber framed doors to bridge and second pavilion doors and windows.

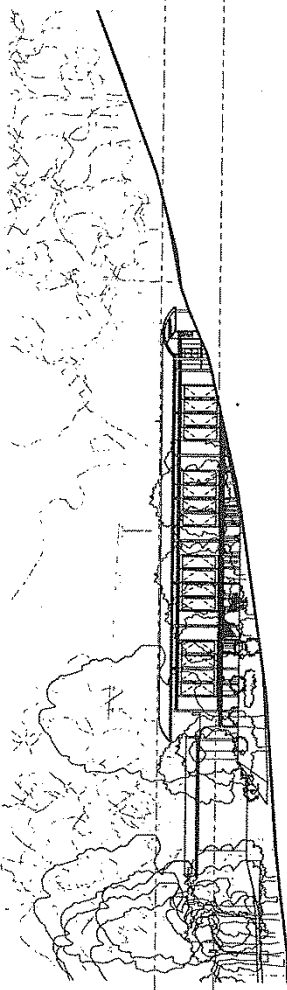
Bamboo flooring overlay panels.

VJ Pine lined ceilings.

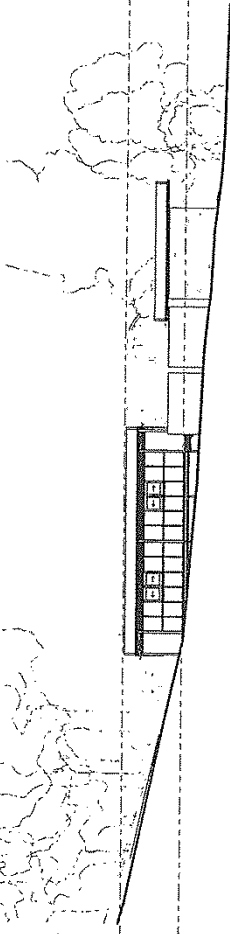
WhiteWashed EcoPly or Caneite wall linings with 40x6mm Australian hardwood timber and 40x1.6mm alloy angle trim.

Customised ecoshelta frame element linkway joining the pods with screening along the eastern and western faces

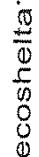
- LEGEND**
- T TIMBER - Class 2 Australian hardwood, oiled finish
  - COL COLORBOND - Gull Grey
  - CZN Corrugated Zincalume Street Cladding
  - SLD Sliding or Bridging Door/Window.
  - FRS Clear oiled timber frame and clear glass
  - FRS2 Clear oiled timber frame and clear glass
  - LV LOUVRE WINDOW - anodised aluminium alloy frame and clear glass
  - RBW - alloy frame and clear glass
  - RBW - Rendered Blockwork Wall
  - TCD Timber Clad Wall
  - TGW Timber Framed Glass Wall
  - TGW Clear Glass Windows Timber Framed
  - CZR Corrugated Zincalume Roofing



**NORTH BOUNDARY ELEVATION**  
SCALE 1:200



**SOUTH BOUNDARY ELEVATION**  
SCALE 1:200

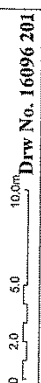


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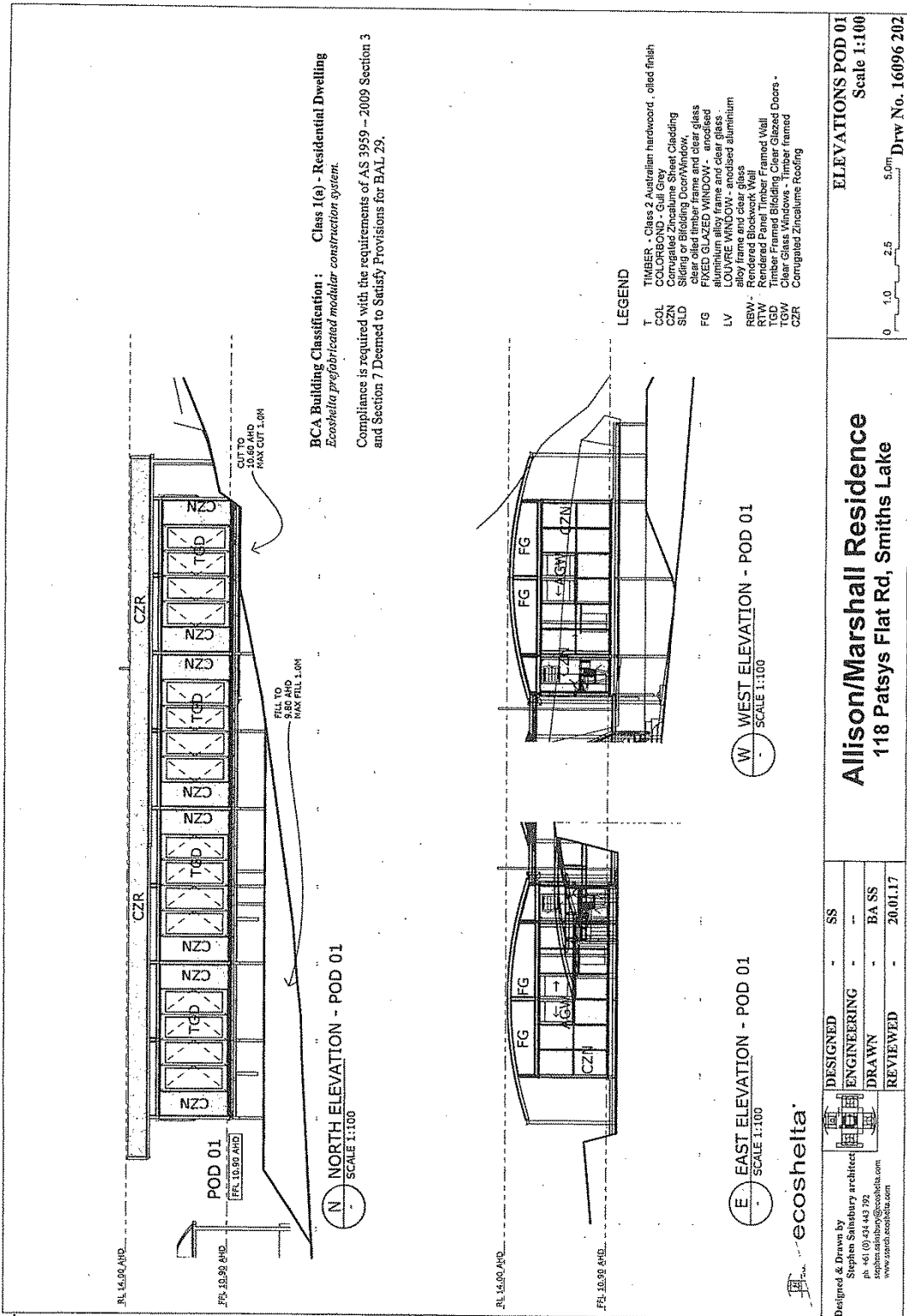
DESIGNED	-	SS
ENGINEERING	-	-
DRAWN	-	BA SS
REVIEWED	-	20.01.17

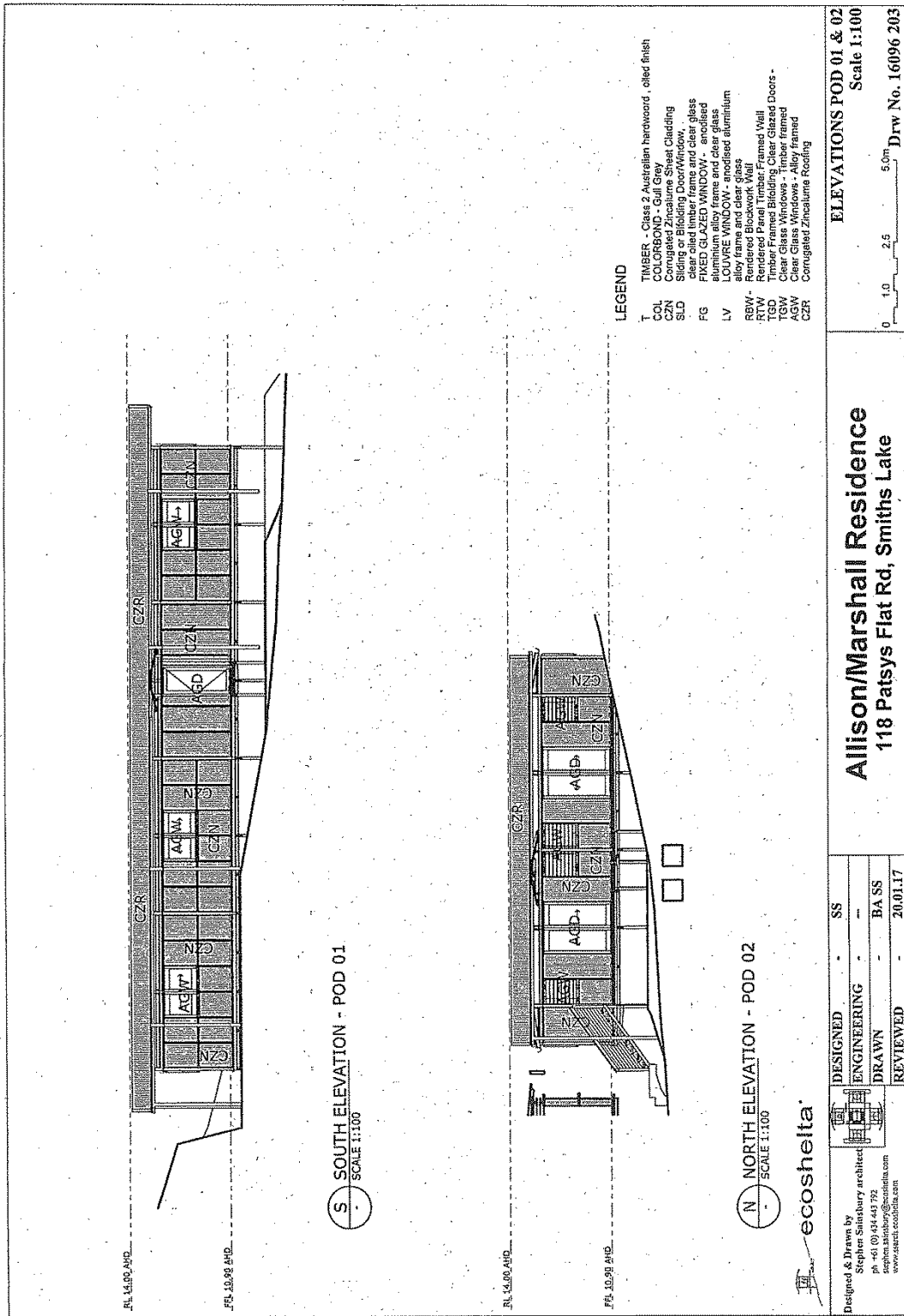
**Allison/Marshall Residence**  
118 Patsys Flat Rd, Smiths Lake

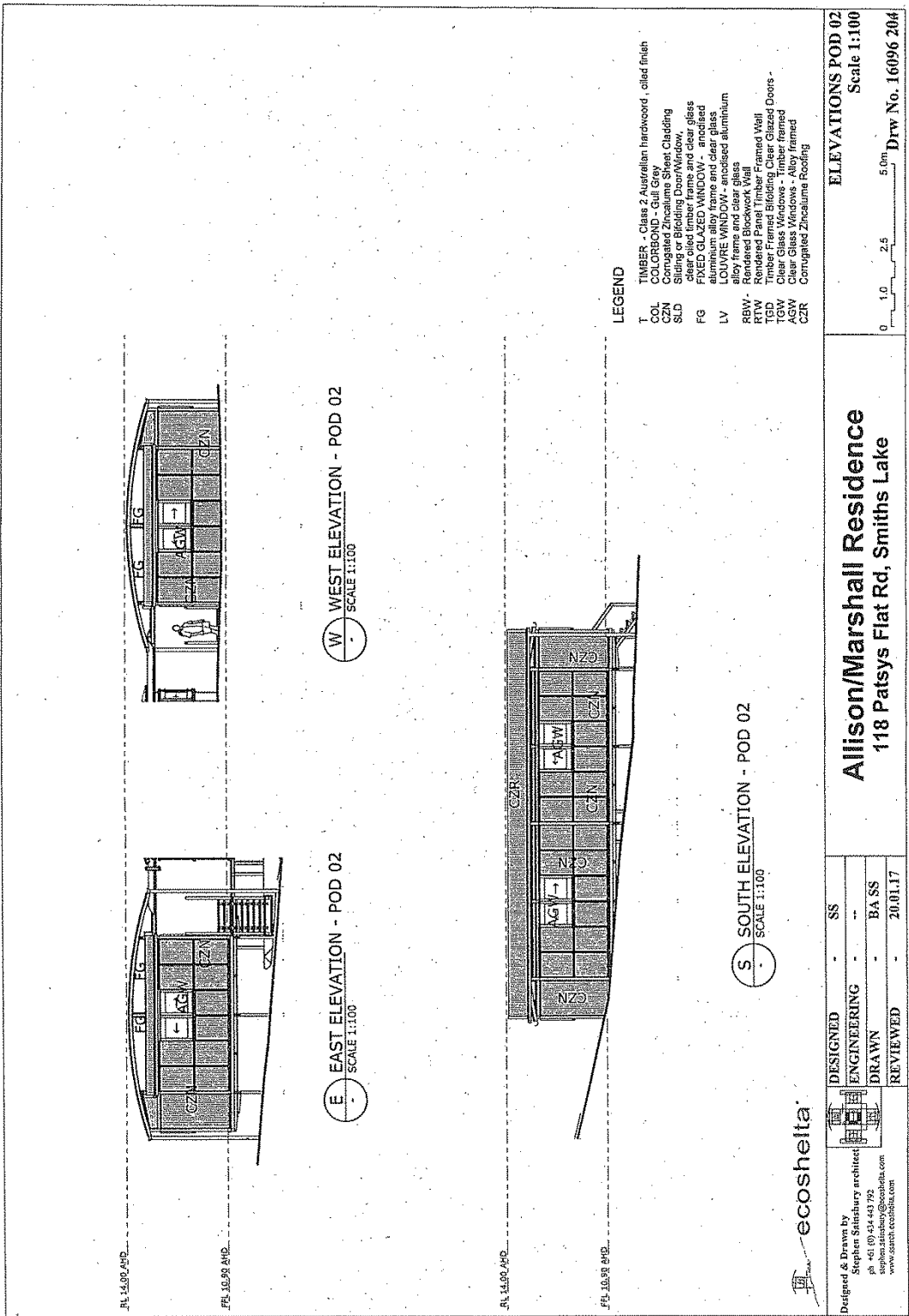
**ELEVATIONS NORTH AND SOUTH**  
Scale 1:200



Draw No. 16096 201







**LEGEND**

- T TIMBER - Class 2 Australian hardwood, oiled finish
- COL COLORBOND - Gull Grey
- SLD Sliding Door
- SLD Sliding or Bifolding Door
- FG clear oiled timber frame and clear glass
- FIXED GLAZED WINDOW - anodised aluminium alloy frame and clear glass
- LV LOUVRE WINDOW - anodised aluminium alloy frame and clear glass
- RBW Rendered Panel Timber Framed Wall
- RTW Rendered Panel Timber Framed Wall
- TGD Timber Framed Bifolding Clear Glazed Doors
- TGW Timber Framed Clear Glazed Windows - Timber framed
- AGW Clear Glass Windows - Alloy framed
- CZR Corrugated Zincalume Roofing

**ELEVATIONS POD 02**  
 Scale 1:100  
 0 1.0 2.5 5.0m  
 Drw No. 16096 204

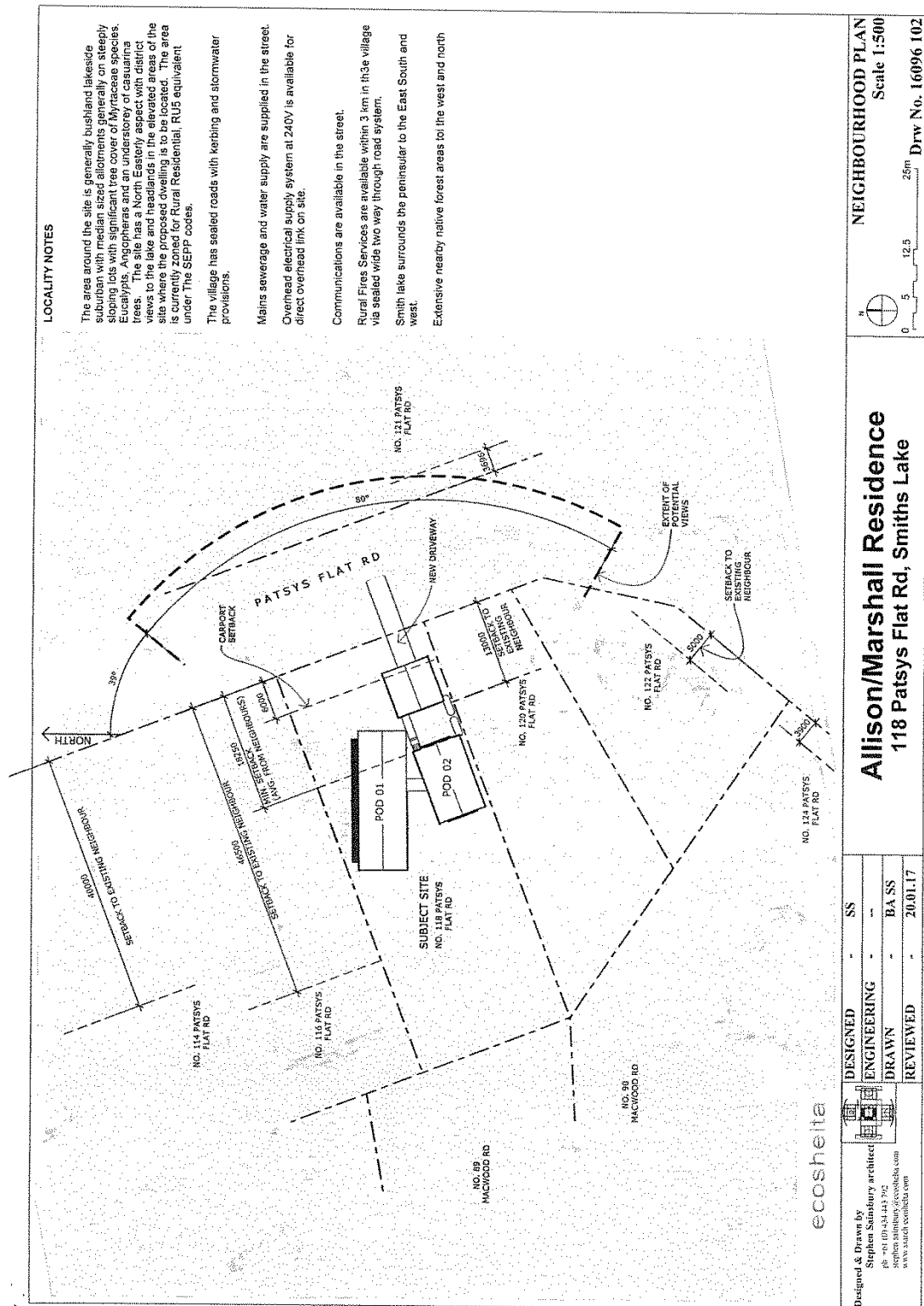
**Allison/Marshall Residence**  
 118 Patsys Flat Rd, Smiths Lake

DESIGNED	SS
ENGINEERING	SS
DRAWN	BA SS
REVIEWED	20.01.17



Designed & Drawn by  
 Stephen Strathbury architect  
 81-83 Oldfield Rd  
 Stephen Strathbury@ecoshelta.com  
 www.stephenstrathbury.com

B: Neighbourhood Plan



LOCALITY NOTES

The area around the site is generally bushland like side suburban with median sized eucalyptus trees. The site is mostly covered with significant tree cover of Myrsine, Eucalyptus, Angophoras and an understory of casuarina trees. The site has a North Easterly aspect with district views to the lake and headlands in the elevated areas of the site where the proposed dwelling is to be located. The area is currently zoned for Rural Residential, RU5 equivalent under The SEPP codes.

The village has sealed roads with kerbing and stormwater provisions.

Mains sewerage and water supply are supplied in the street. Overhead electrical supply system at 240V is available for direct overhead link on site.

Communications are available in the street.

Rural Fires Services are available within 3 km in the village via sealed wide two way through road system.

Smiths lake surrounds the peninsula to the East, South and west.

Extensive nearby native forest areas to the west and north

NEIGHBOURHOOD PLAN  
Scale 1:500

0 5 12.5 25m

25m

20.01.17

**Allison/Marshall Residence**  
118 Patsys Flat Rd, Smiths Lake

DESIGNED	SS
ENGINEERING	---
DRAWN	BA SS
REVIEWED	20.01.17

Designed & Drawn by  
Stephan Stansbury architect  
stephan@stansbury.com.au  
www.stansbury.com.au

ecosheita

## **4 DA 315-2017 DWELLING - 2 STRAND STREET, ALLWORTH**

**Report Author** Aaron Green, District Building Surveyor

**File No. / ECM Index** DA 315/2017 & PK 18357

**Date of Meeting** 29 March 2017

---

### **DETAILS**

Date Received: 11 January 2017

Applicant: Cameron John Watson

Owner: Mr C J Watson and Mrs C M Watson

Land: Lot 1 DP 700736, 2 Stroud St, Allworth

Area: 899m<sup>2</sup>

Property Key: 18357

Zoning: RU5 Village, GLLEP 2014

### **SUMMARY OF REPORT**

- Application submitted for a two storey dwelling.
- The proposal does not comply with Section 5.5.2.1 Front Setback Controls of Great Lakes Development Control Plan 2014.
- The proposal does not comply with Section 3.2 Village Centres and Section 5.4 General Building Design Great Lakes Development Control Plan 2014.
- Non-compliances are discussed within the report.
- General building design and style discussed throughout the report.

### **SUMMARY OF RECOMMENDATION**

That Development Application No. 315/2017, for a dwelling located at Lot 1 DP 700736, 2 Stroud Street, Allworth be granted deferred commencement subject to conditions of consent.

### **FINANCIAL/RESOURCE IMPLICATIONS**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

### **LEGAL IMPLICATIONS**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.



SUBJECT SITE AND LOCALITY



## BACKGROUND:

11 January 2017	Development application received for a new dwelling
16 January 2017	Development application neighbour notified.
2 February 2017	Application referred to strategic planning for comment.
17 February 2017	Strategic planning advised that they had no comments in relation to the proposed dwelling.

## PROPOSAL

The proposal is for an elevated two storey dwelling constructed predominately from shipping containers with traditional framed walls connecting the containers together. There is to be a trussed gable roof over the main part of the dwelling and two skillion roofs protruding from each end. The dwelling will consist of 4 bedrooms, kitchen, dining/living area, two bathrooms, a laundry and an outdoor entertaining area to the lower storey. The upper storey consists of a study only. The applicant is also proposing to keep the existing doors on the shipping containers so as to be able to close the doors and protect the building in adverse weather conditions. It is also proposed to construct a driveway and a shed to the property which will be constructed from a shipping container.

## SITE DESCRIPTION

The subject site is located on the corner of Stroud and Myall Streets, Allworth. There are existing dwellings located to the north, east and south. To the west is what appears to be an old derelict dwelling. To the north-east of the proposed dwelling and within approximately 60m is a commercial poultry farm. The site is an irregular shaped allotment with three road frontages and has a slope from west to east. The allotment is in a prominent location of the village with the proposed dwelling being visible to everyone that enters the village.

A survey plan submitted with the application identifies an existing shipping container on-site located adjacent to the eastern boundary, an examination of Council records failed to reveal any record for approval of the structure, however the plans indicate that this structure is proposed to remain.

## REPORT

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

- a) ***The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; 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; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.***

### ***Great Lakes Local Environmental Plan 2014 (GLLEP 2014)***

The development site is zoned RU5 Village under the plan. Mapping indicates that there is a 0.4:1 Floor Space Ratio (FSR) requirement, a minimum lot size of 1000m<sup>2</sup> and a maximum height of dwellings of 8.5m. The objectives of the R2 zone are:

- To provide for a range of land uses, services and facilities that are associated with a rural village.
- To provide for a range of land uses, services and facilities that are associated with a coastal village.
- To enable non-residential development that does not prejudice the established land use pattern within the village.

Single dwellings are permitted with the consent of Council. In this instance the development complies with the objectives, height and FSR requirements of LEP 2014.

### **Great Lakes Development Control Plan**

The purpose of the DCP is to provide detailed guidelines for the development of dwelling houses and dual occupancy developments. The DCP allows some flexibility in the application of numerical controls where strict compliance is unreasonable or unnecessary having regard to the objective and circumstance of the case.

The proposed dwelling doesn't comply with Section 5.5.2.1 Front Setback Controls as follows:

1. *Where there are existing neighbouring houses within 40m, the front setback should be an average of the front setbacks of the nearest two neighbouring houses, with the same primary road frontage.*
2. *Where there are no neighbouring houses the minimum setback from the primary road frontage will vary:*
  - *4.5m minimum setbacks on allotments less than 900m<sup>2</sup>; and*
  - *6m minimum setbacks on allotments greater than 900m<sup>2</sup>.*

There are no neighbouring houses that have the same primary boundary setback as the proposed dwelling; as such a minimum primary boundary setback of 4.5m applies.

The applicant is proposing a primary boundary setback of 4.0m to Myall St to the west and a point encroachment onto that part of the boundary that changes direction to the north. A secondary setback to Stroud St of 3.0m is also proposed. The secondary setback complies with Council's DCP however, the irregular shape of the allotment makes it difficult to achieve a compliant primary setback. Moving the dwelling back 500mm to comply with the DCP will have negligible benefit to the street but instead will have a greater impact on the adjoining properties due to a loss of privacy. There will still also be a large setback to the actual road pavement of approximately 11.0m. It is considered that the DCP objective has been addressed and that a variation to the DCP is supported.

The dwelling has been designed so the original doors of the shipping containers will remain in place, the applicant advised that they have chosen to do this so as to be able to close the doors and seal the building from adverse weather conditions including extreme heat, wind and rain. When the container doors are closed it will emphasise the shipping containers within the dwelling and further enhance the raw industrial nature of the building. When the container doors are open they will protrude from the dwelling by approximately 1.2m. On the Stroud Street elevation this will reduce the setback to 1.8m from the allotment boundary thus creating a non-compliance with Section 5.5.2.4 Corner Setback Controls of the DCP which requires a minimum 3.0m setback.

The building can be adequately protected from the adverse weather conditions through traditional construction methods which can be retrofitted to the containers. The container doors that front on to Stroud Street will provide an adverse impact to the streetscape whether they are in the open or closed positions.

The proposal does not comply with Section 5.4 General Building Design point 10 of the DCP. This section is as follows:

*Colour and materials are to be sympathetic to the existing character of the street and natural setting of the locality. Highly reflective materials should be avoided. On sloping sites in built up areas, reflective, white and other light coloured roof materials should be avoided to reduce glare impacts to adjoining properties.*

Reinforcing this control is the following point from Section 3.2.2 Inland Villages Additional Character Statements of the DCP:

*The desired future character is derived from the existing development. Existing development within these areas is usually characterised by:*

- *Often painted in earthy colour schemes including light stone, brown and beige colours*

In lieu of choosing a colour scheme that is sympathetic to the existing character of the street and natural setting of the locality the applicant has chosen to emphasise the shipping containers making them the feature of the dwelling. The applicant has chosen to leave the shipping containers in their original colours that being orange oxide and red oxide with the walls that are being constructed on site being manor red. The chosen colours are in complete contrast to the DCP controls.

Cosmetic changes to the building are available that would facilitate the incorporation of this style of building into a village setting. Such changes could include the use of earthy, neutral colours to the roof and particularly the external walls that are consistent with the DCP. Removal of the shipping container doors on the Stroud Street elevation of the dwelling would also ensure that the building presents as a dwelling that contributes to the streetscape rather than dominates it. Because the proposed shed (also a container) is to be located under the carport roof and is setback from the front alignment of the dwelling, to the Stroud Street frontage, these shipping container doors are less likely to impact the streetscape and are considered as being acceptable to remain.

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

***Context and Setting***

The existing village of Allworth has a mixture of dwelling styles including light weight clad construction to brick veneer with tiled roof and also manufactured dwellings. The existing dwelling's range in age from newer style to older dwellings that require maintenance and even what appear to be abandoned derelict dwellings. There is no dominant building style within the village.

Council has previously approved shipping containers in village zones to be used as storage sheds only. This was done with the condition that the container be fitted with external wall cladding and a roof being constructed over the container so as the structure would no longer resemble a shipping container.

On the main thoroughfare to the village, approximately 60m from the proposed dwelling site, exists a large commercial poultry farm that consists of 7 large sheds that are approximately 110m long by 15m wide. These sheds are highly visible from the road and have been established for an extended time. The poultry farm dominates the entry to the village and adds to the mixture of development types within Allworth.

The proposed dwelling is a style of construction that is increasing in popularity and if executed correctly could result in a creative, modern and alternate display of a dwelling that would be a focal point of the town. But if executed poorly could result in a dwelling that would appear to be a commercial/industrial shed with a negative visual impact. Due to the predominant location of the dwelling this negative visual impact would provide an effect to the whole village.

It is considered that if executed correctly the dwelling will result in a development which is consistent with the surrounding locality and be of a benefit to the village.

The use of a more neutral colour scheme to the buildings external claddings and removal of shipping container doors from the Stroud Street frontage would ensure that the building is not inconsistent with the context and setting of the Allworth village, whilst still maintaining individual architectural merit.

### ***Views***

The dwelling is not considered to have an unreasonable impact on the views available from the surrounding properties.

### ***Privacy (Aural and Visual)***

Given the residential locality it is considered that the level of impact on privacy is reasonable for the setting.

### ***Overshadowing***

The dwelling will have a northerly aspect which will allow for adequate solar access to be provided to neighbouring properties to the east and west.

### ***Visual Impact***

The proposed dwelling is of a style of construction that if executed correctly could result in a creative, modern and alternate display of a dwelling that would be a focal point of the town. But if executed poorly could result in a dwelling that would appear to be an industrial shed and have a negative visual impact within this village area. It is also important to consider that development on the approach to the village consists of a large commercial poultry farm and the development within the village is varied in terms of building style and condition.

That applicant has chosen to emphasise the shipping containers within the design of the dwelling, they are not to be masked or hidden in anyway but rather highlighted as being the focal point of the dwelling. By using the original colours of the shipping containers and leaving the original doors on it ensures that the shipping containers will be the dominant aspect of the dwelling.

The applicant has however provided a landscape plan and species list which details comprehensive landscaping to the site which will soften the dwelling's visual impact.

### ***Cumulative Impacts***

This style of construction is increasing in popularity and approval of this dwelling could lead to a cumulative impact by creating a precedent for this style of dwelling within a village zone.

The proposed colour scheme and use of shipping containers are a dominant feature of the design. These features of the proposal are considered to dominate the rural village setting. In order to ensure that the proposal is complementary and sympathetic to the existing character of the locality it is recommended that some design changes are necessary. These changes would include the use of a neutral earthy colour scheme and removal of the shipping container doors on the Stroud Street elevation.

### ***Use of shipping containers***

The use of shipping containers for domestic purpose has been highlighted in the media in recent years. However concerns are raised for the use of the structures as habitable buildings. Shipping containers are used to transport a numerous variety of products and the containers are often fumigated at shipping. There are concerns that residual chemicals may remain in the container and if not mitigated could potentially lead to adverse effects on the health of occupants. A recent study, commissioned by Safe Work Australia, (December 2012) was carried out examining potential effects on workers opening fumigated containers. Whilst this study did not deal with the potential future use of shipping containers for habitable purposes, it is prudent that Council require a certification from an occupational hygienist, prior to the installation of the shipping containers on-site, certifying that the containers are free from any residual chemical and are suitable for human habitation.

#### **c) *The Suitability of the Site for the Development***

The subject site is bushfire prone which results in conditions being imposed in the development consent with regard to construction complying with the relevant bushfire protection requirements.

#### **d) *Any Submissions Made in Accordance with the Act or Regulations***

The application was notified to adjoining owners in accordance with Council's Policy and no submissions were received.

### **CONCLUSION**

With some changes to the design the dwelling is considered acceptable upon this site. The proposed dwelling is a style of construction that is increasing in popularity and if executed correctly could result in a dwelling that would be a focal point of the town.

### **RECOMMENDATION**

The proposed colour scheme and retention of the shipping container doors on the Stroud Street elevation will result in a building that dominates the locality, and therefore these aspects of the proposal are not supported. Accordingly deferred commencement conditions have been included in the recommendation to ensure the building will not detract from or dominate the existing streetscape amenity.

It is recommended that Development Application No. 315/2017, for a new dwelling located at Lot 1 DP 700736, 2 Stroud Street, Allworth be granted as a deferred commencement consent subject to conditions of consent.

#### **Deferred Commencement Conditions**

In accordance with Section 80(3) of the Environmental Planning and Assessment Act, 1979, this is a deferred commencement consent. The consent will not operate until evidence, as specified in the following deferred commencement conditions, has been submitted to and approved by the consent authority and written notice given under Section 100(4)(b) of the *Environmental Planning and Assessment Regulation 2000* that the deferred commencement conditions have been satisfied and the date from which the consent operates:

- a) A detailed colour scheme is to be provided that details the use of colours that are sympathetic to the existing character of the street and natural locality. Earthy colour schemes including light stone, brown and beige colours are to be preferred.

**Reason:** To comply with Great Lakes Development Control Plan 2014 and to ensure the dwelling colours are sympathetic with the existing locality.

- b) The plans are to be amended so that all the shipping container doors (excluding the doors on the shed within the carport) are to be removed from the shipping containers that form part of the dwelling on the Stroud Street frontage.

**Reason:** To comply with Great Lakes Development Control Plan 2014 and to ensure that the dwelling will not have an adverse impact on the streetscape of Stroud Street.

**Evidence required to satisfy the above deferred commencement condition/s must, in accordance with Clause 95(3) of the *Environmental Planning and Assessment Regulation 2000*, be submitted to Council within 6 months of the date of this consent.**

Under Section 80A of the Environmental Planning and Assessment Act 1979, the following conditions will apply, following written notice given under Section 100(4)(b) of Environmental Planning and Assessment Regulation 2000 and subject to any further conditions reasonably arising from compliance to the terms of the deferred commencement condition/s.

## GENERAL CONDITIONS

### 1. Development in accordance with approved plans

The development must be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan type / Supporting Document	Plan No. & Version	Prepared by	Dated

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

**Reason:** Information and to ensure compliance.

### 2. Compliance with National Construction Code Series- Building Code of Australia

All building work must be carried out in accordance with the requirements of the National Construction Code Series - Building Code of Australia as in force on the date the application for the relevant construction certificate or complying development certificate was made.

**Reason:** Prescribed condition under the Environmental Planning & Assessment Regulation 2000.

### 3. Insurance requirements under Home Building Act 1989

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 has been given documentary evidence or written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
  - i) the name and licence number of the principal contractor, and
  - ii) if the contractor is required to have a contract of insurance for any authorised works, a Statement of Cover with the name of the insurer by which the work is insured under Part 6 of that Act .
- b) in the case of work to be done by an owner-builder:
  - i) the name of the owner-builder, and
  - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates has been given the notice of the updated information.

**Reason:** Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

#### **4. Notification of Home Building Act 1989 requirements**

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:

- a) in the case of work for which a principal contractor is required to be appointed:
  - i) the name and licence number of the principal contractor, and
  - ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
  - i) the name of the owner-builder, and
  - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above 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.

**Reason:** Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

#### **5. Adjustment to utility services**

All adjustments to existing utility services made necessary by the development are to be undertaken at no cost to Council.

**Reason:** To ensure utility services remain in a serviceable condition.

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

**The following conditions must be complied with prior to the issue of any construction certificate:**



## **6. Structural details**

Prior to the issue of a construction certificate, structural drawings prepared by a suitably qualified and experienced structural engineer must be submitted to and approved by the certifying authority. The plans must include details for:

- a) All reinforced concrete floor slabs and/or beams or raft slab (having due regard to the possible differential settlement of the cut and fill areas.
- b) Footings of the proposed structure.
- c) Structural steel beams/columns.

**Reason:** To ensure structural stability and safety.

## **7. Plans of retaining walls and drainage**

Prior to the issue of a construction certificate plans and specifications of retaining walls or other approved methods of preventing the movement of soil, where excavation or fill exceeds 600mm above or below the existing ground level, must be submitted to and approved by the certifying authority, Adequate provision must be made for drainage in the design of the structures.

**Reason:** To ensure site stability and safety.

## **8. On-site sewage management system - Section 68 application**

Prior to the issue of a construction certificate, an application under Section 68 of the Local Government Act 1993 to install an on-site sewage management system must be obtained from Council. The application for Section 68 approval must be accompanied by a report prepared by a suitably qualified professional with demonstrated experience in effluent disposal matters. The report must address the site specific design of sewage management in accordance with the requirements of the Local Government Act 1993, the Local Government (General) Regulation 2005 and Guidelines approved by the Director General.

**Reason:** To ensure suitable onsite sewage disposal is provided to the development to protect public health and the natural environment.

## **9. Driveway levels application**

Prior to the issue of a construction certificate, a Driveway Levels Application must be submitted to Council for approval. A Driveway Levels Application Form must be completed and submitted to Council together with the application fee and all required plans and specifications.

Driveways must be constructed by a qualified/licensed contractor at no cost to Council in accordance with the driveway levels and construction standards issued by Council.

**Reason:** To ensure works within Council's road reserve are constructed to a suitable standard for public safety.

## 10. BASIX Certificate

Prior to the issue of a construction certificate, plans and specifications detailing all of the BASIX Certificate commitments must be submitted to and approved by the certifying authority. The proposed development must be constructed in accordance with the requirements of the relevant BASIX Certificate. Where changes to the development are proposed that may affect the water, thermal comfort or energy commitments, a new BASIX Certificate will be required.

**Reason:** Prescribed condition under the Environmental Planning and Assessment Regulation 2000.

## 11. Construction of buildings in bushfire-prone areas

Prior to the issue of a construction certificate, plans and specifications detailing the construction of the building to Bushfire Attack Level 12.5 as defined in Australian Standard AS 3959- Construction of buildings in bushfire-prone areas and section A3.7 Addendum Appendix 3 of "Planning for Bush Fire Protection" must be submitted to and approved by the certifying authority.

**Reason:** To ensure the development complies with bush fire construction standards.

## 12. Underfloor screening

Prior to the issue of a construction certificate, plans and specifications detailing the provision of a screen around the base of the building to improve its visual appearance must be submitted to and approved by the certifying authority. Suitable materials include lattice, slats or louvers. Advanced landscaping (shrubs) may be used in conjunction with screens.

**Reason:** To maintain visual amenity to the street.

## 13. Bond required to guarantee against damage to public land

Prior to the issue of a construction certificate, a Damage Bond Application form together with payment of a bond in the amount of \$2000 and an administration fee of \$320 must be submitted to Council. The bond is payable for the purpose of funding repairs to any damage that may result to Council assets from activities/works associated with the construction of the development and to ensure compliance with Council standards and specifications.

A final inspection will be carried out by the responsible Council officer and the bond (minus any fees required for additional inspections) will be considered for refund:

- a) once all works, including landscaping, driveway construction, turfing, etc, have been completed, and
- b) following issue of an occupation certificate by the certifying authority.

The damage bond is reviewed periodically and therefore the fee and bond amount payable will be determined from Council's current fees and charges document at the time of lodgement of the damage bond.

**Reason:** Protection of public assets.

## **PRIOR TO THE COMMENCEMENT OF ANY WORK ASSOCIATED WITH THIS CONSENT**

**The following conditions must be satisfied prior to the commencement of any building construction or subdivision work:**

### **14. Construction certificate required**

Prior to the commencement of any building or subdivision construction work (including excavation), a construction certificate must be issued by a certifying authority.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 6591 7222.

**Reason:** Statutory requirement under the Environmental Planning and Assessment Act 1979.

### **15. Notification of commencement and appointment of principal certifying authority**

Prior to the commencement of any building or subdivision construction work (including excavation), the person having the benefit of the development consent must appoint a principal certifying authority and give at least two (2) days' notice to Council, in writing, of the persons intention to commence construction work.

**Reason:** Statutory requirement under the Environmental Planning and Assessment Act 1979.

### **16. Site access**

Public access to the site and building works, materials and equipment on the site is to be restricted, when building work is not in progress or the site is unoccupied. The public safety provisions must be in place prior to the commencement of any demolition, excavation or building works and be maintained throughout construction.

**Reason:** To ensure public health and safety during the construction of the development.

### **17. Installation of erosion & sediment control measures**

Prior to the commencement of work, erosion and sediment controls must be in place in accordance with Great Lakes Council Erosion and Sediment Control Policy and "The Blue Book – Managing Urban Stormwater (MUS): Soils and Construction" (Landcom). In particular, the following erosion and sediment control measures must be installed:

- a) Silt fence or sediment barrier.
- b) Temporary driveway from the edge of road to the building site.
- c) Temporary downpipes immediately upon installation of the roof covering.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

**Reason:** To protect the environment from the effects of erosion and sedimentation.

## **18. Pollution prevention sign**

Council's "PREVENT POLLUTION" sign must be erected and maintained in a prominent position at the frontage of the property so that it is clearly visible to the public for the duration of construction work. Council's "PREVENT POLLUTION" sign can be purchased at Council's Customer Enquiry Counter at the Forster, Tea Gardens and Stroud administration buildings.

**Reason:** To increase industry and community awareness of developer's obligations to prevent pollution and to assist in ensuring compliance with the statutory provisions of the Protection of the Environment Operations Act 1997.

## **19. Toilet facilities - unsewered areas**

Prior to the commencement of work, toilet facilities must be provided at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be a toilet connected to an accredited sewage management system approved by the Council.

**Reason:** To maintain the public health and the natural environment.

## **20. Site construction sign**

Prior to the commencement of work, a sign or signs must be erected in a prominent position at the frontage to the site.

- 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 work site is prohibited.

The 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.

**Reason:** Prescribed condition under the Environmental Planning and Assessment Regulation 2000.

## **21. Certification of shipping containers**

Prior to the placement of any shipping container on-site, a report endorsed by an Occupational Hygienist is to be submitted to Council certifying that the shipping containers are free from residual chemicals and are suitable for human habitation.

**Reason:** To ensure there are no adverse health effects on occupants of the building.

## **CONDITIONS TO BE SATISFIED DURING DEVELOPMENT WORK**

**The following conditions must be complied with during any development work:**

### **22. Construction times**

Construction and/or demolition works, including deliveries on or to the site must not unreasonably interfere with the amenity of the neighbourhood and must occur only in accordance with the following:

Monday to Friday, from 7 am to 6 pm.

Saturday, from 8 am to 1 pm.

No construction and/or demolition work, including deliveries are to take place on Sundays or Public Holidays.

**Reason:** To maintain amenity during construction of the development.

**23. Builders rubbish to be contained on site**

All builders rubbish is to be contained on the site in a suitable waste bin/enclosure. Building materials must be delivered directly onto the property. Footpaths, road reserves and public reserves must be maintained clear of rubbish, building materials and other items at all times.

**Reason:** To ensure that materials and waste do not adversely affect traffic or pedestrian safety and amenity.

**24. Maintenance of sediment and erosion control measures**

Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

**Reason:** To protect the environment from the effects of erosion and sedimentation.

**25. Compliance with waste management plan**

During demolition and/or construction of the development, waste disposal must be carried out in accordance with the approved waste management plan.

**Reason:** To ensure waste is minimised and recovered for recycling where possible.

**26. Inspection of drainage and on-site sewage management system**

The drainage and on-site sewage management works must be inspected during construction by Great Lakes Council to verify compliance with this consent and the Australian Standards. An inspection fee in accordance with Council's Fees and Charges Policy must be paid to Council. Inspections must be carried out at the following stages:

- a) Arrange inspections with Council's Building District Surveyor by calling (02) 6591 7291 when:
  - i) All plumbing has been installed prior to covering in.
  - ii) Internal drainage lines are laid in position and prior to covering in.
  - iii) External drainage lines are laid in position and prior to covering in.
- b) Arrange inspection with Council's Environmental Health Officer by calling (02) 6591 7291 when installation of the on-site sewage management facility and associated disposal areas are complete.

**Reason:** To ensure drainage and onsite sewage disposal is in accordance with the approved plans and standards.

**27. Survey of building location**

A survey certificate prepared by a registered surveyor must be submitted to the certifying authority at the following stages of the development:

- a) Prior to the construction of footings or first completed floor slab showing the area of land, building under construction and boundary setbacks.

**Reason:** To ensure compliance with the approved plans.

**28. Landscaping with regard to bushfire protection**

Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

**Reason:** To ensure compliance with Planning for Bushfire Protection 2006.

**PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

**The following conditions must be satisfied prior to any occupation or use of the building:**

**29. Works to be completed**

The building/structure or part thereof must not be occupied or used until an interim occupation/final occupation certificate has been issued in respect of the building or part.

**Reason:** To ensure compliance with the development consent and statutory requirements.

**30. Sealed driveway in accordance with approved Driveways Level Application**

Prior to the issue of a final occupation certificate, a driveway must be constructed from the edge of the road formation to the property boundary in accordance with the approved Driveway Levels Application. Written confirmation from Council must be obtained stating that the constructed driveway is to Council's satisfaction.

**Reason:** To ensure suitable vehicular access to the development.

**31. Internal driveway in accordance with the approved plans**

Prior to the issue of a final occupation certificate, a driveway must be constructed from the property boundary to the proposed car spaces in accordance with the approved plans.

**Reason:** To ensure suitable vehicular access is provided to the development.

**32. On-site sewage management system - approval to operate**

Prior to the issue of an occupation certificate, the on-site sewage management system must be completed in accordance with the approved plans and current specifications and standards. The system must not be used and/or operated until it has been inspected by a Council Officer and an approval to operate the system has been issued.

**Reason:** To ensure public health and safety.

**33. BASIX Compliance**

Prior to the issue of a final occupation certificate, all of the required commitments listed in the BASIX certificate must be fulfilled.

**Reason:** Prescribed condition under the Environmental Planning and Assessment Regulation 2000.

**34. House numbering**

Prior to the issue of a final occupation certificate, the street number must be displayed at the main driveway entrance approved for the property. The street number for this property is 2.

**Reason:** To ensure proper identification of buildings.

### **35. Bushfire mitigation requirements**

Prior to the issue of a final occupation certificate, the following bush fire mitigation requirements must be incorporated into the completed development:

- a) The new building works are to be constructed in accordance with Bushfire Attack Level 12.5 as defined in Australian Standard AS 3959- Construction of buildings in bushfire-prone areas and section A3.7 Addendum Appendix 3 of "Planning for Bush Fire Protection".

**Reason:** To improve bush fire safety.

### **36. Water and Utilities Bushfire Provisions**

In recognition that no reticulated water supply is available to the development, a total of 5000 litres fire fighting water supply shall be provided for firefighting purposes prior to the issue of an occupation certificate. The fire fighting water supply shall be installed and maintained in the following manner:

- a) A hardened ground surface for fire fighting truck access is to be constructed up to and within 4 metres of the fire fighting water supply.
- b) New above ground fire fighting water supply storage's are to be manufactured using non-combustible material (concrete, metal, etc). Where existing fire fighting water supply storage's are constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials, they shall be shielded from the impact of radiant heat and direct flame contact.
- c) Non-combustible materials (concrete, metal, etc) will only be used to elevate or raise fire fighting water supply tank(s) above the natural ground level.
- d) A 65mm metal Storz outlet with a gate or ball valve shall be fitted to any above ground fire fighting water supply tank(s) and accessible for a fire fighting truck.
- e) The gate or ball valve, pipes and tank penetration are adequate for the full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material.
- f) All associated fittings to the fire fighting water supply tank(s) shall be non-combustible.
- g) Any below ground fire fighting water supply tank(s) constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials shall be shielded from the impact of radiant heat and direct flame contact.
- h) Any fire fighting water supply tank(s) located below ground shall be clearly delineated to prevent vehicles being driven over the tank.
- i) All water supplies for fire fighting purposes shall be clearly signposted as a fire fighting water supply.
- j) Below ground fire fighting water supply tank(s) shall have an access hole measuring a minimum 200mm x 200mm to allow fire fighting trucks to access water direct from the tank.
- k) Fire fighting water supply tank(s) and associated fittings, located within 60 metres of a bushfire hazard and on the hazard side of an approved building, shall be provided with radiant heat shielding to protect the tank from bush fire impacts and maintain safe access to the water supply for fire fighters.
- l) A Static Water Supply (SWS) sign shall be obtained from the local NSW Rural Fire Service (RFS) and positioned for ease of identification by RFS personnel and other users of the SWS. In this regard:
  - i. Markers must be fixed in a suitable location so as to be highly visible; and
  - ii. Markers should be positioned adjacent to the most appropriate access for the water supply.

Note: Below ground dedicated fire fighting water supply tank(s) is defined as that no part of the tanks(s) is to be located above natural ground level.

- m) Electricity and gas services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

**Reason:** The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

### **37. Shipping container doors**

Prior to the issue of any occupation certificate there is to be no shipping container doors on the shipping containers that form part of the dwelling and shed on the Stroud Street frontage.

**Reason:** To ensure compliance with Great Lakes Development Control Plan 2014 and to ensure to adverse impact to the streetscape of Stroud Street.

## **ONGOING USE**

### **38. Asset Protection Zone (APZ)**

The entire property must be maintained in perpetuity as an inner protection area (IPA) as outlined within section 4.1.3. and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bushfire Protection 2006'.

**Reason:** To provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels of buildings are below critical limits and to prevent directed flame contact with a building.

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## **ATTACHMENTS**

A: Plans and elevations.

Due to its large size, Attachment A has been circulated in hard copy to the Administrator only as a paper conservation measure. However, this Attachment is publicly available on Council's Website, copies are available at Council offices and copies are available on request.



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**Director**  
**Planning & Natural Systems**



## ANNEXURES:

### A: Species List.

#### Species List

##### Existing Trees

- A. *Corymbia maculata* - Spotted Gum
- B. *Eucalyptus crebra* - Narrow leaved red Ironbark
- C. *Grevillea "moonlight"*- *G.banksii* cultivar
- D. *Callistemon viminalis* - Weeping Bottlebrush
- E. *Plumeria* spp. - Frangipani (not on survey)
- F. *Corymbia maculate* - Spotted Gum
- G. *Eucalyptus macrorhyncha* - Red Stringybark

##### New Trees

1. *Melaleuca linarifolia* - Snow in Summer
2. *Acmena smithii* - Lilly Pilly
3. *Liquidamber styraciflua* - Liquidamber
4. *Melaleuca linarifolia* - Snow in Summer
5. *Brachychiton "Red Pagoda"*- *B.bidwillii* cultivar
6. *Acmena smithii* – Lilly Pilly
7. *Banksia integrifolia* – Coastal Banksia
8. *Elaeocarpus reticulatis* – Blueberry Ash
9. *Callistemon viminalis* – Weeping Bottlebrush
10. *Ceratopetalum gummiferum* – NSW Christmas Bush
11. *Melaleuca linarifolia* – Snow in Summer
12. *Ficus macrocarpa* – Standard
13. *Hakea salicifolia* – Willow Leaved Hakea
14. *Olea Europa* - Olive
15. *Melaleuca linarifolia* – Snow in Summer
16. *Callistemon viminalis* – Weeping Bottlebrush
17. *Acmena smithii* – Lilly Pilly
18. *Citrus x latifolia* – Lime
19. *Melaleuca linarifolia* – Snow in Summer
20. *Citrus x latifolia* – Lime
21. *Callistemon viminalis* – Weeping Bottlebrush
22. *Citrus x limon* – Lemon
23. *Acmena smithii* – Lilly Pilly
24. *Lichee chinensis* – Lychee
25. *Acacia falciformis* – Hickory Wattle
26. *Jacaranda mimosifolia* - Jacaranda

27. *Citrus reticulata* – Mandarin
28. *Hakea salicifolia* – Willow Leaved Hakea
29. *Murraya paniculata* – Mock Orange
30. *Lagestromia indica* – Crepe Myrtle
31. *Lagestromia indica* – Crepe Myrtle
32. *Lagestromia indica* – Crepe Myrtle
33. *Lagestromia indica* – Crepe Myrtle
34. *Lagestromia indica* – Crepe Myrtle

The above trees are a selection of Native and Exotic bird attracting species interplanted with Fruit trees, with a few Deciduous species for Solar Access/Sun Protection. They will be interplanted with native grasses and exotic herbs.

The N/W frontage and Stroud Street facade will have plantings of *Vitus Vinifera* for Solar Access/Sun Protection

The Succulent garden understory on the Myall Street frontage is a mixed planting of Agavae and Aloe species.

The Tropical Garden understory in the S/E corner of the Stroud Street frontage is a mixed planting of Bromeliad spp, *Cycas revoluta* and *Dyopsis lutescens*.

The vegetable patch will run between the water tank and the septic tank.