



# **muswellbrook shire council**

## **ORDINARY COUNCIL MEETING ATTACHMENTS**

**27 JULY 2021**

## TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
<b>10.1</b>	<b>DA 2019/2 - CONSTRUCTION OF MULTI-DWELLING HOUSING COMPRISING SIXTEEN (16) DWELLINGS AND ASSOCIATED SITE WORKS - 19 JOHN HOWE CIRCUIT, MUSWELLBROOK</b>	
	Attachment A DA 2019-2 - Section 4.15 Assessment .....	4
	Attachment B DA 2019-2 Recommended Conditions of Consent.....	38
	Attachment C DA 2019-2 Proposed Site Plan .....	52
	Attachment D DA 2019-2 Proposed Landscape Plan.....	53
	Attachment E DA 2019-2 Proposed Turning Path Analysis Plan.....	54
	Attachment F DA 2019-2 Proposed Solar Access Plan .....	55
	Attachment G DA 2019-2 Proposed Site Analysis Plan.....	56
	Attachment H DA 2019-2 Proposed Elevations Plan(1) .....	57
	Attachment I DA 2019-2 Proposed Elevations Plan(2) .....	58
<b>10.2</b>	<b>DA 2020/133 - BACKPACKERS' ACCOMMODATION - 14 HAYDON STREET, MUSWELLBROOK</b>	
	Attachment A DA 2020/133 Section 4.15 Assessment.....	61
	Attachment B DA 2020/133 Recommended Conditions of Consent.....	77
	Attachment C DA 2020/133 Plans of Proposal.....	87
	Attachment F DA 2020/133 Submission .....	101
<b>10.3</b>	<b>DA 2021-30 - CHANGE OF OPERATIONAL HOURS (MCDONALDS) - 83-89 MAITLAND STREET, MUSWELLBROOK</b>	
	Attachment A DA 2021-30 4.15 Assessment .....	102
	Attachment B DA 2021-30 Redacted Submissions .....	115
	Attachment C DA 2021-30 Draft Conditions of Consent.....	123
	Attachment G DA 2021-30 Crime Risk Assessment.....	128
	Attachment H DA 2021-30 NSW Police response .....	132
<b>10.4</b>	<b>DA 2020-82 - COMMERCIAL FITOUT/BEER GARDEN - ROYAL HOTEL - BRIDGE STREET, MUSWELLBROOK</b>	
	Attachment B DA 2020-82 S4.15 Assessment Report .....	135
	Attachment C DA 2020-82 Draft Conditions .....	141
<b>10.5</b>	<b>DA 2020-136 - TOURIST ACCOMMODATION AND FUNCTION CENTRE - 1831 MERRIWA ROAD, SANDY HOLLOW</b>	
	Attachment A DA 2020-136 Section 4.15 Assessment .....	148
	Attachment B DA 2020-136 Recommended Conditions of Consent.....	168
	Attachment C DA 2020-136 Applicant's request to waive Section 7.12 Contributions .....	187
	Attachment D DA 2020-136 Proposed Site plan .....	188
	Attachment E DA 2020-136 Proposed Landscape Plan.....	190
	Attachment I DA 2020-136 NSW RFS General Terms of Approval.....	191
	Attachment J DA 2020-136 - Transport for NSW Referral Comments .....	196
	Attachment K DA 2020-136 Submissions .....	202
<b>10.6</b>	<b>DA 2021-43 - DWELLING HOUSE - PEBERDYS ROAD, SANDY HOLLOW</b>	
	Attachment A DA 2021-43 - Section 4.15 Assessment Report.....	205
	Attachment B DA 2021-43 - Recommended Conditions of Consent .....	216



	Attachment C	DA 2021-43 - Proposed Plans .....	227
	Attachment D	MSC09E - Road Development Standards Policy .....	233
<b>11.1</b>	<b>INTEGRATED WATER CYCLE MANAGEMENT STRATEGY</b>		
	Attachment D	2015-2018-0238 Revised Appendix C .....	243
	Attachment E	2015-2016-0238 Revised Appendix D .....	249
<b>11.2</b>	<b>2021-22 CAPITAL WORKS PROGRAM ROADS AND DRAINAGE</b>		
	Attachment A	Footpath Renewal 2021-22 .....	255
	Attachment B	Heavy Patching 2021-22 .....	266
	Attachment C	Kerb and Gutter Master 2021-22 .....	289
	Attachment D	New Footpaths 2021-22 .....	296
	Attachment E	Pram Ramps 2021-22 .....	298
	Attachment F	Rehab Program 2021-22 .....	305
	Attachment G	Reseal Program 2021-22.....	306
	Attachment H	Road Safety Devices Master List 2021-22.....	307
	Attachment I	Carpark Inspections.....	308
<b>11.4</b>	<b>MAJOR PROJECTS STATUS REPORT</b>		
	Attachment A	CURRENT 2020-2021 CI Capital Works Hybrid .....	309
<b>11.5</b>	<b>WATER AND WASTEWATER LEVELS OF SERVICE FOR THE FOURTH QUARTER OF 2020-21</b>		
	Attachment A	Quarterly Infrastructure Report - April to June 2021.....	312
<b>11.6</b>	<b>GENERAL DESIGN PROGRAMME - COUNCIL CHAMBERS AND ARTS CENTRE</b>		
	Attachment A	Shop 11 Concept.....	316
	Attachment B	Arts Centre Concept Layout .....	320
<b>12.2</b>	<b>COUNCIL'S MEMBERSHIP OF THE HUNTER JOINT ORGANISATION</b>		
	Attachment A	HJO Newsletter June 2021 .....	321
	Attachment B	Letter to HJO September 2020 .....	326
	Attachment C	Letter to HJO December 2020 .....	327
<b>12.3</b>	<b>DRAFT VOLUNTARY PLANNING AGREEMENT BETWEEN THE MAXWELL VENTURES (MANAGEMENT) PTY LTD AND MUSWELLBROOK SHIRE COUNCIL</b>		
	Attachment A	Maxwell Ventures Management Pty Ltd - Cover Letter .....	329
	Attachment B	Draft Maxwell Venture Management Pty Ltd VPA.....	331
<b>12.4</b>	<b>COUNCIL CARETAKER PROVISIONS</b>		
	Attachment A	OLG Circular 17-21 .....	349
<b>12.5</b>	<b>USE OF COUNCIL MATERIAL DURING ELECTION PERIOD</b>		
	Attachment A	OLG Circular 12-21 .....	350
<b>12.8</b>	<b>DRAFT LIBRARY MEMBERSHIP AND COLLECTION MANAGEMENT POLICIES</b>		
	Attachment A	Draft Collection Management Policy .....	354
	Attachment B	Draft Library Membership Policy .....	360
<b>12.9</b>	<b>FINANCIAL POLICIES</b>		
	Attachment A	MSC20E - Draft Financial Reserve Management Policy .....	365
	Attachment B	MSC13E - Draft Borrowing Policy .....	374
	Attachment C	MSC21E - Draft Financial Management Policy .....	384
	Attachment D	MSC14E - Draft Investment (Financial Securities) Policy.....	393
	Attachment E	MSC19E - Draft Debt Recovery Policy .....	409

	Attachment F	MSC15E - Draft Hardship Policy.....	417
<b>12.10</b>	<b>CARRYOVER PROJECTS FOR 2021/22</b>		
	Attachment A	List A - Original - Operating Carryovers for 2021/22 .....	424
	Attachment B	List A - Final - Operating Projects Carryovers for 2021/22 .....	426
	Attachment C	List B - Initial - Capital Carryover for 2021/22 .....	428
	Attachment D	List B - Final - Capital Projects Carryovers for 2021/22.....	432
<b>12.12</b>	<b>REPORT ON INVESTMENTS HELD AS AT 30 JUNE 2021</b>		
	Attachment A	Investment Valuation Report as at 30 June 2021.....	436
	Attachment B	Investment Trading Limit Report as at 30 June 2021 .....	439
<b>13.1</b>	<b>State Significant Development - 1/07/2021</b>		
	Attachment A	Minutes - State Significant Development Committee Meeting - 1/07/2021 .....	446
	Attachment B	Minutes - State Significant Development Committee Meeting - 5/07/2021 .....	448
<b>13.2</b>	<b>Finance Review and Advisory Committee - 8/07/2021</b>		
	Attachment A	Minutes - Finance Review Advisory Committee Meeting - 8/07/2021 .....	450
	Attachment B	Minutes - Finance Review Advisory Committee - 15/07/2021 ...	452
	Attachment C	Minutes - Finance Review Advisory Committee Meeting - 22/07/2021 .....	454

**DEVELOPMENT ASSESSMENT REPORT****REPORT TO THE GENERAL MANAGER**

<b>ADDRESS:</b>	LOT 514 DP1089307 19 John Howe Circuit MUSWELLBROOK
<b>APPLICATION No:</b>	2/2019
<b>PROPOSAL:</b>	Multi dwelling housing comprising Sixteen (16) dwellings and the carrying out of associated site works.
<b>OWNER:</b>	Raj & Jai 4 Pty Ltd
<b>APPLICANT:</b>	Raj & Jai Construction Pty Ltd Po Box 270 WENTWORTHVILLE NSW 2145
<b>AUTHOR:</b>	Mr H A McTaggart
<b>DATE LODGED:</b>	14/01/2019
<b>AMENDED:</b>	31 July 2019
<b>ADD. INFO REC'D:</b>	31 July 2019 17 February 2020
<b>DATE OF REPORT:</b>	11 April 2021

## 1.0 SITE DESCRIPTION

The development application applies to Lot 514 DP 1089307. The street address of this property is 19 John Howe Circuit, Muswellbrook.

Characteristics of the site are:

- An area of 8,282m<sup>2</sup>.
- The land has direct frontage to John Howe Circuit.
- The land slopes up steeply from John Howe Circuit.
- The land is zoned R1 General Residential under the Muswellbrook Local Environmental Plan 2009.
- Adjoining land is zoned R1 General, and RE1 Public Recreation. The RE1 Public Recreation zoned land was created as part of the same subdivision as the development site (DA 384/2003), this land is owned and managed by Muswellbrook Shire Council.
- The site includes clusters of mature vegetation. A Biodiversity Development Assessment Report was submitted with the proposal and reviewed by Council's Ecologist and Sustainability Team Leader.
- An aboriginal archaeological due diligence assessment was carried out for the site.

The subject site is identified in the aerial image below.



Image.1 locality Plan

The land subject to this development application was created under the Council approved subdivision of DA 384/2003. Since its subdivision the land has remained vacant.

Council's records identify previous development approvals and concept developments for the site that were not acted on. Details have been included below:

Development Application	Date lodged	Details of the Development	Determination
DA 79/2006 - Consolidation of three (3) lots and subdivision into four (4) lots	8 March 2006	This development application included the properties at 15-17 Bloodwood Road. The application gained approval for the consolidation of the 3 lots and their re-subdivision into 3 lots with direct frontage to John Howe Circuit and 1 lot with frontage to Bloodwood Road.	Approved subject to conditions
DA 253/2007 – subdivision of one (1) lot into four (4) lots	23 July 2007	This development application approved the subdivision of the subject site into four lots with frontage to John Howe Circuit, and associated works.	Approved subject to conditions

## 2.0 DESCRIPTION OF PROPOSAL

The proposed development involves multi-dwelling housing, comprising sixteen (16) dwellings at 19 John Howe Circuit.

Each dwelling is three (3) bedrooms, with combined living, kitchen and dining area, a laundry, bathroom and garage. All dwellings are single-storey and dwellings 4 and 5 have been designed to provide accessible housing options.

Nine (9) of the proposed dwellings would have a two (2) car garage, seven (7) have single car garages. There is stacked parking in front of five (5) of garages. An additional five (5) visitor parking spaces and a wash bay would also be provided on the site.

Access is to be provided to the development site from a newly constructed private vehicle access from John Howe Circuit. No vehicle access would be provided to the development from Bloodwood Road. To construct the proposed access, and the development generally, it will be necessary for the proponent to carryout extensive earthworks. These earthworks have been detailed in civil plans in relation to the proposal. The earthworks will alter the natural ground level of the development site by up to 3.75m in some locations (principally around the driveway area).

To support this reshaping of the site retaining walls are proposed at various locations of the site. The civil plans submitted include details of all retaining wall locations and maximum proposed heights. Most of the retaining walls will be less than 1m in height, apart from some walls adjoining paths of travel within the site and the public reserve south of the site. Retaining walls along the parts of the access driveway where the greatest alterations to the site levels are proposed will be benched with 1m height and 1m depth.

A site plan, elevation plan and cut and fill plan have been included below to provide some context for the scope of the proposed development



Image.2 Site Plan

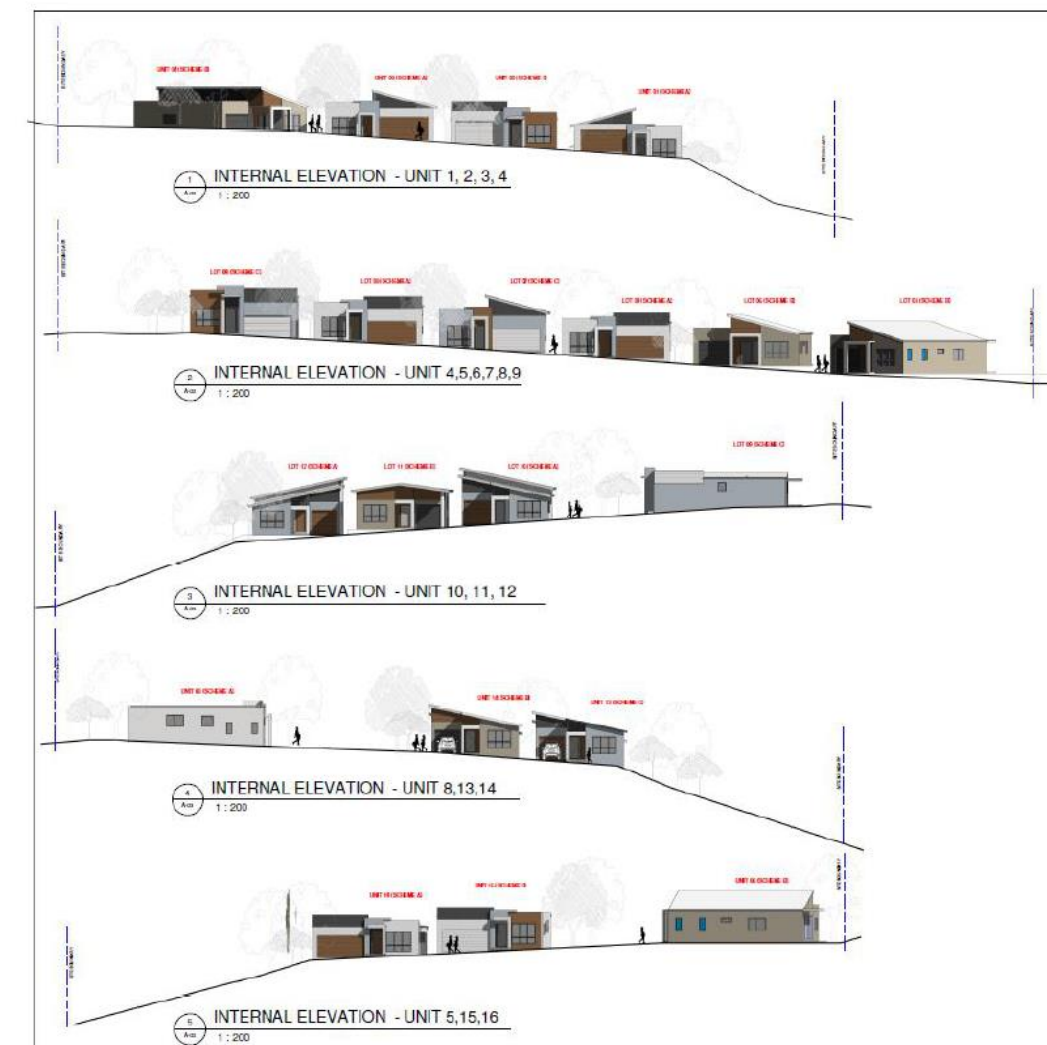


Image.3 Elevation Plan



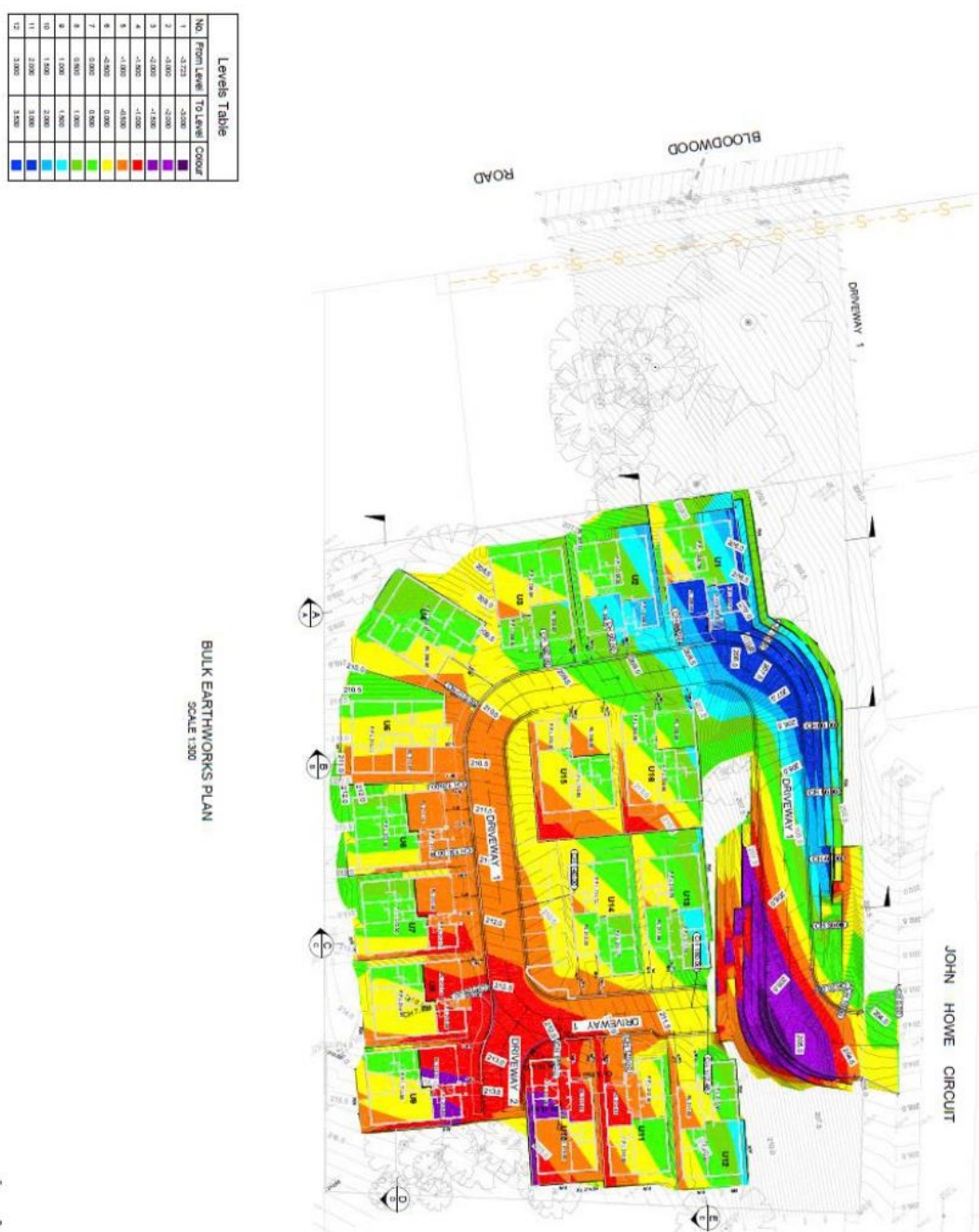


Image.4 Cut and Fill Plan

The original development application involved the construction of twenty-one (21) dwellings, with access via Bloodwood Road and included two (2) additional parcels of land along that street frontage. The amended development application is for sixteen (16) dwellings.



### 3.0 REFERRALS

#### 3.1 External Referrals

##### **Wanaruah Local Aboriginal Land Council**

The development application was reviewed and commented on by the Wanaruah Local Aboriginal Land Council.

Initial comments were received on the 7 February 2019. These comments raised concerns regarding aboriginal artefacts uncovered in the vicinity of the development site during the carrying out of the 2003 subdivision. In investigating this issue, the Assessing Officer met with Wanaruah Local Aboriginal Land Council representatives and reviewed the development application files related to the subdivision of the site.

Additional information was requested from the applicant and a Cultural Due Diligence Assessment for the proposed development was prepared in line with the NSW OEH Due Diligence Code of Practice. This report and its findings were referred back to the Wanaruah Local Aboriginal Land Council who made no further comment in relation to the development application.

#### 3.2 Internal Referrals

##### **Water and Waste**

The applicant engaged GCA Engineering Solutions to provide a response to Council's request for further information around water servicing requirements. A servicing plan for the revised development was provided on the 31 October 2019 along with a concept servicing plan.

This documentation was reviewed by Council's Water and Waste Project Engineer. Council's Water and Waste Officer has no objection from a water servicing perspective subject to the imposition of conditions regarding design and construction.

Conditions related to the preparation of detailed design documents for service extension and their construction have been included in the recommended conditions of consent.

##### **Building Surveyor**

Council's Building Surveyor recommends the need for an internal hydrant where the Proponent cannot demonstrate adequate site coverage from the existing and proposed street hydrants.

These comments have been adopted into the recommended conditions of consent.

##### **Ecologist and Sustainability Team Leader**

In response to this request for additional information and in line with the requirements of the Biodiversity Conservation Act 2016, a Biodiversity Development Assessment Report (BDAR) was prepared by the Proponent.

The BDAR considered the impact of that disturbance on ecological communities in line with the relevant provisions of the Biodiversity Conservation Act 2016 and related guidelines. The BDAR impact summary identified:

- No species that were potential '*serious and irreversible impact entities* on the development site.

- To comply with the Biodiversity Conservation Act 2016 requirements under the Biodiversity Assessment Method (BAM) it would be necessary for the developer to retire 13 ecosystem credits and 13 species credits.

Council's Ecologist and Sustainability Team Leader confirmed that the relevant ecological issues had been considered and that the proposed development could proceed subject to recommended conditions of consent, including conditions of consent related to the retirement of credits.

Conditions put forward by Council's Ecologist and Sustainability Team Leader have been included as recommended conditions of consent.

#### Community Infrastructure

Council's Engineers raised no objection to the proposed development and put forward the following comments:

- Brushbox Trees have been planted across the frontage of the subdivision in Bloodwood Road, above an existing tabledrain.
- There is no footpath fronting the proposed development on either side of the road.
- Proposed driveway grades are compliant with maximum permissible grades and transitions as per Fire Fighting Vehicle / Service Vehicle Requirements
- Pipe grades into stormwater treatment devices or on-site detention tanks should not exceed 5% maximum grade. A drop structure pit can be included upstream of such a device of at least 2.4m if a lower grade is not possible.
- Structural design for on-site detention tank to be provided for CC design, including structural design for concrete lid. A minimum of one grate is to be provided for the tank.
- Stormwater pipes greater than 5% grade should have trench stops/bulk heads (as per AUSPEC 0074 Stormwater Drainage Design Section 6) and with centres of X where X = 100 / Grade (%) of the pipe. Pipes greater than 15% in grade should have concrete bulkheads designed.
- A stormwater trench grate is to be provided across the width of the bottom of the driveway, connected to a stormwater pit, and drained towards a new pit and lintel in Bloodwood Rd as per diagram. The outlet pipe from the on-site detention system to be drained at 90 degrees towards Bloodwood Rd, before draining to the proposed lintel pit. Subsoil drainage is required along new proposed mountable kerb across frontage of property.
- Proposed drainage to connect to the existing lintel pit near the corner of John Howe Circuit as per diagram.
- Footpath in accordance with Council's DCP to be provided for the width of the property and connecting pram ramps between proposed footpath and existing footpath.
- A s68 permit is required prior to construction
- A s138 permit is required prior to construction

These comments have been reviewed by Council Officers and have informed the recommended conditions of consent.

#### 4.0 ASSESSMENT

##### Section 4.15 Matters for Consideration

##### Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument (EPI)

The following EPIs, DCPs, Codes and Policies are relevant to this Application:

##### 1. Muswellbrook Local Environmental Plan 2009 (MLEP 2009)

##### Land Use Zone and Permitted Land Use

The development site is zoned R1 General Residential pursuant to MLEP 2009. The proposal is best defined as multi dwelling housing, which is permitted with consent in the R1 General Residential Zone.

The land use table for the R1 General zone has been included below:

##### **2 Permitted without consent**

*Home occupations*

##### **3 Permitted with consent**

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Educational establishments; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Hostels; Kiosks; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Sewage reticulation systems; Shop top housing; Tank-based aquaculture; Water recycling facilities; Water supply systems*

##### **4 Prohibited**

*Any development not specified in item 2 or 3*

##### Objectives of the R1 General Residential Zone

- *To provide for the housing needs of the community.*

Planning Comment: the proposed development will provide an additional housing option for the community. The proposal is compatible with this land use zone objective.

- *To provide for a variety of housing types and densities.*

Planning Comment: the proposed multi-dwelling housing will provide a different housing product at a greater density than some sites in the locality, but at a density which remains consistent with Council Development Control Plan requirements. Council Officers are therefore satisfied that the proposed housing would be supportive of the achievement of this land use zone objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Planning Comment: Council Officers are satisfied that the services, utilities, private open space and level of amenity to be provided to each unit in the development meets Council's minimum requirements for this type of housing stock.

- *To enable sensitive infill development of other housing types.*

Planning Comment: this is an application for an 'infill' development. Council Officers acknowledge community concern regarding the likely impacts of the development but consider the proposed development to be consistent with Council controls for multi-unit development. At its core this objective is supportive of enabling infill development of alternate housing stock where due regard has been given to its context and setting and relationship to adjoining uses.

- *To allow people to carry out a reasonable range of activities from their homes, where such activities do not adversely affect the living environment of neighbors.*

Planning Comment: Not applicable in this instance.

- *To promote the principles of ecological sustainable development including energy and water efficient subdivision and housing design.*

Planning Comment: BASIX Certificates have been prepared in relation to the dwellings proposed in line with the legislative requirements governing this assessment issue. Ecological issues have been appropriately considered.

- *To minimise the impact of non-residential uses and ensure these are in character and compatible with surrounding development.*

Planning Comment: the proposed development does not involve a non-residential use and thereby would not contravene this objective.

- *To ensure that development is carried out in a way that is compatible with the flood risk of the area.*

Planning Comment: Not applicable in this case.

#### **Summary Comment:**

Council Officers are satisfied that the development would be compatible with all land use zone objectives and is permissible with consent under the R1 general Residential land use table.

#### **Relevant Clauses applicable under the Muswellbrook Local Environmental Plan 2009**

<i>Part 1 Preliminary</i>	
<i>Part 2 Permitted or prohibited development</i>	
<i>2.3 Zone objectives and Land Use Table</i>	The proposed development is compatible with the relevant land use objectives and thereby can be supported under the provisions of this Clause. <b>Complies</b>
<i>Part 3 Exempt and complying development</i>	
<i>Part 4 Principal development standards</i>	
<i>4.1 Minimum subdivision lot size</i>	The proposed development does not involve the subdivision of land. <b>Not relevant</b>

4.3 Height of buildings	<p>The maximum building height applicable to the land under the provisions of the Muswellbrook LEP 2009 is 8.5m.</p> <p>The proposed plans indicate that the maximum height of any proposed dwelling would be 4.9m. When considered in context with the proposed site filling, all buildings would remain below the 8.5m maximum building height. The 8.5m maximum building height has been marked on the proposed section plan for reference when reviewing development heights.</p> <p><b>Complies</b></p>
4.4 Floor space ratio	<p>The permitted Floor Space Ratio for the site is 0.5:1.</p> <p>The gross floor area for the development would be 1909m<sup>2</sup> and the total site area 8282m<sup>2</sup>. The floor space ratio has thereby been calculated as 0.23:1.</p> <p><b>Complies</b></p>
Part 5 Miscellaneous provisions	
Part 6 Urban release areas	
Part 7 Additional local provisions	
7.1 Terrestrial biodiversity	<p>The land subject to this development application is not mapped as 'biodiversity'.</p> <p><b>Not relevant</b></p>
7.6 Earthworks	<p>This clause requires a consent authority to take the following matters into consideration before granting development consent to development involving earthworks:</p> <ul style="list-style-type: none"> <li>a) <i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,</i></li> <li>b) <i>the effect of the proposed development on the likely future use or redevelopment of the land,</i></li> <li>c) <i>the quality of the fill or of the soil to be excavated, or both,</i></li> <li>d) <i>the effect of the proposed development on the existing and likely amenity of adjoining properties,</i></li> <li>e) <i>the source of any fill material or the destination of any excavated material,</i></li> <li>f) <i>the likelihood of disturbing relics,</i></li> <li>g) <i>the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</i></li> </ul> <p>Council Officers are satisfied that the proposed earthworks can be carried out satisfactorily and where appropriate conditions of consent have been recommended to ensure measures are put in place to control the earthworks.</p>

	<p>Council Officers are satisfied that the proposed earthworks are unlikely to have a detrimental impact on the amenity of a neighboring properties.</p> <p><b>Complies</b></p>
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## 2. State Environmental Planning Policy No. 55 – Remediation of Land

Under Clause 7 of this SEPP a consent authority must not consent to the carrying out of any development on land unless:

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

Council Officers are satisfied that the development site is unlikely to be subject to any significant contamination requiring remediation as part of this development. Council Officers have observed:

- The site subject to this development application was created as part of a Council approved residential subdivision in 2005 (DA 384/2003). The consideration of potential site contamination issues was a relevant assessment consideration at the time the land was subdivided. No issue around site contamination arose through the assessment of that application.
- Following the subdivision of the land in 2005 the site has remained vacant. Council has no record of any activities being carried out on the land with the potential to cause its contamination.
- Council Officers have inspected the site as part of the assessment of this development application and did not identify any visible evidence that suggested that the land may be subject to significant contamination which would require remediation under the SEPP.

## 3. State Environmental Planning Policy (Koala Habitat Protection) 2020

The Biodiversity Development Assessment Report submitted with the development application does not consider the site to comprise a potential or core koala habitat. This SEPP does not have further implications for the assessment of this application.

### **Section 4.15(1)(a)(ii) the provisions of any draft EPI.**

There are no draft EPIs relevant to the subject Application.

### **Section 4.15(1)(a)(iii) the provisions of any development control plan**

#### Section 3 – Site Analysis

Council Officers are satisfied that the proponent has adequately considered the provisions of this Section and prepared the documentation accompanying the development application in accordance with the requirements of this Section.

#### Section 6 – Residential Development

Note: The DCP requirements Section of the Table has been prepared to reference DCP requirements relevant to the proposed development and/or include a summary of relevant controls rather than reference to all controls.

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 6 RESIDENTIAL DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
<b>6.1.1 Context</b> (i) Undertake a site analysis in accordance with Section 3 of this DCP. (ii) Design the development to respond to the issues identified in the site analysis.	<b>YES</b>	The development site is affected by design constraints, particularly in relation to the site gradient. The development has responded to this issue in the design and layout proposed.
<b>6.1.2 Front Setbacks</b> This section of the DCP prescribes a minimum building line setback for new residential development fronting local streets of 4.5m.	<b>YES</b>	The setback of the proposed residential units from the sites John Howe Street frontage would be approximately 16m.
<b>6.1.3 Side and rear setbacks</b> This section of the DCP specifies minimum side and rear setbacks for new development in the R1 Residential zone. Under these provisions single storey residential dwellings should be setback 0.9m from side and rear boundaries	<b>YES</b>	The proposed plans indicate that the minimum side/rear building setback for the development would be 4m.
<b>6.1.4 Building Height and Scale</b> (i) Where a building is part of a uniform group of buildings of similar character locate any additions or alterations to the rear and not visible from the street or any public place. (ii) Where a building is to be located amongst buildings having a consistent façade repeat the size, location and proportions of window, door openings and other distinctive features such as roof form. (iii) Dual occupancies, multi dwelling housing and residential flat building developments must be designed and constructed in a form and scale that resembles the detached character of dwelling-houses in the surrounding neighbourhood. (iv) Finishes which are 'textured' rather than bland, through the use of light and shade, diversity in materials and finishes and appropriate decorative treatments. (v) Traditional relationship of roof mass to wall ratio, roof pitch	<b>YES</b>	<ul style="list-style-type: none"> <li>➤ The design of the proposed buildings would be compatible with the existing neighbourhood and streetscape. The proposed buildings would have a modern appearance with design variations between the four different building types proposed and the inclusion of landscaping.</li> <li>➤ The proposed buildings have fenestration similar to nearby dwellings.</li> <li>➤ All proposed residential building would be single storey. Consequently, their height, bulk and scale is compatible with existing residential buildings in the locality.</li> <li>➤ The proposed dwellings have been designed to include various finishes and distinctive design elements in line with DCP controls.</li> </ul>

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 6 RESIDENTIAL DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
and design, length of unbroken ridgelines, parapets, eaves and roofwater guttering detailing. (vi) The amount and length of unbroken roof ridge lines, unpunctuated facades, fencing and repetitive form should be minimized		
<b>6.1.5 Front Fencing and Retaining Walls</b> The DCP controls from this section that relate to the assessment of this development application have been included below. (v) Terracing and retaining walls are not more than 1.5 metres in height below or 1 metre above existing ground level within the front setback. (vi) Slopes between retaining walls/terracing shall be landscaped and are not to be greater than 4 horizontal to 1 vertical.	<b>YES</b>	Retaining walls are proposed as part of the proposed development support the development and stabilise required earthworks.  The plans indicate that all of the proposed retaining walls would comply with the requirements of this Section of the DCP. Proposed retaining walls would be no greater than 1m in height (with the exception of a limited number of 2m retaining walls required to support stairways within the site).  The spacing of the proposed retaining walls would also be consistent with the requirements of both this Section of the DCP and Council's Retaining Walls Policy with all retaining walls spaced 1m apart.
<b>6.1.6 Garages Carports and Sheds</b> This Section of the DCP restricts garages and carports from being located forward of a building line and includes provisions related to their design and construction to ensure that they do not detract from the dwelling to which they relate.	<b>YES</b>	All garages would be attached to dwellings and would not be located forward of the John Howe Circuit building line.
<b>6.1.7 Dwelling Entry</b> (i) Create an address to the street or any public access-point by incorporating the front door and/or windows of habitable rooms in the façade facing the street or public access-point. (ii) Provide an entry that is clearly identifiable from the street, has adequate lighting and has direct access to the street frontage – do not conceal or recess dwelling entries.	<b>YES</b>	Each of the proposed dwellings incorporate building entry points orientated toward the internal access road. While the development site and site access would be identifiable and clearly visible from the John Howe Circuit Road Reserve.
<b>6.1.8 Accessibility and Adaptability</b> (i) Provide a minimum of 10% (or part thereof) of dwellings as adaptable housing designed in	<b>YES</b>	The proposed plans indicate that two (2) of the sixteen (16) dwellings would be designed to provide accessible housing options.



MUSWELLBROOK SHIRE COUNCIL DCP SECTION 6 RESIDENTIAL DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
<p>accordance with the provisions of AS4299.</p> <p>(ii) The required adaptable housing units are to be designed with accessible features for people with disabilities, and to incorporate level entries and wider doorways and corridors, slip resistant surfaces, reachable power points, disabled toilet, and lever door handles and taps; such features to be designed generally in accordance with Australian Standard 4299.</p> <p>(iii) Integrate the adaptable housing components, do not isolate them or use a different standard of materials and finishes - show proposed adaptable units on any development application plans submitted.</p>		This ratio would exceed the accessibility requirement of this Section of the DCP.
6.1.9 Reflective Materials Restricts the use of reflective materials building design.	<b>YES</b>	Council Officers have reviewed the building design and composition. Officers are satisfied that the proposed building materials would be in accordance with this section of the DCP.
<p>6.2 Usable Urban Spaces</p> <p>(i) In multi dwelling housing or residential flat buildings, provision of a minimum of 35m<sup>2</sup> of principal private open space shall be provided per dwelling which is located at or near ground level and directly accessible from the living area.</p> <p>(ii) Narrow elongated areas with any dimension less than 4m shall not be included as part of the principal private open space.</p> <p>(iv) Screening is to be provided where necessary to maintain privacy.</p>	<b>YES</b>	<ul style="list-style-type: none"> <li>➤ All proposed dwellings will have a private open space area in excess of 35m<sup>2</sup>. The minimum private open space proposed is 43m<sup>2</sup>.</li> <li>➤ All private open space areas would have a width &gt;4m.</li> <li>➤ Fencing is proposed along the boundary of open space areas.</li> </ul>
<p>6.2.2 Car Parking</p> <p>(i) Provide on-site carparking in accordance with AS2890.1 and Section 16 of this DCP.</p> <p>(iii) Design access ways and driveways for multi dwelling</p>	<b>YES</b>	<ul style="list-style-type: none"> <li>➤ The rate of off-street car parking is in accordance with Section 16 of the DCP.</li> <li>➤ Turning circle plans have been provided. Council Officers are</li> </ul>

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 6 RESIDENTIAL DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
<p>housing and residential flat buildings to enable vehicles to:</p> <ul style="list-style-type: none"> <li>➤ Enter the parking space or garage in a single turning movement.</li> <li>➤ Leave the parking space in no more than two turning movements.</li> <li>➤ Avoid queuing on public roads</li> </ul> <p>(iv) Comply with AS 1428 - Design for Access and Mobility for multi dwelling housing and residential flat buildings where adaptable housing units are to be provided.</p> <p>(v) Provide manoeuvring space on site for multi dwelling housing and residential flat buildings to allow cars to enter and leave the site in a forward direction.</p> <p>(vi) Provide separate driveway and pedestrian access for multi dwelling housing and residential flat buildings.</p> <p>(vii) Designate disable and visitor carparking for multi dwelling housing and residential flat buildings as common property in any strata plan.</p>		<p>satisfied that the vehicle manoeuvring areas are adequate to support the largest vehicles anticipated to access the site.</p> <ul style="list-style-type: none"> <li>➤ The two (2) proposed accessible units would be provided with a wider garage parking space to comply with accessible parking requirements.</li> <li>➤ Separate vehicle and pedestrian access would be provided for the proposed development to John Howe Circuit.</li> <li>➤ The proposed development does not involve the strata subdivision of the site.</li> </ul>
<p><b>6.2.3 Landscaped Area</b></p> <p>(i) Residential development must not be carried out in a R1 Residential or RU5 Village zone unless a minimum of 35% of the total site area is "landscaped area" as defined in the LEP.</p> <p>(ii) Do not break landscaped area into a series of small fragmented areas that are unusable.</p> <p>(iii) Retain existing mature vegetation and trees and show what measures are to be implemented to protect this vegetation during construction.</p> <p>(iv) Landscaped area is located to the rear or northern boundary of the site</p> <p>(v) Use pervious material or stepping stones where pathway is incorporated in side setback.</p>		<ul style="list-style-type: none"> <li>➤ A landscape plan has been prepared in relation to the proposed development.</li> <li>➤ 45% of the site area will be retained as landscaped area.</li> <li>➤ A portion of existing vegetation located in the south-western corner of the site will be retained.</li> <li>➤ A Biodiversity Development Assessment Report has been prepared by an accredited ecologist to consider the impacts of this disturbance against the Biodiversity Conservation Act 2016. This report was reviewed by Council's Ecologist and Sustainability Team Leader who was satisfied that the biodiversity impacts of the proposed development had been properly considered against this legislation and that impacts would be off-set by the retiring of credits in line with this legislation.</li> </ul>

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 6 RESIDENTIAL DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
(vi) For dual occupancies, multi dwelling housing and residential flat buildings, a landscape plan is to be submitted (vii) The selection of tree species indicated on the landscaping plan must be in a scale with the size of the proposed building/s. For example, buildings of 2 storeys must include trees with an achievable mature height of at least 8 metres.		
<b>6.2.4 Landscaping</b> (i) Include locally occurring native species to extend habitats for fauna and reduce water and fertilizer requirements. (ii) Minimise disturbance of natural ground levels, native vegetation and topography in the vicinity of identified significant trees.	<b>YES</b>	A landscape plan has been submitted in relation to the proposed development and contains appropriate species.
<b>6.2.5 Dual Occupancy Housing, Multi Dwelling Housing and Secondary Dwellings</b> (i) The residential density of dual occupancy developments and multi dwelling housing on residentially zoned land must be no greater than 60 persons per site hectare. (ii) Dual occupancy and multi dwelling housing must be located on significantly regular, rectangular or square, shaped lots and not on battle-axe lots. (iii) Each dwelling is to be designed so that the access way to the front door is clearly identifiable from the public street. (iv) Each dwelling with a street frontage is to be designed so that the front door faces the street. (v) Each dwelling must provide a ground level with at least one habitable room, which must have an adjacent external living area located on ground (car parking is not considered as a ground level). A ground level comprising solely car parking is not acceptable.	<b>YES</b>	i) The DCP provides the following bedroom to person ratio for dwellings: <i>One (1) bedroom dwelling = 1.23 persons</i> <i>Two (2) bedroom dwelling = 1.79 persons</i> <i>Three (3) bedroom dwelling = 2.52 persons</i> <i>Four (4) or more bedroom dwelling = 3.02 persons</i>  The total occupancy rate (2.52 x 16) would be 40.32. The area of the development site is 8,282m <sup>2</sup> . Using the density standard ratio of 60 (persons):10,000(m <sup>2</sup> ), which equates to 1(person):166.666...(m <sup>2</sup> ) the maximum density ratio for a 8,282m <sup>2</sup> site would be 49.7(persons):8,282(m <sup>2</sup> ). The proposed density of 40.32(persons):8,282(m <sup>2</sup> ) complies with the maximum density requirements of 6.2.5(i). ii) The lot has a rectangular shape and is not a battle axe.

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 6 RESIDENTIAL DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
(v) Each dwelling must have an external living area. (vi) Dual occupancy and multi dwelling housing is to be compatible with residential streetscape character.		iii) All front doors are clearly identifiable from the internal access road of the development. iv) All proposed dwellings are orientated toward the internal access road. v) The ground floor of all proposed dwellings include habitable rooms. vi) The proposed dwellings would have a modern style and would not exceed a single-storey height. Council Officers are satisfied that the appearance of the proposed development would not contravene the residential character of the locality.
<b>6.3.1 Topography</b>  (i) Finished ground levels are no greater than 1.5 metres below or 1 metre above ground level (existing). (ii) Locate habitable rooms (not including bathrooms, laundries and storerooms) above the ground level (existing). (iii) Retaining walls are no greater than 1.5 metres below or 1 metre in height above ground level (existing).	<b>Partial Non-compliance</b>  Recommended to support as development is consistent with the related DCP objective.	<p>The location of proposed habitable rooms and the maximum height requirements for retaining walls would comply with the requirements of S 6.3.1(ii) and (iii).</p> <p>However, earthworks related to the proposed development and site regrading would not be strictly in accordance with the requirements of 6.3.1(i) which requires alterations to finished ground levels to no greater than 1.5m below and 1m above existing levels.</p> <p>To manage the steep slopes and grade changes within the site and the adjoining John Howe Circuit, the applicant has proposed earthworks with a maximum depth of cut proposed 3.723m below existing ground level and fill 3.5m above existing ground level. This depth of cut and height of fill would be the extremes of the proposed earthworks with the bulk of site reshaping between 1m cut and 1m fill.</p> <p>Officers are obliged to undertake a merit based review of the proposal compatibility with a flexible approach to the application of this standard in line with the requirements of Section 4.15(3A)(b) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Section 4.15(3A) of the Act prescribes the following:</p> <p><i>(3A) Development control plans If a development control plan contains provisions that relate to the</i></p>

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 6 RESIDENTIAL DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
		<p><i>development that is the subject of a development application, the consent authority—</i></p> <p><i>(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development</i></p> <p>The DCP objectives that relate to S6.3.1 Topography are as follows:</p> <p><i>(a) Natural topography and landform are maintained. The amount of excavation is minimised.</i></p> <p>Council Officers have made the following observations regarding the relationship of the proposed development with this DCP objective:</p> <ul style="list-style-type: none"> <li>➤ The bulk of the proposed earthworks would not exceed the 1.5m cut and 1m fill requirements.</li> <li>➤ The main areas where cut and fill works will exceed the DCP requirements are adjacent to John Howe Road. Earthworks required at this location relate to the establishment and grading of a vehicle access between the site and John Howe Circuit.</li> <li>➤ In the south western portion of the site a cut with a maximum depth of 3m is proposed. The works would not adjoin a property boundary and would lower the finished ground level. The reduction of the finished ground level will reduce any overlooking.</li> <li>➤ Earthworks have been designed to minimise their extent and impact on adjoining properties where possible whilst facilitating the proposed development by seeking to avoid raising the ground level adjacent established residential properties where possible and through the use of retaining walls to avoid</li> </ul>

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 6 RESIDENTIAL DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
		<p>unnecessary cut or fill outside building pad and accessway areas.</p> <ul style="list-style-type: none"> <li>➤ The regraded site will maintain a fall to John Howe Circuit and there would not be significant finished ground level changes along the site boundaries with adjoining residential properties.</li> <li>➤ The previous Council approved subdivision for the for the four (4) lot residential subdivision of the site (DA 253/2007) required the carrying out of extensive earthworks to provide access between the site and John Howe Circuit.</li> <li>➤ Noting the steep contour changes between the site and John Howe Circuit Council Officers do not think it would be possible for suitable vehicle access to be provided to the development site without the carrying out of earthworks that exceed the DCP minimum requirements.</li> <li>➤ Stormwater drainage infrastructure has been proposed as part of this development application to drain all hard stand areas, proposed residential units and their related private open space to John Howe Circuit.</li> </ul> <p>Officers are satisfied that the proposed earthworks</p> <ul style="list-style-type: none"> <li>➤ maintain the natural topography/fall of the site toward John Howe Circuit</li> <li>➤ Are required to facilitate the development and provide vehicle access to the site.</li> <li>➤ Have been designed so to minimise the amount of excavations and the environmental impact of those excavations on adjoining established residential properties.</li> </ul>
<p>6.3.2 Solar Access</p> <p>Requires preparation of site analysis in accordance with Section 3 of the DCP and includes provisions related identifying and restricting overshadowing impacts of development.</p>	YES	<p>Shadow diagrams indicate that the proposed development would remain consistent with the DCP requirements and would not significantly restrict sunlight to private open spaces of adjoining residential land or result in excessive overshadowing.</p>
6.3.3 Visual Privacy	YES	<p>From a review of aerial images, Council Officers are satisfied that the bulk of</p>



MUSWELLBROOK SHIRE COUNCIL DCP SECTION 6 RESIDENTIAL DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
<p>(iii) For multi dwelling and residential flat buildings, provide adequate separation between habitable rooms, balconies and non-habitable rooms, within the development and to adjoining development as follows:-</p> <ul style="list-style-type: none"> <li>➤ Separation between windows in habitable rooms – 12m</li> <li>➤ Separation between habitable balconies /outdoor spaces and non-habitable rooms – 9m</li> <li>➤ Separation between non-habitable rooms – 6m</li> </ul> <p>Note: The above separation distances can be reduced where suitable screening structures (in addition to landscaping) is provided to obscure direct views</p>		<p>dwellings would be setback in excess of 12m from dwellings on adjoining lots. The closest setback identified is approximately 11m. At that location privacy impacts would be somewhat mitigated by the proposed dwelling's finished floor level being below the ground level height of the adjoining property due to the proposed earthworks. Privacy impacts would be further managed at this location and across the site using landscaping and fencing.</p>
<p>6.3.4 Acoustic Privacy</p> <ul style="list-style-type: none"> <li>(i) Site layouts ensure parking areas, streets and shared driveways have a line of sight separation of at least 3m from bedroom windows.</li> <li>(ii) Openings of adjacent dwelling are separated by a distance of at least 3m.</li> <li>(iii) Shared walls and floors between dwellings are constructed to limit noise transmission.</li> <li>(iv) Dwellings adjacent to high levels of uncontrollable external noise are designed to minimise the entry of that noise.</li> <li>(v) Site layout and design separates active recreational areas, parking areas, vehicle access ways, and service equipment areas from bedroom areas of dwellings.</li> </ul>	<p><b>MINOR NON-COMPLIANCE</b></p> <p>Recommended to be supported</p>	<p>Council Officers recommend this minor DCP variation be supported as:</p> <ul style="list-style-type: none"> <li>i) The majority of dwellings would be setback in excess of 3m from parking areas. Three dwellings, 10, 15 and 16, do not achieve this requirement. In each instance each of these proposed dwellings would maintain a reasonable setback from the internal access road and have other bedrooms with setbacks that exceed the minimum setback requirement. The acoustic impact between the on-site vehicle access and these bedrooms is not likely to be significant.</li> <li>ii) The front elevation of adjacent dwellings would be separated by in excess of 3m. All side setbacks would comply with the BCA minimum setback requirements.</li> <li>iii) The proposed units do not include any shared walls requiring fire separation and acoustic treatment.</li> <li>iv) The site is not located adjacent any premises or transport link considered likely to generate substantive noise impacts.</li> <li>v) The site layout design adheres to the relevant density standards and the orientation and separation of the proposed units does not promote potential noise impacts.</li> </ul>

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 6 RESIDENTIAL DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
6.4.1 Energy Conservation	YES	BASIX Certificates have been submitted detailing the energy efficiency construction in accordance with the relevant requirements.
6.4.2 Stormwater Management	YES	The proposed plans include a stormwater detention system. Overflow stormwater from the development will be directed to the John Howe Circuit stormwater drainage in accordance with the DCP requirements.
6.4.4 Security, Site Facilities and Services Requirement for cloths drying spaces, mail boxes and garbage storage areas.	YES	<ul style="list-style-type: none"> <li>➤ Each dwelling will be provided with adequate on-site space for garbage stores.</li> <li>➤ The proposed plans identify secure mailbox location for all proposed dwellings</li> <li>➤ The rear yard/private open space for each dwelling will have suitable sunlit areas for cloths drying facilities.</li> </ul>

#### Section 16 – Car Parking and Access

The DCP requires off-street car parking to be provided for multi-dwelling housing at the following rates:

DCP Requirement	Proposed	Compliance
<b>Cars</b> <i>1-bedroom or studio: 1 space per unit 2-bedroom: 1.5 space per unit (the 0.5 space to remain as common property) 3-bedroom or more: 2 spaces per unit Visitors 1 per 5 units or part thereof</i>	<p>The DCP requires off-street parking at a rate of 2 spaces per 3-bedroom unit with – total 32, with 1 visitor space per 5 units.</p> <p>Accordingly, a total of 36 off-street parking spaces are required for the development.</p> <p>25 parking spaces would be garaged spaces, 6 would be stacked parking external to a garage and 5 provided as visitor parks within a separate area.</p>	<b>YES - a total of 36 car parking spaces would be provided to the development.</b>
<b>Bicycles</b> <i>Residents: Minimum 1 space per 5 units or part thereof Visitors: Minimum 1 space per 10 units or part thereof</i>	A total of seven (7) bicycle parking spaces are required. A total of eight (8) have been proposed.	YES
<b>Car Wash Bay</b> <i>Any development containing 10 dwellings or more shall provide a minimum of 1 car wash bay/area</i>	The proposed development requires a single wash bay. One such wash bay has been proposed.	YES



#### Section 20 – Erosion and Sediment Control

This Section of the DCP requires Erosion and sediment control plans and soil and water management plans to be prepared as the development involves a disturbance area >2500m<sup>2</sup>. The stormwater/civil plans submitted with this development application provide some preliminary detail for erosion and sediment control plans to be employed through the carrying out of the development.

To ensure that suitable erosion and sediment control measures are employed in line with this section of the DCP through the carrying out of the development a condition of consent is recommended.

#### Section 24 – Waste Management

A waste minimisation management plan has been submitted in relation to the proposed development. The waste management measures proposed are generally in accordance with the DCP requirements and no objection is raised to the measures proposed. As the operational waste management provisions were prepared in relation to a 21-unit development, a revised plan detailing waste management provisions for the amended 16-unit development is required as a condition.

#### Section 25 – Stormwater Management

A stormwater management plan has been prepared in relation to the proposed development. The stormwater management plan includes anticipated runoff calculations and details stormwater infrastructure to convey stormwater from the proposed development to John Howe Circuit.

The proposed stormwater management plan was reviewed by Council Engineers and supported as adequate.

#### Section 94 Contributions Plan 2001

Under this plan Section 7.11 Contributions (formerly S 94) are applicable for each additional dwelling as follows:

Open Space: \$2,012.00  
Roads and Drainage \$1,084.50

The rate of contributions applicable to the proposed development would be subject to the CPI changes at the time of payment.

#### Section 94A Contributions Plan 2009

A section 94 developer contribution was applied to the subdivision of the land by Council.

Under the provisions of Council's Section 94A contribution plan Council is not able to apply a Section 94A contribution to the development of land where a contribution under its Section 94 plan has previously been charged to the subdivision of the site. Accordingly, a Section 94A (now S7.12) contribution cannot be charged to the development.

It is recommended that a Section 7.11 Contribution be applied to the development in line with Council's Section 94 Contributions Plan.

#### **Section 4.15(1)(a)(iia) the provisions of any planning agreement**

There are no planning agreements relevant to the subject Application.

**Section 4.15(1)(a)(iv) the provisions of the regulations**

Division 8A of the Environmental Planning and Assessment Regulation 2000 applies to the development.

**Section 4.15(1)(a)(v) the provisions of any coastal zone management plan**

This item is not relevant to the subject Application. The Application does not relate to a coastal area.

**Section 4.15(1)(b) the likely impacts of that development**

Key potential impacts of the proposed development have been considered and commented on under the sub-headings below.

Context and setting

In considering this issue Council Officers have observed that:

- The proposed dwellings are of a contemporary modern design. The design and appearance of the proposed units would not be similar to residential development in the locality and would not have an adverse visual impact.
- All proposed units would be single storey. The height bulk and scale of any of the proposed units is compatible with the height, bulk or scale of adjoining dwellings.
- The height and depth of the proposed cut and fill exceeds the maximum height and depth controls put forward by Council's DCP. Council Officers consider that the earthworks are compatible with the related DCP objective and the earthworks proposed has been designed in a manner that maintains the site's drainage patterns toward John Howe Circuit, and avoids significant adjustments to the sites ground level adjacent neighbouring residential properties. Earthworks would be held in place through retaining walls designed in accordance with Council's Retaining Wall Policy.

Access Traffic and Transport

The Proponent submitted a Traffic Impact Assessment in relation to the proposed development.

The Traffic Impact Assessment put forward the following conclusions and recommendations in relation to the proposal:

*The above assessment has concluded that:*

- *the additional traffic generated by the development is minimal and well within the capacity of the surrounding roads and intersections.*
- *parking is provided in accordance with the Muswellbrook Shire Development Control Plan with additional on-site parking (an extra 2 spaces) provided for visitors.*
- *Sight lines for the proposed driveway have been reviewed on site and found acceptable.*
- *The proposed driveway access has been designed to allow for two-way movements and provide sufficient width to enable the B99 design vehicle to pass a medium rigid garbage truck. Review of the driveway grades is required as part of the detailed design to ensure access for waste vehicles is provided in accordance with AS2890.2.*

This report and its findings were reviewed by Council Community Infrastructure Engineers who raised no objection to the proposal from a traffic impact perspective. These comments have been included under the referrals heading of this report.

#### Utilities

As part of the development electrical, telecommunications, water and sewage services would be provided to the premises.

Comments provided by Water and Waste Officers indicate that the development can be supported from a water and sewage servicing perspective and recommend the imposition of standard conditions of consent regarding the administration of water and sewage connections.

#### Flora and Fauna

The Proponent engaged an accredited ecologist to prepare a Biodiversity Development Assessment Report (BDAR) in relation to the proposal.

The BDAR submitted reviewed the proposed development against the assessment criteria under the Biodiversity Conservation Act 2016 which provides a framework for reviewing ecological impacts of a development and a process for managing environmental impacts through biodiversity off-sets and credit transactions.

The BDAR impact summary identified:

- No species that were potential '*serious and irreversible impact entities*' within the development site.
- To comply with the Biodiversity Conservation Act 2016 requirements under the Biodiversity Assessment Method (BAM) it would be necessary for the developer to retire 13 ecosystem credits and 13 species credits.

The BDAR was reviewed by Council's Ecologist and Sustainability Team Leader who recommended conditions of consent which included a requirement for the retirement of credits in line with the Biodiversity Conservation Act 2016.

#### Heritage

Wanaruah Local Aboriginal Land Council provided initial comments raising concerns about aboriginal artefacts uncovered in the vicinity of the development site during the carrying out of the 2003 subdivision that created the land and the possibility that previously undisturbed artefacts remain on the site of the development.

In investigating this issue Council's Assessing Officers met with Wanaruah Local Aboriginal Land Council representatives and reviewed the development application files related to the subdivision of the site. Council Officers required the applicant to engage a suitably qualified person to complete a Cultural Due Diligence Assessment in line with NSW OEH Due Diligence Code of Practice.

The Proponent engaged Domic Steele Consulting Archaeology to prepare an Aboriginal archaeological due diligence assessment. The methodology for this assessment was set out in accordance with the relevant OEH standards and included a site inspection. The investigation did not identify any sites, objects or areas of potential aboriginal significance and advised that the proposed development was unlikely to have an adverse impact on the aboriginal archaeological values of the place. The recommendations of the report have been included below.

### **6.1 Basis for recommendations**

*The study area contains no documented Aboriginal sites or objects, or any specific areas of potential Aboriginal archaeological sensitivity as evaluated in this report. As a result, it is assessed that the proposed activity is unlikely to have an adverse impact upon the Aboriginal archaeological values of the place. It is therefore concluded there are no Aboriginal archaeological constraints for the development proposal proceeding as planned subject to the recognition of the following considerations:*

- *Recognition of the legal requirements and automatic statutory protection provided to Aboriginal 'objects' and 'places' under the terms of the National Parks and Wildlife Act of 1974 (as amended).*

### **6.2 Recommendations**

- *No further Aboriginal archaeological heritage assessment is required.*
- *In the (largely) unexpected circumstance that any Aboriginal objects are unearthed during development, the activities should temporarily cease within the immediate vicinity of the find locality, and OEH be contacted to advise on the appropriate course of action to allow the LALC to record and collect the identified item(s).*
- *If human skeletal remains are discovered the Coroners Act 2009 requires all works to cease on the site and the Police should be contacted, along with the OEH and LALC, to establish and enable the appropriate course of management action to be implemented.*

This report and its findings was referred back to the Wanaruah Local Aboriginal Land Council who made no further comment in relation to the development application.

In view of the findings of the Aboriginal Archaeological Due Diligence Assessment and noting that documentation related to the 2003 subdivision approval did not identify any specific archaeological finds on the site subject to this application Council Officers are satisfied that the proposed development is unlikely to have a significant adverse impact on an items or places of aboriginal cultural significance and the development may proceed in accordance with the recommendations of the due diligence assessment.

### Stormwater

A stormwater management report and plan has been prepared in relation to the proposed development. These documents, the stormwater modelling and proposed stormwater management procedures have been reviewed by Council Roads and Drainage Engineers referred the proposed development.

The stormwater drainage system proposed would collect water from all roofed and hardstand areas within the site and convey water back to Council's John Howe Circuit stormwater system via a filtration chamber.

The image below is the stormwater drainage layout proposed for the development taken from the stormwater management plan. The proposed stormwater drainage is marked in blue on the plan.



Council Engineers did not raise concerns with the final stormwater drainage plan proposed or the capacity of Council's drainage system to support the additional stormwater discharge from the development site. Accordingly, Council Officers raise no objection to the propose development from a stormwater management perspective.

### Social Impacts

A social impact assessment prepared in line with standard requirements for Social Impact Assessment was submitted with the application. Sections 7 and 8 of the Social Impact Assessment examine the anticipated social impacts of the proposed development and proposed mitigation measures. The report concludes that although the proposal will have some negative impacts, it will have an overall positive social outcome. The conclusions of the report have been included below.

*It can be concluded that the proposal will:*

- *Increase housing supply in the locality, which may assist with housing affordability;*
- *Improve residential amenity by replacing a vacant site with an architecturally designed development that will complement the neighbourhood; and*

- *Generate economic benefits by creating employment opportunities during the construction, cleaning / maintenance, and ongoing operation phases.*

*Overall it is considered that the proposal will generate positive social impacts.*

Council Officers have reviewed both the Social Impact Assessment and the concerns raised by submitters through the assessment of the development applications. While Council Officers acknowledge the proposal has the potential to impact the social dynamic of the neighbourhood within which the multi-unit housing is proposed Officers acknowledge that the provision of additional housing options will have positive social outcomes for Muswellbrook.

#### Economic Impacts

The proposed development would support employment opportunities in the construction industry and provide additional housing opportunities for residents of the Muswellbrook Local Government Area.

#### **Section 4.15(1)(c) the suitability of the site for the development**

The site subject to this development application is zoned R1 General Residential under the Muswellbrook LEP 2009. The land use zoning objectives are supportive of this residential development. The development complies with relevant density standards imposed by the Muswellbrook LEP 2009 and DCP for multi dwelling housing developments.

The landholding is not subject to any 88B instruments that would restrict the construction of multi-dwelling housing or dual occupancy developments, something that was imposed on adjoining properties at the time the land was subdivided in 2003.

Council Officers have also considered the site attributes and hazards through the assessment of the application. Council Officers are satisfied that the site is not subject to any hazards, such as bushfire, flooding or mine subsidence, that would impact the development. The development is unlikely to have significant impact on biodiversity, heritage items or places of Aboriginal cultural significance.

In view of the above the proposed development is considered to be compatible with the proposed development and can be supported by Council as being in accordance with Section 4.15(1)(c) of the EP&A Act 1979.

#### **Section 4.15(1)(d) any submissions made**

The proposed development was notified on two occasions.

The development application as initially lodged was notified to adjoining residents and advertised in the Hunter Valley News between the 16 January 2019 and the 15 February 2019. The notification period was extended beyond the minimum required 14 day notification period to provide individuals additional time to review and comment on the development application through the January holiday period.

79 submissions received through this notification.

Following the initial notification, the applicant amended the scope of the proposed development to reduce the total number of proposed dwellings to sixteen (16) and remove two (2) lots from the development application site and change access to the development.

The development application as amended was renotified to all previous submitters, adjoining property owners and advertised in the Hunter Valley News between 24 July

and 22 August.

108 submissions received through this notification process. Some of the submissions were made via a proforma letter.

Concerns raised by submitters have been summarised and commented on in the table below. A document containing copies of all submissions can be provided to Councillors under separate cover.

Submitter Concern	Planning Comment
<p>Concern regarding the ability for the proposed development to be adequately serviced via waste collection due to development design and density.</p>	<p>The proposal was referred to waste collection contractors JR Richards. JR Richards currently hold the contract for kerb side collection in the Muswellbrook Township.</p> <p>Turning circle information for the largest service vehicles proposed to access the site, including a side pickup garbage loader, were reviewed by Council Engineers and the waste contractor.</p> <p>JR Richards Regional Operations Manager provided advice to indicate that the site could be accessed for waste collection. Final comments provided have been referenced below:</p> <p><i>'we note that the proposed T section and the street passing are typical for service access to sites. We do note that access may be limited if there is on street parking'.</i></p> <p>On-street parking would be impractical for occupants given the slope of the site. However, if an issue was identified in the future with on-street parking, Council could consider options including the establishment of a no-parking zone to ensure site access is not inhibited.</p>
<p>The proposed development would be out of character with the local area and established residential development</p>	<p>This development is different to the type of detached dwelling development that adjoins the development site.</p> <p>However, State Government policies and the zone objectives for this site encourage multi-dwelling houses to provide a range of housing types to meet the needs of different households.</p> <ul style="list-style-type: none"> <li>- The proposed dwellings would be a contemporary design and appearance.</li> <li>- All dwellings will be single storey and thereby comparable in height, bulk and scale to neighbouring single storey residential properties.</li> <li>- The proposed dwellings would comply with the relevant density standards imposed by the Muswellbrook LEP and DCP.</li> <li>- The earthworks involved in the carrying out of the development and the establishment of the site would respond to the existing topography and drainage patterns of the site.</li> </ul>

Submitter Concern	Planning Comment
The proposed development would affect the value of adjoining properties.	<p>Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> specifies the matters that a Council can consider when determining a development application.</p> <p>The impact of the development, either positive or negative, on prices of adjoining land is not something a consent authority can use to inform its decision making on a development application.</p>
Concern related to the impact of additional traffic movements that will result from the development on the amenity of residents of John Howe Circuit, Jenkins Street and Bimbadeen Drive.	The proposed development would increase vehicle movements in the local street network. A Traffic Impact Assessment was submitted in relation to the proposed development. This assessment indicates the local road network has sufficient capacity to accommodate the additional traffic movements. This document was reviewed by Council's Engineers who did not raise concern with the impact of the proposal on Council's local road network.
<p>Concern that the density of the proposed development is not in keeping with the existing locality by virtue of the density of development proposed.</p> <p>A number submitters raising this concern also express concern that approving the development will set an undesirable precedent for development that would not be compatible with previous Council decisions. In particular decisions that saw 6 applications for dual Occupancies in the locality refused in 2010 (DA 48/2010, DA 49/2010, DA 50/2010), DA 53/2010, DA 58/2010 and DA 59/2010).</p>	<p>The proposed dwellings comply with the relevant density standards imposed by the Muswellbrook LEP and DCP.</p> <p>Council Officers acknowledge that in 2010 the Council refused the development applications referenced contrary to the recommendations of staff. In line with legislation, Council Officers are required to carry out a comprehensive assessment of this development application against the relevant planning controls.</p> <p>The sites subject to the 2010 refusals were each affected by a covenant listed to the benefit of Council that limited the density of development that could be permitted on those sites.</p> <p>The terms of the covenant affecting the 2010 sites was as follows:</p> <p><i>'the registered proprietor shall not seek approval from Council for, and shall not establish upon the lot burdened any dwelling characterised by Council as a medium density dwelling including dual occupancy'</i></p>

The covenant provided Council with strong grounds to refuse the 2010 applications.

The land subject to this development application is not affected by the same or a similar covenant.	
Potential impact on flora and fauna	The proposed development has been considered against the provisions of the Biodiversity Conservation Act 2016. A BDAR has been prepared in relation to the development application which was reviewed by Council's Ecologist and Sustainability Team Leader. Where the



	proposal is carried out in accordance with the BDAR it would be in accordance with the Biodiversity Conservation Act 2016 and would not have a significant adverse ecological impact.
Concern regarding the potential visual impact of the development - visible from the Highway and will have an adverse impact on people entering Muswellbrook particularly when viewed in context with the existing Eastbrook Estate development.	Due to the setback from the Highway, the proposed development would have minimal visual impact. The subject site and proposed buildings would have the appearance of modern single storey dwellings.
Request for Council to consider alternates to permitting the development such as: <ul style="list-style-type: none"> <li>- Council Purchasing the land and zoning it for Public Recreation</li> <li>- The owners of adjoining land along Coolibah Close jointly purchasing the land and comprising it into their various holdings</li> <li>- Permitting a smaller scale subdivision of the land consistent with the subdivisions previously approved</li> </ul>	Under the <i>Environmental Planning and Assessment Act 1979</i> staff must assess the development application that has been submitted.  These options are separate to the application and would need to be pursued by a non-regulatory area of Council or by the adjoining owners.
The proposed development contradicts representations made by the original Eastbrook Links developer to purchasers in the area. The development is not consistent with restrictive covenants imposed on surrounding blocks.	Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> specifies the matters that a Council can consider when determining a development application. This does not include representations made by a developer or estate agent at the time of sale of property.  The land subject to this development application is not subject to any covenant that restricts the development of the site for multi-dwelling housing. This contrasts with nearby land in John Howe Circuit and Bloodwood Road where covenants limit development to a dwelling house.
Concern that the proposed development would have an adverse social impact.	A Social Impact Assessment was prepared and submitted in relation to the proposed development. This document was reviewed by Council Officers through the assessment of the DA.  Council Officers are of the view that the proposal can be supported from a social impact perspective due to the provisions of a more diverse range of housing in Muswellbrook.
Concern that the SoEE does not correctly assessed against the DCP density standard of 60 persons per hectare (or 1 person per 166.7m <sup>2</sup> ).  The number of bedrooms proposed would	It is acknowledged that the language in this section of the DCP is not as user friendly as it could be.  The development site has an area of 8,282m <sup>2</sup> . To determine the density of

potentially allow for an occupation rate that exceeds the 60 person per hectare density standard	<p>people permitted on this site 166.7 is divided into the area of the site (8,282/166.7).</p> <p>This equates to 49.7 people for this site.</p> <p>The following occupancy rates are prescribed in the DCP:</p> <p><i>One (1) bedroom dwelling = 1.23 persons</i>  <i>Two (2) bedroom dwelling = 1.79 persons</i>  <i>Three (3) bedroom dwelling = 2.52 persons</i>  <i>Four (4) or more bedroom dwelling = 3.02 persons</i></p> <p>Given each of the 16 dwellings would have 3 bedrooms, the total proposed occupancy rate for the site is 2.52 x 16 = 40.32 people.</p> <p>This complies with the density standard set out in the DCP.</p>
There is no demonstrated demand for the type of medium density housing proposed.	The demand for all types of housing, for rent or purchase, is currently high in most regional locations including Muswellbrook.
A decision to approve the application for this type of housing would conflict with Council objectives to attract people to the area and approve liveability.	The demand for all types of housing, for rent or purchase, is currently high in most regional locations, including Muswellbrook.
The two most southern proposed units would overlook the rear yard and windows of 12 Coolibah CI and have a significant adverse impact on privacy and noise.	<p>While there is potential for some overlooking and visual impacts all setbacks comply with DCP minimum requirements and thereby the proposal has not been recommended for refusal due to these issues.</p> <p>To minimise overlooking issues, recommended conditions have been put forward to require secure fencing between the proposed development and all adjoining sites.</p>
Development has the potential to increase safety issues for adjoining residents and the cost of home and contents insurance	Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> specifies the matters that a Council can consider when determining a development application and the possible impacts on insurance costs, due to the people living nearby, is not included as a consideration.
Proposed development has the potential to affect the neighbouring properties enjoyment of the south westerly prevailing breeze.	Although the proposed development will alter the outlook from Coolibah Close properties, it will not significantly overshadow these adjoining properties or impinge on their amenity by creating a sense of enclosure or impacting on

	<p>breezes.</p> <p>All proposed buildings would be single storey and the finished floor level for their construction would be comparable to the existing ground level.</p>
Result in the loss of any rear vehicle access for the properties backing onto the site from Coolibah Close and Bloodwood Road.	<p>The site subject is not affected by any easements that provide a legal point of access to neighbouring properties fronting Coolibah Close and Bloodwood Road. Accordingly, access to adjoining properties over the subject site appears to be on an informal basis and that access could be denied at any time irrespective of the outcome of this development application.</p>
Concern about the potential for the proposed development and earthworks to impact the structural integrity of adjoining properties through building vibrations.	<p>Council Officers have recommended a condition of consent related to the carrying out of the development to ensure the potential for damage to neighbouring properties is minimised and any damage rectified if it occurs. Proposed earthworks will be of a short duration.</p>
Concern regarding the retaining wall failures in other areas of Eastbrook Links and the potential for similar failures for walls installed as part of this development.	<p>All retaining walls proposed would be of a masonry construction and would comply with requirements of Council's Retaining Wall Policy. Detailed engineering designs for all retaining walls will need to be submitted for certification with any Construction Certificate application.</p>
Concern about the potential impact of the development on water pressure and sewage blockages.	<p>The proposed development has been considered by Council Water and Waste Officers who have advised that the proposal is not anticipated to have any significant adverse impact on water pressure in the locality or on the operation of the sewerage system.</p>

#### Section 4.15(1)(e) the public interest.

The proposed development is in the public interest. This view has been informed by the following consideration:

- The proposed development is permissible with consent in the R1 General Residential zone under the provisions of the Muswellbrook LEP 2009.
- The proposed development would be carried out in accordance with the relevant provisions of the Muswellbrook LEP 2009 and other applicable environmental planning instruments
- The proposed development meets the density standard by providing housing for 40.3 people rather than the 49.7 people permitted and complies with the other multi-unit dwelling specific requirements of the Muswellbrook DCP.
- Having regard to the local assessment criteria prescribed by Council through the Muswellbrook LEP 2009 and DCP the proposed development is considered unlikely to have a significant adverse environmental or social impact.

- Although 108 submissions have been received in relation to the proposed development, Council Officers have not identified sufficient impact to substantiate a decision to refuse consent to the proposal.
- The proposed development would support additional economic activity in the Muswellbrook locality.

## **5 CONCLUSION & RECOMMENDATION**

It is recommended that development consent be granted to the proposed development subject to the recommended conditions of consent pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979.

**DA 2019/2 Recommended Conditions of Consent:****IDENTIFICATION OF APPROVED PLANS AND PROPOSED DEVELOPMENT****(1) Development in Accordance with Plans**

The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions.

Drawing No.	Revision	Drawn by	Drawing Date	Received
Location and Site Analysis Plan A00	B	The Bathla Group	4 June 2019	30/07/2019
Site/Ground Floor Plan A01	B	The Bathla Group	4 June 2019	30/07/2019
Elevations and Section A02	B	The Bathla Group	4 June 2019	30/07/2019
Elevations and Colour Schedule A03	B	The Bathla Group	4 June 2019	30/07/2019
Solar Access A04	B	The Bathla Group	4 June 2019	30/07/2019
Unit Types and Turning Paths A05	B	The Bathla Group	4 June 2019	30/07/2019
Site and Landscape Plan A01	A	The Bathla Group	30 May /2019	30/07/2019
SS01 Design Vehicle	B	SECA Solution	21 May /2019	30/07/2019
HU180034-01-101	C	Baker Ryan Stewart	26 June 2019	30/07/2019
HU180034-01-111	C	Baker Ryan Stewart	26 June 2019	30/07/2019
HU180034-01-201	C	Baker Ryan Stewart	26 June 2019	30/07/2019
HU180034-01-301	C	Baker Ryan Stewart	26 June 2019	30/07/2019
HU180034-01-302	C	Baker Ryan Stewart	26 June 2019	30/07/2019
HU180034-01-303	C	Baker Ryan Stewart	26 June 2019	30/07/2019
HU180034-01-304	C	Baker Ryan Stewart	26 June 2019	30/07/2019
HU180034-01-305	C	Baker Ryan Stewart	26 June 2019	30/07/2019
HU180034-01-501	C	Baker Ryan Stewart	26 June 2019	30/07/2019
HU180034-01-701	C	Baker Ryan Stewart	26 June 2019	30/07/2019
HU180034-01-801	C	Baker Ryan Stewart	26 June 2019	30/07/2019
HU180034-01-802	C	Baker Ryan Stewart	26 June 2019	30/07/2019

**(2) Development in Accordance with Documentation**

The development is to be carried out generally in accordance with the following documents:

Title	Written by	Date
Letter Amending DA and SoEE	The Bathla Group	15 May 2019
Biodiversity Assessment Report	Firebird Ecosultants Pty Ltd	January 2020
Water Servicing Strategy Statement	GCA Solutions	31 October 2019
Stormwater Management Report	Baker Ryan Stewart	June 2019
Aboriginal Archaeological Due Diligence Assessment	Dominic Steel Consulting Archaeology	May 2019
Social Impact Statement	Baker Ryan Stewart	August 2019
Crime Prevention Through Environmental Design Report	Harris Crime Prevention Services	June 2019
Traffic Statement	SECA Solutions	27 May 2019

**(3) Footpath Construction Requirements**

As part of the carrying out of this development a pedestrian footpath is to be constructed along John Howe Circuit, on the opposite side of the road to the development site, for the entirety of its frontage.

Prior to the carrying out of these works design details for the footpath construction are to be provided and a Section 138 permit obtained in accordance with the requirements of this consent.

**OPERATIONAL CONDITIONS IMPOSED UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS AND OTHER RELEVANT LEGISLATION**

**(4) Building Code of Australia**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**(5) Home Building Act**

(1) Building work that involves residential building works (under the meaning and exemptions of the *Home Building Act 1989*) must not be carried out unless the Principal Certifying Authority for the development which the work relates:

- (a) In the case of work being carried out by a licensed builder :
  - (i) Has been informed in writing of the licensee's name and license number, and;
  - (ii) Has received Home Owners Warranty Insurance for works where the contract price of the works exceeds \$20,000.
- (b) In the case of an Owner Builder:

- (i) Has been informed in writing of the persons name and Owner Builder permit number where the cost of works is greater than \$10,000, or;
  - (ii) Has been given declaration signed by the owner of the land that states that the reasonable market cost of the labour and materials is less than \$10,000.
- (2) A certificate issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.
- (3) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is 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.

Note: (1) The amounts referred to in point 1 may be subject to change as regulations are amended.

- (2) An owner that engages multiple licensees/contracts or contracts for part of the work and completes work themselves is considered an Owner Builder under the *Home Building Act 1989*.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

**(6) Construction Certificate Requirement**

No works shall commence on-site until such time as a Construction Certificate has been issued for either part or all of the works to be undertaken. If a Construction Certificate is issued for part of the approved works it must relate to all works being undertaken.

Note: a construction certificate issued by an Accredited Certifying Authority must be deposited with Council at least 48 hours prior to the commencement of any earthworks, engineering or building work at the site.

**(7) Muswellbrook Shire Water and Waste Division**

A 'Notice of Requirements' under the Water Management Act 2000 must be obtained, prior to any Construction Certificate application, detailing water and sewer extensions to be built and charges to be paid by the applicant. Any charges identified in the 'Notice of Requirements' as requiring payment at construction certificate stage are to be paid prior to release of a Construction Certificate.

Documents and information addressing the following will need to be provided with any Notice of Requirement application to the satisfaction of Council Water and Waste Officers for approval:

- Plans are prepared, submitted to and approved by water authority for extension
- An arborist report prepared and submitted to Council relating to street trees in John Howe and the potential for the service extensions to impact trees. The arborist report is to inform service extension design so to minimise damage to the root system of any street tree.



- Details are to be provided to Council of any street trees to be removed as part of the carrying out of the works and replacement trees to be planted in the road reserve. Replacement species are to be approved by Council's Parks and Gardens Division.

Details demonstrating compliance with any requirements for works by Muswellbrook Shire Council Water & Waste Department are to be provided with the Construction Certificate application.

The final compliance certificate must be submitted to the Certifying Authority prior to release of the Subdivision or Occupation Certificate.

**(8) Ecosystem Credit Retirement Conditions**

- a) Prior to issue of construction certificate, the class and number of ecosystem credits in Table [1] must be retired to offset the residual biodiversity impacts of the development.
- b) The requirement to retire credits in condition 2.1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.
- c) Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of this condition must be provided to the consent authority prior to issue of construction certification.

**Table [1] Ecosystem credits required to be retired – like for like**

Impacted plant community type	Number of ecosystem credits	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
Narrow-leaved Ironbark - Grey Box grassy woodland of the central and Upper Hunter (PCT 1691)	13	Hunter, Ellerston, Karuah Manning, Kerrabee, Liverpool Range, Peel, Tomalla, Upper Hunter, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	PCT's: 1691, 1603, 1605, 1691, 1692

**(9) Species Credit Retirement Conditions**

- a) Prior to issue of construction certificate the class and number of species credits in Table [2] must be retired to offset the residual biodiversity impacts of the development.
- b) The requirement to retire credits outlined in condition 2.4 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the Biodiversity Offsets Payment Calculator.

- c) Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table [2] requirements must be provided to the consent authority prior to issue of construction certification.

**Table [2] Species credits required to be retired – like for like**

Impacted species credit species	Number of species credits	IBRA sub-region
<i>Delma impar</i> / <i>Striped Legless Lizard</i>	10	Anywhere in NSW
<i>Diuris tricolor</i> / <i>Pine Donkey Orchid</i>	10	Anywhere in NSW
<i>Pterostylis chaetophora</i> / <i>Pterostylis chaetophora</i>	13	Anywhere in NSW

**(10) Section 68 Local Government Act 1993 Approvals**

Prior to the issue of a Construction Certificate the person acting with this consent shall obtain approval under Section 68 of the Local Government Act 1993 for the carrying out of stormwater works.

Any Section 68 application is to be accompanied with detailed stormwater drainage design plans updated to include/address the following:

- Pipe grades into stormwater treatment devices or OSD tanks should not exceed 5% maximum grade. A drop structure pit can be included upstream of such a device of at least 2.4m if a lower grade is not possible.
- Structural design for OSD tank to be provided for CC design, including structural design for concrete lid. A minimum of one grate is to be provided for the tank.
- Stormwater pipes greater than 5% grade should have trench stops/bulk heads (as per AUSPEC 0074 Stormwater Drainage Design Section 6) and with centres of Xm where  $X = 100 / \text{Grade (\%)}$  of the pipe. Pipes greater than 15% in grade should have concrete bulkheads designed.
- Stormwater pipes greater than 5% grade should have trench stops/bulk heads (as per AUSPEC 0074 Stormwater Drainage Design Section 6) and with centres of Xm where  $X = 100 / \text{Grade (\%)}$  of the pipe. Pipes greater than 15% in grade should have concrete bulkheads designed.
- A stormwater trench grate is to be provided across the width of the bottom of the driveway, connected to a stormwater pit, and drained towards a new pit and lintel in Bloodwood Rd as per diagram. Outlet pipe from the on-site detention system to be drained at 90 degrees towards Bloodwood Rd, before draining to the proposed lintel pit. Subsoil drainage is required along new proposed mountable kerb across frontage of property.

Documentary evidence is to be provided to the Principle Certifying Authority demonstrating that these approvals have been obtained prior to the issue of a Construction Certificate.

The person acting with this consent shall ensure that mandatory stage inspections prescribed by the Section 68 Approval are carried out by Council Officers at the relevant stage of development.

**(11) Footpath Design Plans**

Prior to the issue of a Construction Certificate the person acting with this consent is to prepare detailed design plans for the construction of a footpath for the length of the development site on the opposite side of John Howe Circuit, and submit these plans to Council for approval.

The footpath is to be designed in accordance with the requirements of Council's Development Control Plan and relevant Australian standards and should include connecting pram ramps between the proposed footpath and existing pedestrian areas.

Written evidence demonstrating that these plans have been approved by Council is to be provided to the Principle Certifying Authority prior to the issue of a Construction Certificate. Prior to the construction of the footpath a Section 138 permit is to be obtained from Council in accordance with the requirements of this consent.

Note: Where further information is required in relation to the footpath design requirements you are invited to contact Council Community Infrastructure Roads and Drainage Engineers on 6549 3700.

**(12) Section 138 Approval Requirement**

Prior to the issue of a Construction Certificate and the carrying out of any work within the John Howe Circuit Road Reserve a Section 138 permit is to be obtained from Council in accordance with the requirements of the Roads Act 1993.

Any Section 138 application must be accompanied by detailed design plans demonstrating that all required vehicle crossovers and associated works in the road reserve will comply with the relevant Australian Standards and Council requirements.

**(13) Sediment Control Plan**

Prior to the issue of a Construction Certificate a sediment and erosion management plan and water management plan are to be submitted to and approved by the Certifying Authority. As a minimum, control techniques are to be in accordance with Muswellbrook Shire Council's Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Control Plan shall incorporate and disclose:

- (a) all details to protect and drain the site during the construction processes;
- (b) all sediment control devices, barriers and the like;
- (c) sedimentation tanks, ponds or the like;
- (d) covering materials and methods;
- (e) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

**(14) Shoring and Structural Adequacy of Adjoining Property**

Prior to the issue of a Construction Certificate for the development a Structural Certification Report is to be prepared by an appropriately qualified Civil Engineer to identify that the development would be carried out to manage and maintain the

structural stability of adjoining structures, buildings and works in accordance with the requirements of Condition 7 and the related provision of Clause 98E of the Environmental Planning and Assessment Act 1979.

This report should:

- certify the structural adequacy of adjoining structures to withstand the proposed excavation and construction activities,
- identify measures to protect structures from damage during construction works,
- Where necessary identify measures to underpin and support the structural stability of buildings that may be affected by the carrying out of the approved works.
- This document should include observations of any existing structural dilapidation of adjoining buildings, structures or works.

**(15) Fire Hydrant Coverage**

Prior to the issue of a Construction Certificate the person acting with this consent must provide suitable evidence to the Certifying Authority to demonstrate that appropriate fire hydrant coverage will be provided to the development. This should be done either through the submission of plans showing that the relevant Building Code of Australia coverage and requirements of NSW Fire and Rescue's document 'Fire Hydrants for Minor Residential Development' will be achieved for all parts of the development site and proposed buildings or providing detailed design documents for the provision of a new internal hydrant to provide coverage within the site.

**(16) BASIX Commitments**

Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. Details and plans demonstrating compliance with these requirements are to be submitted to the Certifying Authority for approval with the Construction Certificate.

In this condition:

(a) relevant BASIX Certificate means:

- (i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
- (ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and

(b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

**(17) Waste Minimisation Management Plan**

Prior to the issue of a Construction Certificate the person acting with this consent must submit an updated Waste Minimisation Management Plan for the development. The updated plan must be prepared in relation to the sixteen (16) unit development approved.

The waste minimisation management plan before Council includes references to the development as a twenty-one (21) unit development.

The waste minimisation management plan is to be prepared in accordance with the requirements of the Muswellbrook Development Control Plan and documentary evidence is to be provided to the Principle Certifying Authority to demonstrate the document has been submitted to and approved by Council prior to the issue of a Construction Certificate.

**(18) Section 7.11 Contribution**

A contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, as specified under the Muswellbrook Shire Council section 7.11 contribution plan for the services detailed in column A and, for the amount detailed in column B shall be made to Council.

Contribution type	Amount per dwelling (2020/21 fees and charges)	Total for 16 dwellings (excludes 1 credit for existing lot)
Urban Roads and Drainage	\$1,084.50	\$16,267.50
Open Space and Community Facilities	\$2,012.00	\$30,180

All contributions required by this condition are to be paid to Council prior to the issue of a Construction Certificate. Suitable evidence provided to the Certifying Authority demonstrating their payment with a Construction Certificate application.

The above amount shall be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index and Council Fees and Charges applicable at the time of the payment of the contribution.

A copy of the Muswellbrook Shire Council section 7.11 contribution plan can be viewed at the office of Council.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT**

**(19) Site Sign**

A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- (a) stating that unauthorised entry to the work site is prohibited;
- (b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
- (c) showing the name, address and telephone number of the Principal Certifying Authority for the work.

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

This condition does not apply to building works being carried out inside an existing building.

**(20) Stabilised access**

Stabilised site access consisting of at least 200mm of aggregate at 30–60mm in size and a minimum of 3m in width must be provided from the road edge to the front of the building being constructed prior to the commencement of work. The stabilised access must be fully maintained and removed from the site when a permanent driveway has been constructed.

**(21) Site Facilities**

- (a) If the development involves building work or demolition work, the work site must be fully enclosed by a temporary security fence (or hoarding) before work commences.
- (b) A minimum width of 1.2m must be provided between the work site and the edge of the roadway to facilitate the safe movement of pedestrians.
- (c) Any such hoarding or fence is to be removed when the work has been completed.
- (d) A garbage receptacle fitted with a tight-fitting lid for the reception of all food scraps and papers from the work site must be provided prior to building work commencing and must be maintained and serviced for the duration of the work.
- (e) Toilet facilities must be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the work site.
- (f) Each toilet provided must:
  - be a standard flushing toilet, connected to a public sewer, or
  - if connection to a public sewer is not available, to an on-site effluent disposal system approved by the council, or
  - an approved temporary chemical closet.
- (g) The provision of toilet facilities must be completed before any other work is commenced.
- (h) A person having the benefit of this certificate who causes an excavation that extends below the level of the base of the footings of a building on an adjoining allotment of land must at their own expense and where necessary:
  - protect and support the building from damage, and
  - If necessary, underpin and support the building in accordance with the details prepared by a professional engineer.
- (i) A person having the benefit of this certificate who causes the excavation must, at least 7 days before commencing this work, give notice of intention to do so to the owner of the adjoining allotment of land and provide particulars of the proposed work.
- (j) Erosion and sediment controls must be provided in accordance with the details shown on the approved plans, prior to the disturbance of any soil on the work site.

**(22) Water Meter**

A water meter as issued and installed by Muswellbrook Water & Waste department must be connected to the town's reticulated water supply prior to any commencement.

**(23) Identification of Boundaries**

The boundaries of the development footprint will be delineated in the field using bunting / flagging tape to ensure inadvertent clearing / disturbance of the adjacent vegetation does not occur.

**(24) Identification of hollow bearing trees**

All hollow-bearing trees to be removed are to be clearly marked using bunting or flagging tape.

**CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK****(25) Management of Works Related to the Removal of Hollow Bearing Trees**

The removal of hollow-bearing trees must be supervised by a qualified fauna ecologist or licenced fauna handler, to ensure that any displaced fauna are dealt with appropriately. Hollow-bearing tree removal must adhere to the following procedure:

- Hollow-bearing trees are to be gently nudged twice, with machinery in the presence of the ecologist, as nudging may encourage fauna to leave the trees.
- After each nudging, hollow-bearing trees would be left for a minimum of 10 minutes to allow time for any fauna to escape out of the trees and move safely away from machinery. The tree will be monitored by the ecologist during this time.
- Trees are to be removed by as carefully as possible, to reduce risk of injury to fauna.
- The trees are to be observed for escaping fauna throughout the nudging/felling process by the ecologist.
- Immediately following the felling of hollow-bearing trees, the ecologist will inspect the hollows to retrieve any young or injured fauna or identify the presence of nesting material that would indicate the hollow was being used.
- Any uninjured fauna are to be encouraged to relocate to adjacent habitat areas.
- Any injured or dependent young animals are to be captured and held in a quiet, cool, safe place until transferred to a vet or licensed native animal carer.

**(26) Management of Worksite**

Machinery would be cleaned prior to entering and leaving the site to ensure that weed seeds and propagules are not imported or exported.

**(27) Weed Management**

Weeds shall be managed according to the requirements of the Biosecurity Act; in that they are to be disposed of at a licenced waste management facility or similar. Weeds are not to be mulched and repurposed for any landscaping use.



**(28) Environmental Management**

All staff and contractors will be given training and site briefing to communicate environmental features to be protected and measures to be implemented.

**(29) Construction Hours**

- (a) Subject to this clause, building construction is to be carried out during the following hours:
  - i. between Monday to Friday (inclusive)—7.00am to 6.00pm
  - ii. on a Saturday—8.00am to 1.00pm
- (b) Building construction must not be carried out on a Sunday or a public holidays.
- (c) Demolition works and excavation works must only be carried out between Monday to Friday (inclusive) between 8.00am and 5.00pm.
- (d) The builder and excavator must display, on-site, their 24 hour contact telephone numbers, which are to be clearly visible and legible from any public place adjoining the site.

**(30) Materials**

In accordance with the provisions of the Muswellbrook Development Control Plan buildings are not to be constructed from reflective metal cladding. Zincalume or reflective white sheet metal cladding is not be used without the prior written approval from Council.

**(31) Prohibition on Use of Pavements**

Building materials and equipment must be stored wholly within the work site, unless prior written approval has been obtained from council. Equipment must not be operated on the footpath or roadway, unless prior written approval has been obtained from council.

**(32) Applicant's Cost of Work on Council Property**

The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

**(33) Mandatory Council inspections**

During the carrying out of building works the person acting with this consent shall ensure that all mandatory stage inspections specified by any approvals issued under Section 68 of the Local Government Act 1993 or Section 138 of the Roads Act 1993 are carried out by Council at the relevant stage of works specified by these approvals.

Note: a minimum notice of 48 hours is required when booking an inspection. Inspection fees will be charged in accordance with Council's adopted fees and charges and must be paid prior to the issue of the Construction Certificate.

**(34) Erosion and Sediment Controls**

The approved Sediment & Erosion controls shall be reinstated daily prior to workers leaving the site where modified at any time. Any sediment that escapes from the allotment shall be cleaned, collected and disposed of to Council's waste management facility or the sediment shall be returned to the subject allotment daily.

**(35) Restriction on the import of fill**

Any fill imported to and used at the site is to be appropriately sourced from an approved quarry, landscaping supply business or reputable source.

All fill must be free of contaminants and the person operating with this consent is to provide details of the location or premises that any fill used at the site has been obtained from and provide these details to the Principle Certifying and Council.

**(36) Damage to Public Infrastructure**

The applicant shall bear the cost of all restoration works to Council property damaged during this development. The applicant shall submit in writing and/or photographic record, of any existing damage to Council property before commencement of work.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. If no documentation is received prior to commencement of work it will be assumed that the infrastructure was undamaged and the applicant will be required to restore all damaged infrastructure at their expense.

**(37) Discovery of Aboriginal Heritage**

If Aboriginal objects are uncovered during work, excavation or disturbance of the area, work must stop immediately. The Environmental Protection and Regulation Group of the OEH is to be contacted. Aboriginal archaeological excavation must be co-ordinated with any proposed investigation of non-indigenous material.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

**(38) Occupation**

The building is not to be used or occupied until a final inspection has been carried out and an occupation certificate has been obtained from the Principal Certifying Authority.

**(39) Final Compliance Certificate for Water Supply and Sewerage Works**

The final compliance certificate for water supply works is to be obtained from Muswellbrook Shire Council Water & Waste Department and a copy must be submitted to the Principal Certifying Authority prior to release of any Occupation Certificate.

**(40) (40) Installation of Driveways**

Prior to the issue of any Occupation Certificate, a sealed vehicular crossover shall be constructed between the property boundary and the road in accordance with Council's Footpath, Kerb & Guttering Policy (F10/1) and any S138 approval. The driveway is to continue from the property boundary to the garage in accordance with the profile on the approved plans and is to be fully constructed and sealed prior to the issue of an occupation certificate.

**(41) (41) Connection to Sewer**

The premises shall be connected to the sewer system in accordance with the Australian Standard 3500. A works as executed plan on Council's approved form is to be submitted to Council within seven (7) days following the final drainage inspection and prior to any Occupation Certificate being issued.

**(42) Biodiversity Conservation Act 2016 Requirements and Retirement of Credits**

Prior to the issue of any Occupation Certificate A Biodiversity Assessment Method Calculator (BAMC) Report is to be provided to Council and the Principle Certifying Authority to demonstrate that the BAMC has been finalised.

**(43) Footpath Construction Requirement**

Prior to the issue of any Occupation Certificate the pedestrian footpath required by this consent is to be fully constructed to the satisfaction of Council as the Roads Authority in accordance with the approved plans, conditions of consent and Section 138 permit.

**(44) Construction of Parking Areas**

Prior to the issue of an Occupation Certificate all parking areas, loading bays, driveways, internal access ways, vehicular ramps and turning areas shall be fully constructed, sealed, line marked, sign posted in accordance with the approved plans and AS.2890.1 2004 Parking Facilities and the relevant provisions of AS1428.1 and AS1428.4.

Appropriate signage and line marking is to be installed on the turning bay opposite unit No9 to clearly identify that no car parking in this area is permitted.

**(45) Damage to Adjoining Properties**

All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must always be observed, including the entering onto land for the purpose of undertaking works.

On completion of the works and prior to the issue of an Occupation Certificate, a certificate is to be prepared to the effect that that no damage has resulted to adjoining premises and is to be provided to Council and the Principal Certifying Authority.

Alternatively, if damage is identified which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to the issue of a final Occupation Certificate.

**(46) Installation of landscaping**

Prior to the issue of any Occupation Certificate landscaping is to be installed at the site in accordance with the approved Landscape Plan, the requirements of this consent or as otherwise directed by Council in writing.

**(47) Installation of Fencing**

Prior to the issue of any Occupation Certificate 1.8m high secure fencing is to be installed along the dividing property boundaries of the development site and all adjoining residential properties. This fencing is to be installed at full cost to the person acting with this consent.

**(48) Cloths drying facility**

Prior to the issue of an Occupation Certificate all dwellings are to be provided with an open-air clothes drying facility situated in a sunny location in accordance with the requirements of Council's Development Control Plan.

**(49) Dwelling Numbering**

Prior to any Occupation Certificate being issued for the building works, the person acting upon this consent must apply to Muswellbrook Shire Council and receive written confirmation of the allocated street address(es) or house number(s) for the completed project. These are the numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2003 – Geographic information – Rural and urban addressing.

To assist Council when applying for strata unit number allocations, a draft proposal for unit numbering within the strata scheme should be submitted for concurrence to Council, as these unit numbers will be used to maintain Council's property and mapping database.

**(50) Letter Box Requirement**

Prior to an Occupation Certificate being issued for the building works, the person acting upon this consent must provide a lockable mailbox for each of the dwellings. Mailboxes should be located at the front of the development site adjacent John Howe Circuit in accordance with the approved plans and any Australia Post requirements. All mailboxes are to be appropriately numbered and identifiable for mail deliveries.

No mailbox is to encroach on the Council road reserve.

**(51) Street Trees**

Prior to issue of an Occupation Certificate all street trees required to be replaced as part of the carrying out of water and sewer works are to be planted to the satisfaction of Council.

An inspection of the trees is to be organised with Council Officers to confirm that all required trees have been planted and established in good health. Where it is apparent that additional street trees have been damaged or removed as part of the carrying out of works or the street trees are not in good health new trees are to be reinstated to the satisfaction of Council.

Evidence is to be provided to the Certifying Authority to demonstrate compliance with this requirement.

**CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**

**(52) Stormwater Disposal**

All stormwater from the development including all hardstand areas and overflows from rainwater tanks is to be collected and disposed of in accordance with the approved Stormwater management plan

**(53) Landscaping**

The landscaped area of the development is always to be maintained in accordance with the approved landscape plan

**(54) Vehicle Access**

Vehicle access to and from the site is to be in a forward direction.

**(55) Parking Management**

No parking is to be permitted in the vehicle turning bay opposite unit 9. Appropriate signage and/or line marking is to be installed as part of the development to identify that all vehicle parking in this space is prohibited.

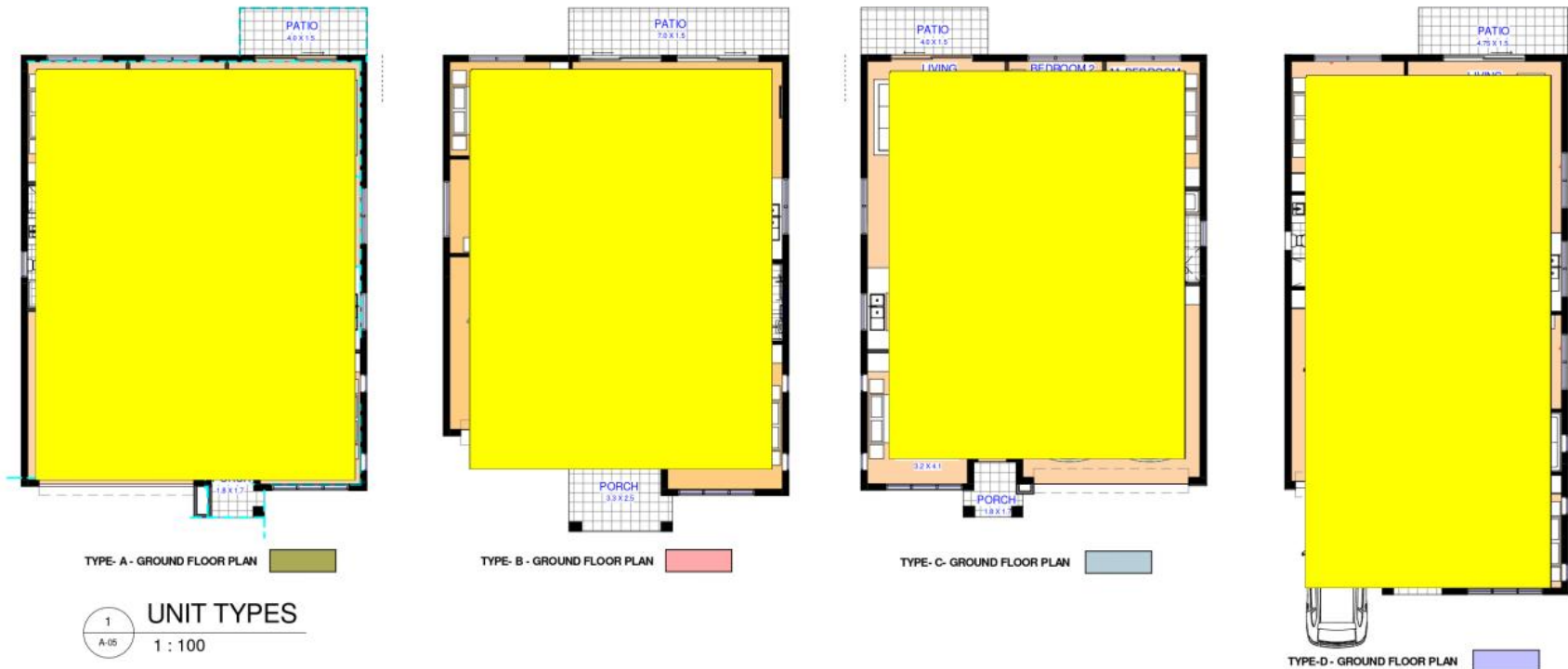




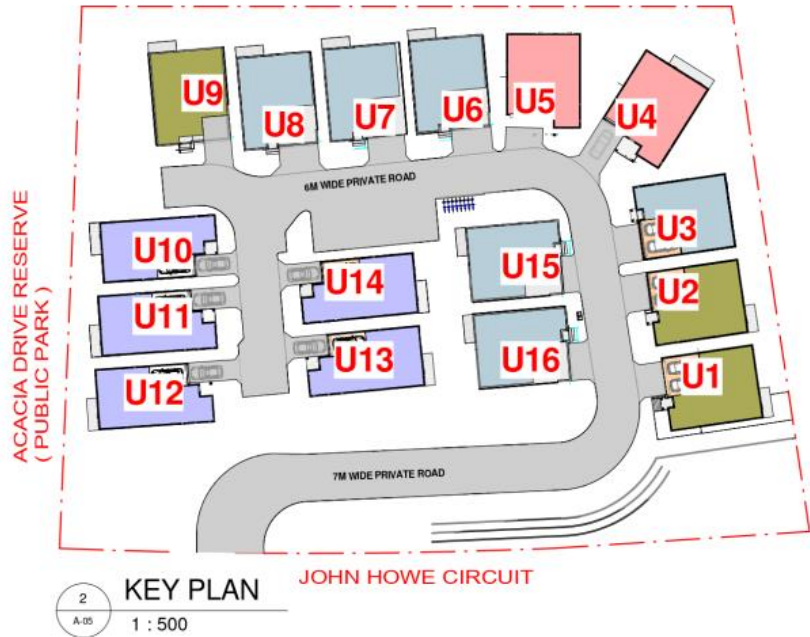




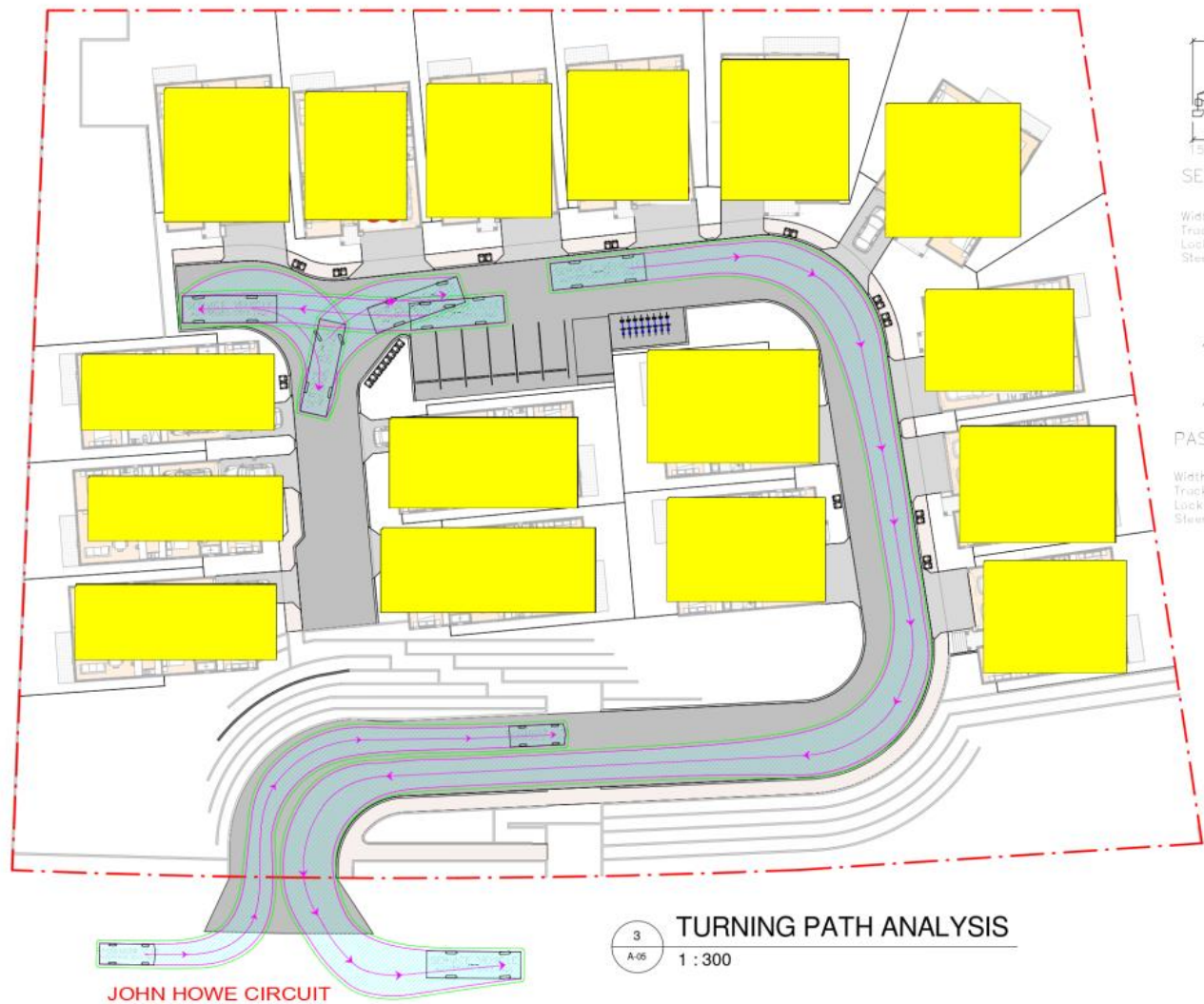




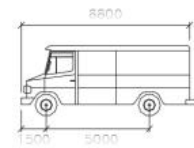
UNIT TYPES  
1 : 100



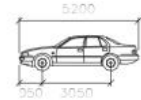
KEY PLAN  
1 : 500



TURNING PATH ANALYSIS  
1 : 300



SERVICE VEHICLE  
Width : 2.500m  
Track : 2.500m  
Lock to Lock Time : 6.0s  
Steering Angle : 38.7 degrees



PASSENGER CAR  
Width : 1.040m  
Track : 1.840m  
Lock to Lock Time : 6.0s  
Steering Angle : 33.6 degrees

UNIT TYPES			
TYPES	UNIT NO S	NO. OF BEDROOMS	TOTAL UNITS
U1, U2, U9	3	3	3
U4, U5	3	2	2
U3, U6, U7, U8, U15, U16	3	6	6
U10, U11, U12, U13, U14	3	5	5
TOTAL NO. OF UNITS - 16			

Thermal Performance Specifications  
Project: 15-17 Bloodwood Road and 19 John Howe Circuit Muswellbrook NSW 2333  
BASIX Certificate: 962424M

Building Elements	Material	Insulation Details
External Walls	Brick Veneer	R2 Bulk Insulation
External Wall Color	Various as per plan	
Internal Walls	Plasterboard on studs	N/A
Ceiling	Plasterboard	R2.5
Roof	Refer to Plans	Sarking
Floors	Concrete slab on ground	
Windows	Improved Aluminum Frame Single Glazed	Uval 5.91 SHGC 0.73

BASIX Specifications  
Project: 15-17 Bloodwood Road and 19 John Howe Circuit Muswellbrook NSW 2333  
BASIX Certificate: 962424M

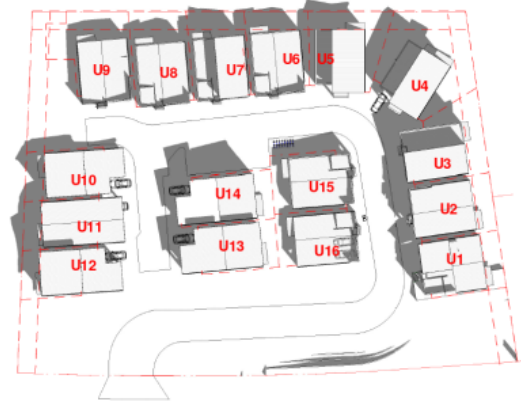
Water Commitments	
Shower Heads:	3 Star (>4.5 but <= 6 L/min)
Toilets:	4 Star
Kitchen and Bathroom Taps:	4 Star
Rainwater Tank	2000L
Energy Commitments	
Hot Water System:	Instantaneous 6 star
Bathroom, Kitchen, Laundry Ventilation:	Individual Fans ducted
Air Conditioning (Heating & Cooling):	1 phase cooling 5 Stars heating 5 Stars
Cooktop and Oven	Gas Cooktop/ Gas Oven

Please refer to BASIX report dated 3/12/2018 for detailed commitment requirements

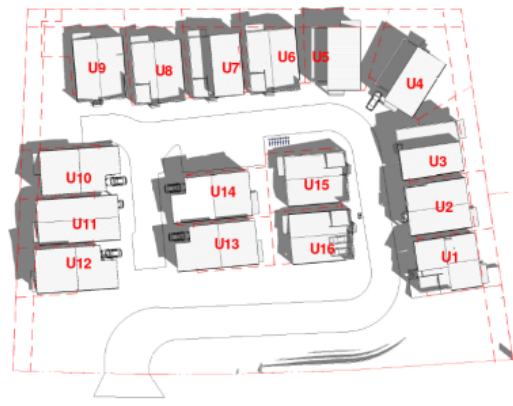
Energy Rating  
Certificate Number: 962424M  
[X] single-dwelling rating  
[X] multi-unit development (attach listing of ratings)  
Recessed downlights confirmation: [ ] Rated with [X] Rated without  
Assessor Name/Number: Ingrid Tyllan VIC/BDAN/13/1652  
Assessor Signature: [Signature] Date: 03/12/2018

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REVISION B FOR DEVELOPMENT APPLICATION FOR REVIEW	LOT NUMBER:	Z:\Projects - Current\Eastbrook\05_Architectural\100_SK\REV\DA OPTION E.rvt	

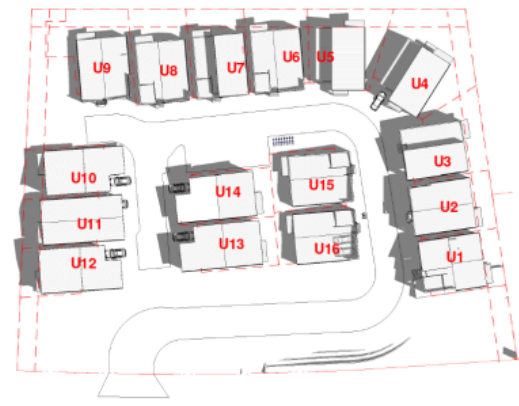




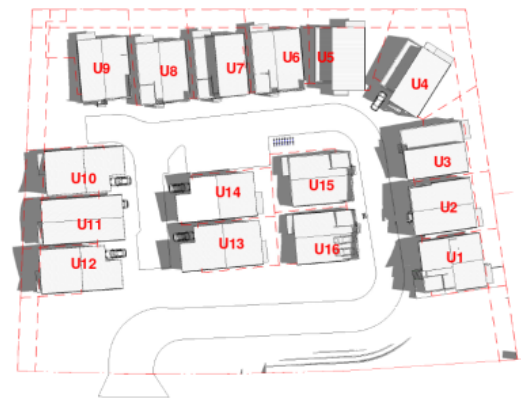
1 SITE PLAN - 9AM - 21 JUNE  
A-04 1 : 750



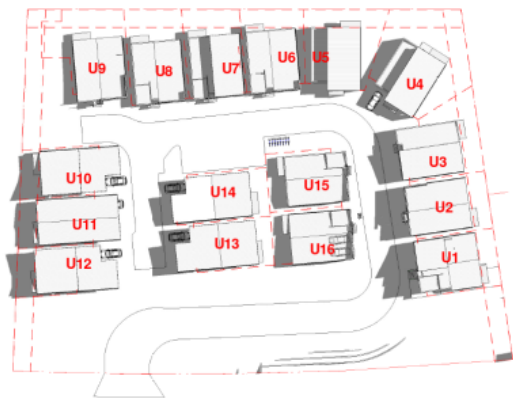
2 SITE PLAN - 10AM - 21 JUNE  
A-04 1 : 750



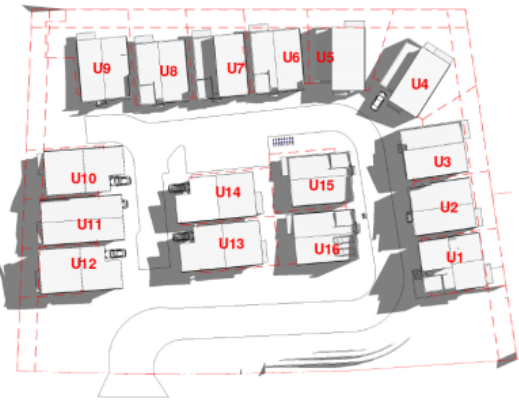
3 SITE PLAN - 11AM - 21 JUNE  
A-04 1 : 750



4 SITE PLAN - 12PM - 21 JUNE  
A-04 1 : 750



5 SITE PLAN - 1PM - 21 JUNE  
A-04 1 : 750



6 SITE PLAN - 2PM - 21 JUNE  
A-04 1 : 750



7 SITE PLAN - 3PM - 21 JUNE  
A-04 1 : 750

				GENERAL NOTES:		NORTH: 				PROJECT: 19 John Howe Circuit Muswellbrook, 2333		LOT NUMBER:		DRAWING TITLE: <b>SOLAR ACCESS</b>		PROJECT No:		DATE: JUNE 2019		DRAWING No:		REV:	
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B				04/06/2019		REVISION B FOR DEVELOPMENT APPLICATION		NS															
A				14/06/2019		FOR REVIEW		PS															
ISSUE				DATE		REVISION		BY															

PROPOSED MULTI-DWELLING DEVELOPMENT AT,  
19 JOHN HOWE CIRCUIT, MUSWELLBROOK 2333  
LOT 514, DP 1089307



1 ROOF PLAN / SITE ANALYSIS  
A-00 1 : 300



- SITE BOUNDARY
- WIND DIRECTION
- TREES TO BE RETAINED
- TREES TO BE REMOVED
- PROPOSED DWELLING
- NEIGHBOURING PROPERTIES

Thermal Performance Specifications  
Project: 15-17 Bloodwood Road and 19 John Howe Circuit, Muswellbrook NSW 2333  
BASIX Certificate: 982424M

Building Elements	Material	Insulation Details
External Walls	Brick Veneer	R2 Bulk Insulation
External Wall Color	Various as per plan	
Internal Walls	Plasterboard on studs	N/A
Ceiling	Plasterboard	R2.5
Roof	Refer to Plans	Sarking
Floors	Concrete slab on ground	
Windows	Improved Aluminum Frame Single Glazed	Uval 5.91 SHGC 0.73

BASIX Specifications  
Project: 15-17 Bloodwood Road and 19 John Howe Circuit, Muswellbrook NSW 2333  
BASIX Certificate: 982424M

Water Commitments	
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Toilets:	4 Star
Kitchen and Bathroom Taps:	4 Star
Rainwater Tank:	2000L
Energy Commitments	
Hot Water System:	Instantaneous 6 star
Bathroom, Kitchen, Laundry Ventilation:	Individual Fans ducted
Air Conditioning (Heating & Cooling):	1 phase cooling 5 Stars heating 5 Stars
Cooktop and Oven:	Gas Cooktop/ Gas Oven
Please refer to BASIX report dated 3/12/2018 for detailed commitment requirements	

Energy Rating Certificate Number: 982424M

☐ single-dwelling rating

☒ multi-unit development (attach listing of ratings)

heating: MJA/m<sup>2</sup>

cooling: MJA/m<sup>2</sup>

Recessed downlights confirmation: ☐ Rated with ☒ Rated without

Assessor Name/Number: VIC/BDW/131652

Assessor Signature: [Signature] Date: 03/12/2018

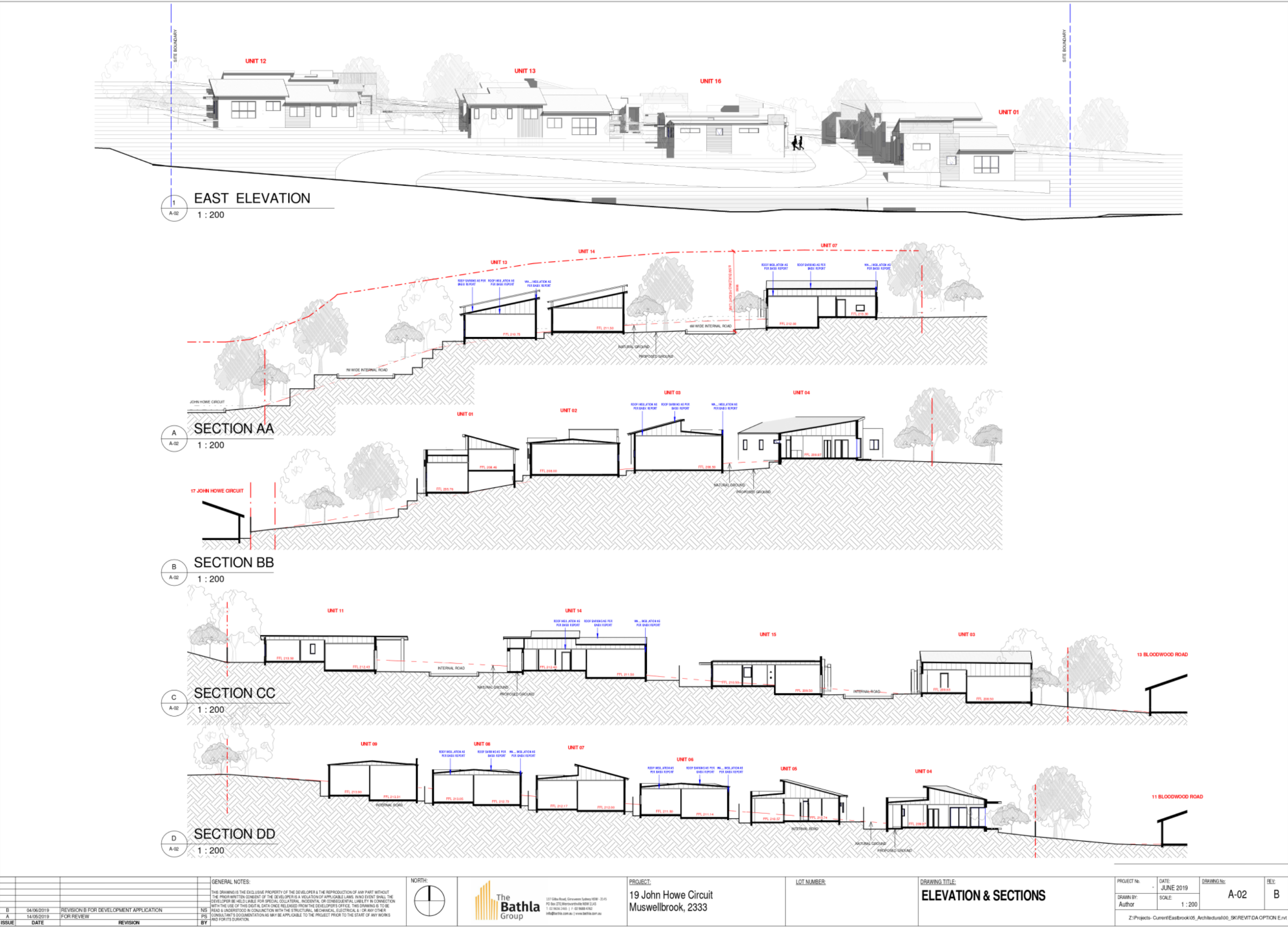
DRAWING REGISTER			
SHEET#	DRAWING NAME	REV	DATE
A-00	LOCATION PLAN, SITE ANALYSIS & ROOF PLAN	B	04/06/2019
A-01	SITE / GROUND FLOOR PLAN	B	04/06/2019
A-02	ELEVATION & SECTIONS	B	04/06/2019
A-03	ELEVATIONS & COLOUR SCHEDULE	B	04/06/2019
A-04	SOLAR ACCESS	B	04/06/2019
A-05	UNIT TYPES & TURNING PATH ANALYSIS	B	04/06/2019





COLOUR SCHEDULE						
NAME	SCHEME	A	SCHEME	B	SCHEME	C
1. METAL DECK ROOF		LIGHT GREY		LIGHT GREY		LIGHT GREY
2. GUTTER DOWNPIPE		SHARE GREY		SHALE GREY		SURFMIST
3. WALLS		LEXICON QUARTER		LINSEED		MILLER MOOD
4. PAINT FINISH MAIN		MILLER MOOD		COCONUT HUSK		COCOUNT HUSK
5. PAINT FINISH FEATURE-1		WHITE		WHITE		WHITE
7. CLADDING		DARK GREY HORIZONTAL		TAN HORIZONTAL		DARK GREY VERTICAL
8. ALUMINIUM WINDOW		DARK GREY		DARK GREY		WHITE
9. FRONT DOOR		TIMBER		GREY		GREY
10. GARAGE DOOR		TIMBER		DARK GREY		SURFMIST
11. WP1 - WALL PANEL-1		WEATHERTEX ECOWALL - SMOOTH PRIMED AND PAINT FINISHED		WEATHERTEX ECOWALL - SMOOTH PRIMED AND PAINT FINISHED		WEATHERTEX ECOWALL - SMOOTH PRIMED AND PAINT FINISHED
12. WP2 - WALL PANEL-2		TEXTURED PRIMED AND PAINT FINISH - TEXTURED PRIMED AND PAINT FINISHED		TEXTURED PRIMED AND PAINT FINISH - TEXTURED PRIMED AND PAINT FINISHED		TEXTURED PRIMED AND PAINT FINISH - TEXTURED PRIMED AND PAINT FINISHED
13. W1 - WALL		RENDER + PAINT FINISH LOWER GROUND FLOOR WALLS - HEBEL PANEL		RENDER + PAINT FINISH LOWER GROUND FLOOR WALLS - HEBEL PANEL		RENDER + PAINT FINISH LOWER GROUND FLOOR WALLS - HEBEL PANEL

GENERAL NOTES:		NORTH:		PROJECT:		DRAWING TITLE:		PROJECT No:		DATE:		DRAWING No:		REV:	
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14/06/2019		FOR REVIEW		1:200		Z:\Projects- Current\Eastbrook\05_Architectural\00_SK\REVIT\DA OPTION E.rvt									



**DEVELOPMENT ASSESSMENT REPORT****Attached:** Site Plan**REPORT TO THE GENERAL MANAGER**

<b>ADDRESS:</b>	LOT: 1 DP: 551973 and LOT: 2 DP: 551973 14 Haydon Street MUSWELLBROOK
<b>APPLICATION No:</b>	133/2020
<b>PROPOSAL:</b>	Backpackers' Accommodation
<b>OWNER:</b>	Haydon Street Development Pty Ltd
<b>APPLICANT:</b>	Perception Planning Po Box 107 CLARENCE TOWN NSW 2321
<b>AUTHOR:</b>	Mr H A McTaggart
<b>DATE LODGED:</b>	08/12/2020
<b>AMENDED:</b>	15 June 2021
<b>ADD. INFO REC'D:</b>	15 June 2021
<b>DATE OF REPORT:</b>	4 July 2021

---

**SUMMARY****SUBMISSIONS:** One (1)**RECOMMENDATION:** Approval subject to conditions

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## 1.0 SITE DESCRIPTION

This development application relates to Lots 1 and 2 DP 551973. Collectively the lots are known as 14 Haydon Street, Muswellbrook.

The land has direct frontage to Haydon Street. The portion of Haydon Street that the site fronts is not identified as a road reserve but is a formed road Lot 11 DP 105817 owned by Muswellbrook Shire Council. The applicant has obtained consent to the lodgement of this application from Council as the owner of this land.

Under the provisions of the Muswellbrook Local Environmental Plan (MLEP) 2009 the land is zoned B2 Local Centre. Land adjoining the site is primarily within the same land use zoning, except for public parkland north-east of the site which is zoned RE1 Public Recreation.

The site itself is currently vacant. Single storey dwellings are located on the land immediately adjoining the development site.

The subject site is identified as flood liable in the Muswellbrook Flood Risk Management Study and Plan 2018.

A development application (DA 70/2017) was previously lodged for the construction of a Boarding House on the land. That development application was refused by Council.

The image below identifies the subject site in context with the adjoining locality.



## 2.0 DESCRIPTION OF PROPOSAL

The proposed development involves the construction and operation of tourist and visitor accommodation, specifically backpackers' accommodation.

The proposed backpackers' accommodation would comprise a two-storey building with accommodation located on the buildings first floor and ground level parking, entry and building circulation areas.

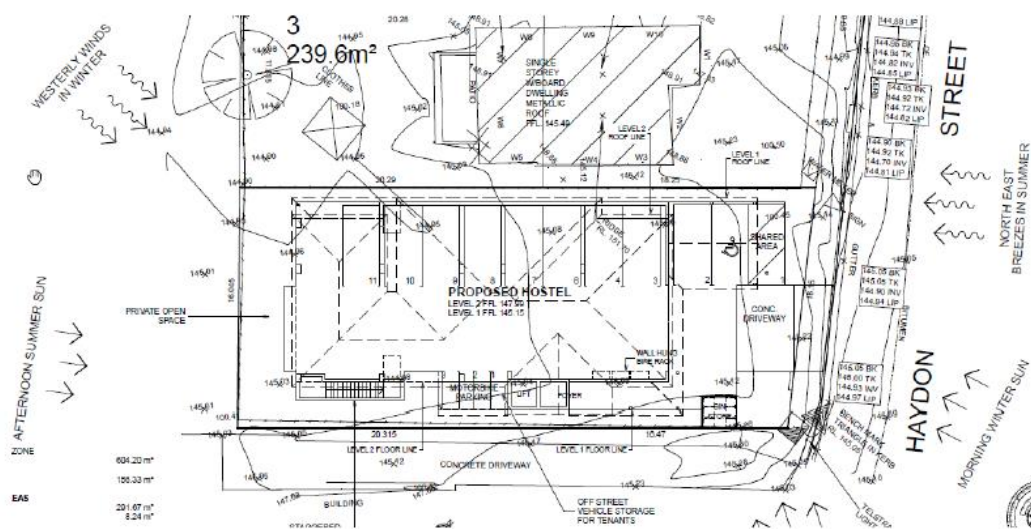
The proposal consists of:

- Eleven (11) off-street parking spaces, and three (3) off-street motorcycle parking spaces
- A lift between the car park and first floor,
- Bin storage area,
- Ten (10) accommodation rooms (including an accessible room)
- Managers room, and
- Common room including kitchen, washing and drying facility

The images below provide a 3D perspective of the backpacker's accommodation and a site plan for its location on the site.



**HAYDON STREET VIEW**





### 3.0 REFERRALS

#### 3.1 External Referrals

The proposed development has not been referred to any external Government Agencies for comment.

#### 3.2.1 Internal Referrals

##### Building Surveyor

A response to this referral was received on the 12 February 2021 which indicated that the applicant appeared to have accounted for building code requirements in the design of the development.

##### Community Services

The proposed development was referred to Council's Community Services Department to consider and comment on any potential adverse social impacts related to the proposal.

No comments were received from Community Services Officers within the nominated period for making submissions regarding the application. It was understood that Council Community Service Officers did not intend to provide any detailed comment regarding potential social impacts related to the development.

##### Water and Waste

Initial comments provided by water and waste raised a request for additional information around the servicing of the development via a sewer main extension over private land. This query was communicated to the applicant who provided additional information and an updated plan that proposed the sewer servicing of the development via the extension of Council infrastructure within Haydon St.

Accordingly, Council Officers are satisfied that the proposed water and sewer servicing arrangement can be supported subject to standard conditions of consent related to the applicant entering into a Notice of Arrangement and the payment of relevant Headworks Charges.

##### Community Infrastructure

Final comments provided by Council engineers have been included below:

##### **Comments on DA 2020-133 (Backpackers accommodation):**

- From the submitted documents; it is found that
  - The existing 1% AEP flood level for this property is **145.21m**
  - The **afflux is 0.075m** for the proposed development
  - A **proposed habitable floor level of 145.25m** has provided in the modified drawing dated 7/04/2021
  - The post-developed impacted 1% AEP flood level = existing 1% AEP flood level plus afflux = **145.285m AHD**
- As part of the CC, the applicant needs to amend the ground floor level (**Level 1**) to **have a FFL** greater than the post-developed 1% AEP level, and ensure all electrical components of elevators, including motors and switches etc to be located

above this level at a suitable freeboard (such above waves) to ensure operation of the elevator at all times for persons with accessibility issues as per DCP13.

- Section 16.6 of MDCP 2009 indicates for a development of this type, a total of 12 car spaces are required, including one accessible space. The modified proposal has provided 11 car spaces, including one accessible space. Although the proposed development has a deficit of one car parking spaces, it has also offered three motorbike spaces and wall-hung bike spaces. Considering the available parking and expected use, the Assessing Officer may consider a merit-based determination for this development.
- As part of the CC, the applicant should provide a sealed drainage lid in the carpark area to prevent upwelling through the floor from surcharged drainage systems.
- As part of the CC, the applicant is to provide a (internal) pit with a triangular Lysaught grate over the last site drainage pit and a grated lid to prevent leaf litter and grass clippings from entering Council's drainage system. This grate is to be maintained at all times.
- As part of the CC, the applicant is to provide an extended detention zone in the site's rainwater tank or similar, with orifice plate and overflow to control peak discharge from the site equalling pre-development peak discharge as per Section 25 of MDCP 2009.

These comments and recommendations have informed the recommended conditions of consent, including:

- The provision of details that electrical components and habitable areas are 500mm above the 1% flood height prior to issue of CC.
- The construction of parking areas.
- A requirement for the applicant to obtain a Section 68 approval under the Local Government Act 1993 and the submission of updated stormwater plans in line with Engineering comments prior to the issue of that permit.

The MDCP 2009 requires only habitable building areas to be constructed 500mm above the 1% AEP flood event. Car parking and circulation areas are not viewed as habitable floor areas within the meaning of the DCP. Accordingly, a recommended condition has not been included around the finished floor level of the parking and ground floor circulation areas.

#### 4.0 ASSESSMENT

##### Section 4.15 Matters for Consideration

##### Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument (EPI)

The following EPIs, DCPs, Codes and Policies are relevant to this Application:

##### 1. Muswellbrook Local Environmental Plan 2009 (MLEP 2009)

##### Land Use Zone and Permitted Land Use

The development site is zoned B2 Local Centre pursuant to MLEP 2009. The land use table for the B2 Local Centre zone identifies Tourist or Visitor Accommodation as a type of development permissible with consent within the zone. The definition for Tourist or Visitor Accommodation includes Backpackers' Accommodation.

Accordingly, Backpackers' Accommodation is development permissible with consent in the B2 Local Centre land use zone.

#### Objectives of the B2 Local Centre Zone

The relationship of the proposed development with the B2 Local Centre zone objectives and land use table has been considered below.

The B2 Local Centre land use zone objectives are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To maintain the status and encourage the future growth of the Muswellbrook established business centre as a retail, service, commercial and administrative centre while maintaining the centre's compact form.*
- *To enable a wide range of land uses that are associated with, ancillary to, or supportive of the retail and service functions of a business centre.*
- *To maintain the heritage character and value and streetscape of the business centre of Muswellbrook.*
- *To support business development by way of the provisions of parking and other civic facilities.*

Council Officers are satisfied that the development would be compatible with the land use zone objectives. The location and density proposed also conforms with the objectives that encourage economic development and employment within the zone.

#### Relevant Clauses applicable under the Muswellbrook Local Environmental Plan 2009

<i>Part 1 Preliminary</i>	
<i>Part 2 Permitted or prohibited development</i>	
<i>2.3 Zone objectives and Land Use Table</i>	The proposed development is compatible with the relevant land use objectives and thereby can be supported under the provisions of this Clause. <b>Complies</b>
<i>Part 3 Exempt and complying development</i>	
<i>Part 4 Principal development standards</i>	
<i>4.1 Minimum subdivision lot size</i>	The proposed development does not involve the subdivision of land. <b>Not relevant</b>
<i>4.3 Height of buildings</i>	The maximum building height applicable to the land and proposed development under the provisions of the Muswellbrook LEP 2009 is 13m.  The maximum height of the proposed building is 9.687m.  <b>Complies</b>

4.4 Floor space ratio	<p>Aa maximum FSR of 2:1 applies to the site.</p> <p>The proposed development would have an FSR of 0.5:1.</p> <p><b>Complies</b></p>
Part 5 Miscellaneous provisions	
Part 6 Urban release areas	
Part 7 Additional local provisions	
7.6 Earthworks	<p>This clause requires a consent authority to take the following matters into consideration before granting development consent to development involving earthworks:</p> <ul style="list-style-type: none"> <li>a) <i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,</i></li> <li>b) <i>the effect of the proposed development on the likely future use or redevelopment of the land,</i></li> <li>c) <i>the quality of the fill or of the soil to be excavated, or both,</i></li> <li>d) <i>the effect of the proposed development on the existing and likely amenity of adjoining properties,</i></li> <li>e) <i>the source of any fill material or the destination of any excavated material,</i></li> <li>f) <i>the likelihood of disturbing relics,</i></li> <li>g) <i>the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</i></li> </ul> <p>The proposal would involve earthworks related to the construction of the development and installation of services. Standard conditions of consent would be imposed on any approval of the proposed development to ensure earthworks are carried out in accordance with the requirements of this clause.</p> <p><b>Complies</b></p>

## 2. State Environmental Planning Policy No. 55 – Remediation of Land

Council as the consent authority is required to consider whether the land is contaminated, and in the event that the land is contaminated whether the land is suitable for the proposed use in its existing state or if remediation of the site is required.

The Assessing Officers observe that:

- The land subject is currently vacant.
- The site is not identified by Council or the NSW Environmental Protection Authority as potentially contaminated land.
- At the time the site was inspected Council Officers did not identify any visual signs that suggested the site was likely to be subject to contamination.

In view of the above observations Council Officers consider the site is not likely to be subject to any contamination requiring remediation under the SEPP.

### 3. State Environmental Planning Policy (Affordable Rental Housing) 2008

The type of accommodation proposed is not a type of accommodation referenced by this SEPP. Accordingly, the provisions of this SEPP do not apply.

#### **Section 4.15(1)(a)(ii) the provisions of any draft EPI.**

There are no draft EPIs relevant to the subject Application.

#### **Section 4.15(1)(a)(iii) the provisions of any development control plan**

##### Section 3 – Site Analysis

It is considered that the documentation provided with the Development Application satisfies the provisions of Section 3 of the Muswellbrook DCP.

##### Section 9 – Local Centre Development

This section of the DCP relates to development in the Local Centre zone.

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 9 LOCAL CENTRE DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
9.1.1 Built Form	Yes	The design of the proposed building is sympathetic to the character of the area. The proposed building incorporates a gable roof style which includes distinct roof features. It is noted that adjoining residential buildings are single storey. However, there are examples of larger two-storey buildings in the locality and B2 Commercial zone. Accordingly, the two-storey height and bulk is not considered to be contrary to the character of the area.
(i) The design of new buildings should reflect and enhance the existing character of local centres. (refer to section 15 of this DCP for further guidance on development in the Bridge Street area)		
(ii) Building design should relate to its retail / commercial / office function.		The building design is compatible with its proposed function.
(iii) Building materials should be of high quality and harmonise with surrounding development. The use of reflective materials is discouraged. Materials and colours should not dominate the streetscape.		The building design has been informed by land use constraints. The inclusion of the habitable parts of the development above the flood height is consistent with DCP requirements that relate to flood prone land.
(iv) Awnings should be designed to integrate with the architecture of the building façade and provide for continuous shelter for pedestrians. Awnings should follow consistent heights above the footpath with a minimum height to the underside of the awning of 3.2 metres		
(v) Building facades should relate to the context of buildings in the area to achieve continuity and harmony. The continuity of commercial frontages should not be broken by parking		The entry to the site is well defined while the building entry points from the parking area will be easily identifiable.

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 9 LOCAL CENTRE DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
<p>areas, service and delivery areas etc.</p> <p>(vi) Buildings should provide for 'activated street frontages' by incorporating active uses at street level including cafes and other retail activities.</p> <p>(vii) Blank building facades to streets or public places are to be avoided.</p> <p>(viii) The placement of windows should provide visual interest and variation to the building façade and relate to those of adjacent buildings. (ix) Building designs should allow for passive surveillance of public places and streets.</p> <p>(ix) Building entrances should be well defined and well lit.</p> <p>(x) New residential development shall be located above street level.</p> <p>(xi) Incorporate areas for future signage into the building design.</p>		
<p>9.1.2 Height of Buildings</p> <p>(i) Building heights comply with the building height limits prescribed by Muswellbrook LEP 2009.</p> <p>(ii) The height of buildings should be consistent with the character of the area, and include roof parapets where that is a characteristic in the surrounding streetscape.</p> <p>(iii) The height of buildings should not result in unreasonable overshadowing or compromise the privacy of adjoining properties.</p>	Yes	<p>The proposed development would comply with the requirements of this section of the DCP. This view has been formed based on the observations below:</p> <ul style="list-style-type: none"> <li>➤ The height of the proposed development would not exceed the maximum building height for the land specified by the Muswellbrook LEP 2009.</li> <li>➤ The shadow diagrams indicates that the proposed development is unlikely to cause any significant overshadowing to residential properties north and west of the site. The diagrams indicate the proposed development would cast a longer afternoon shadow toward the adjoining residence south-east of the development site during the winter month afternoons. When the extent of this shadowing was considered in context with the site layout of the affected dwelling it was considered unlikely to have a substantial adverse impact on that property. The shadow cast by the proposed development would largely impact the front yard and driveway of that development and</li> </ul>

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 9 LOCAL CENTRE DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
		was unlikely to cause unreasonable overshadowing to that property.
<b>9.1.3 Setbacks</b> (i) The front of buildings should be aligned to provide a continuous street frontage. (ii) In some cases, front setbacks should allow for street landscaping and footpath widening where necessary. (iii) New development should respect the setbacks of other buildings along the streetscape. (iv) Separation fencing is provided between development land and any rail corridor. (v) (Not included Relates to Rail Corridor Development)	<b>Yes</b>	<p>The proposed development is considered to be in accordance with the development controls specified by this Section of the DCP:</p> <p>The proposed development has been designed to respect the setbacks of existing residential development in the locality. The building would be setback from the street frontage and incorporate a part of its parking and landscape area at the front of the site.</p> <p>This setback is considered to be acceptable given the absence of immediately adjoining commercial development built to the property boundaries and the requirement for the development to respect the setbacks of adjoining residences.</p>
<b>9.1.4 Accessibility</b>  This Section of the DCP requires new commercial developments to be designed and constructed in a manner which comply with the relevant accessibility standard.	<b>Yes</b>	The proposed development includes an accessible room and lift to support access to the premises by people with disabilities.
<b>9.2.1 Urban Landscaping</b> (i) Where appropriate, landscaping should be incorporated into building design to enhance the character of the streetscape and the amenity of buildings and public places. (ii) Landscaping should reflect the size and height of buildings and should be consistent with the character of the area. (iii) Landscaping should be used to soften the impact of hard surfaces where necessary. (iv) Where landscaping is proposed to be incorporated into a new development, a landscape plan detailing hard and soft landscaping works should be submitted with the development application	<b>Yes</b>	The proposed plans include landscaping adjacent property boundaries. Council Officers are satisfied that the landscaping proposed would be compatible with DCP requirements.
<b>9.2.2 Car Parking</b>	<b>Yes</b>	Council Officers are satisfied that the rate off off-street car parking proposed would meet the relevant DCP off-street car parking requirements.

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 9 LOCAL CENTRE DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
9.2.3 Outdoor Eating Areas	NA	The proposed development does not involve any outdoor eating areas which would require assessment against the requirements of this Sub-section.
9.2.4 Signage and Advertising	NA	The proposed development does not involve any advertisement signage which would require assessment against the requirements of this sub-section.

### Section 13 – Flood Prone Land

The subject land is identified as being affected by the 1% AEP flood event by the Muswellbrook Flood Risk Management Study and Plan 2018.

The provisions of section 13.4 of MDCP 2009 are applicable to 'tourist or visitor accommodation' which falls outside the 'residential accommodation' collective land use terminology.

MDCP 2009 requires:

- that all habitable rooms would be located 0.5m above the height of the 1% AEP flood event – in relation to the proposed development it complies.
- Aspects of the proposed development below the 1% flood event are required to be designed to withstand flood pressures – this requirement is typically administered by a standard condition of consent which Council Officers propose to impose on the development where it is approved.
- the development does not result in the increased flood hazards to adjoining properties by increasing the flood afflux by more than 0.1m – the applicant has provided information from a hydrologist demonstrating that the development would not result in flood impacts contrary to this requirement.

In view of the above considerations Council Officers are satisfied that the proposed development can comply with the relevant criteria of this Section of the DCP. **Complies**

### Section 16 – Car Parking and Access

This Section of the DCP prescribes the rate at which off-street car parking is to be provided to new developments.

The DCP specifies the off-street parking that should be provided. The table below considers the proposed development to determine the rate of off-street parking required:

DCP Requirement	Relationship with proposed development	Car parking requirement
1 space per bedroom	Excluding the managers room, the proposed development would comprise a total of ten (10) bedrooms.	10 off-street parking spaces



DCP Requirement	Relationship with proposed development	Car parking requirement
1 space per 3 employees	Excluding the manager additional staff would comprise casual cleaning and maintenance staff.  An exact number of casual staff has not been provided. The proponent has indicated that these staffing levels would vary depending on seasonal circumstances and rates of occupancy.	(staff numbers not specified) minimum of 1 anticipated to be required.
1 space per manager	The proposed development would include a live-in Manager and Manager's residence	1 off-street parking space
<b>Total</b>		12

The applicant has proposed a total of eleven (11) off-street parking spaces.

Where a proposed development does not comply with the DCP, Council may consider the proposal on merit against the related DCP objectives. The DCP objectives applicable to this requirement relate to ensuring adequate off-street vehicle parking is provided to traffic generating developments.

With regards to this proposed development Council Officers note that:

- The proposed development would provide a total of eleven (11) of street parking spaces. This rate of off-street parking would provide parking for each of the proposed rooms and the Manager's residence.
- The proposed development also includes three (3) motorcycle parking spaces – the DCP does not require the provision of any motor cycle parking.
- The shortfall in available parking could be viewed as relating to staff parking. The applicant has indicated that beyond the manager staffing requirements would primarily relate to cleaners and/or maintenance workers. This work would primarily be carried out during the day and at times where accommodation parking may not be in use by the building occupants.

Council Officers have formed the view that the development could be viewed as compatible with the DCP objectives and thereby supported.

#### Section 20 – Erosion and Sediment Control

This section of the DCP requires erosion and sediment controls to be provided for development applications where the total disturbance areas would exceed 250m<sup>2</sup>.

The construction of the proposed development would involve the disturbance of an area in excess of the 250m<sup>2</sup> minimum and thereby requires details of sediment and erosion control measures in accordance with the DCP, which have been provided. Recognising the erosion and sediment control detail provided Council Officers are satisfied that the proposal is consistent with this DCP requirement. **Complies**

#### Section 24 – Waste Management

This section of the DCP requires a waste minimisation management plan for anticipated waste streams associated with the construction and operation of the proposed development.

The applicant has provided a site waste minimisation management plan for the carrying out of construction works and detailed methods proposed for the management of ongoing waste streams associated with the operation of the proposed development. Council Officers are satisfied that the information provided is consistent with the DCP requirements. **Complies**

#### Section 25 – Stormwater Management

Council Engineers have not raised an objection to the proposed development with regard to stormwater management. Comments provided have been incorporated into recommended conditions of consent. **Complies**

#### Section 94 Contributions Plan 2001

Section 7.11 (formerly Section 94) contributions would not be applicable to the proposed development under the provisions of Council's Section 94 Contributions plan.

#### Section 94A Contributions Plan 2009

Under the provisions of Council's Section 94A Contributions Plan Section 7.12 (formerly Section 94A) Contributions would be applicable to the proposed development at a rate of 1% of the total estimated cost of carrying out the development.

The applicant has estimated that the proposed development would have a value of \$679,975. The 1% Section 7.12 developer contribution applicable to this development under Council's Section 94A development contributions plan would be \$6,799.75. A condition of consent has been included in the recommended Notice of Determination requiring the payment of this contribution.

#### **Section 4.15(1)(a)(iia) the provisions of any planning agreement**

There are no planning agreements relevant to the subject Application.

#### **Section 4.15(1)(a)(iv) the provisions of the regulations**

Division 8A of the Environmental Planning and Assessment Regulation 2000 applies to the development.

#### **Section 4.15(1)(a)(v) the provisions of any coastal zone management plan**

This item is not relevant to the subject Application. The Application does not relate to a coastal area.

#### **Section 4.15(1)(b) the likely impacts of that development**

Likely impacts of the proposed development have been considered throughout the assessment of the development application. Key potential impacts of the proposed development have been considered and commented on under the sub-headings below.

### Context and Setting

In considering this issue Council Officers have observed that adjoining residential buildings are a single storey height while the proposed building and ground floor parking design would have the presence of a two-storey building. Although the scale of the proposed development would exceed that of existing adjoining residential buildings Council Officers do not consider the building to be incompatible with the context and setting of the locality. This view has been informed by the following considerations:

- The land and adjoining residential land is zoned B2 Local Centre despite the scale of existing residential developments in the locality is supportive of higher density development than the scale of existing development.
- The design of the proposed building is sympathetic to the character of the area. The proposed building incorporates a gable roof style which includes distinct roof features.
- The building design has been informed by land use constraints. The inclusion of the habitable parts of the development above the flood height is consistent with DCP requirements that relate to flood prone land. Should the redevelopment of existing residential sites be proposed in the future it may be necessary for those sites to be raised or two storey-building proposed to suitably address flood risk in the locality.

### Utilities

The proposed development would require servicing by sewer, water electrical and telecommunication services.

The applicant has provided design information regarding the extension of Council's sewer infrastructure to service the development. Prior to the extension of Council's sewer service and the connection of the premises to reticulated water and sewer infrastructure it will be necessary for the person acting with this consent to obtain a Notice of Requirements from Council's Water and Waste Division and pay the relevant Section 64 Headworks Contributions under the Water Management Act 2000.

### Natural Hazards

The site is identified is flood liable. The proposed development has been designed to managed flood related issues with the buildings finished floor level designed to be greater than 0.5m above the height of the 1% flood event and information provided to address relevant flood management considerations in accordance with section 13 of MDCP 2009 where required.

### Social and Economic Impacts

The proposed development would support economic activity, provide additional short-term tourist and visitor accommodation and support jobs in the Muswellbrook area. The proposal would directly employ people related to the operation of the premises and would have an indirect benefit to other industries benefiting from the location of this accommodation at a close proximity to the Muswellbrook town centre and CBD.

### **Section 4.15(1)(c) the suitability of the site for the development**

The site subject to this development application is considered to be suited to the proposed development. The land is zoned B2 Local Centre and its land use zone and its zoning objectives are supportive of are compatible with the type and density of development proposed.

**Section 4.15(1)(d) any submissions made**

The proposed development was publicly notified in accordance with the Muswellbrook Community Participation Plan.

One submission objecting to the proposed development was received through the public notification of the development application. The concerns raised in relation to the proposed development have been summarised and commented on in the table below.

Issue Raised	Planning Comment
Additional vehicle movements along Haydon St may increase the risk of a vehicle incident particularly given the limited visibility along Haydon St where the road bends before the Lorne St traffic lights.	The proposed development has been considered by Council Engineers in relation to potential traffic impacts. No significant concerns have been raised in relation to the capacity of Haydon Street to handle the additional traffic loading related to the development proposed.
Potential for conflict between vehicles accessing the site and pedestrian traffic which includes elderly and disabled.	Additional traffic movements between the site and Haydon St have not considered to have an unacceptable risk to pedestrians using the Haydon St road reserve. Suitable space would be provided for vehicles to manoeuvre within the site and exit the property in a forward direction.

**Section 4.15(1)(e) the public interest.**

The proposed development is considered to be generally in accordance with the public interest. This view has been informed by the following considerations:

- The proposed development is permissible with consent in the B2 local centre zone under the provisions of the Muswellbrook LEP 2009.
- The proposed development would be carried out in accordance with the relevant provisions of the Muswellbrook LEP 2009 and other applicable environmental planning instruments
- Although the proposed development would be inconsistent with the MDCP 2009 off-street car parking development standard Council Officers are satisfied that the rate of off-street car parking would be compatible with relevant DCP objectives and can be supported on merit.
- The proposed development would comply with the relevant requirements of the remaining MDCP 2009 requirements.
- Where carried out in accordance with the recommended conditions of consent the proposed development is unlikely to have a significant adverse environmental impact.
- The proposed development would have a positive economic impact.

**5.0 CONCLUSION & RECOMMENDATION**

The proposed development has been assessed against the relevant heads of consideration pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979*. It is considered that the proposed development is unlikely to result in any significant adverse environmental impacts, is located on a site suited to the proposed development and is in the public interest.

It is recommended that development consent be granted to the proposed development subject to the recommended conditions of consent pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979.

**DA 2020/133 – Recommended Conditions of Consent****IDENTIFICATION OF APPROVED PLANS****(1) Development in Accordance with Plans**

The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions.

Drawing No.	Revision	Drawn by	Drawing Date	Received
1902800B Site Plan Proposed	B	Sorensen Design & Planning	07/04/2021	15/06/2021
1902800B Landscape Plan	B	Sorensen Design & Planning	07/04/2021	15/06/2021
1902800B Site Analysis Plan	B	Sorensen Design & Planning	07/04/2021	15/06/2021
1902800B Perspective Views	B	Sorensen Design & Planning	07/04/2021	15/06/2021
1902800B Level 1 Floor Plan	B	Sorensen Design & Planning	07/04/2021	15/06/2021
1902800B Level 2 Floor Plan	B	Sorensen Design & Planning	07/04/2021	15/06/2021
1902800B North and East Elevations	B	Sorensen Design & Planning	07/04/2021	15/06/2021
1902800B South and West Elevations	B	Sorensen Design & Planning	07/04/2021	15/06/2021
1902800B Section A-A	B	Sorensen Design & Planning	07/04/2021	15/06/2021
1902800B Shadow Diagrams 9am & 12am	B	Sorensen Design & Planning	07/04/2021	15/06/2021
1902800B Shadow Diagram 3PM	B	Sorensen Design & Planning	07/04/2021	15/06/2021
1902800B Proposed Sewer Main	A	Wallace Infrastructure Group	27/5/2021	15/06/2021

**(2) Development in Accordance with Documentation**

The development is to be carried out generally in accordance with the following documents.

Where there is a discrepancy between any of the documents referenced by this condition of consent and any other condition referenced by the consent or an amendment to the application made by the applicant in writing the provisions of the related condition or amendment to the application takes precedence over matters referenced by the documents below.

Title	Written by	Date
Statement of Environmental Effects	Perception Planning	25/11/2020
Site Waste Minimisation Management Plan	Perception Planning	21/09/2020
Flood Afflux Report	Wallace Design Group	04/06/2021

**OPERATIONAL CONDITIONS IMPOSED UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS AND OTHER RELEVANT LEGISLATION**

**(3) Building Code of Australia**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**CONSTRUCTION CERTIFICATE REQUIREMENT**

**(4) Construction Certificate Requirement**

No works shall commence on site until such time as a Construction Certificate has been issued for either part or all of the works. If a certificate is issued for part of the works it must cover the works being undertaken onsite.

**ANCILLARY MATTERS TO BE COMPLETED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

**(5) Muswellbrook Shire Water and Waste Division**

A 'Notice of Requirements' under the Water Management Act 2000 must be obtained, prior to any Construction Certificate application, detailing water and sewer extensions to be built and charges to be paid by the applicant. Any charges identified in the 'Notice of Requirements' as requiring payment at construction certificate stage are to be paid prior to release of a Construction Certificate.

Details demonstrating compliance with any requirements for works by Muswellbrook Shire Council Water & Waste Department are to be provided with the Construction Certificate application.

The final compliance certificate must be submitted to the Certifying Authority prior to release of the Subdivision or Occupation Certificate.

Note: the extension of Council's reticulated sewer at no cost to Council and the payment of all Section 64 Headworks Contributions are to be carried out in accordance with the Terms of the Notice of Requirements.

**(6) Section 7.12 Contributions**

Pursuant to section 4.17(1) of the Environmental Planning and Assessment Act 1979, and the Muswellbrook Shire Council Section 94A Development Contributions Plan 2010, a contribution of \$6,799.75 shall be paid to Muswellbrook Shire Council, being 1% of the cost of carrying out the development.

Documentary evidence demonstrating payment of the above contribution to Council is to be provided to the Certifying Authority prior to the issue of a Construction Certificate.

**(7) Section 68 Local Government Act 1993 Approvals**

Prior to the issue of a Construction Certificate the person acting with this consent shall obtain approval under Section 68 of the Local Government Act 1993 for the carrying out of stormwater works.

Documentary evidence is to be provided to the Principle Certifying Authority demonstrating that these approvals have been obtained prior to the issue of a Construction Certificate.

Any Section 68 application to Council is to be accompanied by stormwater design plans for the development which should include the following:

- The applicant should provide a sealed drainage lid in the carpark area to prevent upwelling through the floor from surcharged drainage systems.
- the applicant is to provide a 1200x1200 (internal) pit with a triangular Lysaught grate over the last site drainage pit and a grated lid (or similar approved device) to prevent leaf litter and grass clippings entering Council's drainage system.
- the applicant is to provide an extended detention zone in the site's rainwater tank or similar, with orifice plate and overflow to control peak discharge from the site equalling pre-development peak discharge as per Section 25 of Muswellbrook Development Control Plan 2009.

The person acting with this consent shall ensure that mandatory stage inspections prescribed by the Section 68 Approval are carried out by Council Officers at the relevant stage of development.

**(8) Potential Flood Damage to Buildings**

An assessment, report and certification by a qualified practising Engineer is to be submitted to the Certifying Authority with the Construction Certificate, stating that the structure has been designed to withstand the flood pressures, including debris and buoyancy forces, imposed in the event of a 1% AEP flood and that the structure will not sustain unacceptable damage from the impact of floodwater and debris.

**(9) Construction of Habitable Areas**

The applicant shall ensure that the floor level of all habitable areas of the proposed building are at least 500mm above the 1% AEP flood level. Evidence to support the determination of the flood level shall be supplied by a suitably qualified professional.

Details submitted in association with the Construction Certificate application are to demonstrate compliance with this requirement. The details are to be approved by the Certifying Authority as satisfying this requirement prior to the issue of a Construction Certificate.



**(10) Electrical Fittings for flood affected development**

Electrical and mechanical equipment is to be installed in accordance with the requirements of Section 13 of the Muswellbrook Development Control Plan 2009. Prior to the issue of a Construction Certificate documentary evidence is to be provided to the Certifying Authority to demonstrate the following:

- a) **Main Power Supply** - subject to approval of the relevant energy authority the incoming main commercial power service equipment, including all metering equipment, shall be located 500mm above the 1% AEP flood level. Main power supply shall be designed so that it can be easily disconnected from the development.
- b) **Wiring** - all wiring, power outlets, switches, etc. should, to the maximum extent possible, be located 500mm above the 1% AEP flood (the Flood Planning Level). All electrical wiring installed below the Flood Planning Level shall be designed for continuous submergence in water and should contain no fibrous components. Only submersible type splices should be used below the Flood Planning Level. All conduits located below the Flood Planning Level are to be installed in a manner that allows them to self-drain if subjected to flooding.
- c) **Equipment** - all equipment installed below or partially below the Flood Planning Level is to be capable of disconnection by a single plug and socket assembly.

The 1% AEP flood height for the site has been determined as 145.21m AHD.

**(11) BASIX Commitment**

Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. Details and plans demonstrating compliance with these requirements are to be submitted to the Certifying Authority for approval with the Construction Certificate.

In this condition:

- (a) relevant BASIX Certificate means:
  - (i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - (ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- (b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT****(12) Vehicle Entry**

Prior to commencing construction of the driveway/vehicle crossing/layback, within the road reserve, a permit for the work must be obtained from Council, under Section 138 of the Roads Act 1993.

**(13) Sediment and Erosion Control**

All required erosion and sedimentation techniques are to be properly installed prior to the commencement of any site works and maintained in a functional and effective condition throughout the construction activities until the site is stabilised

**(14) Site Sign**

A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- (a) stating that unauthorised entry to the work site is prohibited;
- (b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
- (c) showing the name, address and telephone number of the Principal Certifying Authority for the work.

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

This condition does not apply to building works being carried out inside an existing building.

**(15) Stabilised access**

Unless existing constructed site access is utilised, stabilised site access consisting of at least 200mm of aggregate at 30–60mm in size and a minimum of 3m in width must be provided from the road edge to the front of the building being constructed prior to the commencement of work. The stabilised access must be fully maintained and removed from the site when a permanent driveway has been constructed.

**(16) Site Facilities**

- (a) If the development involves building work or demolition work, the work site must be fully enclosed by a temporary security fence (or hoarding) before work commences.
- (b) A minimum width of 1.2m must be provided between the work site and the edge of the roadway so as to facilitate the safe movement of pedestrians.
- (c) Any such hoarding or fence is to be removed when the work has been completed.
- (d) A garbage receptacle fitted with a tight fitting lid for the reception of all food scraps and papers from the work site must be provided prior to building work commencing and must be maintained and serviced for the duration of the work.
- (e) Toilet facilities must be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the work site.
- (f) Each toilet provided must:
  - be a standard flushing toilet, connected to a public sewer, or
  - if connection to a public sewer is not available, to an on-site effluent disposal system approved by the council, or
  - an approved temporary chemical closet.
- (g) The provision of toilet facilities must be completed before any other work is commenced.

- (h) A person having the benefit of this certificate who causes an excavation that extends below the level of the base of the footings of a building on an adjoining allotment of land must at their own expense and where necessary:
  - protect and support the building from damage, and
  - If necessary, underpin and support the building in accordance with the details prepared by a professional engineer.
- (i) A person having the benefit of this certificate who causes the excavation must, at least 7 days before commencing this work, give notice of intention to do so to the owner of the adjoining allotment of land and provide particulars of the proposed work.
- (j) Erosion and sediment controls must be provided in accordance with the details shown on the approved plans, prior to the disturbance of any soil on the work site.

**(17) Damage to Public Infrastructure**

The applicant shall bear the cost of all restoration works to Council property damaged during the course of this development. The applicant shall submit in writing and/or photographic record, of any existing damage to Council property before commencement of work.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. If no documentation is received prior to commencement of work it will be assumed that the infrastructure was undamaged and the applicant will be required to restore all damaged infrastructure at their expense.

**CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**(18) Flood Height Certification**

The floor level of the proposed building shall be certified by a registered surveyor as being not less than 500mm above the 1% AEP flood level.

The floor level shall therefore be certified as being not less than RL 145.71m Australian Height Datum (AHD).

The evidence shall be submitted to the Certifying Authority prior to construction works proceeding beyond floor level stage.

**(19) Construction Hours**

- (a) Subject to this clause, building construction is to be carried out during the following hours:
  - i. between Monday to Friday (inclusive)—7.00am to 6.00pm
  - ii. on a Saturday—8.00am to 1.00pm
- (b) Building construction must not be carried out on a Sunday or a public holidays.
- (c) Demolition works and excavation works must only be carried out between Monday to Friday (inclusive) between 8.00am and 5.00pm.
- (d) The builder and excavator must display, on-site, their 24 hour contact telephone numbers, which are to be clearly visible and legible from any public place adjoining the site.

**(20) Dust Emission and Air Quality**

- (a) Materials must not be burnt on the site.
- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in addition odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

**(21) Applicant's Cost of Work on Council Property**

The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

**(22) Prohibition on Use of Pavements**

Building materials and equipment must be stored wholly within the work site, unless prior written approval has been obtained from council. Equipment must not be operated on the footpath or roadway, unless prior written approval has been obtained from council.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE****(23) Occupation**

The building is not to be used or occupied until a final inspection has been carried out and an occupation certificate has been obtained from the Principal Certifying Authority.

**(24) Final Compliance Certificate for Water Supply and Sewerage Works**

The final compliance certificate for water supply works is to be obtained from Muswellbrook Shire Council Water & Waste Department and a copy must be submitted to the Principal Certifying Authority prior to release of any Occupation Certificate.

**(25) Stormwater infrastructure**

Prior to the issue of an Occupation Certificate all stormwater management infrastructure is to be installed in accordance the stormwater management plan approved by Council, AS 3500.3, the provisions of the relevant Section 68 Approval and industry best practice.

**(26) Connection to Sewer**

Prior to the issue of an Occupation Certificate the premises shall be connected to the sewer system in accordance with the Australian Standard 3500 and the requirements of any Section 68 Approval. A Trade Waste Agreement is to have been entered into between the owner of the land and Council and the required Trade Waste infrastructure installed to Council's satisfaction in accordance with the Trade Waste Agreement.

A works as executed plan on Council's approved form is to be submitted to Council within seven (7) days following the final drainage inspection and prior to any Occupation Certificate being issued.

**(27) Construction of Parking Areas**

Prior to the issue of an Occupation Certificate all parking areas, loading bays, driveways, internal access ways, vehicular ramps and turning areas shall be fully constructed, sealed, line marked, sign posted in accordance with the approved plans

and AS.2890.1 2004 Parking Facilities and the relevant provisions of AS1428.1 and AS1428.4.

**(28) Consolidation of Lots**

The person acting with this consent must consolidate Lot 1 DP 551973 and Lot 2 DP 551973.

Prior to the issue of an Occupation Certificate the person acting with this consent shall provide suitable documentary evidence to the Principle Certifying Authority to demonstrate that a survey plan has been prepared for the consolidation of the Lots and that plan has been lodged with Lands and Property Information or the appropriate authority for the registration of land at the time the Occupation Certificate is applied for.

**(29) Landscaping**

Prior to the issue of an Occupation Certificate the person acting with this consent is to install landscaping within the site in accordance with the approved landscaping plan to the satisfaction of the Principal Certifying Authority.

The approved site landscaping is to be maintained at all times.

**(30) Backpackers Accommodation Caretaker**

At all times a live in Manager/caretaker is to reside at the premises. Prior to the issue of any Occupation Certificate for the Council must be advised in writing of the business name, address, owner or company name, 24 hour contact details for the site manager, and number of occupants approved for the premises. A caretaker/manger must be contactable 24 hours a day. Contact information of any new caretaker/manager are to be provided to Council should the position changes.

**(31) Plan of Management**

Prior to the issue of an Occupation Certificate a plan of management is to be prepared and submitted to Council for approval. The plan of Management is to document the rules, processes and procedures by which the quiet enjoyment, safety, security and utility of the boarding house will be achieved and preserved for the benefit of the Proprietor, the Lodgers, the neighbours and the community as a whole.

The plan of management or any superseding document is to be complied with at all times the premises is in operation.

**(32) Boundary Fencing**

Prior to the issue of an Occupation Certificate the person acting with this consent is to install colorbond fencing with a height of 1.8m along the sites boundary with neighbouring residential properties.

**CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**

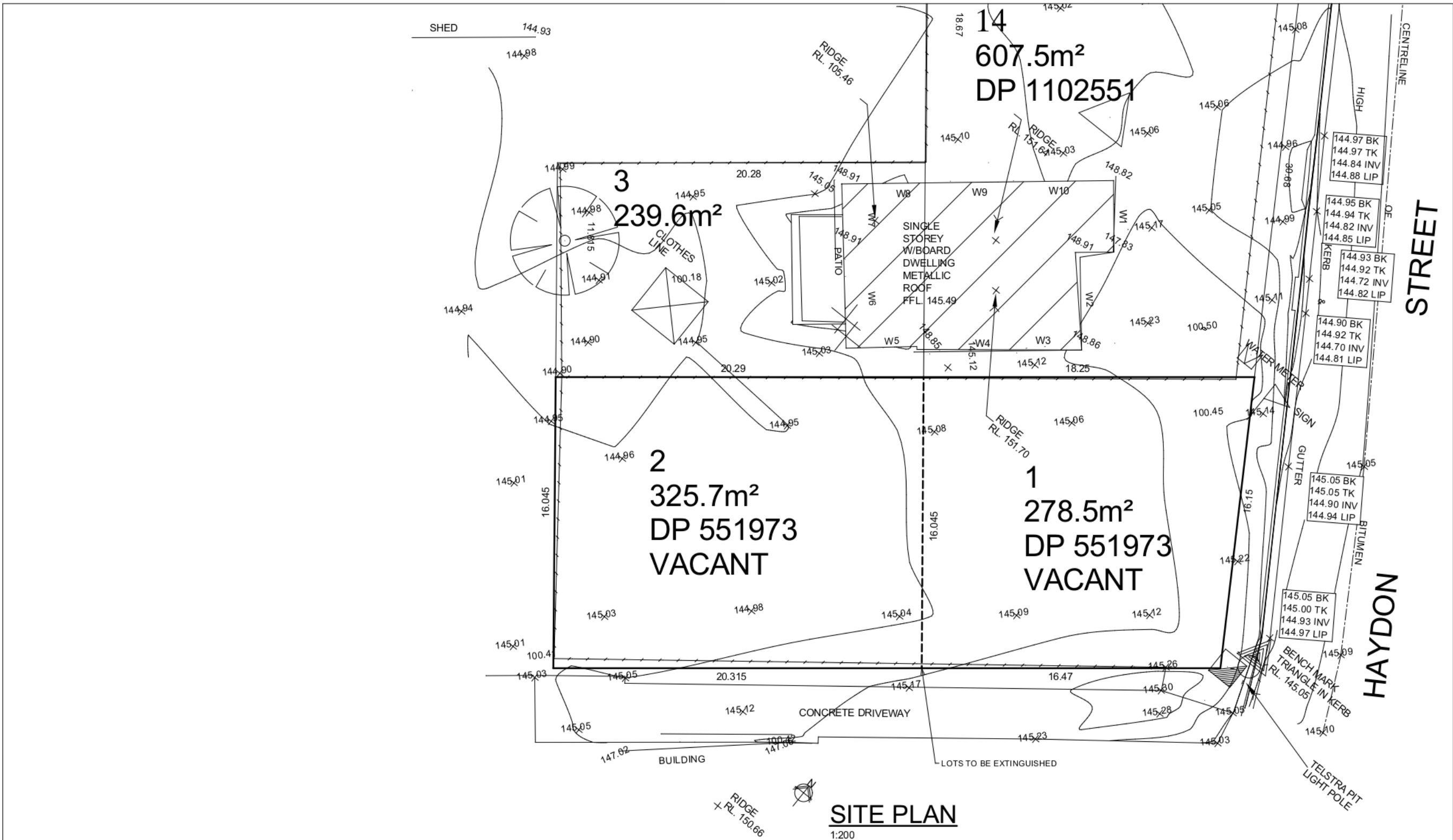
**(33) Stormwater Disposal**

All stormwater from the development including all hardstand areas and overflows from rainwater tanks is to be collected and disposed of in accordance with the requirements of any approval under Section 68 of the Local Government Act 1993 and the approved stormwater management plans.

All stormwater infrastructure is to be managed at all times.

**(34) Accommodation Caretaker**

At all times a live in Manager/caretaker is to reside at the premises.



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NEWCASTLE OFFICE  
Ph: (02) 4961 5544  
SINGLETON OFFICE  
Ph: (02) 4961 5544

CONTACT DETAILS  
General Enquiries:  
reception@sorensendesign.com.au  
www.sorensendesign.com.au

PROJECT: PROPOSED BACKPACKERS HOSTEL AT  
LOTS 1 & 2, DP551973, 14 HAYDON STREET  
MUSWELLBROOK

CLIENT: JILWAN

TITLE: SITE PLAN

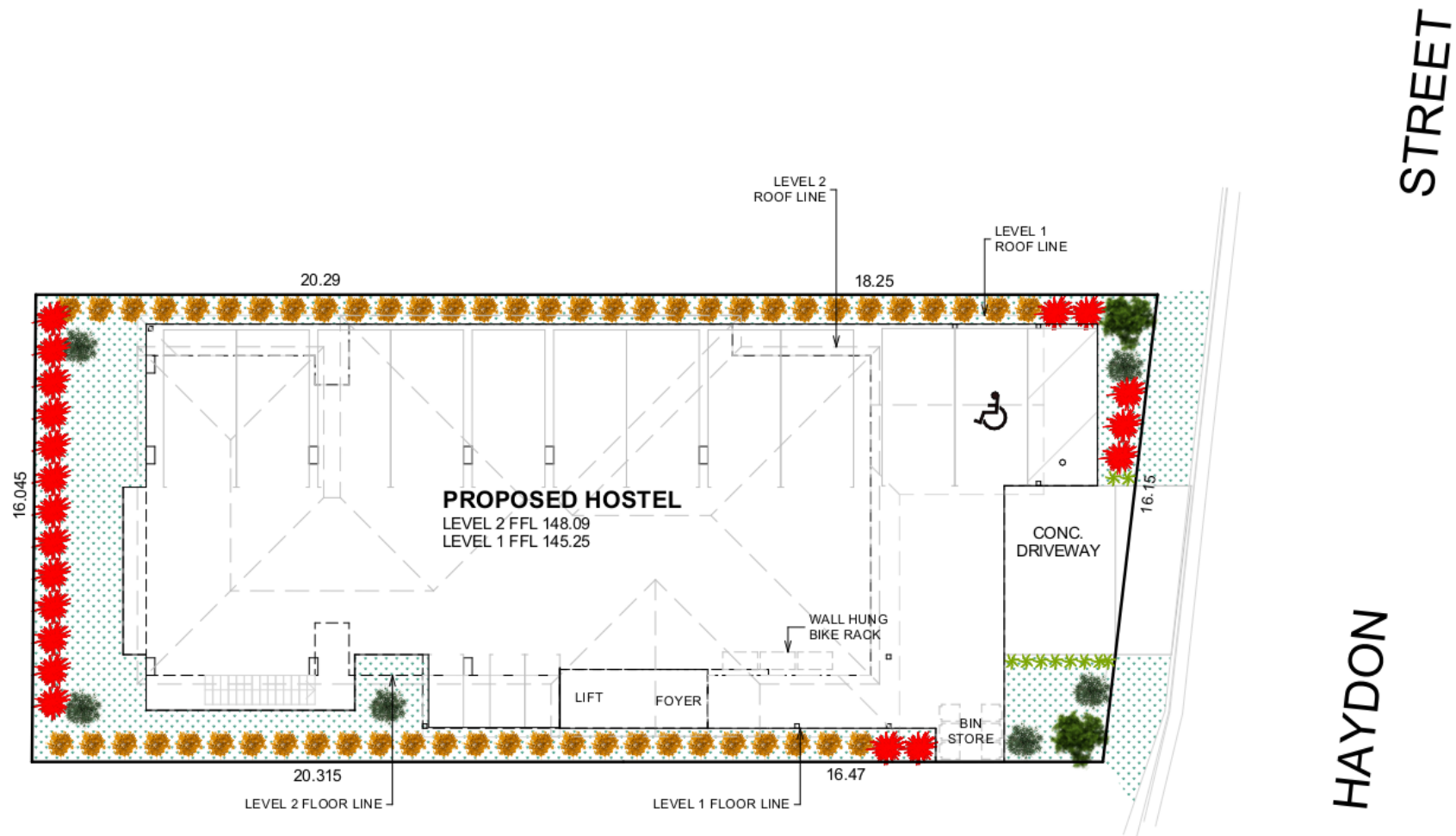
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LANDSCAPE PLAN

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General Enquiries:  
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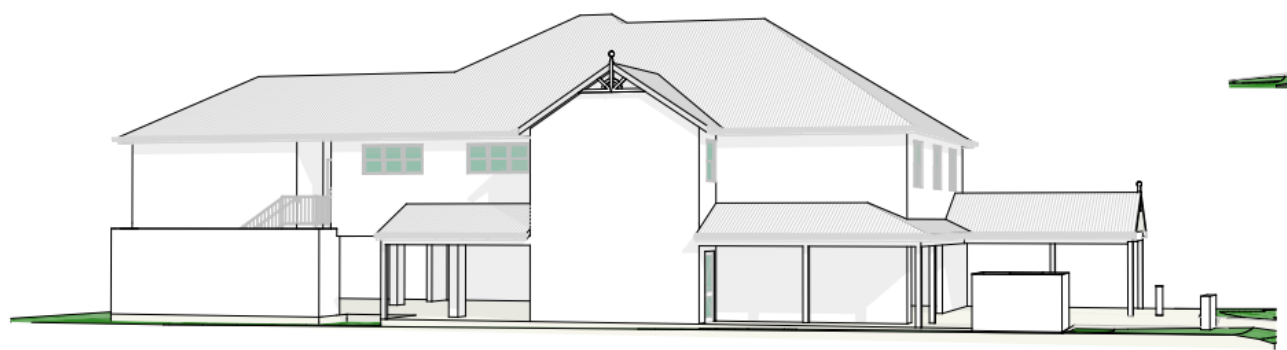




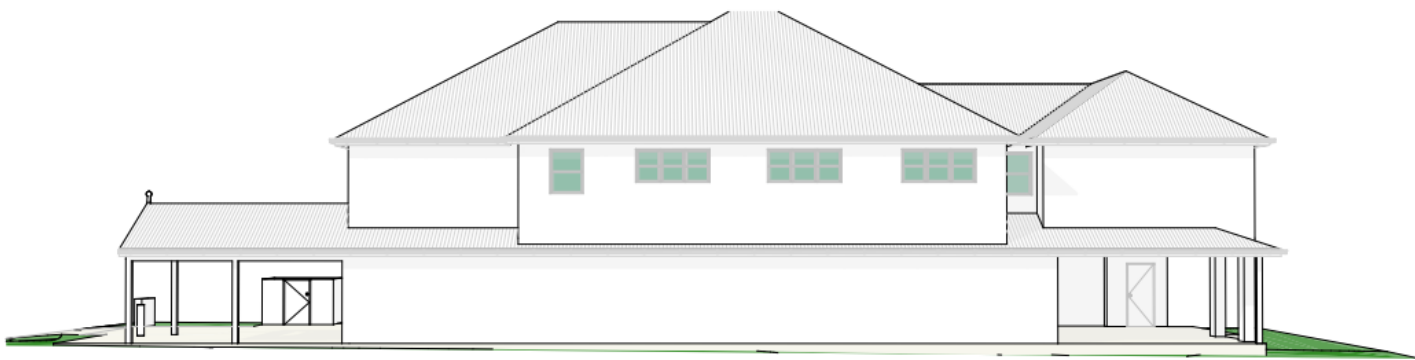
HAYDON STREET VIEW



WEST VIEW



SOUTH VIEW



NORTH VIEW

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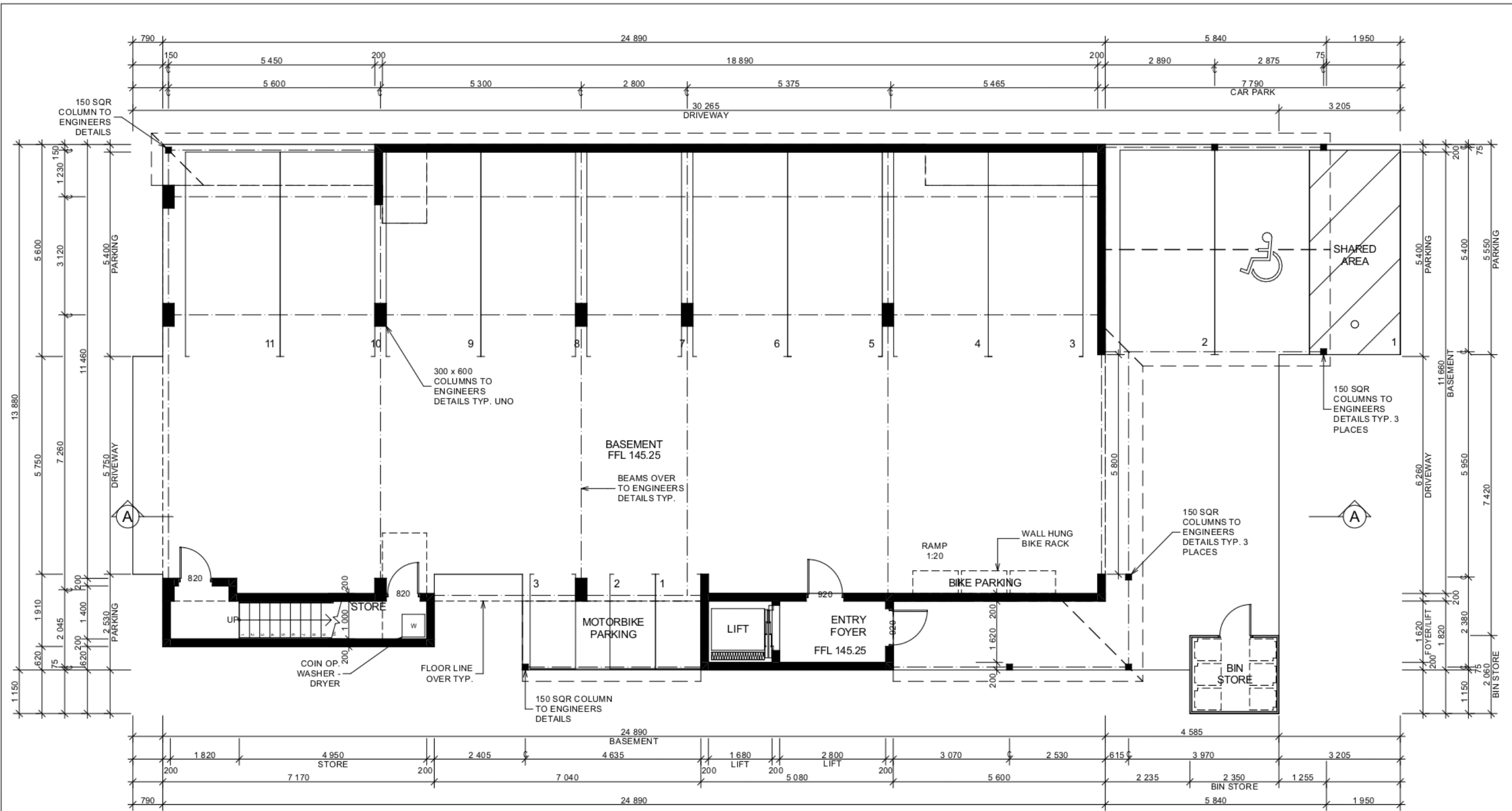
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Attachment C

Page 91



**LEVEL 1 FLOOR PLAN**  
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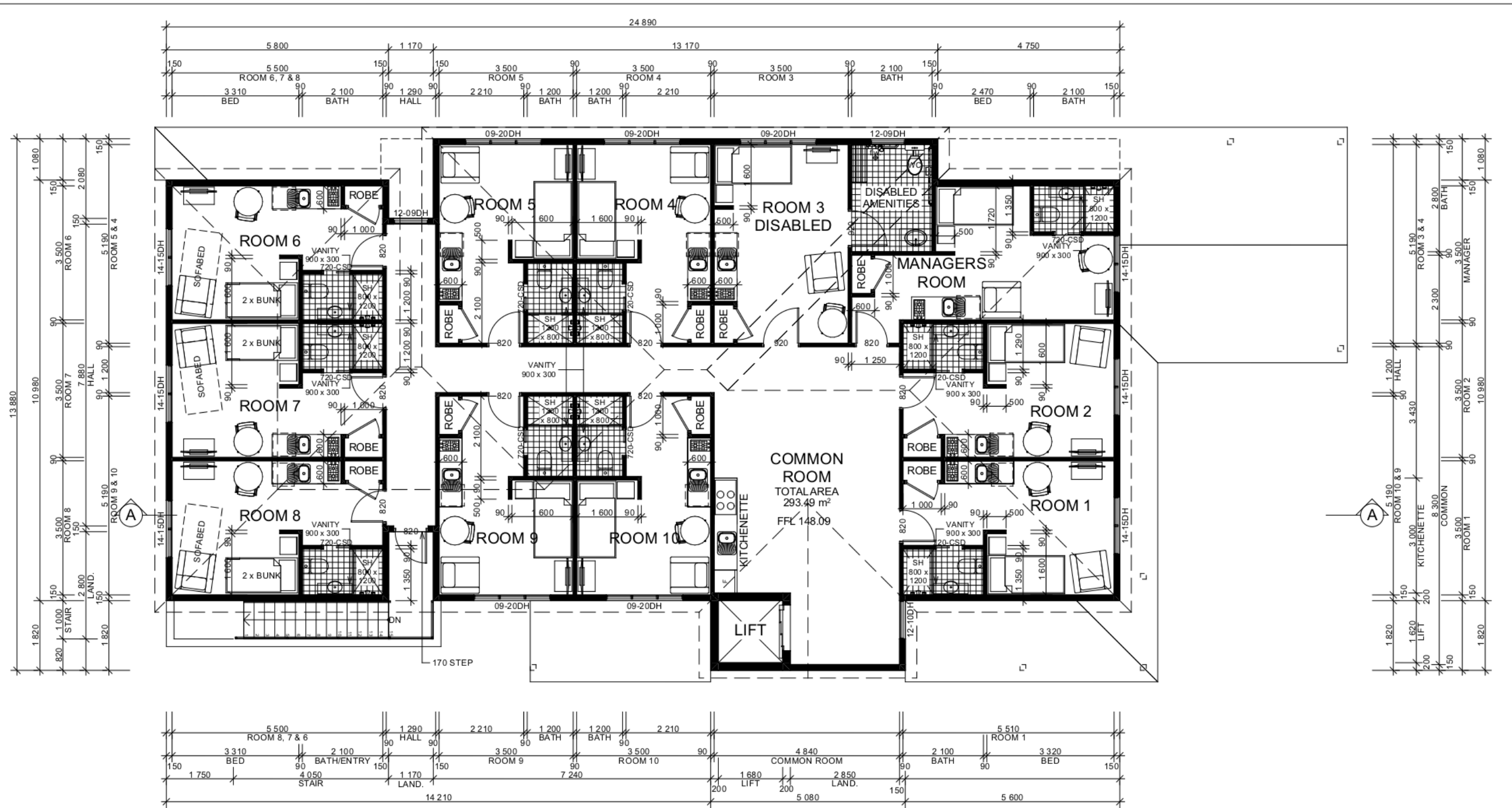
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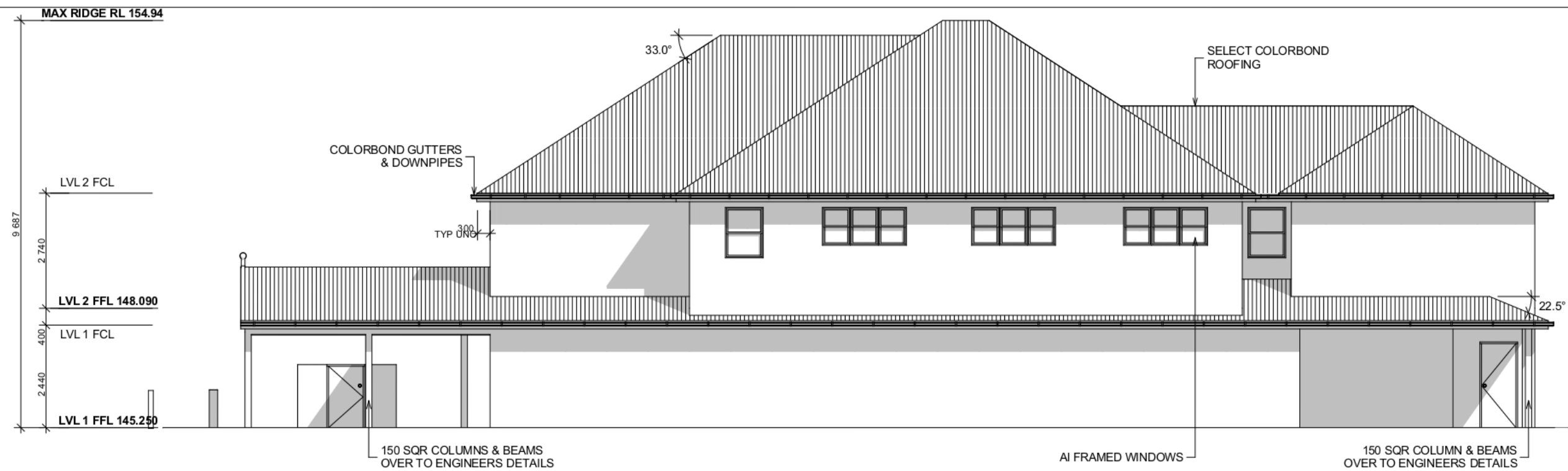
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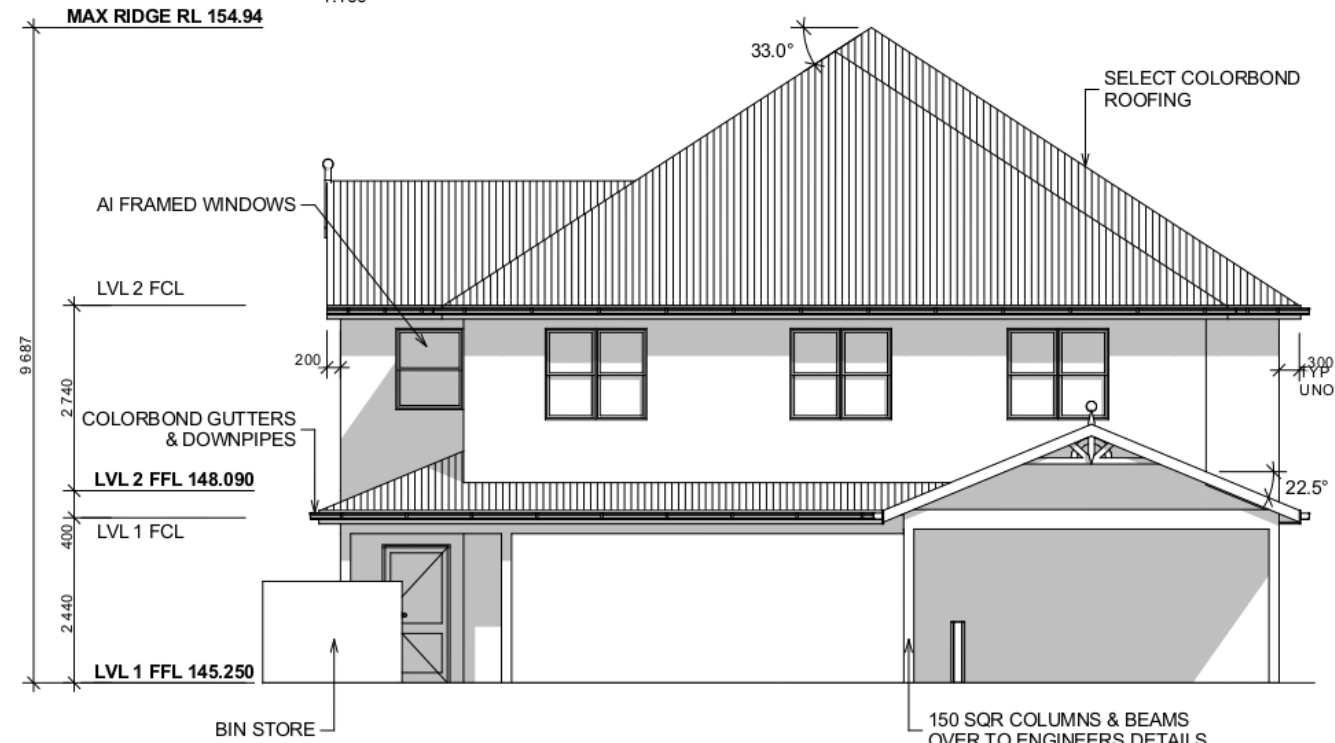
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**NORTH ELEVATION**

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**EAST ELEVATION**

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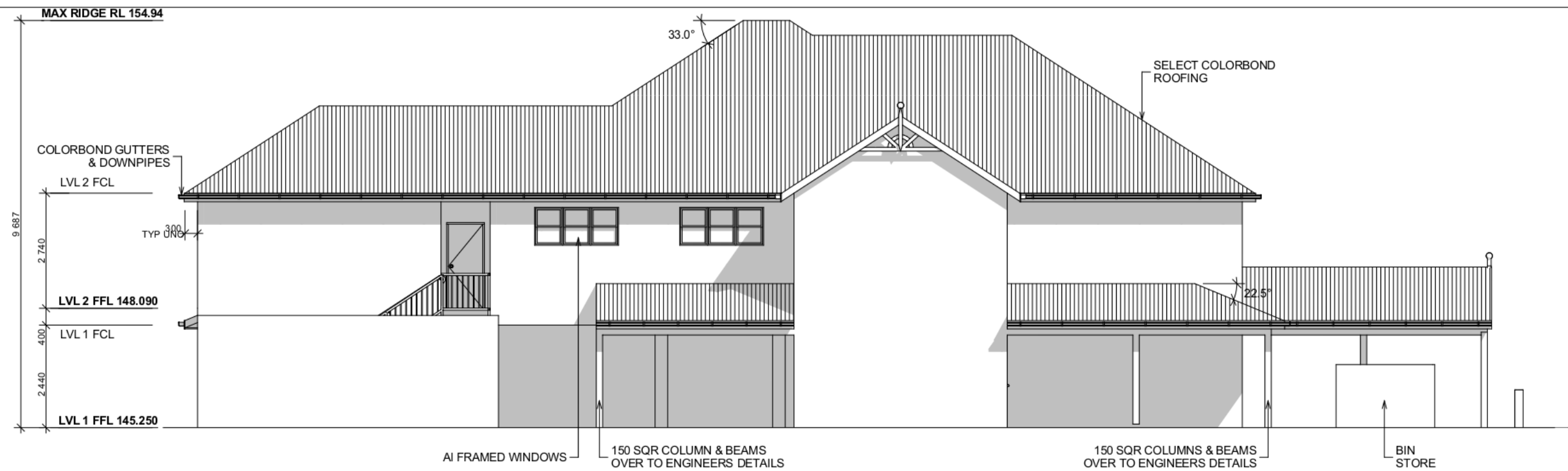
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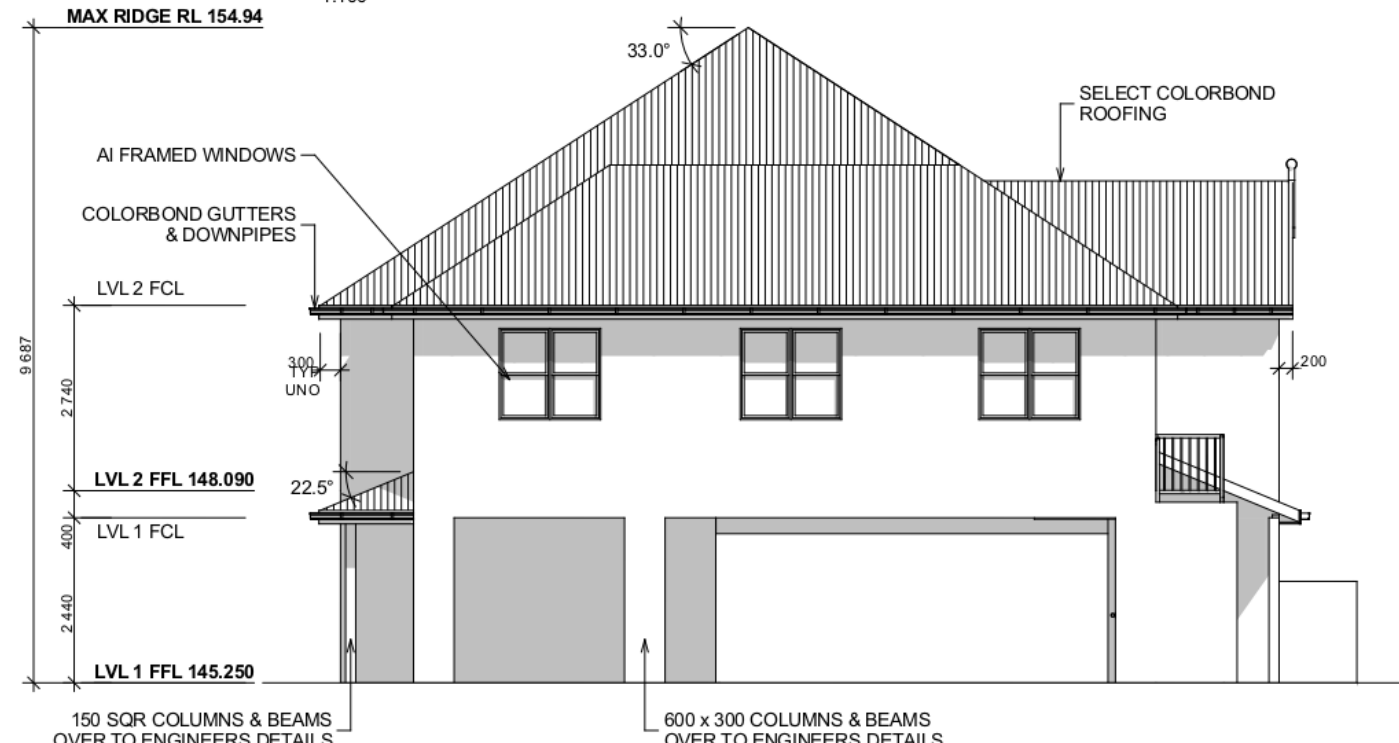
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**SOUTH ELEVATION**

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**WEST ELEVATION**

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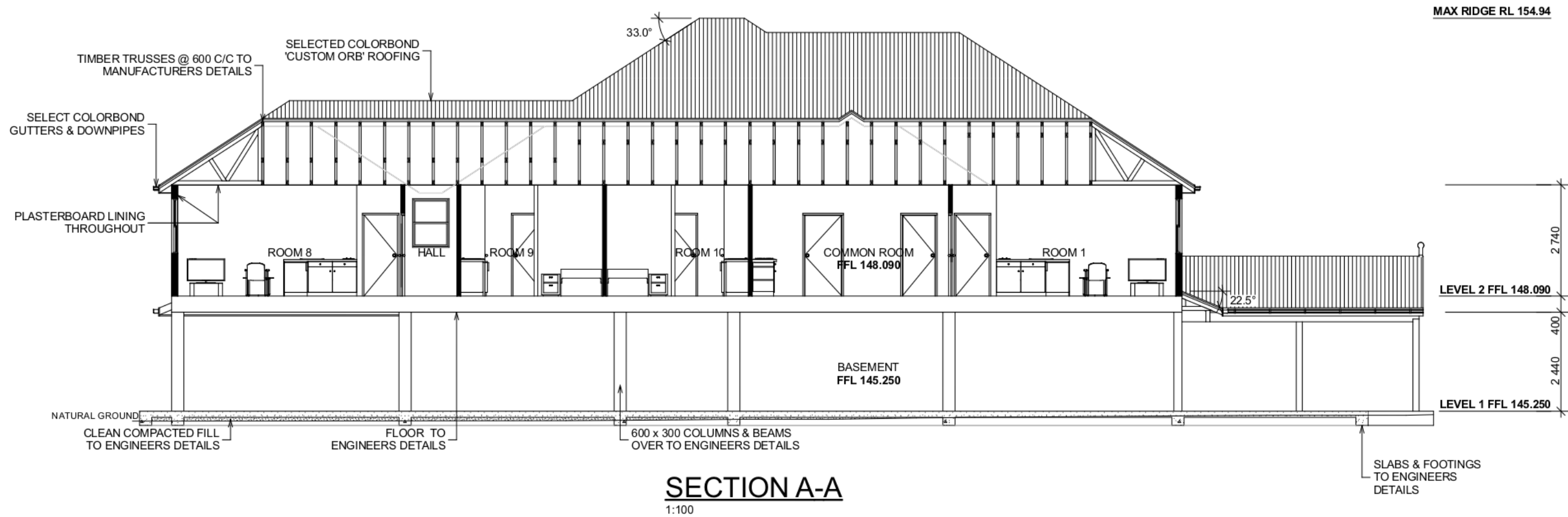
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General Enquiries:  
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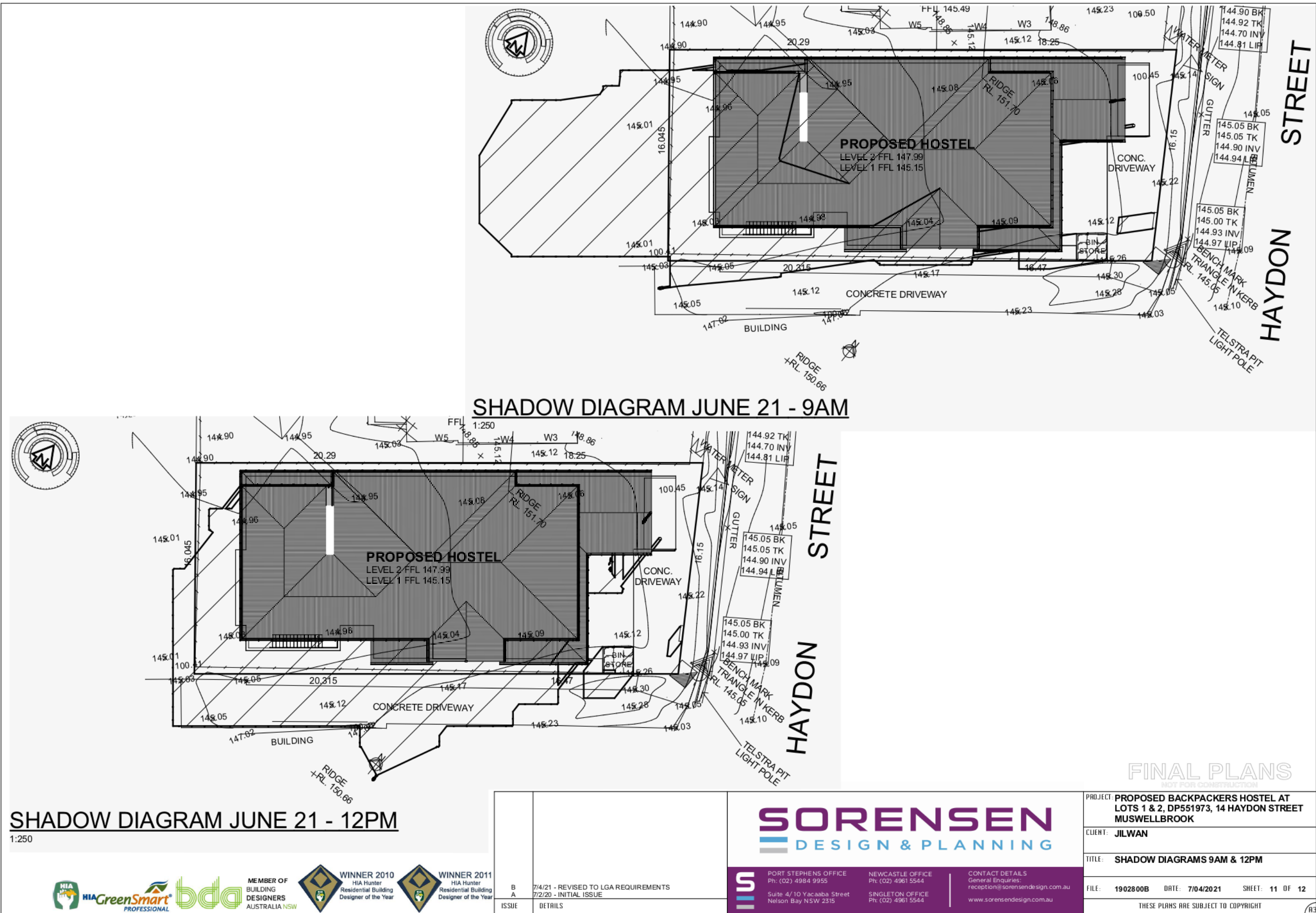
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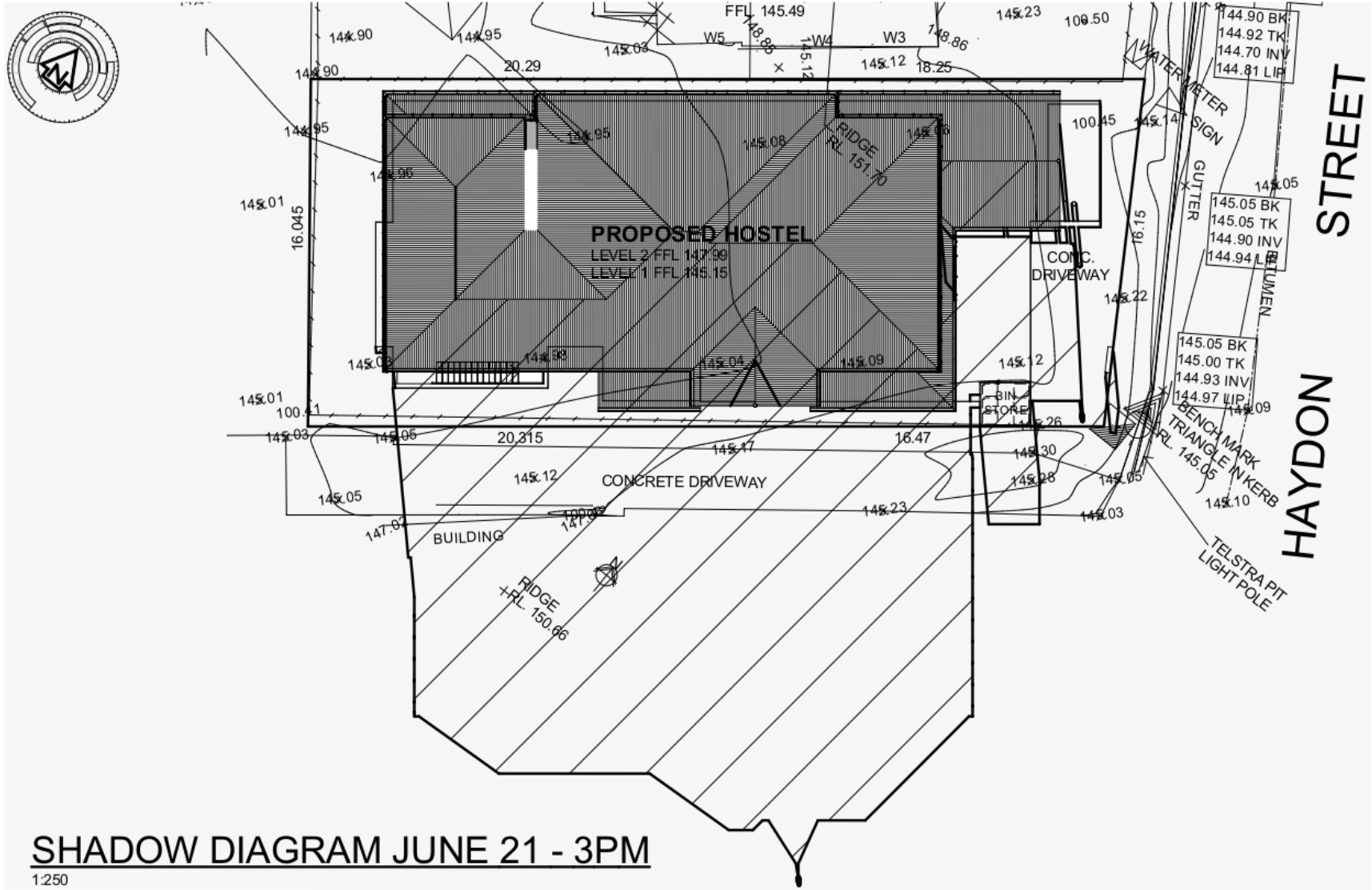
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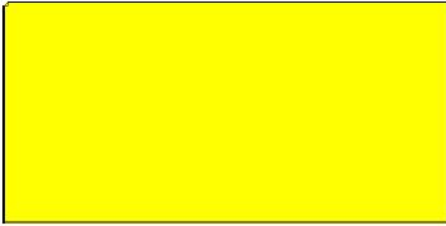
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PROJECT	PROPOSED BACKPACKERS HOSTEL AT LOTS 1 & 2, DP551973, 14 HAYDON STREET MUSWELLBROOK		
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TITLE	SHADOW DIAGRAM 3PM		
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26<sup>th</sup> January, 2021

The General Manager,  
Muswellbrook Shire Council,  
council@muswellbrook.nsw.gov.au

Re Proposal: BACKPACKERS ACCOMMODATION

Reference No 2020/133

We wish to bring to the attention problems that we can foresee if this application is approved.

1. Haydon Street has an "S" bend which obscures vision for residents exiting their premises.
2. Add visitors and neighbours cars parked in street obscuring vision.
3. Through traffic speeding along street to try to beat traffic lights even with new lights on corner of Lorne and Maitland Street.
4. Extra traffic generated by sports fields and extra again when swimming pool and 24 hour Gym reopen
5. There is also a great deal of foot traffic along Haydon Street, elderly, young children and parents, people walking dogs, and disabled people who need to cross Wilkinson Street right across from 14 Haydon Street
6. We believe that these streets with the current traffic flow should have a 40 kph speed limit for protection of all the above and be signed Local Traffic only, and have a marked pedestrian crossing.
7. If the application for the Backpackers Accommodation is approved this would add to the traffic flow and have more people exiting properties along Haydon Street and right on T junction with Wilkinson Street.
8. We recommend that personnel in charge of approving the application personally inspect the area and facilitate changes for current situation and evaluate what needs to be implemented if approval is given.

We trust that as residents in Haydon Street you will take into consideration our observations and be willing to facilitate the recommendations we are submitting.

Yours faithfully,





M U S W E L L B R O O K   S H I R E   C O U N C I L   R E P O R T

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**SECTION 4.15 ASSESSMENT REPORT**

<b>ADDRESS:</b>	Lot: 100 DP 793194, 83-89 Maitland Street Muswellbrook
<b>APPLICATION NO:</b>	DA 2021-30
<b>PROPOSAL:</b>	Pursuant to section 4.15 of the EP & A Act 1979, to - alter hours of operation (internal and drive-thru) of restaurant to 24 hours, 7 days a week.
<b>OWNER:</b>	McDonald's Australia Limited
<b>APPLICANT:</b>	McDonald's Australia Limited C/- SLR Consulting Australia
<b>ADDRESS:</b>	McDonald's Australia Limited C/- SLR Consulting Australia Suite 2, 125 Bull Street NEWCASTLE WEST NSW 2302
<b>AUTHOR:</b>	Mr H A McTaggart
<b>DATE OF REPORT:</b>	13 July 2021
<b>DATE LODGED:</b>	19 March 2021

---

**SUMMARY**

<b>KEY ISSUES:</b>	Noise Impacts, Safety, Security and Crime Prevention, suitability of the site, public interest
<b>SUBMISSIONS:</b>	Four (4)
<b>RECOMMENDATION:</b>	Approval to allow 24/7 hour operation (internal and drive-thru trading) for a 1 year trial period and subject to recommended conditions.

## 1. SITE AND LOCALITY DESCRIPTION

The subject land is identified as Lot 100 DP 793194 (83 – 89 Maitland Street), Muswellbrook.

The subject site is zoned B2 Local Centre under the Muswellbrook LEP 2009 and has frontage to both the New England Highway (a classified state road) and Thompson Street. Vehicles enter from Thompson Street and the New England Highway and the site has a single vehicle exit point to Thompson Street.

A McDonald's restaurant currently operates from the site. A search of Council's records identified that a total of four (4) development applications had been approved in relation to the premises since 1995.

Currently the McDonald's restaurant at the site includes:

- Dine in restaurant and McCafe facilities;
- Drive thru takeaway facilities;
- A car park area with eighty five (85) off-street car parking spaces; and
- Landscaping.

Although the subject land is zoned B2 Local Centre the site is located at an interface between the B2 Local Centre and R1 General Residential zones. The site adjoins an established residential area to the north-west and hotel or motel accommodation to the south-east. North-east of the site on the opposite side of the New England Highway is the Muswellbrook Golf Course and disused site zoned RU3 Forestry.

The image below identifies the subject site in relation to its local context.



## 2. DESCRIPTION OF PROPOSAL

Council has received an application for McDonalds Muswellbrook to operate 24/7. The McDonalds use was approved by Council under DA 72/2003 on the 16 June 2003 (Restaurant Alterations/Additions).

Under DA 2003-72, Condition 1.11, operating hours were restricted to between 6:00am and 10:00pm Monday to Thursday, Sunday and on public holidays and between 6:00am and 11:00pm for Fridays and Saturdays.

On 9 April 2019, Council granted approval to the modification of DA 72/2003 to permit the restaurants drive thru to operate for extended trading hours starting at 5:00 am, 7 days a week, for a 12-month period.

On 7 October 2020, Consent was granted to the modification of the original consent under DA72/2003/5. The modification enabled the previous 12-month trial period (DA72/2003/4) to be made permanent, allowing the store to trade permanently the 5.00 am to 6.00 am window, Monday to Sunday.

This application seeks Council approval for 24 hour, 7 days a week operation (internal and drive-thru trading), for the existing use (DA 2003-72).

## RELEVANT HISTORY

A search of Council's records identified several development applications for alterations and additions, minor works and improvements to the McDonald's restaurant premises.

DA	Description	Determination and date
DA72/2003 (1)	Alterations and Additions to McDonald's Restaurant and McCafe	Approved 16 June 2003
DA 332/2008	Extend Trading Hours of McDonald's Restaurant to 5am to midnight 7 days a week and change of hours of drive-thru facility to 24 hours per day 7 days a week	Refused by Council 9 February 2009
Section 96(1a) modification DA 72/2003(2)	Section 96(1a) modification amend condition 1.11 – alter hours of operation	Refused by Council 12 December 2017
Section 8.2 Review of DA 72/2003(2)	A section 8.2 Review application was lodged for the review of Council's determination of the Section 96(1a) determination of DA 72/2003	No determination required decision timeframe lapsed.
DA 72/2003/4 Section 4.55(2)	Section 4.55(2) modification amend condition 1.11 – alter hours of operation 5:00 am - 6.00 am, Monday to Sunday (drive-thru) for 12-month trial	9 April 2019 Council approved a 12-month trial period for the extended drive-thru operating hours 5:00 am - 6.00 am window, Monday to Sunday
DA 72/2003/5 Section 4.55(2)	Section 4.55(2) modification amend condition 1.11 – alter hours of operation to extended drive-thru operating hours permanently 5:00 am - 6.00 am, Monday to Sunday	7 October 2020 Council approved extended drive-thru operating hours 5:00 am - 6.00 am window, Monday to Sunday

3.

#### **4. REFERRALS**

##### **Internal Referrals**

The Proposal was referred to Council's Community Infrastructure Department who advised they had no objections given McDonalds had been operating successfully for a long period of time without any known incidents, and no additional infrastructure was proposed as part of the development.

Clarification of hours for waste collection and deliveries was sought. Waste collection and deliveries will be managed by the same conditions of consent that have applied to DA72/2003/5.

##### **External Referrals**

###### **NSW Police**

The proposed development was referred to the NSW Police and correspondence was received 19 May 2021. The NSW Police advised:

- That they had no objection to the application and were aware that the Store had been operating under a COVID order with extended hours since 25 October 2020.
- They recorded several events in late 2020 relating to persons loitering in the carpark but these were dealt with at the time by Police.
- Since the Store had been operating the extended hours, there were less loitering incidents occurring in the carpark, which could be attributed to the increase in the passive surveillance from the store being operational 24 hours.
- The previous recommendation to have temporary barriers placed in the carpark to deter vehicles from stopping in the carpark after hours be withdrawn.

#### **SUBMISSIONS**

The proposed modification was notified in accordance with Council's Community Participation Plan and to all individuals who made a submission to Council in relation to the extension of opening hours.

Council received a total of **four (4)** submissions in relation to the application, all of which objected to the proposed development. The issues raised by the submissions are considered under a later heading of this assessment report.

#### **5. SECTION 4.15 CONSIDERATIONS**

The application seeks to modify the operating hours of Muswellbrook McDonalds to 24/7 trading.

#### **6. ASSESSMENT OF SECTION 4.15 CONSIDERATIONS**

##### **S 4.15(1)(a)(i) The provisions of any environmental planning instruments**

###### **The Muswellbrook Local Environmental Plan 2009**

###### **Permissibility**

The proposed development was approved by Council under the provisions of the now repealed Muswellbrook LEP 1985.

Under the now in force Muswellbrook LEP 2009 the subject land is zoned B2 Local Centre. The

use of the premises is best defined as a food and drink premises and sub-categorised as a restaurant or café. The land use definitions for each are as follows:

**food and drink premises** means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

**restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

Under the Muswellbrook LEP 2009 a food and drink premises is a sub-category of a 'commercial premises'. Commercial premises are permitted with consent in the B2 Local Centre zone.

#### Land use zoning objectives

Clause 2.3 of MLEP 2009 requires a consent authority to have due regard to the land use objectives of a zone when determining a development application.

The land use zone objectives for the B2 Local Centre zone are as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To maintain the status and encourage the future growth of the Muswellbrook established business centre as a retail, service, commercial and administrative centre while maintaining the centre's compact form.
- To enable a wide range of land uses that are associated with, ancillary to, or supportive of the retail and service functions of a business centre.
- To maintain the heritage character and value and streetscape of the business centre of Muswellbrook.
- To support business development by way of the provisions of parking and other civic facilities.

It is considered that the proposed modification would be compatible with the land use zoning objectives. The extended trading hours for the premises would support the retail, trade and business development directions set out in the land use zoning objectives.

State Environmental Planning Policies

The State Environmental Planning Policies have been considered in relation to the proposal. It is considered that the proposed development would have limited consequences in relation to these environmental planning instruments.

**S 4.15(1)(a)(ii) The provisions of any draft environmental planning instruments**

There are no draft Environmental planning instruments that relate to the proposed modification.

**S 4.15(1)(a)(iii) the provisions of any development control plan**

The Muswellbrook Development Control Plan (MDCP 2009) is the development control plan relevant to all development in the Muswellbrook Local Government Area.

The provisions of the DCP have been considered in relation to the proposed modification. The DCP does not include any specific provisions relevant to the trading hours of commercial premises.

**S 4.15(1)(a)(iiia) the provisions of any planning agreement**

There are no planning agreements relevant to approved development or proposed modification.

**S 4.15(1)(a)(iv) the provisions of the regulations**

There are no specific matters prescribed by the Environmental Planning and Assessment Regulation 2000 relevant to the assessment of this application.

**S 4.15(1)(b) likely environmental impacts**Access, transport and traffic

The site has primary frontage to New England Highway and the proposal retains that access. One additional access point also occurs from Thompson Street on the north western side of the allotment. Both access locations are sealed and improved by upright kerb and gutter.

The proposed development involves the extension of McDonald's trading hours. The current road network is suitably designed for the Proposal. The premises has been operating with 24/7 hours since October 2020 and traffic movement has not exceeded the road design capacity. Therefore, it is believed that there will be no significant impact.

Waste Management

The premises would continue to be managed generally in accordance with existing waste management procedures.

As part of Council's determination of the extended trading hour trial period the operator was required to prepare and enact a waste minimisation management plan in accordance with the requirements of Council's DCP. This plan has been implemented with litter patrols to collect waste discarded by customers in the vicinity of the development site. This will form as a continued condition as part of consent, should the Proposal be supported.

A submission received by Council suggests that litter from the site remains a problem in the locality. This concern is acknowledged by Council Officers and has been forwarded to the McDonalds Manager.



Odour and air quality

The extension of trading hours would increase the timeframe that kitchen is in use. Odour from the kitchen of the premises was not identified as an issue by the community. The Assessing Officer is satisfied that the proposed modification is unlikely to have any significant impact related to odour.

Noise Impacts

Noise impacts associated with the proposed development was a key consideration for Council in determining the 5:00am drive-thru opening trial period and permanent extended operating hours. As part of this modification application a Noise Impact Assessment was submitted by the proponent. The results indicated that sleep disturbance is not anticipated, as impact noise levels are predicted to remain below the EPA Guideline for maximum noise event trigger levels.

Previously the applicant to implement the following regarding managing noise:

- Keep a record of any intrusive noise or odour complaints received through the trial period.
- Notify nearby residents in writing of the contact information/process for making complaints.
- Enact a process for investigating and managing complaints in consultation with Council if a large quantity of noise complaints is received within a short period of time.
- Install signage, in consultation with neighbouring residents, advising customers of their responsibility to avoid excessive noise that may disturb the amenity of the local neighbourhood.
- Prepare and enact a plan to manage noise through the restaurant drive-thru.

The applicant has previously completed and complied with these noise mitigation measures via previous approvals and this will be extended to this proposal, should Council support the application.

Throughout the previous 12-month trial period (DA 72/2003/4) for the earlier start time for the Drive-Thru, Council did not receive any specific noise complaints. A Council Officer did receive a single verbal complaint in relation to the premise's operation, which was general in nature.

In view of the mitigation measures previously implemented, and the limited complaints received by Council or the NSW Police since the premise began trading 24/7 on a temporary basis, its considered that the proposed trading hours will not have a significant impact on the amenity of the locality.

However, it is suggested the proposed 24/7 operating hours initially occur for a 12-month trial period. This will allow Council the opportunity to review the operation of the business within the existing environment and any complaints before considering permanent 24/7 operating hours.

Safety, security and crime prevention

Matters related to safety, security and crime prevention have been considered in detail through the assessment of this development application.

To inform Council's consideration of these issues the applicant has prepared and submitted a Crime Risk Assessment and plan of management (March 2021) that included the following:

- Crime Prevention through Environmental Design (CPTED) Strategy,
- 24 hour CCTV Surveillance with 60 day viewing retention,

- Effective lighting of public areas,
- Provision of directional signage that assists in controlling activities and movements throughout the premises,
- Maintenance of landscaping to ensure it communicates an alert and active presence occupying the space,
- Car parking closures in accordance with a car parking closure plan during drive-thru only operating hours,
- Incident reporting and registration of complaints,
- The adoption of noise management procedures, and
- The carrying out of regular litter patrols, four (4) per day minimum within a specified area of the premise's immediate locality.

This plan of management was referred to the NSW Police for consideration. The Police have no objection to the proposed trading hours, subject to the implementation of the security measures.

Noting that the NSW Police are satisfied with the security measures proposed, the Assessing Officer is generally satisfied with the proposed development from a safety security and crime prevention perspective.

#### Public Domain

The impacts of the development on the public domain will be limited given the change is regarding hours of operation. While the development is visible from a public place, proposed conditions of consent will also ensure an acceptable level of impact within the existing environment. On this basis, it is believed the development is not expected to have an adverse impact on the public domain.

#### Social and Economic Impacts

The proposed trading hours will have moderate positive economic outcomes related to the additional commercial activity and trading hours. As discussed in previous applications for adjustment of trading hours these positive impacts need to be balanced against any adverse social impacts to the locality. In this instance Council Officers are satisfied that the proposal is unlikely to have any significant adverse social impacts and thereby may be supported.

#### **S 4.15(1)(c) the suitability of the site for the development**

The site is zoned B2 Local Centre under the Muswellbrook LEP 2009. Council Officers are satisfied that the site's zoning and location is suitable to support is commercial land use. However, a trial period is recommended to ensure any impacts to the residential character of adjoining land are not unreasonable.

#### **S 4.15(1)(d) any submissions made**

The proposed development was publically advertised and notified in accordance with the requirements of the Muswellbrook Community Participation Plan. A total of four (4) submissions, all of which objected to the proposal, were received by Council in relation to the development.

Copies of submissions received have been included as attachments to this report.

The content of the submissions received have been considered by the Assessing Officer. Concerns raised by the submitters in relation to the proposed development have been summarised and commented on in the table below.

Issue Raised	Planning Comment
<p>Traffic entering the site has caused sleep disturbance.</p>	<p>In its determination of the extended trading hours under DA 72/2003/4 and DA 72/2003/5 Council established a protocol for the reporting and management of noise impacts associated with the extended trading hours.</p> <p>Throughout the previous trial period and permanent extended hours no noise disturbances were logged with McDonalds and no specific noise disturbances were reported to Council.</p> <p>Although no specific noise disturbances were reported Council Officers do not refute the submitters concerns that they have been disturbed by the extended trading hours.</p> <p>Should Council resolve to support this application it is recommended that any determination remains subject to conditions of consent related to the management of noise impacts and the requirement for McDonalds to continue to record and act to mitigate any noise impacts remains current.</p>
<p>Poorly managed traffic at the site – trucks, and caravans park in no parking areas. Photos provided showing evidence of vehicles parked in unsuitable locations on-site.</p>	<p>The proposed modification would have minimal impact on the current traffic conditions. The extended trading hours is not anticipated to increase the likelihood of illegal vehicle parking at the site as peak trading times are during the day, principally during school and public holidays periods.</p>
<p>Concern regarding the use of the car park at night and disturbances to the area.</p> <p>Video evidence was included.</p>	<p>A condition will also be imposed, should the proposal be supported, requiring any feedback from the community via a complaints register for any concerns.</p> <p>The proposed modification to permit the 24/7 trading hours is not considered to increase the likelihood of this occurrence in the area. Anecdotal evidence from NSW Police is that 24/7 trading has reduced anti-social behaviour in the carpark.</p>
<p>Concern regarding management of litter at the site.</p> <p>Photo evidence of litter at the site was included.</p>	<p>McDonalds has been required to carry out litter patrols for the site and surrounding streets. The continuation of patrols would be required as part of any approval for this application.</p> <p>McDonalds has acknowledged that the successful completion of the patrols relies on the individuals tasked to undertake them. McDonald's has committed to identifying and managing these issues to ensure that litter is managed to a high standard.</p>

Issue Raised	Planning Comment
'No Stopping' Signage at front of McDonalds Store gives preferential treatment to the restaurant and prevents them from cleaning in front of the store and should be removed.	Signage is appropriately located to manage the safety of vehicular movement along the Highway.  McDonalds has been required to carry out litter patrols at the site outlined in their plan of Management. The continued carrying out of these patrols would be required as part of any approval for this application.
Concerns relating to noise associated with traffic and anti-social behaviour	An Acoustic Report was undertaken by a qualified acoustic consultant, as part of the development application to certify the McDonald's operations noise emission during the previously extended trading hours. The results indicated that the proposal for extended trade would satisfy the relevant Project Noise Trigger Levels at all assessed receivers. Conditions of consent are proposed requiring recording of feedback from the community via a complaint register, and implementation of the mitigation measures.
Visual Impacts from lights shining into adjoining residents' properties	Conditions of consent are proposed requiring recording of feedback from the community via a complaint register, and implementation of the mitigation measures.  Conditions are also proposed relating to appropriate lighting to eliminate lighting nuisance.

#### **S 4.15(1)(e) The public interest**

Council Officers acknowledge that these trading hours may result in some impacts to the amenity of neighbouring residents. However, Council Officers are satisfied that public interest considerations are acceptable. However, the new trading hours should be subject to a 1-year trial period. This would allow Council the opportunity to review the operation of the business within the existing environment and any complaints when considering permanent operating hours in the future.

#### **7. CONCLUSION**

The request for 24 hour, 7 days a week operating hours, for the Muswellbrook McDonalds Restaurant (drive-thru and internal trading), has been assessed against the relevant heads of consideration pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

It is considered that the proposed change to operating hours would be in accordance with the relevant development assessment provisions of the Environmental Planning and Assessment Act 1979 and may be supported by Council.

It is recommended that Council grants consent to the modification application subject to conditions, which are consistent with those imposed on previous approvals involving trial periods for extended trading hours before granting permanent extended trading hours. This facilitates an opportunity to reassess the situation after 12 months.

**RECOMMENDATION**

That Council grant approval to DA 2021-30 to allow for internal and drive thru trading to commence 24 hours, 7 days a week, for a trial period commencing on the date of the determination, and concluding a year from that date.

The new conditions of consent are as follows:

**Condition 1**

*The premises may operate 24 hours, 7 days a week on a trial basis for a period of 1 year. The date for the commencement of this trial period is to be taken to be the date of the Notice of Determination given these hours have commenced under the Environmental Planning and Assessment (COVID-19 Development – Takeaway Food and Beverages) Order 2020.*

*At the conclusion of the 1-year trial period the premises must revert to utilising the previous approved trading hours, unless a Section 4.55 modification has been lodged with Council for the continuation of the 24-hour, 7 day per week operation of the premises.*

*Where a Section 4.55 modification is lodged in line with the above, the development may continue to operate 24 hours, 7 days a week for a further period of six (6) months to allow for that application to be determined.*

*If the Section 4.55 modification is refused by Council or withdrawn the premises must revert back to trading hours approved under DA 72/2003/5 being:-*

- (a) The hours of operation are restricted from 5.00 am to 10.00 pm Monday to Thursday, Sunday and Public Holidays, and 5.00 am to 11.00 pm Friday and Saturday;*
- (b) In addition to (a) above, the drive-thru may operate between 5.00 am and 6.00 am, 7 days a week.*

*Note: the assessment of any application for the continuation of 24 hour a day operating times will be carried out in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979. Council will be particularly interested in any performance data from the 1-year trial period, compliance with the development consent requirements, outcomes of any noise monitoring, and complaints received by the operator, Council or NSW Police.*

**Condition 2**

*At all times the person acting with this consent shall comply with the following:*

- (a) The operation of the premises shall comply with the McDonald's Plan of Management dated March 2021, or an updated Plan of Management approved by Council in writing.*
- (b) The proponent shall keep a detailed record of complaints which are to be documented in a register maintained for the 12-month period of the premises operation. The Register is to be maintained on-site and may be inspected by Council Officers and other relevant regulatory personal. Data contained in the complaint register is to include time, location and nature of any intrusive noise, odour or other reported issue that causes a disturbance to an adjoining landowner. The person acting with this consent is to take reasonable steps to inform nearby*

*residents and interested persons on how to make any complaints in relation to the operation of the premises. Council would view an annual letter drop to neighboring properties advising of the contact information and procedure for making complaints as reasonable steps.*

- (c) If noise complaints become systematic and/or a significant increase in complaints is identified in the 12-month period the person acting with this consent is required to complete the following:*
  - (i) Advise Council of the nature and number of complaints being received;*
  - (ii) Unless otherwise directed by Council the proponent shall engage an appropriately qualified person to carry out attended noise monitoring at a location that is representative of the location and/or time period during which complaints have been made. Noise monitoring shall be carried out in accordance with the Noise Policy for Industry (or any superseding Policy) and relevant Australian Standards.*
  - (iii) The outcomes of any noise monitoring shall be reported to Council. If the noise monitoring identifies any exceedance to the recommended PSNL during attended noise monitoring then steps to evaluate feasible and reasonable noise control shall be taken in accordance with the Noise Policy for Industry. After noise controls have been implemented, attended noise monitoring shall be repeated to determine whether noise control has been effective in reducing site noise levels.*
  - (iv) Council may not direct the person acting with this consent to carry out the steps prescribed by (ii) or (iii) above where it is not satisfied as to the validity of complaints received or where it is concerned that generic, vague or vexatious complaints are being made on a regular basis. Where the proponent carries out attended noise monitoring in accordance with (ii) and (iii) within the preceding 6 months or on more than 2 occasions within a 12-month period and no noise exceedances are identified Council may advise the person acting with this consent that they are not required to carry-out further attended noise monitoring.*
- (d) At all times the person acting with this consent must carry out the development in accordance with the requirements of the approved waste minimisation and management plan.*
- (e) The person acting with this consent must consult local residents through the preparation of the plan. The person acting with this consent must comply with the recommendations of this plan and install all required signage relating to the extended hours.*
- (f) In accordance with the Management Plan requirements all lights at the premises are to comply with AS4282 Control of Obtrusive Effects of Outdoor Lighting and the person acting with this consent is to ensure that the premises are operated in accordance with this requirement at all times.*
- (g) At all times the drive-thru ceiling lining and any signage installed is to be maintained as part of the development to manage any noise from vehicle antennas in the drive-thru.*



**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT****3. Directional Signage**

Prior to commencement of operating hours all vehicle directional signage is to be maintained, including trimming of obscuring vegetation, to ensure the proper management of access to the site and clearly identify all entry and exit points and parking for all types of vehicles. Where an access point is entry or exit only appropriate signage is to be installed to identify this to customers. Where there is a car park pedestrian crossing appropriate pedestrian signage should also be installed. All necessary signage installations must comply with the relevant Australian Standard.

**CONTINUED OPERATIONS****4. Management of Litter**

Documentary evidence should be available to Council staff demonstrating compliance with the Plan of Management (March 2021) in relation to the removal of on-site waste in the Public Domain for such areas as, but not limited to, the footpath, gutter, building entry and surrounds. The Litter Patrols identified in the Plan of Management are to be confirmed via a register and signed by the person undertaking the action.

**5. Maintenance of landscaping**

All existing landscaping is to be maintained and remedial pruning is to be undertaken regularly on the site, as per the requirements of the Crime Risk Assessment and plan of management (March 2021), this consent or as otherwise directed by Council in writing. This is to ensure surveillance can occur on the premises.

**6. Outdoor Lighting**

All lighting installed is to be designed and positioned to minimise any adverse impact on neighbouring premises. Any outdoor lighting installations must comply with the relevant Australian Standards AS/NZ 1158.3.1:2005 Lighting for Roads and Public Spaces Pedestrian Area Lighting and Public Spaces Pedestrian Area (Category P) Lighting - Performance and Design Requirements AS 4282.1997 Control of the Obstructive Effects of Outdoor Lighting. Car Park lighting must also minimise light spill and is to be in accordance with AS 1158 and AS 4282-1997.

Where the person acting with this consent becomes aware of a complaint or issue with outdoor lighting affecting the amenity of adjoining premises reasonable steps are to be taken to address the issue and minimise the impact of any light spill on adjoining land.

MR. H.A. MURTAGHART

DEAR SIR

IN REFERENCE TO DA 2021/30

I APOLOGISE FOR NOT REMAINING THIS OBJECTION  
BUT I DO NOT HAVE ACCESS TO AN EMAIL.

IT SEEMS NEVER ENDING WITH MACDONALDS IN.  
APPLYING EVERY 12 MONTHS TO OPEN 24/24

I WANT TO OBJECT STRONGLY AGAINST THEM  
OPENING 24 HOURS. LAST OCTOBER I WAS APPROACHED  
BY THEIR LOCAL MANAGEMENT THAT THEY WERE  
GOING TO OPEN THE DRIVE THROUGH 24 HOURS. AS  
THEY WERE DEEMED AS AN "ESSENTIAL SERVICE"  
DURING THE PANDEMIC. I WAS INFORMED THAT THEY  
DID NOT NEED THE "COUNCIL'S PERMISSION" TO  
PROCEED. THAT WAS TO BE REVIEWED IN MARCH  
THIS YEAR BUT IS STILL CONTINUING IN MAY.

I STRONGLY OBJECT TO THE 24 HOUR SERVICE AS

CONTINUALLY PROS RUINOUS ON ALL THE NOISE &  
TRAVERS UP ESPECIALLY AT NIGHT. I HAVE INTERRUPTED  
SLEEP CONTINUOUSLY, ESPECIALLY WHEN PATRONS HAVE  
TO WAIT IN THEIR WAITING BAY FOR THEIR FOOD.

THE NOISE FROM THE CONTINUOUS RUNNING OF  
THEIR MOTORS IS MOST DISTURBING, THEY THEN  
ROAD OUT OF THE EXIT & TO THE HIGHWAY.

I DID AGREE TO THE DRIVE THROUGH BEING OPEN

AT 5AM ON THEIR LAST APPLICATION TO O.DUN  
BUT THIS WILL BE DOUBLY THE INCONVENIENCE TO  
MY NEIGHBOURS & MYSELF

LOOKS AS THOUGH THEY WILL BE TRYING EVERY  
YEAR TO GAIN 24/24 BUT THIS IS VERY STRESSFUL TO  
US ALL

Yours faithfully

M [REDACTED]  
[REDACTED]

ONCE AGAIN NOTHING HAS CHANGED SINCE  
THE LAST DEVELOPMENT WAS LODGED.

5/5/2021

Gmail - Development Application No 2021/30

**Development Application No 2021/30**

1 message

Tue, Apr 27, 2021 at 1:22 PM

Attention: General Manager

RE:- Development Application No 2021/30  
OBJECTION IN CONFIDENCE

We lodge our objection to the above development application for the following reasons.

1) Noise It is a joke trying to sleep here some nights due to the hoodlums revving their engines into the governor stage and dropping burnouts. Loud conversations waking us up as they park in front of our house slamming doors and not giving a damn for others.

2) Rubbish left in the street is a joke. I have complained to council also McDonalds Muswellbrook and McDonalds Head Office in Sydney. Their rubbish lines our street. After a discussion with head office McDonalds they informed me that they have received numerous complaints from neighbours. They stated that it is policy to do several trips around the outside of the store and pick up any rubbish. A complaint to the manager they stated we only clean once per week. Going against McDonald's Franchise policy. If they can not be trusted to abide by their own regulations I have no faith for this application.

A further question to council, being someone that has been trained in the Motor Traffic Act, I see no relevant reason for the NO STOPPING SIGNS being right out in front of McDonald's Store right up to the boundary. It appears to me that McDonald's Loves them there as they don't have to clean up in front of their store. My suggestion is show that there is no favoritism towards McDonald's and remove those SIGNS I see no valid and I repeat no valid reason for them being there. Also the NSW Police should be advised to carry out night patrols around McDonald's as it attracts hoodlums after midnight.

1/1

[REDACTED]  
3-5-2021

Muswellbrook Shire Council.

MR. H. A. McTaggart.

Dear Sir,

We are residents of  
[REDACTED] are very  
much **against** McDonalds  
proposed application of extension  
of trading hours

Yours faithfully  
[REDACTED]

RECEIVED BY  
MUSWELLBROOK  
SHIRE COUNCIL

06 MAY 2021

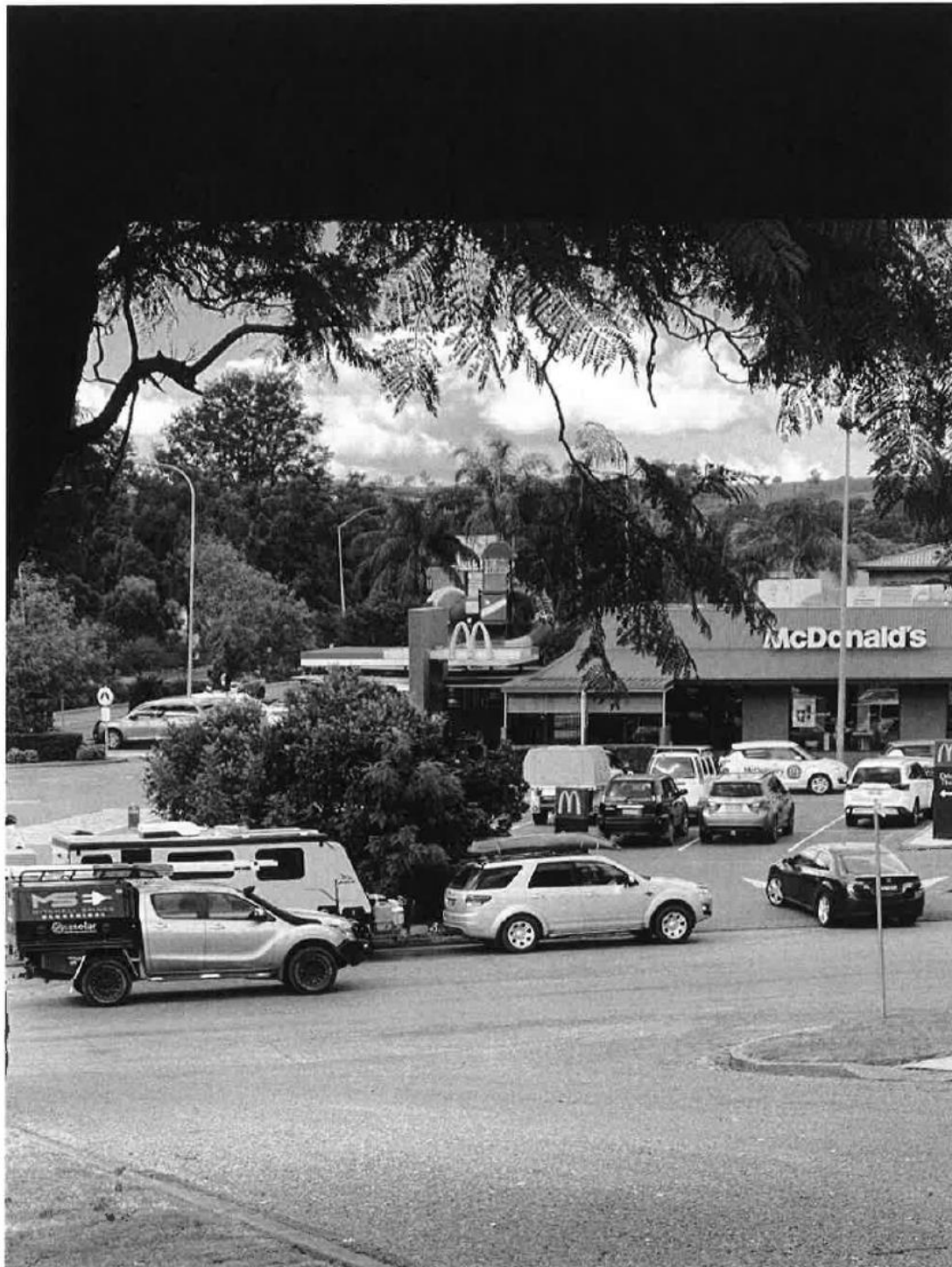
DOCUMENT ID. ....



Alisa Evans

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From: [REDACTED]  
Sent: Tuesday, 11 May 2021 2:28 PM  
To: Muswellbrook Shire Council  
Subject: DA-2021-30 Muswellbrook McDonald's traffic issues





  
30<sup>th</sup> April 2021

To Whom It May Concern,

Re: McDonalds DA 2021/30 -- Change of Operation Hours (24hrs)

We wish to place our written submission to OBJECT to the approval of 24 hours trading of McDonalds Muswellbrook.

In response to McDonalds Proposal and Justification of applied hours a lot of points are not correct.

We would like to know how McDonalds believes there is such a demand for 24hr operating considering Muswellbrook already have two 24 hour service stations which both have food, drink, restrooms and parking for the public as well as a current application for a 7/11 Service station. On observations made over the months McDonalds are not constantly busy or in high demand as they state making us rather interested to see the proof of the profit and loss of operating overnight periods to support such claim.

They have mentioned that there will be minor impact in terms of noise and environment to the area. We would like to invite them to come to our home over night and hear the noise that echo's up the street from the drunken people that congregate around the corner table, to see how the bright lights shine into our home all night making it harder to sleep even though we have spent thousands of dollars on aluminium shutters to try to block it out yet it isn't enough to stop disturbing our family, to hear how noisy the cars are that come and go from the carpark due to it being an open area for them to start the lap of street racing, the loud music and carpark parties that people enjoy having after going through the drive through, to trucks using their air breaks or leaving them idling parked on the street or in the Maitland street to Thompson St turning lane as well as using Shaw Crescent as a turning loop even though the street is not suitable for such size trucks, We ask McDonalds how are these items not of a noise impact to residents?

As for environmental impact if this is the case why are we always collecting rubbish from our front lawn, why are the bins at the exit overflowing more times than not from lack of monitoring and emptying by McDonalds staff. The current location of McDonalds does not suit 24hr operating as it is in a residential area not an industrial area it is surrounded by residents and a motel a place where people are there to sleep at night not to be disturbed by inconsiderate people and vehicles.

We as well as others in our neighbourhood have made several complaints and reports to Phil regarding issues as well as calls to request Police to move along people from the McDonalds carpark area. We have limited Police serves in this area of a night time and wasting their time and resources to control something that is not of public interest or benefit isn't a positive thing for the community. It is mentioned several times that McDonalds are attempting to support early morning mining traffic then why do they need to trade 24 hours to do so when opening at the new approved 5am start supports this traffic.

McDonald's struggle enough to control rubbish, Rodents, Lighting, carpark issues when operating at reduced hours (0500-22/2300) how are they going to manage 24hrs permanently when the COVID trial excuse has proven that they are not capable or willing to look after the area and the environment caused by their patrons.

McDonalds have not made any attempt to hold community engagements with residents as they were previously advised to do so from council, nor do they address any issues that have been brought to their attention from previous submission attempts.

Supporting photographs to show mentioned issues will be attached in this email.



**SITE OPERATIONS****1. Trial Period of Twelve (12) Months**

The premises may operate 24 hours, 7 days a week on a trial basis for a period of 1 year. The date for the commencement of this trial period is taken to be the date of the Notice of Determination given these hours have commenced under the Environmental Planning and Assessment (COVID-19 Development – Takeaway Food and Beverages) Order 2020.

At the conclusion of the 1-year trial period the premises must revert to utilising the previous approved trading hours, unless a Section 4.55 modification has been lodged with Council for the continuation of the 24-hour, 7 day per week operation of the premises.

Where a Section 4.55 modification is lodged in line with the above, the development may continue to operate 24 hours, 7 days a week for a further period of six (6) months to allow for that application to be determined.

If the Section 4.55 modification is refused by Council or withdrawn the premises must revert back to trading hours approved under DA 72/2003/5 being:-

- (a) The hours of operation are restricted from 5.00 am to 10.00 pm Monday to Thursday, Sunday and Public Holidays, and 5.00 am to 11.00 pm Friday and Saturday;
- (b) In addition to (a) above, the drive-thru may operate between 5.00 am and 6.00 am, 7 days a week.

Note: the assessment of any application for the continuation of 24 hour a day operating times will be carried out in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979. Council will be particularly interested in any performance data from the 1-year trial period, compliance with the development consent requirements, outcomes of any noise monitoring, and complaints received by the operator, Council or NSW Police.

**2. Operation of Premises**

At all times the person acting with this consent shall comply with the following:

- (a) The operation of the premises shall comply with the McDonald's Plan of Management dated March 2021, or an updated Plan of Management approved by Council in writing.
- (b) The proponent shall keep a detailed record of complaints which are to be documented in a register maintained for the 12-month period of the premises' operation. The Register is to be maintained on-site and may be inspected by Council Officers and other relevant regulatory personal. Data contained in the complaint register is to include time, location and nature of any intrusive noise, odour or other reported issue that causes a disturbance to an adjoining landowner. The person acting with this consent is to take reasonable steps to inform nearby residents and interested persons on how to make any complaints in relation to the operation of the premises. Council would view an annual letter drop to neighboring properties advising of the contact information and procedure for making complaints as reasonable steps.
- (c) If noise complaints become systematic and/or a significant increase in complaints is identified in the 12-month period the person acting with this consent is required to complete the following:

- (i) Advise Council of the nature and number of complaints being received;
- (ii) Unless otherwise directed by Council the proponent shall engage an appropriately qualified person to carry out attended noise monitoring at a location that is representative of the location and/or time period during which complaints have been made. Noise monitoring shall be carried out in accordance with the Noise Policy for Industry (or any superseding Policy) and relevant Australian Standards.
- (iii) The outcomes of any noise monitoring shall be reported to Council. If the noise monitoring identifies any exceedance to the recommended PSNL during attended noise monitoring then steps to evaluate feasible and reasonable noise control shall be taken in accordance with the Noise Policy for Industry. After noise controls have been implemented, attended noise monitoring shall be repeated to determine whether noise control has been effective in reducing site noise levels.
- (iv) Council may not direct the person acting with this consent to carry out the steps prescribed by (ii) or (iii) above where it is not satisfied as to the validity of complaints received or where it is concerned that generic, vague or vexatious complaints are being made on a regular basis. Where the proponent carries out attended noise monitoring in accordance with (ii) and (iii) within the preceding 6 months or on more than 2 occasions within a 12-month period and no noise exceedances are identified Council may advise the person acting with this consent that they are not required to carry-out further attended noise monitoring.
- (d) At all times the person acting with this consent must carry out the development in accordance with the requirements of the approved waste minimisation and management plan.
- (e) The person acting with this consent must consult local residents through the preparation of the plan. The person acting with this consent must comply with the recommendations of this plan and install all required signage relating to the extended hours.
- (f) In accordance with the Management Plan requirements all lights at the premises are to comply with AS4282 Control of Obtrusive Effects of Outdoor Lighting and the person acting with this consent is to ensure that the premises are operated in accordance with this requirement at all times.
- (g) At all times the drive-thru ceiling lining and any signage installed is to be maintained as part of the development to manage any noise from vehicle antennas in the drive-thru.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT****3. Directional Signage**

Prior to commencement of operating hours all vehicle directional signage is to be maintained, including trimming of obscuring vegetation, to ensure the proper management of access to the site and clearly identify all entry and exit points and parking for all types of vehicles. Where an access point is entry or exit only appropriate signage is to be installed to identify this to customers. Where there is a car park pedestrian crossing appropriate pedestrian signage should also be installed. All necessary signage installations must comply with the relevant Australian Standard.



**CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES****4. Management of Litter**

Documentary evidence should be available to Council staff demonstrating compliance with the Plan of Management (March 2021) in relation to the removal of on-site waste in the Public Domain for such areas as, but not limited to, the footpath, gutter, building entry and surrounds. The Litter Patrols identified in the Plan of Management are to be confirmed via a register and signed by the person undertaking the action.

**5. Maintenance of landscaping**

All existing landscaping is to be maintained and remedial pruning is to be undertaken regularly at the site, as per the requirements of the Crime Risk Assessment and plan of management (March 2021), this consent or as otherwise directed by Council in writing. This is to ensure natural surveillance is able to occur on the premises.

**6. Outdoor Lighting**

All lighting installed is to be designed and positioned to minimise any adverse impact on neighbouring premises. Any outdoor lighting installations must comply with the relevant Australian Standards AS/NZ 1158.3.1:2005 Lighting for Roads and Public Spaces Pedestrian Area Lighting and Public Spaces Pedestrian Area (Category P) Lighting - Performance and Design Requirements AS 4282.1997 Control of the Obstructive Effects of Outdoor Lighting. Car Park lighting must also minimise light spill and is to be in accordance with AS 1158 and AS 4282-1997.

Where the person acting with this consent becomes aware of a complaint or issue with outdoor lighting affecting the amenity of adjoining premises reasonable steps are to be taken to address the issue and minimise the impact of any light spill on adjoining land.

**REASON FOR IMPOSITION OF CONDITIONS:**

The reason for the imposition of the following conditions is to ensure, to Council's satisfaction, the objects of the *Environmental Planning and Assessment Act 1979* (as amended) are achieved:

**(a) To encourage:**

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forest, minerals, water, cities, towns, and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
- (ii) The promotion and co-ordination of the orderly and economic use of development of land;
- (iii) The protection, provision, and co-ordination of communication and utility services;
- (iv) The provision of land for public purposes;
- (v) The provision and co-ordination of community services and facilities;

- (vi) The protection of the environment, including the protection and conservation of native animals and plants including threatened species, populations, and ecological communities and their habitats;
- (vii) Ecologically Sustainable Development; and
- (viii) The provision and maintenance of affordable housing.
- (b) To promote the sharing of the responsibility for environmental planning between the different levels of government in the State.
- (c) To provide increased opportunity for public involvement and participation in environmental planning and assessment.

**ADVICE:**

- Where indicated by specific reference in a condition above, approval is also granted for Section 68 of the Local Government Act 1993 to carry out sewer drainage, water supply work and stormwater drainage.
- You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration or internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a modification under Section 96 of the Environmental Planning & Assessment Act, 1979. Any such changes may need to be the subject of a separate Development Application.

Please bear this in mind before preparing documentation in support of a Construction Certificate application. Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of the Environmental Planning & Assessment Act.

- This document is a development consent only, and does not authorise construction or subdivision works to commence. Prior to commencing any building, subdivision or associated construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (the 'Act') are to be complied with:
  - (i) A Construction Certificate is to be obtained in accordance with Section 6.7 of the Act.
  - (ii) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6(1) of the Act.
  - (iii) Council is to be notified at least two (2) days before the intention to commence building works, in accordance with Section 6.6(2) of the Act.
- The applicant may apply to the Council or an Accredited Certifier for the issuing of a Construction Certificate and to be the Principal Certifying Authority to monitor compliance with the approval and issue necessary documentary evidence or certificate/s.
- Failure to comply with any of the above requirements is an offence under the provisions of the Act, and may result in enforcement action being taken by Council if these requirements are not complied with.

**RIGHT OF APPEAL:**

Sections 8.2, 8.3, 8.4, 8.5 of the Environmental Planning and Assessment Act 1979 provide that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six (6) months *after receipt of this Notice of Determination*, together with payment of the appropriate fees. It is recommended that the applicant discuss any request for a review of the determination with Council Officers before lodging such a request.

If you are dissatisfied with this decision, Section 8.7, 8.10 of the Environmental Planning and Assessment Act, 1979 give you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice.



Our ref: 631.30066

23 March 2021

The General Manager  
Muswellbrook Shire Council  
PO Box 122  
Muswellbrook NSW 2333

## **CRIME RISK ASSESSMENT**

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### **1 INTRODUCTION**

The purpose of this report is to identify and assess crime risk associated with the proposed extension to trading hours of the McDonald's located at 83-89 Maitland Street, Muswellbrook to identify any design elements of the McDonald's that may contribute to opportunities for crime, so that these may be 'designed out' to maximise safety during the extended hours.

### **2 CRIME OPPORTUNITY**

Given the proposed operational hours of the McDonald's are 24 hours, 7 days a week, there is potential for increased opportunity for crimes or anti-social behaviour (e.g. vandalism, graffiti, litter, excessive noise) at the site, particularly during night-time hours.

### **3 CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

Crime Prevention through Environmental Design (CPTED) is a crime prevention strategy that focuses on the planning, design and structure of cities and neighbourhoods. It reduces opportunities for crime by using design and place management principles that reduce the likelihood of essential crime ingredients from intersecting in time and space.

CPTED aims to influence the design of buildings and places by:

- + Increasing the perception of risk to criminals by increasing the possibility of detection, challenge and capture;
- + Increasing the effort required to commit crime by increasing the time, energy or resources which need to be expended;
- + Reducing the potential rewards of crime by minimising, removing or concealing 'crime benefits'; and
- + Removing conditions that create confusion about required norms of behaviour (Department of Planning and Environment, formerly the Department of Urban Affairs and Planning, 2001).

CPTED employs 4 key strategies. These include surveillance, access control, territorial reinforcement and space/activity management.

631.30066\_CPTED\_Muswellbrook\_McD\_Trading Hours\_March2021



In accordance with the 4 key strategies, the principals of Crime Prevention and Public Safety are addressed in relation to the existing store and the proposed extension to trading hours:

### 3.1 NATURAL SURVEILLANCE

Natural surveillance limits the opportunity for crime by increasing awareness that people can be seen. Potential offenders therefore feel increased scrutiny and limitations on their escape routes.

Good surveillance is achieved by:

- a) Clear sightlines between private and public spaces;
- b) Effective lighting of public places; and
- c) Landscaping that makes places attractive, but not a place to hide.

The design of the existing McDonald's affords natural surveillance by the strategic placement of physical features and buildings to maximise visibility within the site, particularly the carpark. The specific design elements include:

- + Clear sight lines between the site and adjoining streets and businesses, allowing maximum visibility and surveillance at the vehicular entry into the site;
- + The maintenance levels for paths of travel comply with AS1680;
- + Appropriate day and night lighting ensures potential problem areas like car parks and corners are well lit; and
- + No 'hidden spots' have been created within the site. Any external areas not visible from the building are captured on closed circuit television (CCTV) and this is advertised.

### 3.2 NATURAL ACCESS CONTROL

Natural access control limits the opportunity for crime by taking steps to clearly differentiate between public space and private space.

Good access control for the movement of people is achieved by:

- a) Landscapes and physical locations that channel and group pedestrians into target areas;
- b) Public spaces that attract rather than discourage people from gathering; and
- c) Restricted access to internal or high risk areas (e.g. car parks).

The site has been designed to limit access and control flow by:

- + The creation of attractive open spaces within the development;
- + Clear delineation of the property boundary with landscape treatment;
- + Use of landscaping that supports pedestrian access within the site; and
- + Appropriate lighting and signage for customers.

### 3.3 TERRITORIAL REINFORCEMENT (COMMUNITY OWNERSHIP)

Territorial reinforcement promotes social control through increased definition of space and improved proprietary concern, i.e. it makes the normal user feel safe and makes the potential offender aware of a substantial risk of apprehension or scrutiny. By using buildings, fences, pavement, signs, lighting and landscape to express ownership and define public, semi-public and private space, natural territorial reinforcement occurs.

Community ownership (territorial reinforcement) makes people feel comfortable in a place and is achieved by:

- a) A design that encourages people to gather in public spaces;
- b) Having a clear transition between boundaries of public and private spaces; and
- c) Having clear design cues as to who is to use the space and what it is to be used for.

The McDonald's operation has been designed to clearly delineate spaces that are to be used for congregation and areas that are not. This will ensure that any potential intruders or people who are not customers of the store will stand out and be easily identified. Elements of territorial reinforcement included in the original design and ongoing management of the McDonald's include:

- + The premises and landscaping is maintained such that it communicates an alert and active presence occupying the space;
- + Clearly defined boundaries of the development. This can be seen in the large car parking area that is for the parking of vehicles and not loitering; and
- + Provision of directional signage that assists in controlling activities and movements throughout the premises (knowing how and where to enter/exit and find assistance can impact on safety).

### 3.4 SPACE MANAGEMENT

Space management strategies such as site maintenance, target hardening, and target removal are included in the development.

#### 3.4.1 MAINTENANCE

Management and maintenance are closely linked to a sense of ownership. Good management and maintenance of a place, or property, is often the difference between it seeming safe or unsafe and it being cared for or uncared for. Deterioration indicates less control by the users of a site and indicates a greater tolerance of disorder.

It is in McDonald's self-interest of to maintain the site to a high standard so that customers continue to visit the site both during the day and night periods. Routine maintenance checks and reporting will be carried out to ensure the property is maintained and to reduce the likelihood of crime or vandalism.

Furthermore, robust materials (including graffiti resistant materials) have been used where appropriate. Any vandalism or graffiti is repaired and removed promptly by personnel or contractors.

#### 3.4.2 TARGET HARDENING AND REMOVAL

Target hardening and removal is the use of 'design out crime' strategies to make it harder for a crime to be committed and reduces the gains of crime. While this is the most long-established and traditional approach to crime prevention, it can create a 'fortress mentality' and imagery whereby users of the development withdraw behind physical barriers and the self-policing capacity of the built environment is damaged. This is effectively working against CPTED strategies that rely on surveillance, territoriality and positive image management.





The proposal includes the use of some physical barriers associated with target hardening; however, the site allows opportunities for natural surveillance from within the site, with clearly defined boundaries, and allows opportunities for natural access control. The site design has ensured that there is a safe environment for customers and workers within the site.

#### **4 CONCLUSION**

The above-mentioned measures that have been designed and constructed into the existing McDonald's operation at the site located at 83-89 Maitland Street Muswellbrook creates an environment that dissuades offenders from committing crimes by manipulating the built environment in which those crimes proceed from or occur.

The proposed trading hours of the Muswellbrook McDonald's premises is considered to be consistent with the Department of Planning and Environment (former Department of Urban Affairs and Planning) Crime Prevention and the Assessment of Development Applications, 2001.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Quinlan'.

Patrick Quinlan (BURP) (NSW Police Safer by Design Course)

**Associate**

**SLR Consulting Australia**



Muswellbrook Shire Council  
MUSWELLBROOK. NSW. 2333

19 May 2021

Attention: Alisa Evans  
Project Planner

RE: Development Application No. DA 2021 - 30.  
Proposal: Change of Trading Hours to 24/7.

Location: 83 – 89 Maitland Street, Muswellbrook

Dear Elisa,

Hunter Valley Police District has received the application that was prepared by KDC and this included a Crime Risk Assessment and a Plan of Management (POM).

The Hunter Valley Police do not object to the application and are aware that during the COVID 19 pandemic that the Store has been operating under a COVID order with extended hours since 25 October 2020.

Hunter Valley Police have recorded several events in late 2020 relating to persons loitering in the carpark but they were dealt with at the time by Police. The POM sets out the process of calling and reporting incidents to Police and this appears to be adhered to and working. Since the Store has been operating the extended hours, there has been less loitering occurring in the carpark and this could be attributed to the increase in the perceived passive surveillance from the store being operational 24 hours. We encourage positive relationship between the store and the Police to continue, with a shared goal of maintaining the peace and quiet order of the neighbourhood.

In July 2018, Hunter Valley Police commented on a similar application for the same location. At the time it was recommended to have temporary barriers be placed in the carpark to deter vehicles from stopping in the carpark after hours leading to loitering and antisocial behaviour. Hunter Valley Police revise this recommendation and do not pursue this recommendation from that report.

We would like to thank you for the opportunity of inspecting the plans for this development and should you require further information on the subjects mentioned within this report feel free to contact Senior Constable Sheree Gray, Crime Prevention Officer, Hunter Valley Police District, Phone 6542-6999.

Yours faithfully



Chief Inspector Guy Guiana APM  
Officer In Charge Muswellbrook & Upper Hunter  
Hunter Valley Police District.

Hunter Valley Policing District

26 William Street, Muswellbrook NSW 2333

T 02 65426999 E [huntermvalley@police.nsw.gov.au](mailto:huntermvalley@police.nsw.gov.au)

TTY 02 9211 3776 for the hearing and speech impaired ABN 43 408 613 180

**TRIPLE ZERO (000)**

Emergency only

**POLICE ASSISTANCE LINE (131 444)**

For non emergencies

**CRIME STOPPERS (1800 333 000)**

Report crime anonymously

**DEVELOPMENT ASSESSMENT REPORT****Attached:** Site Plan**REPORT TO THE GENERAL MANAGER**

<b>ADDRESS:</b>	LOT 2 DP 1230519 10-16 Bridge Street MUSWELLBROOK
<b>APPLICATION No:</b>	DA 82/2020
<b>PROPOSAL:</b>	Commercial Fitout (Upgrade to Kitchen), Outdoor Dining and Amendments to Car Park)
<b>OWNER:</b>	Mr H T & Mrs P Ord
<b>APPLICANT:</b>	Great Northern Investment Group Pty Ltd 12 Bridge Street Muswellbrook NSW 2333
<b>AUTHOR:</b>	Ms A J Evans
<b>DATE LODGED:</b>	11/08/2020
<b>AMENDED:</b>	21/06/2021
<b>ADD. INFO REC'D:</b>	21/06/2021
<b>DATE OF REPORT:</b>	18 July 2021

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**SUMMARY**

**ISSUES:** Unauthorised Works, access and car parking

**SUBMISSIONS:** 0

**RECOMMENDATION:** Approval subject to conditions

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**Documents reference to in the assessment but not attached:**

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulations 2000
- Water Management Act 2000
- Building Code of Australia
- Local Environmental Plan 2009
- Development Control Plan 2009
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No.55 – Remediation of Land
- State Environmental Planning Policy No.64 – Advertising and Signage
- Rivers & Drainage Channels Policy
- Contaminated Land Policy
- Interim Construction Noise Guidelines
- Hunter River Flood Study 2014
- Protection of the Environment Operations Act 1997
- Protection of the Environment Operations (UPSS) Regulation 2014
- Protection of the Environment Operations (Noise Control) Regulation 2008
- Food Act 2003
- Public Health Act 2010
- Public Health Regulation 2012
- Telecommunications Act 1997
- Telecommunications in New Developments Policy
- Australia and New Zealand Food Standards Code
- Australian Standard 1428: 2009– Design for Access & Mobility
- Australian Standard 4674: 2004 – Design, construction and fit out of a food premises
- Australian Standard 2890.1: 2004 – Parking Facilities – Off Street Car Parking
- NSW Environment Protection Authority Noise Policy
- Floodplain Development Manual

**1.0 DESCRIPTION OF PROPOSAL**

The application seeks consent for completed works at 10-16 Bridge Street Muswellbrook (Lot 2 DP 1230519). The works include a new kitchen, the beer garden, alterations to car parking (with accessible access to premise) and demolition (carport).

The upgrade to be kitchen and beer garden have already been undertaken and the application is for the use only. The remaining works to be undertaken are the accessible access and car park.

The subject land is zone B2 Local Centre and a Local Heritage Item under MLEP 2009.

**2.0 SPECIALIST COMMENTS****2.1 Internal Referrals**

The application was referred to Council's Building Section, Environmental Health Officer, Community Infrastructure, Planning Section, and Community and Cultural Services section. Each section reviewed the proposal and recommended standard conditions to be placed on the development consent should the application be approved.

**2.2 External Referrals****2.2.1 NSW Police**

No response received.

### 3.0 ASSESSMENT

This report provides an assessment of the material presented in the Application against the relevant State and local planning legislation and policy.

#### Section 4.15 Matters for Consideration

##### Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument (EPI)

The following EPIs, DCPs, Codes and Policies are relevant to this Application:

#### 1. Muswellbrook Local Environmental Plan 2009 (MLEP 2009)

##### Land Use Zone and Permitted Land Use

The development site is zoned B2 Local Centre pursuant to MLEP 2009. The proposal is best defined as *food and drink premise*, which is permitted with consent in the subject Zone.

##### Objectives of the B2 Local Centre Zone

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To maintain the status and encourage the future growth of the Muswellbrook established business centre as a retail, service, commercial and administrative centre while maintaining the centre's compact form.*
- *To enable a wide range of land uses that are associated with, ancillary to, or supportive of the retail and service functions of a business centre.*
- *To maintain the heritage character and value and streetscape of the business centre of Muswellbrook.*
- *To support business development by way of the provisions of parking and other civic facilities.*

It is considered that the development proposal is not contrary to the objectives of the Zone.

##### Relevant Clauses applicable under the Muswellbrook Local Environmental Plan 2009

<b>Part 2</b>	
2.7 Demolition requires development consent	Minor structure (carport) will be demolished to facilitate carpark. No additional required information. Standard conditioned applied.
2.8 Temporary use of land	NA
<b>Part 3 Exempt and complying development</b>	
3.1 Exempt development	NA
3.2 Complying development	NA
3.3 Environmentally sensitive areas excluded	NA
<b>Part 4 Principal development standards</b>	
4.1 Minimum subdivision lot size	NA
4.3 Height of buildings	NA no building works
4.4 Floor space ratio	NA
4.6 Exceptions to development standards	NA
<b>Part 5 Miscellaneous provisions</b>	
5.6 Architectural roof features	NA



5.8 Conversion of fire alarms	Fire safety compliant.
5.9 Preservation of trees or vegetation	NA
5.9AA Trees or vegetation not prescribed by development control plan	NA
5.10 Heritage conservation	Site contains Local Heritage Item. Works do not compromise the heritage significance of the item. Works located in a highly disturbed area at rear of site.

## 2. State Environmental Planning Policy

The following State Environmental Planning Policies apply to the Muswellbrook Local Government Area and were considered and found not to be applicable to the proposed development.

- SEPP No. 21 Caravan Parks
- SEPP No. 30 Intensive Agriculture
- SEPP No. 33 Hazardous and Offensive Development
- SEPP No. 36 Manufactured Home Estates
- SEPP No. 44 Koala Habitat Protection
- SEPP No. 55 Remediation of Land
- SEPP No. 62 Sustainable Aquaculture
- SEPP No. 64 Advertising and Signage
- SEPP No. 65 Design Quality of Residential Flat Development
- SEPP (Housing for Seniors or People with Disability) 2004
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (infrastructure) 2007
- SEPP (Mining, Petroleum Production and Extractive Industries) 2007
- SEPP (miscellaneous Consent Provisions) 2007
- SEPP (Rural Lands) 2008
- SEPP (Exempt and Complying Development Codes) 2008
- SEPP (Affordable Renting Housing) 2009
- SEPP (State and Regional Development) 2011

### **Section 4.15(1)(a)(ii) the provisions of any draft EPI.**

There are no draft EPIs relevant to the subject Application.

### **Section 4.15(1)(a)(iii) the provisions of any development control plan**

#### Section 3 – Site Analysis

It is considered that the documentation provided with the Development Application satisfies the provisions of Section 3 of the MDCP 2009.

#### Section 9 – Local Centre Development

The proposed application is consistent with the provisions of the MDCP 2009.

#### Section 16 – Car Parking and Access

The proposed development is non-compliant with the requirements of the DCP. The proposal will improve accessible parking and access to the premise. However, the proposed development is deficient by one on-site car parking space. Community Infrastructure have recommended that a planning agreement be entered allowing a contribution to be paid to Council to assist in car parking options with the locality.

The applicant has agreed to a condition of consent being applied for \$9000.00 to be paid per car parking space deficient.

Section 94A Contributions Plan 2009

No contribution payable due to the cost of works being below the threshold for contributions.

**Section 4.15(1)(a)(iia) the provisions of any planning agreement**

There are no existing planning agreements relevant to the subject Application.

**Section 4.15(1)(a)(iv) the provisions of the regulations**

Division 8A of the Environmental Planning and Assessment Regulation 2000 applies to the development.

**Section 4.15(1)(a)(v) the provisions of any coastal zone management plan**

This item is not relevant to the subject Application.

**Section 4.15(1)(b) the likely impacts of that development**

The following additional matters were considered and, where applicable, have been addressed elsewhere in this report:

Context & Setting	Waste
Built Form	Energy
Potential Impact on Adjacent Properties	Noise and Vibration
Access, Traffic and Transport	Natural hazards
Public Domain	Technological hazards
Utilities	Safety, Security, and Crime Prevention
Heritage	Social Impact on Locality
Other land resources	Economic Impact on the Locality
Water	Site Design and Internal Design
Soils	Construction
Air & microclimate	Cumulative Impacts
Flora & fauna	

**Section 4.15(1)(c) the suitability of the site for the development**

It is considered that the development is compatible with surrounding land uses and site characteristics, subject to consent conditions.

**Section 4.15(1)(d) any submissions made**

The Application was notified for a period of not less than fourteen days from 24 August 2020 until 7 September 2020 and 23 September until 7 October 2020. A notice was also placed in the local newspaper, and the Hunter Valley News at the commencement of the notification period.

No submissions were received during the notification period.

**Section 4.15(1)(e) the public interest.**

It is considered that the proposal is in the public interest. The continued use of the premise assists in the ongoing maintenance and conservation of a Local Heritage Item.

NSW Legislation

The applicable legislation has been listed at the start of the report. The assessment has considered these pieces of legislation throughout the report in their relevant sections.

**5 CONCLUSION**

The application has been assessed under s4.15 of the EP&A Act. It is recommended the application be approved subject to conditions of consent.

Signed by:



Alisa Evans  
Development Planner

Date: 19/07/2021

**Disclosure of Political Donations and Gifts:**

No disclosures of a political donations or gifts have been made in relation to this application.

**SOCIAL IMPLICATIONS**

The development as presented will not result in any specific social implications for Council.

**FINANCIAL IMPLICATIONS**

This development as presented has no direct financial impact upon Council's adopted budget or forward estimates.

**POLICY IMPLICATIONS**

The development as presented will not result in any specific policy implications for Council.

**STATUTORY IMPLICATIONS**

Statutory implications relating to assessment of the subject application have been addressed in the body of the report

**LEGAL IMPLICATIONS**

This matter has no specific legal implications for Council.

**OPERATIONAL PLAN IMPLICATIONS**

This matter has no specific Operational Plan implications for Council.

**RISK MANAGEMENT IMPLICATIONS**

This matter has no specific risk management implications for Council.

#### IDENTIFICATION OF APPROVED PLANS

#### 1. Development in Accordance with Plans

The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions.

Drawing No.	Revision	Drawn by	Drawing Date	Received
Job No.013-21 2 of 2	1	P.B Eveleigh Plan Service	23/05/2021	21/06/2021
Kitchen Details 20 of 20 pages	B	Vianen Australia	15/05/2020	13/08/2020

#### 2. Operation of Consent

The operation of the premises on the subject land is to be in accordance with previous consent DA 114/2002 unless amended by a condition of consent of this application (DA 2020-82).

#### OPERATIONAL CONDITIONS IMPOSED UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS AND OTHER RELEVANT LEGISLATION

#### 3. Building Code of Australia

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

#### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT

#### 4. Planning Agreement

Prior to commencement the person acting with this consent shall submit to Council a draft Planning Agreement between the person acting with this consent and Council. The Planning Agreement shall relate to the payment of a contribution of \$9,000.00 per on-site car parking space deficit for this application.

The draft Planning Agreement is to be prepared by an appropriately qualified person. The Planning Agreement is to be entered into by the relevant parties prior to the issue of an Occupation Certificate unless otherwise agreed by Council.

#### 5. Fit-out of kitchen to be in accordance with relevant legislation and standards

Prior to commencement the applicant shall submit detailed design plans to the Principle Certifying Authority demonstrating that the fit out of the food preparation, storage, handling and serving areas would comply with the requirements of Food Act 2003, Food Regulation 2015 and Australian Standards relevant design construction and fit out of food premises (AS4674)

#### 6. Final inspection by Council's Environmental Health Officer required

Prior to the issue of an Occupation Certificate, a satisfactory final inspection of the kitchen must be undertaken by Council's Environmental Health Officer to determine compliance with relevant construction requirements.

**7. Traffic Management Plan**

A Traffic Management Plan, prepared by an appropriately qualified civil engineer, shall be submitted to Council for written approval prior to the issue of any Construction Certificate. The Traffic Management Plan shall include certification and details addressing the following:

- (a) Details demonstrating compliance with relevant provisions in AS2890.1 – Off Street Car Parking Facilities, including, but not limited to, aisle widths, and parking space dimensions;
- (b) Details of the proposed circulation routes within the car park;
- (c) Details of proposed pedestrian routes, kerb construction methods and other protective measures such as bollards, or the like, to ensure safety of users;
- (d) Details of proposed traffic control signage to be installed and references to relevant RTA Guidelines and Australian Standards; and
- (e) Details of speed limit restrictions within the car park.

Notes:

- (i) It is recommended that the Traffic Management Plan be prepared and submitted at an early stage as the Traffic Committee only meets once a month and make require further information prior to approval.
- (ii) The Traffic Management Plan is used to ensure appropriate safety and traffic management is provided within the development which can be enforced through relevant legislation. It is in the interests of the applicant that it is completed.

**8. Accessible Carparking**

A total of ONE (1) accessible car-parking space, shall be provided as part of the total car-parking requirements. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas within the building and to footpath and roads and shall be clearly shown on the plans submitted to the Certifying Authority for approval with the Construction Certificate. All details shall be prepared in consideration of, and construction completed in accordance with Australian Standard AS2890.1 to achieve compliance with the Disability Discrimination Act, and the relevant provisions of AS1428.1 and AS1428.4.

**9. Off-Street Car Parking**

A total of six (6) off-street car parking spaces, together with access driveways, shall be constructed, paved, line marked and signposted in accordance with the approved development plans, appropriate Australian Standards and industry best practice as appropriate. The plans shall also nominate the allocation of parking spaces for specific purposes as required by conditions of this consent. A certificate prepared and certified by an appropriately qualified and practising Civil Engineer for the construction of these areas in accordance with this requirement shall be submitted to the Certifying Authority for approval with the Construction Certificate.

**10. Garbage and Recycling Facilities**

An appropriate area shall be provided within the premises for the storage of garbage bins and recycling containers and all waste and recyclable material generated by this premises. The following requirements shall be met:

- a) all internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained with a tap in close proximity to facilitate cleaning,
- b) include provision for the separation and storage in appropriate categories of material suitable for recycling,
- c) the storage area shall be adequately screened from the street and located behind the building line,
- d) garbage enclosures serving residential units are to be located within areas designated for non-residential uses, and
- e) all waste is to be removed weekly from the site by a contractor and disposed of at a site approved for such purposes.
- f) the tactile markers proposed are to be steel to prevent damage from a garbage truck (and accessible vehicle).

Details of the storage area are to be provided to Council and approved by the Certifying Authority prior to commencement.

**CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK****11. Construction Hours**

- (a) Subject to this clause, building construction is to be carried out during the following hours:
  - i. between Monday to Friday (inclusive)—7.00am to 6.00pm
  - ii. on a Saturday—8.00am to 1.00pm
- (b) Building construction must not be carried out on a Sunday or a public holidays.
- (c) Demolition works and excavation works must only be carried out between Monday to Friday (inclusive) between 8.00am and 5.00pm.
- (d) The builder and excavator must display, on-site, their 24 hour contact telephone numbers, which are to be clearly visible and legible from any public place adjoining the site.

**12. Applicant's Cost of Work on Council Property**

The applicant shall bear the cost of all works associated with the development that occurs on Council's property.



**13. Excavation/Demolition**

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- (c) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.
- (d) The builder is to ensure that persons working on the site comply with the WorkCover Authority's requirements.

**14. Mandatory Council Inspections**

At the following stages of construction, a satisfactory report from Council is to be obtained prior to works proceeding:

- (a) Sewer drains – all pipes are to be correctly laid, suitably bedded and ready to backfill. Suitable backfill material is to be available on site at the time of inspection.
- (b) Connection of stormwater drainage to easement– following installation and bedding of drainage lines and prior to backfilling
- (c) Driveway crossover of the footpath or nature strip:
  - prior to pouring concrete
  - Section 138 Roads Act Permit required prior to inspection being carried out.
- (d) Council infrastructure- at completion of works and prior to an Occupation Certificate inspection.

To arrange an inspection please contact Council's Environmental Service Department on (02) 6549 3745.

Note: Inspection fees will be charged in accordance with Council's adopted fees and charges and must be paid prior to the issue of the Construction Certificate.

**15. No Work on Public Land**

The applicant shall not enter or undertake any work within adjoining public lands (i.e. Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the applicant is to liaise with Council prior to the commencement of any design works or preparation of a Construction Management Plan.

**16. Protection of Public Place**

- (1) If the work involved in the erection or demolition of a building:
  - (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
  - (b) building involves the enclosure of public land,
    - a hoarding and site fencing must be erected between the work site and the public place and be contained within the site boundary unless prior permission has been obtained in writing from Council.
- (2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with construction activity from falling into the public place.
- (3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- (4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- (5) No access across public reserves or parks is permitted.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE****17. Occupation**

The building is not to be used or occupied until a final inspection has been carried out and an occupation certificate has been obtained from the Principal Certifying Authority.

**18. Planning Agreement**

Unless otherwise agreed by Council in writing, the person acting with this consent is to enter into a Planning Agreement with Council for the payment of a contribution in accordance with the terms offered by the applicant and referenced by this consent prior to the issue of an Occupation Certificate.

**CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES****19. Stormwater Disposal**

All stormwater from the development including all hardstand areas and overflows from rainwater tanks, is to be collected and disposed of to:-

- (a) the registered stormwater easement;
- (b) the inter allotment stormwater pit located within the property boundary;
- (c) the kerb and gutter (piped) or
- (d) the existing stormwater drainage on site.

**20. Smoke Free Environment**

All public areas are to comply with the Smoke Free Environment Act 2000 and Smoke Free Environment Regulation 2016.

**21. Garbage Collection**

Waste collection to the premise is only to occur between the hours of 6:00pm until 8:00pm and 5:00am until 8:00am daily.

**REASON FOR IMPOSITION OF CONDITIONS:**

The reason for the imposition of the following conditions is to ensure, to Council's satisfaction, the objects of the *Environmental Planning and Assessment Act 1979* (as amended) are achieved:

- (a) To encourage:
  - (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forest, minerals, water, cities, towns, and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
  - (ii) The promotion and co-ordination of the orderly and economic use of development of land;
  - (iii) The protection, provision, and co-ordination of communication and utility services;
  - (iv) The provision of land for public purposes;
  - (v) The provision and co-ordination of community services and facilities;
  - (vi) The protection of the environment, including the protection and conservation of native animals and plants including threatened species, populations, and ecological communities and their habitats;
  - (vii) Ecologically Sustainable Development; and
  - (viii) The provision and maintenance of affordable housing.
- (b) To promote the sharing of the responsibility for environmental planning between the different levels of government in the State.
- (c) To provide increased opportunity for public involvement and participation in environmental planning and assessment.

**ADVICE:**

- nil
- Where indicated by specific reference in a condition above, approval is also granted for Section 68 of the Local Government Act 1993 to carry out sewer drainage, water supply work and stormwater drainage.
- You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration or internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a

modification under Section 96 of the Environmental Planning & Assessment Act, 1979. Any such changes may need to be the subject of a separate Development Application. Please bear this in mind before preparing documentation in support of a Construction Certificate application. Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of the Environmental Planning & Assessment Act.

- This document is a development consent only, and does not authorise construction or subdivision works to commence. Prior to commencing any building, subdivision or associated construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (the 'Act') are to be complied with:
  - (i) A Construction Certificate is to be obtained in accordance with Section 6.7 of the Act.
  - (ii) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6(1) of the Act.
  - (iii) Council is to be notified at least two (2) days before the intention to commence building works, in accordance with Section 6.6(2) of the Act.
- The applicant may apply to the Council or an Accredited Certifier for the issuing of a Construction Certificate and to be the Principal Certifying Authority to monitor compliance with the approval and issue necessary documentary evidence or certificate/s.
- Failure to comply with any of the above requirements is an offence under the provisions of the Act, and may result in enforcement action being taken by Council if these requirements are not complied with.

#### RIGHT OF APPEAL:

Sections 8.2, 8.3, 8.4, 8.5 of the Environmental Planning and Assessment Act 1979 provide that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six (6) months *after receipt of this Notice of Determination*, together with payment of the appropriate fees. It is recommended that the applicant discuss any request for a review of the determination with Council Officers before lodging such a request.

If you are dissatisfied with this decision, Section 8.7, 8.10 of the Environmental Planning and Assessment Act, 1979 give you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice.

## DEVELOPMENT ASSESSMENT REPORT

Attached: Site Plan

## REPORT TO THE GENERAL MANAGER

<b>ADDRESS:</b>	LOT: 2 DP: 1179404 1831 Merriwa Road SANDY HOLLOW			
<b>APPLICATION No:</b>	136/2020			
<b>PROPOSAL:</b>	Alterations and additions to a Heritage Item (Ellamara) and the use of it and its curtilage as Tourist Accommodation and a Function Centre			
<b>PLANS REF:</b>	Drawings no.	Drawn by	Date	Received
	Master Plan (As Amended)	<i>Michael Bligh &amp; Associates Pty Ltd</i>	04/09/2020	25/04/2021
	Proposed Ellamara Front Sandstone Fence	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Proposed Blacksmiths/Storage – Plan 1	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Proposed Blacksmiths Storage – Plan 2	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Proposed Congregational Facility 1	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Proposed Congregational Facility 2	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Proposed Congregational Facility 3	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Proposed Disability Facility – Dis 1	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Existing Grain Shed & Old Kitchen Plan 1	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Existing Grain Shed & Proposed Old Kitchen Plan 2	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Existing Metallic Shed & Bedrooms Plan F1	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Proposed Metallic Shed to Bedrooms/ Brides Quarters – Plan 2	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Proposed Metallic Shed to Bedrooms/ Brides Quarters – Plan 3	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Upgraded Existing Post Office & Residence – Plan B2	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
	Existing Post Office	<i>Ken Lees Building</i>	Not Dated	17/12/2020

	& Residence – Plan B1	Consultancy NSW		
	Proposed Kitchen Meeting, Bedroom, Decking – Sheet 1	Ken Lees Building Consultancy NSW	Not Dated	17/12/2020
	Proposed Managers Residence – Plans	Ken Lees Building Consultancy NSW	Not Dated	17/12/2020
	Proposed Managers Residence – Elevations	Ken Lees Building Consultancy NSW	Not Dated	17/12/2020
	Proposed Equestrian Stables – Plans	Ken Lees Building Consultancy NSW	Not Dated	17/12/2020
	Proposed Equestrian Stables – Elevations	Ken Lees Building Consultancy NSW	Not Dated	17/12/2020
	Proposed Cottage, Store & Water Hole	Ken Lees Building Consultancy NSW	Not Dated	17/12/2020
	Proposed Tank Toilet & Kids Carriage	Ken Lees Building Consultancy NSW	Not Dated	17/12/2020
	Proposed kitchen Meeting, Bedroom, Decking - Elevations	Ken Lees Building Consultancy NSW	Not Dated	17/12/2020
	Site Survey (sheet 1)	RAP Surveying	June 2020	17/12/2020
	Site Survey (sheet 2)	RAP Surveying	June 2020	17/12/2020
<b>OWNER:</b>	Taz Pty Ltd			
<b>APPLICANT:</b>	Ken Lees Building Consultancy Nsw Po Box 77 Swansea NSW 2281			
<b>AUTHOR:</b>	Ms T Jolly			
<b>DATE LODGED:</b>	17/12/2020			
<b>DATE OF REPORT:</b>	14 July 2021			

### SUMMARY

**SUBMISSIONS:** Three (3)

**RECOMMENDATION:** Approval subject to conditions

### 1.0 SITE AND LOCALITY DESCRIPTION

The subject land is Lot 2 in DP 1179404. The address of the land is 1831 Merriwa Road, Sandy Hollow. The site is zoned *RU1 Primary Production* pursuant to MLEP 2009.

The proposal is best defined as a mixed-use development comprising of a *tourist and visitor accommodation* and *Function Centre*, which is permitted with consent in the subject Zone.

The existing site currently contains multiple historic buildings dating back to the late 1880s.



Buildings include an historic former shop, blacksmiths shed, kitchen building and the original post office at 'Ellamara'. The property is identified as a local heritage item in MLEP 2009

The site has frontage to and vehicle access from Merriwa Road. The portion of Merriwa Road fronting the site is a part of the Golden Highway which is a Classified State Road under the control of Transport for NSW.

The site is identified as bush fire prone.

The southern boundary of the property adjoins and is defined by the bank of Halls Creek, which is also the boundary between the Muswellbrook and Upper Hunter Local Government Areas.

Council has not completed a flood study for the Halls Creek catchment and does not have comprehensive flood modelling for the Goulburn catchment fed by Halls Creek east of the site. Flood information for this area is limited to records of the extent of inundation of the 1955 flood. Council records do not identify the site subject to this application as having been affected by flooding during that event. The topography of also suggests that the land is unlikely to be significantly flood affected and that those parts of the site where existing buildings are located are elevated above the creek.

The figures below shows the site in context with the locality. **Figure 1 – Site Aerial (Source: Spectrum)**



Figure 2 – Location of Existing Buildings



## 2.0 DESCRIPTION OF PROPOSAL

The proposal seeks to refurbish the existing buildings located at the 'Ellamara' heritage listed site, the construction of new buildings infrastructure and the use of the premises for tourist accommodation and the holding of events such as wedding receptions, functions. The key elements of the proposal are listed in the table below:

Key Elements of Development		
Element	Notes	Frequency
Accommodation	<ul style="list-style-type: none"> <li>Weekend Stay accommodation</li> <li>Maximum 30 – 40 people</li> <li>Two management staff</li> <li>Access to central kitchen</li> </ul>	<ul style="list-style-type: none"> <li>Three to four days per week</li> </ul>
Congregational Hall and Church	<ul style="list-style-type: none"> <li>Maximum 70 people</li> <li>Day customers</li> <li>Dry catering only</li> <li>Everything brought in and taken away</li> <li>No hot kitchen</li> </ul>	<ul style="list-style-type: none"> <li>Once per week</li> <li>Saturday Night</li> <li>Functions on demand</li> </ul>
Refurbished stables, kitchen, blacksmiths shed, sheds	<ul style="list-style-type: none"> <li>Includes central kitchen to be used by weekend stay customers.</li> <li>Includes an accessible building</li> </ul>	
Marquee Site	<ul style="list-style-type: none"> <li>Site provided</li> <li>Hire marquee for functions</li> <li>Maximum 60 people</li> <li>No toilet access; Sewage managed via eight portable toilets supplied by Coates Hire</li> </ul>	<ul style="list-style-type: none"> <li>Once per week</li> <li>Weekends</li> </ul>

The new buildings proposed as part of this application have been referenced below:

- a) A new managers residence on the north-eastern part of the Site
- b) A Congregational Hall and Church
- c) An accessible accommodation unit
- d) New Stables
- e) Water tank Bathrooms
- f) Swimming pool

At the time the application was lodged it sought approval for the use of the premises as a camping ground in addition to the above, but the proposal was amended through the assessment of this application to remove the proposed camping ground.

### **3.0 SPECIALIST COMMENTS**

#### **3.1 Internal Referrals**

The application was referred to Council's Building Surveyor, Senior Environmental Health Officer, Community Infrastructure Officers, and Council's Heritage Advisor. Each section reviewed the proposal and recommended conditions to be placed on the development consent should the application be approved.

##### 3.1.1 Building Surveyor

Council's Building Surveyor recommended conditions setting out fire safety, pool and building improvements to be provided as part of this development. These have been included in the recommended conditions of consent.

##### 3.1.2 Senior Environmental Health Officer

Council's Environmental Health Officer (EHO) reviewed the application and Wastewater Report. Council's Senior EHO advised of some unresolved issues with the Wastewater Report and recommended that the report not be approved and that an updated report be required with a Section 68 application for the necessary operating system. The conditions recommended have been incorporated into the recommended consent.

##### 3.1.3 Community Infrastructure – Roads and Drainage

The proposed development was referred to Council's Community Infrastructure Roads and Drainage Division to consider the impacts of the proposal on Council's road and stormwater networks.

A response provided by Community Infrastructure Officers recommended the following conditions be applied to the proposed development:

- Details for pathways and shared routes with pedestrians to be appropriately defined and designed as part of CC, in accordance with DCP 16 and relevant Australian Standards.
- All internal roads to be appropriately signposted including 10km/hr speed limit signage and shared path as applicable.
- Accessible parking to be provided, graded, sealed and line-marked in accordance with AS 2890.6 and DCP 16, including appropriate lighting.
- CI notes the proposal for 56 spaces to be provided on site, and CI are satisfied that there are 'overflow' car parking areas available that would mitigate any overflow. CI does not object to the 56 spaces nominated, subject to CC design (coaches are also proposed).



- All parking to be provided in accordance with AS 2890.1, AS 2890.6 and Muswellbrook Council DCP 16. Prior to CC, plans to be submitted detailing design and location of car park areas, cross-sections and drainage.
- All car parking , roadways and hardstand areas are to be designed and constructed for expected traffic loads and include suitable erosion controls to enable the management of stormwater and its dispersion in accordance with DCP 16 and DCP 25 so as to avoid excessive erosion and/or scouring. CI do not object to gravel car parking areas for the site given the rural nature of the site, provided that all car parks, drains and accessways be maintained at all times
- All driveways and accessways to be provided with appropriate one-way cross fall including grassed or sealed table drains and appropriate rock check dams prior to any discharge point. All stormwater control measures are to be maintained at all times and reasonable improvements made where evidence of erosion or scouring is observed through the operation of the premises and/or after significant rain events as applicable as per DCP 25.
- Detention of stormwater to be provided for nuisance and significant flood events from additional hardstand areas in accordance with DCP 25.
- All service vehicles and buses on site are to enter and exit in a forward direction and turning circles should be provided for any car park shared space between cars and buses and service vehicles prior to CC. The Design Vehicle would be a 9.9m length vehicle.
- Areas for bus parking should be provided prior to CC approval including turning bays, including any provisions for bus "drop off" areas with appropriate signage.
- Driveway crossovers to be sealed between the Golden Hwy roadway with a minimum 2-coat spray seal to the site boundary plus 3m internally beyond the boundary as an apron
- Any works within the road corridor to be prepared and managed under a S138 permit and WAD from TfNSW
- Stormwater for the site to be managed in accordance with DCP 25, including swales, cut-off drains, spreaders and pits as applicable to avoid erosion, particularly in unsealed and steeper areas.
- The current entry is to be permanently closed and fenced off to prevent entry/exit.
- Prior to OC all car parking areas, signage, access driveways and drainage controls to be fully constructed.
- CI generally has no objections to advice from TfNSW regarding the access to the property, however it is noted that no safe turning has been recommended or allowed towards Sandy Hollow (only towards Merriwa). A request to TfNSW has been made by CI to consider the matter and we are awaiting their feedback. We understand that TfNSW is currently reviewing this.

These comments and recommended requirements have been reviewed and consolidated into recommended conditions of consent that capture the requirements and recommendations.

#### 3.1.4 Heritage Advisor

Council's Heritage Advisor reviewed the application and provided plans and noted that the project is a suitable re-use of the heritage buildings with complementary, contemporary style, additional buildings. She recommended the following condition:

External colour scheme:

Prior to the issue of a construction certificate, a schedule of external colours and finishes (include paint manufacturers sample chips) is to be submitted to and approved by Council's Heritage Advisor.

**3.2 External Referrals**Transport for NSW

The proposal involves the construction of two access crossovers from the Golden Highway. Under the Roads Act 1993, any work to connect a road (whether public or private) to a classified road requires the concurrence of TfNSW. A referral was sent out to Transport for NSW.

Transport for NSW raised no objection to the application and listed matters and recommendations for Council's consideration. The recommendations of Transport for NSW have been reviewed and incorporated into recommended conditions of consent.

NSW Rural Fire Service

The proposed development is integrated development under the EP&A Act 1979 which requires referral to the NSW RFS for concurrence, pursuant to Section 100B of the Rural Fires Act 1997. The proposal involves 'tourist or visitor accommodation' on 'bushfire prone land'.

The requirements of the NSW RFS General Terms of Approval have been included in the recommended conditions of consent.

AUSGRID

The proposed development was referred to AUSGRID as the energy authority responsible for the power line that intersects the property.

AUSGRID provided comments setting out terms for the development of the site and any landscaping within the electricity easement.

A recommended condition of consent has been drafted to reference this letter and its terms in any Notice of Determination.

Sandy Hollow Progress Association

The proposed development was notified to the Sandy Hollow Progress Association as part of its public notification. The Sandy Hollow progress Association did not provide a response.

**4.0 ASSESSMENT**

This report provides an assessment of the material presented in the Application against the relevant State and local planning legislation and policy.

**Section 4.15 Matters for Consideration****Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument (EPI)**

The following EPIs, DCPs, Codes and Policies are relevant to this Application:

**1. Muswellbrook Local Environmental Plan 2009 (MLEP 2009)****Land Use Zone and Permitted Land Use**

The development site is zoned RU1 Primary Production pursuant to MLEP 2009.

The proposal is best defined as a mixed-use development comprising Tourist and Visitor Accommodation and Function Centre, which is permitted with consent in the subject Zone.

**Objectives of the Zone**

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To protect the agricultural potential of rural land not identified for alternative land use, and to minimise the cost to the community of providing, extending and maintaining public amenities and services.*
- *To maintain the rural landscape character of the land in the long term.*
- *To ensure that development for the purpose of extractive industries, underground mines (other than surface works associated with underground mines) or open cut mines (other than open cut mines from the surface of the flood plain), will not—*
  - a) *destroy or impair the agricultural production potential of the land or, in the case of underground mining, unreasonably restrict or otherwise affect any other development on the surface, or*
  - b) *detrimentally affect in any way the quantity, flow and quality of water in either subterranean or surface water systems, or*
  - c) *visually intrude into its surroundings, except by way of suitable screening.*
    - i. *To protect or conserve (or both)—*
    - ii. *soil stability by controlling development in accordance with land capability, and*
    - iii. *trees and other vegetation, and*
    - iv. *water resources, water quality and wetland areas, and their catchments and buffer areas, and*
    - v. *valuable deposits of minerals and extractive materials by restricting development that would compromise the efficient extraction of those deposits.*

Clause 2.3 of the MLEP 2009 requires a consent authority to have regard to the relevant land use zoning objectives when determining a development application. Council Officers have considered the proposed development against the RU1 Primary Production Zone land use zone objectives referenced above.



It is the view of Council Officers that the proposal would be in keeping with these land use zone objectives as:

1. The proposed development will maintain the natural resource base and will not restrict the future use of the land for primary industries.
2. The development encourages diversity in primary industry enterprises and will not result in the fragmentation and alienation of resource lands.
3. The development will not create conflict between land uses within this zone and land uses within adjoining zones.

Relevant Clauses applicable under the Muswellbrook Local Environmental Plan 2009

<i>Part 1 Preliminary</i>	
<i>Part 2 Permitted or prohibited development</i>	
<i>2.3 Zone objectives and Land Use Table</i>	The proposal involves <i>tourist and visitor accommodating, dwelling house, camping grounds and sewerage system, function centre and place of worship</i> which are permitted with consent in the RU1 Primary Production Zone. <b>Complies</b>
<i>Part 3 Exempt and complying development</i>	
<i>Part 4 Principal development standards</i>	
<i>4.1 Minimum subdivision lot size</i>	The proposal does not involve any subdivision works. <b>Not relevant</b>
<i>4.3 Height of buildings</i>	MLEP 2009 specifies a maximum building height of 12m in relation to the land. The congregational facility is the tallest building proposed and will be of a height of approximately 8m. <b>Complies</b>
<i>4.4 Floor space ratio</i>	The MLEP 2009 does not specify a maximum FSR for the land. <b>Not Relevant</b>
<i>Part 5 Miscellaneous provisions</i>	
<i>5.10 Heritage conservation</i>	The subject site is listed as an item of local environmental Heritage under Schedule 5 of the MLEP 2009 (I41 – Ellamara). It is not listed on the NSW state register, the National Heritage list, the Commonwealth Heritage List, the National Trust Register (NSW) or the former register of the national Estate. A Statement of Heritage impact has been prepared by <i>Rappoport Pty Ltd</i> dated November 2020.  Council's Heritage Advisor reviewed the provided documents and her comments have been discussed above. <b>Complies</b>
<i>5.13 Eco-tourist facilities</i>	The proposal does not involve a development that can be categorised as an eco-tourist facility. <b>Not Relevant.</b>
<i>Part 6 Urban release areas</i>	

<i>Part 7 Additional local provisions</i>	
<i>7.1 Terrestrial biodiversity</i>	The proposed site has not been identified as "Terrestrial Diversity" by Muswellbrook LEP 2009. <b>Not relevant</b>
<i>7.5 Erection of dwelling houses on land in certain rural and environmental protection zones</i>	The land subject to this development application is zoned RU1 Primary Production and thereby the dwelling entitlement provisions of this Clause are relevant to the site and the proposed development.  Given the recorded history of the site as the premises of the Ellamara homestead Council Officers are satisfied that the premises is benefited by a dwelling entitlement. Consequently, the proposed Managers residence may be supported as a replacement/new dwelling at the site. <b>Complies</b>
<i>7.6 Earthworks</i>	The earthworks associated with the site will involve the establishment of the pad for the new structures and will not involve excessive excavation or disturbance of the existing drainage patterns and soil stability in the locality. The Assessing Officer recommends including a standard condition to cease work if any aboriginal archaeological deposit is found during course of construction. <b>Complies</b>

## **2. State Environmental Planning Policy No. 55 – Remediation of Land**

Council Officers are unaware of any activities which have carried out on the site likely to have caused the contamination of the land. No visual evidence of any contamination was observed by Council Officers during an inspection of the site. The site has historically contained a residential home, post office and blacksmith's shop, which is unlikely to create any significant contamination issues. It is therefore considered that the subject site is unlikely to be affected by contamination requiring remediation in accordance with the SEPP. The proposed development may therefore proceed without the need to further consider the provisions of this SEPP.

## **3. State Environmental Planning Policy No.64 – Advertising and Signage**

The proposed development involves the installation of an identification sign on the northern boundary of the site, facing the Golden Highway, a classified road. The signage will be 2500mm x 500mm and less than a metre off the ground.

It is considered that the proposed signage is consistent with SEPP 64, specifically Schedule 1, refer to the table below.

<b>SEPP 64: Schedule 1 Assessment Criteria</b>	
<b>Assessment Item</b>	<b>Planning Comment</b>
<i>1. Character of the area</i>	
<i>2. Special areas</i>	The subject site is not identified as a special area. Therefore, this matter is not applicable to the subject development.
<i>3. Views and vistas</i>	The proposed signage will not obscure or compromise views, will not dominate the skyline and will not limit the viewing rights of other advertisers.

<b>SEPP 64: Schedule 1 Assessment Criteria</b>	
<b>Assessment Item</b>	<b>Planning Comment</b>
4. <i>Streetscape, setting or landscape</i>	As above.
5. <i>Site and building</i>	The proposed signage is considered to be compatible with the scale and proportion of the building on which it is located.
6. <i>Associated devices and logos with advertisements and advertising structures</i>	This matter is not applicable to the subject development.
7. <i>Illumination</i>	The proposed signage will not be illuminated.
8. <i>Safety</i>	The proposed signage is not considered a risk to public safety.

#### **4. State Environmental Planning Policy (Infrastructure 2007)**

##### **Clause 45 Determination of development applications—other development**

The site contains multiple easements for electricity purposes and is located within 5m of an overhead electricity power line. The application does not propose to increase the height of the building located within this area and only proposes internal changes and refurbishment of the building and therefore the Assessing Officer is satisfied that the proposal is unlikely to impact the electricity transmission network.

##### **Clause 101 Development with frontage to classified road**

The proposed site derives access from the golden highway, a state classified road. An external referral was sent to Transport for NSW RMS for comment and has been discussed earlier in the report. Transport for NSW provided Council with advice which has been considered in its assessment and determination of the application.

##### **Section 4.15(1)(a)(ii) the provisions of any draft EPI.**

There are no draft EPIs relevant to the subject Application.

##### **Section 4.15(1)(a)(iii) the provisions of any development control plan**

##### Section 3 – Site Analysis

The documentation provided with the Development Application satisfies the provisions of Section 3 of the Muswellbrook DCP.

##### Section 8 – Rural and Environmental Zone development

The land subject to this development application is zoned RU1 Primary Production.

	<b>Comments</b>
<b>8.1 Introduction</b>	
<b>8.1.1 Dwelling Houses on existing parcels of land</b>	The subject site is benefited by a dwelling entitlement. Accordingly, the erection of the managers residence proposed would be in accordance with the requirements of this clause. <b>Complies</b>
<b>8.2 Built Form</b>	
<b>8.2.1 Scenic Protection and Building Location</b>	Council Officers have considered the proposed development against the requirements of this Clause:  i. The proposal mainly involves the refurbishment of existing buildings. The tallest new building proposed is the congregational facility at 8m

	<b>Comments</b>
	<p>high. The facility has been located an adequate distance away from the road corridor to minimise the impact to the amenity of the site.</p> <p>ii. The proposal does not involve the removal of any substantial remnant vegetation.</p> <p>iii. Any outbuildings associated with the new proposed dwelling (managers residence) will be located to the rear of the site when viewed from the nearest road.</p> <p>iv. The dwelling house is sited on land identified as being suitable for construction and free from contamination, flooding and bushfire risk, the latter subject to the findings and recommendations of the bushfire assessment report.</p> <p>v. Privacy and views of neighbouring houses are reasonably retained.</p> <p>Council Officers are satisfied that the proposed development is in accordance with the provisions of this Section of the DCP.</p> <p><b>Complies</b></p>
<b>8.2.2 Setbacks</b>	<p>The new proposed dwelling and church will satisfy the minimum prescribed setback of 50m from any public road, in this case the Merriwa Road (Golden Highway). In addition, new buildings are not located within 10 m of any property boundary. <b>Complies</b></p>
<b>8.2.3 Colours and Materials</b>	<p>As the proposed site has been listed as containing a Heritage Item, A Heritage Impact statement has been prepared outlining the suitable materials to be used to ensure that the Heritage significance of the site is maintained. The Assessing Officer recommends including a condition to ensure that the materials specified in the HIS is implemented. <b>Complies</b></p>
<b>8.2.4 Car Parking and Access</b>	<p>Council Officers have made the following observations regarding the proposal's relationship with the DCP provisions:</p> <ul style="list-style-type: none"> <li>• The existing 'Ellamara' has direct access to the Merriwa Road. Access to the proposed Managers residence is via existing roadways.</li> <li>• Car parking for the proposed accommodation, church and camping ground will comply with the relevant requirements in Section 16 of the DCP. The Assessing Officer recommends including a standard condition to ensure that access roads are designed and constructed in accordance with AS2890.1 and AUS-PEC requirements.</li> <li>• Existing entry gateways will be set back sufficiently from the front boundary to allow vehicles to pull up off the Merriwa Road.</li> <li>• Access off the Merriwa Road will incorporate a sealed section between the road seal and the boundary alignment to minimise gravel being deposited on the road surface.</li> <li>• Rural property access is to be designed so that</li> </ul>

	<b>Comments</b>
	<p>stormwater flows do not discharge down the access carrying sediment and debris onto the Merriwa Road.</p> <ul style="list-style-type: none"> <li>Appropriate control devices include, but not limited to, mitre drains, pipe culverts, causeways, diversion banks, or other similar water management devices.</li> </ul> <p>Council Officers are satisfied that the proposed development is in accordance with the provisions of this Section of the DCP.</p> <p><b>Complies</b></p>
<b>8.3 Environmental Matters</b>	
<b>8.3.1 Topography</b>	The proposal would be compatible with the DCP requirements and does not involve any significant reshaping of the site. <b>Complies</b>
<b>8.3.2 Vegetation</b>	<p>The assessing Officer has noted that the proposed site does not contain any significant remnant vegetation and contains a number of established non-native trees.</p> <p><b>Complies</b></p>
<b>8.3.3 Riparian Buffers</b>	<p>The proposed development does not involve the construction of a new building within 40m of a riparian corridor.</p> <p>Landscaping and the construction of pathways within the development site would also be largely outside of the riparian corridor. The landscaping of the development site does not require consent from Council.</p> <p>As the proposed development does not involve building works within a riparian corridor It is considered to be in accordance with this requirement.</p> <p><b>Complies</b></p>
<b>8.3.4 Management of Rivers, Creeks, Streams and Drainage</b>	The proposal does not involve any works that will negatively impact the flow regimes of natural water courses. <b>Complies</b>
<b>8.3.5 Services</b>	<b>Complies - Managed by Standard Condition</b>

#### Section 12 – tourist facilities and accommodation

	<b>Comments</b>
<b>12.1.1 Context</b>	<p>The proposed development is not currently located next to any primary industries. The new congregational hall will be located approximately 40m from Halls Creek, however, this is not expected to result in any adverse impacts to the occupants or to the use and enjoyment of the adjoining land.</p> <p><b>Complies</b></p>

	<b>Comments</b>
12.1.2 Access	The applicant has provided a traffic Impact Study that was referred to Council's Community infrastructure Officer and Transport of NSW. Their comments have been discussed earlier in the report and their comments have been included in the recommended conditions of consent. The Assessing Officer is satisfied that the proposal provides convenient and safe access and egress to service the development in accordance with the MDCP. <b>Complies</b>
12.1.3 Facilities and Services	Discussed under EHO section. <b>Complies</b>
12.2.1 Scenic Character	<ol style="list-style-type: none"> <li>1. The proposal complies with the requirements of Section 14- Outdoor Advertising.</li> <li>2. The proposed development will have adequate screen planting to filter views into the site.</li> <li>3. The colours and materials for the development will be managed by Council's Standard Condition for Heritage Sites.</li> <li>4. The development near the property boundary is existing. The proposal does not involve encroachment beyond the building line.</li> <li>5. Noted.</li> <li>6. Light spill – The proposal is not expected to create an unacceptable level of light; however, it is to be noted that there are residential homes near the site. The Assessing Officer recommends including a condition to restrict the house of operation to ensure that there are no bright lights late into the night.</li> </ol> <p><b>Complies</b></p>
12.2.2 Site Location	The proposed use of the site as a tourist accommodation is considered to be a very suitable re-use of the heritage buildings with complementary, contemporary style, additional buildings. <b>Complies</b>
12.3 Health requirements	<b>Complies</b> – Managed by Standard Condition.

#### Section 14 – Outdoor Signage

The proposed signage is considered to be consistent with the requirements of the DCP and has been assessed against the requirements of the SEPP 64 (discussed above).

#### Section 15 – Heritage Conservation

The proposed development involves a locally listed heritage item. A Statement of heritage impact was submitted with the development application and has been reviewed by Council's Heritage Advisor.

Council's Heritage Advisor has provided referral comments indicating that she is satisfied that the proposed development would not have an adverse impact on the heritage significance of the site and that it would be compatible with the DCP heritage requirements. Accordingly, Council Officers are satisfied that the proposed development would be in accordance with this Section of the DCP. **Complies**



### Section 16 – Car Parking and Access

The applicant has allocated various carparking spaces throughout the site totalling fifty-six (56) carparks and three (3) Bus Parking spaces. Under the Muswellbrook DCP Section 16, the required number of carparks on the site are:

Land Use	DCP Parking Requirement	Required Spaces
Tourist Accommodation Units	<i>1 space per bedroom</i>	15 spaces
Function Centre	<i>1 space per 10 fixed seats, OR 1 space per 10 m2 of gross floor area if seats not affixed,</i>	Total floor area = 330m <sup>2</sup> Required spaces = 33

The proposed development requires a total of 48 car parking spaces. The applicant has proposed 56 which exceeds the DCP. The Assessing Officer recommends including a condition to ensure that the car parks are built according to Australian Standards and provides adequate accessible parking for the same.

### Section 20 – Erosion and Sediment Control

The total floor area of the proposed development is over 250m<sup>2</sup> and therefore requires an Erosion Control as Sediment Plan under the Muswellbrook DCP. An Erosion and Sediment Control Plan has been provided with the application. The Assessing Officer recommends including a standard condition to ensure that the proposed works are carried out in accordance with the proposed plan.

### Section 23 – On-site Sewage Management Systems

A condition of consent should be imposed on any development consent requiring that an on-site sewage management system be installed in accordance with Council's requirements.

### Section 24 – Waste Management

A waste management plan has not been prepared in relation to the proposed development. The Assessing Officer recommends including a standard condition that a Waste Management Plan be provided prior to the issue of an Occupation Certificate.

### Section 94A Contributions Plan 2009

The cost of works for the proposed development is \$1,500,000. A developer contribution of \$15,000 would apply to the development.

This development application has been accompanied by a request for Council to waive developer contributions under Section 7.12 (formerly Section 94A) of the *Environmental Planning and Assessment Act 1979*.

Council Officers have reviewed the Section 7.12 Plan and the applicant's request and do not recommend that Council waive the applicable developer contributions. The proposal would affect demand for Council services in the Sandy Hollow locality, a decision to waive may set a precedent, and as such, the waiving of Contributions is not considered to be in the public interest.

### **Section 4.15(1)(a)(iia) the provisions of any planning agreement**

There are no planning agreements relevant to the subject Application.

**Section 4.15(1)(a)(iv) the provisions of the regulations**

Division 8A of the Environmental Planning and Assessment Regulation 2000 applies to the development.

**Section 4.15(1)(a)(v) the provisions of any coastal zone management plan**

This item is not relevant to the subject Application.

**Section 4.15(1)(b) the likely impacts of that development**

The proposed development has been designed in such a way to allow it to complement the current and future character of the area whilst also providing adequate visual, privacy and residential amenity for the subject site and its immediate surrounds.

Due consideration has been given to the design, layout, location and integration of the proposal within the existing landscape and the proposal is consistent with other rural uses in the surrounding locality.

The following additional matters were considered:

Context & Setting

The proposed site is a largely cleared rural lot with existing buildings of Heritage Significance. The development will involve minimal earthworks and/or disturbance of natural ground.

The proposed buildings will be of a scale that will not have a significant impact when viewed from the road or adjoining properties. All new buildings have been setback an adequate distance from the road and the existing buildings will be screened by the new sandstone fence that will be built along the front boundary of the site.

Council Officers consider the proposal to be a very suitable adaptive re-use of the heritage buildings. Accordingly, no objection is raised to the proposed development with regard to its visual impact or compatibility with the local context and setting.

Noise and Vibration

The proposal involves visitor accommodation and a function centre which are not likely to create significant noise. The Assessing Officer conducted research in relation to noise levels to determine the potential impact of the development on the adjoining properties. The nearest dwelling to the development is located approximately 120m from the closest accommodation on the site.

The potential noise that may be created on the site may be loud music, intermittent church bells and lawnmowers that average at about 100dB. According to the Inverse Square Law, a doubling of the distance from a noise source will reduce the sound pressure level with 6 decibel. According to this, loud noises would be reduced to the level of a normal conversation at 128m from the source if there are no sound barriers in place.

The proposal involves the construction of a sandstone wall, multiple buildings and trees on the site which will serve as additional sound barriers which should ensure that the average noise created on the site will be of minimal impact to the adjoining properties.

Despite this, the Assessing Officer recommends including a condition to restrict the operating hours of the site to ensure that no offensive noise is created late into the night.

Noise	Average decibels (dB)
Leaves rustling, soft music, whisper	30
Average home noise	40
Normal conversation, background music	60
Office noise, inside car at 60 mph	70
Vacuum cleaner, average radio	75
Heavy traffic, window air conditioner, noisy restaurant, power lawn mower	80-89 (sounds above 85 dB are harmful)
Subway, shouted conversation	90-95
Boom box, ATV, motorcycle	95-100
School dance	101-105
Chainsaw, leaf blower, snowmobile	106-115
Sports crowd, rock concert, loud symphony	120-129
Stock car races	130
Gun shot, siren at 100 feet	140

#### Impact to Adjoining Properties

The proposed site is located 100m from the nearest neighbouring dwelling. The proposed tourist accommodation and function centre has been designed to minimise the impacts to the adjoining dwellings in terms of Light Spill, Traffic Safety, Noise, Visual Impact and other factors as discussed throughout this report. Council Officers are of the view that any impacts on the adjoining surrounding will be minimal where the conditions of consent are observed.

#### Social and Economic Impacts

The proposed development would support economic activity and provide new job opportunities. Possible social impacts relate to traffic safety due to increased traffic flow, and the service of alcohol. The applicant has put forward measures to manage the risk of these adverse social impacts occurring in relation to the proposal. Where these proposed safety and security measures are incorporated into the development it is considered that the proposal may be supported from a social impact perspective.

#### **Section 4.15(1)(c) the suitability of the site for the development**

The development is permissible with consent in the RU1 Primary Production Zone and complies with Zone objectives. The development is considered compatible with surrounding land uses and the site attributes are considered suitable for the proposed development.

#### **Section 4.15(1)(d) any submissions made**

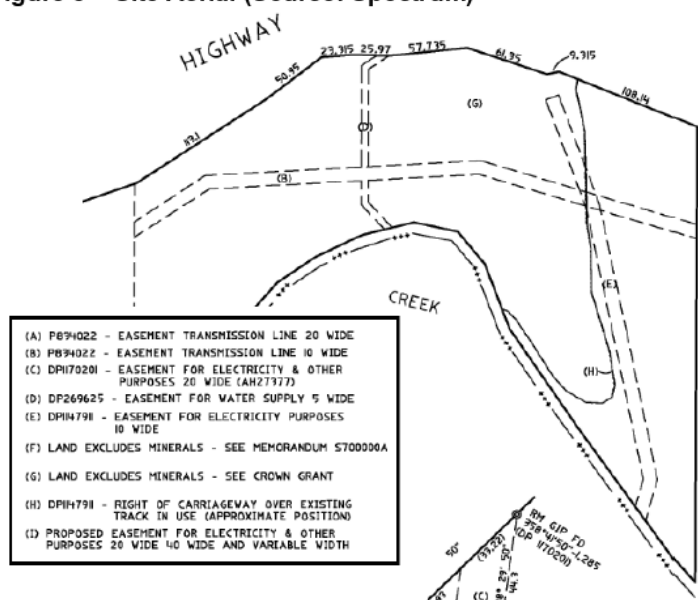
In accordance with the Muswellbrook Community Participation Plan, the application was notified via letters to adjoining property owners from 11/01/2021 to 05/02/2021. Three (3) submissions were received during the notification period.

Each of the submissions received have been considered by Council Officers in the assessment of and have been summarised and commented on in the table below:

Issues Raised	Planning Comment
Legal Access into Adjoining Land at Risk	The deposited Plan for the lot contains a right of carriageway over an existing track on site (identified as H in Figure 3). The ROW provides access to the landlocked adjacent site. The owner of the site expressed concern over the potential loss of access to their site. The Assessing Officer discussed the issue with the applicant who provided a set of updated plans to ensure that the ROW will not be restricted in anyway. The Officer recommends including a condition to ensure that this is complied with.
Safe Access into Ellamara from Highway into the Property	The applicant has provided a Traffic Impact Study which shows the new access into the property. This report has been considered by Council's Engineers and Transport for NSW and the relevant conditions have been included in the recommended conditions of Consent. Council Officers are satisfied that the access in to the property will be adequate in terms of safety if it adheres to the stated conditions.
Concern regarding patrons of the property accidentally trespassing on adjoining property.	The applicant has noted that all Guests will be provided with and have access to information about the property, its permitted use and the property boundaries. The Assessing Officer recommends including a condition to provide internal signs at relevant locations advising patrons of the boundaries.
Concern regarding Noise Levels after hours	The nearest adjoining dwelling is 100m from proposed accommodation. This distance will reduce noise levels. However, a condition restricting operation hours to ensure that no noise will be created late into the night is also recommended.
Increased Traffic Flow Risks/ people leaving under the influence of Alcohol	Any catering service that serves alcohol will be required to have a NSW liquor license and the need to follow RSA requirements. The proponent will provide a list of "site rules" to all people booking the facility which will include expected behaviours, noise, and use of the venue for functions.
Visual Impacts of camping tents and hired toilets	Through the assessment of the application the applicant amended the proposal to remove the camping ground initially proposed. Thereby concerns related to the visual impact of any long-term tents is no longer an issue.

Issues Raised	Planning Comment
	Portable toilets will only be installed for specific events, so will be present for limited durations and likely at a central accessible part of the site (near the Marquee). The visual impact of any temporary installations will be mitigated by the landscaping to be planted on the site.
Impact on Neighbouring Property Values	Impacts on property values is subjective. The design of the development, and proposed conditions of consent, minimise the impact the development may have on the amenity of adjoining properties. The proposed development is expected to have a positive economic impact on the locality.

Figure 3 – Site Aerial (Source: Spectrum)

**Section 4.15(1)(e) the public interest.**

The proposed development is considered to be in the public interest. This view has been informed by the following considerations:

- The proposed development is permissible with consent in the RU1 Primary Production Zone under the provisions of the MLEP 2009.
- The proposed development would be carried out in accordance with the relevant provisions of the MLEP 2009.
- The proposed development would comply with the relevant requirements of the MDCP 2009.
- Where carried out in accordance with the recommended conditions of consent, the proposed development is unlikely to have a significant adverse environmental impact.

- The proposed development would generate additional economic activity and employment opportunities.

## **5.0 CONCLUSION**

The proposed development has been assessed against the relevant heads of consideration of Section 4.15 of the Environmental Planning and Assessment Act 1979. As outlined above it is considered that the proposed development would be in accordance with the relevant planning provisions.

Accordingly, it is recommended the application be approved subject to conditions of consent.

## **6.0 RECOMMENDATION**

It is recommended that development consent be provided for DA 2020-136 for Tourist Accommodation and a Function Centre, subject to the recommended conditions of consent.

Signed by:

Tanya Jolly  
Project Planner

Date: 07 July 2021



## RECOMMENDED CONDITIONS OF CONSENT

## IDENTIFICATION OF APPROVED PLANS

## (1) Development in Accordance with Plans

The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions.

Drawing No.	Drawn by	Drawing Date	Received
Master Plan (As Amended)	<i>Michael Bligh &amp; Associates Pty Ltd</i>	04/09/2020	25/04/2021
Proposed Ellamara Front Sandstone Fence	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Blacksmiths/Storage – Plan 1	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Blacksmiths Storage – Plan 2	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Congregational Facility 1	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Congregational Facility 2	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Congregational Facility 3	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Disability Facility – Dis 1	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Existing Grain Shed & Old Kitchen Plan 1	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Existing Grain Shed & Proposed Old Kitchen Plan 2	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Existing Metallic Shed & Bedrooms Plan F1	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Metallic Shed to Bedrooms/ Brides Quarters – Plan 2	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Metallic Shed to Bedrooms/ Brides Quarters – Plan 3	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Upgraded Existing Post Office & Residence – Plan B2	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Existing Post Office & Residence – Plan B1	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Kitchen Meeting, Bedroom, Decking – Sheet 1	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Managers Residence – Plans	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Managers Residence – Elevations	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Equestrian Stables – Plans	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Equestrian Stables – Elevations	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020

Proposed Cottage, Store & Water Hole	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed Tank Toilet & Kids Carriage	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Proposed kitchen Meeting, Bedroom, Decking - Elevations	<i>Ken Lees Building Consultancy NSW</i>	Not Dated	17/12/2020
Site Survey (sheet 1)	<i>RAP Surveying</i>	June 2020	17/12/2020
Site Survey (sheet 2)	<i>RAP Surveying</i>	June 2020	17/12/2020

**(2) Development in Accordance with Documentation**

The development is to be carried out generally in accordance with the following documents:

Title	Written by	Date
Traffic Impact Study	<i>Northern Transport Planning and Engineering Pty Ltd</i>	March 2021
Statement of Environmental Effects	<i>Larry Cook Consulting Pty Ltd</i>	11 December 2020
Statement of Heritage Impact	<i>Rapport Pty Ltd</i>	November 2020
RFS General Terms of Approval	<i>NSW Rural Fire Service</i>	26 May 2021

**(3) Easement for Electricity**

The development so far as it relates to the electricity easement and electricity infrastructure on-site is to be carried out in accordance with the letter from AUSGRID dated 24 June 2021 (this letter will be marked with Council's approval stamp for ease of reference).

The requirements of this letter extend to all building works, pools water features or landscaping within the vicinity of the power lines and electrical easement.

**OPERATIONAL CONDITIONS IMPOSED UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS AND OTHER RELEVANT LEGISLATION**

**(4) Building Code of Australia**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**(5) Home Building Act**

- (1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act) must not be carried out unless the Principal Certifying Authority for the development to which the work relates:
  - (a) in the case of work to be done by a licensee under that Act:
    - (i) has been informed in writing of the licensee's name and contractor license number, and
    - (ii) is satisfied that the licensee has complied with the requirements of the Home Building Act, or

- (b) in the case of work to be done by any other person:
  - (i) has been informed in writing of the person's name and owner-builder permit number, or
  - (ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in section 29 of that Act, and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

Note: The amount referred to in paragraph (b)(ii) is prescribed by regulations under the Home Building Act 1989. As at the date on which this Regulation was Gazetted, that amount was \$5,000. As those regulations are amended from time to time, that amount may vary.

- (2) A certificate issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.
- (3) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is 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.

#### CONSTRUCTION CERTIFICATE REQUIREMENT

##### (6) Construction Certificate Requirement

No works shall commence on-site until such time as a Construction Certificate has been issued for either part or all of the works to be undertaken. If a Construction Certificate is issued for part of the approved works, it must relate to all works being undertaken.

**Note:**

*A construction certificate issued by an Accredited Certifying Authority must be uploaded to the eplanning portal at least 48 hours prior to the commencement of any earthworks, engineering or building work at the site.*

#### CONDITIONS TO BE COMPLETED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

##### (7) Section 7.12 Contributions

Pursuant to section 4.17(1) of the Environmental Planning and Assessment Act 1979, and the Muswellbrook Shire Council Section 94A Development Contributions Plan 2010, a contribution of \$15,000 shall be paid to Muswellbrook Shire Council.

The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the Muswellbrook Shire Council Section 94A Development Contributions Plan 2010. The contribution is to be paid prior to the issue of the Construction Certificate.

**(8) Sediment Control**

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including plans and specifications shall be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Muswellbrook Shire Council's DCP provisions on Erosion and Sediment Control, or a suitable and effective alternative method. The Control Plan shall incorporate and disclose:

- (a) all details to protect and drain the site during the construction processes;
- (b) all sediment control devices, barriers and the like;
- (c) sedimentation tanks, ponds or the like;
- (d) covering materials and methods;
- (e) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing that these design requirements have been met shall be submitted with the Construction Certificate and approved in writing by the Certifying Authority prior to issuing of the Construction Certificate

**(9) Fit-out of kitchen to be in accordance with relevant legislation and standards**

Prior to the issue of a Construction Certificate for the communal kitchen area the applicant shall submit detailed design plans to the Principle Certifying Authority demonstrating that the fit out of the food preparation, storage, handling and serving areas complies with the requirements of Food Act 2003, Food Regulation 2015 and Australian Standards relevant design construction and fit out of food premises (AS4674).

**(10) Geotechnical Wastewater Report for the On-Site Sewage Management System**

Prior to the issue a Construction Certificate, a detailed Geotechnical Wastewater Report prepared by a suitably qualified consultant is required to be submitted to, and approved by, Council's Environmental Health Officer.

The Wastewater Assessment Report shall include but not be limited to specific details of the site, the proposed on-site sewage management system and effluent disposal system type, hydraulic loading, NATA accredited soil results, and supporting calculations.

**(11) External Colour Scheme**

Prior to the issue of a construction certificate, a schedule of external colours and finishes (include paint manufacturers sample chips) is to be submitted to Council for the consideration and approval of Council's Heritage Advisor.

Documentary evidence demonstrating compliance with this requirement is to be provided to the Certifying Authority prior to the issue of a Construction Certificate.

All works are to be carried out in accordance with the approved colour schedule.

**(12) Waste Management Plan**

A Waste Management Plan is to be submitted with the Construction Certificate. The plans should include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, all landfill removed from the site, haulage routes, design of on-site wind proof waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

**(13) Bushfire Protection**

Prior to the issue of a Construction Certificate the person acting with this consent shall provide the Certifying Authority with design plans demonstrating that the part of the development for which a Construction Certificate is being sought has been designed to comply with the relevant bushfire safety requirements imposed by the NSW Rural Fire Service General Terms of Approval issued in relation to this development application and referenced by this Notice of Determination.

**(14) Parking and Stormwater Design Plans**

Prior to the issue a Construction Certificate, stormwater, parking and access plans are to be provided to Council's Community Infrastructure Department for approval. The submitted plans should consider and address the following:

- a) A parking plan is to be provided detailing a minimum of 48 off-street parking spaces to be provided as part of the development. The parking plan proposed should nominate any accessible parking spaces to be provided in accordance with the requirements of the Access to Premises Standard and Building Code of Australia.
- b) Plans should include details to demonstrate all vehicle manoeuvring and parking areas have been designed to support anticipated traffic loads. As a minimum a gravel finish should be applied to all parking areas and egress areas.
- c) Details of erosion control and stormwater management measures for all parking and hardstand areas are to be provided. It is recommended that the design include a one-way cross fall to driveways and access ways with appropriate grassed or sealed table drains, rock check dams and surface spreaders at discharge points. Stormwater detention should be considered for large storm events.
- d) Bus drop off areas and turning bays should be identified and provided with appropriate signage.

- e) Site entrance/exits are to be sealed to a minimum of 3m within the proposed boundary in accordance with Council's Rural Property Access Drawing SD No: 004/1.

**(15) BASIX Commitments**

Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. Details and plans demonstrating compliance with these requirements are to be submitted to the Certifying Authority for approval with the Construction Certificate.

In this condition:

- (a) relevant BASIX Certificate means:
- (i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 4.55 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - (ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- (b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

**(16) Vehicle Access Design and Construction Requirements**

The eastern and western vehicle access to the site are to be designed in accordance with the following:

Eastern Access:

- Must operate as left-in / left out only.
- A raised, triangular concrete median should be provided at the throat of the intersection and "Left Out Only" signage shall be installed at the exit for drivers leaving the site.
- Type AUL(S) turn treatment in accordance with (Austroads Part 4A) should be provided on Golden Highway at the approach to the Eastern Access.
- The strategic design drawing must demonstrate approach sight distance (ASD) of 126m on a long section for design speed for left out as per Austroads Part 4A, Table 3.1.

Western Access:

- The proposed Western Access arrangement for right turn in and left turn out is generally acceptable.
- Type BAR turn treatment in accordance with the (Austroads Part 4A) should be provided on Golden Highway at the approach to the Western Access. The design must ensure.



- minimum of 201m SISD required (refer Table 3.2 of Austroads Part 4A) in each direction of the intersection and demonstrate in the long section in reference to Figure 3.2 of Austroads Part 4A.
- No left turns are permitted into the Western Access. A design restricting the left turn entry must be provided for TfNSW consideration. In the absence of a suitable design restricting left-turn movements, an AUL(S) treatment is required on the Golden Highway to safe facilitate westbound traffic turning left into site.

#### Access- General

- Both accesses shall be designed to comply with the requirements of Austroads *Guide to Road Design Part 4A:Unsignalised and Signalised Intersections* (Austroads Part 4A) and the relevant Australian Standards (i.e. AS2890:1:2004).
- Design speed shall be taken as posted speed limit + 10 km/h.
- Design vehicle swept paths at the intersection for the largest vehicle accessing the site should be shown in the design drawings.
- Both accesses should be wide enough to accommodate two-way vehicle flow.
- Proposed signs directing traffic to Merriwa and Sandy Hollow should be adjusted to reflect the restrictions recommended below for Eastern access.
- Strategic design plans of required road upgrade works must be submitted for TfNSW consideration prior to determination of the subject application.

Prior to the issue of a Construction Certificate, the person acting on this consent is to provide suitable documentary evidence to the Certifying Authority, demonstrating that the vehicular access design prepared in relation to the development and the requirements referenced above, has been accepted by Transport for NSW, as the Roads Authority for the carrying out of works in relation to the Golden Highway (a classified State Road).

Council would consider either of the following to comprise suitable documentary evidence:

- a) A Works Authorisation Deed (WAD) entered into between the developer and Transport for NSW for the carrying out of the work referenced by this condition.
- b) Written correspondence from Transport for NSW approving the design plans prepared in relation to the worked referenced by this condition.

**Note:** *A WAD must be entered into between the developer and Transport for NSW prior to the commencement of the works related to the Golden Highway improvements required by this condition related requirements of this approval. The WAD process, including acceptance of design documentation and construction, can take time. The developer should be aware of this and allow sufficient lead time within the project development program to accommodate this process. It is therefore suggested that the developer work through this process as soon as possible with the Traffic for NSW.*

#### **(17) Clause 93/94 Requirements for Building Upgrades**

Under clause 93 and 94 of the Environmental Planning & Assessment Regulation, the following fire safety/Building Code of Australia (BCA) works are to be undertaken with the construction certificate works and are to be completed prior to the issue of the occupation certificate:

- (i) Portable fire extinguishers are to be provided to the grain shed gallery, the old kitchen, the blacksmiths shop/BBQ area, the kid's carriage and food preparation area/meeting room in accordance with AS 2444 and E1.6 of Volume 1 of the BCA.
- (ii) The stairs and handrail providing access to the kid's carriage are to comply with D2.13 and D2.17 of Volume 1 of the BCA.
- (iii) Smoke alarms are to be provided/upgraded to the post office/dwelling in accordance with NSW 3.7.5.2, 3.7.5.4 and 3.7.5.5 of Volume 2 of the BCA.
- (iv) Lighting to assist evacuation is to be provided to the post office/dwelling in accordance with 3.7.5.6 of Volume 2 of the BCA.
- (v) Smoke alarms are to be provided/upgraded to the accommodation/bride's quarters in accordance with NSW 3.7.5.2, 3.7.5.4 and 3.7.5.5 of Volume 2 of the BCA.
- (vi) Lighting to assist evacuation is to be provided to the accommodation/bride's quarters in accordance with 3.7.5.6 of Volume 2 of the BCA.
- (vii) The meeting room/kitchen in the building identified as cottage/Ellamara Water Hole is to be solely used for residential purposes and only by the occupant of the accommodation which it is associated with. Alternatively, a review of the building is to be undertaken, to ensure conditions are tenable during occupant evacuation, the building maintains structural stability in the event of a fire and avoids the spread of fire to the degree necessary, appropriate for the type of construction that exists in the building and the relevant classifications.
- (viii) Smoke alarms are to be provided/upgraded to the cottage/Ellamara Water Hole in accordance with NSW 3.7.5.2, 3.7.5.4 and 3.7.5.5 of Volume 2 of the BCA.
- (ix) Lighting to assist evacuation is to be provided to the cottage/Ellamara Water Hole in accordance with 3.7.5.6 of Volume 2 of the BCA.
- (x) The post office/dwelling, accommodation/brides' quarters and cottage/Ellamara Water Hole are to be provided with facilities required by Clause 3.8.3.2 of Volume 2 of the BCA. If any of the facilities are detached from the building, they must be set aside for the exclusive use of the occupants of the building.
- (xi) A review of the food preparation area/meeting room/bedroom is to be undertaken to ensure conditions are tenable during occupant evacuation, the building maintains structural stability in the event of a fire and avoids the spread of fire to the degree necessary, appropriate for the type of construction that exists in the building and the relevant classifications.
- (xii) A certificate of structural adequacy is to be submitted to the Principal Certifying Authority (PCA), certifying the structural strength and load bearing capacity of the, kids carriage (including tie-down), post office/dwelling, accommodation/brides quarters, cottage/Ellamara Water Hole and the food preparation area/meeting room/bedroom will be appropriate for the building's use.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT****(18) Sediment and Erosion Control**

Prior to the commencement of works, sediment and erosion controls are to be installed at the site in accordance with the Erosion and Sediment Control Plan prepared in relation to the proposed development and referenced by this consent.

All required erosion and sedimentation techniques are to be maintained in a functional and effective condition throughout the construction activities until the site is stabilised.

**(19) Site Facilities**

- (a) If the development involves building work or demolition work, the work site must be fully enclosed by a temporary security fence (or hoarding) before work commences.
- (b) A minimum width of 1.2m must be provided between the work site and the edge of the roadway so as to facilitate the safe movement of pedestrians.
- (c) Any such hoarding or fence is to be removed when the work has been completed.
- (d) A garbage receptacle fitted with a tight-fitting lid for the reception of all food scraps and papers from the work site must be provided prior to building work commencing and must be maintained and serviced for the duration of the work.
- (e) Toilet facilities must be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the work site.
- (f) Each toilet provided must:
  - be a standard flushing toilet, connected to a public sewer, or
  - if connection to a public sewer is not available, to an on-site effluent disposal system approved by the council, or
  - an approved temporary chemical closet.
- (g) The provision of toilet facilities must be completed before any other work is commenced.
- (h) A person having the benefit of this certificate who causes an excavation that extends below the level of the base of the footings of a building on an adjoining allotment of land must at their own expense and where necessary:
  - protect and support the building from damage, and
  - If necessary, underpin and support the building in accordance with the details prepared by a professional engineer.
- (i) A person having the benefit of this certificate who causes the excavation must, at least 7 days before commencing this work, give notice of intention to do so to the owner of the adjoining allotment of land and provide particulars of the proposed work.
- (j) Erosion and sediment controls must be provided in accordance with the details shown on the approved plans, prior to the disturbance of any soil on the work site.

**(20) Site Sign**

A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- (a) stating that unauthorised entry to the work site is prohibited;
- (b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
- (c) showing the name, address and telephone number of the Principal Certifying Authority for the work.

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

This condition does not apply to building works being carried out inside an existing building.

**(21) Damage to Public Infrastructure**

The applicant shall bear the cost of all restoration works to Council property damaged during the course of this development. The applicant shall submit in writing and/or photographic record, of any existing damage to Council property before commencement of work.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. If no documentation is received prior to commencement of work, it will be assumed that the infrastructure was undamaged, and the applicant will be required to restore all damaged infrastructure at their expense.

**(22) Section 138 Permit**

Prior to the carrying out of any works within the Golden Highway Road Reserve a Section 138 Permit is to be obtained from Council for the relevant works in addition to approvals from Transport for NSW.

**CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK****(23) Construction Hours**

- (a) Unless otherwise approved by Council in writing, or authorised by a Section 10.17 COVID-19 pandemic Ministerial Order building construction is to be carried out during the following hours:
  - i. between Monday to Friday (inclusive)—7.00am to 5.00pm
  - ii. on a Saturday—7.00am to 4.00pm
- (b) Building construction must not be carried out on a Sunday or a public holidays.
- (c) Demolition works and excavation works must only be carried out between Monday to Friday (inclusive) between 8.00am and 5.00pm.
- (d) The builder and excavator must display, on-site, their 24-hour contact

telephone numbers, which are to be clearly visible and legible from any public place adjoining the site.

**(24) Cost of Work Affecting Public Infrastructure**

The person acting with this consent shall be responsible for all costs incurred related to any works related to the relocation, alteration or improvement of public utility, infrastructure or service required as part of the carrying out of the development. All works affecting public infrastructure are to be carried out in accordance with the requirements of the relevant service provider.

**(25) Archaeological Relics**

If any archaeological relics are uncovered during the course of the work, all works shall cease immediately in that area, and the OEH Heritage Branch shall be contacted. Depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the NSW Heritage Act 1977, may be required before further works can continue in that area.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

**(26) Occupation**

The building is not to be used or occupied until a final inspection has been carried out and an occupation certificate has been obtained from the Principal Certifying Authority.

**(27) Vehicle Access Construction**

Prior to the issue of an Occupation Certificate the eastern and western vehicle accesses to the site is to be constructed in accordance with the requirements of this consent, approved design plans and any Works Authorisation Deed (WAD) entered into between Transport for NSW and the developer.

**(28) On-site Sewage Management**

The development will require On-Site Sewage Management System. Such a system requires approval from Council to install, construct or modify under s68 Local Government Act. A current Approval to Operate will also be required before an Occupation Certificate can be provided. Applications to install a system must be accompanied with a Wastewater Management Plan including Site and Soil Assessment by a suitably qualified person

**(29) Final inspection by Council's Environmental Health Officer required**

Prior to the issue of an Occupation Certificate, a satisfactory final inspection of the kitchen must be undertaken by Council's Environmental Health Officer to determine compliance with relevant requirements.

**(30) Registration with Council's Environmental Health Department**

Prior to the issue of the Occupational certificate, the business is to be registered with Council's Environmental Health Department

**(31) Private Water Supply**

Where reticulated water cannot be provided to the site for use by staff or members of the public, a private drinking water supply is required. The Public Health Act 2010 and the Public Health Regulation 2012 require drinking water suppliers to have a quality assurance program (QAP) that complies with the Regulation and comply with the approved QAP. You are required to develop and submit a copy of the QAP to NSW Health (Hunter New England Public Health Unit) prior to occupation of the site.

**(32) Site Services**

The registered proprietor of the land shall be responsible for all costs incurred in the necessary relocation of any services affected by the required construction works. Council and other service authorities should be contacted for specific requirements prior to commencement of any works.

**(33) Bushfire Protection Measures**

Prior to the issue of an Occupation Certificate all bushfire protection measures required by the NSW Rural Fire Service General Terms of Approval and as referenced by this Notice of Determination are to be implemented/complied with to the satisfaction of the Principle Certifying Authority.

**(34) Swimming Pools**

Access to the pool shall be restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act, 1992, and:

- (a) the pool must not to be completely filled with water until such time as a safety fence has been erected in accordance with this certificate.
- (b) Where the depth of water in the pool exceeds 300mm during construction a temporary barrier or fence must be erected, or other precautions taken so as to prevent the entry of children into the pool.
- (c) Any boundary fence used as pool fencing must have a height no less than 1800mm.
- (d) The swimming pool including overflow water must be drained to the sewer or, if the sewer is not available, overflow water must be disposed of for Council's satisfaction.
- (e) The consent of the Council must be obtained 48 hours prior to any emptying of pool water into the sewer.

Certification from an appropriately qualified person confirming compliance with these requirements shall be provided prior to the issuing of any Occupation Certificate for the pool.



**(35) Pool Safety Requirements**

The owner of the pool shall display a notice showing:

- (a) The words:
  - (i) 'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL' and
  - (ii) 'POOL GATES MUST BE KEPT CLOSED AT ALL TIMES' and
  - (iii) KEEP ARTICLES, OBJECTS AND STRUCTURES AT LEAST 900 MILLIMETRES CLEAR OF THE POOL FENCE AT ALL TIMES'

Note: This notice shall be kept in legible condition and at the pool side.

- (b) A simple flow sequence (which may be the flow sequence depicted in the Cardiopulmonary Resuscitation Guideline) containing details of resuscitation techniques (for infants, children and adults).
- (c) A statement to the effect that formal instruction in resuscitation is essential.
- (d) The name of the teaching organization or other body that published the sign and the date of its publication.

Details demonstrating compliance are to be provided with any Occupation Certificate/Compliance Certificate issued for the pool.

**(36) Registration of Swimming Pool**

Prior to issue of an Occupation Certificate for the swimming pool/spa, it is to be registered on the NSW state register of swimming pools and spas. To register the swimming pool/spa you are to log onto [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au) and follow the prompts. A copy of the registration certificate is to be submitted to the Principal Certifier to confirm the registration.

**CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES****(37) Right of Carriageway**

The carrying out of this development is not to impact on the existing right of carriageway or any other easement or restriction burdening the subject site and benefiting a neighbouring property without the agreement of the benefited parties.

The maintenance, management and operation of the right of carriageway is generally a private matter between the benefited and burdened parties and provided that the development is carried out as proposed and does not unlawfully restrict access across the site, any future alterations to the access agreement do not require further Council involvement.

**(38) Hours of Operation –**

Functions held at the premises in accordance with the terms of this consent are not to be held outside the following hours:

- 10am to 11:30pm

Upon expiry of the permitted hours, all function services and entertainment shall immediately cease, all noise generating devices turned off and patrons are to leave

the premises with the exception of those staying on-site who are to retire to their accommodation.

**(49) Noise Management**

At all times the person acting with this consent shall:

- a) take reasonable steps to ensure that the operation of the premises does not cause offensive noise in accordance with the provisions of the *Protection of the Environment Operations Act 1997*.
- b) The operator of the premises should ensure that the volume of any noise associated with the operation of the premises does not exceed the background noise level by more than 5 decibels (dB) between the hours of 12:00am midnight to 7:00am.
- c) Notwithstanding compliance with the above the noise from the premises should be controlled so as not be audible from any habitable room in any residential premises in the vicinity of the site between the hours of 10:00pm and 7:00am

**(39) Noise Management and Complaint Handling**

At all times the premises is operated for functions the person acting with this consent is to take reasonable steps to ensure the premises is operated in such a way to limit its impact on the amenity of adjoining properties.

The person acting with this consent shall:

- Provide neighbouring properties with contact details for the premises operator and/or site manager.
- Install a sign with the contact details of the premises operator and/or site manager.
- Keep a record of complaints received (complaints register) from neighbours or impacted property owners related to functions and events held at the premises.
- Where a complaint is received the person acting with this consent is to take reasonable steps to investigate the issue. Where it is identified or perceived likely that the late-night operation of the premises is impacting the amenity of a neighbouring property the person acting with this consent is to take steps to mitigate that impact. The complaints register is to include notes on the investigation of any complaints and any outcomes.

The complaint register is to be made available to Council Officers for inspection on request.

**(40) Litter Management**

At all times appropriate waste reciprocals are to be installed through the development site for the collection and management of litter. Reciprocals should allow the source separation of waste into recyclables and general waste. Waste is to be collected regularly and litter through the site.

**(41) Identification of site boundaries**

The person acting with this consent is to ensure that appropriate signage is installed adjacent to or on boundary fences between the development site and neighbouring properties to identify the site's boundary for the information of patrons and to ensure that they do not inadvertently trespass on adjoining land.

**(42) Parking, Access and Stormwater Construction**

Prior to the issue of an Occupation Certificate internal parking, vehicle manoeuvring areas and hardstand stormwater management controls are to be constructed in accordance with the requirements of this consent and the detailed plans approved by Council in accordance with pre-Construction Certificate conditions of consent.

**(43) Site speed limit**

The person acting with this consent is to ensure that appropriate signage is displayed within the site identifying a 10km/hour maximum speed limit for vehicles within the site.

**(44) Vehicle access and egress**

At all times all vehicles including service vehicles and buses are to enter and exit the site in a forward direction.

**(45) Redundant Vehicle Access to be closed**

All redundant vehicle entrances between the premises and the Golden Highway that are part of the development on the approved plans, are to be fenced to prevent their use.

**(46) Traffic management**

At all times the person acting with this consent is to maintain traffic signage at the site.

**(47) Traffic management**

At all times vehicles exiting and entering the site must do so in accordance with the Transport for NSW requirements referenced by this consent or any subsequent correspondence.

In accordance with these requirements left out vehicle movements only are permitted from the eastern access.

**GENERAL TERMS OF APPROVAL PURSUANT TO SECTION 4.46 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

*The following General Terms of Approval have been issued by the NSW Rural Fire Service pursuant to the integrated development provisions of the Environmental Planning and Assessment Act 1979 and must be complied with through the carrying out of this development:*

**(48) Asset Protection Zones**

At the issue of an occupation certificate, and in perpetuity to ensure ongoing protection from the impact of bush fires, the following areas must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019.

- the tourist facility precinct (including homestead, accommodation, blacksmith shop, kitchen, bride quarters and church)
  - north and north-west to the property boundary;
  - east and south for 40 metres; and

- west for 32 metres.
- manager's residence
  - north for 45 metres; and
  - east south and west for 40 metres.
- stables and machinery shed
  - 10 metres, or to the property boundary (whichever is less) in all directions

When establishing and maintaining an IPA the following requirements apply

- a) tree canopy cover should be less than 15% at maturity;
- b) trees at maturity should not touch or overhang the buildings;
- c) lower limbs should be removed up to a height of 2 metres above the ground;
- d) tree canopies should be separated by 2 to 5 metres;
- e) preference should be given to smooth barked and evergreen trees;
- f) large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
- g) shrubs should not be located under trees;
- h) shrubs should not form more than 10% ground cover;
- i) clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- j) grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- k) leaves and vegetation debris should be removed

**Reason:** *The intent of measures is to provide sufficient space for fire fighters and other emergency services personnel, ensuring radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants.*

#### (49) Construction Standards

- a) Construction of the manager's residence, church and disability dwelling must comply with Sections 3 and 5 (BAL 12.5) of Australian Standard AS3959-2018 'Construction of buildings in bush fire-prone areas' or the relevant BAL 12.5 requirements of the 'NASH Standard - Steel Framed Construction in Bushfire Areas' (incorporating Amendment A - 2015). New construction must also comply with the construction requirements for BAL 12.5 in Section 7.5 of 'Planning for Bush Fire Protection 2019'.
- b) New construction within the tourist facility precinct (e.g. additions to heritage buildings) must comply with the relevant sections of Australian Standard AS3959-2018 'Construction of buildings in bush fire-prone areas' or the relevant requirements of the 'NASH Standard - Steel Framed Construction in Bushfire Areas' (incorporating Amendment A - 2015). New construction must also comply with the relevant construction requirements in Section 7.5 of 'Planning for Bush Fire Protection 2019'.

- c) The existing buildings in the tourist facility precinct must be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

**Reason:** *The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack.*

**(50) Access Roads**

Internal access roads around the tourist facility and to the manager's residence, must comply with the following requirements of Planning for Bush Fire Protection 2019:

- Internal access roads are two-wheel drive, all weather roads;
- access is provided to all structures;
- traffic management devices are constructed to not prohibit access by emergency services vehicles;
- access roads must provide suitable turning areas in accordance with Appendix 3;
- the capacity of road surfaces and any bridges / causeways is sufficient to carry fully loaded fire fighting vehicles (up to 23 tonnes);
- bridges / causeways clearly indicate load rating;
- access is provided to within 4 metres of the static water supply;
- minimum 5.5 metre carriageway width kerb to kerb;
- parking is provided outside of the carriageway width;
- curves of roads have a minimum inner radius of 6 metres;
- the maximum grade is 15 degrees and average grade of not more than 10 degrees;
- the road crossfall does not exceed 3 degrees; and
- a minimum vertical clearance of 4 metres to any overhanging obstructions, including tree branches, is provided.

Pedestrian paths from the accommodation buildings to the church / refuge building are to be provided and clearly marked.

**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.*

**(51) Water and Utility Services**

The provision of water, electricity and gas must comply the following requirements of Planning for Bush Fire Protection 2019:

- a minimum 70,000 litre static water supply must be provided at the tourist facility precinct;
- a minimum 20,000 litre static water supply must be provided at the manager's residence;

- a connection for firefighting purposes is located within the IPA or non-hazard side and away from the structure;
- a 65mm Storz outlet with a ball valve is fitted to the outlet;
- ball valve and pipes are adequate for water flow and are metal;
- supply pipes from tank to ball valve have the same bore size to ensure flow volume;
- underground tanks have an access hole of 200mm to allow tankers to refill direct from the tank;
- a hardened ground surface for truck access is supplied within 4 metres;
- above-ground tanks are manufactured from concrete or metal;
- raised tanks have their stands constructed from non-combustible material or bush fire resisting timber -(See Appendix F of AS 3959);
- unobstructed access can be provided at all times;
- underground tanks are clearly marked;
- tanks on the hazard side of a building are provided with adequate shielding for the protection of firefighters;
- all exposed water pipes external to the building are metal, including any fittings;
- where pumps are provided, they are a minimum 5hp or 3kW petrol or diesel-powered pump, and are shielded against bush fire attack;
- any hose and reel for firefighting connected to the pump shall be 19mm internal diameter;
- fire hose reels are constructed in accordance with AS/NZS 1221:1997, and installed in accordance with the relevant clauses of AS 2441:2005;
- where practicable, electrical transmission lines are underground;
- where overhead, electrical transmission lines are installed with:
  - short pole spacing (30 metres), unless crossing gullies, gorges or riparian areas; and
  - no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used;
- all fixed gas cylinders are kept clear of all flammable materials to a distance of 10 metres and shielded on the hazard side;
- connections to and from gas cylinders are metal;
- polymer sheathed flexible gas supply lines are not used; and -
- above-ground gas service pipes are metal, including and up to any outlets.

**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.*

**(52) Landscaping Assessment**

Landscaping of the site is to be designed and managed in accordance with the following:

- compliance with the NSW RFS 'Asset protection zone standards' and Appendix 4 of 'Planning for Bush Fire Protection 2019';
- a clear area of low-cut lawn or pavement is maintained adjacent to the buildings;
- trees and shrubs are located so that:
  - the branches will not overhang the roof;
  - the tree canopy is not continuous; and
  - any proposed windbreak is located on the elevation from which fires are likely to approach.
- new fencing is constructed in accordance with section 7.6 of 'Planning for Bush Fire Protection 2019'.

**Reason:** *The intent of measures is for landscaping to minimise the risk of bush fire attack*

**(53) Emergency and Evacuation Planning Assessment**

Bush Fire Emergency Management and Evacuation Plan must be prepared and be consistent with the NSW RFS document: A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan. The Bush Fire Emergency Management and Evacuation Plan must consider a mechanism for the early relocation of occupants on days when adverse fire weather is notified, or adverse fire activity occurs in the local government area in which the development operates. Details of the bush fire refuge building and emergency procedures should be notified to visitors upon their arrival to the site.

**Note:** A copy of the Bush Fire Emergency Management and Evacuation Plan should be provided to the Local Emergency Management Committee for its information prior to occupation of the development.

**Reason:** *The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments*



From: Simon Rorke <simon060965@gmail.com>  
 Subject: **letter sent to council.**  
 Date: 18 November 2020 6:53:59 AM AEDT  
 To: ken <ken.lees1234@gmail.com>

Dear Mayor,

In December 2019 I purchased, via my self managed superannuation fund, the historic property Ellamara located at 1831 Golden Highway Sandy Hollow. The property is well known throughout the Upper Hunter and I'm sure we'll known to the Councillors.

Ellamara had been historically used for the operation of many commercial events and business ventures.

Ellamara was run down, poorly maintained, at great risk of buildings collapsing due to uncontrolled termite damage and Loss of structural integrity in some of the historic buildings. We felt something needed to be done to ensure the history was not lost forever.

Our vision of creating a high class wedding venue and group accommodation facility to create local jobs, during and after completion, bring significant tourism to the area and in doing so address the above.

We have spent over \$90000 on Consultants (Ross Peasley Surveyors and Ken Lees Building Consultant) to merely document the buildings on the property as they have never been properly recorded for Council or the interest of historians. These plans are included in our DA. Previous owners have also never documented new structures but we have now done so and also include in our DA.

We have engaged Michael Bligh and Associates Landscape Architects to design essential and small town and park lands to compliment the history of the property and provide open space park lands, walking tracks to take in the amazing scenery. This landscaping alone is \$250,000 and will provide locations for locals and tourists to picnic whilst they visit the museum and enjoy lunch or dinner using one of the many barbecues or kitchens provided.

We are proposing to build a very unique sandstone Hall to be offered to business groups, car clubs and weddings.

We intend to offer Ellamara's accommodation free of charge every month to disability and community service groups, homeless groups etc to provide some respite for their clients and families. We are already in discussions to take bookings starting late 2021.

In light of Covid 19 we have started discussions with a Sydney Broadcaster to offer 26 weekends free of charge to individuals or families who have suffered significantly because of Covid 19.

These offers are on top of making Ellamara available periodically to emergency service personnel who are personally suffering and need respite with their extended family.

In the first two years we estimate the donations to use the Venue free of charge will amount to over \$1.1 million to worthy citizens.

Of course all of our plans and endeavours come at a significant financial cost. These costs we believe are well justified and can only bring much needed focus and enjoyment to Ellamara and the Upper Hunter.

There has and will be required a further significant investment to see our development be completed and open to the public and bring tourists to the Upper Hunter.

The Museum needs funds spent to make safe to the public. Disability access is required which is not currently present. Lighting and electrical work may be required.

Open park lands and our barbecue areas will require amenities for the public whilst they use Ellamara for their enjoyment.

This includes disable toilets. Water supply to our park lands for the use of the public will be required for convenience and safety.

Solar power installation to spot locations around the property for public use and to power amenities.

Lighting and signage for the safety of general unsupervised public visitors.

Ellamara has an approved Helicopter landing pad which we intend to make available for local and tourist helicopter companies to use and bring commercial investment to the area. Some funds may need to be spent for this to happen.

We would like to see new jobs created and business to local people. We would be encouraging local food providers with mobile coffee or meals to set up at designated locations around the property to provide the public with options and bring jobs to locals.

Just the maintenance of public spaces would see two full time positions created.

In total Ellamara will create 5 new jobs once fully opened. Of course their will be employment created to complete the project through local contractors.

These types of opportunities all have costs to establish but will not make any substantial direct financial returns to us and therefore will be something open to discussion during the DA process.

Of course last but not least our investment and vision to bring 130 to 150 wedding guests to Sandy Hollow each weekend will provide a very significant economic boost to the local business communities of Sandy Hollow, Denman, Merriwa, Jerry's Plains, Muswellbrook and Scone. Catering, party and wedding suppliers, cafes, motels, hotels, petrol stations, pubs clubs etc will all greatly reap rewards from our investment into the local area.

In a way we see the many opportunities as a public private partnership and we are seeking and requesting consideration be given to exempting us from Section 94 contributions and secondly council providing financial assistance so we can undertake the public space opportunities we have outlined including or museum, helicopter pad, public parklands and amenities.

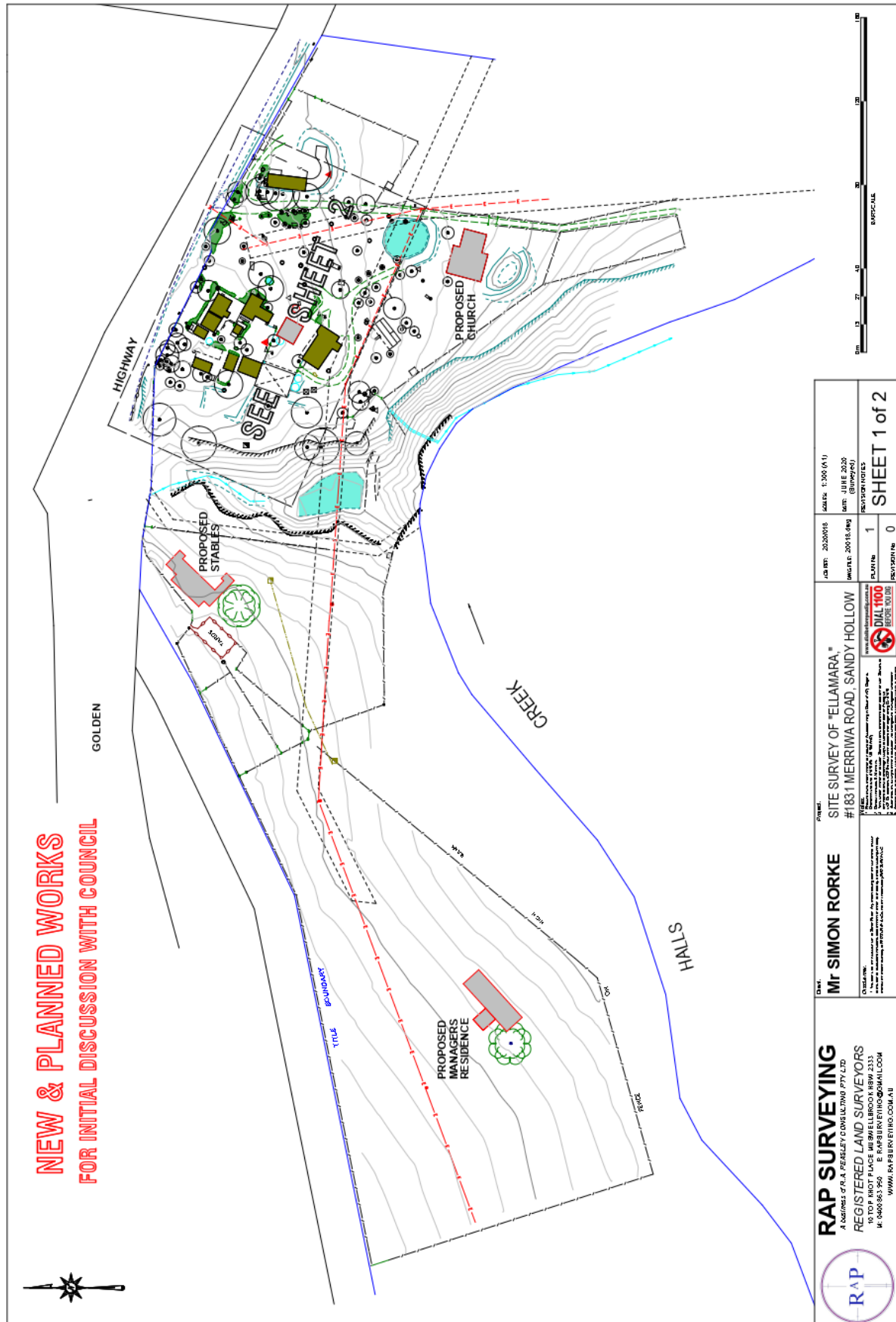
We look forward to Council seeing their way clear to relive Ellamara from The section 94 Contribution.

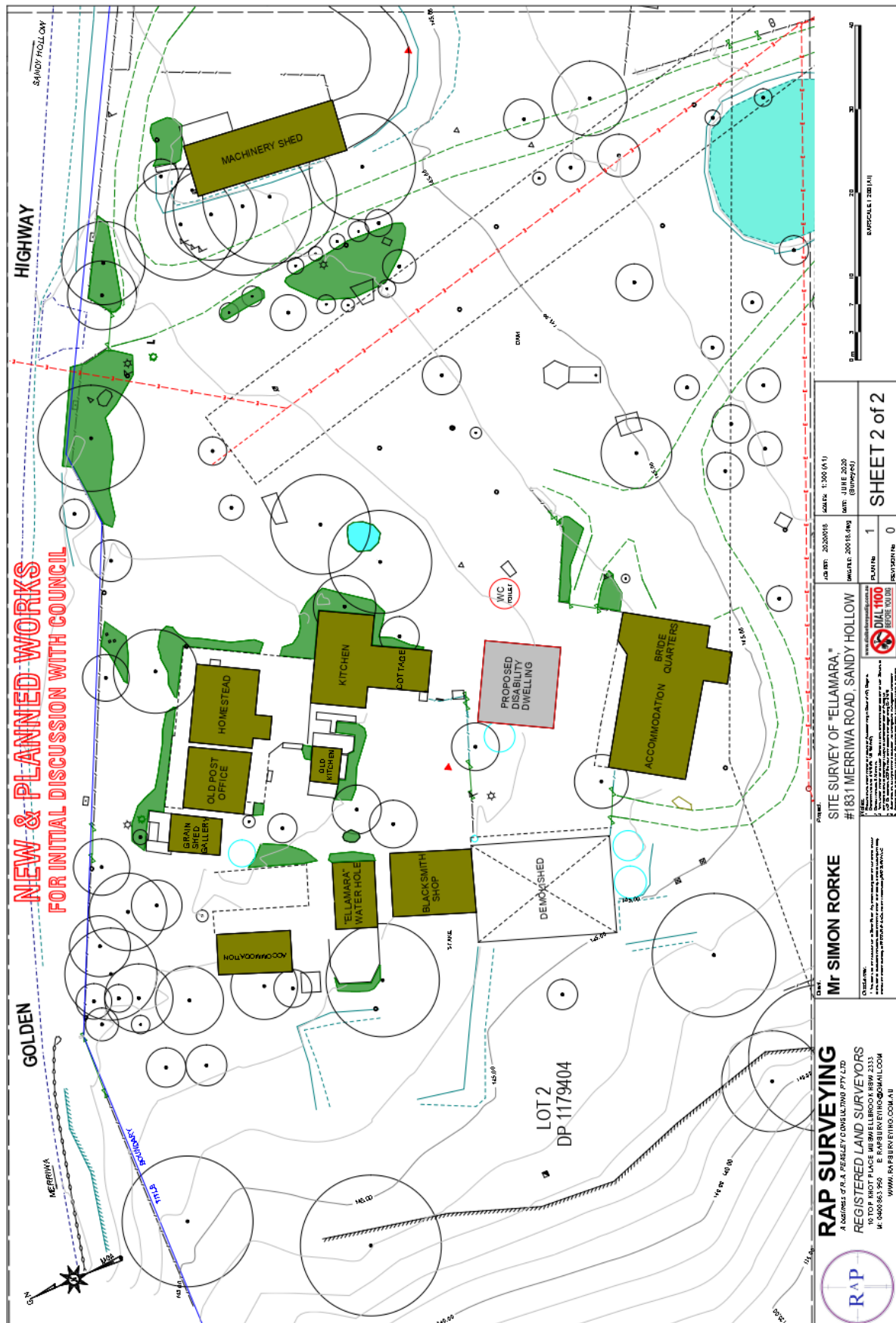
This is also a formal request/application to draw Funds from The Federal Government's Regional Infrastructure and Tourism Funding in the Amount of \$250,000 to cover the costs of the Landscaping and Amenities to facilitate the Community and visitors usage and the Development Costs to public Infrastructure and Tourism Facility installed to the Ellamara estate.

We look forward to working with the Council on this development of providing much need tourism to the Upper Hunter.

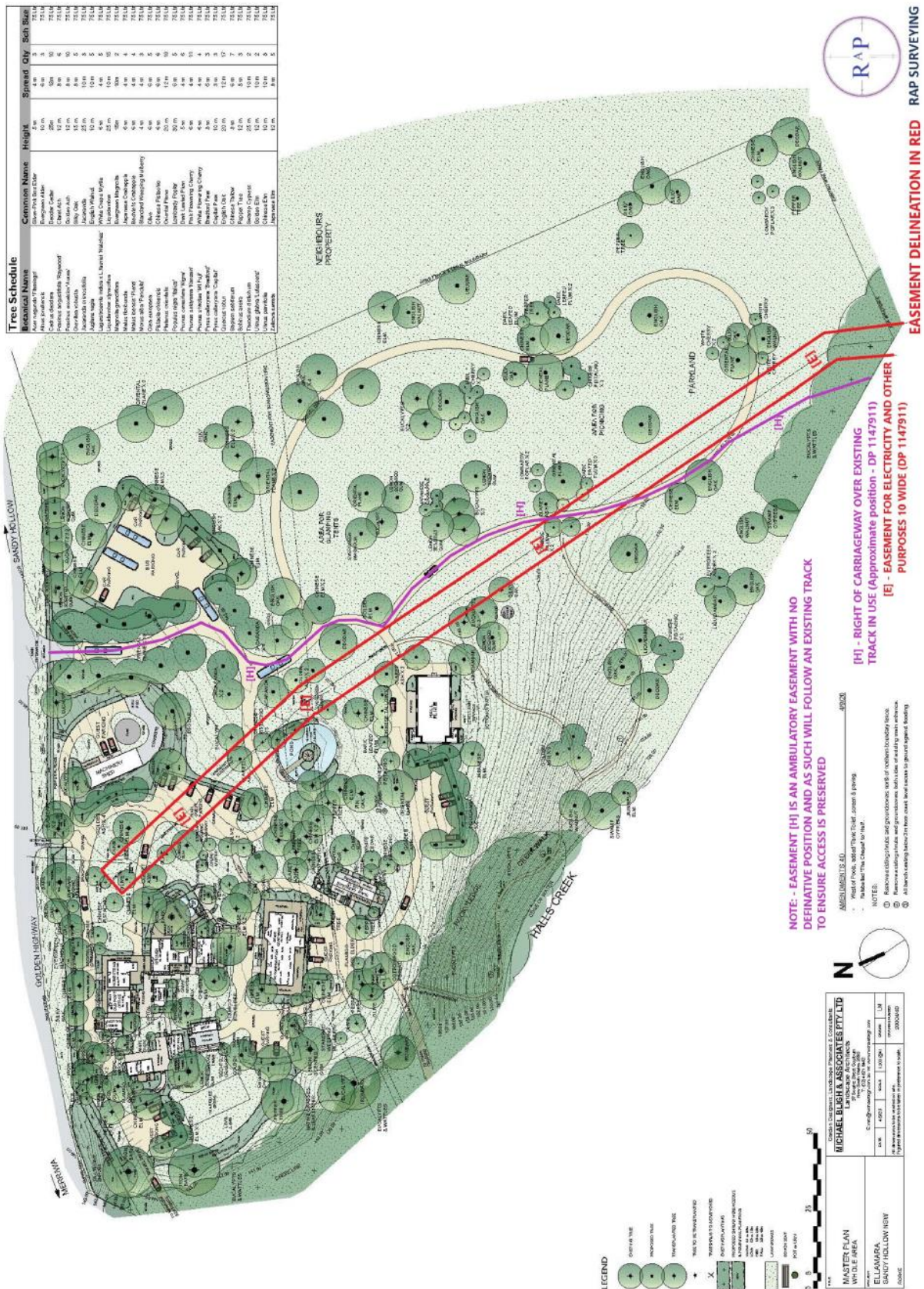
Regards

Simon Rorke  
 ||











## NSW RURAL FIRE SERVICE

Muswellbrook Shire Council  
PO Box 122  
MUSWELLBROOK NSW 2333

Your reference: (CNR-8810) 2020/136  
Our reference: DA20210302000820-Original-1

**ATTENTION:** Tanya Jolly

Date: Wednesday 26 May 2021

Dear Sir/Madam,

**Integrated Development Application**  
**s100B – SFPP – Other Tourist Accommodation**  
**Ellamara 1831 Merriwa Road SANDY HOLLOW NSW 2333, 2//DP1179404**

I refer to your correspondence dated 26/02/2021 seeking general terms of approval for the above Integrated Development Application.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted. General Terms of Approval, under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and a Bush Fire Safety Authority, under section 100B of the *Rural Fires Act 1997*, are now issued subject to the following conditions:

### Asset Protection Zones

***The intent of measures is to provide sufficient space for fire fighters and other emergency services personnel, ensuring radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants. To achieve this, the following conditions shall apply:***

1. At the issue of a subdivision certificate, and in perpetuity to ensure ongoing protection from the impact of bush fires, the following areas must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019.

- the tourist facility precinct (including homestead, accommodation, blacksmith shop, kitchen, bride quarters and church)
  - north and north-west to the property boundary;
  - east and south for 40 metres; and
  - west for 32 metres.
- manager's residence
  - north for 45 metres; and
  - east south and west for 40 metres.
- stables and machinery shed
  - 10 metres, or to the property boundary (whichever is less) in all directions.

When establishing and maintaining an IPA the following requirements apply:

1

#### Postal address

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

#### Street address

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555  
F (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)



- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the buildings;
- lower limbs should be removed up to a height of 2 metres above the ground;
- tree canopies should be separated by 2 to 5 metres;
- preference should be given to smooth barked and evergreen trees;
- large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover;
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed.

#### Construction Standards

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

2. Construction of the manager's residence, church and disability dwelling must comply with Sections 3 and 5 (BAL 12.5) of Australian Standard AS3959-2018 'Construction of buildings in bush fire-prone areas' or the relevant BAL 12.5 requirements of the 'NASH Standard - Steel Framed Construction in Bushfire Areas' (incorporating Amendment A - 2015). New construction must also comply with the construction requirements for BAL 12.5 in Section 7.5 of 'Planning for Bush Fire Protection 2019'.
3. New construction within the tourist facility precinct (e.g. additions to heritage buildings) must comply with the relevant sections of Australian Standard AS3959-2018 'Construction of buildings in bush fire-prone areas' or the relevant requirements of the 'NASH Standard - Steel Framed Construction in Bushfire Areas' (incorporating Amendment A - 2015). New construction must also comply with the relevant construction requirements in Section 7.5 of 'Planning for Bush Fire Protection 2019'.
4. The existing buildings in the tourist facility precinct must be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

#### Access - Internal Roads

***The intent of measures is to provide safe operational access for emergency services personnel in suppressing a bush fire, while residents are accessing or egressing an area. To achieve this, the following conditions shall apply:***

5. Internal access roads around the tourist facility and to the manager's residence, must comply with the following requirements of Planning for Bush Fire Protection 2019:
  - internal access roads are two-wheel drive, all weather roads;
  - access is provided to all structures;
  - traffic management devices are constructed to not prohibit access by emergency services vehicles;
  - access roads must provide suitable turning areas in accordance with Appendix 3;
  - the capacity of road surfaces and any bridges / causeways is sufficient to carry fully loaded fire fighting vehicles (up to 23 tonnes);
  - bridges / causeways clearly indicate load rating;
  - access is provided to within 4 metres of the static water supply;
  - minimum 5.5 metre carriageway width kerb to kerb;
  - parking is provided outside of the carriageway width;
  - curves of roads have a minimum inner radius of 6 metres;
  - the maximum grade is 15 degrees and average grade of not more than 10 degrees;
  - the road crossfall does not exceed 3 degrees; and

- a minimum vertical clearance of 4 metres to any overhanging obstructions, including tree branches, is provided.

6. Pedestrian paths from the accommodation buildings to the church / refuge building are to be provided and clearly marked.

#### **Water and Utility Services**

***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. To achieve this, the following conditions shall apply:***

7. The provision of water, electricity and gas must comply the following requirements of Planning for Bush Fire Protection 2019:

- a minimum 70,000 litre static water supply must be provided at the tourist facility precinct;
- a minimum 20,000 litre static water supply must be provided at the manager's residence;
- a connection for firefighting purposes is located within the IPA or non-hazard side and away from the structure;
- a 65mm Storz outlet with a ball valve is fitted to the outlet;
- ball valve and pipes are adequate for water flow and are metal;
- supply pipes from tank to ball valve have the same bore size to ensure flow volume;
- underground tanks have an access hole of 200mm to allow tankers to refill direct from the tank;
- a hardened ground surface for truck access is supplied within 4 metres;
- above-ground tanks are manufactured from concrete or metal;
- raised tanks have their stands constructed from non-combustible material or bush fire-resisting timber (see Appendix F of AS 3959);
- unobstructed access can be provided at all times;
- underground tanks are clearly marked;
- tanks on the hazard side of a building are provided with adequate shielding for the protection of firefighters;
- all exposed water pipes external to the building are metal, including any fittings;
- where pumps are provided, they are a minimum 5hp or 3kW petrol or diesel-powered pump, and are shielded against bush fire attack;
- any hose and reel for firefighting connected to the pump shall be 19mm internal diameter;
- fire hose reels are constructed in accordance with AS/NZS 1221:1997, and installed in accordance with the relevant clauses of AS 2441:2005;
- where practicable, electrical transmission lines are underground;
- where overhead, electrical transmission lines are installed with:
  - short pole spacing (30 metres), unless crossing gullies, gorges or riparian areas; and
  - no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used;
- all fixed gas cylinders are kept clear of all flammable materials to a distance of 10 metres and shielded on the hazard side;
- connections to and from gas cylinders are metal;
- polymer-sheathed flexible gas supply lines are not used; and
- above-ground gas service pipes are metal, including and up to any outlets.

#### **Landscaping Assessment**

***The intent of measures is for landscaping to minimise the risk of bush fire attack. To achieve this, the following conditions shall apply:***

8. Landscaping of the site is to be designed and managed in accordance with the following:

- compliance with the NSW RFS 'Asset protection zone standards' and Appendix 4 of 'Planning for Bush Fire Protection 2019';



- a clear area of low-cut lawn or pavement is maintained adjacent to the buildings;
- trees and shrubs are located so that:
  - the branches will not overhang the roof;
  - the tree canopy is not continuous; and
  - any proposed windbreak is located on the elevation from which fires are likely to approach.
- new fencing is constructed in accordance with section 7.6 of 'Planning for Bush Fire Protection 2019'.

**Emergency and Evacuation Planning Assessment**

*The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:*

9. A Bush Fire Emergency Management and Evacuation Plan must be prepared and be consistent with the NSW RFS document: A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan. The Bush Fire Emergency Management and Evacuation Plan must consider a mechanism for the early relocation of occupants on days when adverse fire weather is notified or adverse fire activity occurs in the local government area in which the development operates. Details of the bush fire refuge building and emergency procedures should be notified to visitors upon their arrival to the site.

Note: A copy of the Bush Fire Emergency Management and Evacuation Plan should be provided to the Local Emergency Management Committee for its information prior to occupation of the development.

**General Advice – Consent Authority to Note**

- The NSW Rural Fire Service recognises that the development is proposed with regard to provisions for historic buildings in Planning for Bush Fire Protection 2019. As such, construction standards and asset protection zones for the historic buildings may be insufficient to protect life and property in the event of a bush fire impacting the tourist facility. Emergency and evacuation procedures, including the use of an on-site emergency refuge building, are relied upon for the safety of occupants.

For any queries regarding this correspondence, please contact Paul Creenaune on 1300 NSW RFS.

Yours sincerely,

Alan Bawden

**Supervisor Development Assessment & Plan  
Built & Natural Environment**



NSW RURAL FIRE SERVICE

## BUSH FIRE SAFETY AUTHORITY

SFPP – Other Tourist Accommodation

Ellamara 1831 Merriwa Road SANDY HOLLOW NSW 2333, 2//DP1179404

RFS Reference: DA20210302000820-Original-1

Your Reference: (CNR-8810) 2020/136

This Bush Fire Safety Authority is issued on behalf of the Commissioner of the NSW Rural Fire Service under s100b of the Rural Fires Act (1997) subject to the attached General Terms of Approval.

This authority confirms that, subject to the General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under *s100b of the Rural Fires Act 1997*.

**Alan Bawden**

Supervisor Development Assessment & Plan  
Built & Natural Environment

Wednesday 26 May 2021



Transport  
for NSW

CR2021/001107

SF2021/011214

KK

27 May 2020

General Manager  
Muswellbrook Shire Council  
PO Box 122  
MUSWELLBROOK NSW 2333

**Attention: Tanya Jolly**

**GOLDEN HIGHWAY/MERRIWA ROAD (HW27): DA2020/136, BUILDING REFURBISHMENTS, CHURCH/HALL AND MANAGERS RESIDENCE, LOT: 2 DP: 1179404, 1831 MERRIWA ROAD, SANDY HOLLOW**

On 19 January 2021 Transport for NSW (TfNSW) accepted the referral by Muswellbrook Shire Council (Council) Planning Portal regarding the abovementioned application (Development Application). Council referred the Development Application to TfNSW for comment in accordance with Clause 101 - Development with frontage to classified road. Further information relevant to the Development Application were received from Council on 24 March 2021 and 25 May 2021. This letter is a submission in response to the most recent referral.

TfNSW has reviewed information provided including:

- *Statement of Environmental Effects* (SEE) prepared by Larry Cook Consulting and dated 11th December 2020,
- Plan titled *Proposed Road & Traffic at LOT 2 DP 1179404* prepared by Ken Lease Building Consultancy,
- *Traffic Impact Study* (TIS) prepared by Northern Transport Planning and Engineering and dated March 2021, and
- Additional information/documents received from Council via email on 25 May 2021.

TfNSW understands the proposal seeks to refurbish the existing buildings in the 'Ellamara' Village, construct new infrastructure and dedicate areas in the north-eastern part of the site for events such as wedding receptions, and functions. A new manager's residence is also proposed for construction at the north-east portion of the site. On-site parking area will be provided to accommodate up to 40 light vehicles and 4 tourist coaches.

Two access crossovers from the Golden Highway are proposed:

- Existing access located closer to eastern site boundary (Eastern Access), and
- New access closer to western site boundary (Western Access).

Additional information received on 25 May 2021 cites camping facilities on the site if considered in

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1 of 6

the future, will be the subject of an additional DA.

In its additional information request submitted to Council on 8 February 2021, TfNSW requested detailed analysis of existing and proposed access crossovers including dimensions and sight distances on Merriwa Road to be included in the Traffic Impact Assessment. However, no information has been provided in TIS about the available sight distance for motorists at the proposed accesses. As such, TfNSW assessed the intersection of access driveways and Golden Highway using the available aerial imagery.

#### TfNSW Response & Requirements

TfNSW's primary interests are in the road network, traffic and broader transport issues. In particular, the efficiency and safety of the classified road network, the security of property assets and the integration of land use and transport.

Golden Highway (HW27) is a classified State road and Council is the roads authority for this road and all other public roads in the area, in accordance with Section 7 of the *Roads Act 1993*.

TfNSW provides the following comments to assist the consent authority in making a determination:

#### Access- General

- Both accesses shall be designed to comply with the requirements of Austroads *Guide to Road Design Part 4A:Unsignalised and Signalised Intersections* (Austroads Part 4A) and the relevant Australian Standards (i.e. AS2890:1:2004)
- Design speed shall be taken as posted speed limit + 10 km/h.
- Design vehicle swept paths at the intersection for the largest vehicle accessing the site should be shown in the design drawings.
- Both accesses should be wide enough to accommodate two way vehicle flow.
- Proposed signs directing traffic to Merriwa and Sandy Hollow should be adjusted to reflect the restrictions recommended below for Eastern access.
- Strategic design plans of required road upgrade works must be submitted for TfNSW consideration prior to determination of the subject application.

#### Eastern Access:

- The Eastern Access must operate as left-in / left out only.
- A raised, triangular concrete median should be provided at the throat of the intersection and "Left Out Only" signage shall be installed at the exit for drivers leaving the site.
- Type AUL(S) turn treatment in accordance with (Austroads Part 4A) should be provided on Golden Highway at the approach to the Eastern Access.
- The strategic design drawing must demonstrate approach sight distance (ASD) of 126m on a long section for design speed for left out as per Austroads Part 4A, Table 3.1.

#### Western Access:

- The proposed Western Access arrangement for right turn in and left turn out is generally acceptable.
- Type BAR turn treatment in accordance with the (Austroads Part 4A) should be provided on Golden Highway at the approach to the Western Access. The design must ensure

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2 of 6

minimum of 201m SISD required (refer Table 3.2 of Austroads Part 4A ) in each direction of the intersection and demonstrate in the long section in reference to Figure 3.2 of Austroads Part 4A.

- No left turns are permitted into the Western Access. A strategic design restricting the left turn entry must be provided for TfNSW consideration. In the absence of a suitable design restricting left-turn movements, an AUL(S) treatment is required on the Golden Highway to safe facilitate westbound traffic turning left into site.
- As road works are required on Golden Highway (HW27) TfNSW will require the developer to enter into a Works Authorisation Deed (WAD) with TfNSW. TfNSW would exercise its powers and functions of the road authority, to undertake road works in accordance with Sections 64, 71, 72 and 73 of the Roads Act, as applicable, for all works under the WAD (Attachment A).

*Comment: It is requested that Council advise the developer that the Conditions of Consent do not guarantee TfNSW's final consent to the specific road work, traffic control facilities and other structures or works, for which it is responsible, on the road network. TfNSW must provide a final consent for each specific change to the classified (State) road network prior to the commencement of any work.*

*The WAD process, including acceptance of design documentation and construction, can take time. The developer should be aware of this and allow sufficient lead time within the project development program to accommodate this process. It is therefore suggested that the developer work through this process as soon as possible with the TfNSW.*

- All road works under the WAD shall be completed prior to issuing any Occupation Certificate for the development.
- All works associated with the subject development shall be undertaken at full cost to the developer and at no cost to TfNSW or Council, and to Council's requirements.

#### Advice to Council

TfNSW recommends that the following matters should be considered by Council in determining this development:

- TfNSW has no proposal that requires any part of the property.
- Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.
- On-site car parking for the development should be designed in accordance with the latest version of AS/NZS 2890.1, .2, and .6.
- Discharged stormwater from the development must not exceed the capacity of the Golden Highway stormwater drainage system. Council must ensure that drainage from the site is

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3 of 6



catered for appropriately and should advise TfNSW of any adjustments to the existing system that are required prior to final approval of the development.

- Council should ensure that the applicant is aware of the potential for road traffic noise to impact on development on the site, in particular, noise generated by the Golden Highway, a classified State road (HW27). In this regard, the developer, not TfNSW, is responsible for providing noise attenuation measures in accordance with the *NSW Road Noise Policy 2011*, prepared by the department previously known as the Department of Environment, Climate Change and Water.

If the external noise criteria cannot feasibly or reasonably be met, TfNSW recommends that Council apply internal noise objectives for all habitable rooms with windows that comply with the Building Code of Australia.

- Minimal information is provided for new signage proposed. While it is acknowledged that concurrence is not required to be provided by TfNSW for the new signage proposed in the subject application under Clause 18 of the *State Environmental Planning Policy 64 (SEPP 64)*, the following advice is for Council to consider:
  - All signs should meet the criteria contained in the Department of Planning's *TfNSW Corridor Outdoor Advertising and Signage Guidelines (November 2017)* including, but not limited to, Section 3.3.3 Illumination and reflectance.
  - Council should ensure that all signs meet the requirements of Schedule 1 Assessment Criteria of the *SEPP 64*.
  - Please advise the applicant that TfNSW may direct the screening, modification or removal of a structure if, in the opinion of TfNSW, the structure is considered a traffic hazard under Section 104 of the *Roads Act 1993*.

On Council's determination of this matter, please forward a copy of the Notice of Determination to TfNSW for record and / or action purposes. Should you require further information please contact Kumar Kuruppu, Development Services Case Officer, on 4908 7688 or by emailing [development.hunter@transport.nsw.gov.au](mailto:development.hunter@transport.nsw.gov.au).

Yours sincerely



**Kylie-anne Pont**

A/Team Leader Development Services (Hunter)

Development Services North

*Attachment A: Works Authorisation Deed (WAD) Advice to Consent Authority and Developer*

**Attachment A: Works Authorisation Deed (WAD) Advice to Consent Authority and Developer****Advice to the Consent Authority**

- On determination of the proposal a copy of the Notice of Determination should be forwarded to Transport for NSW (TfNSW) within the appellant period for advice / consideration and action where required.
- Conditions of development consent do not guarantee TfNSW consent to the specific road works, traffic control signals and /or other structures or works for which it is responsible. The developer must obtain TfNSW authorisation in writing prior to the commencement of any road works on the Golden Highway (HW27), including traffic management, temporary or permanent road works associated with the proposed development.

**Advice to the Developer**

- Following development consent, early discussion with the TfNSW Project Manager is recommended. TfNSW will initiate the WAD process by sending out a letter and information pack on receipt of the Notice of Determination, including the name and contact details of the Project Manager.
- As the WAD process, including acceptance of design documentation and construction can take considerable time, you should allow sufficient lead time within the project development program to ensure that all documentation and works are completed in advance of occupation. TfNSW will not consider granting concurrence to occupation until it is satisfied all documentation and works under the WAD have been completed.
- Authorisation to commence construction will only be granted when TfNSW is satisfied that all requirements under the WAD have been met by the developer, including TfNSW fees and charges, an unconditional bank guarantee for the full value of the works, detailed design documentation, environmental assessment, road occupancy license, among other matters. TfNSW will issue a letter to the developer advising of this authorisation.
- Any property acquisition / dedication required to accommodate the State road works / traffic control signals associated with the proposed development shall be at full cost to the developer, including all legal and survey costs. This land shall be dedicated by the developer as public road reserve in favour of the Council, as the owner.
- Part of the developers' timeline should make provision for TfNSW to satisfy its obligations under the *Environmental Planning and Assessment Act 1979* (EP&A Act) to assess the environmental impacts of the works within the road reserve. Further investigation and assessment to that undertaken for the development consent may be required to the satisfaction of TfNSW, under Part 5 of the EP&A Act.
- It is recommended that the developer use design consultants with the experience and knowledge of TfNSW design requirements, in particular the Austroads *Guide to Road Design* (with TfNSW supplements) and relevant Australian Standards.
- A fact sheet providing further information on the WAD process can be obtained from the Roads and Maritime Private Developments Website at:  
[http://www.rms.nsw.gov.au/roadprojects/community\\_environment/private\\_developments.html](http://www.rms.nsw.gov.au/roadprojects/community_environment/private_developments.html)
- Construction on a State road and / or traffic control signals requires the engagement of an TfNSW pre-qualified contractor. A list of pre-qualified contractors can be found on the Roads and Maritime website below.

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5 of 6

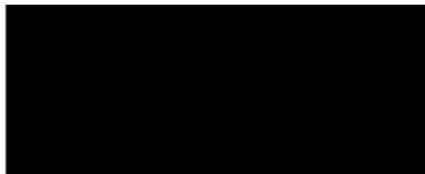


<http://www.rms.nsw.gov.au/doingbusinesswithus/tenderscontracts/prequalifiedcontractors.html>

**As neighbors of this property we have a few questions/queries that we would like to be considered**

1. The legal access/ passage to our 'landlocked' property is through Ellamara. The attached plans on this letter do not show the legal passage way, (this legal passage way is shown on a separate attachment provided in this email) . Our concern is the access disappearing therefore losing access to our property?  
It is our understanding the Ellamara property plans to hold events such as weddings on the property, personally we support the idea of such functions bringing people to the township of sandy Hollow, However, we would like to maintain full 24 hour access through our legal access and wish not to negatively affected ongoing functions. This may not have been considered during the proposed plans and a potential point to think about as we may be driving through access way at all points during the day.
2. Emphasizing we support the undertaking of bringing functions to Sandy Hollow, With many guests and people on an unfamiliar highway, we are curious on whether access to The Ellamara property will be made safer for the arriving guest through a turning lane or any modifications due to the potential of an accident on the highway which is on an 80km/hr bend?
3. At one point in time, all blocks were under one property title, however, now Halls Creek separates the property acting as a boundary. Unfortunately, several instances have happened upon where people have presumable wandered onto our legal title. While we understand this is most likely an accident and harmless, our concern is without a distant notice of where the property boundary is, more people may accidentally make a similar mistake. Is there any current plans to ensure a clear definition between the properties, for example through the use of signage on the Ellamara title. Our concern is our property is used for primary producing therefore contains stock and machinery work which maintains our stock and pastures, the risk of a person being injured due to being in the wrong place at the wrong time is unlikely, however a burden/concern we wish not to ever encounter.

These are our concerns, again we support the development of the property and wish to see this undertaking be successful, and we wish to maintain positive communication with all appropriate parties involved to ensure the safety of all guest, ensure all guest have the wedding day they deserve and not be unfortunately hindered due to vehicles driving through the property. However, this legal access is needed and just a logical concern to be thought on and the lack of this on the plans raises our concerns.



Good morning Fiona ,

Re: Development Application No: 2020/136

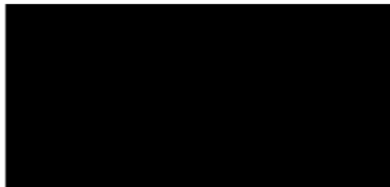
Lot: 2 DP: 1179404- 1831 Merriwa Road Sandy Hollow

[REDACTED] our only concerns are Noise Levels after hours.  
Being on the top side of the mountain the noise travels towards our residence as we have observed when the Sandy Hollow Horse ride was held at Ellamara.

Also, the Entry for traffic is a concern as there is a blind corner with traffic coming from Merriwa direction on the Golden Highway as we have witnessed a traffic accident at a funeral with oncoming traffic which is located further down the road.

Other than these two points there is no other Issue at this time.

Regards



February 4, 2021

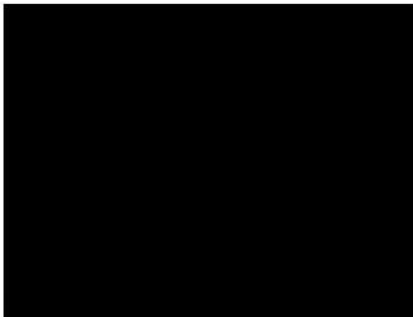
**To:** The General Manager- Muswellbrook Shire Council

**Subject:** DA 2020-136 Additions to a Heritage Item (Ellamara) for use as Tourist Accommodation and a Function Centre

We are writing to raise our concerns on a few points relating to the above DA application.

We would like it known that we are not against the development per se but do have a few concerns that are not addressed in the paperwork attached to the DA.

1. **Traffic-** the Golden Highway at this location is an 80km/hr zone. Our concern is that the increased traffic flow which may lead to an increased risk of accidents. Our experience of having to slow down to turn into our driveway off the Highway has on numerous occasions led to many near misses involving oncoming and following traffic.  
When vehicles are leaving to head back to Sandy Hollow the view coming from Merriwa is limited as it is on a blind corner.  
Will there be a turning lane from Sandy Hollow?  
Will they have a turning lane to exit?  
What happens when a wide load comes through and you have increased traffic flow?  
People leaving the venue driving under the influence of alcohol is also a concern as public transport is not an option.
2. **Noise-** Our concern is the increased noise level from the traffic, people, campers and noise from functions- whatever they may be? Does the venue have permission or a licence to serve or consume alcohol? In the reports there is no mention as to what are the operating hours. Will there be a noise curfew?  
Sound travels, we do not want to be subjected to loud music every weekend and kept awake at night with people leaving the venue and exhibiting loud behaviours.
3. **Visual Impact-** Our concern is the view from our property will now be of camping tents and Coates Hired toilets. This will detract from the natural beauty of the landscape.
4. **Impact on neighbouring property holders** – none of the reports mention any affects to neighbouring property holders. Will this development have an adverse affect on property values?



**DEVELOPMENT ASSESSMENT REPORT**

Attached: Site Plan

**REPORT TO THE GENERAL MANAGER**

<b>ADDRESS:</b>	LOT 2 DP 1210270 Peberdys Road SANDY HOLLOW			
<b>APPLICATION No:</b>	43/2021			
<b>PROPOSAL:</b>	Dwelling House			
<b>PLANS REF:</b>	Drawings no.	Drawn by	Date	Received
<b>OWNER:</b>	Mr M A Johnson & Ms S E Wallace			
<b>APPLICANT:</b>	Casson Planning And Development Services 5 Stanstead Close SCONE NSW 2337			
<b>AUTHOR:</b>	Mr J Boyce			
<b>DATE LODGED:</b>	05/05/2021			
<b>DATE OF REPORT:</b>	21 July 2021			

Drawing No.	Description	Sheet	Revision	Date
-	Site Plan	1 page	-	12/04/21
-	Floor Plan	1 page	-	12/04/21
-	Section & 3D	1 page	-	12/04/21
-	Elevations	1 page	-	-

**SUMMARY**

<b>ISSUES</b>	Access road, bushfire
<b>SUBMISSIONS</b>	Nil
<b>RECOMMENDATION</b>	Approval subject to conditions

## 1. SITE AND LOCALITY DESCRIPTION

The subject land is Lot 2 in DP 1210270 and has access off Peberdys Road, Sandy Hollow. The site was subdivided in 2014 under DA 2014/75 and is currently a vacant lot.

The subject land is zoned RU5 Village and has been identified to be bushfire prone on the Council Mapping System.

**Figure 1.** – Site Aerial Image (Source: Spectrum)



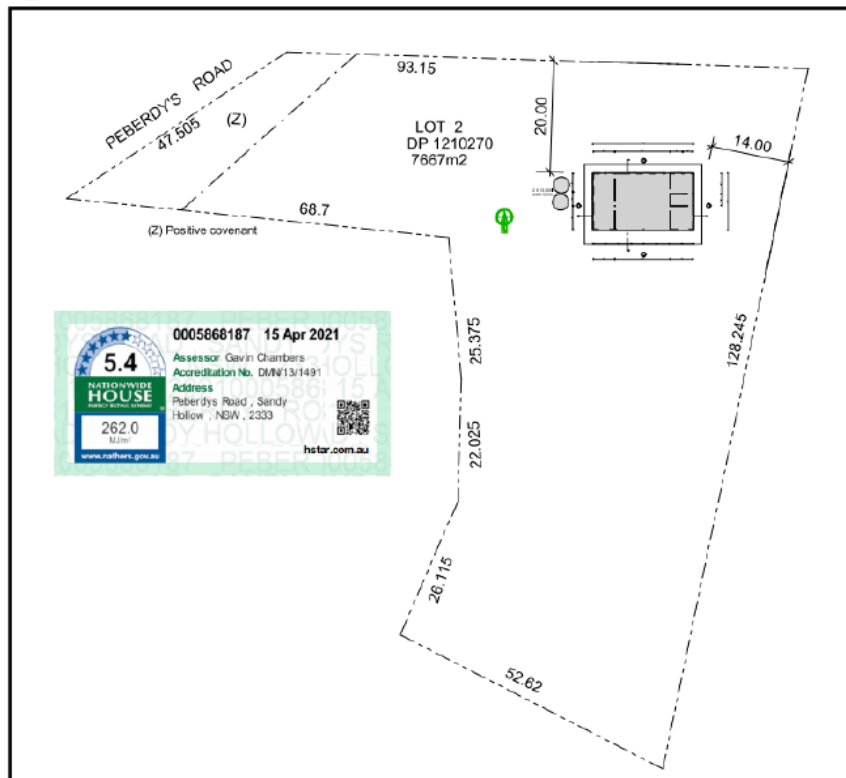
## 2. DESCRIPTION OF PROPOSAL

The proposal seeks development approval for a steel framed and clad dwelling on the subject land

**Figure 2.** – Perspective View



Figure 3. – Site Plan



### 3. SPECIALIST COMMENTS

#### 3.1. Internal Referrals

The application was referred to Council's Environmental Health Officer, and Community Infrastructure. Each section reviewed the proposal and recommended standard conditions to be placed on the development consent should the application be approved.

##### 3.1.1. Senior Environmental Health Officer

The EHO Officer did not have any objections to the development and recommended that the Standard OSSM Condition be placed on Consent.

##### 3.1.2. Community Infrastructure

Community Infrastructure Officers provided the following comments in relation to the proposed development:

- The proposed lot is existing, and forms part of a recent subdivision.
- There is minimal opportunity to further subdivide this property.
- The frontage road (Peberdys Road) is a longer rural access road that serves distant large rural properties, and also is a route for ARTC maintenance vehicles, and is unlike the cul-de-sac and development opportunity present during assessment of the recent Honey Lane development (DA 2020-8).
- Despite the Policy, CI does not recommend the application of the requirement for sealing and upgrading Peberdys Rd between the Golden Hwy and the proposed access point due to the cost of sealing given it is an existing block



and the more significant usage of that road by the wider community and ARTC.

- It should be noted that the proposed internal driveway appears to currently be utilised by an existing lot under the same ownership as the proposed development but is not covered by an easement for right of way access. CI recommends the applicant consider one of three options for resolving this future access issue:
  1. Consolidate the two lots into a single ownership;
  2. Formalise a right of way access benefitting the adjacent lot; or
  3. Propose a new accessway for the adjoining lot directly off Peberdys Road.
- A flood certificate prepared by CI indicates that there is no concern for flood issues for the site.
- Due to its nature as the bush fire prone land, the internal driveway to the property needs to meet the requirements of "Fire safety guideline Access for fire brigade vehicles and firefighters, Published by Fire and Rescue NSW, 2019" and NSW RFS Planning for Bush Fire Protection.
- The applicant needs to provide rural property access to the lot as per the MSC standard Drawing (Rural Property Access, SD No:0041/1).
- Any works undertaken within Peberdy's Road to be prepared and constructed in accordance with an S138 permit.
- CI requires the applicant to provide a driveway with a pipe crossing suitable for the expected loads and scour protection each side of the pipe. The driveway shall always be designed in compliance with Council and Rural Fire requirements with a minimum DGB20 and maintained at all times.

These comments have been reviewed by the Assessing Officer and have informed the recommended conditions of consent.

The Assessing Officer supports the proposal to not require construction and sealing of Peberdys Road, even though this is not in accordance with Council's 2020 Road Development Standard Policy. The Assessing Officer notes that the lot was approved by Council under DA 75/2014 and that no condition was imposed on this approval requiring the improvement or sealing of Peberdys Road.

### **3.2. External Referrals**

The application did not require any external referrals

## **4. ASSESSMENT**

This report provides an assessment of the material presented in the Application against the relevant state and local planning legislation and policy.

## Section 4.15 Matters for Consideration

### Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument (EPI)

The following EPIs, DCPs, Codes and Policies are relevant to this Application:

#### 4.1. Muswellbrook Local Environmental Plan 2009 (MLEP 2009)

##### Land Use Zone and Permitted Land Use

The development site is zoned RU5 Village pursuant to MLEP 2009. The proposal is best defined as new *dwelling house*, which is permitted with consent in the subject Zone.

##### Objectives of the RU5 Village Zone

- *To provide for a range of land uses, services and facilities that are associated with a rural village.*
- *To allow more flexibility in the development of the town of Denman and village of Sandy Hollow.*
- *To allow for future development of residential, commercial or low-impact land use within the town of Denman and village of Sandy Hollow.*
- *To ensure that non-residential uses do not result in adverse amenity impacts on residential premises.*
- *To minimise the impact of non-residential uses and ensure these are in character and compatible with surrounding development.*

It is considered that the development proposal is not contrary to the objectives of the Zone.

##### Relevant Clauses applicable under the Muswellbrook Local Environmental Plan 2009

<i>Part 1 Preliminary</i>	
<i>Part 2 Permitted or prohibited development</i>	
<i>2.3 Zone objectives and Land Use Table</i>	The proposed development is a permissible development under the RU5 land use table as expressed above and in accordance with the relevant to the land use zone objectives <b>Complies</b>
<i>Part 3 Exempt and complying development</i>	
<i>Part 4 Principal development standards</i>	
<i>4.1 Minimum subdivision lot size</i>	The proposal does not seek to subdivide the land. <b>Not relevant</b>
<i>4.3 Height of buildings</i>	MLEP 2009 specifies a maximum building height of 8.5 m in relation to the land. The maximum height of the proposed development is approximately 2700mm at the eaves. <b>Complies</b>
<i>4.4 Floor space ratio</i>	MLEP 2009 specifies a floor space ratio of 0.5:1 in relation to the land.  The proposed dwelling would have an area of approximately 182.95m <sup>2</sup> (this

	<p>measurement has been taken from plans of the application). The Lot has an area of 7667m<sup>2</sup>.</p> <p>Using these calculations, the FSR of the proposed development would be 0.02:1 <b>Complies</b></p>
<i>Part 5 Miscellaneous provisions</i>	
<i>Part 6 Urban release areas</i>	
<i>Part 7 Additional local provisions</i>	
<i>7.1 Terrestrial biodiversity</i>	<p>The subjected site is not identified as "Biodiversity" by Council's biodiversity Mapping <b>Not relevant</b></p>
<i>7.6 Earthworks</i>	<p>Earthworks involved with the proposed development would be minimal and associated with the establishment of the foundation. <b>Complies</b></p>

### Bushfire Assessment

Vegetation: Forest



Slope: rise 52m length 128m = 22.11 degrees upslope of proposed dwelling



Distance to vegetation: more than 98m



BAL calculation: 12.5

#### 4.2. State Environmental Planning Policy No. 55 – Remediation of Land

Council Officers are unaware of any activities that may have caused the contamination of the land. No visual evidence of any contamination was observed during an inspection of the site. The site has historically been agricultural land, which is unlikely to create any significant contamination issues. It is therefore considered that the subject site is unlikely to be affected by contamination requiring remediation in accordance with the SEPP. The proposed development may therefore proceed without the need to further consider the provisions of this SEPP.

#### 4.3. SEPP (Building Sustainability Index: BASIX) 2004

The proposed development involves the construction of a new dwelling house within the meaning of BASIX Affected Buildings by the SEPP. In accordance with the provisions of this SEPP a BASIX Certificate has been prepared and submitted in relation to the BASIX Affected Building proposed. The buildings will need to be constructed in accordance with the provisions of the BASIX Certificate or a subsequent modified version of the relevant certificate.

#### 4.4. Section 4.15(1)(a)(ii) the provisions of any draft EPI.

There are no draft EPIs relevant to the subject Application.

#### 4.5. Section 4.15(1)(a)(iii) the provisions of any development control plan

##### Section 3 – Site Analysis

It is considered that the documentation provided with the Development Application satisfies the provisions of Section 3 of the Muswellbrook DCP.

##### Section 6 – Residential Development

	Comments
<b>6.1 Built Form</b>	
<b>6.1.1 Context</b>	The built form of the proposed development would be in accordance with the requirements of the DCP and would respond to the physical capabilities of the site and the design limitations of Council's DCP. <b>Complies</b>
<b>6.1.2 Front Setbacks</b>	The proposed dwelling would be setback over 50m from Peberdys Road which is well back from the DCP requirements of minimum 4.5m. <b>Complies</b>
<b>6.1.3 Side and Rear Setbacks</b>	The proposed dwelling would be setback 14m from the North, over 77m from the southern side boundary and over 75m from Southern property boundary. <b>Complies</b>
<b>6.1.4 Building Height and Scale</b>	The proposed dwelling would be consistent to the height bulk and scale of existing neighbouring dwellings nearby the subject site. <b>Complies</b>
<b>6.1.5 Front Fencing and Retaining Walls</b>	The proposal does not involve any front fencing or retaining walls. <b>Not Relevant</b>
<b>6.1.6 Garages, Carports and Sheds</b>	No Garages, Carports or Sheds are proposed along this development application. <b>Not Relevant</b>
<b>6.1.7 Dwelling Entry</b>	The entry of the dwelling would be clearly identifiable from Peberdys Road. <b>Complies</b>
<b>6.1.8 Accessibility and Adaptability</b>	Not applicable as the proposed development is single dwelling <b>Not applicable</b>
<b>6.1.9 Reflective Materials</b>	<b>Managed by Standard Condition</b>

	Comments
<b>6.2 Urban Landscape</b>	
<b>6.3 Environmental</b>	
<b>6.3.1 Topography</b>	The proposed site is relatively flat and would not require significant cut and fill and therefore complies with the DCP requirement. <b>Complies</b>
<b>6.3.2 Solar Access</b>	The dwelling will not be overshadowed or impede solar access to the site. <b>Complies</b>
<b>6.3.3 Visual Privacy</b>	Visual privacy would be maintained due to setbacks. <b>Complies</b>
<b>6.3.4 Acoustic Privacy</b>	The proposal is for a residential dwelling with more than adequate setbacks and is not expected to have negative impacts on Acoustic Privacy for the vicinity. <b>Complies</b>
<b>6.4 Site Operation</b>	
<b>6.4.1 Energy Conservation</b>	A BASIX certificate has been provided for the proposal in question. This ensures that energy efficient housing with the use of passive solar design would allow for residence to experience year-round comfort and reduce total energy consumption for heating and cooling. <b>Complies</b>
<b>6.4.2 Stormwater Management</b>	As the subject land is not connected to Council's storm water system.  Council Officers recommend a condition requiring Stormwater from the proposed development to be managed via a connection to a rainwater tank and re-application on-site. <b>Complies</b>
<b>6.4.3 Security, Site Facilities and Services</b>	The proposed site is capable of providing site facilities and services as required by the DCP. <b>Complies.</b>

#### Section 7 – Village Zones

<b>7. VILLAGE ZONES</b>	
<b>7.1 Introduction</b>	
<b>7.1.1 Aims and Objectives</b>	Proposed development is in accordance with the Aims and Objectives for Sandy Hollow.  Proposed development also complies with the provisions of Section 6 of Muswellbrook Development Control Plan. <b>Complies</b>
<b>7.2 Assessment Process</b>	
<b>7.2.1 Character Statements</b>	Proposed new dwelling would not compromise the integrity of the character statement for Sandy Hollow. <b>Complies</b>
<b>7.3 Residential Development</b>	
<b>7.3.1 Waste Water Disposal</b>	Condition are included to install an on-site sewer



	management system to comply with DCP requirements. <b>Complies</b>
7.4 (a) Public Parks and Reserves	
7.4 Non-Residential Development	

#### Section 20 – Erosion and Sediment Control

The relevant objective of this section states:

‘to demonstrate through the preparation of an Erosion and Sediment Control Plan or Strategy for developments over 250m<sup>2</sup> of disturbance that appropriate controls are planned to be installed’.

The total floor area of the proposed development is 182.95m<sup>2</sup> and therefore does not an Erosion Control as Sediment Plan under the Muswellbrook DCP. The proposed development does not involve the carrying out of substantial earthworks. The earthworks proposed would not present any issue in relation to the DCP requirements and it is recommended that a condition of consent is imposed to manage the carrying out of earthworks.

#### Section 23 – On-site Sewage Management Systems

An onsite sewer management system will need to be install and maintained for proper and effective effluent disposal in relation to the proposed development. A condition of consent will be imposed in relation to the proposed development.

#### Section 24 – Waste Management

A waste management plan has not been prepared in relation to the proposed development as DCP requirement. The Assessing Officer recommends including a standard condition that a Waste Management Plan be provided prior to the issue of an Occupation Certificate, should the application be approved.

#### Section 94A Contributions Plan 2010

The cost of works for the proposed dwelling is \$158,550. As a development Contribution wasn't paid to Council when the land was subdivided, a developer contribution of 0.5% of the development cost is applicable.

#### **4.6. Section 4.15(1)(a)(iia) the provisions of any planning agreement**

There are no planning agreements relevant to the subject Application.

#### **4.7. Section 4.15(1)(a)(iv) the provisions of the regulations**

Division 8A of the Environmental Planning and Assessment Regulation 2000 applies to the development.

#### **4.8. Section 4.15(1)(a)(v) the provisions of any coastal zone management plan**

This item is not relevant to the subject Application.

#### **4.9. Section 4.15(1)(b) the likely impacts of that development**

Given the limited scope of the proposed development and its compatibility with the relevant provisions of Council's DCP and LEP the proposed development it is considered that the development won't have significant adverse environmental impacts.

**4.10. Section 4.15(1)(c) the suitability of the site for the development**

It is considered that the development is compatible with surrounding land uses and site characteristics, subject to consent conditions.

**4.11. Section 4.15(1)(d) any submissions made**

In accordance with the Community Participation Plan, the application was notified via notification letters from 14/05/2021 to 31/05/2021. No submissions were received during the notification period:

**4.12. Section 4.15(1)(e) the public interest.**

The proposed development would be in accordance with the MLEP 2009, MDCP 2009 and is unlikely to have any adverse environmental impacts. Accordingly, the proposed development is considered to be in accordance with the public interest.

**5. CONCLUSION**

The proposed development has been assessed against the relevant heads of consideration of Section 4.15 of the Environmental Planning and Assessment Act 1979. It is considered that the proposed development would be in accordance with the relevant planning provisions.

Accordingly, it is recommended the application be approved subject to conditions of consent.

<b>Assessment Officer:</b>	<b>Reviewing Officer: Hamish McTaggart</b>
<b>Signature:</b> 	<b>Signature:</b> 
<b>Date:</b>	<b>Date:</b>

**DA 2021/43 – recommended conditions of consent:****IDENTIFICATION OF APPROVED PLANS****(1) Development in Accordance with Plans**

The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions.

Drawing No.	Description	Sheet	Revision	Date
-	Site Plan	1 page	-	12/04/21
-	Floor Plan	1 page	-	12/04/21
-	Section & 3D	1 page	-	12/04/21
-	Elevations	1 page	-	-

**OPERATIONAL CONDITIONS IMPOSED UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS AND OTHER RELEVANT LEGISLATION****(2) Building Code of Australia**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**(3) Home Building Act**

- (1) Building work that is residential building work (under the meaning and exemptions of the *Home Building Act 1989*) must not be carried out unless the Principal Certifying Authority for the development to which the work relates:
  - (a) In the case of work being carried out by a licensed builder :
    - (i) Has been informed in writing of the licensee's name and license number, and;
    - (ii) Has received Home Owners Warranty Insurance for works where the contract price of the works exceeds \$20,000.
  - (b) In the case of an Owner Builder:
    - (i) Has been informed in writing of the person's name and Owner Builder permit number where the cost of works is greater than \$10,000, or;
    - (ii) Has been given declaration signed by the owner of the land that states that the reasonable market cost of the labour and materials is less than \$10,000.
- (2) A certificate issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.
- (3) If arrangements for doing residential building work are changed while the work is in progress, so that the information submitted to Council is 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.

Note: (1) The amounts referred to in point 1 may be subject to change as regulations are amended.

(2) An owner that engages multiple licensees/contracts or contracts for part of the work and completes work themselves is considered an Owner Builder under the *Home Building Act 1989*.

**ANCILLARY MATTERS TO BE COMPLETED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

**(4) Section 7.12 Contributions**

Pursuant to section 4.17(1) of the Environmental Planning and Assessment Act 1979, and the Muswellbrook Shire Council Section 94A Development Contributions Plan 2010, a contribution of \$792.78 shall be paid to Muswellbrook Shire Council.

The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the Muswellbrook Shire Council Section 94A Development Contributions Plan 2010. The contribution is to be paid prior to the issue of the Construction Certificate.

**(5) Construction Certificate Requirement**

No works shall commence on-site until such time as a Construction Certificate has been issued for either part or all of the works to be undertaken. If a Construction Certificate is issued for part of the approved works it must relate to all works being undertaken.

Note: a construction certificate issued by an Accredited Certifying Authority must be loaded on to the eplanning portal at least 48 hours prior to the commencement of any earthworks, engineering or building work at the site.

**(6) Bushfire Attack Level Design**

Prior to the issue of any Construction Certificate the person acting with this consent shall provide the Principle Certifier with construction plans to demonstrate that the component of the development for which a Construction Certificate is being sought has been designed in accordance with the relevant Bushfire Attack Level Construction requirement.

The bushfire attack level construction of the building shall be in accordance with the Bushfire Attack Levels specified by condition 4 of this consent (**BAL-12.5**)

**(7) BASIX Commitments**

Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. Details and plans demonstrating compliance with these requirements are to be submitted to the Certifying Authority for approval with the Construction Certificate.

In this condition:

- (a) relevant BASIX Certificate means:
  - (i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - (ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- (b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT**

**(8) Sediment and Erosion Control**

All required erosion and sedimentation techniques are to be properly installed prior to the commencement of any site works and maintained in a functional and effective condition throughout the construction activities until the site is stabilised.

**(9) Site Sign**

A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- (a) stating that unauthorised entry to the work site is prohibited,
- (b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours, and
- (c) showing the name, address and telephone number of the Principal Certifying Authority for the work.

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

This condition does not apply to building works being carried out inside an existing building.

**(10) Site Facilities**

- (a) If the development involves building work or demolition work, the work site must be fully enclosed by a temporary security fence (or hording) before work commences.
- (b) A minimum width of 1.2m must be provided between the work site and the edge of the roadway so as to facilitate the safe movement of pedestrians.
- (c) Any such hoarding or fence is to be removed when the work has been completed.

- (d) A garbage receptacle fitted with a tight fitting lid for the reception of all food scraps and papers from the work site must be provided prior to building work commencing and must be maintained and serviced for the duration of the work.
- (e) Toilet facilities must be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the work site.
- (f) Each toilet provided must:
  - be a standard flushing toilet, connected to a public sewer; or
  - if connection to a public sewer is not available, to an on-site effluent disposal system approved by the council; or
  - an approved temporary chemical closet.
- (g) The provision of toilet facilities must be completed before any other work is commenced.
- (h) A person having the benefit of this certificate who causes an excavation that extends below the level of the base of the footings of a building on an adjoining allotment of land must at their own expense and where necessary:
  - protect and support the building from damage; and
  - if necessary, underpin and support the building in accordance with the details prepared by a professional engineer.
- (i) A person having the benefit of this certificate who causes the excavation must, at least 7 days before commencing this work, give notice of intention to do so to the owner of the adjoining allotment of land and provide particulars of the proposed work.
- (j) Erosion and sediment controls must be provided in accordance with the details shown on the approved plans, prior to the disturbance of any soil on the work site.

**(11) Water Meter**

A water meter issued and installed by Muswellbrook Shire Council's Water & Waste department must be connected to the town's reticulated water supply prior to any commencement.

**(12) Vehicle Entry**

Prior to commencing construction of the driveway/vehicle crossing/layback, within the road reserve, a permit for the work must be obtained from Council, under Section 138 of the Roads Act 1993.

**CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**(13) Construction Hours**

- (a) Subject to this clause, building construction is to be carried out during the following hours:
  - i. between Monday to Friday (inclusive)—7.00am to 6.00pm
  - ii. on a Saturday—8.00am to 1.00pm
- (b) Building construction must not be carried out on a Sunday or a public holidays.
- (c) Demolition works and excavation works must only be carried out between



Monday to Friday (inclusive) between 8.00am and 5.00pm.

- (d) The builder and excavator must display, on-site, their 24-hour contact telephone numbers, which are to be clearly visible and legible from any public place adjoining the site.

**(14) Prohibition on Use of Public Land**

Building materials and equipment must be stored wholly within the work site, unless prior written approval has been obtained from Council. Equipment must not be operated on the footpath or roadway, unless prior written approval has been obtained from council.

**(15) Compliance with BASIX Certificate**

Under clause 97A of the Environmental Planning and Assessment Regulation 2000, it is a condition of this Development Consent that all commitments listed in BASIX Certificate No. 1194222S is to be complied with. Any subsequent version of this BASIX Certificate will supersede all previous versions of the certificate.

**(16) Site Waste Minimisation**

Throughout the carrying out of building works the person acting with this consent shall take reasonable steps to minimise waste from the carrying-out of the development in accordance with the following objections of Chapter 24 Waste Minimisation and Management of Council's Development Control Plan.

- Optimise adaptive reuse opportunities of existing building/structures.
- Maximise reuse and recycling of materials.
- Minimise waste generation.
- Ensure appropriate storage and collection of waste.
- Minimise environmental impacts associated with waste management.
- Avoid illegal dumping.
- Promote improved project management.

**(17) Damage to Public Infrastructure**

The applicant shall bear the cost of all restoration works to Council property damaged during the course of this development. The applicant shall submit to Council, in writing and/or photographic record, evidence of any existing damage to Council property before commencement of work.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. If no documentation is received prior to commencement of work it will be assumed that the infrastructure was undamaged and the applicant will be required to restore all damaged infrastructure at their expense.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE****(18) Occupation**

The building is not to be used or occupied until a final inspection has been carried out and an occupation certificate has been obtained from the Principal Certifying Authority.

**(19) On-site Sewage Management**

The development will require On-Site Sewage Management System. Such a system requires Council to install, construct or modify under s68 Local Government Act. A current Approval to Operate will also be required before an Occupation Certificate can be provided. Applications to install a system must be accompanied with a Wastewater Management Plan including Site and Soil Assessment by a suitably qualified person.

**(20) Vehicle Access to Dwellings**

Prior to the issue of any Occupation Certificate a vehicle access driveway is to be constructed from Peberdys Road the property in accordance with the requirements of the Muswellbrook Shire Council standard Drawing (Rural Property Access, SD No:0041/1).

The driveway shall be formed in accordance with the particulars set-out in this drawing and related standards with the exception that the driveway is not required to be bitumen sealed. In place of a sealed driveway Council will accept a Stabilised site access consisting of at least 200mm of aggregate at 30–60mm in size and a minimum of 3m in width.

**(21) Independent Vehicle Access**

The vehicle access provided over Lot 2 DP 1210270 to benefit Lot 1 DP 1210270 is to be removed or formalised via a Right of Way registered on the title of Lot 2 DP 1210270 (to provide a legal access opportunity).

In accordance with this requirement, individual vehicle accesses are to be provided to each of these lots, or registration of a Right of Way on Lot 2 DP 1210270 is to occur prior to the issue of an Occupation Certificate. Accesses for each lot are to be in accordance with the vehicle access construction requirements referenced in this consent.

**(22) House Numbering**

Prior to any Occupation Certificate being issued for the building works, the person acting upon this consent must apply to Muswellbrook Shire Council and receive written confirmation of the allocated street address(es) or house number(s) for the completed project. These are the numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2003 – Geographic information – Rural and urban addressing.

**(23) Bushfire Requirements**

Prior to the issuing of an Occupation Certificate, the following bushfire damage prevention shall be addressed:

**i. Asset Protection Zones**

At the commencement of building works and in perpetuity the property around the building to the property boundary, shall be maintained as an Inner Protection Area (IPA) as outlined in Section 3.2 and Appendix 4 of Planning for Bush Fire Protection 2019 and the NSW Rural Fire Service's document Standards for asset protection zones:

The Inner Protection Area shall comprise of the following:

- minimal fine fuel at ground level;
- vegetation that does not provide a continuous path to building/s for the transfer of fire;
- shrubs and trees that do not form a continuous canopy and vegetation is planted/cleared into clumps rather than continuous rows;
- species that retain dead material or deposit excessive quantities of ground fuel are avoided;
- shrubs and trees are pruned or removed so they do not touch or overhang the building/s; and
- vegetation is located far enough away from the building/s so that plants will not ignite the building/s by direct flame contact or radiant heat emission.

To allow for emergency service personnel and residents to undertake property protection activities, a defensible space that permits unobstructed pedestrian access is to be provided around the building.

**ii. Water and Utilities**

- a) Water, electricity and gas are to comply with section 7.4 of Planning for Bush Fire Protection 2019.
- b) A minimum 10,000 litre Static Water Supply shall be provided for firefighting purposes. The Static Water Supply shall comply with the following requirements of 7.4 of Planning for Bushfire Protection 2009:
  - The static water supply shall be a water tank.
  - Above ground tanks are to be manufactured of concrete or metal and raised tanks must have their stands constructed from non-combustible material or bush fire-resisting timber (see Appendix F AS 3959);. Tanks on the hazard side of a building are to provide adequate shielding for the protection of fire fighters.
  - Underground tanks have an access hole of 200mm to allow tankers to refill direct from the tank. A hardened ground surface for truck access is to be supplied within 4 metres of the access hole.
  - A suitable connection for firefighting purposes (65mm storz outlet with gate or ball valve) is made available on the tank or within the IPA.
  - All plumbing associated with the water supply (fittings, taps, outlets,

pipes) shall be metal.

- A minimum 5hp/3kW petrol or diesel powered pump shall be made available and shielded from potential bushfire threat. Connection of the tank outlet to the pump may require a 65mm to 38mm reducer storz fitting.
- A hose with a diameter not less than 19mm, fire fighting nozzle and fittings suitable for connection to the pump, shall be provided. The hose shall be capable of reaching all elevations of the dwelling.
- A SWS marker shall be obtained from the local NSW Rural Fire Service Fire Control Centre or NSW Fire Brigade Station once the SWS has been installed. The marker once issued is to be placed at the front of the property either:
  - a) On the front fence – facing the road; OR
  - b) On the letterbox – facing the road.

iii. Access

Property access roads shall comply with the requirements of section 7.4 of Planning for Bush Fire Protection 2019 where applicable.

iv. Design and Construction

- a) New construction shall comply with section 3 and section 5 (BAL 12.5) Australian Standard AS3959 "Construction of buildings in bush fire-prone areas' and Table A1.12.5 of "Planning for Bush Fire Protection 2019".
- b) All proposed Class 10 buildings attached to or within 6 metres of the habitable building shall comply with section 5 (BAL 12.5) Australian Standard AS3959 "Construction of buildings in bush fire-prone areas' and Table A1.12.5 of "Planning for Bush Fire Protection 2019".
- c) Where fitted, leaf protection to stop the accumulation of debris to new roofing valleys and guttering shall be non-combustible.

v. Landscaping

Landscaping to the site is to comply with the principles of Appendix 4 of Planning for Bush Fire Protection 2019. In this regard the following landscaping principles are to be incorporated into the development:

- Grassed areas/mowed lawns/ or ground cover plantings being provided in close proximity to the building;
- Restrict planting in the immediate vicinity of the building which may over time and if not properly maintained come in contact with the building;
- Planting should not provide a continuous canopy to the building (i.e. trees or shrubs should be isolated or located in small clusters);
- When considering landscape species consideration needs to be given to estimated size of the plant at maturity;
- Avoid species with rough fibrous bark or which retain/shed bark in long strips or retain dead material in their canopies;
- Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;

- Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);
- Avoid climbing species to walls and pergolas;
- Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
- Use of low flammability vegetation species.

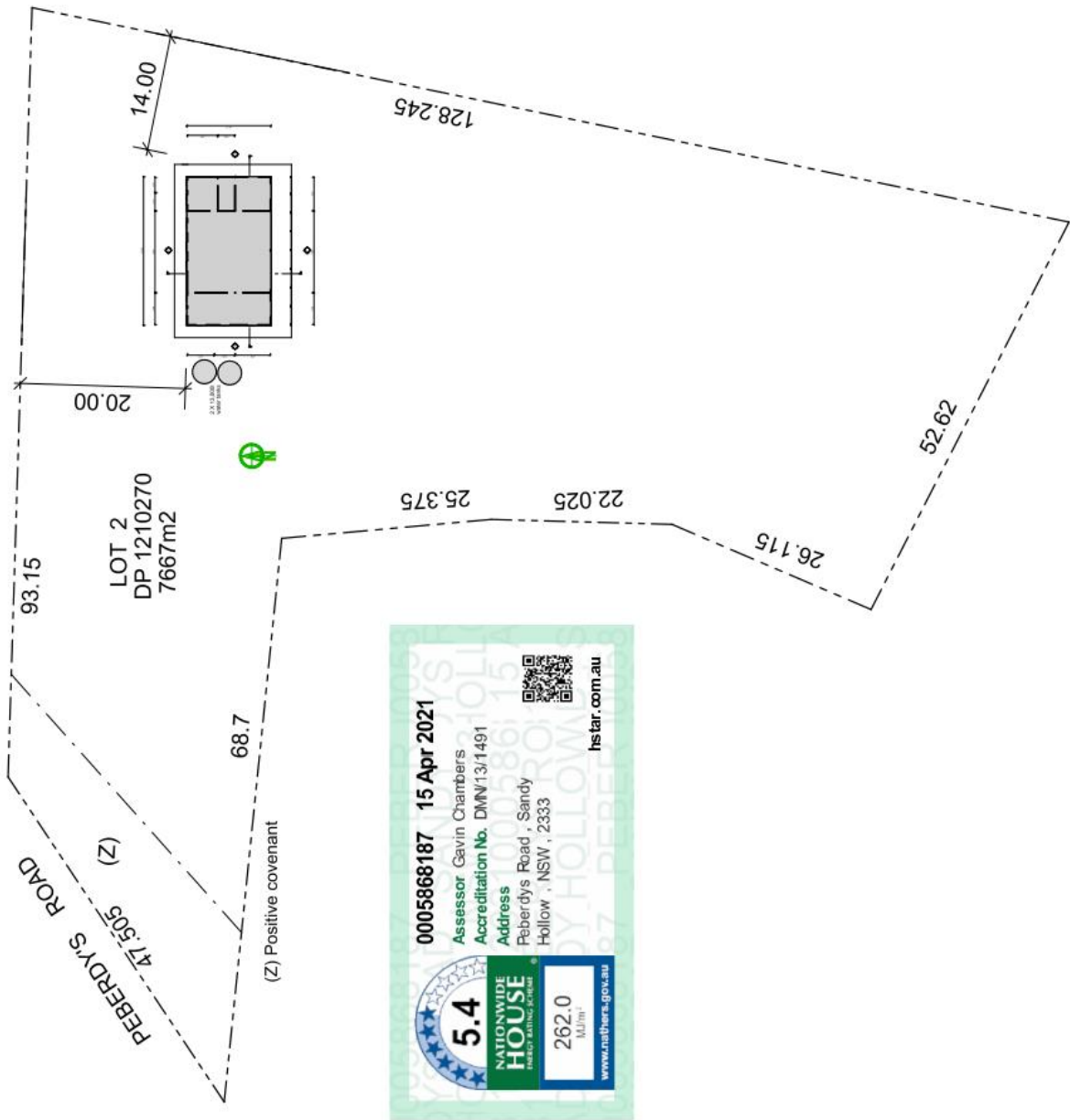
<b>CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES</b>
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**(24) Stormwater Disposal**

Any storm water runoff from the addition and its associated overflow from the rainwater tank are to be appropriately disposed of to an appropriately constructed discharge point at a distance of 3m clear of the proposed and any adjoining buildings. The discharge point shall be constructed to avoid erosion of the adjacent ground.

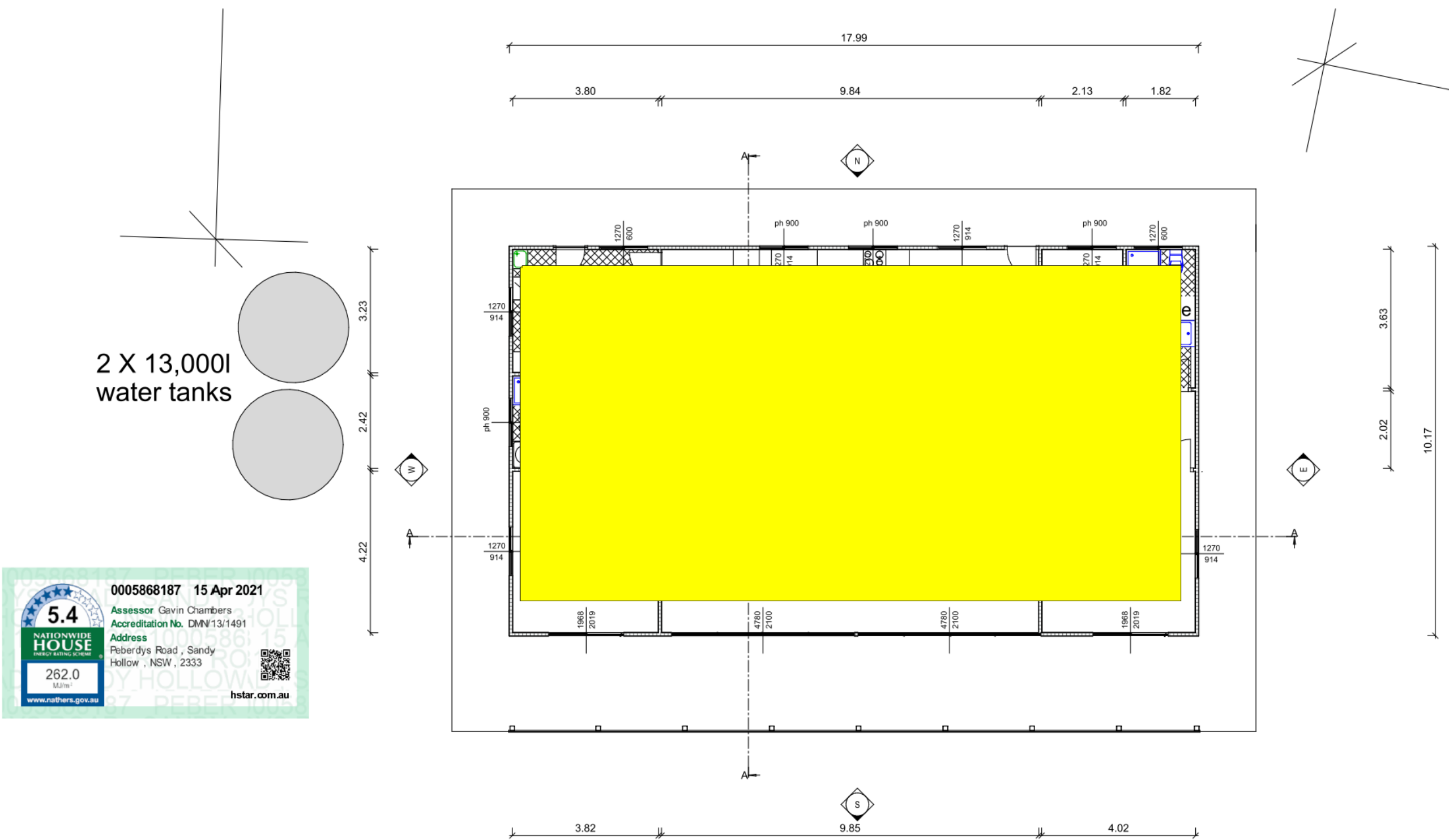
**(25) Roofing & External Cladding Materials**

Roofing and cladding materials shall be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings.



NOTES	CLIENT <b>S Wallace</b>  PROPERTY <b>Lot 2 DP 1210270</b> <b>Peberdys Road, Sandy Hollow</b>  PROPOSAL	TITLE Site Plan	 <b>CASSON</b> PLANNING & DEVELOPMENT SERVICES	David Casson 5 Stanstead Close, Scone NSW 2337 0427 597883 cassonpds@gmail.com
		SCALE 1:500 - 1:750 @ A3		
		DATE 12/04/21		
		DRAWN D C		
AMENDMENTS				





5.4

NATIONWIDE  
HOUSE

ENERGY RATING SCHEME

262.0

MJ/m<sup>2</sup>

www.nathers.gov.au

0005868187 15 Apr 2021

Assessor Gavin Chambers

Accreditation No. DMN/13/1491

Address

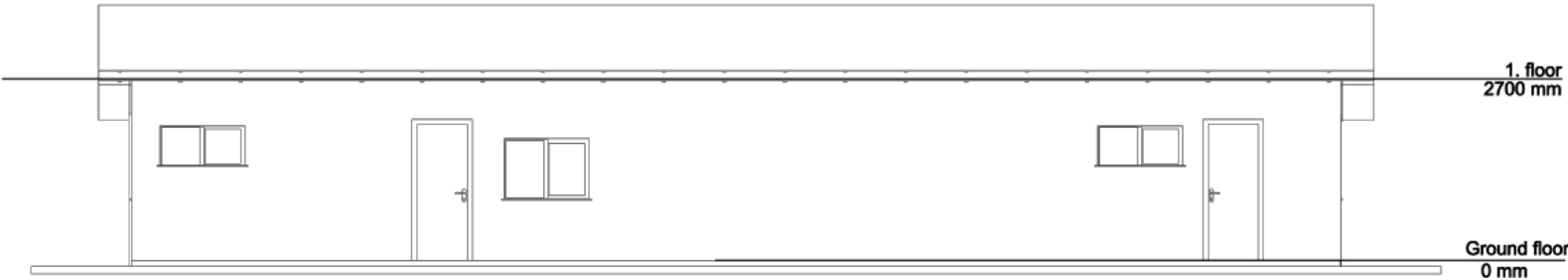
Peberdys Road, Sandy Hollow, NSW, 2333

hstar.com.au

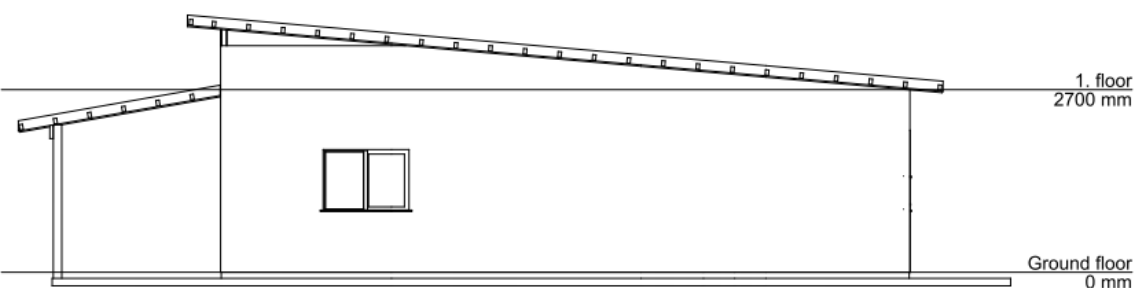
NOTES	CLIENT	TITLE	<div><div>C P D S</div><div>CASSON</div><div>PLANNING &amp; DEVELOPMENT SERVICES</div><div>David Casson 5 Stanstead Close, Scone NSW 2337 0427 597883 cassonpds@gmail.com</div></div>
	<i>S Wallace</i>	Floor Plan	
	PROPERTY	SCALE	
	<i>Lot 2 DP 1210270</i>	1:100 @ A3	
AMENDMENTS	<i>Peberdys Road, Sandy Hollow</i>	DATE	SHEET
	PROPOSAL	12/04/21	
	<i>Dwelling</i>	DRAWN	
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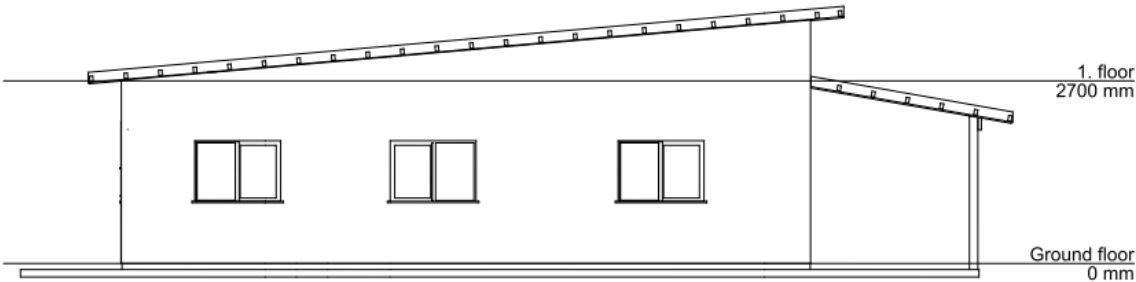
NOTES	<p>CLIENT</p> <p><i>S Wallace</i></p> <p>PROPERTY</p> <p><i>Lot 2 DP 1210270</i></p> <p><i>Peberdys Road, Sandy Hollow</i></p> <p>PROPOSAL</p>	<p>TITLE</p> <p>Section &amp; 3D</p> <p>SCALE</p> <p>1:100 @ A3 / NTS</p> <p>DATE</p> <p>12/04/21</p> <p>DRAWN</p> <p>D C</p>	 <p><b>CASSON</b> PLANNING &amp; DEVELOPMENT SERVICES</p> <p><i>David Casson</i> 5 Stanstead Close, Scone NSW 2337 0427 597883 cassonpds@gmail.com</p>
AMENDMENTS			



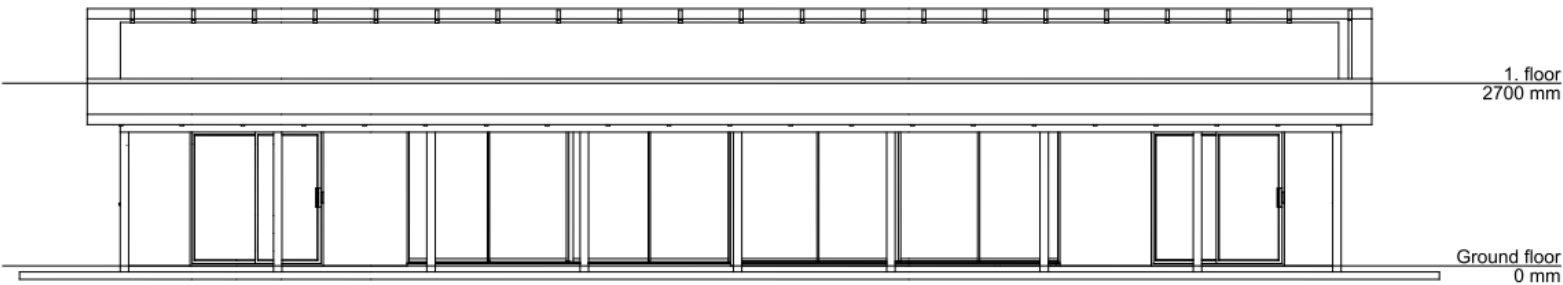
NORTH ELEVATION



EAST ELEVATION



WEST ELEVATION



SOUTHELEVATION

5.4

NATIONWIDE HOUSE ENERGY RATING SCHEME

262.0 MJ/m²

www.nabers.gov.au


0005868187 15 Apr 2021

Assessor Gavin Chambers

Accreditation No. DMN/13/1491

Address Peberdys Road, Sandy Hollow, NSW, 2333

hstar.com.au

NOTES	CLIENT	TITLE	<div><div>C P D S</div><div></div><div>CASSON PLANNING &amp; DEVELOPMENT SERVICE</div></div>	
	PROPERTY	SCALE		
	AMENDMENTS	DATE SHEET		David Casson 5 Stanstead Close, Scone NSW 2337 0427 597883 cassonpds@gmail.com
	PROPOSAL	DRAWN D C		



# **muswellbrook shire council**

## **Road Development Standards Policy**

**MSC09E**

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## Policy Objective

To provide policy guidance regarding:

- The conditions under which Council maintains roads across the Shire.
- Council's policy on changing the status of an 'unmaintained' road to a 'maintained' road.
- Council's policy regarding requests for Council to take over the upgrade and maintenance of 'unmaintained' roads.
- To provide a unique address for properties so that they can be easily identified and located.
- To ensure the naming and numbering of rights of way is regulated.
- The closure of Council roads.

The Road Development Standards Policy is intended to complement Council's Development Control Plan.

## Risks being addressed

This policy ensures safe and high quality community infrastructure necessary to a regional centre.

## Scope

This policy applies to all local roads in the Shire of Muswellbrook, for which Council is the designated road authority.

## Contents

1. Definitions
2. Policy Statement
  - 2.1 New Roads
  - 2.2 Road Maintenance
  - 2.3 Public Ramps
  - 2.4 Naming of Roads
  - 2.5 Property Addresses and Numbering
  - 2.6 Rights of Way
  - 2.7 Road Closures Requested by Development
  - 2.8 Dedication of Public Roads
3. Delegations
4. Legislation
5. Dispute Resolution
6. Associated Council Documentation

## 1. Definitions

Term	Definition
Formed road	A road that does not have gravel paving, but which is formed using a grader so that stormwater will drain off laterally.
Maintained road	A road specified in Council's Road Register as being maintained by Council.
Unformed road	A road reserve that has been cleared and open to use by the public.
Unmade road	A road reserve that has had no capital improvement including clearing, formation or gravel paving. An unmade road may be trafficable or un-trafficable in all weathers.
Unmaintained road	A road that is included, or not included, in Council's Road Register, and is not maintained by Council.

## 2. Policy Statement

### 2.1 New Roads

In a number of instances a new development will require:

- the construction of a new road for access, and the road will be dedicated to Council as a Public Road; or
- the reconstruction or upgrading of an existing Public Road.

The Standards that will apply are outlined in Muswellbrook DCP 2009, and engineering guidelines such as Auspec and Austroads.

It is Council's preference that residential subdivisions (for example, land zoned R1, R2, R5, B2, B3), created under Torrens and Community Title, be provided with a Public Road access that meets Council's standards. Any requests for residential subdivisions to be served by a Private Road that doesn't meet Council's standards will require justification as to why compliance with Council's standards are unnecessary or unreasonable in that instance.



In urban areas, access to new sub-divisions or dwellings will be required to be made from a sealed road compliant with Council's engineering guidelines such as Auspec and/or Austroads. Where an upgrade to an unsealed road is required, this may be carried out by the developer at its full cost, or in the case of multiple property access along the identified, affected length of road, through the development of a Developer Contributions Plan in order to fairly apportion costs between relevant property owners.

## 2.2 Road Maintenance

Council will only maintain the road network recorded in the Roads Register, and within Council's approved budget.

The responsibility and cost of maintenance of unmaintained roads, whether Formed, Unformed or Unmade roads rest with the land owners who use the road for access to private properties. Approval of a dwelling on a property accessed by an unformed road does not commit Council to any upgrade construction or repair of that road.

Land owners may make a written application to Council for approval to construct a formed road, at the cost of the land owners. Applications will be assessed, and may be granted conditional approval based on conditions outlined in the policy procedure.

The formation or construction of a road to Council standards does not automatically imply that Council will maintain the road. Council will only take over maintenance of the road:

- if it provides wider community benefits and satisfies the criteria outlined in Requests for Council take over section below; and
- following construction of the road in accordance with conditional approval and its acceptance by the authorised Council officer.

Land owners may make a written application for Council assume responsibility for the maintenance of a road. Council will consider applications on an individual basis and on the merits of each individual application, and usually only where land owners agree to pay the costs to upgrade an existing unmaintained road to Council standards. Council will take the following into consideration when making a decision:

- Availability of funds (budget allocation);
- Number of residents per km – as a minimum, must be greater than 5;
- Lot size and future sub-division potential;
- Traffic volume – must be greater than 40 average annual daily traffic (AADT);
- Public, recreational and emergency services use; and
- Existing road condition, and public safety and risk considerations.

Sections of road that provide access to 5 or less residences will not be considered for addition to the maintained road list.

Private individuals or Contractors may perform maintenance on public roads that are unmaintained if they obtain S138 permit from Council. Section 138 of the Roads Act (NSW) requires that all work undertaken within Council's road reserves must have Council consent prior to work being undertaken.

The only time a S138 permit is not required is when all works (including all loading and unloading with the use of machinery, shifting of the machinery e.g. backhoes, cranes, concrete trucks, mine vehicles etc) being undertaken are carried out within the boundaries of private property. Should this be the case, Council requires written notification to this effect.

Conversely, should consolidation of properties result in a maintained road providing access to one property only, without the road traversing any other property or providing a public benefit, Council may decide to remove that road from the register of maintained roads, and to no longer maintain the identified section of road.

### 2.3 Public Ramps

Part 9 Division 2, Roads Act (1993), Part 6, Roads (General) Regulations 2008 imposes statutory duty on Council to inspect, maintain and repair any part of a public road which is a roadway, a pathway, a shoulder or road infrastructure. For the purposes of this section, a Public Gate and/or a Stock Grid are considered an inherent component of a road and can therefore be regarded as road infrastructure.

Whilst Council has the control, care and management responsibility of its public roads, provisions of this policy transfer responsibility to the landowner for monitoring, maintenance and repair of any Public Gate and/or Stock Grid which are permitted for use. This maintenance responsibility includes the section of road 20 metres either side of the Stock Grid.

All costs associated with the construction, maintenance and repair of a Public Gate and/or Stock Grid, as well as the section of road 20 metres either side of the Stock Grid, is the responsibility of the owner of the land to whom the Public Gate and/or Stock Grid has been granted.

This policy also requires compliance check of a permitted Public Gate and/or Stock Grid to ensure that the liability insurance is held by the land owner. Council reserves the right to undertake any maintenance or removal of a Public Gate and/or Stock Grid at the landowner's expense where it may be deemed that it poses a hazard to other road users.

If Council determines that Public Gate and/or Stock Grid is not maintained to the appropriate standard, or that the Public Gate and/or Stock Grid is not warranted, Council may remove the Public Gate and/or Stock Grid and reinstate the road at the landowner's expense.

### 2.4 Naming of roads

Council will not accept the use of surnames of living private citizens or those in public office except when "special circumstances" are deemed by Council to warrant or justify such use.

(NOTE: "Special circumstances" will be considered in the naming of streets, accessways and parks and reserves after private citizens or those in public office where the following criteria designed to enhance the historical fabric of the Shire are met:

- a) the person after whom the street, accessway, park, or reserve is deceased or is no longer resident in the area;
- b) the person after whom the street, accessway, park, or reserve is proposed to be named has rendered exceptional services to the Shire.)

Council has a preference for the use of Aboriginal place names, the names of Australian flora and fauna, the names of geological rocks, minerals and elements related to the Shire, or places where former Shire residents have been involved in war or peace keeping efforts sanctioned by the Australian Government.

### 2.5 Property Addresses and Numbering

Council is committed to ensuring the health and wellbeing of its residents by making sure their place of residence can be quickly located in an emergency. Council will apply the property numbering

principles identified in the Comprehensive Property Addressing System established by the Geographical Names Board. Each property shall have an address that is linked to a single road name.

The Comprehensive Property Addressing System was established to ensure there was a uniform approach taken across the whole of NSW. The majority of properties in the Shire have been allocated a Property Address that conforms to this approach. Occasionally, however, an owner or Council will identify a property that doesn't have a correct Property Address, and in this case the owner may initiate a request for a Property Address.

If a private property in a rural location has more than one private road/driveway providing access to separate dwellings on the one property, each access should be provided with a separate Property Number, in order to make it easy for emergency Services to find the correct property.

In any new subdivision, the Property Addresses for new lots must be created at the time the subdivision is approved and registered.

## 2.6 Rights of Way

Council is committed to ensuring the health and wellbeing of its residents by making sure their place of residence can be quickly located in an emergency.

In consultation with the property owners serviced by the right of way, where it is considered necessary to ensure properties have a unique and identifiable address, Council will name existing Rights of Way (ROW).

If Council receives a request from a property owner to name a right of way, the cost of approved signage and the supply of rural address plates benefiting properties are to be borne proportionally by the property owners serviced by the right of way.

Where a subdivision application in a rural area proposes access by right of way, and that right of way:

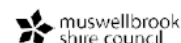
- services or will service more than 1 property; and
  - the right of way exceeds 400 metres in length,
- a condition will be applied to the subdivision consent requiring;
- a) The Applicant to include a name for the right of way for Council's approval;
  - b) The Applicant to provide and erect, at its expense, a sign that bears the approved name of the right of way. The sign shall also include the words 'Private Road' in letters approximately 30mm high. The size and style of the sign is to be the same as Council's standard street signage;
  - c) New lots serviced by the ROW are to be given an address to the ROW; and
  - d) The erection of rural address plates to identify each property.

In the case of private roads in rural locations that provide access to a primary residence and a number of rural workers dwellings, the Owner should consider naming the private road as a ROW and providing each residence with a number based on distance from the Public Road, again to help emergency services locate the correct dwelling quickly.

Rights of Way are not maintained by Council.

## 2.7 Road Closures requested by Development

Road closures requested by private developers will comply with the Notice of Motion entitled 'Road Closure Resolution' adopted by Council at the 12 February 2019 Ordinary Council Meeting. The adopted Road Closure Resolution provides:



1. Without predetermining any particular application under Division 3 of Part 4 of the Roads Act 1993, Council adopts a general policy that significant alterations to the rural road network should not be resolved until after the adoption of a new Local Environment Plan;
2. Review and finalisation of the Contributions Plan accompanying the Mine Affected Roads Strategy.

## 2.8 Dedication of Public Roads

Where existing roads have minor deviation outside the public road reserve, no action will be taken to correct this unless reconstruction work of that section of road is undertaken, or adjoining property owners request the correction of the road boundary.

## 3. Delegations

**The General Manager** is the interpreter of this Policy and shall be the sole arbiter in respect to the application of this Policy.

**Directors, Assistant Directors, and Executive Managers** are responsible for the administration and implementation of this policy.

## 4. Legislation

Roads Act 1993

Roads (General) Regulations 2008

## 7. Dispute Resolution

The General Manager is the sole interpreter of this policy.

## 8. Associated Council Documentation

Muswellbrook Shire Council 2019-20 Operational Plan

Muswellbrook Shire Council Rural Road Status Report (as amended 1986)

### Authorisation Details

<b>Authorised by:</b>	Council
<b>Minute No:</b>	403
<b>Date:</b>	30 June 2020
<b>Review timeframe:</b>	2 years
<b>Department:</b>	Community Infrastructure

<b>Document Owner:</b>	
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## Details History

Version No.	Date changed	Policy type	Modified by	Amendments made