

**JOINT REGIONAL PLANNING PANEL
(Northern Region)**

JRPP No	2012NTH020
DA Number	DA12/0364
Local Government Area	Tweed Shire
Proposed Development	Construction of tourist accommodation development comprising of 355 tourist units, ancillary communal recreational facilities, on-site carparking for 375 vehicles and associated bulk earthworks, with access from the western extension of Kirkwood Road connecting to Fraser Drive.
Street Address	Firetail Street, Tweed Heads South
Applicant/Owner	Proportional Property Investment Ltd Atf PPI Wholesale Property Trust No 1
Number of Submissions	Two (2)
Recommendation	Refusal
Report by	Colleen Forbes, Coordinator Development Assessment
Report date	8 February 2013

Assessment Report and Recommendation

FILE NO: DA12/0364

REPORT TITLE:

Development Application DA12/0364 for a construction of tourist accommodation development comprising of 355 tourist units, ancillary communal recreation facilities, onsite carparking for 375 vehicles and associated bulk earthworks, with access from the western extension of Kirkwood Road connecting to Fraser Drive (JRPP) at Lot 1 DP 1168904; Firetail Street TWEED HEADS SOUTH

SUMMARY OF REPORT:

The proposed development is for the construction of a tourist accommodation development involving 355 units, communal facilities, carparking with access proposed from the western extension of Kirkwood Road connecting to Fraser Drive.

The subject site is part zoned 2(e) Residential Tourist and part zoned 6(b) Recreation.

The site is heavy covered with mature vegetation and the south eastern portion of the site incorporates a SEPP 14 Wetland.

The proposed development includes extensive bulk earthworks to gain access from the Kirkwood Road extension as well as to provide a development platform. The earthworks propose a maximum 27m cut from the central portion of the site, which will result in the loss of the mature vegetation located across the proposed development footprint.

The purpose of this report is to have the application determined by the Northern Region Joint Regional Planning Panel, due to the capital investment value of the proposed development exceeding \$20,000,000.

The assessment of the proposed development has raised many issues in relation to: cultural heritage matters; landforming and access matters; aircraft and road noise impacts; as well as flora and fauna impacts. A complete cultural heritage assessment has not been undertaken for the proposal and insufficient information has been provided in relation to the matters raised above.

In light of the applicant's reluctance to withdraw the application and that the proposal cannot be supported with regard to Cultural Heritage issues without a site survey and complete cultural heritage assessment being undertaken, Council has not issued a further information request with regard to the outstanding issues raised within the report. It was not considered appropriate to request further design details (which could potentially cost the applicant a significant amount of money) if the application was going to be recommended for refusal. As such, an assessment of the proposal has been undertaken against the information originally submitted with the development application.

After consideration of all applicable environmental planning instruments, the Tweed Development Control Plan and various policies, the proposal is recommended for refusal.

REPORT:

Applicant: Proportional Property Investment Ltd PPI Wholesale Property Trust No.1

Owner: Proportional Property Investments Ltd

Location: Lot 1 DP 1168904; Firetail Street TWEED HEADS SOUTH

Zoning: 2(e) Residential Tourist
6(b) Recreation

Cost: \$30,000,000

BACKGROUND:

The subject site is described as Lot 1 DP1168904 and is located in Tweed Heads South on the western side of the Pacific Highway (Motorway) and is to be accessed from a new section of Kirkwood Road connecting to Fraser Drive to the west of the site.

The site is irregular in shape with a northern frontage of 347.555m to Kirkwood Road, an eastern frontage of 614.680m to the Motorway, a southern boundary of 758.861m and a western boundary of 529.758m, as shown in Figure 1 below. This results in a total site area of 18.02ha.



Figure 1: Aerial photo of subject site

The site is vacant with a large portion covered by mature native vegetation. The site landform comprises a central ridge which crosses the site in an east – west direction. Site levels fall to the north and to the south of the central ridge. A State Environmental Planning Policy (SEPP) No 14 Wetland is located in the south east portion of the site.

The surrounding area comprises a mixture of vacant urban release land, the Pacific Highway corridor and medium density residential development.

The area to the north of the site is the unformed road reserve of Kirkwood Road. Council has recently begun the construction of the eastern extension of Kirkwood Road which involves a borrow pit on the western extension. The borrow pit is located directly adjacent to the northern boundary of the site. To the east of the site is the Tweed Heads Bypass of the Pacific Highway (Motorway).

To the south is a large rural property, which operates as a function centre and offers farm stay accommodation. To the south east is an industrial area associated with the South Tweed trade and commerce area.

The area to the west incorporates detached residential dwellings in Firetail Street and a medium density townhouse development.

As the site is quite heavily vegetated, a development application (DA11/0388) was submitted for the removal of exotic understorey vegetation to allow for a detailed cultural heritage site inspection / investigation to be undertaken for the subject application.

DA11/0388 proposed to remove the exotic undergrowth by mechanical means. The application was approved, with heavy or tracked machinery only permitted in certain areas of the site. No heavy or tracked machinery is permitted within the remainder of the, as shown below in Figure 2. It was also conditioned that weed control works within Area "B" may be undertaken only in a manner sensitive to the ecological values of the site using recognised bushland regeneration techniques.

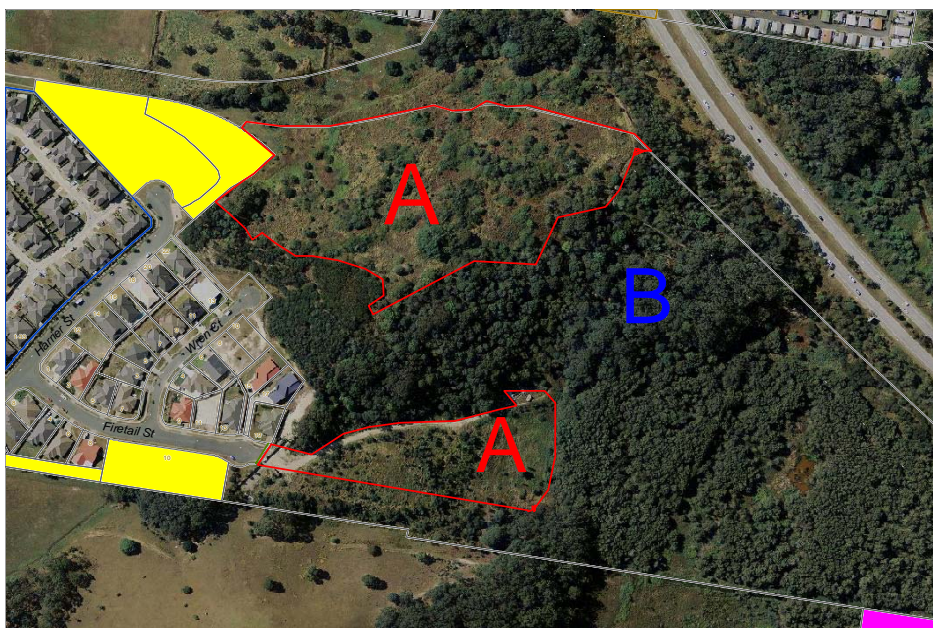


Figure 2: Understorey clearing using heavy machinery or tracked machinery must be limited to the red polygon areas marked as A. No heavy or tracked machinery is permitted within the higher ecological value and conservation areas marked as B.

A subdivision application (33 lots – K98/0011) was approved in 1998 over the western part of the (originally larger) allotment (originally comprised of Lot 9 and 10 DP 822830). A flora and fauna assessment undertaken at that time recognised significant ecological values over the site, including occupied Koala habitat. In the conclusions of the 1998 report, James Warren & Associates state:

“An extensive rehabilitation and regeneration program of mixed Eucalypt species (containing a high density of Koala food trees) should be carried out on the adjacent Lot 10 (amended to Lot 33 DP 1073293, now Lot 1 DP 1168904 – the subject site) and linked with buffer zone planting around the Proposed Development. This program will conserve approximately 2 hectares of forest comprised of 1.25 hectares of existing Blackbutt forest, 0.3 hectares of Swamp Sclerophyll Forest and 0.3 hectares of grassland to be regenerated as mixed Eucalypt forest. This

program will eventually increase the amount of Koala habitat available to Koalas in the South Tweed area.”

Consent conditions for K98/0011 included a requirement for a conservation zone through the central portion of the subject site, for the purposes of conservation and rehabilitation. The footprint of the proposed development appears to slightly overlap a portion of the zone. In this regard, the proponent has proposed to amend the conservation zone to more accurately align the conservation areas with the high conservation areas of the site. The revised conservation zone appears to be clear of the proposed development footprint, as shown in Figure 3 below.

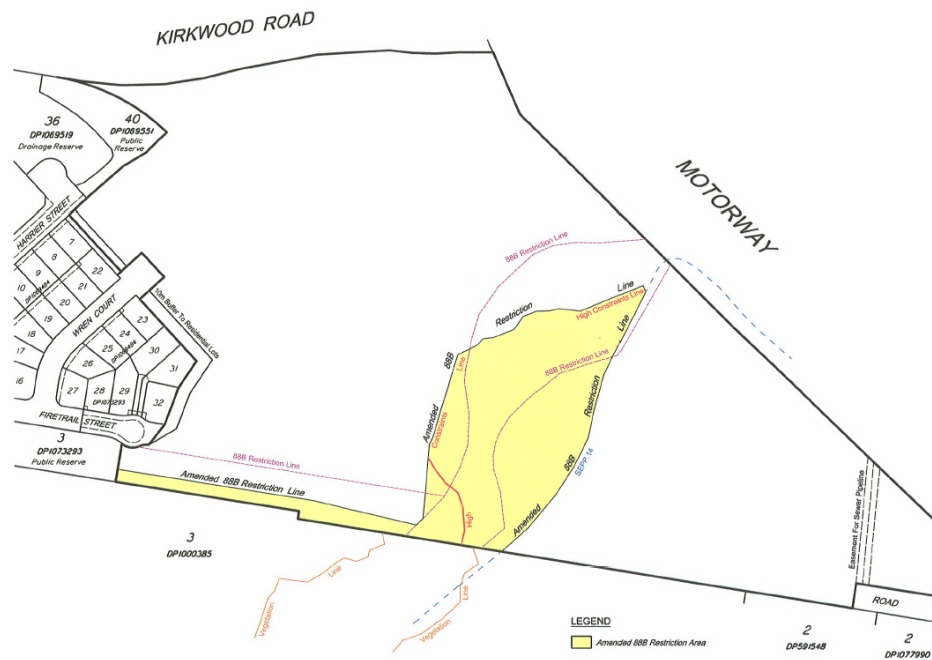


Figure 3: Proposed revised covenant areas over the subject site.

A subdivision certificate (SSC11/0032) for road widening was granted over the site in 2011 to facilitate the construction of the Kirkwood Road extension (which was granted approval via PTV10/0032). The PTV application covered the extension of Kirkwood Road from its junction with Falcon Way to the east of the Pacific Highway and from Fraser Drive to the west. The proposal included the provision of access to and from the Pacific Highway via southbound on and off ramp and via a northbound off ramp. This application created current Lot 1 DP 1168904.

PROPOSAL:

The proposed development comprises a total of 355 tourist accommodation units to be provided in a series of one, two and three storey structures. The proposal incorporates seven different types of units, as follows:

- 71 x Type A units (1 bed dwelling – two storeys);
- 32 x Type B units (2 bed dwelling – two storeys);
- 16 x Type C units (2 bed dwelling (alternate design) – two storeys);
- 5 x Type D units (1 bed disabled dwelling – one storey);
- 22 x Type RV-A units (1 bed RV space dwelling – two storeys);
- 7 x Type RV-B units (2 bed RV space dwelling – two storeys); and
- 9 x Type E (2 bed duplex dwelling – three storey).

Each of the two storey buildings contains two units (one per floor). Each of the proposed three storey units contains six accommodation units, with two units per floor.

The proposal also incorporates a communal facilities building located adjacent to the site entry which includes swimming pools, barbeques, a kiosk, dining area, games room and administration offices.

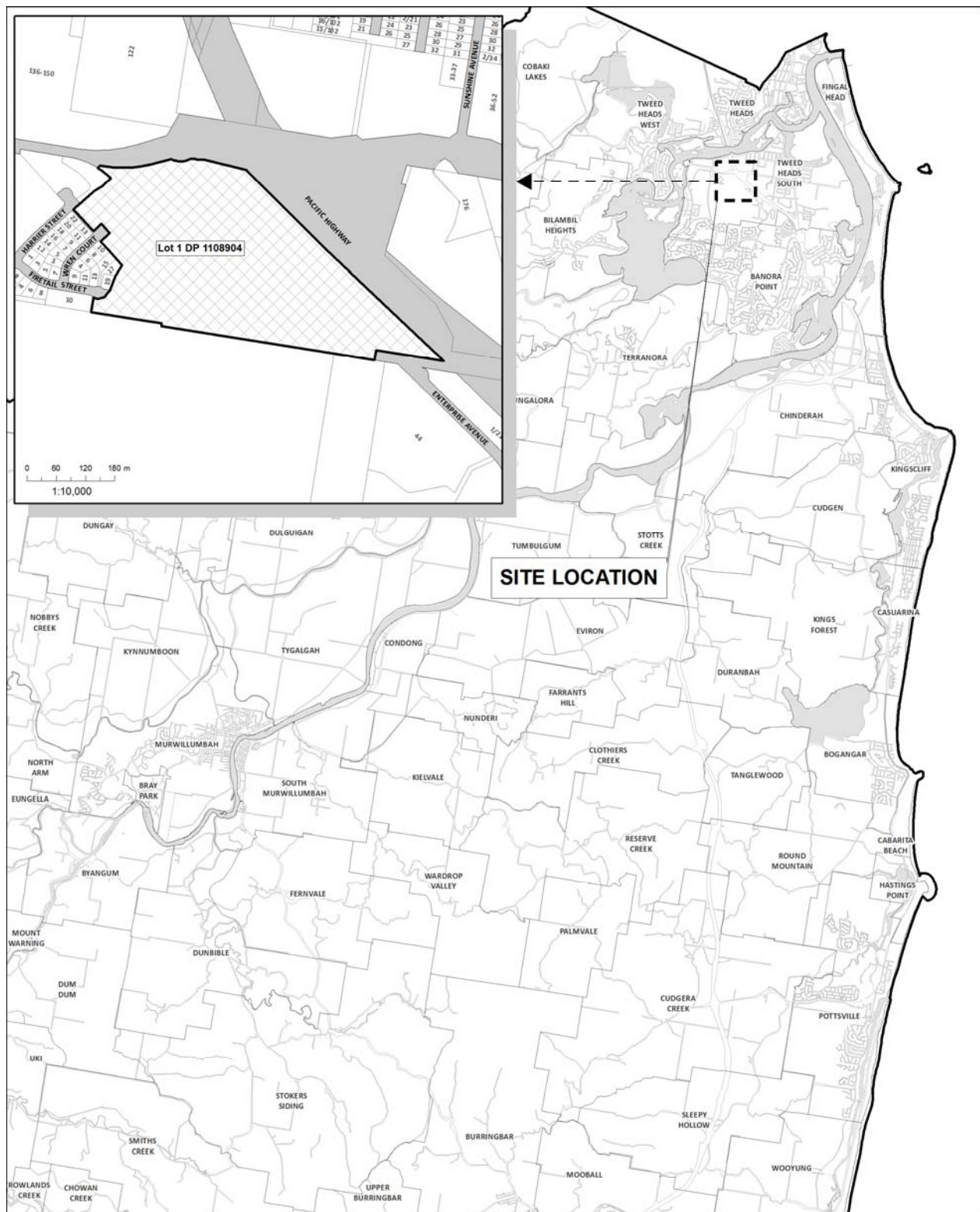
The site will contain 375 car spaces, including open car spaces and car ports for the storage of RV's and motor home vehicles. Within the site, the accommodation units are accessed via the internal driveway network and car parking is provided adjacent to each unit.

In order to access the site, the proposal intends to construct a portion of the proposed extension to Kirkwood Road. The proposal also incorporates extensive earthworks, including maximum cuts in the order of 27m in the centre of the site, to provide a developable area.

The proposed earthworks will necessitate the removal of vegetation from the north western part of the site.

The capital investment value of the proposed development has been estimated at, \$30,000,000 which results in this assessment report being forwarded to the Northern Region Joint Regional Planning Panel (JRPP) for determination.

SITE DIAGRAM:



Locality Plan

Lot 1 DP 1168904
Firetail Street, Tweed Heads South

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dig before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral: 04 February, 2013
© Land and Property Management Authority (LPMA) & Tweed Shire Council.
Boundaries shown should be considered approximate only.

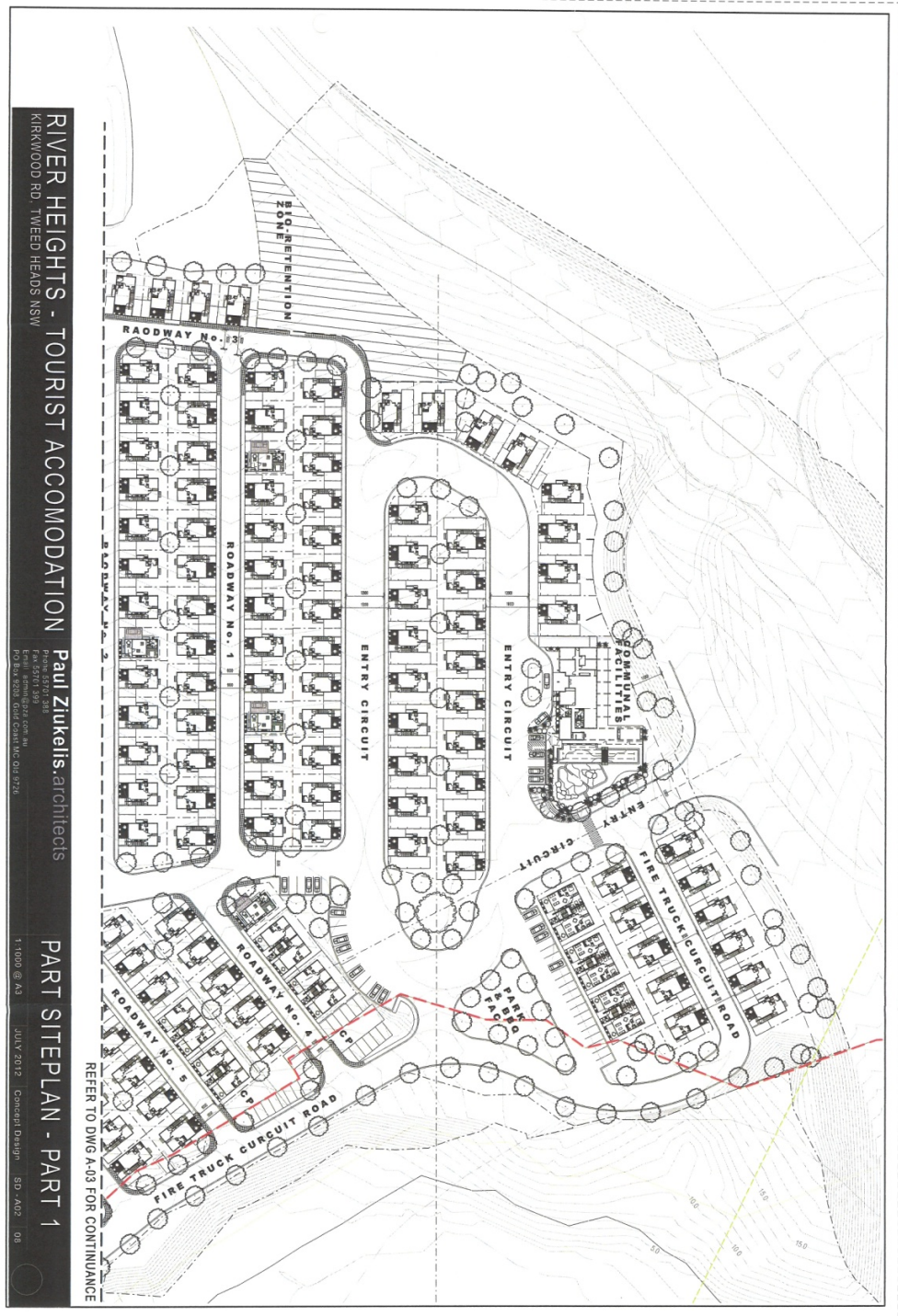
0 1 2 Km
1:125,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED
Map Projection: Universal Transverse Mercator
Horizontal Datum: Geodetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56
GDA

Civic and Cultural Centre
3 Tumbulghum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484
T | (02) 6670 2400 | 1300 292 872
F | (02) 6670 2429
W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au

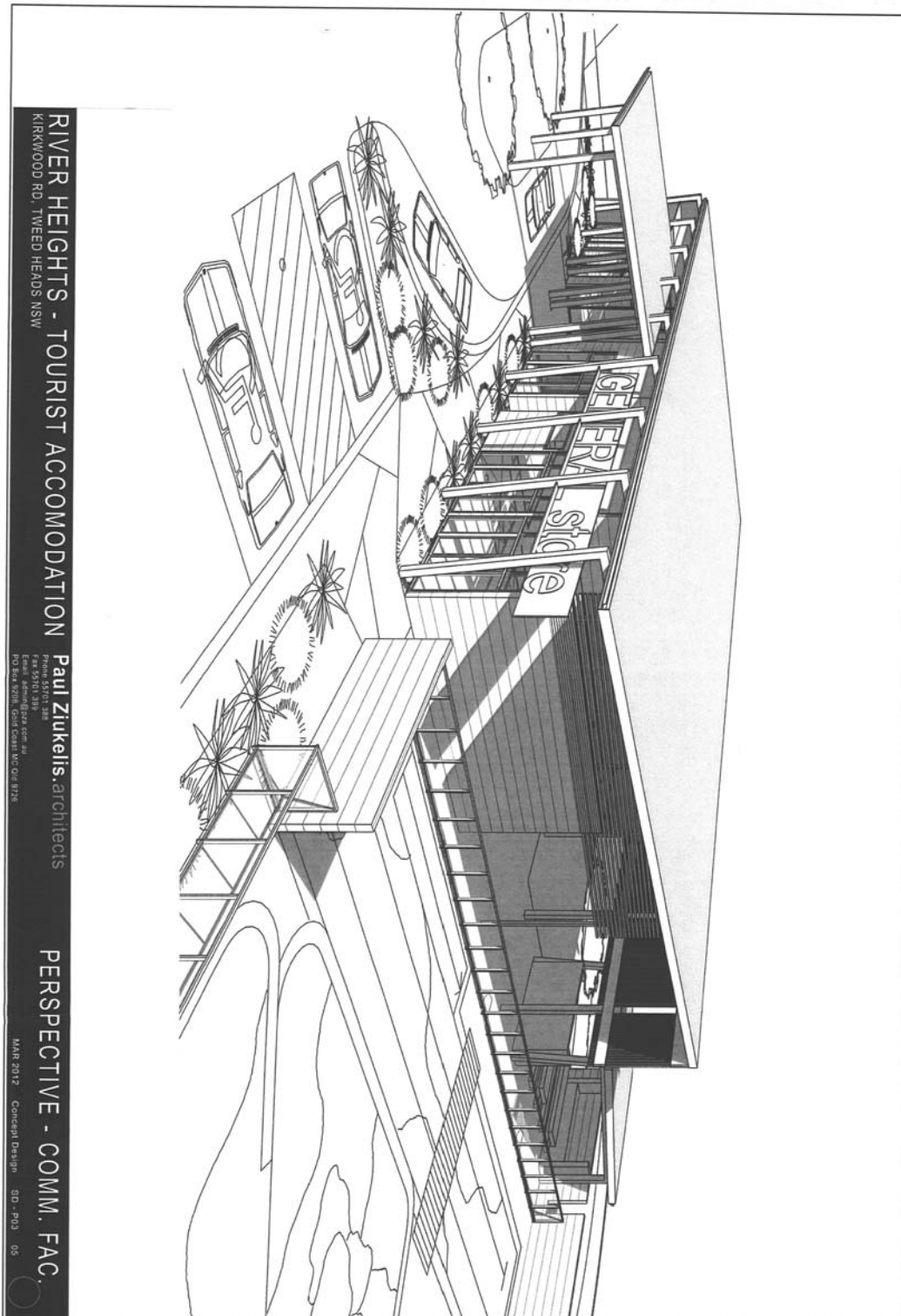


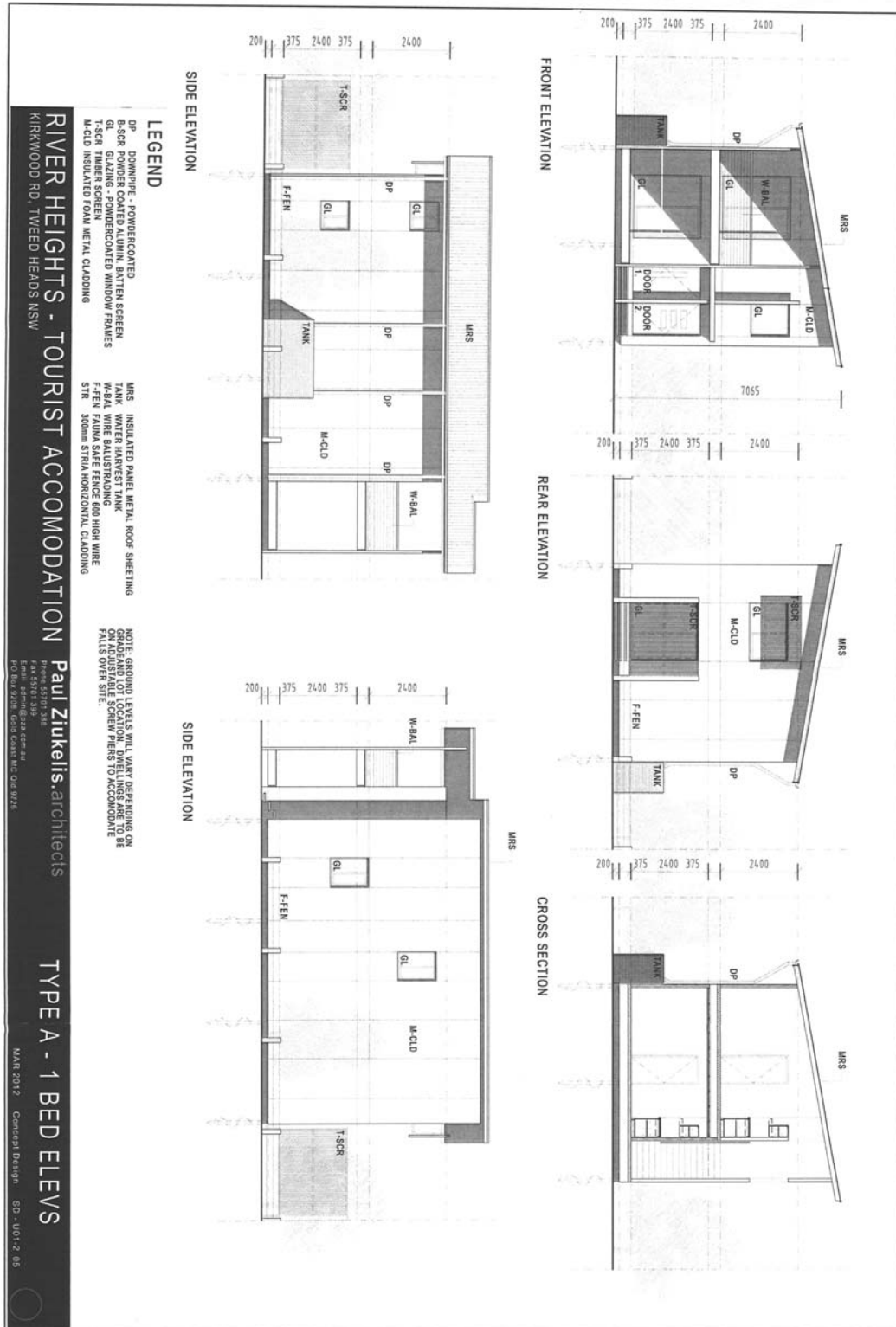
DEVELOPMENT/ELEVATION PLANS:

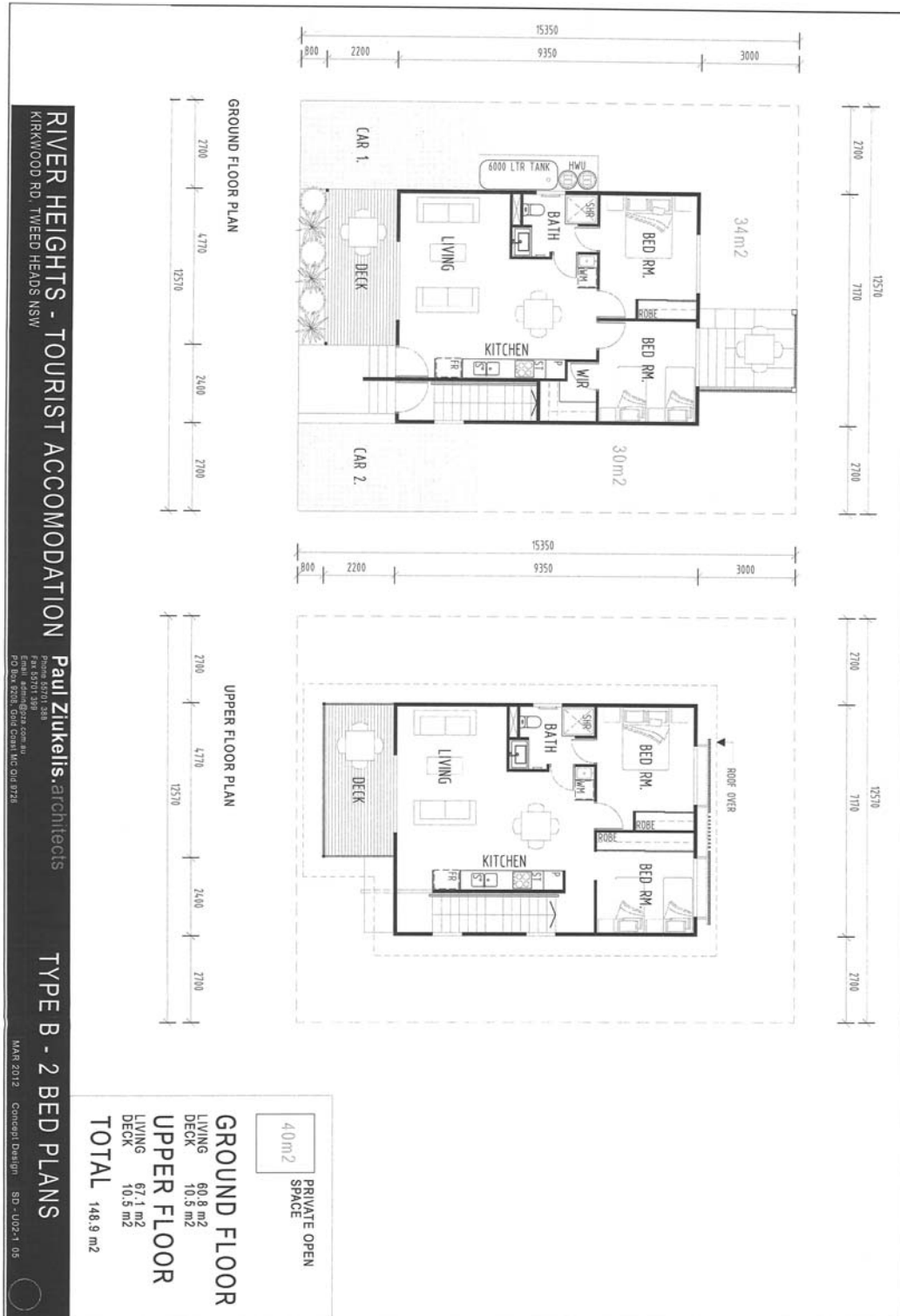


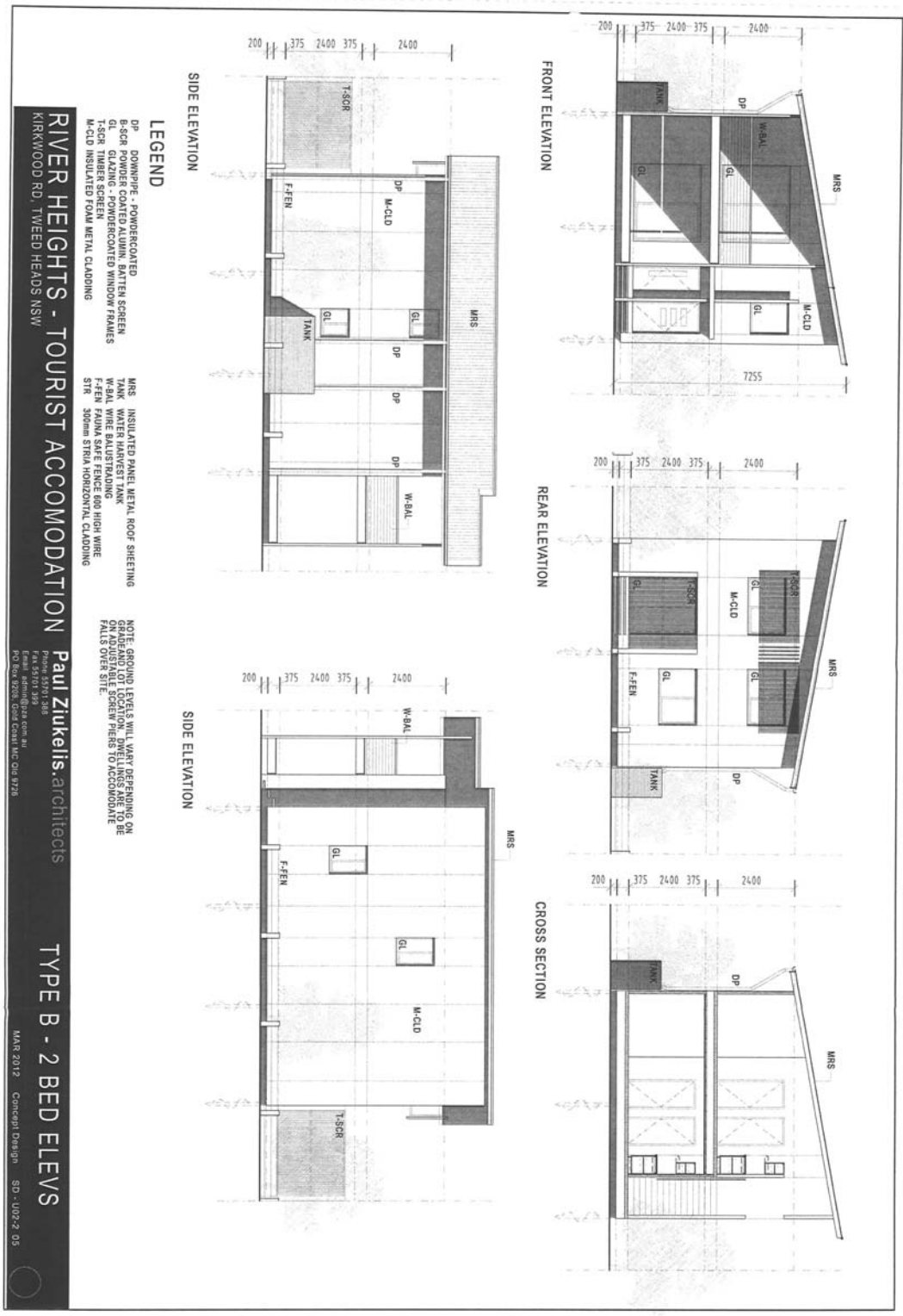












RIVER HEIGHTS - TOURIST ACCOMODATION

Paul Zinkels architects

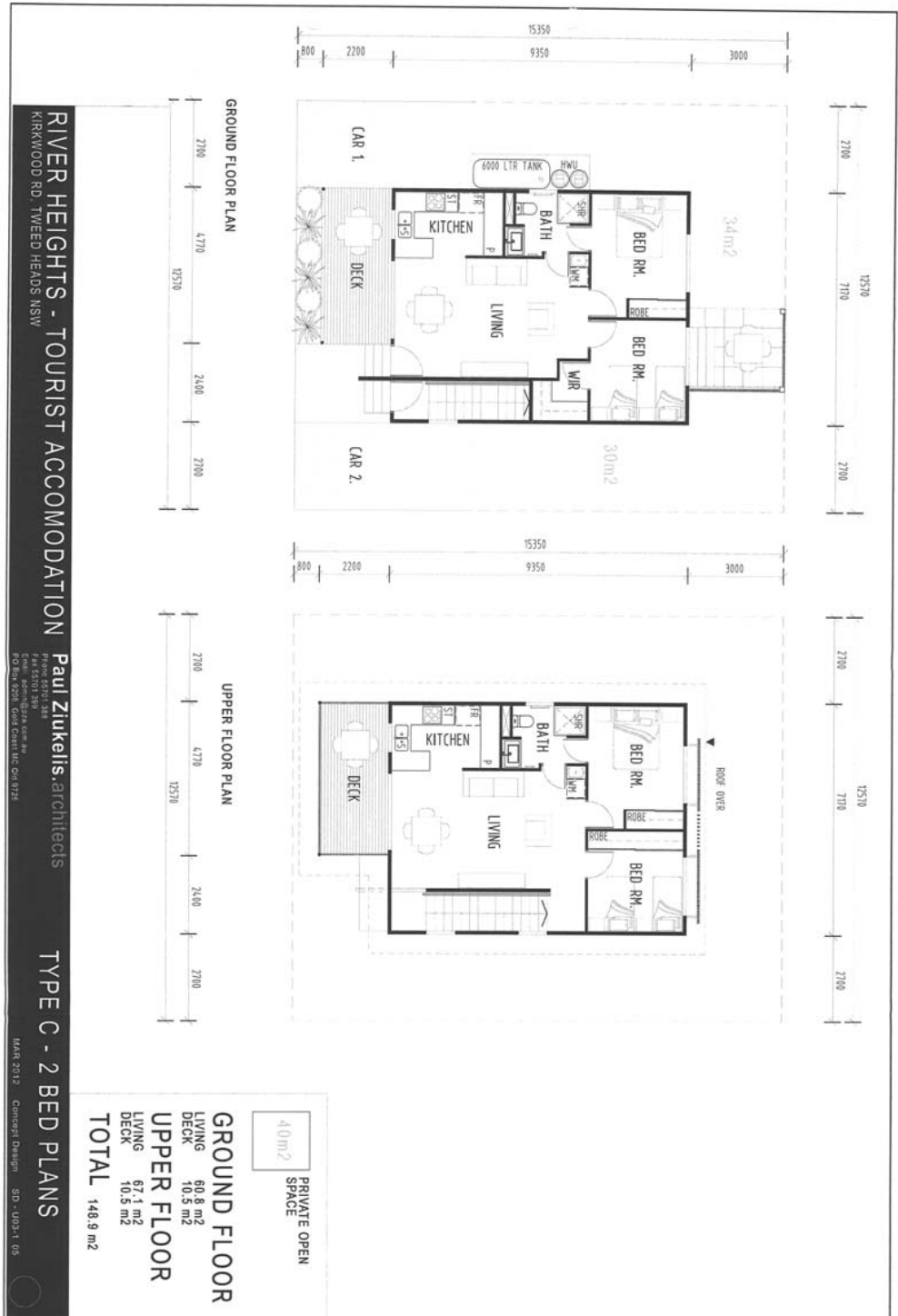
TYPE B - 2 BED ELEVATIONS

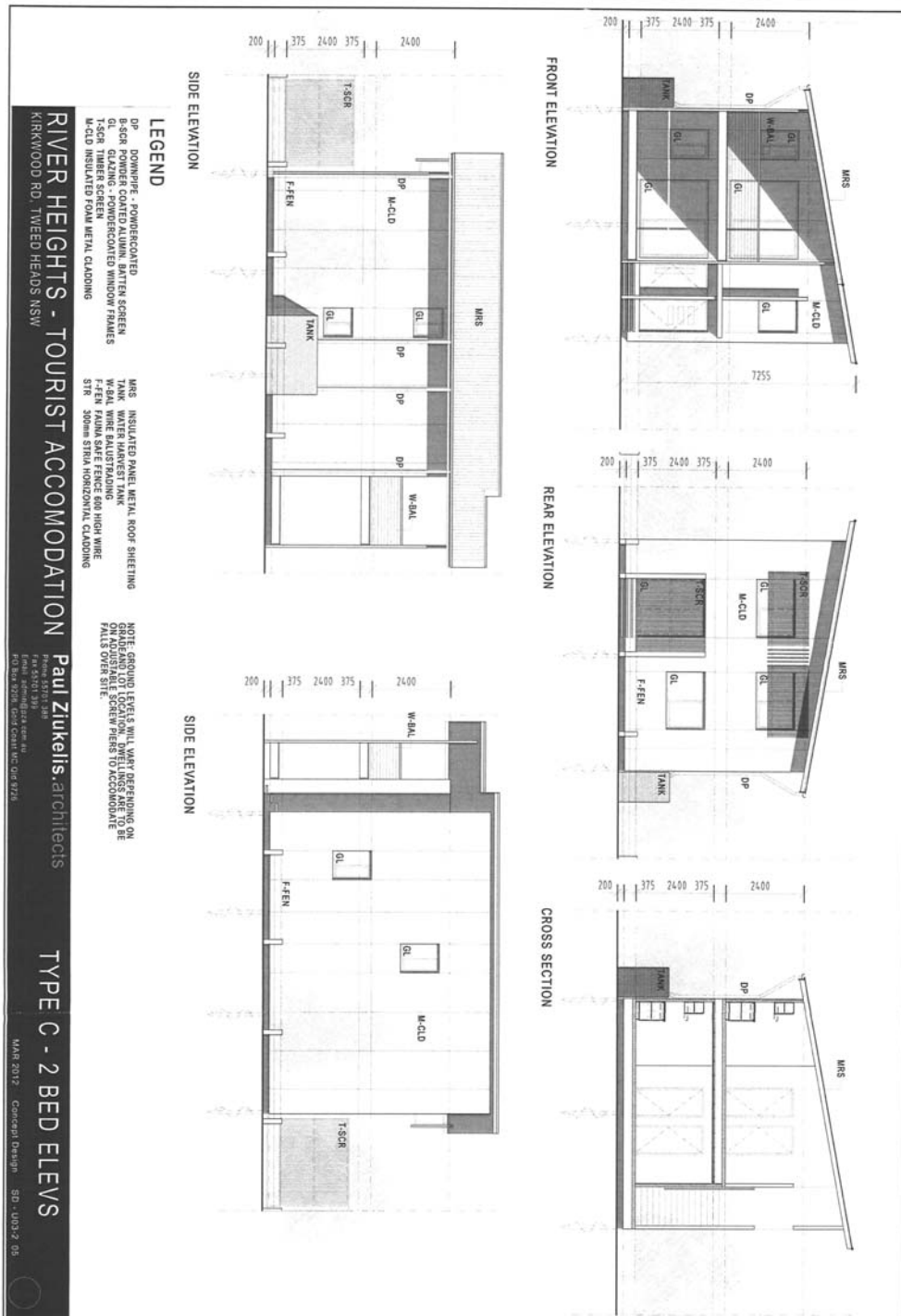
KIRKWOOD RD. TWEED HEADS NSW

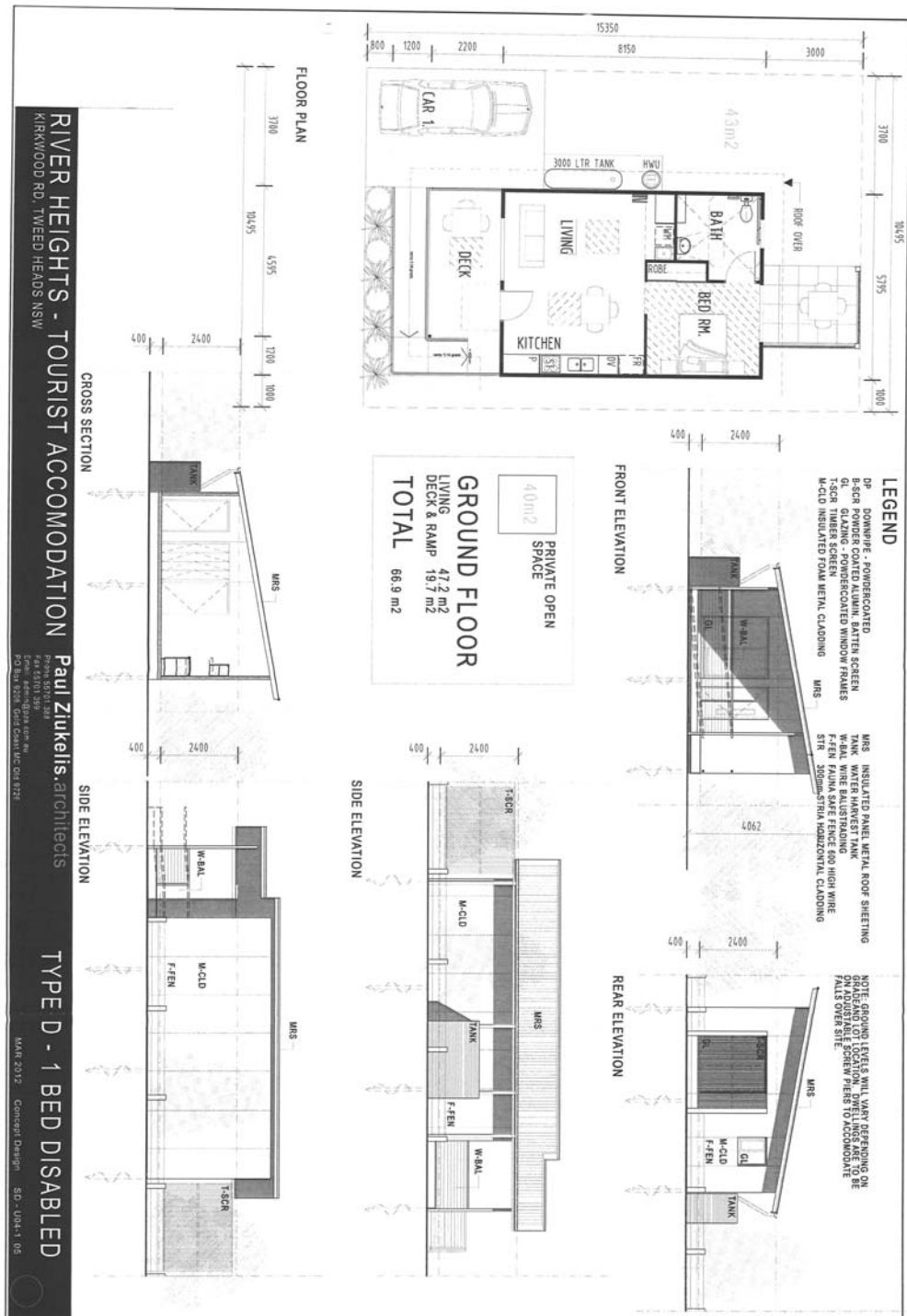
Paul Zinkels architects
15/11-15/12
PO Box 223, TWEED HEADS NSW 2478

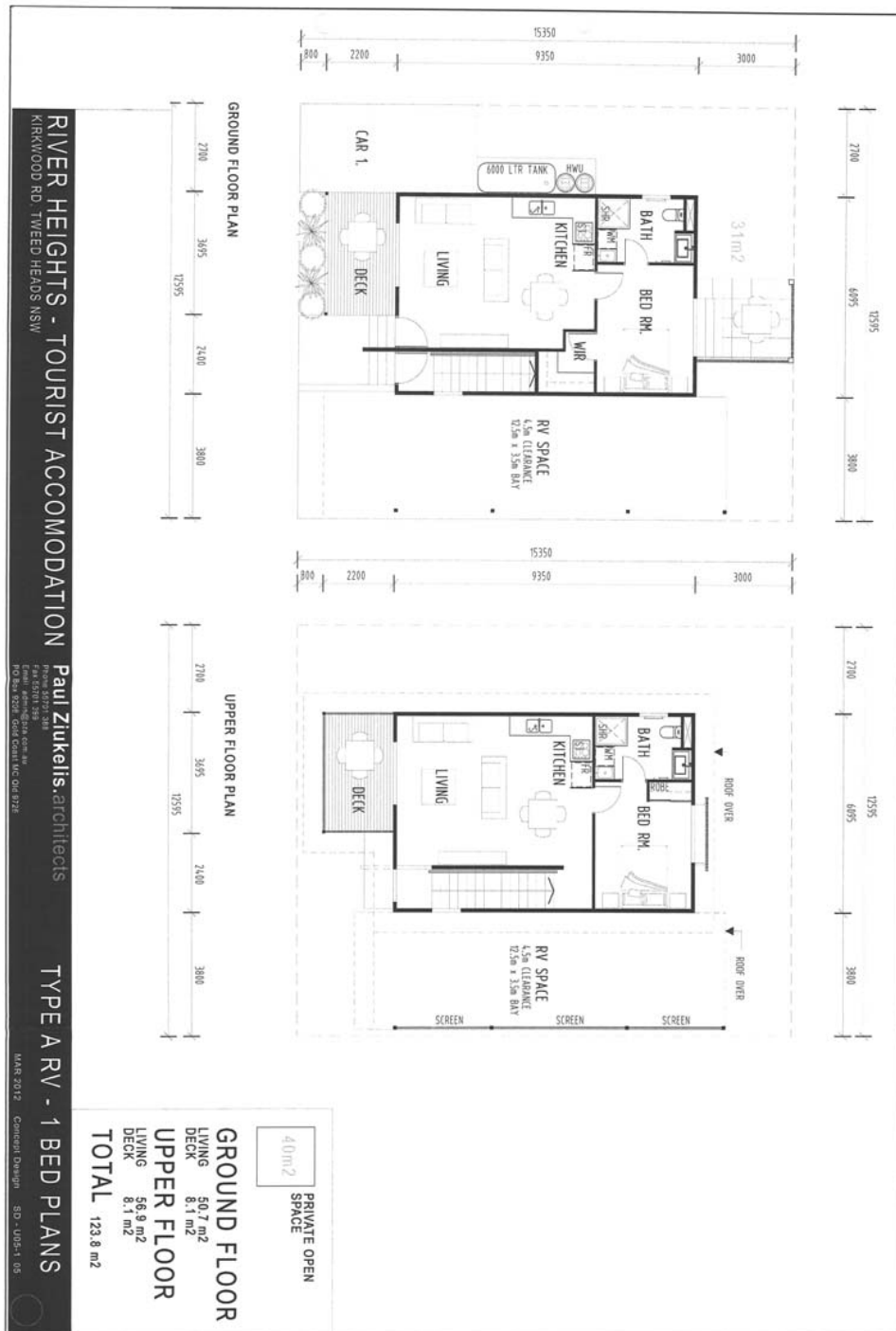
Phone 5531 300
Fax 5531 305
Email paul@paulzinkels.com.au

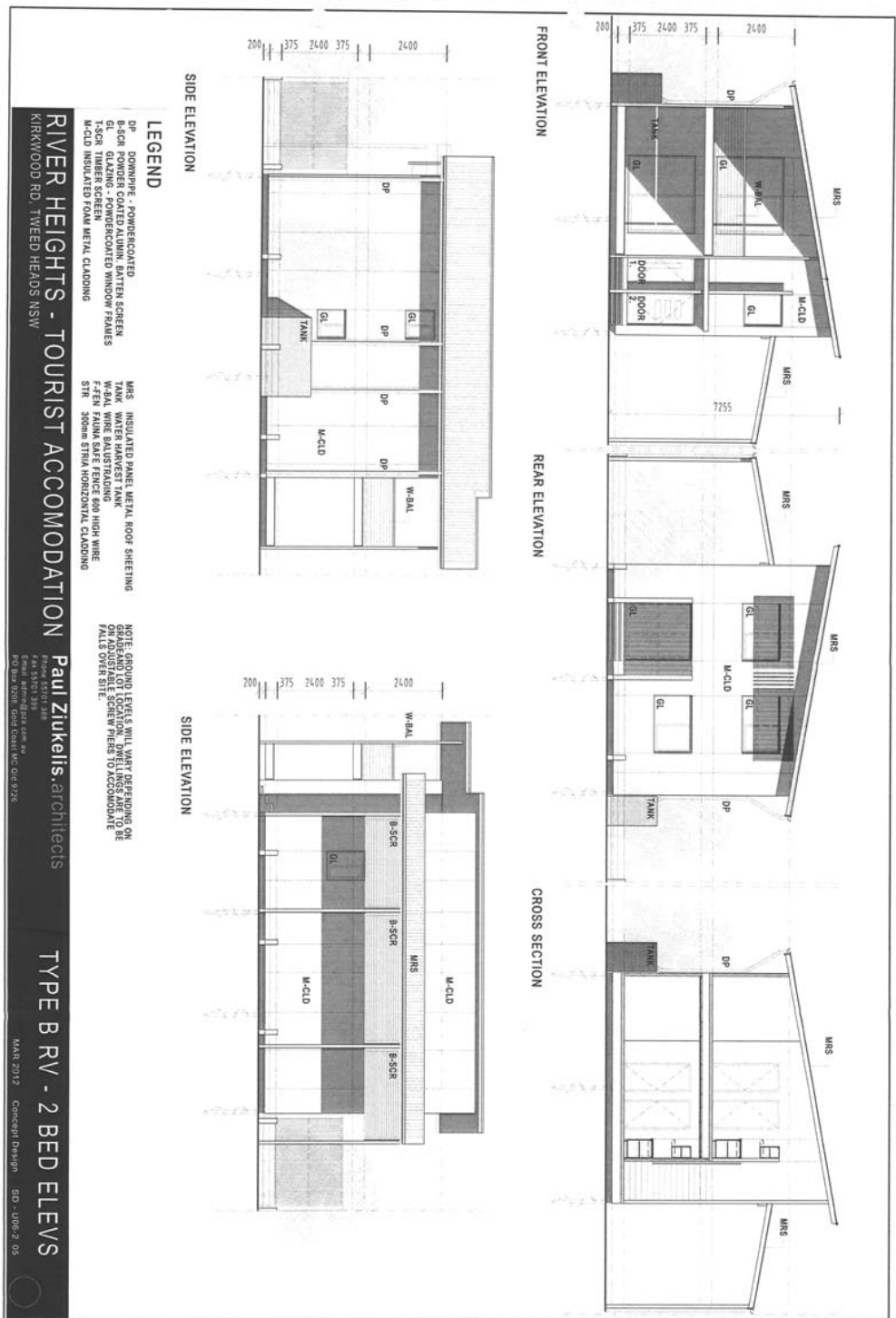
MAR 2012 - Concept Design - SD - 1002-2-05

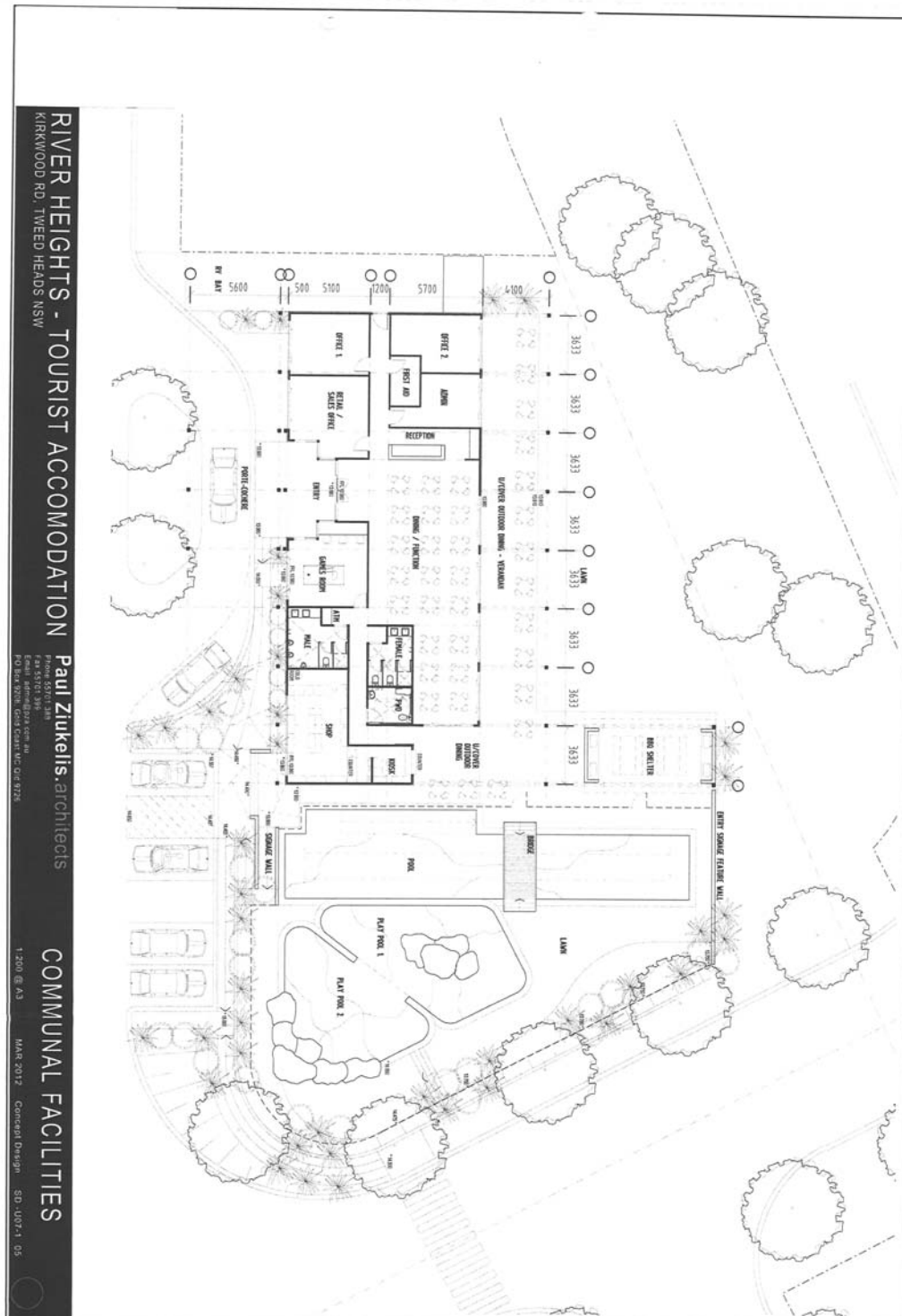


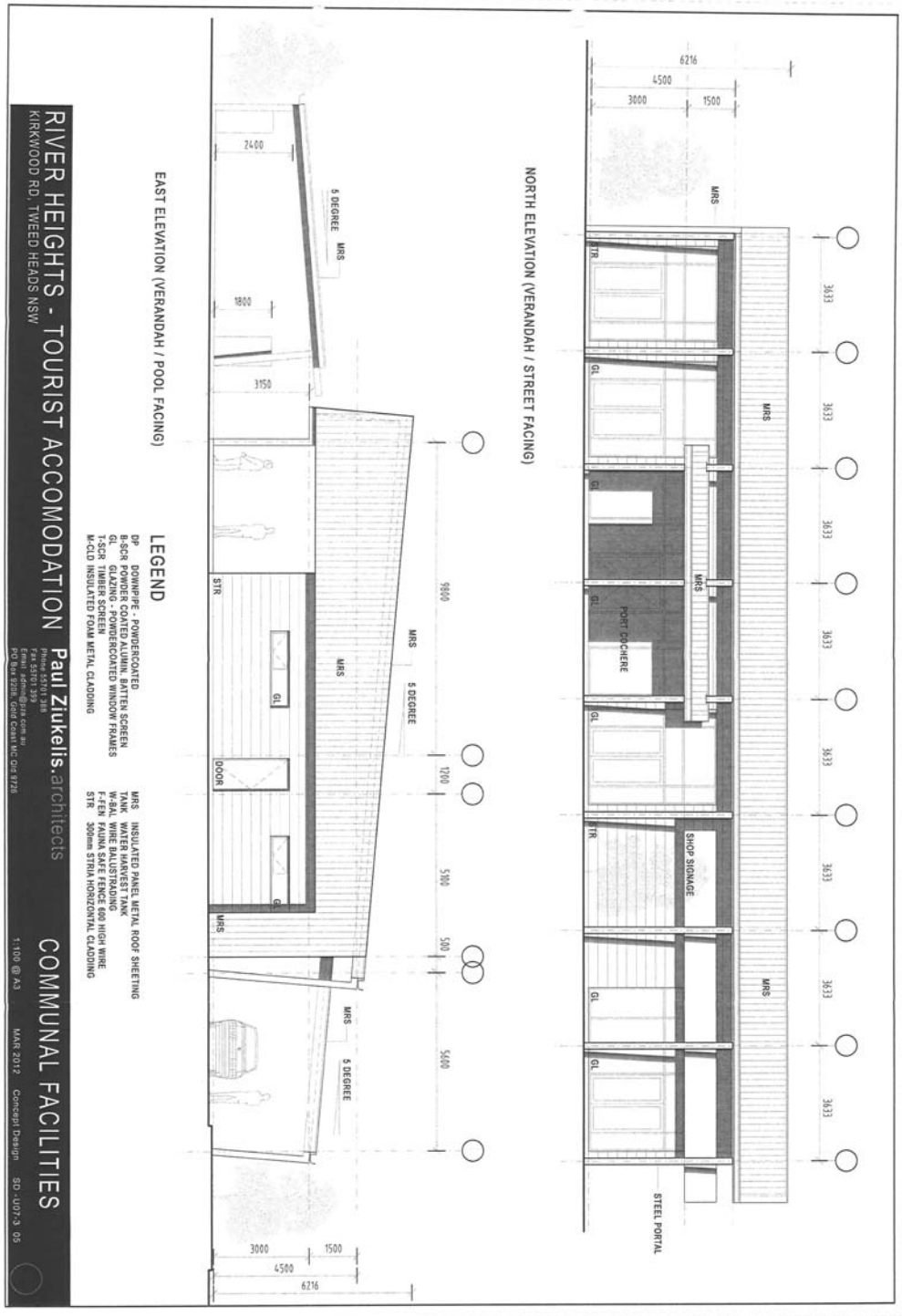


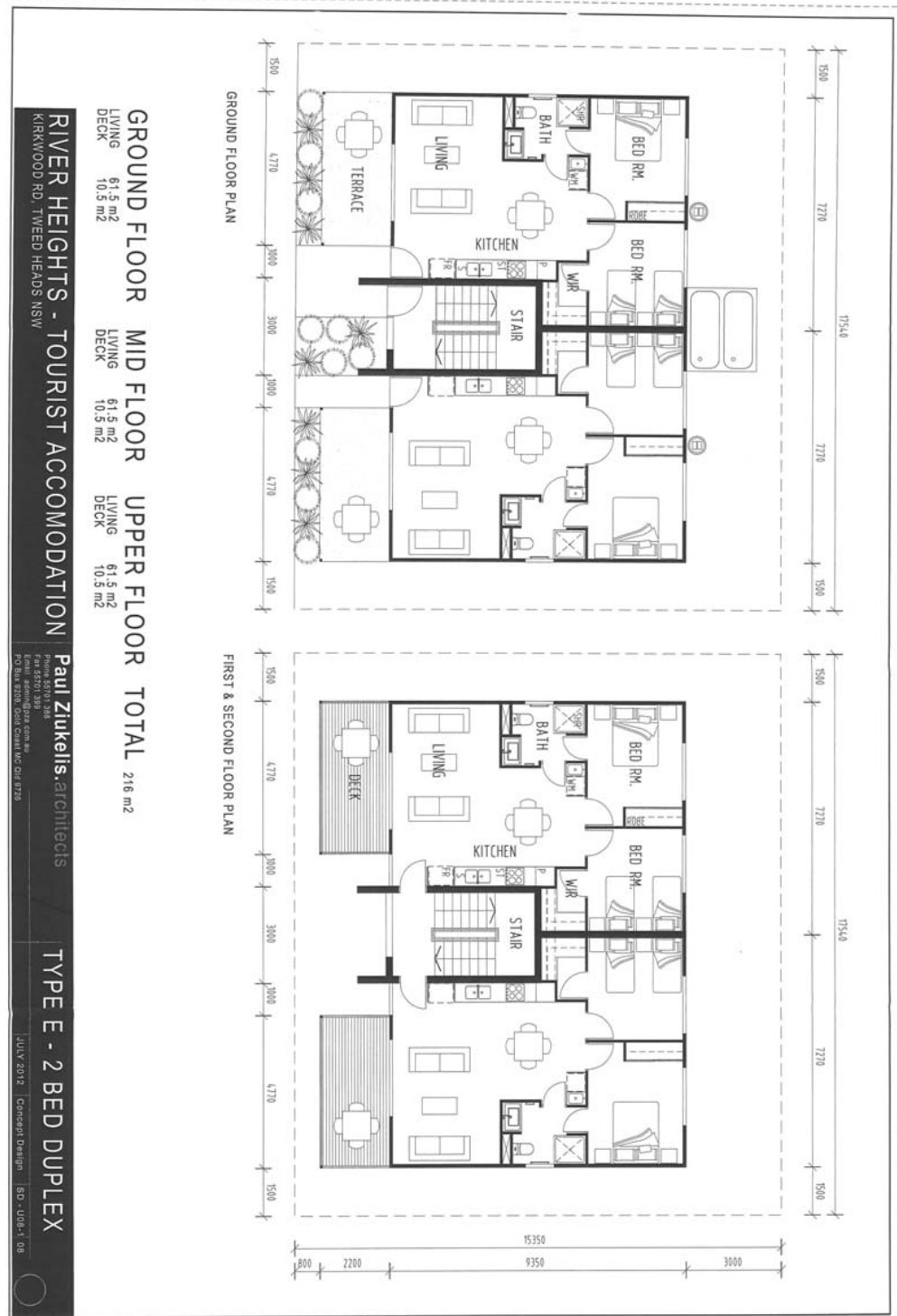


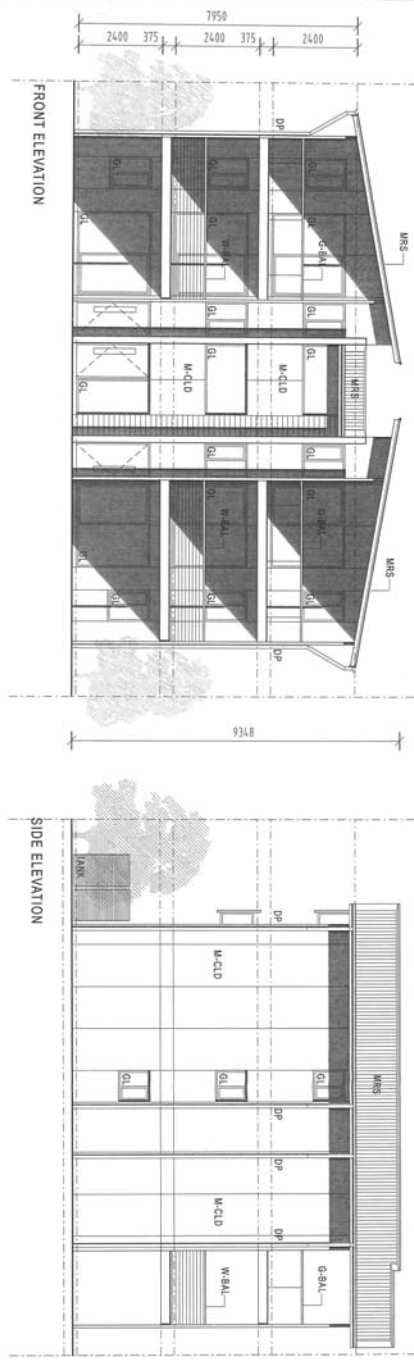






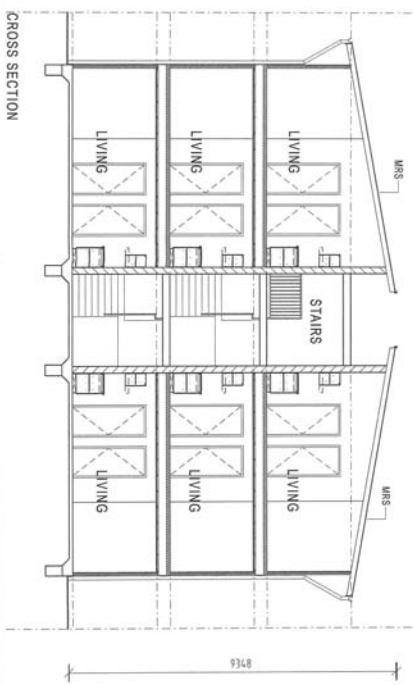






LEGEND

- DP - DOWNPIPE - POWDERCOATED
 - GL - GLAZING - POWDERCOATED WINDOW FRAMES
 - T-SCR - TUBER SCREEN
 - M-CLD - INSULATED FOAM METAL CLADDING
 - W-BAL - WIRE BALUSTRADE
 - G-BAL - GLASS BALUSTRADE
 - STN - STEEL STRIP HORIZONTAL CLADDING
- NOTE: GROUND LEVELS WILL VARY DEPENDING ON ON SLAB ON GROUND. SWELLINGS ARE TO BE



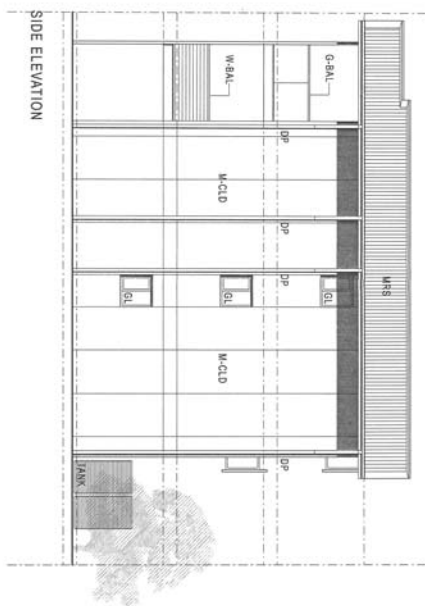
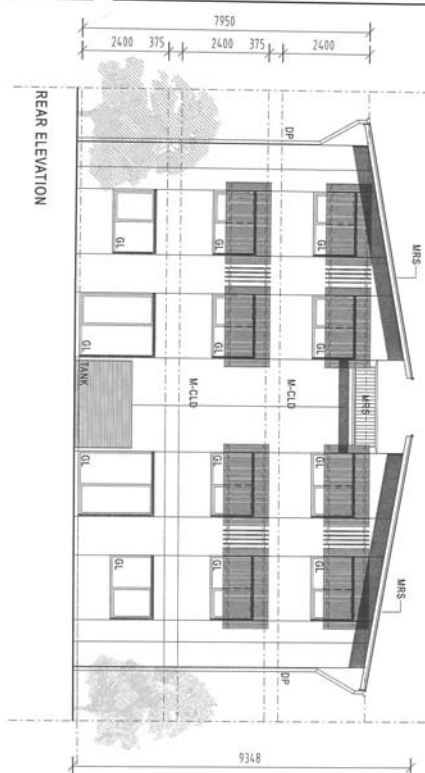
RIVER HEIGHTS - TOURIST ACCOMMODATION

Paul Ziukeils architects

Phone: 08 9370 1348
Email: paul@ziukeils.com.au
PO Box 9008, Gosford NSW 2250

TYPE E - 2 BED DUPLEX

JULY 2019 Concept Design RD - URB 2.08



LEGEND

- DP - DOWNPIPE - POWDERCOATED
- B-SCR - POWDER COATED ALUMINUM SCREEN
- GL - GLAZING - POWDERCOATED WINDOW FRAMES
- T-SCR - TIMBER SCREEN
- M-CLO - INSULATED FOAM METAL CLADDING
- M-CLD - INSULATED FOAM METAL ROOF SHEETING
- TANK - WATER TANK
- W-BAL - WIRE BALUSTRADE
- G-BAL - GLASS BALUSTRADE
- P-FEN - PAUNA SAFE FENCE 800 HIGH WIRE
- S-TR - 300mm STAIN HORIZONTAL CLADDING

NOTE: GROUND LEVELS WILL VARY DEPENDING ON ON SLAB ON GROUND. DWELLINGS ARE TO BE ON SLAB ON GROUND.

RIVER HEIGHTS - TOURIST ACCOMMODATION

Paul Ziukelis architects
 10/11
 Email: paul@ziukelis.com.au
 Tel: 08 9370 2199
 PO Box 3208, Gold Coast, QLD 4217

TYPE E - 2 BED DUPLEX

JULY 2012 Concept Design ETD - 100% 09

Paul Ziukelis.architects
 Phone 55701 7385
 Fax 55701 3924
 PO Box 9208, Gungahlin ACT 2928



STREET ELEVATIONS - F
 TYPES D, B, A AND C

DOORIN CRUISE AND PAUL ZIUKELIS PTY LTD
 ARCHITECT AND LANDSCAPE ARCHITECT
 10/100 DOORIN CRUISE RD, DOORIN ACT 2680
 PHONE 08 9425 1111
 RIVER HERITS TOURIST ACCOMMODATION
 10/100 DOORIN CRUISE RD, DOORIN ACT 2680
 PHONE 08 9425 1111
 STREET ELEVATION
 TYPE D, B, A AND C
 1/2018

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

(a) (i) **The provisions of any environmental planning instrument Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is *"the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced"*. Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

The development application is not considered to meet the provisions of Clause 4 of the LEP, as the proposed development is not considered to be suitable for the subject site. The character of the Tweed is not retained and the development is not considered to be compatible with the Shire's environmental qualities.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

The proposed development is not considered to meet the provisions of Clause 5, with inadequate assessment undertaken to determine the full extent of potential impact upon the environment and surrounding locality.

Clause 8 – Consent Considerations

- (1) This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:
 - (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
 - (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
 - (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

In this instance, the subject site is part zoned 6(b) Recreation and part zoned 2(e) Residential Tourist, the primary objectives of which are outlined in Clause 11 assessment below. Assessment against Clause 11 concludes that the proposed development is not consistent with the primary objective of the 6(b) zone.

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is not considered that the proposed development complies with the aims and objectives of each.

Having regard to the potential impacts to the environment and surrounding locality, the proposal is considered to have an unacceptable cumulative impact on the locality and community in general.

In conclusion, the proposed development is not supported as it does not meet the provisions of Clause 8(1)(a), 8(1)(b) or 8(1)(c).

Clause 11 - Zone objectives

As noted above, the subject site has two zonings. The majority of the site is zoned 6(b) Recreation and a small part of the site in the south western portion is zoned 2(e) Residential Tourist.

The primary objective for land zoned 6(b) Recreation are:

- *to designate land, whether in public or private ownership, which is, or may be used primarily for recreational purposes*

The primary objectives for land zoned 2(e) Residential Tourist are:

- *to encourage the provision of family orientated tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities.*

The proposed development is best defined as Tourist Accommodation, pursuant to the provisions of the Tweed LEP 2000. Despite Tourist Accommodation being permissible with consent in both zones, the proposed development is not considered to meet the primary objective of the 6(b) zone.

The applicant states that the...*'proposal is consistent with the zone objectives in that the development achieves a recreational use of the land providing for family orientated tourist accommodation.'* This statement is not supported, with the site not considered to be used primarily for recreation purposes, particularly with regard to the density of the development.

In terms of the 2(e) zone, the proposal is considered to be consistent with the primary zone objectives.

Clause 15 - Essential Services

Clause 15 of the TLEP requires that Council be satisfied that the subject land has the benefit of essential services before issuing consent. Issues raised in this regard are discussed later in this report. In summary, insufficient

information has been provided for Council to be satisfied that the provisions of Clause 15 have been met.

Clause 16 - Height of Building

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The subject land is identified as having a three storey height limit, with an objective to ensuring that *the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land*.

The proposed development is considered to comply with the height provisions of Clause 16 in that one, two and three storey buildings are proposed.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP relates to social impact assessment, with the objective to ensure proper consideration of development that may have a significant social or economic impact. The proposed development is not supported in that proper consideration of the social impacts arising from the development has not been undertaken. Further detail is provided in this regard under the DCP A13 heading.

Clause 22 – Development Near Designated Roads

Clause 22 of the TLEP applies to the proposed development, because the subject site has frontage to a designated road (Pacific Highway / Motorway). An assessment against the provisions of Clause 22(4) is noted below.

- 4) *The consent authority may grant consent to development on land to which this clause applies only if it is satisfied that:*
- (a) *the development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*

Direct access to the Motorway will not be possible in the short term. Following the construction of the Kirkwood Road western interchange, access to the Motorway will be available, via Kirkwood Road. The Roads and Maritime Services (RMS) has raised no objection to the long term access arrangements to the Motorway.

- (b) *the location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*

The final design of the access to the Motorway has not yet been finalised. Given that RMS has raised no concerns with future access to the Motorway, this component of Clause 22 is considered satisfied.

- (c) *the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*

The proposed development and proposed access onto the Kirkwood Road extension is not considered to impact upon any future road improvements or realignment of the Motorway. The future interchange will be accommodated within the Motorway / Kirkwood Rd road reserve.

- (d) *where the land is in Zone 1 (a), 5 (a), 7 (a), 7 (d), 7 (f), or 7 (l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and*

Not applicable – the subject site is zoned 2(e) and 6(b).

- (e) *the development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and*

The proposed development is considered to be of a type that is sensitive to traffic noise. Although the applicant proposes to incorporate appropriate noise attenuation measures in the construction of the units, insufficient information has been provided to be satisfied that the provisions of Clause 22(4)(e) have been met. The applicant's noise report fails to address building treatments for the upper level of the 3 storey units. Further detail in this regard is provided later in this report.

- (f) *the development would not detract from the scenic values of the locality, particularly from the point of view of road users, and*

The applicant states that the '*proposed development will incorporate contemporary design and quality landscaping which will not detract from the scenic amenity of the locality.*' This statement is not supported. The proposed development incorporates extensive cut of the site (27m) which will obviously remove the majority of the mature trees covering the hilltop. The proposed 'quality landscaping' is not considered to be adequate in terms of the loss of vegetation. In addition, the large batters on the northern, western and southern portions of the site are proposed to be rock batters with limited opportunity for plantings.

Given that the subject site is highly visible from the surroundings areas of Tweed Heads and South Tweed / Banora Point, as well as from the northern and southern approaches of the Motorway, the proposed development is not considered to meet the provisions of Clause 22(4)(f) in that it is considered to detract from the scenic values of the locality.

- (g) *where practicable, access to the land is provided by a road other than the designated road, and*

Direct access to the site will be via the Kirkwood Road western extension. Access to the Motorway from Kirkwood Road will be possible in the future, however RMS has raised no objection to this scenario.

- (h) *in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development:*
 - (i) *would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and*

- (ii) *would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and*
- (iii) *would not compromise highway safety and efficiency, and*
- (iv) *would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.*

Not applicable – the site is zoned 2(e) and 6(b).

In summary, the proposed development is not supported in that it does not satisfactorily meet all of the applicable provisions of Clause 22.

Clause 23 – Control of Access

The objective of Clause 23 is to control access to designated roads. As noted above, the proposed development does not initially involve any access to or from the Motorway. Direct access is proposed via the western Kirkwood Road extension, which will eventually incorporate an interchange with the Motorway. The RMS has raised no objection to the long term access provisions, thereby satisfying Clause 23.

Clause 32 – Aircraft Noise

Clause 32 provides objectives to prevent certain noise sensitive developments from locating in proximity to the airport and its flight path, as well as to minimise the noise impact from the operation of the airport on development in its vicinity. Clause 32 applies to land within the 20 or higher ANEF contour. The subject site is mapped as being located within the 25 – 30 ANEF contour and as such, Clause 32 is applicable to the proposed development. Clause 32(3) is considered relevant to the assessment of this application.

- (3) *Consent must not be granted to development for the purpose of a caravan park, child care centre, hospital or educational establishment or for residential development (including subdivision for residential purposes, but not including the erection or use of a dwelling house) within the 25 or higher ANEF contour.*

In this regard, the applicant states that...*‘as the proposed development is development for the purpose of Tourist Accommodation it is not subject to the restrictions of Clause 32(3).’*

Council staff are of the opinion that despite that proposal being defined as tourist accommodation, the nature of the proposal is more characteristic to that of residential development. As such, Clause 32(3) is considered to be applicable and accordingly, the application should not be granted consent. To do otherwise is considered to be a breach of duty of care for future occupants of the development.

This issue was raised in *Port Stephens Shire Council v Booth & Ors*; *Port Stephens Shire Council v Gibson & Anor* [2005] NSWCA 323, whereby it was noted that:

“Council failed to do what s90 of the EPA Act required because of an “uninformed and mistaken understandings of the implications of the 2002 ANEF in respect of which they had taken no appropriately qualified

advice”, including that the Panel inappropriately used the concept of a tourist facility when the development proposal “incorporated many characteristics of residential development” and was for substantially increased intensity of development at odds with the situation within the 25 contour.”

In terms of use it was noted that:

“the proposed use of the cabins for up to 150 days “encroaches upon residential use”.”

In addition, the court ruling noted that:

“The nature of the proposed Fisherman’s Village, as known to the Council, was closer to that of a residential development than the building type hotels, motels and hostels, as is evident from the permissible occupation for 42 consecutive days or an aggregate of 150 days in any twelve months.”

Tweed Council’s standard condition for short term tourist accommodation is as follows:

“The occupancy of the development is restricted to short-term tourist accommodation only. For the purposes of this development, short-term accommodation means temporary accommodation for holiday or tourist purposes which for any one person is restricted to a period of accommodation not exceeding forty two (42) consecutive days with an interval of at least fourteen (14) days between occupancies and not exceeding a total of ninety (90) days in any twelve (12) month period.”

Despite the fact that Council’s overall limit (90 days) is lower than the 150 day limit dealt with in the Court case mentioned above, the principle is still the same. That is, the proposed development is considered to be more characteristic to residential development than that of a hotel, motel or hostel.

As such, it is considered that the consent authority has a duty of care to treat the development as a type of residential development within the 25 – 30 ANEF contour. Therefore, the proposed development is not considered to meet the provisions of Clause 32(3).

It is also noted that the Gold Coast Airport Pty Ltd does not support the proposed development, regarding it as an inappropriate activity for the site and that consent should not be granted. More detailed comments from the GCAPL are provided later in this report, as is a detailed assessment with regard to potential noise impact from aircraft noise.

Clause 34 - Flooding

Clause 34 of the TLEP provides objectives to minimise future potential flood damage by ensuring only appropriate compatible development occurs on flood liable land. Whilst 34% of the subject site is identified as being prone to flooding, this relates to the lower SEPP 14 area. The proposed tourist accommodation is proposed above the flood design level. No further action is required in this regard.

Clause 35 - Acid Sulfate Soils

Clause 35 relates to Acid Sulfate Soil (ASS) management. Council's GIS indicates that the site is classified as Class 2 and Class 5 soils. The applicant provided an Acid Sulfate Soil Management Plan for the proposed development. Council's Environmental Health Unit has raised no objections to the proposal in this regard, subject to conditions being applied if the application is to be approved.

Clause 38 – Future Road Corridors

The objective of this clause is to cater for the alignment of and development in proximity to, future roads. Consideration must be given to the effect of development on the future alignment of the road corridor.

Whilst the proposed development does not appear to directly impact upon Kirkwood Road extension itself, several issues are raised in terms of landforming, as discussed in detail later in this report. Direct access off the Kirkwood Road extension is proposed. However, final access design needs to be reviewed in light of the location of cultural heritage artefacts on the boundary of the subject site and the Kirkwood Road extension.

Clause 39 - Remediation of Contaminated Land

The objective of Clause 39 is to ensure that contaminated land is adequately remediated prior to development occurring. The applicant has provided a Preliminary Contaminated Land Investigation report. Based on the investigation, the majority of the site appears to have been used for cattle grazing and banana cultivation in the 1960's. The report recommended that a detailed site contamination investigation be undertaken.

As such, a Detailed Site Contamination report was prepared. This report concludes that in consideration of the potential soil contamination associated with the former landuse, the site is considered suitable for the proposed tourist accommodation land use and that no further investigation or remediation is required.

Council's Environmental Health Unit has raised no objections to the proposal in this regard.

Clause 39A Bushfire Protection

The entire site is mapped as being bushfire prone, due to the vegetation location on the site. The intent of this clause is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets.

A Bushfire Threat Assessment report was provided by the applicant. Being Integrated development (tourist accommodation), the application was referred to the Rural Fire Services (RFS) for assessment. The RFS have not yet provided a Bushfire Safety Authority, requiring further information on a range of issues. The RFS comments are provided in detail later in this report.

It is also noted that the Planning for Bushfire Protection guidelines require the identification of any significant features on the property, threatened species and Aboriginal relics. The applicant's bushfire assessment highlights the fact that the report does not address these considerations or corresponding legislation. Rather, the report refers to the Statement of Environmental Effects.

It is not considered that the proposal complies with the bushfire protection clause.

Clause 44 – Development of Land Within Likely or Known Archaeological Sites

Clause 44 relates to the development of land that is likely or is a known archaeological site, and has specific requirements for the consent authority.

- (1) *The consent authority may grant consent to the carrying out of development on an archaeological site that has Aboriginal heritage significance (such as a site that is the location of an Aboriginal place or a relic within the meaning of the National Parks and Wildlife Act 1974), or a potential archaeological site that is reasonably likely to have Aboriginal heritage significance only if:*
- (a) *it has considered an assessment of how the proposed development would affect the conservation of the site and any relic known or reasonably likely to be located at the site prepared in accordance with any guidelines for the time being notified to it by the Director-General of National Parks and Wildlife, and*
 - (b) *except where the proposed development is integrated development, it has notified the local Aboriginal communities (in such a way as it thinks appropriate) of the development application and taken into consideration any comments received in response within 21 days after the notice was sent, and*
 - (c) *it is satisfied that any necessary consent or permission under the National Parks and Wildlife Act 1974 has been granted.*

Until such time that a thorough cultural heritage assessment has been undertaken (including a site inspection and test excavations), as per the provisions of the *Code of Practice for Archaeological Conduct in New South Wales 2010*, the proposed development is not considered to comply with Clause 44. As such, development consent cannot be granted by the consent authority. Cultural heritage issues are discussed further later in this report.

Clause 47 Advertising Signs

The applicant has not directly acknowledged any signage for the proposed development. However, development plans do identify two large signage walls at either end of the pool, as well as signage for the shop within the communal facilities. No details have been provided to allow further assessment of the application against the provisions of Clause 47.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The proposal is considered to comply with clause 32B as it does not impede on access to the foreshore and does not result in any shadow on the foreshore.

Clause 75: Tourism development

Being a proposal for tourist accommodation, the provisions of Clause 75 of the North Coast REP are considered to be applicable. It is noted that the applicant's Statement of Environmental Effects does not address Clause 75. The considerations of Clause 75 are noted below.

(1) *The council must not grant consent to tourism development unless it is satisfied that:*

(a) *adequate access by road, railway or water transport (or any combination of them) exists or will be provided to service the development, taking into account the scale of the development proposed, and*

The proposed access to the site has raised concerns with regard to landforming issues and cultural heritage matters (as discussed later in this report). As such, it has not been determined that adequate access exists.

(b) *if the proposal involves permanent residential accommodation, all social and community services reasonably required by those residents exist in close proximity to the development, and*

Not applicable – the development does not propose any permanent residential accommodation.

(c) *the development will not be detrimental to the scenery or other significant features of the natural environment, and*

As discussed above, the proposed bulk earthworks associated with the development is considered to be detrimental to the scenery of the locality's natural environment.

(d) *reticulated water and sewerage are available, or arrangements satisfactory to the council have been made for the provision of those facilities.*

Water and sewer issues have been raised by Council's Water Unit (as noted later in this report). As such, this component of Clause 75 is not considered to have been met.

(2) *In considering an application for consent to tourism development, the council must have regard to principles contained in the Tourism Development Along the New South Wales Coast: Guidelines.*

The Guidelines nominate Tweed Heads / Kingscliff area as a 'Prime Tourism Development Area'. The proposed development, incorporating more than 100 accommodation units, is defined as large-scale development. Although the guidelines note that large-scale tourism development is allowable, it is noted that the development needs to be...*'sensitive to environmental features and provide a choice in development style and form'*. In terms of environmental factors, the guidelines also require the following to be satisfied:

"In hilly or undulating country, ridges should not be built on. When viewed from access roads, beaches, public reserves and waterways, the skyline should appear to be continuously vegetated."

As noted later in this report, the proposed development is not considered to be sensitive to environmental features associated with the subject site. The

proposed development will effectively remove the existing hilltop and mature vegetation, which will impact upon the visual amenity of the site when viewed from access roads. As such, the proposal is not considered to have regard to the principles of the Tourism Development Along the New South Wales Coast: Guidelines.

- (3) *The council must not approve an application for large scale resort development unless it is within or adjacent to a prime tourism development area or adequate urban services are available.*

Not applicable – the proposed development is not considered to be for a resort development.

In summary, the proposed development is not supported in that the proposal does not adequately address the relevant provisions of Clause 75 of the North Coast REP.

SEPP No. 14 - Coastal Wetlands

As noted above and as shown below in Figure 4, the southern eastern portion of the site incorporates a mapped SEPP 14 Wetland.



Figure 4: Mapped SEPP 14 Wetland (shown in blue hatch)

Restrictions of the SEPP are as follows:

- (1) *In respect of land to which this policy applies, a person shall not:*
- (a) clear that land,*
 - (b) construct a levee on that land,*
 - (c) drain that land, or*
 - (d) fill that land,*

The applicant notes the following:

“No draining, filling or levee works are proposed within the mapped area. Accordingly, no further assessment or referral is required.”

The applicant is correct in that no proposed works are actually carried out within the mapped SEPP 14 area and as such, concurrence from the Director-General and referral to the Director of the National Parks and Wildlife is not required. Despite the applicant not having regard to clearing, it is noted that the proposed clearing works are also beyond the SEPP 14 area. However, although not directly carrying out works within the mapped area, the proposed development is considered to impact upon the SEPP 14 wetlands. Further comment in this regard is provided later in this report.

SEPP No. 36 - Manufactured Home Estates

Concern was raised during the pre-lodgement meeting with respect to the proposal being a manufactured home estate, which would be prohibited due to aircraft noise provisions under Clause 32 of the Tweed LEP 2000.

In this regard, the applicant has noted the following:

“The construction methodology of the proposed units will include on-site construction of the units. The proposed buildings will require Construction Certificates and do not comprise ‘manufactured homes’ and the proposed development is not a ‘manufactured home estate’.”

As such, SEPP 36 does not apply to the proposed development.

SEPP No. 44 - Koala Habitat Protection

The applicant has noted that SEPP 44 applies to the proposed development as the subject site has an area greater than 1 hectare. The applicant also notes that the vegetation on the site comprises less than 15% native vegetation suitable for Koala habitat and therefore a Koala Plan of Management is not required under SEPP 44.

Council’s Natural Resource Management Unit has assessed the proposed development with regard to Koala Habitat Protection (as detailed later in this report). In summary, the applicant’s application requires further assessment with regard to the presence of potential and core Koala habitat, in light of Council’s mapping system identifying the presence of Secondary A koala habitat adjacent to the SEPP 14 wetland and Secondary B habitat on the hill. As such, the provisions of SEPP 44 are not considered to have been met.

SEPP No. 55 - Remediation of Land

As noted above, the applicant has provided a Detailed Site Contamination report, which concludes that the site is considered suitable for the proposed tourist accommodation land use and that no further investigation or remediation is required.

SEPP No. 64 – Advertising and Signage

As noted above, no details have been provided with regard to proposed signage. As such, assessment against the provisions of SEPP 64 has not been undertaken.

SEPP No 71 – Coastal Protection

The proposed development is located within coastal zone and therefore relevant provisions of the SEPP apply.

Clause 8 of the SEPP identifies matters for consideration for land within the coastal zone. The applicable matters are addressed below.

- (d) *The suitability of the development given its type, location and design and its relationship with the surrounding area*

As detailed throughout this report, the proposed development is not considered to be suitable for the subject site, given its type, location, design and relationship with the surrounding area.

- (g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats*

As noted later in this report, it is not considered that the proposal incorporates sufficient information in terms of assessment of the Threatened Species Conservation Act.

- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals*

The issue of insufficient assessment with regard to cultural heritage impact is detailed later in this report. The applicant notes that a Preliminary Due Diligence Assessment has been undertaken. The first two recommendations of the assessment is for the site to be cleared of exotic vegetation and a full archaeological assessment to be undertaken. The application proposes to undertake the cultural heritage survey during the site clearing associated with the bulk earthworks for the development. This is not considered to be acceptable. The survey needs to be undertaken before the development application is determined, in order to be satisfied what (if any) cultural heritage impacts may occur. As noted later in this report, Council's Aboriginal Advisory Committee does not support the proposed development until such time that a thorough cultural heritage assessment has been undertaken.

- (n) *the conservation and preservation of items of heritage, archaeological or historic significance*

The applicant notes that a Preliminary Cultural Heritage Assessment has been undertaken which concludes that '*based on the evidence available the project area is unlikely to contain Aboriginal objects of sufficiently high significance*' to alter the development. Given that site vegetation did not allow a thorough ground survey, the conclusions of the preliminary report are not supported, particularly given the presence of stone axes found during the construction of the adjoining Kirkwood Road project.

In light of the above, the application is not considered to adequately satisfy the matters for consideration under SEPP 71.

SEPP (State and Regional Development) 2011

As noted by the applicant, the proposal is not a State Significant Development of Infrastructure as mandated by Schedule 1 or 2.

Part 4 of the Policy deals with Regional Development, for which the Joint Regional Planning Panel is the consent authority. The SEPP refers to Schedule 4A of the Environmental Planning and Assessment (EP&A) Act.

The proposal has a capital investment value of \$30 million. Under Schedule 4A of the EP&A Act, the proposal meets the criteria of 'General Development Over \$20 million'. Therefore, the proposal is properly categorised as Regional Development and the application has been lodged accordingly.

SEPP (Infrastructure) 2007

The proposed development is considered to be a traffic generating development. As such, referral to the Roads and Traffic Authority (now known as Roads and Maritime Services (RMS)) is triggered, in accordance with Column 2 of Schedule 3 of the SEPP.

RMS was provided with a copy of the proposed development. Specific comments are provided later in this report. In addition, RMS noted that assessment against the provisions of Clause 101 and 102 of the Infrastructure SEPP is required, given the site's location adjacent to a classified road (Motorway). Assessment against these clauses is noted below.

101 Development with frontage to classified road

- (1) *The objectives of this clause are:*
 - (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
 - (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*
- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
 - (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*

The proposed development does not have direct access from the Motorway. Access is proposed from the western Kirkwood Road extension, which initially links with Fraser Drive to the west. Kirkwood Road will eventually connect directly to the Motorway, but RMS has indicated that they have no objection to the long term access arrangements.

- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

As noted above, the RMS has indicated that they have no objection to the long term access arrangements. As such, it is not considered that the development will adversely affect the safety, efficiency or ongoing operation of the Motorway.

- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The RMS has raised concern with the proposed construction methods of the dwellings to reduce traffic noise. Details of construction methods have not been submitted with the application, which raises concern that the proposal may not ameliorate potential traffic noise. Thereby, the proposed development is not considered to satisfy the provision of Clause 101(2)(c) of the Infrastructure SEPP. Noise impacts are discussed in further detail later in this report.

102 Impact of road noise or vibration on non-road development

- (1) *This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RTA) and that the consent authority considers is likely to be adversely affected by road noise or vibration:*
 - (a) *a building for residential use,*
 - (b) *a place of public worship,*
 - (c) *a hospital,*
 - (d) *an educational establishment or child care centre.*

Although the proposed development is not strictly for a residential use, the RMS have highlighted to Council that the provisions of Clause 102 need to be satisfied.

- (2) *Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.*

There are no specific guidelines applicable to the proposed development.

- (3) *If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
 - (a) *in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,*
 - (b) *anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

As noted later in this report, Council's Environmental Health Unit has undertaken an assessment of the proposed development in terms of noise impact from the Motorway. Issues remain outstanding with regard to the noise

assessment for the upper level of the proposed three storey buildings. Therefore, the proposal is not considered to satisfy the provisions of Clause 102(3).

- (4) *In this clause, freeway, tollway and transitway have the same meanings as they have in the Roads Act 1993.*

104 Traffic-generating development

- (1) *This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves:*
- (a) *new premises of the relevant size or capacity, or*
 - (b) *an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*

As the proposed development incorporates more than 200 car spaces, Clause 104 applies to the proposed development.

- (2) *In this clause, relevant size or capacity means:*
- (a) *in relation to development on a site that has direct vehicular or pedestrian access to any road—the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*
 - (b) *in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection—the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.*

The proposed development is considered to be a traffic generating development. As such, referral to the Roads and Traffic Authority (now known as Roads and Maritime Services (RMS)) is triggered, in accordance with Column 2 of Schedule 3 of the SEPP.

- (3) *Before determining a development application for development to which this clause applies, the consent authority must:*
- (a) *give written notice of the application to the RTA within 7 days after the application is made, and*

The proposed development was referred to the RTA (now RMS) to determine whether the proposal was Integrated given its future access to the Motorway. The RMS response is detailed later in this report.

- (b) *take into consideration:*
 - (i) *any submission that the RTA provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, the RTA advises that it will not be making a submission), and*

The issues raised by RMS have been taken into consideration during the assessment of this application.

- (ii) *the accessibility of the site concerned, including:*
 - (A) *the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
 - (B) *the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*

The abovementioned accessibility issues are not considered to be applicable to the proposed development and have not been raised as an issue by the RMS.

- (iii) *any potential traffic safety, road congestion or parking implications of the development.*

The RMS and Council officers have undertaken an assessment of the proposed development in terms of traffic issues. The RMS have concerns with the impact upon local roads. Council considers that a more detailed traffic assessment is required with regard to site access.

- (4) *The consent authority must give the RTA a copy of the determination of the application within 7 days after the determination is made.*

A copy of the determination of this application will be provided to the RMS.

Overall, it is not considered that the provisions of Clause 104 have been met, given the issues raised with regard to potential traffic safety and road congestion.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments
Draft Tweed Shire Local Environment Plan 2012

Council's Draft Local Environmental Plan 2012 has been publicly exhibited and is applicable to the site.

The draft zone is RE2 – Private Recreation. The proposed development is best defined as tourist and visitor accommodation, which is permitted with consent under the Draft Local Environmental Plan.

Clause 4.3 of the Draft LEP is related to building height. The maximum height for the subject site under the Draft LEP is 10m. The three storey buildings (Type E units) are proposed to have a maximum height of 9.348m, which complies with Clause 4.3 of the Draft LEP.

Clause 5.10 relates to heritage conservation. As noted above, the applicant has not yet undertaken a thorough cultural heritage assessment of the site. As such, the provisions of Clause 5.10 are not considered to have been met.

Clause 7.8 of the draft LEP relates to terrestrial biodiversity. Council's mapping system identifies a large portion of the site in this regard. The following matters apply to the proposed development:

- (4) *Before determining a development application for development on land to which this clause applies, the consent authority must consider:*
 - (a) *whether the development is likely to have:*
 - (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*
 - (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (5) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
 - (b) *if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

As the applicant has not satisfactorily addressed impacts upon flora and fauna, the proposed development is not considered to meet the provisions of Clause 7.8 of the draft LEP 2012.

Clause 7.11 of the draft LEP relates to earthworks and drainage, with an intent to ensure that development has regard for environmental and social values. The provisions of Clause 7.11 require the consent authority to take into consideration the following matters in relation to proposed earthworks and drainage:

- (3) (a) *any potential adverse impact on:*
 - (i) *existing watercourses and drainage patterns, and*
 - (ii) *soil stability in the locality, and*
 - (iii) *drinking water supplies, and*
 - (iv) *landscape values and amenity, and*
 - (v) *the environmental values of the land,*
- (b) *the effect of the proposed development on the likely future use or redevelopment of the land, and*
- (c) *the quality of fill to be excavated or imported and its suitability for the proposed use, and*
- (d) *the source of any fill material or the destination of any excavated material, including transportation, and*
- (e) *the likelihood of disturbing Aboriginal objects or other relics.*

As noted later in this report, there are considerable issues in relation to proposed landforming, as well as potential impact upon the SEPP 14 wetlands, and cultural heritage issues. As such, the proposed development is not considered to meet the provisions of Clause 7.11 of the draft LEP 2012.

Clause 7.15 of the draft LEP refers to essential services. This clause requires the consent authority to be satisfied that adequate services are available and that adequate arrangements have been made in relation to:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable road access.*

As noted later in this report, Council has raised concern with water supply, sewer, stormwater drainage and road access. As such, the proposed development is not considered to meet the provisions of Clause 7.15 of the draft LEP 2012.

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

A1-Residential and Tourist Development Code

A detailed assessment of the proposed development against all relevant provisions of A1 (Part C – Residential Flat Buildings) has been placed on the file. A number of variations / non-compliances are noted in detail below.

1. Variation to Chapter 2, Design Control 1 – Public Domain Amenity (Streetscape)

Control E Facades visible from the public domain are to be well designed.

Comment:

Whilst the proposed development can be justified against the individual components of this control, concern is raised with the over streetscape when looking at the development as a whole. The design of each type is very similar and there is very little architectural variation, particularly when you are looking at a length of two storey units on either side of the street. Figure 5 below provides an example of this. It is considered that a better design could have been incorporated to provide different architectural features for each building type to break up the streetscape and provide different points of interest.



Figure 5 – Elevation of internal street indicating the similar design of each unit.

2. Variation to Chapter 2, Design Control 1 – Public Domain Amenity (Public Views and Vistas)

Control A *The location and height of new developments is not to significantly diminish the public views to heritage items, dominant landmarks or public buildings from public places.*

The applicant has provided the following comment for this control:

“The proposed development will not diminish the public views to landmarks or public buildings. The site will be provided with quality landscaping.”

Comment:

As noted elsewhere in this report, the issue of heritage items on the site is yet to be determined. Until a complete cultural heritage survey and assessment has been completed, it cannot be determined if the site contained any heritage items. The applicant has disregarded this particular component of the control.

3. Variation to Chapter 2, Design Control 1 – Public Domain Amenity (Public Views and Vistas)

Control B *The location and height of new developments is to be designed so that it does not unnecessarily or unreasonably obscure public district views of major natural features such as the water, ridgelines or bushland.*

The applicant has provided the following comment for this control:

“The proposal includes significant earthworks however, the high conservation value areas in the southern part of the site will be retained and appropriate landscaping provided to the development area. The development comprises buildings of up to three storeys in height and accordingly will not obscure views to this area from public places.”

Comment:

Whilst it is acknowledged that the southern part of the site is being retained, insufficient information has been provided with regard to cultural heritage issues and impact upon flora and fauna. The proposal will remove the ridgeline and bushland as a result of the proposed extensive earthworks.

4. Variation to Chapter 2, Design Control 2 – Site Configuration (Landscaping)

Control A *Retain existing landscape elements on sites such as natural rock outcrops, watercourses, dune vegetation, indigenous vegetation and mature trees.*

The applicant has provided the following comment for this control:

“The existing high conservation vegetation will be retained in the south eastern part of the site.”

Comment:

The applicant's comments are not considered to justify the non-compliance with this control. Whilst the SEPP 14 area and buffer area is being maintained, insufficient information has been provided to determine the full impact upon the native vegetation and mature trees across the site and as such the non-compliance is not supported.

5. Variation to Chapter 2, Design Control 2 – Site Configuration (Landscaping)

Control C *Locate and design the building footprint to enable the retention of existing trees.*

The applicant has provided the following comment/ justification to vary this control:

“Due to the extent of earthworks required it is not possible to retain all of the existing vegetation. In addition to the vegetation to be retained, the development site will be landscaped with an appropriate mix of endemic species to provide a quality landscaped appearance.”

Comment:

As noted elsewhere in this report, cultural heritage, landforming and flora and fauna issues remain unresolved. As such, the proposed variation is not supported.

6. Variations to Chapter 2, Design Control 2 – Site Configuration (Topography, Cut and Fill)

Control A *Building siting is to relate to the original form of the land.*

Control E *Site excavation / land forming is to be kept to a minimum required for an appropriately designed site responsive development.*

Control F *The maximum level of cut is 1m and fill is 1m except for areas under Control J.*

The applicant has provided the following comment/ justification to vary these controls:

“Due to the constraints set by the levels of the Kirkwood road Extension project and the residential development to the west of the site, it is not practical to optimise the use of the site without significant earthworks. Further details provided in the Engineering Report.”

Comment:

The applicant's comments are not considered to adequately justify the proposed major variations to these controls. Given the landforming impacts (as discussed later in this report), the proposed variations are not supported. The proposal is not considered to be an appropriately designed site responsive development.

7. Variation to Chapter 2, Design Control 2 – Site Configuration (Topography, Cut and Fill)

Control N ***Proposed variations to the controls must demonstrate that the excavation or filling of the site is in harmony with the natural landform / environment and will not adversely affect the adjoining properties.***

The applicant has provided the following comment/ justification to vary this control:

“The Kirkwood Road Extension project will include significant earthworks with cuts in the order of 19m. The adjoining Pacific Highway corridor is characterised by other significant batter slopes. The proposed development will appropriately landscape the site and 10m buffers of established vegetation will be maintained adjoin the residential properties to the west. Accordingly the proposed cut batters are unlikely to adversely affect the adjoining properties.”

Comment:

Given the number of potential impacts and suitability issues raised elsewhere in this report, the proposed development is not considered to meet the provisions of this control in that the excavation is not in harmony with the natural landform / environment. The applicant's justification for a variation to this control is not supported.

8. Variation to Chapter 2, Design Control 9 – External Building Elements (Roofs, Dormers and Skylights)

Control A ***Relate roof design to the desired built form by:***
- ***using a compatible roof form. Slope, material and colour to adjacent buildings.***

The applicant has provided the following comment for this control:

“The roof theme is consistent.”

Comment:

Similar to that discussed in Variation 1, the proposed development incorporates a roof design for each building type which is very similar and there is very little architectural variation, particularly when you are looking at a

length of two storey units on either side of the street. The applicant's comment is not supported. It is considered that a better design could have been incorporated to provide different architectural roof features for each building type to break up the streetscape and provide different points of interest.

9. Variation to Chapter 2, Design Control 9 – External Building Elements (Elevations visible from the Public Domain)

Control A ***Design important elements such as front doors and building entry areas to have prominence in the building elevation and to be clearly identifiable from the street.***

The applicant has provided the following comment for this control:

“The proposed development will provide an attractive landscaped frontage with communal recreation facility and the site entry being the identifiable features.”

Comment:

The applicant's comments relate this control to the overall site. This approach is not considered to be correct. It is considered appropriate to apply this control to the individual buildings within the site. As such, the proposal is not considered to comply with this control in that such a similar design for each building does not allow the units to have prominence or be clearly identifiable.

In summary, the proposed variations are not supported and provide further indication that the proposed development is not suitable for the subject site.

A2-Site Access and Parking Code

For Tourist Accommodation, DCP A2 requires one space per unit and one space per staff. With 355 units being proposed and a maximum of 20 staff, the proposed development generates a requirement of 375 car spaces. One additional HRV space is also required for service deliveries.

The proposed development incorporates 375 car spaces, which complies with the provisions of DCP A2. The application has not addressed the issue of service vehicle /delivery space required for the communal facilities associated with the development. As such, the proposed development does not fully comply with the provisions of DCP A2.

A3-Development of Flood Liable Land

As noted above, the subject site is mapped flood prone land. Whilst 34% of the subject site is identified as being prone to flooding, this relates to the lower SEPP 14 area. The proposed tourist accommodation is proposed above the flood design level. As such, the proposed development is considered to comply with DCP A3.

A4-Advertising Signs Code

As noted previously, no details have been provided for the proposed signage and as such, assessment against the provisions of DCP A4 has not been undertaken.

A11-Public Notification of Development Proposals

The proposal was originally notified for a period of 14 days from 26 September 2012 to 11 October 2012. During this time, a total of two submissions were received. The issues raised are provided later in this report.

A13-Socio-Economic Impact Assessment

Given that the proposed development incorporates more than 50 beds, a socio-economic impact assessment is required pursuant to the provisions of DCP A13.

The applicant's Socio Economic Impact Statement notes that the...*'proposed tourist accommodation development is being pursued in light of the identified future demand for affordable family holiday accommodation in the area and the specific nominated use of the site as Tourist Accommodation under the Tweed Development Control Plan 2008, Section B3.'*

The applicant's statement provides the following conclusion:

"It is our opinion that the proposal achieves a sound balance between the site's opportunities and constraints and substantially complies with all relevant statutory and Strategic Planning Policies and Guidelines. It has been noted that some potential minor negative impacts may arise during the construction phase, however to a large extent these can be managed and mitigated as reflected in Section 9.0 of this Statement.

Clearly, as documented in this Statement, the proposed development which will provide a direct investment of \$30 million, is estimated to generate approximately 73 direct employment jobs during construction, a direct annual investment of approximately \$2.7 million and 12 fulltime equivalent jobs during its operation phase, will result in positive social economic and outcomes."

The applicant's Statement is supported in terms of the potential positive economic outcomes, however potential social impacts to neighbouring properties remains a concern, such as amenity and landforming impacts. Insufficient information has been provided by the application to conclude that the proposed development would result in a positive social outcome.

B3-Banora Point West- Tweed Heads South

This DCP identifies precincts for different development types within the area covered by the DCP. The subject site is located within Precinct 2 which is earmarked in the policy for tourist development and private open space.

The proposed accommodation units are being proposed within the area mapped as tourist development. As such, the provisions of B3.7.2 Guidelines apply to the development.

B3.7.2 Guidelines

Whilst no specific guidelines or requirements are specified within this Section Council will, when dealing with any development application, consider the following matters:

- i. The circulation system within the development provides for safe and convenient pedestrian and vehicle movements;*

Whilst the applicant has noted that the proposed internal driveway network provides safe two way vehicle access with shared access for pedestrians, the RMS has raised concern with adequate onsite servicing areas, which are free of pedestrian conflict.

- ii. Intersections with distributor and collector roads are safety designed and adequately spaced;*

Although the RMS has raised no issue with the long term proposal for the Kirkwood Road interchange with the Motorway, inadequate information has been provided by the applicant with regard to potential impact with the surrounding local road network.

- iii. The provision of adequate car parking;*

As noted in the DCP A2 assessment above, car parking provisions for the proposed development are considered to be satisfactory. However, service vehicle / delivery provisions have not been adequately addressed by the applicant.

- iv. Noise abatement;*

Noise abatement issues are discussed later in this report, with regard to aircraft and road noise impact. Insufficient information has been provided in this regard to consider this matter to have been satisfactorily addressed.

- v. Privacy to adjacent or adjoining residential development;*

The proposed development proposes a grade separation from the existing residences to the west. Insufficient information has been provided with regard to potential impact to residents as a result of the extensive bulk earthworks and removal of the existing hilltop adjacent to the residents.

- vi. The provision of public access, pedestrian and open space linkages;*

The applicant notes that a significant area of ecologically significant vegetation is to be retained on the eastern part of the site including appropriate buffers. This statement is not considered to address the guideline in terms of public access / pedestrian / open space linkages.

- vii. The existing amenity of the neighbourhood;*

The applicant has noted that the proposal is accessed separately from and is orientated away from the adjoining residents and as such will not adversely impact upon the existing amenity. Insufficient information has been submitted in this regard. Concern is raised with the potential impact due to the extensive bulk earthworks and loss of vegetation.

viii. Visual amenity;

The applicant states that the proposal includes contemporary architectural design in order to provide appropriate visual amenity. The applicant also notes that quality landscaping together with the retention of a 10m wide strip of existing vegetation on the western side, as well as retention of vegetation on the eastern side to maintain suitable visual amenity both internally and external of the site.

Visual amenity impact is discussed in detail later in this report. In summary, insufficient information has been provided to determine the full impact of the proposed development.

ix. The effects of lighting; and

If approved, the proposed development would be conditioned to contain any light spill within the boundary of the subject site.

x. The effects of the proposed hours of operation on the surrounding environment.

Hours of operation have not been proposed.

In summary, whilst the subject site is nominated as a Tourist Accommodation site within DCP B3, the proposed development does not adequately address the provisions of the DCP guidelines for tourist accommodation.

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

Clause 92(a) Government Coastal Policy

The subject land is affected by coastal policy. The proposed development is not considered to be in conflict with the policies and strategies contained within the NSW Coastal Policy 1997.

Clause 92(b) Applications for demolition

This clause is not applicable as the proposal does not incorporate any demolition works.

Clause 93 Fire Safety Considerations

This clause is not applicable as the proposal does not incorporate any change of use in an existing building.

Clause 94 Buildings to be upgraded

This clause does not apply as the proposal does not involve the rebuilding, alteration, enlargement or extension of an existing building.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The subject site is not mapped as being within the current coastal hazard lines. As such, the Tweed Shire Coastline Management Plan 2005 is not applicable to the proposed development.

Tweed Coast Estuaries Management Plan 2004

This Plan relates to the Cudgen, Cudgera and Mooball Creeks and is therefore not applicable to the proposed development.

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

This Plan relates to the Cobaki and Terranora Broadwater and is therefore not applicable to the proposed development.

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

Flora and Fauna

Council's Natural Resources Management Unit has noted the following with regard to potential impact upon flora and fauna:

"The subject site covers an area of approximately 18.02ha, the majority of which is covered by native vegetation. The application proposes the removal of approximately 10.77ha of vegetation. A significant loss of habitat value in areas considered of high ecological status is inevitable. The removal of this vegetation will diminish the value of the remaining vegetation as a movement corridor for fauna, lessen areas of foraging, remove valuable sheltering and breeding habitat and remove hollow-bearing trees.

Consideration should also be given to indirect impacts to fauna such as road strike, lighting, the introduction of domestic animals and the potential for the degradation of remaining vegetation and areas of SEPP 14.

*An assessment against the Environment Protection and Biodiversity Conservation Act 1999 suggests that the proposed development will not result in any impact to threatened fauna species recorded on site and those that frequent the site from time to time. The assessment states that the proposed development may have an impact on the local population of Stinking Laurel (*Cryptocarya foetida*) but concludes that the subject site does not support an important population of any species listed as Endangered or Vulnerable and a significant impact on these species will not be incurred.*

A fauna assessment for the site has not been conducted and therefore it is impossible to predict the true value of the habitat proposed for removal, nor does the application inform of the species present. In addition, it is probable that numerous hollow-bearing trees are present given the age and size of the native vegetation on site. The loss of

hollow-bearing trees is a key threatening process under the TSC Act 1995.

SEPP 44 requires assessment of the presence of potential or core Koala habitat and the impacts of development on that habitat. The basis for determining potential Koala habitat is the presence of certain tree species, listed under Schedule 2 to SEPP 44, as more than 15% of total trees present within an area of native vegetation on a site.

The site contains Koala food trees as listed in the SEPP, including Swamp Mahogany within the coastal wetland and Tallowwood amongst the mapped Blackbutt community. Koalas have been found in the immediate vicinity in the past (1998). These records pre-date the Pacific Highway re-routing to the immediate east of the allotment. The applicant concludes that SEPP 44 is not relevant as core Koala habitat is not present.

Reference to Council's GIS mapping system identifies the presence of Secondary A Koala habitat adjacent the wetland and Secondary B on the hill (Figure 4). This vegetation is proposed for removal to facilitate the development. Further assessment regarding the presence of potential and core Koala habitat is required within these areas.

The site contains mapped Coastal Wetland to the south-eastern corner of the site. No works are proposed within this area and a 50m buffer zone has been provided, however, it is anticipated that direct impacts created through the construction phase (i.e. cut/fill, vegetation removal etc) and indirect impacts generated following construction (i.e. increased population, stormwater runoff) will have a detrimental effect on this EEC.

Recommendations:

That the subject application be refused on the following grounds:

Development not suitable for the site

The development is of considerable size and occupies the majority of the land outside of the SEPP 14 area. The site is highly constrained and has areas of high ecological importance and sensitivity. In addition, threatened species and an EEC are present.

Development has real potential to cause actual environmental harm

The site has high ecological values including mapped SEPP 14 wetlands, an Endangered Ecological Community (Swamp Sclerophyll Forest) and some old-growth Blackbutt Open Forest (containing in parts a high proportion of Tallowwoods and thus comprising potential Koala habitat). Apart from previous Koala records for the site, additional threatened species records exist on the site for the Grey-headed Flying Fox, Little Bent-wing Bat and Eastern Bent-wing Bat.

The application proposes the removal of approximately 10.77ha of primarily native vegetation. A significant loss of habitat value is inevitable. The removal of this vegetation will diminish the value of the remaining vegetation as a movement corridor for fauna, lessen areas of

foraging, remove valuable sheltering and breeding habitat and remove hollow-bearing trees.

Furthermore, consideration should also be given to indirect impacts to fauna such as road strike, lighting, the introduction of domestic animals and the potential for the degradation of remaining vegetation and areas of SEPP 14.

Insufficient assessment of SEPP 44

A detailed consideration of the provisions of SEPP 44 has not been conducted by the applicant. Numerous preferred koala food trees occur on site and are proposed for removal to facilitate the development.

Insufficient Assessment of Threatened Species Conservation Act 1995

The application does not include a sufficient assessment of species under the Threatened Species Conservation Act 1995. The applicant suggests that the proposal will not impact significant flora or fauna. This conclusion is considered questionable given the large scale vegetation clearing proposed (10.77ha) and the planned significant earthworks (cut to depths of 27m).

Furthermore, a fauna assessment has not been conducted and therefore it is impossible to predict the value of the habitat proposed for removal or adequately consider the species present. The applicant has not considered the potential loss of hollow-bearing trees and as such an assessment of significance cannot be conducted.”

Noise Impact

Council’s Environmental Health Unit has noted the following with regard to potential noise impact arising from the proposed development:

“The site is located adjacent to the Pacific Highway (east), proposed extension of Kirkwood Road (north - approved and under construction), and Fraser Drive (west). A residential estate is located to the west, and commercial/light industrial estate to the south. A total of 355 tourist cabins (manufactured onsite) are proposed for the site including a reception building and store, and recreation facilities. Tourist cabins of up to three (3) storeys in height are proposed. Mechanical plant selections have not been made at this stage.

An Environmental Noise Impact Report for Lot 1 DP 1168904 prepared by CRG Acoustics Pty Ltd dated 24 July 2012 (crgref: 10330a report.rev.1) has been submitted which considers aircraft noise, road traffic noise, construction noise, offsite commercial/industrial noise and onsite noise impacts.

Aircraft:

The subject site is located entirely within the 25-30 contours ANEF (2031) for Gold Coast Airport. It is noted that the acoustic consultant has used the now superseded ANEF contours for 2021, stating that the site falls within both the 20-25 and 25-30 ANEF contours. As part of the site fell within the 20-30 contours, this will not alter the findings of the report.

Section 32 (3) of the Tweed LEP 2000 states that consent must not be granted to development for the purpose of a caravan park, child care centre, hospital or educational establishment or for residential development (including subdivision for residential purposes, but not including the erection or use of a dwelling house) within the 25 or higher ANEF contour.

The applicant advises that the development is for tourist accommodation and is not a manufactured home estate and therefore the above requirement does not apply.

Note 4 of Table 2.1 within AS 2021-2000 states that "where the relevant planning authority determines that any development may be necessary within existing built-up areas designated as unacceptable, it is recommended that such development should achieve the required Aircraft Noise Reduction (ANR) determined according to Clause 3.2. For residences, schools etc, the effect of aircraft noise on outdoor areas associated with the buildings should be considered".

However it is also stated in Note 5 of Table 2.1 that "in no case should new development take place in Greenfield sites deemed unacceptable because such development may impact airport operations".

Regardless of the specific building type applied, the acoustic consultant has used the most conservative indoor design sound level for assessment.

Based on the location of the subject site an aircraft noise impact level of 91 dB(A), resulting from Boeing 767 short range take offs has been calculated as the worst case scenario noise source level. It is noted that the acoustic consultant has specified a level of 90 dB(A), not 91 although a 1dB alteration would be negligible. This would require an ANR of 41 dB(A) in sleeping areas and dedicated lounges, 36 dB(A) in other habitable areas, and 31 dB(A) in bathrooms, toilets and laundries. Further, as the ANRs exceed 30 dB(A), the full spectrum information for the building component should be consulted to allow for low frequency noise.

The acoustic consultant advises "aircraft noise requires the highest building shell noise reductions to achieve the internal noise criterion with an ANR of 40 for sleeping areas and 35 for other habitable rooms compared to the highest TNR of 28 for road traffic noise.

Therefore, to ensure that the indoor noise criterion at noise sensitive habitable rooms of the proposed cabins can be achieved, additional noise measurements will be required in accordance with Australian Standard AS2021 (with measurements conducted in 1/3 octave bands); and additional modelling of the proposed building shells completed.

The additional noise modelling will require obtaining NATA certified sound transmission loss data in 1/3 octave bands from building material suppliers so direct assessment with the measured aircraft noise results in 1/3 octave bands can be undertaken to ensure the required sound transmission loss is achieved. Based upon the calculated ANRs of 40 and 35, the required building shell treatments (i.e. glazing, external wall and roof/ceiling systems) are likely to be extensive".

An indication of the likely level of treatment has been provided, which considers low frequency noise. The acoustic consultant advises that this is best attenuated through building components with multiple layers of different material types and thicknesses, high density materials and systems with large air-gaps. No specific building design proposals have been provided.

Although the SEE p33 of 49 states that air conditioning units are not proposed, the acoustic consultant has advised that provision has been made for air conditioning or sealed mechanical ventilation to all habitable rooms affected by aircraft and road traffic noise to allow occupants to close windows and doors, however that the installed plant should not reduce the acoustic performance of the building shell.

The information provided is incomplete and further information is required.

Further information - As per the requirements of the Environmental Noise Impact Report for Lot 1 DP 1168904 prepared by CRG Acoustics Pty Ltd dated 24 July 2012 (crgref: 10330a report.rev.1), to ensure that the indoor noise criterion at noise sensitive habitable rooms of the proposed buildings can be achieved, additional noise measurements carried out by a qualified acoustic consultant are required in accordance with Australian Standard AS2021 (with measurements conducted in 1/3 octave bands) and additional modelling of the proposed building shells completed.

The additional noise modelling will require obtaining NATA certified sound transmission loss data in 1/3 octave bands from building material suppliers so direct assessment with the measured aircraft noise results in 1/3 octave bands can be undertaken to ensure the required sound transmission loss is achieved.

Specific design proposals for the development based on the above shall be provided to Council for review and approval prior to determination of the development application.

Road:

The development is likely to be impacted by road traffic noise from the Pacific Highway and proposed Kirkwood Road, and the development may impact existing residents due to an increase in traffic entering and exiting the site utilising Kirkwood Road.

The NSW Road Noise Policy no longer considers road traffic noise for new developments. This is now specified within Section 102 the State Environmental Planning Policy (Infrastructure) 2007.

Section 102 of the SEPP considers the impact of road noise or vibration on non-road development including a building for residential use. If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the LAeq levels are not exceeded (a) in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am and (b) anywhere else in the building

(other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

The consultant has also assessed the development against AS 3671 Acoustics - Road traffic noise intrusion - Building Siting and Construction to determine the extent of building treatments that would be required to achieve the internal noise criterion for the nearest (worst affected) cabins to the Pacific Highway and Kirkwood Road.

This appears to have only been undertaken for the ground and first floor levels, not the second floor (where applicable).

It is noted that the aircraft noise requires the highest building shell noise reductions to achieve the internal noise criterion with an ANR of 40 for sleeping areas and 35 for other habitable rooms compared to the highest Traffic Noise Reduction (TNR) of 28 for road traffic noise.

It is also noted that windows, doors and other openings must be closed. Therefore provision has been made for air conditioning or sealed mechanical ventilation is required to noise affected habitable rooms.

The development will create additional traffic for Kirkwood Road and this may impact upon the existing residential developments within this location. The NSW Road Noise Policy provides assessment criteria for local roads of 55 dB(A) for daytime and 50 dB(A) for night time. The acoustic consultant has advised that road traffic noise increases along the existing local road network once the proposed development has been completed (including the completion of Kirkwood Road extension) are below the day and night time criteria within the NSW Road Noise Policy.

Prior to determination of the development application, further information will be required.

Further information - It appears that the Environmental Noise Impact Report for Lot 1 DP 1168904 prepared by CRG Acoustics Pty Ltd dated 24 July 2012 (crgref: 10330a report.rev.1) includes an assessment of the ground and first floor levels against AS 3674 - Acoustics - Road traffic noise intrusion - Building Siting and Construction to determine the extent of building treatments that would be required to achieve the internal noise criterion for the road noise affected buildings however the second storey, where applicable, has not been addressed. Further information is required for review and assessment."

Cultural Heritage

The initial application incorporated a Preliminary Cultural Heritage Assessment (Everick Heritage Consultants Pty Ltd) within Annexure 13. The assessment (dated 30 May 2012) noted that Everick had been commissioned to undertake a cultural heritage assessment in May 2011 and noted works undertaken to date. These included: consultation with Council's Aboriginal Advisory Committee (AAC); heritage register searches; literature review; and cultural heritage survey of the site.

The site survey was undertaken on 17 May 2011, with Tweed Byron Local Aboriginal Land Council (TBLALC) officer and local Traditional Owner in

attendance. No Aboriginal objects were found at the time; however, ground surface visibility was poor. This then led to the lodgement of DA11/0388 for the removal of exotic understorey vegetation.

The preliminary assessment went on to note the following:

“The Proponent has advised Everick that they intend to lodge a Development Application for construction of a tourist accommodation on Lot 33 DP1073293. On the evidence available, we do not believe the Project Area will contain Aboriginal objects of sufficiently high significance (cultural or scientific) to substantially alter any development plans. However, during consultation with the local Aboriginal community, they have consistently reiterated their desire:

- (a) to identify and record any Aboriginal objects within development sites; and*
- (b) to make informed decisions about how their cultural heritage should be managed within development sites.*

The above can only be achieved with further cultural heritage assessment. The Proponent has provided commitments to Everick that the cultural heritage assessment will be finalised prior to any Development Application being determined within the Project Area.”

During the construction for the Kirkwood Road extension (May 2012), several stone axes were identified either within or immediately adjacent to the northern boundary of the site. The existence of the stone axes resulted in Council modifying the batter design around the location of the axes, so as to leave the area with minimal impact.

Council issued a letter to the applicant on 10 September 2012, requesting withdrawal of the application, as the proposal did not include a cultural heritage assessment of the site, particularly given that Aboriginal artefacts had been found on the adjoining property / boundary of the site.

The applicant submitted a response on 14 September 2012, advising that they would not be withdrawing the application. The response was accompanied by a Cultural Heritage Due Diligence Assessment, which is largely a desk top study of the proposal against the relevant registers, databases maps etc, as required by the *Code of Practice for Archaeological Conduct in New South Wales 2010*. The assessment incorporates a number of recommendations, the first of which is the clearing of exotic vegetation from parts of the site.

The applicant's response also noted that...*‘Council had adequate information in which to undertake an assessment of the development application’* and they requested that Council continue with the processing of the application. As such, assessment of the application has been undertaken on the information provided to date, with no further information requests being issued.

Council staff attended the February meeting (1 February 2012) for the AAC, to discuss the proposed development and to ascertain whether the proposed development was supported by the AAC. Draft minutes from the January meeting were read, in relation to discussions about the proposed development with the proponent's cultural heritage consultant (Everick). The draft minutes noted the following:

“Excerpt of Minutes of Aboriginal Advisory Committee meeting held on 18 January 2013

River Heights Tourist Park

Kirkwood Road batter is within the perimeter of the property as is the Tuckeroo Tree and artefacts.

Proposal is to take the top of the cliff off to further develop. Everick has advised the developer that the community is not happy with that. Everick confirmed the area is consistent with significant site characteristics.

Everick has recommended property owner meet with the community to discuss concerns.

Des Williams advised development, clearing and scraping of the top of the hill is not supported.

Developer has asked if test excavations can be done. Everick asked opinion of community in relation to test excavations.

Purpose of testing is to ascertain if there is any physical heritage (artefacts) in the area proposed for development. There needs to be anthropological evidence for the site to be registered as an Aboriginal place. Council may determine that the site is significant regardless and not allow development.

There is another high ridgeline on the site identified in the walk over. No investigation undertaken at this time awaiting permit to clear vegetation to see if artefacts can be identified in that area.

Testing will involve pits. Des advised the soil is clay and clay will be holding artefacts. Place pits method has the highest likelihood of finding an artefact. Everick will use scientific placement of pits to try to tell story of site and changing geology.

Leweena Williams asked how will non-physical elements be viewed eg. known trail and Tuckeroo Tree? Everick advised that a Court of Law will put most emphasis on non-physical however cultural heritage assessment needs to identify non-physical elements/importance of site regardless.

Jackie McDonald and Des noted existing area (identified Tuckeroo Tree) is not able to be developed at all. It must be preserved. Des noted community will go to Court to protect the tree and surrounding area because of its alignment to other sites across the Shire. Tree is the highest point and has key observation points.

Everick recommending excavation be done with an excavator. Des stated need to engage a very experienced excavator operator.

Action: Everick prepare draft excavation strategy for community to consider.

Action: Request developer fence tree and surrounding to protect area and prevent access.

Recommendation:

Aboriginal stakeholders (AAC members) meet on site with owner of site (Robert Sullivan) to discuss cultural heritage concerns and steps required to proceed with development.

Jackie asked who is responsible for registering site. Council is responsible. Des advised NPWS officer has been to site and it is recognised by the National Parks field officer as a site and will be recorded as such. Everick will need to investigate NPWS status on behalf of developer."

In addition to going over the previous month's draft minutes, the AAC was advised of the status of the proposal in that it was being reported to the JRPP for refusal. The AAC were supportive of Council's assessment to date, given that the proponent had not undertaken an on-site cultural heritage survey.

It was noted by the AAC that the understorey vegetation would need to be removed in order to undertake a proper assessment of the site. The AAC was advised that the proponent had such approval (DA11/0388) to remove the undergrowth. To date, DA11/0388 has not been acted upon as the approval does not allow heavy or tracked machinery to remove the undergrowth in certain areas of the site. Rather, the applicant is proposing to undertake the cultural heritage site survey in association with the site works for the development.

The AAC was advised that Council did not support approval of the proposed development until an appropriate site survey and been undertaken and assessment completed which would determine the impact (if any) upon the cultural heritage significance of the subject site.

The verbal recommendation at the end of the February meeting was that the proposed development was...*'not supported by the AAC until a thorough cultural heritage assessment has been undertaken'*. Official minutes of this meeting are not yet available.

A copy of the proposed development was also referred to the Tweed Byron Local Aboriginal Land Council (TBLALC) for comment. Despite several attempts to obtain written comments from the TBLALC, no submissions have been received at the time of writing this report.

Visual Amenity

The proposed development incorporates extensive cut from the existing hillside. This will result in the loss of the mature vegetation from the development footprint. Insufficient information has been provided to undertake a full assessment in this regard. Issues raised are impact to the adjoining residents to the west, as well as visual impact from along the Motorway and surrounding areas when facing the subject site.

(c) Suitability of the site for the development

Topography

As noted above, parts of the subject site are steeply sloping. With the main access coming from the Kirkwood Road extension to the north (which has involved substantial earthworks), the proposed development also incorporates

extensive earthworks in order to achieve access and developable grades within the site.

During a pre-lodgement meeting, the applicant was requested to undertake an assessment against the provisions of Council's Subdivision Design Specification – D6 Site Regrading, with any variations justified. The applicant provided an Engineering report which incorporated an assessment against the relevant controls of D6.

Council's Planning and Infrastructure Engineer provided the following comments with regard to landforming issues:

"The site is steeply sloping (exceeding 30% in locations) and contains a central ridgeline, which is at approximately RL 40m AHD. The applicant proposes to excavate this ridge down to approximately RL 15m AHD. Cut depths up to 27m, into rock, and fill of up to 6m is proposed. Rock edge batters are generally 2–8m in height, with some sections up to 14m, with limited landscaping of these possible. According to the applicant, this degree of excavation is necessary to achieve access to the site and to provide sites for tourist accommodation.

This degree of landforming clearly does not comply with the requirements of DCP-A1, which limits cut and fill to 1m, with variations only permissible for 15% of the site, and the applicant has requested a variation accordingly. Other landforming criteria in DCP-A5 and D6 relates specifically to subdivisions, so are not strictly applicable, however at a prelodgement meeting the applicant was requested to address these specifications in order to justify the proposal. With regard to D6, bulk landforming controls and perimeter batter heights are vastly exceeded, and the proposed works will not retain the existing landform.

The applicant argues that impacts on adjoining properties are limited as the ridge is contained wholly within the subject site and landforming blends to existing at the perimeter of the works. This is not accurate along the western boundary behind Wren Court properties, where the landform changes from a steep batter above Wren Court to a steep batter below. No earthworks sections are provided in this location, and impacts on these residents have not been addressed. Further, there are a number of intrinsic values associated with the existing ridgeline that are not addressed by the applicant in their assessment, such as visual impact and current attenuation of the adjacent highway.

The applicant takes several opportunities to mention Council's Kirkwood Road project, which is currently undertaking extensive landforming on the subject land and adjoining road reserve, resulting in very high cuts and batters (up to 19m). The proposed works are far more significant than those proposed for the Kirkwood Road site, and it was in the course of these works that the cultural heritage issues were discovered.

The removal of the ridgeline is crucial to the subject development. Should cultural heritage issues preclude its removal, the development design cannot be achieved. As the matter has not been satisfactorily addressed, the application should be refused."

Upon being advised of cultural heritage matters (discovery of stone axes) on the Kirkwood Road Project, the applicant requested a copy of Council's

modified road and earthworks design on 17 September 2012, to allow the applicant to...‘consider impacts upon the ability to gain practical access to the subject site.’ On 17 September 2011 Council’s Senior Contracts Engineer provided a copy of the geotechnical report, the originally proposed road alignment and the revised design. No additional / revised road access design has been submitted by the applicant.

Access, Transport and Traffic

Council’s Planning and Infrastructure Engineer has provided the following comment with regard to traffic issues:

“The site is adjacent to the Kirkwood Road corridor, and site levels have been designed to be consistent with the future construction of this road and highway interchange. The plans also demonstrate that a future connection to Enterprise Avenue (as per TRCP works program) is possible with the site design. However as discussed above, the landforming required is extensive and raises various concerns for Council.

The applicant proposes to construct part of the Kirkwood Road West formation, to the minimum width required to service the development (7.5m carriageway), with the intent that the road can be upgraded in the future by Council, and that the works undertaken are creditable against TRCP contributions.

The road access issues are linked strongly with the proposed landforming, and as such, until such time as the landforming design can be validated, there is insufficient information to confirm that site access is satisfactory. A more detailed traffic assessment can be undertaken should the landforming issues be resolved.”

As noted within the cultural heritage assessment, stone axes have been found during the construction of the Kirkwood Road extension works. These artefacts are located in proximity to a Tuckeroo Tree situated along the boundary of the subject site. The AAC requires the area around the Tuckeroo Tree to be retained / preserved, with the area not to be developed at all.

This creates a major issue with the access into the subject site. The Tuckeroo Tree is located directly in line with the proposed access road from Kirkwood Road. Given the importance of the artefacts in proximity to the Tuckeroo Tree, access to the site will need to be revised which is likely to impact upon the proposed landforming of the site.

Stormwater

The following stormwater comments have been provided by Council’s Planning & Infrastructure Engineer:

“Stormwater Quantity

The applicant proposes to limit flows to pre-development levels for catchment A (Northern catchment) and has provided a detailed preliminary stormwater management plan (PSWMP) to demonstrate this. Missing from the PSWMP are calculations for pipe/orifice flow from the flood detention basin however the applicant proposes to provide these at detailed design stage (PSWMP section 3.4.4).

For catchment B (southern catchment) the applicant proposes no peak flow attenuation citing the fact that the catchment discharges to a wetland, which is modelled as being inundated by a Q100 event, as justification. The area that catchment B discharges to is classified as a SEPP 14 wetland. This is a sensitive environment and changes to the hydraulic regime have the potential to degrade the wetland. Therefore, the applicant should provide onsite detention for catchment B to limit post development flows to pre-development levels.”

Water Supply

The following Water Unit comments have been provided by Council's Strategic Engineer:

“Council's Water Supply planning has anticipated growth in this area and has the capacity to handle this proposed development. As observed in the Knobel Consulting Engineering Report, capacity is available in the 200 diameter main at the intersection of Harrier Street and Fraser Drive on the western side of Fraser Drive.

The report incorrectly states that there is a 150mm main in an easement on the eastern side of Harrier Street. There is a 100mm water main on the eastern side of Harrier Street with in the road reserve. This is shown correctly in the report's drawing K1868 P017. There is also a 150mm main from the 200mm main in Fraser Drive along the western side of Harrier Street to the intersection of Firetail Court. With such a large development, the proponent will have to make sure that a suitable fire flow throughout the private network will be available from the 100mm main. It may be that the 150mm main on the western side of the Harrier Street will need to be extended to provide an adequate supply.

Council's supply will be to the entrance at Harrier Street and suitable bulk metering and backflow prevention in accordance with Council's standards will be required. Losses through this installation should also be included in any water network modelling for the development.

It is noted that the water analysis has treated the demand of the various units on a different basis to the sewer loading calculation.”

Sewer

The following Water Unit comments have been provided by Council's Network Engineer:

“The Knobel Consulting Engineering Report has calculated the flows from the proposed development on the basis of 0.4ET and 0.6 ET for one and two bedroom units respectively. The appropriate rates from Council's Fees and Charges would be 0.5 ET and 0.75ET. It appears that the report has wrongly adopted the Water Supply rates from Fees and Charges.

The WSA02 flow estimation methodology has also been adopted, but the ARI for peak wet weather is lower than Council is likely to adopt in a current review of loading criteria. If the multiplier for a 5 year ARI was included, the peak wet weather flow estimate would increase. It is also

considered the leakage severity factor adopted is lower than the long term condition is likely to be.

	PWWF
Report Estimate	10.20L/s
Corrected ETs	10.95L/s
Adj. for 5year ARI	12.28L/s
Adj. Network Deficiency	16.43L/s (Allows for deterioration of network over time.)

As it is, the reports flow estimate is similar to the flow estimate using the former Public Works Department methodology with Storm Allowance based on an area rate. Based on the per inflow opportunity storm allowance, the PWWF could be 15.1L/s. On this basis, the capacity of the 150mm sewer main may be possible in a 5 year ARI event and possibly in a 2 year ARI event. The surcharge may however only be internal (within the manholes) depending on the duration of the design storm and storage in the internal pump station.

Further work may be necessary to confirm the viability of connection to the existing network as proposed by the Report.

To accommodate this development, an upgrade of the Sewer Pump Station SPS3022 Fraser Drive will be required. There is also another project in train that requires the pump station to be upgraded. Other previous developments have also contributed to the increased loading on the pump station. Consequently, upgrades will be financed from the s64 Development contributions fund.”

Waste Management

Council’s Environmental Health Unit has identified that further information is required with regard to Waste Management. These include details of waste and recycling facilities proposed and location of these facilities, as well as written confirmation from Solo Resource Recovery that the site can be adequately accessed and serviced.

Similar access issues have been raised by the Roads and Maritime Services, in terms of adequate access and internal road network for waste services.

Food Handling:

Council’s Environmental Health Unit has noted that no detail has been provided for the proposed general store / shop, kiosk and dining facilities. The following information is required for assessment to be finalised in this regard:

“Further information - Plans drawn to a scale of 1:50 detailing the following with regards to the general store/shop, kiosk and other food related areas:

- a. Floor plan and sectional elevations in two directions*
- b. Layout of general store/shop and kiosk showing all equipment*
- c. All internal finish details including benches and work surfaces, floors, wall, ceiling and lighting*
- d. Hydraulic design in particular method of disposal of trade waste*

- e. *Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required*
- f. *Servery areas including counters.”*

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

The proposal was originally notified for a period of 14 days from 26 September 2012 to 11 October 2012. During this time, a total of two submissions were received.

The issues raised by these objectors are summarised and addressed in the table below.

Issue	Officer Comment
<p>Location – Proposal is located in a small parcel of land zoned 2(e) (Tourist Accommodation), where the bulk of the subject land is zoned 6(b) (Private Open Space – Private recreation golf course).</p>	<p>The proposed development is located over the 2(e) and 6(b) zones. Tourist accommodation is permissible with consent in both zones, pursuant to the provisions of the Tweed LEP 2000.</p> <p>The reference to the area zoned 6(b) (Private Open Space – Private Recreation Golf Course) relates to the south eastern portion of the site and the adjoining property to the south, as shown in Map 2 (Layout Plan) of DCP B3 rather than the zoning map of the TLEP 2000.</p> <p>The proposed development is not proposed to be located within this locality. In any case, the area is a SEPP 14 Wetland, in which neither a tourist accommodation development or golf course would be permissible.</p>
<p>Amenity – loss of amenity to neighbouring properties who had the expectation at the time of their purchase that their neighbouring land was zoned 6(b) (Private Open Space – Private recreation golf course).</p>	<p>Loss of amenity has been raised as an issue within the body of this report. As noted above, zoning of the land under the provision of the Tweed LEP 2000 is 2(e) Residential Tourist and 6(b) Recreation. The reference to the Private Recreation Golf Course relates to DCP B3. In any case, the area directly adjoining the existing residences is mapped as Tourist Accommodation on Map 2, rather than Private recreation golf course.</p>

Issue	Officer Comment
<p>Tourist Accommodation – if Council continues to permit permanent residents to live in tourist accommodation, developers will continue to bypass normal residential building controls, which require:</p> <ul style="list-style-type: none"> • Basix certification • Aircraft noise intrusion abatement • Adequate car parking • Compliance with bulk earthworks limits <p>It is recommended that Council increases its resources to follow up on tourism accommodation already approved and being used as permanent residences. If approved, should be conditional upon the developer to provide an annual report justifying their application.</p>	<p>Council must assess the development applications as they are proposed, which in this instance is for tourist accommodation. If the application were to be recommended for approval, appropriate conditions of consent would be applied with regard to the short term use of the development and aircraft noise abatement.</p> <p>Car parking has been assessed against the relevant provisions of DCP A2.</p> <p>Bulk earthworks / landforming issues have been raised within the body of this report.</p> <p>If Council becomes aware of any tourist accommodation being used for permanent residential purposes, appropriate compliance action is taken.</p>
<p>Traffic – Council staff have advised that access via Firetail Street will not be permitted. For the sake of neighbouring residences, temporary access should not be provided.</p> <p>Before the applicant's proposal to construct any part of the western alignment of the Kirkwood Road extension to gain access to the development is considered, appropriate approvals for Kirkwood Road extension Stage 1B should be obtained.</p>	<p>The proposed development proposes access only via the Kirkwood Road access point. Access from Firetail street has not been proposed, with plans suggesting that access from Firetail Street and Wren Court not achievable due to slope constraints.</p> <p>In terms of construction of the western extension of Kirkwood Road, the applicable Part V approval has been granted (as part of the approval for the eastern extension). No other approvals are necessary, as the works to be carried out are Permissible without consent under the provisions of the Infrastructure SEPP. Construction timeframes are unknown at this stage, with funding being a major contributor.</p> <p>It is noted below in the Roads and Maritime Services comments that the Kirkwood Road intersection at Fraser Drive (roundabout) will need to be in place prior to operation of the tourist facility, if the application was being supported.</p>

Issue	Officer Comment
<p>Public Transport – Submission raises concern with the bus routes proposed, noting that route 607 is approximately 2km from the project site. It is also noted that the applicant states that Tweed City Shopping Centre is 1.6km from the proposed development site. The submission notes that the actual walking distance is 4.5 or 5km, depending on which path you take.</p>	<p>The only bus route considered within an acceptable distance is route 604, which runs along Fraser Drive to the west of the site. Route 607 is not considered to be acceptable.</p> <p>Council's mapping system confirms that the applicant's assessment of the distance to the Tweed City Shopping Centre is "as the crows flies" – measured in a straight line rather than the actual walking path that a pedestrian would have to take.</p>
<p>Aircraft noise – Concern is raised with regard to noise impact from aircraft, recommending that appropriate construction materials be used.</p>	<p>The issue of aircraft noise is addressed within the body of this report.</p>
<p>Koala Habitat – Concern is raised with regard to whether an accurate study of the koala habitat under SEPP 44 and raises the issue of legislative requirements under the EPBC.</p>	<p>The issue of Koala habitat and SEPP 44 assessment is addressed within the body of this report.</p>
<p>Acid Sulfate Soils – The submission notes that a ASS Management Plan should be required for the construction of the half width of Kirkwood Road being proposed for access to the site.</p>	<p>If the application were to be approved, appropriate conditions of consent would require an ASSMP for the proposed construction works associated with Kirkwood Road.</p>
<p>Aboriginal Cultural Heritage– It is noted that clearing of the understorey vegetation on the site has not been undertaken to allow a site survey to be undertaken. It is recommended that the Aboriginal Cultural Heritage be re-exhibited for consideration.</p>	<p>Aboriginal Cultural Heritage issues have been addressed within the body of this report. In order to undertake a complete cultural heritage assessment, site survey, test excavations and further Aboriginal community consultation must take place.</p>
<p>Stormwater Management – Concern is raised with regard to an absence of critical information in relation to site hydrology, hydraulics and bulk earthworks. Concern is raised with regard to impact upon the SEPP 14 Wetland.</p>	<p>The issue of stormwater management, land forming and impact upon the SEPP 14 area is addressed within the body of this report.</p>

Issue	Officer Comment
Development Description – the submission disputes the proposed description of the development, being ‘Tourist Accommodation’.	The assessment of the proposed development has been based on what the applicant has proposed – this being tourist accommodation.
Harrier Street – concern is raised as to why there is a need to enter Harrier Street at all when there should be provision of direct access to Kirkwood Road.	Traffic impact has been raised within the body of the report with regard to impact to the local road network and the proposed ‘controlled access point’ at Harrier Street.

Roads and Maritime

Services

Given that the proposed development is considered to be a traffic generating development and will have immediate access to the Motorway when the Kirkwood Road extension eventually links to the classified road, the proposal was referred to the RMS to determine whether the application was Integrated development.

Initial comment from RMS is noted below:

“The roundabout on the western side of the highway as part of the Kirkwood Road extension, will in all probability be a local road, not part of the freeway. Consequently, the proposed 351 lot connection to the...extension will not require RMS approval under 138 of the Roads Act, the proposal is not integrated development.

Given the scale it will still require referral to RMS for advice as required by ISEPP.”

Following a detailed assessment of the proposed development, RMS provided the following comments:

“RMS has no objection to the long term access arrangements proposed for the tourist facility, however, the proposed access in the short term relies on road connections that are not currently funded or programmed. Occupation and operation of the tourist facility in the short term will require construction of connections to Fraser Drive along the proposed Kirkwood Road west extension. It is noted the Kirkwood Road intersection at Fraser Drive is dependent on roundabout control to adequately provide for development traffic. These works will need to be in place prior to operation of the tourist facility and would be the responsibility of the proponent.

The architectural design drawings show a road connection from the tourist facility to Harrier Street. The impact of the additional traffic on the existing residential area in Harrier Street has not been explored by the Transport Impact Assessment (TIA) supporting the proposal. The TIA is also silent about the impact of traffic generated by the proposal on the intersection of Harrier Street and Fraser Drive. The traffic impacts on Harrier Street and its intersection with Fraser Drive should be quantified,

and any remedial works necessary to limit any adverse impacts identified and implemented prior to connecting the proposal to Harrier Street.

The layout for the proposed internal roads has been designed to accommodate a passenger car and caravan combination. Service vehicle pick up and delivery for the facility is not specified in the TIA. To ensure site servicing activities such as on site garbage collection and deliveries are adequately catered for, Council should satisfy itself that adequate onsite servicing areas have been provided and are free of pedestrian conflict. Service vehicles should enter in a forward direction.

The development proposal is adjacent to the Pacific Highway. Council is reminded of its obligations under Clause 101 and 102 of SEPP (Infrastructure) to ensure that appropriate measures will be undertaken in the construction of the dwelling to reduce road traffic noise. These measures are the responsibility of the applicant and are to be at no cost to RMS."

Rural Fire Services (RFS)

As a tourist accommodation development, the application required referral to the RFS as Integrated development. A Bushfire Safety Authority has not been issued, as further information is required for assessment as noted below.

"The service is not in a position to properly assess the application as submitted by Tweed Shire Council on the basis of the information provided. The following will need to be provided for further assessment:

- 1. It is noted that the proposed asset protection zone to the north relies on the removal of vegetation in association with the proposed extension of Kirkwood Road. The RFS requests an outline of the timing for this work to occur with respect to the proposed development and the means of ensuring that this area will be maintained as an asset protection zone in perpetuity.*
- 2. The effective slope for vegetation to the south-east (i.e. the slope most likely to influence fire behaviour) over the distance of the predominant vegetation is considered to be down slope. Further details clarifying the calculation of required / proposed APZs for this elevation are required, including a plan clearly showing the location of the vegetation with respect to proposed buildings.*
- 3. The extent to which construction standards are proposed to apply across the site of the proposed development.*
- 4. Details of the proposed 'controlled access point' to Harrier Street, including its ability to be used for site access and/or emergency access / egress."*

Tweed Byron Local Aboriginal Land Council (TBLALC)

A copy of the proposed development was referred to the Tweed Byron Local Aboriginal Land Council (TBLALC) for comment. Despite several attempts to obtain written comments from the TBLALC, no submissions have been received at the time of writing this report.

Gold Coast Airport Pty Ltd (GCAPL)

The GCAPL provided detailed comment on the proposed development, as a key stakeholder, in light of the potential adverse impact on the health and lifestyle of future residents due to unavoidable aircraft noise.

Initial concerns are noted as follows:

“The subject land is situated between the 25 and 30 ANEF contours in ANEF mapping for Gold Coast Airport, published in the airport’s Master Plan 2011, and it is therefore subject to severe impact from aircraft noise. The proposed development is to involve some 355 tourist accommodation units and associated facilities, in a location where it would be appropriate that intensification of residential use be avoided or minimised.

For that reason, GCAPL is of the opinion that tourist accommodation, particularly in view of the very substantial scale of the proposed development, represents an inappropriate activity for the subject land, and accordingly that consent should not be granted.

However it is acknowledged that the proposed land use is one which is permitted by consent in the relevant zone and designated as such in the DCP. In the event that the application is proposed to be approved, it will be essential that stringent standards for reduction of aircraft noise be imposed by way of conditions, and rigorously monitored and enforced.”

The submission also provides detailed comment on the following: Australian Standard requirements; TLEP 2000; Draft LEP 2012; and the applicant’s Environmental Noise Impact Report. The following conclusions and recommendations are noted:

“As stated in the outset, GCAPL is of the fundamental view that development of a substantial tourist accommodation complex in a locality so seriously affected by aircraft noise is inappropriate. However, in the event that approval is proposed to be granted, it will be important that safeguards be put in place through the consent to ensure that potential impacts on health and lifestyle of future tourist users of the complex due to aircraft noise will be minimised. This will involve the imposition of detailed and enforceable conditions.

Apart from the specific acoustic conditions below, there should be a requirement made explicit in the consent that the proposed buildings are to be used for temporary tourist occupation, with an appropriate time limit placed on maximum length of stay, to avoid permanent or quasi-permanent use.

GCAPL recommends that acoustic conditions along the lines of the following be incorporated in any consent for the proposed development:

- 1. The development be insulated to the applicable standard required by AS2021 – Acoustics – Aircraft Noise Intrusion – Building Siting and Construction for the ANEF contour above the development, noting specifically the indoor design sound levels detailed in Table 3.3 of the standard.*
- 2. Prior to the issuing of any construction certificates, an acoustic report must be submitted to the Council. The report must specify the acoustic design required to meet the acoustic performance specified in Condition 1. The report must be prepared by a suitably*

qualified acoustical professional, being either a member of the Australian Acoustical Society or an employee of an Association of Australian Acoustical Consultants member firm.

3. *Prior to the commencement of use, the Council must be provided with certification from a suitably qualified acoustical professional, being either a member of the Australian Acoustical Society or an employee of an Association of Australian Acoustical Consultants member firm, certifying that the acoustic attenuation measures required by the acoustic report submitted in Condition 1 have been implemented in the construction. This certification will require evidence of site inspections for a reasonable portion of the buildings (10 – 20%) during construction. This will need to be done at various stages of the buildings' construction, such that all pertinent building elements and constructions can be inspected. Examples of evidence of these inspections are to be photographs taken by, or in the presence of, the acoustic engineer and site notes recorded by the engineer.*
4. *Prior to the commencement of the use, the Council must be provided with certification from a suitably qualified acoustical professional, being either a member of the Australian Acoustical Society or an employee of an Association of Australian Acoustical Consultants member firm, certifying that the applicable requirements of AS2021 have been achieved and are demonstrated through acoustic testing. Testing shall be undertaken in accordance with the procedures detailed in Appendix C of AS2021."*

NSW Police

The proposed development was referred to the Tweed Byron Local Area Commend for comment on 26 September 2012. The NSW Police provided a response on 12 November 2012, noting that they would not be making comment on the proposal.

(e) Public interest

The proposed development is considered to be inconsistent with relevant environmental planning instruments and Council policy requirements. The proposal is considered unsuitable and inappropriate for the subject site.

The proposal is considered to impact significantly upon the subject site in terms of potential cultural heritage issues, extensive bulk earthworks, noise impact with regard to aircraft and traffic noise, loss of existing mature vegetation from the site and possible impact upon the SEPP 14 Wetland located on the site. The proposal is also considered to potentially impact upon the amenity of the surrounding residential area and access roads.

The application submitted is deficient in detail. However, sufficient information has been submitted to determine that the nature of the proposal is unsuitable for the site. This unsuitability is reflected in the proposal's non compliance with the statutory and strategic framework applicable to the application.

As such, the application is not considered to be in the public interest and is recommended for refusal.

OPTIONS:

1. Refuse this application in accordance with the recommendation for refusal.
2. Grant in-principle support for the proposal, and that officers bring back a further report to the JRPP with possible conditions of development consent.

The Council officers recommend Option 1.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the NSW Land & Environment Court.

POLICY IMPLICATIONS:

Not applicable.

CONCLUSION:

The proposed tourist accommodation development is considered to create an unacceptable level of impact with particular regard to cultural heritage, landforming, flora and fauna, noise and visual amenity. Given that the subject site is not considered to be suitable for such a large scale tourist accommodation development, the proposal is not supported and is therefore recommended for refusal.

UNDER SEPARATE COVER:

Nil

RECOMMENDATION:

That Development Application DA12/0364 for a construction of tourist accommodation development comprising of 355 tourist units, ancillary communal recreation facilities, onsite carparking for 375 vehicles and associated bulk earthworks, with access from the western extension of Kirkwood Road connecting to Fraser Drive (JRPP) at Lot 1 DP 1168904; Firetail Street TWEED HEADS SOUTH, be refused for the following reasons: -

1. The development application is contrary to Clause 4 of the Tweed Local Environmental Plan 2000, in that the proposed development does not meet the aims of the plan.
2. The development application is contrary to Clause 5 of the Tweed Local Environmental Plan 2000, in that the proposed development would have an unacceptable adverse impact on the natural environment.
3. The development application is contrary to Clause 8(1) of the Tweed Local Environmental Plan 2000, in that: the proposed development is not considered to be consistent with the primary objective of the 6(b) Recreation zone; the proposed development is not considered to have satisfactorily considered the

aims and objectives of other relevant clauses of the Tweed Local Environmental Plan; and the proposed development is considered to have an unacceptable cumulative impact upon the surrounding environment.

4. The development application is contrary to Clause 32(3) of the Tweed Local Environmental Plan 2000, in that the proposed development is of a nature that is inappropriate within the 25 or higher ANEF contour.
5. The development application is contrary to Clause 44(1) of the Tweed Local Environmental Plan 2000, in that the proposed development has not satisfactorily assessed how the development will affect the conservation of the site and any relic known or reasonably likely to be located at the site.
6. The development application is contrary to Clause 8 (d), (l) and (n) of the State Environmental Planning Policy No 71 - Coastal Protection, with regard to suitability and cultural heritage.
7. The development application is contrary to Clause 101 and 102 of the State Environmental Planning Policy (infrastructure) 2007, in that the proposed development does not satisfactorily address potential impacts of road noise.
8. The development application does not comply with Section 79C (1) (b) of the Environmental Planning and Assessment Act 1979 as it relates to the likely impacts of the development - there is no certainty that the development will not have an adverse impact on the locality.
9. The development application does not comply with Section 79C (1) (c) of the Environmental Planning and Assessment Act 1979, in that the development is not considered to be suitable for the subject site.
10. The development application is not considered to be in the public interest.