

## ***Additional Item***

22 February 2012  
To the Ordinary Council Meeting

Director's Report  
Environment and Planning Services  
Department

### **2.5 Application for a Liquor Licence - Fishermans Wharf The Entrance**

---

TRIM REFERENCE: F2011/02395 - D02918804

AUTHOR: Gina Vereker; Director

#### **SUMMARY**

Mr Enzo Ferrazzano holds an "On-premises" licence under the *Liquor Act* in respect to Shop 4/12 The Entrance Road, The Entrance (which is part of the premises known as "Fisherman's Wharf"). Under s.24(1) of that Act alcohol is not able to be sold or supplied to people who are not also provided with food at those premises. The licence is sometimes called a "drink & dine" licence.

Mr Ferrazzano has applied to the Casino, Liquor and Gaming Control Authority (CLGCA) for "primary service authorisation" exception under s.24(3) of the *Liquor Act*, which (if granted) would permit alcohol to be supplied to people who are not dining at the premises.

Council may make a submission to the CLGCA in respect to Mr Ferrazzano's application. Council staff have prepared a draft submission which is included as Attachment 1. It is recommended that Council endorse the contents of this submission

#### **RECOMMENDATION**

***That Council resolve that Council make the attached submission to the Casino, Liquor and Gaming Control Authority in respect to the Primary Service Authorisation Application in respect to Shop 4/12 The Entrance Road, The Entrance (being part of the premises known as "Fisherman's Wharf").***

#### **BACKGROUND**

Mr Enzo Ferrazzano holds an "On-premises" licence under the *Liquor Act* in respect to Shop 4/12 The Entrance Road, The Entrance (which is located on the first floor of the premises known as "Fisherman's Wharf"). Under s.24(1) of that Act, alcohol is not able to be sold or supplied to people who are not also provided with food at those premises. The licence is sometimes called a "drink & dine" licence.

Mr Ferrazzano has applied to the CLGCA for "primary service authorisation" exception under s.24(3) of the *Liquor Act*. The effect of such an authorisation is to permit alcohol to be sold or supplied to people who are not provided with food. That is, if the application is granted, Mr Ferrazzano will be able to serve alcohol to people who are not dining at the premises.

Council has been served with a copy of Mr Ferrazzano's application to CLGCA. Under s.44 of the *Liquor Act* and cl. 12 of the *Liquor Regulation 2008* Council may make a submission to CLGCA concerning Mr Ferrazzano's application, which the CLGCA is required to take in to account. Any such submission is required to be made by 8 March 2012.

## **2.5 Application for a Liquor Licence - Fishermans Wharf The Entrance (contd)**

---

Whilst the General Manager and Director Environment and Planning Services each have delegation to lodge a submission on Council's behalf, it is considered appropriate that Councillors have the opportunity to comment on the draft submission prepared by staff prior to its finalisation. Due to the limited time for the receipt of submissions, this matter has been brought to Council as a late business item.

### **CURRENT STATUS**

Mr Ferrazzano's application is pending. If Council wishes to make a submission to CLGCA it must do so prior to 8 March 2012. CLGCA is required to take any such submission in to consideration when it determines that application.

### **CONSULTATION**

The *Liquor Act* and the *Liquor Regulation 2008* require that the subject application be notified to occupiers of adjoining owners and certain prescribed government entities (including Council and the NSW Police Force), and that notice in a prescribed form be affixed to the subject premises. The purpose of those provisions is to provide relevant government entities, neighbours and the public are given notice of the application. Any person (including Council) may make a submission to the CLGCA in respect to the application.

The applicant has advised that The Licensing Police from Tuggerah Local Area Command (LAC) of the NSW Police Force have lodged a submission in respect of the application raising the issue of *"whether there is sufficient parking to accommodate customers from licensed premises in the immediate vicinity as parking is already stretched with some customers apparently occupying the nearby hotel."*

### **THE PROPOSAL**

The applicant seeks to have the existing "on-premises" restaurant licence amended to include an authorisation that would permit the supply of alcohol to people whether or not they consume food.

Attachment 1 is a copy of the draft submission to be lodged with the CLGCA in summary the issues that submission raises are as follows:

- The sale or supply of alcohol from the premises to persons who have not purchased or being supplied with food is likely to change the use of the premises from the approved restaurant use to a different purpose, potentially a bar or hotel.
- Such a change in use of the premises is not permitted under the terms of the current development consent.
- The proponent's application to the CLGCA provides little comfort to Council or the community that the use of the premises would continue to comply with the approved restaurant use, should this application be granted.
- Should the proponent's application be successful there is a potential outcome that a "defacto" hotel will operate in the future without appropriate development or licensing controls.

## **2.5 Application for a Liquor Licence - Fishermans Wharf The Entrance (contd)**

---

In addition, in making a submission, Council also needs to take into account the potential impacts on the community should the application be approved.

### **OPTIONS**

Council has the option to lodge a submission or not to lodge a submission. It is recommended that Council endorse the lodging of a submission as outlined in Attachment 1.

### **CONCLUSION**

Council has the option of lodging a submission to the CLGCA outlining any concerns it may have concerning the application made to the CLGCA by Mr Ferrazzano. Staff have prepared a draft submission, which is included as Attachment 1. It is recommended that Council endorse the contents of this submission and add other relevant matters.

### **ATTACHMENTS**

- |          |  |           |
|----------|--|-----------|
| <b>1</b> | Draft Submission to Casino Liquor and Gaming Control Authority | D02920172 |
| <b>2</b> | Development Consent DA 1457/2010/A                             | D02920180 |
| <b>3</b> | Development Plans  | D02920176 |



## DRAFT SUBMISSION

DA/1457/2010/A

16 February 2012

The Chief Executive  
Casino Liquor and Gaming Control Authority  
GPO Box 3970  
SYDNEY NSW 2001

Dear Sir/Madam,

**APPLICANT:** ENZO FERRAZZANO  
**LICENCE No:** 60011640  
**LICENSED PREMISES:** Shop 4/12 The Entrance Road, The Entrance NSW 2261  
**APPLICATION:** PRIMARY SERVICE AUTHORISATION (S.24(3))

Pursuant to cl. 8 of the *Liquor Regulation 2008*, Wyong Shire Council ("Council") makes the following submissions to the Casino Liquor and Gaming Control Authority ("Authority") in respect to the pending application by Mr Enzo Ferrazzano for "primary service authorisation" under s.24(3) of the *Liquor Act* in respect to the current "on-premises" licence numbered 6011640, which relates to premises known as Shop 4/12 The Entrance Road, The Entrance ("the Premises"):

1. Council is the relevant consent authority for the purposes of the *Environmental Planning and Assessment Act 1979* ("EP&A Act"). Council has been notified of the pending application to the Authority, as required by cl. 8(1)(b) of the *Liquor Regulation 2008*.
2. On 7 March 2011 Council, in its capacity as consent authority under the EP&A Act, granted consent to a development application DA/1457/2010 for the use of 12 The Entrance Road, The Entrance. On 8 April 2011 Council, in its capacity as consent authority under the EP&A Act, modified that consent to development application DA/1457/2010. A copy of the Notice of Determination and associated plans for the modified consent are attached and marked "A".
3. That modified consent permits the Licensed Premises to be used for the purpose of a "restaurant". The term "restaurant" is relevantly defined by cl. 7(1) of the *Wyong Local Environmental Plan 1991* as:

*"a building or place, the principal purpose of which is the provision of food to people for consumption on the premises or via a drive-thru facility, or both".*

4. The current licence for the Premises is an on-premises licence issued pursuant to Part 3 Division 4 of the *Liquor Act 2007*. That on-premises licence is currently subject to the restraint imposed by s.24(1) of the *Liquor Act 2007*, which states:

*"An on-premises licence must not be granted in respect of any premises if the primary purpose of the business or activity carried out on the premises is the sale or supply of liquor".*



5. The pending application before the Authority seeks an authorisation under s.24(3) of the *Liquor Act 2007*: Sub-section 24(3) states:

*"Subsection (1) does not apply to or in respect of an on-premises licence if the licence is, on application by the licensee, endorsed by the Authority with an authorisation that allows liquor to be sold or supplied for consumption on the licensed premises otherwise than with, or ancillary to, another product or service".*

6. Council strenuously objects to the granting of the primary service authorisation by the Authority, for the following reasons:

- a. The sale or supply of alcohol at the Premises to persons who have not purchased or been supplied with food is likely to change the use of the Premises from a "restaurant" use, which is permitted under the modified consent to DA/1457/2010, to development for a different purpose. Council submits this change of use will occur as the primary purpose of the use of the Premises is likely to cease to be *"the provision of food to people for consumption on the premises"*
- b. Any such change in the use of the Premises would be unlawful in the absence of a development consent for that use: ss. 76A(1) and 125 of the EP&A Act.
- c. Council submits that the Authority has **no** power to grant the "primary service authorisation" in circumstances where development consent is required to use the Premises for the proposed modified licence. Sub-section 51(3) of the *Liquor Act 2007* provides that the Authority has the *"...same powers in relation to the application as the Authority has in relation to an application for a licence..."*, with those "same powers" including the restriction imposed by s.45(3)(c) of that Act, which states:

*"The Authority must not grant a licence unless the Authority is satisfied that: (c) if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates—that development consent or approval is in force... "*

- d. Council submits that the Applicant has failed to demonstrate that the use of the Premises in accordance the primary service authorisation sought will be in accordance with the modified consent to DA/1457/2010, and has so failed to meet the mandatory requirement of cl. 15(2)(b) of the *Liquor Regulation 2008*.
- e. The granting of the primary service authorisation by the Authority will permit the establishment of a "defacto" hotel without the additional controls that would be expected to apply if the Premises were to be granted a hotel licence under the *Liquor Act 2007*. Further the Applicant avoids the more rigorous investigations and inquiries that the Authority would be expected to apply to an application for a hotel licence for the Premises.

- f. Council receives numerous complaints of alcohol-related anti-social conduct and noise complaints from within The Entrance precinct, which the Premises forms part of. This has caused Council to impose an alcohol free zone in the area surrounding the Premises, and to increase the patrols of its Rangers in and about The Entrance precinct. Council has a very strong view that permitting the supply of alcohol from the Premises to persons who have not also been supplied with food will increase anti-social conduct in The Entrance Precinct. These issues are not addressed adequately in the CIS that forms part of the Applicant's Application to the Authority.
7. In the event that the Authority is minded to grant the Application, then Council respectfully requests that the Authority impose conditions on the "primary service authorisation" that will have the following effect:
  - a. Restrict the proportion of persons in the Premises that are able to be supplied with alcohol without having to be supplied with food. *The purpose of this request is to ensure that the principal use of the Premises remains the supply of food and is not the supply of alcohol.*
  - b. Restrict the maximum number of people permitted to be present in the licensed area of the Premises to those that can be seated at tables and chairs in the Premises.
  - c. Impose conditions similar to those that would be imposed if the Premises were subject to a hotel licence.

Should you wish to discuss the matter further, please don't hesitate in contacting me on 43505207.

Yours Faithfully,

Gina Vereker  
**Director**  
**ENVIRONMENT & PLANNING SERVICES**



DA/1457/2010/A  
Gary Evans/kg

8 April 2011



MacKenzie Architects  
C/- Dougald MacKenzie  
4/3 The Postern  
CASTLECRAG NSW 2068

## Application to Modify Development Consent Notice of Determination

Pursuant to Clause 122 of the Environmental Planning and Assessment Regulations 2000

<b>Development Application No:</b>	DA/1457/2010/A
<b>Property Address:</b>	Lot 1 DP 1012476, Lot 101 DP 1046474, Fishermans Wharf, 12 The Entrance Road, THE ENTRANCE NSW 2261
<b>Description of Development:</b>	Internal alterations to existing four (4) ground floor food service tenancies, use of mid level function centre, external facade alterations, provision of shade structure and external deck to ground level tenancy.
<b>Modified On:</b>	8 March 2011
<b>Determination:</b>	Approved
<b>Determination Date:</b>	7 March 2011
<b>Consent to Operate From:</b>	7 March 2011
<b>Consent to Lapse On:</b>	7 March 2016
(if not commenced before)	

### Conditions

- The development taking place in accordance with the approved development plans reference number CC100C dated 21/03/11, CC101A, CC200A, CC201A dated 01/02/11 prepared by Mackenzie Architects except as modified by any conditions of this consent, and any amendments in red.

### Prior to Release of Construction Certificate:

*The following conditions must be satisfied prior to the release of the Construction Certificate. Conditions may require the submission of additional information with the Construction Certificate Application. Applicants should also familiarise themselves with conditions in subsequent sections and provide plans in accordance with any design requirements contained therein.*

**Certificates/Engineering Details**

- 2 A Construction Certificate is to be issued by the Principal Certifying Authority prior to commencement of any works. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.

**Liquid Trade Waste**

- 3 The submission of a trade waste application and subsequent approval by Council to discharge liquid trade waste into the sewerage system prior to issue of the Construction Certificate.

**Prior to Commencement and During Works:**

*The following conditions must be satisfied prior to the commencement of site works, including any works relating to demolition, excavation or vegetation removal.*

**Approved Plans**

- 4 A copy of the stamped approved plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.

**Acoustic**

- 5 Construction or demolition may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction or demolition is to be carried out at any time on a Sunday or a public holiday.

**Site Requirements**

- 6 The provision of a hoarding or safety fence between the work site and the public place in accordance with Work Cover Authority requirements, for the duration of the project. Details to be submitted to the Principal Certifying Authority/appropriately Accredited Certifier unless the hoarding is required within the footpath area where approval from Council under the Roads Act as the Roads Authority is required.
- 7 The Principal Contractor (or Owner/Builder) is to erect a sign in a prominent position on the site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifying Authority (PCA) for the work; the name, address and telephone number (including a number for outside of business hours) of the Principal Contractor for the work (or Owner/Builder); and stating that unauthorised entry to the site is prohibited. The sign must be maintained while the work is being carried out and is to be removed when the work is completed. Appropriate signs can be collected from Council's Customer Service Centre, where Council is the nominated PCA.



**Certificates/Engineering Details**

- 8 Prior to the occupation of the building, an application for an Occupation Certificate for the development must be submitted to and approved by the Principal Certifying Authority.

**Prior to Release of Occupation Certificate:**

*The following conditions must be satisfied prior to the release of an Occupation / Subdivision Certificate.*

**Building Code of Australia**

- 9 Compliance with the relevant provisions and requirements of the Building Code of Australia.

**External Materials**

- 10 The completed development must be in compliance with the external colours and materials submitted with the application.

**Food Act Requirements**

- 11 No food handling, (as defined by the NSW Food Act 2003), is permitted in the food premises prior to the issue of the Occupation Certificate.
- 12 All liquid trade waste is required to pass through a basket arrestor with fixed screens, fitted to all floor wastes and sinks, before being discharged into the sewerage system.
- 13 Compliance with the requirements of the New South Wales Food Act 2003, the Food Regulation 2004, and AS4674–2004 – Design, Construction and Fitout of Food Premises, and AS1668, Part 11 – Mechanical Ventilation, for all food preparation and food storage areas, including liquor areas.
- 14 The installation of hand wash facilities with a minimum dimension of 500mm x 400mm providing warm running water through a common mixing spout with hands-free tap operation (consisting of elbow or wrist operated tap levers, foot or hip operated tap levers, or electronic sensor tap operation).

**Ongoing Operation:**

*The following conditions must be satisfied during use / occupation of the development.*

**Approved Plans**

- 15 Once the development has started in accordance with the approved plans it must be continued and completed to the satisfaction of the Consent Authority.

**Acoustic**

- 16 The recommendations as contained within the acoustic assessment report prepared by Acoustic Logic Consultancy Noise and Vibration Consultants dated 9<sup>th</sup> December 2008, are to be adhered to with respect to the operation of the proposed mid level function centre, in order to maintain the acoustic amenity of nearby residents. Specific requirements are as follows: -
- a) All external doors and windows opening to the external terraces, foyer and stairwell areas are to remain closed at all times, except when being used by patrons for access purposes.
  - b) After 6:00pm, patrons and staff are to use the doors on the eastern façade of the building (those directly facing the lake), to access the eastern outdoor terrace area. In this regard, the existing access doors to the outdoor terrace area immediately adjoining the kitchen are to be provided with suitable signage on the interior and exterior face of the doorway, advising patrons that this doorway is for emergency access use only. Further, suitable signage is to be provided directing patrons to the access doorways directly facing the lake.
  - c) The outdoor terrace area immediately adjoining The Entrance Road bridge is to be utilised as a dedicated smoking area in order to minimise occupant numbers on the eastern outdoor terrace.
  - d) After 10:00pm, a maximum of 120 patrons only are permitted on the eastern outdoor terrace area at any one time. Patron numbers within this terrace area are to be monitored by suitable head counts and the use of security personnel at terrace access points.

**Advertising Signs**

- 17 No advertisement shall be erected on or in conjunction with the use and/or development without prior development consent unless the advertisement is an 'approved sign' under Development Control Plan 2005, Chapter 50 - Advertising Signs.

**Amenity**

- 18 For the purposes of preserving the amenity of neighbouring occupants and residents, hours of operation are restricted to between:
- 8.00am to Midnight on Thursday, Friday and Saturday
  - 8.00am to 11.00pm on Sunday to Wednesday
- 19 The proprietors of the venue are responsible at all times for the orderly congregation of patrons entering and dispersal of patrons from the venue.

**Litter Control**

- 20 Garbage bins are to be provided in convenient locations and arrangements made for the collection of rubbish and the clearance of litter from the area surrounding the development on a regular basis. All waste produced from the proposed businesses must be contained within the building and disposed of via the waste facilities provided.

- 21 All rubbish and refuse is to be stored out of public sight except during collection.

#### **Outdoor Seating**

- 22 The placement of any outdoor seating for any of the tenancies shall not obstruct or hinder pedestrian access along the waterfront boardwalk. In this respect a minimum width of 4 metres must be maintained from the outer edge of the boardwalk to the tenancies in order to provide sufficient public access along the foreshore. All such seating is to be in accordance with Council's Outdoor Eating Policy.

#### **Restrictions on Use**

- 23 In accordance with the requirements of the Environmental Planning and Assessment Regulation, 2000, a maximum of 350 persons, inclusive of staff and performers, are permitted within the mid level function centre.
- 24 In accordance with the requirements of Clause 98D of the Environmental Planning and Assessment Regulation, 2000, a suitable sign is to be displayed in a prominent position within the premises stating the maximum number of occupants as detailed within condition 16 above, permitted to be within the proposed mid level function centre.
- 25 All lighting shall be designed so as to ensure that glare does not adversely impact upon any adjoining property.
- 26 The public toilets are to be available to the public 24 hours a day, 7 days a week. The public toilets are to maintain adequate night time lighting, directional signage, and appropriate security measures. The toilets are to be maintained on a regular basis to ensure their safety and public presentation.
- 27 The proprietors of the venue are to ensure to the satisfaction of Council that the public are to have unrestricted, safe and convenient access to the observation deck during the operating hours of the development. In this regard no alcohol is to be served on the observation deck.

#### **Safer by Design**

- 28 The development management shall adopt an ongoing policy of rapid repair for vandalism and graffiti for the development and ensuring that all lighting is in working order.
- 29 Suitable signage shall be installed reminding patrons leaving the premises late at night to be mindful to minimise any noise that may affect surrounding occupants.
- 30 Appropriate security measures are to be adopted, including the presence of security personnel, to discourage the potential for antisocial behaviour on the site.

---

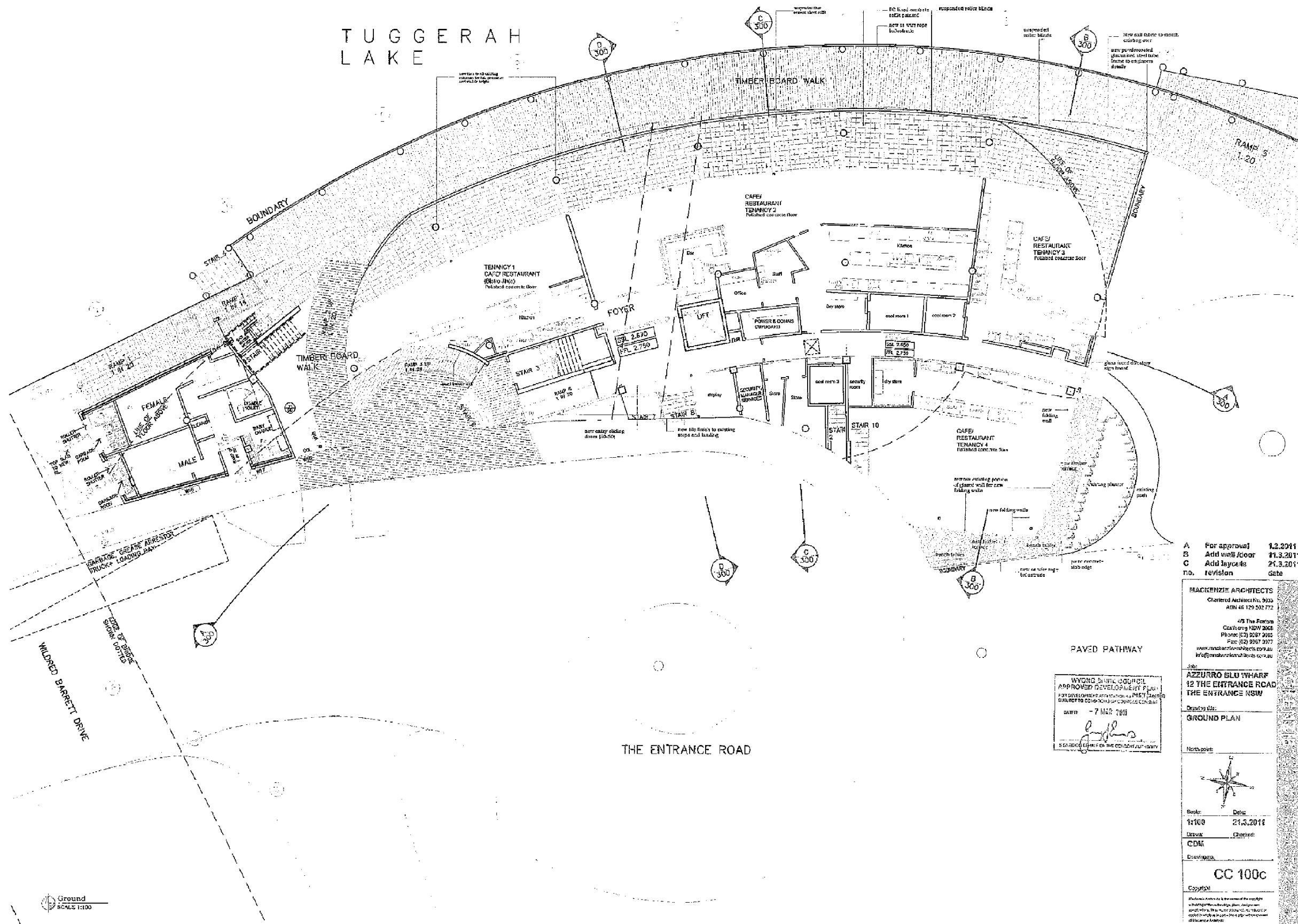
## Right of Appeal

If you are dissatisfied with this decision, Section 96(6) of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within 40 days from the date on which you receive this notice.

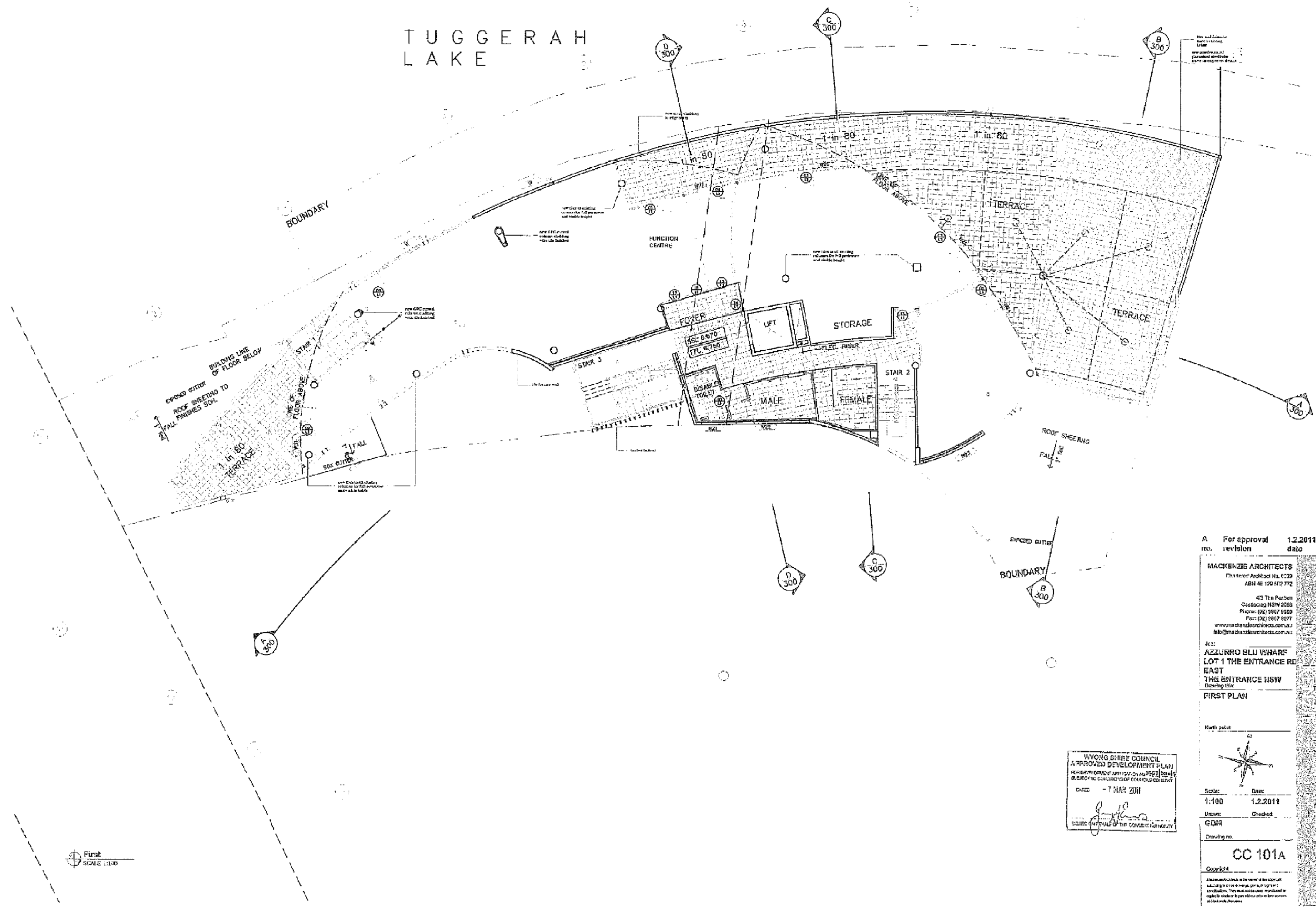
Section 82A of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to Review the determination, except where the application is Integrated or Designated development. The request must be made in writing (or on the review application form) within twelve (12) months from the date of this determination, together with payment of the appropriate fee.

**Signed on Behalf of the Consent Authority**

Gary Evans  
**SENIOR HEALTH & BUILDING SURVEYOR**



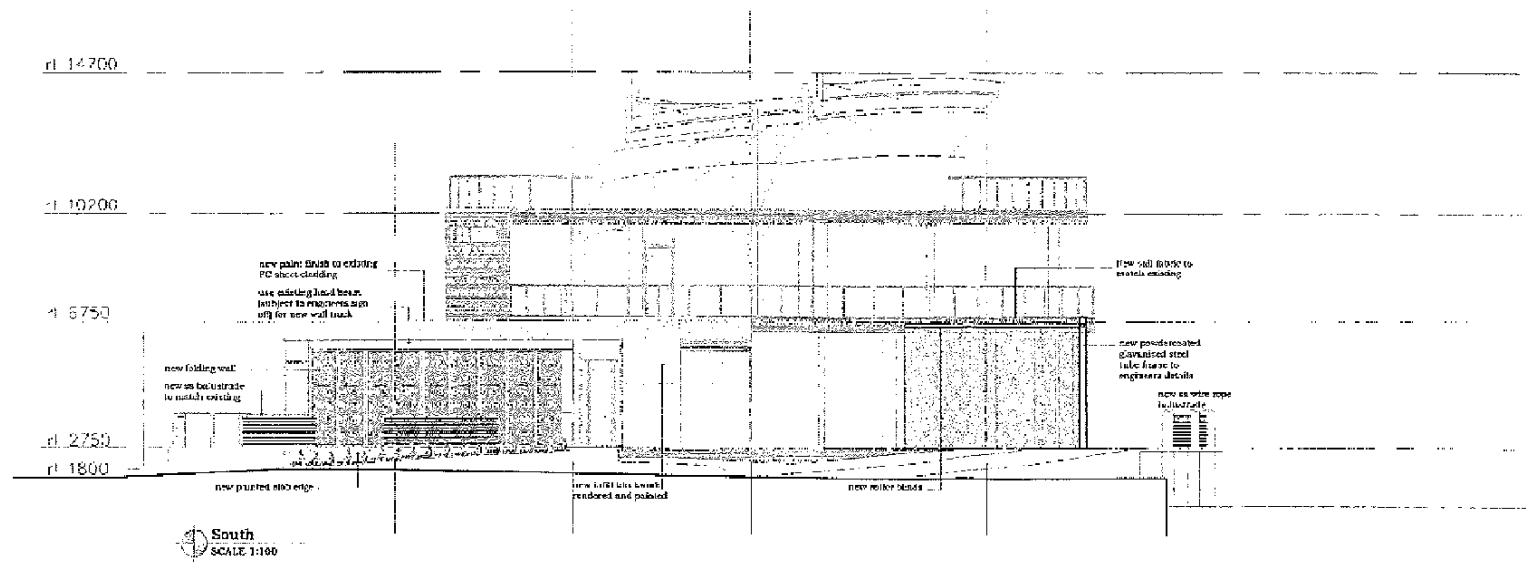
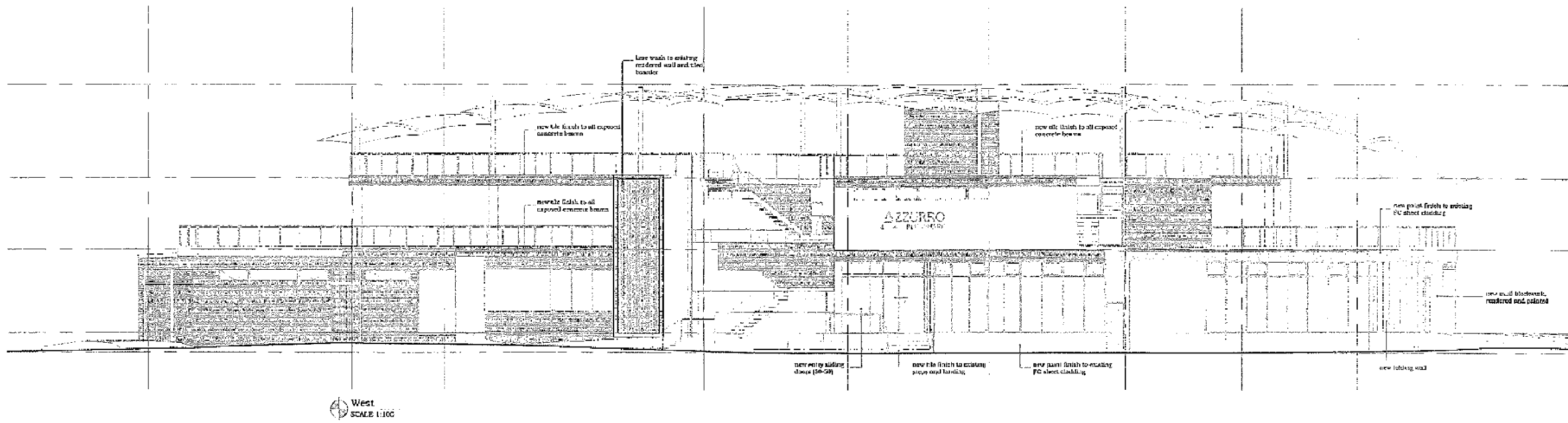
TUGGERAH LAKE



First SCALE 1:100

BYVOYD SHIRE COUNCIL  
 APPROVED DEVELOPMENT PLAN  
 FOR DEVELOPMENT OF LOT 1 THE ENTRANCE RD  
 EAST THE ENTRANCE NSW  
 DRAWING NO. CC 101A  
 DATE - 7 MAR 2011  
 [Signature]

A	For approval	12.2011
no.	revision	date
<b>MACKENZIE ARCHITECTS</b> Chartered Architect No. 6239 ABN 48 120 512 772 43 The Puckers Cessnock NSW 2208 Phone: (02) 5967 9500 Fax: (02) 5967 9277 www.mackenziearchitects.com.au info@mackenziearchitects.com.au		
Job: <b>AZZURRO BLU WHARF</b> LOT 1 THE ENTRANCE RD EAST THE ENTRANCE NSW Drawing No.		
<b>FIRST PLAN</b>		
North point:		
Scale:	Date:	
1:100	12.2011	
Drawn:	Checked:	
GDB		
Drawing no.		
<b>CC 101A</b>		
Copyright		



A For approval 1.2.2011  
no. revision date

**MACKENZIE ARCHITECTS**  
 Cranford Architects No. 9335  
 ABN 46 129 502 772

4/5 The Common  
 Gasbury NSW 2066  
 Phone: (61) 021 933 936  
 Fax: (61) 021 933 937  
 www.mackenziearchitects.com.au  
 E: info@mackenziearchitects.com.au

Job:  
**AZZURRO BLU WHARF**  
**LOT 1 THE ENTRANCE RD**  
**EAST**  
**THE ENTRANCE NSW**  
 Cranford NSW

**ELEVATIONS**  
**WEST AND SOUTH**

North point

Scale: 1:100 Date: 1.2.2011  
 Drawn: GDM Checked:  
 Drawing no. CC 200A

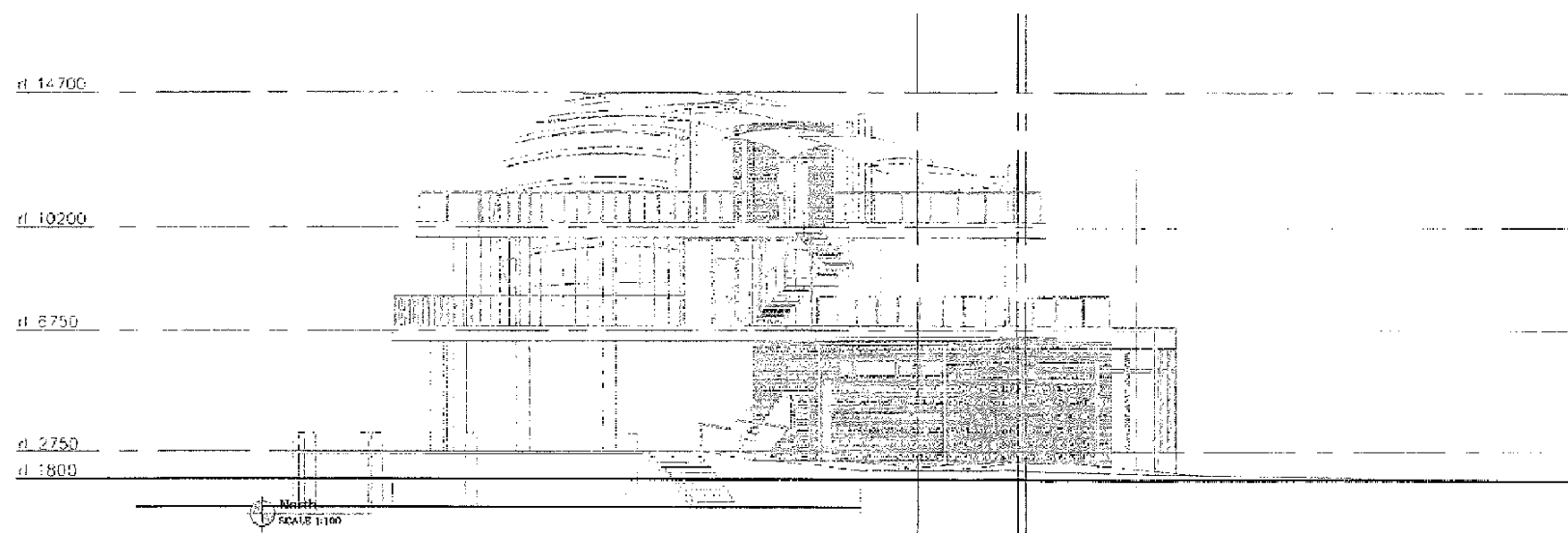
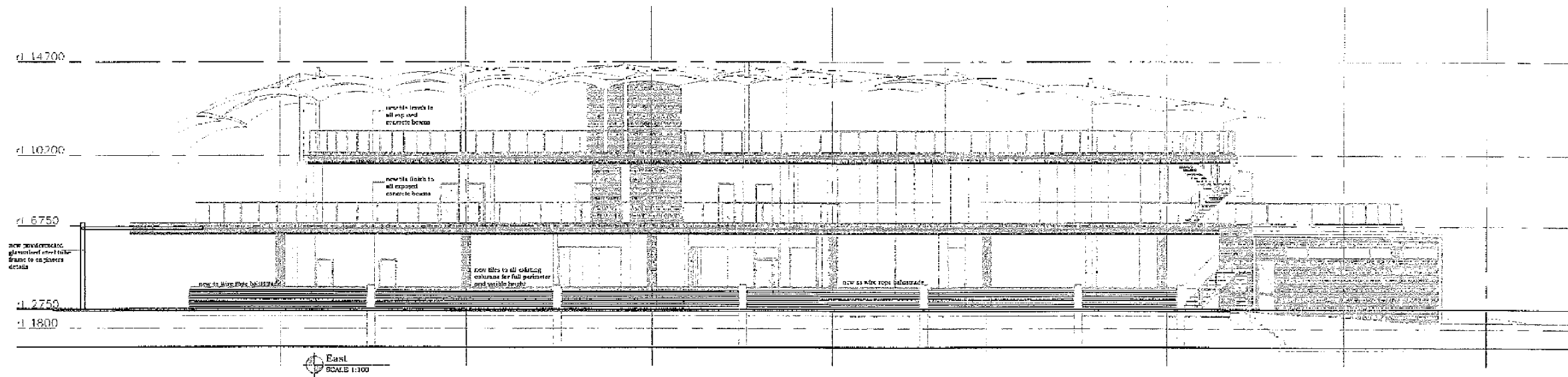
Copyright

Readers are advised to be aware of the copyright and liability for these drawings, plans, designs and specifications. They are issued to users on the understanding that they shall not be used for any other purpose without the written consent of Mackenzie Architects.

**WYONG SHIRE COUNCIL**  
 APPROVED DEVELOPMENT PLAN  
 APPROVED UNDER THE LOCAL GOVERNMENT ACT 1995 (NSW) AND  
 SUBJECT TO CONDITIONS OF COUNCIL'S CONSENT

DATE: 7 MAR 2011

SHIRAZ A. KHANZARI, CHIEF EXECUTIVE OFFICER



A For approval 1.2.2011  
no. revision date

**MACKENZIE ARCHITECTS**  
Chartered Architect No. 0683  
AAR 48 123 962 772  
475 The Pylon  
Clashmore NSW 2058  
Phone: (62) 8937 0068  
Fax: (62) 8937 0077  
www.mackenziearchitects.com.au  
info@mackenziearchitects.com.au

to:  
**AZZURRO BLU VIKARF**  
LOT 1 THE ENTRANCE RD  
EAST  
THE ENTRANCE NSW  
DRAWING NO.  
**ELEVATIONS**  
NORTH AND EAST

North arrow



Scale: 1:100 Date: 1.2.2011  
Drawn: GDM  
Checked: GDM

CC 201A

WYONG SHIRE COUNCIL  
APPROVED DEVELOPMENT PLAN  
FOR DEVELOPMENT APPLICATION NO. 15187  
SUBJECT TO CONDITIONS OF CONSENT  
15187 - 7 AVR 2011  
*[Signature]*  
SIGNED BY DEPUTY MAYOR OF WYONG SHIRE

Copyright  
Mackenzie Architects is the owner of the copyright  
in the drawings, plans, designs and  
specifications. The entire contents of this  
document are the property of Mackenzie Architects  
and are not to be reproduced or  
distributed in any form without the  
written consent of Mackenzie Architects.



