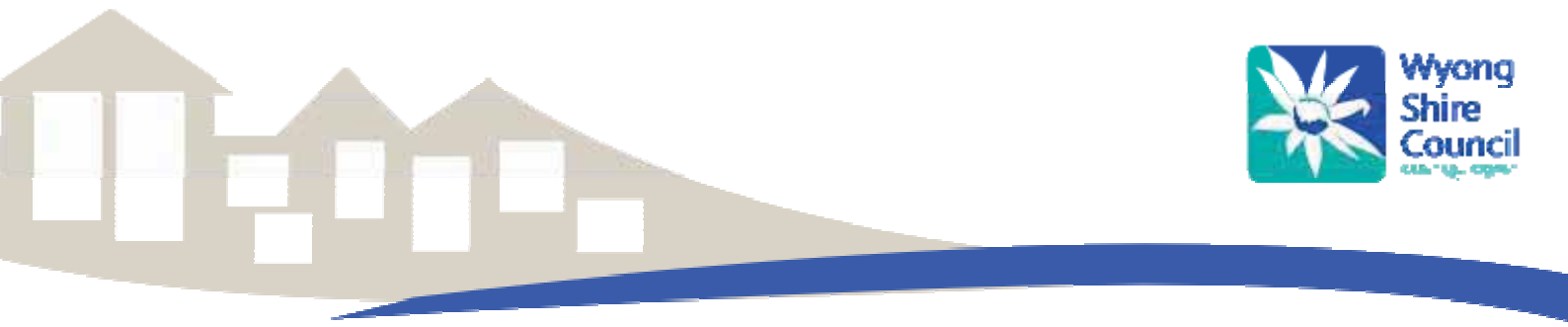


Wyong Shire Council

ORDINARY MEETING

ENCLOSURES

Wednesday, 26 October, 2011



WYONG SHIRE COUNCIL
ENCLOSURES TO THE
ORDINARY MEETING
TO BE HELD IN THE COUNCIL CHAMBER,
WYONG CIVIC CENTRE, HELY STREET, WYONG
ON WEDNESDAY, 26 OCTOBER 2011 ,
COMMENCING AT 5:00:00 PM

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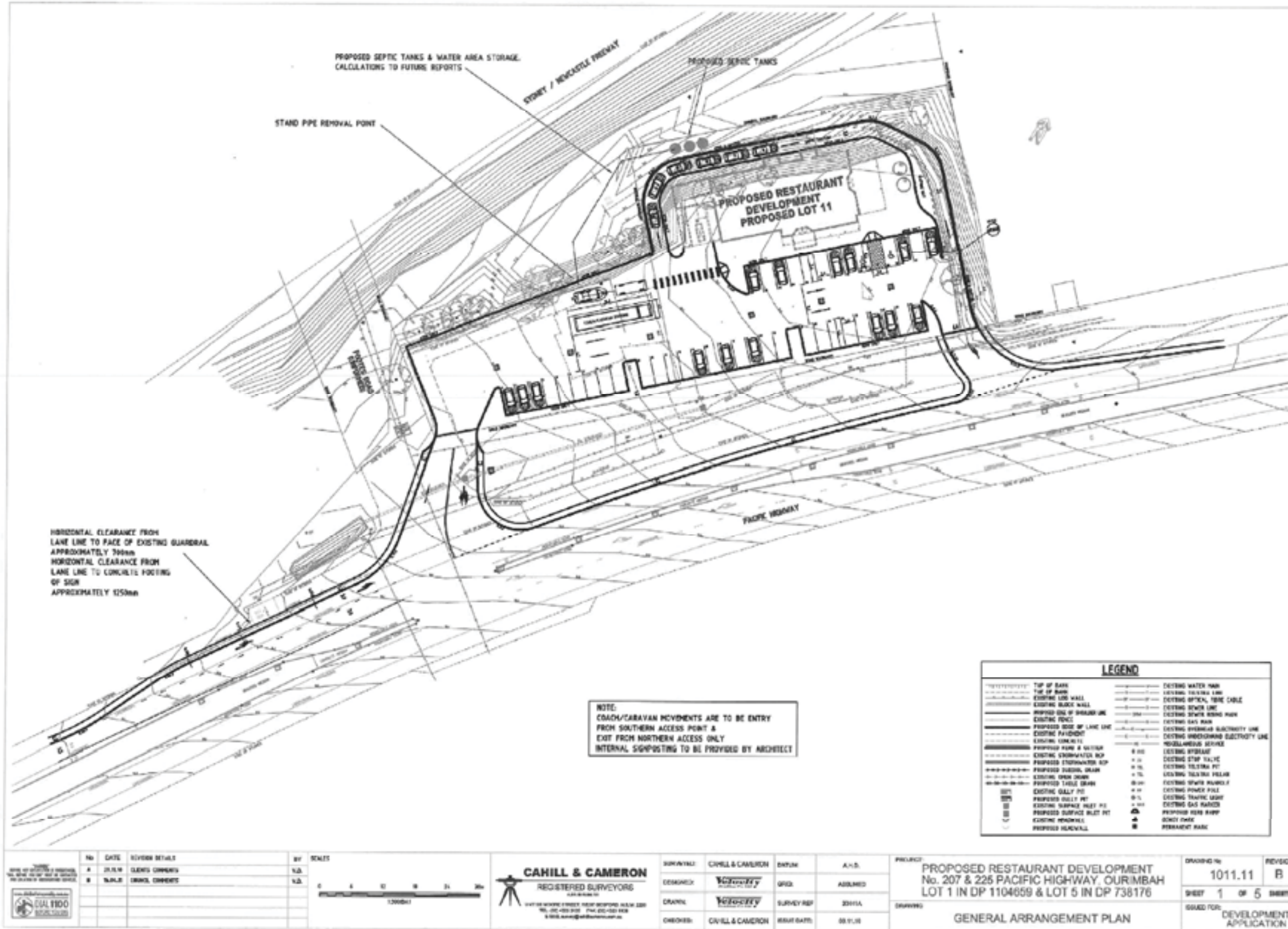
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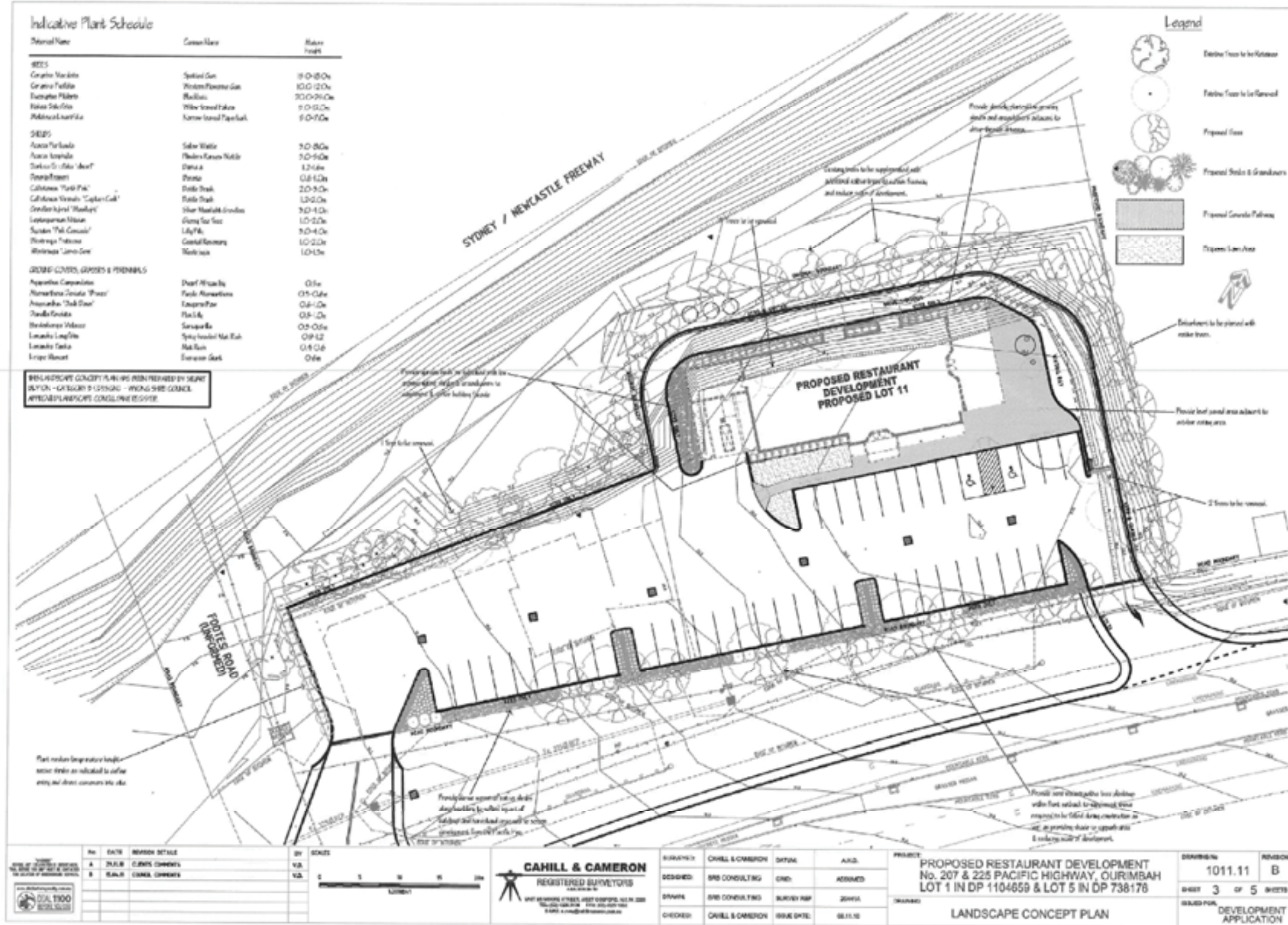
Attachment 1: WSC General Purpose & Special Purpose Financial Statements Year end 30 June 2011 (D02808229 Distributed under Separate Cover)

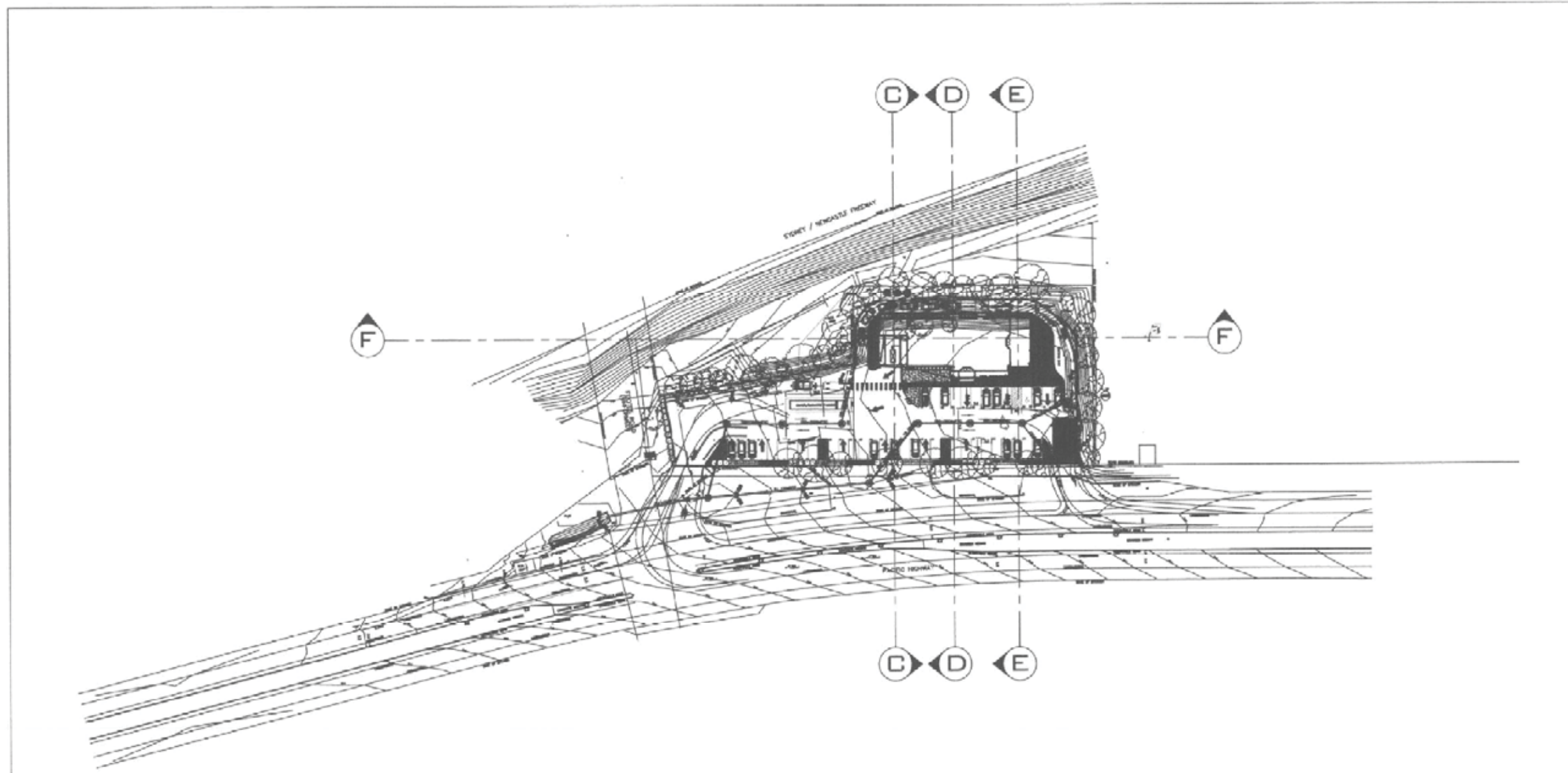
Attachment 2: (Draft) WSC Water Supply Authority Financial Statements Year end 30 June 2011 (D02808233 Distributed under Separate Cover)











SITE / SECTION MARKER PLAN

SCALE 1:1000 @ A3

AMENDMENT A : MAY 2011
 -REDUCTION OFF ROOF PITCH TO 27 DEG
 -REDUCTION OF UPPER LEVEL CEILING HEIGHT TO 2.7M
 -ADDITIONAL SECTIONS AS PER G.C.C REQUEST

PROPOSED HEATHERBRAE'S PIES
 PROPOSED LOT 11 IN THE
 RESUBDIVISION OF LOT 1
 DP1 104659 & LOT 5 DP738716 HN
 207 & 225 PACIFIC HIGHWAY,
 OURIMBAH

SHARPLAN PTY LTD

10 OLD OGGTRAP
 ROAD
 SOMERSBY NSW 2250

OFFICE 43628302
 MOBILE 418658133
 FAX 43627263

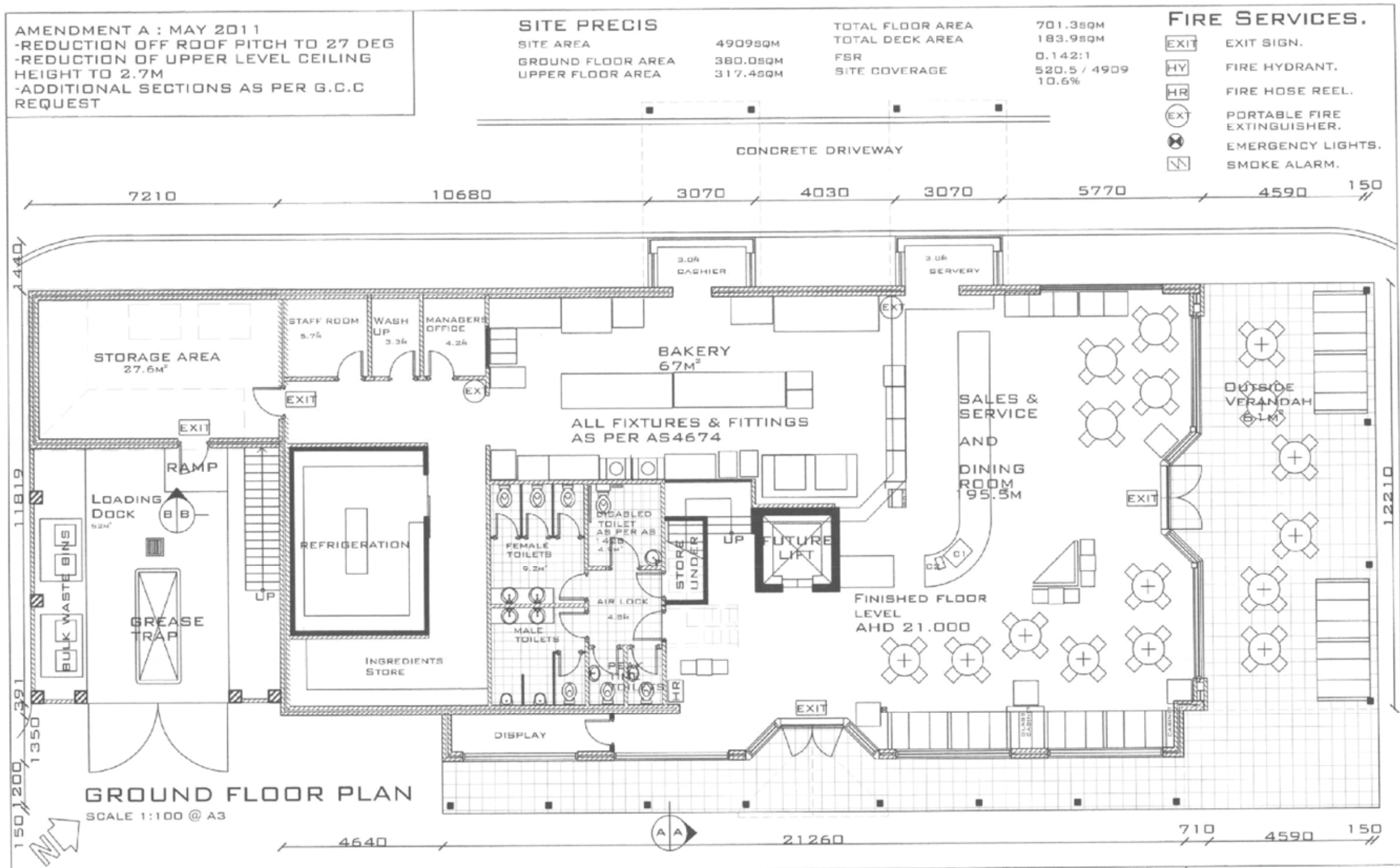
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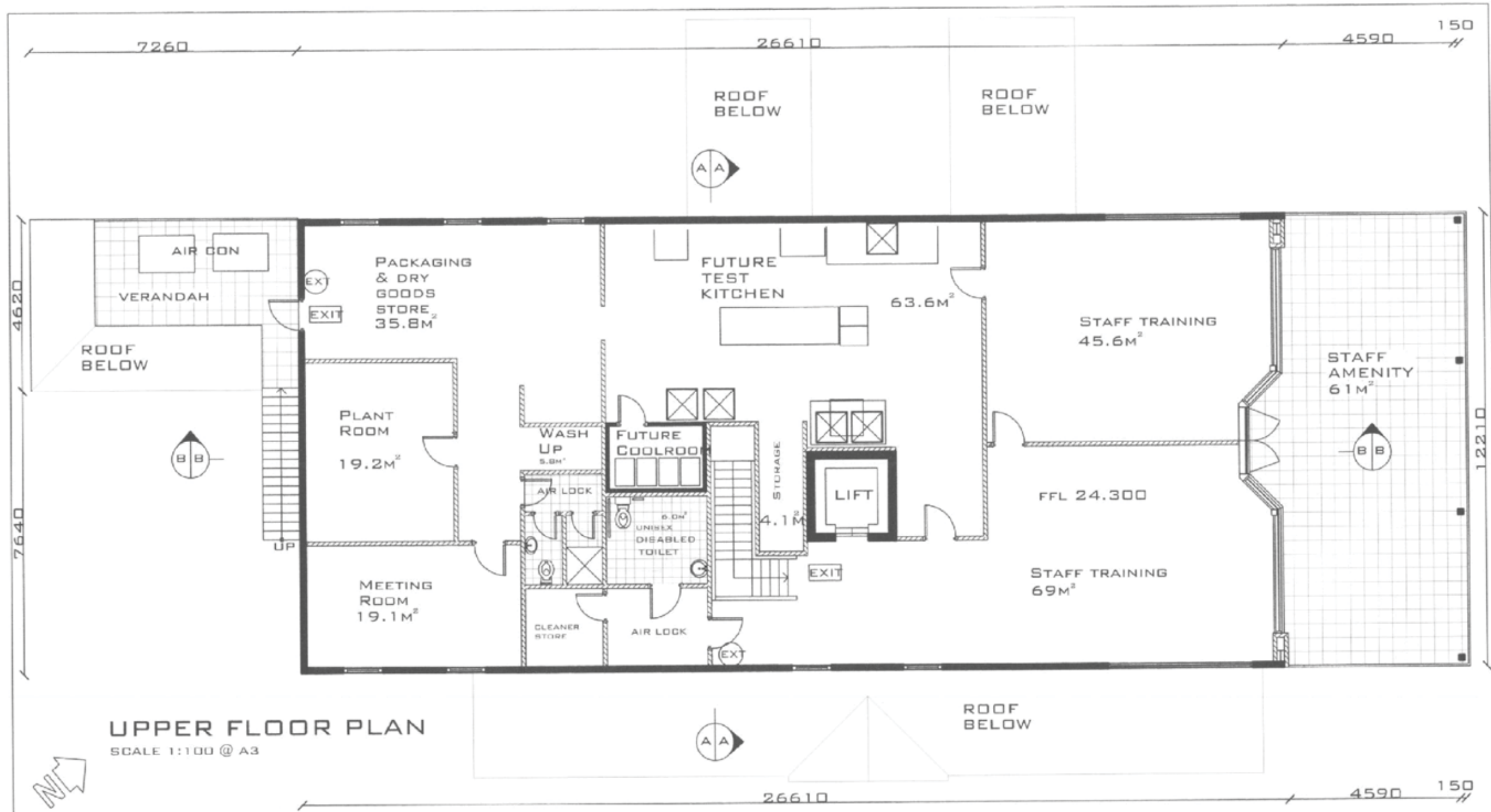
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SITE /
 SECTION
 MARKER PLAN



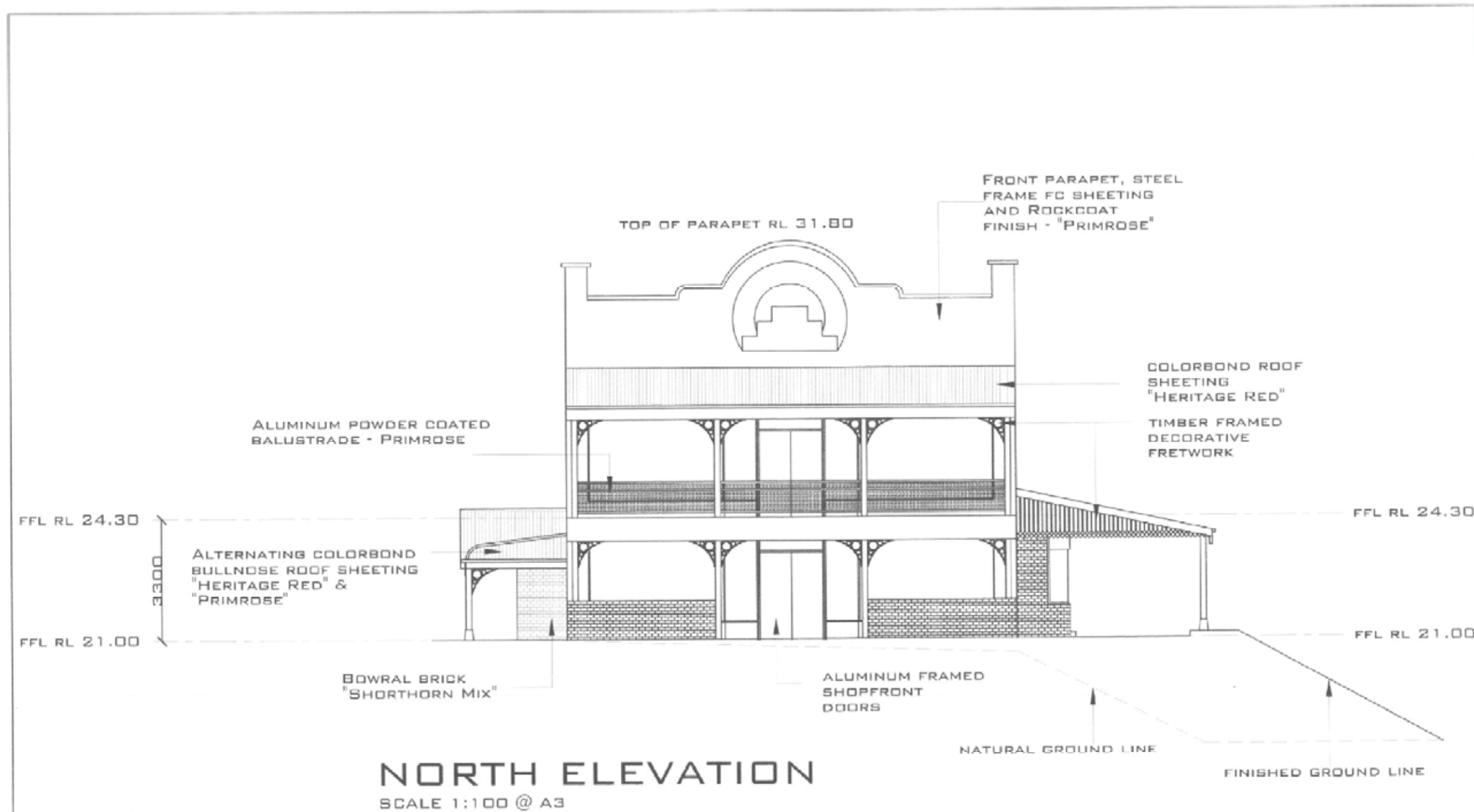
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UPPER FLOOR PLAN
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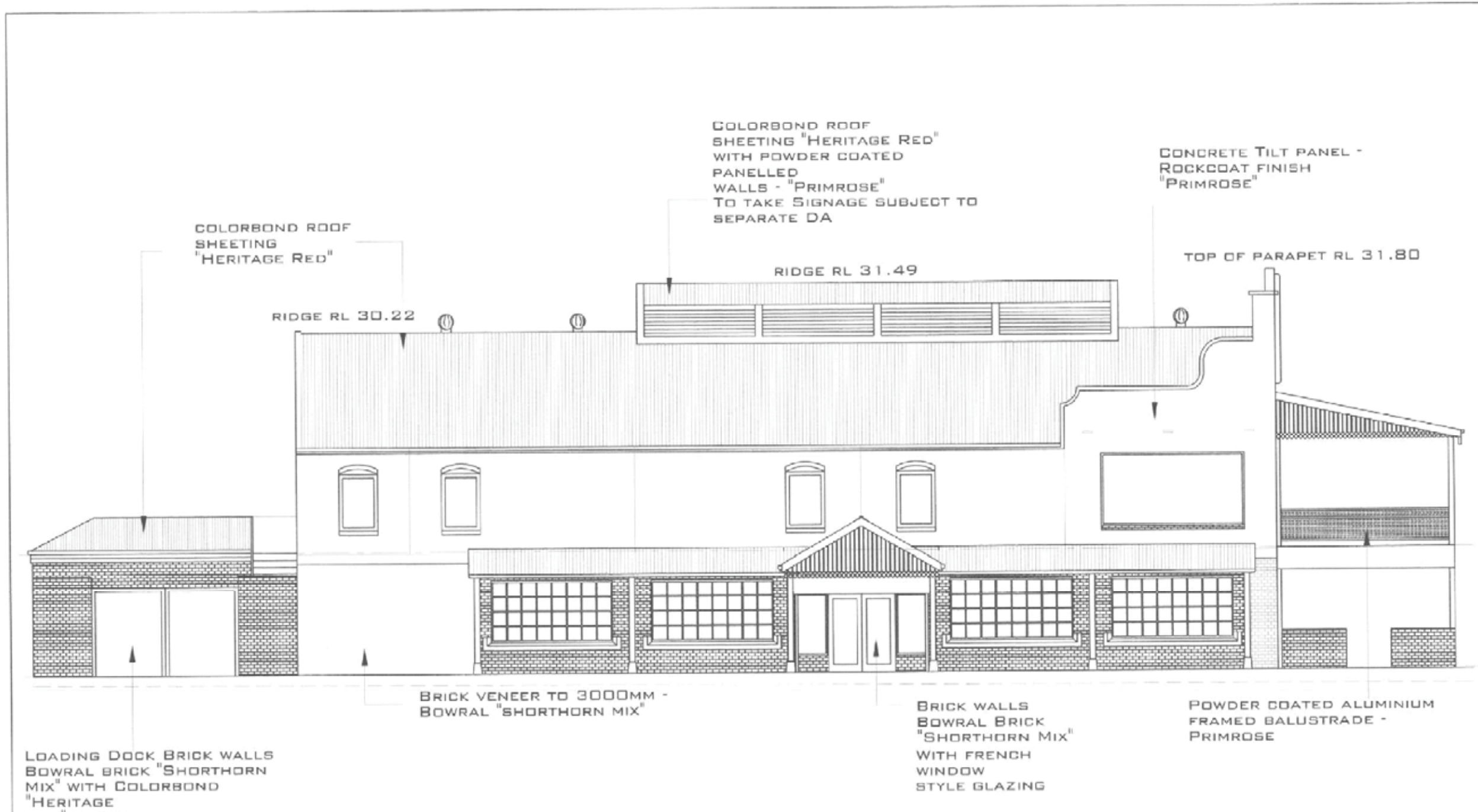
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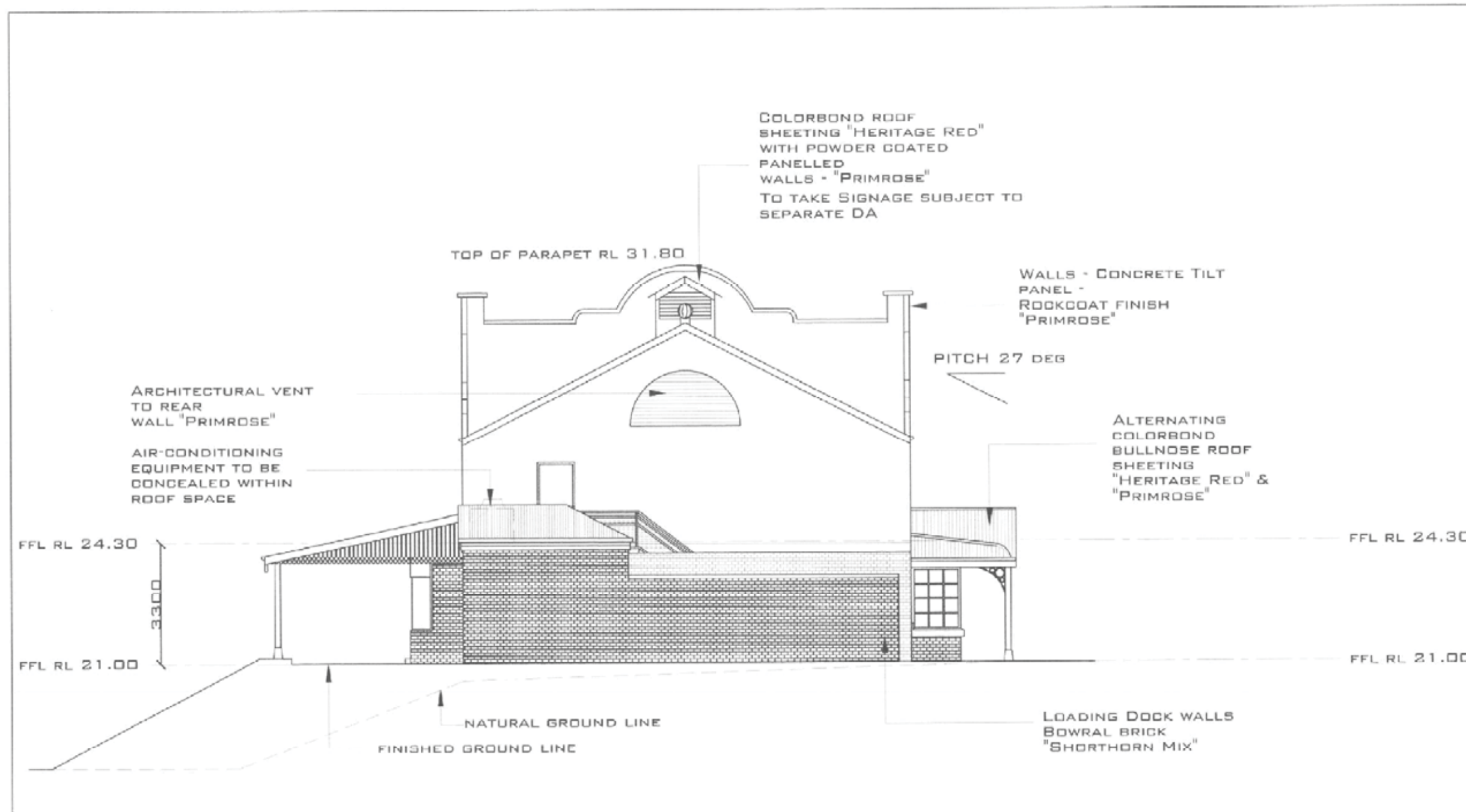


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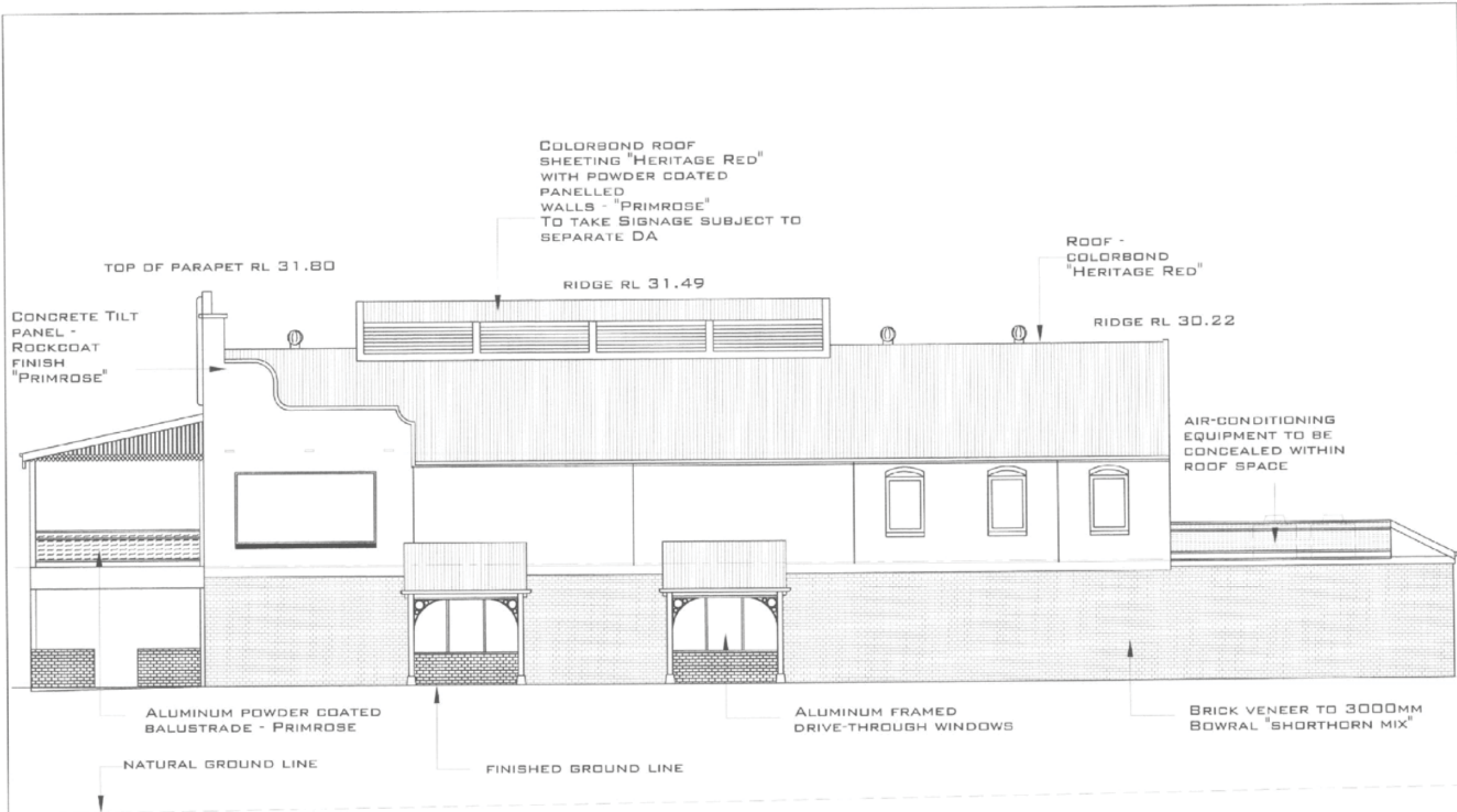
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| SCALE 1 : 100 | | | |



SOUTH ELEVATION
SCALE 1:100 @ A3

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WEST ELEVATION

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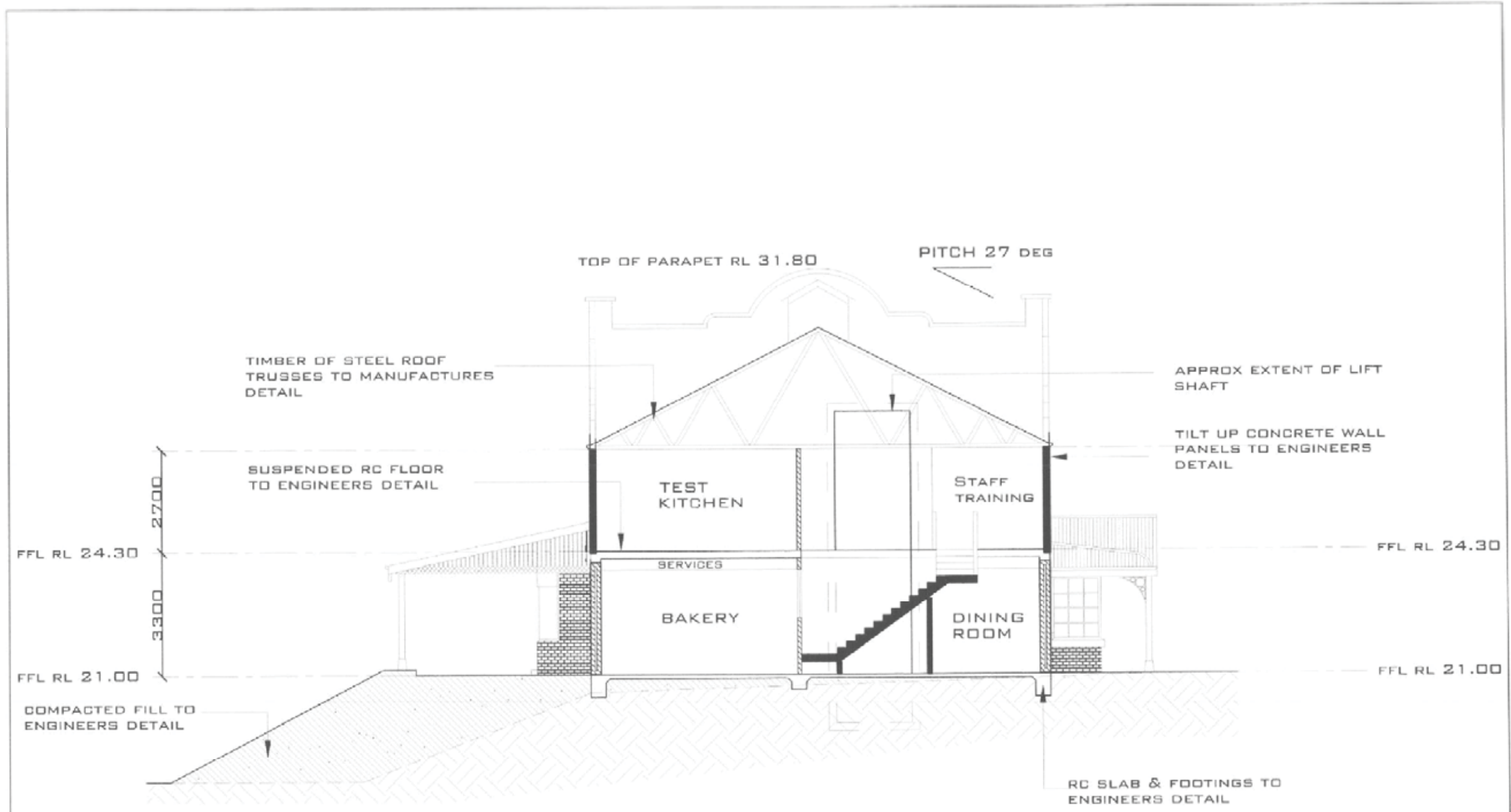
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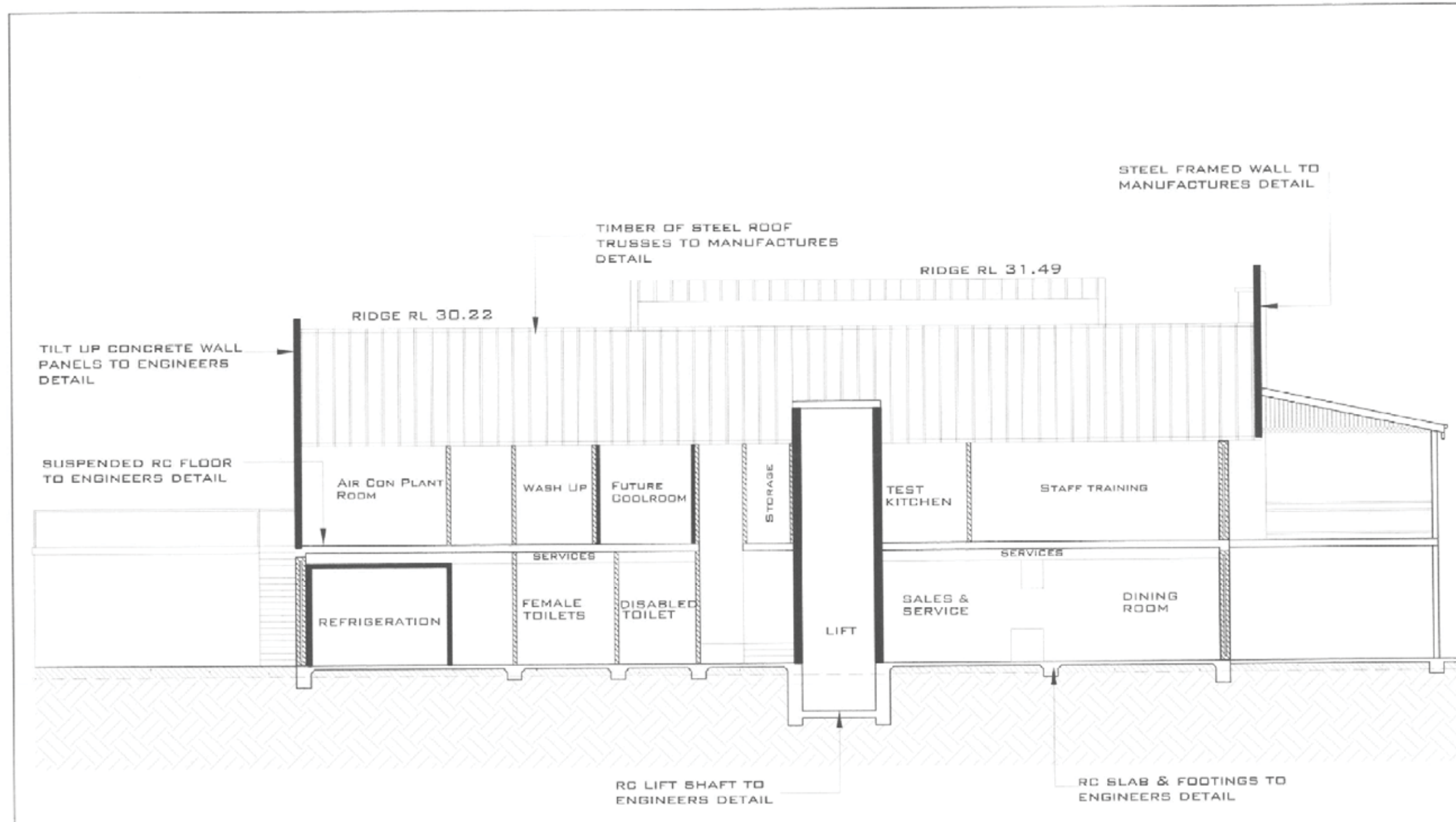
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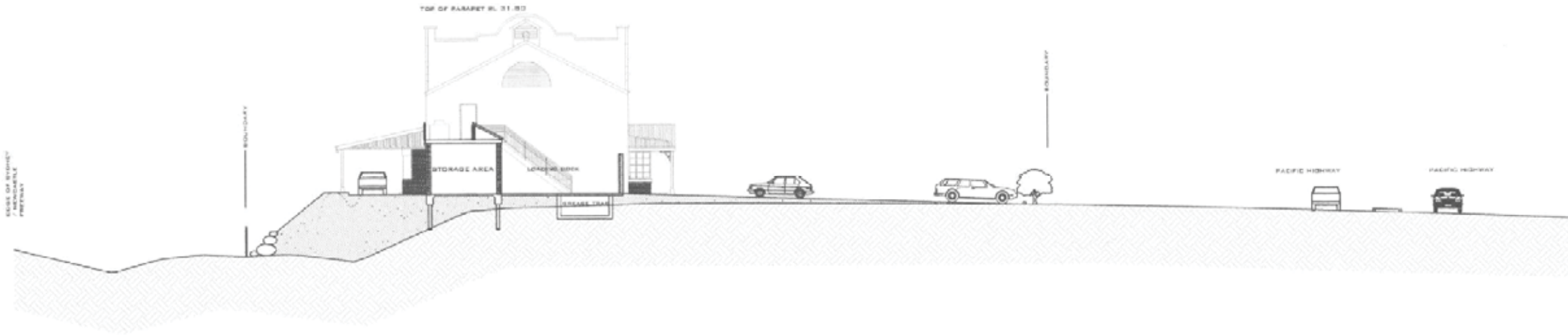
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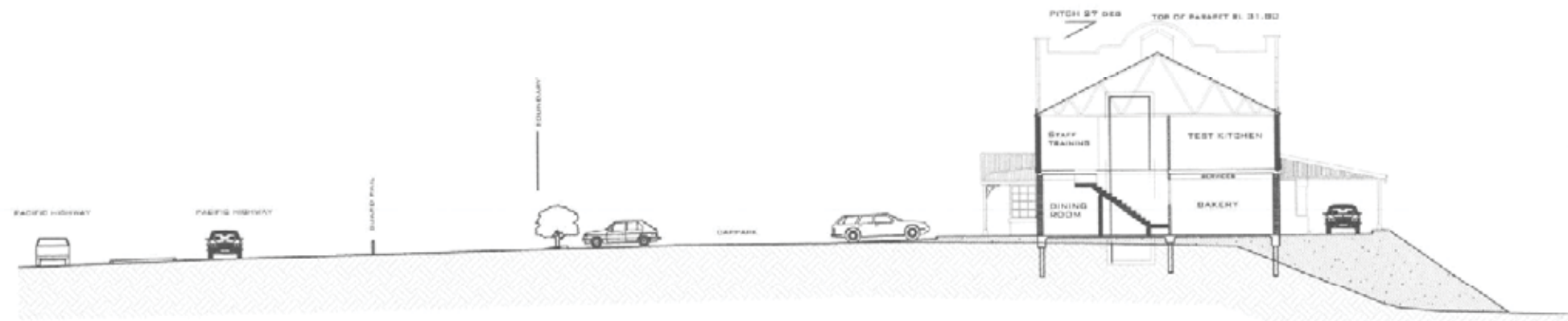
SECTION BB
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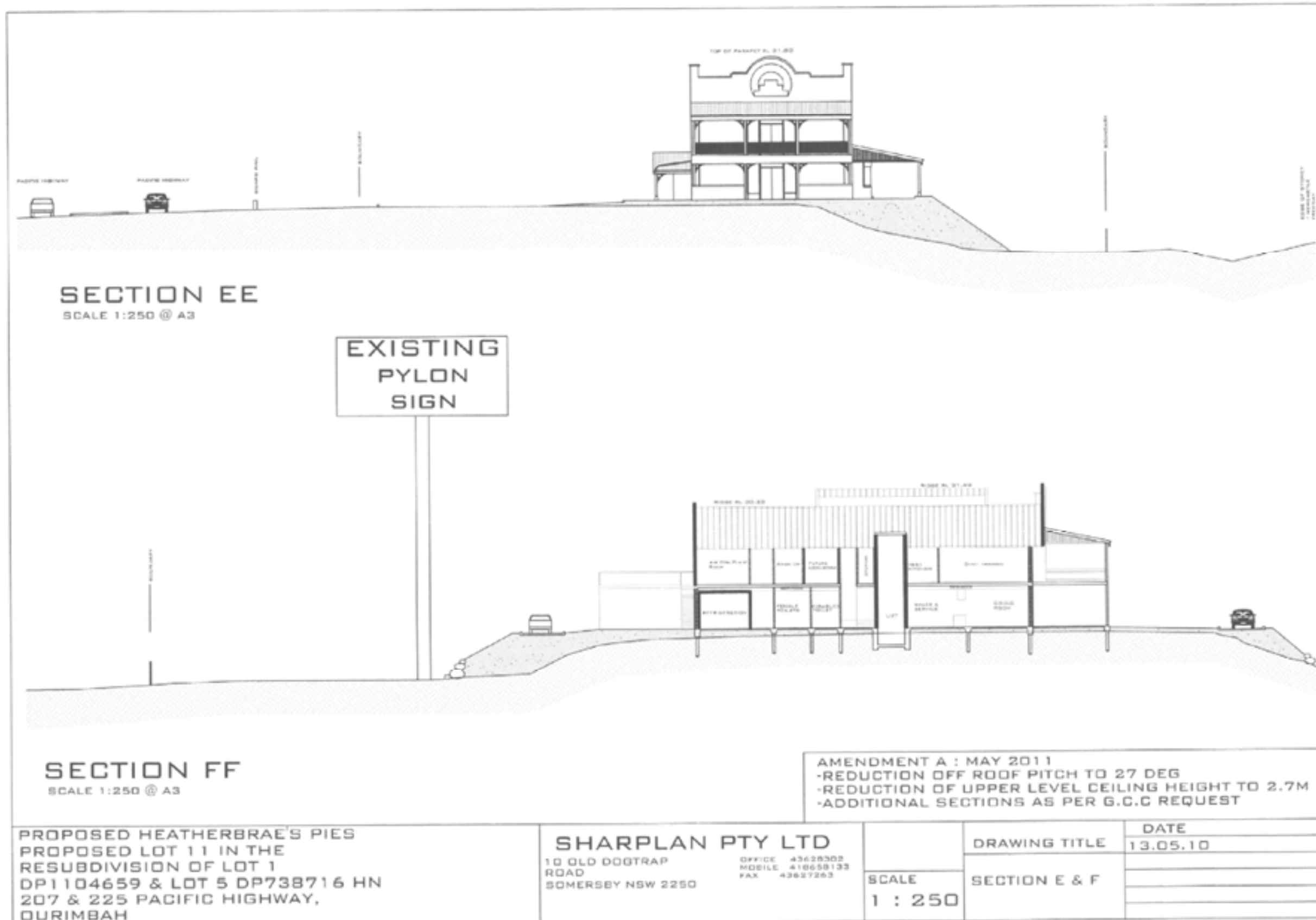
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SECTION DD
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| | | 1 : 250 | SECTION C & D | 13.05.10 |



2 July 2010
To the Development Assessment Panel Meeting

Director's Report
Shire Planning Department

0.0 Change of use from a Carpet Warehouse and Showroom to a Retail Premises (Liquor Shop) under the provisions of Existing Use Legislation, Lot 2 DP 518378, No. 211 Wallarah Road, Kanwal

TRIM REFERENCE: DA/1112/2009 - D02286191

AUTHOR: EG

SUMMARY

An application has been received for the change of use of a carpet warehouse and showroom to a retail premises. The application has been examined having regard to the matters for consideration detailed in Section 106 and 79C of the Environmental Planning and Assessment Act 1979 and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

| | |
|------------------------------|--|
| Applicant | KL Properties Pty Ltd c/ SJH Planning & Design |
| Owner | KL Properties Pty Ltd |
| Application No | 1112/2009 |
| Description of Land | Lot 2 DP 518378, No 211 Wallarah Road Kanwal |
| Proposed Development | Retail Premises (liquor shop) |
| Site Area | 2890m ² |
| Zoning | 2 (b) Multiple Dwelling Residential |
| Existing Use | Carpet Warehouse and Showroom |
| Employment Generation | 15 Full time and 20 part-time employees |
| Estimated Value | \$350 000 |

RECOMMENDATION

A *That Council refer the application to the General Manager for determination having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues with an indication that based on the information available to it, Council favours refusal of the application for the reasons outlined below:*

- 1** *Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the submission under Clause 41 of the Environmental Planning and Assessment Regulation 2000 relating to Existing Use has not adequately demonstrated how the carpet warehouse and showroom could change its use to a retail premises having regard for the change of use provisions.*
- 2** *Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided in the Statement of Environmental Effects having regard for the requirements of Clause 50 and Schedule 1 of the Environmental Planning and Assessment Regulation 2000.*

- 3 Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided to adequately assess the impacts of the development.**

B That Council advise those who made written submissions of its decision.

PRECIS

- Consent is sought for the following:
 - Internal fit-out of existing building
 - Addition of carparking spaces and pedestrian footpath at the front of the building
- Vehicular access is proposed from Wallarah Road.
- The application is relying on the provisions of Existing Use legislation to be able to change the use of the building from a carpet warehouse and showroom to a retail premises (shop) for the purposes of selling liquor.
- Insufficient information has been submitted in relation to addressing the matters for consideration outlined within Section 79C of the Environmental Planning and Assessment Act 1979 and Existing Use legislation.
- The proposal was referred to the RTA for comment.
- The proposed development was advertised in accordance with DCP 2005 Chapter 70-Notification of Development Proposals with four submissions being received.
- The application is recommended for refusal.

INTRODUCTION

The Site

The subject site, Lot 2 DP 518378, is located on the northern side of Wallarah Road. The site is generally rectangular in shape having an area of approximately 2890m². The northern, eastern and western boundaries are adjacent to a tourist park which is zoned 2 (b) Multiple Dwelling Residential, whilst the southern boundary adjoins Wallarah Road. Surrounding development comprises an aged care facility, Anglican Church and Kanwal Village Shopping Centre which are located on the southern side of Wallarah Road. Residential dwelling houses are located further to the west of the subject site.



Figure 1: Subject site, 211 Wallarah Road, indicated in blue

The Proposed Development

The proposed development comprises the internal fit-out of an existing building which is to be used for the purposes of a shop which will sell liquor. The internal layout involves a stock room, liquor cool room, trading area with bulk display and an area for sales.

Hours of operation proposed are:

- Monday to Wednesday and Saturday- 9.00am to 8.00pm
- Thursday to Friday- 9.00am to 9.00pm
- Sunday- 10.00am to 6.00pm

The proposed development involves the employment of 15 full time employees and 20 permanent/part-time positions will be created.

Vehicular access to the site is from Wallarah Road. Existing carparking is located on the site to the east and west of the existing building with seven additional carparking spaces proposed along the Wallarah Road frontage. Staff parking and loading operations are proposed in the north western corner of the site.

Summary

The main issues raised as part of the assessment process related to whether the building could in fact be changed from a carpet warehouse and showroom to a “retail premises” within the meaning of the Standard Instrument, therefore utilising the provisions of Existing Use legislation contained within Clause 41 of the Environmental Planning and Assessment Regulation 2000. During the course of the assessment it became evident that Council could not support the application on the basis of the Existing Use Rights argument, hence, no further additional information was requested of the applicant in relation to the above matter.

VARIATIONS TO POLICIES

Nil

HISTORY

In 1968 Council approved the use of the premises for the following purposes:

- Building and construction
- Wholesaling of new and used building material
- Electrical wholesalers
- Food wholesaler
- Cold storage
- Auctioning of furniture, general plant and equipment subject to all goods being stored within the building.

In a town planning report recommending approval for a plant nursery, dated 14 September 1977, it was stated that “only the latter activity (last dot point above) has taken place, although with regard to the other uses it is difficult to determine. Certainly no food wholesaling or cold storage has taken place.” It was also recommended that all uses “be relinquished and approval to conduct a plant nursery be granted”.

In 1977 the land was zoned Rural 1(c) under Interim Development Order No 58.

Development Consent 82/283 was granted on 12 July 1982 for a Garage for storage of personal goods and a personal household workshop. It appears that this consent may not have been commenced.

Council’s records indicate the subject site was used for a carpet showroom in 1982.

The subject site was zoned 1(c) Rural under Wyong Local Environmental Plan 1987-Rural Lands.

In 1988 Council confirmed by way of letter dated 19 August, that the property enjoyed non-conforming existing use rights as a furniture and carpet warehouse and showroom. In this letter it was stated that as other uses previously approved on site had either not commenced, or had ceased operation for a period of time in excess of 12 months, then under the provisions of the “Environmental Planning and Assessment Act only the current use, being the carpet and furniture warehouse and showroom, enjoys existing use rights”.

The land was re-zoned from 1(c) Rural to Residential 2(b) under Wyong Local Environmental Plan 1991.

On 1 October 1997, Development Consent was granted under DA 488/97 for redevelopment of an existing carpet showroom and warehouse.

Building Application 664/98 was approved on 11 May 1998 for the redevelopment of the existing showroom and warehouse.

PERMISSIBILITY

The subject site is zoned 2(b) Multiple Dwelling Residential under Wyong Local Environmental Plan 1991. A *shop* is a prohibited use in the zone. Notwithstanding this, if the subject site and proposed development was deemed to enjoy the provisions of existing use rights then a change of use from a commercial use to another commercial use (the definition of which incorporates a retail premises) is permissible in the zone by virtue of the provisions of Clause 41(1) (e) of the Environmental Planning and Assessment Regulation 2000 subject to compliance with the requirements of Clause 41(2).

RELEVANT STATE/COUNCIL POLICIES AND PLANS

The Council has assessed the proposal against the relevant provisions of the following environmental planning instruments, plans and policies:

- Environmental Planning and Assessment Act 1979 ss 106 & 107
- Environmental Planning and Assessment Regulation 2000 clause 41
- Draft State Environmental Planning Policy (Competition) 2010
- Wyong Local Environmental Plan (WLEP) 1991
- Development Control Plan 2005
 - Chapter 32-Kanwal Urban Release Area
 - Chapter 50-Advertising Signs
 - Chapter 61-Carparking

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles.

The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application. This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may withstand these potential impacts. In this particular case, the proposal is considered satisfactory having regard for the location of the subject site and its distance from existing and potential natural hazards and any ecologically significant parcels of land.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act 1979 and other statutory requirements, Council's policies and Section 149 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information. Any tables relating to plans or policies are provided as an attachment.

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES (s79C(1)(a)(i-iv):**Existing Use**

Under Section 106 of the Environmental Planning and Assessment Act 1979, existing use means:

“(a)...

(b) *the use of a building, work or land:*

- (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) *that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse”.*

On 1 October 1997 consent was granted under DA 488/97 for the ‘Redevelopment of an existing carpet showroom and warehouse’, after it had been acknowledged by Council that the use of the site for a carpet showroom and warehouse had occurred as far back as 1982. In 2004, a development application was lodged (DA/975/2004) for “the demolition of an existing warehouse building and construction of a hotel”. The application was refused and subsequently went to appeal. In *Longhill Planning v Wyong Shire Council* [2006] NSWLEC 202, Bly C was satisfied that the existing warehouse development on the subject site was lawfully established and thus enjoyed the provisions of existing use rights.

The development application for the proposed hotel was unaffected by the amendments to the existing use provisions which came into effect under the *Environmental Planning and Assessment Amendment (Existing Uses) Regulation 2006*, by virtue of the savings and transitional provisions. As such, Council and the Court considered the application under the previous provisions of Clause 41 of the Regulation which enabled an existing use to be changed to, among other uses, a use that would otherwise be prohibited under the Act (former cl 41(1) (d)). This Clause also provided that a use to which an existing use was changed was itself taken to be an existing use (former cl 41 (2)).

The application currently before Council is subject to the amendments which came into effect on 9 February 2007 under the *Environmental Planning and Assessment Amendment (Existing Uses) Regulation 2007*, which enable an existing use, as defined by Section 106 of the *Environmental Planning and Assessment Act 1979*, to be changed:

if it is a commercial use- to another commercial use (including a commercial use that would otherwise be prohibited under the Act...(Clause 41(1)(e)).

Under Clause 41(3), a commercial use is defined as “the use of a building, work or land for the purpose of office premises, business premises or retail premises (as those terms are defined in the *Standard Instrument (Local Environmental Plans) Order 2006*).

Council must determine whether the application for a change of use from a carpet warehouse to a liquor shop falls within the provisions of a change of use within the meaning of Clause 41(1)(e). The applicant engaged Senior Counsel advice in relation to the change of use of the carpet warehouse to a shop and the issue of abandonment of the existing use. The relevant points of this submission are detailed below.

Applicant's Submission

- *The Carpet Warehouse use was approved for change to use for the Irish Pub.*
- *In my opinion...the "existing use" of the premises was that of carpet warehousing and retailing of carpets. I do think the use that was being made of the premises can be put to the level of generality of "warehouse" or "retail shop"...*
- *It will be recalled that by virtue of cl. 41(1), an existing use may, be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act or if the use is a commercial or light industrial use satisfying the provisions of sub clause (2). Warehousing, video rental and bottle shops are all prohibited in this zone and so the existing use may not be changed under cl. 41(1) unless cl 41(2) (e) applies.*

That sub cl. provides that if the existing use is a commercial use it may be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act).

- *It is my understanding that the change from carpet warehousing and retail to bottle shop will involve no alterations or additions, no increase of floor space of the premises, no rebuilding of the premises associated with the existing use...The floor space of the premises needs to be confirmed.*
- *I have no instructions whether the use of the premises as a bottle shop will involve a significant intensification of that existing use. I assume it will not. Accordingly all the matters in sub cl. (2) seem satisfied subject to checking.*
- *Cl 41(3) defines "commercial use" to mean the use of a building, work or land for the purpose of office premises, business premises or retail premises (as those terms are defined in the Standard Instrument (Local Environmental Plans) Order 2006). It seems to me that the use of the premises as a carpet warehouse and associated retailing is the use of the premises within the meaning of the phrase "retail premises". Likewise the use of the premises for bottle shop seems to fall within the meaning of that phrase.*
- *The client wants now to open a bottle shop in the premises. No building works are required. Car parking is available on site. A bottle shop is clearly retail premises.*

Summary

1. ...
2. *The use of the premises for carpet warehouse and retailing is characterised as "retail premises" under cl.41.*
3. *That use is an "existing use" for the purposes of the Environmental Planning and Assessment Regulation (on the proviso that Mr Karedis' evidence is accepted) which may be changed to another use including a commercial use within the meaning of regulation 41.*
4. *Commencement of the video hire and sale store without development consent was unlawful as it was in breach of cl.45 but it did not have the effect of abandonment of the "existing use" of the premises which was for carpet warehousing and retailing.*

5. A bottle shop would be a commercial use as defined in regulation 41 and would be a permissible development provided development consent was obtained for that change of use.

Council Comment

It is considered that for Council to determine whether the applicant has a valid argument for falling within the provisions of Clause 41(1) (e), that is, the change of use of a commercial use to another commercial use, Council must rely upon the categorisation of the current existing use. It is noted that in summarising the relevant principles on the categorisation of existing uses in *Warlam Pty Ltd v Marrickville Council*, Biscoe J said:

“the courts refuse to categorise the purpose of an existing use so narrowly that natural changes in the method of using land or carrying on a business or industry will render an existing use right valueless. Likewise, the courts refuse to categorise the purpose of an existing use so widely that land or premises could be used for a prohibited purpose that was not part of its use at the time of commencement of the prohibiting regulation”.

Applying these principles, the appropriate categorisation for the use of the premises was, and continues to be, for the purposes of a carpet showroom and warehouse because it involved the storage of carpet pending its sale and distribution and an ancillary showroom/product display and office component. The characterisation of the use has already been established by virtue of the notice of determination issued in 1997 wherein the proposed development was described as a carpet showroom and warehouse. To extend this categorisation to include “retail use” as Senior Counsel and the applicant have done, is considered an exaggeration of the original consent and an attempt to categorise the existing use so widely so as to incorporate a prohibited purpose, that is, retail premises.

In *Botany Bay City Council v Parangool Pty Ltd* [2009] NSW LEC 198, His Honour, Lloyd states that if the existing use is dependent upon the express and limiting terms of the development consent then the genus test is irrelevant (a test which is used to assist in the categorisation of a particular development having regard for determining existing use rights). In this case, His Honour found that the consent expressly limited the lawfulness of the existing use to “warehousing/storage and distribution of alcoholic goods”, therefore there was no opportunity to approve a change of use to warehousing generally. In that regard, it could be argued that the development consent issued in 1997 expressly limited the existing use to that of a carpet showroom and warehouse with no specific mention to retail sales. It is considered that there is no opportunity to change the existing warehouse to a “retail premises”.

Sevenex Pty Limited v Blue Mountains City Council also discusses the issue of categorisation of uses and existing uses having regard for change of use. His Honour, Sheahan J, recognises that reference may be made to documents incorporated (or not) into the development consent for the purposes of resolving any ambiguity or inconsistency in construction of the consent. The 1997 development consent clearly incorporates the approved plans in condition 1 which specifically identify the areas of the development such as the warehouse, showroom, office and amenity components of the building. His Honour also draws upon the discussion in *Peters v Manly Municipal Council* [2007] NSWCA 343 where a “use is defined by its “reasons for being”, not by such ancillary or incidental aspects”.

Accordingly, even if there was some form of retail sales occurring on site in conjunction with the showroom/display area, this could not be categorised as the dominant tenement, nor could this limitation on the development consent be said to render the existing use “valueless” as stated by Biscoe J.

Ancillary development

It is considered that any retail sales associated with the premises was merely a purpose which was subservient to the dominant purpose of the premises for the storage of carpets pending their sale and distribution. Therefore, to claim that a “commercial use” was operating and the site can now be changed from one commercial use to another commercial use, that being a retail premises that will be for the purposes of liquor sales, is contrary to the evidence before Council of a development that had a primary purpose of storing carpets pending their sale and distribution.

The *Standard Instrument (Local Environmental Plans) Order 2006* contains a definition relating to “warehouse or distribution centre” which means “a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made”. The existing use would be more appropriately defined within this term and not within that of a “commercial use”. As such, the proposed use of the building as a ‘shop’/‘retail premises’ is considered to be a non-conforming use and a development that cannot be granted consent under the provisions of Clause 41 of the Regulations.

Issue of abandonment

Section 107 (2)(e) and (3) of the Act prohibits the continuance of a use where that use is abandoned and states that a use is “*to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months*”. Despite the fact that Council does not accept the fact that the site enjoys existing use rights for a commercial use, Council will still make comment and respond to the matters raised in relation to this issue.

Applicant’s submission

Has the use been abandoned?

- *A use can still continue, notwithstanding that there may have been interruptions or breaks, which were not of such a kind to bring about a termination or abandonment of the use.*
- *It is to be borne in mind however that a subjective intention to resume a use, although a relevant factor, is not by itself sufficient to rebut the presumption of abandonment under s 107(3) of the Environmental Planning and Assessment Act 1979.*
- *Kitto J (Shire of Perth v O’Keefe (1964))... pointed out that the term “purpose” was used in “an objective sense to refer to the end which is seen to be served by a particular use of the premises rather than in a subjective sense to indicate the object in the minds of particular individuals...*
- *I now turn to the statement of Gregory Karedis. He says that he is a principle of KL Properties Pty Ltd which company purchased the property on 12 July 2006...He goes on to say that in about 2004 the company was contemplating establishing a new hotel in the area. Vacant sites were looked at as well as the subject site which was occupied by Ken Derry, a carpet retailer who had been retailing from the subject site for approximately 20 years.*

- *Mr Karedis says that a colleague who was also in the carpet and rug sale business expressed an interest in running such a business from the subject premises.*
- *In 2006 the Land and Environment Court granted consent for the establishment of a hotel on the site...the company was mindful that in order to establish a hotel on the site it would be necessary to satisfy licensing laws in order to open such premises.*
- *The company was comforted by the fact that the premises could be used for the purpose of carpet warehousing and retail sales and that it had a ready and willing tenant who desired to re-establish such a use in the premises if the licensing application failed.*
- *In the interim the company leased the premises for use as a video store...this was not a long term arrangement and intended to be temporary...intention was to use the premises for carpet warehousing and retailing if it transpired that he could not establish a hotel on the site.*
- *If it transpires that the company is unable to use the premises as a bottle shop then its intention remains to re-establish a carpet warehouse and retailing outlet on the property.*
- *Although the premises ceased to be used for carpet warehousing and retailing, that cessation of years was only temporary. The cessation occurred in circumstances where the company was trying to implement the development consent that it had obtained from the Land and Environment Court.*
- *Mr Karedis says that it has always been the company's intention to re-establish a carpet warehouse within the existing building if its attempts at redevelopment failed. In this event it is open to be concluded that existing use rights to use the premises for carpet warehousing and retailing have not been abandoned.*

Council Comment

Council contend that the applicant has established that the use of the building for a carpet warehouse and showroom has continued in the required sense. Prima facie evidence has not been provided to Council to demonstrate that this use has not been abandoned.

Although Senior Counsel has stated that it has always been "the company's intention to re-establish a carpet warehouse within the existing building..." Council argue the fact that the intent has always been for the re-establishment of a carpet warehouse once other uses had been exhausted, particularly when the property owners have allowed for an illegal use, such as a video shop, to operate from the premises. To say that there was a subjective intent for the warehouse to continue to operate, particularly when the owner has gone to great extent to have other uses approved on the subject site is contrary to the actions undertaken by the property owner.

In *Hawkesbury City Council v Agostino* [2009] NSWLEC 176, His Honour, Justice Lloyd, made it clear that there is a “distinction between an intention to ‘continue a use’ and an intention ‘not to abandon a use’”, albeit a fine one, and that “the onus does not fall on the Council to establish that there was abandonment by way of an overt thought process. The onus remains on...” the applicant “...to establish that there was... no abandonment of use”. In this instance, no information has been provided to Council (apart from Senior Counsel opinion) in relation to the intention of Mr Karedis to continue to use the premises for the purposes of a carpet warehouse in the event that all other avenues regarding use of the site had been exhausted.

The applicant has not given Council any information on the issue of abandonment, particularly in relation to proving on the balance of probabilities that a subjective intention of the property owner was to continue to use the site for the purposes for which the site enjoyed existing use rights which is a carpet warehouse and showroom (Lloyd J in *Hawkesbury City Council v Agostino*). There appears to have been a cessation in the use of the premises as a warehouse since 2006 and it remains vacant to the present day. Given the circumstances, it could be argued that the cessation of the actual use of the premises can be proven by the very fact that the premises has remained vacant for a period of more than 12 months, and no information has been provided that can demonstrate that there was an “asserted subjective intention to continue the use of the premises for that particular purpose” (*Hawkesbury City Council v Agostino*).

Carparking

Under the summary table for parking requirements for specific land uses outlined in clause 3 of DCP 2005 Chapter 61-Carparking, the following number of spaces are required for a shop which is considered to be a use which aligns the most appropriately to a retail premises:

| Standard | Required | Provided | Complies |
|-------------------------------------|---|----------|----------|
| 1 space per 30m ² of GFA | 14 spaces (425.31m ² GFA) | 20 | Yes |
| Total Required | 14 | 20 | Yes |

Although the provisions of DCP 2005 Chapter 61-Carparking do not strictly apply to the proposed development, Council still undertook carparking calculations in accordance with the requirements for a shop as it gave an indicative number of what a shop of this size would normally require in Wyong local government area and Council was able to determine if, in ordinary circumstances (a development not relying on existing use) the proposal would comply. As shown above, the proposal would comply with Council’s carparking requirements for a shop.

Insufficient information

Insufficient information has been provided to adequately assess the application with regard to the following:

- Adequately addressing the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 in the Statement of Environmental Effects, having specific regard to transport and traffic, social impact, noise, safety, security and crime prevention, whether the proposal fits in the locality and energy efficiency.
- Whether the proposal meets Existing Use legislation.
- Documentation supporting the advice provided by Legal Counsel, particularly in relation to affidavits from property owners.

Given the lack of detail submitted with the application, particularly in the Statement of Environmental Effects, Council has had to rely upon its own research in relation to the history of the site and in the development of a case for existing uses. The lack of information supplied has not assisted the applicant in providing a satisfactory argument to convince Council that the site does in fact enjoy existing use rights and that the proposed change of use is a lawful one.

THE LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b)):

The relationship to the regional and local context and setting

The existing building is on an isolated piece of land and is setback from the road so as not to dominate the streetscape. The scale, form and design of the existing development are considered to be compatible with other development in the area.

The access, transport and traffic management measures

Access to the site is from Wallarah Road which is on the southern boundary of the property. The site has two accesses, one to the east and one to the west. If the development was to be approved a condition of consent would require separate one-way entry/exit to the site.

In relation to traffic generation, it is considered that the proposed use of the site for a retail premises for the purposes of selling liquor has the potential to generate more traffic than that of a carpet warehouse and at different times. However, Council is unable to ascertain the proposed traffic generation for the use of the site as a retail premises due to the lack of information provided by the applicant.

The impact on the public domain (recreation, public open space, pedestrian links)

Given the site has an existing building that primarily consists of private space in and around the building, there would be no impact on the public domain as a result of a change of use to a retail premises. In relation to existing pedestrian linkages and access between the subject site and Kanwal Village shopping precinct, there is an incomplete footpath that exists sporadically on the southern side that visitors to the subject site can utilise which will allow them to walk to the pedestrian lights on Wallarah Road opposite Kanwal Village. However, it is anticipated that the majority of visitors to the site will use a vehicle.

The impact on utilities supply.

The proposed development is able to be serviced by the appropriate utilities as per the requirements of Clause 29 of Wyong LEP 1991.

The effect on heritage significance.

The property is not listed as an item of heritage nor is it in a heritage conservation area.

Any effect on other land resources.

There will be no effect on land resources.

Any impact on the conservation of water.

The proposed development would not impact on the conservation of water.

Any effect on the conservation of soils or acid sulphate soils.

The subject site is not affected by acid sulphate soils. As the proposal is for the fit-out of an existing building, there will be no impact on soil quality, nor would the proposed development create soil erosion or degradation.

Any effect on quality of air and microclimate conditions.

There will be no impact on air quality or microclimate conditions.

Any effect on the flora and fauna.

No flora or fauna would be impacted upon by the proposed internal modifications to the existing building or any upgrading of the external carparking area.

The provision of waste facilities.

A waste management plan was submitted with the application and is considered satisfactory having regard for the provisions of DCP 2005 Chapter 69-Controls for Site Waste Management.

Whether the development will be energy efficient.

The proposed development involves the modification to an existing building. However, no information was provided as to whether the change of use to a retail premises would incorporate energy efficient measures.

Whether the development will cause noise and vibration.

Any impact from noise generated by the development, having regard for loading and unloading activities and visitors to the site could not be adequately assessed due to the lack of information provided with the application.

Any risks from natural hazards (flooding, tidal inundation, bushfire, subsidence, slip etc).

The subject site is located just outside of the coastal protection zone, and it is not impacted by flooding or located in a bushfire prone area.

Any risks from technological hazards.

There are no risks to people, property or the biophysical environment having regard for industrial and technological hazards and land contamination, nor is there a need for risk assessment and management.

Whether the development provides safety, security and crime prevention.

The existing building fronts Wallarah Road which would allow for natural surveillance and visibility in the carpark area and into the building itself. Lighting would need to be incorporated into the development given its operating hours, particularly in the staff carpark which is located more to the rear of the development in the south western corner. However, it is considered that adequate lighting, surveillance and security would be achievable, yet, this aspect of the development was not addressed by the applicant.

Any social impact in the locality.

The proposed development has the potential to create a sense of social unease having regard for the type of product it would sell-liquor. A social impact assessment was not submitted with the application as such, the social impact of this type of development has not been assessed in detail. The proposal does have the potential to result in social displacement however, this assertion is very difficult to support without the benefit of an assessment.

Any economic impact in the locality.

The proposed development would result in the employment of over 20 people in the community and generate income that could be put back into the community. However, the proposed development has the potential to impact on the liquor shop located on the opposite side of Wallarah Road in the Kanwal Shopping Village. Notwithstanding this, the fact that the proposed development would create competition for the existing business and may impact on its commercial viability is not a matter for consideration having regard for the new draft SEPP (Competition) 2010.

Any impact of site design and internal design.

Given the proposal involves the adaptive re-use of an existing building the site design and appearance and design of the building has already been determined. Council can however, ensure that there is adequate landscaping, lighting, ventilation, and disabled access associated with the building and that appropriate improvements are made to the building to align with the end use.

Any impacts of construction activities (construction site management, protection measures).

The proposed development would not create any undue noise or vibration during the fit-out stage as the majority of works would be contained within the existing building and it is considered that site safety measures could be adequately maintained.

Any cumulative impacts.

No cumulative results would occur as a result of the proposed development.

THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT (s79C(1)(c)):***Whether the proposal fits in the locality.***

The proposed development is located in an area that is in close proximity to other retail premises, albeit it is separated by Wallarah Road. There are no constraints posed by adjacent developments that would render the proposal prohibitive and there are adequate utilities and services available to the site.

Council is unable to determine if the proposed use of the site will be suitable with regard to amenity and traffic generation as a lack of information has been provided to allow Council to undertake a satisfactory assessment of the proposal.

Whether the site attributes are conducive to development.

The site is not subject to any natural hazards nor is it affected by ecological constraints.

ANY SUBMISSION MADE IN ACCORDANCE WITH THIS ACT OR REGULATIONS (s79C(1)(d)):

Any submission from the public.

The application was advertised in accordance with DCP 2005 Chapter 70-Notification of Development Proposals with four submissions being received. The issues raised in the submissions have been addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979. A summary of the submissions is detailed in the table below.

| Doc. No | Summary of Issues | Response |
|-----------|--|---|
| D02077252 | <ul style="list-style-type: none"> • The previous existing use of carpet warehouse dates back prior to 1980 and was discontinued shortly after the issue of a DA for an Irish pub on site. • This use has never been taken up but the premises were briefly used as a video store for a period of about 12 months, which ceased about August 2009. We are unaware of a DA ever being sought for this use which we suspect would have been illegal. • Our understanding is that the carpet warehouse use ceased around the time of sale of 12.07.06. | The use of the premises for a video store never sought a lawful approval and this has been acknowledged in documentation submitted with the application (Senior Counsel advice). |
| | We understand that existing use entitles a property to be used for similar type uses. This would certainly not extend to a food and beverage as envisaged in the liquor store application. | Existing use legislation allows for the redevelopment of a use that currently exists or a change of use to a use that is permissible in the 2(b) Multiple Dwelling Residential zone. Council agrees that in this instance the proposed change of use from a carpet warehouse to liquor shop does not meet the provisions of the existing use legislation. |
| | A second retail liquor outlet located across a busy main road would fragment the convenience local shopping provided by Kanwal Village. This would necessitate pedestrian customers to cross Wallarah Rd either at the traffic lights or further west down Wallarah Rd where there is no fencing on the median strip, creating a safety issue for pedestrians and motorists. | If a development was approved on the subject site it would be expected that customers would take all precautionary measures when crossing the road including complying with the road safety rules. |
| | Motorists would need to make additional car movements through either Wallarah Rd roundabouts to the east or west adding further to traffic congestion to the traffic lights at Walker Av and the roundabouts. | It is considered that the subject site would not generate such a significant amount of traffic to warrant refusal of the application. |

| Doc. No | Summary of Issues | Response |
|------------------------|--|--|
| | Vehicle access to the site is situated at the top of the hill with poor site lines and is definitely not suited to a high visitation site as envisaged in the application...this presents a real safety risk to both pedestrians and vehicles alike. | Access to the site is considered satisfactory. |
| | Allowing high visitation convenience retailing to both sides of a busy main road is just bad planning in any ones language and has been discouraged for decades, and should not be allowed. | Given the site and its various uses were established many years ago certain provisions of the Environmental Planning and Assessment Act allow for the enjoyment of existing use legislation which enables greater flexibility in the consideration of development applications. |
| D02077252 D02112578 | <ul style="list-style-type: none"> • Kanwal Village contains a liquor store adjacent to the IGA supermarket which adequately services the area. • The use of the site for convenience and food and liquor shopping is not compatible with the Wyong Shire environmental planning scheme and because of the size of the building (775 sq metres) will threaten the viability of other liquor outlets including the Warnervale retail shopping centre. | Council is aware of the liquor store in Kanwal Village. Even if Council accepted the argument put forward by the applicant that the carpet warehouse was a commercial development for the purposes of a 'retail premises', then the provisions of the Draft SEPP (Competition) 2010 would need to be considered and this states that <i>"the likely impact of proposed commercial development on the commercial viability of other commercial development is not a matter that may be taken into consideration by a consent authority for the purposes of determining a development application under Part 4 of the Act..."</i> (Clause 9(1)). However, given Council is not supporting the application, competition arising from the proposed development will not be an issue. |
| D02071565 | It appears from the architectural plans that the works which will be carried out involve a new fit-out of the existing building for liquor store purposes, involving demolition of certain internal walls, including the existing toilets. We note that no provision is made for replacement toilets. | Amended plans were submitted which made provision for a new unisex/access toilet. |
| | ...a store of this size, in this location, proximate to a child care centre, community hall, church and caravan park, potentially gives rise to social impact issues, the assessment of which is entirely absent from the documentation which has been lodged in support of the DA. | Agreed. |
| | The legal advice relies upon an affidavit sworn by the Applicant...on 17 July 2009, a copy of which is not included either in the legal advice or in the DA documentation. | Agreed. |

| Doc. No | Summary of Issues | Response |
|-----------|--|---|
| | ...although he purchased the subject site with the purpose of establishing a hotel upon it (in respect of which a consent was granted), and ...then unlawfully established a video rental business from the premises...and now seeks to obtain development consent to use the premises as a bottle shop, the premises (is meant to) enjoy existing use rights as a carpet warehouse and showroom, even though that has not been the use of the building for several years? | Yes. This is the argument that the applicant is proposing. |
| | It is entirely open to the Council to conclude on the basis of the actual history of the building, that existing use rights as a carpet warehouse and showroom have long since been abandoned. It is therefore open for Council to conclude that there is no existing use rights applying to the premises and that the application for a bottle shop must be refused. | In its assessment of the application Council has concluded that the proposed change of use from a carpet warehouse and showroom to a liquor shop does not fall within the provisions of Clause 41(e), therefore the development does not enjoy existing use rights. |
| |A carpet warehouse and showroom would fall into the definition of either a warehouse or distribution centre or bulky good premises. Both of these terms are defined. If the intention of the regulators had been to permit a warehouse or bulky goods premises to be changed to a retail premises pursuant to existing use rights, Clause 41(3) of the Regulation would make specific reference to them. It makes no such reference. | Council agrees that the carpet warehouse and showroom is not a "retail premises" as defined and that there are more appropriate definitions in the Standard Instrument. |
| | Wyong Council is unable to approve DA/112/2009 because the change of use from a carpet warehouse and showroom to a bottle shop will involve a significant intensification of an existing use...the use of the site as a bottle shop would be a significantly more intensive use than the use of the site as a carpet warehouse and showroom...in terms of operating hours, number of transactions, number of vehicular movements, number of deliveries and the like. | As Council has not accepted that the proposed development is in fact a change of use within the meaning of Clause 41(e) then we have not gone on to assess the issue of intensification as the latter is dependent upon the former. |
| D02071809 | We note the relevant requirements of s79C of the Environmental Planning and Assessment Act 1979, and in particular s 79C (1) (b),(c) and (e) and respectfully submit that the application does not in any way address these issues. | Council acknowledges that the application has failed to address certain matters pertaining to Section 79C matters for consideration. |

| Doc. No | Summary of Issues | Response |
|---------|--|---|
| | The application does not meet the requirements of the relevant Regulations (Reg 50 (1) and Part 1 of Schedule 1 of the Environmental Planning and Assessment Regulation 2000). Clause 2 (4) of Schedule 1...provides that a Statement of Environmental Effects must address certain matters... the documentation supporting the application suffers from absence of relevant information | The DA documentation is lacking in detail having regard for the requirements of the EP&A Regulation 2000. |
| | ...in the past, some local Council's seem to have adopted a position of allowing other relevant authorities to decide important issues relating to liquor licenses. We point out that the Office of Liquor Gaming and Racing (NSW) is not the only authority to consider relevant matters relating to the sale of liquor in New South Wales. Recent changes to the Liquor Act look to the increased involvement of local government in this area of law. | Council considers all aspects relating to a proposal. In this instance, a more thorough assessment has not been requested due to the fact that Council is refusing the application as it is considered the site cannot utilise the provisions of existing use legislation for the purposes of a change of use to a retail premises. |

Any submission from public authorities.

The application was referred to the RTA who raised no objection to the proposed development subject to the inclusion of conditions of consent.

THE PUBLIC INTEREST (s79C(1)(e)):

Any Federal, State and Local Government interests and community interests.

The Central Coast Regional Strategy was released on 26 June 2008. The strategy allows population increase with associated increases in housing and employment provision. The proposed development would provide employment opportunities for the community.

OTHER MATTERS FOR CONSIDERATION

Contributions

The proposal falls within the Development Servicing Plan (DSP) No 7 for the Gorokan District and the contribution charges for water supply and sewerage are applicable.

If the application was recommended for approval then contributions would be applicable under Contributions Plan No. 7-Gorokan District.

CONCLUSION

The proposed development does not adequately address the provisions of Sections 106 and 79C of the Environmental Planning and Assessment Act 1979, nor does it adequately address the provisions of the Environmental Planning and Assessment Regulation 2000 having specific regard to Clauses 41, 50 and Schedule 1.

It is considered that the proposed change of use from a carpet warehouse and showroom to a retail premises to be used for the purposes of selling liquor is not permissible under existing use legislation as the carpet warehouse and showroom is not considered to fall within the definition of 'commercial use' as it can be more appropriately defined under the Standard Instrument. Furthermore, the acknowledgement of Council of the non-conforming use for a carpet warehouse and showroom should not be taken so liberally as to warrant the use falling within the definition of commercial use and therefore allowing for a change of use to a prohibited use which cannot occur under the provisions of Section 106 of the Act.

A lack of information did not allow for Council to adequately assess the application with regard to the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 having particular regard for traffic generation, energy efficiency, social impact, noise associated with the proposed use and the suitability of the site for the proposed development. As such, the proposed development is recommended for refusal for the reasons contained within the report and outlined in the recommendation.

ATTACHMENTS

Nil.

14 April 2010
To the Ordinary Meeting

Director's Report
Shire Planning Department

5.6 Establishment of an Environment Committee

TRIM REFERENCE: F2004/06960 - D02132081

AUTHOR: GV

SUMMARY

At the Ordinary meeting of Council held on the 9 September 2009, Council resolved that staff report on the possibilities for establishment of an Environment Committee. This report reviews the models currently operating in other Councils and recommends the establishment of an Environment Committee (EC) by way of an extension to the charter of the Tuggerah Lakes Estuary Coastal and Floodplain Management Committee (TLECFMC).

RECOMMENDATION

- 1 *That Council amend the Charter of the Tuggerah Lakes Estuary Coastal and Floodplain Management Committee to form a strategic level Environment Committee .*
- 2 *That Council determine the membership of this Environment Committee.*
- 3 *That the Environment Committee continue to meet on the same basis as the current Tuggerah Lakes Estuary Coastal and Floodplain Management Committee.*
- 4 *That the purpose of the Environment Committee is to examine, develop, review and report to Council on broad shire wide strategic environmental issues and initiatives, whilst continuing to consider the existing matters currently contained within the charter of Tuggerah Lakes Estuary Coastal and Floodplain Management Committee.*

ORDINARY MEETING 14 APRIL 2010

It was MOVED by Councillor GRAHAM and SECONDED by Councillor EATON:

- 1 *That Council amend the Charter of the Tuggerah Lakes Estuary Coastal and Floodplain Management Committee to form a strategic level Environment Committee .*
- 2 *That Council determine the membership of this Environment Committee.*
- 3 *That the Environment Committee continue to meet on the same basis as the current Tuggerah Lakes Estuary Coastal and Floodplain Management Committee.*
- 4 *That the purpose of the Environment Committee is to examine, develop, review and report to Council on broad shire wide strategic environmental issues and initiatives, whilst continuing to consider the existing matters currently contained within the charter of Tuggerah Lakes Estuary Coastal and Floodplain Management Committee.*

An AMENDMENT was MOVED by Councillor WYNN and SECONDED by Councillor EATON:

- 1 *That Council establish a strategic Environment Committee.*
- 2 *That Council determine the membership of this Environment Committee.*
- 3 *That Council consider a report on the charter of this Environment Committee.*

- 4 That Council note that the purpose of the Environment Committee is to examine, develop, review and report to Council on broad shire wide strategic environmental issues and initiatives.

The AMENDMENT was put to the vote and declared CARRIED

FOR: COUNCILLORS EATON, MCNAMARA, SYMINGTON, WEBSTER AND WYNN

AGAINST: COUNCILLORS GRAHAM, MCBRIDE AND VINCENT

The AMENDMENT became the MOTION

RESOLVED on the motion of Councillor WYNN and seconded by Councillor EATON:

- 1 That Council establish a strategic Environment Committee.
- 2 That Council determine the membership of this Environment Committee.
- 3 That Council consider a report on the charter of this Environment Committee.
- 4 That Council note that the purpose of the Environment Committee is to examine, develop, review and report to Council on broad shire wide strategic environmental issues and initiatives.

FOR: COUNCILLORS EATON, MCNAMARA, SYMINGTON, WEBSTER AND WYNN

AGAINST: COUNCILLORS GRAHAM, MCBRIDE AND VINCENT

BACKGROUND

At the Ordinary meeting of Council held on the 9 September 2009, Council *RESOLVED* unanimously on the motion of Councillor WYNN and seconded by Councillor BEST:

“That the Shire Planning Department provide a report that outlines the possibilities for establishment of an Environment Committee. The report should include, but not be limited to:

- *The Terms of Reference (charter, roles, responsibilities and function);*
- *Possible membership;*
- *Whether it should be a committee of Council; and*
- *Report on environment committees that have been established in other Council areas, their roles, functions and achievements.*

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT, WEBSTER AND WYNN

AGAINST: NIL”

CURRENT ENVIRONMENT COMMITTEE MODELS IN LOCAL GOVERNMENT

In relation to point 4 of the Resolution, there are a number of differing models for local government environmental or sustainability committees, the most common being:

- Committees of Council
- Advisory committees to Council
- Community consultation committees
- Action groups.

A review of similarly placed Councils (See Table 1) indicates that these committees have experienced varying success. The most apparent feature of the active and successful committees is a clear statement of the function and objectives of each committee, a clear membership structure and well administered meetings. The real success of any Committee is dependent on the expertise and drive of its membership.

With an increasing emphasis and need to address *sustainability and climate change issues*, some Councils have attempted to reduce their number of committees and have incorporated terms of reference on sustainability and climate change into the terms of reference of all Council committees (for example, Gosford Council). Other Councils see *environmental sustainability* as a discrete issue and therefore have specific committees.

Some Council committees (such as Hornsby Council's Sustainable Action Committee) focus on community based projects culminating in achievements such as a Green Buildings program, Ride to Work Day, Walk to Work Day and the Sustainable House Day Bus Tour.

Other Council committees (such as Lake Macquarie Council's Environment Committee and Manly Council's Community Environment Committee) consist of expert panels or technical advisory committees who consult technical expertise locally and from around the world and serve an advisory function to Council for example, on ecosystem enhancement and sustainable living.

Gosford's Environment Committee deals with a broader scope of sustainability issues (other than just environmental issues) and advises Council on matters such as sustainability, identification of emerging issues affecting the LGA, city planning and development of environmental partnerships.

Function and Role of an Environment Committee (EC)

Council Objectives

The goal for Council in establishing an EC is enhanced strategic environmental management. The outcomes of the Committee should assist in

- Enhancing Councillor's understanding of strategic environmental issues.
- Enabling timely input by Council into corporate planning matters that potentially effect Council's ability to manage and influence strategic environmental issues.

Enhancing Council's decision-making ability in respect of the prioritisation of environmental objectives as measured against social and economic objectives.

In ideal circumstances a specific committee to deal with strategic environmental matters would not be required and in fact should be superfluous on the basis that the full Council should make all of its decisions on the basis of the triple bottom line (therefore giving appropriate consideration to environmental matters).

However, it is considered that we, as an organisation have not yet reached that level of maturity as we have only recently commenced our journey along the road towards sustainability. In addition, it is only within the past 18 months that a specific sustainability unit has been established within the organisation and the unit is yet to fully roll out the sustainability decision making framework, which will provide the tools for Council to appropriately consider environmental issues as they relate to or are impacted by social and economic issues.

Therefore, at this point in time, it is considered good governance for Council to establish a strategic level EC, which would perform a similar function in respect to environmental issues as is currently fulfilled by the Strategic Finance Committee in relation to financial matters.

The purpose and objectives of an EC would be as follows:

- To enhance the Shire's environmental sustainability by way of the development and consideration of strategic environmental policy.
- To consider, examine and review broad shire wide strategic environmental issues and initiatives.
- To drive the implementation of the strategic environmental objectives contained within the SSV.
- To enable strategic and corporate focus to be given to the environmental aspects of the triple bottom line in a similar way to the Strategic Finance Committee and its consideration of economic aspects.
- To encourage/consider Council's advocacy role at State and Federal Government level in relation to environmental issues affecting Wyong Shire.
- To develop and consider strategic environmental initiatives of benefit to the Shire such as carbon trading, bio banking etc.
- To develop strategic environmental KPI's and monitor Council's strategic environmental performance.
- To implement and administer the Estuary Management Plan for the Tuggerah Lakes including implementation of capital works, ongoing maintenance programs and administering funding programs for works and services.
- To implement and administer Council's Floodplain Risk Management Program including flood emergency management and reporting on the impacts of significant flood events.
- To develop, implement and administer Council's Coastline Management Plan including reporting on the implications of significant erosion and storm events on coastal property.

To meet its strategic objectives, it should be noted that the Committee would not deal with operational matters such as individual development applications or local environmental plans. However, it would be appropriate that all major strategic planning policies and documents that may substantially impact the environment (in a positive or negative way) be considered by the EC. Examples of these would include the Shirewide Settlement Strategy, Comprehensive LEP, the environmental part of the State of the Shire Report, Natural Resources Strategy, Climate Change Policy and the Biodiversity Management Plan, etc.

Role of Existing Committees

The EC would and should become the peak environmental committee of Council, therefore, the role currently undertaken by the TLECFMC. The current role and significance of the TLECFMC should not be understated as it is required from a legislative point of view (as outlined in the Coastline Management Manual, Floodplain Management Manual and the Estuary Management Manual), and performs an important role in community engagement. However, the TLECFMC only deals with particular aspects of the environment. In contrast the EC will deal with wider environmental issues at a strategic level, whilst the existing committees have an operational/advisory function and would retain their current role.

Options

Council has three major options in respect to the establishment of the EC.

- 1 Resolve not to establish an EC.
- 2 Establish an EC as the peak forum for the consideration of strategic environmental issues and therefore the TLECFMC becomes a sub committee of the EC.
- 3 Extend the role and charter of the TLECFMC to perform the function of an EC. In this option, the name of the committee would be changed to EC, however, all the legislative functions of the TLECFMC would be incorporated.

Recommended Option

Option 3 is recommended for the following reasons:

- The current functions of the TLECFMC are required from a legislative point of view to satisfy the provisions of the Coastline Management Manual, Estuary Management Manual and Floodplain Management Manual. Therefore, no matter what form an environment committee might take, there would be a need to maintain the current role of the TLECFMC.
- It would be considered unnecessary and ineffective use of resources to form a separate committee to the TLECFMC, particularly taking into account that it already deals with a wide range of environmental issues.
- The broad membership of the TLECFMC with its inclusion of relevant State Government Authorities and members of the community provides an appropriate membership base and discussion forum for all potential environment issues that would be considered by the EC.
- Combining the TLECFMC with the EC will only require the same level of resource, one business paper and only one meeting requiring the attendants of both staff and Councillors.

Legislative Background

The right to establish an EC is given to Council under s355, of the Local Government Act 1993 (the Act).

Council must establish the Committee in accordance with s.259-s.271 of the Local Government Regulations (General) 2005 (the Regs.)

Committee Accountability

The Committee would be accountable to Council.

Committee Membership

In accordance with Section 267 of the LG Regs, the Mayor is required to be the Chairperson of all Council Committees unless he/she chooses to relinquish that position. The Mayor is required to be a member of every committee (s.260 Regs.)

With respect to existing environment committees that have been investigated, Committee membership numbers vary between Councils depending on function. The roles and background of members is also varied but is always linked with the function of the committee.

Meeting Frequency

The frequency of meetings is also dependent on the function of the committee and amongst other Councils, appears to range from monthly to quarterly. With respect to the recommended option to establish an EC, it is proposed that meetings would continue to be held on a monthly basis as currently occurs with the TLECFMC.

Table 1 – Other Council Committees

| Council Committee Name | Terms of Reference | | |
|---|--|--|-------------------|
| | Function/Charter/ Scope | Membership | Meeting Frequency |
| Gosford Council - Environment Committee | <ul style="list-style-type: none"> Review the sustainability report indicators and initiatives and provide advice to Council and Council Directorates as applicable. Identify and evaluate emerging local and global issues that impact upon the local government area of Gosford City Council. Evaluate and identify the long term environmental benefits into City plans. Effectively communicate the committee's achievements via the Sustainability Report and the Community Newsletter. The Committee may establish and dissolve Sunset Groups to assist in addressing projects and issues that come before the committee. | Chairperson 6 Councillors Director Environment & Planning Principal Environmentalist Sustainability Officer Communications Officer Sustainability (Education) Officer Natural Resource Officer 7 community representatives Total: 20+ | N/A |
| Hornsby Council - Sustainable Action Committee | <ul style="list-style-type: none"> The Committee works with Council and community in order to achieve its strategic intent of creating a living environment towards a sustainable future. The purpose of the Committee is to assist the Council and community of the Shire to realise the objectives of Council's Management Plan, particularly the development and implementation of initiatives that contribute towards achieving the vision for sustainability in Hornsby Shire. <ul style="list-style-type: none"> Subcommittees may be established to work on specific | Chairperson Councillor Councillors Council staff Up to 20 Community representatives Total: 24+ | Quarterly |

| Council Committee Name | Terms of Reference | | |
|--|--|---|-------------------|
| | Function/Charter/ Scope | Membership | Meeting Frequency |
| | <p>projects or activities.</p> <ul style="list-style-type: none"> ○ The Committee may seek information and briefings from Council staff and from organisations and individuals other than Council. ○ Council is responsible for the budget and overall coordination of the committee. <ul style="list-style-type: none"> ● Primary Roles: <ul style="list-style-type: none"> ○ Contribute to the development of Councils Management Plan ○ Review the annual State of Environment Report. | | |
| <p>Manly Council - Community Environment Committee</p> | <p>Special Purpose Committee, to provide a forum for discussion and recommendation to Manly Council to:</p> <ul style="list-style-type: none"> ● Advise Council regarding special natural landscapes, biodiversity and aquatic environments to conserve a sustainable, healthy and safe environment for future generations of the community. <p>Key functions of the Committee:</p> <ul style="list-style-type: none"> ● Promote environmental best practice ● Advise the General Manager on priority projects to be considered for funding from the Environmental Levy each year ● Review the effectiveness of projects funded on an annual basis following advice provided by Council staff. | <p>Councillor representatives Representative from the National Parks and Wildlife Service. Little Penguin Warden. 11 Community members.</p> <p>Total: 14+</p> | Monthly |
| <p>Ku-ring-gai Council - Sustainability Reference Committee</p> | <p>The objective of this committee is to support and assist residents, businesses, Council and others to communicate and to engage in sustainability. The committee has a wide term of reference that includes:</p> <ul style="list-style-type: none"> ● comment on and input into the development of public policy ● strategic planning ● corporate reporting ● social, environmental and financial planning ● risk management ● community engagement ● climate change. | <p>Chairperson (Councillor) Deputy Chairperson (Councillor) 18 community members</p> <p>Total: 20+</p> | N/A |

ATTACHMENTS

1 Charter - Sustainable Environmental Committee D02204092