

8.1 **DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC**



**Ballina Shire Council**  
 80 Cherry Street  
 BALLINA NSW 2478  
 93 Box 450  
 BALLINA NSW 2478  
 02 6695 4144  
[info@ballina.nsw.gov.au](mailto:info@ballina.nsw.gov.au)  
[www.ballina.nsw.gov.au](http://www.ballina.nsw.gov.au)



**DA 2016/510 - 3 Rayner Lane, Lennox Head - Two Storey Dwelling**

**ballina shire council**  
 geographical information system

Projection: GDA94 / MGA zone 55  
 Date: 24/11/2016

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**SHADOW DIAGRAM CERTIFICATION**  
 NUMBER: **SDC137701**  
 DATE: **05.12.16**  
 PROJECT: **3 Rayner Lane Lennox Head NSW**



Client Details:  
 D & J Priest  
 C/O  
 MS Design  
 Gold Coast QLD  
  
 P 07 55 704 118

CERTIFICATION FOR:			
DA <input checked="" type="checkbox"/> Final approval application	L&P <input type="checkbox"/> All-Other Planning Documentation	FKP&P <input type="checkbox"/> Eggs & Wireless Review / Statement	CONSULTANT Primary <input type="checkbox"/> Other <input checked="" type="checkbox"/>
CERTIFICATE CONTENTS			
CERTIFICATE <input checked="" type="checkbox"/> This Page	Calculations <input checked="" type="checkbox"/> ITEM 1	Statement <input checked="" type="checkbox"/> ITEM 2	Process <input checked="" type="checkbox"/> ITEM 3

I hereby certify that the shadow diagrams provided for this proposed design are accurate and in accordance with the following. This certification is applicable only to the shadow diagrams produced as listed below.

CERTIFICATION DETAILS FOR SHADOW DIAGRAMS		
Project Details	3 Rayner Lane, Lennox Head. As detailed in DA Plans provided by MS Design, MS DESIGN, Ref D16-CB3, issue 06.12.16	
Applicable for Shadow Diagrams Numbered	SD 01 +	
Issue	Version 01	
Dated	05.12.2016	
ACCURACY DETAILS	DATA	TOLERANCE VERIFICATION
Existing Building	Canby's Surveys, Ref 1949, 16.11.09, &	+/- 150mm Reproduction of Survey data.
Neighbouring Buildings - *	* Elevation supplement No.2 Rayner, Ref George Korban submission, 22.11.16.	+/- 50mm Reproduction of Elevation.
Topography and Site		
Proposed Design	Architectural Plans	+/- 150mm
RL critical heights	Architectural Plans & Survey	+/- 30mm
Shadow Cast per Component	3D Modelling Software	+/- 130mm
Comparative Shadow Analysis per frame	3D Model & Post Processing	5% tolerance in final image
<b>PRECEDENCE RULE - DATA</b>		
1. Survey 2. No.2 Rayner Window Elevation 3. Architectural Plans 4. MS Design 3D Data		

CERTIFIER SIGNED:



Cameron McFadzean

**Certifier:**  
 Cameron McFadzean  
 Registered Architect NSW 8730, BA (Architecture) & Architecture, Assessor ABBA, AssocIES  
 Deneb Design

**SHADOW DIAGRAM CERTIFICATION SDC137701**

**ITEM 1. SOLAR ANGLES**

SUN ANGLES		
<b>LOCATION</b>	Lennox Head NSW Lat 28° 47' Long 153° 35'	
<b>Date / Time</b>	<b>AZIMUTH</b>	<b>ALTITUDE</b>
	Degree °	Degree °
<b>Winter Solstice</b>		
9:00	42	24
10:00	29	31
11:00	13	36
12:00	358	36
13:00	339	35
14:00	325	29
15:00	313	20
<b>Summer Solstice</b>		
9:00	42	24
10:00	29	31
11:00	13	36
12:00	358	36
13:00	339	35
14:00	325	29
15:00	313	20
<b>Definitions:</b>		
Sunlight System	Solar Daylight System - IES Certified (MR Raytrace and Global Illumination)	
Sun Position	0.000° AZIMUTH and ALTITUDE derived from LATITUDE and LONGITUDE	
Date / Time	ACST (Aust. Eastern Standard Time - ACST) Not Daylight Savings time  WINTER SOLSTICE: 21 JUNE SUMMER SOLSTICE: 22 DECEMBER	
% Height	50% of the relevant LIVING window height is shown. (SILL + (Head - SILL)/2)	

SHADOW DIAGRAM CERTIFICATION SDC137701

**ITEM 2. SHADOW DIAGRAM – Statement**

Deneb Design has been engaged to provide solar analysis in particular with regard to the two second floor Living room windows of No.2 Rayner Lane.

Information included the 3D Drawings file (DWG) which presented data for the PROPOSED DESIGN and No.2 Rayner Lane modelling. Deneb Design verified this data against RL Spot heights and overlay Plans provided by MS DESIGN as PDF Plans dated 05.12.16. A copy of the submission by Mr George Korban, Architect representing No.2 Rayner Lane was provided by MS DESIGN, to which the window and room designations were determined.

We concur with the sun angles provided as part of the Korban submission.

GRID NORTH as provided in the survey, (Carty's Surveyors) was used to determine SOLAR NORTH.

With respect to the two second floor Living room windows of No.2 Rayner Lane, the following solar access has been determined, in which 50% of the area of glass is in direct sunlight, 1000 – 1500 inclusive (5 hours). From the hours of 1100 – 1400 (3 hours) approximately 70% of the window area is in direct sunlight.

Yours faithfully,



Cameron McFadzean BA (Architecture) B Architecture, AssocArchSA, Assoc.AES

SHADOW DIAGRAM CERTIFICATION SDC137701

ITEM 3. PROCESS OF SHADOW DIAGRAM PRODUCTION

A brief summation of the process of digital shadow production used by Deneb Design follows.

1. 3D Model created from information in typical order of precedence (refer to specific documents for variation to this order of precedence).
  - 1.1 Survey Plan
  - 1.2 Architectural Models (2D) and Elevations
  - 1.3 Architectural Plans
  - 1.4 Site Photos / Aerial Images.

The accuracy of the translation of these data sources are provided in the certification document. Where accuracy and validity cannot be determined the tolerances are not stated. The tolerances stated are median figures gathered from self-auditing process. It is not uncommon for different data sources to contain discrepancies, hence the precedence rule.

2. Daylight System

Daylight system – a photometrical physically-based light source, based on IES standards (Illuminating Engineering Society) is positioned within the model using True North from Plans/Survey. Date and Time values are set, and these are processed internally by computer algorithms (MAX) to determine azimuth and altitude. The altitude and azimuth angles are available upon request.

3. Shadow Image

For each and every time slot a image is rendered using the 3D model and daylight system for every component of the shadow set. A single time slot may consist of several (typically 4) shadow types. Due to render resolution and edge blurring, particularly in low light where the shadows cast becomes difficult to differentiate accuracy tolerance is determined as a percentage across the entire image. This is as low as 0.5%, however due to the number of passes and composition of the final shadow image this tolerance is indicated as a higher figure and shown in the certification document. Refer also to dynamic range and thresholds for more information. Typical image slots:

- 3.1 Neighboring structures and ground / terrain and other features.
- 3.2 Neighboring shadows cast
- 3.3 Existing Building (if present) and existing shadow cast
- 3.4 Proposed Building and proposed shadow cast
- 3.5 Other Stages or variations if required.

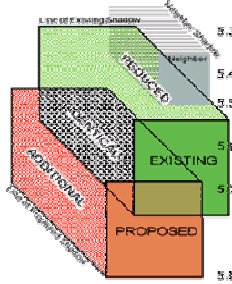
4. Composition

Composition is the spacing and spacing of the image slots. The rendered image slots are composited and coloured/separated to create a shadow diagram showing different shadowing elements – self, existing, proposed, additional etc. The process is subject to human compositioning error only – ie it is either accurate or has an obvious error related to composition – Deneb Design work procedure determine a sequence of steps which has reduced this compositioning error to nearly zero occurrence. This compositioning can include numerous options as per the clients situation. Algorithms are used to analyse the pixels of each render to determine shadow cast – refer to Item 7. Scripts are used to automate the procedure of taking those common shadows – proposed, existing and neighbor, and translating those into more meaningful Reduced, Identical and Additional.

5. Shadow Types – Classifications

A typical shadow diagram has several different shadow types shown. Not all shadow diagrams have all of these types.

- 5.1 Existing Building and Shadow – The existing building is 3D modeled and the shadow that is cast is called the existing shadow. This existing shadow may also be divided into IDENTICAL and REDUCED Shadow types.
- 5.2 Proposed Building (Image) and Shadow – The proposed building is modeled and typically shown in PLAN. The shadow cast from this proposed building is called the proposed shadow. This is typically not show by itself – and is divided into IDENTICAL and ADDITIONAL shadow types.
- 5.3 REDUCED Shadow (Green Dot) – The reduced shadow is determined by comparing the existing shadow and the proposed shadow. The proposed shadow is removed from the existing shadow, with any remaining existing shadow now called the reduced shadow. (function is: Existing – Proposed = Reduced Shadow)
- 5.4 IDENTICAL Shadow (Black Dot) – This is the shadow where the existing and proposed shadows coincide – ie the are both the same. (function is: Proposed – Existing)
- 5.5 ADDITIONAL Shadow (Red Dot) – the additional shadow is determined by comparing the existing shadow and the proposed shadow. The existing shadow is removed from the proposed shadow, with any remaining proposed shadow now called the additional shadow. (function is: Proposed – Existing = Additional Shadow)



- 5.6 NEIGHBOR Shadows (Grey stripe) – these are shadows cast from neighbor buildings. For clarity of comparison these are shown in combination with a other shadows, ie we show the existing and/or proposed shadow falling over the top of the neighbor shadow. This is important when considering solar access. Is the neighbor shadow does not remove the overhanging of either existing or proposed. This methodology has been brought about by the established "tradition" of not showing any neighbor shadows, and by the realisation that not all neighbor buildings can be modeled if they are not on survey.
- 5.7 The methodology of classifying structures into existing, proposed is clearly defined by the architectural plans depicting the proposed works and existing conditions. Typically the survey is used for the existing conditions. The methodology of classifying structures into the neighbor category has some scope which is typically document and detailed in the plans themselves. Generally most items not within the site boundary are treated as neighbor structures. Existing fences are typically treated as neighbor structures.

6. Layout

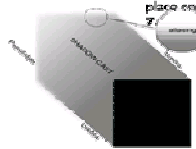
Each image time slot in composition becomes a single shadow image. These shadow images are positioned in page with time stamps and files placed alongside. Deneb Design work procedure has a code checking system to assist in ensuring the correct shadow image is placed in the correct place on the page. This procedure is semi-automated and human error can occur. Self-auditing has revealed a 0% occurrence.

7. Shadow Parts and edge accuracy

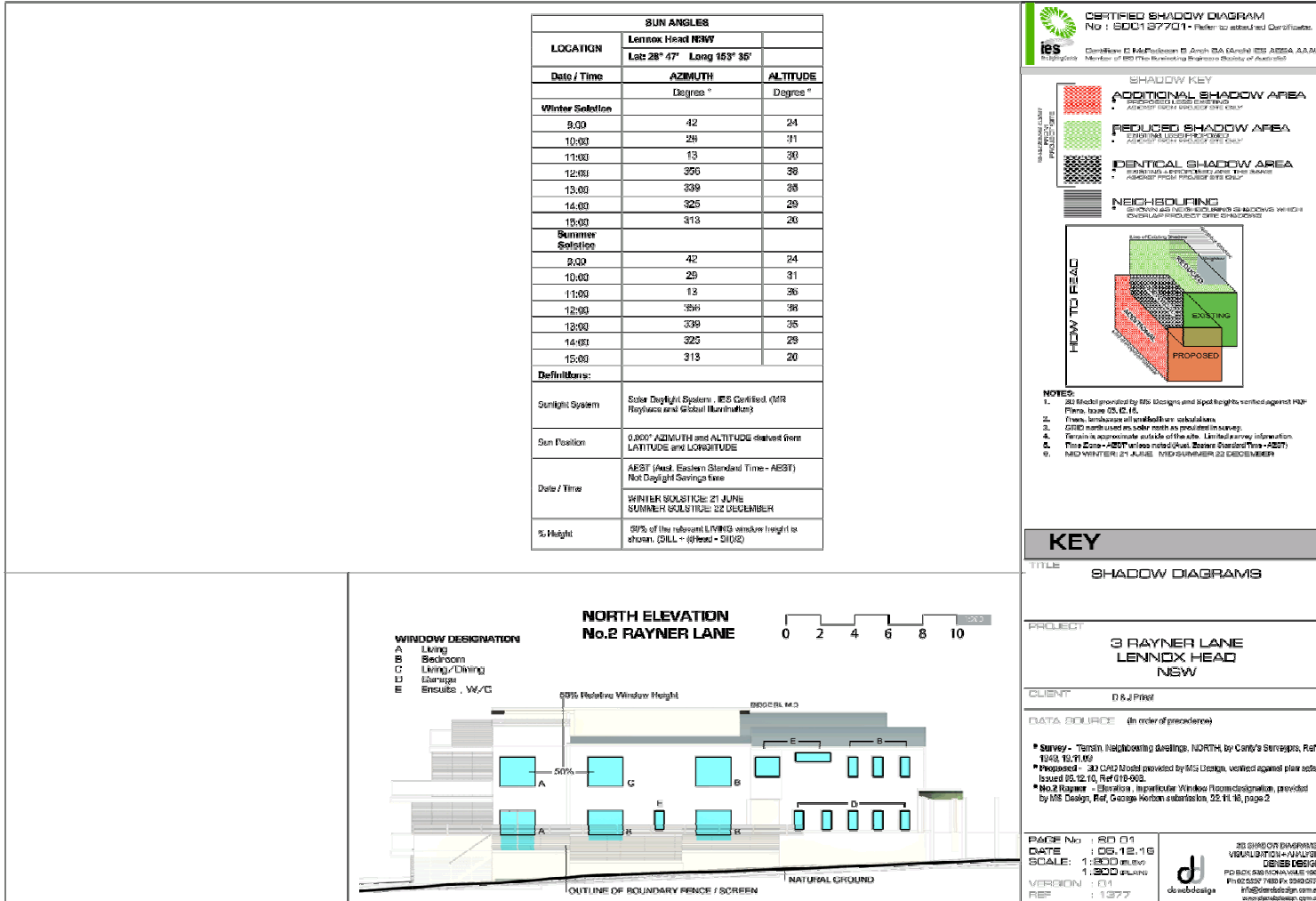
The daylight system used in the production of the shadows produces photo-real shadows that have a Umbra (dark part) and a Penumbra (radiant from dark to light). This is most obvious in low sun angles where the shadows are long. As the length of the shadow increases the edge of it becomes "blurry". An algorithm analysis each render for the dynamic range to determine where to classify the shadow – ie it determines a threshold value for the proposed shadow cast. The color of dynamic range is important to the algorithm for instance in low light (low sun and camera stopping away from the light) the dynamic range (difference between black and white) in the render is small – thereby reducing the ability to accurately classify the shadow cast.

8. Solar Calculations

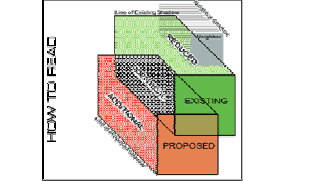
8.1 Methodology and accuracy – Where provided the solar calculations provide numerical areas to various shadow areas – ie existing and proposed. Reference to the definitions in this document is required. The areas are calculated by an algorithm analyzing the shadow area (refer to item 7) and returning a pixel count. This pixel count is then scaled to appropriate unit conversion (typically m2). Due to the Item 7 compositioning and the scaling effect a tolerance expressed as a % of total image is given. A manual system of translating the area values into a presentation table is used and subject to human error. Several formulas are used within the table to express comparative analysis (% change etc) and these are also subject to human error.



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**CERTIFIED SHADOW DIAGRAM**  
 NO : SDC157701 - Refer to attached Certificate.  
 IES  
 Chris New ID: 144788888 ID: 144788888 IES: AESSA, AASA  
 Member of IES (The International Illumination Society of Australia)



- NOTES:**
- All Model provided by MS Design and spot heights verified against MR Plans, Issue 02, 16.
  - These shadows are not to be used for valuation.
  - GND levels used as solar north as provided in survey.
  - Results approximate outside of the site. Limited survey information.
  - Time Zone = AEST unless noted (Aest. Eastern Standard Time = AEST)
  - RED WINTER: 21 JUNE. RED SUMMER: 22 DECEMBER

**KEY**

TITLE: SHADOW DIAGRAMS

PROJECT: 3 RAYNER LANE LENNOX HEAD NSW

CLIENT: D & J Price

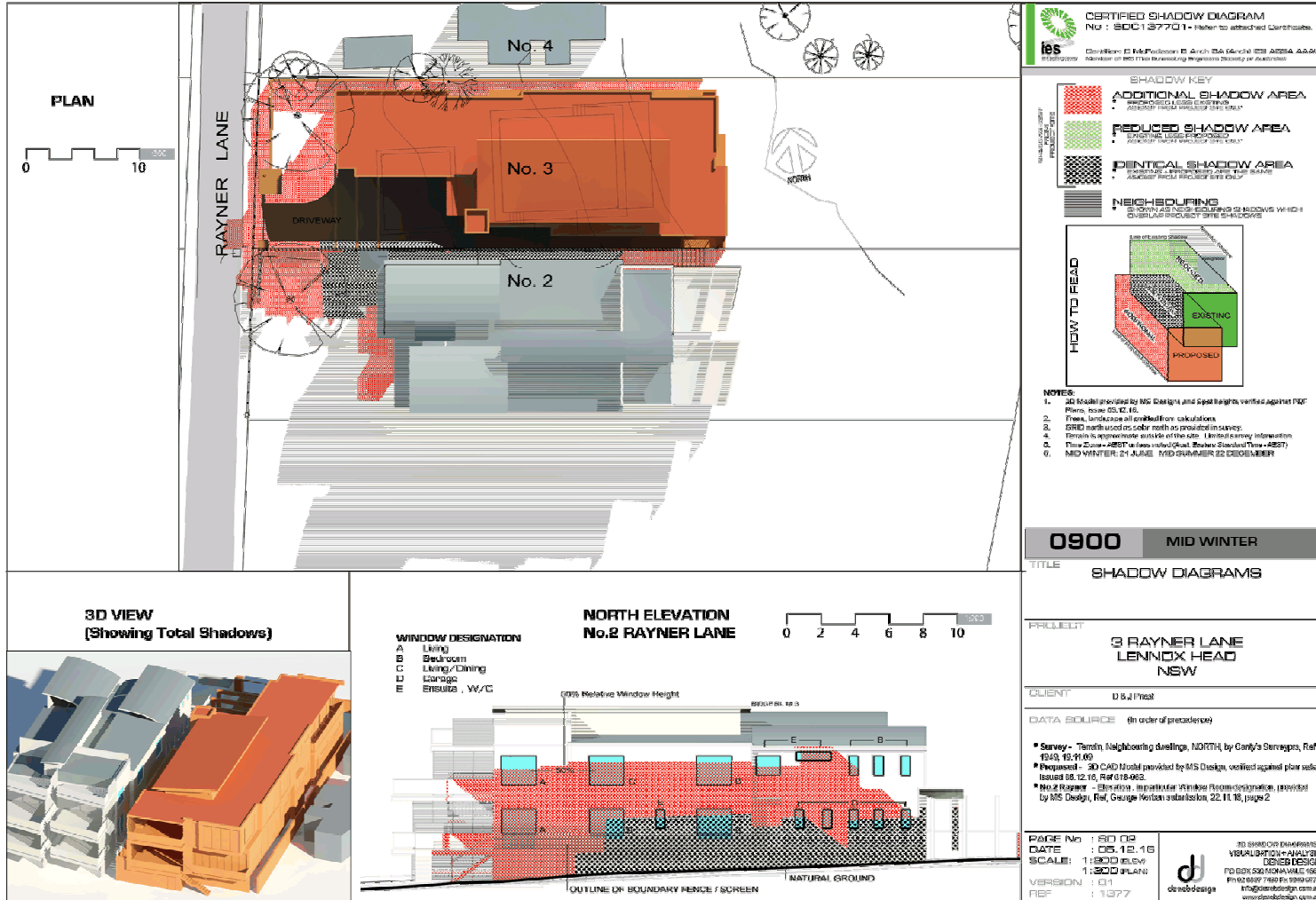
DATA SOURCE: (in order of precedence)

- Survey - Terrain, Neighbouring dwellings, NORTH by City's Streets, Ref 1949, 19.71.05
- Proposed - 3D CAD Model provided by MS Design, verified against plan sets issued 02.10.16, Ref 010-002.
- No.2 Rayner - Elevation, In-particular Window Room designation, provided by MS Design, Ref. George Kerban submission, 02.11.16, page 2

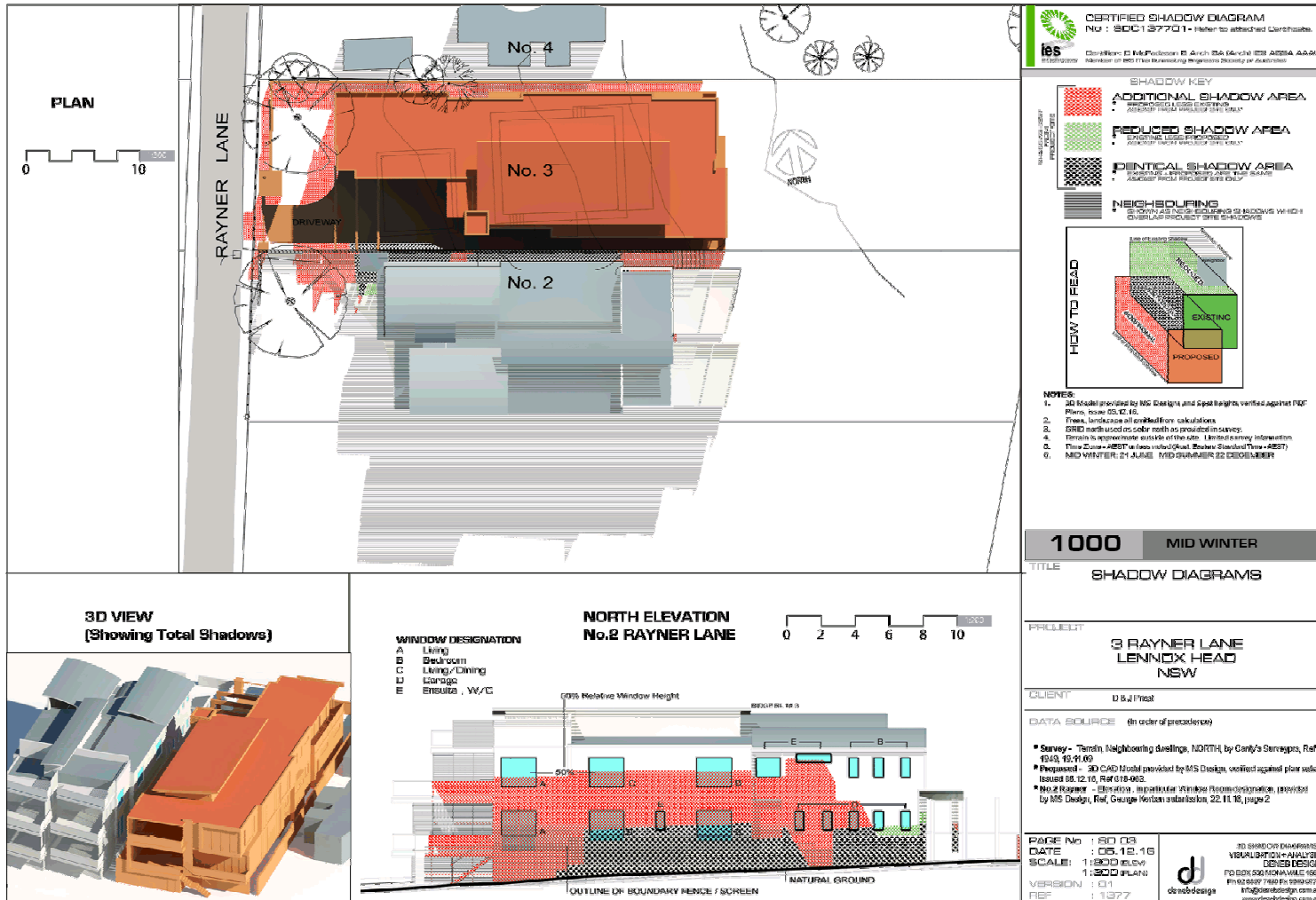
PAGE No: RD 01  
 DATE: 02.12.16  
 SCALE: 1:500 (PLAN)  
 1:200 (ELEV)  
 VERSION: 01  
 REF: 1377

20 SHAWON BARRING / VISUALISATION / ANALYSIS DESIGN  
 PO BOX 536 NORVALE NSW 1580  
 PH 02 5337 7488 FX 2568 0122  
 info@shawon.com.au  
 www.shawon.com.au

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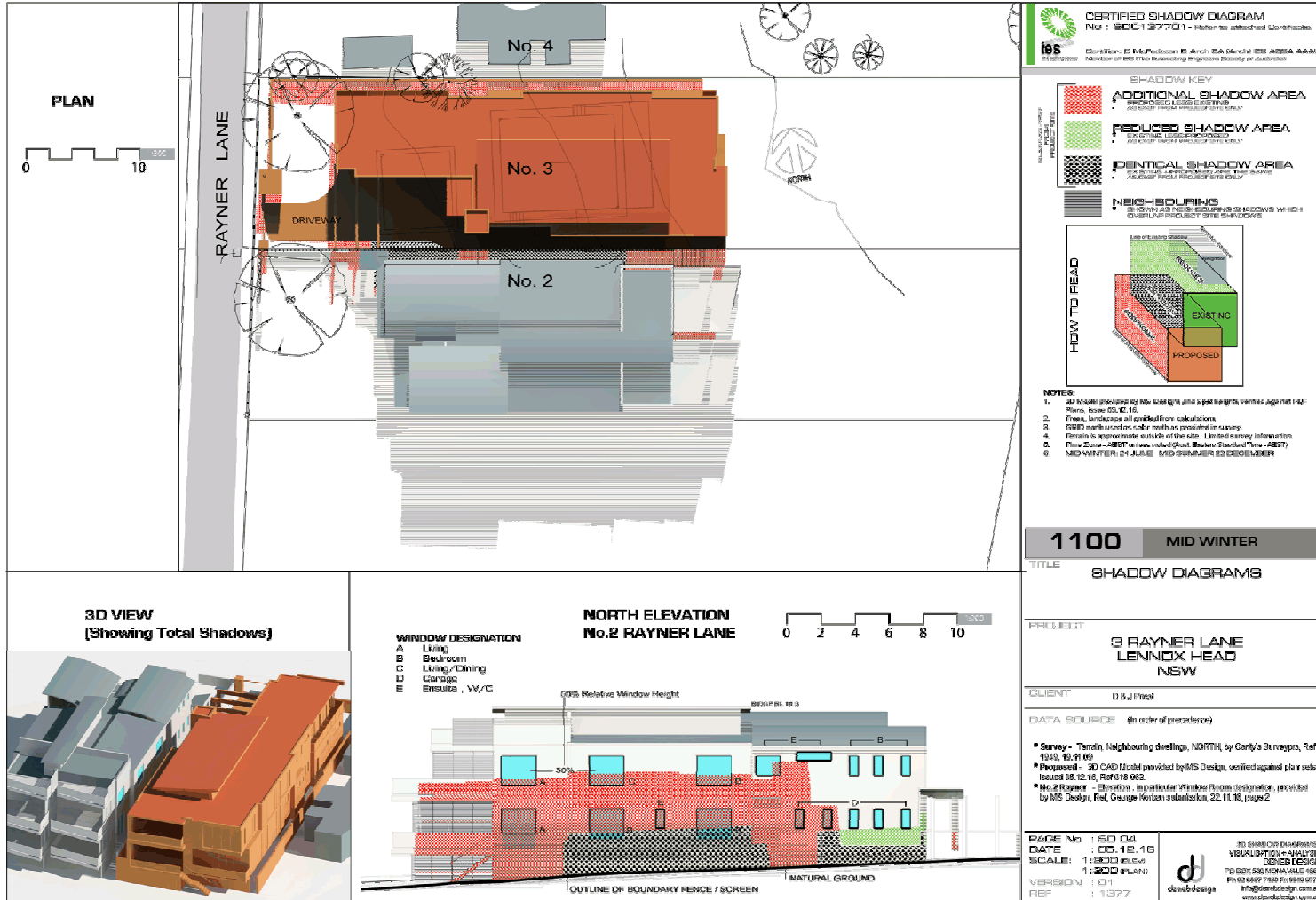


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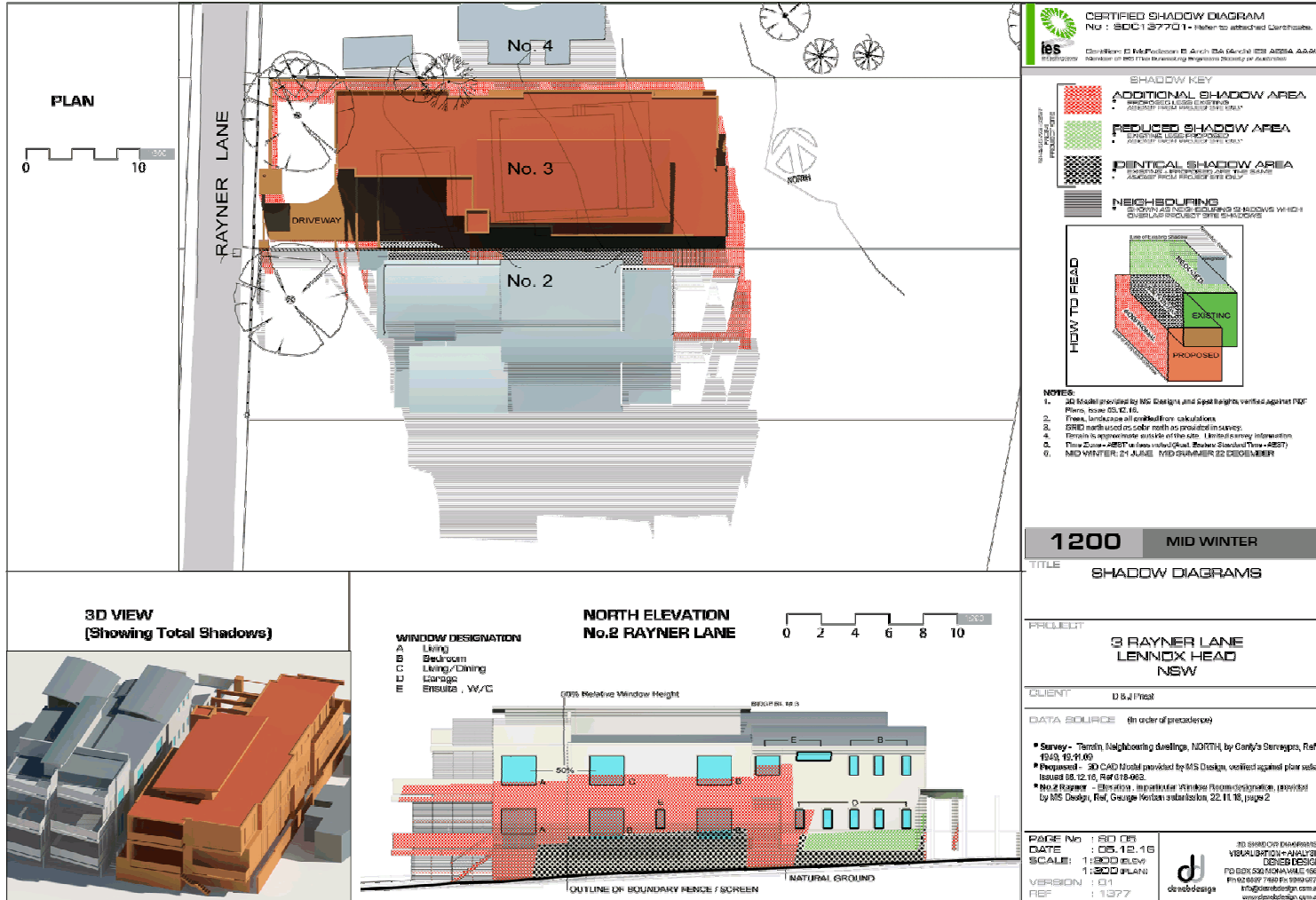




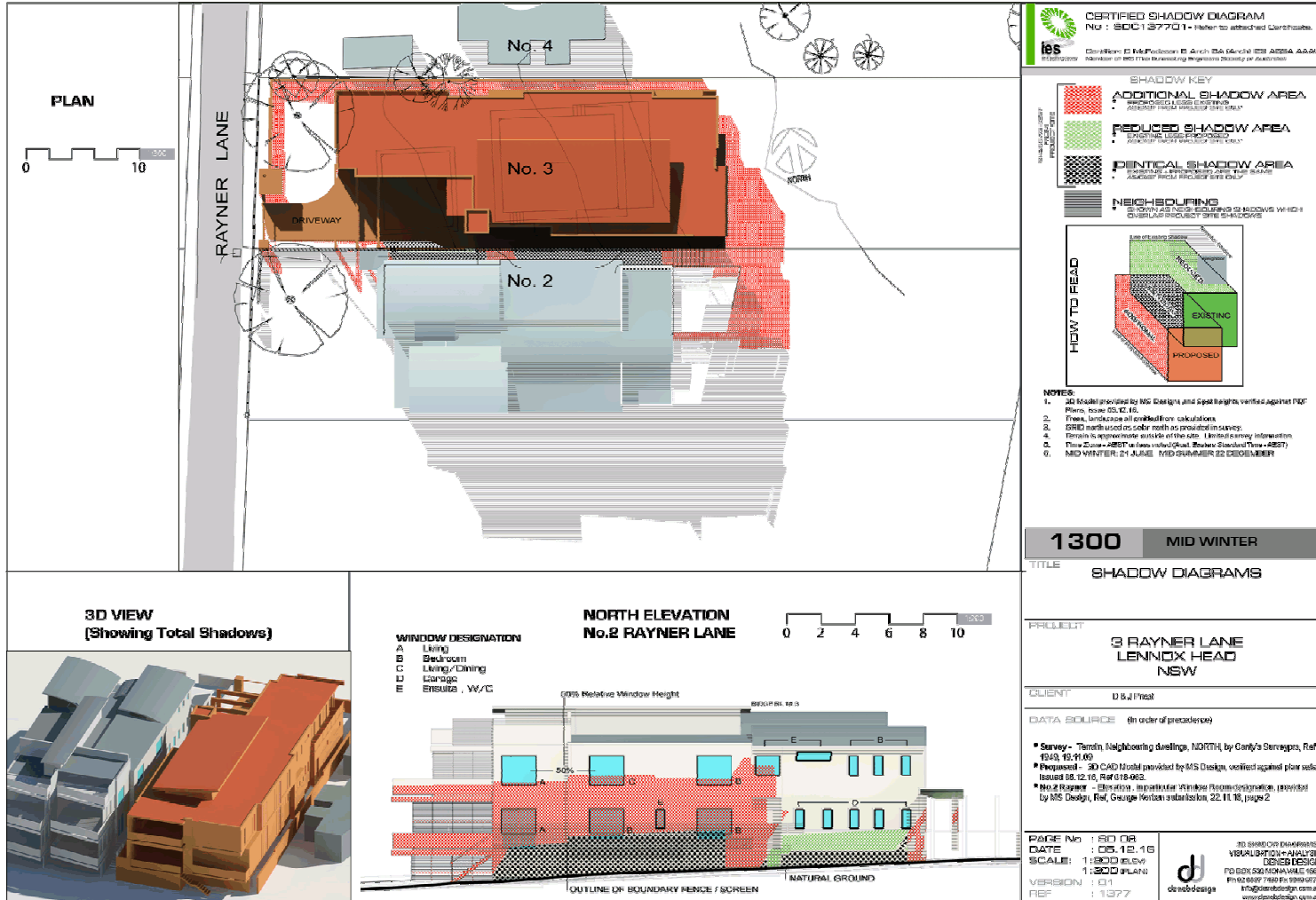
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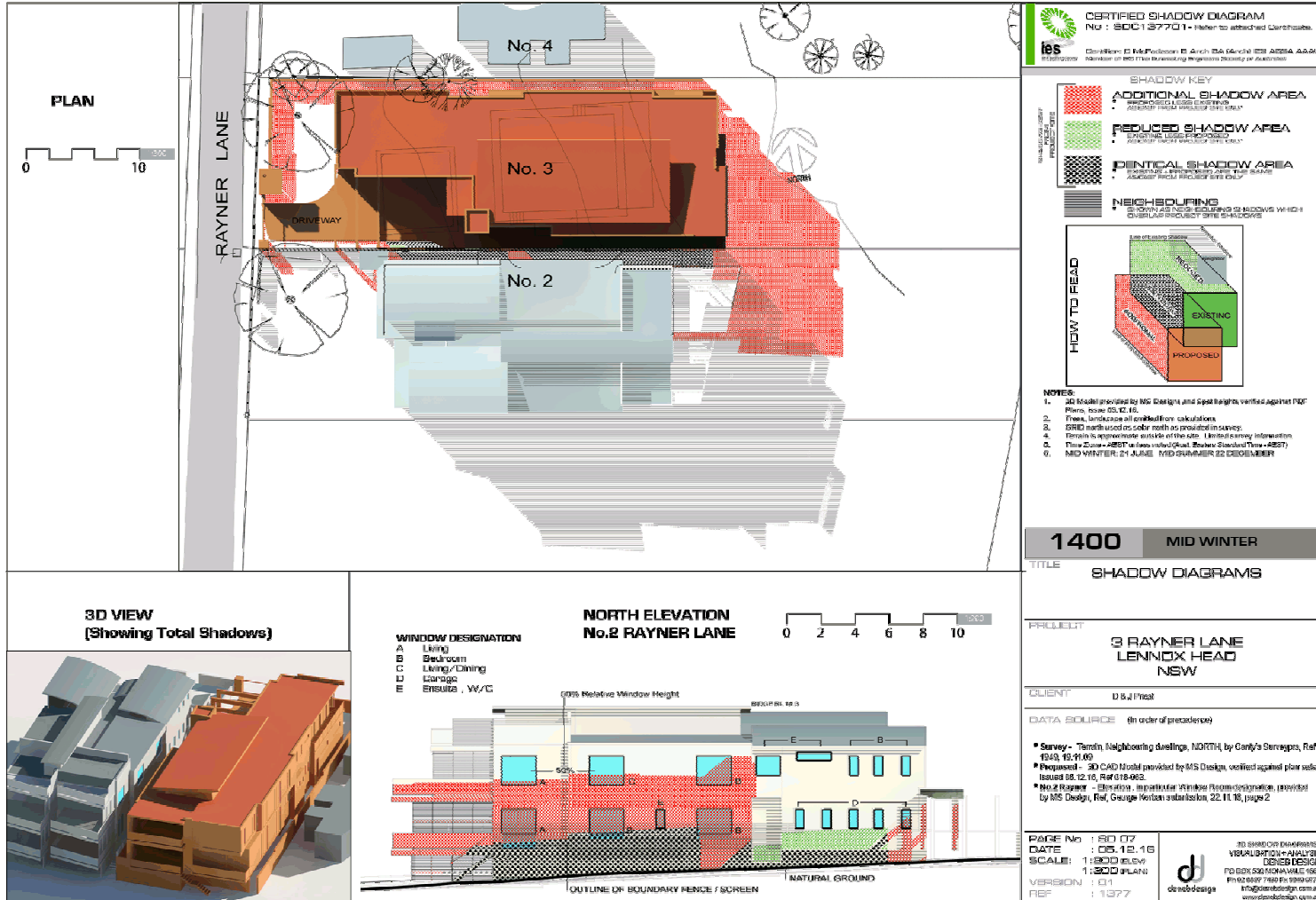
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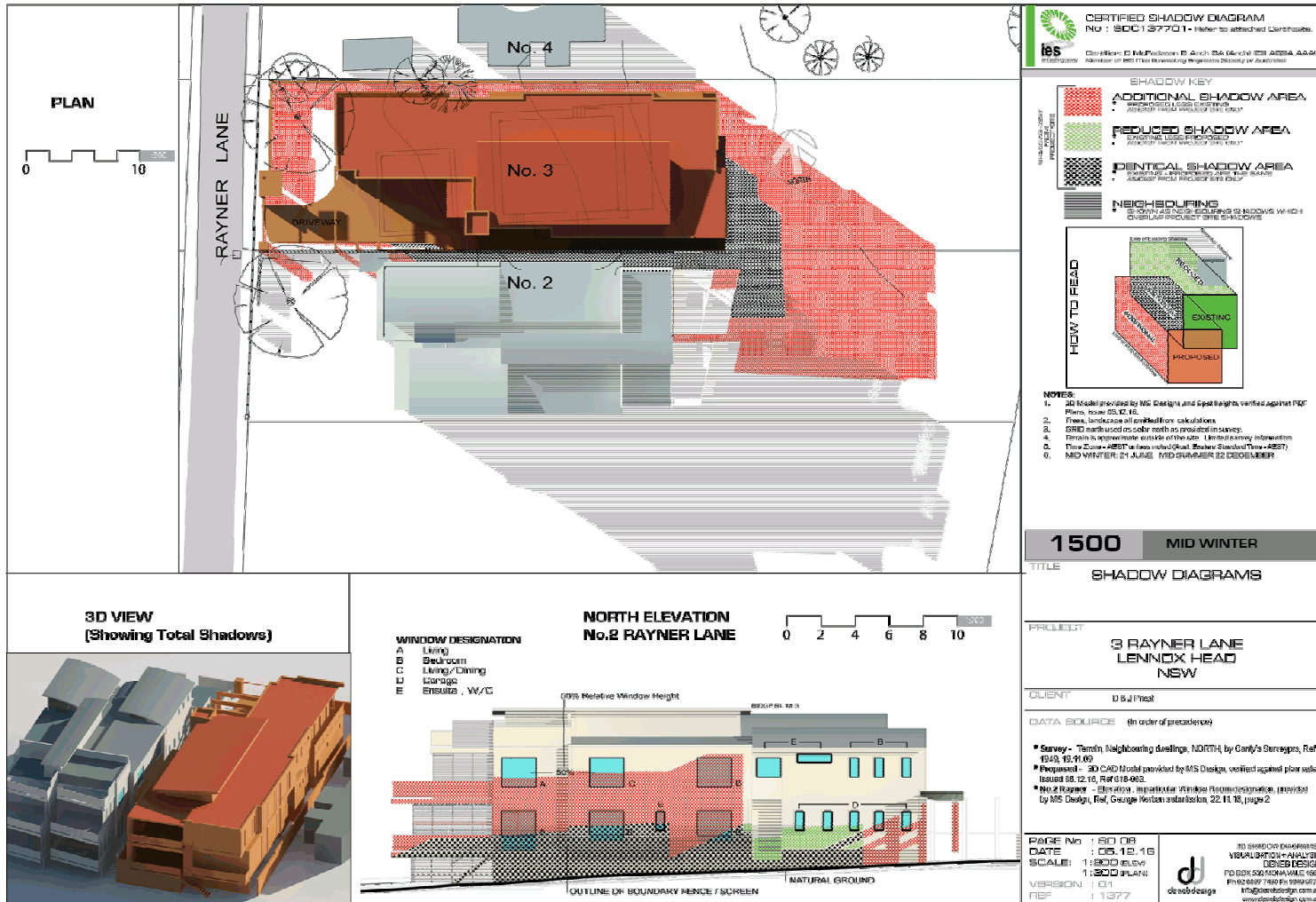
8.1 DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC



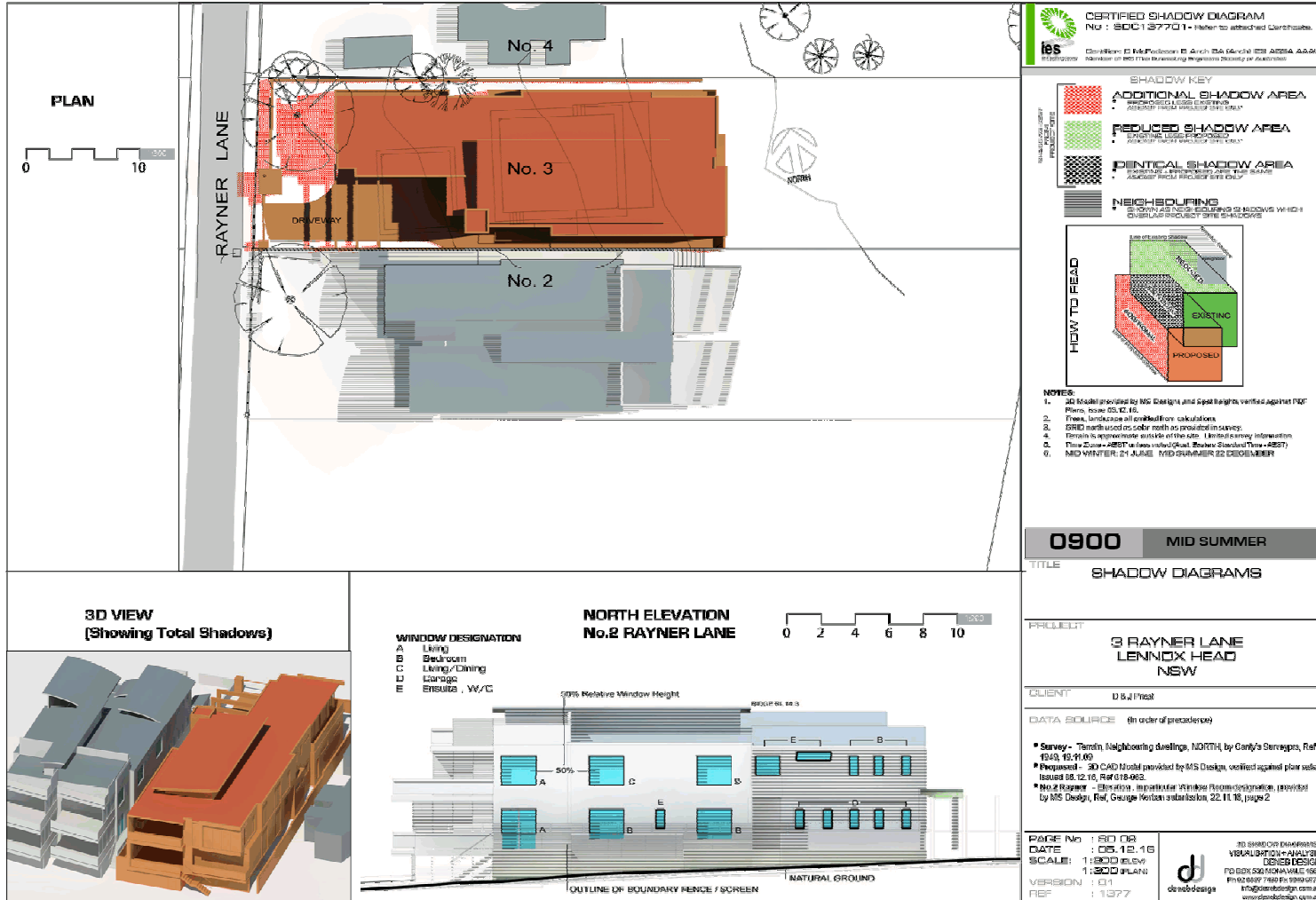
8.1 DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC



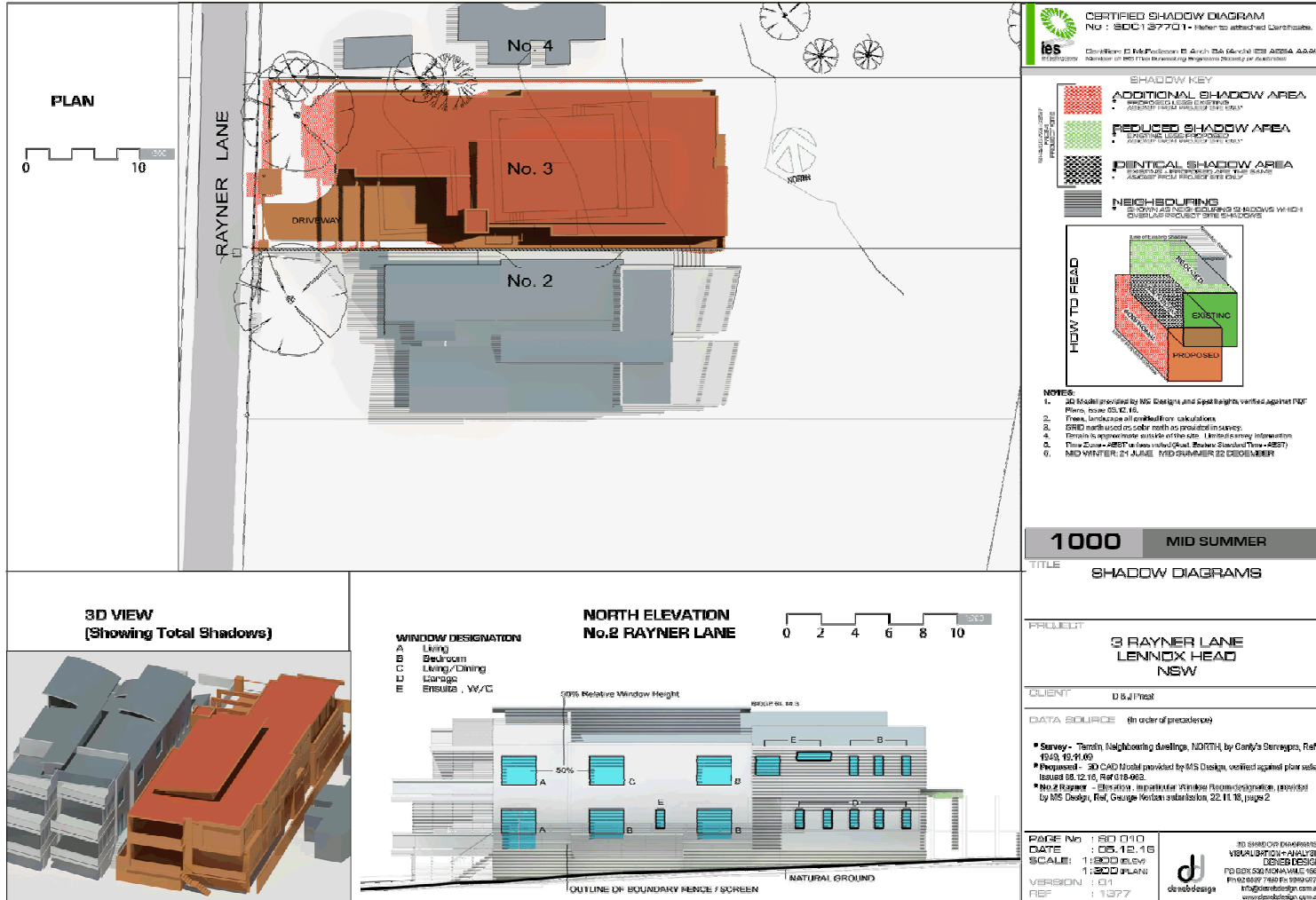
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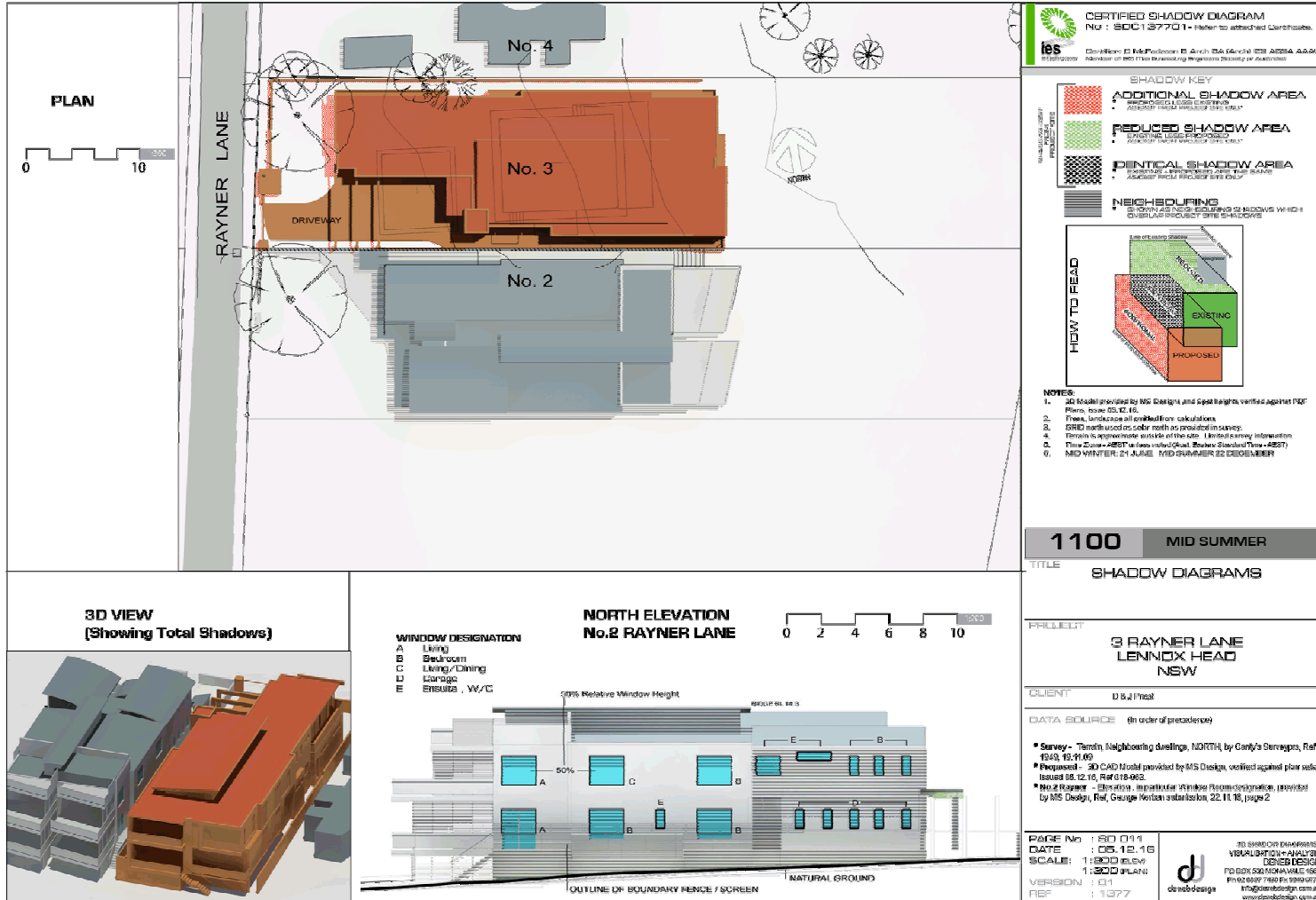
8.1 DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC



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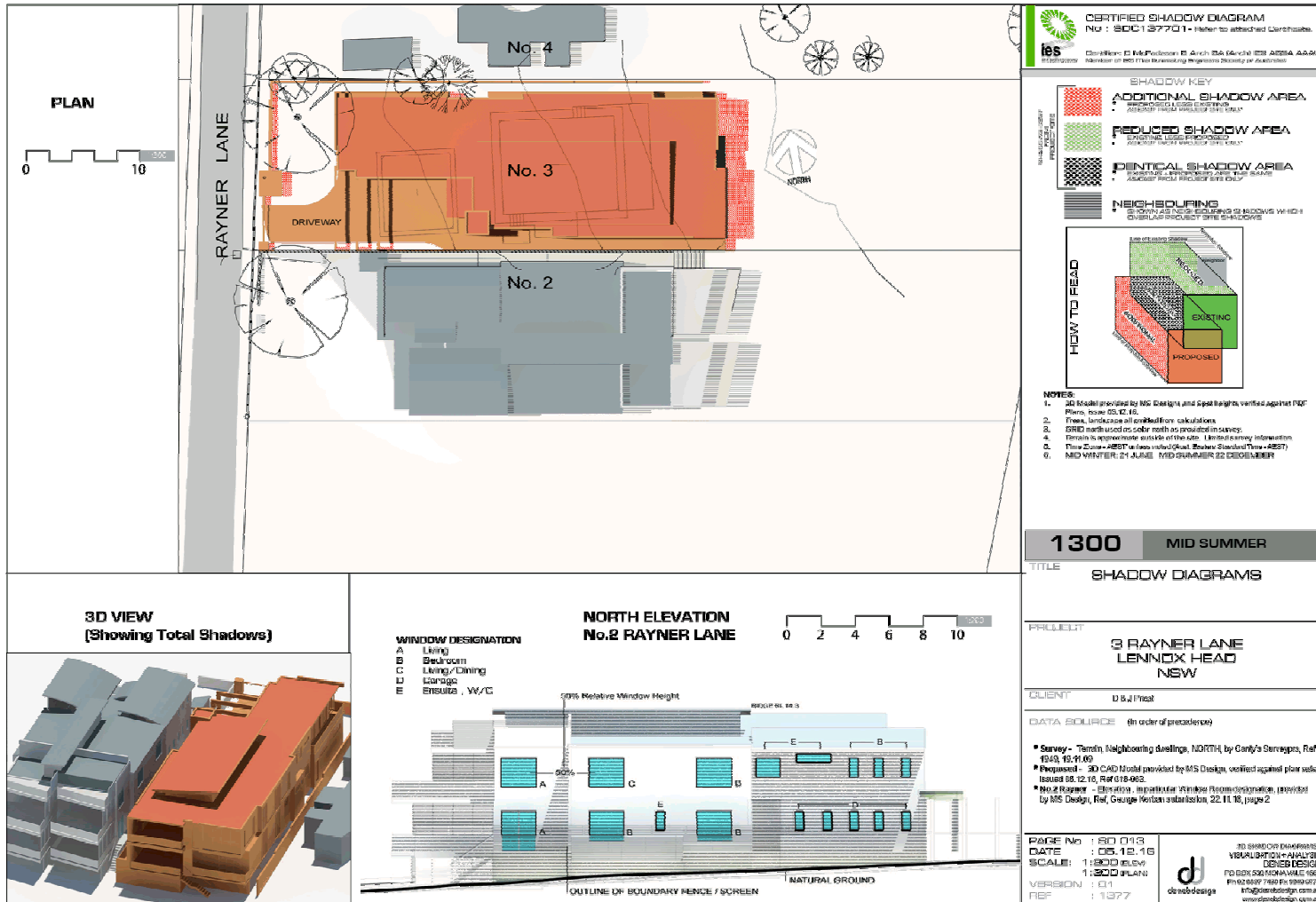
8.1 **DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC**



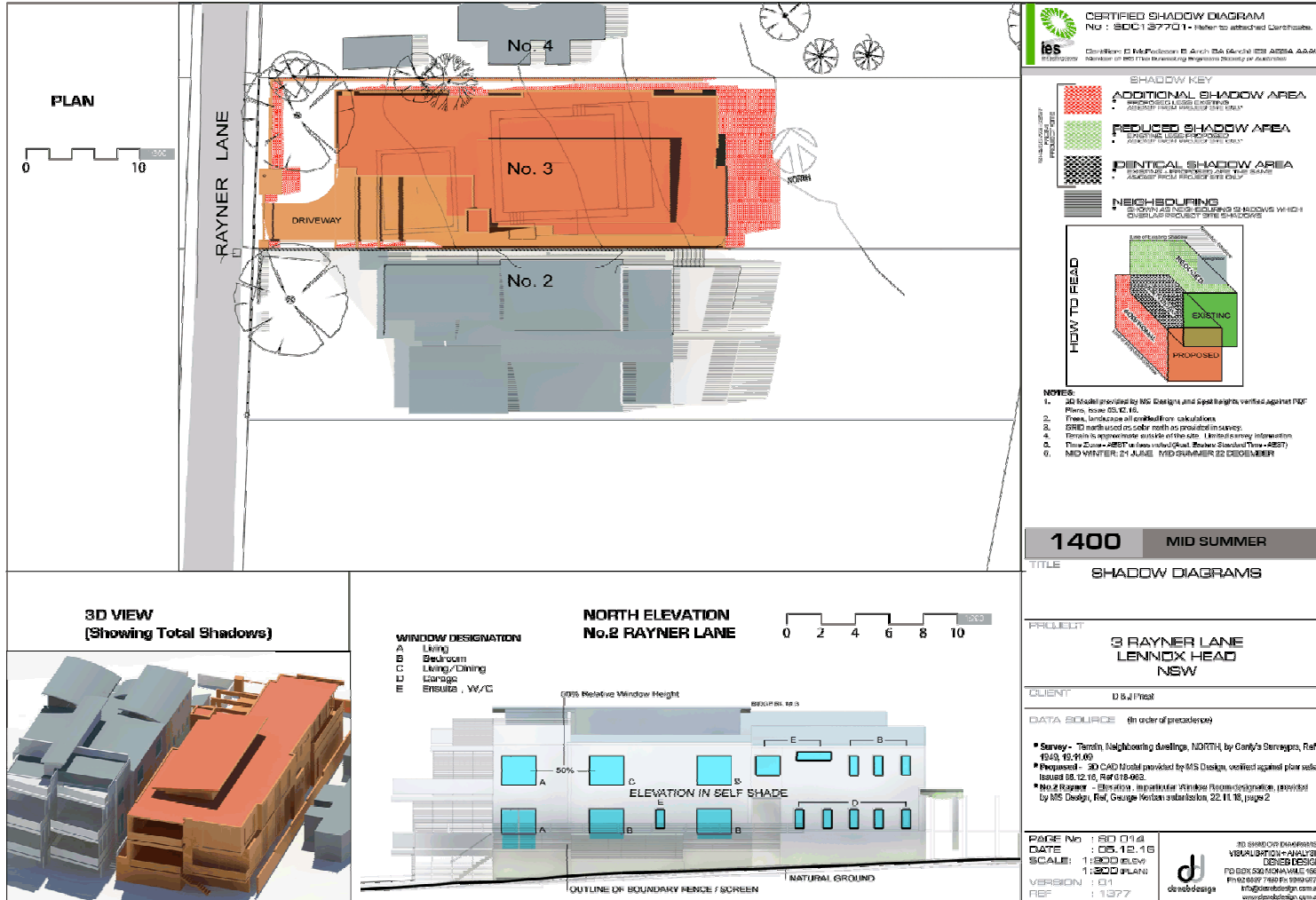




8.1 DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC



8.1 **DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC**





22 November 2016

George Korban, Architect 7558 on behalf of:  
Craig Jones and Rebecca Winters-Jones  
1/2 Rayner Lane  
Lennox Head NSW 2478



Attn: Mr Vince Hunt  
Ballina Shire Council  
PO Box 450  
Ballina, NSW, 2478

**RE: DA No: DA 2016/510**  
**Applicant: Ardill Payne & Partners**  
**Property: Lot 43 Sec: 1 DP: 11687, 3 Rayner Lane LENNOX HEAD**  
**Proposal: The demolition of an existing dwelling/garage, construction of a new two story dwelling and swimming pool**

Dear Mr Hunt

I am a registered architect with over 20 years experience in New South Wales. The owners of Unit 1, 2 Rayner Lane, Lennox Head have engaged me to review aspects of the current Development Application for 3 Rayner Lane, their northern neighbour.

**Shadow Diagrams**

I note that the shadow diagrams provided in the application do not comply with Council's requirements for shadow diagrams at 9.00am, 12 noon and 3.00pm on 21 June and 21 December. There are no diagrams at all provided for 21 December, and the diagrams for 21 June show 9.00am, 12 noon and 3.00pm for plans, but then oddly 10.00am, 12 noon and 2.00pm for elevations.

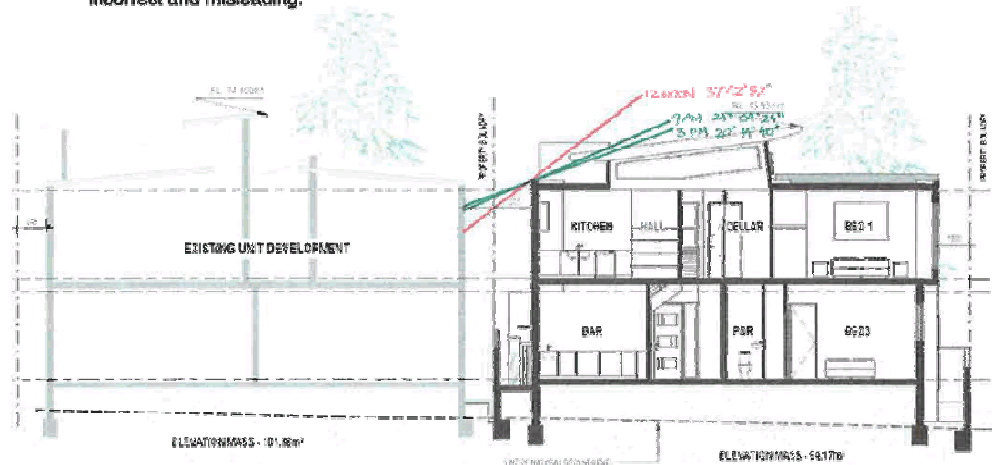
The shadow diagrams also do not state what sun angles they are based on. To fill this shortcoming I have sought the relevant information from the Australian Government, Geoscience Australia website : [www.ga.gov.au/geodesy/astro/smpos.jsp](http://www.ga.gov.au/geodesy/astro/smpos.jsp).

According to this government website the sun angles for 21 June 2016 (Australian Eastern Standard Time) were:

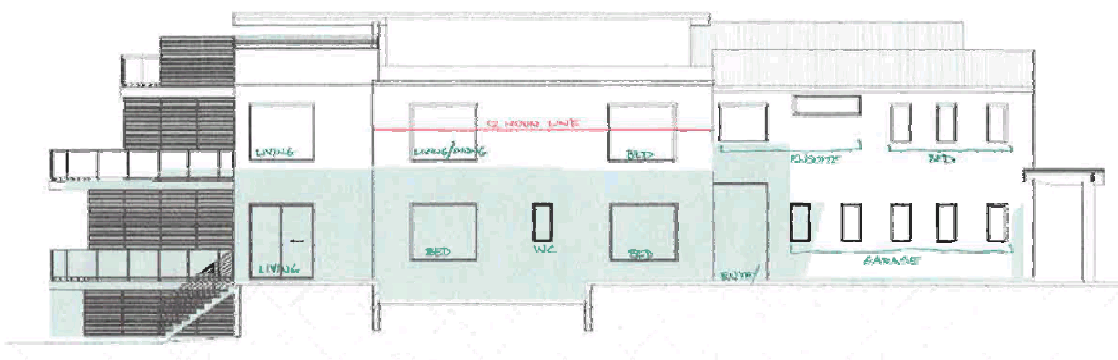
9.00am	Azimuth: 42° 08' 21"	Altitude: 24° 04' 24"
12noon	Azimuth: 356° 22' 26"	Altitude: 37° 42' 52"
3.00pm	Azimuth: 313° 17' 17"	Altitude: 20° 14' 49"

For reference these are represented diagrammatically at the rear of this letter, as are screenshots from the website of the sun angles for each daylight hour of 21 June 2016.

A simple check of the 21 June 12noon shadows by overlaying the correct sun altitude on the section shown on drawing DA-01-03 suggests that the shadow diagrams are somewhat incorrect and misleading:



**Section marked-up with correct 12noon sun altitude angle**



12 Midday 21 June

**Elevation marked-up with result of correct 12noon sun altitude angle**

*(Note there is a slight difference in the angles on plan between the cut of the section and the azimuth at 12noon. On the section line the distance between buildings is 2130mm. On the azimuth line the distance between the buildings is approximately 2205mm. This has no significant effect on the simple check described above.)*

Thus I can only conclude from this simple analysis that the shadow diagrams provided in the Development Application are incorrect and should be rejected.

In the letter dated 19 October 2016 the applicant also claims that the proposal is fully compliant in relation to overshadowing/solar access. This is an incredulous statement when even their own shadow diagrams show that the ground floor living room window receives **NO** direct sunlight on any of their diagrams, and the ground floor private open space (balcony) receives almost **NO** direct sunlight on any of their diagrams.

Ballina DCP 2012 - Chapter 4: Part C Residential & Tourist Development

Part 3 General Controls

C3.1.3 Development Controls

J. Element - Solar Access

Controls

ii. *The windows of living areas of dwellings and private open space facing north, north east or north west must receive at least three hours of direct sunlight between 9.00am and 3.00pm (Australian Eastern Standard Time) on 21 June (Winter Solstice);*

The controls above do not allow an applicant to arbitrary determine which living areas and private open this clause is applicable to. The application is therefore non-compliant in relation to overshadowing/solar access.

**Building Height**

The Development Application assumes a building envelope taken from a base RL 5.900 which is 610mm above what it describes as the centreline RL of Rayner Lane. This appears to assume a number of assumptions that are not provided for in Ballina Council's LEP and DCP. I note the following:

Ballina LEP 2012 - Part 4 Principle Development Standards

4.3 Height of Buildings

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Buildings Map shows a maximum height of 8.5m.

4.3A Exceptions to height of buildings

(1) *The objective of this clause is to align building height and flood planning provisions and provide for a consistent point of reference for the measurement of building heights in flood prone areas.*

(2) *This clause applies to land identified as "Minimum Level Australian Height Datum (AHD)" on the Building Height Allowance Map.*

The site is **NOT** identified as "Minimum Level Australian Height Datum (AHD)" on the Building Height Allowance Map, therefore this clause does **NOT** apply.

4.6 Exceptions to development standards

(1) *The objectives of this clause are as follows:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Director-General has been obtained.

(5) In deciding whether to grant concurrence, the Director-General must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

Thus for any contravention of LEP Clause 4.3, ALL of the above must apply.

Ballina DCP 2012 - Chapter 4: Part C Residential & Tourist Development

Part 3 General Controls

CS.1.3 Development Controls

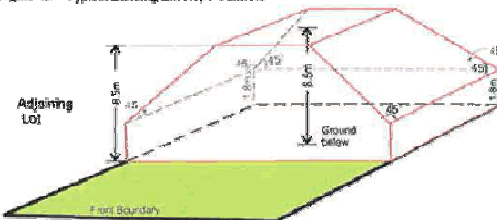
C. Element - Building Envelopes

Objectives

- i. Ensure buildings are set back progressively from the side and rear boundaries as building height increases so that buildings do not unduly effect existing or future development on adjoining properties by way of overshadowing, impinging on privacy, or unreasonably obstructing views;

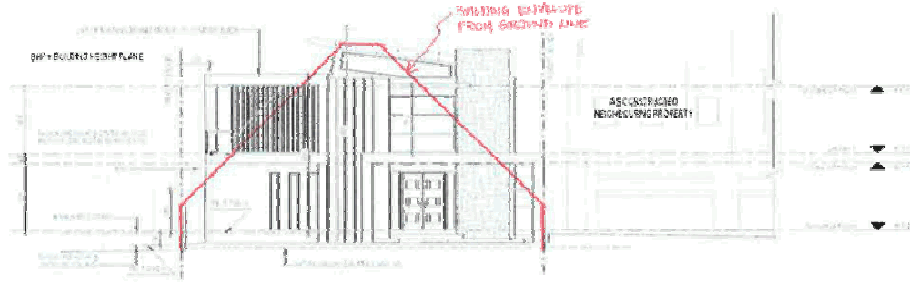
The objective is to **ENSURE** buildings are progressively set back along the side boundaries.

Figure 4.1 - Typical Building Envelope Controls



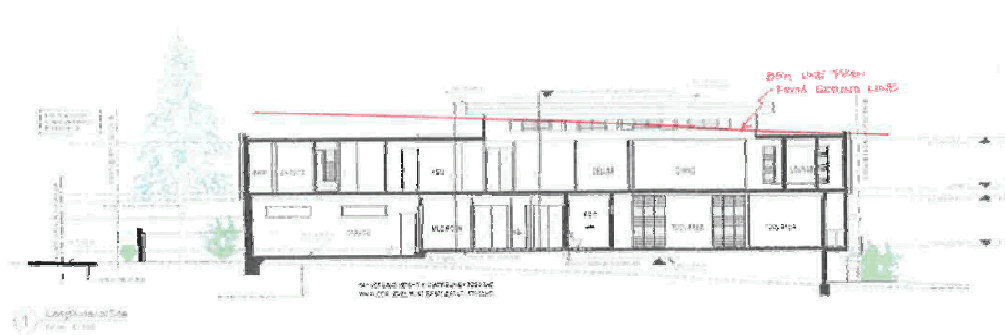
The maximum envelope above is derived from the ground level below, **NOT** an arbitrary floor level. And thus if the ground line slopes, the building envelope also slopes.





1 West Elevation  
Scale 1:100

Drawing marked-up with building envelope line taken from ground line



Drawing marked-up with 8.5m line taken from ground line

*Variations*

- i. The following variations to the setbacks nominated by the building envelope are permitted:  
Encroachments are permitted along the northern and eastern elevations of the wall length

Thus there is **NO** permitted variation to encroach on the southern elevation of wall length as shown in the Development Application.

*Notes:*

*Encroachments to the side and rear boundary building envelopes will generally not be supported along the southern and western elevations. This is because these elevations have the greatest capacity to overshadow adjoining properties, including existing or future private open space required to meet the provisions of this DCP.*

This explicitly states that encroachments to the side boundary building envelope will generally **NOT** be supported along the southern elevation.

*Part 4 Special Area Controls*

*4.5 Lennox Head Coastal Hazard Protection Area*

*4.5.3 Development Controls*

*Table 4.10 notes that for 3 Rayner Lane the floor level must be 500mm above the centreline of Rayner Lane.*

The ground floor RL chosen in the application is 610mm above the stated centreline of Rayner Lane, not 500mm. It also does NOT automatically follow that the allowable building envelope base raises from ground level to the floor level described.

*Notes:*

*Where compliance with the minimum floor level requirement for buildings in Rayner Lane results in encroachment beyond the maximum building height specified in the LEP, Council may consider a variation to the building height standard under clause 4.6 of the LEP where the building would have otherwise met the building height standard in the absence of the minimum floor level requirement.*

This does NOT say that Council may consider a variation in the way that the building envelope is measured ie a maximum 1.8m at the boundary ground line before chamfering to 45°. This merely states that Council may vary the maximum 8.5m line (the very top) if items under LEP Clause 4.6 are met.

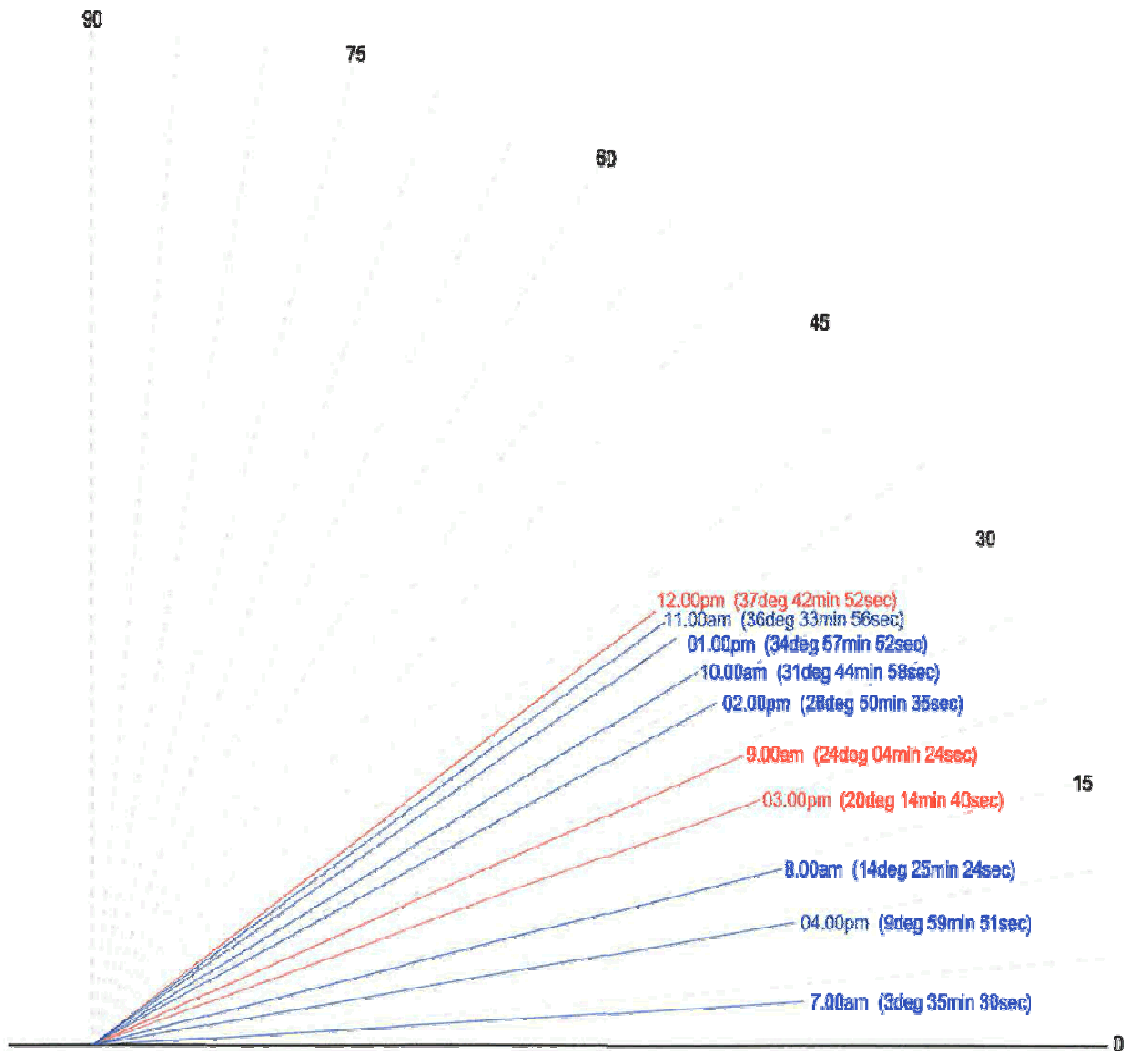
Thus I can only conclude from the review of Ballina Council's LEP and DCP is that the basis for the allowable building heights and envelopes shown in the Development Application are flawed and cannot be supported. And if the allowable envelope described in the application is flawed then obviously the shadow diagrams that follow from these are also flawed.

If you require any further information I can be contacted on 0424 186 293, or by email at [georgekorban@hotmail.com.au](mailto:georgekorban@hotmail.com.au).

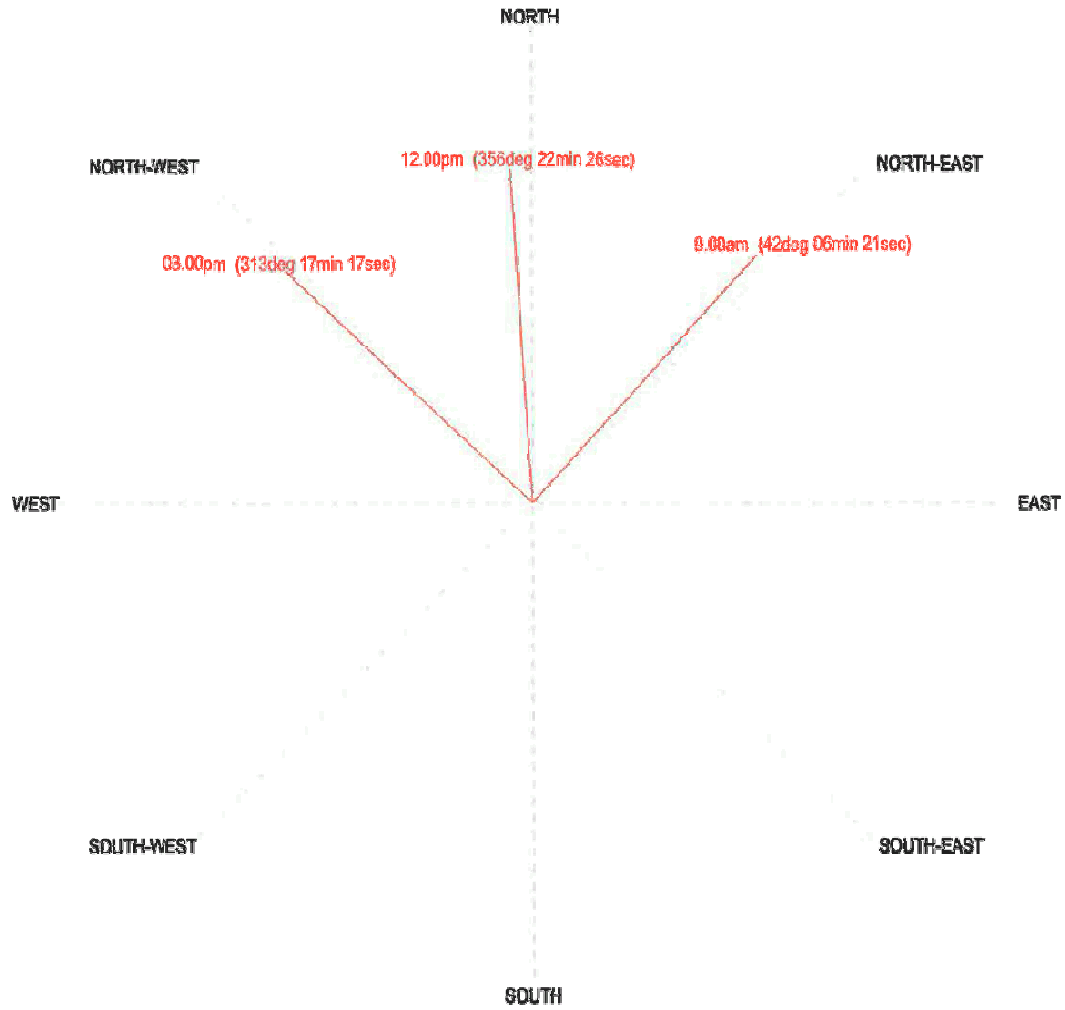
Yours sincerely

George Korban

Architect 7558  
61 Bentwing Place  
Tintenbar NSW 2476



Lennox Head sun angles on 21 June 2016 - Altitude



Lennox Head sun angles on 21 June 2016 - Azimuth



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## Sun or Moon Position Results

---

**LENNOX HEAD** Lat=-28°47'00" Long=+153°35'00" Height=0.0m

**AZIMUTH AND ALTITUDE OF THE SUN**  
Time zone: +10:00 hours  
Altitude includes astronomical refraction angle for a standard atmosphere.

Date	Time	Refraction	Azimuth	Altitude
21/06/2016	07:00:00	00°13'23"	00°51'33"	3°33'30"

Computed using National Mapping Division's suncompex program, version 1.1

---

**Azimuth** is the clockwise horizontal angle (in degrees minutes and seconds) from true north to the sun/moon.  
**Altitude** is the vertical angle (in degrees minutes and seconds) from an ideal horizon, to the sun/moon.  
 An ideal horizon exists when the surface forming the horizon is at a right angle to the vertical line passing through the observer's position on the earth. If the terrain surrounding the observer was flat and all at the same height above sea level, the horizon seen by the observer standing on the earth would approximate the ideal horizon.

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## Sun or Moon Position Results

---

**LENNOX HEAD** Lat=-28°47'00" Long=+153°35'08" Height=6.0m

**AZIMUTH AND ALTITUDE OF THE SUN**  
Time zone: +10.00 hours  
Altitude includes astronomical refraction angle for a standard atmosphere.

Date	Time	Refraction	Azimuth	Altitude
21/06/2016	08:00:00	00°03'45"	52°28'34"	14°25'24"

Computed using National Mapping Division's swarcpospos program, version 1.1

---

**Azimuth** is the clockwise horizontal angle (in degrees minutes and seconds) from true north to the sun/moon.  
**Altitude** is the vertical angle (in degrees minutes and seconds) from an ideal horizon, to the sun/moon.  
**An ideal horizon** exists when the surface forming the horizon is at a right angle to the vertical line passing through the observer's position on the earth. If the terrain surrounding the observer was flat and all at the same height above sea level, the horizon seen by the observer standing on the earth would approximate the ideal horizon.

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## Sun or Moon Position Results

---

**LENNOX HEAD** Lat=-25°47'00" Long=+153°25'00" Height=0.0m

**AZIMUTH AND ALTITUDE OF THE SUN**  
 Time zone: +10.00 hours  
 Altitude includes astronomical refraction angle for a standard atmosphere.

Date	Time	Refraction	Azimuth	Altitude
21/06/2016	09:00:00	00°02'10"	42°06'21"	24°04'24"

Computed using National Mapping Division's sunmoonpos program, version 1.1

---

**Azimuth** is the clockwise horizontal angle (in degrees minutes and seconds) from true north to the sun/moon.  
**Altitude** is the vertical angle (in degrees minutes and seconds) from an ideal horizon, to the sun/moon.  
**An ideal horizon** exists when the surface forming the horizon is at a right angle to the vertical line passing through the observer's position on the earth. If the terrain surrounding the observer was flat and all at the same height above sea level, the horizon seen by the observer standing on the earth would approximate the ideal horizon.

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## Sun or Moon Position Results

---

**LENNOX HEAD** Lat=-29°47'00" Long=152°35'00" Height=0.0m

**AZIMUTH AND ALTITUDE OF THE SUN**  
 Time zone: +10.00 hours  
 Altitude includes astronomical refraction error for a standard atmosphere.

Date	Time	Refraction	Azimuth	Altitude
21/06/2016	10:00:00	00°02'36"	29°10'28"	21°44'58"

Computed using National Mapping Division's *emssmooqec* program, version 1.1

---

**Azimuth** is the clockwise horizontal angle (in degrees minutes and seconds) from true north to the sun/moon.  
**Altitude** is the vertical angle (in degrees minutes and seconds) from an ideal horizon, to the sun/moon.  
 An ideal horizon exists when the surface forming the horizon is at a right angle to the vertical line passing through the observer's position on the earth. If the terrain surrounding the observer was flat and all at the same height above sea level, the horizon seen by the observer standing on the earth would approximate the ideal horizon.

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## Sun or Moon Position Results

---

**LENNOX HEAD** Lat=-23°47'09" Long=153°35'00" Height=0.0m

**AZIMUTH AND ALTITUDE OF THE SUN**  
Time zone: +10.00 HOURS  
Altitude includes astronomical refraction angle for a standard atmosphere.

Date	Time	Refraction	Azimuth	Altitude
21/06/2016	11:00:00	00°01'18"	13°35'16"	36°35'56"

Computed using National Mapping Division's [sunmoonpos](#) program, version 1.1.

---

**Azimuth** is the clockwise horizontal angle (in degrees minutes and seconds) from true north to the sun/moon.  
**Altitude** is the vertical angle (in degrees minutes and seconds) from an ideal horizon, to the sun/moon.  
**An ideal horizon** exists when the surface forming the horizon is at a right angle to the vertical line passing through the observer's position on the earth.  
**If the terrain** surrounding the observer was flat and all at the same height above sea level, the horizon seen by the observer standing on the earth would approximate the ideal horizon.

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## Sun or Moon Position Results

---

**LENNOX HEAD** Lat=-28°47'00" Long=+153°35'00" Height=0.0m

**AZIMUTH AND ALTITUDE OF THE SUN**  
Time zone: +10.00 hours  
Altitude includes astronomical refraction angle for a standard atmosphere.

Date	Time	Refraction	Azimuth	Altitude
21/06/2016	12:00:00	00°01'15"	356°22'26"	37°42'52"

Computed using National Mapping Division's sunmoonposn program, version 1.1

---

**Azimuth** is the clockwise horizontal angle (in degrees minutes and seconds) from true north to the sun/moon.  
**Altitude** is the vertical angle (in degrees minutes and seconds) from an ideal horizon, to the sun/moon.  
**An ideal horizon** exists when the surface forming the horizon is at a right angle to the vertical line passing through the observer's position on the earth. If the terrain surrounding the observer was flat and all at the same height above sea level, the horizon seen by the observer standing on the earth would approximate the ideal horizon.

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## Sun or Moon Position Results

---

**LENNOX HEAD** Lat=-28°47'00" Long=+156°35'00" Height=0.0m

**AZIMUTH AND ALTITUDE OF THE SUN**  
Time zone: +10.00 hours  
Altitude includes astronomical refraction angle for a standard atmosphere.

Date	Time	Refraction	Azimuth	Altitude
21/06/2016	13:00:00	00°01'23"	338°37'23"	34°57'52"

Computed using National Mapping Division's sunmoon program, version 1.1

---

**Azimuth** is the clockwise horizontal angle (in degrees minutes and seconds) from true north to the sun/moon.  
**Altitude** is the vertical angle (in degrees minutes and seconds) from an ideal horizon, to the sun/moon.  
**An ideal horizon** exists when the surface forming the horizon is at a right angle to the vertical line passing through the observer's position on the earth. If the terrain surrounding the observer was flat and all at the same height above sea level, the horizon seen by the observer standing on the earth would approximate the ideal horizon.

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## Sun or Moon Position Results

---

**LENNOX HEAD** Lat=-28°47'00" Long=153°35'00" Height=0.0m

**AZIMUTH AND ALTITUDE OF THE SUN**  
Time zone: +10.00 AEST  
Altitude includes astronomical refraction angle for a standard atmosphere.

Date	Time	Refraction	Azimuth	Altitude
21/06/2016	14:00:00	00°01'46"	325°05'44"	28°50'35"

Computed using National Mapping Division's sunmoonpos program, version 1.1

---

**Azimuth** is the clockwise horizontal angle (in degrees minutes and seconds) from true north to the sun/moon.  
**Altitude** is the vertical angle (in degrees minutes and seconds) from an ideal horizon, to the sun/moon.  
**An ideal horizon exists** when the surface forming the horizon is at a right angle to the vertical line passing through the observer's position on the earth. If the terrain surrounding the observer was flat and all at the same height above sea level, the horizon seen by the observer standing on the earth would approximate the ideal horizon.

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## Sun or Moon Position Results

---

**LENNOX HEAD** Lat=-29°47'00" Long=+155°35'00" Height=0.0m

**AZIMUTH AND ALTITUDE OF THE SUN**  
Time zone: +10.00 hours  
Altitude includes astronomical refraction angle for a standard atmosphere.

Date	Time	Refraction	AZIMUTH	ALTITUDE
21/06/2016	15:00:00	00°02'38"	313°17'17"	29°14'30"

Computed using National Mapping Division's `sunmoonpos` program, version 1.1

---

**Azimuth** is the clockwise horizontal angle (in degrees minutes and seconds) from true north to the sun/moon.  
**Altitude** is the vertical angle (in degrees minutes and seconds) from an ideal horizon, to the sun/moon.  
**An ideal horizon** exists when the surface forming the horizon is at a right angle to the vertical line passing through the observer's position on the earth. If the terrain surrounding the observer was flat and all at the same height above sea level, the horizon seen by the observer standing on the earth would approximate the ideal horizon.

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## Sun or Moon Position Results

---

**LENNOX HEAD** Lat= $-28^{\circ}47'00''$  Long= $+152^{\circ}35'00''$  Height=6.0m

**AZIMUTH AND ALTITUDE OF THE SUN**  
 Time zone: +10.00 hours  
 Altitude includes astronomical refraction angle for a standard atmosphere.

Date	Time	Refraction	Azimuth	Altitude
21/06/2016	14:00:00	00°05'20"	302°49'21"	2°59'51"

Computed using National Mapping Division's sunmoonpos program, version 1.1

---

**Azimuth** is the clockwise horizontal angle (in degrees minutes and seconds) from true north to the sun/moon.  
**Altitude** is the vertical angle (in degrees minutes and seconds) from an ideal horizon, to the sun/moon.  
 An ideal horizon exists when the surface forming the horizon is at a right angle to the vertical line passing through the observer's position on the earth. If the terrain surrounding the observer was flat and all at the same height above sea level, the horizon seen by the observer standing on the earth would approximate the ideal horizon.

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## Sun or Moon Position Results

---

**LENNOX HEAD** Lat=-28°47'00" Long=+153°38'00" Height=9.0m

**AZIMUTH AND ALTITUDE OF THE SUN**  
 Time zone: +10.00 hours  
 Altitude includes astronomical refraction angle for a standard atmosphere.

Date	Time	Refraction	Azimuth	Altitude
22/06/2016	17:00:00	00°00'00"	296°05'02"	-1°29'03"

Computed using National Mapping Division's sunmoon program, version 1.1

---

**Azimuth** is the clockwise horizontal angle (in degrees minutes and seconds) from true north to the sun/moon.  
**Altitude** is the vertical angle (in degrees minutes and seconds) from an ideal horizon, to the sun/moon.  
**An ideal horizon exists** when the surface forming the horizon is at a right angle to the vertical line passing through the observer's position on the earth. If the terrain surrounding the observer was flat and all at the same height above sea level, the horizon seen by the observer standing on the earth would approximate the ideal horizon.

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## Sunrise & Sunset Results

---

LENNOX HEAD Lat=-28°17'00" Long=+153°35'00"  
TIMES OF SUNRISE AND SUNSET  
(for ideal horizon & meteorological conditions)  
TIME ZONE: +10.00 hours  
21/06/2016 Rise 0639 Set 1657

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Computed using National Mapping Division's sunziseaset program, version 2.2

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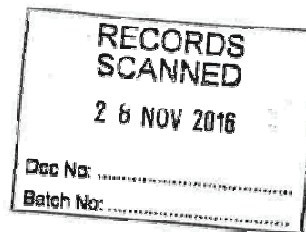
# McCartney Young Lawyers

Directors: Michelle McCartney & Michael Young

Our Ref: MY:ST:20160565  
Your Ref:

25 November 2016

Mr Vince Hunt  
Ballina Shire Council  
PO Box 450  
Ballina NSW 2478



Dear Mr Hunt

**Property: 3 Rayner Lane Lennox Head (DA 2016/510)  
Submission on the DA- Objection to Proposed Development**

**A. Introduction**

We act for Mr Craig Jones and Mrs Rebecca Winters-Jones, the owners of 1/2 Rayner Lane, Lennox Head. Our clients have instructed us to prepare a letter in support of their objection to development application 2016/510 (DA) with respect to the adjoining property at 3 Rayner Lane Lennox Head (Property).

The development application describes the proposed development as follows:

*"To demolish/remove an existing dwelling house and garage and to construct a double story dwelling house and swimming pool."*

We have been instructed with the following documents:

1. Development Application 2016/510
2. "Development Application & Statement of Environmental Effects - Submission to Ballina Shire Council" (SEE) prepared by Ardill Payne & Partners and dated September 2016.
3. A submission made by our clients to Ballina Shire council dated 3 October 2016
4. The response to the Request for Further Information by Ardill Payne & Partners dated 19 October 2016
5. Updated (Amended) Plans for DA 2016/510 dated 7 November 2016
6. A letter by architect George Korban dated 22 November 2016.

For the reasons outlined in this letter, Council is unable to grant consent (having regard to the law) and should not grant consent (having regard to the merits of the matter).



Level 1 Suite 10/31 Cherry Street Ballina NSW | PO Box 183 Ballina NSW 2478  
Phone: 02 6683 5366 | DK 27660 BALLINA | Fax: 02 6683 5544  
Email: info@my-lawyers.com.au | Web: www.my-lawyers.com.au  
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**B. Environmental Planning and Assessment Act 1979**

As council is aware, if an environmental planning instrument provides that specified development may not be carried out except with development consent, a person must not carry the development out on land to which the provision applies unless consent has been obtained and is in force and the development is carried out in accordance with the consent and the instrument (s.76A EP&A Act).

In determining the DA the Council is to take into consideration the matters prescribed pursuant to s.79C as are of relevance to the DA. Those matters include, without limitation, any environmental planning instruments and any relevant development control plan (DCP).

**C. Ballina Local Environmental Plan 2012**

The principal environmental planning instrument is the Ballina Local Environmental Plan 2012 (BLEP).

The land to which the DA relates is zoned R3 Medium Density Residential (Zone) under the BLEP.

Development for the purpose of a dwelling - or a dwelling house - is permissible in the Zone, it being "development not specified in item 2 [permitted without consent] or 4 [prohibited]".

Council must have regard to the "Objectives" of the Zone when determining the DA (cls. 2.3(2) BLEP). With respect to Objectives the Court of Appeal has said the following:

*"They are not provisions of the LEP that control development. Rather, they set the framework in which the LEP operates. The objectives themselves are not necessarily consistent, but reflect the conflicting demands upon development within the particular Local Government Area.*

...

*I am not to be taken as saying that the objectives are not relevant to the construction of other provisions in the LEP. A provision is to be construed within the statutory instrument as a whole: see Project Blue Sky (discussed further below). Thus a construction of a provision which was more conducive to the achievement of the objectives of the LEP is to be preferred to a construction that does not achieve those aims."*

*(Abret Pty Limited v Wingecarribee Shire Council [2011] NSWCA 107 at [42] and [45])*

(We will return to these observations later in the advice.)

We do not repeat the Objectives to the Zone, but note that housing needs and housing types are to be provided within a medium density residential environment, such development being "compatible with the character and amenity of the surrounding neighbourhood.

The development standards that Council must take into account are provided in Part 4 of the BLEP. The development standards that Council must take into account include floor space ratio (FSR) (cls 4.4) and the height of the building (cls 4.3).

### 1. *Floor Space Ratio*

With respect to FSR we have not undertaken an analysis of the gross floor area of all buildings within the site (cls. 4.5(2)). When regard is had to:

- the total available site area; and
- the available "developable area", defined by the front setback and the foreshore building line,

there is no apparent reason to disagree with the calculation of the FSR provided in the SEE (pg. 9, FSR 0.47:1). However the front setback and the foreshore building line impose constraints on the site: approximately 48% of the site is not available for development. Having regard to that calculation, as the site has been (almost) halved – and the proportion of the site that is available for development – the proposed building has an FSR of almost 1:1.

While fully acknowledging that this is not the basis on which FSR is calculated, it is a useful guide with respect to the bulk and scale of the development on that portion of the site which in turn gives rise to impacts on the surrounding environment.

### 2. *Building Height*

Clause 4.3 of the BLEP provides the "Height of Building" control by reference to the "Height of Buildings Map" (cls 4.3(2)).

The Height of Buildings Map prescribes a maximum building height for the Property of 8.5 metres. Building height is measured by reference to the vertical distance from existing ground level to the highest point of the building.

According to the SEE, the highest point of the proposed building is approximately 9.7 metres when measured from the natural ground level to the highest point of the roof (SEE pg 16). Our our calculation by reference to drawing DA-01-03 discloses a maximum height of 10 metres at the eastern end of the building. Therefore, the proposed development exceeds the restriction on height contained in Clause 4.3.

The SEE provides arguments that are intended to avoid the consequences of this height (and breach).

The first argument refers to Clause 4.3A(3) of the BLEP. However the SEE acknowledges that this provision cannot apply: the Property is not mapped on the Building Height Allowance Map.

The SEE seeks to argue that the provisions of the DCP that prescribe minimum floor levels to mitigate inundation from coastal processes should be treated in a similar fashion to the express provisions in cls. 4.3A (SEE pg. 16).

We return to this argument below where we comment on the DCP. What is fundamental to note is that the BLEP itself does not provide an express provision which allows the development standard created by clause 4.3 to be avoided by reference to some other method to calculate building height.

The only mechanism available to seek "forgiveness" from complying with the requirements of the BLEP with respect to building height is Clause 4.6 of the BLEP..

(We are of the view that clause 5.6 does not apply because the roof feature that exacerbates the building height is not decorative - it fulfils a significant function with respect to solar penetration and the creation of cross ventilation. We cannot agree with the assertions made on page 17 of the SEE.)

Our consideration of the documents that have been lodged with the DA do not disclose a written request that justifies the contravention of the building height (what was formerly known as a "SEPP 1 Objection"). If such a written request had been lodged it would have been required to address the relevant criteria in clause 4.6. All of the criteria would need to be satisfied in order to forgive the contravention of Clause 4.3 relating to building height.

In the absence of a written request in accordance with clause 4.6:

- 2.1 Council cannot grant consent;
- 2.2 this submission cannot address the matters that might have been raised, being matters that are fundamental to the granted consent.

For this reason, if a written request is lodged we require Council to notify us of the written request and provide us with an opportunity to respond to it.

3. *Development within the coastal zone*

Clause 5.5 of the BLEP must also be considered by the Council - and indeed the matters that arise under the clause *must* be addressed in the DA (consent cannot be granted unless Council has considered the matters specified in the clause). It is not sufficient for the SEE to simply cross-reference to SEPP 71 and avoid addressing the requirements of the clause. The assertion that "*the bulk, height, scale, external appearance etc of the proposed building is consistent with that of other adjacent buildings on the eastern side of Rayner Lane*" is demonstrably untrue. Furthermore the form of our clients building follows its function as a duplex, with a roof form that is designed to allow solar penetration particularly into the southern dwelling.

As the DA has not addressed the requirements of this clause, development consent cannot be granted.

D. **Ballina Shire Development Control Plan 2012**

There are a number of controls relevant to the DA that arise pursuant to the DCP. The SEE commences a consideration of the requirements of the DCP on page 20. This submission addresses those matters that are particularly relevant to Council's assessment of the DA.

1. *Building Height*

The Ballina Shire Development Control Plan 2012 (BDCP)- Chapter 4- Residential & Tourist Development, in Part 4.5, provides specific development controls relating to the Lennox Head Coastal Hazard Protection Area, including Rayner Lane. This part of the DCP is referred to on page 16 of the SEE.

The DCP control states that development must comply with the floor levels and building lines contained in the tables in Control 4.5.3. The habitable floor level for 3 Rayner Lane is '500mm above centreline of Rayner Lane'. The plans that accompany the DA have

identified the centreline of Rayner Lane is 5.290 AHD and that therefore the habitable floor level is 5.790 AHD (DA-01-03).

(We note that the letter of George Korban, architect, dated 22 November 2016 (Korban Letter) states that the RL is 610mm above the centreline of the Lane and not 500mm.)

The "Note" to Control 4.5.3 specifies that where compliance with the minimum floor level requirement results in encroachment beyond the maximum building height specified in the BLEP (in this case 8.5 metres) Council can consider a variation to the building height standard where *'the building would have otherwise met the building height standard in absence of the minimum floor level requirement'*.

Firstly, and notwithstanding the express reference to clause 4.6 of the BLEP in the Note, it is extremely doubtful that the DCP can create an exception to observing a development standard, being an exception that is not expressly allowed by reference to the provisions of clause 4.6. The BLEP is the regulatory instrument and it is doubtful that the DCP can effectively amend the BLEP.

Secondly the building does not demonstrate compliance with the height control *but for* the obligation to observe clause 4.5 of the DCP. The design of the building, by incorporating a significant and functional roof element, exceeds the building height and exceeds it, in at least one place, by 1.5 metres.

As the building would not have otherwise met the building height limit under the BLEP, Council cannot consider a variation. The building does not comply with the relevant height provisions of the BLEP and fails to comply with the DCP.

## 2. *Building Envelope*

The Ballina DCP contains controls relating to building envelopes in Part 3.1.1, Element C. Residential accommodation in the Zone must be contained within a building envelope.

That building envelope is demonstrated in the Korban Letter and we do not repeat the observations made

The DCP does make provisions for variations which permit with consent encroachments along the northern and eastern elevations of the wall length. Amongst other criteria, the encroachment must be limited to no more than 40% of the wall length of the elevation of the building. The note in the DCP provides that encroachments to the side and rear boundary building envelopes will generally not be supported along the southern and western elevations.

The SEE concedes that the proposed development does not comply with the building envelope controls as it proposes a northern encroachment which is approximately 44% of the length of the northern boundary, and a southern encroachment which is 31% of the length of the southern boundary (whether those figures are accurate need not be dealt with in this submission and we make no admissions).

The SEE asserts that non-compliance with the DCP control relating to building envelopes is justified because the proposal is considered to achieve the objectives of the building envelope control. We disagree: the following objectives of the control (contained in Chapter 4, Part 3.1.3, C) will not be attained due to non-compliance with the building envelope control:

- *Ensure buildings are set back progressively from the side and rear boundaries as building height increases so that buildings do not unduly*

*affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy, or unreasonably obstructing views;*

- *Ensure that the occupants of residential accommodation have the opportunity to enjoy the optimum use of winter sunlight;*
- *Enhance opportunities for solar access to both the development site and adjoining properties.*

The failure to comply with the building envelope has a particular impact upon our clients. It is conceded that the views directly east are significant and are enjoyed by our clients. However solar access, views and privacy along the northern boundary are just as important and are crucial to our clients' enjoyment of their premises, this being the only longitudinal wall which can accommodate windows and receive sunlight.

The failure to set back the building the subject of the DA in accordance with the controls had a significant impact on our clients.

### *3. Overshadowing and Solar Access*

The BDCP contains development controls relating to solar access in Part 3.1.1, Element J. One of the objectives of these controls is to 'ensure developments do not significantly overshadow living areas and the private open space of adjacent dwellings and areas of foreshore open space'. Control 4 states that 'new buildings must maintain at least three hours of direct sunlight to the windows of living areas that face north, north east or north west for existing adjacent dwellings and their areas of private open space between 9.00am and 3.00pm on 21 June'.

The Korban Letter puts our clients concerns on this aspect of the DA very well and we do not repeat those matters, other than to say that it appears our client's ground floor living room window will receive no direct sunlight at all between 9.00AM and 3.00PM on 21 June. The DCP states that where overshadowing is likely to occur, measures such as increasing setbacks, reducing heights and amending roof designs may be required.

That is, and stating the obvious, a building design that complies with the controls may increase direct sunlight - but would also relieve our clients of a sense of overbearing created by such an extensive wall so close to the boundary.

### *4. Weight to be given to the DCP*

In *Zhang v Canterbury City Council* ([2001] NSWCA 167), it was held that the DCP 'had to be considered as a fundamental element in or a focal point of the decision making process'. Because the provision in the DCP was so 'directly pertinent to the application for consent before the Council', it was 'entitled to significant weight in the decision making process'.

In the determination of development application 2016/510, provisions of the BLEP, as well as provisions in the DCP, particularly those relating to building envelopes, overlooking and privacy, and solar access, need to be genuinely considered, and should be fundamental to the determination process.

The numerous failures to comply with the provisions of the DCP (and the BLEP) give rise to the very impacts that these controls are designed to mitigate. Indeed in circumstances where the provisions of the DCP have been tailored to address the Property (cls 4.5.3 of the DCP) the failure to comply with both the BLEP and DCP controls strongly suggests that the DA has not had sufficient regard to these controls and should be refused.

### E. Planning principles

A number of planning principles have been developed by the Land and Environment Court to guide the exercise of discretion on the assessment of development.

The SEE makes reference to *Tenacity Consulting v Warringah (2004)* NSWLEC 140 (*Tenacity*) the planning principle with respect to view loss.

Views are a significant consideration in assessing the proposed development. The DCP contains controls relevant to view sharing or at least the reasonable protection of views. *Tenacity* established a four-step consideration to determine how views are to be shared and whether view loss is reasonable. The four steps were outlined and considered in Ardill Paynes' letter of 19 October 2016 and the conclusion was made that only partial views across the side boundary would be impacted and therefore the view loss would be 'negligible to minor'. However, the proposed development removes *all* but the most oblique views from the windows on the northern wall of their dwelling, both on the ground floor and the first floor (their duplex does not have any southern windows).

The fourth consideration in *Tenacity* relates to reasonableness and states that '*where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable*'. The proposal does not comply with the setback controls created by the DCP with the result that sunlight, ventilation, privacy and view loss are all exacerbated. The loss of view from all windows on the northern wall is unreasonable.

Other planning principles are relevant, but need not be extensively detailed in this submission.

1. In *Davies v Penrith City Council* ([2013] NSWLEC 1141) Moore SC (as he then was) establish criteria for assessing the impact on neighbouring properties. The principle requires a consideration of the impact on the neighbouring property, whether the impact arises out of poor design and whether the proposal complies planning controls.
2. In *Meriton v Sydney City Council* ([2004] NSWLEC 313), on the issue of privacy, the principle is that privacy can be achieved by separation between buildings (and particularly windows), offsetting windows - and the overlooking of neighbours that arises out of poor design is "not acceptable".
3. In *The Benevolent Society v Waverley Council* ([2010] NSWLEC 1082) Moore SC (as he then was) establish criteria for assessing the adequacy of solar access. The Senior Commissioner considered that the ease with which sunlight access can be protected is inversely proportional to the density of development: low density gives rise to a reasonable expectation that the dwelling and some of its open space will retain existing sunlight. Irrespective of that consideration, overshadowing arising out of poor design is not acceptable.

### F. Conclusion

It is a matter for Council to consider and give weight to the design of the development and whether the impacts on the built and natural environment, having regard to that design, are acceptable.

This submission has identified where as a matter of law Council cannot grant consent and as a matter of merit Council should not grant consent.

The DA proposes a big building generously proportioned and providing extensive amenity to the occupants: three-car garage; porch, foyer and mud room; bar, rumpus room and indoor pool; lift, voids and a cellar; upstairs bedrooms with a generous ensuite and large study (and even separate spaces for shoes).

In circumstances where the built form could have been reduced, that choice has not been made. For example the pool could have been placed "outdoors", or the pool could be constructed on the southern side of the building, the "void above" deleted and a setback created on the boundary (the current design in effect creates a large indoor water feature).

Our clients expect that development will occur on the Property. However that development should be in accordance with the controls that apply and that work towards satisfying the objectives of the zone. In this respect, comparing our clients building with the proposed building is not a reasonable comparison. Our clients' building provides 2 separate dwellings (adding to the variety of housing types in the environment) with minimal impact on the environment (noting our clients occupy the last site in the Lane but one).

The overwhelming impression created by the design of the development in the DA is that it maximises the benefit of the building and the amenity of its occupants to the detriment of the wider environment and particularly our clients. The failure to comply with the BLEP, the DCP and observe the observations of Commissioners of the Court as expressed in the planning principles leads to the conclusion that the design creates unacceptable and avoidable impacts on our clients and the wider environment.

The effects of the proposed development on our clients' views and solar access and privacy combine to create an unacceptable impact on the amenity of our clients' property. If the proposed development is granted consent, it will set an undesirable precedent relating to the way that Rayner Lane and the Lennox Head area should be developed. Council should not approve the development as it does not comply with the relevant planning instrument and development controls and has unreasonable impacts on our clients' amenity.

Yours faithfully



**Michael Young**  
Direct Line: 02 6663 5560  
michael@my-lawyers.com.au



03 October 2016

Craig Jones and Rebecca Winters-Jones  
1/2 Rayner Lane  
Lennox Head, NSW, 2478

Mr Vince Hunt  
Ballina Shire Council  
PO Box 450  
Ballina, NSW, 2478

**RE: DA No: DA 2016/510**  
**Applicant: Aadrill Payne & Partners**  
**Property: Lot 43 Sec: 1 DP: 11687, 3 Rayner Lane LENNOX HEAD**  
**Proposal: The demolition of an existing dwelling/garage, construction of a new two story dwelling and swimming pool**

Dear Sir

We are the owners and occupiers of Unit 1, 2 Rayner Lane Lennox Head.

We object to the encroachment on the Southern boundary proposed in the above mentioned development application. The proposed encroachment of 31% of the Southern boundary has significant impacts to the solar access of our living areas and significantly impacts the views of our property 2 Rayner Lane, Lennox Head.

Our dwelling is a duplex that was constructed in 2008 and is the Northern dwelling of the duplex. Our southern wall has no windows as it is the adjoining wall to the Southern dwelling. The proposed development at 3 Rayner Lane, removes all views from all of our windows on the Northern wall of our dwelling on both the ground floor and the first floor (see photographs attached). **This is an unreasonable impact.**

The ground floor of our dwelling has two bedrooms, a living area and a patio, that will have all solar access between 9am and 3pm removed by the proposed development as modelled by the applicant and demonstrated in their submission (see photographs attached of existing sunlight). **This is an unreasonable impact.** We are also concerned about potential loss of solar access on the first floor level and back yard.

The proposed development does not comply with the *Ballina Shire Development Control Plan 2012 Chapter 4 – Residential and Tourist Development* and the non-compliance directly results in the impacts stated above. We have specific objections to the proposal under Part 3, Section 3.1.3, Element C - Building Envelopes, Element I – Overlooking and Privacy and Element J – Solar Access.

*Ballina Shire Development Control Plan 2012 Chapter 4, Section 3.1.1, Element C – Building Envelopes* states:

**Objectives**

- i. **Ensure buildings are set back progressively from the side and rear boundaries as building height increases so that buildings do not unduly affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy, or unreasonably obstructing views;**

- ii. **Ensure that the occupants of residential accommodation have the opportunity to enjoy the optimum use of winter sunlight;**
- iii. **Enhance opportunities for solar access to both the development site and adjoining properties;**
- iv. *Achieve varied and interesting street scapes, good orientation of residential developments with regard to sun, shade, wind and neighbouring development, and effective use of allotments to create useable private open space and courtyards;*
- v. **Ensure that buildings are compatible with the bulk, scale and character of the locality; and**
- vi. **Minimise adverse impacts on the existing or future amenity of adjoining properties and the scenic or landscape quality of the locality.**

**Controls**

- i. *Residential accommodation (optional for secondary dwellings) and tourist and visitor accommodation in Zone R2 Low Density Residential and Zone R3 Medium Density Residential must be contained within a building envelope measured as follows:*
  - **below a plane measured over the land at 45 degrees from a point 1.8 metres above the side and rear boundaries,**
  - *where the subject site has a frontage to a secondary street, below a plane measured over the land at 45 degrees from a point 1.8m above a parallel line measured 2.0m inside the secondary street boundary,*
  - *where the subject site has a frontage to a public reserve, below a plane measured over the land at 45 degrees from a point 1.8m above the boundary to the public reserve, and*
  - **below a plane measured 8.5 metres above ground level.**
- ii. *The external walls of a residential accommodation or tourist and visitor accommodation must be setback a minimum of 900mm from the side and rear boundaries of the site (excluding internal strata title boundaries), subject to consideration of impact on privacy, private open space and solar access to adjoining properties; and*
- iii. *For dual occupancies, semi-detached dwellings, attached dwellings and multi dwelling housing developments and any residential accommodation or tourist and visitor accommodation that share a common wall, the building height plane as applied from side and rear boundaries of the site (excluding internal strata title boundaries), secondary frontages and public reserves applies to those parts of the development which interface with adjoining properties and public land.*
- iv. *A third storey in the form of a loft only is permitted within residential development subject to a 8.5 metre maximum building height subject to compliance with the following:*
  - (a) *No more than two rooms (for the purposes of a bedroom and/or study) and a bathroom plus an internal link to the storey below are to be contained within the loft space; and*
  - (b) *Design must ensure that the loft does not have the external appearance of a storey.*
  - (c) *The maximum roof pitch is not to exceed 35 degrees; and*
  - (d) *Compliance with building envelope controls.*

**Variations**

- i. The following variations to the setbacks nominated by the building envelope are permitted:
  - Eaves and gutters – up to a maximum of 700mm (note: minimum setback requirements provided by the Building Code of Australia must be complied with i.e. 450mm to the outside of fascia),
  - Climate control elements - which are of a minor scale and an open character, and that do not affect compliance with the above design objectives, and
  - Encroachments are permitted along the **northern and eastern** elevations of the wall length provided that:
    - the encroachment is for not more than 40% of the wall length of the elevation of the building;
    - the encroachment does not exceed 6.5 metres in height measured from the wall/eave junction;
    - the encroachment is at least 1200mm from the side or rear boundary; and
    - an area of private open space meeting the requirements indicated in G, Element – Landscaping and Open Space is provided along the same elevation as the encroachment.

The proposed development **does not comply** with these Objectives or Controls or allowed Variations. Whilst variations are permitted under the Plan, these are specific to the Northern and Eastern boundaries, and the Plan explicitly notes that “*Encroachments to the side or rear boundary building envelopes will generally not be supported along the southern and western elevations. This is because these elevations have the greatest capacity to overshadow adjoining properties, including existing or future private open space required to meet the provisions of this DCP.*” This note within the Development Control Plan is central to our objection to the southern encroachment being proposed in the development application.

The Development Application concludes on page 28 of the *Development Application & Statement of Environmental Effect* by Adrill Payne & Partners that:

*“the proposal will not result in a significant reduction in the overshadowing of the property to the south to that of the building approved under DA 2010/538.”*

Whilst this may be a true statement, it has no relevance to this current application that is being assessed under the *Ballina Shire Development Control Plan 2012*. The reference point of a previously approved development under a superseded Development Control Plan cannot be used as a justification for the **significant impacts** of this current application.

It is also worth noting that DA 2010/538 approval lapsed on 24 June 2015 and assessment of any development applications is required to be under the *Ballina Shire Development Control Plan 2012*.

*Ballina Shire Development Control Plan 2012 Chapter 4, Section 3.1.1, Element i – Overlooking and Privacy:*

**Objectives**

- a. Ensure buildings do not unduly affect existing or future development on adjoining properties by impinging on privacy or obstructing views; and
- b. Provide visual privacy for internal and external spaces;

**Controls**

- i. *A window must have a privacy screen if:*
  - *it is a window in a habitable room, other than a bedroom, and*
  - *the wall in which the window is located has a setback of less than 3 metres from a side or rear boundary, and*
  - *the window has a sill height of less than 1.5 metres.*
- ii. *A balcony, deck, patio, pergola, terrace or verandah must have a privacy screen if it:*
  - *has a setback of less than 3 metres from a side or rear boundary, and*
  - *has a floor area of more than 3 square metres.*
- iii. *For residential accommodation and tourist and visitor accommodation involving multiple dwellings on the same site, direct views between habitable rooms, other than bedrooms, shall be screened where:*
  - *Ground and first floor windows are within a 9 metre radius from any part of the window of an adjacent dwelling on the same site, and*
  - *Other floor windows are within a 12 metre radius of an adjacent dwelling on the same site, and*
  - *Direct views from habitable rooms, excluding bedrooms, of dwellings into the principal area of private open space of other dwellings on the same site shall be screened or obscured where they are within a 12 metre radius.*
- iv. *Details of privacy screening required in (i)-(iii) must be submitted with the development application and may consist of:*
  - *Screening that has 25% openings (maximum), is permanently fixed and is constructed of durable materials, or*
  - *A 1.8 metre high visually impervious fence or wall between a ground-level balcony, deck, patio, pergola, terrace, verandah or window where the floor level is not more than 1 metre above ground level (existing), or*
  - *Landscape screening by using existing dense vegetation or new planting that can achieve a 75% screening effectiveness within three years (without affecting solar access or views).*
  - *Fixed opaque glazing in any part of a window below 1.5 m above floor level.*

Our objection under this Element is the large window in the stairwell on the first floor on the Southern wall. This window will look directly into the bathroom of bedroom 1 and bedroom 2 on the first floor of our dwelling. It is not possible to tell from the development application if this window is clear, opaque or screened and hence the development application does not comply with the provisions in the Controls of Element I (iv), whereby the details of the privacy screening must be submitted with the development application. Given the stairwell is not classified as a habitable room, it may not be required to be screened, however as it directly impinges on our privacy, we request this window be opaque.

This Element also outlines the objective to “Ensure buildings do not unduly affect existing or future development on adjoining properties by impinging on privacy or obstructing views”.

which as outlined above, the views from our dwelling are impinged on and obstructed by the proposed encroachment.

*Ballina Shire Development Control Plan 2012 Chapter 4, Section 3.1.1, Element J – Solar Access:*

*Objectives*

- a) *Ensure new dwellings have adequate direct sunlight to living areas (living rooms, lounge rooms, kitchens, dining rooms and the like) and private open space; and*
- b) *Ensure developments do not significantly overshadow living areas and the private open space of adjacent dwellings and areas of foreshore open space.*

**Controls – Dual Occupancies, Semi-attached Dwellings, Attached Dwellings, Multi Dwelling Housing, Residential Flat Buildings and Tourist and Visitor Accommodation**

- i. *Dwellings are to be orientated with the main indoor and outdoor living spaces and major window areas facing towards the north and east;*
- ii. *The windows of living areas of dwellings and private open space facing north, north east or north west must receive at least three hours of direct sunlight between 9.00am and 3.00pm (Australian Eastern Standard Time) on 21 June (Winter Solstice);*
- iii. *The solar access requirements in (i) and (ii) are not required for development comprising only backpackers accommodation, bed and breakfast accommodation, farm stay accommodation or hotel or motel accommodation.*
- iv. *New buildings must maintain at least three hours of direct sunlight to the windows of living areas that face north, north east or north west for existing adjacent dwellings and their areas of private open space between 9.00am and 3.00pm (Australian Eastern Standard Time) on 21 June (Winter Solstice);*
- v. *Where existing overshadowing by buildings and fences does not provide the required amount of direct sunlight to existing adjacent dwellings and their areas of private open space as required in (ii), new buildings must not result in an unreasonable reduction of existing direct sunlight to adjoining dwellings;*
- vi. *Buildings are to be designed, wherever practicable, to include a north or west facing roof where a solar hot water system or collector can be installed*
- vii. *New buildings must not result in overshadowing of beaches or adjoining public foreshore open space before 3.00pm (Australian Eastern Standard Time) on 21 June (Winter Solstice) or 6.30pm (Australian Eastern Daylight Saving Time) on 21 December (Summer Solstice).*

As outlined in the Solar Study (Appendix C, Sheet DA-04-02) of the development application, the proposed development completely shadows the two bedrooms, living area and patio on the ground level of our dwelling and provides no natural sunlight to the ground level of the dwelling. We are also concerned about potential loss of sunlight on the first floor, as we are unable to determine from the various diagrams provided in the development application if shadowing will occur. Some of the diagrams appear to show shadowing.

Given it is a requirement for new dwellings to have at least three hours per day of direct sunlight between 9:00am and 3:00pm on the Winter Solstice it is unreasonable for a new dwelling subject to that requirement to create impact that completely removes solar access to an existing dwelling. Attached are photographs taken on 28 Sept that shows natural sunlight that will be lost in the living areas of the ground floor of our dwelling.

*Ballina Shire Development Control Plan 2012 Chapter 4, Section 3.1.1, Element J – Solar Access specifically Notes:*

*Where overshadowing is likely to occur, the following measures may be required to reduce potential impacts:*

- *the building re-sited or setbacks increased,*
- *heights reduced, and*
- *amendment of roof designs.*

The development application outlines that overshadowing is not only "likely to occur", it is definitely going to occur and ask that the provisions of this note be implemented.

Whilst we knew when we purchased Unit 1, 2 Rayner Lane that there was potential for development of 3 Rayner Lane, we trusted that the local Development Control Plan would manage the potential impacts of the development. As the development proposal DA 2016/510 does not comply with the provisions of the Development Control Plan, the impacts to our property from the proposed development are well beyond reasonable given that:

- a. it completely removes **ALL** views from our Northern windows on both the ground floor and first floor (bearing in mind we do not have any southern windows due to the nature of the duplex construction) and;
- b. completely removes **ALL** natural sunlight from the ground floor living areas.
- c. Creates privacy issues

The approval of DA2016/510 will have direct impacts on the amenity of our property and will adversely impact value.

We ask that our objection be reviewed favourably and that DA2016/510 not be approved.

We welcome an inspection of our dwelling to assess the extent of the impacts.

Regards,

Craig Jones

Rebecca Winters-Jones



Ground floor living room showing natural sunlight that will be lost and the loss of northern view resulting from the proposed encroachment.



Ground floor bedroom 3 showing natural sunlight that will be lost resulting from the proposed encroachment.



Ground floor bedroom 4 showing natural sunlight that will be lost resulting from the proposed encroachment.



Northern wall and patio showing natural sunlight that will be lost resulting from the proposed encroachment.



**Northern wall and patio showing natural sunlight that will be lost resulting from the proposed encroachment.**



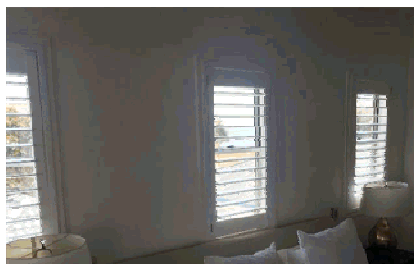
**First floor living area most Eastern window showing the views that will be completely lost resulting from the proposed encroachment.**



**First floor living area showing the views that will be completely lost resulting from the proposed encroachment.**



**First floor bedroom 2 showing views that will be completely lost resulting from the proposed encroachment**



**First floor bedroom 1 showing views that will be completely lost resulting from the proposed encroachment**



**Disclosure:**

We have not made any political donations or gifts to any local Councillor or Council employee any prior period, including two years prior to the submission date of this objection.

25 November 2016

Craig Jones and Rebecca Winters-Jones  
1/2 Rayner Lane  
Lennox Head, NSW, 2478

Mr Vince Hunt  
Ballina Shire Council  
PO Box 450  
Ballina, NSW, 2478

**RE: DA No: DA 2016/510**  
**Applicant: Ardill Payne & Partners**  
**Property: Lot 43 Sec: 1 DP: 11687, 3 Rayner Lane LENNOX HEAD**  
**Proposal: The demolition of an existing dwelling/garage, construction of a new two story dwelling and swimming pool**

Dear Sir,

Further to our objection letter dated 03 October 2016, we have obtained further professional advice with regard to DA 2016/510, to support our position on the matter.

I draw your attention to the letters from McCartney Young Lawyers and from our registered Architect George Korban submitted separately. These letters are self-explanatory and reinforce our previously stated concerns about the proposed development.

Of grave concern to us is the potential inaccuracies in the solar study included in the Development Application. Our Architect's review outlines a much more substantial loss of direct sunlight than that represented in the Development Application. Our Architects assessment shows loss of direct sunlight to both levels of our dwelling, which is clearly unreasonable and detrimental to livability standards.

We are also extremely disappointed in the outrageous assertion made by the applicant in their letter dated 19 October 2016 that the impact on view loss is "negligible to minor". Whilst this assertion may reflect the wishes of the developer, it certainly does not reflect our reality that the loss of views in their entirety would be directly associated with the lack of compliance to the requirements of the Ballina Councils Local Environmental Plan and Development Control Plan. The developers assertion is both unreasonable and miss leading.

Once again we appeal to Council to not approve DA 2016/510 on the basis of it not complying with the council planning requirements, and as a direct result of this non compliance having significant and unreasonable impact on us as neighbouring landowners.

Regards,



Craig Jones



Rebecca Winters-Jones

# ARDILL PAYNE & PARTNERS

Civil & Structural Engineers – Project Managers – Town Planners – Surveyors



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## DEVELOPMENT APPLICATION & STATEMENT OF ENVIRONMENTAL EFFECTS

Submission to Ballina Shire Council

To undertake the demolition/removal of an existing dwelling house and garage and the construction of a double storey dwelling house and a swimming pool

Lot 43 Sec 1 DP 11687  
3 Rayner Lane, Lennox Head

for:  
Julie and Don Priest

September 2016

Document Control Sheet

Filename:	8231 - DA.SEE for dwelling house (Sept 2016)
Job No.:	8231
Job Captain:	Paul Snellgrove
Author:	Paul Snellgrove
Client:	Julie and Don Priest
File/Pathname:	

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**1 Introduction**

*This section introduces the proposal and provides a general overview of the project. Details of public authority and other consultations that have been undertaken in conjunction with the preparation of this development application are also provided.*

**1.1 Background**

Ardill Payne and Partners (APP) has been engaged by Julie and Don Priest to provide town planning services in the preparation and lodgement of a development application and statement of environmental effects with Ballina Shire Council.

Development consent is sought for the demolition/removal of an existing dwelling house and detached garage and the subsequent construction of a double storey dwelling and a swimming pool on land described as Lot 43 Sec 1 DP 11687, No. 3 Rayner Lane, Lennox Head.

**1.2 Structure and Scope of Report**

- |                  |   |
|------------------|---|
| <b>Section 2</b> | Describes the subject land and its local environmental context.                   |
| <b>Section 3</b> | Describes the development proposal in detail.                                     |
| <b>Section 4</b> | Reviews the key environmental interactions and proposed management measures.      |
| <b>Section 5</b> | Reviews the statutory and planning policy provisions applying to the development. |
| <b>Section 6</b> | Provides a summary and conclusions.   |

A number of appendices form part of this statement of environmental effects being:

- |                   |  |
|-------------------|--|
| <b>Appendix A</b> | Aerial photograph of subject and adjoining land      |
| <b>Appendix B</b> | Copy of deposited plan and contour and detail survey |
| <b>Appendix C</b> | Architectural plans                                  |

**Appendix D** BASIX certificate

**1.3 Overview of Statutory Framework**

Ballina Shire Council is the consent authority for the development application as defined in Clause 4(1) and pursuant to Section 80 of the *EP & A Act 1979*.

The proposed development does not comprise integrated development for the purposes of Section 91 of the *EP & A Act 1979* and therefore no integrated referrals are required.

**1.4 DA History**

A search of Council's DAs Online has identified the following application that has been approved on the subject land:

010.2010.0000538.001  
Development Applications - Demolition, erection of two storey Strata Title Duplex, basement carport Demolition of existing dwelling and construction of a new two storey Strata Title Duplex with basement car parking and in-ground pool as per plans prepared by MSP Architects Pty Ltd, Project No. 2069 Drawing No's, EX-01-EX 02 and SK-01 - SK-25, dated December 2009  
Lodged: 29/03/2010 / Approved: 24/06/2010  
Address: 3 Rayner Lane LENNOX HEAD NSW 2478  
Applicant: Cassidine Holdings Pty Ltd  
Officer: Vince Hunt

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2 **The Site and its Context**

*This section describes the subject land and identifies the geographical context of the site and its relationship to the surrounding locality.*

**2.1 Location and Property Description**

The subject land is described in real property terms as Lot 43 Sec 1 DP 11687 and is commonly known as No. 3 Rayner Lane, Lennox Head.

The subject land is generally rectangular in shape with the following dimensions and area:

- 15.095m western boundary (to Rayner Lane)
- 72.159m northern boundary (to Lot 42 Sec 1 DP 11687)
- 15.339m eastern boundary (to road reserve)
- 69.886m southern boundary (to Lot 44 Sec 1 DP 11687)
- 1070m<sup>2</sup> area

An aerial photograph of the subject and adjoining land is provided at **Appendix A** with a copy of the deposited plan and a contour and detail survey being provided at **Appendix B**.

As shown below and on the detail survey at **Appendix B**, existing on the land is a single storey weatherboard and F/C roof dwelling house, a single storey weatherboard and tile roof garage and a number of trees/shrubs (domestic type landscaping).





View to the east from Rayner Lane (Extract: Google Maps)

#### 2.1.1 Contamination

The land has a long-standing existing use for residential purposes (dwelling house), which is not a use that would have led to contamination of the site or the site soils. Due to the age of the buildings, they may contain asbestos.

#### 2.1.2 Topography

The subject land is relatively flat and level, with a fall generally down to the east (to the dunes). As shown on the contour and detail survey at **Appendix B**, the land has levels in the order of 5.4-3.1m AHD.

#### 2.1.3 Coastal Hazards

The subject land is mapped as being subject to coastal hazards/processes (namely inundation and erosion) and is protected by the revetment/sea wall to the east.

## 2.2 Other Matters

The subject land is not:

- mapped on the Ballina LGA Bush Fire Prone Land Map (2012) as being bush fire prone
- mapped as being subject to the 1 in 100 year flood event
- mapped as containing acid sulfate soils
- identified as including or comprising critical habitat as prescribed in the *Threatened Species Conservation Act 1995* or Part 7A of the *Fisheries Management Act 1994*
- listed in Schedule 5 of the Ballina LEP 2012 as being or containing an item of general or archaeological heritage
- affected by any road widening or realignment proposal under Division 2 of Part 3 of the *Roads Act 1993*, any environmental planning instrument or any resolution of the Council
- mapped as being within the 2020 ANEF for the Ballina Airport
- mapped as containing or adjoining any SEPP 14 or SEPP 26 mapped lands

## 2.3 Adjoining and Surrounding Land Uses

The land is situated within a built urban environment which is characterised by mix of commercial uses (Lennox CBD) to the west and residential uses to the north and south. The land interfaces with the dunes and beach to the east. The adjacent land uses are evident on the aerial photograph provided at **Appendix A**.

## 2.4 Infrastructure Provision

The subject land and existing dwelling are serviced with reticulated water, sewerage, electricity and telecommunications services, with the location of such being shown on the detail survey at **Appendix B**.

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### 3 Description of Proposal

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*This section describes the proposed development and identifies specific environmental and development objectives that will be adopted in conjunction with the project.*

#### 3.1 Proposed Development

The proposed development involves the demolition/removal of the existing buildings/structures and the subsequent construction of a double storey dwelling house and swimming pool with details of such being provided below:

- ground floor – triple garage, Bedrooms 3 and 4, bathroom, laundry, powder room, rumpus/bar, in-ground in-door swimming pool, entrance foyer, porch and deck
- first floor – Bedroom 1 (ensuite and walk-in robe), Bedroom 2 (ensuite), study, bathroom, lounge, dining/kitchen and deck
- constructed of rendered blockwork/brickwork to the ground and first floor with a concrete roof and a concrete slab ground floor
- the architectural roof feature (sky-light) is constructed of weathertex cladding with a metal roof
- ground floor areas of:
  - living areas – 172.39m<sup>2</sup>
  - enclosed swimming pool – 81.87m<sup>2</sup>
  - garage – 66.83m<sup>2</sup>
  - rear deck – 38.16m<sup>2</sup>
  - porch – 6.60m<sup>2</sup>
  - TOTAL – 365.85m<sup>2</sup>
- first floor areas of:
  - living areas – 278.95m<sup>2</sup>
  - BBQ deck – 33.92m<sup>2</sup>
  - pool void – 33.31m<sup>2</sup>
  - deck – 17.17m<sup>2</sup>
  - TOTAL – 363.34m<sup>2</sup>

The proposed dwelling house has a:

- footprint of 360m<sup>2</sup>
- gross floor area of 509m<sup>2</sup>

- site coverage of 33%
- FSR of 0.47:1

The house has been designed and situated so as retain the existing pine tree in the front yard. This pine tree is to be protected during site works. As shown on the detail survey at **Appendix B**, there are 3 x Tuckeroos and 8 x Frangipanis along the northern boundary which may have to be removed (and at the least trimmed) to facilitate construction of the proposed dwelling.

Copies of the architectural plans of the proposed dwelling are provided at **Appendix C** with a BASIX certificate being provided at **Appendix D**.

### **3.2 Site Access, Traffic Generation and Local Road Network**

The subject land has frontage to Rayner Lane which is a constructed urban residential lane with a bitumen seal for the full property frontage.

Existing vehicular access to the property (detached double garage) is via Rayner Lane.

The local road network has sufficient capacity to safely and efficiently service the traffic movements that will be generated by the proposed dwelling (no net increase in traffic generated at/by the site as the residential use and density is not changing).

### **3.3 Site Services**

The subject land is serviced with reticulated water, sewerage, stormwater, electricity and telecommunication services, with the location of such being provided on the detail survey at **Appendix B**. The proposed new dwelling will be connected to such services.

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**4 Statement of Environmental Effects**

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*Section 79C of the EP & A Act 1979 requires the consideration of likely impacts of the development on the natural and man-made environment of the locality. This report contains information and assessment of the various aspects of the proposal and its locality, as well as measures that will be implemented to minimise any impacts on the environment.*

**4.1 Water Quality**

There will be an increase in impervious areas/surfaces on the subject land as a result of the proposed development with roof-water being captured in a water tank(s) to satisfy BASIX requirements.

As per Section 2.2.4 of Council's Stormwater Management Standards for Development, stormwater treatment is not required for "runoff from single residential dwellings, dual occupancies and secondary dwellings."

As per Section 2.3.2 of Council's Stormwater Standards, attenuation of post development stormwater discharge is not required for "Brownfield (Infill) Development only" involving "Single residential dwellings, dual occupancies and secondary dwellings."

**4.2 Traffic and Parking**

Vehicular access to the proposed dwelling will be via Rayner Lane with a new driveway to be constructed to service the new triple garage.

The proposal will not result in any net increase in traffic movements to/from the subject land. The RTA's Guide to Traffic Generating Development provides the following traffic generation rates that are applicable to the proposed development:

**3.3.1 Dwelling houses.**

**Rates.**

Daily vehicle trips = 9.0 per dwelling  
Weekday peak hour vehicle trips = 0.85 per dwelling.

Based on the above, the existing dwelling already generates some 9 movements/day and the proposed new dwelling will generate some 9-10 movements/day.

The local road network has the capacity to accommodate the vehicle movements that will be generated by the proposed development.

The existing dwelling has a detached double garage that is accessed via Rayner Lane which will be demolished. The proposed new dwelling has a triple garage that will be accessed via Rayner Lane, with sufficient area being provided in the driveway in front of the garage for the stack parking of additional cars.

**4.3 Waste**

Waste services are provided to the existing dwelling and will be provided to the new dwelling via Council's general, green and recycling kerb-side waste collection services which are currently collected in Rayner Lane.

Waste generated during the site and construction works will be the responsibility of the principle building contractor. Any construction waste will be managed on site by the principle contractor and will be appropriately disposed of in accordance with best practice and Council's requirements.

As per the Note at the bottom of Table 2.2 of Section 3.7 of Chapter 2 of the DCP 2012, demolition and construction waste details will be submitted with the Construction Certificate Application by the builder.

The daily occupation of the dwelling will generate standard domestic waste streams which are able to be practically and efficiently managed by Council's kerb-side waste collection services.

The following comprises the Site Waste Minimisation and Management Plan that is required in accordance with Section 3.7 of Chapter 2 of the DCP 2012.

Stockpile	There is no stockpiling proposed or required in respect of the management of the type of waste that will be generated by the proposed dwelling.
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	The dwelling will have a green waste bin which will be collected weekly by Council.
	There is no scope for any re-use of any waste on the site.
Site waste receptacles	Sufficient space exists on the lot for the placement of 3 x wheelie-bins.
	Sorting of waste will be undertaken by residents with waste being placed into the appropriate bins for collection.
	There is no waste that is able to be re-used on the site.
Waste cupboard	Sufficient area exists within the kitchen for a waste cupboard.
Garbage and recycling area/room	Sufficient area exists in the garage or in the yard area of the dwelling for the storage of Council's standard wheelie-bins.
Composting	There is no scope for a composting space on the site.
Garbage chute	Not required – building only 2 storey.
Special waste	No special waste will be generated at/by the site.
Collection point	Garbage bins will be placed by the residents on the Rayner Lane road verge in front of the site on collection days. There is sufficient area in front of the subject land (clear of proposed driveway) for the placement of the bins.
Waste management plans	Based on the above, it is submitted that a detailed operational waste management plan is not required as the dwelling will generate the same amounts of domestic waste as other dwellings in the Shire.
On-going management	The on-going waste management will be the responsibility of the residents, with disposal being via Council's kerb-side collection system.

#### 4.4 Contamination

The subject land has long been used for residential purposes (dwelling house), which is not a use that would have potentially contaminated the site.

There will not be any material change of use of the land resulting from the works. The site has and will continue to be used for residential purposes. Due to the age of the existing dwelling house, it may contain asbestos which would have to be disposed of in strict compliance with the relevant Council and WorkCover requirements. This will be a matter for the demolition/house removal contractor.

Under the circumstances, it is submitted that there is no requirement for any further site contamination investigation or assessment.

#### 4.5 Social and Economic Impacts

The proposed development is not considered to be such that will have adverse impacts upon the social fabric of the locality.

The proposed development is consistent with the strategic and statutory planning provisions for the site and is compatible with the adjoining and adjacent buildings in terms of use, density, bulk, scale, height, external appearance etc.

#### 4.6 Coastal Hazards

The subject land is identified as being subject to coastal hazards, however is afforded protection by the existing revetment wall to the east.

In order to minimise the potential for damage to the proposed dwelling posed by coastal hazards and as required by Section 3.1.4 of Chapter 2 of the Ballina DCP 2012, the building has been designed as follows:

- habitable floor level of 5.9m AHD, being the required 500mm above the centre-line of Rayner Lane
- foreshore building line of 40.43m at northern and 41.95m at southern boundary
- foundations to comprise piling supporting a suspended floor with a minimum clearance of 0.3m between ground level (existing) and the underside of the floor system and designed to support the building for the condition of removal of soil to RL 2.0m AHD including any lateral loadings imposed by soil mass failure to this level
- the piling will be sufficient to fully support the proposed building and will be designed and certified by a suitably qualified structural engineer
- the property owner will maintain and repair any damage to the revetment wall protecting the subject land caused during the building/construction process



- any future boundary fence eastward of the eastern building line will be a maximum of 1m high above ground level and will be of an open system construction

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**5 Statutory and Policy Planning**

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*This section of the report identifies and addresses the applicable environmental planning instruments (EPIs) and policy planning documents that must be considered by the consent authority in the consideration of this application.*

**5.1 Environmental Planning Instruments (EPIs)**

This section identifies and provides comment on the EPIs and *EP & A Act 1979* provisions that are of relevance to the proposed development.

**5.1.1 Ballina Local Environmental Plan 2012**

The Ballina LEP 2012 came into effect on the 4<sup>th</sup> February 2013. The subject land is identified on the BLEP mapping as follows:

- Coastal Hazard Areas Map – Sheet CHA\_005D – Hazard Area
- Height of Buildings Map – HOB\_005 – I – 8.5m maximum building height
- Lot Size Map – LSZ\_005D – S – 800m<sup>2</sup> minimum lot size
- Land Zoning Map – LZN\_005D – R3 – Medium Density Residential

The objectives of the R3 zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide development compatible with the character and amenity of the surrounding neighbourhood.*
- *To encourage housing and infrastructure that supports the aging population.*

- *To provide for development that meets the social and cultural needs of the community.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*

The proposal involves the demolition/removal of an existing dwelling house and the construction of a “**dwelling house**” which is defined in the dictionary to the BLEP as “..a building containing only one dwelling.”

Dwelling houses are permitted with consistent within, and are consistent with the objectives of the R3 zone.

Clause 2.7 provides that consent is required for demolition.

Clause 4.3 provides that the height of any building is not to exceed the height shown for the land on the Height of Buildings Map, being 8.5m maximum height.

The highest point of the building is approx. 9.7m when measured from the natural ground level to the highest point of the roof (toward the eastern end). The building has a height 8.148m when measured from the habitable floor level that is required to mitigate coastal hazards (per Table 4.10 of Section 4.5 of Chapter 4 of the BDCP).

The proposed roof has a height of RL 13.938m AHD which is lower than the highest point of the roof of the adjoining recently constructed building to the south which is RL 14.3m AHD.

Clause 4.3A provides that the maximum height of a building is to be measured from the minimum level AHD that is required to mitigate flooding, as shown on the Building Height Allowance Map. Notwithstanding that the subject land is not mapped as being subject to flooding and is not mapped on the Building Height Allowance Map, Section 4.5 of Chapter 4 of the DCP prescribes minimum floor levels to mitigate inundation from wave action and thus it is submitted that it would be reasonable for a comparable relaxation provision to be applied.

If that was the case, the maximum permitted height would be 14.29m AHD which is the same as the highest point of the roof of the adjoining building to the south (being 14.3m AHD).

Clause 5.8 provides that development that includes an architectural roof feature that exceeds the height limit may be considered where the architectural roof feature:

- comprises a decorative element on the uppermost portion of the building
- is not an advertising structure
- does not include any floor space area
- is not capable of modification to include a floor space area
- will not result in significant overshadowing

It is submitted that the part of the roof structure that encroaches the height is for all intents and purposes an architectural roof feature (decorative element) that:

- is situated on the uppermost portion of the building
- is not an advertising structure
- does not include any floor space
- is not capable of modification to create floor space
- will not result in any overshadowing

Having regard to the above, it is submitted that the proposed height is therefore permitted pursuant to Clause 5.6 and that a Clause 4.6 variation is not required.

Clause 5.5 provides certain considerations for the development of land within the coastal zone. These heads of consideration are effectively the same as the considerations contained in Clause 8 of SEPP 71, with a detailed commentary on such being provided in **Section 5.1.3** of this report. Detailed commentary in respect of the impacts of coastal hazards are provided in **Section 4.6** of this report.

Clause 7.7 provides that consent must not be granted unless the consent authority is satisfied that all requisite public

infrastructure services are available or that adequate arrangements have been made to make them available when required.

The subject land is fully serviced with all required infrastructure services and the proposed new dwelling will be connected thereto.

**5.1.2 State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)**

SEPP 55 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. The Policy ensures that remediation is permissible development and is always carried out to a high standard. It specifies when consent is required for remediation and lists considerations that are relevant when rezoning land and determining development applications.

*The Managing Land Contamination, Planning Guidelines, SEPP 55 – Remediation of Land (1998)* provides that where the history of a site is relatively well documented and no existing or prior potential contaminating activities are evident, no further investigations are required.

Comments in respect of contamination are provided in Sections 2.1.1 and 4.4.

**5.1.3 State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)**

SEPP 71 applies to this proposal as the land is situated within the “coastal zone” (Clause 4). The proposed development is not a development to which Part 3 – Significant Coastal Development applies. The land is mapped as being a “sensitive coastal location” due to it being within 100m of the beach.

Clause 8 provides matters for consideration by a consent authority when it determines a development application to carry out development to which SEPP 71 applies. The following is a brief précis of these Clause 8 matters:

- the proposed development does not involve the clearing of any significant naturally occurring native vegetation
- the proposed development will not impair existing or future public access to the foreshore of any waterway or waterbody – there is expansive unimpeded public access to the beach via the coastal reserve and a road reserve to the east
- the proposed development will not have any significant adverse impacts upon flora and fauna or the scenic qualities of the locality and will not adversely impact upon the environment of any coastal foreshore
- the proposed development is consistent with the strategic planning and permissible development for/on the land
- the bulk, height, scale, external appearance etc of the proposed building is consistent with that of other adjacent buildings on the eastern side of Rayner Lane
- coastal hazard issues are addressed in **Section 4.6** of this report

**Clause 14 – Public Access Along Foreshore**

The proposed development will not impact public access to/along any part of the coastal foreshore.

**Clause 15 – Effluent Disposal**

A reticulated sewerage system exists in the locality. The subject land is and the proposed dwelling will be connected to such system.

**Clause 16 – Stormwater**

The proposed development will not result in the discharge of untreated stormwater from the site. Stormwater will be connected to the existing Council reticulated stormwater system.

## 5.2 Ballina Shire DCP 2012 (BSDCP)

The BSDCP 2012 came into effect on the 4<sup>th</sup> February 2013 and contains a number of provisions that are of relevance to the proposal, details of which are provided below.

The subject land is mapped on the DCP mapping as follows:

- Building Line Map – Sheet BL\_004\_020 – 6.0m lane setback + foreshore building line (see DCP Chapter 4, Section 4)
- Coastal Hazard Protection Map – Sheet CH\_001\_010 – Area A – Land adjacent to Seven Mile Beach (south of Byron Street)
- Dwelling Density Map – Sheet DD\_003\_020 – medium density – 1 dwelling/250m<sup>2</sup> of site area
- Mosquito Management Map – Sheet MM\_001\_080 – coastal plain & lowlands (below 10m contour) and area of high mosquito risk
- Natural Areas & Habitat Map – Sheet NH\_001\_090 – 50m Buffer – Natural Areas & Habitat
- Special Area Controls Map – Residential – Sheet SR\_003\_020 – Coastal Hazard Protection Area

### 5.2.1 Chapter 2 – General and Environmental Controls

#### ***Section 3.3 – Natural Areas and Habitat***

The subject land is mapped as being “50m buffer” with the mapped natural area/habitat being the coastal reserve and beach on the eastern side of the lot.

The building is setback behind the eastern building line and will not have any adverse impacts on this reserve, the dunes, the beach or any vegetation thereon and under the circumstances, there is no requirement for an ecological assessment.

As per Section 3.3.3(ii), there is no requirement for dwellings to demonstrate any net environmental benefit.

#### ***Section 3.4 – Potentially Contaminated Land***

Comments in respect of contamination are provided in **Sections 2.1.1** and **4.4** of this report.

***Section 3.6 – Mosquito Management***

The windows, external doors and other openings in the proposed dwelling will be fitted with effective insect screening.

***Section 3.7 – Waste Management***

Comments in respect of waste management are provided in **Section 4.3** of this report.

***Section 3.9 – Stormwater Management***

Comments in respect of stormwater management are provided in **Section 4.1** of this report.

***Section 3.10 – Sediment and Erosion Control***

Sediment and erosion controls will be implemented and maintained during construction and site works and will be the responsibility of the building contractor. Appropriate conditions of consent can be imposed to ensure that this occurs.

***Section 3.11 – Provision of Services***

Comments in respect of the provision of services are provided in **Sections 2.4** and **3.3** of this report.

***Section 3.14 – Coastal Hazards***

Comments in respect of coastal hazards are provided in **Section 4.6** of this report.

***Section 3.18 – Protection of Foreshore and Public Open Space Areas***

The subject land adjoins foreshore/public open space. Due to the building complying with the eastern building line, there will not be any significant overshadowing of or impacts on the coastal reserve. There will not be any overshadowing of any part of the beach. The proposal will not have any adverse impacts on public access to/from the coastal reserve or on the enjoyment and use of the reserve by any member of the public.

The bulk, scale, height, footprint, built form etc of the proposed dwelling is comparable to that of other recently constructed residential buildings on the eastern side of Rayner Lane.



Any impacts on the coastal reserve will be the same as those for all of the other dwellings along the eastern side of Rayner Lane.

**Section 3.19 – Car Parking and Access**

Comments in respect of such are provided in Section 4.2 of this report.

**5.2.2 Chapter 2a – Vegetation Management**

The house has been designed and situated so as to retain the existing pine tree in the front yard. This pine tree is to be protected during site works and retained.

As shown on the detail survey at **Appendix B**, there are 3 x Tuckeroos and 8 x Frangipanis along the northern boundary which may have to be removed (and at the least trimmed) to facilitate construction of the proposed dwelling. The following is an assessment in relation to the possible removal or trimming of these trees:

- The subject land is zoned R3 – Medium Density Residential and therefore Chapter 2a of DCP 2012 applies.
- The Tuckeroos appear to have a height of less than 6m.
- The Frangipanis appear to have a height of less than 3m

**Section 4.2 – Assessment of Development Applications**

**Section 4.1.2 – Urban Zones**

*a) whether the tree or other vegetation contributes to the aesthetic qualities of the locality and comprises an important component of the skyline;*

The trees make a minor contribution to the aesthetic quality of the site and do not comprise an important component of the locality or the skyline.

*b) whether the tree or other vegetation makes a significant contribution to the amenity and character of the locality;*

The trees are not considered to make a significant contribution to the amenity and character of the locality.

*c) whether the tree or other vegetation is important from a cultural and/or heritage perspective;*

The trees is situated in the yard of a private developed residential lot and are not considered important from a cultural or heritage perspective.

*d) whether the growth habit (crown or root) or mature size of the tree or other vegetation is undesirable in a given situation (e.g. under power lines, on top of or under retaining walls or banks, over sewer lines, close to roads or driveways etc.) such that it unreasonably interferes with infrastructure or sight distances;*

The trees are not known to be interfering with any infrastructure.

*e) whether the tree or other vegetation is causing damage to public or private utilities and services including kerb and guttering and the aesthetic value of the tree or other vegetation is not greater than the effect of damage caused by the tree;*

This is not known to be the case.

*f) whether the tree or other vegetation is interfering with, or may interfere with, the efficiency of a solar or communication appliance;*

This is not known to be the case.

*g) whether the tree or other vegetation is in an overcrowded situation where the overcrowding is detrimental to tree growth and the judicious removal of tree(s) will result in improved growth of other trees;*

The trees are not considered to be in an overcrowded situation.

- h) whether the species and/or growth form of the tree or other vegetation is ecologically significant in the local or regional context and its ability in providing habitat for native fauna; and*

The trees are not considered to be ecologically significant in the local or regional context and does not appear to be providing any habitat for native fauna.

- i) whether, based on supporting documentation submitted with the application, the tree or other vegetation is dying or diseased and its safe useful life expectancy is diminished.*

This is not considered to be the case.

The trees may be in conflict with the proposed dwelling and it is recommended that Council supports their trimming/removal (if required).

#### **5.2.3 Chapter 4 – Residential and Tourist Development**

Chapter 4 of DCP 2012 contains a number of controls that relate to residential development in urban areas. The following is an assessment against these applicable controls:

Pursuant to Section 79(C)(3A) of the *EP & A Act 1979*, Council is required to be flexible in applying the provisions of 'set standards' and allow reasonable alternate solutions that achieve the objects of those standards for dealing with that aspect of the development, viz

#### ***"79(C)(3A) Development control plans***

*If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:*

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards – is not to require more onerous standards with respect to that aspect of the development, and*
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards – is to be flexible in*

- applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and*
- (c) *may consider those provisions only in connection with the assessment of that development application."*

Where the proposed development does not comply with a 'set standard' contained in the DCP, this SEE has addressed the objectives of the standard and has justified the non-compliance on the basis that the proposal complies with the objectives.

### **Part 3 – General Controls**

#### **3.1 – General Controls applying to residential and tourist development**

##### **A. Element – Building Height**

Comments in respect of height are provided in **Section 5.1.1** of this report.

##### **B. Element – Floor Space Ratios**

There is no mapped FSR for the subject land under the DCP. The development has an FSR of 0.47:1 which is less than the maximum 0.6:1 FSR requirement under Clause 4.4 of the BLEP 2012.

##### **C. Element – Building Envelopes**

The following are the building envelope controls which are applicable to the proposed development:

- i. Residential accommodation (optional for secondary dwellings) and tourist and visitor accommodation in Zone R2 Low Density Residential and Zone R3 Medium Density Residential must be contained within a building envelope measured as follows:*
  - *below a plane measured over the land at 45° from a point 1.8m above the side and rear boundaries,*
  - *where the subject site has a frontage to a secondary street, below a plane measured over the land at 45° from a point 1.8m above a parallel line measured 2.0m inside the secondary street boundary,*
  - *where the subject site has a frontage to a public reserve, below a plane measured over the land at 45°*



- vi. *Minimise adverse impacts on the existing or future amenity of adjoining properties and the scenic or landscape quality of the locality.*

As can be seen from the elevations at **Appendix C**, the building is setback a minimum of 1000mm from the northern side boundary and a minimum of 1205mm from the southern side boundary which exceeds the required 900m setback.

Encroachments are expressly permitted along the northern and eastern elevations of the wall length provided that:

- *the encroachment is for not more than 40% of the wall length of the elevation of the building*
- *the encroachment does not exceed 6.5m in height measured from the wall/eave junction*
- *the encroachment is at least 1200mm from the side or rear boundary; and*
- *an area of private opens space meeting the requirements indicated in G. Element – Landscaping and Open Space is provided along the same elevation as the encroachment*

The proposed encroachments are considered reasonable based on the following:

- the bulk, height, scale and setbacks of the proposed building are comparable with a number of the other recently approved and constructed buildings on the eastern side of Rayner Lane
- the building height plane encroachment is exacerbated by the requirement for the building to comply with the minimum habitable floor level (to mitigate coastal hazards)
- there are articulations in the northern and southern walls of the building and the encroachments
- the northern encroachment is approx. 44% of the length of the northern lot boundary
- the southern encroachment is 31% of the length of the southern lot boundary

- the encroachment is a minimum of 1000mm and 1205mm from the northern and southern side boundary respectively
- the proposal will not result in any overshadowing of the property to the north and complies with Council's solar access provisions
- the proposal will not result in a significant reduction in the overshadowing of the property to the south to that of the building approved under DA 2010/538
- there is no private usable outdoor open space/courtyard area of the adjoining development to the south that will be impacted – the northern side of the adjoining dwelling to the south comprises a narrow pathway access up the side of the dwelling
- the proposal will not result in an unreasonable loss of privacy of the property to the north (the windows are high set and relatively small)
- the proposal achieves a varied and interesting streetscape, has appropriate orientation and complies with the landscaped open space requirements
- the proposal is compatible with and compliments the bulk and scale of surrounding developed residential allotments
- the proposal will not have any adverse impacts on the existing or future amenity of adjoining properties and the scenic or landscape quality of the locality
- on the first floor of the southern elevation, there is a window which is to the stairwell, a high-set window (1800mm sill height) to the living room, a small window with opaque louvres to the toilet and privacy screens to the deck, which will ensure that there is reduced potential for over-looking of the property to the south

The proposal is considered to achieve the above objectives of this control, and as such, it is respectfully requested that Council grants a variation to this control.

#### **D. Element – Articulation Zone**

A very high level of articulation has been provided to all elevations and the lane frontage of the dwellings. The building is setback behind and does not encroach the 6m building line to Rayner Lane. The dwelling has been designed so that it presents to the lane frontage and has an identifiable entrance/front door.

**E. Element – Building Lines**

The subject land has a mapped building line of 6.0m to Rayner Lane, with the building line being approx. 7m. The building also complies with the eastern building line required under Section 4.5 of Chapter 4.

There are no building line encroachments proposed.

**F. Element – Development Fronting Laneways**

The building is setback in excess of the required 6m from Rayner Lane.

**G. Element – Landscaping and Open Space**

In excess of 400m<sup>2</sup> of landscaped and pervious areas/surfaces have been provided being approx. 37% of the total site area.

The dwelling has a large eastern facing, ground level private open space area (which includes an eastern facing deck to the rumpus room) and which as dimension of approx. 27m x 15m and an area of approx. 400m<sup>2</sup>.

**H. Element – Vehicular Access and Parking**

As per Table 4.4, the proposal requires 2 on-site car parking spaces. The development provides a triple garage and thus satisfies the required 2 spaces/dwelling. Stacked spaces are also available in the driveway in front of the garage due to it being setback well in excess of the required 5.5m.

The garage doors are perpendicular to the lane and thus do not present to the street.

**I. Element – Overlooking and Privacy**

There are a number of windows in the first floor of the building, some of which comprise opaque glass and some of which will be provided with privacy screens. Details of all privacy screens will be provided with the Construction Certificate.



**J. Element – Solar Access**

The dwelling has been designed and oriented so as to maximise solar access. There is a good provision of north-facing windows with clerestory windows in the architectural roof feature. The pool faces the north and east and there is a ground and first floor deck which both face east.

**K. Element – Fences and Walls**

A 1.8m high masonry wall is proposed along the northern boundary. A 1.8m high masonry wall is proposed 1m east of the western boundary of the lot, with gates being proposed to the driveway.

600mm high batten screening is proposed over the masonry fence along the southern lot boundary.

There is no eastern fencing proposed under this application.

**L. Element – Roof Pitch**

The proposed dwelling has a flat roof with the architectural roof feature having a pitch of approx. 5°. The flat roof is integral to the architecture and design of the dwelling and is consistent with the roof form of other buildings on the eastern side of Rayner Lane.

**M. Element – Adaptable Housing**

Not applicable as the development does not contain 10 or more dwellings.

**N. Element – Minimum Lot Area**

The subject lot has an area of 1070m<sup>2</sup> which exceeds the required 450m<sup>2</sup> lot size for dwelling houses.

**O. Element – Dwelling Density**

The mapped maximum permissible density for the site is 1 dwelling/250m<sup>2</sup> of site area. The proposed density is 1 dwelling/1070m<sup>2</sup>.

**P. Element – Earthworks and Slope Sensitive Design Controls**

The subject land is flat.

**Q. Element – Screening of Underfloor Space of Buildings**

There is no understorey that will be visible from the street.

**Part 4 – Special Area Controls**

**4.5 – Lennox Head Coastal Hazard Protection Area**

An assessment of the Section 4.5 controls is provided in **Section 4.6** of this report.

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## 6 Conclusion

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*This section of the report provides a detailed conclusion of the development proposal.*

The proposed development involves the demolition of an existing dwelling house and garage and the subsequent erection of a double storey dwelling house and a swimming pool. The proposed development is permissible with consent within, and is consistent with the objectives of the R3 – Medium Density Residential Zone under the BLEP 2012 and other relevant environmental planning instruments, codes and policies.

The proposed dwelling does not comply with the building envelope controls under the DCP, however, the departures have been assessed and are considered relatively minor and not such that will have any adverse impacts on the landscape or streetscape or the amenity of any adjoining property.

The proposed development has been assessed under all relevant environmental planning instruments having regard to all relevant environmental, social and economic considerations.

The development has been designed such that is highly functional and will provide a high level of residential amenity to its residents and will present well in the local streetscape and landscape. Integral to the development is site landscaping that will soften the built form and beautify the site.

In conclusion and having regard to the particular circumstances of this case, it is respectfully requested that consent be granted to this application.

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7 **Scope of Engagement**

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This report has been prepared by Ardill Payne & Partners (APP) at the request of Julie and Don Priest for the purpose of a development application and is not to be used for any other purpose or by any other person or corporation.

This report has been prepared from the information provided to us and from other information obtained as a result of enquiries made by us. APP accepts no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this document for a purpose other than that described above.

No part of this report may be reproduced, stored or transmitted in any form without the prior consent of APP.

APP declares that it does not have, nor expects to have, a beneficial interest in the subject project.

To avoid this advice being used inappropriately it is recommended that you consult with APP before conveying the information to another who may not fully understand the objectives of the report. This report is meant only for the subject site/project and should not be applied to any other.

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**8 Attachments**

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- Appendix A** Aerial photograph of subject and adjoining land
- Appendix B** Copy of deposited plan and contour and detail survey
- Appendix C** Architectural plans
- Appendix D** BASIX certificate

# ARDILL PAYNE

& P a r t n e r s  
www.ardillpayne.com.au einfo@ardillpayne.com.au  
ABN: 51 808 558 977



8231 - RFI letter 2

7<sup>th</sup> December 2016

The General Manager  
Ballina Shire Council  
PO Box 450  
BALLINA NSW 2478

**Attn: Mr Vince Hunt**

**Dear Vince**

**re: Request for further information – DA 2016/510 (3 Rayner Lane, Lennox Head)**

I refer to prior communications in respect of the subject matter and in particular to McCartney Young Lawyers' (MCL) letter dated 25<sup>th</sup> November 2016 that was provided on behalf of Mr Craig Jones and Mrs Rebecca Winters-Jones.

There are a number of misleading and erroneous statements contained in this letter, particularly in relation to floor space ratio, height, view loss planning principles and the like, with comments on such being provided below.

There are a number of other issues raised in MCL's letter which do not warrant particular re-dress and which have to be considered by Council as part of its Section 79C assessment of the application.

### **Floor Space Ratio**

As detailed in the SEE and on the architectural plans at Appendix C to the SEE, the subject land has a site area of 1070m<sup>2</sup>, the proposed building has a gross floor area of 509m<sup>2</sup> and the resultant floor space ratio is 0.47:1 which is below the maximum permitted FSR of 0.5:1.

The submission that consideration should be given to reducing the area of lot as a consequence of the foreshore building line (which would result in an FSR of approx. 1:1) is incorrect and misleading.

"Site area" is defined in Clause 4.5(3) of the BLEP 2012 and expressly relates to "...the area of that lot...". There is no reference in the definition to any restrictions, limitations or other considerations in respect of building lines, easements etc.

**Engineers | Planners | Surveyors | Environmental | Project Management**

**BALLINA**  
45 River Street  
PO Box 20  
BALLINA NSW 2478  
Ph: 02-6686 2280

**BRISBANE**  
Level 1, The Design Bank  
89 Grey Street  
SOUTH BRISBANE QLD 4101  
Ph: 07-3423 6676

**GUNNDAH**  
Germare House,  
285 Conadilly Street,  
GUNNDAH NSW 2360  
Ph: 02-6742 8955

2.  
8231 – Reply to RFI 2  
7<sup>th</sup> December 2016

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It should be stressed that the subject land is zoned R3 – Medium Density Residential Zone under the BLEP 2012 and has a permitted density of 1 dwelling/250m<sup>2</sup> of site area under the BDCP 2012.

If a residential flat development was proposed, there is no actual prescriptive floor space ratio under either the BLEP 2012 or the BDCP 2012.

#### **Building Height**

As articulated in 5.1.1 of the SEE, Clause 5.6(2) of the BLEP 2012 states that “*Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.*”

On this basis, it is submitted that there is a legal statutory mechanism to enable Council to consent to the proposed building.

The first paragraph on Page 4 of MCL’s letter actually confirms that the height is exceeded by a “roof feature” and submits that Clause 5.6 does not apply “*..because the roof feature exacerbates the building height is not decorative – it fulfils a significant function with respect to solar penetration and the creation of cross ventilation..*”.

It is firmly submitted that there is an architectural roof feature atop the roof which fully satisfies the required Clause 5.6(3) standards being that:

- (a) it comprises an architectural element on the uppermost part of the building – it provides architectural interest, articulation and functionality to what would otherwise be a large flat roof
- (b) it is not an advertising structure
- (c) it does not include floor space area and is not capable of modification to include floor space area
- (d) it will cause minimal overshadowing

There is nothing in Clause 5.6 that prohibits/precludes architectural roof features from serving any secondary/ancillary purpose (such as improved solar access or breeze paths), both of which are strongly encouraged by contemporary sustainable building practices.

Notwithstanding that we are firmly of the opinion that the “roof feature” as referenced by MYL comprises an “architectural roof feature” for the purposes of Clause 5.6 of the BLEP 2012, a formal Clause 4.6 variation request has been provided below which will provide Council a legal mechanism to vary the height provision, if it deems that the roof feature is not an “architectural roof feature” and thus Clause 5.6 has no application.

Clause 4.6(3) states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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**BALLINA**  
45 River Street  
PO Box 20  
BALLINA NSW 2478  
Ph: 02-6688 3280

**BRISBANE**  
Level 1, The Design Bank  
89 Grey Street  
SOUTH BRISBANE QLD 4101  
Ph: 07-3123 6675

**GUNNEDAH**  
Germane House,  
285 Conaally Street,  
GUNNEDAH NSW 2380  
Ph: 02-6742 9395

3.  
8231 – Reply to RFI 2  
7<sup>th</sup> December 2016

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- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

It is considered that strict compliance with Clause 4.3 of BLEP 2012 is unreasonable and unnecessary in the circumstances of the case for the following reasons:

- that portion of the roof that exceeds the maximum permitted height limit is an architectural feature that sits on top of the flat roofed building and has been designed to provide increased architectural interest, merit, articulation and functionality
- the bulk, height, scale, external appearance and built form of the proposed building is consistent with that of other adjacent residential buildings (including the newer buildings on the eastern side of Rayner Lane)
- the highest point of the architectural roof feature is lower than the highest point of the roof feature on the adjoining building to the south
- the portion of the roof that exceeds the maximum permitted height limit does not create any additional overshadowing, loss of privacy or any other adverse impacts for adjoining or surrounding properties
- the portion of the roof that exceeds the maximum permitted height limit does not unreasonably contribute to the bulk and scale of the proposed building
- the portion of the roof that exceeds the maximum permitted height limit does not unreasonably impact on the streetscape – it will actually contribute to the streetscape presentation of the building by providing increased architectural merit and interest
- deletion of the roof feature that exceeds the maximum permitted height limit would not result in any tangible benefits for adjoining or surrounding properties or the streetscape

Therefore, if Council is of the opinion that the architectural roof feature is not an architectural roof feature for the purposes of Clause 5.6 of the BLEP, it is respectfully submitted that the above environmental planning grounds are such that justify that strict compliance with the height provision is unreasonable and unnecessary having regard to the circumstances of the case and that Council grants consent to the proposed building.

As articulated above, there are thus two legal avenues for Council to approve the proposed development, with both being worthy of support.

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**BALLINA**  
45 River Street  
PO Box 20  
BALLINA NSW 2478  
Ph: 02-5626 2280

**BRISBANE**  
Level 1, The Design Bank  
88 Grey Street  
SOUTH BRISBANE QLD 4101  
Ph: 07-3123 6675

**GUNNEDAH**  
Gerrards House,  
285 Conadilly Street  
GUNNEDAH NSW 2380  
Ph: 02-6742 9955



4.  
8231 – Reply to RFI 2  
7<sup>th</sup> December 2016

---

Should you have any questions in respect of this matter please contact me on 6686 3280 or [dwayne@ardillpayne.com.au](mailto:dwayne@ardillpayne.com.au).

Yours faithfully



Dwayne Roberts  
**ARDILL PAYNE & PARTNERS**

---

**BALLINA**  
45 River Street  
PO Box 20  
BALLINA NSW 2478  
Ph: 02-6686 3280

**BRISBANE**  
Level 1, The Design Bank  
89 Grey Street  
SOUTH BRISBANE QLD 4101  
Ph: 07-3123 6675

**GUNNEDAH**  
Germanis House,  
285 Conadilly Street,  
GUNNEDAH NSW 2380  
Ph: 02-6792 9955

8.1 **DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC**

CLIENT/S:  
 Don & Julie Priest  
 PROJECT :  
 New Residence  
 PROJECT ADDRESS:  
 3 Rayner Lane Lennox Head



SHEET NUMBER	ARCHITECTURAL SCHEDULE	REVISION
DA-00-01	Cover Sheet	B
DA-01-01	Site Plan	
DA-01-02	Hardscape Plan	
DA-01-03	Site Sections	B
DA-02-01	Ground Floor Plan	
DA-02-02	Level 1 Floor Plan	
DA-03-01	Elevations 1	B
DA-03-02	Elevations 2	B
DA-03-03	Elevations 3	B
DA-04-01	Front Perspectives	
DA-04-02	Rear Perspectives	

**DEVELOPMENT APPLICATION DRAWINGS  
 ISSUE 2 05.12.2016**

DATE	REVISION	DESCRIPTION
20.11.2016	1	Issue 01 - Initial Exchange Plans for final Approval as per 6000 Conditional Approval
20.11.2016	2	Revised all Drawings - Structural drawings submitted to Structural Control Unit. Finalise overall Building Volume 1100mm



**GOLD COAST**  
 PH: 07 5572 8118  
 FAX: 07 5582 3115  
 SUITE 105, 47 AUBURN ROAD  
 BUNDALL QLD 4287  
 PO BOX 1076, GUYRA QUEENSLAND 4226  
 AUST: 52 432 448 024  
 8896 1152524

**BALLINA**  
 PH: 07 5572 8118  
 PO BOX 21100  
 BALLINA NSW 2478



Project No :  
**016-063**  
 Sheet No :  
**DA-00-01**  
 Issue and Date:  
**05.12.2016**

DRAWINGS PRINT TO SCALE ON A2 SHEETS

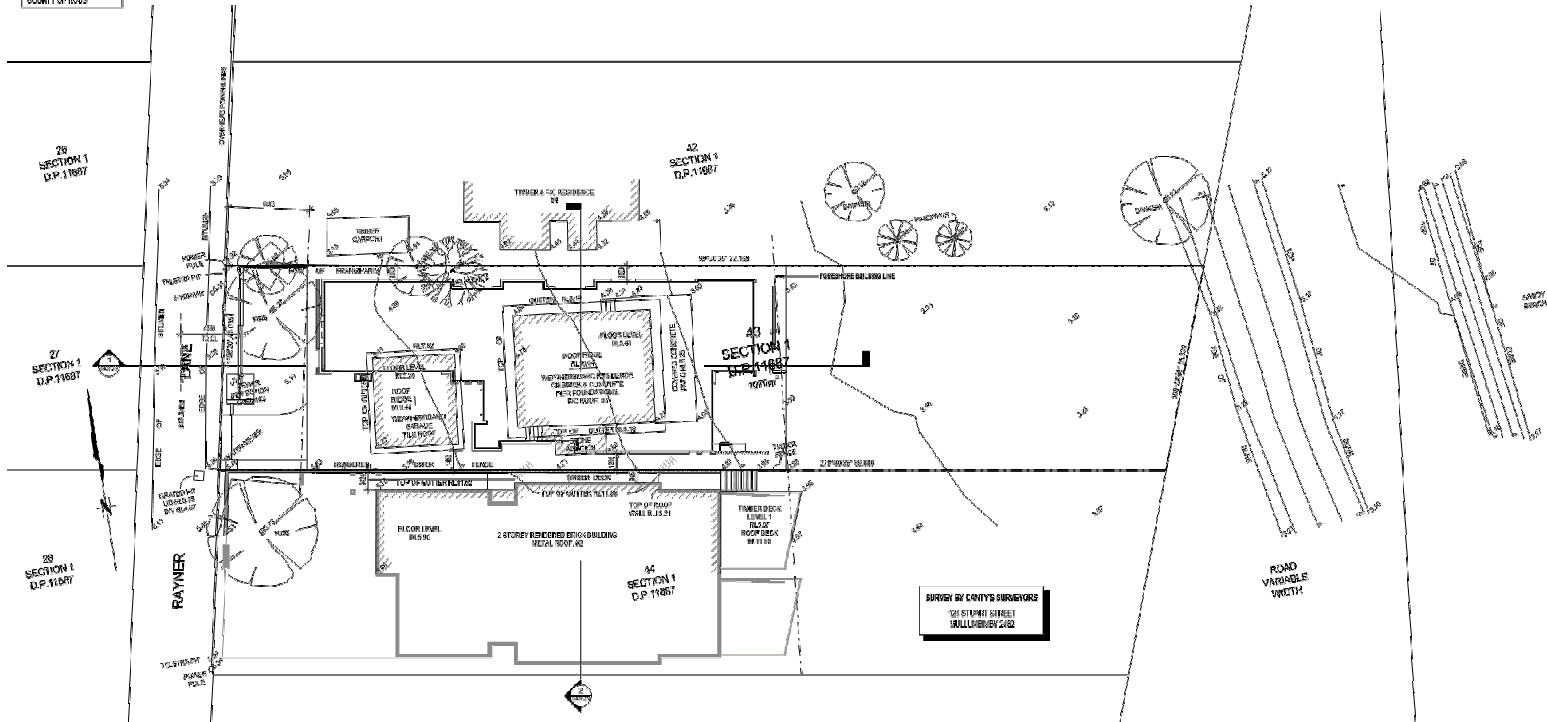
8.1 DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC

LOT NO. 43  
3 RAYNER LANE  
LENNOX HEAD

COUNCIL : BALLINA SHIRE COUNCIL

Project Area 380.00 m<sup>2</sup>  
Site Area 100.00 m<sup>2</sup>  
Site Coverage 33%  
FRR = 0% (RMP / RPS)

PROPERTY DESCRIPTION  
LOT 43 SECTION 1 D.P. 11887  
PARCELS OF BALLINA  
COUNTY OF LINDSAY



1 Site Plan  
Scale: 1 : 200

 <b>MS design</b> <small>architectural &amp; interior design</small>	<b>GOLD COAST</b> PH: 07 5570 4118 FX: 07 5570 4119 28 RIVER FALLS, ADMINISTRATION BUILDING MARGINAL, GOLD COAST QLD 4216 AEN: 92 192 440 084 FAX: 1800 00 7000	<b>BALLINA</b> PH: 02 6520 438 018 63 WILSON STREET BALLINA NSW 24785	 <b>EcoDesign</b> Sustainable Building & Design	 <b>KOTI</b> Building designers architects & quantity surveyors
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Revision Schedule		
Date	Number	Revision Description

client: <b>Don &amp; Julie Priest</b>	designed by: JHT	drawn by: SL	job no.: <b>016-083</b>
project: <b>3 Rayner Lane Lennox Head</b>	issue # date: 005.12.2016	sheet no.:	<b>DA-01-01</b>
title: <b>Site Plan</b>	scale: 1 : 200	on A2	






8.1 DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC



1 West Elevation (Schematic)  
Scale: 1 : 75



2 East Elevation (Schematic)  
Scale: 1 : 75

 <small>21000100000000</small>	<b>GOLD COAST</b> PH: 07 5570 4418 FX: 07 5570 4119 25 RIVER PALM AVENUE/SHOP ROOM MURRAL, QLD 4223 PO BOX 5086, GOLD COAST SUNSHINE UPB QLD 4215 1800 100 000	<b>BALLINA</b> PH: 0430 438 024 67 WOODEN DRIVE/ST PAULINE NSW 2478  EcoSolve Sustainable Building Solutions	 building design and construction solutions and inc.
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Revision Schedule		
Date	Number	Description
25/11/2016	01	Issued for Exhibition. Significant changes suggested by Shire of Council. Minor or overall building footprint by 110sqm

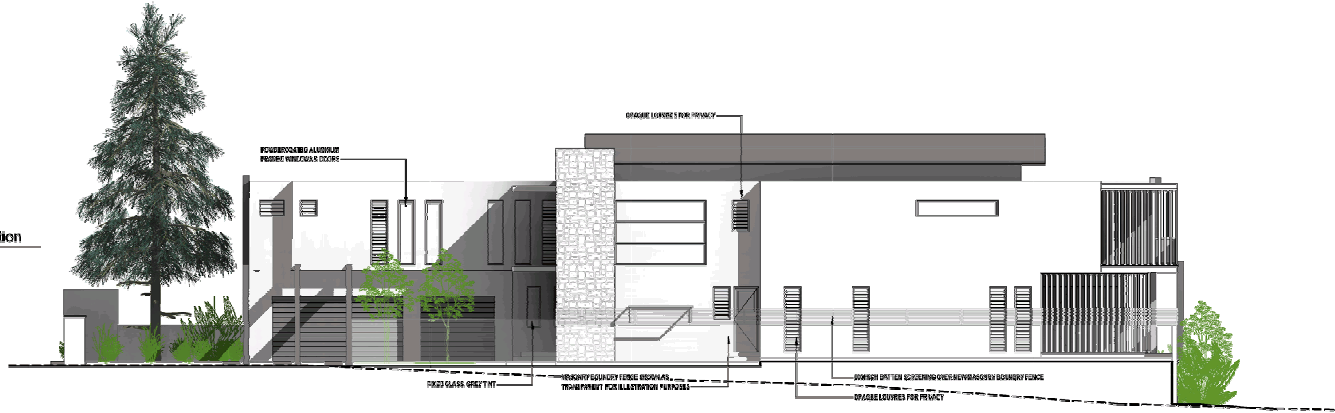
client: <b>Don &amp; Julie Priest</b>	designed by: JHT	drawn by: SL	job no.: 016-083
project: <b>3 Rayner Lane Lennox Head</b>	issues & date: 05/12/2016	sheet no.: <b>DA-03-01</b>	
title: Elevations 1			scale: 1 : 75 on A2




8.1 **DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC**

1 North Elevation  
Scale: 1:100



2 South Elevation  
Scale: 1:100






 <b>MS design</b> <small>Architecture &amp; Interiors</small>	<b>GOLD COAST</b> PH: 07 5570 4418 FX: 07 5570 4419 25 RIVER PAL, 57 ARADONDRIFT ROAD MERRILL, QLD 4214 PO BOX 2096, CLACK, SUNBIVAL, QLD AEN: 92 182 440 084 FAX: 1 800 007 7	<b>BALLINA</b> PH: 0420 438 018 67 WOODSON STREET BALLINA NSW 2478	 <b>EcoSolve</b> Sustainable Building Solutions	 <b>KOTI</b> Building design and construction solutions
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Revision Schedule		
Date	Number	Description
25/11/2016	01	Issued for Construction. All drawings, specifications, schedules, and details approved by the client.

Client: <b>Don &amp; Julie Priest</b>	Designed by: JHT	Drawn by: SL	Job no.: <b>016-083</b>
Project: <b>3 Rayner Lane Lennox Head</b>	Issue & Date: 05/12/2016	Sheet no.:	<b>DA-03-02</b>
	File: Elevations 2	Scale: 1:100	on A2

8.1 DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC



 <small>MS design</small> <small>Architecture &amp; Interiors</small>	<b>GOLD COAST</b> PH: 07 5570 4418 FX: 07 5570 4119 25 RIVER PAL, 57 ADAMSDRIFT ROAD MERRILL, QLD 4214 PO BOX 2086, CLACK, SUNNYSIDE QLD PH: 07 5570 4418 FAX: 07 5570 4119	<b>BALLINA</b> PH: 0430 438 024 67 WOODEN STREET BALLINA NSW 2478	 EBCORSEEL Building design and construction services	 KOTI Building design and construction services
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Revision Schedule		
Date	Number	Revision Description

client: <b>Don &amp; Julie Priest</b>	designed by: JHT	drawn by: SL	job no.: <b>016-083</b>
project: <b>3 Rayner Lane Lennox Head</b>	issues & date: 05.12.2016	sheet no.:	<b>DA-04-01</b>
title: <b>Front Perspectives</b>	scale:		on <b>A2</b>

8.1 **DA 2016/510 - Two-storey Dwelling - 3 Rayner Lane, Lennox Head.DOC**



 <p><b>MS design</b> Architects</p>	<p><b>GOLD COAST</b> PH: 07 5570 4418 FAX: 07 5570 4119 28 RIVER PALM ST, ARCHERBROOK ROOMS SUNSHINE COAST, QLD 4212 MOBILE: 0411 1211 RDN: 92 182 440 084 RDN: 182 0202</p>	<p><b>BALLINA</b> PH: 0420 438 018 67 WOODEN DRIVE BALLINA NSW 2478</p>	 <p><b>EBCORSEEL</b> Building designers across NSW and VIC.</p>	 <p><b>KOTI</b> Building designers across NSW and VIC.</p>
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Revision Schedule		
Date	Number	Revision Description

client: <b>Don &amp; Julie Priest</b>	designed by: JHT	drawn by: SL	job no.: <b>016-083</b>
project: <b>3 Rayner Lane Lennox Head</b>	issues & date: 05.12.2016	sheet no.: <b>DA-04-02</b>	
title: <b>Rear Perspectives</b>			scale: on A2



9 January 2017

Craig Jones and Rebecca Winters-Jones  
1/2 Rayner Lane  
Lennox Head, NSW, 2478

Mr Vince Hunt  
Ballina Shire Council  
PO Box 450  
Ballina, NSW, 2478

**RE: DA No: DA 2016/510**  
**Applicant: Ardill Payne & Partners**  
**Property: Lot 43 Sec: 1 DP: 11687, 3 Rayner Lane LENNOX HEAD**  
**Proposal: The demolition of an existing dwelling/garage, construction of a new two story dwelling and swimming pool**

Dear Sir,

We have now had several conversations and written several letters stating our position on the Development Application 2016/510 (the Development Application) and responding to the Applicants additional information letters.

We would like to reiterate that our primary objection to the Development Application is that the proposal will have substantial impact on our solar access and loss of views which result directly from the proposed structure being *non compliant* with building height plane provisions of the Ballina Shire Council, Local Environmental Plan (LEP) and Development Control Plan (DCP) (as outlined previously in our letters).

This impact is intolerable to us as it will substantially impact the liveability of our property. The Applicant continues to fail to address these primary issues in their responses, preferring to ignore and downplay the impacts.

We find it outrageous that we discovered the original application was erroneous and substantially underestimated the impact of the proposed structure on our solar access (being our primary concern).

We again appeal to Council to decline to approve the Development Application for reasons outlined in our letters and the letters of Mr George Korban and McCartney Young Lawyers, and that the Applicant comply with the provisions of the LEP & DCP.

Regards  
Craig Jones and Rebecca Winters-Jones

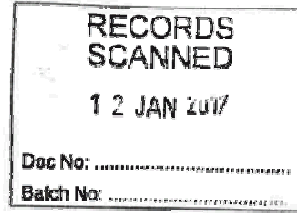


Directors: Michelle McCartney & Michael Young

Our Ref: MY:ST:20160565

9 January 2017

Mr Vince Hunt  
Ballina Shire Council  
PO Box 450  
Ballina NSW 2478



Dear Mr Hunt

**Submission on DA 2016/510- Objection to Proposed Development  
Property: 3 Rayner Lane, Lennox Head**

We refer to previous correspondence relating to DA 2016/510 and particularly the letter from Ardill Payne (the applicant) addressed to you and dated 7 December 2016 (Letter).

In this letter we:

- provide clarification on our earlier comments on FSR;
- comment on the height of the building and why the applicant has not established a valid exception to the height limit standard; and
- outline why Council is unable to grant consent.

**Floor Space Ratio**

We concede that we have not undertaken an independent calculation of the FSR of the proposed development. However, when regard is had to the plans, the FSR as stated in the SEE does warrant checking and confirmation by Council.

Furthermore, we do not argue with those provision of the BLEP as quoted in the Letter - the words "say what they say".

Our earlier submission identified the constraints that apply to this particular lot as a result of, amongst other things, the foreshore building line. In circumstances where the area of the lot that can be developed is constrained by that line, it may simply not be



Level 1 Suite 10/31 Cherry Street Ballina NSW | PO Box 183 Ballina NSW 2478  
Phone: 02 6683 5556 | DX 27660 BALLINA | Fax: 02 6683 5544  
Email: info@my-lawyers.com.au | Web: www.my-lawyers.com.au  
McCartney Young Lawyers Pty Limited incorporated legal practice  
ABN: 66 134 734 062



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possible to develop the land to the maximum FSR because of unacceptable impacts that will arise from such a development.

Mr Korban's letter of 8 December 2016 makes further comment on the building envelope – and the failure of the building to comply with the mandated envelope – and we respectfully adopt those comments.

***Building Height***

***1. Architectural roof feature***

The Letter states that the part of the proposed building that exceeds the height limit prescribed by the BLEP is an architectural roof feature and that therefore it is permitted in accordance with clause 5.6 of the BLEP.

Again, we do not argue with the text of the relevant controls. The Objectives of 'Clause 5.6- Height exception for architectural roof features' are as follows:

- (1)(a) to ensure that architectural roof features to which the clause applies are decorative elements only; and*
- (b) to ensure that the majority of roof features are contained within the prescribed building height.*

The relevant words of the Objectives are repeated in the text of the control (cls 5.6(3)):

- (3) Development consent must not be granted to any such development unless the consent authority is satisfied that:*
  - (a) the architectural roof feature:*
    - (i) comprises a decorative element on the uppermost portion of a building, and*
    - ...*
    - (iv) will cause minimal overshadowing, and...*

The proposed development does not comply with these Objectives and prescriptive controls. The Letter states that '*there is nothing in clause 5.6 that prohibits/precludes architectural roof features from serving any secondary/ancillary purpose*'. However, Objective (1)(a) specifically aims to ensure that architectural roof features are 'decorative elements **only**'. It appears to us that the control is unequivocal: the roof

feature should not serve a purpose other than being a decorative element (unless of course it is below the mandated building height limit). As mentioned in our previous correspondence, the proposed roof feature serves functions such as solar penetration and the creation of cross ventilation, precluding it from being described as a 'decorative element only'. It therefore does not comply with the objectives of the provision and clause 5.6 does not apply.

#### 2. Clause 4.6 variation request

The applicant submits that if the part of the building exceeding the height is not an architectural roof feature and that therefore clause 5.6 does not apply, clause 4.6 of the BLEP allows for an exception to the building height standard. The applicant's variation request has not sufficiently addressed the criteria in clause 4.6.

##### *2.1 Development consent must not be granted*

This aspect of the built form is an "architectural roof feature". The roof feature causes (or contributes to) the building to exceed the height limit set by clause 4.3.

The consequences of the breach of the height limit caused by the roof feature are clear: "Development consent **must not be granted** to any such development..." (unless the specified criteria are satisfied – and in this case the criteria are not satisfied) (cls. 5.6(3)).

In these circumstances the specific control imposed by clause 5.6 should be read and understood as directly controlling this aspect of the development. Because the roof feature can be readily addressed – by, for example, the substitution of another roof structure – the breach of the height limit (which is otherwise a development standard) cannot be "forgiven" pursuant to clause 4.6.

Council should decline to grant consent and require the submission of plans that show a building that is compliant with all relevant controls including the roof.

Should Council disagree with the way we have interpreted the operation of clause 5.6 of the BLEP, what follows below is in response to the Letter that seeks to rely on clause 4.6.

## 2.2 Unreasonable and unnecessary

The Letter has failed to establish that compliance with the height standard is unreasonable and unnecessary, in accordance with Clause 4.6(3)(a). The most common way of establishing that compliance with a development standard is unreasonable or unnecessary is by showing that the proposal achieves the objectives of the development standard notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* [2007] NSWLEC 827. In this way the express provisions of 4.6(3)(a) are consistent with the case law.

The objectives of the development standard for the height of buildings are as follows:

- a) *to ensure that the height of buildings is compatible with the bulk, scale and character of the locality;*
- b) *to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality.*

These objectives have not been achieved by the proposed development. That is, the exceedance of the height control does not otherwise satisfy the intent of the objectives – the height limit imposes a control that is reasonable and necessary.

Other ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary are that *'the underlying objective or purpose is not relevant to the development; that the objective would be defeated or thwarted if compliance was required; that the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard; or that the zoning of the land is unreasonable or inappropriate'* (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 at 61). This "case law criteria" might be considered to give substance to the general terms of clause 4.6(3)(b). Nevertheless, the applicant has not established that compliance with the standard should be "forgiven" based on these criteria or the terms of clause 4.6(3)(b).

Mr Korban, in his letter of 4 January, has commented on the environmental planning grounds relied on by the applicant. It is our submission that the planning grounds expressed by the applicant do not justify a departure from the height standard contained in the BLEP. The proposal does not align with the aims of the standard, nor is it in the public interest as discussed below.

### *2.3 The public interest*

Clause 4.6(4) provides that for development consent to be granted to development which contravenes a development standard, the consent authority must be satisfied not only that *'the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)'*, but also that *'the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out'*. The development is not consistent with the objectives of the standard listed above.

The first objective of the building height standard relates to compatibility. Compatibility was discussed in the case of *Project Venture Developments v Pittwater Council* [2005]. Roseth SC states (at [24]) that there are two questions to ask in order to test whether a proposal is compatible with its context, firstly *'are the proposal's physical impacts on surrounding development acceptable?'* and secondly, *'is the proposal's appearance in harmony with the buildings around it and the character of the street?'*

The physical impacts of this proposal on surrounding development are not acceptable. As outlined in our previous letter, the proposed building will adversely impact neighbouring properties, particularly our clients' property. The proposed building does not fit within the prescribed building height limit and building envelope and its excessive bulk and scale will have an adverse impact on the built environment of the locality.

The proposed development is also inconsistent with the second objective of the height standard. The development that is proposed does not minimise adverse impacts on our clients' adjoining property. Previous submissions have identified that the proposed development would cause substantial overshadowing to our clients' dwelling, and would have detrimental impacts on views and solar access. As the proposed development is not consistent with the objectives of the building height standard, it is therefore not in the public interest, Clause 4.6(4)(ii) is not satisfied and justification for the variation is not established.

**Conclusion**

The applicant claims that they have identified two legal avenues for council to approve the proposed development. However, for reasons provided above, the breach of the height standard cannot be permitted by the clause 5.6 height exception nor the clause 4.6 variation request under the BLEP. In addition to this breach of the BLEP, provisions contained in the development control plan (DCP) have not been complied with. As addressed in our letter of 25 November, the proposal does not comply with DCP controls relating to the building envelope, overshadowing and solar access. The reasons provided by the applicant do not justify a departure from the standards and controls contained in the BLEP and the BDCP and therefore the development application should be refused.

Yours faithfully



**Michael Young**  
**Direct Line: 02 6683 5560**  
**michael@my-lawyers.com.au**