

MEMO TO: PAUL HOYE – GENERAL MANAGER OPERATIONS
FROM: JENNY ELPHINSTONE – SENIOR PLANNING OFFICER
DATE: 19 OCTOBER 2015
SUBJECT: **DELEGATED AUTHORITY REPORT
RECONFIGURING A LOT (1 LOT INTO 2 LOTS)
37-39 OWEN STREET, CRAIGLIE**

<u>PROPOSAL:</u>	RECONFIGURING A LOT (1 LOT INTO 2 LOTS)
<u>APPLICANT:</u>	DIANNE PERRY PO BOX 380 PORT DOUGLAS QLD 4877
<u>LOCATION OF SITE:</u>	37-39 OWEN STREET, CRAIGLIE
<u>PROPERTY:</u>	LOT 3 ON SP201317
<u>LOCALITY:</u>	PORT DOUGLAS & ENVIRONS
<u>PLANNING AREA:</u>	INDUSTRY
<u>PLANNING SCHEME:</u>	DOUGLAS SHIRE PLANNING SCHEME 2008
<u>REFERRAL AGENCIES:</u>	NONE APPLICABLE
<u>NUMBER OF SUBMITTERS:</u>	NOT APPLICABLE
<u>STATUTORY ASSESSMENT DEADLINE:</u>	EXPIRED (24 JULY 2015)
<u>APPLICATION DATE:</u>	29 JUNE 2015 (ORIGINAL APPLICATION)
<u>REQUEST FOR DEEMED APPROVAL:</u>	6 OCTOBER 2015
<u>DEEMED APPROVAL ASSESSMENT DEADLINE</u>	20 OCTOBER 2015
<u>APPENDIX:</u>	1. PROPOSED PLAN(S) & DOCUMENT(S)

LOCALITY PLAN



RECOMMENDATION:

That the General Manager Operations approves by Delegated Authority, the Development Application for a Reconfiguring a Lot (1 Lot into 2 Lots) over land described as Lot 3 on SP201317, located at 37-39 Owen Street, Craiglie, subject to the following:

APPROVED DRAWING(S) AND / OR DOCUMENT(S)

The term 'approved drawing(s) and / or document(s)' or other similar expressions means:

Drawing or Document	Reference	Date
Proposed Reconfiguration Plans	Tusk Design Drawings: R01; D1 Site Plan; D2 Carparking & Landscaping; and DS Services, prepared for D Perry dated June 2015 and as amended by Condition 3 of the approval.	To be determined

ASSESSMENT MANAGER CONDITIONS

- 1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:**
 - a. The specifications, facts and circumstances as set out in the application submitted to Council;**
 - b. The following conditions of approval and the requirements of Council's Planning Scheme and the *FNQROC Development Manual*.**

Except where modified by these conditions of approval.

Timing of Effect

- 2. The conditions of the Development Permit must be effected prior to the issue of a Compliance Certificate for the Plan of Survey, except where specified otherwise in these conditions of approval.**

Amendment to Design

- 3. The proposed lot layout must be amended to accommodate the following changes:**
 - a. Demonstrate by way of swept path diagrams that a truck can enter and exit the rear proposed Lot 1 in forward gear. This may require amendment to the internal boundaries between proposed Lot 1 and 2, and/or an alternative car accommodation arrangement within proposed Lot 1;**
 - b. Demonstrate compliance on the design plan with the existing development approval for a material change of use for Service Industry including a statement regarding compliance with all conditions of the approval. In particular the Applicant must demonstrate compliance with the provision of onsite car parking and landscaping. The car parking compliance must be certified by a RPEQ; and**
 - c. A statutory declaration by the land owner is to be provided to Council confirming compliance with all conditions of Development Permit 8/7/2631 for Service Industry and all Development Permits for Building Work issued to the land.**

The amended lot layout must be provided to the satisfaction of the Chief Executive Officer prior to the issue of a Certificate of Compliance for the signing and dating of the Survey Plan.

Access for Inspection

- 4. Prior to the issue of a Certificate of Compliance for the signing and dating of the Survey Plan the Applicant must allow full and unrestrained access to the site by Council officers for an inspection during normal business hours in regard to compliance of the development with existing approvals and consistency of the development with the amended plan as required under Condition 3 above.**

Water Supply and Sewerage Works Internal

5. Undertake the following works internal to the land:

- a. Provide a single internal water and sewer connection to Lot 2 in accordance with the *FNQROC Development Manual*; and
- b. Confirm that a separate internal sewer line for the existing building on Proposed Lot 1 is situated within the access leg.

The above works must be designed and constructed in accordance with the *FNQROC Development Manual* prior to the issue of a Compliance Certificate for the Plan of Survey.

Location of Services

6. Provide written evidence from a licensed surveyor that all services (water, storm water, telecommunications and power) are contained within each respective lot.

Lawful Point of Discharge

7. All stormwater from proposed Lot 1 must be directed to a lawful point of discharge, being Owen Street, to the requirements and satisfaction of the Chief Executive Officer.

Electricity and Telecommunications

8. Written evidence of negotiations with Ergon Energy and the telecommunication authority must be submitted to Council stating that both an underground electricity supply and telecommunications service will be provided to the development prior to the issue of a Compliance Certificate for the Plan of Survey.

ADVICE

1. This approval, granted under the provisions of the *Sustainable Planning Act 2009*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of sections 339 and 341 or section 363 of the *Sustainable Planning Act 2009*.
2. All building site managers must take all action necessary to ensure building materials and / or machinery on construction sites are secured immediately following the first cyclone watch and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
3. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
4. For information relating to the *Sustainable Planning Act 2009* log on to www.dilqp.qld.gov.au . To access the *FNQROC Development Manual*, Local Laws, and other applicable Policies log on to www.douglas.qld.gov.au.

5. No separate land use approval has issued for the use of the Proposed Lot 2 and development is subject to the requirements of the Planning Scheme.

EXECUTIVE SUMMARY:

The proposal seeks a development permit for Lot reconfiguration (1 Lot into 2 Lots) over land included within the Industry Planning Area at 37-39 Owen Street, Craiglie, more formally described as Lot 3 on SP201317. Due to various reasons, including changes of staff the application has not been determined within the decision period of the IDAS (Integrated Development Assessment System) of the *Sustainable Planning Act 2009 (SPA)*.

The land has been developed for Service Industry use. Concern is held as to whether the mezzanine floor is used as a Caretaker's Residence. The Applicant has continually denied Council officers access to inspect the premises. The ability to determine whether the use of the land is compliant with the existing Development Approval and the Planning Scheme has not been able to be achieved.

Issues of possible non-compliance and concerns with the proposed reconfiguration were raised with the Applicant who advised, at that time, that she would further consider the proposal. Despite this advice to Council the Applicant has now served on Council a request for a deemed approval. Under SPA, once served, Council can still determine the application and is able to either approve, or approve with conditions. Council is unable to refuse the application at this time. Such decision must be made within ten (10) business days of the lodgement of the request for a deemed refusal. Should Council not determine the application within the ten (10) business days then standard conditions are applicable as per the Act. Due to the time limitation and Council reporting process time requirements the application is unable to be reported to a Council meeting for determination.

Concern is held with the ability of the development in its current form to meet requirements in respect of the land use and current requirements for disability access etc. No request has been lodged to amend the existing approval so that development will align with the proposed reconfiguration. That is, the existing Service Industry is now expected to be undertaken over only part of the land and the previously large expanse of 'landscaping' area will effectively form a new lot.

Conditions of the new approval for reconfiguration require the demonstration of full compliance with the Planning Scheme for land use and that the proposed development is suitable in respect of current requirements for new lots. This demonstration, including a requirement to enable access for a site inspection to clarify the demonstrated compliance must be achieved in order to gain a certificate of compliance for the signing and dating of the survey plan.

In addition separate advice is to be forwarded regarding the need to comply with the existing approval and the Planning Scheme.

TOWN PLANNING CONSIDERATIONS:

Background

The land that is subject to this application was originally part of a combined application (CA61) to create lots 1-23 and enable a material change of use for proposed lots 2 – 21 to be used in accordance with the requirements of Special Management Area 3 (Service Industry Precinct – Craiglie). The application was approved on 7 August 2007 by the former Douglas Shire Council. The lot that is associated with the application is Lot 3 on SP201317 that was created as part of the overall combined application. Developer contributions were paid over the whole of the land for Industry use rights.

An application was lodged in January 2013 to the Cairns Regional Council establish a *Service Industry* and an associated *Caretaker's Residence* on the land (Development Application 8/7/2631). The application originally proposed a number of buildings on the land with shared access, loading and car parking areas. A Decision Notice issued on 12 February 2013. The approval required the payment of infrastructure charges for the *Caretaker's Residence* component of the application.

The applicant subsequently sought to waive the infrastructure charges for the *Caretaker's Residence* component of the application. At its Planning and Economic Committee held on 8 May 2013, Cairns Regional Council refused the request to waive the infrastructure charges for the *Caretaker's Residence* component.

The Applicant then sought a permissible change to delete the *Caretaker's Residence* land use and to substantially reduce the size of the Service Industry development. The amended design nominated a driveway of 4000mm width. The request was approved by Council's delegate on 10 October 2013. The approved amended plans do not detail any mezzanine floor area in the single building then proposed.

The 'approved plans' detail four (4) car spaces. However, the condition of the approval required the provision of five (5) car parking spaces in accordance with the AS standard for car parking. A further condition required the site must be landscaped generally in accordance with landscaping details included on the approved plans and with accordance with the Douglas Shire Planning Scheme Policy No 7 – Landscaping. There was no condition requirement regarding the driveway width or demonstration of the ability for a truck to manoeuvre to allow ingress and egress in a forward movement. However, there was a large landscaped area to the front of the lot and no condition required this area to be protected from vehicle movements.

After the issue of the approval the Applicant's partner, Mr Phil Walker, made enquiries in February 2014 for the inclusion of a mezzanine floor. Council issued advice on 15 April 2014 that no formal request to change the approval was necessary. The proposed change comprised the addition of a mezzanine level of 80 m², adjoining the mezzanine a verandah of 36 m² and shower facilities to the toilet room on the ground floor. The advice stated that the premises, '*may not be used for residential use, including temporary residential use. Temporary residential use includes any overnight stay by any person.*'

Mr Walker sought further advice on 25 September 2014 regarding the ability to amend the approval to now include a *Caretaker's Residence*. Mr Walker was advised that a permissible change could be made to include the use, as it was part of the original application and Development Approval, and that such change would attract an application fee and infrastructure charges. To date, no request has been lodged.

The building on the land was constructed under a Development Permit issued by a Private Certifier lodged with Council in November 2013 and detailed a floor plan with no mezzanine, and elevations that included upper level windows.

Inspection of the site was undertaken in respect of the current application in August 2015, from the road and the adjoining vacant land. The inspection identified that a mezzanine had been constructed and the balcony and mezzanine had been constructed and were being occupied. The inspection also identified that a carport had also been added. The Building Certifier was contacted and an amended plan was lodged that day that includes the mezzanine floor level. The submitted amended plan does not include the carport addition to the south of the main building structure.

Proposal

The proposed development is for a Lot reconfiguration (1 into 2 lots). The lots are fairly regular in shape with a front (Proposed Lot 2) and rear, battle axe lot (Proposed Lot 1) design. The existing building and four (4) car spaces are identified as being contained in the Proposed Lot 1 with vacant land for Proposed Lot 2. Access and frontage for Proposed Lot 1 is limited to the existing driveway. All infrastructure services for Proposed Lot 1 are contained within this lot. Proposed Lot 2 will have direct frontage and access to Owen Street. No service provision plan has been provided for Proposed Lot 2. Proposed Lot 1 will have a site area of 1072m² and Proposed Lot 2 will have a site area of 1003m². The submitted plans vary in area of constructed floor area with one (1) plan including the carport and other plans excluding this feature.

Douglas Shire Planning Scheme Assessment

Douglas Shire Mossman and Environs Planning Locality		Code Applicability	Compliance
Locality	Port Douglas and Environs	✓	Complies
Planning Area	Industry	✓	Complies
Defined Use	Reconfigure a Lot		
Overlay Codes	Acid Sulfate Soils Code	✗	-
	Cultural Heritage and Valuable Sites Code	✗	-
	Natural Hazards Code	✗	-
General Codes	Design and Siting of Advertising Devices Code	✗	-
	Filling and Excavation Code	✗	-
	Landscaping Code	✗	-
	Natural Areas and Scenic Amenity Code	✗	-
	Reconfiguring a Lot Code	✓	Refer to comment
	Vehicle Parking and Access Code	✗	-
	Sustainable Development Code	✗	-

Compliance Issues

The performance criteria for the Reconfiguring of a Lot Code requires lots to be sufficient in area and dimensions to meet the requirements of users and accommodate the form of development likely to be constructed in respect of the planning area and to achieve efficiency of layout. Council is also required to have regard to compliance with existing approvals.

Concern is raised with the inconsistency of the development with the existing approval over the land. No approval has issued under the building approval for the carport extension. The development fails to include five (5) car spaces as required by the conditions of the material change of use approval. The proposed plan significantly reduces the approved landscaping area. Concern remains with the use of the first floor as to whether this is consistent with the approval that has issued.

The driveway has been constructed and is bunded by a low set block wall. The driveway is of a short length and allows only one (1) way access at any time. The width of the driveway will need to comply with the relevant standard in respect of car parking.

A condition of the approval requires the demonstration of compliance with the existing approval over the land, in particular the provision of five (5) car parking spaces in accordance with the Australian Standard including car space dimensions, access and turning area requirements. The condition also requires the consistency of the development in respect of landscaping. It is anticipated that this will necessitate an amendment to the existing Development Permit for the land use. The area of Proposed Lot 2 will require a further development permit for a material change of use for development to occur thereon.

Prior to Council being required to provide a certificate of compliance for a proposed plan of survey for the proposed subdivision, it is recommended that the applicant demonstrate compliance with all conditions associated with development permit 8/7/2631 to ensure that landscaping, parking, access and manoeuvring within proposed Lot 1 remain in compliance with the approval.

Loading Vehicle Access to Rear Lot

The Scheme requires that sufficient manoeuvring area is available on site to allow a single truck to ingress and egress the site in a forward gear. Concern is raised with the area of Proposed Lot 1 in particular the ability for truck manoeuvring to enable trucks to ingress and egress the proposed site in a forward gear. A condition of the approval requires this to be demonstrated.

Infrastructure Services

The proposed development will also require separate connections to water and sewer infrastructure. This may require partial removal and reinstatement of the driveway that currently provides access to the development on the rear of the site.

Access for Inspection

Under the Local Government Act Council officers are able to inspect land in respect of Planning Scheme compliance and for the purposes of assessing a development application. Access cannot include the use of force. Where access is denied by gates, locked premises or an owner denying access then Council can seek a warrant. In this circumstance the condition of the approval can achieve access for the purpose of the current application.

Non-Compliance

Separate advice is to be issued regarding the need for an inspection in regard to current compliance with the Planning Scheme and the developments approved over the land.

ADOPTED INFRASTRUCTURE CHARGES

The proposed development does not trigger Adopted Infrastructure Charges and is subject to previous charges associated with the original reconfiguration of lot.

MAYORAL COMMENTS

The Mayor has assessed that the application may be approved under Delegated Authority.

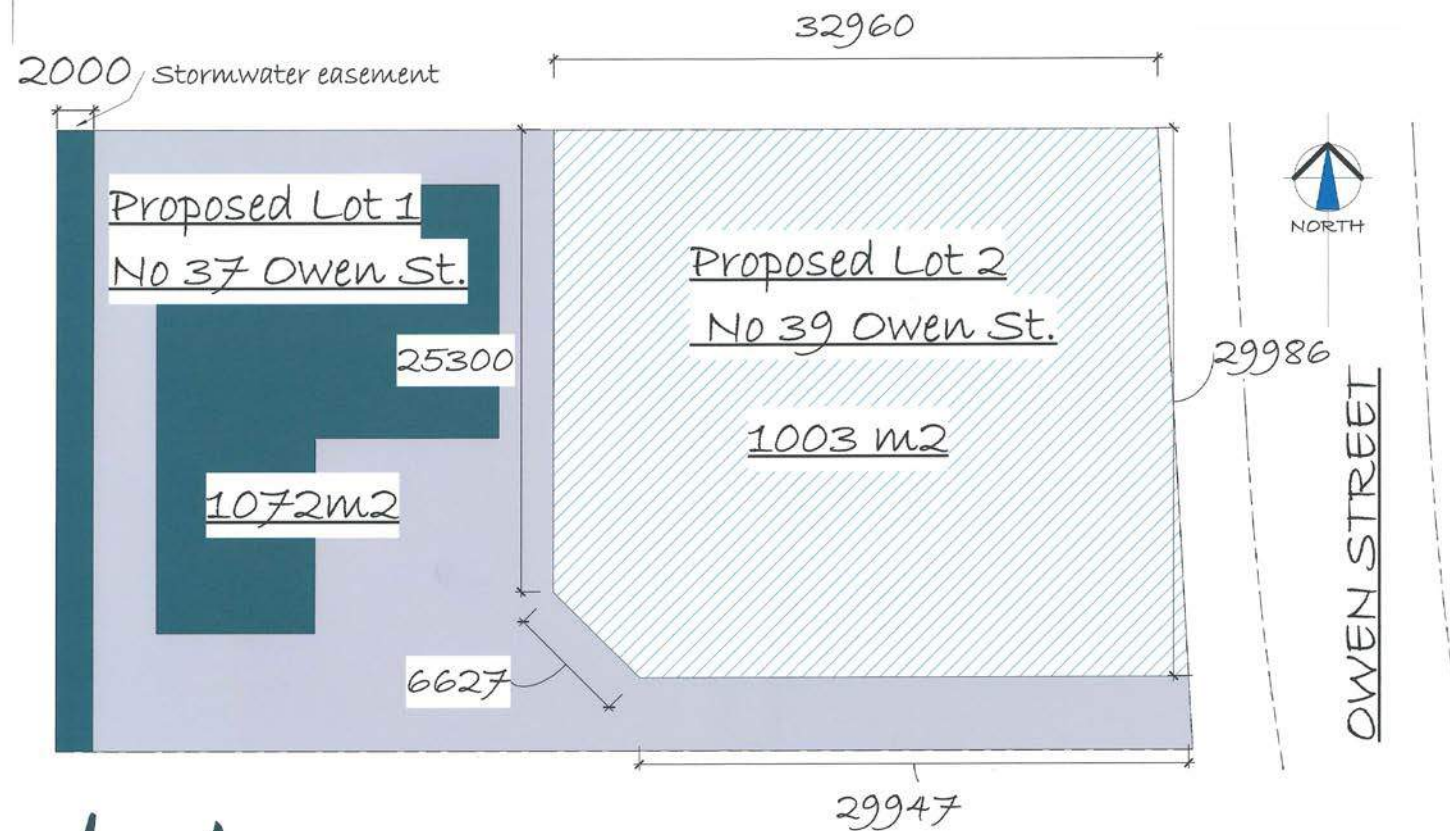
Jenny Elphinstone
Senior Planning Officer
Action Officer

Donna Graham
Manager Development & Environment

Paul Hoyer
General Manager Operations

Approved / ~~Not Approved~~

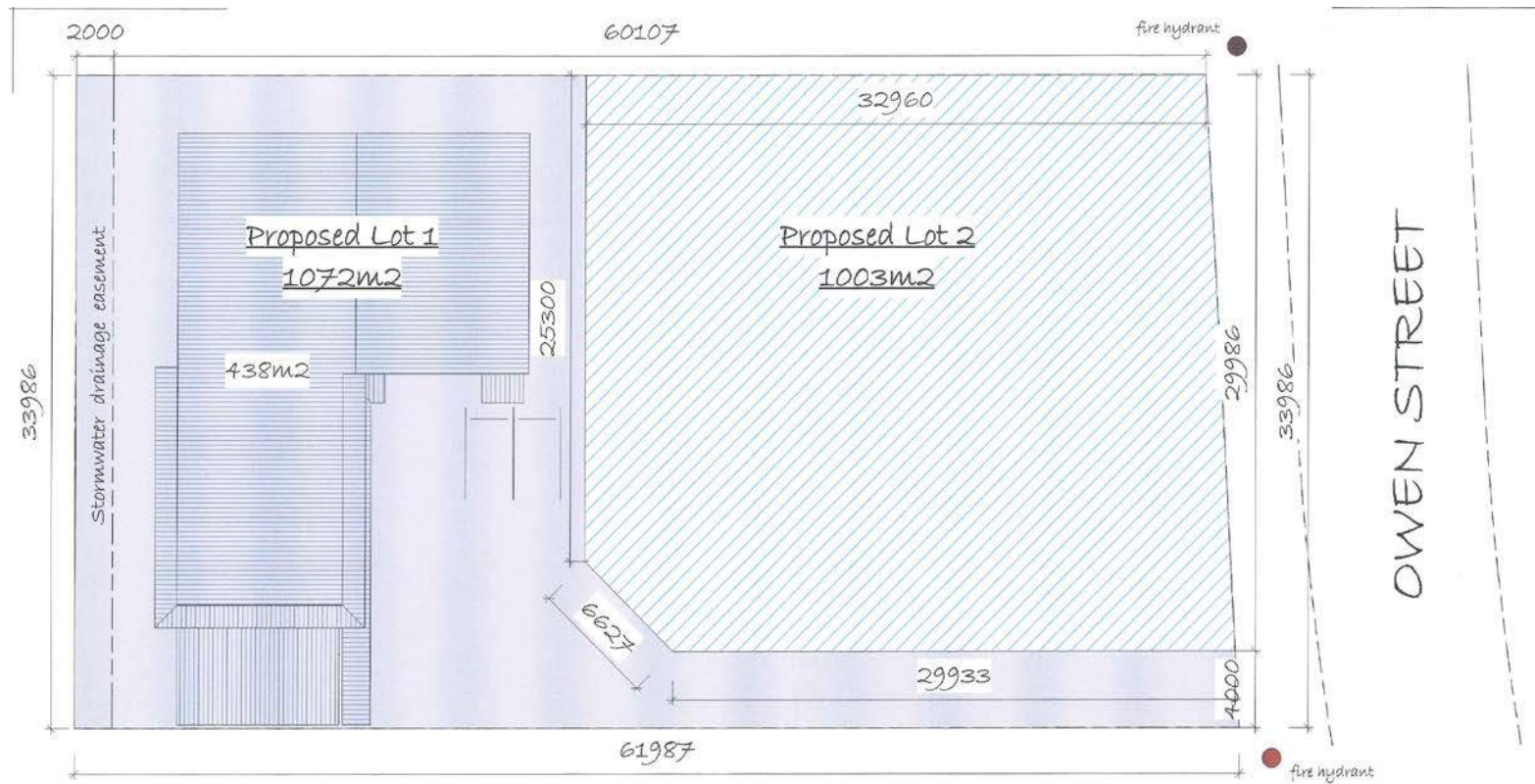
APPENDIX 1: PROPOSED PLAN(S) & DOCUMENT(S)



Proposed Reconfiguration for D perry
Lot 3 on SP 201317 Owen Street, Craiglie

Dwg. R01
Date. June 2015

Scale 1: 20



Total Site Area = 2075m²

Allowable coverage Lot 1 = 60% = 643m² Actual = 438m²

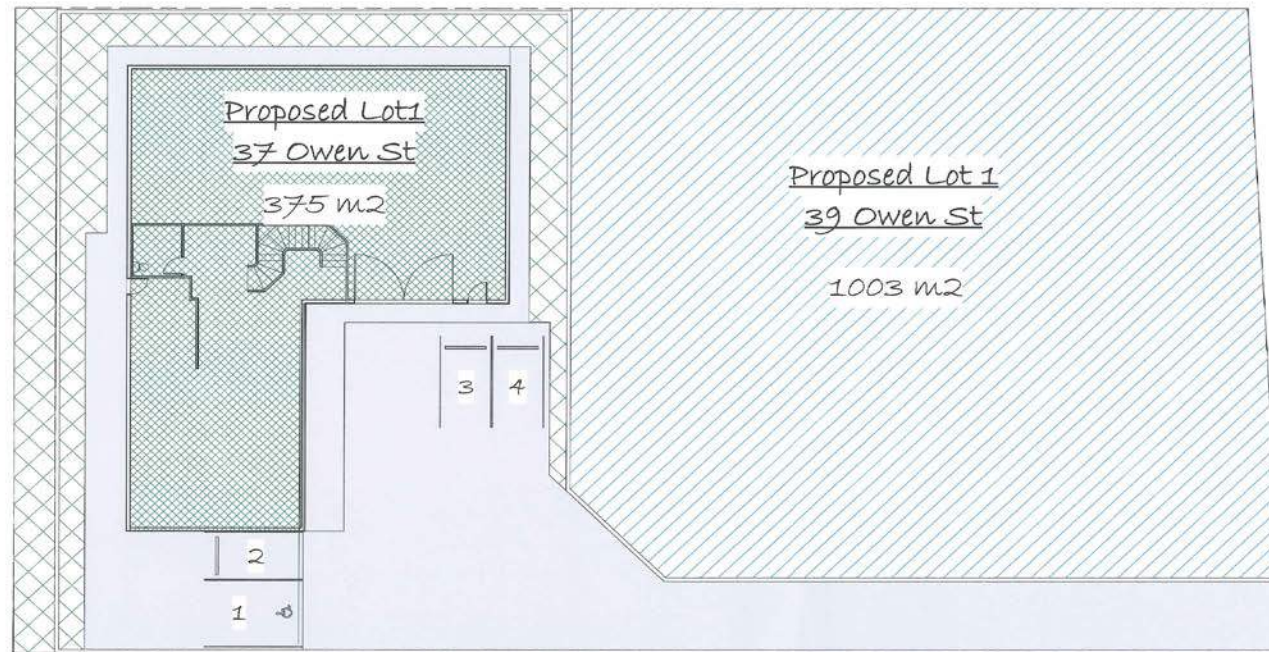
tzusk
DESIGN

Proposed Reconfiguration for D perry
Lot 3 on SP 201317 Owen Street, Craiglie

Dwg. D1. Site plan
Date. June 2015

Scale 1: 200





Minimum landscape requirements Lot 1: 20% of 1072 m² = 215m²
Actual: 217 m²

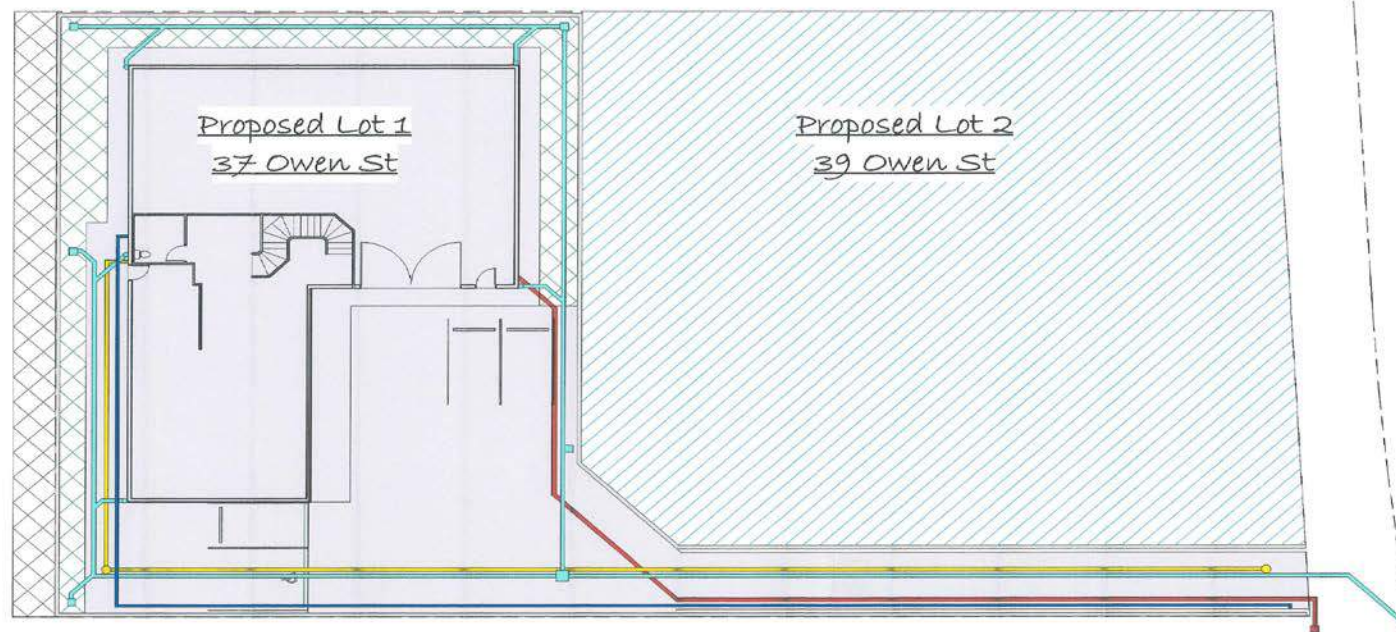


Carparking requirements: 1/90 m² of net lettable area 323 m² = 4 spaces

tzusk
DESIGN

Proposed Reconfiguration for D perry
Lot 3 on SP 201317 Owen Street, Craiglie

Dwg. D2. Carparking & Landscaping
Date. June 2015 Scale 1: 200



- 3 Phase Power feed & Telstra lines
- Stormwater downpipes & ground pits
- Sewer
- Concrete Aprons & driveway
- 32mm Water service



Proposed Reconfiguration for D perry
Lot 3 on SP 201317 Owen Street, Craiglie

Dwg. DS Services
Date. June 2015

Scale 1:200