

Our Ref: HRP15132  
Contact: Dominic Hammersley

3 December 2015

Chief Executive Officer  
Douglas Shire Council  
PO Box 723  
MOSSMAN QLD 4873

Attn: Neil Beck

Dear Neil,

**REQUEST FOR PERMISSIBLE CHANGE – CAPE TRIBULATION ROAD, DIWAN –  
LOT 41 RP739765**

**PREVIOUS COUNCIL APPLICATION REFERENCE: MCUC 5306/2013**

We hereby submit a request for a permissible change in accordance with Section 369 of the *Sustainable Planning Act 2009* (SPA) on behalf of the Trustee for the Diwan Eco B&B Trust.

This request has the intention of effecting a change to an existing approval for a Material Change of Use over Cape Tribulation Road, Diwan, better known as Lot 41 on RP739765.

Please find enclosed the original approval documents (**Attachment A – Original Approval Documents**) that supports this Permissible Change request.

**1. BACKGROUND**

This request relates to a Material Change of Use Approval granted by Douglas Shire Council ('Council') for Cape Tribulation Road, Diwan (refer **Attachment A**).

Summary details of the existing development approvals are provided in **Table 1** below.

**TABLE 1 DEVELOPMENT APPLICATION / APPROVAL DETAILS**

	Approval 1
<b>Council Reference</b>	MCUC 5306/2013
<b>Approval Date</b>	8 April 2014
<b>Description/Purpose of Proposal</b>	Material Change of Use (Home Based Business (Bed & Breakfast)).
	Approval 2
<b>Council Reference</b>	MCUC 5306/2013
<b>Approval Date</b>	19 June 2015
<b>Description/Purpose of Proposal</b>	Generally in Accordance – Plan refinements

Refer to **Attachment A – Original Approval Documents**.

**2. PROPOSED PERMISSIBLE CHANGE**

The permissible change seeks to broaden the scope of the above approval to acknowledge the following desired attributes of the bed and breakfast operation:

Australia • Belgium • Canada • Ecuador • Germany • Indonesia • Italy • Kenya •  
New Zealand • Papua New Guinea • Peru • Tanzania • United Arab Emirates •  
United Kingdom • United States • Operations in 85 countries

- > A kitchen facility that provides all meals (i.e. not restricted to breakfast);
- > Operating hours that extend to include Sundays and public holidays; and
- > Acknowledgement of an intent to serve alcohol with meals, plus minibar for guests of the bed and breakfast operation.

Condition 1 of the approval requires the applicant to:

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, including recommendations and findings confirmed within technical reports; and*
  - 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.*

Accordingly, we respectfully request that the Decision Notice be amended to include reasonable and relevant condition(s) with regard to food service and operating hours, such as:

- (1) *The approved use may operate 7 days a week, including Sundays and public holidays;*
- (2) *Kitchen facilities are exclusively limited to the catering of guests of the bed and breakfast, and may provide all meals.*

We further request the addition of an Advice Note to the Decision Notice, which has regard to the service of alcohol as part of the bed and breakfast operation:

- (1) *A Commercial other (subsidiary on-premises) licence will be required from the office of Liquor and Gaming Regulation (OLGR) for the on-premises service of alcohol.*

### **3. PERMISSIBLE CHANGE TESTS**

The change proposed must satisfy the key tests for a permissible change under Section 367 of the SPA. A permissible change, for a development approval, is a change to the approval that would not:

- (a) *result in a substantially different development; or*
- (b) *if the application for the approval were remade including the change-*
  - (i) *require referral to additional concurrence agencies; or*
  - (ii) *for an approval for assessable development that previously did not require impact assessment – require impact assessment; or*
- (c) *for an approval for assessable development that previously required impact assessment – be likely, in the responsible entity's opinion, to cause a person to make a properly made submission objecting to the change proposed, if the circumstances allowed; or*
- (d) *cause development to which the approval relates to include any prohibited development.*

A response to these tests is provided in the following subsections.

#### **(a) Substantially Different Development**

The Statutory Guideline 06/09 - Substantially different development when changing applications and approvals, provides guidance relating to whether a change is considered to be substantially different and therefore not a permissible change under the SPA. Specifically,

the guideline states that “A change may result in a substantially different development if the change proposed:

- *involves a new use with different or additional impacts;*
- *results in the application applying to a new parcel of land;*
- *dramatically changes the built form in terms of scale, bulk and appearance;*
- *changes the ability of the proposal to operate as intended. For example, reducing the size of a retail complex may reduce the capacity of the complex to service the intended catchment;*
- *removes a component that is integral to the operation of the development;*
- *significantly impacts on traffic flow and the transport network, such as increasing traffic to the site;*
- *introduces new impacts or increases the severity of known impacts;*
- *removes an incentive or offset component that would have balanced a negative impact of the development; and*
- *impacts on infrastructure provision, location or demand.”*

The Permissible Change proposed, can be seen to:

- **not** involve a new use with different or additional impacts as the change relates to particularising the operation of the bed and breakfast, and defines the nature of food service, service of alcohol and operating hours; no additional impacts are expected from the changes proposed.
- **not** result in the application applying to a new parcel of land as the change does not involve a new parcel of land.
- **not** dramatically change the built form in terms of scale, bulk and appearance as the change relates to the operations of the bed and breakfast only; no changes to the built form are proposed.
- **not** change the ability of the proposal to operate as a whole as the change relates to particularising the operations of the bed and breakfast only.
- **not** remove a component that is integral to the operation of the development as the change relates to particularising the operations of the bed and breakfast only.
- **not** significantly impact traffic flow and the transport network as no changes are proposed to the access for the development; the proposed change relates to the operations of the bed and breakfast only.
- **not** introduce new impacts or increase the severity of known impacts as the particularising the operations of the bed and breakfast; specifically, (a) acknowledgement that all meals are catered as part of the bed and breakfast does not introduce new impacts or increase the severity of known impacts; and (b) acknowledgement that the bed and breakfast operates 7 days a week; is consistent with community expectation of a bed and breakfast development, and the development is sufficiently removed from sensitive receiving environments that no new impacts or increase in the severity of impacts could be reasonable foreshadowed.
- **not** remove an incentive or offset component that would have balanced a negative impact of the development as no offsets were part of the original application.

- **not** impact on infrastructure provision, location and demand because the provision of infrastructure to the bed and breakfast will remain unchanged, as with the capacity of the bed and breakfast.

Based on the above assessment, it is considered that the change proposed **does not** result in a substantially different development, as elucidated under Statutory Guideline 06/09.

**(b) Additional Concurrence Agencies**

There were no Concurrence Agencies involved in the original application, and if lodged now, a development application would not require referral to a Concurrence Agency, this test does not apply in this instance.

**(c) Requires impact assessment**

The original application required code assessment, and if re-made given the requested change, would not be impact assessable.

**(d) Properly made submissions**

As identified at (c), the original application was code assessable and accordingly would not result in any properly made submissions.

**(e) Prohibited development**

No prohibited development is proposed.

**4. CONCLUSION**

This permissible change has demonstrated that the proposed changes to the existing Development Approval for Material Change of Use (Home Based Business (Bed & Breakfast)) should be considered a 'Permissible Change' pursuant to Section 367 of the SPA.

In particular, it is considered that the changes would:

- not result in a substantially different development having regard to the matters set out in Statutory Guideline 06/09;
- not require referral to additional concurrence agencies;
- not cause a proposal that did not require impact assessment to now require impact assessment;
- not cause a person to make for a properly made submission objecting to the change, if the circumstances allowed; and
- not cause the development to include any prohibited development.

In conclusion, the change proposed in this request satisfies the necessary tests of the SPA regarding a permissible change. For these reasons it is recommended that the Council give favourable consideration to the proposal to approve the changes as requested, subject to application of reasonable and relevant conditions.

Should you require any further details or clarification please contact me on (07) 4051 0288.

Yours faithfully,



**DOMINIC HAMMERSLEY**

Business Development Manager / Senior Planner  
Cardno HRP

Enc:  
Attachment A – Original Approval Documents



## Attachment A – Original Approval Documents

10 APR 2014

Job # 2174 - HAP13260 - LP

Doc. Name DOUGLAS SHIRE COUNCIL 140410.

Scan DECISION NOTICE

W.I.P. \_\_\_\_\_

Administration Office

64 - 66 Front St Mossman

P 07 4099 9444

F 07 4098 2902

**YOUR REF:** HRP13260

**OUR REF:** MCUC 5306/2013 SEDA (419111)

8 April 2014

Trustee for the Diwan Eco B&B Trust  
C/- Cardno HRP  
PO Box 244  
**MACKAY QLD 4740**

Dear Sir/Madam

**DECISION NOTICE UNDER S 335 SUSTAINABLE PLANNING ACT 2009:  
DEVELOPMENT APPLICATION FOR CAPE TRIBULATION ROAD, DIWAN**

With reference to the abovementioned Development Application, which was determined under Instrument of Delegation on 7 April 2014, please find attached the relevant Decision Notice.

The notice includes extracts from the Act with respect to making representations about conditions, negotiated decisions, suspension of the appeal period, and lodging an Appeal.

Should you have any enquiries in relation to this Decision Notice, please contact Michelle Henderson of Council's Development and Environment Branch on telephone number 07 4099 9457.

Yours faithfully



Donna Graham  
Manager Development & Environment

Att





Administration Office  
64 - 66 Front St Mossman  
P 07 4099 9444  
F 07 4098 2902

**APPLICANT DETAILS**

Trustee for the Diwan Eco B&B Trust  
C/- Cardno HRP  
PO Box 244  
MACKAY QLD 4740

**ADDRESS**

Cape Tribulation Road, Diwan

**REAL PROPERTY DESCRIPTION**

Lot 41 on RP739765

**PROPOSAL**

Home Based Business (Bed & Breakfast)

**DECISION**

Approved subject to conditions (refer to approval package below).

**DECISION DATE**

7 April 2014

**TYPE**

Material Change of Use (Development Permit)

**REFERRAL AGENCIES**

None Applicable

**SUBMISSIONS**

There were no submissions for this application.

**FURTHER DEVELOPMENT PERMITS REQUIRED**

Development Permit for Building Works  
Development Permit for Plumbing Works

**CODES TO COMPLY WITH FOR SELF-ASSESSABLE DEVELOPMENT**

None

**DOES THE ASSESSMENT MANAGER CONSIDER THE APPLICATION TO  
BE IN CONFLICT WITH APPLICABLE CODES, PLANNING SCHEME,  
STATE PLANNING POLICIES OR PRIORITY INFRASTRUCTURE PLAN  
(IF YES, INCLUDE STATEMENT OF REASONS)**

Not in conflict



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

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

Drawing or Document	Reference	Date
Survey Plan (Site Plan & Perspectives)	Drawing no ECO.1213.1630 (1 of 5) prepared by Shelmier Architects (Council ref no 389814).	May 2013
Site Plan	Amended plan to be confirmed	TBC
Floor Plan	To be confirmed	TBC
Southern & Eastern Elevations	Drawing no ECO.1213.1630 (3 of 5) prepared by Shelmier Architects (Council ref no 389814).	May 2013
Northern & Western Elevations	Drawing no ECO.1213.1630 (4 of 5) prepared by Shelmier Architects (Council ref no 389814).	May 2013
Concept View of Site Development	Drawing no ECO.1213.1630 (5 of 5) prepared by Shelmier Architects (Council ref no 389814).	May 2013

**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, including recommendations and findings confirmed within technical reports; and
  - 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 satisfied prior to Commencement of Use, except where specified otherwise in these conditions of approval.

**Amendment to Design**

3. The proposed development must be amended to accommodate the following changes:
  - a. Provide floor plans for all proposed buildings demonstrating a maximum of eight (8) bed spaces to be accommodated in the four (4) 'accommodation huts' only, and the deletion of any accommodation in the barn;
  - b. Provide an amended site plan which reflects any amendments to buildings, structures and vehicle parking onsite, taking into consideration Condition 21 – Maximum Bed Spaces.

Details of the above amendments must be endorsed by the Chief Executive Officer prior to issue of a Development Permit for Building Work.

## **Water Supply**

4. The on-site water supply designated for use as potable water must meet the requirements of The Australian Drinking Water Guidelines. Any treatment system required must be installed and operational prior to commencement of use and is the responsibility of the property owner.
5. Water storage tank(s) with a minimum capacity not less than 30 000 litres must be installed prior to occupation of the premises. Details of the water tank(s) must be shown on plans submitted with the Building Application. Such water tank(s) must be provided with:
  - a. Mosquito-proof screens of brass, copper, aluminium or stainless steel gauze not coarser than one (1) mm aperture mesh of substantial construction and installed in such manner as not to cause or accelerate corrosion; or
  - b. Flap valve at every opening of the tank or other receptacle; or
  - c. Other approved means for preventing the ingress or egress of mosquitoes; and
  - d. Where a tank or other receptacle is provided with a manhole, the manhole must have a diameter of no more than 40 cm; and
  - e. A 50 mm ball valve with a camlock fitting.

## **Water Saving**

6. All toilet devices in the development must be fitted with dual flush cisterns and showers and hand basins in the development must be fitted with flow control valves or similar water control devices to generally restrict flow to nine (9) litres of water per minute.

## **On-Site Effluent Disposal**

7. The method of on-site effluent disposal must be in accordance with the recommendations contained in the On-Site Sewage Disposal Assessment Report GT14-004-001R Dunn Rev 1 (Council Ref No415622) dated 1 February 2014 prepared by Engineering Testing Services Pty Ltd.

Or;

Should there be an amendment to the proposed on-site effluent disposal system taking into account maximum number of guests as outlined in Condition 21 – Maximum Bed Spaces, details of any amended wastewater treatment system to be installed must be approved by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.

## **Damage to Infrastructure**

8. In the event that any part of Council's existing road infrastructure is damaged as a result of construction activities occurring on the site, Douglas Shire Council must be notified immediately of the affected infrastructure and have it repaired or replaced at no cost to Council.

## **Vehicle Parking**

9. The amount of vehicle parking must be as specified in Council's Planning Scheme which is a minimum of six (6) spaces, being two (2) spaces for the House Land Use and four (4) spaces for the Home Based Business (Bed & Breakfast) Land Use.

The car parking layout must comply with the Australian Standard AS2890.1 2004 Parking Facilities – off-street car parking and be constructed in accordance with Austroads and good engineering design. In addition, all parking, driveway and vehicular manoeuvring areas must be appropriately surfaced (gravel standard), drained and line marked.

## **Vegetation Clearing**

10. Existing vegetation on the land must be retained in all areas except those affected by the construction of access driveways and/or the installation of services as detailed on the approved plans. Any further clearing requires a Permit for Operational Works (Vegetation Damage).

## **Landscaping**

11. All landscaping to be installed must consist of native and endemic species only and planted in an irregular and random fashion to blend with existing vegetation. Exotic species are not permitted.
12. A ten (10) metre wide landscape buffer must be provided and retained along the road frontages of the site. Screening vegetation is also to be provided and retained along the western boundary of the land, to screen the development from the view of the adjoining property. The landscaping buffer and landscaping on the land must consist of 100 per cent of native and endemic species in accordance with the Plant Species Schedule in Planning Scheme Policy No 7. The landscaping buffer must be planted in an irregular and random fashion to blend with existing vegetation. The use of palm trees must be limited and only used as an accent feature.

## **Building Colours**

13. The exterior finishes and colours of Buildings are non-reflective and blend with the natural colours of the surrounding environment. Roofs and structures (including water tanks) must be of moderately dark to darker shades of green, grey, blue and brown.

The applicant must provide colour samples prior to the issue of the Development Permit for Building Works.

The above requirements must be made known in writing to all prospective purchasers.

## **Sediment and Erosion Control**

14. Soil and water management measures must be installed/implemented prior to discharge of water from the site, such that no external stormwater flow from the site adversely affects surrounding or downstream properties (in accordance with the requirements of the *Environmental Protection Act 1994*, and the *FNQROC Development Manual*).

### **Lawful Point of Discharge**

15. All stormwater from the property must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream from the development, all to the requirements and satisfaction of the Chief Executive Officer.

### **Existing Creek and Drainage Systems**

16. All existing creek systems and drainage areas must be left in their current state, including no channel alterations and no removal of vegetation unless consented to in writing by the Chief Executive Officer.

The applicant/owner must obtain any necessary approvals from the Department of Natural Resources and Mines for carrying out works in a watercourse.

### **External Works**

17. Undertake the following external works:
  - a. Provide concrete crossover(s) and apron(s) in accordance with *FNQROC Development Manual Standard Drawing S1105*. A copy is attached at Appendix 2.

The crossover must not impact on stormwater flows in minor and major flow events
  - b. Repair any damage to existing roadway that may occur during and works carried out in association with the construction of the approved development.

### **Shed/Barn**

18. The use of the shed shall be for purposes ancillary to the residential use of the land, and may not be used for holiday or residential accommodation.

### **House**

19. The lot must not contain more than one (1) House and such House is to be occupied by one (1) Household.

### **Maximum Bed Spaces**

20. The maximum number of persons/bed spaces to be accommodated on the site at any time for the Home Based Business (Bed & Breakfast) Land Use is eight (8) bed spaces.

### **Generators**

21. All power generation devices are to be positioned and housed (including noise attenuation material) so as to mitigate noise nuisance to adjoining and nearby residents.

### **Fuel Storage**

22. All fuels must be stored in an undercover, secure and bunded location at all times.

## **Fencing**

23. Any fencing onsite is to be limited to the extents of the existing cleared site area to minimise any impacts on the existing fauna habitats and habitat corridors within the locality.

## **Advertising Devices**

24. Signage for the Home Based Business is to consist of a sign not exceeding 0.3m<sup>2</sup> and having only the name and occupation for the Home Based Business (Bed & Breakfast). Any additional signage will require an application for Operational Works for an Advertising Device.

## **Employees**

25. The Home Based Business is to be conducted by a resident or residents of the House and the number of employees who are not residents of the House must not exceed two (2) persons.

## **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 section 339 and section 341 of the *Sustainable Planning Act 2009*.
2. The applicant/owner is advised that this approval does not approve the construction of the building work. A Development Permit for Building Work must be obtained in order for construction to commence.
3. 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.
4. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
5. For information relating to the *Sustainable Planning Act 2009* log on to [www.dsdip.qld.gov.au](http://www.dsdip.qld.gov.au). To access the *FNQROC Development Manual*, Local Laws and other applicable Policies log on to [www.cairns.qld.gov.au](http://www.cairns.qld.gov.au).

## **LAND USE AND ADMINISTRATIVE DEFINITIONS\***

In accordance with *Douglas Shire Planning Scheme 2008* the approved land uses of House and Home Based Business are defined as:

### *House*

*Means the use of premises comprising one (1) Dwelling Unit, located on one (1) lot for the exclusive residential use of one (1) Household. The use includes:*

- *Outbuildings/structures incidental to and necessarily associated with the residential use;*
- *The care of children in accordance with the Child Care (Family Day Care) Regulation 1991;*
- *Accommodation for a member or members of the extended family of the Household occupying the House and for personal staff; and*
- *A display house which displays to the general public the type of construction or design offered by a builder/developer, for a maximum period of twelve (12) months and which then converts to a House for the exclusive use of one Household.*

### Home Based Business

*Means the use of a House and its surrounds, or an ancillary Building on the lot containing the House, by the permanent resident/s of the House for the conduct of a business, commercial or professional enterprise which is not industry based.*

*The use includes the provision of accommodation to tourists or travellers, commonly described as:*

- *Bed and Breakfast Accommodation – any premises used or intended for use as tourist accommodation which provides breakfast and overnight accommodation, which is not self contained.*

OR

- *Forest Stay Accommodation – any premises used or intended for use as tourist accommodation which is not self-contained and which operates in association with organised tours of the natural and/or rehabilitated forest environment on the same site and includes some staff accommodation on site for employees.*

OR

- *Host Farm Accommodation – any premises used or intended for use as tourist accommodation, which is not self contained, and which operates in conjunction with a Primary Industry.*

In accordance with *Douglas Shire Planning Scheme 2008* the administrative definition of Bed Space is defined as:

### Bed Space

*Means a space occupied by one (1) person for the purpose of sleeping. The following types of beds or Sites have the Bed Space equivalencies assigned to them, as follows:*

<i>Single bed</i>	<i>=</i>	<i>1 bed space</i>
<i>Double size bed/queen size bed/king size bed</i>	<i>=</i>	<i>2 bed spaces</i>
<i>Two-level bunk bed</i>	<i>=</i>	<i>2 bed spaces</i>
<i>Tri-level bunk bed</i>	<i>=</i>	<i>3 bed spaces</i>
<i>Single trundle bed</i>	<i>=</i>	<i>1 bed space</i>
<i>Sofa bed – single</i>	<i>=</i>	<i>1 bed space</i>



<i>Sofa bed – double</i>	=	<i>2 bed spaces</i>
<i>Camping site</i>	=	<i>2 bed spaces</i>
<i>Caravan/campervan/motorhome/cabin site</i>	=	<i>2 bed spaces</i>

\*These definitions are provided for convenience only. This Development Permit is limited to the specifications, facts and circumstances as set out in the application submitted to Council and is subject to the abovementioned conditions of approval and the requirements of Council's Planning Scheme and the *FNQROC Development Manual*.

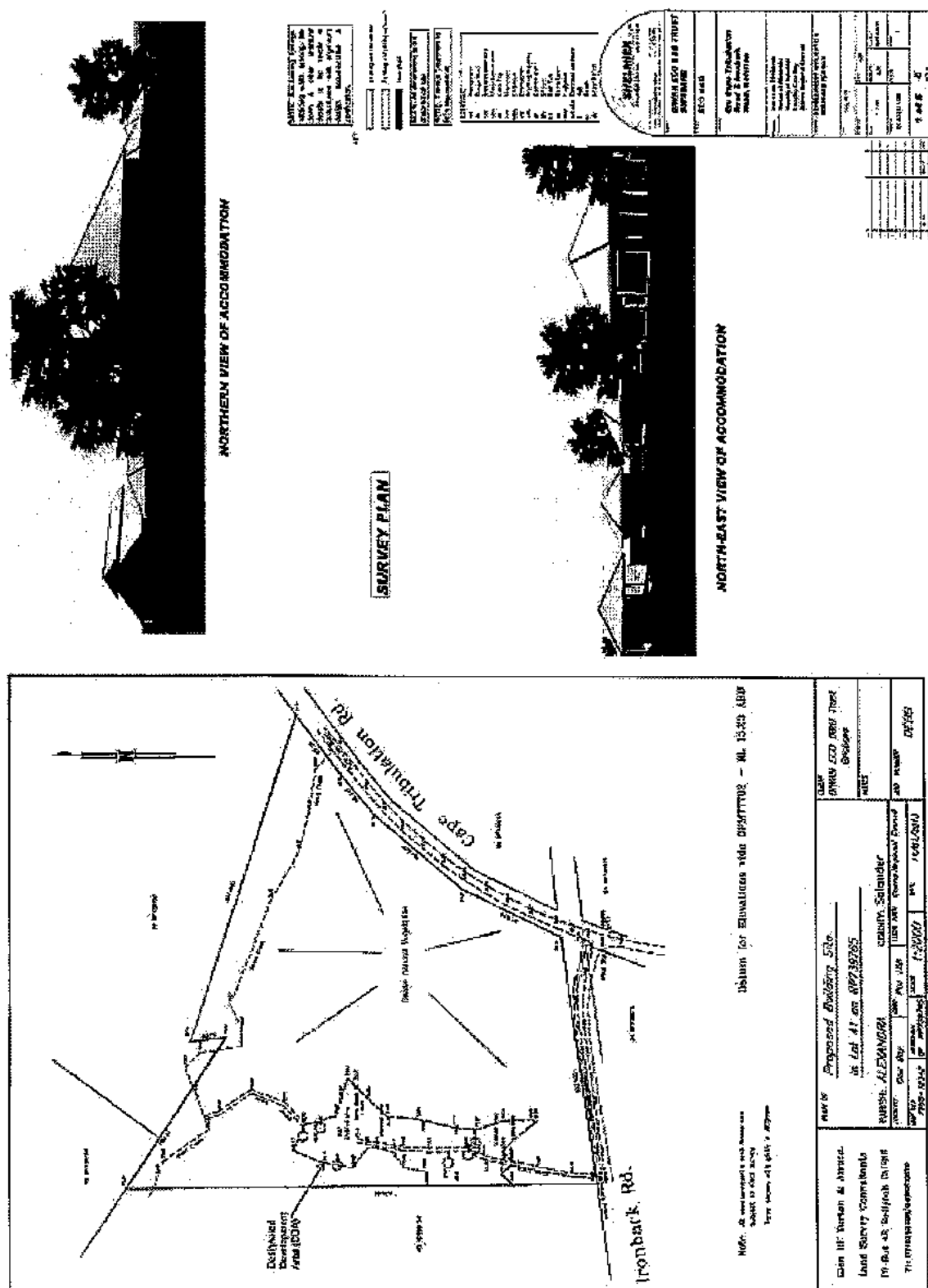
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## **RIGHTS OF APPEAL**

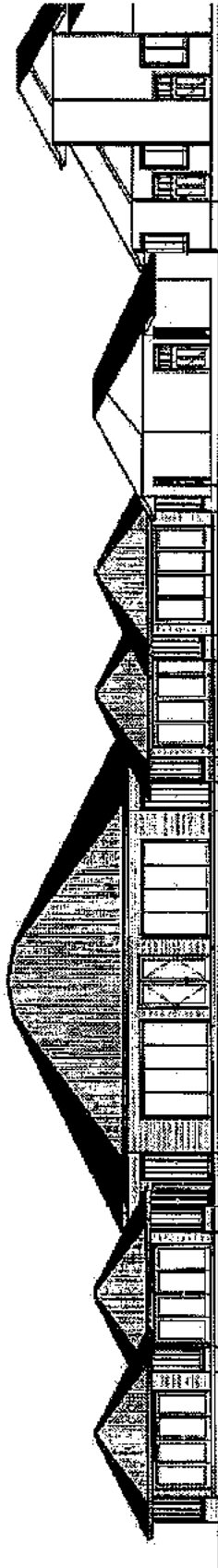
Attached

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## **End of Decision Notice**







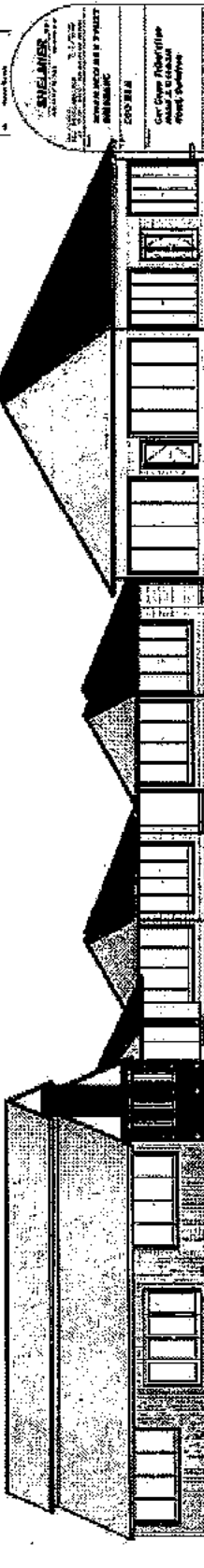
**SOUTHERN ELEVATION 1:100**

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**EASTERN ELEVATION 1:100**

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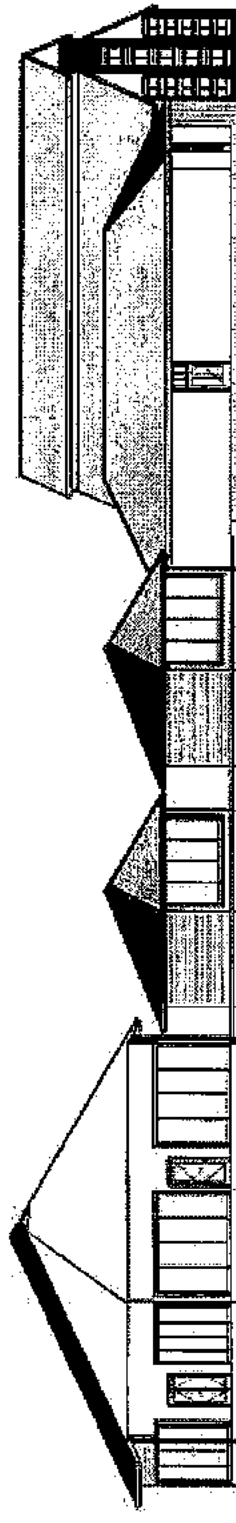
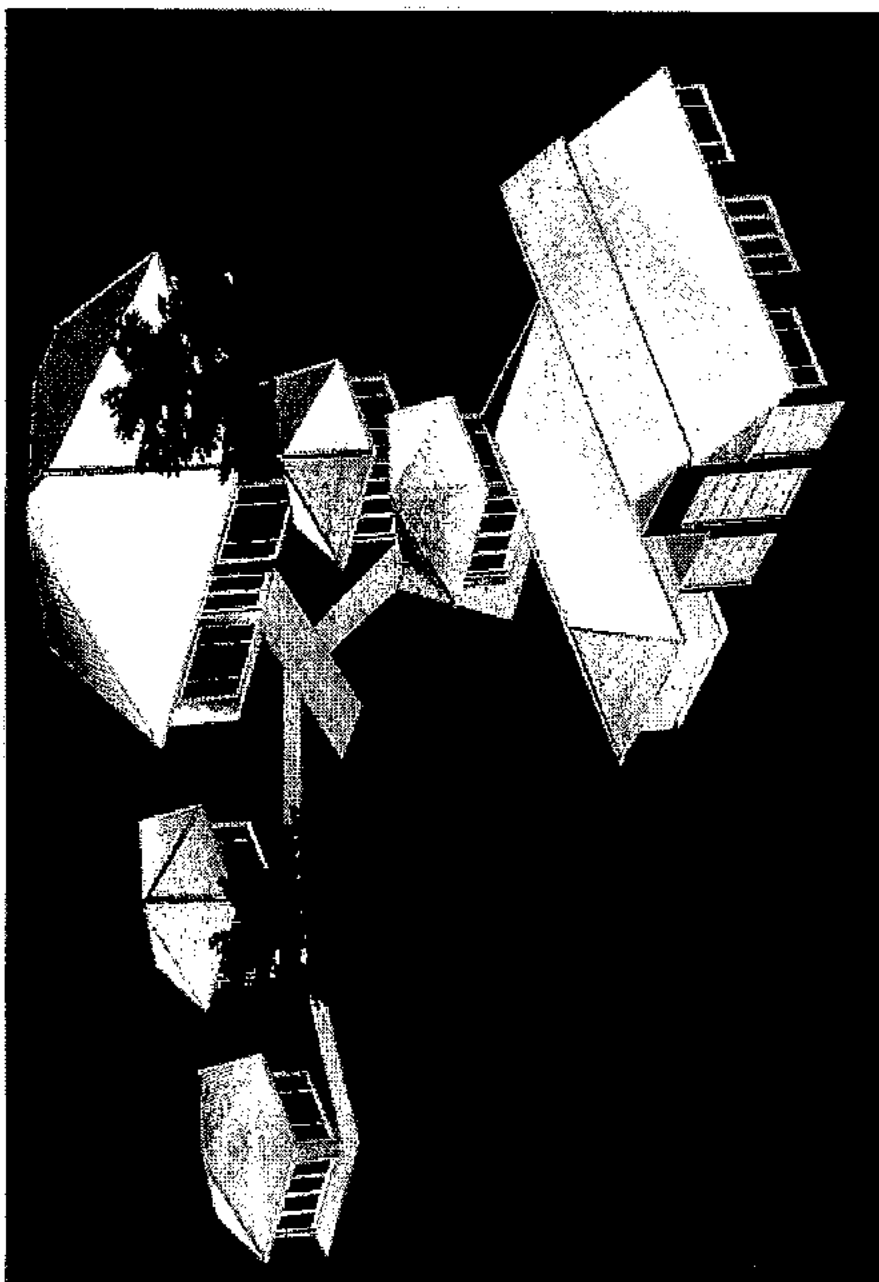
[illegible]

Figure 1 is a schematic diagram of a multi-layered structure. It shows a central vertical axis with various layers and components labeled. The layers are numbered 1 through 10. The components are labeled with letters A through J. The diagram illustrates the relationship between the layers and the components, showing how they are interconnected and how they change across the layers.

[illegible]

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