ORDINARY MEETING

20 JANUARY 2010

14

REQUEST FOR NEGOTIATED DECISION FOR MATERIAL CHANGE OF USE (MULTIPLE DWELLINGS- 4 UNITS) – 11 HIBISCUS LANE HOLLOWAYS BEACH – DIVISION 8

L Payler : 8/7/1794 : #2429281

PROPOSAL:	REQUEST FOR NEGOTIATED DECISION FOR MULTIPLE DWELLINGS (4 UNITS)				
<u>APPLICANT</u> :	A L NUNN C/- PETER ROBINSON PLANNING PO BOX 4751 CAIRNS QLD 4870				
LOCATION OF SITE:	11 HIBISCUS LANE HOLLOWAYS BEACH				
PROPERTY:	LOT 26 ON RP709285				
PLANNING DISTRICT:	BARRON SMITHFIELD				
PLANNING AREA:	RESIDENTIAL 3				
PLANNING SCHEME:	CAIRNSPLAN 2009				
REFERRAL AGENCIES:	NIL				
NUMBER OF SUBMITTERS:	N/A				
<u>STATUTORY ASSESSMENT</u> <u>DEADLINE:</u>	N/A				
APPLICATION DATE:	06/11/2009				
DIVISION:	8				
<u>APPENDIX:</u>	 APPROVED PLAN(S) & DOCUMENT(S) DEVELOPER CONTRIBUTION CALCULATIONS SUPPORTING INFORMATION 				

3. SUPPORTING INFORMATION

LOCALITY PLAN



RECOMMENDATION:

That Council resolves to amend the Development Permit 8/7/1794 issued on the 3 December 2009 for Multiple Dwellings (4 units) over land described as Lot 26 on RP709285, located at 11 Hibiscus Lane Holloways Beach, subject to the following:

- 1. Condition 3 remain unchanged.
- 2. Condition 8 remain unchanged.
- 3. Condition 15 be amended to read:
 - 15. Undertake the following works external to the land at no cost to Council:
 - a. Construct full width bitumen widening to the Poinciana Street and Hibiscus Lane frontage;
 - b. Construct tree guard around the existing tree in the Poinciana Street road reserve;

- c. Provision of a concrete crossover(s) and apron(s); and
- d. Repair any damage to existing kerb and channel, footway or roadway (including removal of concrete slurry from footways, roads, kerb and channel and stormwater gullies and drain lines) that may occur during and works carried out in association with the construction of the approved development.
- 4. Condition 17 remain unchanged.
- 5. Condition 26 remain unchanged.
- 6. That all other conditions of approval contained in the Decision Notice 8/7/1794 (#2414907) dated 3 December 2009 remain unchanged.

EXECUTIVE SUMMARY:

Council is in receipt of a request to negotiate the decision made for the development of four units on the site at 11 Hibiscus Lane, Holloways Beach. The applicant requests removal of several conditions which they believe to be unreasonable and/or unlawful.

Council Officers do not support the request to change conditions 3, 8, 17 or 26. It is recommended that Condition 15 be amended to reflect Councils intention to upgrade Poinciana Street road pavement in the near future.

TOWN PLANNING CONSIDERATIONS:

Background

On the 3 December 2009 Council approved, by delegated authority, the application for Material Change of Use (Multiple Dwellings). The development involves the construction of four units on the vacant site.

The applicant now seeks to remove several of the conditions on the grounds that they are unreasonable and/ or unlawful. The applicant's request and Council Officer responses are detailed below.

Condition 3

Condition 3 currently reads:

- 3. The proposed development must be amended to accommodate the following changes:
 - a. Provide fixed louvre screens to the balcony areas of the first floor of all units to inhibit overlooking of the neighbouring residential properties.

- b. Include louvers or obscure glazing to habitable room windows to prevent overlooking of units and neighbouring residential properties.
- c. Reduce the total combined width of crossovers on each site frontage to a maximum of 3.6 metres.
- d. Reduce the width of each driveway to a maximum of 3.0 metres.
- e. Setback the gazebo and pool of all units at least one (1) metre from the side and front property boundaries. Incorporate dense screening landscaping within the setback areas.

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

Applicants Request

It is requested that Condition 3c be amended to read:

Reduce the total combined width of the crossovers on each site frontage to a maximum of 6 metres.

The applicant contends that there is no logical justification for this in terms of the relevant codes, aesthetics, and traffic or safety issues. The applicant explains that if the allotment were to be occupied by a house with a standard double garage the crossover width would ordinarily be 6 metres. The applicant also argues that halving the width of the driveway as it crosses the footpath is inconvenient and potentially dangerous. Drivers reversing out of the garage not only have to concentrate on other vehicles and pedestrians, they have to perform a rather precise S shaped manoeuvre between the boundary of the property and the carriageway. In summary, that applicant contends that no useful purpose is served by the requirement to reduce the crossover width to 3.6 metres and a number of adverse consequences result.

Officer Response

The applicants request is not supported.

Contrary to the applicant's submission, the requirement for a 3.6 metre wide crossover is a requirement of Acceptable Measure 13.2 of the Multiple Dwelling (Small Scale Development) Code. The related Performance Criteria states:

P13 Vehicle Access and parking is not visually obtrusive from the street and is consistent with the streetscape.

The proposed six (6) metre wide cross over is not consistent with the Performance Criteria or the Acceptable Measure. The condition was included to ensure that the hardstand area at the front of the site was reduced. It is also noted that there are no footpaths on either street.

Also contrary to the applicant's suggestion that a single dwelling on the site would ordinarily have a six (6) metre wide crossover, the FNQROC Development Manual Standard Drawing S1015 specifies a maximum crossover width of three (3) metres for residential development (which includes dual occupancy and houses). Six (6) metre wide vehicle crossovers are not consistent with accepted development practices.

Adequate space for manoeuvring of vehicles should be provided onsite. Development should not rely on the road verge to achieve safe and convenient access to the site. It is also argued that pedestrian safety benefits from smaller driveway widths which give priority to pedestrian traffic rather than vehicles.

The amendment to design condition provides an opportunity for the applicant to modify the design to improve onsite vehicle manoeuvring arrangements while also reducing the width of the driveway and crossover.

Applicants Request

The applicant requests that Condition 3e be deleted. The applicant considers that there is no useful purpose served by the additional landscaping and the implementation of this condition considerably reduces the utility and amenity of both the pool and the gazebo while creating maintenance and other adverse consequences.

The applicant suggests that the pool and gazebo are located adjacent to the 6m setback area on the adjoining allotments (an area generally occupied by swimming pools, car parking/access and other recreational areas) and as a consequence, the adjoining uses are entirely compatible and the additional setback serves no useful purpose.

The applicant also contends that as Condition 27 requires a screen fence to be provided on the side boundary the landscaping required by Condition 3c will not be visible from the adjoining sites and as such, affords no benefit to the adjoining owners and is a positive disadvantage to the occupants of the development.

Officer Response

The applicants request is not supported.

The proposal is inconsistent with Acceptable Measure A3.1 which requires buildings to be setback a minimum of 6 metres from any road frontage or in established areas within 20% of the average setback of adjoining development. While the units are setback over six meters from the road frontage, proposed gazebos for each unit are positioned on the road frontage of both Hibiscus Lane and Poinciana Street. The related Performance Criteria states:

P3 Buildings are setback from the street frontages to establish a desirable streetscape pattern or in established areas maintain consistency with the existing streetscape pattern.

Acceptable Measure A7.3 also requires that buildings are setback a minimum of one meter from the side and rear boundary. Once again while the main unit building complies, the proposed gazebos are located 0.6 meters from the side boundary, with eaves almost on the boundary. The related Performance Criteria requires that:

P7 Buildings and open living areas are designed and arranged on the site to provide privacy for residents and neighbours

Condition 3e is included to ensure compliance with these Performance Criteria. The applicant's suggestion that a 1.8 meter high fence on the side property boundaries will provide an alternative acceptable solution is not supported.

Condition 8

Condition 8 currently reads:

8. Pay a monetary contribution to Council in accordance with Council's Trunk Infrastructure Contributions Policy towards the improving Stormwater Quality.

Contributions must be paid at the rates applicable at time of payment. On the present method of calculation, the contributions are \$569.24 for Stormwater Quality.

Payment is required Commencement of Use or approval and dating of the Building Format Plan, whichever occurs first.

Applicants Request

The applicant requests that Condition 8 be deleted. The applicant suggests that this condition requires a payment of a monetary contribution to Council that Council will use to install infrastructure intended to rectify the stormwater quality issues caused by the project.

They contend that no stormwater quality issues can be identified as being associated with the project. Once the project is complete, landscaped and settled, no mechanism can be identified by which stormwater will carry pollutants from the site. During construction, in accordance with both the Development Manual and the requirements of the Environmental Protection Act, soil and water management practices will be put in place to minimise the temporary risk of pollutants leaving the site.

The applicant also argues that as Council has no plans to install any stormwater quality maintenance infrastructure in Holloways Beach, the condition is unlawful.

Officer Response

The applicants request is not supported.

Infrastructure contributions for the development were calculated in accordance with Councils current Trunk Infrastructure Contribution Policy. In accordance with the Policy Water Quality Infrastructure items to be funded using Infrastructure Contributions are the works required to achieve Council's water quality objectives in each catchment. Works may include:

- Stormwater quality devices such interceptors, trash racks, vegetated swales etc
- Creation of meanders, riffles, settlement ponds

Costs of infrastructure are apportioned across a particular catchment so that all development is contributes to the cost of water quality management works. In this instance, the site is within the Barr Creek (Barron River Delta) Stormwater Quality Catchment, which extends well beyond the site or the suburb of Holloways Beach. No reasonable grounds for justifying exemption from the provisions of the Trunk Infrastructure Contribution Policy have been provided.

Condition 15

Condition 15 currently reads:

- 15. Undertake the following works external to the land at no cost to Council:
 - a. Construct full width bitumen widening to the Poinciana Street and Hibiscus Lane frontage;
 - b. Construct tree guard around the existing tree in the Poinciana Street road reserve;
 - c. Provision of a concrete crossover(s) and apron(s); and
 - d. Repair any damage to existing kerb and channel, footway or roadway (including removal of concrete slurry from footways, roads, kerb and channel and stormwater gullies and drain lines) that may occur during and works carried out in association with the construction of the approved development.

The external works outlined above require approval from Council in accordance with Local Law 22 – (Activities on Roads). Three (3) copies of a plan of the works at A1 size and one (1) copy at A3 size must be endorsed by the Chief Executive Officer prior to commencement of such works. Such work must be constructed in accordance with the endorsed plan to the satisfaction of the Chief Executive Officer prior to Commencement of Use or approval and dating of the Building Format Plan, whichever occurs first.

Applicants Request

The applicant requests that condition 15a be amended to remove reference to Hibiscus Lane and specify the width of the bitumen widening required for Poinciana Street.

The applicant holds that Hibiscus Lane is already fully constructed and is safe and serviceable furthermore the width is appropriate given its dimensions, context and community expectations in this area. Any bitumen widening would encroach onto the grass verge and would be unsightly and unnecessary. The requirement for widening on Hibiscus Lane should be deleted.

With respect to Poinciana Street, the applicant contends that the grass verges and informal parking is seen as a highly desirable streetscape by the residents of the area. The width of the existing seal is approximately 6.6 metres, adequate to convey existing and future levels of traffic safely and serviceably. The applicant considers that no widening of the sealed carriageway in Poinciana Street is justified. The applicant suggests that if Council can justify a widening of Poinciana Street, the width of that widening should be specified.

Officer Response

The request relating to Poinciana Street frontage is supported and the condition should be amended accordingly. It is noted that Council's Works Department has scheduled bitumen upgrade works along Poinciana Street. Depending on the timing of the development, it is possible that the works will be completed by Council, irrespective of the conditions of approval.

The request relating to Hibiscus Lane is not supported. Given the proposal will intensify the amount of traffic manoeuvring in the street, the condition is considered reasonable and relevant. Please refer to Appendix 3 for a photo of the verge.

An alternative is to require that the applicant provides a bitumen turn out linking the existing road pavement to the crossover. However, given the width of the site and the requirement for vehicles to reverse from the site, this approach would retain only small patches of grass verge. This would likely result in a less functional and more unsightly road verge.

Condition 17

Condition 17 currently reads:

17. A report prepared by a qualified Acoustical Consultant must be submitted at the time of lodgement of an application for a Development Permit for Building Work and endorsed by the Chief Executive Officer prior to the issue of the Development Permit for Building Work. The report must indicate design and construction features to be incorporated in the development to ensure that the development is acoustically insulated to at least the minimum standards as required by AS2021 - Acoustics - Aircraft Noise Intrusion - Building Siting and Construction for the 20-25 ANEF, having regard to the provisions of the Environmental Protection Act 1994, Environmental Protection (Noise) Policy 2008.

Applicant Request

It is requested that Condition 17 be deleted.

The applicant contends that this condition is not a requirement of the Operation Aspects of the Cairns International Airport Code.

The applicant argues that in accordance with the purpose of the Code, it is not a requirement for all residents to be protected from all aircraft noise and that the Code is about the protection of the operational aspects of the airport. The Code states:

"The purpose of this Code is to ensure that the Cairns International Airport and State Significant Aviation Facilities within the City are protected from the adverse impacts of development".

In the preamble to the Code, it is stated:

"Development should not compromise the efficient operation of the airport. State Planning Policy 1/02 Development in the Vicinity of Certain Airports and Aviation Facilities requires that the airports and aviation facilities be protected from development that could undermine their safety or operational efficiencies."

The applicant suggests that there is no aspect of the development that can adversely impact upon the operation efficiency or safety of the Cairns International Airport. The applicant states:

There are approximately 1,200 residential dwellings and units at Holloways Beach, all of which are potentially influenced by aircraft noise to a greater or lesser extent. Virtually none of these dwelling units are insulated against aircraft noise intrusion. There is no pattern of regular or wholesale redevelopment of residential activities at Holloways Beach, the inevitable consequence of which will be the elimination of the existing housing stock and its replacement by buildings that are insulated against aircraft noise. In other words what is there now is unlikely to change. The logical consequence of this set of circumstances is that the addition of four dwelling units in an area marginally affected by aircraft noise can possibly lead to an impact on the operational efficiency of the Cairns International Airport of itself. While it may be possible, although extremely unlikely, that there will be a large groundswell of community opposition in Holloways Beach to the movement of aircraft to and from the airport, this will be unrelated to the four additional units comprising this project. Unless all residences at Holloways Beach are insulated against aircraft noise, there is no point in insulating any of them.

The relevant Performance Criteria P4 indicates that land uses not directly associated with the Airport are to be protected from aircraft noise levels that may cause harm of undue interference. The applicant contends that there is no evidence that the aircraft noise levels in Poinciana Street and Hibiscus Lane cause either harm or undue interference and therefore the condition is not required to satisfy the Performance Criteria or the purpose of the relevant Code or for that matter the relevant State Planning Policy.

The applicant holds that none of the relevant planning instruments require the residents to be 'protected' and that the protection is only to be afforded to the airport infrastructure and operations.

Officer Response

The applicants request is not supported.

Contrary to the applicants' interpretation of the Code, Council Officers are of the opinion that the Code clearly requires that the occupants of new residential development within the 20-25 ANEF contour must be protected from aircraft noise. This directly protects the airports anticipated capacity to alter flight paths or expand flight capacity.

The Australian Noise Exposure Forecast (ANEF) is a plot of estimated noise exposure based on a forecast of aircraft movements and a fleet mix for a defined future horizon. The ANEF is assessed and endorsed by Airservices Australia for adoption as the likely noise exposure at a designated time in the future. This means that while aircraft noise in a given location may be considered insignificant at present, the ANEF identifies the potential for a future increase in noise related to the increased or altered operations of an airport.

While it is acknowledged that existing residential buildings in the area are unlikely to have noise attenuation measures built in, this does not mean that new development should be exempt from improved practices. The assumption that no other development within the 20-25 ANEF contour has been required to comply is unfounded.

This condition requires the preparation of an acoustic report and the development to be acoustically insulated against potential aircraft noise intrusion as considered necessary by the acoustic report. No evidence (aside from anecdotal) has been provided to support the suggestion that aircraft noise is not and will not be an issue. No advice from a suitably qualified engineer has been provided to support the applicants' claims.

The condition is relevant given that the site is within the 20-25 ANEF contour and the development is for permanent residential use. The condition is reasonable, as it ensures that the development is consistent with the Planning Scheme Code, the *State Planning Policy 1/02 Development in the Vicinity of Certain Airports and Aviation Facilities, the* Environmental Protection (Noise) Policy 2008.and the Australian Standard AS2021 - Acoustics - Aircraft Noise Intrusion - Building Siting and Construction for the 20-25 ANEF.

Condition 26

Condition 26 currently reads:

26. Prior to Commencement of Use, the applicant/owner must submit to Council a letter from Ergon Energy, or details of alternative arrangements for the works, stating that satisfactory works have been completed for the provision of an underground electricity supply to the development.

Applicants Request

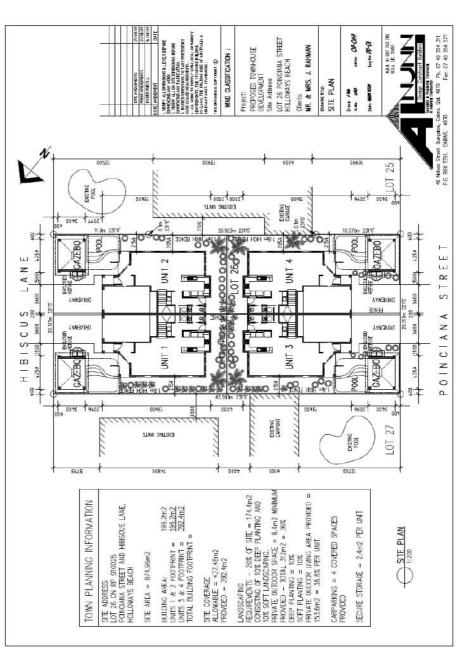
It is requested that this condition be deleted. The applicant contends that there is no existing underground electricity infrastructure in either street and direct connections from the existing overhead supply are available.

Officer Response

The applicants request is not supported. The condition is not requiring that the power pole be placed underground. The condition requires that the connection between the existing pole and the site be placed underground. This is a standard requirement for new development and ensures that electricity supply to the site is safe and unexpected interruptions to the power supply due to storms, cyclones, or branches falling onto powerlines are minimised.

Lauren Payler Planning Officer Action Officer

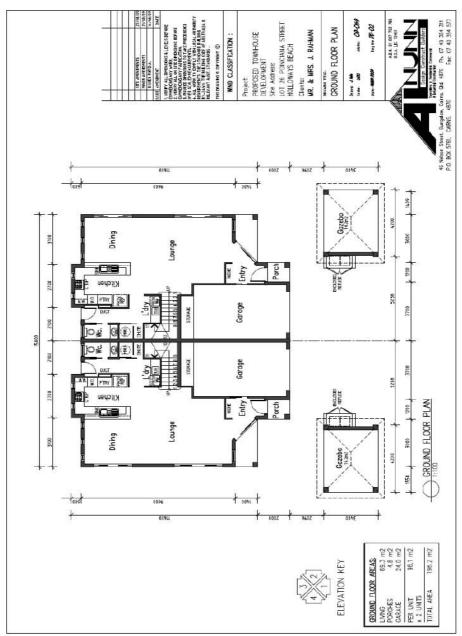
Simon Clarke Manager Development Assessment



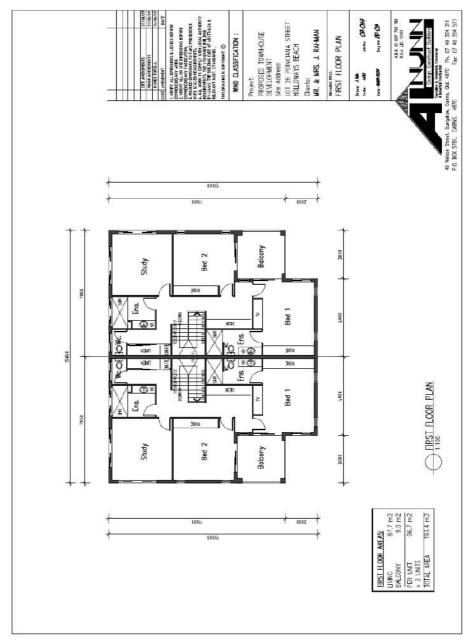
APPENDIX 1 APPROVED PLAN(S) & DOCUMENT(S)



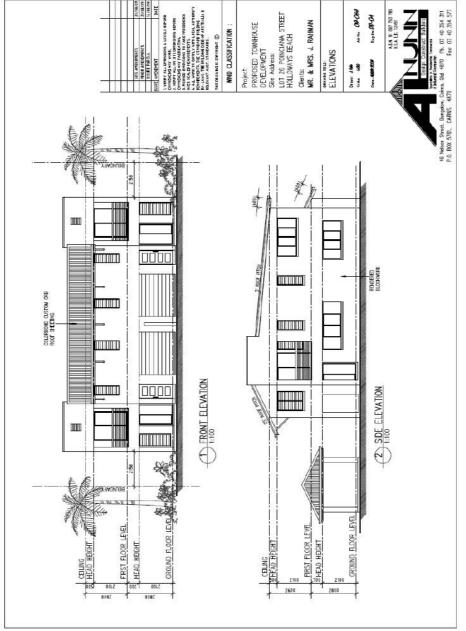


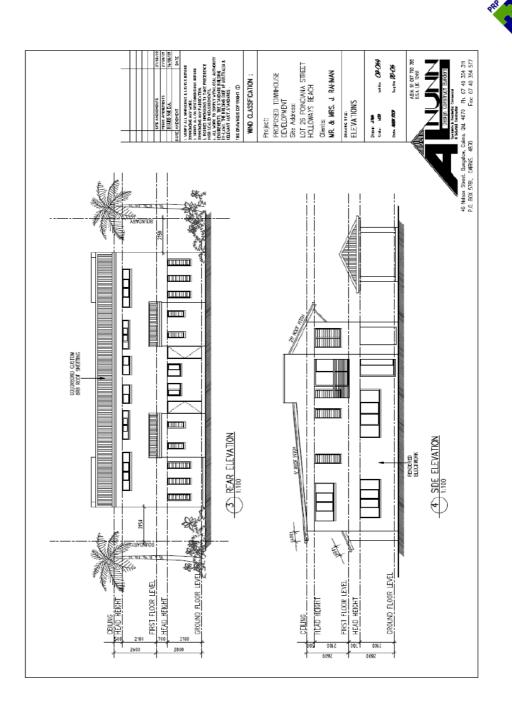












APPENDIX 2 DEVELOPER CONTRIBUTION CALCULATIONS

11 Hibiscus Lane Holloways Beach L26 RP709285 87150 STREET No. & NAME SUBURB LOT & RP No.s PARCEL MCU (4 x Multiple Dwellings) 8/7/1794 30-Sep-09 4 DEVELOPMENT TYPE COUNCIL FILE NO. OUARTER ENDING VALIDITY PER 2397296 1 This logsheet is indexed appropriately only for paym made within the quarter noted above. VERSION NO. DIST. \$ / ERA NET ERA ADJUSTMENT AMOUNT DUE AMOUNT PAID RECEIPT TO WATER WATER 3.00 3.740.00 X 1.80 0.00 \$6,732.00 635 / 00 WASTEWATER Northern 2 3,109.00 X 1.80 0.00 \$5,596.20 636 / 00 Transport Caims Urban CRC Infrastructure \$25,440.00 348/ 00 DRAINAGE Barr Creek (Barron River Defttaleam Management S0.00 0 0 0 0 Stormwater Quaity \$569.24 400/524 400/524 400/524 0	11 Hibiscus Lane Holloways Beach L26 RP709285 87158 STREET NO. & NAME SUBURB LOT & RP No.s PARCEL NO MCU (4 x Multiple Dwellings) 8/7/1794 30-Sep-09 4 DEVELOPMENT TYPE COUNCIL FILE NO. OUARTER ENDING VALIDITY PERIO 2397296 1 This logsheet is indexed appropriately only for paymen made within the quarter noted above. VERSION NO. SKIDS NO. VERSION NO. VERSION NO. VERSION NO. AMOUNT DUE AMOUNT PAID RECEIPT TY NATER DIST. \$ / ERA NET ERA ADJUSTMENT AMOUNT DUE AMOUNT PAID RECEIPT TY NATER 3.00 3,740.00 X 1.80 0.00 \$\$6,732.00 635 / 057. MASTEWATER Northern 2 3,109.00 X 1.80 0.00 \$\$5,596.20 636 / 057. Transport Caims Urban CRC Infrastructure \$\$2,6440.00 348/ 057. 636 / 057. Roadsj Caims Urban Caims Urban CRC Infrastructure \$\$2,6440.00 0 0 ORAINAGE Barro - Smithfield Stormwater Quality <t< th=""><th></th><th>A Nu</th><th></th><th></th><th></th><th>N//</th><th></th><th colspan="2">0</th></t<>		A Nu				N//		0	
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		Checked by				on		Date Paid		
Amendments Date Receipt No		Amendments					Date	Receipt No		

1. The Developer should confirm these details with Development Assessment prior to arranging payment

2. City Assessment must update these details if the effective quarter is no longer current

3. City Assessment must update these details in the event of policy change or variation to Development Approval

These details must be presented at time of payment
 A photocopy of these details to be forwarded to Development Assessment once payment is receipted
 The original of these details to be forwarded to Finance Department with receipt once payment is receipted
 Payment details to be entered into Developer Contributions Register by Finance Officer

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APPENDIX 3 SUPPORTING INFORMATION

HIBISCUS LANE- SITE ON LEFT BEYOND POLE