



27 March 2023

Judd Cornwall  
Byron Shire Council

Via email

Dear Judd

## THE ESPLANADE PARKING AND OTHER WORKS PLANNING ADVICE

### Purpose of this Advice

The purpose of this advice is to:

- Advise on planning pathway for this project based on the four options in the draft plan set.
- Advise on specialist information required.
- Identify likely issues with the options.

At the time of writing, Council had supplied a plan set for project #2668 with four options. Parking plan option 1 – 9/10/18; option 2 – 9/10/18; option 3 – 22/6/22; and option 5 – 22/6/22.

Mike Svikis inspected the subject land on 22 March 2023.

### General

There are three (3) 'approval pathways' available under the *Environmental Planning and Assessment Act 1979*:

- 1 Exempt development – no approvals required under the Act (may still require approvals/permits/licensing under other legislation). In Byron, this can still trigger a Conservation Risk Assessment (CRA);
- 2 Development with consent – consent required under Part 4 of the Act (ie the development application process – can require an EIS in some circumstances); and
- 3 Development without consent – no approval required, but Council will need to consider environmental implications of the works (under Part 5 of the Act) – a Review of Environmental Factors (REF) is the tool used for this. May still require approvals/permits/licensing under other legislation.

## The Project

The activity is different with each option and involves the following components:

### Option 1

- Proposed gravel road widening and gravel turning area
- Proposed signage
- Proposed bollards
- Designated parallel parking areas (nine spaces) and designated 'no parking' areas
- Concrete block retaining wall at turnaround area in hind dune

### Option 2

- Proposed new gravel turning area. No road widening
- Proposed signage
- Proposed bollards
- Designated 'no parking' along entire road section south of intersection with The Strand (zero spaces)
- Concrete block retaining wall at new turnaround area in hind dune

### Option 3

- Proposed sealed road widening along full length and large sealed turning area
- Proposed signage
- Designated angle parking areas between driveways (18 spaces)
- Remove most trees in the road reserve on both sides of road
- Install 1.5-metre to 2.5-metre-high retaining wall along most of the road length in hind dune

### Option 5

- Proposed sealed road widening along full length and large sealed turning area
- Proposed signage
- Designated angle parking areas between driveways (37 spaces)
- Remove most trees in the road reserve on both sides of road
- Install 1.3-metre to 2.5-metre-high retaining wall along most of the road length in hind dune

The plans for each option are attached at Appendix 1.

The project arises because The Esplanade is in poor condition and has minimal drainage; it is a popular parking spot for beach users that is often full and congested; it is the sole road access for eight residential lots and parking in driveways is common; it is the only access for the garbage truck for weekly pick-ups from the eight lots.

## The Subject Land

The subject land is entirely within The Esplanade road reserve (Figure 1). It runs parallel to New Brighton beach.

Figure 1: The Esplanade road reserve



The subject land is zoned mostly 7f1 (Coastal Lands Zone) and partly 7f2 (Urban Coastal Lands Zone) under Byron LEP 1988 (Figure 2). It is a deferred matter under Byron LEP 2014.

Figure 2: Byron LEP 1988 – subject land is zoned 7f1 (Coastal Lands Zone) and 7f2 (Urban Coastal Lands Zone)



The subject land (road reserve) is mostly identified as being on the seaward side of the Immediate Hazard Line in the *Byron Shire Coastline Hazards Assessment Update* (2013) (Figure 3). The ‘immediate’ erosion hazard extent represents the zone that could be affected by erosion in the immediate near future (eg over the next few years) in the event of one or more major storm events, while the 2050 and 2100 extents incorporate a landward shift in the immediate hazard line in response to the shoreline recession.



Figure 3: Byron Shire Coastline Hazards Assessment map extract



The subject land is identified by Council as an area of High Environmental Value (Figure 4) with a vegetation community described as Littoral Rainforest (Figure 5).

Figure 4: BSC Area of High Environmental Value

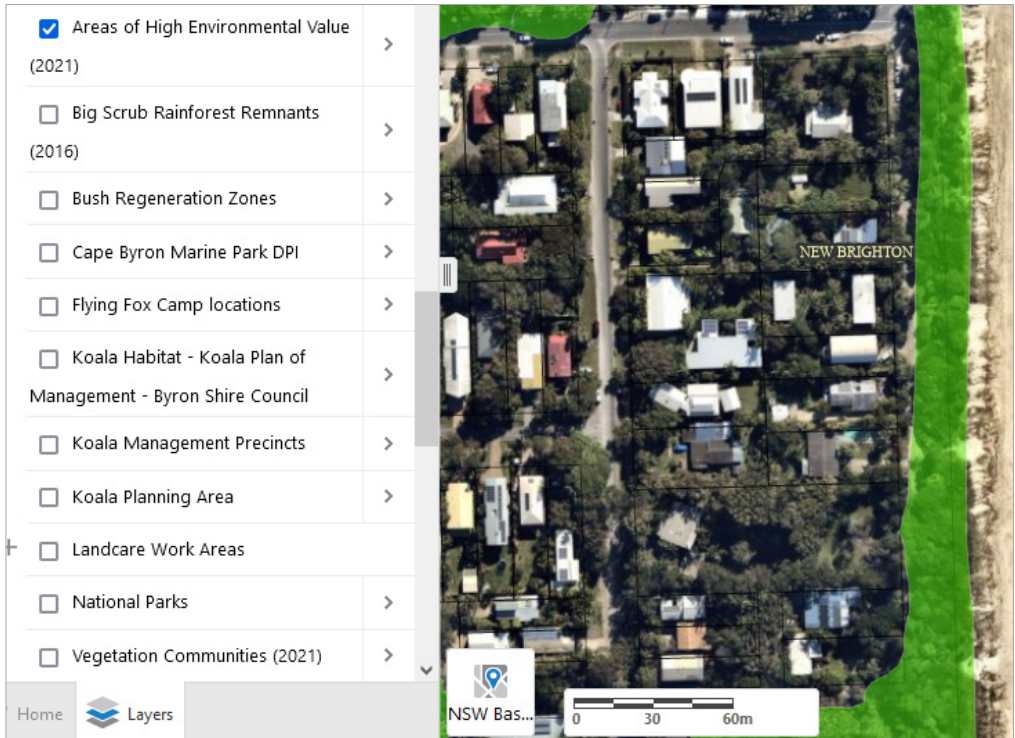
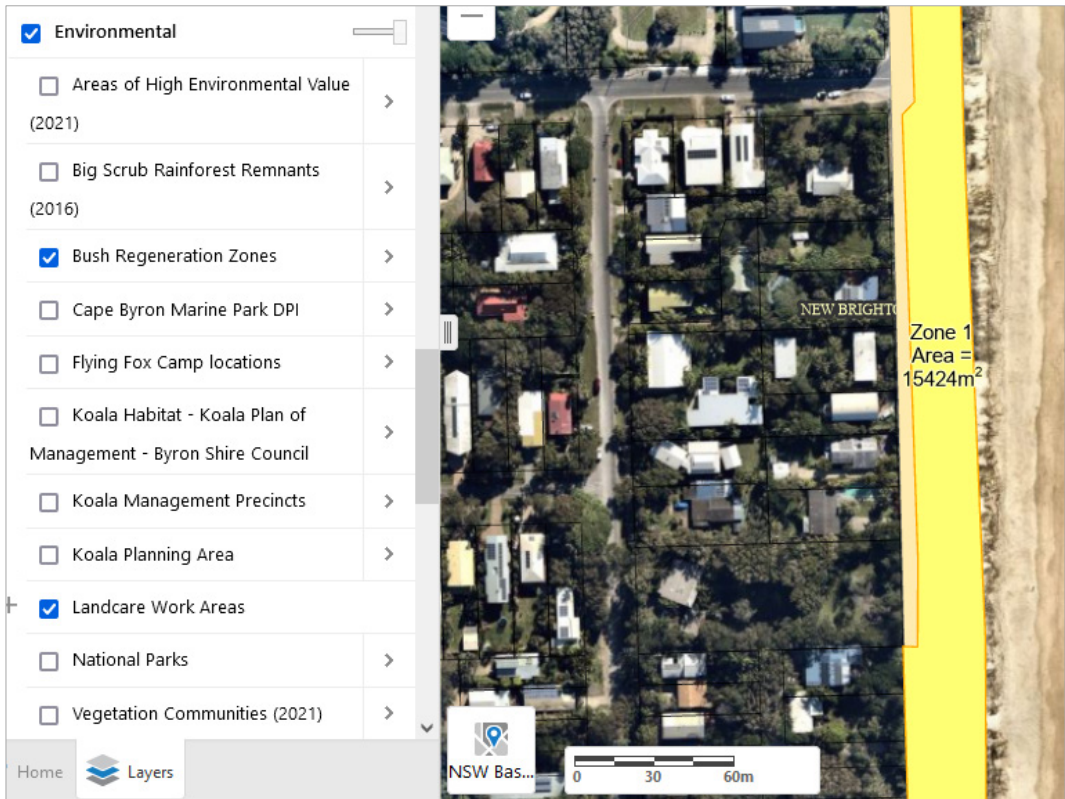


Figure 5: BSC Vegetation Community mapping



The subject land and adjacent dunes to the east are identified by Council as bush regeneration areas (Figure 6). Council has also been active in this location with beach scraping to promote dune height and stability.

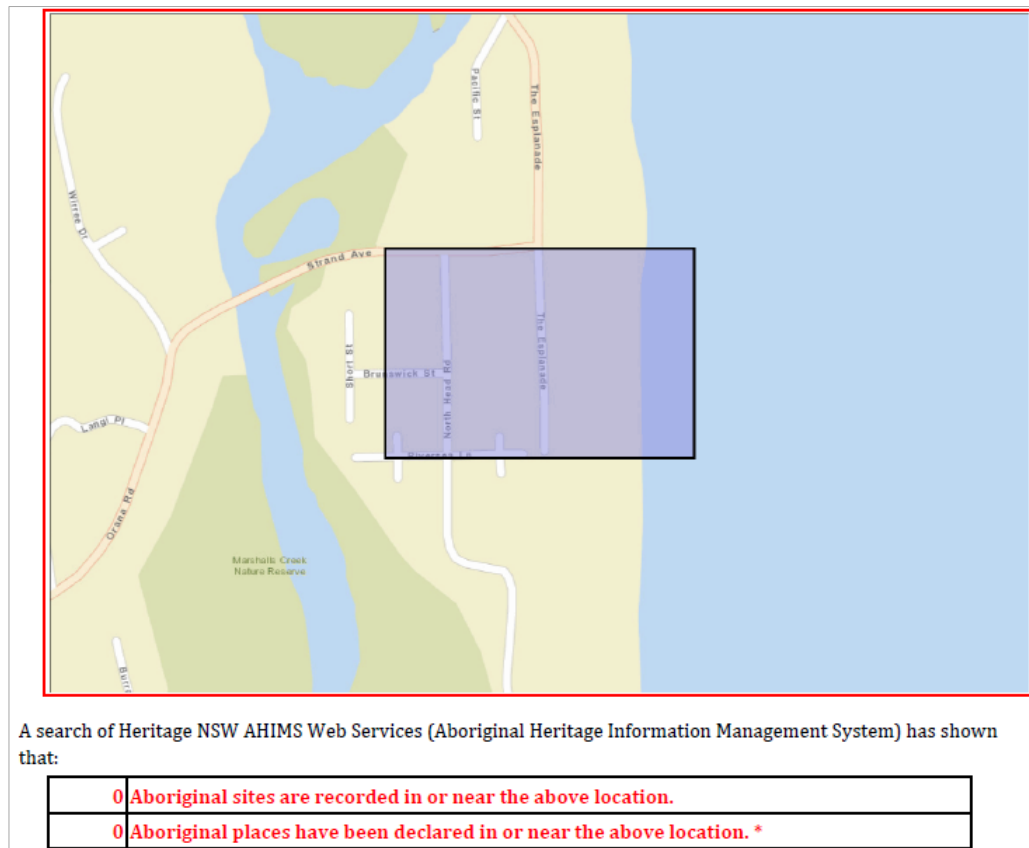
Figure 6: BSC bush regeneration and landcare areas



A search of the AHIMS register indicates that Aboriginal sites are not known to be located in the works area (Figure 7). However, the subject land is located between a beach and Marshalls Creek, which both provide a food source, so there is a high probability of the locality being associated with Aboriginal settlement. Consultation with the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) and the Tweed Byron Local Aboriginal Land Council (TBLALC) would be appropriate if substantive works were to proceed.



Figure 7: AHIMS search result (March 2023)



## Planning Pathways

Different parts of this project have different planning pathways.

### Works that are permitted without consent (REF required)

SEPP (Transport and Infrastructure) 2021, Division 17 Roads and traffic, Subdivision 1 Roads and road infrastructure facilities deals with road related works as follows:

#### **2.109 Development permitted without consent—general**

- (1) *Development for the purpose of a road or road infrastructure facilities may be carried out by or on behalf of a public authority without consent on any land.*

Under Part 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), a Review of Environmental Factors (REF) is required. Byron Shire Council is the determining authority.

The activities that can be undertaken in the road reserve subject to a Part 5 REF are activities that are new works such as:

- road widening (sealed or not);
- new turnaround area (sealed or not);
- concrete block retaining wall;
- tree removal; and
- earthworks (excavating the dune).



## **Works that are exempt development (no assessment or CRA required)**

### **2.113 Exempt development**

- (1) *Development for any of the following purposes is exempt development if it is carried out by or on behalf of a public authority or the Minister responsible for Crown roads (within the meaning of the Roads Act 1993) in connection with a road or road infrastructure facilities and complies with section 2.20—*
- (a) *erection, installation, maintenance, reconstruction or replacement of any of the following, and any associated landscaping works—*
- (i) *security fencing with a height above ground level (existing) of not more than 3.2m,*
  - (ii) *safety barriers or systems, including Jersey barriers,*
  - (iii) *directional, safety or other advisory signs relating to road works or the use of existing road infrastructure facilities,*
  - (iv) *pedestrian and cyclist facilities (such as footpaths, street lighting, kerb adjustments and ramps, pedestrian fences, refuges, holding rails, and bollards),*
  - (v) *slope stability works that are required for safety reasons and minor road safety improvements,*
  - (vi) *minor road pavement or shoulder work (such as patching, grading, re-sheeting, sealing and re-sealing),*
  - (vii) *street furniture (such as seats, bins and directional signs) and any associated kerb construction, access paths and ramps, lighting and signage that complies with AS:1428.2 and the Disability Standards,*
  - (viii) *removal from or addition to existing traffic lights of items such as signal displays, loops or buttons,*
  - (ix) *roadside facilities and rest areas, if the development does not involve the installation of toilets and involves no greater disturbance to the ground or vegetation than necessary,*
  - (x) *street lighting, if any replacement involves the replacement of existing materials with similar materials only and if the lighting minimises light spill and artificial sky glow in accordance with the Lighting for Roads and Public Spaces Standard,*
  - (xi) *pavement and road surface markings (such as bus lane markings), lane delineators, electric pavement lights, detection loops and traffic counters,*
  - (xii) *kerb and guttering,*
  - (xiii) *culverts, drains and other works to improve the quality or control of stormwater runoff,*
  - (xiv) *public transport information display and ticketing systems,*
- (b) *repair or replacement of lighting, mechanical systems, electrical equipment or air monitoring equipment, replacement of screening of overhead bridges and removal of graffiti or debris,*
- (c) *emergency works to protect a road or road infrastructure facilities, the environment or the public, but only if they involve no greater disturbance to soil or vegetation than necessary,*

- (d) *upgrading or maintenance of landscaping, or vegetation management (such as weed spraying, slashing and pruning), that—*
  - (i) *does not involve construction works, and*
  - (ii) *involves the replacement (if any) of existing materials with similar materials only,*

The activities that can be undertaken in the road reserve as exempt development are activities such as:

- signage;
- parking delineation;
- line marking;
- bollards,
- pot hole fixing; and
- sealing or resealing of existing road (not widening).

## Issues and Advice

One of the key reasons for undertaking an REF is to decide if the proposed activity is likely to have a significant impact on the environment and therefore, an EIS is required. A number of the options involve significant tree removal, or cutting into the rear of the main dune, or building a concrete block wall in the main dune.

All these activities are likely to have a significant impact on the environment because it is a highly dynamic coastal erosion zone. It is an area where Council policy (as contained in its 2010 DCP) states:

### ***Element – Precinct 1 - from the Beach Escarpment to the Immediate Impact Line***

#### ***Element Objective***

*To ensure the impact of coastal processes on potential development is minimised by limiting development and ensuring any development is only temporary.*

#### ***Performance Criteria***

*New buildings or works are to be temporary and able to be readily removed in the event of coastal erosion.*

*Development that is of a community nature, which relates to the use of the beachfront, may be considered, provided that any building is easily removable and does not require a major extension to a service main.*

Works such as cutting the dune and building a retaining wall and new, wider roads are not temporary or readily removed. They are inconsistent with Council policy.

Removal of mature, native vegetation that has been planted to protect and stabilise the dune is also the opposite of what Council would normally do in this situation.

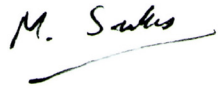
All options contain road widening, at least for a new turnaround area, and a retaining wall of some sort. Council should only proceed with these works if it is prepared to produce a Part 5 EIS with associated specialist reports on coastal erosion, vegetation impacts, etc.

It is recommended that the project be separated into the works that are exempt (and those that are not), and that the exempt works be undertaken with due care if they add any value to the problems that need to be resolved.

Observations from 22 March 2023 indicate that the exempt parts of option 1 have already been undertaken such as bollards (rocks have been used), signage and parallel parking. This may be as much as can be achieved given the physical constraints of the site.

I am available to discuss this planning advice, if required.

Yours sincerely

A handwritten signature in black ink, appearing to read "M. Svikis", with a long horizontal flourish underneath.

Mike Svikis  
Principal Planner

Enc: Plans for each option (Appendix 1)

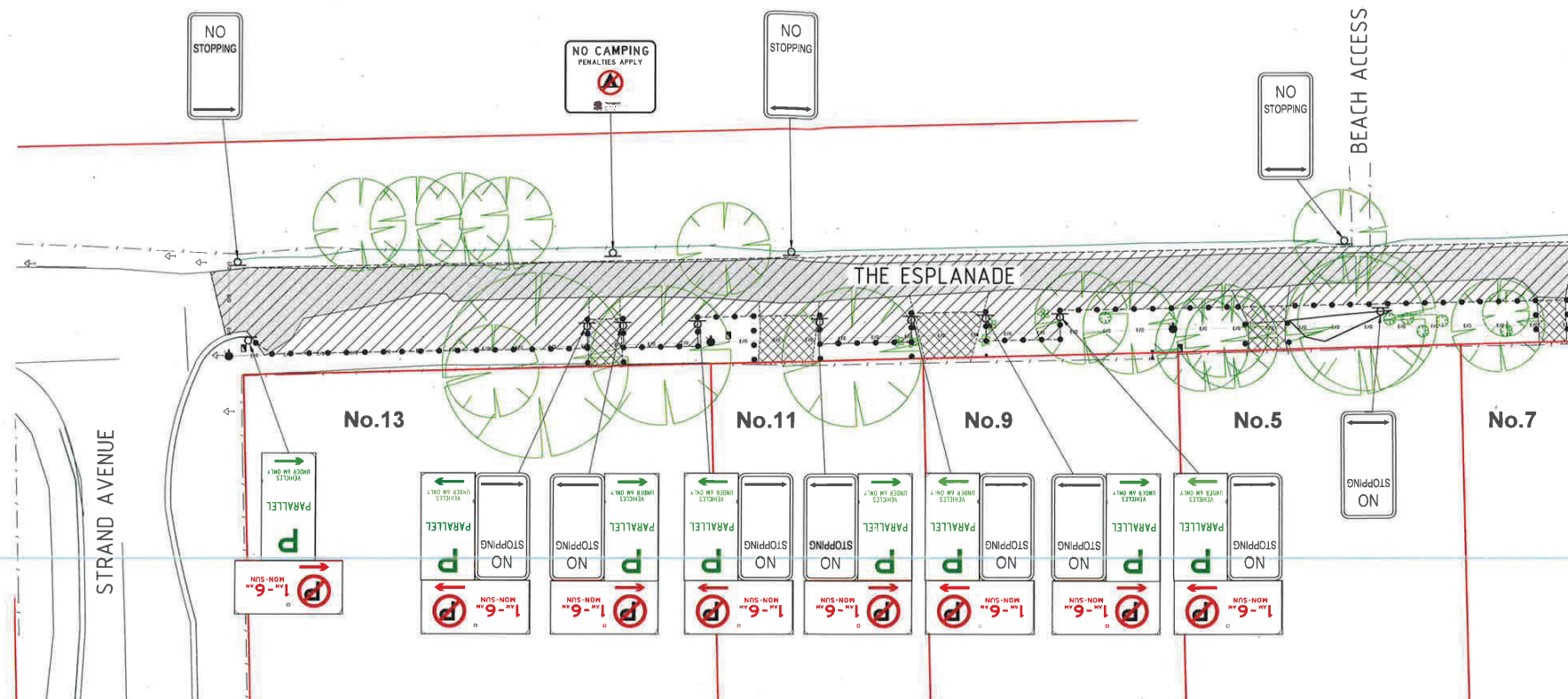
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## APPENDIX 1

Plans for each option

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CONCEPT PART PLAN - OPTION 1  
SCALE 1:400 (A3)

LEGEND

- PROPERTY BOUNDARY
- EXISTING TELECOMMUNICATIONS PIT
- EXISTING OVERHEAD POWER
- EXISTING POWER / TELECOMMUNICATIONS POLE
- EXISTING FENCE LINE
- EXISTING SEALED ROAD
- PROPOSED GRAVEL ROAD
- EXISTING DRIVEWAY
- PROPOSED SIGNAGE
- PROPOSED BOLLARD

PRELIMINARY  
NOT FOR CONSTRUCTION

ISSUE	AMENDMENT DETAILS
A	ORIGINAL ISSUE

DRAWN	CHECK	DATE
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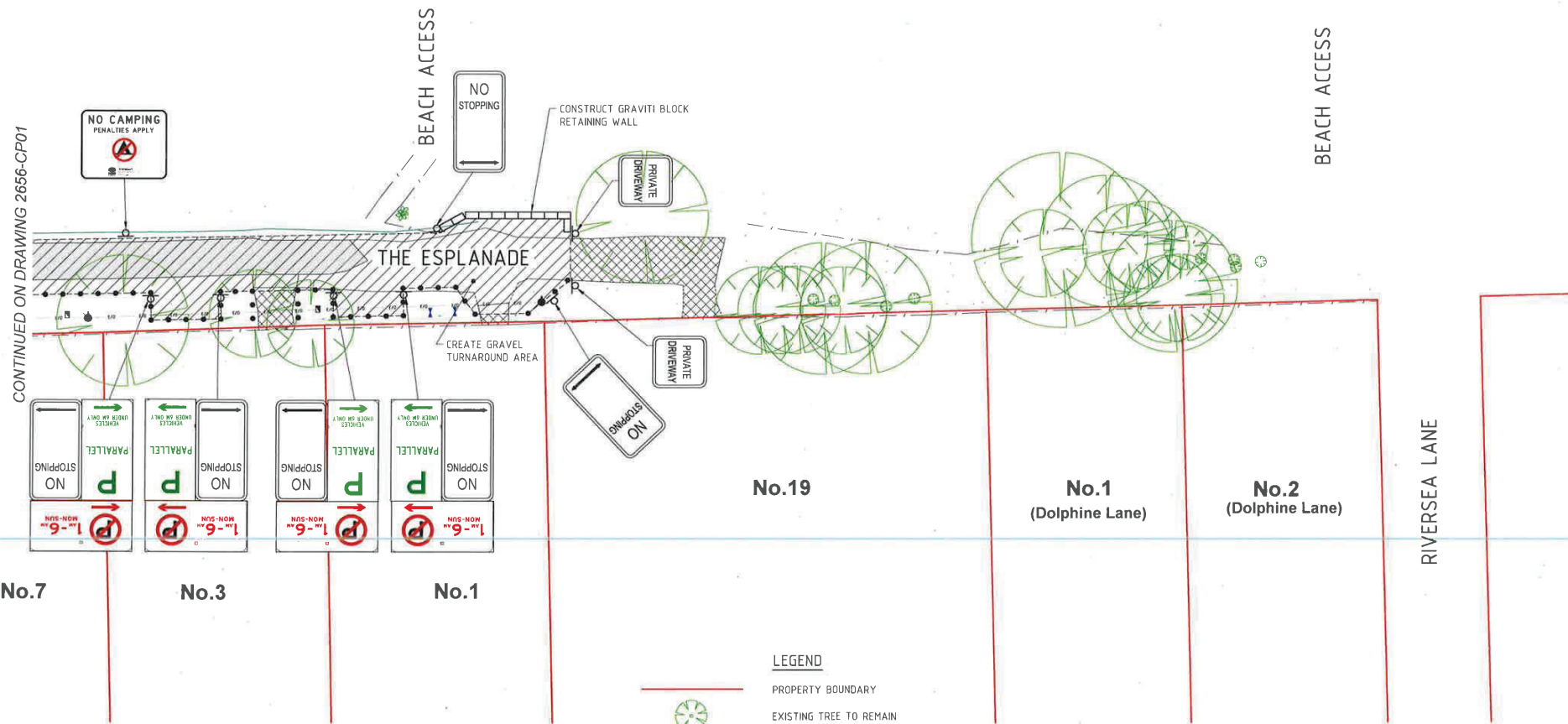
INFRASTRUCTURE SERVICES  
COUNCIL OFFICES  
70-80 STATION STREET,  
MULLUMBIMBY NSW 2482.  
PHONE 02 66267000  
FAX 02 66843018  
WEBSITE www.byron.nsw.gov.au



DESIGNED	E.E.	08.10.18
DRAWN	J.B.	09.10.18
CHECKED	E.E.	09.10.18
HORIZONTAL DATUM	MGA	
VERTICAL DATUM	AHD	

PROJECT:	AMENDED PARKING LAYOUT. THE ESPLANADE, NEW BRIGHTON
PLAN TITLE:	CONCEPT PART PLAN - OPTION 1

PROJECT NUMBER:	2668
DRAWING NUMBER	2668-CP1
ISSUE	A



CONCEPT PART PLAN - OPTION 1  
SCALE 1:400 (A3)

#### LEGEND

- PROPERTY BOUNDARY
- EXISTING TREE TO REMAIN
- EXISTING TELECOMMUNICATIONS PIT
- EXISTING OVERHEAD POWER
- EXISTING POWER / TELECOMMUNICATIONS POLE
- EXISTING FENCE LINE
- EXISTING SEALED ROAD
- PROPOSED GRAVEL ROAD
- EXISTING DRIVEWAY
- PROPOSED SIGNAGE
- PROPOSED BOLLARD

PRELIMINARY  
NOT FOR CONSTRUCTION

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DRAWN	J.B.	09.10.18
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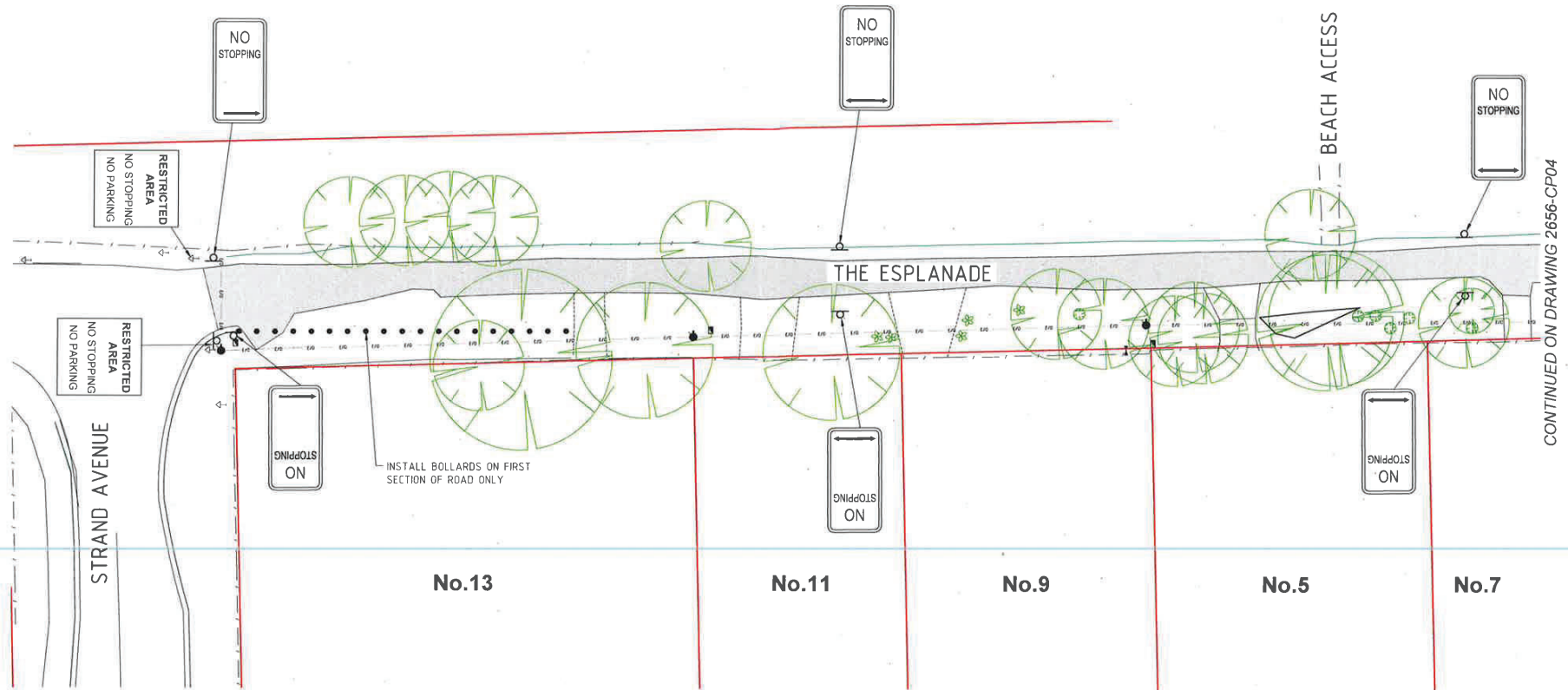
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THE ESPLANADE, NEW BRIGHTON  
PLAN TITLE: CONCEPT PART PLAN - OPTION 1

PROJECT NUMBER: 2668  
DRAWING NUMBER: 2668-CP2  
ISSUE: A

ISSUE: AMENDMENT DETAILS  
ACAD FILE No:

J.B. E.E. 09.10.18  
DRAWN CHECK DATE

# USE FIGURED DIMENSIONS ONLY. DO NOT SCALE.



CONCEPT PART PLAN - OPTION 2  
SCALE 1:400 (A3)

LEGEND

- PROPERTY BOUNDARY
- EXISTING TREE TO REMAIN
- EXISTING TELECOMMUNICATIONS PIT
- EXISTING OVERHEAD POWER
- EXISTING POWER / TELECOMMUNICATIONS POLE
- EXISTING FENCE LINE
- EXISTING SEALED ROAD
- PROPOSED GRAVEL ROAD
- PROPOSED SIGNAGE
- PROPOSED BOLLARD

PRELIMINARY  
NOT FOR CONSTRUCTION

ISSUE	AMENDMENT DETAILS
A	ORIGINAL ISSUE

DRAWN	CHECK	DATE
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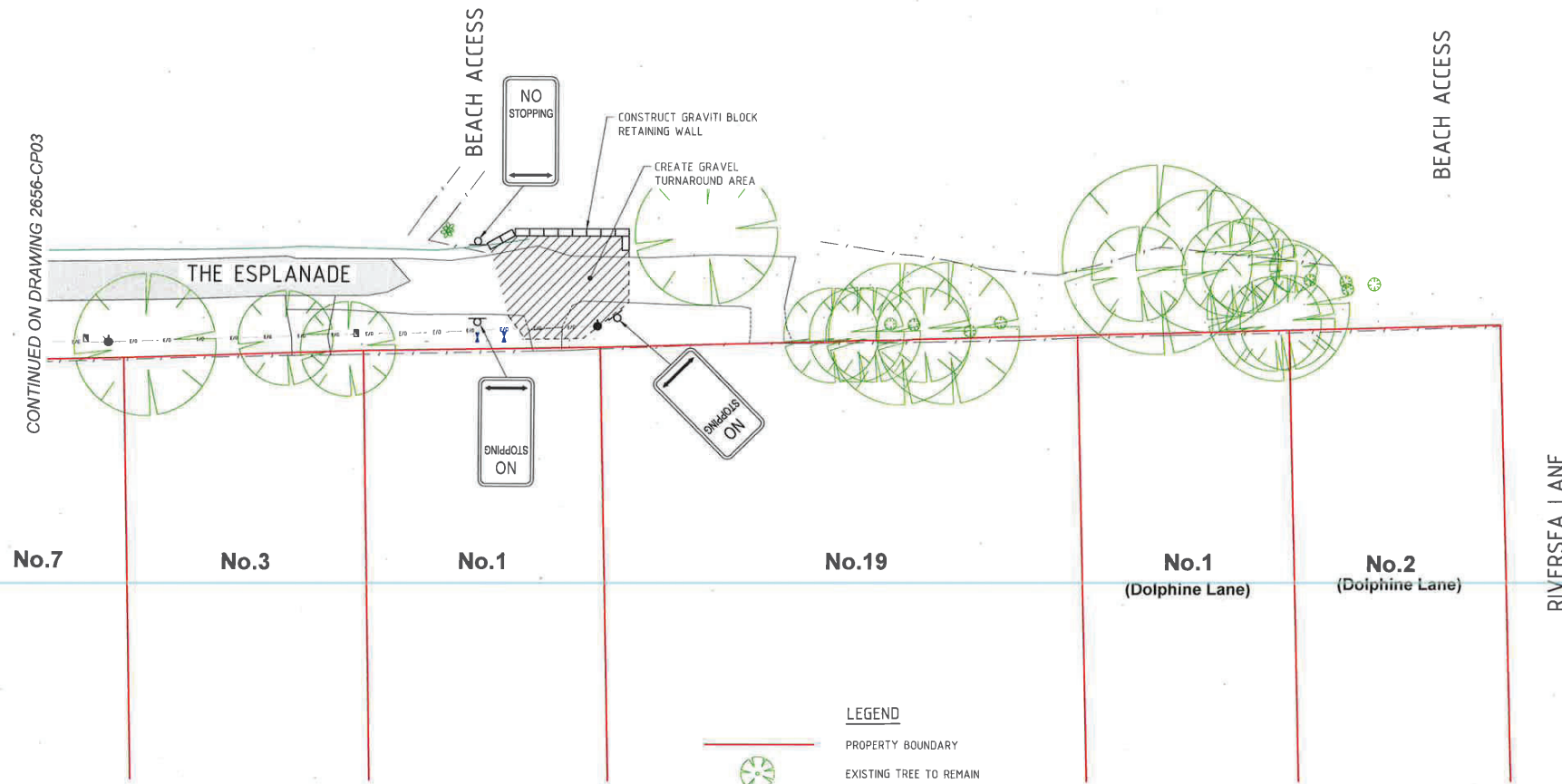
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VERTICAL DATUM	AHD	

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THE ESPLANADE, NEW BRIGHTON  
PLAN TITLE: CONCEPT PART PLAN - OPTION 2

PROJECT NUMBER:	2668
DRAWING NUMBER	2668-CP3
ISSUE	A



CONTINUED ON DRAWING 2656-CP03



CONCEPT PART PLAN - OPTION 2  
SCALE 1:400 (A3)

#### LEGEND

- PROPERTY BOUNDARY
- EXISTING TREE TO REMAIN
- EXISTING TELECOMMUNICATIONS PIT
- EXISTING OVERHEAD POWER
- EXISTING POWER / TELECOMMUNICATIONS POLE
- EXISTING FENCE LINE
- EXISTING SEALED ROAD
- PROPOSED GRAVEL ROAD
- PROPOSED SIGNAGE

**PRELIMINARY**  
NOT FOR CONSTRUCTION

ISSUE AMENDMENT DETAILS

DRAWN CHECK DATE

# USE FIGURED DIMENSIONS ONLY. DO NOT SCALE.

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WEBSITE [www.byron.nsw.gov.au](http://www.byron.nsw.gov.au)



APPROVED DATE

DESIGNED	E.E.	09.10.18
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CHECKED	E.E.	09.10.18
HORIZONTAL DATUM	MGA	
VERTICAL DATUM	AHD	

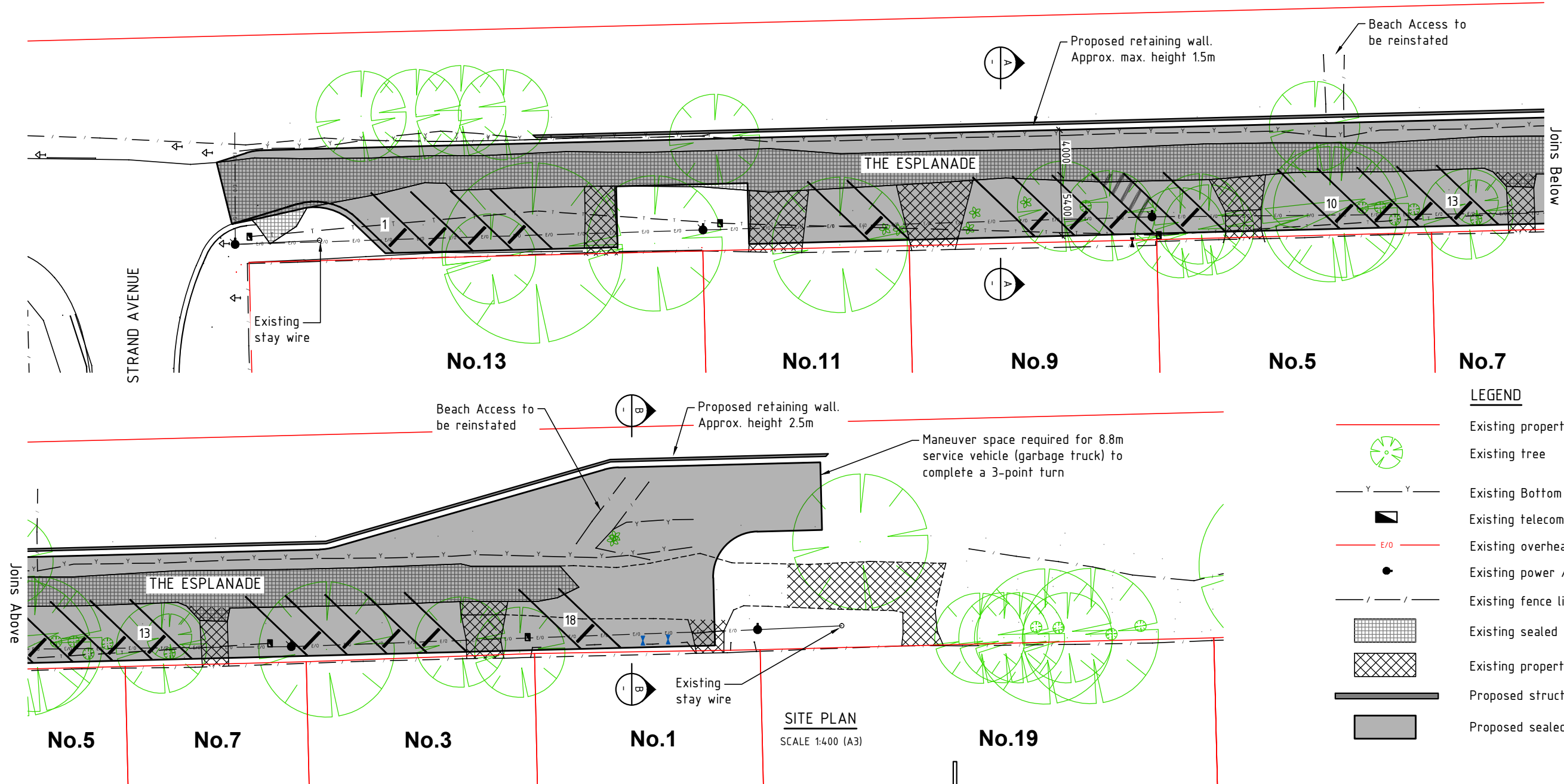
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THE ESPLANADE, NEW BRIGHTON**

PLAN TITLE: **CONCEPT PART PLAN - OPTION 2**

PROJECT NUMBER: **2668**

DRAWING NUMBER	ISSUE
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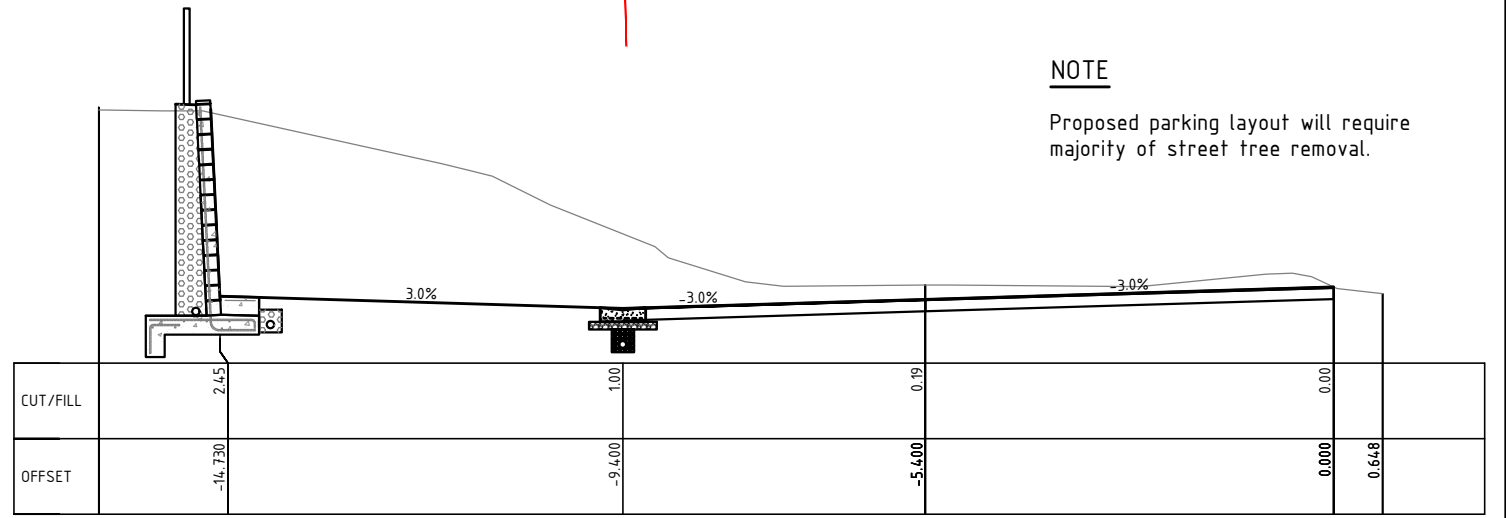
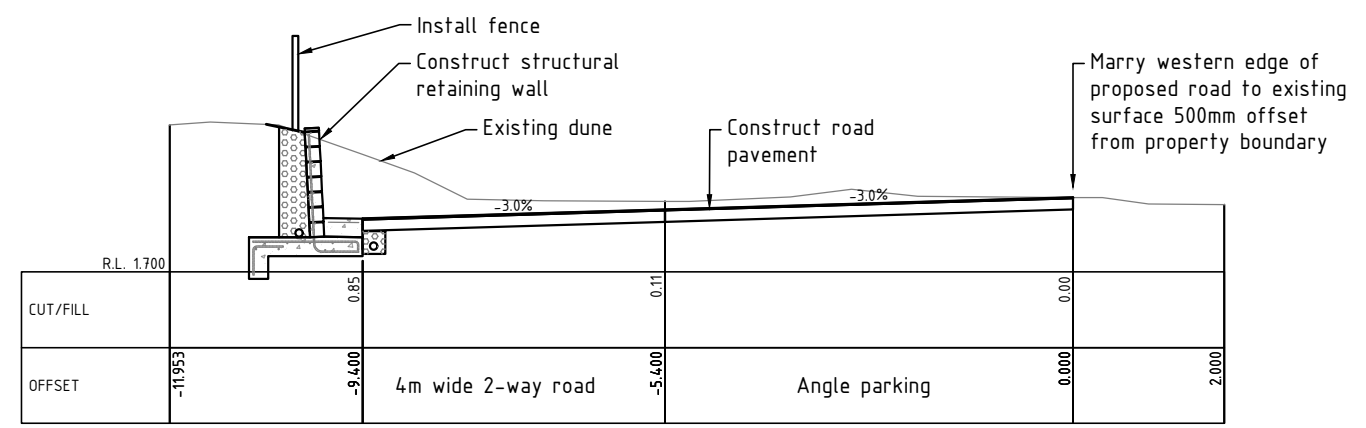




- LEGEND**
- Existing property boundary
  - Existing tree
  - Existing Bottom of bank / Dune vegetation
  - Existing telecommunications pit
  - Existing overhead power line
  - Existing power / telecommunications pole
  - Existing fence line
  - Existing sealed road
  - Existing property access
  - Proposed structural retaining wall
  - Proposed sealed road

**NOTE**

Proposed parking layout will require majority of street tree removal.



PRELIMINARY

NOT FOR CONSTRUCTION

ADDN OF CROSS SECTION B

ADDN OF CROSS SECTION C

45 DEGREE ANGLE PARKING

ORIGINAL ISSUE

AMENDMENT DETAILS

A.D.

J.F.

22.06.22

A.D.

J.F.

11.02.22

A.D.

E.E.

25.08.21

J.B.

E.E.

20.02.20

DRAWN

CHECK

DATE

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SCALE: A1 SHEET 1:50, A3 SHEET 1:100

0 0.5 1 2 3 4 5 m

# USE FIGURED DIMENSIONS ONLY. DO NOT SCALE.

INFRASTRUCTURE SERVICES

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MULLUMBIMBY NSW 2482.

PHONE 02 66267000

FAX 02 66843018

WEBSITE www.byron.nsw.gov.au

APPROVED

DATE

DESIGNED E.E. 20.02.20

DRAWN J.B. 20.02.20

CHECKED E.E. 20.02.20

HORIZONTAL DATUM ISG

VERTICAL DATUM AHD

PROJECT:

AMENDED PARKING LAYOUT.

THE ESPLANADE, NEW BRIGHTON

PLAN TITLE:

Option 3 - Parking Layout

45° Parking with 8.8m service vehicle

maneuver space within road reserve

PROJECT NUMBER:

2668

DRAWING NUMBER

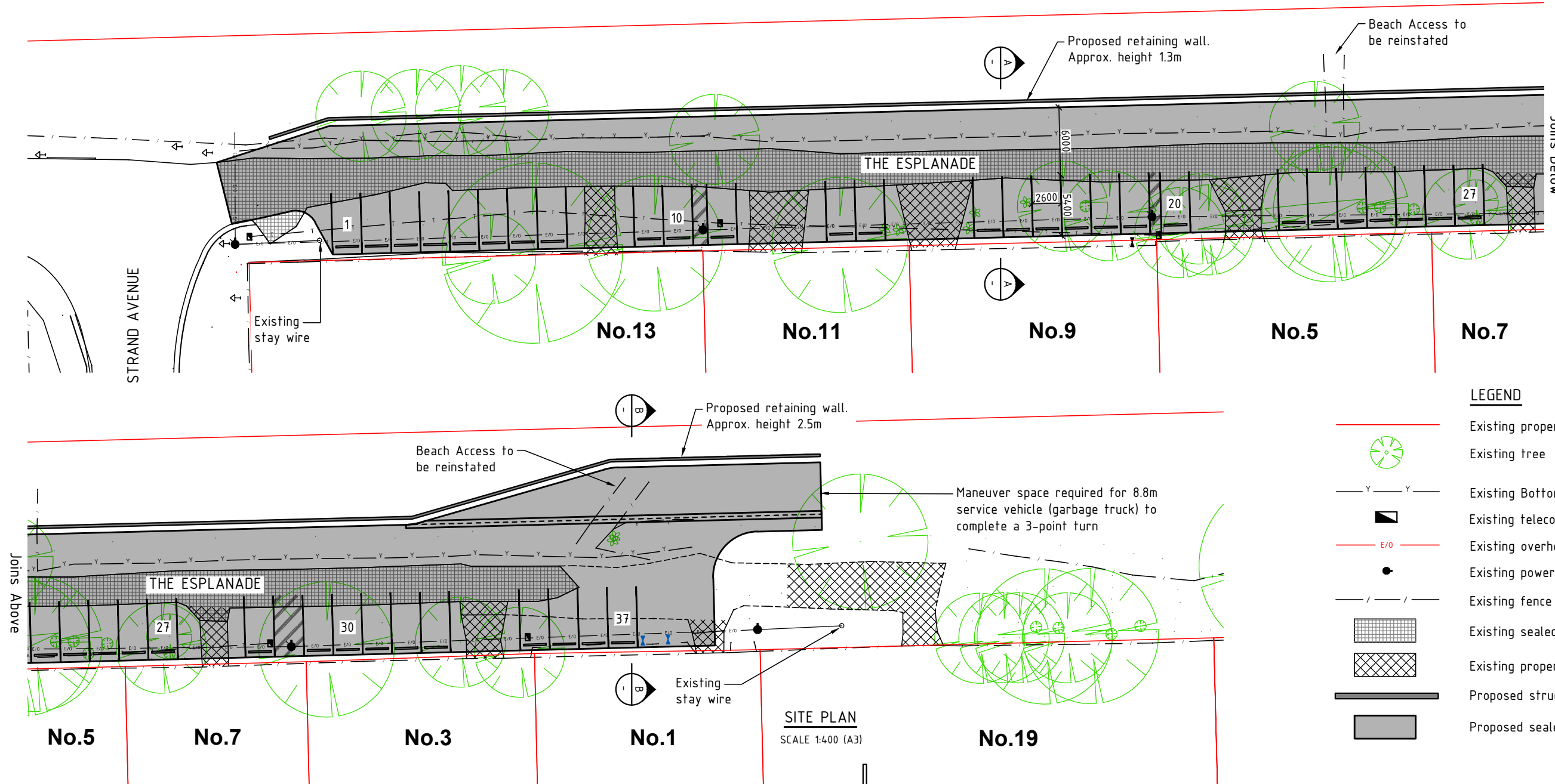
2668-04

ISSUE

D

ACAD FILE No:

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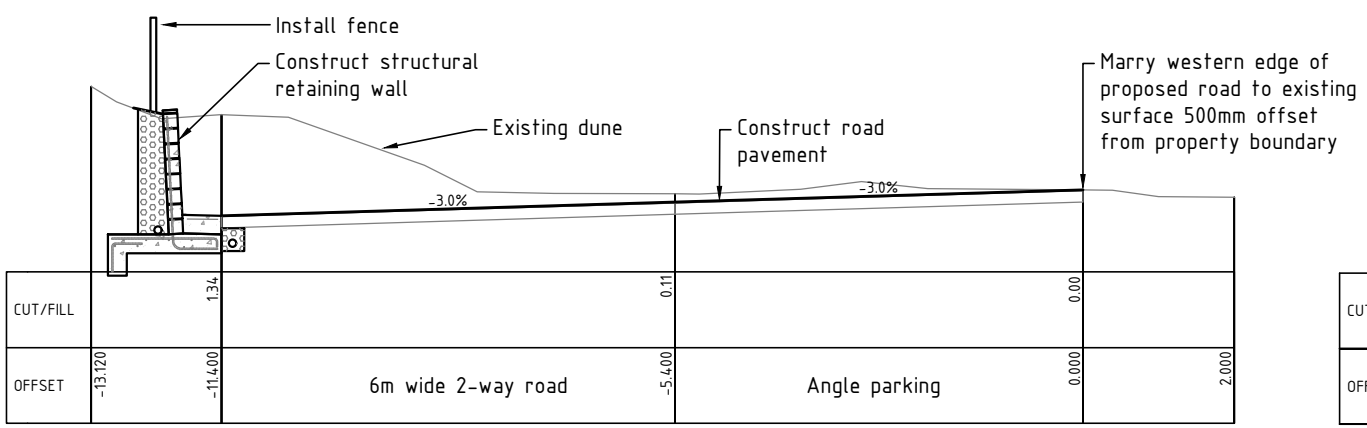


### LEGEND

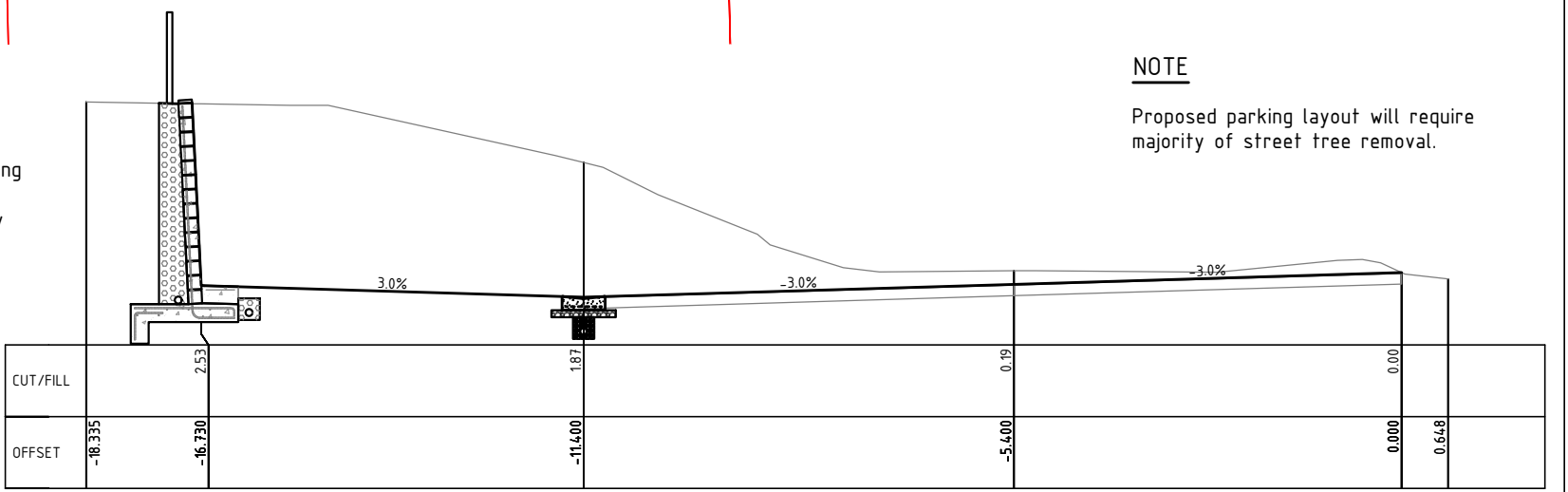
- Existing property boundary
- Existing tree
- Existing Bottom of bank / Dune vegetation
- Existing telecommunications pit
- Existing overhead power line
- Existing power / telecommunications pole
- Existing fence line
- Existing sealed road
- Existing property access
- Proposed structural retaining wall
- Proposed sealed road

### NOTE

Proposed parking layout will require majority of street tree removal.



Typical Section - A  
SCALE 1:100 (A3)



Typical Section - B  
SCALE 1:100 (A3)

<b>PRELIMINARY</b> <b>NOT FOR CONSTRUCTION</b>				<b>SCALE: A1 SHEET 1:200, A3 SHEET 1:400</b> 0 2 4 8 12 16 20 m		<b>INFRASTRUCTURE SERVICES</b> COUNCIL OFFICES 70-90 STATION STREET, MULLUMBIMBY NSW 2482. PHONE 02 66267000 FAX 02 66843018 WEBSITE www.byron.nsw.gov.au				<b>APPROVED</b> ..... <b>DATE</b> .....		<b>PROJECT:</b> <b>AMENDED PARKING LAYOUT.</b> <b>THE ESPLANADE, NEW BRIGHTON</b>		<b>PROJECT NUMBER:</b> <b>2668</b>	
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B 90 DEGREE ANGLE PARKING		A.D. E.E. 25.08.21				COUNCIL OFFICES		CHECKED E.E. 20.02.20		maneuver space within road reserve					
A ORIGINAL ISSUE		J.B. E.E. 20.02.20				COUNCIL OFFICES		HORIZONTAL DATUM MGA							
ISSUE AMENDMENT DETAILS		DRAWN CHECK DATE		# USE FIGURED DIMENSIONS ONLY. DO NOT SCALE.		COUNCIL OFFICES		VERTICAL DATUM AHD							