



TOWN PLANNING AUDIT REPORT

951 Broken Head Road
BROKEN HEAD

Prepared for: Byron Shire Council

REF: M210019
Date: 29 July 2021





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1. Introduction

We confirm that we have been engaged by Byron Shire Council to prepare a Town Planning Audit Report in relation to No. 951 Broken Head Road, Broken Head (also known as “Linnaeus Estate”). Details of our brief are outlined below.

At a Council Meeting held on 21 May 2020, Council resolved:

“Res 20-203:

3. That Council request the proponent to submit a current audit of buildings, structures and works on site to enable Council staff to review against existing consents and approvals to assess compliance. This audit is to be submitted within three months.”

The above resolution follows a complaint submitted to Council and issues raised in public access during the 21 May Council Meeting.

On 11 August 2020, the landowner submitted an audit to Council seeking to address the above Council resolution.

Byron Shire Council have instructed us to undertake an audit of the landowner’s material, as well as planning and building approvals on the site. Specifically, we have been requested to undertake the following:

1. Review the audit material as supplied by the landowners.
2. Review the development consents and amended development consents.
3. Review the relevant Construction Certificates for the site.
4. Do a desktop site review to identify any structures that appear not to match up with approved development consents and Construction Certificates.
5. Discuss initial findings with Council planning / engineering / EHO staff as required.
6. Inspect the site with relevant Council officers.
7. Establish if there are any questions to ask the landowners and review any responses.
8. Prepare a review report.

The purpose of this Report is to provide a coordinated written response to the brief following a full and thorough review of the planning history of the site and relevant consents. The Report is divided into six sections. The remaining sections include a locality and site analysis; planning history, a review of the landowners audit material, and the relevant planning and building consents; a site inspection report; and a conclusion.





2. Locality and Site Analysis

The subject site relates to land on the eastern side of Broken Head Road and is legally described as part of Lot 1 DP1031848. The site address is No. 951 Broken Head Road, Broken Head and it is also known as the “Linnaeus Estate”.

The total site has an area of 111.2ha and the land is irregular in shape. The site benefits from access to a Right of Way created under DP 259337.

An aerial photograph of the site is provided in Figure 1 and the site is outlined in red and shaded yellow.



Figure 1: Aerial image of the site (Source: SixMaps)


The subject site has a mixture of zonings under Byron Shire Local Environmental Plan (BLEP) 2014. This includes parts of the site being in the SP1 Special Activities zone, which allows for mixed use development that includes ‘tourist or visitor accommodation’ under Schedule 1 of BLEP 2014, as follows:

“8 Use of certain land at Coast Road, Broken Head

(1) *This clause applies to land at The Coast Road, Broken Head (known as the Linnaeus Estate) being part of Lot 1, DP 1031848, and identified as “Area D” on the Additional Permitted Uses Map.*

(2) *Development for the purposes of mixed use development that includes tourist or visitor accommodation is permitted with development consent.*





(3) Development consent may only be granted under this clause if the consent authority is satisfied that the proposed development—

(a) is ancillary to a lawful existing land use, and

(b) is for the purpose of providing education or training for professional and personal development through a variety of academic, cultural and vocational programs.”

The site currently contains a number of buildings and structures associated with the approved use of the site as a private educational facility.

The subject site has a number of constraints, including being bushfire prone and containing a number of ecologically threatened flora species.

3. Planning History

The subject site has an extensive planning history. The most relevant development consents are summarised below:

- **1998/0146.1** - Development application No. 98/0146 was approved by Court Orders issued on 8 December 1998 for a private educational facility with a capacity of no more than 72 persons at any one time. The approval included a masterplan for the site with 30 buildings across the site, identified as:
 - (a) Building 1 – Centre (Community Building)
 - (b) Buildings 2 to 12 – Accommodation Type A
 - (c) Buildings 13 to 22 – Accommodation Type B
 - (d) Buildings 23 and 24 – Staff Residence
 - (e) Building 25 – “M.V. Killara” Retreat
 - (f) Building 26 – “G.B. Shaw” Retreat
 - (g) Building 27 – “Pavilion” Retreat
 - (h) Building 28 – “Tower” Retreat
 - (i) Building 29 – Primitive camping ground community building
 - (j) Building 30 – Underground chapel
- **17.2001.7046.1** – Section 96 application No. 01/7046 was approved by Court Orders issued on 6 July 2001 for amendments to the configuration of approved Buildings 2-12 (“Type A”) and 13-22 (“Type B”).
- **5.1998.146.2** – Section 96 application No. 98/0146.2 was approved by Court Orders issued on 10 March 2003 for amendments to approved Building 1 configuration.
- **5.1998.146.3** – Section 96 application No. 98/0146.3 was approved by Court Orders on 17 May 2004 for amendments to the approved development, including:
 - (a) Delete Condition C6 and F12 to allow an increase in wastewater treatment capacity from 6,000 to 16,800 litres per day;
 - (b) Amend Condition F3 to allow an increase in capacity from 72 to 112 people; and
 - (c) Delete Condition F7 to permit laundry facilities in accommodation buildings.
- **5.1998.146.4** – Section 96 application No. 98/0146.4 was approved by Court Orders on 17 May 2004 to modify the plan indicating areas for irrigating water with Exhibit 4.7A.
- **2005.290.1** – Development application was approved by Council on 3 August 2005 for a swimming pool and associated works.
- **2008.532.1** – Development application was approved by Council on 3 November 2008 for provision of managers’ residence in “Building 23”.

- **2013.600.1**– Development application was approved by Council on 12 June 2014 for reconfiguration of private camping sites and replacement with 6 accommodation units (“Buildings 31 to 36”).
- **2013.600.2**– Section 96 application was approved by Council on 19 October 2016 to allow staged construction of approved “Buildings 31 to 36”.
- **2013.600.3**– Section 96 application was approved by Council on 22 June 2017 to allow deletion of Condition 12 relating to requirements for a restrictive covenant for coastal erosion.
- **5.1998.146.5** – Section 96 application No. 98/0146.5 was approved by Council on 23 June 2017 to delete the approved primitive camping ground.

4. Review of Planning and Building Approvals

4.1 LANDOWNER DOCUMENTATION

In documentation lodged with Council on 11 August 2020, the landowner provided the following masterplan, illustrating the buildings that they allege have been approved and/or built on the subject site. **Figure 2** below provides an extract from the masterplan, including the list of buildings on site and relevant approval DA number. The buildings in red are unbuilt.

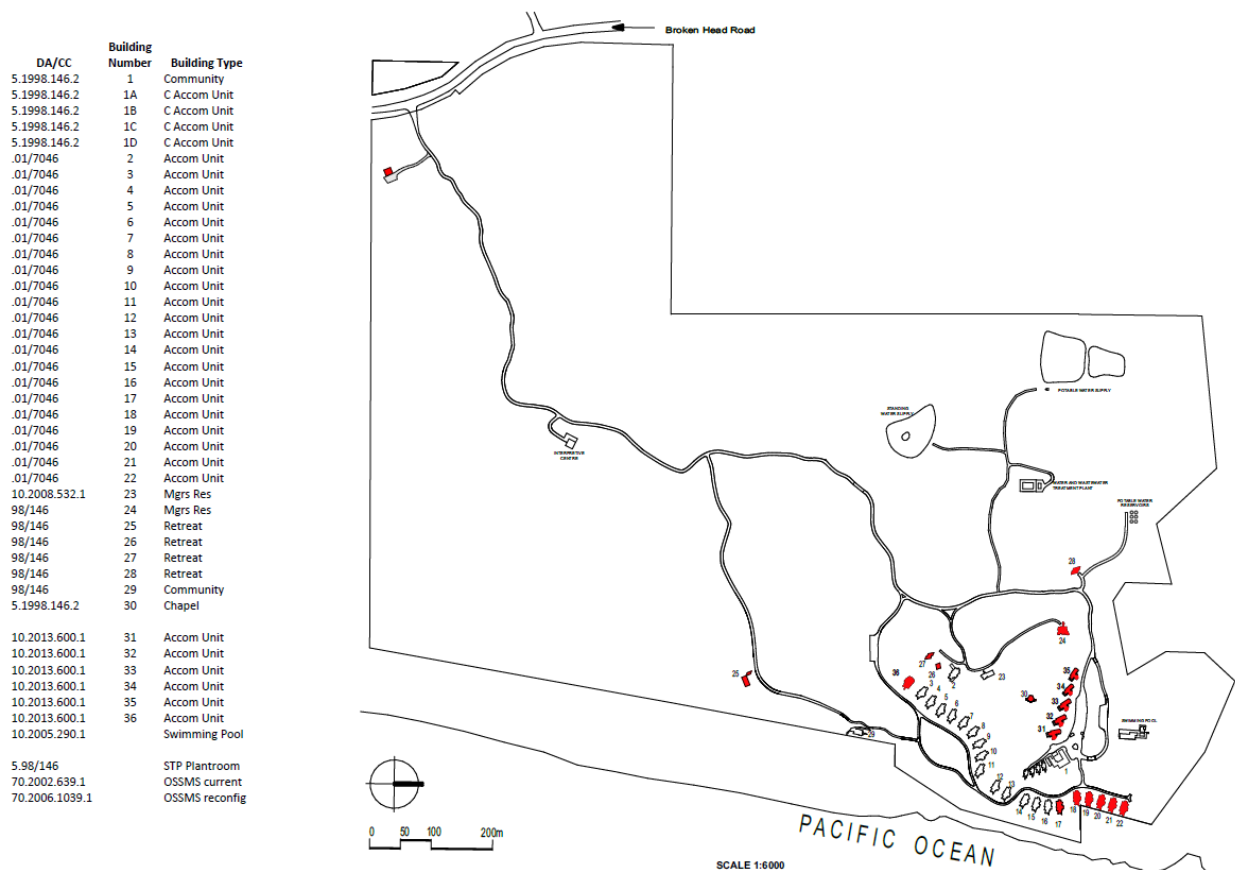


Figure 2 Landowner masterplan for buildings on site

The above masterplan is supported by a document tabulating the relevant DA and building (CC and OC) approvals that relate to each of the buildings identified in the masterplan.

An audit of the relevant DA and building approval documents, including consent and stamped plans has been undertaken. This has been summarised in the table below.



Table 1: DA & Building approvals

Building No.	DA No.	Approval Date	Confirmed	CC (Date)	OC (Date)
1 (Community)	5.1998.146.2	10 March 2003	Yes	11.1998.146.5 (11 Aug 2003)	4 Nov 2004
2-12 (Type A Accommodation)	17.2001.7046.1	6 July 2001	Yes	11.1998.146.1 (20 Sep 2001)	Building 2, 7 (14 Aug 2003) Building 3, 4, 5, 6 (25 June 2001) Building 8, 9, 10, 11 (23 Dec 2002) Building 12 (1 June 2001)
13-22 (Type B Accommodation)	17.2001.7046.1	6 July 2001	Yes	11.1998.146.1 (20 Sep 2001)	Building 13, 14, 15 (1 June 2001) Building 16 (25 March 2003) Building 17-22 (Unbuilt)
23 (Managers)	10.2008.532.1	3 Nov 2008	Yes	11.2008.532.1 (8 Dec 2008)	15 Dec 2009
24 (Managers)	5.1998.146	8 Dec 1998	Yes	99/2027 (26 Nov 1999) (13 Sep 2001)	Unbuilt
25-28 (Retreats)	5.1998.146	8 Dec 1998	Yes	99/2027 (26 Nov 1999)	Unbuilt
29 (Community)	5.1998.146	8 Dec 1998	Yes	99/2027 (26 Nov 1999)	18 July 2004
30 (Chapel)	5.1998.146.2	10 March 2003	Yes (5.1998.146)	99/2027 (26 Nov 1999)	Unbuilt
31-36 (Accommodation)	10.2013.600.1	12 June 2014	Yes	11.2013.600.1 (8 Feb 2018)	Unbuilt Consent Lapsed 18 June 2019
Swimming Pool	10.2005.290.1	3 Aug 2005	Yes	11.2005.290.1 (9 Aug 2005)	1 May 2012

4.2 CLARIFICATIONS REQUIRED

The parts of the above table that are highlighted in yellow refer to documents and/or dates that we have not been able to retrieve from Council files and require further clarification from the landowner and/or Council staff. This includes the following in respect of the relevant Buildings:

- **Buildings 2-12** – There appears to be some minor inconsistencies with the plans that were approved by Court Orders for modification application 17.2001.7046.1 and stamped plans for Construction Certificate application 11.1998.146.1 (see comparison in Figures 3 to 5 below with inconsistencies outlined in red). Nonetheless, all of the constructed buildings subject to these approvals have received an Occupation Certificate.



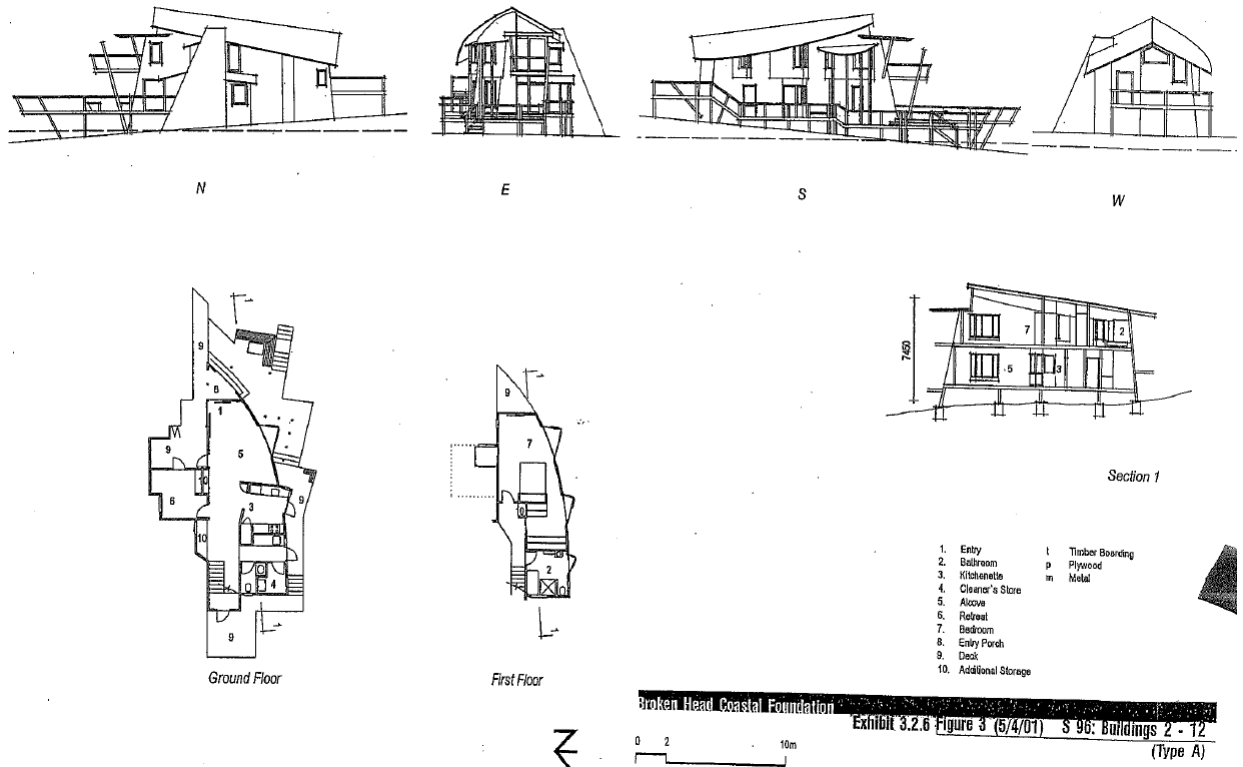


Figure 3 Extract from "Type A" Court approved plans (17.2001.7046.1)

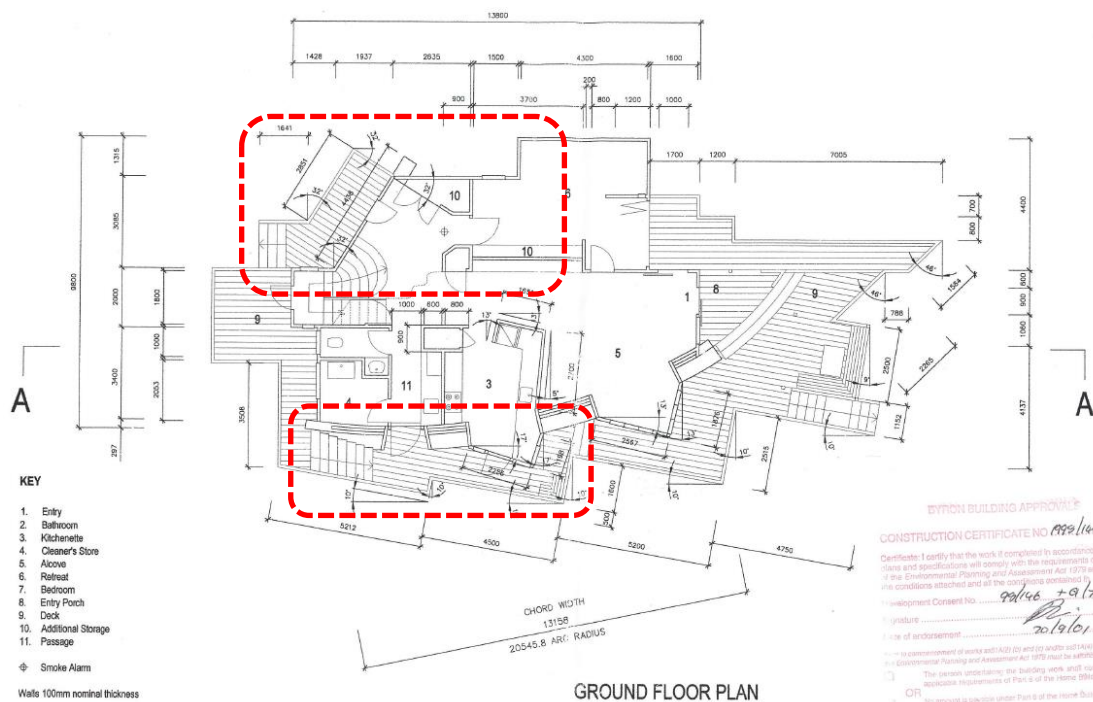


Figure 4 Extract from "Type A" ground floor CC stamped plans (11.1998.146.1)

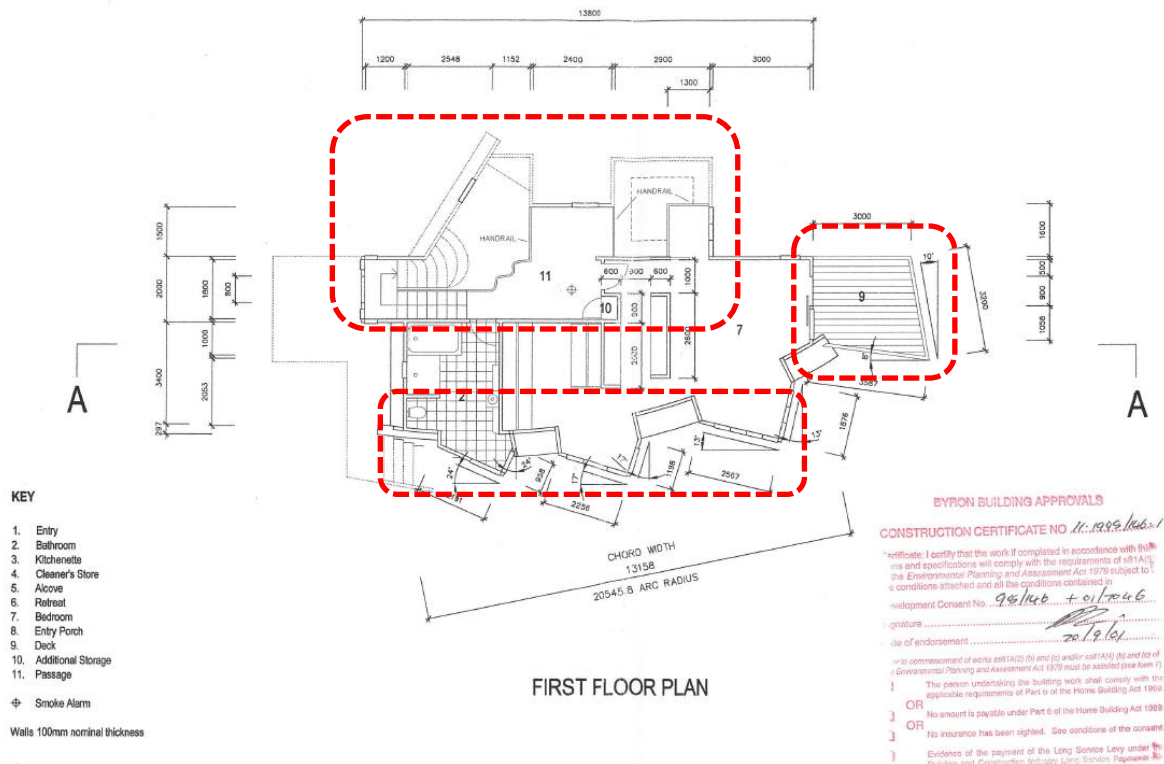


Figure 5 Extract from "Type A" first floor CC stamped plans (11.1998.146.1)

- **Buildings 13-22** – There appears to be some minor inconsistencies with the plans that were approved by Court Orders for modification application 17.2001.7046.1 and stamped plans for Construction Certificate application 11.1998.146.1 (see comparison in Figures 6 to 8 below with inconsistencies outlined in red). Nonetheless, constructed Buildings 13 to 15 have received an Occupation Certificate.

According to the landowner's documentation, Buildings 17 to 22 have not been constructed.

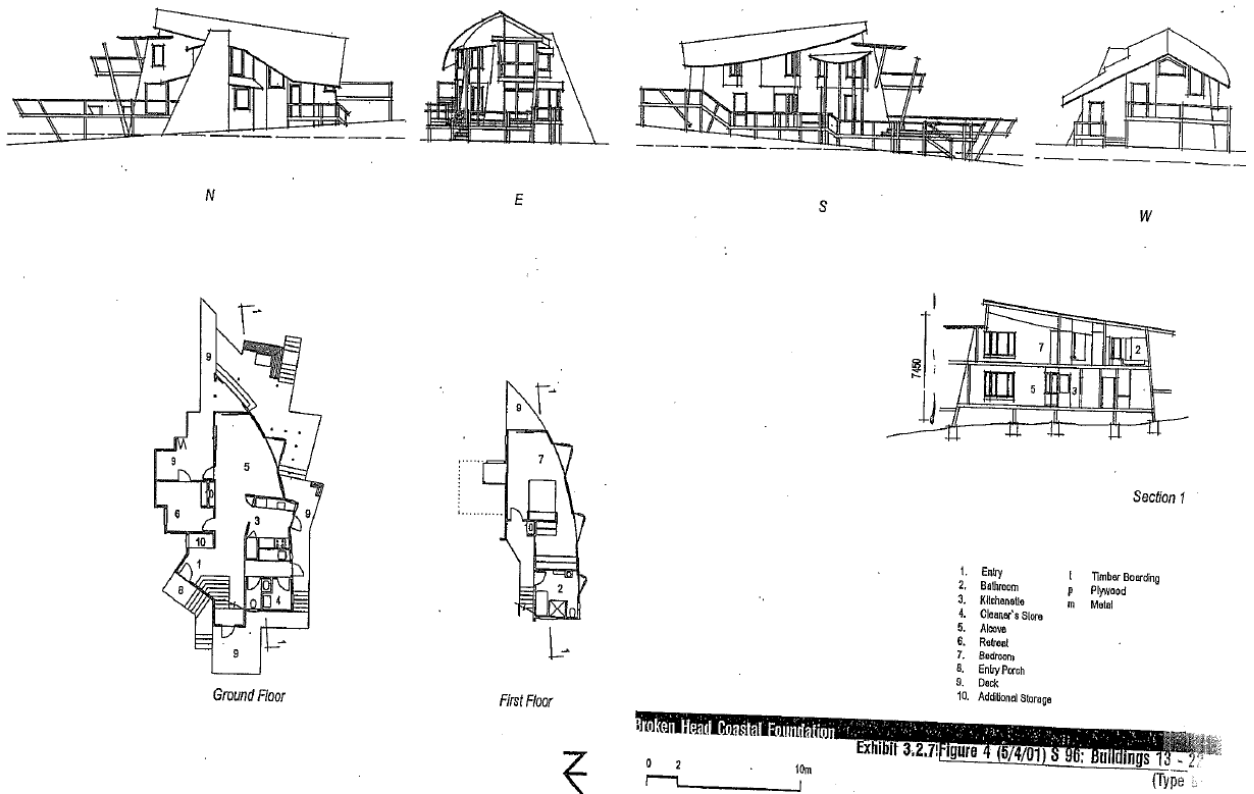


Figure 6 Extract from "Type B" Court approved plans (17.2001.7046.1)

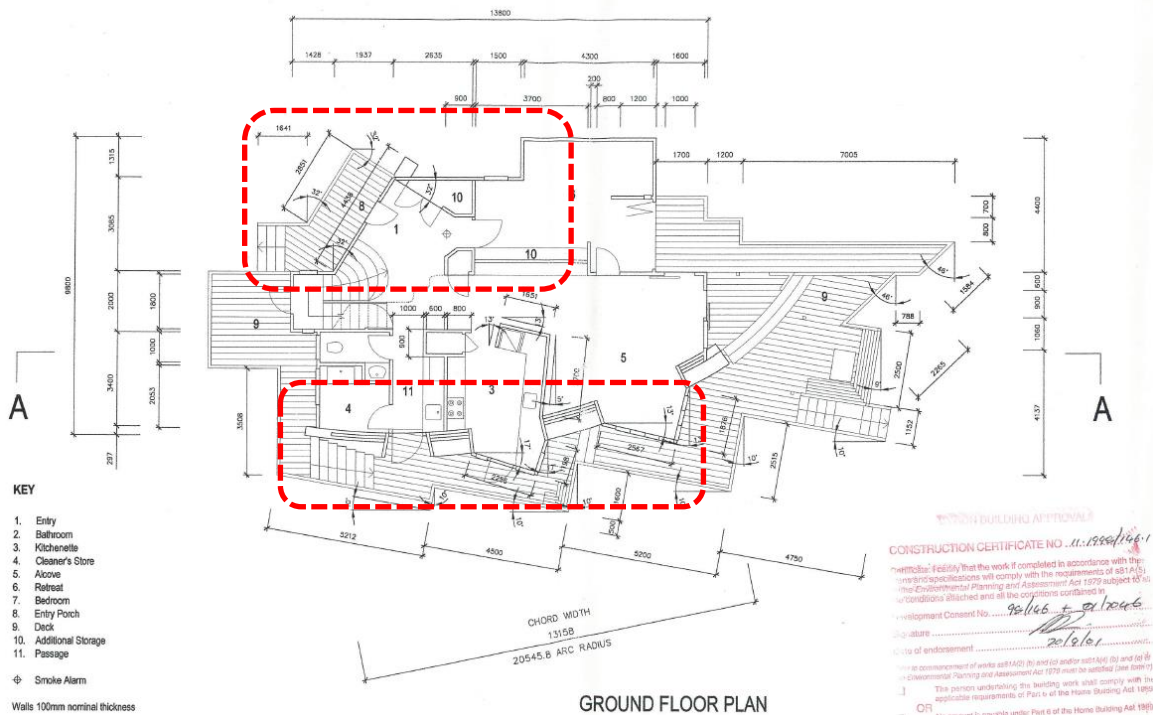


Figure 7 Extract from "Type B" ground floor CC stamped plans (11.1998.146.1)

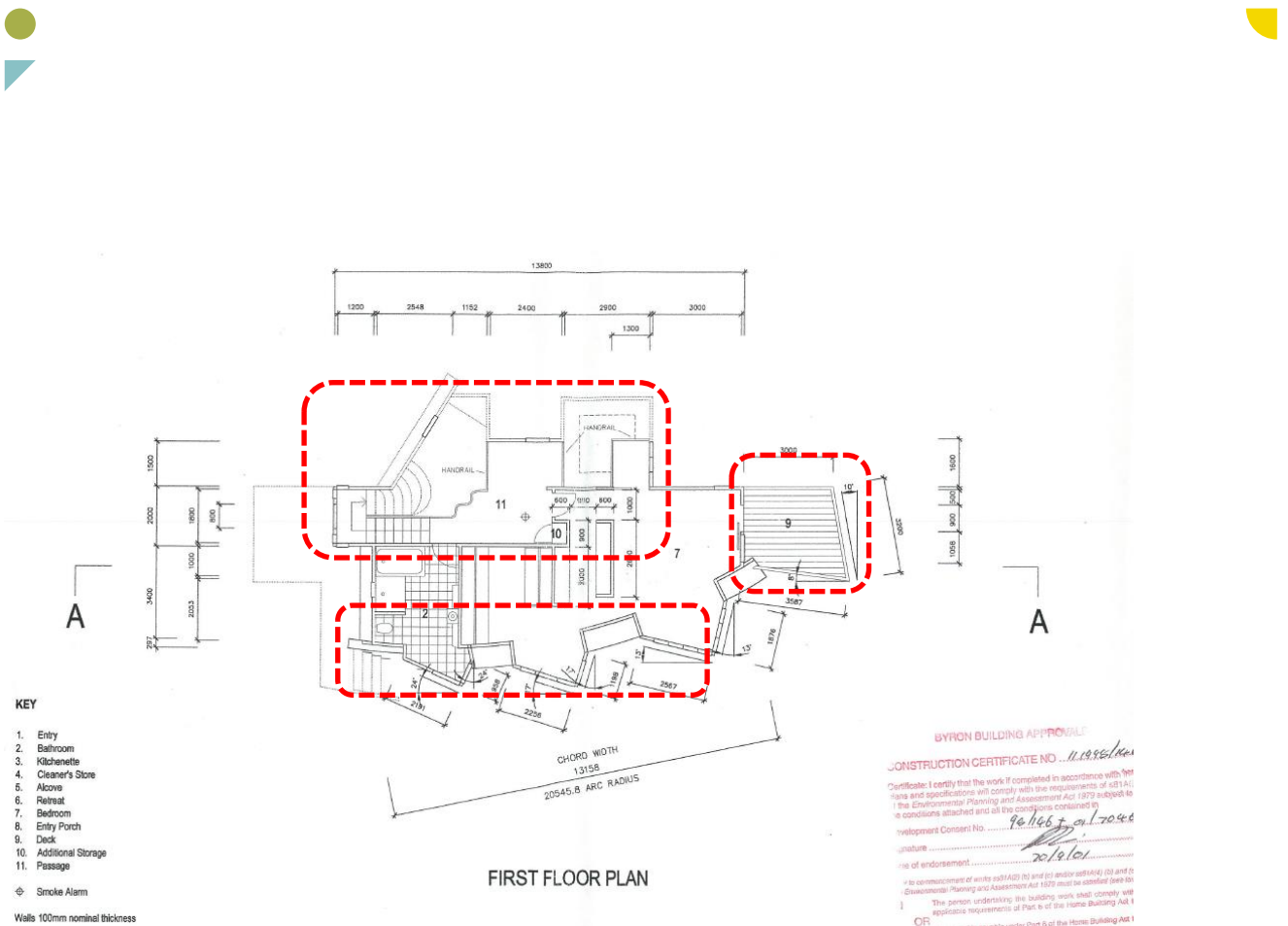


Figure 8 Extract from "Type B" first floor CC stamped plans (11.1998.146.1)

- **Building 24** – The landowner refers to a Construction Certificate issued on 13 September 2001. We do not have access to this. However, we note that the building is included in stamped plans under Building Approval 99/2027 (dated 26 November 1999). The building has not been constructed. It is therefore recommended that Council seeks those documents for their files for future audit purposes.
- **Building 30** – The landowner documentation refers to approved plans under 5.1998.146.2. However, this consent does not include any reference to Building 30. The building is identified on the originally approved plans (5.1998.146) and is also included in stamped plans under Building Approval 99/2027 (dated 26 November 1999). The building has not been constructed. It is therefore recommended that Council seeks those documents for their files for future audit purposes.

4.3 FURTHER CLARITY OF CONSENTS REQUIRED

Building 1 area

Clarification has been sought with respect to the approved area for Building 1. In particular, in reference to 280m² of floor space that was referred to in a historical Council report. It is not clear where the 280m² figure has come from, however Building 1 was approved under DA 5.1998.146.2 with 711.2m² of floor space, as illustrated in the following accommodation schedule (right hand column):

Component's of Building No.1	Approved Development	Proposed S.96 Modification
1A. Admin, storage, kitchen, servery	125.5	121.8
1B. Dining Room	81.0	81.0
1C. Seminar room	88.8	88.8
1D. Gallery, studio, theatre, admin	92.4	82.0
1E. Seminar room/ Library	134.4	98.2
1F. Toilets	32.0	37.0
1G. Staff change room. Linen store	39.0	45.0
1H. Accommodation	118.1	157.4
Total	711.2	711.2
Deck Area	446.0	430.0

On-site sewage management system (OSMS)

Under DA 5.1998.146.3, Condition F3 was varied to allow an increase of persons on site from 72 to 112. This was reliant on compliance with other conditions of consent, which include Conditions C6 and F12 that were varied so that maximum volume of sewage treated on site could increase from 6,000L per day to 16,800L per day. This was subject to Condition G1 that required approval to be obtained under Section 68 of the Local Government Act 1993.

This approval appears to have been sought under application **70.2006.139.1**, however we do not have access to a Council approval for this application.



5. Site Inspection

Following clarification of the matters set out above, which require further documentation to be provided by the landowner, Planning Ingenuity will undertake a site inspection to “ground check” the findings of the audit set out herein. Following that, this Section of the report will be updated.





6. Conclusion and Findings

Approved development

As outlined in Section 4 of this Audit Report, the majority of buildings that the landowner has noted on site are accounted for in DA approvals and subsequent CC and OC approvals. However, there are some inconsistencies in the documentation provided that will require clarification from the landowner and/or Council staff. It is also noted that we have not been provided Occupation Certificates for Buildings 16 and 29, which have been constructed on site.

There also appears to be some minor inconsistencies in relation to the Court approved DA plans and stamped CC plans for Buildings 2 to 22. These inconsistencies relate to the building form, however do not appear to add any significant bulk to those buildings. It is noted that all of the constructed buildings have obtained Occupation Certificates. Thus, it is likely that any inconsistencies between plans were accepted by Council prior to occupation of those buildings.

Site inspection findings

As indicated in Section 5, a site inspection will be undertaken following clarification of certain aspects being provided by the applicant and from further review of Council files if necessary.

Land use

In addition to the above, there appears to be some ambiguity with regards to the use of buildings on the site. The development on site was approved as a private education facility with ancillary accommodation. This included the provision of “academic, cultural and vocational” programs on the site. Over time, through numerous modifications and new DAs on the site, the size and quantum of ‘non-educational’ buildings has expanded. Each of these has been consented under the auspice of being ancillary to the main private educational use. However, a number of these buildings appear to be capable of being inhabited independently and it is not entirely clear what connection they have to the main private educational use of the site.

It is noted that tourist or visitor accommodation is permitted on the site as an ‘additional permitted use’, but only where it is ancillary to the private educational use and is for the purpose of providing education or training for professional and personal development through a variety of academic, cultural and vocational programs. The nature of use is a matter of fact and is outside the ambit of this audit. Notwithstanding, the nature of use is central to the approvals on the site and further investigation in this regard is recommended.



