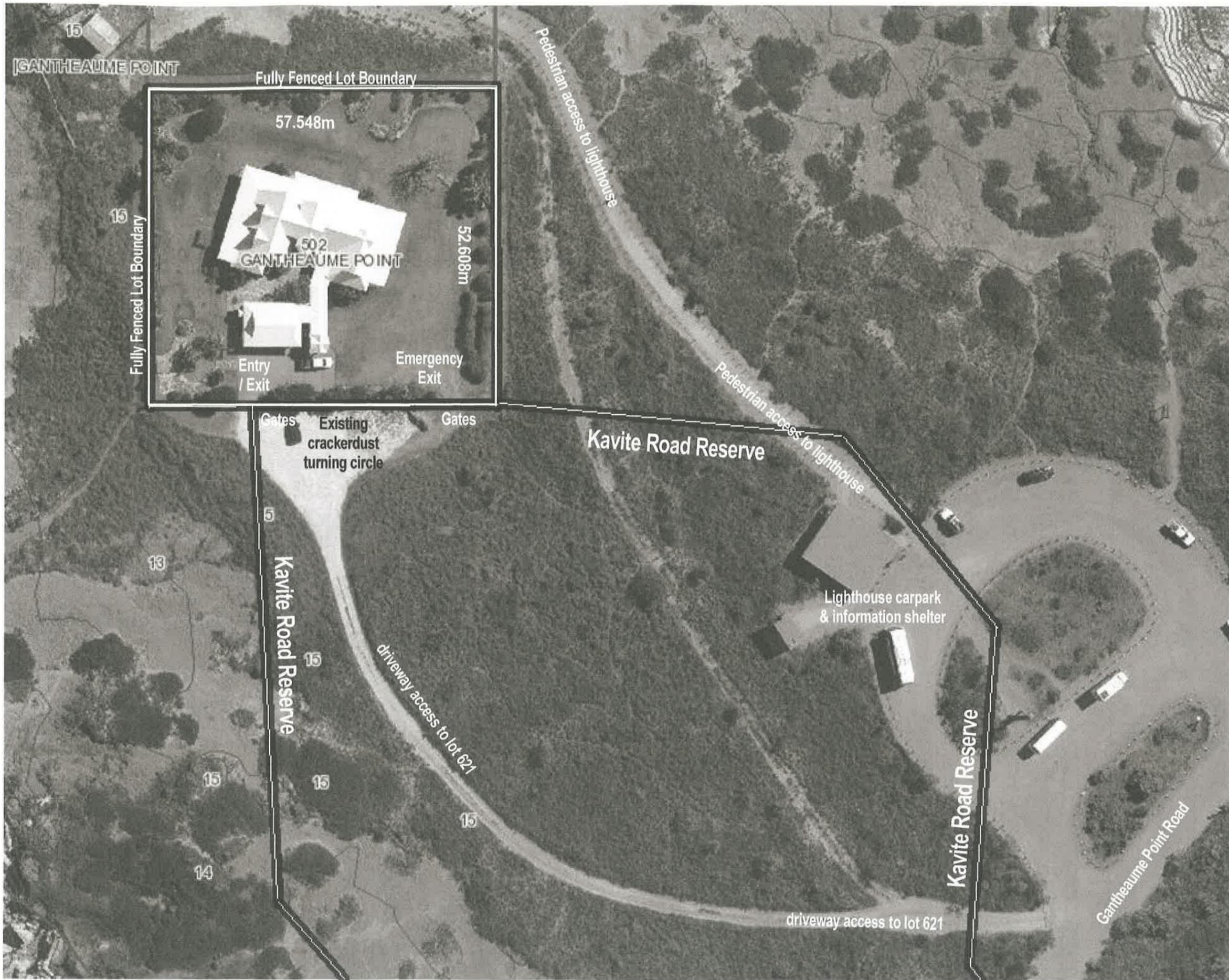


Lighthouse

Not to Scale
0 5 10 15 20 25
Meters



Lot 621
3027m²

CLIENT:

Cori Fong

ADDRESS:

Lot 621 (#502)
Gantheaume Point Road
CABLE BEACH

Authority:

Shire of Broome

"Entertaining Layout"

REV	DATE	DESCRIPTION
-	29/01/13	Working Drawings

Locality Plan

Scale: Not to Scale

Job N°: CS0881

Sheet: 01 of 03

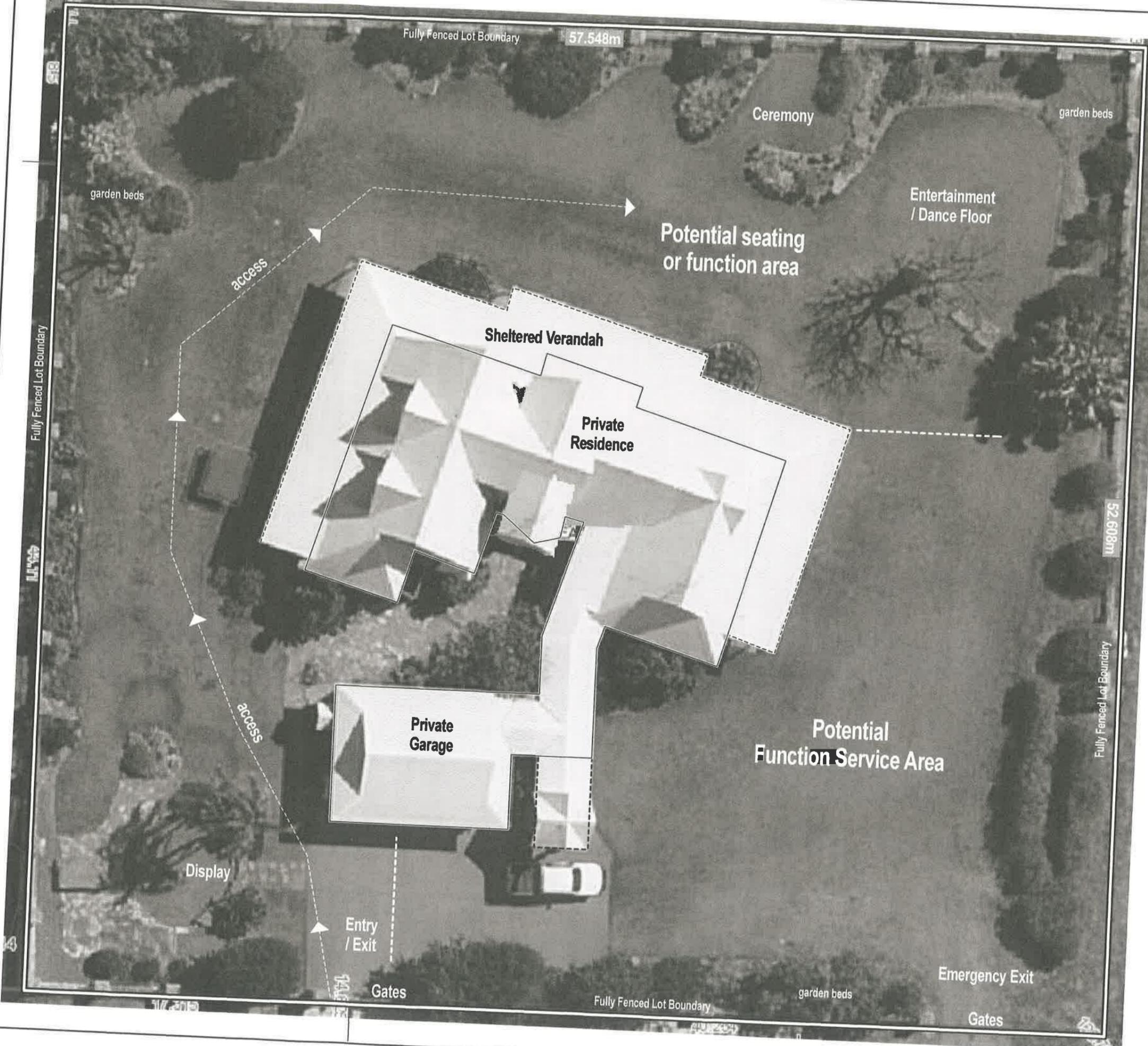
W.A.
STAR
design drafting

0429 689 269
craig@stardesign.net.au

Scale 1:200
Meters
0 2 4 6 8 10



Lot 621
3027m²



CLIENT:
Cori Fong

ADDRESS:
Lot 621 (#502)
Gantheaume Point Road
CABLE BEACH

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Shire of Broome

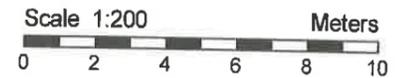
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-	29/01/13	Working Drawings

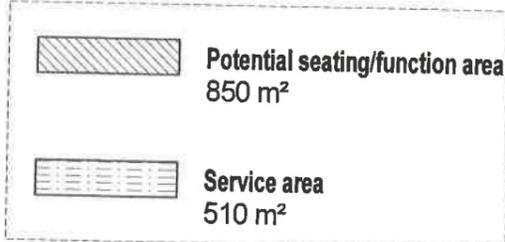
Site Plan
Scale: 1 : 200
Job N°: cs0381
Sheet: 02 of 03

STAR
design drafting
0429 689 269
craig@stardesign.net.au

Fully Fenced Lot Boundary 57.548m



Lot 621
3027m²



CLIENT:
Cori Fong

ADDRESS:
Lot 621 (#502)
Gantheaume Point Road
CABLE BEACH

Authority
Shire of Broome

"Entertaining Layout"

REV	DATE	DESCRIPTION
-	29/01/13	Working Drawings

Area Plan

Scale: 1 : 200

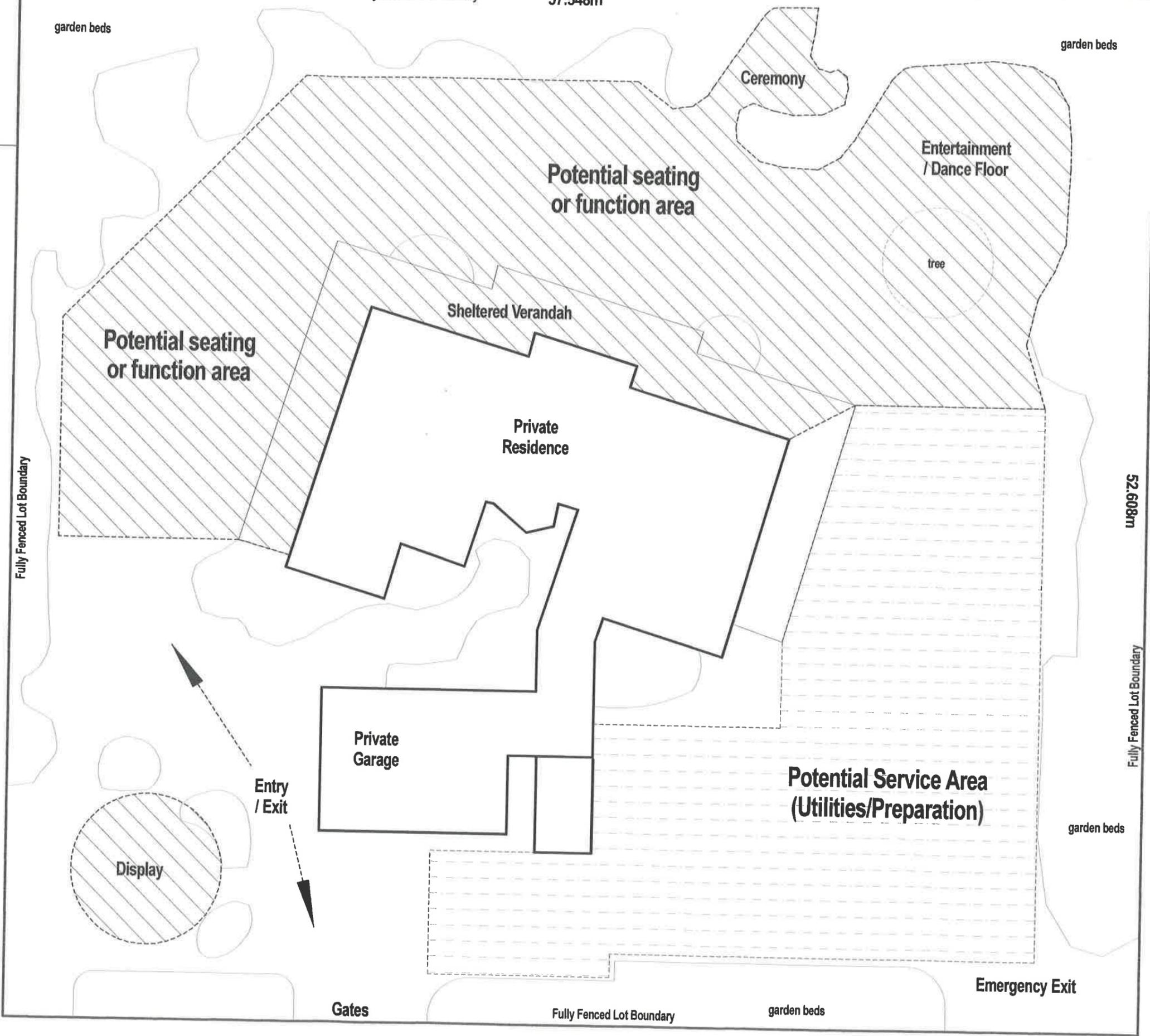
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Sheet: 03 of 03

W.A.

STAR
design drafting

0429 689 269
craig@stardesign.net.au



LANKESTER PLANNING SERVICES
10 Leake Street, Bayswater WA 6053. Ph. 040 777 6604
email; janetlank@westnet.com.au

Your Ref: GAN-1/LT621:2013/23

4 September 2013

Chief Executive Officer
Shire of Broome
PO Box 44
BROOME WA 6725

Attention: Director Development Services - Andre Schonfeld
Snr Planning Officer – Kirsten Wood

Dear Andre and Kirsten,

NO. 502, LOT 621 GANTHEAUME POINT ROAD, MINYIRR, BROOME – REQUEST FOR RECONSIDERATION OF THE CONDITIONS OF PLANNING APPROVAL

I refer to the abovementioned site and the Council decision of the 18 July 2013, which granted conditional planning approval for the use of the outdoor garden area at Lot 621 for the purpose of private and public functions.

Planning Conditions for Reconsideration

I act on behalf of the Landowner, Coral Fong with regard to this request for Council to reconsider conditions of the planning approval in accordance with Clause 8.3 of the Scheme. The reconsideration request primarily relates to the following two conditions:

"7. A maximum of up to 12 events can be held in a 12 month period.

10. This approval is valid for a period of 24 months only. When this approval expires the site must not be used for the purpose of 'function/reception land use' without attaining further approval from the Shire of Broome."

Additional/associated consideration also needs to be given to conditions 2, 3, 4, 8 and 9 due to the application of condition 10, which limits the planning approval and operation of the activity for a two year period. Conditions 2, 3, 4 and 9 are:

"2. Prior to the commencement of the use on the site, the access track must be upgraded to a cracker dust finish and widened to allow for two way vehicle movements and therein maintained at the applicant's cost to the satisfaction of the Shire of Broome.

3. Prior to the commencement of the use on the site, the bus pick up and drop off area must be upgraded to a cracker dust finish and therein maintained at the applicant's cost to the satisfaction of the Shire of Broome.

4. Prior to the commencement of the use on the site, the five car parking bays shown on the approved site plan must be upgraded to a cracker dust finish, sign posted and therein maintained at the applicant's cost to the satisfaction of the Shire of Broome.

8. The applicant is required to submit an annual compliance report to the Shire of Broome demonstrating that the condition of planning approval have been met. The compliance report must be submitted by the 30th June every year.

9. b) Prepare and register a notification under Section 70A of the Transfer of Land Act, in a form acceptable to the Shire, giving notice of the landowner(s) responsibility for maintenance of the verge(s), prior to occupation of the development."

Waiver of Application Fee and Lack of Due Process

In discussion with the Director of Development Services, I understand that the administration fee for this reconsideration request will be waived. This waiver is given on the basis that it is due to the error in the Shire administrative process, which has specifically given rise to the need for the applicant/owner to now pursue this reconsideration request. The reconsideration would not have been necessary if the agenda report/recommendation, as presented on the Council website had proceeded to be considered by Council. Concern about due process relates to the following:

- The Council agenda report Item 9.2.6, as published on the Council website prior to the Ordinary Council meeting of 18 July 2013, and as advised to the applicant by Shire staff on 12 July 2013 did not include planning conditions 7 and 10, as detailed in the official staff report/recommendation noted above. Neither did the report detail three other planning conditions - condition 4 (car parking bays), condition 5 (traffic management plan), condition 8 (compliance report) – however these latter conditions are not in dispute.
- The advertised agenda report 9.2.6 was replaced 'on the night of the Council meeting' by staff. This is documented in the Council minutes as *"The Shire President advised that a replacement Agenda Item 9.2.6 had been provided. The Director of Development Services briefed Council on the changes."*
- The applicant and owner was not advised of the change to the report, nor the change of recommendation/conditions until the 22 July 2013, which was after the Council meeting. Neither were any of the 'new' issues/conditions raised by Shire staff with the applicant/owner prior to the Council decision. Consequently, no opportunity was given for the applicant/owner to discuss the new issues/changes with staff and/or councillors prior to the Council meeting. (Note: It is evident that the changes/issues occurred after the conclusion of the report by the assessing planning officer, who has acted professionally and assisted the application/owner in all respects)
- The substitution of the official report, after the advertised agenda report was listed on the Council website, removed the due process and right that an applicant/owner is normally provided in the Council agenda process.

- If the applicant/owner was aware of the 'changed' staff report/recommendation then every effort would have been made to discuss this further with staff and Councillors prior to the Council meeting and for the applicant/owner to attend the full Council meeting. On the basis of the original advertised report/recommendation (on the Council website prior to 18 July), there was no reason for the applicant/owner to question/review the staff recommendation/conditions.
- The substitution of an advertised Council agenda reports without advising the applicant/owner is contrary to the expected openness and accountability of local government.

Reconsideration Request

It is requested that both condition No. 7 (a maximum of up to 12 events in a 12 month period) and Condition No. 10 (2 year limit to operate the land use on a 'trial' basis) be removed and/or modified.

- a) The limit on the number of events per year in addition to the 2 year operating limit renders the proposal unviable and unable to proceed.**

Substantial expenditure is required to address planning conditions numbered 2, 3, 4 – upgrading of access track, turnaround area, car bays (approx. \$35,000) and condition 9 – legal notification on title, in addition to associated set-up costs, i.e. required Shire and Health management plans, public building application, insurance, systematic landscaping/gardening regime prior to each event, various consultants, back up generator/power supply, separate power supply to ensure functions and dwelling to ensure supply to each, marketing etc.

- The limit on the number of events in the proposed time frame does not allow the owner sufficient time or number of events to recover costs. The conditions are an unreasonable imposition.
- It is acknowledged that the applicant/owner indicated in the original application possibly 12 events a year, as an indicator to maintain the 'low key' activity on site in association with the residential dwelling use. However the exact number of events is unknown eg. - depending upon demand, the difficulty or otherwise of operating the venue etc. There was no discussion that '12' was a maximum figure.
- Due to the outdoor nature of the facility and the limited use of the venue during the wet season, the '2 year' limitation effectively comprises only two 'dry seasons' during which the majority of events are likely to occur.
- There is no guarantee that a fresh planning approval will be issued after the currently proposed 2 year trial period expires in order to assist cost recovery.
- The imposition of conditions 2, 3, 4, (cracker dust upgrade and road widening) and condition 9 (notification on title) is unreasonable in the context of a 2 year operating limit and the ability to recover costs.
- If an ongoing approval is not issued after the proposed 2 year trial period, then the cracker dust upgrade is a wasted resource and cost. Additional expenditure is then also required to remove the notification on the title. (as it will have no further relevance for a residential dwelling)

- It is unreasonable to expect that even medium term business decisions be based on what would be essentially an operating period of only two dry season's. Such a short time frame compromises the ability to receive/plan bookings 'in advance' for such functions like weddings that require long lead times.
 - The inability to commence a business due to the unreasonable trade restrictions imposed (i.e. number of events and short trial period) and the uncertainty of ongoing business after the proposed 2 year trial will mean that the Shire will lose the opportunity for the proposed outdoor function venue on Lot 621 and a significant economic asset of the town. The ever increasing attraction of Broome as a wedding destination and the iconic Gantheaume Point location provides the ability for the outdoor venue on Lot 621 to extend and boost the tourist season and visitors to Broome.
- b) There is no indication of what criteria the owner needs to 'satisfy' during the 2 year trial period in order to achieve a further ongoing/unlimited planning approval for the land use activity.**

In discussions with the Director of Development Services it is understood that the basis of the 2 year trial period may relate to:

- The assessment of the cracker dust construction standard of the access track, turnaround area. This concern is unfounded. The application of a 'maintenance' requirement for the accessway/turnaround/carpark construction is inherent in conditions 2, 3, 4 and 9b. In addition, the powers under the Scheme and referred to in Advice Note f. of the planning approval will ensure that the access is always satisfactorily provided. i.e. in the event that the owner fails to maintain the access/turnaround area/car bays satisfactorily then the planning approval can be revoked. This can be done without the need for a 2 year trial period. The potential to erode/reduce the standard of the cracker dust surface will primarily occur with traffic movement in the wet season. However, it is during the wet season that the use of Lot 621 outdoor venue is limited/non existent due to 'undesireable' wet season features - sand flies, mosquitoes, cyclones, rain, and humidity. Limited traffic movement associated with the outdoor venue will occur during this time. The ability to maintain a satisfactory cracker dust car park surface (with traffic movement that far exceed the bus and service vehicle movements planned for Lot 621 outdoor venue) is evident elsewhere in Broome eg. (former) Cable Beach Crocodile Park and now based at Roebuck Plains/Skuthorpe, Broome Golf Club, the Fishing Club and the Pistol Club, which also accommodates overflow caravan/camping in the tourist season.
- The relaxation of car parking bays. This concern is also unfounded. The operation of the outdoor venue is proposed only on the basis of bus access to the site and no private parking by the hirer/patrons is permitted. This will be enforced strictly by the owner of Lot 621 and also by the Shire under condition 5 (traffic management plan) of the planning approval

There is no surrounding residential amenity to consider due to the isolated nature of the site. Neither should noise and traffic be an issue for review during the 2 year trial period. The noise and traffic associated with the nearby racecourse activities (races, concerts, festival activities) and Gantheaume Point tourist attraction creates regular noise, traffic, pedestrian movement and litter, which far exceed the proposed public/private function proposal for Lot 621. Both these activities are serviced by unconstructed roads. Therefore the need to review the standard of access to Lot 621 is inconsistent with the existing situation for surrounding land uses.

c) Other considerations/options

The removal of both condition 7 (12 event limit) and condition 10 (trial period) is preferred and requested, as detailed above. However, further issues noted below need to be explored.

- The principal constraint on the operation of the land use is condition 7 (12 event limit). Therefore, in the event that Council sought to maintain condition 10 (trial period), the owner considers it may be possible to progress the planning approval on the basis that the 'limit of events' is removed. It is thought that the increased flexibility in the number of events will assist the recovery of costs over what is effectively a trading period of two dry seasons. This would also assist Council to more properly assess the real scale of the activity, its operation and management, access and traffic management strategy.
- However, it is important to emphasise that the '2 year' time trial is effectively only an operating period for the outdoor venue of 2 dry seasons. Because of the outdoor nature of the venue, the majority of events will occur in the drier months of the year. Consequently, it is requested that Council consider the trial period over a 48 month period i.e. 4 'dry seasons'. Four 'dry seasons' – generally about 5 to 6 months – will produce an effective operating time of approximately 2 years (24 months).
- Please note that the suggested trial period of 4 "dry seasons" does not imply four calendar years of January to December, nor financial years of July to June. Neither should the reference to 4 'dry seasons' be interpreted to mean only operating in May to October or June to November of each year.

A trial period of either 2 or 4 years presents the owner with operational and business difficulties, however there is the potential for the owner to manage this aspect of the planning approval, provided the restriction on the number of events per year is removed. Therefore, if a trial period remains then further clarification is required with respect to:

- The 'criteria' on which the Council will ultimately 'assess' or 'review" the land use activity through the trial period. A list of the criteria should be provided to the owner in order to clearly identify what needs to be 'achieved/satisfied' during and/or at the conclusion of the trial period. The owner should be given a realistic goal and expectation that a fresh planning approval (without a time limit) will be issued in the future after the trial period provided that the 'criteria' is satisfied. As detailed previously, it is unreasonable to expect business decisions and large financial outlays to be made for only a short term time frame.
- Where a fresh planning approval is issued after the trial period, the Council should indicate the likely conditions of planning approval that might apply. For example – is it anticipated that a future planning approval will again restrict the proposal to a limited operating period? With ongoing renewals every 2? 4years? Or upgrade the construction standard of the accessway/car park? Require a large scale car park? Alternatively, if the identified 'criteria' is satisfied should the owner anticipate the issue of a fresh planning approval on the basis of the 'trial period' (and the event limit/per year being removed) and with all other conditions remaining unchanged?
- How will the Council manage the fresh planning application and presumably the granting of fresh planning approval, after the trial period? It is assumed that

Council's review of the trial period can only occur after 2 years or 4 years? of operating and at the conclusion and submission of the final 'annual compliance report'. For this to occur the business must cease on site after 24 (or 48) months from commencement and in accordance with condition 10, the *".....site must not be used for the purpose of function/reception land use....."*.

Consequently, this presents operational/business difficulties for bookings that occur years in advance. The lack of continuity of the business, (it would be at least 60 to 90 days before Shire could process a planning application) and the possibility that a fresh planning approval may be issued with 'new' varied conditions that may require additional work/actions and require additional time to achieve would further delay 're-establishing' the business onsite. It is suggested that a '6 month interim period' be provided after the 'trial period' which allows:

- The land use to continue to operate for another 6 months, and
 - Within that same 6 month period the owner must lodge a planning application, including the last compliance report and the Council must act reasonably to consider the planning application, assess the trial period and provide a determination within the same 6 month period.
- If the trial period is retained, the Council should removing condition 9b) (notification on title) until such time as the trial period ceases and a fresh application for planning approval is sought and obtained for an 'unrestricted' planning approval. It is only at this point, when the planning approval has no time limit that the notification of the title is relevant and appropriate. Regardless of condition 9b) (notification on the title), the responsibility for maintenance of the accessway/turnaround area is still enforceable under conditions 2, 3, and 4. The Shire has not lost control of this requirement.
 - Clarification is sought on the 'commencement date' of any trial period and condition 8 (annual report submission by 30th June). Any trial period should commence from the 'date of the first event on site'. The commencement date is unknown at this stage until the first event actually occurs. When/if the first event occurs the owner could formally notify the Shire in writing. The written notification will establish the 'commencement date'. The clarification on the Shire's interpretation of the 'commencement date' is also needed within the context of condition 8, which requires an annual compliance report to be lodged with the Shire *".....by the 30th June every year."* For example, if the first event occurs near the start of the dry season – say 1 May 2014 - then a 'compliance report' by the end of June 2014 (after 2 months of operating) does not represent an annual report of the first twelve month operating time period of the land use. Neither does it provide any reasonable assessment period. If it is the intent of Council that the annual compliance report will be linked with each twelve months of operating, then the annual report submission date (currently specified in condition 8 as 30th June) should be modified to coincide with the commencement date.
 - Clarification is also sought on condition 2 which requires a widened access track *"....to allow for two way vehicle movement...."*. The interpretation of this condition can take many forms eg. widen the total length of the accessway to 6m wide? 4.5m wide? Or maintain the 3m wide track and provide one or two passing points/embayment to allow two way movement. The control and management of vehicle movement to the site and for functions is well documented. Frequent and intensive two way movement of cars and buses will not occur. The creation of a 6m wide track is not justified. Neither is it desirable to undertake unnecessary clearing of the coastal vegetation from an environmental aspect. A double width

accessway is unattractive for the amenity of patrons arriving at the iconic and isolated Gantheaume Point destination or would not contribute to localities natural environment. It is anticipated that a reasonable interpretation of accommodating 'two way vehicle movement' is in the form of a widened passing embayment at a strategic point in the accessway.

The current conditions on the planning approval granted on 18 July 2013 for the outdoor function venue on Lot 621 does not reasonably allow for this land use proposal to proceed.

It is respectfully requested that a reconsideration be given to the July 2013 conditions of planning approval imposed on Lot 621 as outlined above, and to provide the applicant/owner with the standard due process and right to discuss these matters with Shire Officers and Councillors.

I trust that the information supplied is sufficient for your office to progress this reconsideration. Please do not hesitate to contact me on 040 777 6604 or my email janetlank@westnet.com.au if you require further information.

Yours faithfully

Janet Lankester
Town Planner
LANKESTER PLANNING SERVICES