

SHIRE OF SHARK BAY

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All correspondence to the
Chief Executive Officer

Your Ref
Our Ref P4281 / O-CR-14343
Enquiries Paul Anderson

6 February 2015

OFFICE OF THE ENVIRONMENTAL PROTECTION AUTHORITY
LOCKED BAG 10
EAST PERTH WA 6892

Dear Sir/ Madam,

SHIRE OF SHARK BAY – PLANNING APPLICATION FOR 7 SHORT STAY UNITS – LOT 304 SUNDAY ISLAND BAY, DIRK HARTOG ISLAND

The Shire has received a planning application seeking approval to construct 7 short stay accommodation units as part of a first stage of development of Lot 305 Sunday Island Bay, Dirk Hartog Island.

Ultimately, the landowner would like to develop around 33 units in the longer term, however the Shire can only process the current application as submitted.

The Shire would like to formally refer the application to the Environmental Protection Authority in accordance with Section 38 of the Environmental Protection Act. The Shire also seeks assistance and advice on environmental issues associated with the proposed development, as it is located within a World Heritage Area.

We attach a copy of the application on CD and also advise as follows:

1. Copies of Council reports

The application was considered by Council at its ordinary meeting held on the 17 December 2014. Council resolved to advertise the application for public comment following receipt of additional information by the applicant.

I attach a copy of the Council minutes – Attachment 1.

2. Advertising

Advertising closes on the 6 February 2015, however the Shire may receive some late submissions.

To date the Shire has received four submissions, which are included as Attachment 2.

3. World Heritage

The application has been referred to the Department of Parks of Wildlife who has lodged a submission.

Office of the Environmental Protection Authority

File:

09 FEB 2015

A:	<input type="checkbox"/> For Information
fa:	<input type="checkbox"/> For Discussion
Officer:	<input type="checkbox"/> For Action
<input type="checkbox"/> Dir. AC	Response phases:
<input type="checkbox"/> Dir. Bus Ops	<input type="checkbox"/> GM Signature
<input type="checkbox"/> Dir. SPPD	<input type="checkbox"/> Dir for GM (copy to GM)
<input type="checkbox"/>	<input type="checkbox"/> Dir Signature (copy to GM)
<input type="checkbox"/>	<input type="checkbox"/> Mgr Direct (copy to GM)

The Application has also been referred to the Shark Bay World Heritage Advisory Committee who will lodge a submission shortly. Once advice has been received from the Shark Bay World Heritage Advisory Committee we will forward a copy to the Environmental Protection Authority separately.

4. Coastal Setbacks

The applicant has lodged a coastal report which has been referred to the Department of Planning. We expect a late submission from the Department of Planning and will forward their advice to the Environmental Protection Authority separately.

5. Restrictive Covenant

There is a restrictive covenant placed on the Certificate of Title of Lot 304 by the Minister of Lands – Attachment 3.

The Department of Lands has objected to the development as aspects do not comply with the restrictive covenant. The Department has advised they have written to the landowner regarding this matter, and the Shire is awaiting the outcome.

If necessary, the Shire will obtain legal advice on the implications of the restrictive covenant on the planning decision making process.

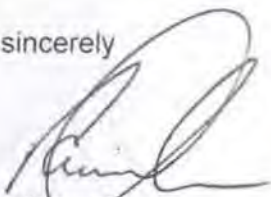
6. Conclusion

Please be advised that the Shire does not have significant resources and does not employ an environmental officer. The Environmental Protection Authority's advice on environmental matters is therefore essential as the island is un-serviced, remote and located within the world heritage area.

The Shire has referred the planning application to its external planning officer, Liz Bushby at Gray & Lewis Landuse Planners for assessment.

If you have any queries please do not hesitate to contact Liz directly on 9474 1722.

Yours sincerely



Paul Anderson
CHIEF EXECUTIVE OFFICER

17 DECEMBER 2014

Moved Cr Capewell
Seconded Cr Prior

Council Resolution

That Council suspend Standing Orders, clause 9.5 Limitation on number speeches to be suspended at 3.21 pm for open discussion on presentation by Mr Geoff Wardle on Item 13.1 Planning Application for 7 Short Stay Units – Lot 304 Sunday Island Bay, Dirk Hartog Island.

6/0 CARRIED

Mr Geoff Wardle made a presentation to the Council on the 7 Short Stay Units proposed for Lot 3304 Sunday Island Bay, Dirk Hartog Island.

Cr Ridgley left the Council Chamber at 3.34 pm.

Cr Ridgley returned to the Council Chamber at 3.36 pm

Moved Cr Prior
Seconded Cr Capewell

Council Resolution

That Council reinstate standing Orders at 3.40 pm.

6/0 CARRIED

13.1 PRELIMINARY REPORT – PLANNING APPLICATION FOR 7 SHORT STAY UNITS – LOT 304 SUNDAY ISLAND BAY, DIRK HARTOG ISLAND

P4281

Author

Liz Bushby, Gray & Lewis

Disclosure of Any Interest

Disclosure of Interest: Gray and Lewis

Nature of Interest: Financial Interest as receive planning fees for advice to the Shire – Section 5.65 of *Local Government Act 1995*

Disclosure of Interest: Cr Cowell

Nature of Interest: Impartiality Interest as World Heritage Project and Executive Officer of the Department of Parks and Wildlife.

Moved Cr Prior
Seconded Cr Capewell

Council Resolution

That Council:

1. Note that amended plans have been lodged by Hypermarket Pty Ltd for short term accommodation (7 building envelopes) on Lot 304 Sunday Island Bay, Dirk Hartog Island.

2. Authorise the Chief Executive Officer to request the following information be provided by the applicant within 60 days or an alternative time period agreed to in writing by the Chief Executive Officer as listed below:
- (A) An amended site plan that includes:
 - i. A scale no greater than 1:1000 (can be A1 size)
 - ii. A total of 7 building envelopes to reflect the proposed development being 7 short stay accommodation units with retention of setbacks to existing lot boundaries. All other building envelopes to be deleted as they will be subject of a future separate application.
 - iii. The floor plan layout for each building envelope to be superimposed onto the new scaled site plan with notation of the relevant Building Design (1, 2 or 3) with clarification on whether any 'duplex' designs are proposed.
 - iv. Deletion of any proposed 'lot' boundaries as the applicant will need to lodge a separate subdivision application to the Western Australian Planning Commission who is the determining authority for all subdivision proposals.
 - v. The existing lot to be shown in its entirety on one site plan (not cut into two halves) with all existing lot boundary dimensions.
 - vi. Existing site levels in Australian Height Datum (AHD) and proposed Finished Floor Levels in AHD.
 - (B) A new separate plan sheet be provided for 'Building Design 3' which is to scale, has a detailed floor plan layout and elevations to an equal quality as provided for Building Design 1 and 2 that demonstrate the building appearance to the south, east, west and north. Alternatively the applicant may simply use Building Design 1 or 2 for Building Envelope 1B.
 - (C) Review and confirm all floor areas to include any outdoor living areas which are enclosed.
 - (D) An updated Environmental Report to include an amended site plan showing 7 building envelopes as the 'proposed site accommodation layout' (on page 52) in lieu of the superseded 2013 site plan.
 - (E) An amended photomontage that only shows the 7 short stay accommodation units proposed in this planning application.
 - (F) Two CD's with an electronic pdf copy of all documents and plans.
 - (G) Further clarification on management of the proposed short stay facility and how the waste management plan will be implemented.
 - (H) Fifteen full plan sets for consultation.
3. Authorise the Chief Executive Officer to determine whether additional information provided by the applicant is sufficient for commencement of formal advertising.

4. Authorise the Chief Executive Officer to commence formal advertising for a period of 21 days once satisfactory amended plans are received, and advertising is to include the following:
 - i. A public notice on the Shire Public Noticeboard
 - ii. An advertisement in an official newspaper circulating in the district.
 - iii. Formal referral to the Environmental Protection Authority in accordance with Section 38 of the *Environmental Protection Act 1986*.
 - iv. Letters to key stakeholders including:
 - Shark Bay World Heritage Advisory Committee
 - Department of Parks and Wildlife
 - Department of Environment Regulation
 - Department of Planning (Coastal Branch)
 - Department of Transport
 - Department of Planning (Tourism Branch)
 - Department of Water
 - Health Department of Western Australia
 - Department of Lands (Henty Ferrar)
 - All landowners of green title lots on Dirk Hartog Island
5. Advise the applicant that the Shire requests amended plans be provided in a timely manner as the application has been ongoing for an extended time period.
6. Authorise the Chief Executive Officer to notify the Western Australian Planning Commission that the application is not being formally referred to a Development Assessment Panel as the development is being staged, and the estimated cost for Stage 1 is below the threshold of \$7 million which entails mandatory referral.

6/0 CARRIED

Précis

An application for 33 short stay units on Lot 304 was lodged by Hypermarket Pty Ltd in October 2013.

The applicant has submitted additional information and revised plans on the 26 November 2014 and seeks to progress the application.

The applicant has advised they only seek approval for Stage 1 of development consisting of 7 short stay accommodation units.

Background

• 2013 Application

An application for 33 short stay accommodation units was lodged with the Shire of Shark Bay in 2013. The original documents also referred to staff accommodation, gym and a lodge.

The original application was referred to relevant authorities and key stakeholders for public comment in November 2013.

Subsequent to commencement of consultation Gray & Lewis liaised with the applicant and raised concern over:

- (i) The need for detailed plans and images that would clearly show what the development would look like. There was some uncertainty about the final development outcome.
- (ii) Coastal setbacks as raised by the Department of Planning.

Gray & Lewis had discussions with the applicant (Geoff Wardle) in late 2013 whereby he indicated an intention to lodge amended detailed plans for 7 units.

The application was placed on hold pending more detailed plans and additional information from the applicant.

- *Lot History*

Gray & Lewis is of the understanding that the State Government exchanged freehold parcels of land with the lessee of Dirk Hartog Island. Now there are expectations by owners that the lots can be developed.

There is a restrictive covenant on the Certificate of Title of Lot 304 which allows the land to be used for the purpose of low impact eco tourism including visitor accommodation units and staff accommodation, subject to normal local government and other necessary approvals.

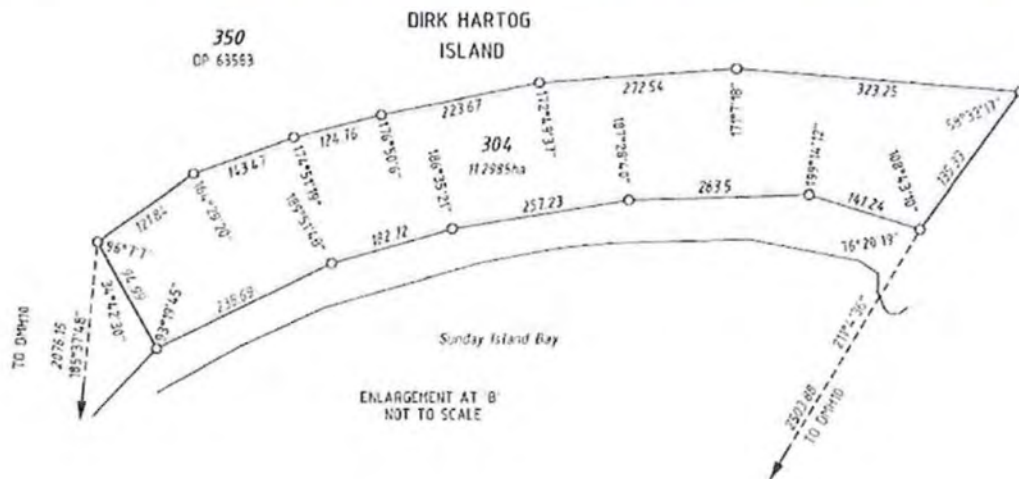
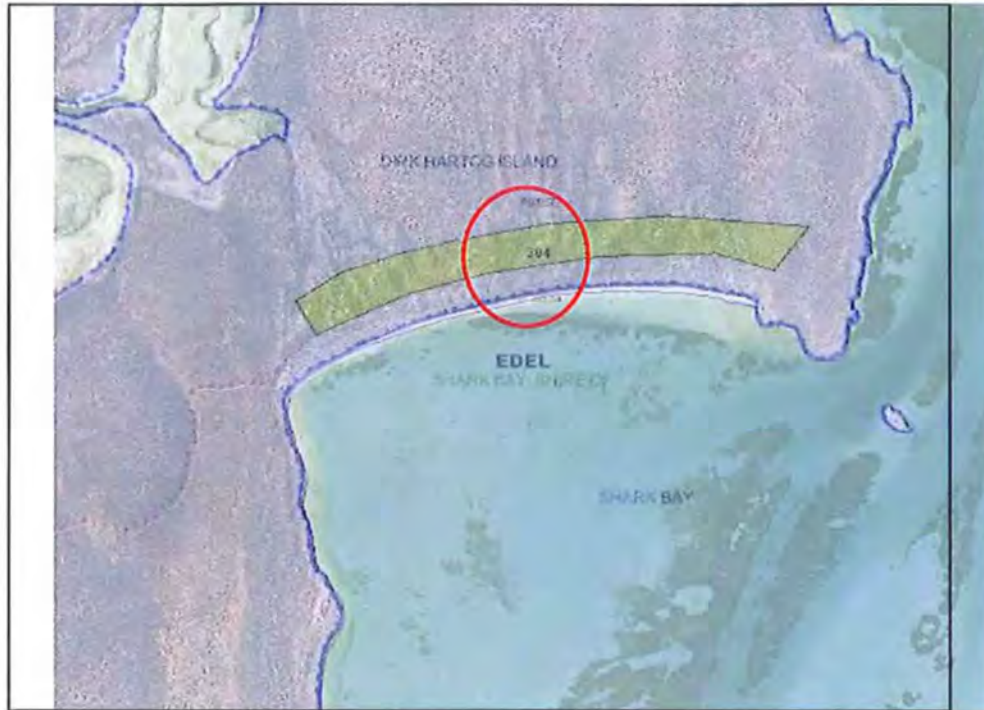
The covenant include restrictions on the number of visitor accommodation units as a ratio to the lot area, limits the floor area of visitor units and staff accommodation; limits occupation of visitor units to short stay, and requires accommodation units and buildings to comply with all relevant Local, State and Commonwealth Government statutory approvals.

The covenant is to the benefit of the Minister for Lands under the Land Administration Act 1997.

- *Location*

A location plan and survey diagram is included below for ease of reference.

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Comment

Gray & Lewis has not undertaken a full planning assessment of the application due to (1) time constraints and (2) the need for external advice.

This report recommends that additional information be requested from the applicant, and the application be advertised by the Shire for public comment.

The Shire has opportunity to request additional information at this early stage.

The applicants submission is included at the end of this report.

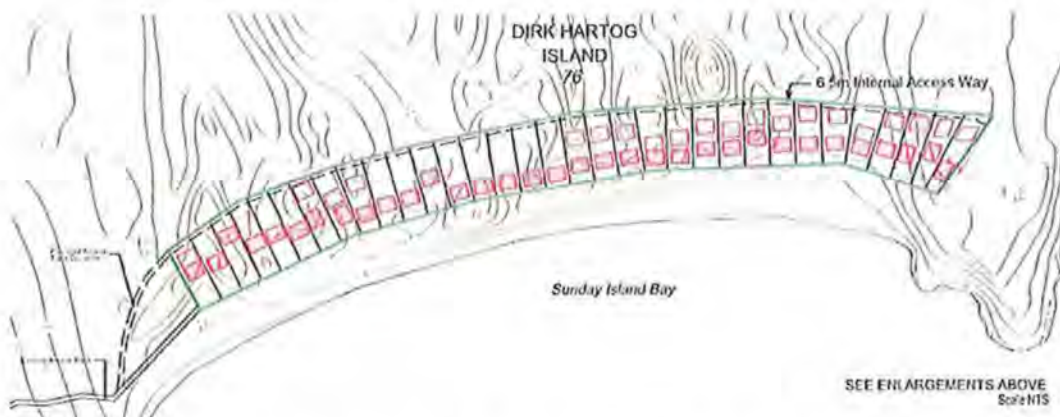
- *Zoning*

Lot 304 is zoned 'Rural / Pastoral' under the Shire of Shark Bay Local Planning Scheme No 3 ('the Scheme'), and is also contained within a Special Control Area (SCA) applicable to the Shark Bay World Heritage Property.

- *Site Plan – Building Envelopes*

The applicant has submitted a site plan showing building envelopes for 33 short stay accommodation units however has confirmed in writing that approval is only sought for 7 short stay accommodation units – Attachment 2.

The applicant indicates that building envelopes have been sited having regard for matters such as coastal setbacks and views – refer extract below.



A full set of plans is included as Attachment 3. Gray & Lewis has highlighted the seven building envelopes in blue on the site plan.

The building envelopes are numbered 1-33 on the site plan and the applicant has shown proposed 'lots'. Some 'lots' have 2 building envelopes that are labelled 'A' or 'B'.

The applicant advises that:

- 'Building Envelope A' is for primary (short stay) accommodation units
- 'Building Envelope B' is for 'duplex units, staff accommodation and other associated infrastructure'.

The total number of (future) proposed building envelopes shown on the site plan for short stay accommodation, duplex units, staff accommodation or other infrastructure is 54.

The ultimate total number of accommodation units may exceed 54 as some building envelopes could be 'duplexes' (2 units in one building envelope).

- *Staging and Proposed Development*

The applicant has advised that development will occur in three stages as follows:

- (i) Stage 1 – Seven short stay accommodation units with ancillary infrastructure and building envelopes.
- (ii) Stage 2 – Eleven accommodation units following completion of Stage 1.
- (iii) Stage 3 – Following completion of Stage 2.

Gray & Lewis has previously advised the applicant that the plans lodged should only show the extent of development as proposed in the application.

There is concern that the plans as submitted will cause confusion to key stakeholders during public consultation. It is recommended that the applicant be requested to provide an amended site plan that only shows the proposed 7 building envelopes.

- *Building Design*

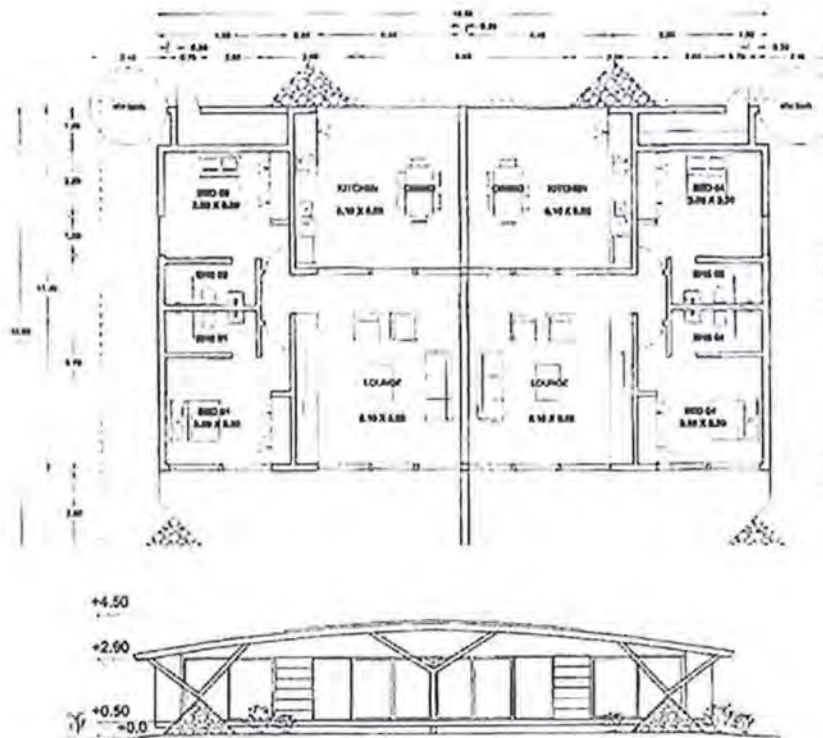
The applicant advises there are three building designs referred to as 'Building Design 1, 2 and 3'. However there are two floor plan options within each design classification being:

- A single accommodation model and;
- A 'duplex' model.

It is assumed that only single accommodation models are proposed for the seven units however it needs to be clarified with the applicant.

The building designs are included below for ease of reference, and in Attachment 3.

1. Building Design 1: Floor Area 161sqm – Proposed for building envelopes marked 1A, 3, 6, 17 and 23B on the site plan.



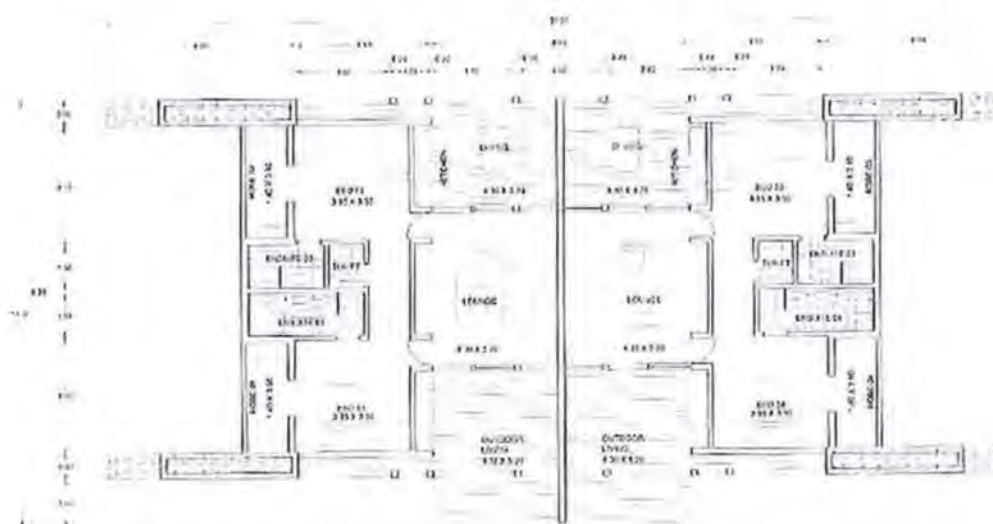
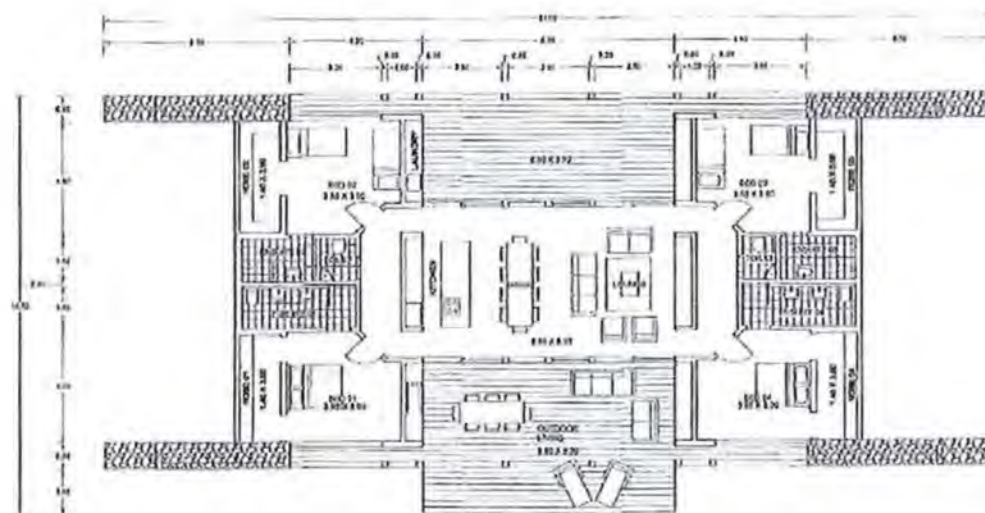
The Scheme defines 'gross floor area' as 'means the aggregate of the total floor area of each level of a building including the thickness of the external walls but excluding the space set aside for the parking of wheeled vehicles and for the accommodation of service vehicles where such space is included in the building'.

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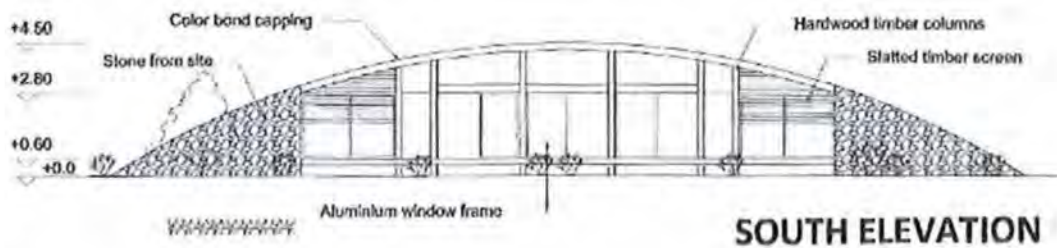
Gray & Lewis is of the view that the enclosed 'outdoor living area' should be included in the Floor Area. This is consistent with the approach of the Residential Design Codes which only allows roofed areas to be included as open space where they are open on at least two sides, and the restrictive covenant on Lot 304 which excludes unenclosed open verandahs from the floor area calculation.

It is recommended that the applicant be advised that the floor areas should be amended to include any outdoor living areas which are enclosed. The Gross Floor Area of Building Design 1 is approximately 261.32m² (ie 18.8m x 13.9m).

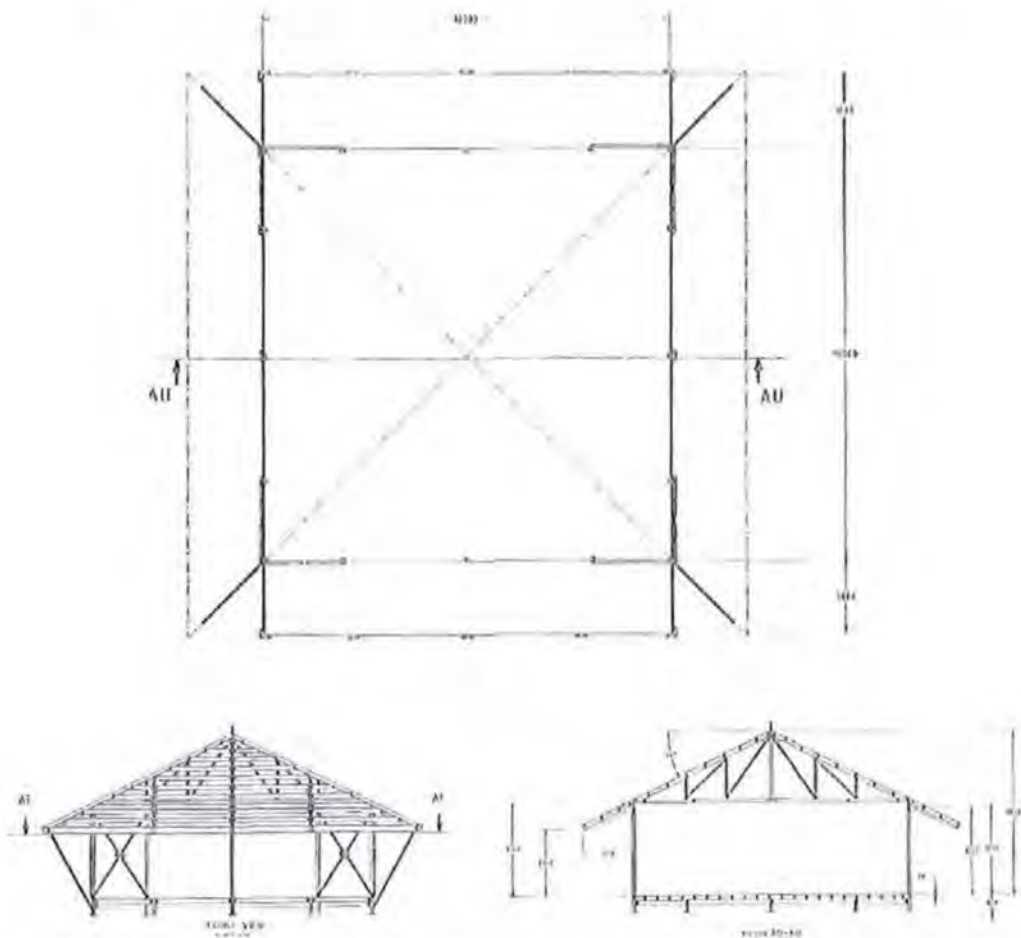
2. Building Design 2: Floor Area 165sqm – Proposed for building envelope marked 23A on the site plan.



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2. Building Design 3: Floor Area 100sqm – Proposed for building envelope marked 1B on the site plan.



The plans provided for 'Building Design 3' are not to scale, do not show any internal floor layout, and lack detailed elevations.

It is recommended that the applicant be requested to provide:

- A. Floor Plans superimposed onto a lower scale site plan so it is clear which building design (single or duplex accommodation) applies to each envelope without written explanation; and
- B. A separate plan sheet be provided for 'Building Design 3' which is to scale, has detailed floor plan layout and elevations to an equal quality as provided for Building Design 1 and 2 that demonstrate the building appearance to the south, east, west and north.

- *Relevant Zone Objectives*

The objectives of the 'Rural / Pastoral' zone are:

- a) to retain the existing pastoral leases for pastoral industry;
- b) to prohibit the use of any land which may be incompatible to the existing uses or which may adversely affect the expansion of the areas adjacent to Denham, Monkey Mia and Nanga;
- c) to prohibit the erection of any structure other than a fence on the land subject to inundation; and
- d) to ensure that Rural/Pastoral uses protect World Heritage Values, minimise land degradation, promote soil conservation and ensure the sustainable use of land for rural purposes.
- e) to provide for low key tourism uses that are compatible with the operations of pastoral leases and the World Heritage Values.

The land is no longer subject to any pastoral lease however relevant to this application Council needs to be satisfied that the development is a 'low key tourism use' and 'compatible with world heritage values'.

It is recommended that future consultation include referral to the Shark Bay World Heritage Advisory Committee.

- *Landuse Permissibility*

When an application is lodged, part of the planning assessment involves examining the landuse definitions in the Scheme, and determining the 'best fit' landuse classification.

If the landuse is listed in the Scheme's Zoning Table, it dictates the permissibility of the use in the relevant zone.

The applicant has applied for 7 'short stay accommodation' units.

The Scheme has an existing landuse definition for 'short term accommodation' which *'means two or more detached dwellings, chalets or similar, on one lot let for holiday purposes, none of which are occupied by the same tenant for continuous period of more than four months'*.

The landuse of 'short term accommodation' is listed a 'D' use in 'Table: Zoning Table' of the Scheme in the Rural /Pastoral zone. Essentially this means that *'the use is not permitted unless the local government has exercised its discretion by granting planning approval'*.

- *World Heritage and Environmental Matters*

In accordance with Clause 6.2.4 of the Scheme, the local government is to have regard for the Environmental Protection Authority 'Guidance statement for assessment of development proposals in the Shark Bay World Heritage Property' area. The

Guidelines specifically address the need for consultations with regards to referring development applications within and adjacent to the Shark Bay World Heritage Property.

The World Heritage listing does not prevent development however there is an expectation that developments be carefully evaluated from an environmental perspective.

Gray & Lewis referred the original application for 33 short term accommodation units to the Environmental Protection Authority for consideration of environmental issues in 2013. No Environmental Protection Authority advice was received as the application was placed on hold pending additional information.

It is recommended that this new application be formally referred to the Environmental Protection Authority (on receipt of amended plans) to ascertain whether formal environmental assessment is required.

The Environmental Protection Authority can make decisions about whether to assess the proposal, the appropriate level of assessment, the key environmental factors in assessments, the environmental acceptability of proposal, and the conditions that should be applied.

The Environmental Protection Authority may determine that no environmental assessment is required, or set a level for environmental assessment. The Environmental Protection Authority also has the ability to request additional information from the applicant.

Gray & Lewis does not recommend determination of the application until such time as Environmental Protection Authority advice has been obtained.

The applicant has written their own 'Environmental Report' and advised it was prepared in consultation with Department of Parks and Wildlife (then Department of Environment and Conservation). Ordinarily environmental reports would be prepared by a professional environmental consultant with specific expertise in that area.

The applicants 'Environmental Report' includes the superseded 2013 site plan as the '*proposed site accommodation layout*' (on page 52) which will likely cause confusion during advertising. It is recommended that the applicant be requested to update the Environmental Report to include an amended site plan showing 7 building envelopes.

- *Coastal Considerations*

The Scheme requires a minimum finished floor level not less than RL 3.2 metres AHD (Australian Height Datum) for 'Land subject to Inundation'.

The site plan shows contours which appear to be Australian Height Datum levels (AHD). No Finished Floor Levels are provided however the applicants' written submission indicates Finished Floor Levels's for each building envelope '*are between 6 and 16 metres AHD*'.

In Point 2a (vi) of the 'Officer Recommendation' in this report, Gray & Lewis has recommended that the applicant be requested to provide existing site levels in AHD and proposed Finished Floor Level's in AHD.

It is to Councils discretion whether to ask for this level of detail however it is

a standard plan requirement, and will assist Department of Planning to assess the coastal report. It is likely the applicant will need to engage a licenced surveyor to assist with levels.

Council has obligation to have regard for any relevant State Planning Policy under Clause 10.2 e) of the Scheme.

State Planning Policy 2.6 (SPP 2.6) provides for land use and development decision-making within the coastal zone including managing development and land use change; establishment of coastal foreshore reserves; and to protect, conserve and enhance coastal values.

The Policy aims to provide a relatively low risk of development being adversely impacted by coastal inundation over a 100 year planning horizon. Coastal setbacks are calculated having regard for a 500 year average recurrence interval (ARI) event, plus an allowance for sea level rise.

The original application was referred to the Department of Planning who recommended that the applicant lodge a coastal assessment or information that addresses compliance with SPP 2.6.

The applicant has lodged a report by Damara WA PTY Ltd on 'Coastal Setback Allowances'. Damara WA indicates that all the building envelopes are setback beyond the erosion hazard line except site 4 which requires confirmation that levels are greater than 4.7m AHD. Site 4 is not included in this application.

It is recommend that consultation occur with the Department of Transport and Department of Planning to ascertain the adequacy of the coastal report.

- *Visual Impact / aesthetics*

Building design is a subjective issue and visual impact is most relevant in terms of protecting the World Heritage values of the area. Comments from Shark Bay World Heritage Advisory Committee will form an important part of the visual impact assessment.

It is noted that the proposed building designs are of a low building scale, are not bulky in appearance and do not protrude into the skyline.

The applicant has provided a photomontage of the entire proposed development, photographs of scale models and has advised a scale model will be delivered to the Shire prior to the Council meeting.



The applicant confirms all colours will be as per the World Heritage colour palette. Building materials will include a combination of limestone blocks, light weight panels and fully insulated colorbond roofing.

Building materials will generally be manufactured to kit level and transported in knock down form for easy assembly. The applicant has indicated they will be imported from overseas.

For ease of consultation it is recommended that the applicant be requested to lodge an amended photomontage that only shows the 7 buildings proposed.

- *Future Subdivision*

Gray & Lewis is of the view that the plans should not show any 'proposed' lots as any subdivision requires separate approval by the Western Australian Planning Commission. It is recommended that the applicant be requested to show only the existing lot boundaries and dimensions.

There is uncertainty as to whether the Western Australian Planning Commission will support further subdivision of Lot 304.

The 'Environmental Report' states that *'each separate leisure accommodation unit may be owned by investors, investor groups, private individuals and other interested parties'*.

- *Servicing*

The 'Environmental Report' states that each accommodation unit and its infrastructure will operate independently for the provision of power, water and sewerage under the direction of a project manager.

The Environmental Report indicates power will be a combination of wind, solar and a generator. Water will be a combination of rainwater, desalinated ocean water, and ground water pumped from either West Wells or Two Wells. Effluent disposal is proposed via leach drains.

There is limited information on proposed services at this stage, therefore separate approvals will be required for some of the more significant infrastructure, such as any wind turbines or desalination plant. The Shire can impose conditions on development for the submission of more detailed plans for minor ancillary development such as water tanks and generators.

The applicant will have to lodge a separate application to install any new effluent system which will be assessed by the Shire's Environmental Health Officer.

As the land is currently un-serviced the Shire can request that the applicant provide more detailed servicing information prior to commencing consultation.

- *Access*

The site plan shows an existing access track connecting to the south west corner of the lot which was approved by the Conservation Commission of Western Australia – Attachment 4.

The proposed access is to the north west portion of the lot. The applicant has discussed the alternative route with the Department of Parks and Wildlife however it has not been formally approved.

It is recommended that the Shire refer this matter to the Department of Parks and Wildlife for advice.

- *Management Plans*

The applicant has prepared a waste management plan and foreshore management plan which needs to be referred to the Department of Parks and Wildlife for advice.

Gray & Lewis has not re-examined the waste management plan in depth due to time constraints.

- *Development outside of Lot 304*

The planning application only relates to Lot 304 so any structures outside of the lot boundaries do not form part of this application.

- *Restrictive Covenant and Local Planning Scheme*

A restrictive covenant is a private agreement between two parties that restricts the use or enjoyment of land owned by one of those parties, for the benefit of another party – in this case the benefit is to the Minister for Lands. A restrictive covenant is recorded on a Certificate of Title for Lot 304 and outlines limitations for future development.

There are some conflicts between the provisions of the restrictive covenant and the provisions of the Shires Scheme. For example, the covenant limits short stay accommodation to a maximum of 3 months in a calendar year whereas the Scheme allows occupation of short term accommodation for up to 4 months.

Another example is the restrictive covenant limits the floor area of short term accommodation to 90m² (excluding unenclosed verandahs) whereas the Scheme has no floor size limitation.

Restrictive covenants and planning controls are not related and provide for different forms of restriction. A restrictive covenant is a restriction on title however planning controls arise from legislation.

The existence of a restrictive covenant applicable to Lot 304 may not technically be a valid planning consideration, however it causes complications as:

- (i) The Scheme has a specific clause that extinguishes any restrictive covenant that limits the number of residential dwellings on a lot. The clause does not apply in this case so there is specific provision in the Scheme to vary a restrictive covenant.
- (ii) Restrictive covenants are recognised property interests.

From a practical perspective it would not seem logical for the local government to approve any development that conflicts with the restrictive covenant if it can be avoided. For this reason it is recommended that the application be referred to the Department of Lands for advice.

Gray & Lewis is of the view that the restrictive covenant does not limit the Shire's decision making ability, as it is the owner who is responsible for complying with the restrictive covenant.

The Minister for Land has the ability to require forfeiture of the freehold title for any breach of the restrictive covenant under Section 35 of the Land Administration Act 1997.

Depending on advice by Department of Lands, the Shire may need to consider obtaining legal advice on this situation.

- *Estimated Cost of Development*

The estimated cost for each unit is between \$150,000.00 and \$180,000.00. The estimated cost for stage 1 is approximately \$1,260,000.00.

The ultimate cost of all future development will be between \$8,100,000.00 and \$9,720,000.00 (calculated based on 54 building envelopes).

If the applicant proceeded with the entire development as one application, there would be mandatory referral to a Development Assessment Panel. The application would be determined by a Development Assessment Panel as opposed to the Shire.

It is recommended that the Shire notify the Western Australian Planning Commission (Development Assessment Panel) of the application as issues have been raised by local governments that significant staged applications avoid the need for a Development Assessment Panel determination.

Legal Implications

Shire of Shark Bay Local Planning Scheme No 2 – The majority of the Scheme requirements are explained in the body of this report.

Clause 9.2 of the Scheme outlines the 'accompanying material' to be provided as part of a planning application including site plans, elevations, and floor plans.

Environmental Protection Act 1986 – Part IV of the *Environmental Protection Act 1986* (the Act) makes provision for the EPA to undertake environmental impact assessment of significant proposals, strategic proposals and schemes.

The Environment Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012 (Administrative Procedures 2012) set out the principles and practices adopted by the Environmental Protection Authority for dealing with referrals and assessing proposals under Part IV of the Act.

The Act states that proposals which are likely, if implemented, to have a significant effect on the environment may be referred to the Environmental Protection Authority, and the Environmental Protection Authority must decide whether or not to assess the proposal. Decision-making authorities are required to refer significant proposals.

In accordance with the Scheme, the Shire is also to have regard to the Environmental Protection Authority 'Guidance Statement for Assessment of Development Proposals in Shark Bay World Heritage Property 49' or any succeeding document.

Environment Protection and Biodiversity Conservation Act 1999 - Under the *Environment Protection and Biodiversity Conservation Act 1999*, actions that have, or are likely to have, a significant impact on a matter of national environmental significance require approval from the Australian Government Minister for the Environment (the Minister). The Minister will decide whether assessment and approval is required under the Environment Protection and Biodiversity Conservation Act.

The nine matters of national environmental significance protected under the Environmental Protection and Biodiversity Conservation Act are:

- world heritage properties
- national heritage places
- wetlands of international importance (listed under the Ramsar Convention)
- listed threatened species and ecological communities
- migratory species protected under international agreements
- Commonwealth marine areas
- the Great Barrier Reef Marine Park
- nuclear actions (including uranium mines)
- a water resource, in relation to coal seam gas development and large coal mining development

Policy Implications

The Western Australian Planning Commission 'Statement of Planning Policy No. 2.6 – State Coastal Planning Policy' is discussed in the body of this report.

Financial Implications

There are no financial implications associated with the development.

Strategic Implications

A Draft Tourism Strategy is being finalised for the Shire of Shark Bay. Tourism development on Dirk Hartog Island may widen the available tourist experiences available in the locality.

Voting Requirements

Simple Majority Required

Signatures

Author *A Bushby*

Chief Executive Officer *P Anderson*

Date of Report 10 December 2014



Mr Paul Anderson
Chief Executive Officer
Shire of Shark Bay
PO Box 126
DENHAM WA 6537

Dear Mr Anderson

DEVELOPMENT APPLICATION – LOT 304 SUNDAY ISLAND BAY, DIRK HARTOG ISLAND

Thank you for your letter of 22 December 2014 requesting comments on the current Development Application for Lot 304 Sunday Island Bay. The following comments are provided for your consideration.

The Shark Bay World Heritage Area is listed on the basis of its outstanding natural values and Dirk Hartog Island is a unique location within the world heritage property. The island presents a rare and significant opportunity to restore ecological values, reintroduce threatened fauna and develop sustainable tourism. Likewise Lot 304 presents this same opportunity to develop a ecotourism operation that complements the island's natural and cultural values. A well-designed development would foster and promote an awareness and appreciation of the value and importance of the island and of the area.

1. The Development Application refers to the development "based on best environmental building and operational practises" and "best eco standards currently available" however this is not clear in the application. Statements that development "will complement the landscape rather than impinge on the landscape" and "is designed to blend in seamlessly with the existing landscape" are subjective and not supported by any formal landscape assessment.
2. With regard to the location of structures as shown on the site plan for development of 33 accommodation units plus 20 units for duplexes, staff accommodation and other infrastructure, there is concern that the high density of development and very close proximity between buildings may be at odds with the intent to create a nature-based experience. Also better utilisation of landform could be achieved if the development was designed to nestle into the landform, perhaps with a smaller 'pocket' of high density and low density elsewhere. Whilst this Development Application is only for seven units, it is not clear at what stage the cumulative impacts of the much larger proposed development will be considered.
3. As stated in the Shire planner's report in the December Council Meeting Minutes, the floor area for accommodation units exceeds the 90 sqm stipulated in the restrictive covenant with the Minister for Lands.
4. As some buildings are to be constructed from "stone from site", assessment may be required to determine that an adequate source of stone is available on Lot 304.

5. The Development Application proposes that each accommodation unit would operate independently with regards to the provision of power, water and sewage, with power provided through a combination of solar, wind and generator. This indicates that there may be multiple wind turbines constructed in a relatively small area and that potential impacts on environmental values including visual amenity may need to be considered.
6. Given that visual quality is a World Heritage value, the application should demonstrate through formal assessment that the proposed design has the least possible negative impact on visual quality. Parks and Wildlife has previously referred the proponent to the publication "Visual Landscape Planning in Western Australia" published by the Western Australian Planning Commission. Visual Impact Assessment may be required by the Environmental Protection Authority (EPA) and preparation of any Visual Impact Assessment should consider the Shark Bay Landscape Study.
7. Page 15 of the Environmental Report relates to "Impact of Development on Natural Environment" but not all potential impacts are considered. The report refers to the establishment of landscape guidelines to limit the visual impact of infrastructure but these guidelines are not included in the report. The report refers to the use of solar power systems but does not address the use of wind power which is also mentioned as a source of power.
8. Page 18 of the Environmental Report relates to "Threats and Responses to Threats". Some threats to national park values have not been addressed including the threat of introduced pests. Page 34 of the Environment Report states that "There is no practical likelihood that operations on the site are likely to significantly affect threatened species ..." however not all potential impacts have been considered.
9. Page 47 of the Environmental Report states that "The island supports ... a small number of marsupials". This is incorrect and should be changed to mammals. Likewise on page 50 there is a statement that "DPaW propose to reintroduce marsupials". This should also be changed to mammals.
10. Pedestrian access from multiple units to the beach may have significant environmental and visual impact. Vehicle access tracks should where possible meander around landform, be low in elevation and avoid dune ridge crossings to minimise erosion potential and visual impact.
11. Amended site plans should include:
 - water easement from West Well to Lot 304;
 - location of any wind, solar or other utilities; and
 - indicative locations for any temporary construction access tracks
12. With increased visitation to the island there may be serious risks to the Dirk Hartog Island National Park Ecological Restoration Project. The plan acknowledges some but not all risks, which include the introduction of pests via packaging.
13. In relation to effluent disposal, there may be concerns regarding the large number of individual septic and leach drain systems required in this development. Microbial and chemical water sampling could be considered at Dirk Hartog Island Lodge to confirm the proponent's assumptions regarding water quality resulting from the septic tank and leach system in a similar setting. Other effluent treatment systems could be considered such as Aerated Treatment Units given proximity to High Water Mark. Compliance will be required with the Health Act 1911 and Australian Standards (AS3500-2003).

14. In relation to the proposed seawater storage and desalinations, approval will be required for water extraction from the marine park. The proponent makes no reference about the method for disposal of bitterns.
15. The proposal to discourage guests from travelling to the island by private vehicle is supported. Department of Transport advice on the use of Polaris vehicles is pending.
16. Page 13 of the Foreshore Management Plan refers to gaining Parks and Wildlife approval for "permanent" structures and access. Approval is also required for temporary structures and access.
17. In relation to the preliminary report prepared by the Shire's planners, Parks and Wildlife supports the request for further information from the proponent. The referral to Environmental Protection Authority (EPA) and Shark Bay World Heritage Advisory Committee is also supported.

Thank you for the opportunity to comment on this application. Should you have any queries regarding this advice, please contact Steve Nicholson (District Manager Shark Bay) on 08 9948 2226, steve.nicholson@dpaw.wa.gov.au.

Yours sincerely



Nigel Sercombe
REGIONAL MANAGER
Midwest Region

3 February 2015

Liz

From: Raven, Murray <Murray.Raven@lands.wa.gov.au>
Sent: Friday, 30 January 2015 2:53 PM
To: 'Liz'
Cc: Nosrati, Mahtab; Farrar, Henty
Subject: RE: 20150123 Development Application - Lot 304 Sunday Island Bay Dirk Hartog Island (A5296795)

Hi Liz,

We have written to the land owner seeking advice on the apparent non-compliance of the proposed development over Lot 304 of the terms (in part) of the restrictive covenant. The Department of Lands is unable to support the development application until this matter is resolved.

Regards

Murray Raven | A/Manager | Mid West and Gascoyne Department of Lands | Level 2, 140 William Street | Perth WA 6000 T (08) 6552 4629 | F (08) 6552 4417 | M 0428 953 856 E murray.raven@lands.wa.gov.au | W www.lands.wa.gov.au

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Government of Western Australia
Department of Environment Regulation

2015/000011
Teresa Gepp
6467 5383
6467 5510
LUP.Advice@der.wa.gov.au

Mr Paul Anderson
Chief Executive Officer
Shire of Shark Bay
PO Box 126
DENHAM WA 6537

Dear Sir

DEVELOPMENT APPLICATION LOT 104 SUNDAY ISLAND BAY DIRK HARTOG ISLAND – INVITATION TO COMMENT

Thank you for your referral received 24 December 2014 inviting comment from the Department of Environment Regulation (DER) on a planning application before Council.

DER commenced operation on 1 July 2013, following the separation of the Department of Environment Conservation (DEC) into DER and the Department of Parks and Wildlife (Parks and Wildlife). DER is a regulatory agency and land management responsibilities previously held by DEC were allocated to Parks and Wildlife. DER does not own land in the vicinity of the planning application and recommends that this application is referred to Parks and Wildlife if that has not already occurred.

DER is reviewing its roles and responsibilities and its involvement in statutory and strategic land use planning processes. This review is occurring to ensure that the Department's resources are efficiently and effectively targeted to core statutory roles and functions. As a component of this review, the Department has released a Draft Guidance Statement on Land Use Planning which can be accessed at <http://www.der.wa.gov.au/our-work/consultation> and is open for comment until 2 March 2015.

DER is not currently resourced to respond to the volume of planning referrals received and is consequently unable to provide other advice in this instance.

Yours sincerely

Kerry Laszig
/EXECUTIVE DIRECTOR LICENSING AND APPROVALS

15 January 2015



Government of Western Australia
Department of Transport
Coastal Infrastructure Business Unit

Your ref : 100840
Our ref : DT/12/00794
Enquires : Fangjun Li (9435 7545)

Liz Bushby
Gray&Lewis
Suite 5, 2 Hardy St
South Perth, WA 6151

9 December 2013

Dear Liz

RE: REFERRAL OF DEVELOPMENT APPLICATION ON BEHALF OF THE SHIRE OF SHARK
BAY- LOT 304 SUNDAY ISLAND BAY, DIRK HARTOG ISLAND

Thank you for your letter dated 25 November 2013 requesting our comments of the above development plan.

Unfortunately we have limited resources at the moment to under take a detailed review of this plan. In general we would support an approach which is consistent with the newly gazetted State Coastal Planning Policy. This document now provides significantly more guidance on these issues.

The reply from the Department of Planning will give full information regarding SPP 2.6, with which this development must comply. Your engineering consultants will need to evaluate the setback dimensions and land height above sea level which the policy requires for the site.

We will endeavour to continue our assistance on the broader coastal management and protection issues related to SPP2.6. Should you like to discuss this further please do not hesitate to contact Fangjun Li, Acting Manager of Coastal Management (9435 7545).

Regards

Fangjun Li
A/Manager Coastal Management
Maritime Planning
CC. Shire of Shark Bay
Martin Baird



Government of Western Australia
Department of Transport
Coastal Infrastructure Business Unit

Your ref : P4281 / O-AP-14234
Our ref : DT/12/00794
Enquiries : Fangjun Li (9435 7545)

Paul Anderson
CEO
65 Knight Terrace
Denham WA 6537
PO Box 126 Danham

13 January 2015

Dear Paul

RE: DEVELOPMENT APPLICATION - LOT 304 SUNDAY ISLAND BAY, DIRK HARTOG ISLAND

Thank you for your letter dated 22 December 2014 requesting our comments of the above development application.

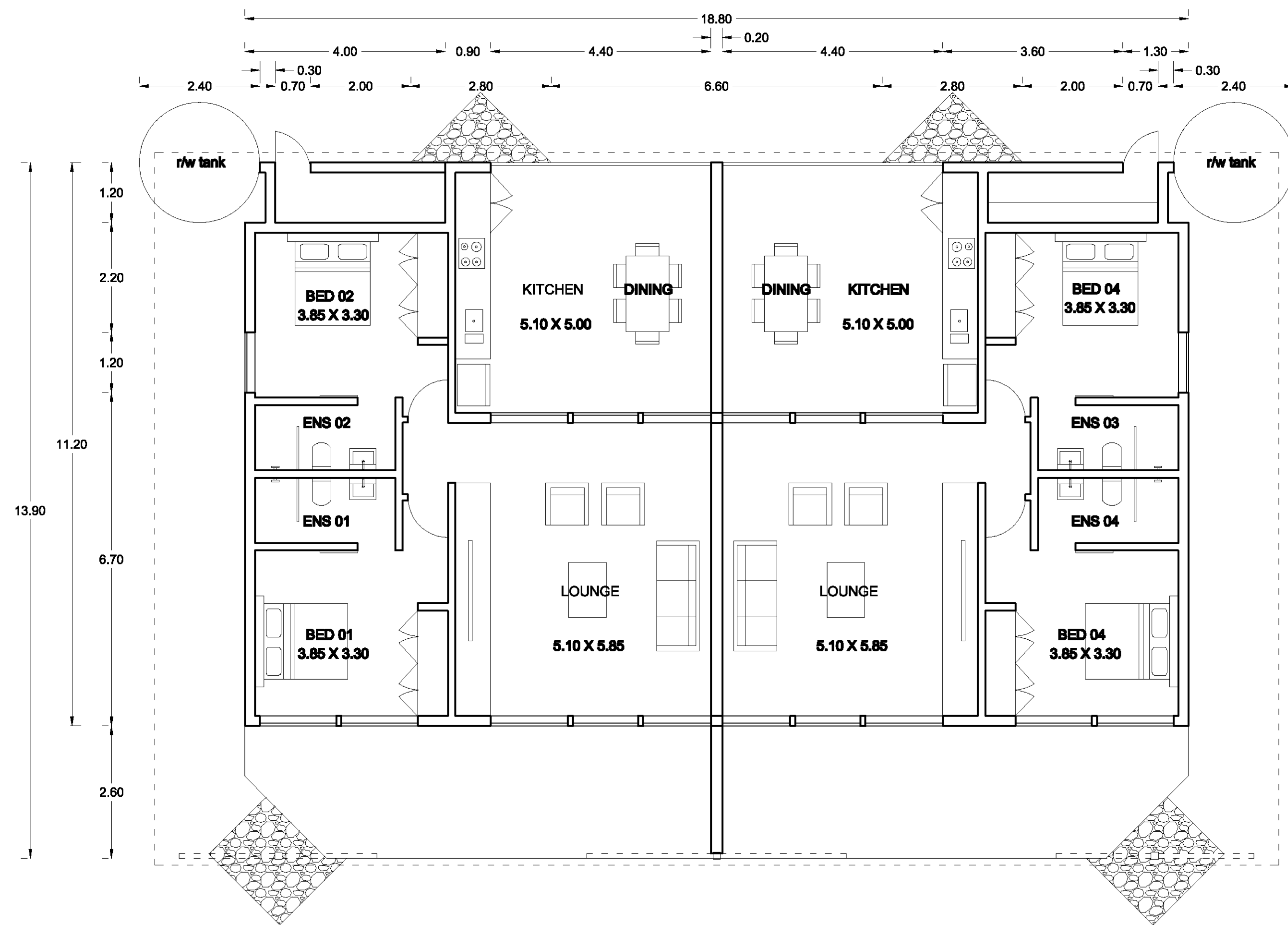
As recommended in our previous letter dated 9 Dec 2013, I would recommend the Shire to check if this DA will satisfy the coastal setback requirement stated by the State Coastal Planning Policy 2.6. One of the underlying themes of this recently revised policy is that development should follow a risk management process and consider a full range of adaptation options where protection is only used as a last resort. In some instances it may be considered appropriate to have one management option over a shorter timeframe, while more strategic adaptation options are considered over a broader area and longer timeframe.

The Department of Transport endeavours to provide technical advice when and where time and resources permit. However, coastal hazard risk assessment for each DA case needs significant expertise and time to investigate and provide advice. At the moment our higher priority workloads prevent us from providing assessment for individual DAs.

Should you like to discuss this further please do not hesitate to contact me by 9435 7545, or email fangjun.li@transport.wa.gov.au.

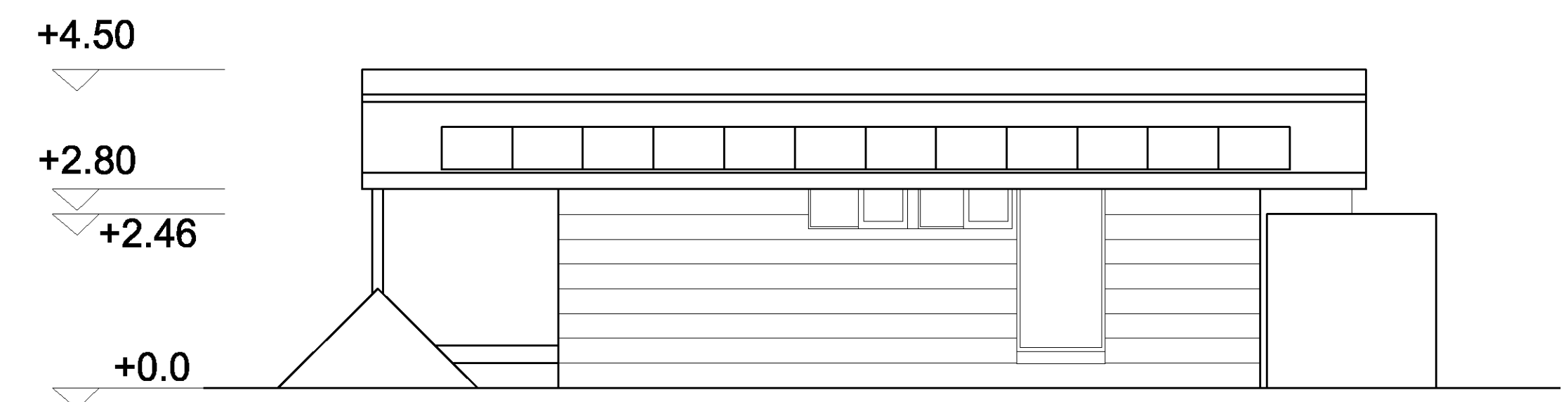
Regards

Fangjun Li
Manager Coastal Management
Maritime Planning
CC. David Saunders, Department of Planning
Martin Baird

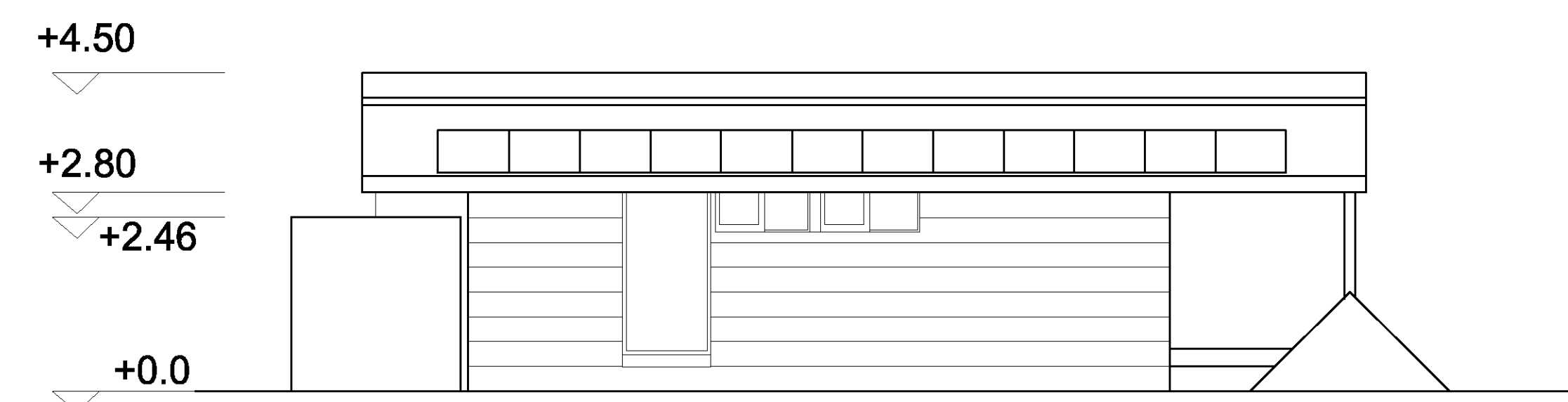


PLAN

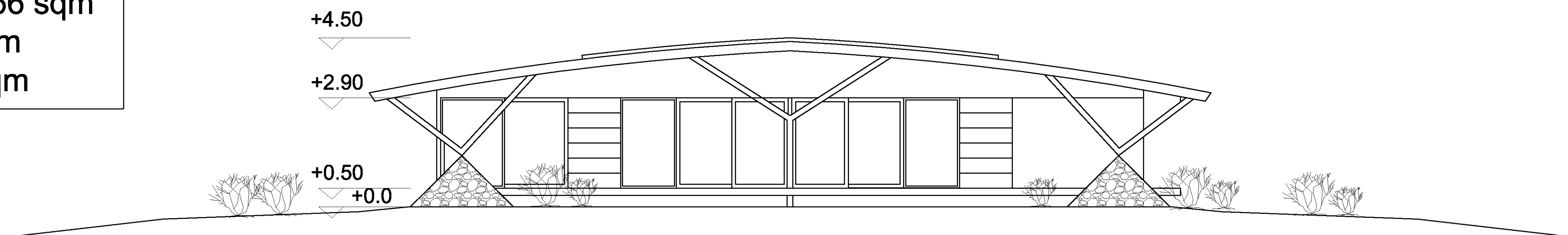
Floor Areas (per Duplex)
 Internal floor area - 66 sqm
 Front deck - 25.5 sqm
 Courtyard - 23.30 sqm



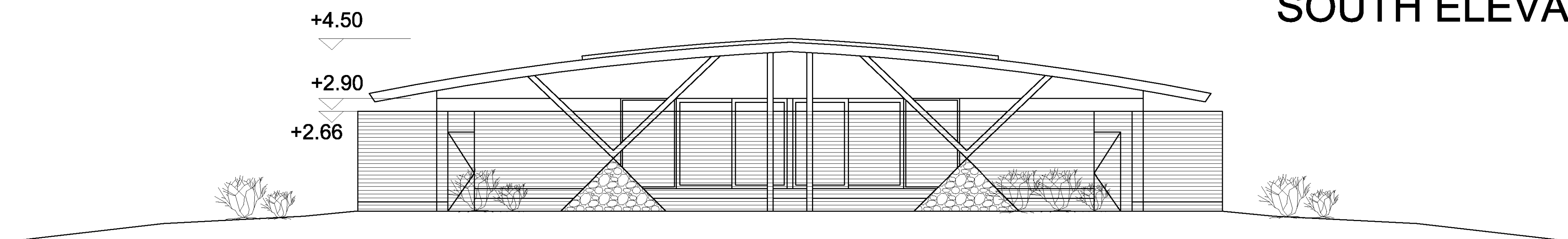
EAST ELEVATION



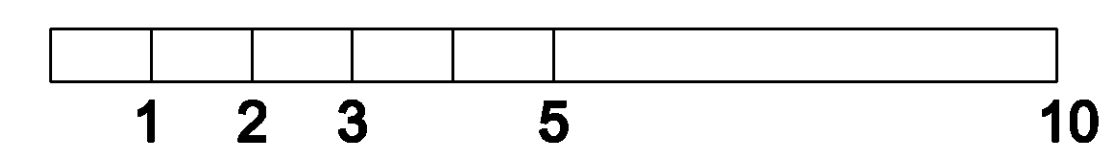
WEST ELEVATION



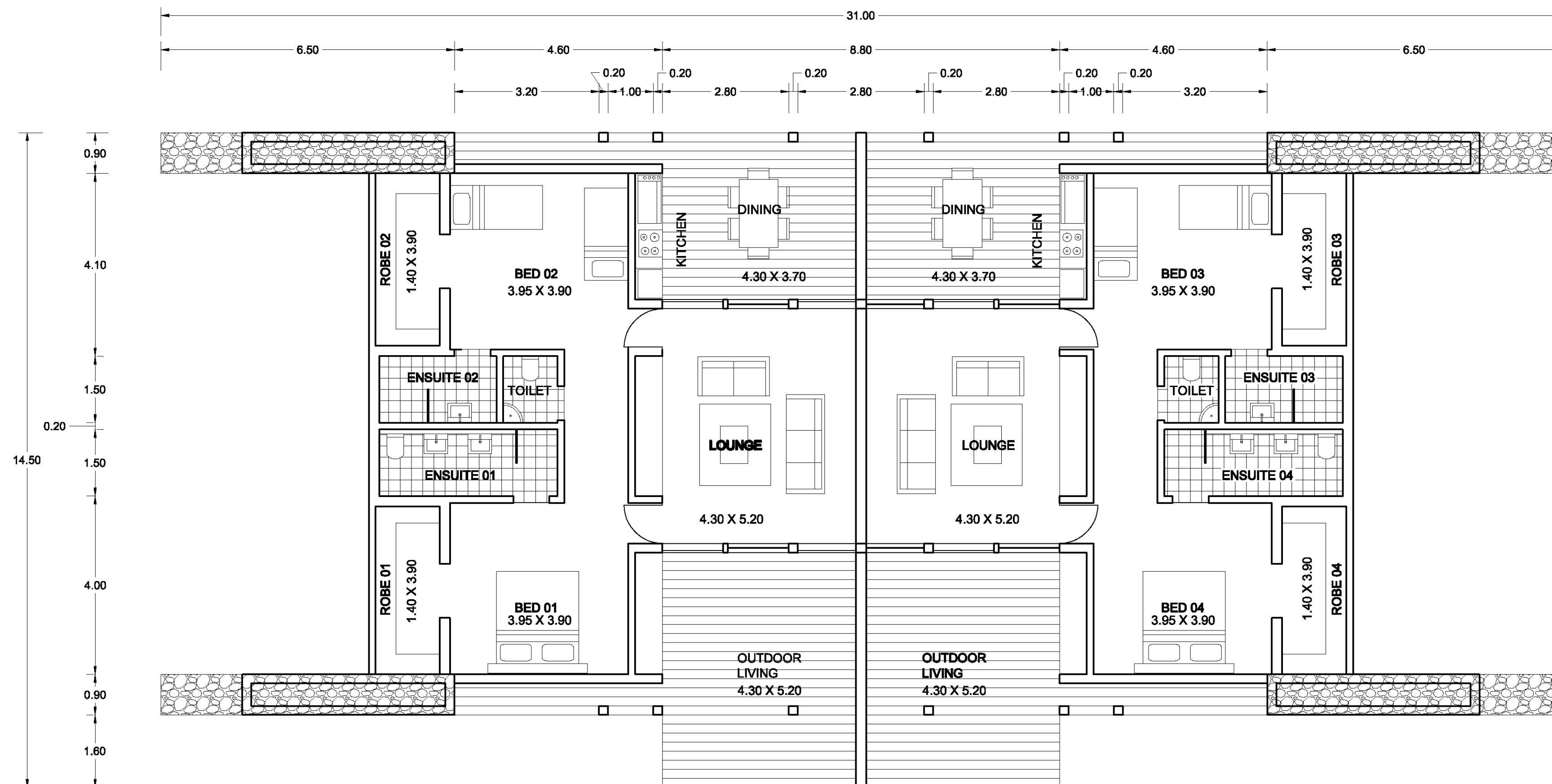
SOUTH ELEVATION



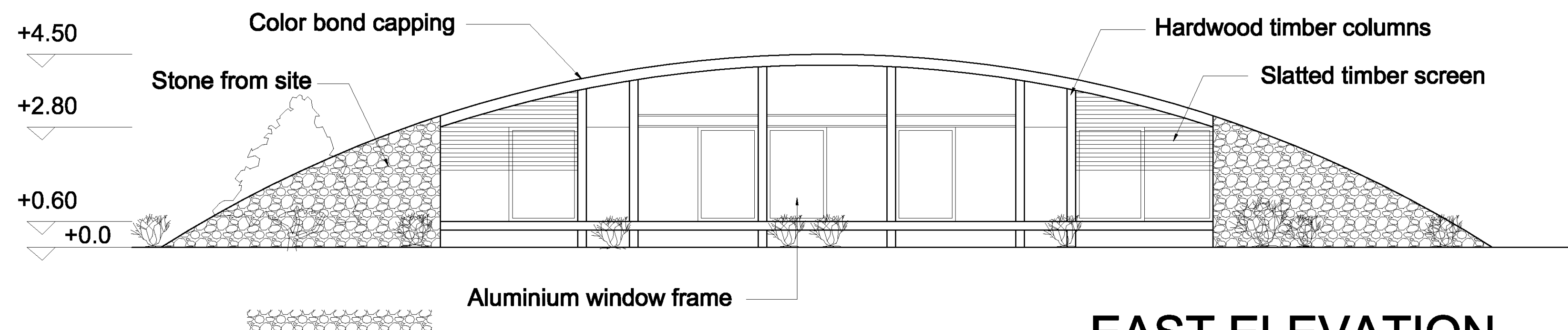
NORTH ELEVATION



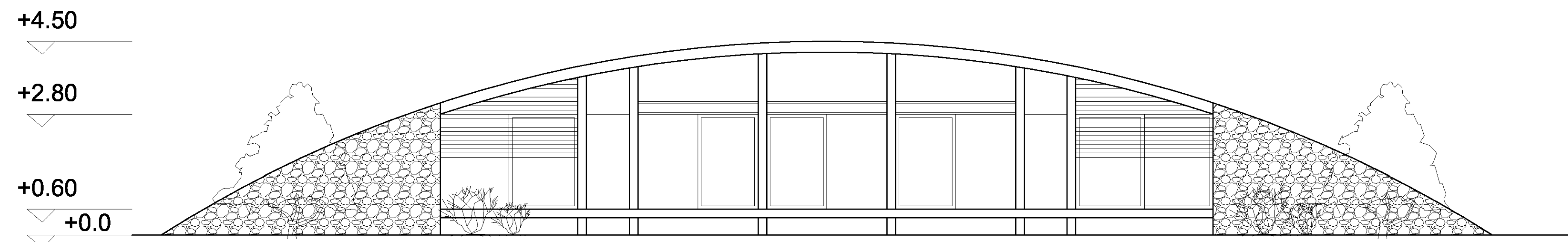
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 All dimensions are in Meters



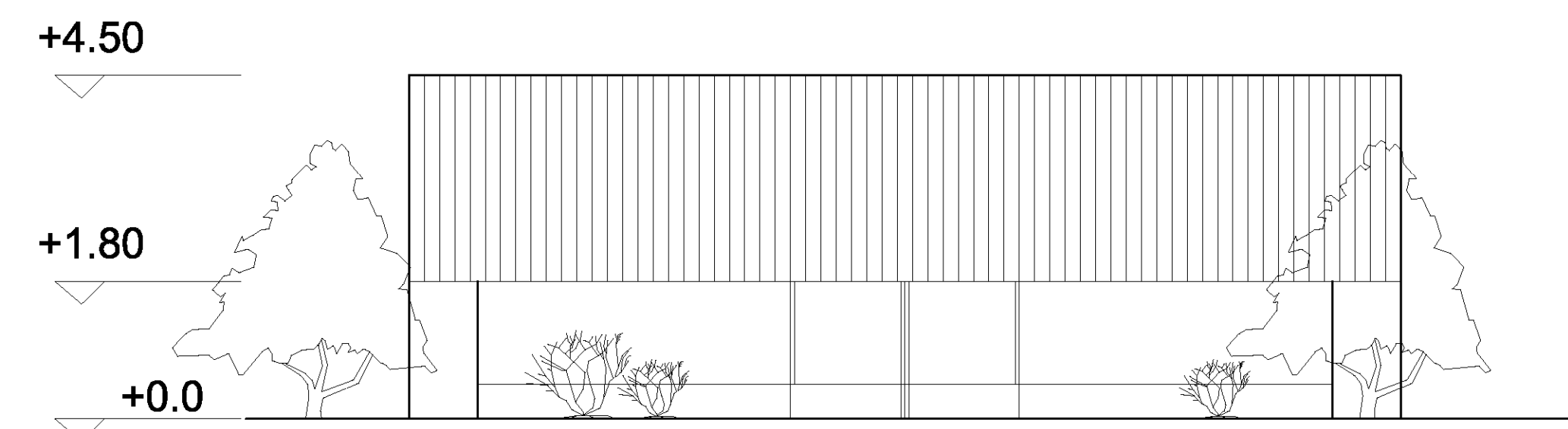
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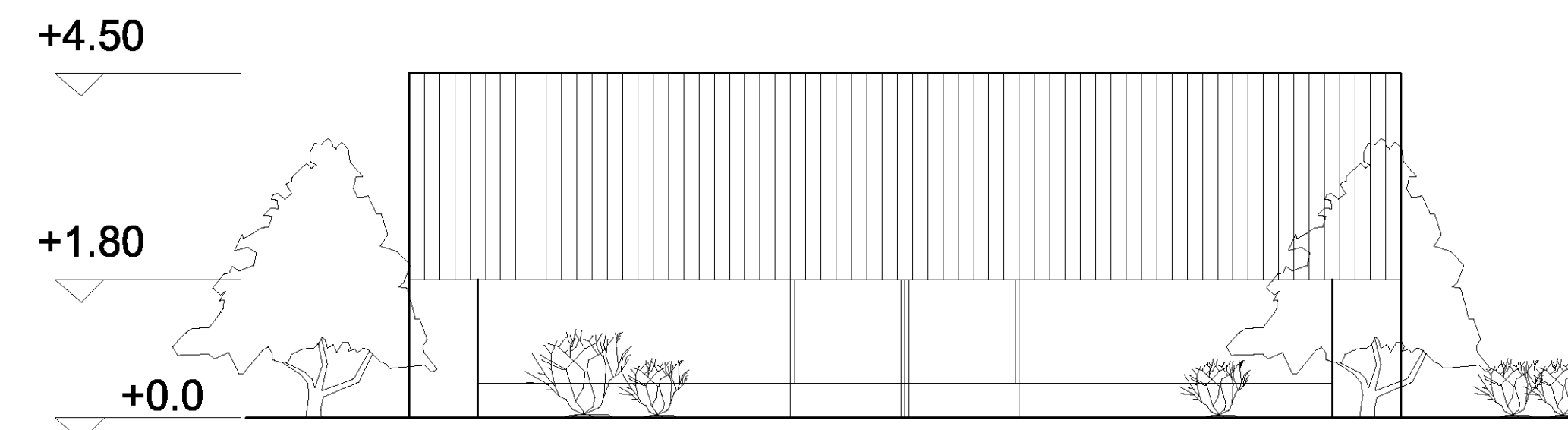
EAST ELEVATION



WEST ELEVATION



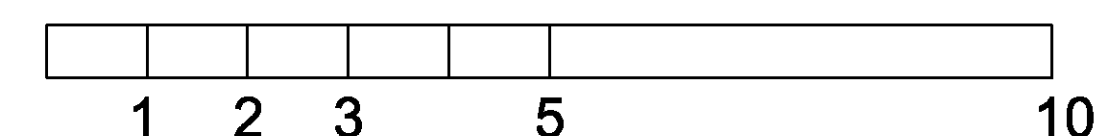
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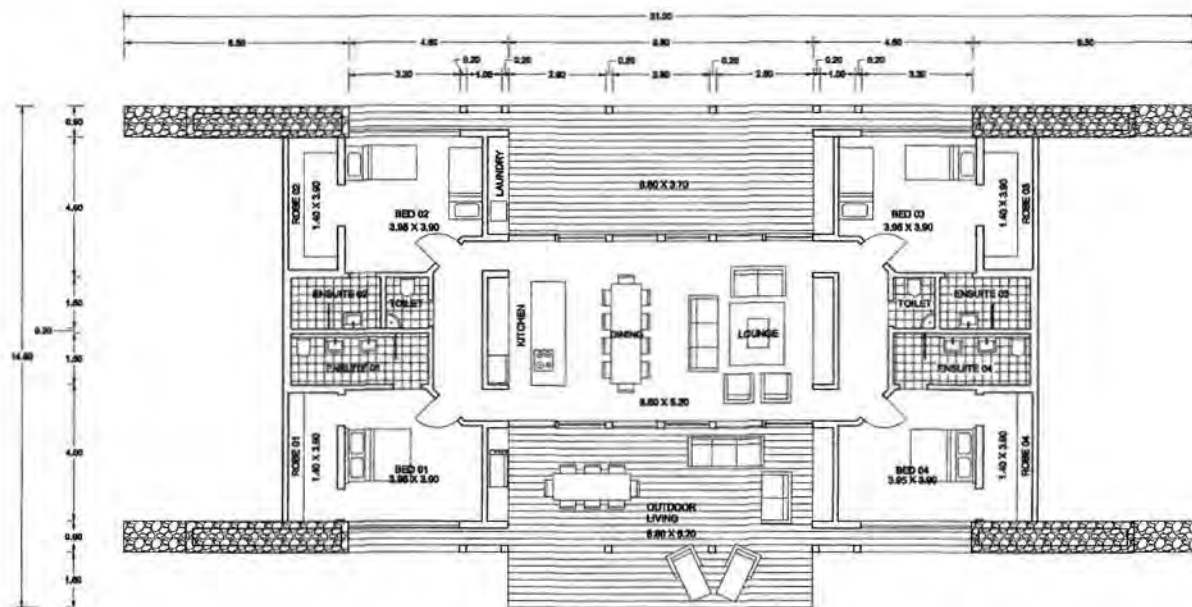
SOUTH ELEVATION

DIRK HARTOG ISLAND

Floor Areas (per Duplex)
Internal floor area - 82 sqm
Front deck - 24 sqm
Rear deck - 16 sqm



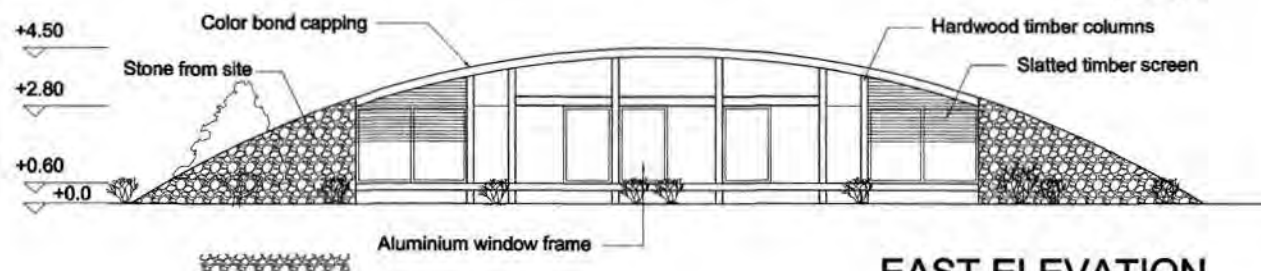
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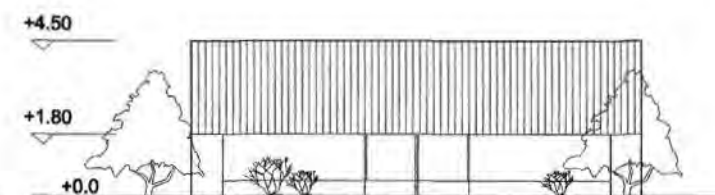
DIRK HARTOG ISLAND

Floor Area
Internal floor area - 165 sqm
Front deck - 46 sqm
Rear deck - 32.5 sqm

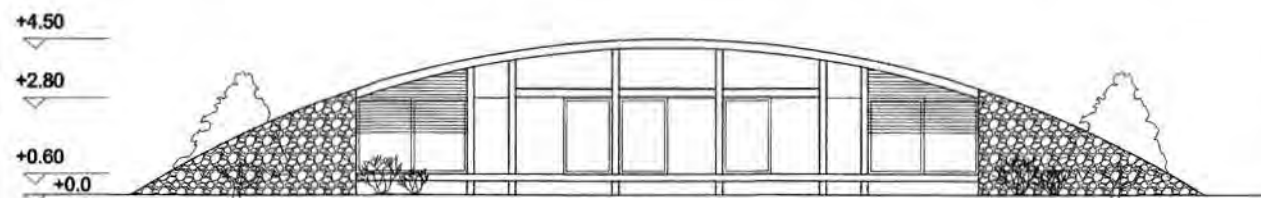
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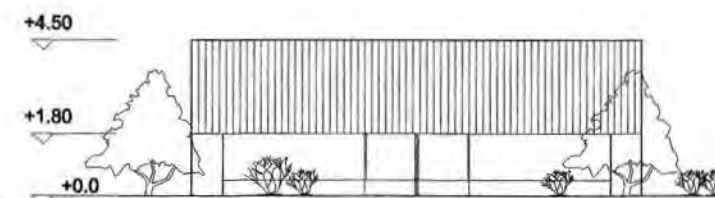
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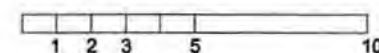
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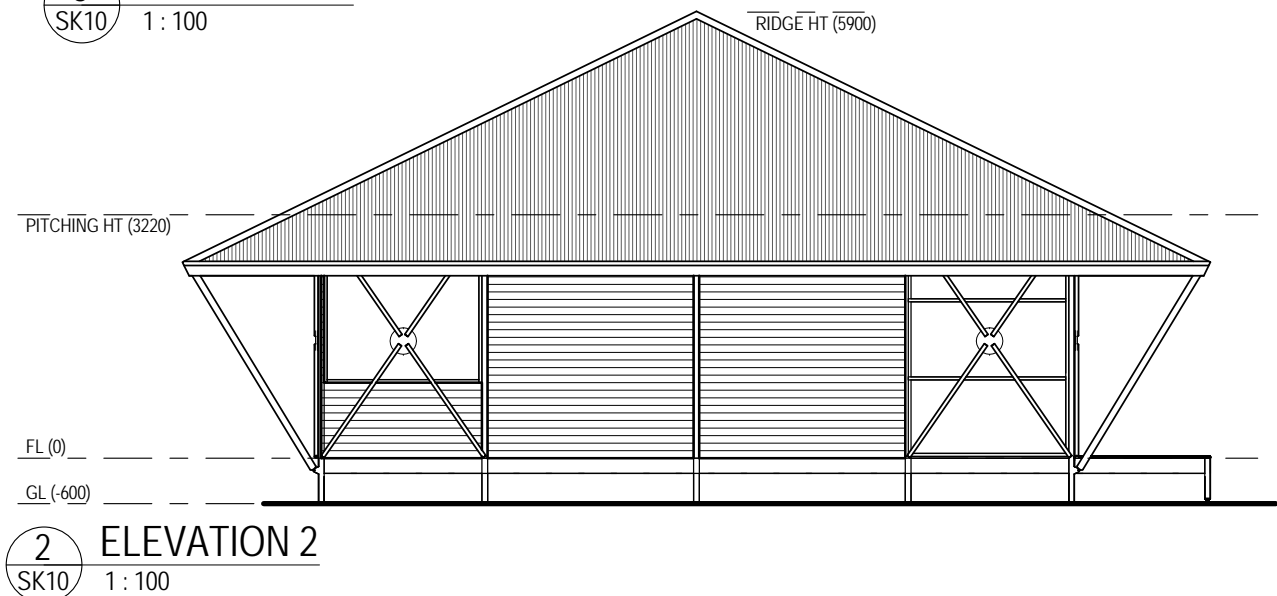
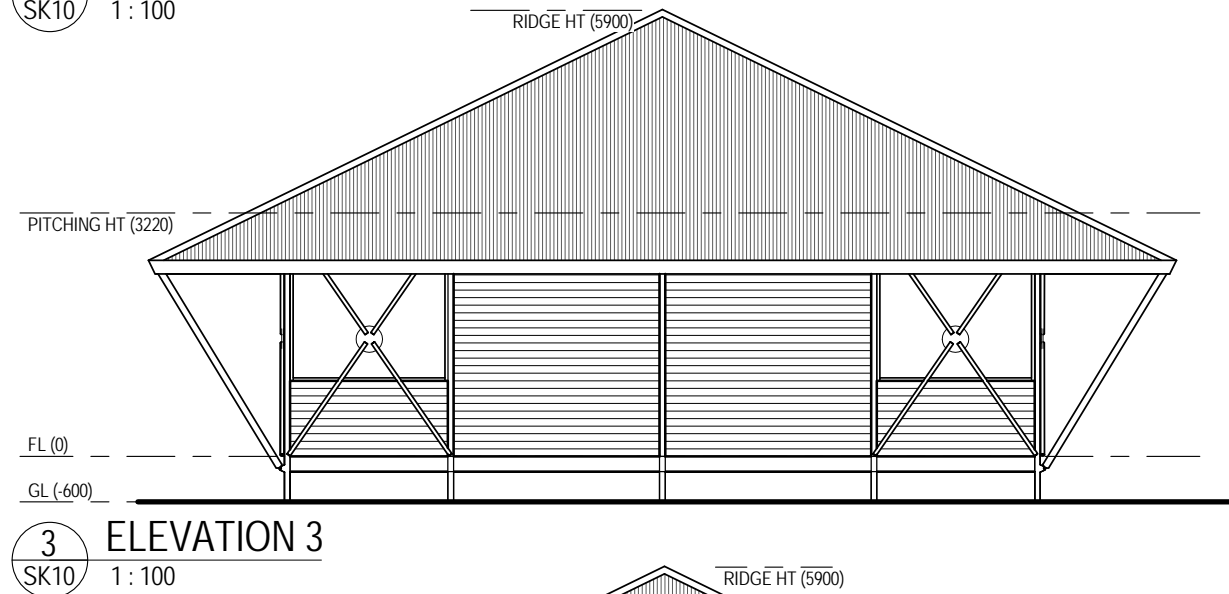
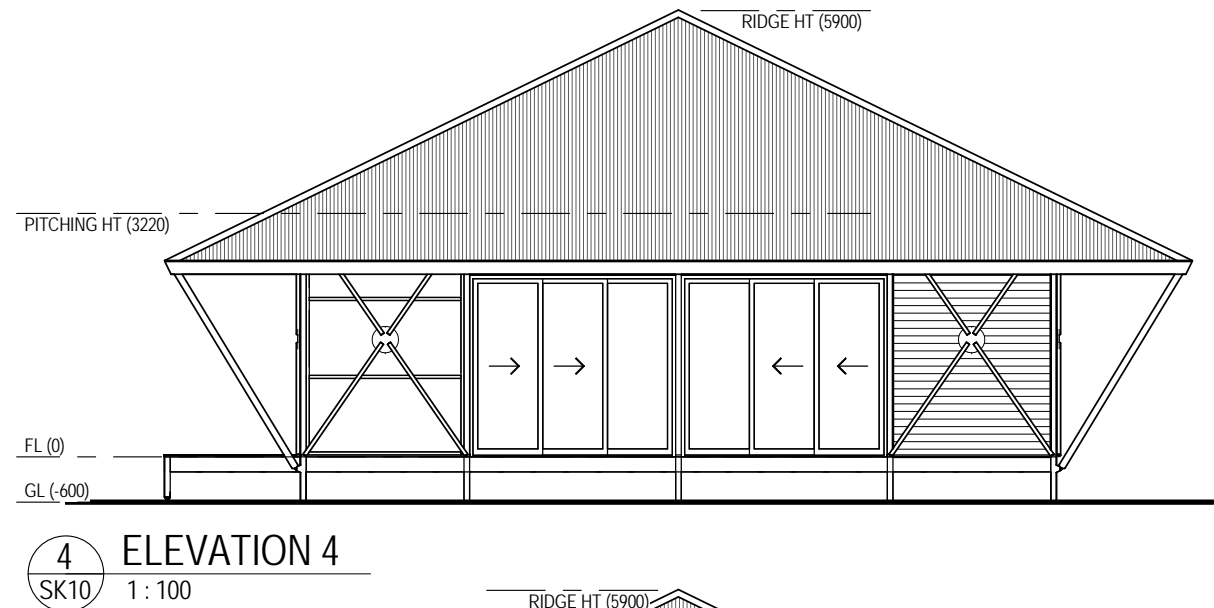
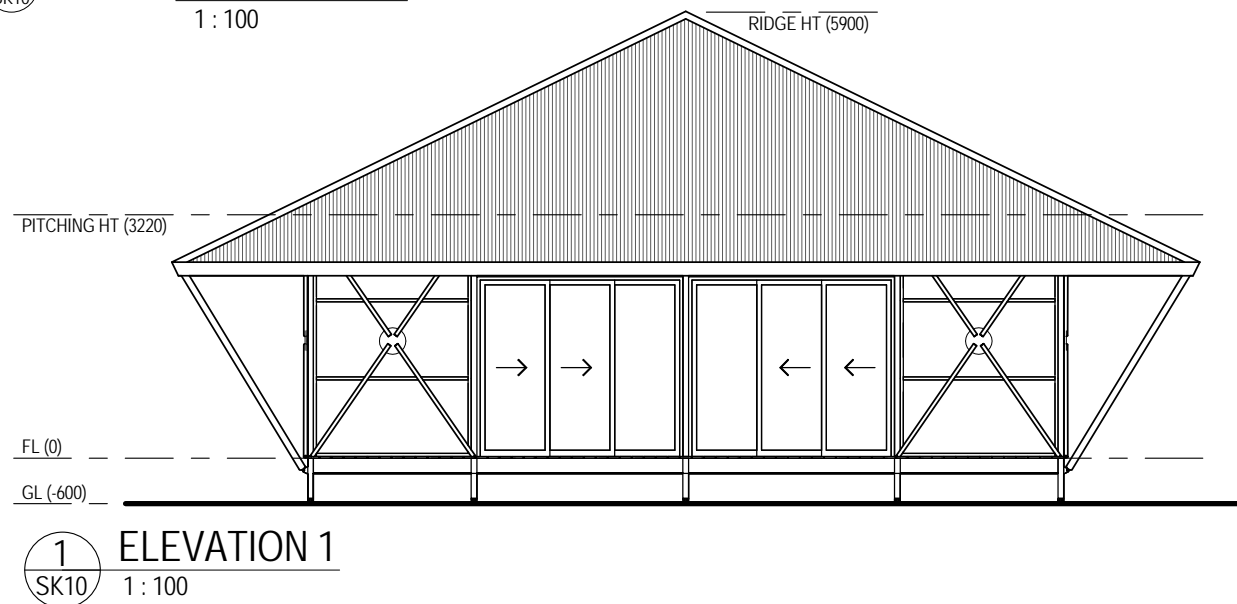
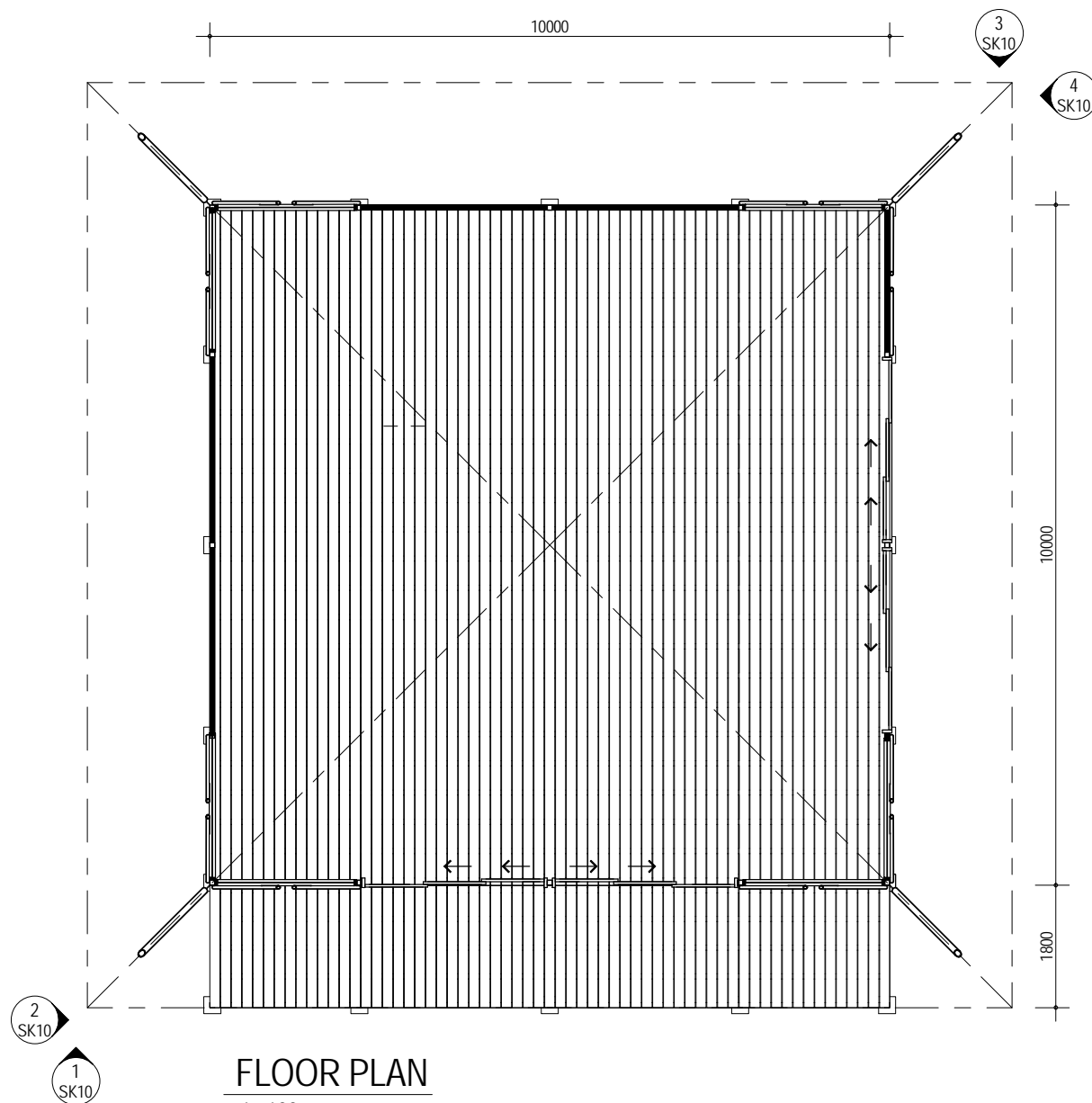
WEST ELEVATION



SOUTH ELEVATION



Scale: 1:200 in A4
All dimensions are in Meters



REVISION SCHEDULE		
REV.	DATE	DESCRIPTION
A	18.12.14	FOR INFORMATION

PROJECT:
ECO MODULE 10m X 10m

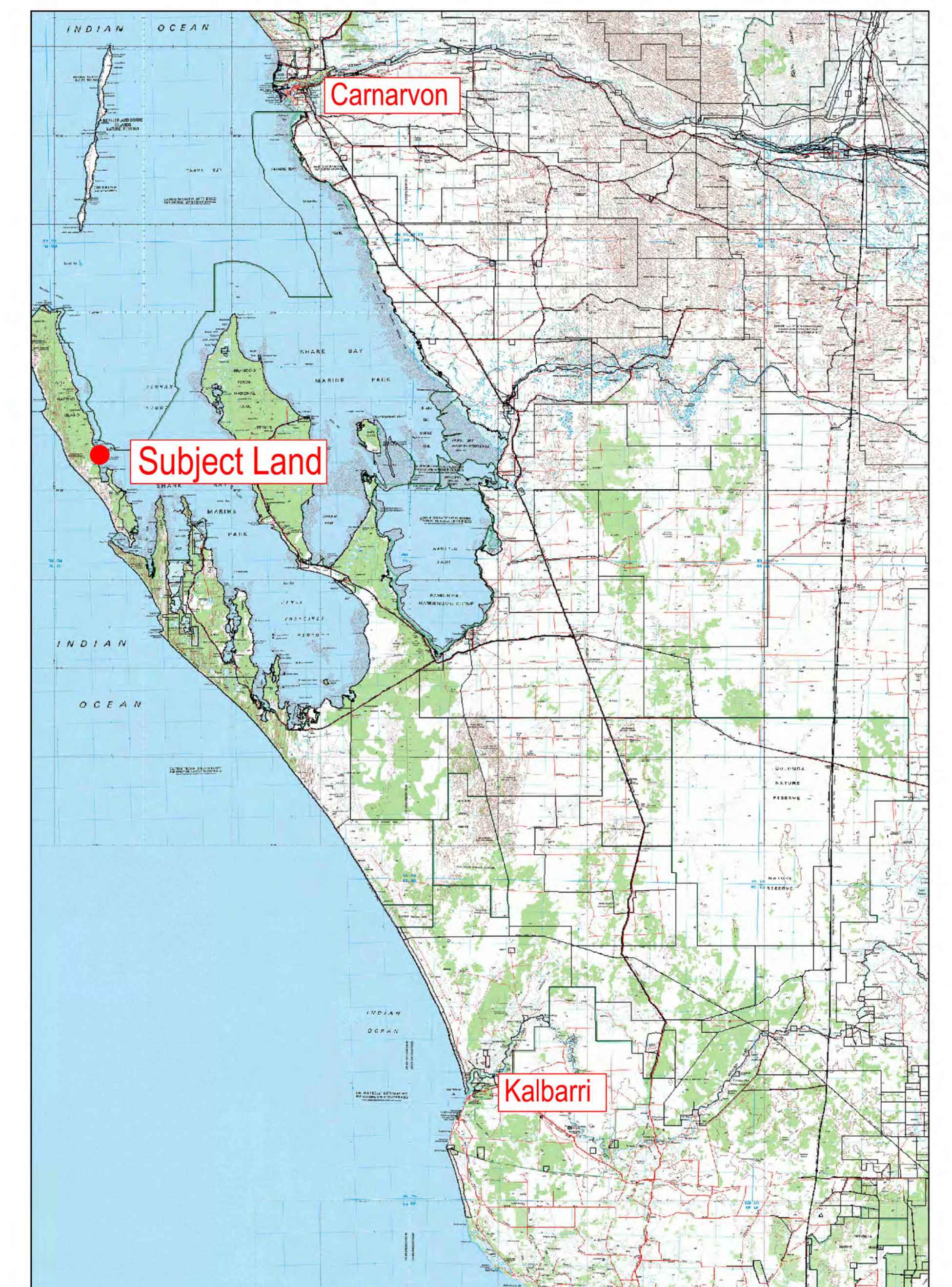
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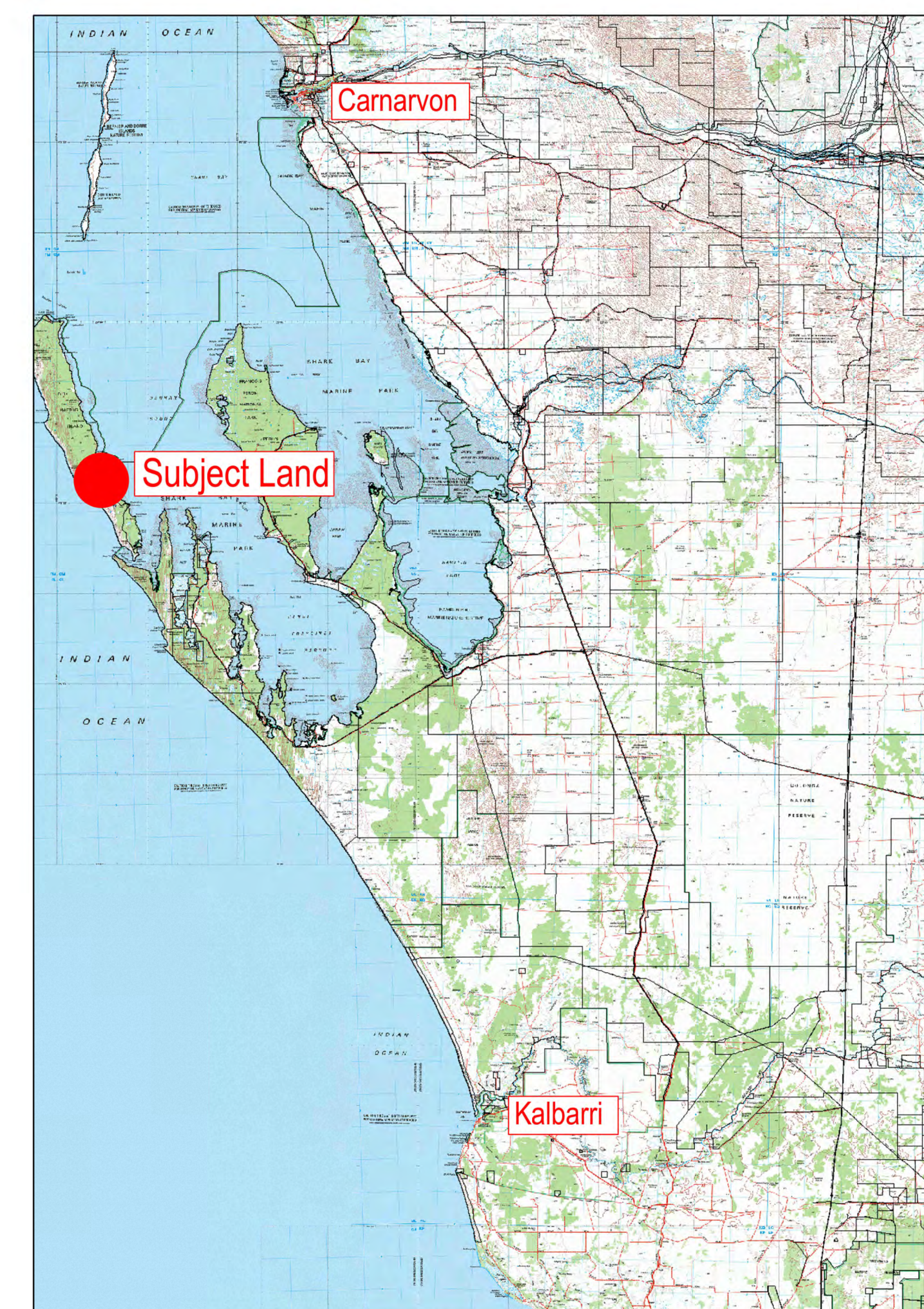
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SKETCH DESIGN

DRAWN WH	SCALE @ A3 1 : 100	DATE 18/12/2014 12:29:54 PM
PROJECT NO.	4.0002	
DRAWING	FLOOR PLAN & ELEVATIONS	
DRAWING NO.	SK10	REVISION A





Geoff Wardle

From: Tanya Stul <tanya@seaeng.com.au>
Sent: Friday, 21 November 2014 9:09 AM
To: gwa04410@bigpond.net.au
Subject: Report and Letter for Sunday Island Bay
Attachments: 239 - Letter Regarding Revised Layout for Sunday Island Bay 20141121.pdf; 239-01-Rev0 Wardle - Dirk Hartog Sunday Island Bay.pdf

Hi Geoff,

Please find attached a final letter and report for Sunday Island Bay coastal setback allowances. The letter outlines the changes incorporated in a revised layout following preparation of the original report. The letter should be read in conjunction with the report.

Thank you.

Regards,
Tanya

Tanya Stul
Damara WA
5/19 Wotan St
Innaloo, WA 6018
Ph: 9445 1986
Mob: 0413 646 735
tanya.stul@damarawa.com or tanya@seaeng.com.au



Your Ref: Sunday Island Bay
Our Ref: 239.01

21 November 2014

Geoff Wardle
PO Box 107
North Fremantle WA 6159

Dear Geoff,

REVISED LAYOUT FOR LOT 304 SUNDAY ISLAND BAY, DIRK HARTOG ISLAND

Thank you for coordinating the revised site layout recommended for Lot 304 Sunday Island Bay, Dirk Hartog Island. The revision is based on recommendations in the original coastal setback allowances report attached to this letter (*Sunday Island Bay – Dirk Hartog Island, Coastal Setback Allowances*).

The report recommended the layout be modified for 10 sites according to the erosion and inundation hazard assessment using the landform erosion setback allowance to 2070. Alterations included (pp.25-26):

- *Moving sites 2, 8, 9, 18, 19, 20, 23 and 24 to the alternate envelope already mapped.*
- *Creating a new alternate envelope for site 3 that is further landward of the landform-based erosion hazard line to 2070.*
- *Either moving site 4 further landward or confirming the elevations are >5m AHD at that location.*

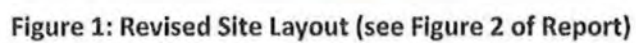
A revised layout was provided by Whelans on 12 November 2014 to incorporate these changes (Figure 1). A summary of the changes made is provided in Figure 2, Figure 3 and Table 1. Many of the changes incorporated shifting the envelopes and alternate envelopes 10m landward in preference to using the alternate site. This satisfies the requirements to shift the sites beyond the erosion hazard line. All sites now, other than Site 4 are confirmed to be located landward of the inundation hazard line and the landform-based erosion hazard line to 2070 (Table 1; Figure 4).

It is recommended further investigation is undertaken for the location of Site 4 as the elevation could not be confirmed at >4.7m AHD using the 2m elevation contour dataset. We recommend requesting provisional approval for Site 4 if an elevation of >4.7m AHD is confirmed. We suggest considering rejecting the site if it is <4.7m AHD and located within the inundation hazard zone.

Finally, this letter should be read in conjunction with the other recommendations contained in Section 6 of the main report. This includes consideration of planned retreat using an erosion trigger of 41m and avoiding beach access with a north-south alignment.

Regards,

Tanya Stul
Damara WA
8/19 Wotan St
Innaloo WA 6019



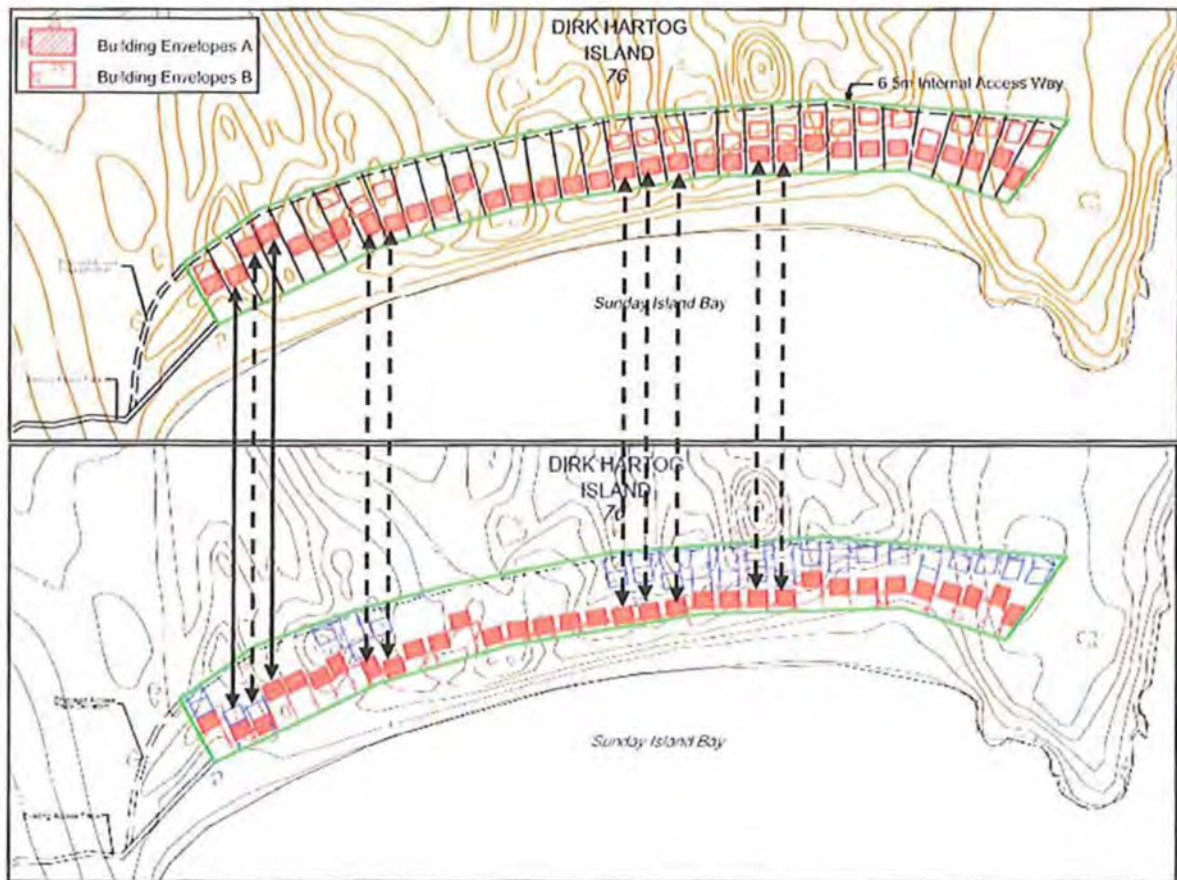


Figure 2: Altered Layouts with New Layout (Top) and Previous Layout (Base)
Changes according to recommendations are in black solid line with changes satisfying avoidance of mapped coastal and inundation hazard in black dashed line (see Table 1 for further detail).



Table 1: Recommended and Actual Changes to Sites

Site	Recommended change	Actual change (Figure 3)	Avoids mapped coastal and inundation hazard (Figure 4)
2	Move to alternate envelope already mapped	Envelope moved ≈5m landward of alternate envelope boundary	Yes
3	Creating a new alternate envelope for site 3 that is further landward of the landform-based erosion hazard line to 2070	Envelope now ≈35m landward of landform-based erosion hazard line to 2070	Yes
4	Move further landward or confirming the elevations are >5m AHD at that location	Moved further landward, but still not confirmed elevation is >4.7m AHD as it is still in area <6m AHD. Recommended to request provisional approval for the site if confirmed elevation >4.7m AHD. Consider rejecting site if within inundation hazard zone (<4.7 mAHD).	Unconfirmed for inundation hazard
8	Move to alternate envelope already mapped	Both envelope and alternate envelope moved 10m landward	Yes
9	Move to alternate envelope already mapped	Envelope moved 10m landward	Yes
18	Move to alternate envelope already mapped	Envelope moved 10m landward	Yes
19	Move to alternate envelope already mapped	Envelope moved 10m landward	Yes
20	Move to alternate envelope already mapped	Envelope and alternate envelope moved 10m landward	Yes
23	Move to alternate envelope already mapped	Envelope and alternate envelope moved 10m landward	Yes
24	Move to alternate envelope already mapped	Envelope and alternate envelope moved 10m landward	Yes

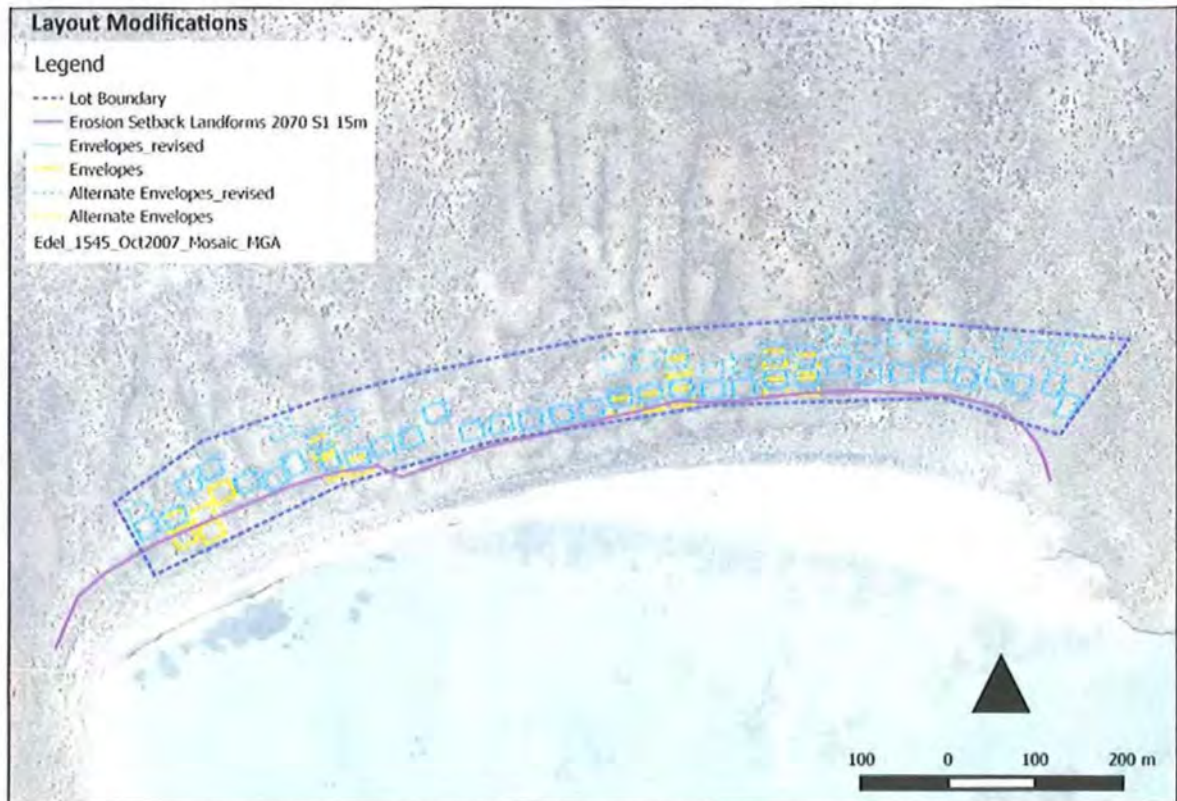


Figure 3: Modifications to Layout

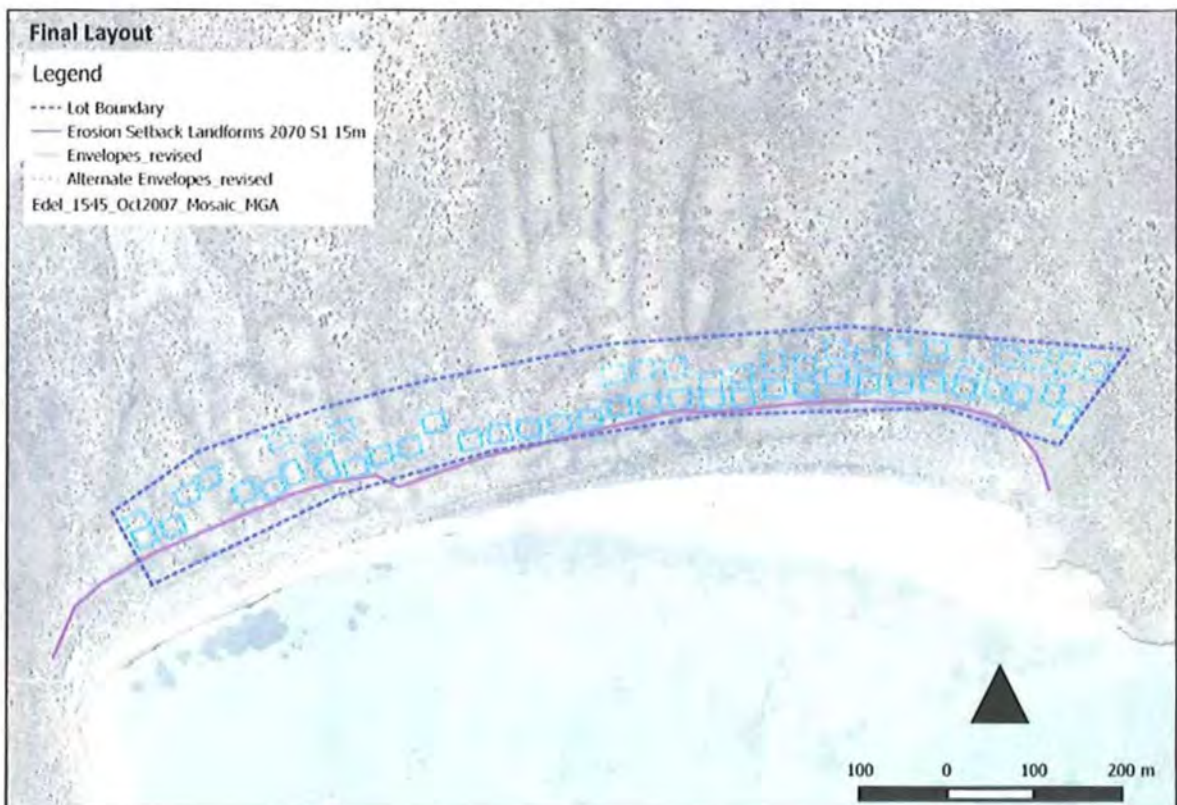


Figure 4: Final Layout