



# Byron Shire Council



## Agenda

### Ordinary (Planning) Meeting

Thursday, 13 August 2020

held at Council Chambers, Station Street, Mullumbimby  
commencing at 11:00am

*Public Access* relating to items on this Agenda can be made between 11.00am and 11.30am on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

Mark Arnold  
General Manager

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## CONFLICT OF INTERESTS

**What is a “Conflict of Interests”** - A conflict of interests can be of two types:

**Pecuniary** - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

**Non-pecuniary** – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Code of Conduct for Councillors (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

**Remoteness** – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in the Code of Conduct for Councillors.

**Who has a Pecuniary Interest?** - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

**Relatives, Partners** - a person is taken to have a pecuniary interest in a matter if:

- The person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. “Relative”, in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

**No Interest in the Matter** - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

### Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
  - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
  - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

**No Knowledge** - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

**Non-pecuniary Interests** - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as of the provisions in the Code of Conduct (particularly if you have a significant non-pecuniary interest)

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## RECORDING OF VOTING ON PLANNING MATTERS

### Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
  - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
  - (b) not including the making of an order under that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING

### **BUSINESS OF ORDINARY (PLANNING) MEETING**

- 1. PUBLIC ACCESS**
- 2. APOLOGIES**
- 3. REQUESTS FOR LEAVE OF ABSENCE**
- 4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**
- 5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)**
- 6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**
  - 6.1 Ordinary (Planning) Meeting held on 18 June 2020
- 7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**
- 8. MAYORAL MINUTE**
- 9. NOTICES OF MOTION**

Nil
- 10. PETITIONS**
- 11. SUBMISSIONS AND GRANTS**
- 12. DELEGATES' REPORTS**
- 13. STAFF REPORTS**

#### **Sustainable Environment and Economy**

- 13.1 PLANNING 26.2019.8.1 - Exhibition Outcomes - Submissions report - 54 Parrot Tree Place Bangalow Planning Proposal.....5
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- 13.6 PLANNING - Report on Variations to Development Standards 1 April 2020 to 30 June 2020 .....31
- 13.7 PLANNING - DA 10.2020.220.1 Alterations and Additions to Existing Entertainment Facility (Brunswick Picture House) at 30 Fingal Street Brunswick Heads .....34
- 13.8 PLANNING - DA 10.2019.643.1 Demolition of Existing Dwelling House and Construction of Dual Occupancy (Attached) at 11 Brownell Drive Byron Bay .....52

#### **14. QUESTIONS WITH NOTICE**

*Questions with Notice: A response to Questions with Notice will be provided at the meeting if possible, that response will be included in the meeting minutes. If a response is unable to be provided the question will be taken on notice, with an answer to be provided to the*

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING

*person/organisation prior to the next Ordinary Meeting and placed on Councils website*  
[www.byron.nsw.gov.au/Council/Council-meetings/Questions-on-Notice](http://www.byron.nsw.gov.au/Council/Council-meetings/Questions-on-Notice)

***Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Director prior to the meeting. Any suggested amendments to the recommendations should be provided to Councillor Support prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.***

**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.1                      PLANNING 26.2019.8.1 - Exhibition Outcomes - Submissions report - 54 Parrot Tree Place Bangalow Planning Proposal**

**Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                Alex Caras, Land Use Planning Coordinator  
**File No:**                            I2020/723

**Summary:**

A planning proposal to rezone a small section of RU1 Primary Production to R2 Low Density Residential at 54 Parrot Tree Place, which will enable an additional 2 residential lots, was presented to Council at the February planning meeting.

Council resolved **20-004** to request a gateway determination and proceed to public exhibition.

The planning proposal was placed on exhibition from 29 April to 29 May. Five public submissions were received all objecting to the proposed rezoning. The submissions are addressed within this report.

Consultation with Department of Primary Industries (Agriculture) was undertaken as per the gateway determination. No issues were raised with the planning proposal.

It is recommended that the planning proposal be forwarded to Parliamentary Counsel's office as exhibited for finalisation.

**NOTE TO COUNCILLORS:**


In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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**RECOMMENDATION:**

- 1.     That Council forward the planning proposal to amend Byron LEP 2014, as included in Attachment 1 (E2020/6094), to NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP instrument be prepared.**
- 2.     That Council liaise with PCO as necessary to finalise the content of the draft LEP and to enable PCO to issue an opinion that the plan can be made.**
- 3.     That Council make the draft LEP under delegated authority and forward the plan to the NSW Department of Planning, Industry and Environment for notification on the NSW Government legislation website.**

**Attachments:**

- 1       26.2019.8.1 Parrot Tree Place Planning Proposal, E2020/6094 
- 2       Confidential - 26.2019.8.1 - Combined submissions, E2020/41458

**REPORT**

A planning proposal was presented to Council at the 20 February 2020 planning meeting and Council resolved **20-004** to request a gateway determination and proceed to public exhibition.

The planning proposal rezones approximately 690m<sup>2</sup> of RU1 Primary Production land to R2 Low Density Residential to correct the 400m buffer from the sewage treatment plant. Amendments to the Minimum Lot Size and Floor Space Ratio maps are also required to reflect the residential zoning. This amendment will enable an additional 2 residential lots.

This report presents the exhibition outcomes of the planning proposal to rezone part of 54 Parrot Tree Place, Bangalow.

**Public exhibition**

The planning proposal was placed on exhibition from 29 April to 29 May 2020. Letters were sent to the adjacent landowners and to the Department of Primary Industries (Agriculture) for their comment. The planning proposal was advertised in the Echo on two occasions and available on Council's website. The submissions received are contained in Attachment 2. All five public submissions object to the rezoning. The submissions are addressed below:

Submission	Staff comment
Two additional lots in an already crowded space should not be supported as this puts a strain on the lack of on-street parking.	<p>The planning proposal will increase the area of <i>R2 Low Density Residential</i> zone on the subject land by 690m<sup>2</sup>, a potential increase of approximately two dwellings in the context of a residential area.</p> <p>An assessment of parking and traffic impacts will occur as part of any future development application/s for this site when lot layout and dwelling configuration is known.</p>
<p>The recent development at 50 Parrot Tree Place of 3 large units is by the same developer and will further place pressure on street parking and traffic flow.</p> <p>The street is currently bottlenecked by on street parking creating safety issues.</p> <p>The road will not be able to support the increase in cars from the additional 2 lots proposed.</p>	<p>Refer to comments above.</p> <p>LEP and DCP controls will otherwise apply to any future development application/s and will need to take into account the need for off street parking to service the demands generated from new development.</p>
There has been no traffic management plans for the additional lots.	A traffic and parking impact assessment is not triggered for this planning proposal. Any future development application will need to include this assessment.
The 54 Parrot Tree Place application is already a high-density proposal which is at odds with the existing properties on the street, and an additional two lots will risk further overflow cars onto a street that is already at an often dangerously full capacity.	The additional lots do have a smaller minimum lot size than that of the surrounding lots in Parrot Tree Place, but are still considered low-to medium- density.

<b>Submission</b>	<b>Staff comment</b>
There should be an additional survey report completed by Council showing that the developers surveyors measurements are correct, and not biased in anyway.	The survey was prepared by a registered surveyor and has been checked by Council staff.
The attached diagram shows the survey is from the furthest part of the STP rather than the closest edge.	The attached diagram referred to in this submission was indicative only to try and demonstrate the intent of the planning proposal. The accurate survey measures from the closest point of the STP. This survey is in the planning proposal.

The Department of Primary Industries (Agriculture) reviewed the planning proposal and because of the minor nature of the rezoning, raised no objection to the planning proposal. Their response is also included in Attachment 2.

### **Conclusion**

The small increase in residential zoning is considered to be of low impact and the issues regarding traffic and on-street parking will be assessed with any subsequent development applications.

It is recommended that the planning proposal be forwarded as exhibited to the Parliamentary Counsel Office and Department of Planning, Industry and Environment for finalisation.

### **STRATEGIC CONSIDERATIONS**

#### ***Community Strategic Plan and Operational Plan***

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.10	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

#### ***Legal/Statutory/Policy Considerations***

This planning proposal will amend the Byron LEP 2014.

#### ***Financial Considerations***

This is an applicant funded proposal with all costs borne by the applicant.

#### ***Consultation and Engagement***

As per the Gateway determination as outlined in this report.



**Report No. 13.2                      PLANNING - 26.2019.5.1 Exhibition outcomes - submissions report - rail corridor planning proposal**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Rob Van Iersel, Major Projects Planner

**File No:** I2020/461

**Summary:**

This report presents the exhibition outcomes of the rail corridor planning proposal.

The planning proposal intends to rezone the rail corridor between Lawson Street and Bayshore Drive in Byron Bay to SP2 Infrastructure (Rail Corridor) and permit maintenance work associated with rail operations to be undertaken without consent.

The planning proposal was requested by Byron Bay Railroad Company, who operate the solar train over this section of the corridor under licence from Transport for NSW. The request was made to:

- rationalise the zoning of the corridor which currently is partly deferred under BLEP 2014; and
- transfer existing savings provisions, which allow certain rail maintenance works to be undertaken without consent, from BLEP 1988 to BLEP 2014, as they apply to this section of rail corridor.

The proposal was exhibited from 18 March to 17 April 2020.

One public submission and four agency submissions were received. These submissions are addressed within this report.

One minor mapping change to the planning proposal has been made, based on the submission from Transport for NSW, requesting that the proposed SP2 zoning be removed from a parcel of land that is in the process of being acquired by an adjoining land owner.

The Schedule 1 Additional Permitted Uses clause has been amended in response to the submission from the Biodiversity Conservation Division of Department of Planning, Industry & Environment. The amendment will clarify that development consent will be required for rail works (including maintenance) that involve clearing of native vegetation or alteration to existing ground levels on land mapped under *State Environmental Planning Policy (Coastal Management) 2018* as being in proximity to a coastal wetland or littoral rainforest.

Additional information has also been included in the planning proposal to better explain the areas mapped as proximity to coastal wetlands under SEPP (Coastal Management) and to reference the Belongil Flood Risk Management Study, based on the advice from the Biodiversity Conservation Division.

The mapping change and additional information will have no impact on the intent of the planning proposal.

It is recommended that the updated planning proposal be forwarded to the Department of Planning, Industry and Environment for finalisation.

**NOTE TO COUNCILLORS:**

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council



Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.


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**RECOMMENDATION:**

1. That Council forward the planning proposal to amend Byron LEP 2014, as included in Attachment 1 (E2020/32263), to NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP instrument be prepared.
2. That Council liaise with PCO as necessary to finalise the content of the draft LEP to enable PCO to issue an opinion that the plan can be made.
3. That Council make the draft LEP under delegated authority and forward the plan to the NSW Department of Planning, Industry and Environment for notification on the NSW Government legislation website.

5

**Attachments:**

- 1 Rail Corridor Planning Proposal - Post Exhibition version, E2020/32263 
- 2 Confidential - Public Submission, E2020/50013
- 3 Agency Submissions, E2020/52469 

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**REPORT**

At the end of 2019, Council received a request to prepare a planning proposal to amend Byron Local Environmental Plan (BLEP) 2014. The proposal seeks to rezone a section of the rail corridor located between Bayshore Drive and Lawson Street, Byron Bay.

The planning proposal was requested by Byron Bay Railroad Company, who operate the solar train over this section of the corridor under licence from Transport for NSW. The request was made to:

- rationalise the zoning of the corridor which currently is partly deferred under BLEP 2014, particularly to change the W1 Natural Waterways zoning that applies to the section of rail located on the existing bridge across Belongil Creek; and
- transfer existing savings provisions, which allow certain rail maintenance works to be undertaken without consent, from BLEP 1988 to BLEP 2014, as they apply to this section of rail corridor.

At the November Planning meeting, Council resolved (**Res 19-578**) to forward the planning proposal to the Department of Planning, Industry and Environment for a gateway determination and then proceed to public exhibition.

This report presents the exhibition outcomes of this planning proposal.

***Public exhibition***

The planning proposal was placed on exhibition from 18 March to 17 April 2020.

Letters were sent to the adjoining landowners and a number of government agencies. The planning proposal was advertised in the Echo on two occasions and available on Council's website.

Following the exhibition, one public submission was received and four State Agencies responded with written comments. The submission and agency response are addressed below and are attached to this report.

***Public submission***

The submission raised concerns that the planning proposal may present restrictions on future uses of the rail corridor for rail purposes other than the solar train. The writer also sought assurances that the LEP amendments, specifically the additional permitted uses, would not allow existing rail infrastructure, particularly the duplicate railway tracks (siding/passing loop) in place within the nominated section, to be removed.

Nothing in this planning proposal would provide any exclusivity to the current operator or prevent any future rail uses. Changing the small section of W1 Natural Waterways for the Belongil bridge section removes a potential prohibition that could prevent future uses.

The proposed additional permitted uses are those currently permitted without consent under the existing BLEP 1988. The planning proposal, therefore, does not allow works that could not currently be carried out without consent.

***Agency submissions***

**Biodiversity Conservation Division (BCD), Department Planning, Industry & Environment**

5 The BCD recommended that the planning proposal should identify and discuss areas of environmentally sensitivity along the rail corridor, including parts that are mapped under State Environmental Planning Policy (Coastal Management) 2018.

10 They also recommended that the planning proposal should reference the Belongil Creek Flood Risk Management Study 2015 and consultation with Arakwal with relation to cultural heritage.

The planning proposal has been amended in accordance with these recommendations.

15 BCD objected to the proposed Additional Permitted Uses, in so far as they would allow development without consent within areas mapped as Coastal Wetland or Littoral Rainforest under SEPP (Coastal Management) 2018, or within areas mapped as proximate to those areas.

20 The provisions of SEPP (Coastal Management) 2018 take precedence over the Byron LEP. In that regard, clause 10 of the SEPP specifies that development consent is required for any development on land mapped as coastal wetland or littoral rainforest. This will override the provisions of the additional permitted uses clause for the section of the corridor mapped as Coastal Wetland.

25 Therefore, there is no need to amend the proposed Additional Permitted Uses clause in this regard.

SEPP (Coastal Management) also maps areas proximate to coastal wetland and littoral rainforest (100m from each). Clause 11 of the SEPP sets out matters to be considered in relation to development within these proximate areas, but it does not require consent for all development.

30 It was suggested, therefore, that the proposed Additional Permitted Uses clause be amended to exclude any clearing of native vegetation or alteration to existing ground levels within areas mapped as 'proximate'.

35 On the basis of this, BCD have withdrawn their objection.

**Rural Fire Service**

Raised no issues or concerns with regards to bush fires.

**40 NSW Department of Primary Industry (Fisheries)**

Raised no objections to the proposal subject to acknowledgement of the following comments:

45 *DPI Fisheries highlights that the subject rail corridor traverses through SEPP Coastal Wetlands, a highly sensitive key fish habitat. Any future proposals to undertake works within the rail corridor to facilitate operations under the new zoning will need to avoid and minimise impacts to key fish habitat, and that any unavoidable impacts are appropriately offset.*

50 *It should be noted that the rail corridor traverses the Cape Byron Marine Park (CBMP), in particular, the waters of the Belongil Creek Special Purpose Zone. These waters are protected under the Act with disturbance and extractive being use highly regulated. Any actions or activities arising from amended council zoning must consider Marine Estate legislation and the intent to provide protection to the waters of Belongil Creek and adjacent areas. Works or activities taking place within or affecting the creek will require permission under the Act.*

55

Within the rail corridor, the riparian areas of Belongil Creek are mapped as coastal wetland under SEPP (Coastal Management) 2018. As discussed above, the SEPP overrides the Byron LEP and as such any works occurring in that part of the corridor would require development consent. Consideration of the relevant Acts would therefore occur for any development in this area.

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### **Transport for NSW**

Supports the proposed rezoning of the rail corridor to SP2 Infrastructure (Rail Corridor).

10     Advised that some parcels backing onto the rail corridor will be subject to boundary adjustments as Transport for NSW excise surplus land and that it would be inappropriate to zone these specific parts SP2 Infrastructure.

15     The draft zoning map has been amended to remove two small areas of land on the edge of the rail corridor, which are currently subject to boundary adjustment and purchase by adjoining residential properties.

### **Arakwal**

20     The Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) hold the Native Title and were invited to provide comment on this planning proposal. At the time of writing this report, no response had been received.

### **Next steps**

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It is recommended that the planning proposal be forwarded to the Department of Planning, Industry and Environment and Parliamentary Counsels Office for finalisation.

## **STRATEGIC CONSIDERATIONS**

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### ***Community Strategic Plan and Operational Plan***

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.10	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

### ***Legal/Statutory/Policy Considerations***

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This planning proposal will amend Byron Local Environmental Plan 2014.

### ***Financial Considerations***

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This is an applicant funded planning proposal.

### ***Consultation and Engagement***

Outlined in this report.

**Report No. 13.3      Business and Industrial Lands Strategy staff response to Department of Planning, Industry and Environment**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Natalie Hancock, Senior Planner

**File No:** I2020/1054

**Summary:**

In March 2020, staff forwarded the Business and Industrial Lands Strategy (BILS) to the Department of Planning, Industry and Environment (DPIE) seeking Ministerial approval of the strategy.

On the 12 May 2020, the DPIE - Director, Northern Region Local and Regional Planning advised that the strategy is approved, subject to a number of qualifications and amendments (Attachment 1).

Staff have reviewed the DPIE comments and prepared a response report (Attachment 2) providing the basis for the recommendations contained in this report.

Subject to Council supporting the recommendations, a cover letter, copy of the response report (Attachment 2) and updated BLIS will be forward to the DPIE.

**NOTE TO COUNCILLORS:**

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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**RECOMMENDATION:**

**1. That the Business and Industrial Lands Strategy be updated to:**

**a) Include two new actions as follows:**




- i) Prepare a precinct plan for land around the Byron Central Hospital to inform the preparation and assessment of individual development proposals and ensure the long-term functionality of this key service precinct in the Byron Shire.**
- ii) Amend the Byron LEP 2014 B7 Business Park Zone objectives to extend consideration to the retail function of Mullumbimby town centre and Brunswick Heads village centre.**

**b) Add under the Business and Industrial Lands Strategy tables for investigation areas:**

- i) 1 (Billinudgel), 2 (Mullumbimby), 6 (Byron West) and 7 (Bangalow) an additional dot point under 'key issues and further investigations' requiring *'investigations to ensure that any proposed development is consistent with relevant State and regional planning provisions this may include the management of areas of high environmental value, flooding and heritage/cultural significance.'***

- ii) **2 (Mullumbimby) and 7 (Bangalow) an additional dot point under ‘key issues and further investigations’ requiring detailed assessment of agricultural capability and impact on surrounding land will be required as part of any planning proposal consistent with Section 9.1 Direction 5.3: Farmland of State & Regional Significance on the NSW Far North Coast.**
  - c) **Insert at the start of the Business and Industrial Suitable Lands Principles a qualifying statement ‘the principles set out below are intended to provide additional guidance on land that is suitable for business and industrial purposes in Byron Shire. Should an inconsistency between a relevant State and regional regulatory planning provisions and the principles arise, the investigations are to ensure that any proposed development is consistent with relevant State and regional planning provisions.’**
  - d) **Insert under Actions 12 (Gulgan East & West) & 14 (Gulgan North) a requirement to undertake an assessment to evaluate the potential impact of business park development on existing business centres for any proposal incorporating a business park.**
  - e) **Exclude Lot 50 DP 881232 and southern part of Lot 26 DP 830652 from the Gulgan West investigation area on the basis that it is wholly contained within a significant regional farmland designation and a major part of the land is anticipated to have a depth of flood water in excess of 1.5m in a 100 year flood event, and furthermore the landowners are advised accordingly.**
  - f) **Support:**
    - i) **maintaining of a maximum building height control for the southern end of Jonson Street at 9 metres.**
    - ii) **further consideration of applying SEPP 70 Affordable housing contribution scheme within the Byron Bay Town Centre.**
- 2. That the Department of Planning, Industry and Environment be advised that Council:**
- a) **has updated the Business and Industrial Lands Strategy as per the Council endorsed recommendations under item 1 above.**
  - b) **intends to retain the business and industrial suitable land principles as stated in the Business and Industrial Lands Strategy.**
  - c) **intends to retain the Gulgan North as an investigation area, independent to Gulgan East and West.**
  - d) **does not support the use of the term ‘preliminary investigation areas’ and intends to retain all ‘investigation areas’ as identified, subject to the adjustment of Gulgan West boundary as per item 1. Above.**
  - e) **prefers the use of ‘anticipated delivery timeframe’ to a rigid land release program for the Byron Shire.**

**Attachments:**

- 1 DPIE letter on Business and Industrial Lands Strategy, E2020/53144 
- 5 2 Report - Response on DPIE letter on Business and Industrial Lands Strategy qualifications and amendments request, E2020/55461 
- 3 Special Disclosure of Pecuniary interest Annexure, E2012/2815 

**REPORT**

In March 2020, staff forwarded the Business and Industrial Lands Strategy (BILS) to the Department of Planning, Industry and Environment (DPIE) seeking Ministerial approval of the strategy.

On the 12 May 2020, the DPIE - Director, Northern Region Local and Regional Planning advised that the strategy is approved, subject to a number of qualifications and amendments (Attachment 1).

Staff have reviewed the DPIE comments and prepared a response report (Attachment 2) providing the basis for the recommendations contained in this report.

**Response in summary**

The table below summarises the response report – it highlights the points raised by the DPIE, staff response and recommendation to these.


DPIE advice reference/comment	Staff Response
<b>Advice a.</b>  The DPIE recommends preparation of a precinct plan for land around the Byron Central Hospital to inform the preparation and assessment of individual development proposals and ensure the long-term functionality of this key service precinct	Supported  The preparation of a precinct plan will incur a cost. The cost is dependant on whether the work is undertaken internally or by a consultant. Any costs will be included for consideration in future budget bids.  <b>Recommendation:</b>  Insert a new Business and Industrial Lands Strategy Action 16 (noting existing subsequent actions will be renumbered accordingly) as follows:  <i>Prepare precinct plan for land around the Byron Central Hospital to inform the preparation and assessment of individual development proposals and ensure the long-term functionality of this key service precinct in the Byron Shire.</i>  <b>(Recommendation 1. a) i))</b>
<b>Advice b.</b>  The DPIE supports investigation areas at Billinudgel, Bangalow, West Byron Bay and Mullumbimby with qualification that more detailed investigations to occur at the planning proposal stage. This to include assessment of agricultural capability and impact on surrounding land regionally significant farmland as relevant.	Supported  <b>Recommendation:</b>  Add under the Business and Industrial Lands Strategy tables for investigation areas:  1 (Billinudgel), 2(Mullumbimby), 6 (Byron West) and 7 (Bangalow) an additional dot point under 'key issues and further investigations' requiring ' <i>investigations to ensure that any proposed development is consistent with relevant State and regional planning provisions this may include the management of areas of high environmental value, flooding and heritage/cultural significance.</i> '



DPIE advice reference/comment	Staff Response
	<p>2 (Mullumbimby) and 7 (Bangalow) an additional dot point under 'key issues and further investigations' requiring <i>'detailed assessment of agricultural capability and impact on surrounding land will be required as part of any planning proposal consistent with Section 9.1 Direction 5.3: Farmland of State &amp; Regional Significance on the NSW Far North Coast.'</i></p> <p><b>(Recommendation 1. b))</b></p>
<p><b>Advice c.</b></p> <p>The DPIE requests that the Business and Industrial Suitable Land Principles' on p.79 of the BILS be amended to be consistent with the Land Release Criteria in the North Coast Settlement Planning Guidelines 2019.</p> <p>Furthermore it was recommended that the 'important farmland' provisions in the Business and Industrial Land Suitability Principles should be amended to align with Section 9.1 Direction 5.3, the <i>North Coast Regional Plan 2036</i> (NCRP) and the Northern Rivers Farmland Protection Project - Final Recommendations, February 2005.</p>	<p>This request is not fully supported.</p> <p>The Business and Industrial Suitable Land Principles were in the exhibited strategy (exhibited in Nov 2018) well prior to the release of the North Coast Settlement Planning Guidelines (the late 2019). The BLIS is captured under the <u>transitional arrangements</u> in the Guidelines that state they: <i>'apply to new land use planning strategies prepared by councils. Where a land use planning strategy has already been publicly exhibited compliance with the Guidelines will not be mandatory.'</i></p> <p>It is considered that the DPIE concerns could be addressed with refinement of the Principles text to set an interpretive position between a State policy and the BILS.</p> <p><b>Recommendation:</b></p> <p>That the DPIE be advised that Council intends to retain the Business and Industrial Suitable Lands Principles as is.</p> <p><b>(Recommendation 2. b))</b></p> <p>Insert at the start of the Business and Industrial Suitable Lands Principles a qualifying statement <i>'the principles set out are below intended to provide additional guidance on land that is suitable for business and industrial purposes in Byron Shire. Should an inconsistency between a relevant state and regional regulatory planning provisions and the principles arise; the investigations are to ensure that any proposed development is consistent with relevant state and regional planning provisions.'</i></p> <p><b>(Recommendation 1. c))</b></p>
<p><b>Advice d.</b> Relationship of a potential business park with the existing business centres</p> <p>(DPIE advice d. is discussed in</p>	<p>Supported.</p> <p>A business park would most likely utilise the Zone B7 Business Park. The objectives of this zone under LEP 2014 currently address the zone's relationship with the Byron Bay business centre. To address the potential for</p>

<b>DPIE advice reference/comment</b>	<b>Staff Response</b>
<p>a number of following parts)</p> <p>The DPIE requests investigation areas investigations include the potential impact of business park development on existing business centres.</p>	<p>business park development in the northern part of the Shire, the objectives could be expanded to also reference the relationship with Mullumbimby town centre and the Brunswick Heads village centre.</p> <p><b>Recommendation:</b></p> <p>Insert under Actions 12 (Gulgan East &amp; West) &amp; 14 (Gulgan North) a requirement to undertake an assessment to evaluate the potential impact of a business park on existing business centres for any proposal incorporating a business park.</p> <p><b>(Recommendation 1. d))</b></p> <p>Insert a new action under Business and Industrial Lands Strategy Direction 4 to amend the Byron LEP 2014 B7 Business Park Zone objectives to extend consideration to retail function of Mullumbimby town centre and Brunswick Heads village centre.</p> <p><b>(Recommendation 1. a) ii))</b></p>
<p><b>Advice d. Re: Gulgan Investigation Areas</b></p> <p>(DPIE advice d. is discussed in a number of parts)</p> <p>The DPIE supports the proposed strategic planning for the Gulgan East and West areas in Action 12 of the BILS and recommends that this is extended to include the Gulgan North area.</p> <p>Further that Gulgan North be identified as a 'preliminary' investigation area along with Gulgan East and West.</p>	<p>This request for a the North Gulgan to be strategic planned with Gulgan West and East and the 'Preliminary' status designation is not supported for reasons including:</p> <ul style="list-style-type: none"> <li>– Gulgan North investigation area is able to be considered and developed independent of the other two localities. As an example infrastructure services required for this area are not reliant the West and East Gulgan areas progressing</li> <li>– due to an earlier planning proposal for an ecovillage, the Gulgan North land has undergone analysis at a level appropriate to a planning proposal and is suitable to be identified as an investigation area</li> <li>– Gulgan East area already largely contains quasi industrial land uses such as a wrecker yard and service station</li> <li>– the BILS is captured under the North Coast Settlement Planning Guidelines 2019 transitional arrangements, namely <i>'where a land use planning strategy has already been publicly exhibited compliance with the Guidelines will not be mandatory'</i></li> <li>– the North Coast Regional Plan (NCRP) does not utilise the term 'preliminary investigation areas'. The NCRP</li> </ul>

DPIE advice reference/comment	Staff Response
	<p>recognises that Urban Growth Areas <i>‘will be subject to more detailed investigations to determine capability and future yield. Land that is subject to significant natural hazards and/or environmental constraints will be excluded from development’</i></p> <ul style="list-style-type: none"> <li>– the designation as an investigation area is consistent with the intent of a growth area - Investigation Area – Employment Land designation under the NCRP.</li> <li>– the required investigations raised by the DPIE are able to be addressed at the planning proposal stage and State Directions are in place to ensure this occurs.</li> </ul> <p><b>In using the term investigation areas in the BILS it has the following meaning:</b></p> <p>An ‘investigation area’ means land considered appropriate to be a future potential business and/or industrial land release area. Not all land identified as an investigation area will be suitable for development and further detailed assessment will be required usually as part of a planning proposal to change the zoning of the land.</p> <p><b>Recommendation:</b></p> <p>That the DPIE be advised that Council intends to retain the Gulgan North as an investigation area, independent to Gulgan East and West.</p> <p><b>(Recommendation 2. c))</b></p> <p>That the DPIE be advised that Council does not support the use of the term ‘preliminary’ investigation areas and intends to retain all ‘investigation areas’ as identified, subject to the adjustment of Gulgan West boundary (see next response).</p> <p><b>(Recommendation 2. d))</b></p>
<p><b>Advice d.</b> Re: Amount of land and land release program (DPIE advice d. is discussed in a number of parts)</p> <p>The DPIE requested that Council review the need for additional employment land in</p>	<p>Noting, the DPIE concern over the quantum of land in the Gulgan west area, staff have undertaken further preliminary assessment of flood prone land in this locality. Based on this further analysis, indicating that the major part of Lot 50 DP 881232 and southern areas of Lot 26 DP 830652 are anticipated to have a depth of flood water in excess of 1.5m in a 100 year flood event, as well as wholly contained within a significant regional farmland designation; it considered appropriate to exclude this land from the designated investigation area. A revised</p>

DPIE advice reference/comment	Staff Response
<p>the Gulgan East, West and North areas as part of a land release program for the Byron Shire.</p> <p><b>Amount of land and land release program cont.</b></p>	<p>boundary for the Gulgan West investigation area is shown below.</p>  <p>In regard to the need for industrial land, the BILS (page 64) identifies three growth scenarios based on population projections and trends in industry and floor space requirements. The BILS Background Report acknowledges that it is prudent to provide and plan for an additional supply of land (or contingency) above the projected in the interests of price competition</p> <p>The area of land needed as cited for the scenarios is 'net additional developed land area' to accommodated the resulting projected floor space demand i.e. land area needed to accommodated actual industrial uses.</p> <p>With part of Gulgan West excluded, a revised 'potential developable land' for the combined investigation areas in the BILS is approximately 36 ha. This figure whilst higher than Scenario 3 of 24 ha 'net additional developed land area' it is not excessive when also taking into account:</p> <ul style="list-style-type: none"> <li>- existing development patterns in Byron Shire, the likely premises/development land yield/per gross ha of land equates of around an 85% yield on the gross possible developable land i.e. 85% of 36 ha (gross) = some 30 ha (net).</li> <li>- the recently released draft North Byron Flood Risk Management Study indicates the Billinudgel industrial areas (a precinct 8 ha in area) is given as a low priority hence status quo remains where parts of this precinct hold limited suitably for many industrial tenancy types, particularly with pending limitations on fill.</li> </ul> <p>On the matter of a Land Release Program, a number of Councillors at a Strategic Planning Workshop (Nov 2019) indicated a preference not to set a specific release program so as to avoid any restrictions on particular parcels being able to be developed. Benefits of this approach were seen as:</p>

DPIE advice reference/comment	Staff Response
	<ul style="list-style-type: none"> <li>- providing a new and flexible supply in various locations across the Shire;</li> <li>- avoiding the land supply issue experienced in the Shire where one landowner can effectively control and bank the land supply;</li> <li>- providing land for both traditional industrial use and for business park use in the short term.</li> </ul> <p><b>Recommendation:</b></p> <p>Exclude Lot 50 DP 881232 and southern part of Lot 26 DP 830652 from the BILS Gulgan West investigation area on the basis that it is wholly contained within a significant regional farmland designation and the major part of the land is anticipated to have a depth of flood water in excess of 1.5m in a 100 year flood event, and furthermore the landowners advised accordingly.</p> <p><b>(Recommendation 1. e))</b></p> <p>That the DPIE be advised that Council and prefers the use of 'anticipated delivery timeframe' to a rigid land release program for the Byron Shire.</p> <p><b>(Recommendation 2. e))</b></p>
<p><b>Advice d</b></p> <p>Council collaborate with other Northern Rivers councils and the Department of Planning Industry and Environment to build an evidence base, consistent with Action 5.1 of the Regional Plan and Principle 2 of the North Coast Settlement Planning Guidelines, to <i>'consider a regional approach to land supply'</i>.</p>	<p>Council has collaborated with other Northern Rivers councils and the Department of Planning, Industry and Environment as part of the North Rivers Regional Economic Development Strategy (REDS). The investigation area land identified is well situated to support the REDS.</p> <p>A review of the North Coast Regional Plan provides an appropriate forum for this collaboration; evidence based regional planning and addressing emerging and shared opportunities.</p> <p>The DPIE staff have offered to assist with ongoing collaborative work.</p>
<p><b>Advice e.</b></p> <p>DPIE supports the preparation of a database of developed and vacant zoned industrial land under BILS Action 9 as an input to the annual North Coast House and Land Monitor.</p>	<p>Noted.</p>

DPIE advice reference/comment	Staff Response

**Additional updates**

At 22 November 2018 Council meeting (**Res 18-777**) it was resolved to amend the Planning Proposal for the Byron Bay CBD (26.2017.6.1) to **maintain the maximum building height control for the southern end of Jonson Street at 9 metres**, as currently mapped under Byron LEP 2014.

At the 16 April 2020 Council planning meeting (**Res 20-151**) it was resolved to put further consideration of the Byron Bay Town Centre Planning Proposal - Review of Planning Controls and draft DCP 2014 Chapter E9 on hold to enable the establishment of a Design Panel and **to allow for further consideration of applying SEPP 70 within the Byron Bay Town Centre**.

**Recommendation:**

That the Business and Industrial Lands Strategy be updated to reflect the intent of Council to:

- i. maintain the maximum building height control for the southern end of Jonson Street at 9 metres;
- ii. allow for further consideration of applying SEPP 70 within the Byron Bay Town Centre.

**(Recommendation 1. f))**

**Next steps and consultation**

Subject to Council supporting staff recommendations, a response will be provided to the DPIE advising of Council's position together with an update version of the BILS containing amendments as endorsed by Council.

The landowners of Lot 50 881232 and DP Lot 26 DP 830652 will also be advised the changes to the West Gulgan investigation areas in the BLIS.

**STRATEGIC CONSIDERATIONS****Community Strategic Plan and Operational Plan**

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>	4.5	Work to improve community resilience in our changing environment	4.5.1	Develop and implement strategies for our community's needs	4.5.1.1	Finalise the Business and Industrial Land Strategy

**Legal/Statutory/Policy Considerations**

The BILS is informed by the relevant state, regional and/or local planning framework and best practice planning principles.

**Financial Considerations**

The cost of preparing the BILS has been met by Council.

**Report No. 13.4**      **Review of submissions on the draft Byron Shire Affordable Housing Contribution Policy and Procedure**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Natalie Hancock, Senior Planner  
**File No:**      I2020/1095

**Summary:**

Council on 21 May 2020 resolved (**Res 20-213**) to adopt for public exhibition a Draft Byron Shire Affordable Housing Contribution Policy and accompanying Procedures.

The Policy provides a framework to facilitate and manage affordable housing contributions. It provides a mechanism to secure land and/or monetary contributions to deliver affordable housing on certain land identified in the draft Residential Strategy and Byron Bay town centre.

The Procedure assists with the implementation of the Policy and provides more detail on how Council intends to operate the contribution framework in Byron Shire.

The draft Policy and Procedures were exhibited for a period of 6 weeks from 3 June – 17 July 2020, with a total of 5 submissions received (Attachment 1), three from community groups, one from a community member and one representing landowners subject to an affordable housing contribution (refer Attachment 1). All submissions were supportive of the Policy and the need to address affordable housing, however expressed concerns with the practical implications of affordable housing delivery.

This report provides a summary of the key matters raised in submissions and recommends no changes to the Byron Shire Affordable Housing Contribution Policy (refer Attachment 2) and accompanying Procedures (refer Attachment 3).

**NOTE TO COUNCILLORS:**





In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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**RECOMMENDATION:**

**That Council adopt the Byron Shire Affordable Housing Contribution Policy in Attachment 2 (E2020/55585) and accompanying Procedures in Attachment 3 (E2020/55587).**

**Attachments:**

- 1 Submissions affordable housing contribution policy, E2020/55821 
- 2 Policy Affordable Housing Contribution 2020 - Final version, E2020/55585 
- 3 Procedures to accompany Policy Affordable Housing Contribution, E2020/55587 
- 4 Special Disclosure of Pecuniary Interest Annexure, E2012/2815 



**REPORT**

Council on 21 May 2020 resolved (**Res 20-213**) to adopt for public exhibition a Draft Byron Shire Affordable Housing Contribution Policy and accompanying Procedures.

The draft Policy and Procedures were exhibited for a period of 6 weeks from 3 June – 17 July 2020, with a total of 5 submissions received, three from community groups, one from a community member and one representing landowners subject to an affordable housing contribution (Attachment 1). All submissions were supportive of the policy and need to address affordable housing, however expressed concerns with the practical implications of the delivery of affordable housing.

This report provides a summary of the key matters raised in submissions and recommends no changes to the Byron Shire Affordable Housing Contribution Policy Attachment 2 and accompanying Procedures Attachment 3.

**Key issues**

Matter Raised	Staff response
<p><u>Proposed affordable housing contribution area landowner input</u></p> <p>Two landowners of land potentially subject to an Affordable Housing Contribution Scheme responded by agreeing with the Policy and the Objectives, however seeking two changes:</p> <p>1. In regard to Objective <i>vii</i> that states the <i>contributions to supplement, but not replace, or be in lieu of the application to the development of the Byron Shire Developer Contributions Plan established under the Act</i>, that the Policy clearly state that no Developer Contributions, nor Water/Sewer Contributions will be levied on the affordable housing lots/area granted to Council.</p> <p>2. The contribution rates for Mullumbimby and Bangalow are reduced from 20% to 10% on the basis that the provision of 20% of area if that is greater than 20% of lots simply will not work if the end development is a mix of both conventional residential lots, as well as small lots for affordable housing.</p>	<p>1. It is unreasonable to expect that a developer pay developer contributions on a lot that they are required to dedicate to Council for the purposes of affordable housing. Section 7.11 contributions under Byron Shire Developer Contributions Plan 2012 Amendment 4 would not have to be paid for land that is to be subdivided for affordable housing purposes. This policy position already exists in clause 2.15 of the plan. No amendment of the policy as exhibited is required.</p> <p>With respect to the payment of water and sewer charges for subdivisions of land to dedicate a lot to Council for the purposes of affordable housing it is unreasonable to expect the developer to pay these. As this is a separate fund of the creation of the new lot will generate a demand for water and sewer services the contributions should be paid. A mechanism to facilitate the payment would be for the water and sewer contributions to be paid by Council (general fund) from a specific reserve created for this purpose. The reserve would be funded from the affordable housing cash contributions paid by other developers.</p> <p>Section 8 of the Procedures enables review to reflect updates as the residential strategy and subsequent planning proposal/s for investigation areas progress.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p> <p>2. A reduction in the guiding contribution rate of 20 % is not supported nor required. The 20% area would be upper limit for the purposes of the Policy and is subject to further viability testing on a case by case basis.</p> <p>The Policy and Procedures are underpinned by the logic a development needs to be viable, otherwise no housing will be delivered.</p>

Matter Raised	Staff response
	<p><i>Procedure 4.1 Establishing a contribution rate (item) c)</i> enables proponents as part of a planning proposal for the upzoning to have the <u>ability to request a contribution rate variation for their individual precincts/project and AHCS clause</u>. This procedure can involve as part of a planning proposal for the upzoning and AHCS undertaking an independent viability testing for their individual precincts/project.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>
<p><u>Amenity</u></p> <p>Concern that the SEPP 70 Affordable Housing Contribution Scheme will lead to intensification of densities in the established R2 – Residential Low Density Zone urban areas with associated amenity and infrastructure issues.</p> <p>Issues listed include:</p> <ul style="list-style-type: none"> <li>• adequacy of footpaths</li> <li>• parking overflow on streets</li> <li>• need for convenience to public transport</li> <li>• over development of existing lots</li> <li>• importance of respect for and reinforcement of heritage provisions</li> </ul> <p>It was suggested that place planning processes and subsequent updates to the Byron Development Control Plan 2014 (DCP) are useful avenues to better plan for affordable housing, diversifying housing types and densities within local areas.</p>	<p>Whilst noting the concerns expressed over experiences with infill occurring in established residential areas, an SEPP 70 affordable housing contribution scheme applies to land with an upzoning and only where a contribution is viable. In the case of Byron Shire, as indicated in the Policy, this applies to:</p> <ul style="list-style-type: none"> <li>• Residential investigation areas i.e. possible new release residential areas</li> <li>• Byron Town Centre.</li> </ul> <p>The application of the scheme in existing established zoned R2 and R3 areas could not occur unless there is an upzoning. An upzoning means a change of zone to enable residential development or a change of planning controls (such as floor space ratio) which enables greater residential density on a site.</p> <p>Planning for new release areas enables measures to be put in place in advance for the likely densities and anticipated residents' needs.</p> <p>The SEPP 70 Affordable Housing Contribution Scheme is distinct from two existing other State government regulations facilitating additional housing in established residential areas:</p> <ul style="list-style-type: none"> <li>• SEPP Affordable Rental Housing facilitating additional affordable rental housing.</li> </ul> <p><a href="https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Diverse-and-affordable-housing/Affordable-Rental-Housing-SEPP">https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Diverse-and-affordable-housing/Affordable-Rental-Housing-SEPP</a></p> <ul style="list-style-type: none"> <li>• Recently enacted Low Rise Housing Diversity Code facilitating potential fast track medium density housing.</li> </ul> <p><a href="https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Low-Rise-Housing-Diversity-Code/The-Low-Rise-Housing-Diversity-Code">https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Low-Rise-Housing-Diversity-Code/The-Low-Rise-Housing-Diversity-Code</a></p> <p>Many of the issues raised are more pertinent to the</p>

<b>Matter Raised</b>	<b>Staff response</b>
	<p>delivery of housing under these provisions, but nevertheless the feedback is useful for Council when planning for new release areas, place planning and DCP reviews.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>
<p><u>Short Term Holiday Let impacts</u></p> <p>Potential use of affordable dwellings for Air BNB.</p> <p>Support of 90 day cap on short term holiday letting to help reduce the need for affordable rental housing.</p>	<p>Housing delivered under a SEPP 70 Affordable Housing Contribution Scheme must be used for affordable housing. The policy/procedures state that on land on which this type of housing is to be delivered is to remain as Council land. Hence Council will be able to see that this occurs.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>
<p><u>Dwelling targets and dwelling mix</u></p> <p>It was raised that target number of 140 dwellings in the Policy is inconsistent with the possible 190 dwellings identified in Table 1 of the Procedures.</p> <p>Concern was expressed that 20% contribution rate may lead to an excessive number of affordable houses congregated in one location.</p>	<p>It is noted that there is an inconsistency between the yield number in the Policy and the Procedures. Either way the figures are indicative and subject to the actual development outcomes on the land. The numbers in the procedures may need to be revised based on Council (Planning) meeting of 18 June 2020 (<b>resolution 20-276</b>) to include additional investigation areas in the draft residential strategy.</p> <p>It is considered the baseline 140 dwelling target should be retained in the Policy.</p> <p>Section 8 of the Procedures enables review to reflect updates as the residential strategy and subsequent planning proposal/s for investigation areas progress. Such updates will enable community members to remain informed on the ongoing delivery of affordable housing in their locality.</p> <p>As the housing is proposed for new release areas, an opportunity exists for Council to work with the developer and affordable housing providers on the placement, type and design of affordable housing and supporting infrastructure.</p> <p><i>Policy statement of intent 5 requires 'in all cases, will determine the affordable housing contribution form, in order to: a) support a more even distribution of affordable housing within urban areas.'</i></p> <p><b>No amendment of the policy as exhibited is required.</b></p>
<p><u>Community involvement in the process</u></p>	<p>Noted.</p>

<b>Matter Raised</b>	<b>Staff response</b>
<p>Support for Policy objectives that focus on continued community input in the process of affordable housing delivery</p>	<p>It however highlighted that separate to the housing under this Policy process, housing under the low rise medium density code – complying development – the applicant is not required under legislation to engage with the community as part of the formal process.</p> <p><b>No amendment of the Policy as exhibited is required.</b></p>
<p><u>Planning agreements (PA)</u></p> <p>Suggested that Council should not enter into a PA unless the development is compatible with the character of the local area.</p>	<p>It is considered this aspect would be captured under 5.5. <i>When will Council not consider entering a Planning Agreement? (item) v.</i></p> <p><i>When a development is <b>unacceptable on planning grounds</b>, planning benefits offered by the proponent in a Planning Agreement will not make an unacceptable development acceptable.</i></p> <p>The draft Byron DCP Character narratives will provide additional guidance on local residential character.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>
<p><u>Planning agreements (PA)</u></p> <p>Concern was expressed that affordable housing could be used as a tool to lever development that is in appropriate for an area.</p> <p>It was suggested that the Policy clarifies that investigation areas may contain land that may not be suitable for residential development.</p>	<p>The adoption of this Policy is intended to set a framework to avoid a lever situation occurring.</p> <p>The Residential Strategy is the more appropriate document to provide guidance on land that is suited to residential development. Procedure Item 4.2 states that:</p> <p><i>A land contribution to Council for the purpose of affordable housing requires the land is fit for purpose.</i></p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>
<p><u>SEPP for Affordable rental Housing</u></p> <p>Submissions expressed a dissatisfaction with the housing being delivered under this SEPP issues being:</p> <ul style="list-style-type: none"> <li>• design disconnect with the local character/streetscape</li> <li>• parking</li> <li>• density of development on a given site</li> <li>• locations and local infrastructure that are not</li> </ul>	<p>Noted.</p> <p>This SEPP is a state government regulation and Council does not have the capacity to amend.</p> <p>It should be noted that the Department of Planning, Industry and Environment (DPIE) is currently exhibiting an Explanation of Intended Effect (EIE) for a new Housing Diversity SEPP. The EIE is on exhibition until 9 September 2020. The proposal includes the consolidation of three housing-related SEPPs into one. Staff will be making a submission and will raise again these concerns for DPIE consideration.</p> <p><a href="https://www.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp">https://www.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp</a></p>

<b>Matter Raised</b>	<b>Staff response</b>
<p>necessarily suited to the needs of rental tenants</p> <ul style="list-style-type: none"> <li>the 10 year sunset clause on the requirement of renting at an affordable level</li> </ul>	<p>On going improvements to the Byron DCP are seeking to address the aspects where Council does have the capacity to regulate/guide.</p> <p>The draft Residential Strategy is being used to inform place planning and long range infrastructure planning and delivery.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>
<p><u>Inclusivity</u></p> <p>It was suggested that the Byron DCP include requirements for inclusivity (such as need for disabled, older people and families)</p>	<p>This suggestion is supported and it is noted that the draft Residential Strategy Direction 2 actions include review of the Byron LEP and DCP to address this matter, amongst other items.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>

***Next steps***

It is recommended that Council adopt the Policy and Procedures without changes.

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**STRATEGIC CONSIDERATIONS**

***Community Strategic Plan and Operational Plan***

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
<b>Community Objective 4: We manage growth and change responsibly</b>	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.3	Prepare an Affordable Housing contribution scheme under SEPP 70 to be incorporated in the local planning framework controls (Action in Residential Strategy)
<b>Community Objective 4: We manage growth and change responsibly</b>	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.4	Investigate and implement planning controls to encourage an increase in the supply of affordable and inclusive housing stock (Action in Residential Strategy)

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***Legal/Statutory/Policy Considerations***

The draft Policy has been exhibited in accordance with *Local Government Act 1993* – Section 160 Public notice and exhibition of draft local policy. Under *Local Government Act 1993* – Section 160 the period of public exhibition must be not less than 28 days.

***Financial Considerations***

Not applicable to this report.

***Consultation and Engagement***

The draft Policy and Procedures builds on the extensive engagement undertaken in developing the draft Residential Strategy.

The exhibition was undertaken in line with the Community Participation Plan.

Council is committed to building ongoing and meaningful relationships and partnerships with local community and interest groups about planning matters.

**Report No. 13.5**                      **PLANNING - Report of the 11 June 2020 Planning Review Committee**  
**Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                  Chris Larkin, Manager Sustainable Development  
   Noreen Scott, EA Sustainable Environment and Economy  
5    **File No:**                              I2020/925

**Summary:**

10    This report provides the outcome of the Planning Review Committee (PRC) held on 11 June, 2020. Due to COVID-19, the PRC meeting was held partly via Zoom with one Councillor attending in person. Of the two development applications reported to PRC, one is to be reported to Council for determination and one application remains with staff to determine under delegation.

15    **NOTE TO COUNCILLORS:**

20    In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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**RECOMMENDATION:**

25    **That Council endorses the outcomes of the Planning Review Committee meeting held on 11 June 2020.**



**REPORT**

The Planning Review Committee meeting scheduled for 11 June, 2020 was held via a Zoom meeting with Councillor Martin attending in person.

5

Councillors: Crs Hunter, Hackett, Lyon, Coorey, Cameron and Martin

Apologies: Cr Ndiaye

10

Staff: Chris Larkin (Manager Sustainable Development), Rob Van Iersel, Noreen Scott (Minute Taker)

The following development applications were reviewed with the outcome shown in the final column.

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2020.251.1	C Lonergan	27-31 Fletcher Street BYRON BAY	Use of Take-Away Drink Premises (coffee cart)	4/6/20 to 24/6/20	Staff Delegation
10.2020.215.1	Ardill Payne & Partners	6 Keats Street BYRON BAY	Multi Dwelling Housing Comprising of Ten (10) Two Storey Detached Dwellings and Ten (10) Swimming Pools and Strata Subdivision	14/5/20 to 3/6/20  14 submissions	The number of public submissions  The perceived public significance of the application  Council

15

**Report No. 13.6**      **PLANNING - Report on Variations to Development Standards 1 April 2020 to 30 June 2020**

**Directorate:**      Sustainable Environment and Economy

**Report Author:**      Chris Larkin, Manager Sustainable Development

5      Noreen Scott, EA Sustainable Environment and Economy

**File No:**      I2020/1088

10      **Summary:**

This report is provided as a requirement of the NSW Department of Planning, Industry and Environment - Planning Circular 20-002 for reporting variations to development standards to the Secretary.

15      **NOTE TO COUNCILLORS:**

20      In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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**RECOMMENDATION:**

25      **That Council adopt the report on variations to development standards for the period 1 April 2020 to 30 June 2020.**

**REPORT**

5 This report is provided as a requirement of the NSW Department of Planning, Industry and Environment - Planning Circular 20-002 for reporting variations to development standards to the Secretary for applications made under Clause 4.6 of Byron Local Environmental Plan 2014 and Clause 64A of Byron Local Environmental Plan 2014 1988.

The period of reporting is 1 April 2020 to 30 June 2020 which included the following DAs:

<b>DA No</b>	<b>10.2019.517.1</b>
Development	Mixed Use Development (Stage 4 Habitat)
Property:	Habitat Bayshore Drive BYRON BAY
Lot and DP:	LOT: 1 & 12 DP: 271119
Zoning:	B4 Mixed Use
Development Standard being varied	<b>Clause 4.3 Height of Buildings LEP 2014</b>
Justification Summary	The proposed buildings are similar in scale and height to buildings in this precinct. Development will not result in any overshadowing, overlooking, loss of privacy or amenity impacts in the locality
Extent of variation	11% (max)
Concurrence	Council under assumed concurrence
Determination Date	21/05/2020
Determined by	Council
<b>DA No.</b>	<b>10.2019.616.1</b>
Development	Demolition of Existing Buildings and Construction of Mixed Use Development
Property:	137-139 Jonson Street BYRON BAY 3 Browning Street, BYRON BAY
Lot and DP:	LOT: 21 DP: 247289 LOT: 5 DP: 758207 LOTS 60-61 DP: 1256365
Zoning:	B2 Local Centre
Development Standard being varied:	<b>Clause 4.3 Height of Buildings LEP 2014</b> <b>Clause 4.4 Floor Space Ratio LEP 2014</b>
Justification Summary	The proposed building is consistent in scale to nearby buildings and establishes the desired future character of the locality consistent with the Byron Bay Town Centre Master Plan.  The proposed buildings are consistent in scale to nearby buildings. The additional floor area does not contribute to the overall bulk or scale of the building
Extent of variation	9% Max Height of Buildings 9.60% - FSR
Concurrence	Council under assumed concurrence
Determined Date	21/05/2020
Determined By	Council

<b>DA No.</b>	10.2019.630.1
Development	Dual occupancy (attached)
Property:	7 – 9 Brownell Drive, Byron Bay
Lot and DP:	Lots 4 & 5 on DP112343
Zoning:	R2 Low Density Residential
Development Standard being varied:	<b>Clause 4.3 Height of Buildings LEP 2014</b>
Justification Summary	The development standard is exceeded by small segments of the roofline as a product of the 'step' in the existing ground level from previous earthworks. The remainder of the building complies with the development standard. Conversely, the proposed roofline adheres to the development standard when juxtaposed with the estimated (surrounding) natural ground level, which is the objective of the standard: to assimilate with surrounding environment and character.
Extent of variation	9.88%
Concurrence	Staff under assumed concurrence
Determined Date	25 May 2020
Determined By	Director

## STRATEGIC CONSIDERATIONS

### *Community Strategic Plan and Operational Plan*

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.1	Assess and determine development applications

5

### ***Legal/Statutory/Policy Considerations***

The report is provided as a requirement of Planning Circular [Varying Development Standards PS 20-002](#)

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.7

**Report No. 13.7** **PLANNING - DA 10.2020.220.1 Alterations and Additions to Existing Entertainment Facility (Brunswick Picture House) at 30 Fingal Street Brunswick Heads**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Patricia Docherty, Planner

Noreen Scott, EA Sustainable Environment and Economy

**File No:** I2020/1030

### Proposal:

**DA No:** 10.2020.220.1

**Proposal description:** Alterations and Additions to Existing Entertainment Facility (Brunswick Picture House)

**Property description:** LOT: 13 SEC: 7 DP: 758171  
30 Fingal Street BRUNSWICK HEADS

**Parcel No/s:** 24240

**Applicant:** Planners North

**Owner:** Eight Hilton Lane Pty Ltd

**Zoning:** B2 Local Centre

**Date received:** 6 May 2020

**Integrated / Designated Development:** ☐ Integrated ☐ Designated ☒ Not applicable

**Concurrence required** No

**Public notification or exhibition:**

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 21/5/20 to 10/6/20
- Submissions received: Nine (9) in Total (Seven (7) Support; Two (2) Object)
- Submissions acknowledged: ☒ Yes ☐ No ☐ N/A

**Delegation to determine** Council

**Issues:**

- Public Submissions
- The existing fire safety order issued by Council is to be satisfactorily completed prior to the issue of a construction certificate.
- Noise management conditions required.
- Operating capacity is 200 persons seating in accordance with access upgrade report.
- Approved existing on-site parking – double garage to be made available for use.

### Summary:

This development application seeks approval for alterations and additions to an existing entertainment facility (Brunswick Picture House), including the following:

- The proposed works seek to improve the accessibility to the premises, provide for storage facilities, upgrade toilet facilities particularly in relation to accessibility, provide somewhere for performers to prepare and change, and improve the overall operation of the premises.

- The proposal provides for the removal of existing asbestos cladding and roofing.
- The works include replacing the existing roof with uncoloured zincalume roof sheeting.
- Solar panels are proposed to be installed on the roof.
- Air conditioning is to be provided for the premises to enable the doors of the facility to be closed during performances, which will reduce potential impacts on existing, surrounding properties.
- The works will involve the removal of two existing planted ornamental trees.

The proposed alterations and additions do not increase the capacity of the venue or intensify the existing use of the approved entertainment facility.

The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions of approval attached to this report.

**NOTE TO COUNCILLORS:**




In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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**RECOMMENDATION:**

**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.220.1 for Alterations and Additions to Existing Entertainment Facility (Brunswick Picture House), be granted consent subject to the conditions of approval attached to this report (E2020/54768).**

**Attachments:**

- 1 10.2020.220.1 Recommended Conditions of Consent, E2020/54768 
- 2 10.2020.220.1 Brunswick Picture House Plans, E2020/54328 
- 3 10.2020.220.1 Noise Impact Assessment Report, E2020/34462 
- 4 Confidential - 10.2020.220.1 Submissions received, E2020/55686

REPORT





**Assessment:****1. INTRODUCTION****1.1. History/Background**

Available documentation references the following historical approvals for this site:

**BA 26/52** for a Picture Hall was issued on 7/4/1952.

**BA 63/2076** for the purposes of an addition to "Victory Theatre" was approved on 31/12/1963.

**BA 64/2052** for a double garage adjacent to dwelling house was applied for on 29/10/1964.

**BA 71/2076** for amenities providing toilets for patrons of the existing theatre was determined on 7/7/1971.

**DA 5.1996.320.1** for conversion of an existing church into a school was refused on 16/2/1997.

**DA 10.2017.471.1** for change of use to restaurant or café – this is ancillary to the Entertainment Facility and was approved on 14/05/2018 for an initial period of 12 months to ensure noise management measures is achieved. Operational conditions required that the restaurant or cafe is not to be open to the public and patrons of the theatre at the same time to ensure that there be no increased demand for car parking for the development. The applicant advises a separate application will be submitted to seek approval for this to continue.

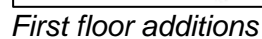
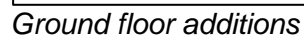
**Note.** It is considered that the approvals in 1952 and 1963 remain operative and the use of the building for the purposes of a picture house or theatre, defined under Byron Local Environmental Plan (LEP) 2014 as an entertainment facility, has not lapsed. Furthermore, entertainment facilities are permissible with consent on the land, zoned B2 Local Centre under LEP 2014. The application is not required to demonstrate existing or continuing use rights pursuant to *Division 4.11 Existing uses* of the Environmental Planning & Assessment Act 1979.

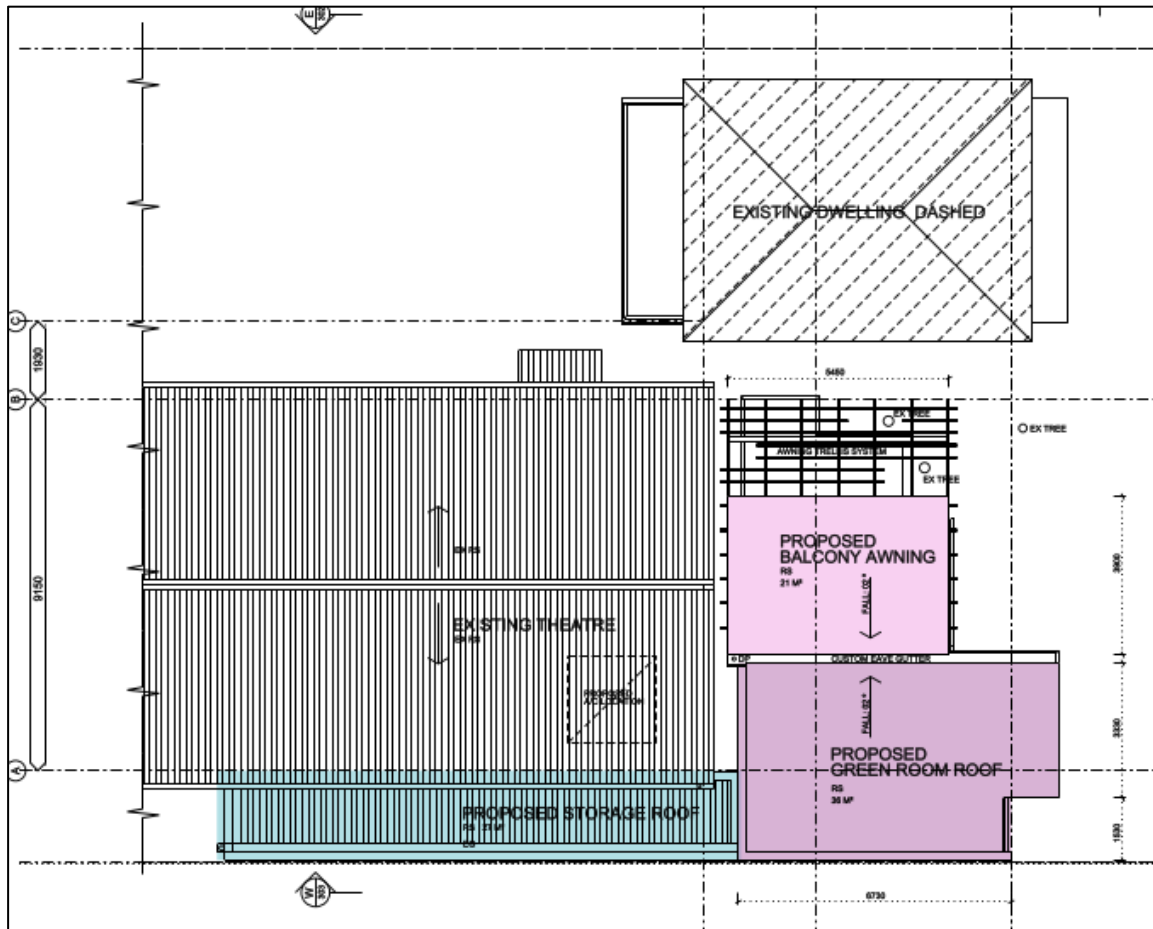
**1.2. Description of the proposed development**

This application seeks approval for alterations and additions to an existing entertainment facility (Brunswick Picture House), including the following:

- The proposed works seek to improve the accessibility to the premises, provide for storage facilities, upgrade toilet facilities particularly in relation to accessibility, provide somewhere for performers to prepare and change, and improve the overall operation of the premises.
- The proposal provides for the removal of existing asbestos cladding.
- The works include replacing the existing roof with uncoloured zincalume roof sheeting.
- Solar panels are proposed to be installed on the roof.
- Air conditioning is to be provided for the premises to enable the doors of the facility to be closed during performances, which will reduce potential impacts on existing, surrounding properties.
- The works will involve the removal of two existing planted ornamental trees.

The proposed alterations and additions do not increase the capacity of the venue or intensify the existing use of the approved entertainment facility.

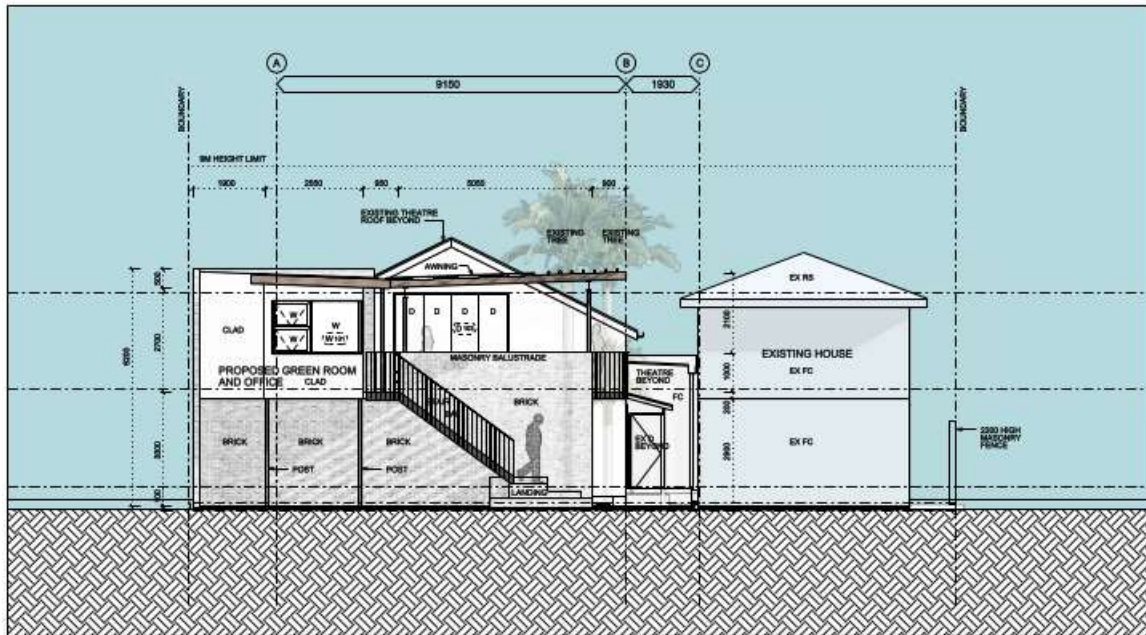




Roof replacement and additions



5 Fingal Street elevation (North)



Slessor Lane elevation (South)

The proposed development is detailed in the plan set provided in the attachments to this report.

5

### 1.3. Description of the site

Site inspections were carried out on 12 May 2020, 11 June 2020 and 17 June 2020.

Land is legally described	LOT: 13 SEC: 7 DP: 758171	
Property address	30 Fingal Street BRUNSWICK HEADS	
Land is zoned:	B2 Local Centre	
Land area is:	1,012 m <sup>2</sup>	
Property is constrained by:	Acid Sulfate Soils Class 4.	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

- 10 The Brunswick Picture House is located in the northern part of the site, a dwelling and approved double garage are located towards the south eastern corner of the site. Fingal Street is on the northern side of the site and Slessor Lane is on the southern side of the site.

- 15 The site is in an area characterised by a broad mix of commercial and residential uses in the Brunswick Heads business district. The site adjoins land zoned B4 Mixed use development to the west and land zoned R2 Low density residential is located on the opposite side of Slessor Lane to the south.





*Brunswick Picture House streetscape*



*Brunswick Picture House from rear yard, existing dwelling onsite to the right*



*Existing dwelling and double garage to the right*



*Existing structures on rear lot boundary obstructing approved garage for residence – Slessors Lane*

5



*Lot and Land use zone*



**2. SUMMARY OF REFERRALS**

Referral	Issue
Environmental Health Officer*	No objections subject to conditions. Refer to Doc #A2020/24632.
Development Engineer	No objections subject to conditions.
Water & Sewer Engineer (Local Approvals Officer) Concurrent Approvals	No objections subject to conditions for concurrent approvals.
Building Surveyor	No objections subject to conditions.
Heritage Consultant	No objections subject to recommendations noting that it is not a heritage item nor in a heritage conservation area.

\* Conditions provided in the above referral are included in the Recommendation of this Report below

**3. SECTION 4.14 – BUSH FIRE PRONE LAND**

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2019'. The site is not bush fire prone land.

**4. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES**

Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

**4.1 State Environmental Planning Instruments**

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site has a long-standing history of residential and entertainment use. There are no dip sites / buffers or known radioactive sands on the lot. The existing structures to be demolished have asbestos containing material. Conditions of consent for the handling and safe disposal of asbestos are included in the recommended conditions of consent. There is no increase in sensitivity in land use proposed. It is considered that no further site investigation is required for the proposed development		
State Environmental Planning Policy No 64—Advertising and Signage	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed development does not seek approval for additional advertising and signage.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The land is in the mapped Coastal Environment Area and Coastal Use Area and is considered to satisfy the relevant provisions under Division 3 and 4 of the SEPP. The development being within the urban footprint of the Brunswick Heads CBD raises no issues in terms of the SEPP.		
State Environmental Planning Policy (Vegetation in non-rural areas) 2017	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed removal of the planted ornamental vegetation in the yard does not require a permit under the development control plan or the Vegetation SEPP.		

**4.2A Byron Local Environmental Plan 2014 (LEP 2014)**

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject

land and the proposed development. The LEP 2014 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1.1  <input checked="" type="checkbox"/> 1.1AA  <input checked="" type="checkbox"/> 1.2  <input checked="" type="checkbox"/> 1.3  <input checked="" type="checkbox"/> 1.4  <input checked="" type="checkbox"/> Dictionary  <input checked="" type="checkbox"/> 1.5  <input checked="" type="checkbox"/> 1.6  <input checked="" type="checkbox"/> 1.7  <input checked="" type="checkbox"/> 1.8  <input checked="" type="checkbox"/> 1.9
Part 2	<input checked="" type="checkbox"/> 2.1  <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table   <input checked="" type="checkbox"/> 2.7
Part 4	<input checked="" type="checkbox"/> 4.3  <input checked="" type="checkbox"/> 4.4   <input checked="" type="checkbox"/> 4.5
Part 6	<input checked="" type="checkbox"/> 6.1  <input checked="" type="checkbox"/> 6.2  <input checked="" type="checkbox"/> 6.6

- 5 In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:
- (a) The proposed development is defined in the LEP 2014 Dictionary as a restaurant or cafe;
  - (b) The land is within the B2 Local Centre according to the Land Zoning Map;
  - (c) The proposed development is permitted with consent; and
  - (d) Regard is had for the Zone Objectives as follows:

10

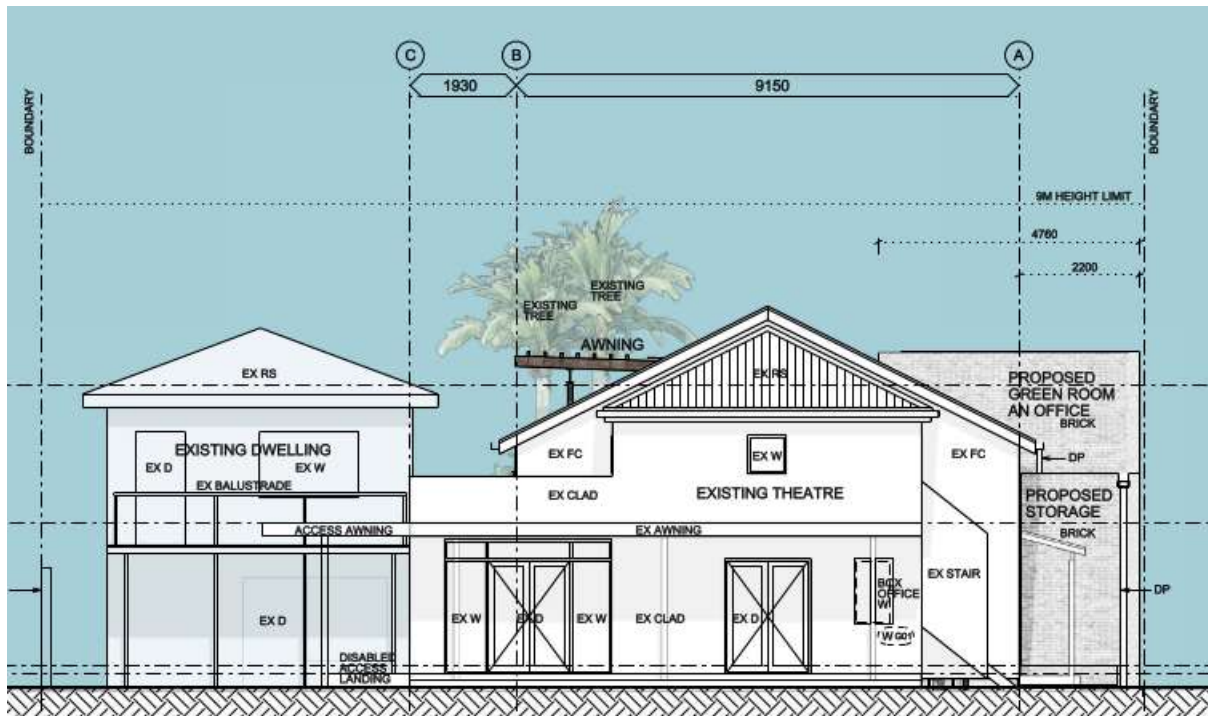
<b>Zone Objective</b>	<b>Consideration</b>
<i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i>	The proposal contributes to the existing range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
<i>To encourage employment opportunities in accessible locations.</i>	The proposal contributes to employment opportunities in accessible locations.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The proposal contributes towards public transport patronage, and walking and cycling in this central location.
<i>To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.</i>	The proposal does not relate to allowing residential and tourist and visitor accommodation above commercial premises.

- 15 The relevant clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

#### **Clause 4.3 Height of Buildings**

The height of buildings including the storage space, back stage changing areas, covered deck and new roof are all substantially lower than the maximum permissible nine (9) metre height limit:





Elevation of buildings all below 9 metre height limit

#### Clause 4.4 Floor Space Ratio

The total Gross Floor Area (GFA) including the alterations and additions to the existing entertainment facility and the approved dwelling house does not result in a Floor Space Ratio (FSR) in excess of the permissible 0.75:1 (i.e. FSR is less than 75% of 1,012 m<sup>2</sup> site area). Proposal Complies

**Gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—
- (i) storage, and
- (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

#### 4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

Not applicable

#### 4.4A Byron Shire Development Control Plan 2014 (DCP 2014)

The following specific comments are made on relevant chapters of the DCP.

##### 5 Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access.

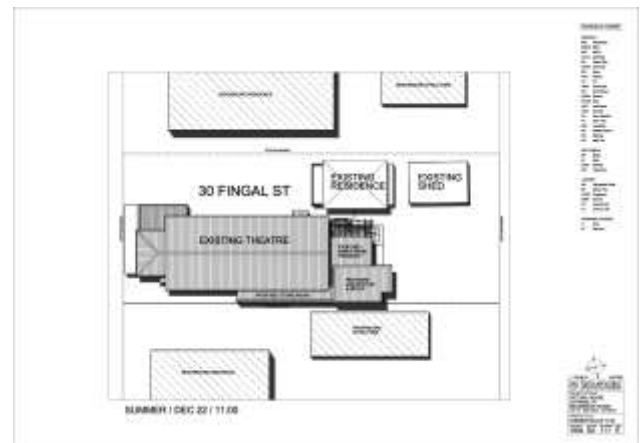
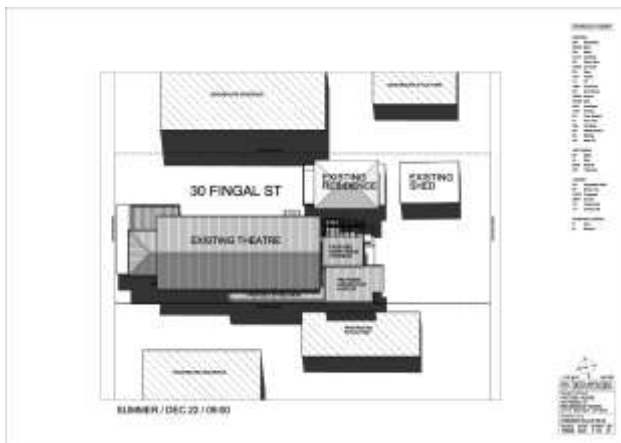
The proposal does not generate any specific additional parking, however Provisions have been made in the recommended conditions of consent to ensure that the existing approved parking for two vehicles in the double garage is to be available for use by the associated dwelling house at all times.

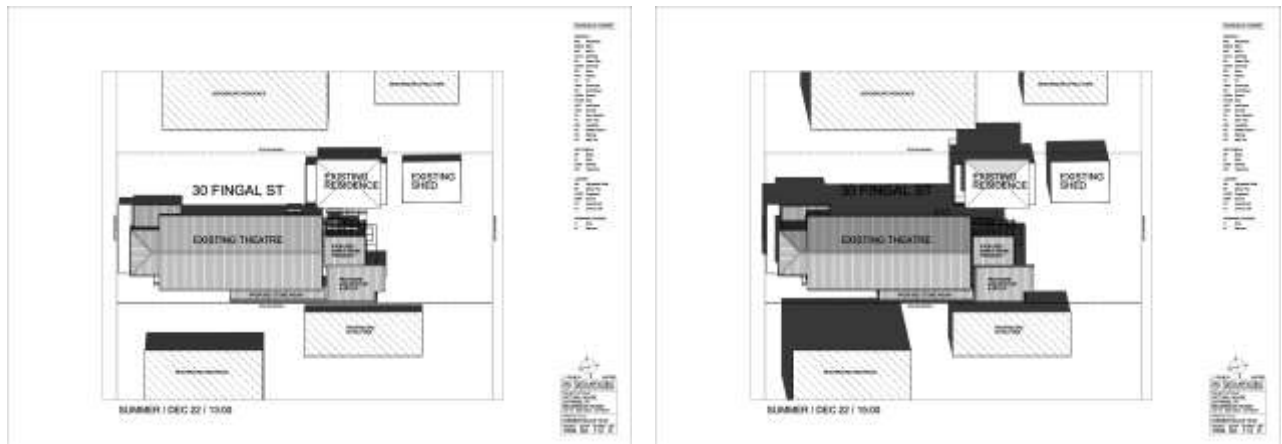
##### 10 Chapter D4 Commercial and retail development

**Setbacks** - The western side of the proposed back stage areas will be built to the boundary. There is no side setback limitation on land zoned business under LEP 2014. The subject site and the adjoining land are zoned for business purposes. Notwithstanding the adjoining land use zone is mixed use and the site contains existing residential accommodation. The assessing officer requested additional information to assess the potential for overshadowing. A review of the submitted shadow diagrams prepared by the registered architect has confirmed that the development is designed to minimise impacts on solar access on adjoining properties. This will ensure that the occupants of adjoining residential buildings will continue to enjoy the optimum use of winter sunlight and summer shade.

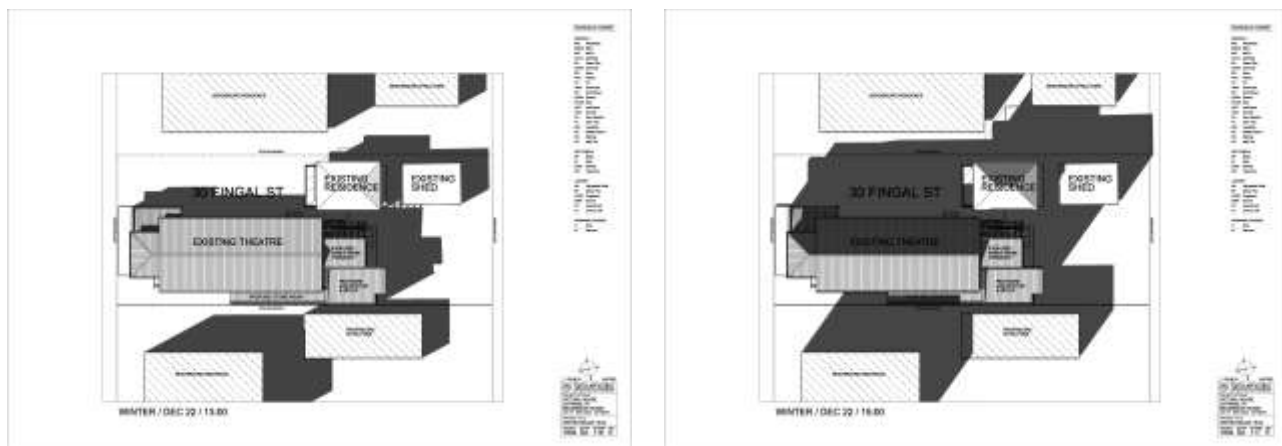
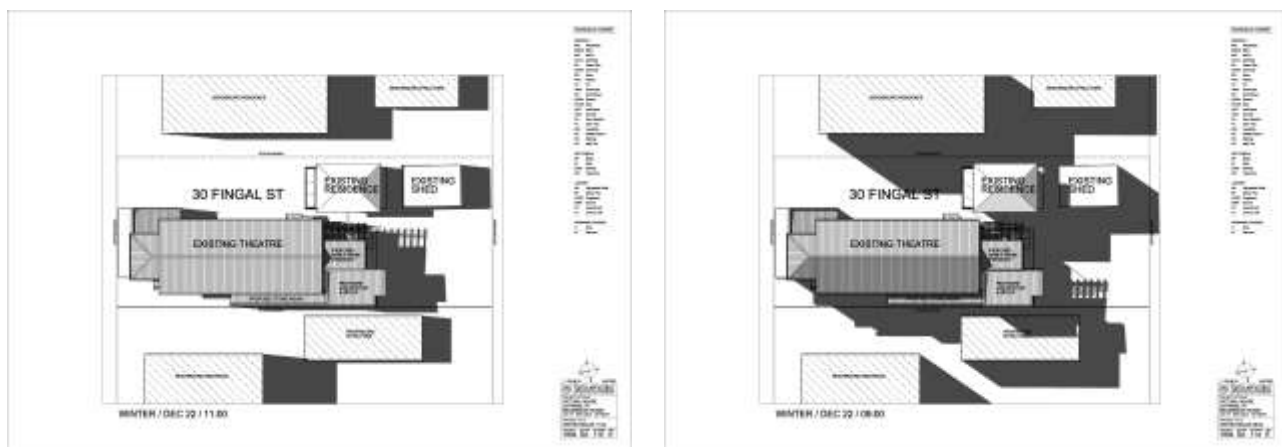
There are no additional window or door openings proposed on the storage and back stage areas which are proposed to be built to the boundary. The solid block wall of this part of the building is proposed to be 4.1 metres high (storage area) and 6.2 metres high ('green room'), substantially below the 9 metre height limit.

Some pruning of vegetation will be required, which does not require consent where it is overhanging the subject site.





Summer solstice shadow diagrams 09.00, 11.00, 13.00, 15.00



Winter solstice shadow diagrams 09.00, 11.00, 13.00, 15.00

## 10 Chapter E4 Brunswick Heads

The proposed development is satisfactory in terms of the character, bulk and scale provisions contained within the DCP for the CBD of Brunswick H. The additions to the theatre are well within the height requirements under the LEP whilst the building materials do not offend the visual amenity or character of the neighbourhood.

15 The proposal raises no other issues under the DCP

**4.5 Environmental Planning & Assessment Regulation 2000 Considerations**

Clause	<i>This control is applicable to the proposal:</i>	<i>I have considered this control as it relates to the proposal:</i>	<i>If this control is applicable, does the proposal comply?</i>
<b>92</b>	Yes	Yes	Yes – Conditions apply in relation to demolition works
<b>93</b>	No	N/A	N/A
<b>94</b>	Yes	Yes	Yes – Conditions apply in relation to building code of Australia matters
<b>94A</b>	No	N/A	N/A

\* Non-compliances and any other significant issues discussed below

5 **4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

Impact on:	Likely significant impact/s?
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality. See additional comments below in relation to noise and built environmental impact on matters raised during the exhibition period.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.

10 Council Policies that are applicable to the proposed development have been considered during assessment.

**4.7 The suitability of the site for the development**

The site is a serviced, unconstrained property and is suitable for the proposed development.

15

**4.8 Submissions made in accordance with this Act or the regulations**

The development application was publicly exhibited from 21/05/2020 to 10/06/2020.

There were **nine (9)** submissions made on the development application:

- 20
- 7 For
  - 2 Against

Issues of objection that are relevant matters for consideration, primarily relate to residential amenity impacts affecting residents to the east, west and south. These are considered, as follows:

25

**Issue - Noise day and night affecting existing residential development**

**Consideration** – The Report entitled 'Noise Impact Assessment, Alterations and Additions Brunswick Picture House, 30 Fingal Street Brunswick Heads Ref: 141/2016\_Adds & Alts prepared by Tim Fitzroy & Associates dated 12 February 2020.' (see attachment). This report considers the potential noise impact associated with use of roof mounted air conditioning plant to manage the ambient air within the development.

30

A meeting between Council staff and the applicant's technical experts in planning and noise was held on 01/07/20 involved discussion about the current DA for alterations and additions to an existing entertainment facility as an opportunity to improve noise attenuation generally rather than specifically with respect to the proposed air conditioning. It was agreed that the applicant would:

- 5     1.     Review the existing development and assess the noise impacts on sensitive receivers;
2.     Assess the proposed development (new roof and a/c and building additions) and assess the noise impacts on sensitive receivers;
3.     Consider, if appropriate (mindful of costs/benefits), opportunities to improve noise attenuation during the redevelopment process; and
- 10    4.     Submits a revised Noise Impact Assessment to Council which includes the outcomes of items 1, 2 and 3 with a view to providing the Best Possible Outcome to mitigate noise impact from the development on sensitive receivers.

15     Sound power level from the air conditioner plant 78 dB(A) is predicted via noise modelling to exceed the project specific noise criteria (PSNC) by 6 dB(A) during evening and night time hours. However, it is expected that the actual air conditioner model when specified will vary from 78 dB(A) and mitigation measures designed to ensure compliance with the PSNC at the boundary of the nearest affected residences. Details and specifications can be required for approval prior to the issue of a construction certificate by the certifying authority (PCA or Council).

20     Further discussions held between Council's EHO and the Acoustic Consultant on 20/07/20 provides that the Noise Management Plan required for DA 10.2017.471.1 can be amended to:

1.     Include management of the alterations and additions particularly the use of outside deck area and use of air conditioning plant.
2.     Limit operational noise during evening hours (6pm – 10pm) and night time hours (10pm – 12am).
- 25    3.     Provide a noise monitoring program.

Having consideration for the above assessment, it is recommended that the development be approved subject to conditions of consent being imposed.

30     Compliance with the consent conditions will ensure that the proposed alterations and additions to the existing entertainment facility is likely to result in a beneficial improvement to residential amenity.

**Issue – Traffic and parking**

35     **Consideration** – Major concerns are raised that the building upgrades will attract more people and more frequent performances and that this will have impacts on-street parking in the vicinity, including Slessor Lane, including no parking for performers. The entertainment facility was constructed prior to current DCP requirements for on site parking for new buildings. Council has considered the nature of the additional floor space in relation to potential patronage. All additional areas are for storage and back of house use. The capacity of the venue is not increased and

40     therefore there is no parking requirement associated with the subject DA in accordance with DCP 2014.

Discussions were had with the applicant regarding the provision of additional parking of the rear lane as there is the capacity for the provisions of a five spaces to alleviate parking concerns. The

applicant however has decided not to provide any further parking. Notwithstanding, the existing approved double garage for provision of on-site car parking for the existing dwelling is not being made available for its intended use. This is marked on the plans as a shed. A condition of consent is recommended that require the two car garage to be reinstated for the approved use of on-site car parking by the occupants of the residential dwelling house.

**Issue – lack of on site loading fails to minimise disturbance**

**Consideration** – There is suitable access for loading and unloading from Fingal Street to the proposed storage area and the entry foyer. A condition of consent is recommended to require an operational management plan to be submitted prior to the issue of an occupation certificate to demonstrate that the operators will prioritise loading and deliveries in relation to the Entertainment Facility to be made via Fingal Street. Deliveries relating to the existing dwelling will not be affected by this.

**Issue – lack of on-site garbage storage and waste management fails to minimise disturbance**

**Consideration** – an operational waste management plan will be required to be submitted prior to the issue of an occupation certificate to demonstrate that waste management including storage of bins and presentation to Slessor Lane for collection will be managed so as not to be left on the public road reserves other than for the purposes of collection.

**Issue – Building to boundary affecting established garden**

**Consideration** – It is considered that the proposed extension of part of the boundary is reasonable on land zoned B2 Local adjoining another lot zoned B4 Mixed use . Both are business zones under the LEP. There are no side setback limitations under the DCP on land zoned residential. The amenity impacts on the adjoining residence have been considered.

There are no additional window or door openings proposed on the storage and back stage areas which are proposed to be built to the boundary. The solid block wall of this part of the building is proposed to be 4.1 metres high (storage area) and 6.2 metres high ('green room'). The construction will create a solid buffer between the lots, which will have no unreasonable impacts on overshadowing or privacy. Some pruning of overhanging planted ornamental vegetation may be required, however this may occur at any time without development consent.

**Issue – Existing use rights**

**Consideration** – It is considered that the approvals in 1952 and 1963 remain operative and the use of the building for the purposes of a picture house or theatre, defined under Byron Local Environmental Plan (LEP) 2014 as an entertainment facility, has not lapsed. Furthermore, entertainment facilities are permissible with consent on the land, zoned B2 Local Centre under LEP 2014. The application is not required to demonstrate existing or continuing use rights pursuant to *Division 4.11 Existing uses* of the Environmental Planning & Assessment Act 1979.

**Issue – Safe asbestos removal**

**Consideration** – Recommended conditions of consent require for asbestos and lead-contaminated wastes removal to be undertaken by suitably qualified and experienced asbestos management contractors in accordance with regulations. Wastes must be handled and disposed of in accordance with the requirements of the Work Cover Authority.

The applicant/owner is to produce documentary evidence that this condition has been met. Wastes must be disposed of at a Licenced Waste Facility. All wastes removed from the site must be managed and disposed of in accordance with the NSW DECC Waste Classification Guidelines (2008). A condition for an Asbestos Removal Control Plan includes the requirement to notification of neighbours before asbestos removal works commence. Notification to neighbours must be provided in writing a minimum of seven (7) working days before removal. Notification must include the expected commencement date and timing of works.

**4.9 Public interest**

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

**5. DEVELOPER CONTRIBUTIONS**

**5.1 Water & Sewer Levies**

No Section 64 levies are required

**5.2 Developer Contributions**

Section 7.12 Levy will be payable.

**6. CONCLUSION**

The DA proposes Alterations and Additions to Existing Entertainment Facility (Brunswick Picture House). The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site.

The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development.

The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions of consent.

**7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Provide Disclosure Statement register details here: Not applicable

**Report No. 13.8**      **PLANNING - DA 10.2019.643.1 Demolition of Existing Dwelling House and Construction of Dual Occupancy (Attached) at 11 Brownell Drive Byron Bay**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Rebecca Mercer, Team Leader Planning Services  
**File No:** I2020/1050

**DA No:** 10.2019.643.1  
**Proposal description:** Demolition of Existing Dwelling House and Construction of Dual Occupancy (Attached)  
**Property description:** LOT: 6 DP: 251131  
 11 Brownell Drive BYRON BAY  
**Parcel No/s:** 2560  
**Applicant:** Newton Denny Chapelle  
**Owner:** Mr C Bissiotis & Ms A F Bilios  
**Zoning:** R2 Low Density Residential  
**Date received:** 18 December 2019  
**Integrated / Designated Development:** ☐ Integrated      ☒ Designated      ☒ Not applicable  
**Concurrence required** No  
**Public notification or exhibition:**  
 – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications  
 – Exhibition period: 9/1/20 to 8/2/20  
 – Submissions received: 1  
**Variation request** Clause 4.6 - Height 4.94% variation and FSR 4% variation  
**Issues:**

- Encroachment into building height plane on north and south boundaries
- Exceeds maximum floor space ratio (Clause 4.6 variation)
- Exceeds maximum building height (Clause 4.6 variation)
- Encroachment into front setback
- Earthworks
- Littoral rainforest

**Summary:**

The development application is seeking approval for the demolition of the existing dwelling house and the construction of a dual occupancy (attached). The subject site is zoned R2 Low Density Residential under the Byron LEP 2014 and the land has an area of 809 m<sup>2</sup>.

On the ground level each dwelling will involve a double garage, laundry, powder room, storage areas, an entry foyer, stairwell, and a lift. The first level will include three bedrooms, two ensuite bathrooms, one standalone bathroom, and an outdoor balcony area. The third level proposes involves an open terrace courtyard at the rear and each dwelling will comprise an open plan kitchen/living/dining area, powder room, outdoor balcony areas, whilst the upper level will comprise a rooftop terrace with a swimming pool and a further powder room.

The proposal received one submission objecting to the DA. The submission raised several concerns regarding building height, floor space ratio, earthworks, encroachments into the front



setback and the building height plane on the southern boundary, bulk and scale, ecological and littoral rainforest impacts, and impacts on solar access and views.

The variations to the DCP controls relating to earthworks, front setback and building height plane are supported in the circumstances. The variations sought are not out of character for Wategoes Beach considering the topography of the area, the inherent littoral rainforest that many properties retain or back onto, and the type of development already in this part of Byron bay.

However, the variations to the development standards under Byron LEP 2014 are not supported in terms of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio. The proposal exceeds the 9m building height control by 445mm due to a small part of an upper level dividing wall between the two dwellings on the pool deck exceeding the 9 metre height limit. The proposed floor space ratio of the development is 0.52:1 exceeding the required 0.5:1 FSR by 21.6m<sup>2</sup>.

Although only minor there is no specific reason why the development cannot be designed to comply with the development standards under the LEP. Changes can be made easily to the layout of the development to achieve compliance, without a significant redesign of the building.

The development is otherwise consistent with the applicable planning instruments and development controls for this part of Byron Bay.

It is recommended that the development be approved by way of **deferred commencement consent** requiring amended plans to be submitted to Council demonstrating compliance with the two development standards under Byron LEP 2014.

#### NOTE TO COUNCILLORS:



- 5 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

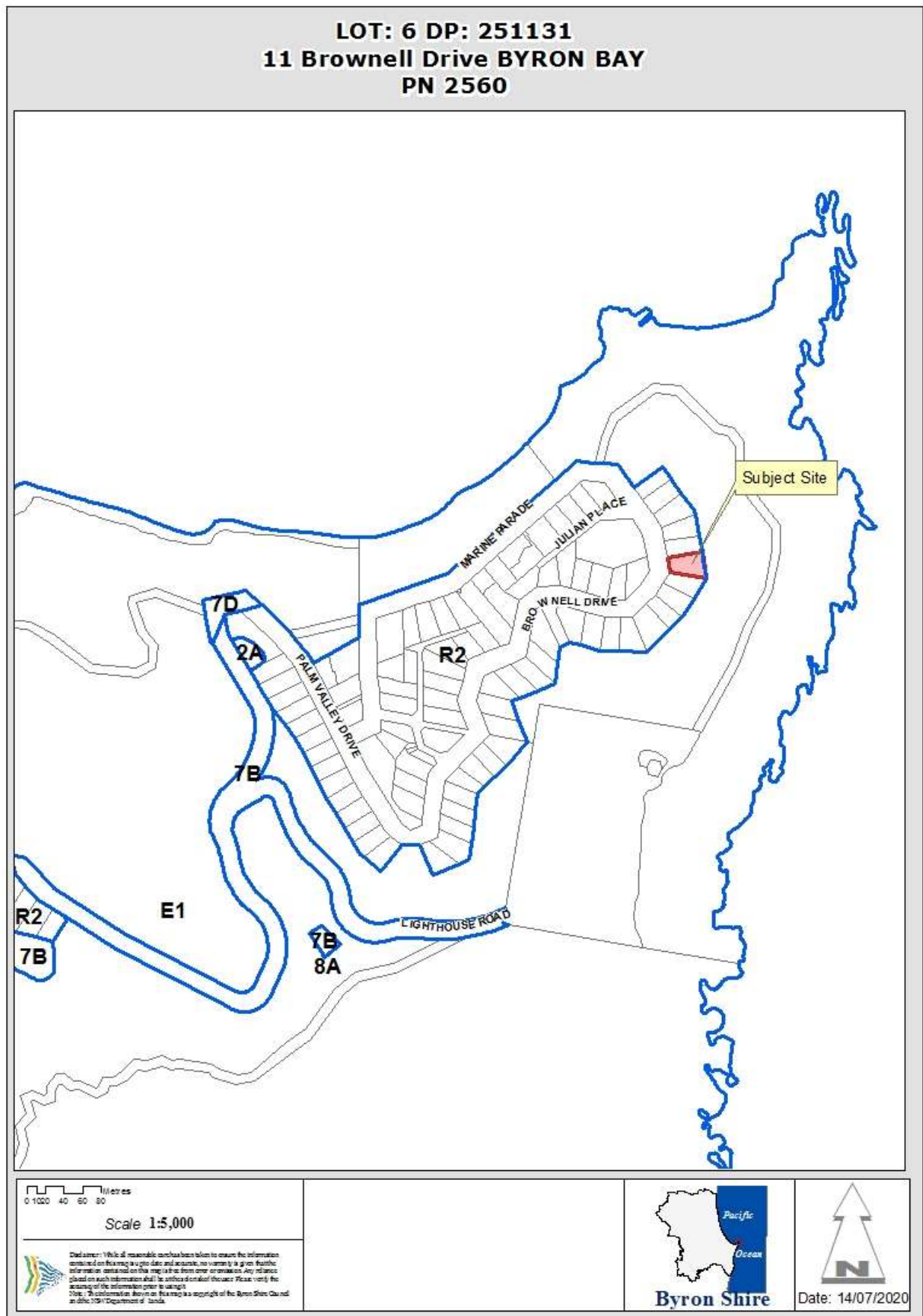
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#### RECOMMENDATION:

**That pursuant to Section 4.16(3) of the Environmental Planning & Assessment Act 1979, development application 10.2019.643.1 for demolition of an existing dwelling house and the construction of an attached dual occupancy be granted a deferred commencement consent subject to the following conditions listed in Attachment 2 (E2020/56220).**

#### Attachments:

- 15 1 10.2019.643.1 - Plans, E2020/56162 
- 2 10.2019.643.1 - Conditions of Consent, E2020/56220 
- 3 Confidential - 10.2019.643.1 - Submission received, E2020/55700



## REPORT

**Assessment:****1. INTRODUCTION****1.1. History/Background**

Councils records show the following previous determination has been made on the subject site.

- BA 6.1977.2267.1 for a Dwelling was approved 14 November 1977.

**1.2. Description of the proposed development**

This application seeks approval for Demolition of Existing Dwelling House and Construction of Dual Occupancy (Attached). The proposal involves the demolition of the existing one-bedroom dwelling to erect an attached four-storey dual occupancy with roof top swimming pools. The proposed dual occupancy will comprise four levels as follows:

- **Ground Level:** Each dwelling will involve a double garage, laundry, powder room, storage areas, an entry foyer, stairwell, and a lift. There will also be a single visitor parking space and a shared bin storage area.
- **First Level:** This level involves three bedrooms, two ensuite bathrooms, one standalone bathroom, an outdoor balcony area, stairwell, and a lift for each dwelling.
- **Second Level:** This level involves an open terrace courtyard at the rear. Each dwelling will comprise an open plan kitchen/living/dining area, powder room, outdoor balcony areas, and a stairwell and lift.
- **Third Floor:** The uppermost level of each dwelling will comprise a rooftop terrace, covered BBQ area, seating, swimming pool, powder room, stairwell, and lift.

The development is cut into the site involving earthworks with a maximum depth of 9.5m. Ten trees are to be removed with compensatory plantings proposed to embellish the adjacent littoral rainforest at the rear of the site.

**1.3. Description of the site**

A site inspection was carried out on 8 January 2020. The lot is a 'wedge shape' with an approximate 15.24m frontage to Brownell Drive and an approximate 29m rear boundary. It slopes steeply upwards from the street with levels ranging from RL 29m AHD in the North West of the site to RL 50m AHD in the south east corner of the site. There is an existing brick dwelling house situated on the subject site which was constructed in the 70s.

Land is legally described as	LOT: 6 DP: 251131	
Property address is	11 Brownell Drive BYRON BAY	
Land is zoned:	R2 Low Density Residential	
Land area is:	809.4 m2	
Property is constrained by:	Bushfire prone land, High Environmental Value, Littoral Rainforest	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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**Figure 1 - Front of site**



**Figure 2 – Neighbouring dwelling to the south**



**Figure 3 - Rear of the site**



**Figure 4 - Rear of the site to the south**

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## **2. SUMMARY OF REFERRALS**

<b>Referral</b>	<b>Issue</b>
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Ecologist	Mapped Littoral rainforest areas – see comments below under SEPP Coastal Management 2018.
Rural Fire Service (4.14)	No objections subject to conditions.
Department of Planning & Environment	No issues of State or regional significance that apply to the proposal. The Department recommends Council ensure the requirements of SEPP (Coastal Management) 2018 are



Referral	Issue
	adequately addressed before determining the subject development application.

### Biodiversity Conservation Act 2016

The eastern half of the parcel is identified on the biodiversity values map. However, Clause 7.3(4) of the *Biodiversity Conservation Regulation 2017* states 'Despite anything to the contrary in this Part, proposed development (other than subdivision) does not exceed the biodiversity offsets scheme threshold merely because it is to be carried out on a lot included in the Map if the lot was the result of a subdivision carried out before the commencement of the Act and the lot is within land zoned R1 to R4, RU5, B1 to B8 or IN1 to IN3 under an environmental planning instrument'. As the land is zoned R2 low density residential and the property was created by way of subdivision in 1962 prior to the commencement of the Act in 2016 the development does not need to enter into the offset scheme and a BDAR report is not required.

### 3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2006'. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided conditions which are reflected in the Recommendation of this Report below.

### 4. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

#### 4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The ecology referral states the following: <i>The Cape Byron State Conservation Area, which adjoins the eastern border of the parcel, is known to contain breeding female koalas. An OEH koala record is also located in the Conservation Area, ~40m east of the parcel.</i> No conditions regarding koala protection were deemed necessary to impose by Council's Ecologist.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The Environmental Health referral states the following in relation to SEPP 55: Stage 1 Preliminary Contaminated Land Assessment ENV Solutions dated December 2018 concludes that soil sampling results were below the Health Investigation Levels (HIL) in accordance with NEPM (2013) Table 1 A (1) Column A – 'Standard' Residential with garden/accessible soil (home grown produce <10% fruit and vegetable intake (no poultry), also includes childcare centres, preschools and primary schools. Reporting was conducted in accordance NSW EPA Guidelines for <i>Consultants Reporting on Contaminated Sites (2000)</i> . The proposed development is satisfactory having regard to this SEPP.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: A multi-dwelling BASIX was provided for the proposed development (1040813M).		

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Consideration:</b> Littoral rainforest is mapped across the eastern half of the parcel. The remainder is included in the littoral rainforest 100m buffer. The parcel is also mapped as part of both the coastal environment area and coastal use area under the Coastal Management SEPP. The mapped rear half of the parcel comprises a degraded edge of the larger extent of the ecological community; the actual vegetation in the rear of the parcel does not align with the characteristics of the littoral rainforest ecological community. It currently involves several exotic and non-native species and has not been maintained or enhanced causing rainforest to develop poorly. Ten native trees are to be removed four of which are cypress pine and appear to have been planted whilst the providence of the remaining natives to be removed is unknown.</p> <p>Having regards to Clause 10(4) and 11 of the SEPP, Council must be satisfied that the development:</p> <ul style="list-style-type: none"> <li>proposes sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the littoral rainforest; and</li> <li>will not significantly impact on— the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.</li> </ul> <p>The applicant is proposing to embellish the rear of the property and undertake compensatory planting at a rate of 10 to 1 for the native trees to be removed. Notwithstanding the development footprint pushes further into the littoral rainforest mapped area more than necessary through the construction of two hardstand outdoor areas or courtyards at the rear of each dwelling. It is considered these are unnecessary considering the large roof top pool and balcony areas facing the street and the views of the Pacific Ocean to the north and north west, and it is recommended the areas be removed from the plans to enhance the area available for landscaping and revegetation purposes and to provide a better buffer to protect and enhance the biophysical, hydrological and ecological integrity of the littoral rainforest to the east of the dwellings. Subject to appropriate conditions of consent, it is considered the proposal satisfies the requirements of the SEPP.</p>		

#### **4.2 Byron Local Environmental Plan 2014 (LEP 2014)**

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as Dual Occupancy;
- (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- (c) The proposed development is permissible with consent; and
- (d) Regard is had for the Zone Objectives as follows:

<b>Zone Objective</b>	<b>Consideration</b>
To provide for the housing needs of the community within a low density residential environment.	The proposed dual occupancy is considered consistent with existing and anticipated future development within the immediate locality. It provides additional housing for the community within a low density residential environment.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	No other land uses are proposed

**Clause 4.1E Minimum Lot Sizes for dual Occupancies, manor housing, multi dwelling housing, and residential flat buildings.**

The subject property has an area of 809m<sup>2</sup> and complies with the minimum lot size requirements of 800m<sup>2</sup> for a dual occupancy.

**Clause 4.3 Height of Buildings**

The proposed development partially exceeds the 9m building height limit measured from natural ground level. An extract from the plans is provided below and it can be seen that a small part of the dividing wall between the two dwellings on the pool deck exceeds the 9m control by 445mm. The application seeks a 4.94% variation to the 9m height; a written request for a clause 4.6 variation to a development standard (clause 4.3) was submitted as part of the application.

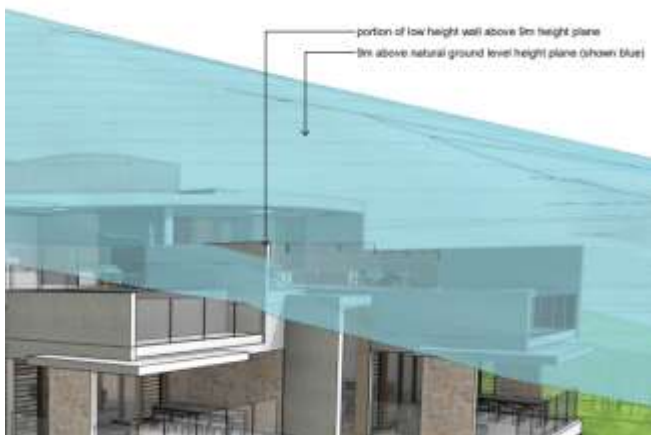


Figure 5 - Extent of building above 9m height limit

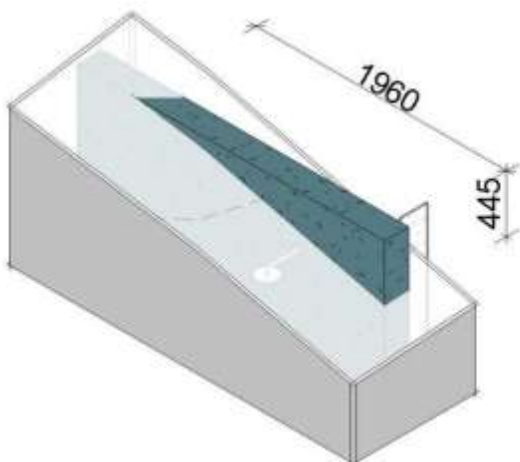


Figure 6 - Extent of building above 9m height limit

Is strict compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The written request argues that strict compliance with the development standard is unreasonable or unnecessary in this particular case for the following reasons:

- The subject site slopes upwards from the road very steeply presenting a significant design challenge for any redevelopment of the site. The proposed building has been designed to be set, as far as practical, within the existing slope of the land. At the rear of the site, two of the proposed 4 levels are set below existing ground level. This results in the vast majority of the building being set below the 9m building height control
- The portion of the building exceeding the 9m building height limitation relates to a centrally located pool barrier separating the two roof deck pools. The barrier is required in order to achieve compliance with the applicable pool safety regulations.

- The impacts of the building on the natural environment or amenity of the locality would not alter if the encroaching wall was removed from the dwellings.
- The location of the encroachment is such that it will not:
  - Encroach into views enjoyed by neighbouring properties;
  - Dominate the skyline or intrude into the scenic amenity of the locality;
  - Result in offsite overlooking or intrusion of privacy; or
  - Impact on the offsite shadows cast by the development.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The written request argues that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The slope of the site presents a significant challenge for any redevelopment of the property. The proposed building has been designed to be set, as far as practical, within the existing slope of the land. This results in the vast majority of the building being set below the 9m building height control.
- The application is accompanied by a comprehensive Visual Amenity Impact Report which confirms that the proposed building incorporates a range of design measures to ensure that the building is a suitable addition to the locality. These include articulation, modulation, material selection and landscaping which will collectively result in the building representing a positive addition to the streetscape.
- The conclusions of the Visual Amenity Impact Report or the impact of the development on the natural environment would not alter if the encroaching wall was removed from the building.

Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

The objectives of the building height standard (clause 4.3) are as follows:

- (a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,
- (b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,
- (c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

The variation to the development standard sought is considered to be consistent with the objectives of the standard for the following reasons:

- The variation is relatively minor at 4.94%.
- The portion of the building exceeding the 9m building height limitation relates to a centrally located pool barrier separating the two roof deck pools. The barrier is required in order to achieve compliance with the applicable pool safety regulations.
- The impacts of the building on the natural environment, streetscape, and visual amenity of the locality would not alter if the encroaching wall was removed from the dwellings.

Has the concurrence of the Secretary has been obtained?

The concurrence of the Secretary may be assumed (under Planning Circular 18-003) as the development does not contravene the numerical standard (building height limit) by greater than 10%.

**Consideration:** It is acknowledged that the variation is minor in terms of the small roof top wall dividing the two dwellings. However there is no reason why this building cannot be designed to ensure strict compliance with the 9 metre height limit and achieve a similar outcome in terms of the development as proposed. In particular it appears the overall height of the offending element is 2.5 metres. This wall can be reduced to 2 metres or designed on an angle to ensure compliance. Other



design solutions could also be crafted by the architects as appropriate. As such the height variation is not supported. A condition of consent is recommended by way of deferred commencement requiring the plans to be amended to bring the development into compliance with the development standard under Clause 4.3 of Byron LEP 2014.

#### Clause 4.4 Floor Space Ratio

The gross floor area of the proposed development is as follows:

Ground floor:	44.2 m <sup>2</sup>
First floor:	196.7 m <sup>2</sup>
Second floor:	167.9 m <sup>2</sup>
Third floor:	11.3 m <sup>2</sup>
Total:	426.3 m <sup>2</sup>

As the site area is 809.4sqm the proposed floor space ratio is 0.52:1 exceeding the required 0.5:1 for the site. The proposed development exceeds the 0.5:1 FSR by 21.6sqm, seeking a 4% variation to the development standard. A written request for a clause 4.6 variation to a development standard (clause 4.4) was submitted as part of the application.

#### Is strict compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The written request argues that strict compliance with the development standard is unreasonable or unnecessary in this particular case for the following reasons:

- The subject site slopes upwards from the road very steeply. This presents a significant design challenge for any redevelopment of the site. The proposed building has been designed to be set, as far as practical, within the existing slope of the land. The resultant dwellings are set over four levels.
- In order to achieve improved accessibility through the development, each dwelling is provided with a lift. As the lifts are not 'communal', they are counted as part of the GFA of the building. Were the lifts to be excluded from the building, the building would be compliant with the FSR requirement of 0.5:1.
- The lifts are located at the rear of the building within the part of the building which is largely set beneath existing ground level. Removing the lift wells would not alter the side or rear setbacks of the proposed development. Whilst the portion of the building containing the lift over run is compliant with the 9m building height control the lifts were to be removed, there would be a reduction in building height in the south eastern corner of Residence 2.

#### Are there sufficient environmental planning grounds to justify contravening the development standard?

The written request argues that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The slope of the site presents a significant challenge for any redevelopment of the property. The proposed building has been designed to be set, as far as practical, within the existing slope of the land. The proposed dwellings are set over four levels. In order to achieve improved accessibility through the development, each dwelling is provided with a lift. As the lifts are not 'communal' they are counted as part of the GFA of the building. Were the lifts to be excluded from the building, the building would be compliant with the FSR requirement of 0.5:1.
- The lifts are located at the rear of the building within the part of the building which is largely set beneath existing ground level.
- The application is accompanied by a comprehensive Visual Amenity Impact Report which confirms that the proposed building incorporates a range of design measures to ensure that the building is a suitable addition to the locality. These include articulation, modulation, material selection and landscaping which will collectively result in the building representing a positive addition to the streetscape. The conclusions of the Visual Amenity Impact Report,

or the impact of the development on the natural environment, would not alter if the lifts were removed from the building.

Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

The objectives of the building height standard (clause 4.4) are as follows:

- (a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,
- (b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,
- (c) to provide floor space in the business and industrial zones adequate for the foreseeable future,
- (d) to regulate density of development and generation of vehicular and pedestrian traffic,
- (e) to set out maximum floor space ratios for dual occupancy in certain areas.

The variation to the development standard sought is considered to be consistent with the objectives of the standard for the following reasons:

- The variation is relatively minor at 4%.
- In order to achieve improved accessibility through the development, each dwelling is provided with a lift. As the lifts are not 'communal', they are counted as part of the GFA of the building. Were the lifts to be excluded from the building, the building would be compliant with the FSR requirement of 0.5:1.
- The lifts are located at the rear of the building within the part of the building which is largely set beneath existing ground level. The impacts of the building on the natural environment or amenity of the locality would not alter if the lifts were removed from the dwellings.

Has the concurrence of the Secretary has been obtained?

The concurrence of the Secretary may be assumed (under Planning Circular 18-003) as the development does not contravene the numerical standard (floor space ratio) by greater than 10%.

**Consideration:** Similar to the height variation, there is no reason why this building cannot be designed to ensure strict compliance with the floor space ratio requirements and still achieve a similar outcome in terms of the development as proposed. In this instance the development will require the removal of 21.6 m<sup>2</sup> of floor area to achieve compliance or 10.8 m<sup>2</sup> from each dwelling. As an example where this floor area could be found, the building comprises a total of 12 bathrooms, ensuites and powder rooms for the occupants of the development across multiple floors. That is six in each dwelling. A range of other design solutions can also be employed by the architects to reduce this floor area. As such the floor space ratio variation is not supported in this instance. A condition of consent is recommended by way of deferred commencement requiring the plans to be amended to bring the development into compliance with the Clause 4.4 of Byron LEP 2014.

#### **Clause 6.1 Acid Sulfate Soils**

The subject site is not mapped as containing ASS. This is consistent with the elevated nature of the property.

#### **Clause 6.2 Earthworks**

The proposed development is cut into the property and will involve earthworks to a maximum depth of 9.5m. Applicants submitted a Preliminary Geo-Tech Investigation Report which indicates the site contains underlying rock and includes recommendations for the design of the footing and associated earthworks.

Conditions have been recommended by Councils Development Engineer for a Stability Assessment Report and Geotechnical Report specific to the development for the construction

certificate for approval. Conditions of consent are recommended in relation to a dilapidation reports for the adjoining properties and Council infrastructure. Conditions of consent are also recommended in relation to disturbing any heritage items or relics that maybe uncovered.

**5 Clause 6.6 Essential Services**

The proposal is a serviced allotment with water, sewer, stormwater, power and telecommunications. Access will be provided from Brownell Drive to the car parking garage areas.

The proposal raises no other issues under the LEP

**4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

Not applicable

**4.4 Byron Shire Development Control Plan 2014 (DCP 2014)**

**B2: Preservation of Trees and Other Vegetation**

The development proposes the removal of 10 trees some of which are likely to have been planted. The applicant has proposed to plant in excess of 100 plants in the rear yard of the property to compensate for the removal of these trees and to embellish or enhance the adjacent littoral rainforest. Conditions to apply

**B3: Services**

The subject property has access to all necessary services. Conditions of consent recommended in relation to driveways, connection to water, sewer and stormwater management and payment of contributions for water and sewer levies.

**B4: Traffic Planning, Vehicle Parking, Circulation and Access**

This chapter requires 2 parking spaces be provided for each dwelling with each dwelling involving at least 1 covered car space. The proposed development is compliant as 2 spaces have been provided for each dwelling.

**B14: Excavation and Fill**

This chapter requires general excavation to be limited to a depth of 1m. It further states the maximum excavation restriction is not applicable where the excavation is incorporated into the dwelling structure to satisfy minimum car parking requirements up to a maximum height of 2 metres. Due to the topography of the site, the proposed development will involve significant earthworks with a maximum depth of 9.5m.

The subject site slopes upwards from the road very steeply presenting a significant design challenge for any redevelopment of the site. The proposed building has been designed to be set, as far as practical, within the existing slope of the land to reduce the bulk and scale of the building, particularly when viewed from adjoining properties. The approach was also required in order to achieve compliant driveway grades to the building. The areas of significant excavation will be absorbed within the building form and will not be visible from the public street or adjoining properties.

The proposed development is considered compliant with the objectives and performance criteria of this chapter as the proposed earthworks:

- maintain the natural features of the locality;
- allow the development to reduce the perceived bulk and scale, as a large proportion of the building will in-effect be hidden into the side of the hill;

- create a landscape and streetscape that is not unattractive to the immediate locality, and is not out of character with surrounding development due to the topography of the Wategos neighbourhood.
- Stormwater flowing through the site to be suitably collected and redirected to the street drainage system by way of catch drains
- Geotechnical – although the design and construction of the development will need to be carefully managed, the slope stability as noted in the applicants geotechnical report with a Class S should be generally stable to enable the development to proceed without significant challenges.

Site Class	Foundation	Characteristic Surface Movement
A	Most sand and rock sites with little or no ground movement from moisture changes	
S	Slightly reactive clay sites, which may experience only slight ground movement from moisture changes	0 - 20mm
M	Moderately reactive clay or silt sites, which may experience moderate ground movement from moisture changes	20 - 40mm
H1	Highly reactive clay sites, which may experience high ground movement from moisture changes	40 - 60mm
H2	Highly reactive clay sites, which may experience very high ground movement from moisture changes	60 - 75mm
E	Extremely reactive sites, which may experience extreme ground movement from moisture changes	> 75mm
P	Sites which include filled sites (refer to AS 2870 2.4.6), soft soils, such as soft clay or silt or loose sands; landslip; mine subsidence; collapsing soils; soils subject to erosion; reactive sites subject to abnormal moisture conditions or sites which cannot be classified otherwise.	

Conditions have been recommended by Councils Development Engineer for a Stability Assessment Report and Geotechnical Report to be provided prior to the issue of a Construction Certificate. A variation to the DCP provisions is recommended in this instance.

### **C3: Visually Prominent Sites, Visually Prominent Development and View Sharing**

#### 1. An assessment of the value of the view that may be affected:

The view from the dwelling at 13 Brownell Drive comprises of mainly water views framed by vegetation and land views these views are considered to be highly valuable.

#### 2. Consider from what part of the property the views are obtained:

The views are presently obtained from the ground floor deck/terrace and first floor deck at a standing position, mostly across the front however some views are obtained across the side boundary between the two properties, over the existing dwelling at 11 Brownell Drive. The views are also obtained from some of the living areas of the dwelling. The *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* case states views across side boundaries are more difficult to protect than views from front and rear boundaries and the expectation to retain side views is often unrealistic.

#### 3. Assessment of the extent of the impact:

The views will be impacted on at the north, figures 7 & 8 demonstrate the proposed dual occupancy, will partially block the existing outlook over the vegetation and landform, however will not obstruct the existing water views or distant landscape views. The impact on the views of the adjoining property to the south is of a minor nature and does not impact on the 'highly valued'

water views, the view loss is over the side boundary which is difficult and unrealistic to maintain. The existing dwelling and decks at 13 Brownell Drive are orientated to the north-west; most of this view will be protected. The proposed view loss is considered minor.

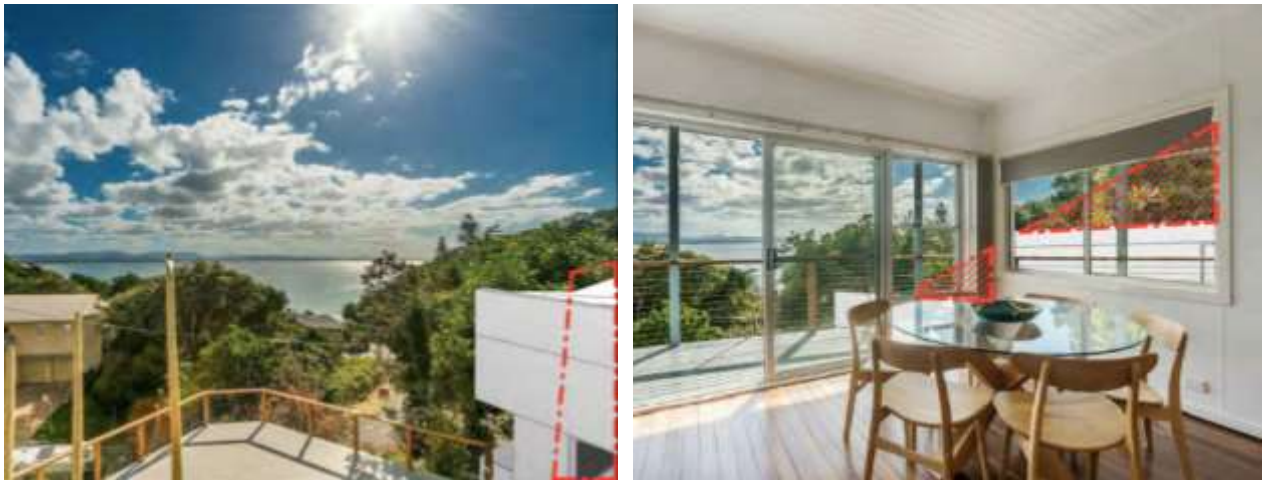


Figure 7 & 8 - Proposed encroachment into the existing views at 13 Brownell Drive

#### 4. Assessment of the reasonableness of the proposal that is causing the impact:

As the subject site slopes upwards from the road, the proposed development encroaches into the building height plane on the southern boundary. The site is constrained due to its topography and the littoral rainforest at the rear; it is unrealistic for a development on such site to comply with the building height plane. As the adjoining property will fully maintain their existing 'highly valued' water views and any view loss is over the side boundary, the view impact and view sharing resulting from the proposal is considered reasonable.

The building height plane encroachments and impact on views resulting from the proposed development are demonstrated to meet the relevant Objectives and Performance Criteria of the above sections of the Byron DCP 2014. The proposed development is considered reasonable and acceptable having regard to the existing development on the site and the surrounding development within the low density urban residential area.

### **D1: Residential Accommodation in Urban, Village & Special Purpose Zones**

#### D1.2.1 Building Height Plane:

The proposed development encroaches into the building height plane on both side boundaries on the north and south elevations. Due to the orientation of the site and the design of the proposed development, the northern encroachments will not adversely impact on the existing solar access, views, or privacy currently enjoyed by the adjoining property to the north at 9 Brownell Drive.

Figure 9 below demonstrates the encroachment into the building height plane on the southern boundary. It can be seen that the parts of the development which encroach into the BHP are the corners of the flat roof for level 2 and 3 and the wall to be utilised as a pool fence. Due to this, there are no adverse impacts on the privacy currently enjoyed by the adjoining property to the south, and as discussed above the view impacts are also considered to be of a minor nature. The adjoining property will fully maintain their existing 'highly valued' water views and any view loss is over the side boundary which is difficult/unrealistic to protect. The view impact and view sharing resulting from the proposal is considered reasonable. Due to the orientation of the site, a complying development would still overshadow 13 Brownell Drive during the winter months. The shadow diagrams provided show the BHP encroachments do not cause further overshadowing onto the adjoining property at 9am (Figure 10 & 11). The deck above the existing garage will mostly be impacted at this time; however it will obtain full solar access by midday. By midday and through to 3pm (during winter) the overshadowing is quite minor only extending a few metres into the property at 13 Brownell. It is considered most, if not all of the windows of the dwelling will



maintain solar access during this time, the impacts will mostly be in relation to any private open space situated on the north of the site. As previously stated, the orientation of the site makes it unrealistic for the adjoining property to the south to maintain full solar access during winter as a compliant development causes similar overshadowing to the property.

Due to the topography of the site it is impractical for development to comply fully with the BHP. As the majority of sites within the Wategos area are constrained by a steep terrain, most development within the area encroaches into the building height plane on side boundaries. The property to the south at 13 Brownell Drive also involves a significant encroachment into the building height plane on the southern boundary, as do numerous properties along Brownell Drive. As there is a precedent set within immediate locality it is considered unreasonable for Council to require full compliance with this BHP control. The proposed development is considered otherwise to meet the objectives and performance criteria of this control. The proposed encroachments are considered reasonable and acceptable in the circumstances.



Figure 9 - Building height plane encroachments on southern boundary (non compliant areas are unshaded)

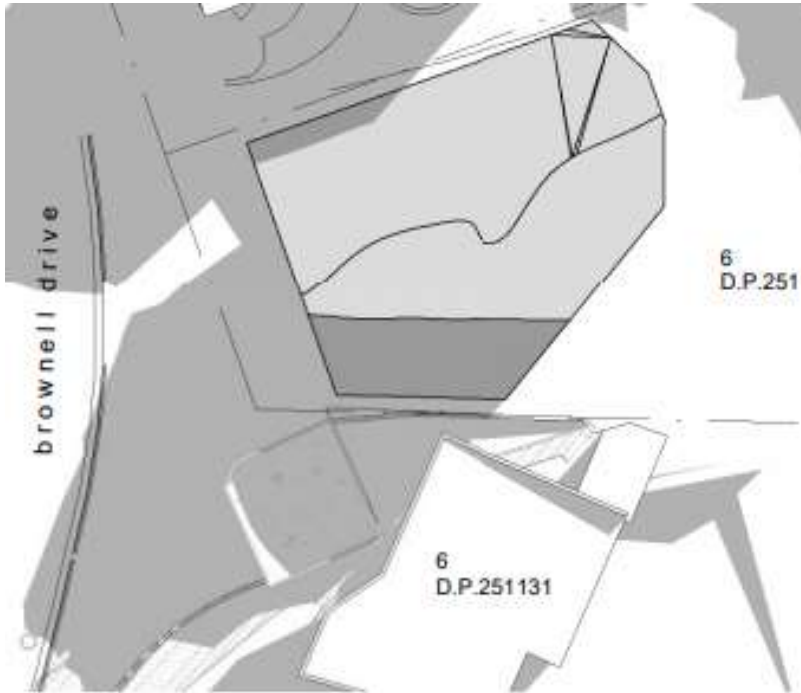


Figure 10 - Compliant development 9am winter solstice

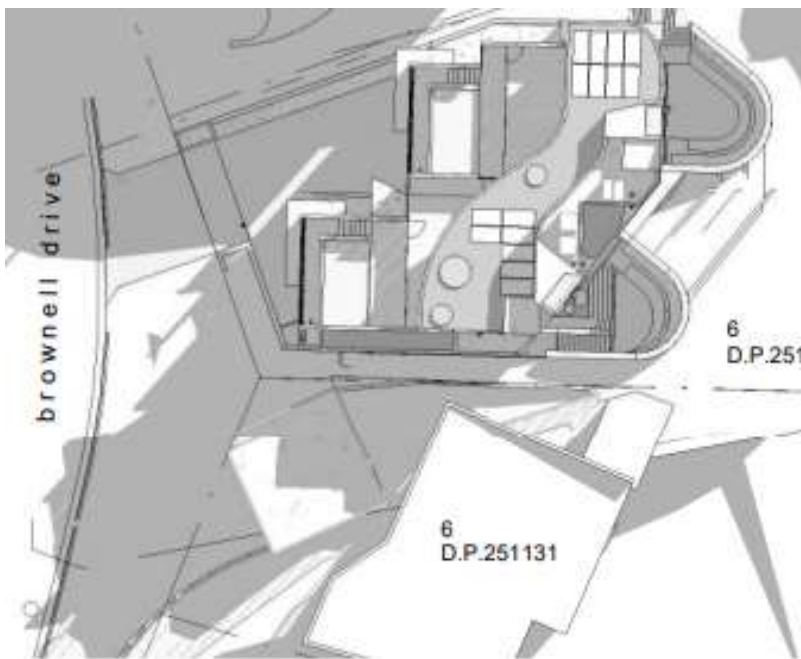


Figure 11 - Proposed development 9am winter solstice

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D1.2.2 Setbacks from Boundaries:

The proposed development is compliant with the required side and rear setbacks; however the development proposes a staggered front setback ranging from 2.5m to 13.5m, with a small corner of the development protruding into the 4.5m front setback as specified in the DCP.

10

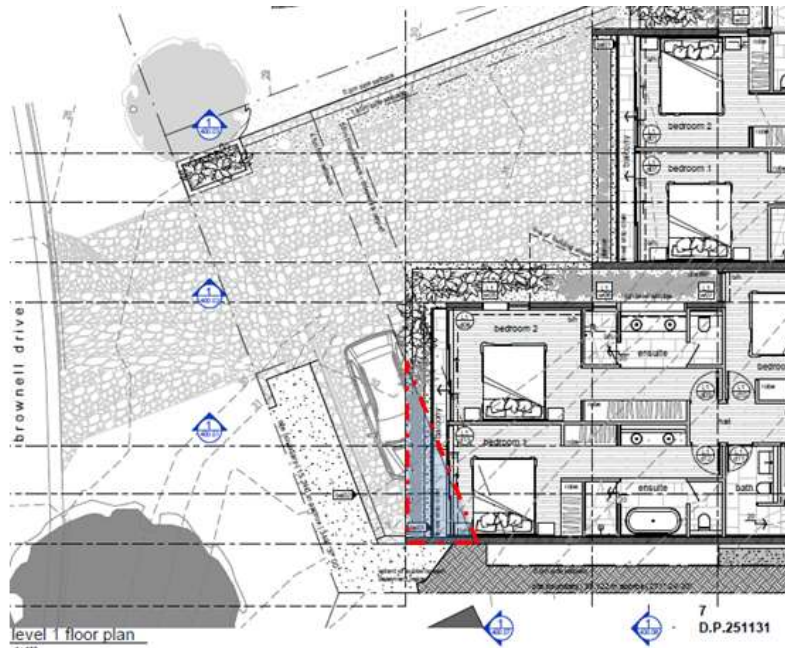


Figure 12 – Triangular area of encroachment into the front setback

The existing dwelling on the site also involves a staggered front setback ranging from 1.5m to 4m. The property to the south of the site (13 Brownell Drive) has a garage with roof deck constructed to the front property boundary. Due to the topography of Wategos there are various other examples where development encroaches into the front setback.

Having regard to the above, and the staggered setback arrangement as proposed, a variation to the front setback is supported in this instance.

#### D1.2.4 Character & Visual Impact:

The proposed development is considered consistent with surrounding development within the Wategos area having regard to character, visual amenity, bulk, scale, height, architectural features, density, setbacks, and materials and colours. The proposed building provides an articulated, interesting façade which will sit within the topography of the site. Suitable landscaping is proposed to assist in blending the development with the streetscape. The proposal will involve a neutral palate of natural finishes, coarse render and glass, with timber and stone highlights. Having regard to recent development within the immediate locality, the proposed development is not out of character and will positively contribute to the built form of the area and the streetscape.

#### D1.5.4 Private Open Space:

Each dwelling must provide an area of private open space at ground level not located in the front setback, having a minimum area of 30m<sup>2</sup> and a minimum length and width each of 4m, excluding any area used for vehicle circulation or parking. Both dwellings have suitable private open space in the form of outdoor balconies on level 2, and outdoor roof terraces on level 3. The rear of the property is to be utilised as a littoral rainforest/regeneration area, but in effect also is considered as open space yard area and is approximately 260 m<sup>2</sup> in area. It is considered the proposed private open space areas satisfy the requirements of this control.

The proposal raises no other issues under the DCP.



**4.5 Any Planning Agreement or Draft Planning Agreement?**

	Yes	No
Is there any applicable planning agreement or draft planning agreement?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: Not applicable		

**4.6 Environmental Planning & Assessment Regulation 2000 Considerations**

5

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	Yes	Yes	Conditions recommended for demolition
93	No	Not applicable	Not applicable
94	No	Not applicable	Not applicable
94A	No	Not applicable	Not applicable

**4.7 Any Coastal Zone Management Plan?**

	Satisfactory	Unsatisfactory	Not applicable
Is there any applicable coastal zone management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: Not applicable			

10

**4.8 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

Impact on:	Likely significant impact/s?
<b>Natural environment</b>	Yes. The proposal will involve the removal of 10 trees and partially encroach into mapped littoral rainforest however compensatory plantings are proposed to revegetate and enhance the site, and conditions of consent recommended to remove hard stand courtyards from the rear of both dwellings.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality. The development is generally consistent with recent development within the Wategos area in terms of built form, character, bulk and scale, setbacks, and height.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.
<b>Construction Impact</b>	The development will generate several impacts during construction e.g. traffic, noise, dust, etc. Conditions of consent are recommended to control hours of work, builders waste, construction noise, traffic control, installation of sedimentation and erosion control measures etc. to ameliorate such impacts. Dilapidation reports are required prior to works commencing and at the end of construction to ensure no damage to adjoining properties and Council infrastructure.

Are there any Council Policies that are applicable to the proposed development? No

15

**4.9 The suitability of the site for the development**

The site is a serviced, unconstrained property and is suitable for the proposed development.

**5 4.10 Submissions made in accordance with this Act or the regulations**

The development application was publicly exhibited. There was **1** submission made in objection to the development application, the following concerns were raised:

Issues/Concerns	Comments
Removal of Littoral Rainforest:	Although the development encroaches into the mapped littoral rainforest, it proposes to remove only 10 trees. As the mapped littoral rainforest was degraded and not maintained or enhanced a new development and landscape plan will likely provide a greater outcome for the littoral rainforest. The landscape plan has proposed compensatory planting and conditions have been recommended by Councils Ecologist.
Contravenes Height:	Conditions recommended to reduce the overall height of the development
Excessive Bulk/Floor Space Ratio:	Conditions of consent recommended to ensure compliance with the FSR requirement of 0.5:1.
Breaches Building Height Plane:	As stated above, the BHP encroachments are considered minor and a variation is supported in this instance.
Inadequate Setbacks and Façade Facilitation:	As discussed above under the DCP discussions, having regard to the design of the development and the various precedents to setback within the Wategoes area a variation to the front setback is supported in this instance.
Further Assessment of Height, Bulk, Scale, and Over-development: The assessment of height and bulk should be carried out in accordance with the planning principal established by the Land and Environment Court in <i>Veloshin v Randwick Council</i> [2007] NSWLEC 428.	<ol style="list-style-type: none"> <li><u>Are the impacts consistent with impacts that may be reasonably expected under the controls?</u> Yes. Impacts associated from overshadowing, visual amenity, privacy, or views on the adjoining property have been reasonably mitigated and are not unexpected in this area of Byron Bay, with residential development characterised by dwellings which push the standard planning controls. A variation to the front setback is supported as discussed above, however deferred conditions of consent recommended in relation to compliance with the height and floor space ratio controls. The impacts of the proposed development are consistent with impacts that may be reasonably expected under these controls as discussed throughout this report.</li> <li><u>How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?</u> Conditions recommended to ensure compliance with the height and floor space ratio controls as per the relevant planning controls under Byron LEP 2014.  The encroachments exceeding a compliant development (BHP &amp; front setbacks) are consistent with development within the immediate locality as discussed in the body of the report. The proposed bulk of the development is not deemed excessive.</li> <li><u>Does the area have a predominant existing character and are the planning controls likely to maintain it? Does the</u></li> </ol>

	proposal fit into the existing character of the area? Development within Wategos involves characteristics such as extensive earthworks, encroachments into the front setback, and the BHP encroachments. It is an area of high economic status and is expected to be continuously being redeveloped creating large, modern, and expensive dwellings. Having regard to recent development within the immediate locality, the proposed dual occupancy is not out of character and will positively contribute to the built form of the area and the streetscape.
Loss of Views:	As discussed above a view assessment has been carried out and it is considered the development will not have a detrimental impact on neighbours views.
Earthworks	Noted – variation supported in this instance as discussed above.

#### **4.11 Public interest**

- 5 It is considered the proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

### **5. DEVELOPER CONTRIBUTIONS**

#### **5.1 Water & Sewer Levies**

- 10 Section 64 levies will be payable.

#### **5.2 Section 7.11 Contributions**

Section 7.11 Contributions will be payable.

### **6. CONCLUSION**

- 15 The DA proposes Demolition of Existing Dwelling House and Construction of a Dual Occupancy (Attached). Variations are sought to DCP provisions relating to Building height plane, earthworks and the front setback which are supported in this instance. However the proposed variations to  
20 development standards in relation to height and floor space ratio under Byron LEP 2014 are not supported, nor are the rear courtyard areas having regard to the provisions under the SEPP Coastal Management 2018 for littoral rainforest. It is considered the plans can be amended easily without resulting in major changes to the overall development to ensure compliance with the LEP  
25 provisions, and to provide a better outcome in terms of the littoral rainforest to the rear of the development. The application is recommended for approval subject to **deferred commencement consent** with amended plans required to be submitted to Council to activate the consent.

### **7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Provide Disclosure Statement register details here: Not applicable