

Agenda Ordinary (Planning) Meeting

Thursday, 13 October 2022



BYRON
SHIRE
COUNCIL

Agenda Ordinary (Planning) Meeting

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.

A handwritten signature in black ink, appearing to read "Mark Arnold".

Mark Arnold
General Manager

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)

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.

OATH AND AFFIRMATION FOR COUNCILLORS

Councillors are reminded of the oath of office or affirmation of office made at or before their first meeting of the council in accordance with Clause 233A of the Local Government Act 1993. This includes undertaking the duties of the office of councillor in the best interests of the people of Byron Shire and the Byron Shire Council and faithfully and impartially carrying out the functions, powers, authorities and discretions vested under the Act or any other Act to the best of one's ability and judgment.

BYRON SHIRE COUNCIL

BUSINESS OF ORDINARY (PLANNING) MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. ATTENDANCE BY AUDIO-VISUAL LINK / 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 8 September 2022
7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS
8. MAYORAL MINUTE
9. NOTICES OF MOTION
 - 9.1 Council report to NRPP on Linnaeus DA 10.2021.170.1 8
10. PETITIONS
11. SUBMISSIONS AND GRANTS
12. DELEGATES' REPORTS
13. STAFF REPORTS
 - Sustainable Environment and Economy**
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 - 13.4 PLANNING - 10.2021.582.1 Demolition of Existing Dwelling and Construction of Multi Dwelling Housing comprising of Six (6) Dwellings at 8 Kumbellin Glen Ocean Shores..... 57
 - 13.5 PLANNING - Planning Proposal - 26.2021.6.1 - 103 Yagers Lane, Skinners Shoot 79
 - 13.6 PLANNING - 10.2022.389.1 Temporary use of land in the Byron Rail Corridor to undertake a pop-up Information and Education Facility and associated temporary structures from Wednesday 26 October 2022 to Monday 31 October 2022 in association with the annual Byron Bay Film Festival and to hold similar events in 2023 and 2024. 90

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- 13.7 PLANNING - 26.2022.8.1 - Planning Proposal for an amendment to Byron Local Environmental Plan 2014 to permit events on certain Council owned land at 249 Ewingsdale Road, Ewingsdale (Cavanbah Centre) 105

14. QUESTIONS WITH NOTICE

Nil

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 person/organisation prior to the next Ordinary Meeting and placed on Councils website 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.

NOTICES OF MOTION

Notice of Motion No. 9.1 Council report to NRPP on Linnaeus DA 10.2021.170.1

5 **File No:** I2022/1322

I move:

- 10 1. That Councillors receive, once it is lodged with the Northern Regional Planning Panel, a copy of the Assessment Report prepared by Council staff for DA 10.2021.170.1 for 27 cabins, 7 other buildings, alterations & additions, earthworks, vegetation removal, and change of use of 14 units from educational to tourism on the “Linnaeus Estate” at Broken Head.
- 15 2. That Council seeks advice from the NSW Department of Planning and Environment a method and timeframe by which a Council could make a timely submission to a Planning Panel in line with the procedure described in the Department’s own Sydney and Regional Planning Panels operational procedures (clause 11.12).

20

Signed: Cr Duncan Dey

Councillor’s supporting information:

25 As described in the response to Question with Notice 14.1 in the Council Agenda for 12 May 2022, PPSNTH-83/DA10.2021.170.1 Mixed Use Development comprising *Twenty-Seven (27) New Eco Tourist Facility Cabins, Seven (7) Ancillary Buildings including Wellness Facility, Refuges, Depot, Addition of Deck to Existing Centre and Associated Earthworks and Vegetation Removal, and Change of Use of Fourteen (14) Private Education Accommodation Units to Eco Tourist Facility Units* is under assessment or has

30 been assessed.

Such an Assessment is prepared by Council staff for consideration of the Northern Regional Planning Panel so that NRPP can determine the DA. Council determines DA’s normally but the state has yielded that role up to other agencies under various circumstances. In this case, NRPP determines the DA based on the Byron Shire Council

35 staff report and on submissions received.

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.1

As stated in the response to my Question of 12 May, *the assessment report is not to be endorsed or presented to the elected council before being sent to the Panel secretariat.* This doesn't exclude sharing the assessment report with Council once it has been sent to the Panel secretariat.

- 5 Since I lodged a previous NoM on this matter, the determination date has blown out to October.

Part 1 of the Motion seeks release of the Assessment Report once it is lodged.

- 10 Included in the *Sydney and Regional Planning Panels operational procedures* is an arrangement by which Councils can make their own submission to a Planning Panel, independent of the staff assessment that Council staff must send to the Panel:

11.12 Council representation to the Planning Panel

An elected council may make a submission on a DA within their LGA that is to be determined by a Panel up to seven days before the Panel meeting.

- 15 After the assessment report is sent to the secretariat, it may be given to the elected council to assist in its decision as to whether it will be making a submission to the Panel. The elected council's submission should not be prepared by persons involved in the assessment of the application but could be prepared by another council officer, or a consultant.

- 20 A council submission should not be specifically referenced in the assessment report or recommendations prepared by the council staff. If council makes a submission, a staff representative or individual Councillors may register to address the Panel at the meeting to express the views of council.

Councillors who are also Panel members have an independent role because they have been nominated by their council as its nominee to the Panel.

- 25 Part 2 of the motion is to seek guidance from the state on how the procedure described above can take place, considering the long lead-in times of Council meetings and short (one week) timeframe by which staff lodge their assessment report with the Planning Panel.

- 30 The DA in question is controversial. There were 2623 submissions made when it was on exhibition, of which 42 (1.6%) were in support. One of those against was a substantial submission by Tim Robertson SC, as referred to in the *Response to Submissions Report* on this DA. That submission indicates that there are legal planning issues that must be resolved prior to the DA being assessed or determined.

- 35 On-site sewage management (OSM) issues have also been highlighted. When development was approved in 2004 by the Land & Environment Court for the current non-tourist educational usage, that consent included deactivating the existing disposal fields and creating new ones, plus monitoring of their performance. None of this appeared to have happened by June 2022.

Staff comments

by Shannon Burt, Director, Sustainable Environment and Economy:

Staff responses below:

- 5 **1. That Councillors receive, once it is lodged with the Northern Regional Planning Panel, a copy of the Assessment Report prepared by Council staff for DA 10.2021.170.1 for 27 cabins, 7 other buildings, alterations & additions, earthworks, vegetation removal, and change of use of 14 units from educational to tourism on the “Linnaeus Estate” at Broken Head.**

10 A copy of the assessment report will be uploaded to the Councillor Hub as per clause 11.12 of the Planning Panel Operational Procedures. The Planning Panel will also publish relevant documents on the development application link on their web page. Any submitters to the development application will be separately notified by the Planning Panel secretariat at that time.

15 [Minister Approved July 2022 Sydney District and Regional Planning Panels Operational Procedures \(SPP\).docx \(nsw.gov.au\)](https://www.nsw.gov.au/minister-approved-july-2022-sydney-district-and-regional-planning-panels-operational-procedures-spp.docx)

- 20 **2. That Council seeks advice from the NSW Department of Planning and Environment a method and timeframe by which a Council could make a timely submission to a Planning Panel in line with the procedure described in the Department’s own Sydney and Regional Planning Panels operational procedures (clause 11.12).**

Staff can write to and seek advice from the Planning Panel Secretariat in response to part 2 of the notice of motion.

Financial/Resource/Legal Implications:

25 Council and staff need to observe the Planning Panel Operational Procedures and Code of Conduct.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.3	Provide administrative support to Councillors to carry out their civic duties

Report No. 13.1 PLANNING - Amendments to Byron Development Control Plan 2014

5 **Directorate:** Sustainable Environment and Economy
Report Author: Sam Tarrant, Planner
File No: I2022/854

Summary:

10 This report presents proposed amendments to various chapters within Byron Development Control Plan (DCP) 2014.

15 Planning staff maintain a list of potential changes to be considered for inclusion into the DCP based on issues arising from development application assessments, interpretation issues with current controls, inconsistencies, updated local and state policies and Council resolutions.

The changes presented range from updating definitions for clarification purposes to including new controls for residential dwellings.

The proposed amendments are presented within this report.

It is recommended that the amended draft DCP chapters are placed on public exhibition.

20

NOTE TO COUNCILLORS:














25 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.

RECOMMENDATION:

That Council:

- 5 1. **Proceeds with the public exhibition of the Byron DCP 2014 amendments proposed in this report, as detailed in Attachment 1 (E2022/91228).**
2. **Receives a further report for consideration on the amendments that receive submissions following the public exhibition period.**
- 10 3. **Should there be no submissions received to certain amendments, that those amendments to the DCP be adopted as of the close of the statutory public exhibition period date and notified accordingly.**

Attachments:

- 15 1 DCP Housekeeping items list and reasoning 2022, E2022/91228 
- 2 Draft Part A Preliminary - Amendments 2022, E2022/87899 
- 3 Draft Chapter B3 Services - Amendments 2022, E2022/87901 
- 4 Draft Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access - Amendments 2022, E2022/87905 
- 20 5 Draft Chapter B8 Waste Minimisation and Management - Ammendments 2022, E2022/88000 
- 6 Draft Chapter B10 Signage - Amendments 2022, E2022/87907 
- 7 Draft Chapter C2 Areas Affected by Flood - amendments 2022, E2022/87926 
- 8 Draft Chapter D1 Residential Accommodation - Amendments 2022, E2022/87928 
- 25 9 Draft Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones - Amendments 2022, E2022/87930 
- 10 Draft Chapter D8 Public Art - Amendments 2022, E2022/87931 
- 11 Draft Chapter E2 Bangalow - Amendments 2022, E2022/88008 
- 12 Draft Chapter E4 Brunswick Heads - amendments 2022, E2022/87932 
- 30 13 Draft Chapter E5 Certain locations in Byron Bay Wategos - Amendments 2022, E2022/91198 

Report

5 The DCP is periodically reviewed to ensure that planning controls are current and correct. Staff maintain a register of potential changes to investigate for inclusion and deletion from Byron DCP. The changes are collated and presented as various amendments to Byron DCP 2014. This allows multiple amendments to be considered and exhibited collectively.

This report presents 25 items to amend the DCP. The purpose of the amendments is to assist Council officers when assessing development applications, provide consistency and clarity to applicants, better reflect the planning policies of Council and achieve desirable planning outcomes.

10 The amendments to the DCP apply to various chapters and include updates to legislation and policy, response to trends in applications, Council resolutions, clarification and other issues that need addressing.

A list of these items, including the description and the rationale for the proposed amendment is contained in Attachment 1 (E2022/91228).

15 The amendments proposed to each chapter are summarised below:

Part A: Preliminary

Insert new definitions, remove notification requirements that are now contained with Byron Community Participation Plan and include details on the information required to be submitted for re-sited buildings.

20 **B3: Services**

Update to reflect latest Crown Land road policy.

B4: Traffic Planning, Vehicle Parking, Circulation and Access

Insert Road Access and Safety Principles, clarify Austroads standards and include parking requirement for caretakers dwellings in industrial zones

25 **B8: Waste Minimisation and Management**

Include requirements for on-site waste collection within residential development with 6 or more dwellings where there is inadequate space for kerbside collection and on major roads.

B10: Signage

30 Various changes based on a review of Council's signage policy and resolution **20-095**.

C2: Areas Affected by Flood

Update the flood matrix FL1 to read “All floor levels to be greater than or equal to the 5% AEP flood level” as recommended in the North Byron Floodplain Risk Management Plan.

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

- 5
- 10
- Changes to controls applying to dwellings including Building Height Plane, Solar Access and Privacy based on a review of the application of the current controls and DAs. This separates existing controls to allow for clearer interpretation and application. Also includes open space requirements for dwellings, density provisions for multi-dwelling housing in R2 Low Density zone and requirement for multi-storey dwellings to have internal connecting staircases. Also provides additional controls for ancillary dwellings in industrial zones to clarify these are only for the purpose of on-site caretakers and are limited to one per Torrens Title lot.

D2: Residential Accommodation and Ancillary Development in Rural Zones

- 15
- Remove reference to ‘Byron Rural Settlement Strategy’ (now superseded) and introduce a 10m rear and side setback requirement for dual occupancies and secondary dwellings in the rural zones.

D8: Public Art

- 20
- Moving the chapter from *Part D: Controls applying to specific land uses* to *Part B: Controls applying generally to development applications*, lifting the dollar value trigger amount, updating objectives and changing reference to the Arts and Creative Industry Advisory Committee.

E2: Bangalow

- 25
- Reinstate landscaped buffer controls for an area within Clover Hill, Bangalow.

E4: Brunswick Heads

Introduce prescriptive measures to clarify basement car parking is not supported in Brunswick Heads, limit the built form to two storeys within the 9 metre height limit, prohibit roof top decks to maintain residential privacy and provide front landscaping requirements.

E5: Certain locations in Byron Bay and Ewingsdale

30

Include additional controls specific to Wategos Beach residential area regarding building envelope, excavation, and stormwater management.

A marked up, draft version of each amended DCP chapter is attached to this report and will be available as part of the public exhibition.

Staff will continue to monitor and review Byron DCP on an ongoing basis. Other amendments to Byron DCP are planned or underway, including changes to B1 Biodiversity to support the new wildlife corridor mapping, review of rural tourist controls, and a review of chapter C2 Areas affected by flood. These will be completed as separate stand-alone amendments.

5

Next steps

The draft DCP amendments will be exhibited for a minimum of 28 days. Any submissions received will be presented to Council along with any recommended changes to the exhibited chapters. There is a short window to have the submissions reported to the December Council meeting and have the amendments adopted before the end of the year.

10

The amended Byron DCP chapters will come into effect once adopted and published on Council's website.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.2	Review and update LEP and DCP to reflect strategic land use priorities and/or legislative reforms

15

Recent Resolutions

- [20-741](#) – Item 9: Insert RASP into DCP
- [20-095](#) – Item 12: Review of signage policy
- [21-337](#) – Item 21: Include setback requirement for dual occupancies and secondary dwellings in rural zones

20

Legal/Statutory/Policy Considerations

As discussed in the report.

Financial Considerations

None relevant to this report

Consultation and Engagement

5 The proposed amendments to Byron DCP 2014, including the marked-up chapters will be exhibited for a minimum of 28 days in accordance with Byron Community Participation Plan.

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Report No. 13.2 PLANNING - S4.55(2) 10.2018.534.2 – Retrospective modification to change the approved height of an approved dual occupancy and minor internal changes.

5 **Directorate:** Sustainable Environment and Economy
Report Author: Ben Grant, Planner
File No: I2022/743

Proposal:

Modification No:	10.2018.534.2			
Proposed modification:	S4.55 to Modify Height of Dwelling Number 2 and Internal Changes			
Original Development:	Dual Occupancy (Detached) Including a Swimming Pool for Each Dwelling			
Type of modification sought:				
Property description:	LOT: 7 DP: 248668			
	44 Brownell Drive BYRON BAY			
Parcel No/s:	2330			
Applicant:	Ardill Payne & Partners			
Owner:	Ms E L Cotton			
Zoning:	R2 Low Density Residential			

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Date received:	14 April 2022
Original DA determination date:	6 March 2020
Integrated Development:	No
Public notification or exhibition:	<ul style="list-style-type: none">– Level 1 advertising under the Byron Shire Council Community Participation Plan.– Exhibition period: 26 April 2022 to 9 May 2022.– Submissions received: Six (6) Objections.
Planning Review Committee:	Not applicable
Delegation to determination:	Council
Issues:	<ul style="list-style-type: none">• Development not in accordance with consent.• Breach of 9m maximum height development standard by 9.4%. Proposal inconsistent with the objectives of LEP 2014 Clause 4.3 height of buildings.• Modified design inconsistent with existing and desired future character for the Wategos area as outlined in DCP 2014, Parts D1.2.4, D1.5.2 and E5.8.• Contrary to public interest.

Summary:

This application is a Section 4.55(2) modification to amend the design of a dual occupancy (detached), comprising two multi-storey dwellings currently under construction at 44 Brownell Drive, Byron Bay.

- 5 Specifically, the design of Dwelling Two has been modified during construction by adding a toilet and shower plus modified sink location to the top floor plant room. The overall building height has also been increased to 9.879m above existing ground level which breaches the 9m maximum building height development standard by 9.4%.

- 10 It is understood that the Principal Certifying Authority has issued a Written Directions Notice under s. 6.31 of the *Environmental Planning and Assessment Act 1979* requesting the principal contractor to cease work on the non-compliant parts of the building and bring

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.2

the existing works into alignment with the approved plans. This application has been lodged to retrospectively modify the plans and regularise the existing building work.

The application was advertised and notified for a period of fourteen days between 26 April 2022 and 9 May 2022 in accordance with the Byron Shire Community Participation Plan.

5 Six submissions were received during the notification period objecting to the application.

For reasons discussed further in the body of this report, the modified proposal is considered to be excessive in height and scale and is contrary to the aims and objectives of LEP 2014 Clause 4.3 height of buildings. The modified proposal is taller and bulkier than the original design and is inconsistent with the desired future character and design principles for Wategos described in Chapter E5 of Byron DCP 2014 which establishes a vision of “low-rise, low scale development integrating with the natural landform and landscape”. In particular the building further accentuates it being more of a three and four storey design and exacerbates the building height encroachment.

10

The applicant has not provided sufficient justification to explain why the building height was increased during construction or how the modification is justified from an environmental planning perspective. Approving the proposed modification in such circumstances is likely to set an undesirable precedent and is contrary to the public interest.

15

The section 4.55 application is therefore recommended for refusal on the grounds listed in the Recommendation of this Report below.

20

NOTE TO COUNCILLORS:

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25

RECOMMENDATION:

5 It is recommended pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2018.534.2, for S4.55 to Modify Height of Dwelling Number 2 and Internal Changes, be refused for the following reasons:

- 10 1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the modified development is inconsistent with the Objectives of Clause 4.3 Height of Buildings in *Byron Local Environmental Plan 2014*.
- 15 2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the modified development is inconsistent with the Objectives of the R2 Low Density Residential zone.
- 20 3. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the modified development is inconsistent with the Objectives and Performance Criteria of Byron Development Control Plan 2014, Parts D1.2.4, D1.5.2, E5.8.3 and E5.8.4.
- 25 4. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is likely to set un desirable precedent if approved and is contrary to the public interest.

Attachments:

- 30
- 1 10.2018.534.2 Architectural Plans, E2022/91516 
- 2 10.2018.534.2 Surveyors Height Certification, E2022/91517 
- 3 10.2018.534.2 Submissions Redacted, E2022/91574 

Site Plan

Assessment Report

1. INTRODUCTION

5 1.1. History relevant to the modification application

Previous determinations

10 Development consent no. 10.2018.534.1 for a dual occupancy (detached) including a swimming pool for each dwelling was issued on 6 March 2020. A variation to the 9m maximum building height was granted as part of the approval, allowing the development to be constructed to 9.628m in height.

15 Construction certificate no. 11.2018.534.1 was issued on 20 November 2020. A review of the documentation shows that an alternative set of plans for Dwelling Two were submitted and approved with the Construction Certificate. The plans, shown in **Figure 2**, increased the size of the second floor in Dwelling 2 by approximately 10m² and changed the external wall configuration.

Written directions notice

The design of Dwelling Two has been altered during construction. The top floor plant room has been converted to third/fourth storey entertainment area with amenities and the overall height of the building has been increased to 9.879m above existing ground level.

20 It is understood that the Principal Certifying Authority has issued a Written Directions Notice under s.6.31 of the *Environmental Planning and Assessment Act 1979* requesting the Principal Contractor to cease work and bring the building into alignment with the approved plans.

Amendments and additional information

25 Amended plans were submitted on 7 July 2022 in response to a request for further information regarding building height. A letter was also provided from a registered surveyor confirming that the levels shown on the plans were accurate. A copy of the surveyor's letter can be found in **Attachment 2**.

1.2. Description of the proposed development

30 Approval is sought to retrospectively modify the design of a dual occupancy (detached) currently under construction at 44 Brownell Drive, Byron Bay.

The following modifications are proposed:

(1) **Dwelling Two – Level 3 modifications**

- 35
- Addition of a shower, toilet and modified sink location in the top floor plant room.
 - Increase the floor-to-ceiling height in the plant room from 2.1m to 2.405m.

- Change part of the external roof design over the plant room.
- Increase the maximum building height from 9.628m to 9.879m.
- Change the design and materials of the living room pop-out roof construction to concrete.

5

(2) Dwelling Two – Level 2 modifications approved in construction certificate

As discussed earlier in this report, a modified floor plan was submitted and approved with the Construction Certificate which included the following design changes:

10

- Kitchen, living, and dining room increased in size by approximately 10m².
- North-eastern external wall of the kitchen moved 1.48m further north.
- Roof design near the dining area modified by increasing the internal floor-to-ceiling height.

15 A comparison of the approved and proposed design is illustrated in **Figures 1 – 6**.

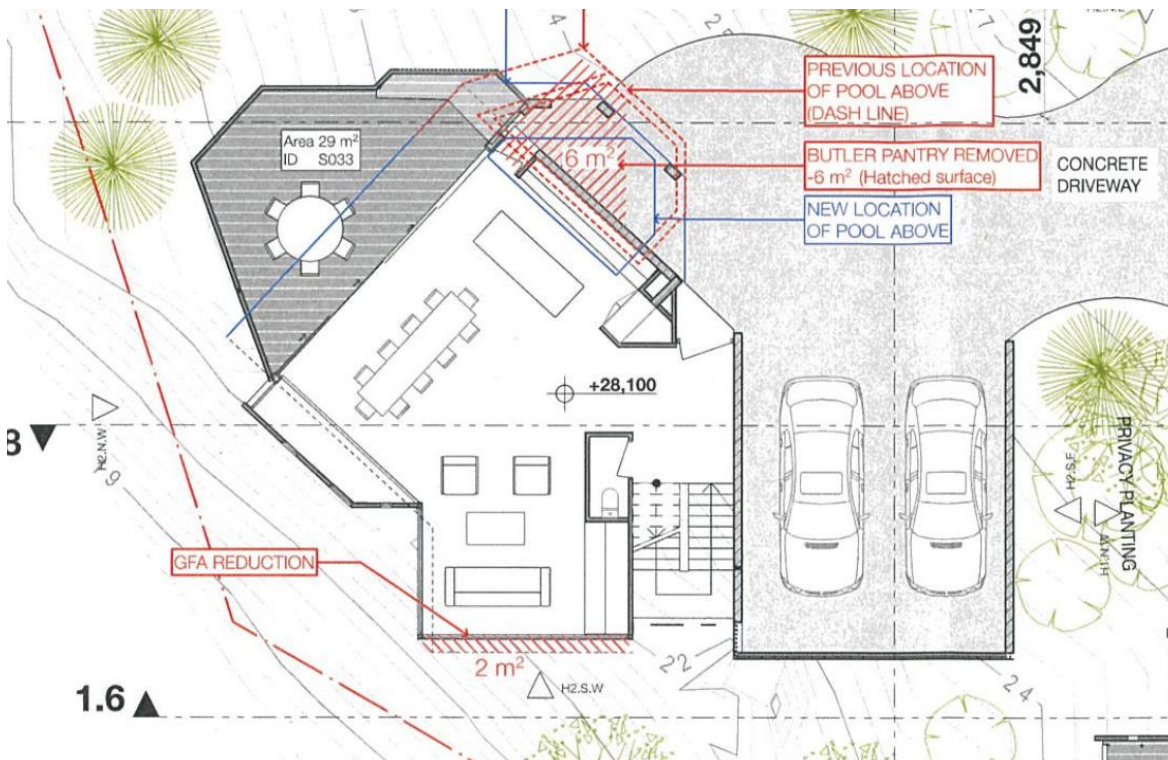


Figure 1: Extract from Level 2 Floor Plan – approved DA plans.

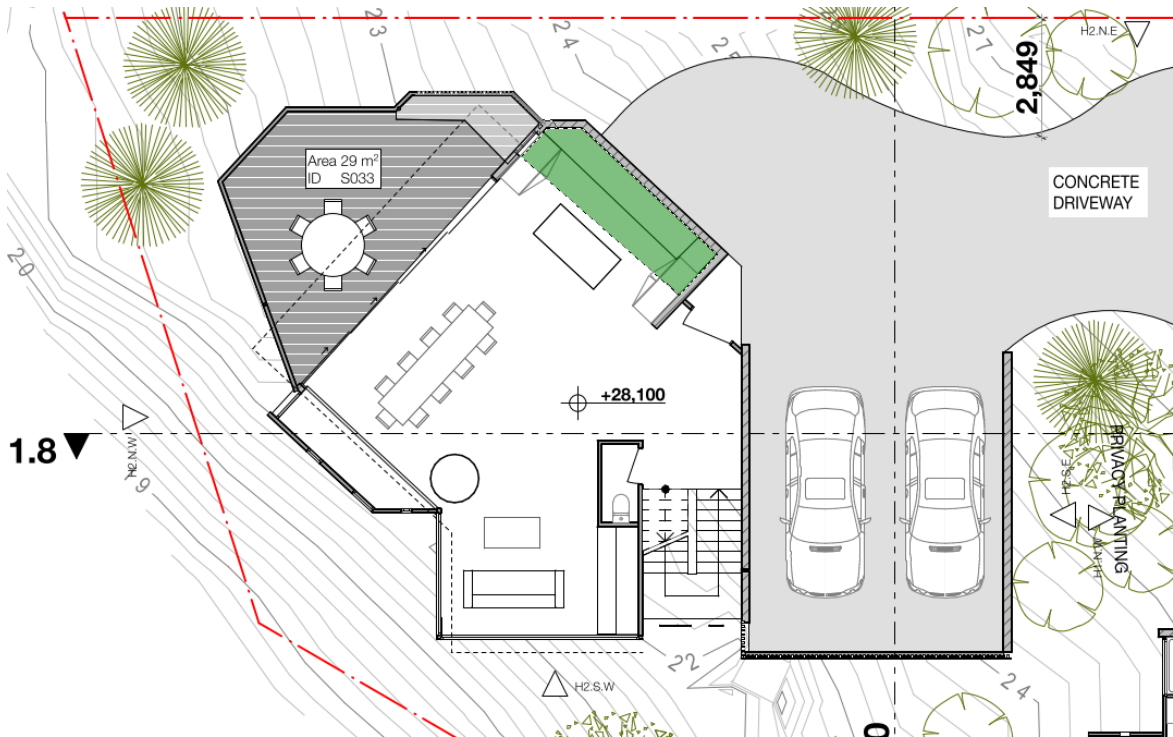


Figure 2: Extract from Level 2 Floor Plan - Construction Certificate plans.

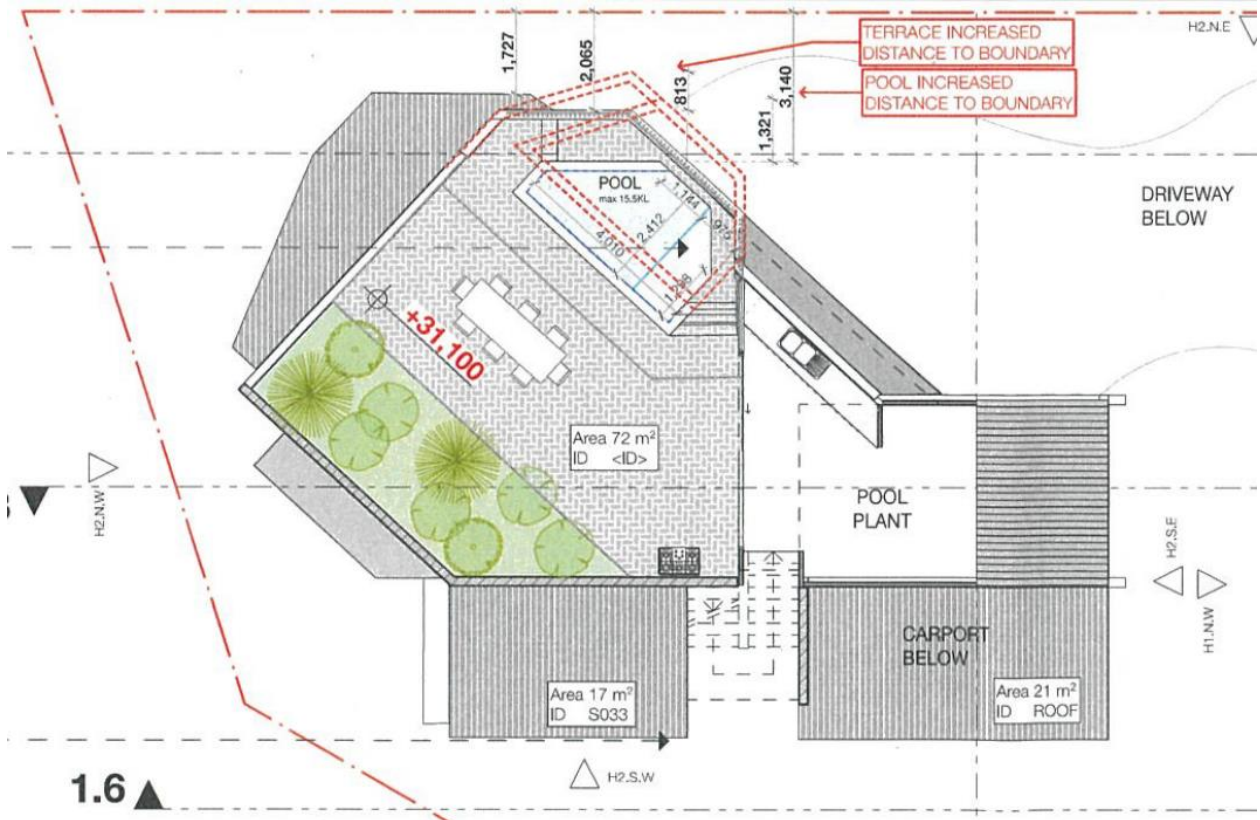


Figure 3: Extract from Level 3 Floor Plan – approved DA plans.

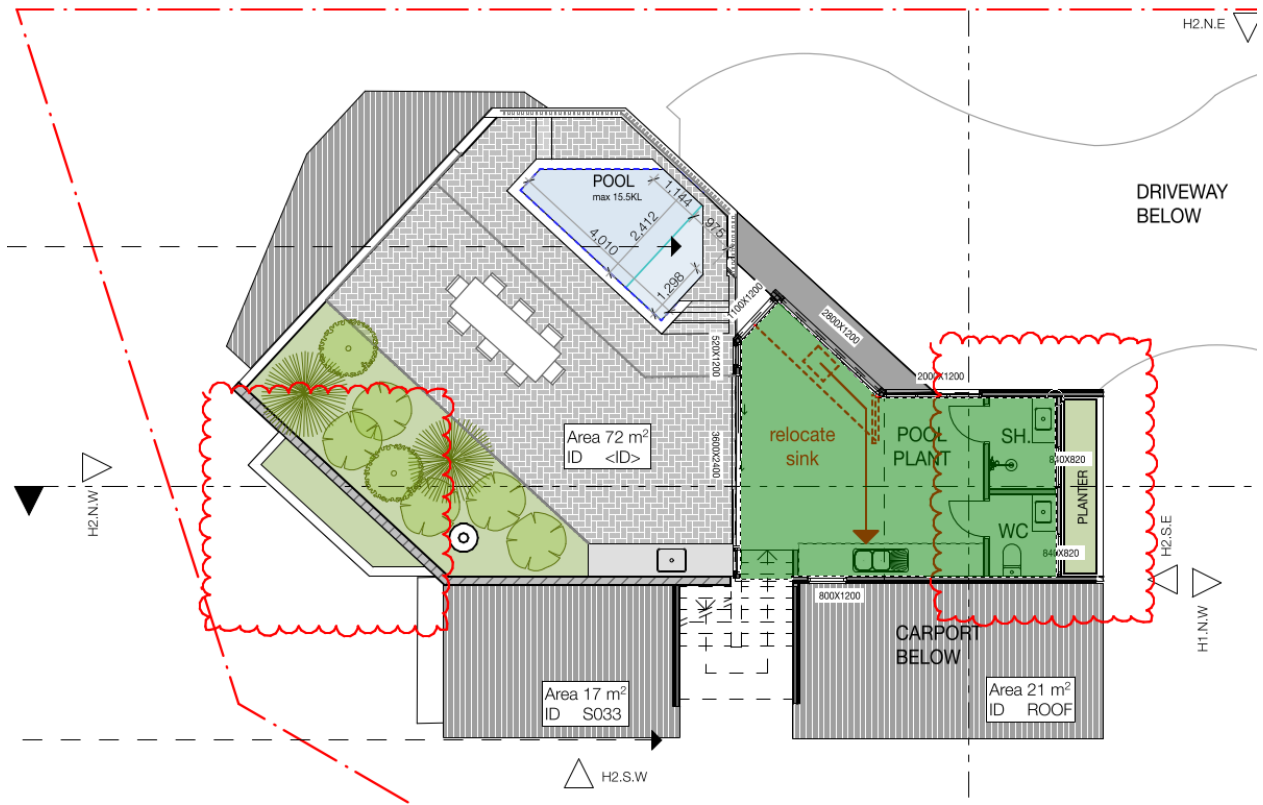
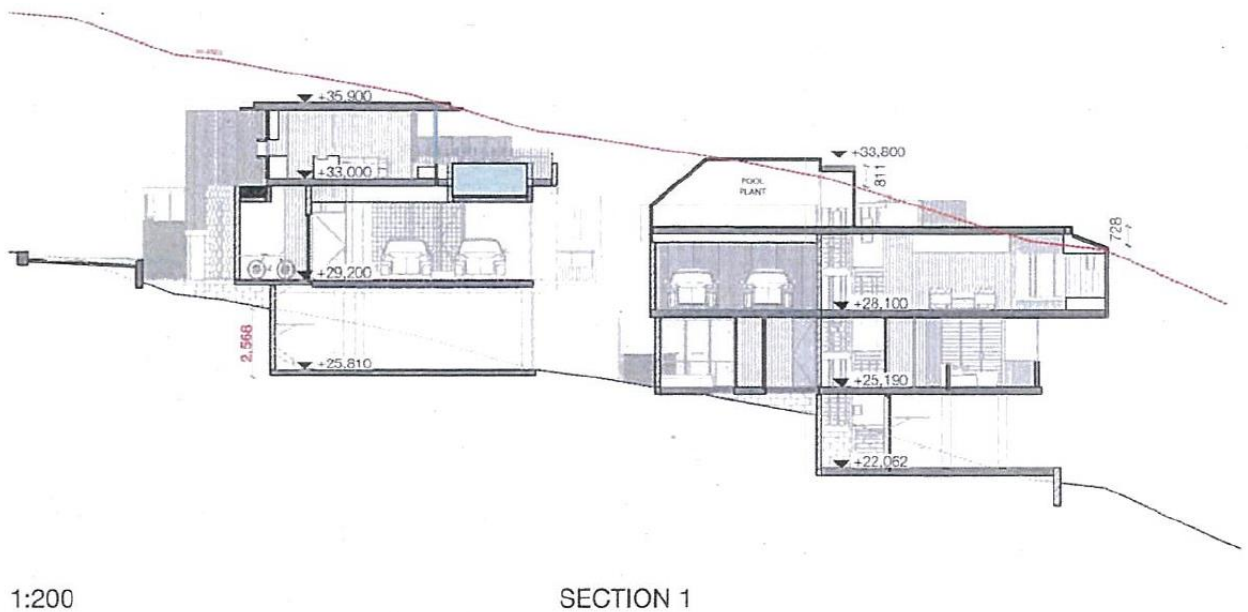
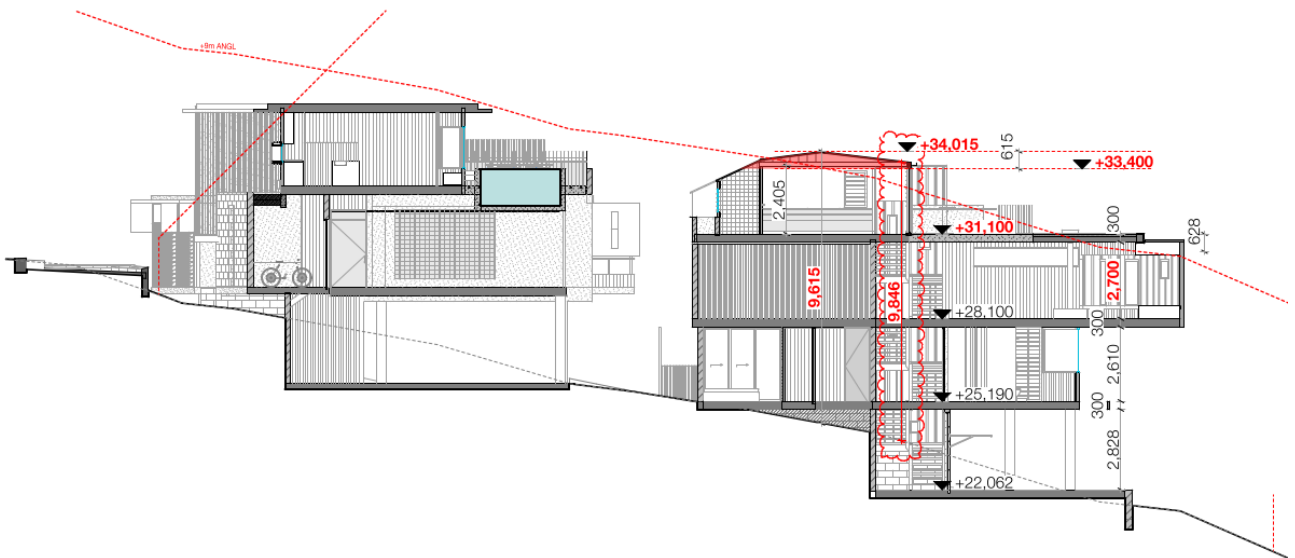


Figure 4: Extract from proposed Level 3 floor plan (as built). The plant room has been modified for use as a recreation area with amenities adjoining the swimming pool.



5 **Figure 5:** Extract from approved section.



1:200

SECTION 1

Figure 6: Extract from modified section. The roof above the plant room has been altered and increased in height to 9.879m.

1.3. Description of the site

5 The site was inspected on 29 April 2022.

Land is legally described as	LOT: 7 DP: 248668	
Property address is	44 Brownell Drive BYRON BAY	
Land is zoned:	R2 Low Density Residential	
Land area is:	828.3 m ²	
Property is constrained by:	Bushfire Prone Land, High Environmental Value Vegetation	
	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



Figure 7: Aerial image of subject site.



Photo 1: View north-west.



Photo 2: View north.



Photo 3: View north-east.

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1. SECTION 4.55(2)

Section 4.55 (2)	The Applicant is a person entitled to act on the consent. The applicable provisions of the Regulation are considered below. The development to which the consent as modified relates is substantially the same as the originally approved development. Consultation was required with the NSW Rural Fire Service and Essential Energy in relation to the original development application. Public notification of the application, including consideration of any submissions received if applicable, is discussed elsewhere in this report.
Section 4.55(3)	Section 4.15(1) matters are considered below.
Section 4.55(4)	The modification to the development consent is not the granting of a consent. The modified consent becomes the consent.
Section 4.55(6)	The deemed refusal provisions are noted.
Section 4.55(8)	The Court was not involved in the original development consent and is not involved in the current section 4.55(2) application.

5

2. ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Clause 115(1)	The application is made using Council's standard form including all necessary information.
Clause 115(2)	The notification requirements of clause 49 are noted.
Clause 115(3)	The proposal does not relate to a residential apartment building.
Clause 115(3A), (3B), (4)	The proposal does not relate to a residential apartment building.
Clause 115(5)	It is not necessary to refer the application to a design review panel.
Clause 115(6)	The application is accompanied by a BASIX Certificate for approval, reflecting the modified proposal.
Clause 115(7)	The application is accompanied by a BASIX Certificate for approval, reflecting the modified proposal
Clause 115(8)	The land is not owned by a Local Aboriginal Land Council.
Clause 115(10)	The Land and Environment Court is not involved.

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Clause 116	The Court did not grant the original consent.
Clause 118	The original development application was not for designated development, State significant development or for any other advertised development made to a consent authority other than Council.
Clause 119	Any required advertising of this application is discussed below.
Clause 119A	The site is not located within strategic agricultural land.
Clause 120(1)	The original development application did not involve any concurrence authority or integrated development approval body.
Clause 120(2)	The original development application did not involve any concurrence authority or integrated development approval body.

3. SUMMARY OF REFERRALS

External referrals

Referral	Issue
Essential Energy	The application was referred to Essential Energy for comment in accordance with s.109 of the Regulation. Essential Energy raised no objection to the proposed modification and provided a set of standard notes to be included in any consent notice.
NSW Rural Fire Service	The application was referred to NSW Rural Fires Service (RFS) for comment in accordance with s.109 of the Regulation. No comments were received from the RFS.

Internal Referrals

Referral	Issue
Building Surveyor	Council's Building Surveyor noted that a modified construction certificate would be required for any aspects of the original proposal that have not been completed. If Council resolves to approve the modification, a Building Information Certificate will be required for new parts of the building not constructed in accordance with the original development consent. A construction certificate for such works cannot be issued retrospectively.

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4. 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 bush fire prone land.

- 5 The original development application was referred to the Rural Fire Service (RFS) for comment under s.4.14 of the Act due to concerns over vegetation on the adjoining Crown reserve to the west.

10 The applicant later submitted a report from a BPAD accredited consultant confirming that the adjoining vegetation was low risk, and the development was capable of complying with the specifications and requirements of *Planning for Bushfire Protection 2006*. As such, referral to the RFS for comment under s.4.14 of the Act was not required for the original application.

15 No change to the original bushfire assessment arises due to the modification. Existing conditions in Schedule 4 of the consent are adequate and the proposal is capable of complying with Planning for Bushfire Protection 2019.

5. SECTION 4.15 – 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.

20 5.1. State Environmental Planning Instruments

Considerations	Satisfactory	Unsatisfactory
<p><i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></p> <p>Chapter 2 Coastal management</p> <p>The site is within the Coastal Use Area and the Littoral Rainforest Proximity Area as defined under the s.2.4 of this policy.</p> <p><u>Clause 2.8 Development on land in proximity to coastal wetlands or littoral rainforest</u></p> <p>The proposed modification will not have a significantly greater impact on the coastal environment or the ecological integrity of littoral rainforest in the area than the original design. The quantity and quality of ground and surface water flows from the site will remain largely unchanged and no additional removal of vegetation is</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
<p>proposed.</p> <p><u>Clause 2.10 Development on land within the coastal environment area</u></p> <p>The proposed modification is unlikely to have an adverse impact on access to the foreshore, views from public places, Aboriginal cultural heritage, or the scenic qualities of coastal headlands. The proposal is satisfactory having regard to the matters for consideration under ss. 2.8, 2.11 and 2.12 of the SEPP (Resilience and Hazards) 2021.</p> <p>Chapter 4 Remediation of land</p> <p>Council's Environmental Health Officer commented in the original assessment that the potential for contamination was low, and the site was suitable for the residential development in its current state. No change to that finding arises from the modification.</p>		
<p>State Environmental Planning Policy (Transport and Infrastructure) 2021</p> <p><u>Clause 2.48 Determination of development applications—other development</u></p> <p>The original development application was referred to Essential Energy under cl. 45 of the former SEPP (Infrastructure) 2007 due to proximity of the elevated swimming pools to electricity infrastructure.</p> <p>The application was referred to Essential Energy in accordance with s.109 of the Regulation. Essential Energy raised no objection to the proposed modification and provided a set of standard notes to be included in any consent notice.</p>	☒	☐

5.2. Byron Local Environmental Plan 2014 (LEP 2014)

LEP 2014 is an applicable matter for consideration in the assessment of the subject application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposal. The LEP 2014 clauses that are checked below are of relevance to the proposal:

Part 1 ☒1.1| ☒1.1AA| ☒1.2| ☒1.3| ☒1.4| ☒Dictionary| ☒1.6| ☒1.7| ☒1.8| ☒1.8A|

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1.9| 1.9A

Part 2 2.1| 2.2 | 2.3 |Land Use Table | 2.4 | 2.5 | 2.6 | 2.7 | 2.8

Part 4 4.3|4.4 |4.5 |4.6

Part 6 6.2| 6.6| 6.7

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

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

Zone Objective R2 Low Density Residential	Consideration
To provide for the housing needs of the community within a low-density residential environment.	The proposal is considered to be incompatible with the aim of the R2 Low Density Residential zone to provide housing for the needs of the community in a low-density residential environment. Refer to parts 5.3 and 5.5 for further discussion of height, bulk and character.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	

10 The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) 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).

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	A maximum building height of 9m applies to the site. The original development application was approved with a ~6% variation to the 9m height standard which allowed Dwelling Two to be constructed to a total height of 9.628m. The modified design has added facilities to the top floor plant room allowing it to be used as an entertainment space adjoining the swimming pool. The roof form has also been modified, increasing the total building height to 9.879m above existing ground. Dwelling Two does not comply with the

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		<p>height limit specified in the development consent and exceeds the 9m maximum building height by 9.4%.</p> <p>See further details in the LEP 2014 'Discussion' section below.</p>																				
4.4 Floor space ratio	Yes	<p>Clause 4.4, subclause 2A, provides that the maximum floor space ratio (FSR) for dual occupancies in the R2 Low Density Residential zone is 0.5:1.</p> <p>Approximately 43.4m² of additional gross floor area (GFA) has been added to Dwelling Two resulting in a floor space ratio of 0.49:1.</p> <p>Calculations are shown in the table below, including a comparison of the approved and modified designs.</p> <p>Approved design FSR</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Dwelling 1 GFA</td> <td style="text-align: right;">180.3m²</td> </tr> <tr> <td>Dwelling 2 GFA</td> <td style="text-align: right;">181.5m²</td> </tr> <tr> <td>Total GFA</td> <td style="text-align: right;">361.8m²</td> </tr> <tr> <td>Site Area</td> <td style="text-align: right;">828.4m²</td> </tr> <tr> <td>Approved design FSR</td> <td style="text-align: right;">0.44:1</td> </tr> </table> <p>Modified design FSR</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Dwelling 1 GFA</td> <td style="text-align: right;">180.3m²</td> </tr> <tr> <td>Dwelling 2 GFA</td> <td style="text-align: right;">224.9m²</td> </tr> <tr> <td>Total GFA</td> <td style="text-align: right;">405.2m²</td> </tr> <tr> <td>Site Area</td> <td style="text-align: right;">828.4m²</td> </tr> <tr> <td>Modified design FSR</td> <td style="text-align: right;">0.49:1</td> </tr> </table>	Dwelling 1 GFA	180.3m ²	Dwelling 2 GFA	181.5m ²	Total GFA	361.8m ²	Site Area	828.4m ²	Approved design FSR	0.44:1	Dwelling 1 GFA	180.3m ²	Dwelling 2 GFA	224.9m ²	Total GFA	405.2m ²	Site Area	828.4m ²	Modified design FSR	0.49:1
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Dwelling 2 GFA	224.9m ²																					
Total GFA	405.2m ²																					
Site Area	828.4m ²																					
Modified design FSR	0.49:1																					
4.6 Exceptions to development standards	Not applicable	<p>Previous caselaw has determined that the modification power is a freestanding provision in the Act, meaning that a</p>																				

		<p>modification application may be in breach of a development standard without requiring a clause 4.6 objection to be submitted as a precondition to the granting of consent.</p> <p>Development standards are therefore not binding but are matters for consideration when determining a modification application.</p> <p>Further consideration of building height is addressed in the LEP 2014 'Discussion' section below.</p>
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Part 6 Additional local provisions

Provision	Compliance	Comment
Clause 6.2 Earthworks	Yes	No change to excavation or filling of the site is proposed.
Clause 6.6 Essential services	Yes	The site is serviced by electricity, water, sewer, and telecommunications. Existing conditions are deemed adequate for dealing with stormwater disposal and vehicular access.

5.3. LEP 2014 - Discussion

Clause 4.3 Height of buildings

5 *Increase in building height*

The site is subject to a maximum height control of 9m. As shown in **Figure 7**, the modified design exceeds the 9m height limit by 0.879m, which equates to a 9.4% variation to the development standard. A variation of 0.628m (6%) was approved for the original development application. The new design increases the building height by a further 3.4%.

10 *Is a Clause 4.6 Objection required?*

A written request to vary a development standard under Clause 4.6 of the Standard Instrument is not required for a modification application. Notwithstanding, the consent authority is still required take into consideration the relevant aims and objectives of the development standard being varied as part of its assessment under s. 4.15(1)(a)(i) of the Act.

15

Clause 4.3 Objective

The proposed variation to the 9m height standard is assessed against the objectives of Clause 4.3, as follows:

4.3 Height of buildings

- 5 (1) *The objectives of this clause 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,*
 - 10 (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.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

15 **Assessment**

(a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet.

Objective (a) is a restatement of the height standard, which in this case is being breached by 9.4%. Variations to the maximum height limit can be granted in cases where strict compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify contravening the standard.

As discussed further below, the applicant has not provided sufficient justification to explain why the building height was increased during construction or how the modification is justified from an environmental planning perspective.

25 **(b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located.**

The proposal is considered to be inconsistent with Objective (b) for the following reasons:

- The proposal is inconsistent with the bulk, height, and scale of development in the surrounding locality which is generally characterised by two storey and split-level houses that step down the hillside.
- 30 • The elements that exceed the maximum building height will be clearly perceptible to the public, particularly in views from the corner of Palm Valley Drive and Brownell Drive. At the eastern end of Palm Valley Drive, Dwelling Two will likely be perceived as a four-storey building.
- 35 • The modified development is inconsistent with the desired future character and design principles for Wategos described in Chapter E5 of Byron DCP 2014 which establishes a vision of “low-rise, low scale development integrating with the natural landform and landscape”.

(c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

5 The proposal is contrary to Objective (c) as it does not minimise or mitigate the visual impact of the development or the potential disruption to the views and privacy of existing development in the area. On the contrary, the modified development increases those impacts (especially visual) which were the subject of numerous public submissions during the original assessment.

10 The increased building height and modified roof form has the potential to impact on the views and amenity of surrounding residences. The applicant has not provided a visual impact assessment to allow a proper assessment of those impacts in accordance with C3.2.1 of Byron DCP 2014.

15 For the above reasons, the proposed variation to the 9m height control is not considered to be well founded and is inconsistent with the objectives of clause 4.3 of LEP 2014. The proposal in its current form adversely affects the built environment of the locality and is likely to set an undesirable precedent if approved.

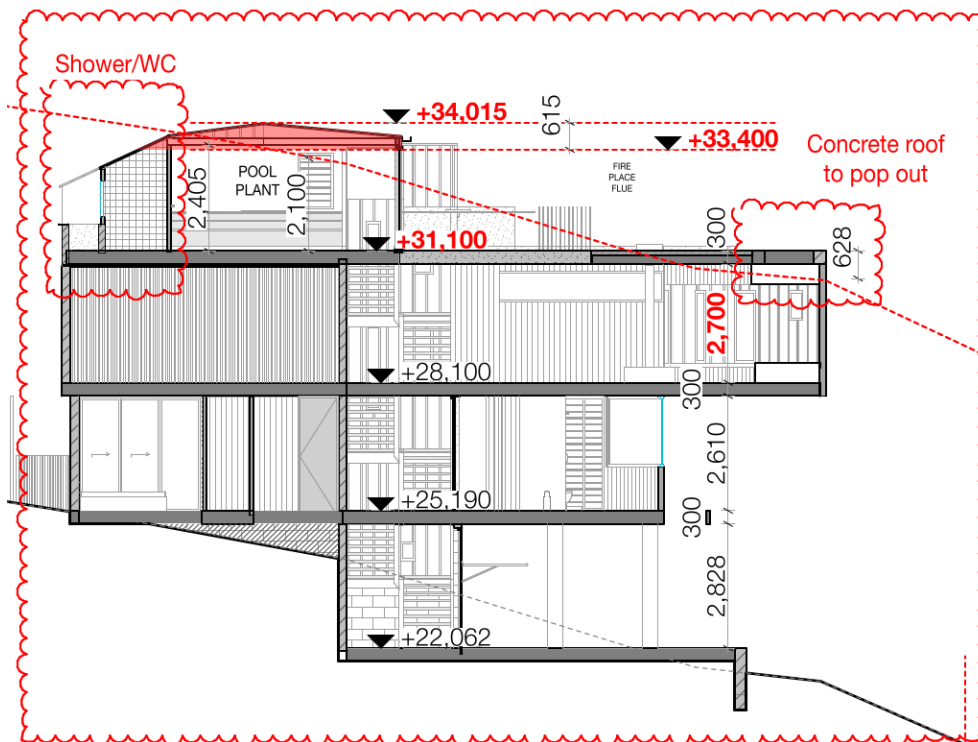


Figure 7: Extract of Section 01 illustrating the proposed breaches of the 9m building height standard.

20 **5.4. Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

There are no proposed environmental planning instruments with relevance to the subject application.

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5.5. Byron Shire Development Control Plan 2014 (DCP 2014)

5 DCP 2014 is an applicable matter for consideration in the assessment of the subject application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposal:

- Part A Preliminary
- Part B Chapters: B1| B3| B4| B8| B9| B14
- Part C Chapters: C3
- Part D Chapters D1
- Part E Chapters E5

10 These checked Parts/Chapters have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with all sections of these Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to certain prescriptive measures which are considered further (having regard to the DCP 2014 Section A1 Dual Path Assessment) as follows:

Chapter C3 Visually Prominent Sites, Visually Prominent Development and View Sharing

Development control	Compliance	Comment
C3.2.1 Visual Impact Assessment	No	<p>The proposal involves further breaches of the maximum building height and is in a visually prominent location.</p> <p>The applicant has not provided a visual impact assessment in accordance with Part C3.2.1 demonstrating that the modified design will not adversely affect the character and visual quality of the surrounding area.</p>
C3.2.2 Assessment of Impacts on Views and View Sharing	No	<p>The increased building height has the potential to impact on views and privacy of surrounding residences. No information was provided to allow an assessment of view impacts in accordance with Part C3.2.2.</p>

Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones

Development control	Compliance	Comment
D1.2.4 Character & Visual	No	The proposed development is inconsistent

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<p>Impact</p> <p>D1.5.2 Character</p>		<p>with the Objectives and Performance Criteria of D1.2.4 and D1.5.2 for the following reasons:</p> <ul style="list-style-type: none"> • The modified design adds to the bulk and height of Dwelling 2 which will be perceived as a four storey building in views from the eastern end of Palm Valley Drive. • The application is inconsistent with the Residential Character Narrative for Wategos in Part E5 of DCP 2014.
<p>D1.5.3 Adjoining and Adjacent Development</p>	<p>No</p>	<p>As explained in Part D1.2.4 & D1.5.2, the increased height and scale of the proposal is inconsistent with the character of adjoining and adjacent development in the locality.</p> <p>The modified design does not adequately respond to the slope or topography of the site and has not used appropriate design to minimise impacts on privacy and visual amenity.</p>

Chapter E5 Certain Locations in Byron Bay and Ewingsdale

Development control	Compliance	Comment
<p>E5.8.3 Design considerations</p>	<p>No</p>	<p>Part E5.8.3 establishes the design principles for future residential development in Byron Bay, Sunrise Beach, and Wategos as follows:</p> <ul style="list-style-type: none"> • <i>Buildings are predominantly low-rise and small scale, integrating with the natural landform and landscape.</i> • <i>Building footprints and hard landscaping areas are limited to ensure sufficient vegetated areas are established to maximise the opportunities for habitat creation, recreation, and general amenity particularly along street frontages.</i> • <i>Design and construction of homes are better equipped for future climate</i>

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		<p><i>change impacts, such as bushfire, flooding, and erosion hazards.</i></p> <ul style="list-style-type: none"> • <i>Development creates a cohesive streetscape in respect to building setback, massing, composition, architectural detailing, materials and colours and incorporating pitched roofs.</i> • <i>Front fences and walls do not dominate the public domain; instead responding to and complementing the context and character of the street or laneway.</i> <p><u>Assessment</u></p> <p>The modified development scheme results in a taller and bulkier building than the original design and does not align with the requirement for low-rise, low scale development integrating with the natural landform and landscape.</p> <p>The development does not positively contribute to a cohesive streetscape in respect to scale, massing, materials or roof design and is incompatible with the Design Considerations for the Wategos area outlined in Part 8.5.3.</p>
E5.8.4 Character Narratives	No	<p><u>Pocket C Wategos Beach</u></p> <p>The residential character of Wategos is described in Part 8.5.4 as “an eclectic array of architectural styles and diverse coastal architectural themes. Some newer dwellings are two or three storeys in height and step down the slope of the site”.</p> <p>The DCP notes that there are examples in Wategos where building bulk dominates the site, which is regarded by some as being inconsistent with the R2 Low Density Residential zoning of the area.</p> <p>Future housing is required to remain consistent with R2 zone objectives with appropriate bulk and scale and use of</p>

		<p>natural landscaping.</p> <p><u>Assessment</u></p> <p>As discussed in Part 5.8.3, the modified design is excessive in height and is inconsistent with the requirement for new development to retain appropriate bulk and scale consistent with the R2 zone objectives.</p>
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5.6. Any Planning Agreement or Draft Planning Agreement?

There are no planning agreements or draft planning agreements related to the proposed development.

5 5.7. Environmental Planning & Assessment Regulation 2021 Considerations

Clause 61 Additional matters that consent authority must consider

AS 2601 – 2001: *The Demolition of Structures* is not relevant to the proposed modification unless requirements are included in any development consent to demolish or alter parts of the building.

10 Clause 64 Consent authority may require upgrade of buildings

Council’s Building Surveyor made no comment in relation to the need for building upgrades. Should Council resolve to approve the application, a Building Information Certificate would be required for any building works not carried out in accordance with the original development consent. A modified construction certificate would be required for any uncompleted building work.

15

5.8. 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?
Natural environment	The proposed modification will not have a significantly adverse impact on the natural environment of the locality.
Built environment	The modified development is excessive in height and scale and detracts from the existing and desired future character of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.

Economic impact	No. The proposal will not have a significant economic impact on the locality.
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5.9. The suitability of the site for the development

The site is a serviced, unconstrained property and is generally suitable for residential development.

5 5.10. Submissions made in accordance with this Act or the regulations

The application was publicly exhibited for a period of 14 days in accordance with the Byron Shire Community Participation Plan and Byron DCP 2014.

There were six (6) submissions made on the application which are summarised in the table below.

- 10
- Zero (0) for,
 - Six (6) against.

Table 1: Summary of submissions

Issue	Comment
<p>Removal of vegetation in road reserve</p> <p>Concerns have been previously raised over alleged removal of vegetation within the Council road reserve.</p>	<p>A review of aerial photography did not identify significant vegetation removal in the Council road reserve. A temporary driveway appears to have been installed during the construction phase although it is unclear if any vegetation was removed.</p>
<p>Levels should be confirmed by survey</p> <p>It is submitted that Council should require survey detail now to confirm that the levels referred to in the conditions and those depicted on the architectural plans align.</p>	<p>A letter has been provided from a registered surveyor confirming that the levels shown on the architectural plans are accurate.</p>
<p>Insufficient justification for height breach</p> <p>It is submitted that there is insufficient justification for the proposed breach of the height limit. The Statement of Environmental Effects merely states that the proposal will result in development that is “essentially identical” and the no Clause</p>	<p>Acknowledged. The application does not properly explain why the building height was increased or how it is justified on planning grounds.</p>

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<p>4.6 variation is required. No rationale for the breach of the height limit or supporting material demonstrating the potential impact of the height limit is provided.</p> <p>The application does not adequately argue why a variation should be granted in the circumstances.</p>	
<p>Lack of landscaping</p> <p>The development as constructed to date contains a large concrete slab which appears to make no provision for the landscaping as indicated on the approved plans between the deck of Dwelling 2 and the south-western boundary. The approved landscaping is essential to the development.</p>	<p>Large concrete slabs appear to have been approved for the original DA. The amount of landscaped area between the existing and proposed schemes appears to be similar.</p>
<p>Development exceeds floor space ratio</p> <p>The development exceeds the maximum floor space ratio of 0.4:1. The application fails to argue which strict compliance with the floor space ratio is unreasonable or unnecessary in the circumstances of the case.</p>	<p>Clause 4.3, Subclause 2A, of Byron LEP 2014 provides that the maximum floor space ratio for dual occupancies in the R2 Low Density Residential zone is 0.5:1.</p> <p>The modified design has a FSR of 0.49:1 and complies with the development standard.</p>
<p>Building height plane</p> <p>The development does not comply with the building height plane as illustrated on Plan 05. It is our view that the breaches are significant.</p> <p>The application does not include an analysis of the impacts on views or solar access from adjoining properties.</p>	<p>The modified roof elements are setback from the site boundaries by 4.7m and 8.5m respectively and comply with the building height plane. Other elements of the design which breach the building height plane were approved as part of the original assessment.</p>
<p>Setback from boundaries</p> <p>The proposed development has a setback that varies from 2.8m to 3m from Brownell Drive. The application does not include any justification of why a variation to the</p>	<p>Variations to the setback controls were approved as part of the original assessment. The modified development does not change any boundary setbacks.</p>

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<p>setback controls in DCP 2014 should be varied.</p>	
<p>Private open space</p> <p>The development fails to provide open space at ground level and instead proposes rooftop private open space including swimming pools. In the case of proposed Dwelling 2, the open space does not provide for an extension of the living space. It is submitted that the proposed private open space is not adequate, accessible, and useable in terms of meeting the recreational and gardening landscaping needs of residents.</p>	<p>Variations to the private open space provisions in DCP 2014 were approved for the original application. The proposal does not substantially alter the private open space for the development compared to the existing approval.</p>
<p>Visually prominent development</p> <p>The proposed development does not include an assessment of the potential to impact upon views from another property. It is submitted that the proposed development has the potential to impact on existing iconic views from surrounding sites and that an assessment of impact is required to be submitted and should be made available to adjoining property owners for review.</p> <p>It is reasonable to require the applicant to prepare material depicting the impact of the existing approved and proposed amended scheme on existing views from surrounding dwellings. Part C3.2.1 of Chapter C3 – Visually Prominent Sites requires a visual impact assessment to be prepared for the development.</p>	<p>Acknowledged. A Visual Impact Assessment was not provided in accordance with Chapter C3 of Byron DCP 2014.</p>
<p>State Environmental Planning Policies</p> <p><u>SEPP (Resilience and Hazards) 2021</u></p> <p><i>Chapter 2 Coastal Management</i></p> <p>The subject land is identified as land in proximity to littoral rainforest. It is submitted</p>	<p>The altered roof form and upper floor modifications will not have any material impact on ecological integrity of the adjoining littoral rainforest communities.</p> <p>It is noted that land contamination was considered in the original assessment and the site was found to be acceptable for</p>

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<p>that no Ecological Assessment has been undertaken in relation to the proposed development.</p> <p><i>Chapter 4 Remediation of Land</i></p> <p>The SEE refers to foundations of a demolished dwelling and scattered domestic landscaping. Given that no approvals are evident on Council's files the previous dwelling located on the site may well have been included lead paint and it is considered that a SEPP 55 assessment should have been undertaken in the circumstances.</p>	<p>residential use in its current state without requiring remediation. No change to that finding arises from the proposed modification.</p>
<p>Use of top floor plant room</p> <p>It is evident from the plans that there are no external western walls for the pool plant which is unusual given the potential noise impacts from pool plant.</p> <p>The design and layout of this area is concerning from an amenity perspective. The landing area is open and the sink now appears to be sites partly in the plant room.</p> <p>It is also strange that there is no pool plant room depicted on the plans for dwelling no. 1.</p>	<p>The plans submitted with the application indicate sliding doors on the western side of the plant room. This space appears to be designed as an entertaining area with facilities adjacent to the swimming pool.</p> <p>It is acknowledged that there is no pool plant room for Dwelling 1.</p>
<p>Noise and Amenity</p> <p>The plant room potentially being used as an entertainment room, or for any other purpose not only raises concerns about going well over the floor space ratio, but also about noise, lighting and privacy within the neighbourhood.</p> <p>The provision of an entertainment/living space on the roof top will impact on the amenity of surrounding dwellings.</p> <p>Due to the increased usability of a rooftop, adjoining residences will suffer further invasion of privacy and diminished</p>	<p>It is acknowledged that the modified plant room has the potential to increase the capacity and usage of the top floor and swimming pool. Increased levels of noise and reduced privacy are a potential issue, although it is noted that privacy screens have been installed on some of the norther facing elevations.</p>

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<p>amenity.</p> <p>The additional facilities proposed for Level 3 increase the potential for this area to be used by groups to socialise and result in potential adverse impacts on the amenity of the surrounding dwellings in terms of noise. It is submitted that Council should clarify the proposed use of the terrace area at the top of the stairs and require the pool plant room to be enclosed.</p>	
<p>Privacy and views</p> <p>In the Exhibition copy 10.1018.534.1 (2018) Visual Considerations (page 11) it was stated the dwellings will “merge into the existing street scape”. This is incorrect and is now very apparent. Palm Valley Drive residents south of the development do not “look over” the dwelling, they look right into the dwelling. Same with Brownell residents.</p>	<p>The building has a significant scale and bulk relative to the size of the allotment and surrounding development.</p> <p>It is visually apparent the building takes on 3-4 storey appearance and the additions on the top floor accentuate this appearance.</p>
<p>The impacts are significant</p> <p>Whilst the applicants may argue that the impact of any additional height or floor space gain is minimal, the current impact was already significant, and that the additional space and height is therefore not minimal.</p>	<p>Agreed.</p>
<p>Not substantially the same development</p> <p>A plant room being converted into a living space (effectively a fourth floor, with a bathroom) is not "substantially the same development".</p> <p>The additional height and habitable space would never have been approved had the developer disclosed the intent at the outset.</p>	<p>Considering the quantitative and qualitative differences between the original and modified development schemes, the proposal is considered to satisfy Section 4.55 of the EPA Act 1979.</p> <p>Notwithstanding this is not a reason to grant consent as other factors as discussed in the body of this report need to be considered.</p>

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<p>Parking and safety</p> <p>44 Brownell accommodates a maximum of 4 vehicles (for 8 bedrooms) causing excess vehicles to street parking.</p> <p>There are important safety concerns due to the increasing traffic using Brownell Drive, negotiating its limited vision, blind corners, lack of kerb and guttering, shoulders or footpaths.</p> <p>There are concerns relating to the driveway location and a satisfactory alternative should be investigated.</p>	<p>Parking and traffic safety are ongoing issues in the Wategos area. Notwithstanding, the driveway design and location has already been approved in its current form and no changes to these elements of the development are proposed. Revisiting the driveway design is considered beyond the scope of this assessment.</p>
<p>Planning system being 'gamed'</p> <p>This case is clear example of how overdevelopment of a site can be 'gamed' by seeking and obtaining incremental breaches of various aspects of the LEP and DCP.</p> <p>The end result of these applications will be a large structure containing 8 bedrooms, 4 car ports, 2 swimming pools and (if approved) 7 bathrooms. Seven bathrooms on an 839 sq m residential block is excessive.</p> <p>There needs to be more critical attention given to those modifications that simply extend non-compliance further. The final bulk and scale of this development, as well as its usage intensity and potential impacts on amenity in the neighbourhood, are matters of concern.</p> <p>It is requested that the variation application be dealt with by Council with copies of all submissions provided to all Councillors for their consideration.</p>	<p>The proposed modifications which have been carried out contrary to the existing development consent are of concern to Council. As discussed in this report, the additional breach of the height limit is not supported.</p>
<p>Overdevelopment of the site</p> <p>The current Variation being put forward</p>	<p>It is acknowledged that the approved development has a large footprint and scale relatively to the size of the lot. Further</p>

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<p>constitutes one of several applications by the proponents that collectively achieve an undesirable net result: over-development of the site.</p> <p>We now look at a large structure containing 8 bedrooms, 4 car ports, 2 swimming pools, 6 bathrooms. This is all on an 839 sq m block.</p> <p>There has now been another application for an increase in height of 0.615m to Structure 2, making it possible to apply for a 7th bathroom. The original DA called this area a plant room. Seven bathrooms on an 839 sq m residential block surely must be considered excessive.</p>	<p>breaches of the planning rules for height and building envelope are not supported.</p>
<p>Privacy and amenity</p> <p>The modified dwelling will impact on the privacy of adjoining residences.</p> <p>Due to the increased usability of a rooftop, there will be further invasion of privacy and diminished amenity. It is request that the Variation application be dealt with by Council with copies of all submissions provided to all Councilors for their consideration.</p>	<p>Noted. Privacy screens were required in the original approval although increased usage of the pool area may have potential amenity impacts.</p>

5.11. Public interest

- 5 The modified proposal is excessive in height and scale and arises from development carried out not in accordance with the existing development consent. There appears to be no particular reason why the design was modified, apart to provide additional floor space and height for the proponent. The modifications are contrary to the relevant planning controls and will increase visual and amenity impacts on neighbouring residences which were the subject of several public submissions on the original application.
- 10 It is unfortunate the developer went ahead with the works prior to getting an approval. However, the proper planning process in terms of orderly development of land is to obtain approval first not as an “afterthought” and or wait until Council or the Principal Certifying Authority discovers the building isn’t as per the approved plans, stops the work from proceeding and awaits a retrospective approval to be issued. In this situation what is
- 15 being sought is a further variation to a development standard that had already been varied with no further valid justification other than to improve the amenity of the roof top pool area

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5 for this dwelling. To support the proposal jeopardises the importance of Councils planning controls to manage building height, bulk and scale in this visually significant residential neighbourhood of Byron Bay if they can be incrementally varied in this way. Council considers the works on the top floor of this dwelling can be returned to their approved form by the builders.

Approving the proposed modification in such circumstances is likely to set an undesirable precedent and is contrary to the public interest.

6. DEVELOPER CONTRIBUTIONS

10 The proposed modifications generate no nexus to levy additional contributions if the application was to be approved.

7. CONCLUSION

15 The modified proposal is considered to be excessive in height and scale and is contrary to the aims and objectives of LEP 2014 Clause 4.3 Height of buildings. The proposed modifications are inconsistent with the relevant planning controls and will increase the visual and amenity impacts on neighbouring residences which were the subject of several public submissions on the original application.

20 Approving the proposed modification in such circumstances is likely to set an undesirable precedent and is contrary to the public interest.

The proposed section 4.55 application is recommended for refusal.

Report No. 13.3 PLANNING - Amendments to Byron Local Environmental Plan 2014

Directorate: Sustainable Environment and Economy

Report Author: Sam Tarrant, Planner

5 **File No:** I2022/1087

Summary:

Byron Local Environmental Plan (LEP) 2014 is a key planning instrument that guides development and land use decisions within Byron Shire.

10 The LEP is periodically reviewed to ensure that planning controls are current and correct. Staff maintain a register of LEP issues to investigate for inclusion in a general amendment planning proposal. This allows for Byron LEP 2014 to be regularly updated to provide fit for purpose planning controls and planning controls that meet community expectations.

This report presents several policy and mapping amendments to be considered in the upcoming general amendments planning proposal.

15 It is recommended that the amendments presented within this report are investigated further and a planning proposal prepared. The planning proposal will then be presented to council prior to seeking a gateway determination.

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:

That Council:

- 30
- 1. Endorses the potential amendments to Byron LEP 2014 and Byron LEP 1988 as detailed within this report for further investigation;**
 - 2. Requests staff to prepare a planning proposal based on this investigation;**
 - 3. Receives a report outlining the particulars of this planning proposal for consideration prior to seeking a gateway determination.**

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Attachments:

- 1 Combined LEP housekeeping mapping amendments, E2022/89875 

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Report

The LEP is periodically reviewed to ensure that planning controls are current and correct. Staff maintain a register of potential changes to investigate for inclusion from Byron LEP 2014.

- 5 The changes are collated and presented in a single planning proposal. The amendments proposed relate to both mapping and policy but are not considered large or significant enough to be completed as a standalone planning proposal. Combining multiple amendments into a single planning proposal allows Byron LEP to be updated more regularly.

10 Proposed amendments

Several amendments to Byron LEP 2014 and one amendment to Byron LEP 1988 are proposed. Some of these are relatively minor, administrative changes and others will require further investigation before they can be finalised within a planning proposal.

- 15 There are currently 12 items to be considered for inclusion in a general amendment planning proposal. Table 1 includes proposed amendments to various policy provisions within Byron LEP 2014 and Table 2 proposes a number of mapping changes. The mapping anomalies and areas subject to the mapping amendments within this report are shown in attachment 2.

Table 1: Policy amendments

Item #	Amendment	Reasoning
1	Include the C4 Environmental Living zone in clause <i>4.1AA Minimum subdivision lot size for community title schemes</i>	A recent planning proposal has introduced the C4 Environmental Living zone into Byron LEP 2014. The C4 zone should be included in clause 4.1AA to ensure that a community title subdivision complies with the minimum lot size requirement.
2	Remove (2A) from clause <i>4.4 Floor space ratio</i> .	Clause 4.4 gives weight to the floor space ratio (FSR) maps within Byron LEP. 2014 Subclause (2A) enables applications for dual occupancies in the R2 Low Density Residential zone to have a FSR of 0.5:1, regardless of what is shown in the FSR map for a particular area. This subclause has been carried forward from Byron LEP 1988.

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Item #	Amendment	Reasoning
		<p>This is inconsistent as some areas have an FSR of less than 0.5:1 to minimise the bulk/scale of development, protect environmental features and or reduce risk to hazards (e.g. flooding). This promotes construction of larger dual occupancy over a dwelling house (i.e. with lower FSR) in identified sensitive or constrained areas.</p>
3	<p>Investigate rural subdivision clauses 4.1C and 4.1F</p>	<p><i>4.1C Minimum subdivision lot size for boundary adjustments in certain rural and residential zones</i> aims to enable adjustment of boundaries between two properties that does not create additional dwelling opportunities.</p> <p>Other councils have this clause within their LEP, and court proceedings have placed emphasis on ‘boundary adjustment’ limiting the application of the clause to meet its intention.</p> <p>Further investigation is required to have this clause fit for purpose without creating unintended outcomes.</p> <p><i>4.1F Exceptions to minimum lot sizes for certain rural subdivisions</i></p> <p>Further investigation is required to determine the intended application of this clause without creating unintended outcomes.</p> <p>Council resolved (21-174) in June 2021 to consider both of these clauses in a future housekeeping planning proposal, pending the outcome of rural planning reforms from Department of Primary Industries. These reforms have not progressed.</p> <p>It is recommended that both Clause 4.1C and 4.1F are investigated further and amended if appropriate.</p>

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Item #	Amendment	Reasoning
4	Remove "attached" from clause 6.8 <i>Rural and nature-based tourism development - (4) (a)</i> .	<p>(4)(a) requires a dwelling house or dual occupancy (attached) to be constructed on site to enable consent for rural or nature-based tourism.</p> <p>This subclause has carried over from Byron LEP 1988 which only permitted attached dual occupancies in rural areas. This clause should reference 'dual occupancies' as both attached and detached are permissible in the rural zones under LEP 2014.</p>
5	Remove "other than a classified road" from clause 6.8 <i>Rural and nature-based tourism development - (3) (a)</i> .	<p>This part requires suitable vehicle access to and from a road for tourism development but prohibits access to a classified road.</p> <p>There are several classified roads within Byron Shire including Mullumbimby Road and Gulgan Road, with some properties having existing access to these roads.</p> <p>If suitable and safe access can be demonstrated, access to these roads may be appropriate.</p> <p>It is proposed to remove the prohibition of utilising access to classified roads in this clause.</p>
6	<p>Insert the following into <i>Schedule 1 Additional Permitted Uses</i> as a carryover from clause 17 in Schedule 8 of Byron LEP 1988:</p> <p>"Lot 3, DP 599728, development for the purpose of four dwelling-houses for a multiple occupancy is permitted with development consent"</p>	<p>By oversight this APU was not included in Schedule 1 of LEP 2014 as part of finalising E Zones PP1, which is inconsistent with treatment of the adjoining Lot 2 DP 599728.</p>

Table 2: Mapping amendments

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Item #	Amendment	Reasoning
7	Increase the Floor Space Ratio (FSR) from 0.2:1 to 0.3:1 for certain areas in Suffolk Park and New Brighton.	<p>Residential areas under Byron LEP 1988 have a maximum FSR of 0.5:1 for dwellings. Some areas at New Brighton, and Suffolk Park along Broken Head Road when transitioned to LEP 2014 were given an FSR of 0.2:1 due to their environmental sensitivity/flood hazard.</p> <p>It's likely that many of these dwellings already have an FSR greater than 0.2:1 as they were constructed before the application of the 2014 zoning.</p> <p>Some landowners have stated the 0.2:1 FSR is restrictive and hindering some of these sites from redevelopment. It is recommended to investigate an increase in FSR for these areas to 0.3:1.</p>
8	Reduce the height of buildings limit from 9m to 8m within the Wategos residential area.	<p>Wategos is the most eastern residential area within Australia, is surrounded by a State Conservation Area and has steep topography. These attributes give it a high degree of visual exposure.</p> <p>To minimise the impact of the built form on the environment and visual/public realm, it is proposed to reduce the height limit in this area from 9m to 8m.</p> <p>Consultation with the affected landowners will be required as part of the planning proposal process.</p>
9	Remove rural zoning from lots within Bangalow Industrial estate, Dudgeons Lane	<p>A small part of the Bangalow industrial estate has the RU1 Primary Production zone applying. This anomaly was identified in a submission to the planning proposal for 150 Lismore Road (26.2021.3.1) and the area should have an <i>IN1 General Industrial Zone</i> applied, consistent with the rest of the industrial estate. FSR and Lot Size will also need to</p>

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Item #	Amendment	Reasoning
		be amended to reflect the IN1 zone.
10	<p>Include 3 land parcels in Bangalow in the HOB map sheet to have a 9m height limit.</p> <p>PN 269670, PN 269673 and PN 269693</p>	<p>These parcels do not currently have a height limit applying. They should have a 9m height limit applying as consistent with the surrounding area.</p>
11	<p>Rezone several parcels that have been gazetted as National Parks or Nature Reserves to <i>C1 National Parks and Nature Reserves</i>.</p>	<p>The following sites have been gazetted as National Parks or Nature Reserves under the National Parks and Wildlife Act 1974 and the zoning is to be updated to <i>C1 National Parks and Nature Reserves</i>:</p> <p>Lot 1 DP 1261334</p> <p>Lot 311 DP 1163830</p> <p>Unformed road Koonyum Range</p> <p>The sites are now part of Billinudgel Nature Reserve and Mount Jerusalem National Park.</p>
12	<p>Amend Byron LEP 1988 to rezone the West Byron Urban Release Area to reflect the court approved subdivision for Harvest Estate.</p>	<p>Council Resolved 19-137 to amend the zoning of West Byron Urban release area in relation to the subdivision plan.</p> <p>The court approved Harvest Estate subdivision (2021) differs from the zoning currently within Byron LEP 1988.</p> <p>The zoning should be amended to reflect the 'land use' layout of the approved Harvest Estate subdivision plan.</p> <p>The rezoning will not result in any additional development.</p>

Next steps

Some of these items will require further investigation before a gateway determination can be sought. These include item 3 (rural subdivision clause) and item 7 (application of 0.2 FSR in certain locations).

- 5 A planning proposal will be created reflecting the amendments presented within this report and any other appropriate amendments as necessary.

A report outlining the planning proposal will be presented to Council prior to seeking a gateway determination and public exhibition.

Strategic Considerations

10 **Community Strategic Plan and Operational Plan**

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.2	Review and update LEP and DCP to reflect strategic land use priorities and/or legislative reforms

Recent Resolutions

- **21-174** Rural subdivision provisions
- **19-137** West Byron Urban Release Area zoning

15 **Legal/Statutory/Policy Considerations**

None applicable to this report.

Financial Considerations

This is a Council initiated planning proposal and will be funded from the existing budget.

Consultation and Engagement

- 20 The planning proposal will be exhibited in accordance with the gateway determination. Notification of the exhibition period will be sent to directly affected properties.

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Report No. 13.4 PLANNING - 10.2021.582.1 Demolition of Existing Dwelling and Construction of Multi Dwelling Housing comprising of Six (6) Dwellings at 8 Kumbellin Glen Ocean Shores

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Directorate: Sustainable Environment and Economy

Report Author: Jordan Vickers, Planner

File No: I2022/1099

Proposal:

DA No:	10.2021.582.1		
NSW PP	PAN-143522		
Proposal description:	To demolish an existing dwelling house and to construct a multi dwelling housing development containing 6 dwellings		
Property description:	LOT: 1323 DP: 243480		
	8 Kumbellin Glen OCEAN SHORES		
Parcel No/s:	40380		
Applicant:	Chincogan Property Developments Pty Ltd		
Owner:	Chincogan Property Developments Pty Ltd		
Zoning:	R2 Low Density Residential		
Date received:	11 September 2021		
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
Concurrence required	No		
Public notification or exhibition:	– Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications		

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	<ul style="list-style-type: none"> - Exhibition period: 24/11/21 – 7/12/21 - Submissions received: 17 - Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Delegation to determine	Council
Issues:	<ul style="list-style-type: none"> • Building height plane • Zone objectives
Summary:	<p>The DA proposes to demolish an existing dwelling house and to construct a multi dwelling housing development containing 6 dwellings.</p> <p>The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in the Recommendation of this Report below.</p>

Summary:

5 This application seeks approval for the demolition of an Existing Dwelling House and the construction of Multi-Dwelling Housing comprising six (6) Dwellings. The proposed Multi-Dwelling Housing building is a detached structure of 2 blocks of 3 x attached units spanning approximately 30m across the subject site.

Each unit is a three-storey domicile comprised of: ground floor single-car garage and utilities room; first floor kitchen, dining/living areas, and outdoor private open space; and a second floor containing two bedrooms (Master bedroom + one bedroom) and a bathroom.

10 The building is a slab-on-ground construction, articulated with a variety of materials (FC sheets, weatherboard and rendered cladding), colorbond roofing and panelift garage doors.

15 Excavation and retaining up to 2m is required to establish the ground floor car parking area. Planted landscaping is required to be removed to facilitate the development. A landscaping plan has been provided with the application demonstrating proposed replacement plantings to be established along the Goondooloo Drive frontage.

Submissions received during community notification identified density and built form as primary matters of concern, identifying that the proposal far exceeds the existing and expected residential density within the low-density residential zone and that the bulk of the building is out of character with the streetscape.

20 The site is located within the R2 Low Density Residential zone which is predominantly characterised by Dwelling houses, detached Secondary dwellings and Dual occupancies. The development provides affordable and diverse housing to suit the needs of the community and reflects the built form of the low-density residential environment which surrounds the development site. The density of the proposal in terms of built form and floor area is not inconsistent with what may be expected of an allotment of this size. It would be

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possible to construct a triplex comprising four bedrooms with double garages each. Further the type of housing being proposed will add to the mix of housing types in Ocean Shores which are generally considered family sized dwelling houses.

5 It is noted DA10.2020.138.1 sought consent for seven dwellings. The application was reported to Council on 19 November 2020 with Staff recommending the application be approved for only 6 units and the building to be separated into two detached buildings. Council resolved (See **Res 20-613**) to approve the development application but reduced the number of dwellings to five.

10 Notwithstanding this resolution of the last Council, it is still considered the proposal for 6 x 2 bedroom dwellings, having regards to the sites location, is a suitable response to the constraints applying to the land and the applicable planning controls. The property has two road frontages and adjoins a council reserve, leaving the fourth boundary adjoining a dual occupation to the north, which overlooks the subject property. The property is also approximately 400 metres from the shopping centre in Rajah Road providing ready access to necessary retailers and service providers.

15 The application is recommended for approval subject to conditions of consent.



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.

RECOMMENDATION:

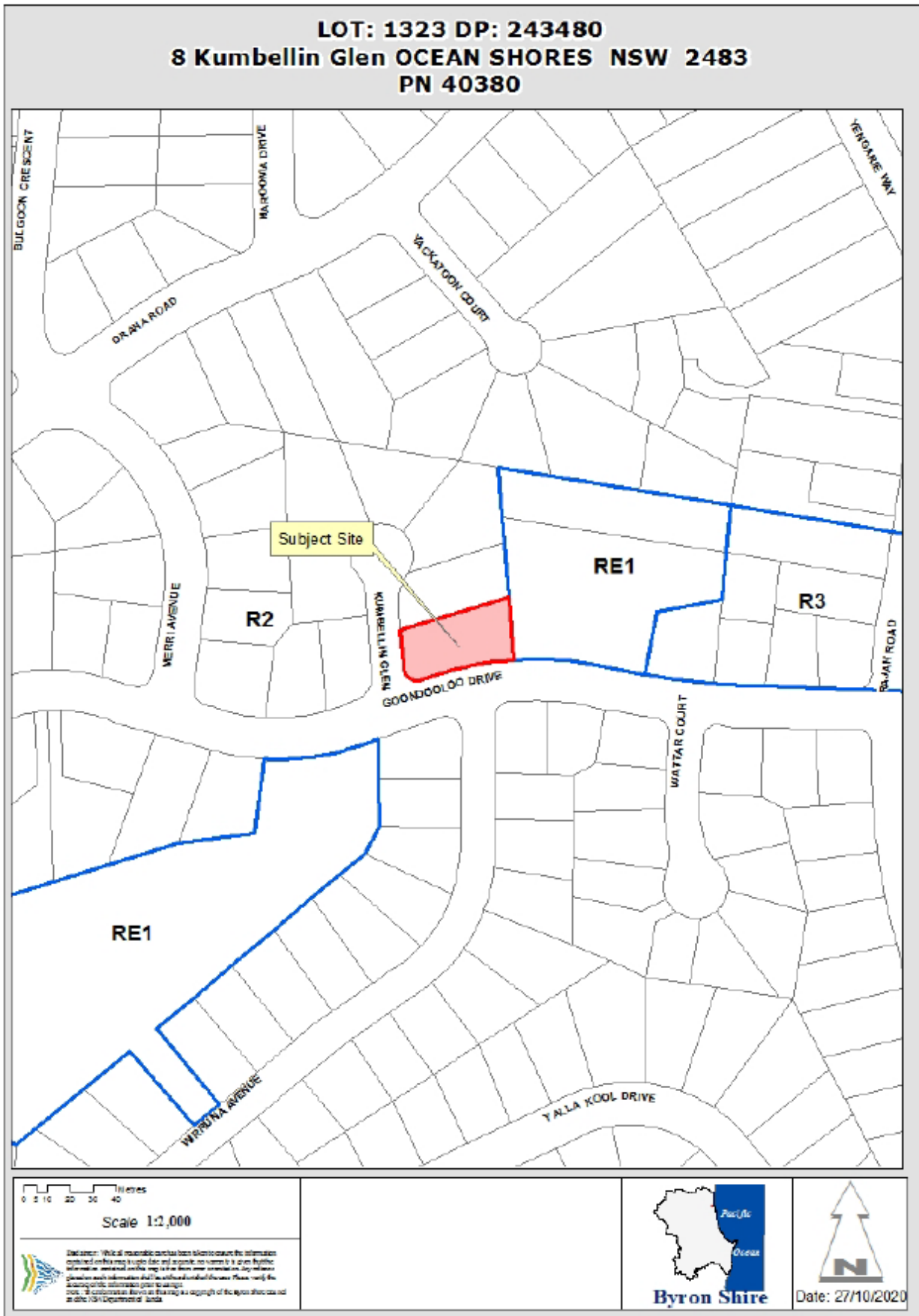
25 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.582.1 to demolish an existing dwelling house and to construct a multi dwelling housing development containing 6 dwellings, be granted consent subject to conditions in Attachment 2.**

Attachments:

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- 1 DA10.2021.582.1 Proposed Plans - 8 Kumbellin Glen, Ocean Shores, E2022/92255 
 - 2 DA10.2021.582.1 Conditions of Consent - 8 Kumbellin Glen, E2022/92075 
 - 3 Confidential - DA10.2021.582.1 Combined submissions, E2022/91933
 - 4 Confidential - DA10.2021.582.1 Petition, E2022/91760

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Report

Assessment:

1. INTRODUCTION

History/Background

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Formatted Account	Document Type	External Ref	Precis	Received Date	Cour	Cour	Determination	Determination
006.1991.00002202.001	Building Applications		Dwelling	08/05/1991			05/06/1991	Finalised
010.2021.00000582.001	Development Application	PAN-143522	Demolition of Existing Dwelling and Construction of Multi Dwelling	15/11/2021				
010.2020.00000138.001	Development Application	PAN-9990	Demolition of Existing Dwelling House and Construction of	17/03/2020			20/11/2020	Approved
010.2017.00000653.001	Development Application		Multi Dwelling Housing: Four (4) Dwellings including Alterations and	16/11/2017			23/04/2018	Withdrawn/Cancelled

Description of the proposed development

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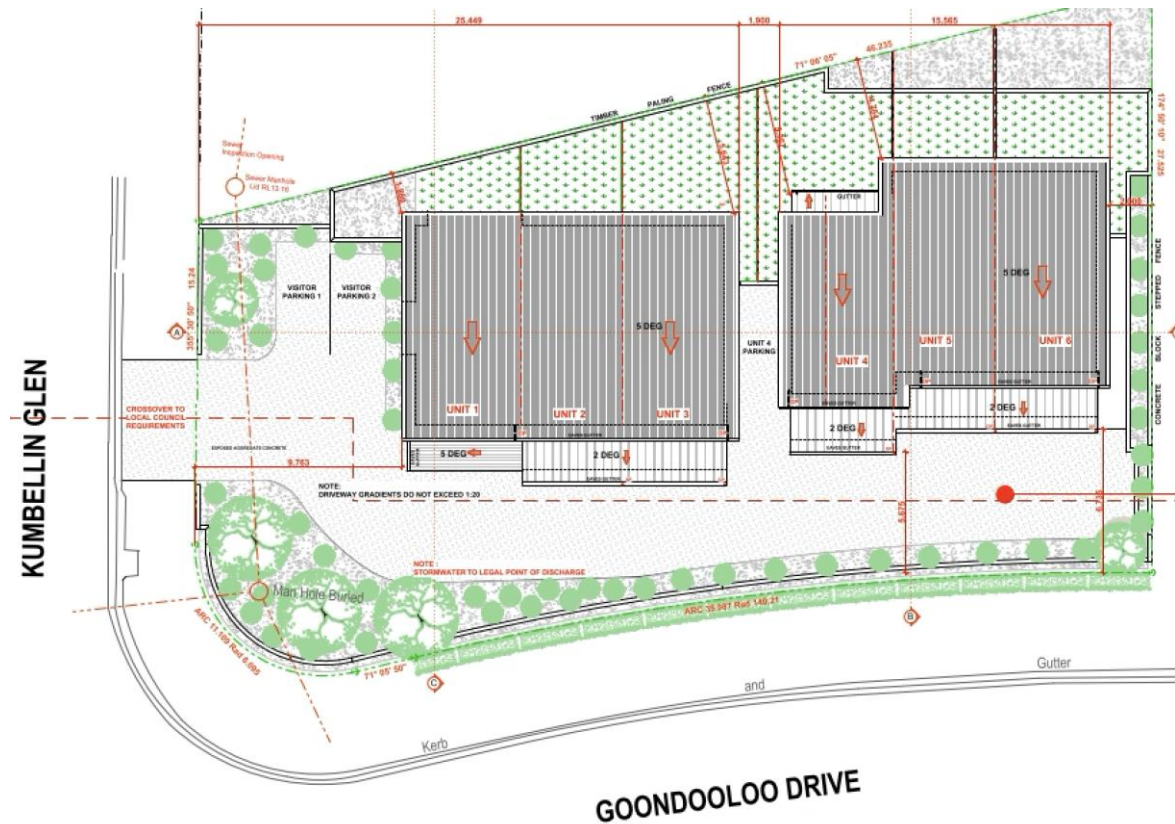
This application seeks approval for the demolition of an Existing Dwelling House and the construction of Multi-Dwelling Housing comprising six (6) Dwellings. The proposed Multi-Dwelling Housing building is comprised of two individual structures, each of three (3) attached units spanning approximately 15m across the subject site. Each unit is a three-storey domicile comprised of: ground floor single-car garage and utilities room; first floor kitchen, dining and living areas, and outdoor private open space; and a second floor containing two bedrooms (Master bedroom + one bedroom) and a bathroom.

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Site Plan

Each unit comprises a first floor living area and a second storey with two bedrooms. Car parking and laundry areas are located on the ground floor. Each dwelling has a partly covered rear deck on the first floor which opens up on to the rear courtyards for private open space purposes. Excavation and retaining is required to establish the ground floor car parking area and the existing dwelling is required to be demolished to facilitate the development.

The dwellings are to be clad with fibro cements sheeting, rendered foam cladding and weatherboards with colorbond sheet roofing.

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Street Elevation Impression

Description of the site

The subject site known as 8 Kumbellin Glen, Ocean Shores and legally described as Lot 1323 on DP243480, has a total site area of 1075m² and is located within the Low density residential (R2) zone of the Byron Local Environmental Plan 2014. The property is a corner lot with dual frontage to Kumbellin Glen and Goondooloo Drive and is currently improved by a single dwelling house and landscaping. The allotment falls from the northern boundary to the Goondooloo Drive frontage. From survey detail the property sits between 9.0 m AHD at its lowest point to over 16.0 m AHD in the north-east corner of the lot. No easements encumber the site however Council Sewage infrastructure is located at and parallel to the frontage to Kumbellin Glen.

The greater locality of ocean Shores is predominantly comprised of detached dwelling houses however the immediate vicinity of the subject site (particularly Kumbellin Glen) is characterised by Dual occupancies and a detached Multi-dwelling housing development comprised of three (3) dwellings (see image below).

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Land is legally described	LOT: 1323 DP: 243480	
Property address	8 Kumbellin Glen OCEAN SHORES	
Land is zoned:	R2 Low Density Residential	
Land area is:	1075m ²	
Property is constrained by:	Cattle Dip Buffer, Coastal Management SEPP (Coastal Environment Area)	
	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

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer*	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S94 / Contributions Officer	No objections subject to conditions.
Waste & Resource recovery	No objections subject to conditions.

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

5 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.

10 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.

15 State Environmental Planning Instruments (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>SEPP No 55—Remediation of Land</i></p> <p>Consideration:</p> <p>Council’s Environmental Health Officer reviewed the submitted Preliminary Site Investigation and provided the following comment:</p> <p align="center"><i>Preliminary Site Assessment found the site to be</i></p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
<i>free from contamination.</i>		
<p><i>SEPP (Building Sustainability Index: BASIX) 2004</i></p> <p>Consideration:</p> <p>The proposal is accompanied by a valid BASIX and NatHers certificate. The SEPP has been addressed and the proposal is considered to comply.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Coastal Management) 2018</i></p> <p>Consideration:</p> <p><u>Coastal Environment Area:</u></p> <p>The property is within the Coastal Environment Area and the proposed development is unlikely to cause an adverse impact on:</p> <ul style="list-style-type: none"> a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, b) coastal environmental values and natural coastal processes, c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1, d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms, e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability, f) Aboriginal cultural heritage, practices and places, g) the use of the surf zone. 	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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 Multi dwelling housing;
- 5 (b) The land is within the R2 Low Density Residential 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:

Clause 2.3 - Zone objectives and Land Use Table

10 The Objectives of the low-density Residential Zone (LDRZ) are:

- To provide for the housing needs of the community within a low-density residential environment; and
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

15 The proposal is for 6x2 bedroom dwellings in a small compact form provides for an alternate form of accommodation in Ocean Shores that is not readily supplied by the housing market. The alternate forms of dual occupancies and triplexes in Kumbellin Glen and nearby are more consistent with housing for families and may not be suitable for those wishing to downsize, single parent families with 1 or 2 children, couples or retirees. The
20 developments design as two separate buildings also breaks up the building as opposed to one solid row of houses, whilst the dwellings footprint is not dissimilar to the large dual occupancies or triplexes in this area of Ocean Shores.

The following examples are provided of larger housing types in the vicinity of the subject development:

- 25
- 6 Goondooloo Drive– Triplex
 - 2 Kumbellin Glen – Dual occupancy
 - 4 Kumbellin Glen – Dual Occupancy
 - 5 Kumbellin Glen – Triplex
 - 6 Kumbellin glen – Dual Occupancy
- 30
- 10 Goondooloo drive – Dual Occupancy

35 The applicants could seek consent for something similar to those approved nearby, however such a proposal is likely to comprise 3-4 bedroom dwellings with media/ rumpus rooms, offices and studies, double garages and a footprint and built form not dissimilar to what is being proposed and continues to serve the housing needs of part of the community. It is also relevant to acknowledge the subject property is only 400 metres from

Ocean Shores Shopping Precinct in Rajah Road, which can provide for the daily shopping needs of residents, making the site more suitable for medium density purposes.

- 5 As such it is concluded the development is not inconsistent with the first objective and provides for opportunities to meet the housing needs in Ocean Shores of a different proportion of the population. The second objective is taken to consider the alternate non-residential land uses that may be permissible in the R2 such as the neighbourhood shop. This objective is not relevant to the proposal.



10

Subject site Context with surrounding housing forms in Kumbellin Glen and at 6 and 10 Goondooloo Drive.

15

Clause 4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings

Pursuant to clause 4.1E, Multi-dwelling housing within land zoned Low Density Residential (R2) must be sited on allotments 1,000m² or greater. This site has an area of 1,075m², thus multi dwelling housing is a permissible use on the subject site. The proposal complies with the clause.

20

As LEP 2014 does not stipulate a density control for Multi dwelling housing in the LDRZ with regard to dwellings/m² and relies on other development standards (LEP: Floor Space Ratio) and development controls (DCP: Setbacks, Private Open Space etc.) to guide this density, the merits of the proposal need to be considered to determine if the proposal is appropriate in context.

25

Given the minimum lot size map for the locality is 600m², Council's expectation is that the planned residential density for the locality would be 1 dwelling/600m²; or, with the inclusion of Secondary dwellings, a maximum of 1 dwelling per 300m². Similarly, Dual occupancies in the zone are permissible on lots ≥ 800m², and the maximum considered density of each allotment in such an instance would be 1 dwelling/400m². Accordingly, the development as proposed is in conflict with the Objectives of clause 4.1E, notably: *"to achieve planned residential density in certain zones"*.

As the proposal seeks to establish a multi-dwelling housing development at a residential density of 1 dwelling /179m², it is not reflective of the planned residential density of the Low density residential zone noted above.

Notwithstanding, as discussed under Clause 2.3 above, the proposal is considered to achieve the objectives of the low-density residential zone, and as discussed hereafter, the merits of the proposal justify the development through demonstrable compliance with development standards and controls.

Clause 4.4 Floor Space Ratio

The Statement of Environmental Effects (SEE) notes that the proposed development is compliant with applicable the Floor Space Ratio (FSR) development standard (0.5:1) with an FSR of 0.39:1.0.

Clause 4.3 Height Of Buildings

The proposal complies with the 9 m height limit as demonstrated in the architectural drawings including the elevations and sections.

Clause 5.21 Flood Planning

The subject site is elevated at height of 9.0m AHD or higher and not prone to flooding

Clause 6.2 Earthworks

The proposal incorporates earthworks primarily to create a level pad for the garage and driveway/ manoeuvring areas. The applicant have submitted a Geotech report which is has been assessed and it is considered the site can be developed subject to a further report specific to slope stability conditions and for the report to be certified by a practicing engineer with geotechnical expertise. Impacts can be mitigated and conditions to apply in relation to protecting any aboriginal artefact or item that maybe unearthed during earthworks, for sedimentation and erosion control measures to be implemented during construction, and excavated spoil to be disposed of off site in accordance with EPA Guidelines.

Clause 6.3 Essential Services

The subject site is serviced with all necessary infrastructure for the development. Conditions to apply.

Clause 6.7 Affordable Housing

Additionally, the proposal provides a housing typology (2-bed housing) that is desirable in the Shire and not inconsistent with Clause 6.7 of the Byron LEP 2014, which endeavours to:

- 5 a) *increase the supply of affordable housing,*
- b) *provide accommodation to support a diverse residential population inclusive of all income groups within Byron,*
- c) *to ensure a housing mix and tenure choice including affordable housing,*
- 10 d) *to ensure that affordable housing is identified by the Council as in demand and located close to transport and services appropriate to the intended households.*

Compared to fewer dwellings with similar habitable floor area as discussed above, the proposal for six (6) two-bedroom units responds to the LEP identified need to: increase the supply of affordable housing; provide accommodation suitable for a diverse range of income groups; provide a mix of housing and tenure options for affordable rental housing in close proximity to services appropriate to the households (the Ocean Shores Shopping Centre), and provide housing along the public transport route. By reasoning of built form and area the dwellings will either sell or rent for a lesser price than say a larger 3 or 4 bedroom dwelling due to inherent market forces.

It is considered the proposal contributes to the provision of affordable and diverse housing types in the Ocean Shores locality in proximity to the Shopping Centre and public transport and will assist those on lower incomes an opportunity to rent or buy a dwelling at a more affordable price point. Condition to apply to prevent the dwellings from being used for short term holiday rental accommodation, and to ensure the dwellings increase the supply of housing not the supply of holiday accommodation.

25

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

There are no proposed environmental planning instruments of relevance to the proposal.

30 **4.4A Byron Shire Development Control Plan 2014 (DCP 2014)**

B3 Services

The property has access to all necessary services including power telephone, water, sewer and stormwater. Conditions of consent to apply in terms of augmenting these services, stormwater management, payment of headworks charges and an easement for sewer.

35

B4 Traffic Planning, Vehicle Parking, Circulation and Access

The proposal provides one parking space per dwelling plus two spaces for visitors in accordance with the DCP. The driveway and internal manoeuvring areas are satisfactory. Conditions of consent to apply

5

B8 – Waste Minimisation & Management

10 The property benefits from approximately 40m of frontage to Goondooloo Drive at the Southern boundary and 5m either side of the driveway at Kumbellin Glen. While Goondooloo Drive has an operational bus stop near the subject land, it is not identified immediately in front of the development site and the adjacent land is council owned property where a bus can stop if required. It is considered there is adequate road frontage for garbage collection.

15



Bus stop mapping extract for Ocean Shores

B9. Landscaping

20 In accordance with DCP Part B9.4.1 a Common Landscaped Area (CLA) of 420m² is to be provided for the site, being 70m²/dwelling @ 6 dwellings, less the totals of the areas of approved private courtyards and approved private open space balconies, which equates to 229m². As such only 191 m² of CLA is required. The proposal indicates that 223 m² of landscape area will be provided. It is considered the proposal complies.

B14 – Excavation and Fill & D1.2.5 - Fences

Excavation and retaining up to 2m is required in order to create the ground floor and visitor car parking spaces and services areas for the proposed development (see Unit 5 below).

DCP Part B14.2 allows for excavation up to 1.8m for car parking beneath a building, and while the proposal also locates services within the excavated area, these are located behind enclosed garage spaces and will not be visible from the streetscape.

Excavation up to 1.2m is also proposed for the rear yard of Units 5-6 (see Unit 5 above).

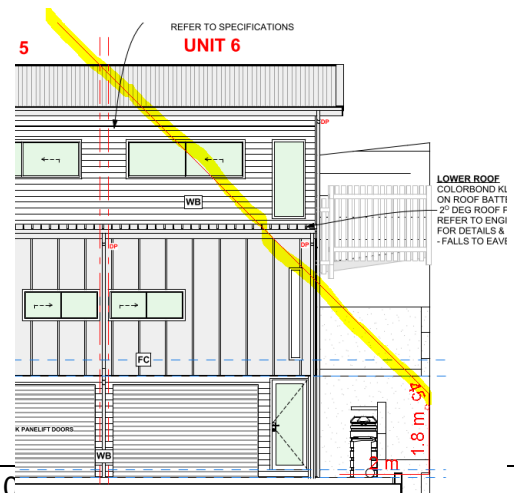
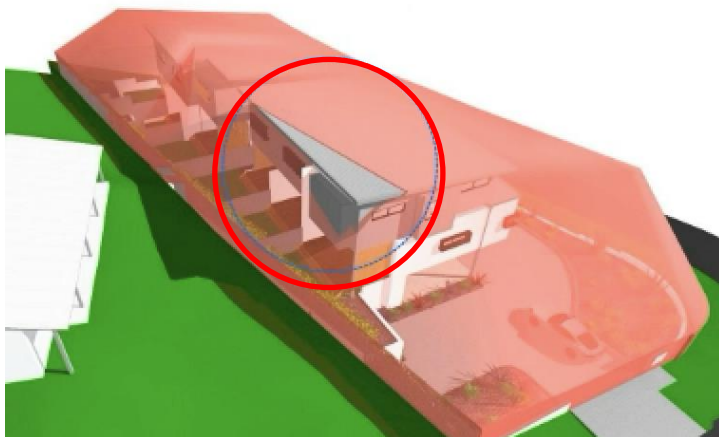
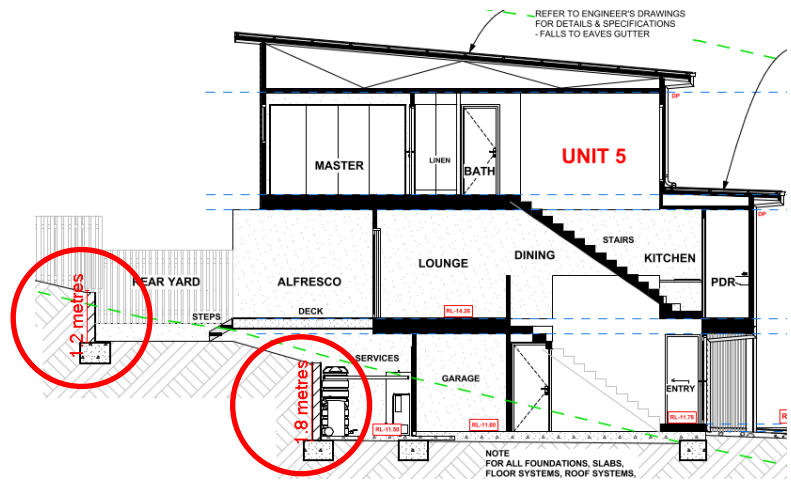
Rear yard retaining will provide usable private open space for the units in a scale and character that is compatible with the surrounds and does not introduce adverse visual impacts.

The proposal seeks to establish a retaining structure along the front property boundary to create a landscaping bay along the Goondooloo road frontage and is thereby considered a Fence in accordance with the DCP Part D1.2.5. As proposed, the structure is located at the front property boundary growing in height from approximately 1.2m at the western end of the site to a maximum height of approximately 2.2m at the east. Proposal plans demonstrate that the wall is recessed up to 500mm within the property boundary with hedging to be located in front of the structure adjacent to the Council Road reserve.

Despite exceeding the prescribed 1.2m high fence, the proposal mitigates adverse visual impact and complies with the performance criteria by including a recession in the front fence (retaining wall) to provide street-front landscaping.

D1.2.1 Building Height Plane

The development encroaches into the eastern side boundary building height plane with the adjacent park. The development will not adversely affect any residential development on this site by way of overshadowing, or impinging on privacy. It is considered this encroachment as present for Unit 6 is acceptable.



In terms of the north eastern corner of the building an encroachment is also observed through the eaves above units 2 and 3 to a smaller extent and part of the top storey of Unit 1. Being on the northern elevation the encroachment does not impact on neighbours from overshadowing between 9am and 3 pm, whilst the upper-level bedroom has only a small
5 louvre window on this elevation for letting in natural light. The other windows for Units 2 and 3 include window blades for privacy purposes. Conditions of consent are recommended requiring the louvre window to also be screened or frosted/ opaque glass being used. It is considered the encroachment on this elevation is minor and acceptable in the terms of the objectives and prescriptive measures underpinning this design element.

10

D1.2.2 Setbacks

The proposal has setbacks complies with the 4.5 m setbacks to Goondooloo Drive and the 3 metre setback to Kumbellin Glen. It also complies with the minimum 1.5 m setbacks to side and rear boundaries other than the Building Height Plane encroachment on the
15 northern boundary as discussed above, and the requirement for the two buildings to be 3 metres apart.

15

D1.6.1 Private Open Space Courtyards

Each dwelling has access to private open space of 30m² with minimum 4 metre
20 dimensions

20

D1.6.3 – Landscaping

Adequate area is available for landscaping on site as discussed above. Conditions to
25 apply.

25

D1.6.5, 1.6.6, 1.6.8 Soundproofing, Clothes Drying, Tv Antennae

Each unit has access to a northern courtyard for clothes drying purposes. The dwellings will need to comply with building code requirements for soundproofing and fire separation. Conditions to apply regarding common antennae for the 6 dwellings. It is considered the
30 proposal is satisfactory

30

D1.6.7 Equity of Access and Mobility / B13 Access and Mobility

Unit 1 has been designed as an adaptable housing and nominated as such on the plans. The garages has been designed with suitable width and height for wheelchair accessibility,
35 whilst doorways and the bathroom are also of a greater width for adaptable purposes if required. The proposal complies with the requirement for a minimum of 10% of dwellings to be adaptable under B13.

35

40

D1.6.10 – Character & E9 – Ocean Shores, New Brighton and South Golden Beach Residential Character Areas

5 This development control seeks to ensure that medium density housing development (including attached dwellings) is compatible in character with the locality, provides adequate private open space, addresses slope and drainage issues, and is consistent with the character narrative within Chapter E9 of the DCP.

10 The character narrative within Chapter E9 discusses that: new developments facilitate the demand for greater housing choice, demonstrating greater variation in size, height, materials, architectural styles and orientation; outdoor activity spaces are oriented toward the backyard; townhouse development is clustered around Rajah Road or near the Ocean Shores Shopping Centre; housing diversity will occur through infill development including (to a lesser extent) townhouses on appropriate lots; existing neighbourhood character and site constraints (topography, flooding, coastal habitat) are respected. Further, Chapter E9 specifies that:

15 *Higher average densities are generally suitable to areas within convenient walking distance of public transport, the Ocean Shores Shopping Centre and/or Billinudgel Village Centre. By providing greater housing choice in these localities, a greater mix of household types and age groups can be accommodated, which in turn can provide a more ‘well-rounded’ community.*

20 The proposal provides greater housing choice in close proximity to the Ocean Shores Shopping Centre and Rajah Road, provides north-facing backyard outdoor space that responds to orientation, has been modified to respond to the presiding built-form/character, and has suitable convenient access to public transport. It is considered that the proposal facilitates the objectives of these development controls. The applicant
25 has submitted a design verification statement from their designer. It is considered the proposal is acceptable in terms of Ocean Shores character narrative.

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

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	N/A	N/A	N/A
93	N/A	N/A	N/A
94	N/A	N/A	N/A
94A	N/A	N/A	N/A

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

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?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

5

4.7 The suitability of the site for the development

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

4.8 Submissions made in accordance with this Act or the regulations

10

The development application was publicly exhibited

There were **17** submissions made on the development application including one petition of 110 signatures, all in opposition, which are discussed hereafter:

Primary concerns from submissions of opposition:

15 Numerous submissions were received regarding the proposed development. A summary of these submissions and the assessment officer’s comment are discussed hereafter.

❖ **Conflicts with existing and expected density**

Submitters posit that the bulk and built form of the proposal does not reflect the low density residential environment that is characteristic of the area (dwelling houses,

Secondary dwellings and detached Dual occupancies), nor the expected residential density of the Low density residential zone. It is contended that the increased density is not justified.

Comment:

5 The design of the development is reflective of the built form of multi dwelling housing development within the local area. Multi dwelling housing is permitted with consent on this property. The application has been demonstrated to achieve the development standards of the Byron LEP 2014 and development controls of the DCP 2014, including the DCP Chapter pertaining to Ocean Shores. The proposal is reflective of the
10 established built form in the locality and contributes to the provision of affordable and diverse rental housing in the Ocean Shores locality in proximity to the Shopping Centre and public transport.

❖ **Tree removal:**

Concerns have been raised regarding the removal of vegetation from the site.

15 Comment:

Established vegetation at the site comprises primarily planted landscape species and is not identified as Koala habitat, High Environmental Value, or of ecological significance under any planning instrument. The site to be suitably landscaped and conditions to apply

20 ❖ **Use as Airbnb (short term accom) and consequential impact on amenity:**

Submitters highlight concerns regarding the 'potential' use of the development for short term accommodation, and the consequential degradation of amenity and community within the locality (as is commonly experienced from such occurrence).

Comment:

25 The proposal seeks to establish multi dwelling housing at the subject site, development that is 'permitted with consent' pursuant to the Byron Local Environmental Plan 2014. Conditions will be applied to the development restricting the use of the dwellings to that approved under the consent and not to be holiday let.

30 **Excess traffic, Number of car parking spaces provided and flow-on on-street parking.**

Submitters are concerned that increased density within Kumbellin Glen is unsustainable, and identify that each dwelling is afforded a single car parking space and that flow-on on-street parking is likely however not feasible.

Comment:

35 Proposal complies with parking requirements for two bedroom dwellings and visitor space provisions.

❖ **Degradation to Goondooloo Drive road surface**

Submitters posit that additional vehicles trafficking Goondooloo Drive will further contribute to the degradation of the road surface.

40 Comment:

The applicant will be required to pay developer contributions in accordance with Council's Policy whereby a portion of the contribution paid will be allocated to maintenance of Urban Roads.

❖ **Noise**

5 Submitters are concerned about the noise of demolition/construction and habitation of the proposed residences.

comment:

10 Noted – noise during construction will be shortlived and conditions of consent to apply to limit hours of work. Noise caused by inhabitants of the dwellings and surrounding existing dwelling cannot be controlled through the Development Assessment process.

❖ **Height (submissions purport that the development is over height)**

Submissions purport that the proposal exceeds the maximum building height development standard. The submitters assert that "Council designates a maximum of 2 storeys for a multi dwelling in an area which is zone low density".

15 Comment:

Proposal plans demonstrate that the proposal is less than 9m overall height. The building height overlay map prescribes only height in metres, not maximum number of storeys.

❖ **Noncompliance with the Building Height Plane**

20 A submitter highlighted that the Building Height Plane (BHP) is encroached at the eastern side property boundary (adjoining Council park land) and no variations to the BHP should be permitted.

Comment:

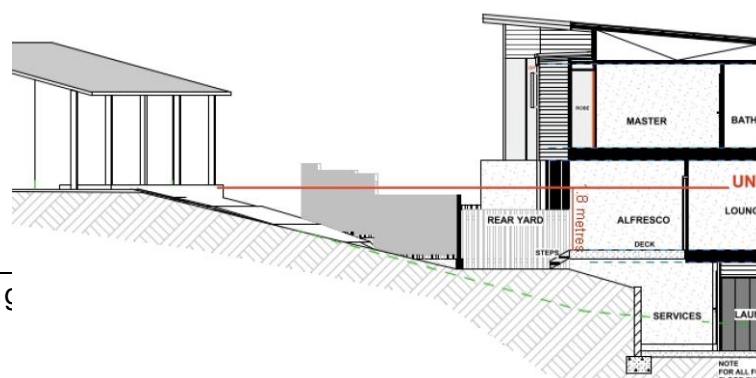
25 Section 4.14(6) of the Act requires malleability in the application of the DCP. The BHP encroachment is justifiable as it will not cause overshadowing, privacy or amenity implications for adjoining property owners, and provides an acceptable performance outcome.

❖ **Overlooking**

30 One submitter highlights concerns regarding overlooking from the northern alfresco areas of the development to the adjoining property.

Comment:

35 The subject land is downhill of the adjacent property to the north. The alfresco areas proposed at the rear of each dwelling unit have a finished floor level approximately 1.8m below the finished floor level of the dwelling at the north. A rear boundary fence will further obscure views from alfresco areas toward the adjacent building. Contrary to the submitters concerns, it appears users of the alfresco areas may experience overlooking by residents of the adjacent dwelling.



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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.4

❖ **The dangerous intersection of Goondooloo and Kumbellin – people speed down the hill and it is dangerous.**

Submitters are concerned that increased density within Kumbellin Glen will intensify the existing dangerous intersection of Kumbellin Glen and Goondooloo Drive.

5 Comment:

The assessment of this DA cannot control dangerous driving of persons within the locality. Access to the development is of Kumbellin Glen which is a short culdesac.

❖ **School Bus stop at Goondooloo**

10 Submitters highlight concerns regarding safety for students using the Goondooloo Drive bus stop with additional traffic using the (Kumbellin Glen – Goondooloo Drive) intersection, considering increased density within Kumbellin Glen and on-street parking.

Comment:

15 The proposal will not inhibit use of the School Bus stop at Goondooloo Drive; and on-street parking is assumed.

❖ **Waste management**

Submitters highlight concerns regarding the availability of road reserve to accommodate wheelie bins at the subject site.

Comment:

20 The subject land has dual frontage to both Kumbellin Glen and Goondooloo Drive, with a total frontage of over 40m.

❖ **Accessibility of dwellings**

25 Submitters highlight that the buildings are three-storeys with stairwell access, and therefore the dwellings will not be accessible for persons with disabilities or small children.

Comment:

30 In accordance with DCP Chapter B13, a minimum of 10% of dwellings proposed in the development must be adaptable housing in accordance with AS4299 – 1995 (adaptable housing being defined in the DCP). Proposed Unit 1 is an adaptable dwelling.

❖ **Social and emotion well-being of occupants**

Submitters assert that the social and emotional well-being of occupants of the dwelling units has been neglected with “no provision for gardens or adequate communal areas.”

Comment:

35 The proposed development provides the prescribed area of both private open space and common landscaped area in accordance with the DCP.

❖ **Incomplete application**

Submitters highlight that the application did not include a Design Verification Statement or Traffic Impact Statement.

40 Comment:

The applicant was requested to provide a Design Verification Statement which has been submitted and is considered satisfactory in term of the DCP. Council’s

Development Engineer has reviewed the proposal and confirmed that a Traffic Impact Statement is not required in accordance with DCP Part B4.2.1(2) – ‘The Need for a Traffic Impact Assessment’ as the development does not generate more than 10 peak hour trips per day and is low impact.

5 **4.9 Public interest**

The proposed development is demonstrated to achieve the Prescribed Measures and Performance Criteria, and where necessary, Objectives of the Byron DCP 2014 and LEP 2014. Therefore, it is understood that the proposal is unlikely to prejudice or compromise the public interest. The proposal presents a development which is unique to the subject land, based on development related advice provided by Council and previous iterations of this application which have been assessed by Council. A development of this nature is suited to the subject land as demonstrated by compliance with the relevant planning controls, and it is not anticipated to create an undesirable precedent.

5. DEVELOPER CONTRIBUTIONS

15 **5.1 Water & Sewer Levies**

Section 64 levies will be payable.

5.2 Developer Contributions

Section 7.11 Contributions will be payable.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a ‘gift’ from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

20 **7. CONCLUSION**

The DA proposes to demolish an existing dwelling house and to construct a multi dwelling housing development containing 6 dwellings.

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.

**Report No. 13.5 PLANNING - Planning Proposal - 26.2021.6.1
- 103 Yagers Lane, Skinners Shoot**

Directorate: Sustainable Environment and Economy

Report Author: Dylan Johnstone, Development Investigations Lead

5 **File No:** I2022/1198

Summary:

10 Council received a planning proposal in August 2021 requesting an amendment to Byron LEP 2014 to obtain a dwelling entitlement for Lot 8 DP 8385 which has an area of approximately 9 hectares. The street address is 103 Yagers Lane, Skinners Shoot.

The subject land contains an existing unauthorised dual occupancy (detached). Aerial photography indicates that one of the dwellings was constructed in approximately 2014 while the second dwelling was constructed over a period between 2015-2018.

15 This Planning Proposal is the result of Action No. 22 of the Byron Shire Rural Land Use Strategy 2017 (BSRLS) which recommends investigation into a strategic framework for resolving dwelling entitlement issues. This strategy was endorsed by the NSW DPIE in July 2018. This action provides the strategic basis for the subject planning proposal.

The planning proposal is the best means to obtain development consent for the existing dual occupancy (detached).

20 The subject land is affected by flooding and is mapped as bush fire prone land. These issues are addressed to the satisfaction of Council. The proposal generates minimal additional traffic movements and does not require any upgrading of Yagers Lane.

25 The planning proposal is justifiably inconsistent with the North Coast Regional Plan 2036 because it is located outside of the Urban Growth Area boundary. It is located in the coastal strip being located east of the Pacific Highway. The planning proposal is consistent with the Urban Growth Area Variation Principles of NCRP.

The planning proposal is consistent with the Council adopted Local Strategic Planning Statement and 10 year + Community Strategic Plan 2022 (CSP).

30 An assessment of the planning proposal indicates that it is also consistent with relevant SEPPs and the majority of relevant section 9.1 Directions; and where inconsistencies occur, they can be justified or addressed with further information.

It is recommended that the planning proposal be forwarded to the NSW DPIE for a Gateway determination so that it can proceed to public exhibition (subject to compliance with any Gateway conditions).

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13.5

The planning proposal, as attached to this report, includes supporting information and studies that are required to be placed on public exhibition and available for agency consultation.

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.

10





RECOMMENDATION:

That Council:

- 15 1. **proceeds with the planning proposal as attached to this report (Attachment 1) to amend LEP 2014 to permit a dual occupancy (detached) with consent on the subject land;**
2. **forwards the planning proposal to the NSW Department of Planning and Environment for a Gateway determination;**
- 20 3. **pending a positive Gateway determination and completion of further studies by the applicant (if required), undertakes public exhibition of the planning proposal in accordance with the determination requirements;**
4. **considers a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.**

25

Attachments:

- 1 26.2021.6.1 - Draft Planning Proposal for Council - 103 Yagers Lane Skinners Shoot, E2022/91546 
- 30 2 26.2021.6.1 - Preliminary Contaminated Land Assessment - 103 Yagers Lane Skinners Shoot, E2022/91565 
- 3 26.2021.6.1 - On-site Wastewater Management Assessment - 103 Yagers Lane Skinners Shoot, E2022/91566 
- 35 4 26.2021.6.1 - Letter of offer for Voluntary Planning Agreement - 103 Yagers Lane Skinners Shoot, E2022/92776 

Background

5 Council resolution **20-283** dated 18 June 2020 included a request that staff *prepare an Unauthorised Residential Accommodation Policy as a matter of priority to confirm the planning pathways and consequences for unauthorised residential accommodation seeking regularisation in Byron Shire.* This resolution also included *that in the meantime any planning proposal or development application lodged with Council for existing (as of 18 June 2020) unauthorised residential accommodation comply with the requirements of the Unauthorised Residential Accommodation Policy or for those applications lodged prior to the Policy being adopted the principles as presented in this report.*

10 Council resolution **20-417** dated 27 August 2020 resolved that the Draft Byron Shire Unauthorised Dwellings Policy be placed on public exhibition with a submissions report to be sent back to Council following the exhibition.

15 As a result of issues raised in public submissions, the Draft Unauthorised Dwellings Policy was converted to a [guideline](#) document for internal use by staff to outline the process for reactive investigations initiated by complaints and owner-initiated actions.

20 One of the planning pathways identified in the guideline is “pathway 2” which provides that, where land does not have a dwelling entitlement and contains an existing unapproved dual occupancy, a planning proposal may be submitted to seek to amend LEP 2014 to permit the dual occupancy on the land with development consent.

Subject Land

25 Historically, Lot 8, together with Lots 4, 6 & 7 of DP 8385 formed an “existing holding” on the relevant day as defined within Clause 15 of LEP 1988. Pursuant to clause 15 of Byron LEP 1988 an existing holding is entitled to one ‘dwelling entitlement’ over the entire aggregation of lots in the holding.

30 The ownership of the four lots comprising the existing holding changed on 11 October 2013. Clause 4B of the Environmental Planning & Assessment Act 1979 defines ‘subdivision of land’ which includes reference to a division of land affected by ‘conveyance, transfer or partition’. Consequently, as of 11 October 2013 the land no longer satisfies the requirements for an “existing holding” under the terms of Clause 15(2)(b) of LEP 1988. Accordingly, Lot 8 does not hold a dwelling entitlement.

35 Council received a planning proposal in August 2021 requesting an amendment to Byron LEP 2014 to obtain a dwelling entitlement for Lot 8 DP 8385 which has an area of approximately 9 hectares (see Figures 1 & 2 below). The street address is 103 Yagers Lane, Skinners Shoot. The subject land contains an existing unauthorised dual occupancy (detached).

The land formerly contained a piggery which has been decommissioned for several years. The former piggery sheds remain on the site with some of the sheds being approved for

use as a plant nursery with another building on the site being approved as a place of assembly.

5 Flood modelling information available to Council indicates that the majority of the site (including the site of the existing dwelling) is not inundated during the Probable Maximum Flood (PMF).

Access to the site during a flood is compromised as Yagers Lane and Skinners Shoot Road are inundated during flood events, however there is no need to evacuate during a flood given the site has land above the PMF.

10 The land has been largely cleared of vegetation historically though there has been some regrowth of camphor laurel and landscape plantings in recent years. There are two clumps of Camphor Laurel located along the southern boundary which are located approximately 60m from the nearest existing dwelling. There are also two small clumps of vegetation mapped as subtropical rainforest that are located on the western and northern boundaries at a minimum distance of approximately 180m to the nearest dwelling. There is also a
15 hoop pine located between the two existing dwellings.

The majority of the site is mapped as bushfire prone land however the existing dwellings may reasonably comply with Planning for Bushfire Protection 2019. Consultation with the Rural Fire Service will be undertaken as part of this Planning Proposal.



Figure 1: Subject land



Figure 2: Existing dual occupancy (detached)

Planning Proposal

5 The planning proposal lodged by the proponent requests an amendment to Byron LEP 2014 to obtain a dwelling entitlement for Lot 8 DP 8385 on land zoned RU2.

The land contains an existing dual occupancy (detached) and the aim of the planning proposal is to establish a legislative mechanism to permit the lawful use of the dual occupancy with development consent.

10 Specifically, the planning proposal seeks to add the land to Part 6 – Additional local provisions to permit a dual occupancy (detached) with consent on Lot 8 DP 8385.

Planning Framework

North Coast Regional Plan

15 The subject site is located outside of the Urban Growth Area boundary under the North Coast Regional Plan 2036 (NCRP). It is located in the coastal strip being located east of the Pacific Highway. Being outside of the Urban Growth Area boundary makes it inconsistent with the NCRP. However, an inconsistent planning proposal can be justified with an application consistent with the Urban Growth Area Variation Principles. This has been demonstrated in the attached Planning Proposal.

5 The most relevant NCRP direction is *Direction 24: Deliver well-planned rural residential housing areas*. The most relevant action is *24.2 Enable sustainable use of the region's sensitive coastal strip by ensuring new rural residential areas are located outside the coastal strip, unless already identified in a local growth management strategy or rural residential land release strategy endorsed by the Department of Planning and Environment*.

10 The proposal is consistent with the Urban Growth Area Variation Principles of the NCRP and is consistent with Action No. 22 of the *Byron Shire Rural Land Use Strategy 2017* (BSRLS) which recommends investigation into a strategic framework for resolving dwelling entitlement issues. This strategy was endorsed by the NSW DPE in July 2018.

Local Strategic Planning Statement

Council adopted a Local Strategic Planning Statement in September 2020 and it was subsequently agreed to by DPIE.

The relevant planning priority in the LSPS (page 37) is:

15 “3. *Support housing diversity and affordability with housing growth in the right locations.*”

This planning proposal will be adding to the supply of housing stock in the shire by providing a mechanism to legalise an existing dual occupancy (detached) and is consistent with the adopted LSPS.

20 **Site Specific Issues**

Flooding

Flood modelling information available to Council indicates that the majority of the site (including the site of the existing dwelling) is not inundated during the Probable Maximum Flood (PMF).

25 Access to the site during a flood is compromised as Yagers Lane and Skinners Shoot Road are inundated during flood events, however there is no need to evacuate during a flood given the site has land above the PMF.

Traffic and roads

30 Skinners Shoot Road has approximately 781 vehicles/day (2021-22 traffic counts). The road formation ranges from approximately 5m to 6m and is sealed. Council's adopted engineering standards (The Northern Rivers Local Government Development Design and Construction Manuals) require a road formation for such daily traffic flows of a 7m seal with 1m shoulders. The current road formation does not comply with Council's standards, irrespective of a dual occupancy on the subject site.

35 Yagers Lane is not expected to carry more than 150 veh/day. The road formation is approximately 4m and is sealed with grassed verges. Council's adopted engineering

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13.5

- standards (The Northern Rivers Local Government Development Design and Construction Manuals) require a road formation of a 6m seal with 0.5m gravel shoulders. Whilst Yagers Lane is below the recommended formation standard, irrespective of the dwellings on the current site, it is reasonable for the current formation to serve the additional 15 trips for a dual occupancy development. The demand for passing of vehicles is low, however the grassed verges are suitable for passing if needed.

Bush fire

- The land is mapped as bush fire prone land and contains vegetation mapped as Category 1 (high risk), Category 2 (low risk), Category 3 (medium risk) and a vegetation buffer area.
- 10 The existing dwellings are located within Vegetation Category 3 (medium risk) with the hazard being identified as grassland. The existing dwellings are located a minimum of 60m from vegetation identified as Category 1 (high risk).
- The existing dwellings each include an existing Asset Protection Zone (APZ). The existing APZs may need to increase in size to comply with Planning for Bushfire Protection 2019 but this can reasonably be achieved without having a significant ecological impact.

15 Council staff will consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination.

Land contamination

- 20 The applicant has supplied a preliminary contaminated land assessment carried out in accordance with the contaminated land planning guidelines. While the land has previously been used as a commercial piggery and plant nursery, soil tests were undertaken and no contamination of concern was identified. The existing dwelling envelopes are considered suitable for use as a dual occupancy (detached).

Aboriginal cultural heritage

- 25 The Jali and Tweed Byron LALCs and the Arakwal Corporation will be consulted as part of the public exhibition of the planning proposal following a gateway determination. An AHIMS search undertaken by the applicant did not identify any aboriginal sites or places within proximity of the subject site.

Ecology

- 30 The land has been largely cleared of vegetation historically though there has been some regrowth of camphor laurel and landscape plantings in recent years. There are two clumps of Camphor Laurel located along the southern boundary which are located approximately 60m from the nearest existing dwelling. There are also two small clumps of vegetation mapped as subtropical rainforest that are located on the western and northern boundaries at a minimum distance of approximately 180m to the nearest dwelling. There is also a hoop pine located between the two existing dwellings. Compliance with the requirements of Planning for Bush Fire Protection 2019 can reasonably be achieved without having a significant ecological impact.

Developer Contributions / Planning Agreement

The planning proposal seeks to amend LEP 2014 so that a dual occupancy (detached) is permitted with consent on the subject site.

5 If a dual occupancy (detached) is permitted on the site, this will create additional demands on rural roads, community facilities, open spaces etc. Such demands are captured by the Byron Shire Developer Contributions Plan 2012 which requires a monetary contribution in accordance with the Plan and Section 7.11 of the *Environmental Planning and Assessment Act 1979*.

10 Ordinarily contributions would be paid at the time of subdivision for creating a lot with a dwelling entitlement equivalent to one Standard Dwelling Unit (SDU) (3 bedroom dwelling or greater). However, for the purposes of this planning proposal, there is no clear mechanism within the Contributions Plan for applying developer contributions.

15 The submitted planning proposal included a letter of offer to enter into a planning agreement with Council. The offer proposes payment of a monetary contribution which is equivalent to two SDUs.

Council staff have no justification to require additional contributions over and above the demand normally generated for a rural dual occupancy under the terms of the Contributions Plan 2012.

20 However, Council may resolve to apply different terms in the agreement if deemed reasonable and appropriate in the circumstances.

A formal agreement will need to be drafted to be exhibited concurrently with the planning proposal.

Next steps

There are three options for Council to consider:

- 5 1. Proceed with the planning proposal contained in Attachment 1 to this report, which will facilitate the lawful use of the existing dual occupancy (detached) with Council consent. This option is subject to any requirements imposed by DPE in its Gateway determination; or
 2. Proceed with the planning proposal in a modified form other than the version attached to this report; or
 3. Not proceed with the planning proposal and advise the applicant accordingly.
- 10 There is sufficient information to support the planning proposal at Attachment 1 to this report and proceed to a Gateway submission. It is considered that no additional studies are required prior to public exhibition and agency consultation.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.2: Enable housing diversity and support people experiencing housing insecurity	4.2.3: Establish planning mechanisms and advocate for changes to legislation to support housing that meets the needs of our community	4.1.4.2	

15

Recent Resolutions

- **20-283:** that staff prepare an Unauthorised Residential Accommodation Policy as a matter of priority to confirm the planning pathways and consequences for unauthorised residential accommodation seeking regularisation in Byron Shire.

20

- **20-417:** that the Draft Byron Shire Unauthorised Dwellings Policy be placed on public exhibition with a submissions report to be sent back to Council following the exhibition.
- 5
- **21-448:** that Council agrees to the Draft Unauthorised Dwellings Policy being converted to a guideline document for internal use by staff to outline the process for reactive investigations initiated by complaints and owner-initiated actions

Legal/Statutory/Policy Considerations

The relevant legal/statutory/policy considerations have been noted above.

10 **Financial Considerations**

If Council chooses to proceed with the planning proposal, it will be at the proponent's expense as a landowner-initiated planning proposal. Full cost recovery of the remaining stages will be required by Council. If the applicant chooses not to pay then the planning proposal will not proceed. If Council chooses not to proceed then the matter does not incur any additional costs.

15

Consultation and Engagement

If Council chooses to proceed with the planning proposal, it will be forwarded to the NSW Department of Planning & Environment for a Gateway determination. A positive determination will identify public exhibition requirements and government agency consultation requirements.

20

BYRON SHIRE COUNCIL

Report No. 13.6 PLANNING - 10.2022.389.1 Temporary use of land in the Byron Rail Corridor to undertake a pop-up Information and Education Facility and associated temporary structures from Wednesday 26 October 2022 to Monday 31 October 2022 in association with the annual Byron Bay Film Festival and to hold similar events in 2023 and 2024.

5

Directorate: Sustainable Environment and Economy

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

File No: I2022/1295

Proposal:

DA No:	10.2022.389.1		
NSW PP	PAN-260180		
Proposal description:	Temporary use of land in the Byron Rail Corridor to undertake a pop-up Information and Education Facility and associated temporary structures from Wednesday 26 October 2022 to Monday 31 October 2022 in association with the annual Byron Bay Film Festival and to hold similar events in 2023 and 2024.		
Property description:	Lot 4729 DP 1228104		
	Butler Street, BYRON BAY		
Parcel No/s:	268546		
Applicant:	Planners North		
Owner:	Byron Shire Council (TAHE)		
Zoning:	SP2 Infrastructure under LEP 2014		
Date received:	2 September 2022		
Integrated / Designated	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable Heritage exemptions

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Development:			apply
Concurrence required	No		
Public notification or exhibition:	<ul style="list-style-type: none">- Level 2 advertising under Council's Community Participation Plan.- Exhibition period: 13/09/2022 – 26/09/2022- No Submissions received.		
Issues	Heritage considerations Management/operational matters		

Summary:

Development consent is sought for the temporary use of land in the Byron Rail Corridor to undertake a pop-up Information and Education Facility in association with the annual Byron Bay Film Festival and to hold similar events in 2023 and 2024.

- 5 The use is in addition to several other venues used by the Film Festival at the same time throughout the town centre including the Byron Bay Community Centre, Palace Cinemas, and the Sunset Screenings site at Dening Park.

10 The proposal comprises the erection of a 10m x 10m dome providing for: panel focussed workshops; screenings and performances associated with digital innovation; and the showcasing of information through immersive and emerging technologies.

15 The proposed use will include information sessions, masterclasses, panel discussions and workshops geared towards creative technology and innovation, with demonstrations and screenings of 360 content. A maximum of two (2) ancillary smaller dome or tipi structures will also be located to the south of the main dome, utilised in a similar manner and to also house ancillary equipment such as virtual reality helmets.

20 The hours of operation will generally be between 10am and 11pm on Friday 28, Saturday 29 and Sunday 30 October. Setup will commence on Wednesday October 26 and pack down will occur on Monday 31 October. The Information and Education facility use will be ticketed, and the number of tickets will generally be in the order of 60 persons at any one time.

The application is recommended for approval subject to conditions of consent.

NOTE TO COUNCILLORS:



25 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.

RECOMMENDATION:

- 5 **Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.389.1 for Temporary use of the land for an information and education facility including the erection of temporary structures from Wednesday 26 October 2022 to Monday 31 October 2022, and to hold similar events in 2023 and 2024 subject to conditions of consent in Attachment 1.**

10

Attachments:

- 1 10.2022.389.1 Conditions of Consent, E2022/93485 
2 10.2022.389.1 Proposed Plans, E2022/93623 

15

Assessment:

Description of the proposed development

5 The subject application seeks development consent to undertake an Information and Education Facility in association with the annual Byron Bay Film Festival.

The proposal comprises the erection of a 10m x 10m dome providing for: panel focussed workshops; screenings and performances associated with digital innovation; and the showcasing of information through immersive and emerging technologies.

10 The proposed use will include information sessions, masterclasses, panel discussions and workshops geared towards creative technology and innovation, with demonstrations and screenings of 360 content. A maximum of two (2) ancillary smaller dome or tipi structures will also be located to the south of the main dome, utilised in a similar manner and to also house ancillary equipment such as virtual reality helmets.

15 The hours of operation will generally be between 10am and 11pm on Friday 28, Saturday 29 and Sunday 30 October. Setup will commence on Wednesday October 26 and pack down will occur on Monday 31 October. The Information and Education facility use will be ticketed, and the number of tickets will generally be in the order of 60 persons at any one time.

20 Development Consent is sought on an annual basis for a period of three (3) years. It is noted that the dates of the Information and Education Facility may vary over the three (3) year period. It is proposed that on the completion of each use a review will be undertaken to highlight any issues arising from the operation and a meeting will be held with Council officers as required.

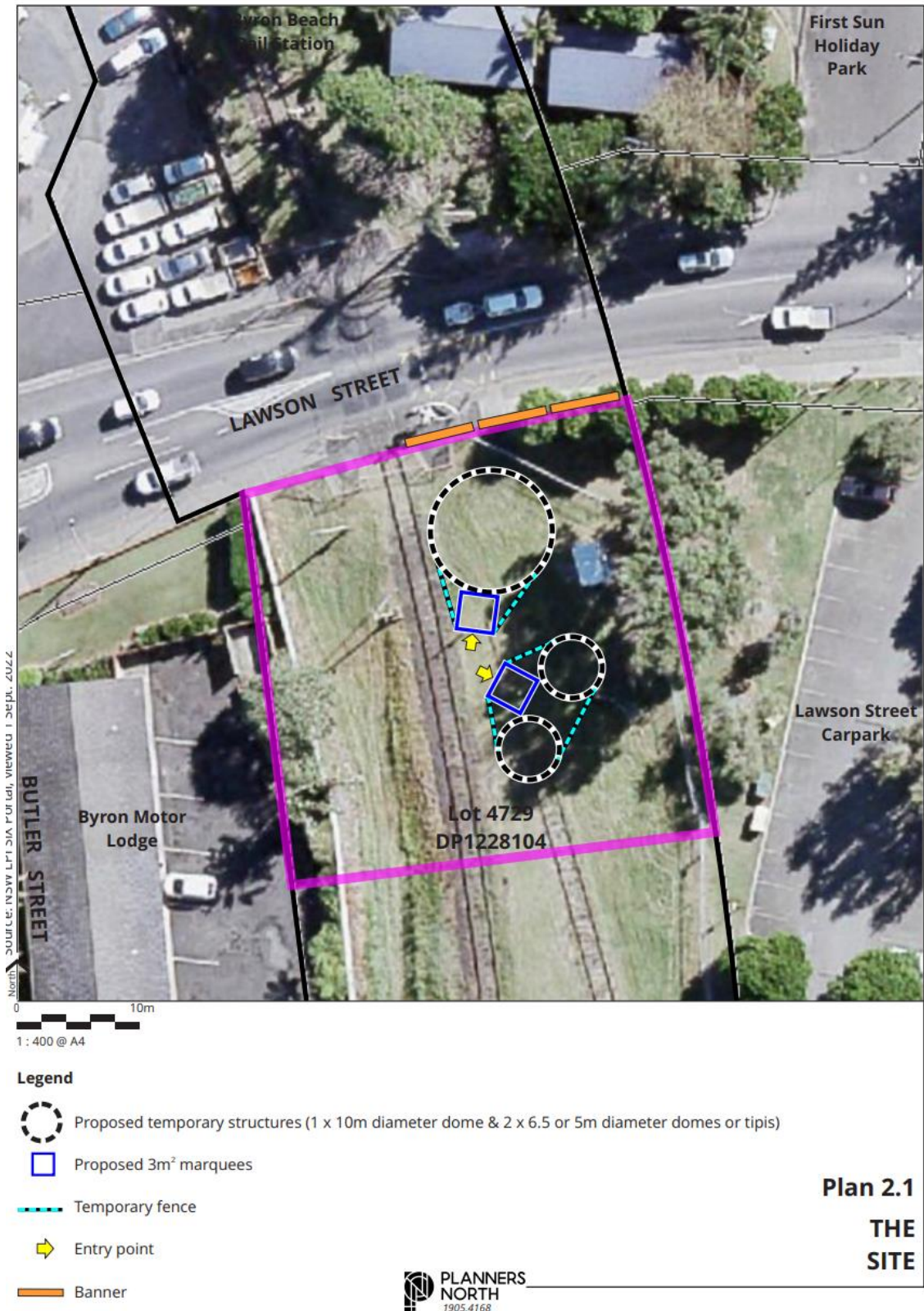


Figure 1: proposed layout



Figure 2: Example of dome structure in terms of scale

5 Description of the site

The subject site is described as Part Lot 4729 DP1228104 and comprises part of the rail corridor located in Byron Bay Town Centre. The part of the corridor proposed to be utilised adjoins Lawson Street to the north, the Lawson Street carpark to the east, Byron Motor Lodge to the west and the rail corridor to the south. The site has been upgraded and landscaped for the use of the public.

10

Land is legally described	LOT: 4729 DP: 1228104
Property address	Butler Street BYRON BAY
Land is zoned:	The temporary use of the land only affects that part zoned SP2 Infrastructure under Byron LEP 2014. Refer to zoning plan below.
Property is constrained by:	Part Flood Liable Land Acid sulfate soils Class 3 Erosion precinct 3 Heritage - The site contains the heritage listed Byron Bay Railway Station and Yard Group (item I078), which is of State significance and is within the Railway Precinct Heritage Conservation Area, of local significance as listed in the Byron

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	Shire LEP 2014.	
	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

5

10



15 **Figure 3: Byron LEP 2014 – Zoning Map**

SUMMARY OF REFERRALS

Referral	Issue
Building Certifier	No objections subject to conditions.

SECTION 4.12 CONCURRENT APPROVALS

5 Under section 4.12 of the Environmental Planning & Assessment Act 1979 (EP&A Act, the following concurrent approvals under Section 68 of the Local Government Act 1993 are included in the conditions.

Part D Community Land

- 2 Direct or procure a theatrical, musical or other entertainment for the public.
- 3 Construct a temporary enclosure for the purpose of entertainment.
- 10 5 Set up, operate or use a loudspeaker or sound amplifying device.

SECTION 4.14 BUSH FIRE PRONE LAND

15 Under section 4.14 of the Environmental Planning & Assessment Act 1979 (EP&A 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'.

As the proposal is for a temporary use that does not involve the construction of any buildings, the proposal does not raise any significant bushfire issues.

SECTION 4.46 INTEGRATED PLANNING CONSIDERATIONS – HERITAGE ACT

20 The following integrated approval is identified in accordance with Section 4.46 of the Environmental Planning & Assessment Act 1979 (EP&A Act).

Heritage Act 1977 s 58 approval in respect of the doing or carrying out of an act, matter or thing referred to in s 57 (1). The subject land comprises a State Heritage Item.

25 The subject site being part of the elongated property/corridor which takes in the Byron Bay Railway Station and Yard group is state and locally listed as a heritage item. The area of heritage importance is located around the railway station and water tower to the south of the site.

30 However, certain activities and works are exempt from approval under the Heritage Act 1977 for heritage items listed on the State Heritage Register. The activities and works must have little to no impact on the item's heritage significance and support its management and use.

The following exemptions have been applied to the proposed use of the rail corridor.

Standard Exemption 12 Temporary Structure

5 This exemption is for erection of a temporary structure(s) for less than 30 consecutive calendar days. Examples of typical temporary structures include: marquees, tents, or gazebos; and porta-loos.

10 **Comment:** The proposed temporary structures will comply with the relevant standards of the standard exemptions and will not impact on the fabric of the heritage item. The temporary structures are sited well away from existing buildings and the proposed structures will be erected for a maximum of 6 consecutive calendar days inclusive of set up, pack down and removal. It is submitted the proposed temporary structures will not impact on the Byron Bay Railway Station and Yard Group.

Standard Exemption 15 Signs

This exemption is for installation of certain types of temporary signage including the installation of new non-illuminated site interpretation and/or waymarking signs.

15 **Comment:** Temporary banner signage is proposed to be attached to the fence along the Lawson Street frontage for the duration of the use. The type of sign proposed will be conditioned to be low impact, temporary and to assist with way finding through the rail corridor to the use. It will comply with the relevant standards of the standard exemptions and will not detract from the item or its setting.

20 **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.

1 State Environmental Planning Policies (SEPP)

25 ***Transport and Infrastructure SEPP 2021***

Subdivision 2 Development in or adjacent to rail corridors and interim rail corridors— notification and other requirements

The proposed development does not trigger the provisions of Clause 2.98 for reasons provided below and as such a referral to Transport for NSW has not been required.

- 30
- The proposed development is temporary and will have minimal impact.
 - The corridor is not operational in the vicinity of the proposal and a such unlikely to have an adverse impact on rail safety.
 - The use is not located within 5 metres of an exposed overhead electricity power line that is used for the purposes of railways or railway infrastructure facilities.

35

2 Byron Local Environmental Plan 2014 (LEP 2014)

Clauses 1.4 and 2.1 – 2.3 Objectives and Land use

- (a) The proposed development falls within the definition of an ‘information and education facility’ under Byron Local Environmental Plan 2014.

5

information and education facility means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like

- 10 (b) The proposed pop-up information and education facility and associated structures are in the land zoned SP2 Infrastructure under Byron LEP 2014.

- (c) The proposed Information and Education Facility is permissible with Development Consent in the SP2 Infrastructure Zone, in accordance with Item 9 of Schedule 1 Additional Permitted Uses of BLEP14.

15 **9 Use of certain land at Byron Bay Rail Corridor, adjacent Rail Land and Lawson Street South Car Park**

- 20 (1) This clause applies to land at the Byron Bay Rail Corridor and Lawson Street South Car Park, being part of Lot 4729, DP 1228104, Lot 1, DP 1001454, and Lot 3 and part of Lot 7, DP 827049 and identified as “Area E” on the Additional Permitted Uses Map.

- (2) Development for the following purposes is permitted with development consent—

- 25 (a) community facilities,
(b) information and education facilities,
(c) markets, if Council is satisfied the development will not increase the number of markets on the land to which this Plan applies.

- (3) The following development is permitted without development consent—

- 30 (a) landscaping that does not involve excavation of more than 1 metre from ground level (existing), or filling of more than 1 metre above ground level (existing),
(b) development for the purposes of recreation areas.

35



Figure 4: Area E – Mapping Extract from Additional Permitted Uses Map - Byron LEP 2014

20 (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<p>SP2 Infrastructure</p> <ul style="list-style-type: none"> • To provide for infrastructure and related uses. • To prevent development that is not compatible with or that may detract from the provision of infrastructure 	<p>The proposal is not incompatible with the zoned infrastructure purposes (railway infrastructure and car park) and will not detract with the provision of infrastructure.</p> <p>The proposal is considered to be consistent with the relevant zone objectives.</p>

Clause 4.3 Height of buildings

A maximum height of 9m applies to the subject site in the railway corridor. The proposed dome has a maximum height of 5m. Any other structure will comply with the 9m height.

25 Clause 5.10 Heritage conservation

This clause requires consideration and conservation of any heritage and/or Aboriginal cultural heritage.

That part of the site proposed for the temporary use is identified as item I078 within Schedule 5 Environmental Heritage of the Byron LEP 2014 as a State significant item. The

listing includes the Railway Station building and the surrounding railway land and rail line. The site is subject to the State Heritage Register Curtilage in association with the listing.

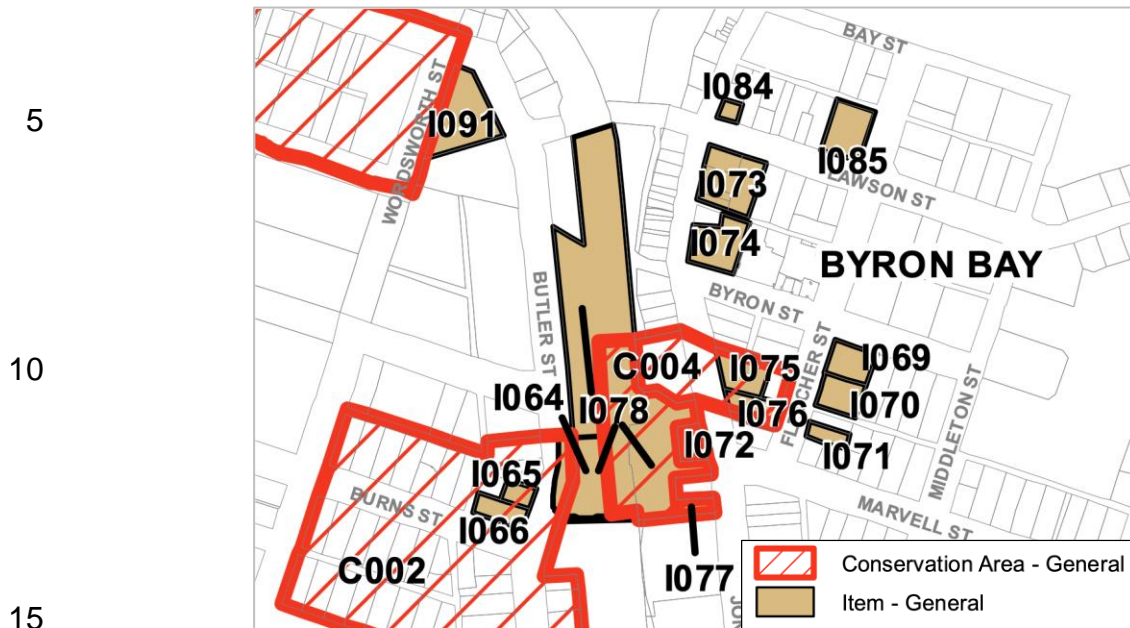


Figure 5: Heritage Map Extract – Byron LEP 2014

The temporary structures are sited well away from existing buildings and the proposed structures will be erected for a maximum of 6 consecutive calendar days inclusive of set up, pack down and removal. The proposal is unlikely to significantly impact on the Heritage context of the site and although Clause 10.5(3) applies a Heritage Impact Assessment is not necessary in the circumstance.

Clause 5.21 – Flood planning

Due to the temporary nature of the use, the proposal is considered satisfactory with respect to flood planning considerations.

Clause 6.6 – Essential services

Infrastructure for water and power is located within the railway corridor and Railway Park.

Public toilets are available in Railway Park.

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

None relevant to the proposal.

4 Byron Shire Development Control Plan 2014 (DCP 2014)

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access

5 The use forms an ancillary component of the Byron Bay Film Festival which will be undertaken in several venues throughout the town centre over the duration of the festival. The other venues associated with the festival include the Byron Bay Community Centre, Palace Cinemas, and the Denning Park Reserve.

10 There are no specific rates for the proposal but using entertainment facilities as a similar type of traffic generating development, the proposal requires 1 space per 10 seats. This would equate to 6 spaces. If a stricter rate of 1 space per 5 persons for the pop-up use was applied, then the proposal only generates 12 parking spaces.

15 However, given the low impact and temporary nature of the use proposed, it is considered unlikely that this use alone will generate additional parking demand on the town centre to that which already exists and is catered for on the street. As stated above, the use is an ancillary component of the Byron Bay Film Festival and is to be ticketed as such.

In these circumstances it is deemed that there is adequate car parking capacity in the immediate vicinity of the site in the public domain to cater for the level of use and any associated parking generation.

20 Conditions are recommended for traffic management plan for site setup, pack down and removal.

Chapter B8 Waste Minimisation and Management

The proposal has been assessed by in relation to the requirements of Chapter B8 and conditions recommended.

Chapter C1 – Non-Indigenous Heritage

25 Issues in relation to non-indigenous heritage were discussed under the clause 5.10 considerations of Byron LEP 2014. No additional matters need to be considered.

Chapter C2 – Flooding

No permanent structures, fill or development requiring earthworks is proposed.

30 Should flooding be a risk for the use days, the applicant has indicated that the use would not proceed.

5 Environmental Planning and Assessment Regulation 2021 considerations

The proposal raises no issues under the EPA Regulations 2000 or updated provisions under EPA regulations 2021.

35

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?
Natural environment	No adverse natural environment impacts issue are expected.
Built environment	No permanent structures are proposed. Conditions of consent are recommended in relation noise, site and waste management and hours of operation.
Social Environment	No adverse social impact issues are expected.
Economic impact	Positive economic impacts are expected from the proposal, providing additional employment opportunities and local trading opportunities the result of the film festival activities throughout the town centre.
Construction Impacts	No permanent structures are proposed.

7 The suitability of the site for the development

- 5 The site is suitably serviced and subject to the implementation of recommended conditions of consent is suitable for the proposed development.

8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited.

- 10 There were **no** submissions made on the development application.

9 Public interest

The Byron Bay Town Centre Masterplan was adopted in 2016 after extensive community consultation.

- 15 One of the key priorities from it was to encourage the upgrade and use of the Rail Corridor precinct for low impact activation, pedestrian movements, and small-scale business/market use.

The proposed temporary use of a section of the Rail Corridor is considered consistent with this master plan priority and as such consistent with the public interest.

20

DEVELOPER CONTRIBUTIONS

There is no nexus to levy water and sewer charges or developer contributions on the application.

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DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

CONCLUSION

5 The proposed development application raises no issues in terms of the applicable planning controls applying to the site and is unlikely to have a detrimental impact on the built or natural environment. The application is recommended for approval subject to conditions of consent.

Report No. 13.7 PLANNING - 26.2022.8.1 - Planning Proposal for an amendment to Byron Local Environmental Plan 2014 to permit events on certain Council owned land at 249 Ewingsdale Road, Ewingsdale (Cavanbah Centre)

5

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy
Alex Caras, Land Use Planning Coordinator

10 **File No:** I2022/1300

Summary:

15 The planning proposal seeks to amend Byron LEP 2014 to permit events such as low impact performance of live music or arts on land owned by Council, without development consent. The assessment and permission for any such event would be dealt with under the *Local Government Act 1993*. This will be achieved by adding a new item to Schedule 2 Exempt Development. No mapping changes are required. The planning proposal will apply to that part of the Cavanbah Centre at 249 Ewingsdale Road that is zoned RE1 Public Recreation.

20 The Cavanbah Centre site is partly flood affected; however, it is not in a floodway or high hazard area. It is partly affected by bushfire hazard and buffers. Neither of these constraints will impact on the short-term uses proposed to be exempt development. The Cavanbah site has good road, cycle and pedestrian access. Water and sewerage are available.

25

The planning proposal is consistent with the North Coast Regional Plan, Council's adopted 10-year Community Strategic Plan 2032 (CSP) and Local Strategic Planning Statement (LSPS).

30 An assessment of the planning proposal indicates that it is consistent with relevant SEPPs. SEPP (Resilience and Hazards) 2021 applies to the subject land because it contains a small area within 100-metres of a coastal wetland. The planning proposal is unlikely to have negative impacts on this area. No native vegetation will be removed because of any exempt development.

35

It is consistent with most of the relevant section 9.1 Directions; and where inconsistencies occur, they can be justified or addressed with further information.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.7

It is appropriate to send the planning proposal to the NSW DPE for a gateway determination so that it can proceed to public exhibition (subject to compliance with any gateway conditions).

- 5 No additional information or studies are required prior to public exhibition and agency consultation.


10

RECOMMENDATION:

- 15
1. That Council proceeds with a planning proposal as attached to this report (Attachment 1) that seeks to amend Byron LEP 2014 to permit events on certain Council owned land at 249 Ewingsdale Road without the need to obtain development consent;
 2. Forward the planning proposal to the NSW Department of Planning and Environment for a gateway determination;
 - 20 3. That Council, pending a positive gateway determination, undertakes public exhibition of the planning proposal in accordance with the determination requirements;
 4. That Council considers a submissions report post exhibition that includes any recommended changes to the planning proposal for final adoption.

Attachments:

25

- 1 26.2022.8.1 Planning Proposal Cavanbah Events (v1 Gateway) - September 2022, E2022/93749 

Report

Background and Subject Land

5 In 2017, the “Plan of Management Community Land – Cavanbah Centre” was adopted by Council. It specifically identifies the range of uses that can be carried out at the site and includes outdoor and indoor entertainment. The facility was approved in 2009 and has been used successfully to stage sporting and cultural events on many occasions.

10 Low impact performance of live music or arts can already be undertaken as exempt development inside the multi-purpose stadium pursuant to SEPP (Exempt and Complying Development Codes) 2008, but they can only take place outside the stadium with development consent. All three neighbouring Councils permit events on Council owned or controlled land without development consent. They use a permit system under the *Local Government Act 1993* to outline the limitations and obligations of using the Council land.

15 The planning proposal will achieve this outcome for the Cavanbah Centre. It will make the process of staging an event on the Cavanbah site less onerous. The planning proposal will apply to that part of the Cavanbah Centre at 249 Ewingsdale Road that is zoned RE1 Public Recreation (Figure 1).



Figure 1 Subject land at Ewingsdale Road, Byron Bay

Planning Proposal

5 The planning proposal seeks to amend Byron LEP 2014 to permit events such as low impact performance of live music or arts without Council consent on certain land owned by Council at 249 Ewingsdale Road, Byron Bay. The assessment and permission for any such event would be dealt with under the *Local Government Act 1993*.

This outcome will be achieved by adding a new item to Schedule 2 Exempt Development. No mapping changes are required. The provisions will only apply to that part of the Cavanbah Centre zoned RE1 Public Recreation.

The provisions may be as follows:

10 ***Entertainment and events on land owned or managed by Council***

Applies to that part of Lot 3 DP 706286 zoned RE1 Public Recreation

Must not include the erection of a permanent structure on the land

Must not include clearing of native vegetation

Must have obtained all required approvals

15

Planning Framework

North Coast Regional Plan (NCRP)

The Cavanbah Centre is located immediately adjacent to the Byron Bay Urban Growth Area boundary on the western edge of town.

20 The NCRP is a high level strategic document that does not directly address the issue of permitting events on public land. However, making this process less onerous is consistent with achieving the vision for the North Coast, including “a thriving, interconnected economy” and a “vibrant and engaged community” (page 8). On this basis, the planning proposal is consistent with the NCRP.

25

Local Strategic Planning Statement

30 Byron Council adopted a Local Strategic Planning Statement (LSPS) in September 2020, which was subsequently endorsed by DPIE. The LSPS aims to “Support a strong, diversified and sustainable economy based on Byron Shire’s unique character, landscapes and important farmland” (page 47). A relevant Economic Priority Action (page 48) is “TA1. *Facilitate and support sustainable development of our business community.*” Allowing appropriate sites to be used for events will support the business community.

This planning proposal is consistent with the adopted LSPS.

35 **Site Specific Issues**

Flooding

The subject land is partly flood prone in the 1% ARI design flood. However, the site is not a floodway or high hazard area. The planning proposal will permit events such as low impact performance of live music or arts over short periods. These uses will not impact on

flood behaviour, are temporary, often partly outdoors and are not likely to be held if major flood events are forecast. They are easily abandoned if floods are predicted.

Traffic and Parking

5 The Cavanbah site is well connected with walking and cycling tracks in both directions along Ewingsdale Road. Public transport also runs along Ewingsdale Road and eleven bus parking spaces are located in the car park. The site has a dedicated sealed car park with 362 car parking spaces, plus an unsealed overflow area that can be used for an unspecified number of vehicles. Limitations on parking is a key factor that will limit the size of any events at the Cavanbah site.

10 The subject land has good access to the Pacific Motorway and Byron town centre via Ewingsdale Road. The connection with Ewingsdale Road to the Cavanbah site is a two-lane roundabout. Existing traffic congestion on Ewingsdale Road is a key factor that will limit the size of any events at the Cavanbah site.

15

Water, Sewerage and Waste

The proposed use of the subject land for entertainments and events will rely on existing water and sewer connection as well as power and communications. If additional toilets are required then temporary units can be brought in. Waste can be managed with by skip bins and contract services. A glass and can recycling depot is located at the Cavanbah site already.

20

Land Contamination and ASS

25 The Cavanbah site has no history of contamination from past land use. The subject land is affected by Class 2 and Class 3 acid sulfate soils (ASS) but this site has been filled for sporting field drainage in the past, and this planning proposal will not result in an intensification of land use. It is highly unlikely that staging events on a temporary basis will result in significant soil disturbance, and ASS is not a significant constraint.

30 *Aboriginal Cultural Heritage*

A search of the Aboriginal Heritage Information Management System (AHIMS) identified two sites in proximity to the Cavanbah Centre but none on the subject land. One site is located in the Arts and Industry Estate, and the other is located south of Ewingsdale Road in proximity to the disused chicken abattoir. Given the Cavanbah site was filled as part of the establishment of sports fields, it is likely that any Aboriginal sites or artefacts which may have been there are now buried. The use of the site for events is unlikely to cause any significant ground disturbance. Impacts on Aboriginal cultural heritage is not anticipated.

35

40 *Ecology*

The subject land contains no significant native vegetation as it has all been cleared for past agricultural uses and then, more recently, the Cavanbah sports fields and multi-

purpose centre. Native vegetation areas to the west are not subject to this planning proposal. There is no likelihood of threatened species, populations or ecological communities being affected by future development on the subject land.

5 Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.1	Assess requests to amend Local Environmental Plans and/or Development Control Plans including maps in accordance with legislative requirements.
2: Inclusive Community We have an inclusive and active community where diversity is embraced and everyone is valued	2.1: Foster opportunities to express, celebrate and participate in arts and cultural activity	2.1.3: Events and festivals - Support and enable arts & cultural activity, festivals, projects, and events	2.1.3.9	Collaborate with government, agency and industry on policy and legislative reforms

Financial Implications

10 If Council chooses to proceed with the planning proposal, it will be at its own expense as a Council-initiated planning proposal. If Council chooses not to proceed, then the matter does not incur any additional costs.

Statutory and Policy Compliance Implications

Section 9.1 Directions and SEPPs

15 SEPP (Resilience and Hazards) 2021 applies to the Cavanbah Centre land because it is partly mapped as being within 100 metres of a Coastal Wetland. It is not mapped as being within the Coastal Environment, Coastal Use or Littoral Rainforest areas. The subject land has minimal environmental values itself because it is substantially cleared grassland and sporting facilities. The site has already been set up to protect:

A) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland...*,
and maintain or improve:

5 B) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland...*

This planning proposal will permit use of the site for events that are not subject to the coastal wetland buffer provisions of the SEPP. It is highly unlikely that a future event will impact on the adjacent coastal wetlands or on water quality entering the wetlands.

10 The planning proposal is justifiably inconsistent with some section 9.1 Directions because it:

- 15
- will affect a particular site and apply site specific controls,
 - will apply to flood prone land and make some land uses exempt development,
 - has not yet been referred to the RFS for bushfire consideration.

These justifiable inconsistencies are all discussed in more detail in the planning proposal (Attachment 1).

20 CONCLUSION AND OPTIONS GOING FORWARD

There are three options for Council to consider:

- 25
1. Proceed with the planning proposal at Attachment 1 to this report, which will permit events such as low impact performance of live music or arts without development consent on land owned by Council at 249 Ewingsdale Road, Byron Bay. This option is subject to any requirements imposed by DPE in its gateway determination; or
 2. Proceed with the planning proposal in a modified form other than the version attached to this report; or
 3. Not proceed with the planning proposal.

30 There is sufficient information to support the planning proposal at Attachment 1 to this report and proceed to a gateway submission. No additional studies are required prior to public exhibition and agency consultation.