

# Supplementary Agenda Ordinary Meeting

Thursday, 15 December 2022



**BYRON**  
SHIRE  
COUNCIL

# Agenda Ordinary Meeting

held at Council Chambers, Station Street, Mullumbimby  
commencing at 9.00am

Public access relating to items on this agenda can be made between 9:00 and 10:30 am 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**



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## CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

### Disclosure and participation in meetings

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

- (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

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

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

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

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

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## RECORDING OF VOTING ON PLANNING MATTERS

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### 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.

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## 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 MEETING**

### **16. DEFERRED ITEMS FROM 8 DECEMBER PLANNING MEETING**

16.1	PLANNING - DA 10.2021.685.1 - New Dwelling to Create Dual Occupancy (Detached), Swimming Pool and Strata Subdivision to create Two (2) Lots and Common Property – 2 Keats Street, Byron Bay.....	7
16.2	Changing policy to remove fossil fuel sponsorship .....	69
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16.4	Update on Resolution 22-361 .....	84

***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.***

## DEFERRED ITEMS

**Report No. 16.1 PLANNING - DA 10.2021.685.1 - New Dwelling to Create Dual Occupancy (Detached), Swimming Pool and Strata Subdivision to create Two (2) Lots and Common Property – 2 Keats Street, Byron Bay**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Ivan Holland, Planner  
Chris Larkin, Manager Sustainable Development

**File No:** I2022/1814

**Proposal:**

**Proposal description:** New Dwelling to Create Dual Occupancy (Detached), Swimming Pool and Strata Subdivision to create Two (2) Lots and Common Property

**Property description:** LOT: 1 DP: 1257709  
2 Keats Street BYRON BAY

**Parcel No/s:** 269977

**Applicant:** Town Planning Studio Pty Ltd

**Owner:** Mrs M J Kerrigan

**Zoning:** R2 Low Density Residential / 2(a) Residential / 7(a) Wetlands

**Date received:** 16 November 2021

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

**Concurrence required** Yes – Enter CNR No.31702

**Public notification or** – Level 2 advertising under Council's Community Participation Plan and designated development advertising under Schedule 1 (sub 8)

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**exhibition:** of the EP&A Act and ss.56, 58 of the EP&A Regs.

- Exhibition period: 26 November 2021 to 17 January 2022
- Submissions received: Nil (0)

**Other approvals**    ☐ N/R    ☒ W & S (68)    ☐ OSMS (68)    ☐ ST (68)    ☒ RA (138)

Other:

<b>Estimated cost</b>	<b>\$519,000.00</b>
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**Delegation to determine** Council

**Issues**

- Coastal Wetlands under the Coastal Management SEPP – Designated Development – Environmental Impact Statement
- Unauthorised conversion of shed to a dwelling

## Summary:

The DA proposes construction of a new dwelling, with a swimming pool, to create a dual occupancy (detached) and strata subdivision that will result in one dwelling being located on each strata lot and the residual land being incorporated into a common property lot.

- 5 The west of the property is mapped coastal wetland and the remainder of the property is coastal wetland proximity area. Aspects of the development (i.e., subdivision boundaries, part of the driveway and bush fire asset protection zones) encroach the mapped coastal wetland. Consequently, the proposal is designated development and must be determined by Council. However, the mapped boundaries of the coastal wetland are not particularly  
10 accurate, no native vegetation needs to be removed to facilitate the development and a Vegetation Management Plan has been offered for the ongoing care of the wetland.

Part of a shed on the property has been converted to a dwelling/habitable space without approval and will be required to be restored to a shed by way of condition of consent.

- 15 The application was reported to Council on the 8 December 2022 with a recommendation for approval but was deferred subject to reconsideration of the deferred conditions for the decommissioning of the shed and the prohibition on the cats and dogs as per Condition 55(d). The resolution states:

20 **Resolved** that Development Application No. 10.2021.685.1 for New Dwelling to Create Dual Occupancy (Detached), Swimming Pool and Strata Subdivision to create Two (2) Lots and Common Property, be deferred until the 15 December 2022 pending advice on a suitable condition for the use of the shed and Condition 55(d). (Lyon/Hunter)

These matters have been considered with a timeframe for the shed to be decommissioned within 12 months of the date of the consent being granted or prior to the issue of an occupation certificate (whichever comes first), whilst the cat and dog prohibition has also



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been removed as the site is not within Wildlife Conservation Area (eg the Lilli Pilli Estate or Hardy Avenue).

The application is recommended for approval subject to conditions to address the above, and other site-specific matters such as stormwater management, acid sulfate soils and vehicular access.

#### NOTE TO COUNCILLORS:

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

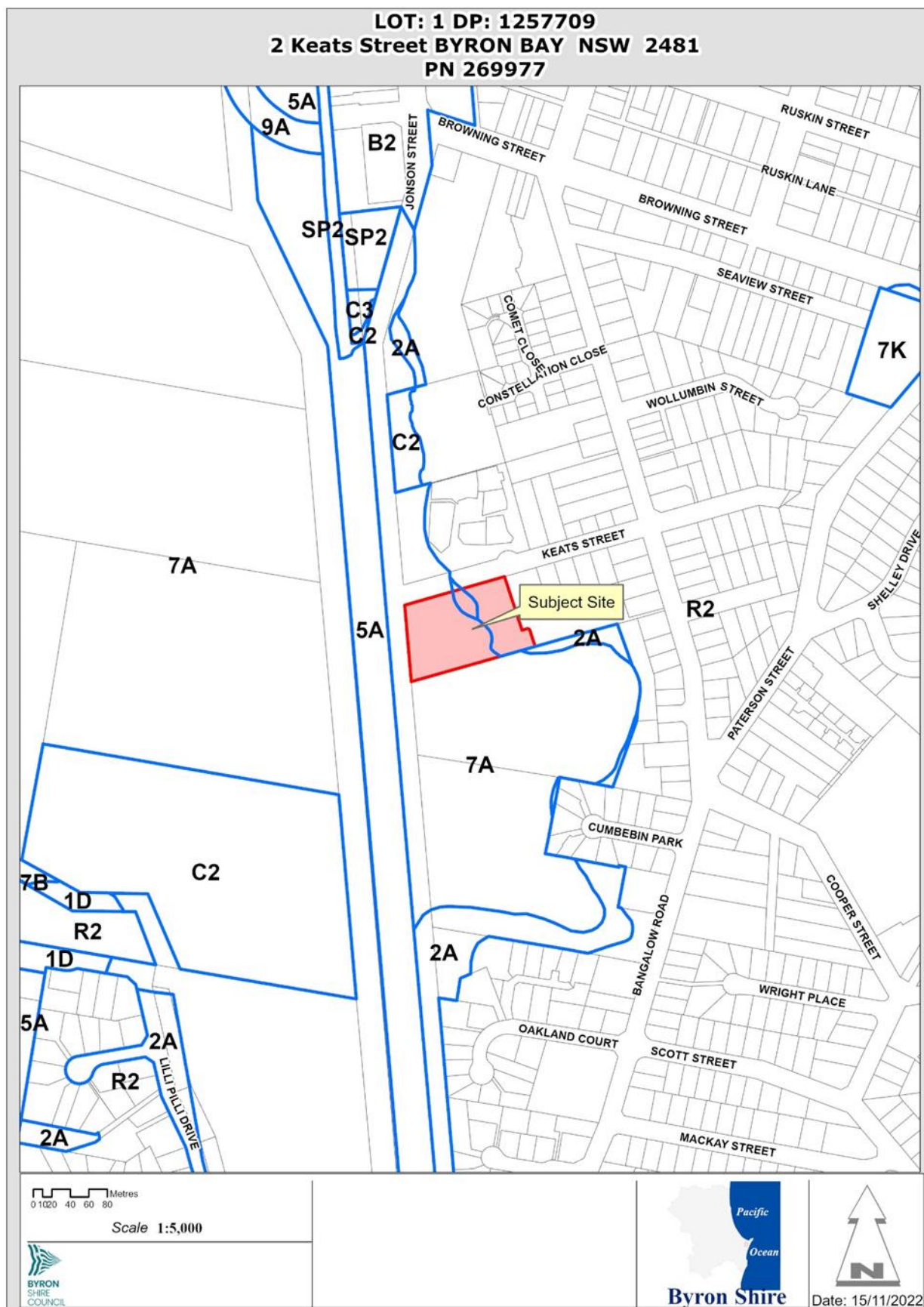
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#### RECOMMENDATION:

**That, pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, Development Application No. 10.2021.685.1 for New Dwelling to Create Dual Occupancy (Detached), Swimming Pool and Strata Subdivision to create Two (2) Lots and Common Property, be granted consent subject to conditions attached to this report.**

#### Attachments:

- 1 DA 10.2021.685.1 Development and subdivision plans, E2021/130777 , page 31 [↓](#)
- 2 DA 10.2021.685.1 Annotated Engineering plans, E2022/62977 , page 44 [↓](#)
- 3 DA10.2021.685.1 - Recommended Conditions., E2022/122019 , page 46 [↓](#)



## Assessment:

### 1. INTRODUCTION

#### History/Background

Council's records indicate the following development approval history for the property:

- 5 • The subject property was created by a 2 lot subdivision (DA 10.2016.794.1) which was approved on 13/6/2017.

The development assessment report for the 2 lot subdivision identifies the following development approvals for the pre-subdivision property:

- 10 • BA 6.1996.2739.1 – Dwelling and swimming pool – approved 16/1/1997;
- DA 10.1998.382.1 – Dwelling additions FPL (shed) – approved 14/12/1998;
- DA 10.2016.301.1 – Tree Removal (1) – approved 19/10/2016;

15 The development assessment report also states “*Proposed Lot 1, with an area of approximately 1.02 hectares, would retain the existing dwelling, pool, sheds and State Environmental Planning Policy (SEPP) No. 14 Wetland. Proposed Lot 2, with an area of approximately 6050m<sup>2</sup> consists of predominately vacant land that could provide for future residential development*”, with proposed Lot1 being the subject property for this development application.

20 Council requested further information in relation to engineering matters, particularly vehicular access and manoeuvring, on 31 January 2022 and received a response on 8 March 2022.

Council requested further information regarding sewerage plans and specifications on 19 May 2022 and received a response on 3 June 2022.

#### Description of the proposed development

25 This application seeks approval for a dwelling house to create a dual occupancy (detached), a swimming pool and strata subdivision.

The new dwelling will:

- 30 • Be single storey with the built-form being a skillion roof over masonry walls on a concrete slab.
- Contain two bedrooms, three bathrooms, a lounge room, kitchen, laundry and dining areas.
- Be located near the south-eastern corner of the property.
- Have an inground swimming pool located on the western side of the new dwelling.

The strata subdivision will (see Figure 1):

- 35 • Result in the current dwelling being located on proposed Lot 1 (identified as Lot A).
- Have the proposed dwelling located within Lot 2 (identified as Lot B).

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- Have the remainder of the property allocated to a common property lot (identified as Lot 1).

The proposed lot areas are detailed in the table below:

Proposed Lot	Proposed Area
1	1,084 m <sup>2</sup>
2	1,876 m <sup>2</sup>
Common Property	7,260 m <sup>2</sup>

5

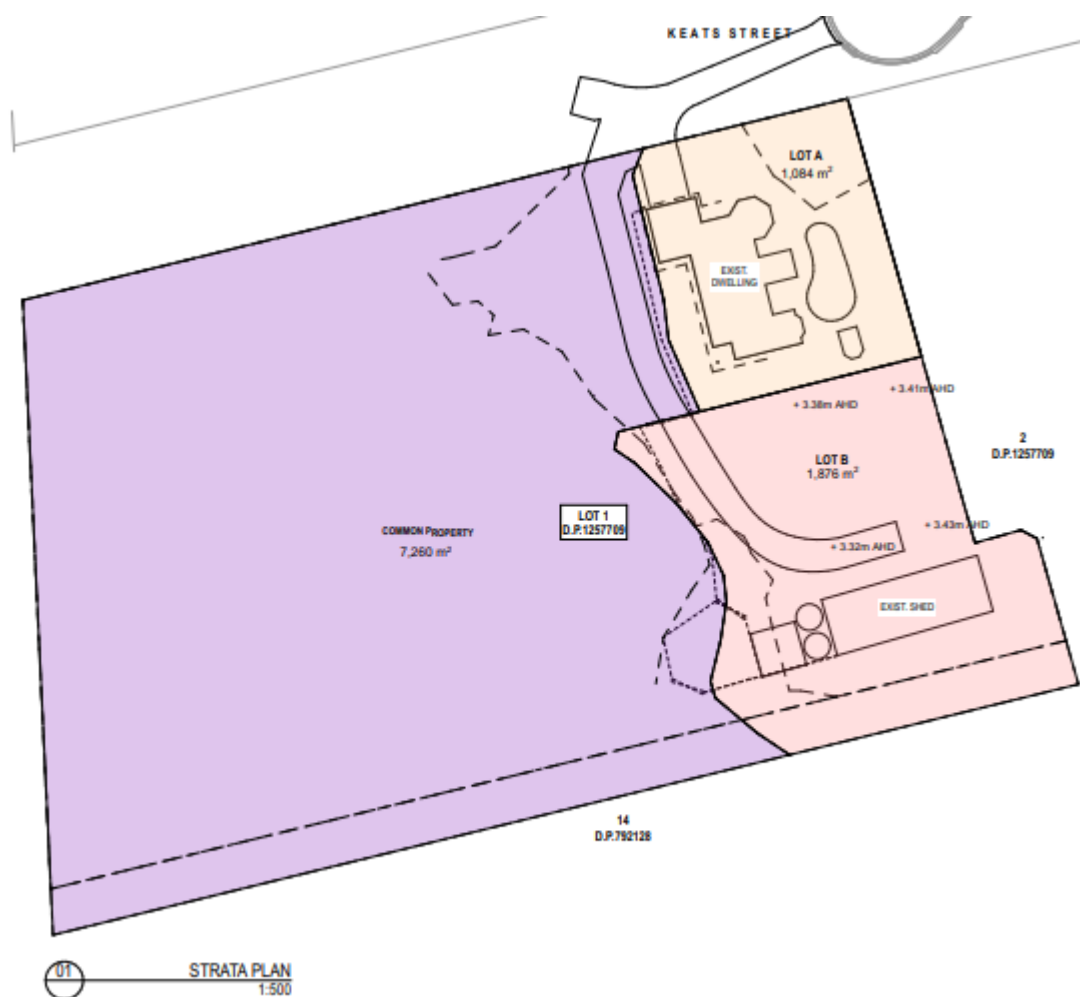


Figure 1. Proposed strata subdivision plan.

## Description of the site

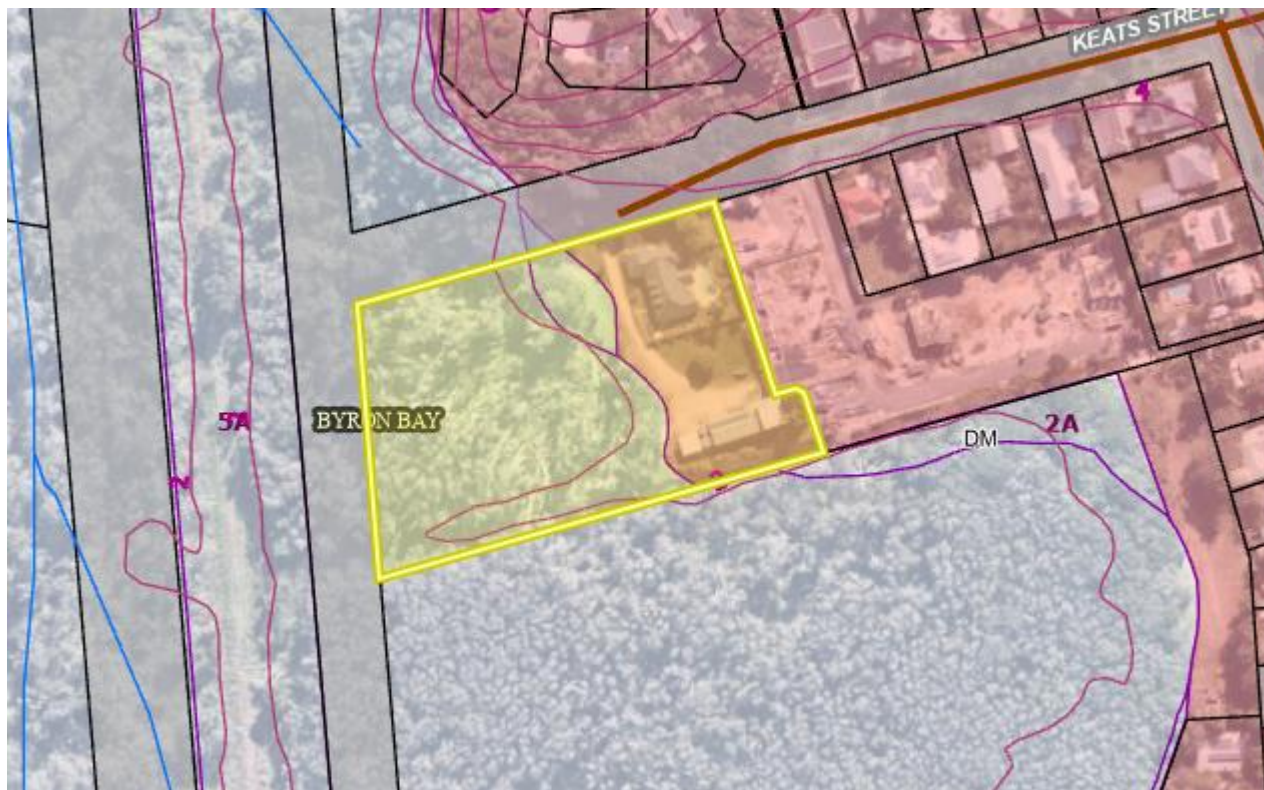


Figure 2. Aerial photo with land zoning overlay. Subject property identified by yellow polygon.

Land is legally described	LOT: 1 DP: 1257709	
Property address	2 Keats Street BYRON BAY	
Land is zoned:	R2 Low Density Residential / 2(a) Residential / 7(a) Wetlands (see Figure 2)	
Land area is:	1.022 ha	
Property is constrained by:	<ul style="list-style-type: none"> <li>• Flood liable land</li> <li>• Bushfire prone land</li> <li>• Acid sulfate soils - Class 2/5</li> <li>• High environmental value vegetation (coastal swamp forest)</li> <li>• Mapped coastal wetland</li> <li>• Stormwater pipeline through north of property</li> <li>• Key fish habitat</li> </ul>	
Is a BDAR required due to the location of the		<input type="checkbox"/> Yes <input checked="" type="checkbox"/>

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<p>proposed development? (see consideration in Section 1.5 of the Biodiversity Assessment (Geolink, June 2021))</p>	<p>No</p>
<p>Are there any easements in favour of Council affecting the site?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Is there a Vegetation Management Plan which might affect the proposal?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Is there a Voluntary Planning Agreement which might affect the proposal?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>

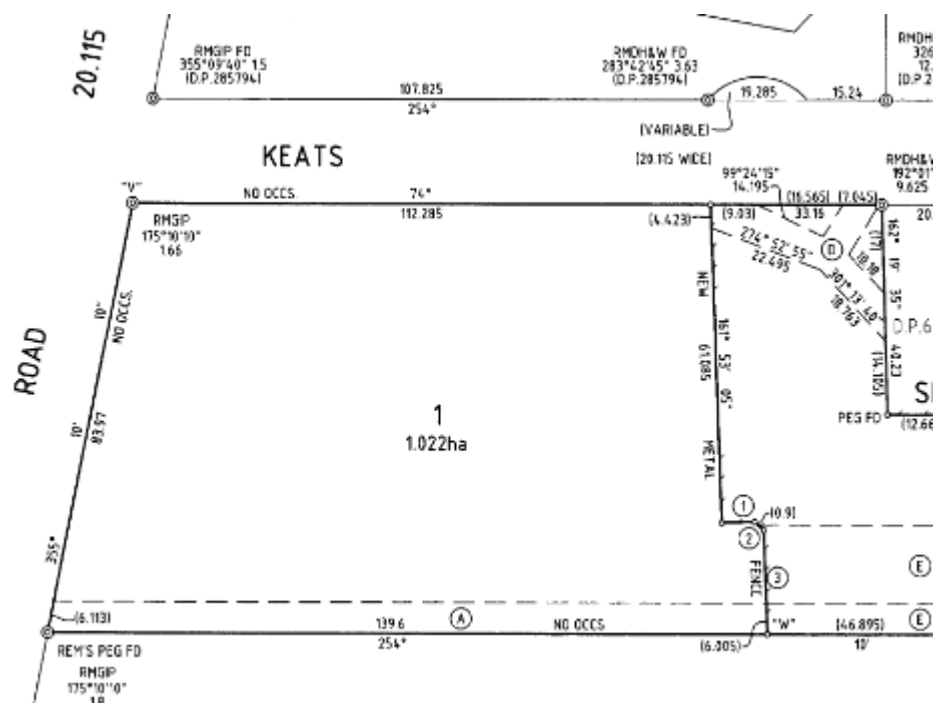


Figure 3. Extract of property title showing “easement for drainage of water 2.01 & 6 wide” (labelled (A)).

- 5 A site inspection was carried out on 7 November 2022



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Photo 1 – driveway access to property from Keats Street. View east



Photo 2 – driveway access to proposed new dwelling. View north



Photo 3 – driveway access to proposed new dwelling. View south



Photo 4 – View north over site for proposed dwelling



Photo 5 – View south over site for proposed

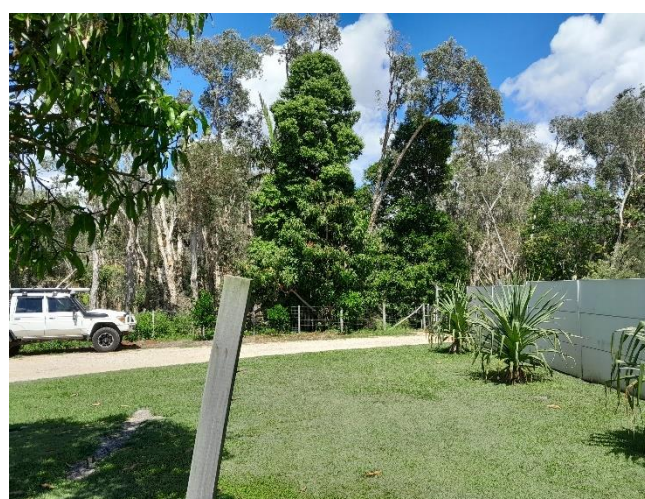


Photo 6 – View west over site for proposed



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dwelling with shed in the background. East section of building to be restored to use as a shed	dwelling
	
Photo 7 – View west over driveway to coastal wetland	Photo 8 – Coastal wetland west of development site. Applicant has advised that fence has been installed along western edge of bush fire asset protection zone

## 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.
S7.11 / Contributions Planner	No objections subject to conditions.
Rural Fire Service (RFS)	RFS issued general terms of approval (GTAs) and a bush fire safety authority for the proposal on 2 September 2022 (ref: DA20220706009128-Original-1).
Department of Primary Industries – NSW Fisheries (DPI Fisheries)	DPI Fisheries issued general terms of approval for the proposal on 5 August 2022 (ref: IDA22/80).


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

- 5 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.

#### State Environmental Planning Policies (SEPP)

Consolidated SEPPs 2021

Considerations	Satisfactory	Unsatisfactory
<p><i>SEPP (Biodiversity and Conservation) 2021</i></p> <p><u>Chapter 4 Koala habitat protection 2021</u></p> <p>The subject property is located within the koala planning area covered by the Byron Coast Comprehensive Koala Plan of Management (BCKKPoM) and consequently, determination of the development application must be consistent with the BCKKPoM (cl.4.4, 4.8 and Schedule 2).</p> <p>The subject property is not within a koala management precinct and does not contain any mapped koala habitat (see map below).</p>  <p>Koala management precincts (yellow hatched area) and koala habitat (green shaded areas) – subject property identified by yellow polygon.</p>	☒	☐
<p><i>SEPP (Resilience and Hazards) 2021</i></p> <p><u>Chapter 2 Coastal management</u></p> <p>In relation to the mapped areas under the SEPP (Coastal Management), the development is located as follows (see map below):</p> <ul style="list-style-type: none"> <li>Proposed Lot B and Lot 1 subdivision boundaries, part of the driveway and bush fire asset protection zones</li> </ul>	☒	☐

Considerations	Satisfactory	Unsatisfactory
<p>encroach the large area of the property to the west that is mapped <u>coastal wetland</u>; and</p> <ul style="list-style-type: none"> <li>The new dwelling and swimming pool are to be located entirely within the <u>coastal wetland proximity area</u>.</li> </ul>  <p>The proposal is designated development as part of the proposal is on land identified as “coastal wetlands” and is “any other development” (cl.2.7(1) and (2), s.4.10 EP&amp;A Act).</p> <p>The Applicant obtained the Secretary’s Environmental Assessment Requirements, and the DA is accompanied by an Environmental Impact Statement (EIS). The DA has been publicly exhibited for 28 days.</p> <p>Development consent must not be granted “... <i>unless the consent authority is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest</i>” (cl.2.7(4)).</p> <p>The application proposes the following measures to manage impacts on the wetlands:</p> <ul style="list-style-type: none"> <li>No native tree removal; and</li> <li>weed control in the coastal wetland for 5 years following initial works (details are provided in the Vegetation management Plan provide with the application).</li> </ul> <p>A fence has been installed to the west of the gravel driveway accessing proposed Lot B (see Photos 6-8). The applicant</p>		

Considerations	Satisfactory	Unsatisfactory
<p>advised that this fence has been installed along the western limit of the required bush fire asset protection zone for the proposed dwelling.</p> <p>Some pruning of the canopy of a stand of Melaleucas at the west of proposed Lot B (see Photo 7) is likely to be required to meet asset protection zone standards but otherwise adverse impacts on native vegetation from the development appear to be unlikely.</p> <p>The application proposes to discharge stormwater from the development to the drainage channel that runs along the southern boundary of the property. Stormwater quality modelling is not required by Council's Development Control Plan, as developed area is less than 2,500m<sup>2</sup>. However, consideration of the potential impacts of the stormwater discharge on the adjoining wetlands was a requirement of the EIS. An erosion and sediment control plan has been prepared for the construction phase of the development. The application proposes treating stormwater from the completed development using a bio retention basin prior to discharge. Council's Development Engineer has advised that the bio retention basin needs to be extended and has recommended a condition accordingly.</p> <p>Mitchell's Rainforest Snails (MRS) were identified on the site as part of the biodiversity assessment in the vegetated wetland areas. No specific mitigation measures for potential impacts on MRS have been proposed however the MRS were only identified in vegetated areas of the site separate from the development footprint.</p> <p>The new dwelling, swimming pool and associated works are within the "proximity area for coastal wetlands" and must not significantly impact on-</p> <p>(a) <i>the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or</i></p> <p>(b) <i>the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest. (cl.2.8(1)).</i></p> <p>The proposed location for the dwelling (and associated APZ) and swimming pool is currently a combination of grassed area, gravel driveway and domestic landscaping. Indirect impacts (i.e., noise, light and vehicle strike) of the development are also expected to be minimal due to the location and scale of the development.</p>		

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Considerations	Satisfactory	Unsatisfactory
<p>Consequently, the development is unlikely to have a significant impact on the adjoining coastal wetland.</p> <p><u>Chapter 4 Remediation of land</u></p> <p>A preliminary site contamination report (Tim Fitzroy &amp; Associates, February 2021) was provided with the application. The report states that the site was previously filled, not contaminating activities were identified from historical aerial photos and soil sampling results did not indicate any contamination. Council's Environmental Health Officer found no evidence of contaminating activities having been carried out on site. Based on the above, the site is considered suitable for the proposed development.</p>		
<p><i>SEPP (Building Sustainability Index: BASIX) 2004</i></p> <p>Consideration: The dwelling is BASIX development, and a BASIX Certificate was provided with the application.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Transport and Infrastructure) 2021</i></p> <p>Consideration: The now disused Murwillumbah to Casino rail line is to the west of the property separated by a road reserve. The proposed development is for residential accommodation which could be adversely affected by rail noise or vibration in the unlikely event the rail line was to be reused for trains (cl.2.100). In their Secretary's Environmental Assessment Requirements (SEARS) response, Transport for NSW (TfNSW) requested the following matters be addressed:</p> <ul style="list-style-type: none"> <li>• Impact of the development (construction and operation) on the rail line;</li> <li>• Stormwater management and implications to the rail corridor; and</li> <li>• An acoustic assessment confirming residents will not be subject to adverse noise and vibration if the rail corridor becomes operational.</li> </ul> <p>There will be no direct impacts of the development on the rail corridor due to separation of over 100m of vegetated land.</p> <p>Stormwater from the new development on Lot B will be discharged to the open drain that runs along the southern boundary of the property. Provided on-site stormwater detention and bioretention is provided in accordance with the condition recommended by Council's Development Engineer, adverse impacts on the rail corridor from stormwater from the</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



<b>Considerations</b>	<b>Satisfactory</b>	<b>Unsatisfactory</b>
development are unlikely.  The noise & vibration assessment (Noise Measurement Services, 1/2/2021) provided with the application concluded that, in the event passenger trains were reintroduced, the internal noise limit would not be exceeded in the dwellings, even with the windows open.		

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

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

- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as dwelling house and dual occupancy (see Note) and in cl.6.2 of the EP&A Act as subdivision of land;
- (b) The land is within the R2 Low Density Residential according to the LEP 2014 Land Zoning Map;
- (c) The proposed development is permitted with consent; and
- 10 (d) Regard is had for the Zone Objectives as follows:

<b>Zone Objectives – R2</b>	<b>Consideration</b>
<ul style="list-style-type: none"> <li>• To provide for the housing needs of the community within a low density residential environment.</li> <li>• To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	The dual occupancy will provide for the housing needs of the community.

- 15 Note: The building on proposed lot B, identified as “Exist. Shed”, has been converted to a dwelling/habitable space. This application does not seek to approve the use of this building as a dwelling and as such a condition is recommended for this building to be restored to a shed (i.e., through the removal of kitchen, bathroom and all non-structural internal partitions).

### 4.1 Minimum subdivision lot size

The minimum lot size requirement does not apply to strata subdivisions however, the proposed lots (A and B) exceed the minimum lot size for the R2 zoned land being 600m<sup>2</sup>.

### 4.1E Minimum lot sizes for certain residential accommodation

- 20 The property, at 1.20ha, is greater than the minimum lot size for a dual occupancy (detached) in the R2 zone being 800m<sup>2</sup>.

### 4.3 Height of buildings

The maximum height of the proposed dwelling is 5.5m above ground level and well below the 9m maximum .

4.4 Floor space ratio

- 5 The floor space ratio for Lots A and B is 0.22:1 and 0.1:1 respectively (based on dwelling floor areas of 240m<sup>2</sup> and 187m<sup>2</sup> respectively) being below the 0.5:1 maximum .

5.21 Flood planning

- 10 Council's GIS indicates that the property is in a flood planning area. Council's Development Engineer is satisfied with the development is compatible with the flood hazard (i.e., no works below 100 year flood level, floor heights above flood planning level, suitable access) and will not adversely affect flood function and behaviour.

6.1 Acid sulfate soils

- 15 The property is mapped as having acid sulfate soils (Class 2 to the west and class 5 to the east). An acid sulfate soils assessment (Tim Fitzroy & Associates, February 2021) was provided with the application. The assessment report concluded that, "*The results of field and laboratory testing have shown the site contains actual acid sulfate soil from the ground surface to approximately 1.5m below the ground surface. The acid sulfate soil will present an environmental hazard and it will require treatment if it is to be disturbed or excavated for the proposed development*".

- 20 The acid sulfate soils assessment included a management plan which was found to be acceptable by Council's Environmental Health Officer.

6.2 Earthworks

- 25 The development will require earthworks for the dwelling footings, the swimming pool (~1.5m in depth), connection of services and driveway works. The earthworks are relatively minor in scale and an erosion and sediment control plan was included with the application to managed construction-phase stormwater quality. The application states that no fill will be imported to the site. Excavated soils will be removed in accordance with site contamination/acid sulfate soils management requirements.

6.6 Essential services

- 30 Subject to conditions recommended by Council's Development Engineer, the property is expected to have access to necessary essential services as it is in an established residential area and has an established dwelling. Council's Engineers are satisfied the development can be adequately serviced subject to recommended conditions.

6.7 Affordable housing in residential and business zones

- 35 This clause requires that prior to granting consent to development for residential accommodation or the subdivision of land, the consent authority has considered— the need for providing, maintaining, or retaining affordable housing, and the need for imposing conditions relating to providing, maintaining, or retaining affordable housing including, but not limited to, imposing covenants and the registration of restrictions about users.

- 40 While the proposal does not provide for affordable housing as defined by the clause, it responds to this clause through provision of new housing stock. To ensure the dwelling is used for residential purposes and adds to the housing stock of the Shire, a condition has

been recommended to preclude use of the dwellings for short-term rental accommodation and/or holiday letting.

- 5 Without an appropriate legislative mechanism in place, Council is unable to require anything further of a proponent currently. To this aim, staff are reviewing this clause to encompass wording in line with the on exhibition [Affordable Housing Contribution Scheme - Byron Shire Council \(nsw.gov.au\)](#) to provide greater guidance to applicant's on expectations.

10 **4.2B Byron Local Environmental Plan 1988 (LEP 1988)**

In accordance with LEP 1988 clauses 5, 8 and 9:

- 15 (a) The proposed development is defined in the LEP 1988 Dictionary as dual occupancy (see Note) and subdivision of land (cl.6.2 of the EP&A Act);
- (b) The land is within the 2(a) Residential and 7(a) Wetlands zones according to the map under LEP 1988;
- (c) The proposed development is permitted with consent; and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

Zone Objectives – 2(a)	Consideration
<p>(a) to make provision for certain suitable lands, both in existing urban areas and new release areas, to be used for the purposes of housing and associated neighbourhood facilities of high amenity and accessibility,</p> <p>(b) to encourage a range of housing types in appropriate locations,</p> <p>(c) to enable development for purposes other than residential purposes only if it is compatible with the character of the living area and has a domestic scale and character, and</p> <p>(d) to control by means of a development control plan the location, form, character and density of permissible development.</p>	<p>The proposed dwelling house and strata subdivision are not inconsistent with zone 2(a) objectives.</p>

# BYRON SHIRE COUNCIL

## LATE REPORTS

16.1

Zone Objectives – 7(a)	Consideration
<p>(a) to identify all lands covered by State Environmental Planning Policy No 14—Coastal Wetlands,</p> <p>(b) to identify and preserve estuaries and wetlands and allow them to continue to function as feeding and breeding areas for wildlife, shellfish and fish,</p> <p>(c) to prohibit development within the zone that is likely to have a detrimental effect on the habitat or landscape qualities or the flood mitigation function of the wetlands,</p> <p>(d) to enable development of public works and environmental facilities where such development would not have a significant detrimental effect on the habitat or landscape qualities of the wetland and other significant coastal habitat areas, and</p> <p>(e) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.</p>	<p>The development is unlikely to have a detrimental impact on the adjoining coastal wetland due to all building works being outside the wetland area, no native tree removal being required and the scale of the development being relatively minor.</p>

Note: Only the bush fire APZ associated with the current dwelling encroaches zone 2(a) land and the bush fire APZ associated with the proposed dwelling encroaches zone 7(a) land. Otherwise, the dwellings are entirely located within zone R2 land.

### 11 Subdivision in rural areas for agriculture etc

- 5 The minimum subdivision lot size for zone 7(a) land is 40ha if the subdivision is “... *for agriculture, forestry or a dwelling-house...*”. Proposed Lot 1 will contain all the zone 7(a) land and will be common property under the proposed strata arrangement but will be only 7260m<sup>2</sup> in area. The applicant has argued that the minimum lot size does not apply as the dwelling will not be located on proposed Lot 1. But for a small section of asset protection
- 10 zone required for the new dwelling, no component of the dwelling (e.g., including the driveway) will encroach the 7(a) zoned land. On the basis that the common property lot is not being created for a dwelling, a variation to the minimum lot size requirement for the zone 7(a) land is not required.

### 17 Dual occupancy

- 15 A dual occupancy is permissible on the zone 2(a) land, “ *but only if, not more than 2 dwellings will be created or result on the allotment*”. As noted above, the shed that has been converted to a dwelling/habitable space will need to be restored back to a shed. A requirement has been recommended to this effect. The lots for the dwelling are greater than 800m<sup>2</sup> and the resulting floor space ratio will be less than 0.5:1 and as such the
- 20 proposed dual occupancy can comply with this clause.

24 Development of flood liable land

As noted above, Council's Development Engineer is satisfied with the development in relation to flood compatibility and flooding impacts.

36 Development adjoining wetland

- 5 The bush fire APZ for the current dwelling and possibly a small part of the driveway is located within zone 2(a) land which adjoins the wetland (zone 7(a) land). Development proposed in this area is minimal and is not contrary to the requirements of this clause.
- The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The
- 10 proposed development complies with all clauses of LEP 1988 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

15 **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

No proposed instruments were identified that are relevant to this application.

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

B1 – Biodiversity

- 20 As acknowledged in the Biodiversity Assessment (Geolink, June 2021) provided with the application, the proposal does not comply with several of the required ecological setbacks. A variation to these setbacks has been sought on the basis that:
- the dwelling is setback as far as practicable from the coastal wetland;
  - no vegetation of habitat removal is required for the development;
  - 25 • bush fire APZs are located on cleared land and do not overlap the coastal wetland (Joe to confirm);
  - no fencing is proposed; and
  - A Vegetation Management Plan has been provided for the coastal wetland.

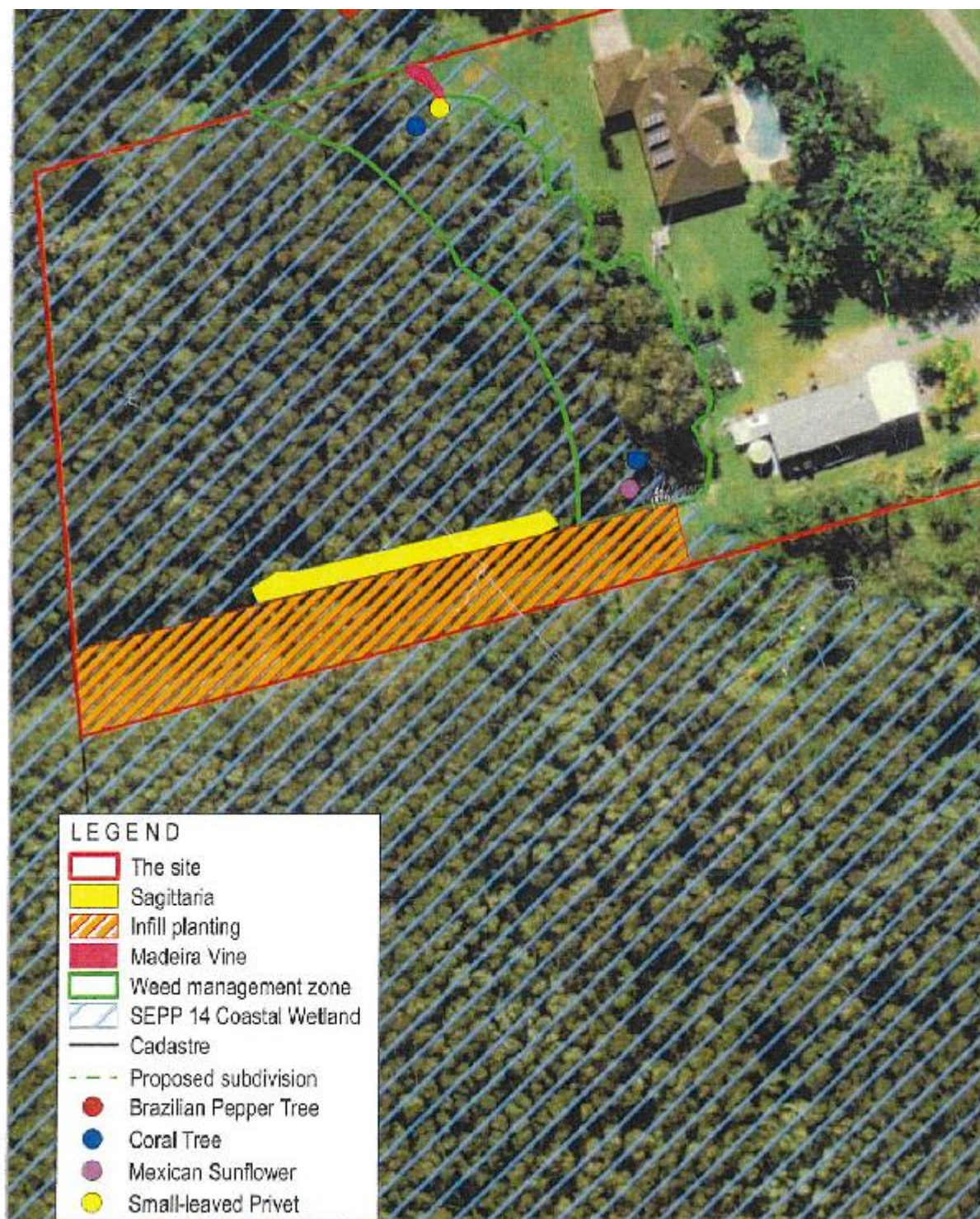
30 Based on the above measures, the proposal is consistent with the objectives of the development envelope controls (D1.2.1).

The subject property is in a 10/50 vegetation entitlement clearing area however the 10/50 exemption cannot be used to clear vegetation on this parcel of land as it is wholly or partially within a coastal wetland (online tools access 10/11/22).

- 35 The subject property was created by a 2 lot subdivision (DA 10.2016.794.1) which was approved subject to a Vegetation Management Plan (VMP) for "...*restoration of the SEPP 14/Coastal Wetlands* ...". The figure below is extracted from the approved VMP which



illustrates the actions proposed by the VMP being weed control within the swamp sclerophyll forest and supplementary planting along the drain spoil batter. The VMP provided with this development application will further the weed control initiated under the original subdivision DA.





B3 – Services

- 5 The property has an existing dwelling and is in an established residential area. Essential services (i.e., water and wastewater) are available (or can be made available with required) for the additional dwelling. Stormwater is to be discharged in the Council drainage reserve along the southern boundary of the property and vehicular access will be via Keats Street which some upgrade works to the driveway and crossover being required.

B4 – Traffic Planning, Vehicle Parking, Circulation and Access

- 10 Proposed parking and traffic impacts are acceptable however Council's Development Engineer identified issues relating to access and has recommended conditions to address removal of the boom gate, modification of the proposed turning bay in the road reserve to minimise pavement and avoid tree removal, deletion of the driveway kerb and provision of a turning head for the new dwelling.

B6 – Buffers and Minimising Land Use Conflict

- 15 The subject property adjoins the disused rail corridor to the west. The new dwelling will be ~140m to the east of the railway line and separated by established coastal swamp forest. A Noise Assessment was provided with the application that concluded that, in the event the railway recommenced operation, the relevant noise limit would be met in the dwelling even with the windows open.

B9 – Landscaping

- 20 A landscaping plan is required but was not provided with the application. A conditions has been recommended requiring a landscaping plan consistent with relevant provisions (B9.3.1 and B9.5.1).

D1 Residential Accommodation in Urban, Village and Special Purpose Zones

**D1.2 General Provisions**

- 25 The dwelling will be set back 2m from the eastern boundary and is consistent with building height plane and setback requirements (D1.2.1, D1.2.2).

**D1.3 Dwelling Houses**

The new dwelling and proposed Lot B, on which it will be situated, have adequate space to provide the required car parking and landscaping (D1.3.1, D.3.2).

30 **D1.5 Dual Occupancy and Semi-Detached Dwellings**

There is adequate space for car parking and private open space for both dwellings (D1.5.1, D1.5.4). Character impacts and impacts of neighbours will be negligible due to the new dwelling being located at the terminus of Keats Street and behind the current dwelling (D1.5.2, D1.5.3).

35

D6 – Subdivision

5 The proposed strata subdivision is generally consistent with the relevant subdivision design guidelines (D6.2.1). The two strata lots in the zone R2 land are greater than the minimum lot size, meet lot size and shape requirements (D6.4.1) and the two development lots have, or can be provided, suitable vehicular access (D6.4.2).

## 4.4B Byron Shire Development Control Plan 2010 (DCP 2010)

10 All the land governed by DCP 2010 will be contained within the common property lot (Proposed Lot 1). Other than driveway upgrade works, no other development is proposed in the common property lot.

Part B – Subdivision

15 The proposed strata subdivision is generally consistent with the relevant subdivision design guidelines (B2) and development guidelines (B3). Vehicle access, stormwater management and landscaping are considered above under DCP 2014 in relation to the development lots.

## 4.5 Environmental Planning and Assessment Regulation 2000 considerations

	<b>Applicable to the proposal:</b>	<b>Considered the control as it relates to the proposal:</b>	<b>If this control is applicable, does the proposal comply?</b>
Clause 92 - Additional matters that consent authority must consider	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Clause 93 Fire safety and other considerations	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Clause 94 - Consent authority may require buildings to be upgraded	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Clause 94A - Fire safety and other considerations applying to erection of temporary structures	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA

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

Impact on:	Likely significant impact/s?
<b>Natural environment</b>	The proposal will not have a significantly adverse impact on the natural environment of the locality.
<b>Built environment</b>	The proposal will not have a significantly adverse impact on the built environment of the locality.
<b>Social Environment</b>	The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	The proposal will not have a significant economic impact on the locality.
<b>Construction Impacts</b>	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 capable of being serviced, has manageable constraints 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 **Nil (0)** submissions made on the development application:

#### 4.9 Public interest

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

## 4. SECTION 4.46/7 – INTEGRATED DEVELOPMENT

The proposal is integrated development (s.4.46 EP&A Act) in that it requires authorisation under:

- 5 • s.100B of the *Rural Fires Act 1997* in respect of subdivision of land that could lawfully be used for residential or rural residential purposes; and
- s.201 of the *Fisheries Management Act 1994* to carry out dredging or reclamation works.

10 The consent authority must, in accordance with the regulations, obtain general terms of approval in relation to the development before granting consent. RFS issued general terms of approval and a bush fire safety authority for the proposal on 2 September 2022 (ref: DA20220706009128-Original-1). DPI Fisheries issued general terms of approval for the proposal on 5 August 2022 (ref: IDA22/80).

## 5. DEVELOPER CONTRIBUTIONS

### 5.1 Water & Sewer Levies

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

25

DEVELOPMENT APPLICATION

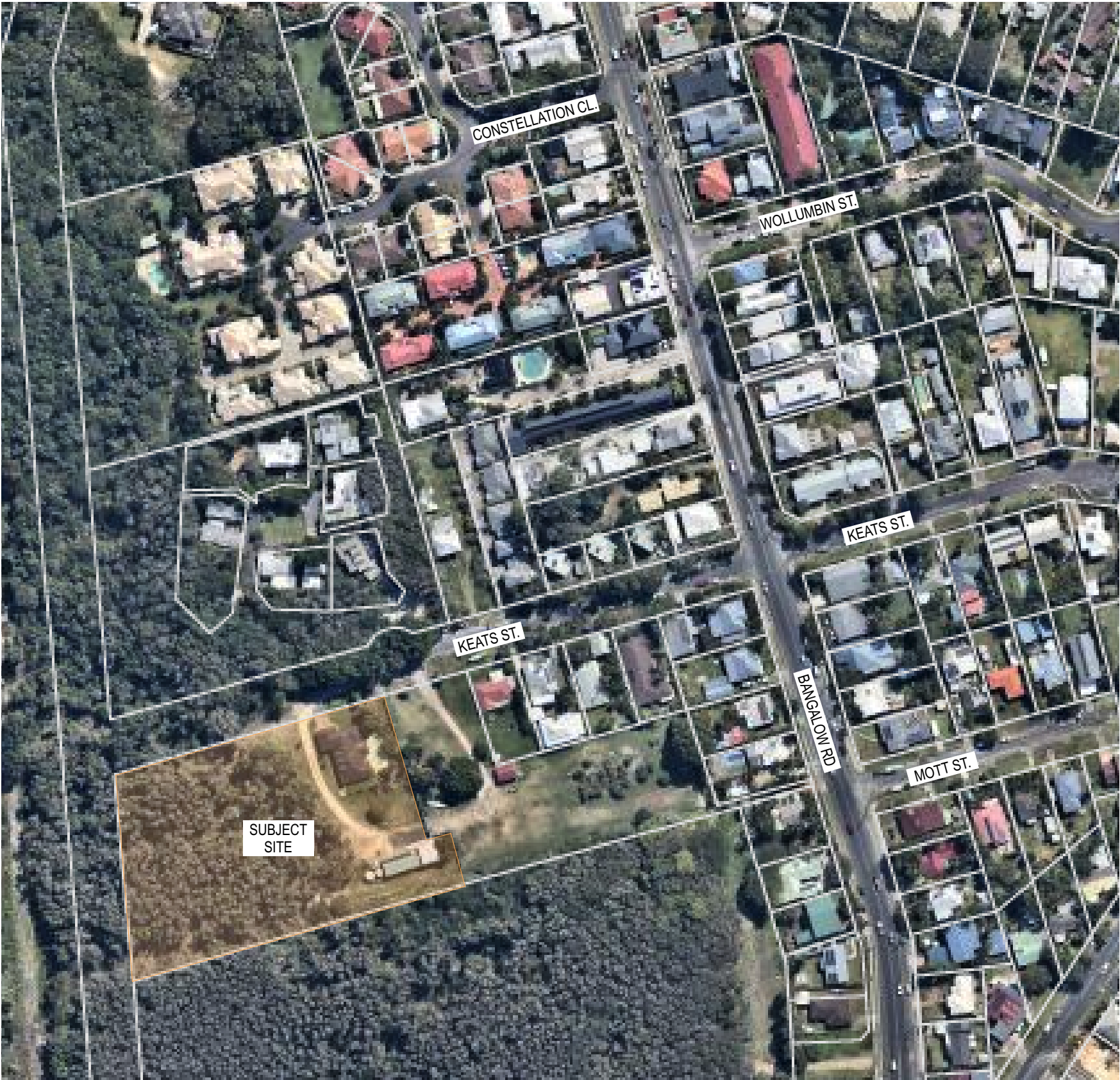
2 KEATS STREET, BYRON BAY

<div>DRAWING SCHEDULE</div> <div><div>0.01</div><div>COVER PAGE &amp; DRAWING SCHEDULE</div></div> <div><div>0.02</div><div>LOCATION PLAN</div></div> <div><div>1.02</div><div>PROPOSED SITE PLAN</div></div> <div><div>1.02</div><div>PROPOSED STRATA PLAN</div></div> <div><div>2.01</div><div>DEMOLITION PLAN</div></div> <div><div>2.01</div><div>PROPOSED PLAN</div></div> <div><div>2.01</div><div>PROPOSED ROOF PLAN</div></div> <div><div>3.01</div><div>ELEVATIONS - SHEET 1</div></div> <div><div>4.02</div><div>LONG SECTIONS</div></div> <div><div>4.02</div><div>SHORT SECTIONS</div></div> <div><div>7.01</div><div>DOOR / WINDOW SCHEDULE</div></div> <div><div>8.01</div><div>PROPOSED LANDSCAPING PLAN</div></div>	<div>DEVELOPMENT SUMMARY</div> <div><div>SITE AREA:</div><div>9,388m<sup>2</sup></div></div> <div><div>GFA</div><div><div>GROUND:</div><div>176m<sup>2</sup></div><div>TOTAL:</div><div>176m<sup>2</sup></div></div></div> <div><div>TOTAL GFA:</div><div>176m<sup>2</sup></div><div>FSR:</div><div>0.01:1</div></div>	<div>LEGEND</div> <div><div>AC</div><div>AIR CONDITIONING PLANT</div></div> <div><div>ALM</div><div>ALUMINIUM</div></div> <div><div>CO.1</div><div>CONCRETE - BURNISHED</div></div> <div><div>EG</div><div>EDGE GUTTER</div></div> <div><div>GL</div><div>GLASS</div></div> <div><div>HWD</div><div>HARDWOOD</div></div> <div><div>HWS</div><div>HOT WATER SYSTEM</div></div> <div><div>MRS</div><div>METAL ROOF SHEETING</div></div> <div><div>MW.1</div><div>MASONRY WALL</div></div> <div><div>PP</div><div>POOL PUMP</div></div> <div><div>PV.1</div><div>PAVING</div></div> <div><div>RWT</div><div>RAINWATER TANK</div></div> <div><div>SP</div><div>SOLAR PANELS</div></div> <div><div>TS.1</div><div>TIMBER SCREEN</div></div>
	<div>COMPLIANCE WITH BASIX REQUIREMENTS AS PER CERTIFICATE NO. 1210454S</div>	



<div><div><div></div></div><div>HGA</div></div> <div>LVL 1/144 JOHNSON STREET BYRON BAY PO BOX 1285 NSW 2481 F: 02 66809820   T: 02 66809690   E: office@harleygraham.com ABN: 85158246003 NSW 7892</div>	NORTH	SHEET TITLE <b>COVER PAGE &amp; DRAWING SCHEDULE</b>				PAPER <b>A3</b>	DWG NO. <b>0.01</b>	STATUS <b>NOT FOR CONSTRUCTION</b>					
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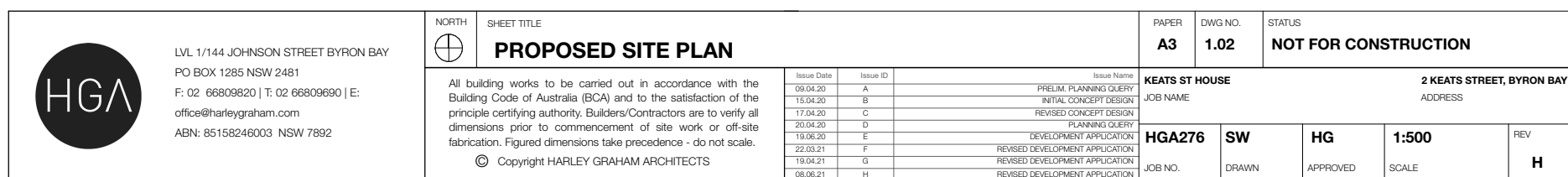


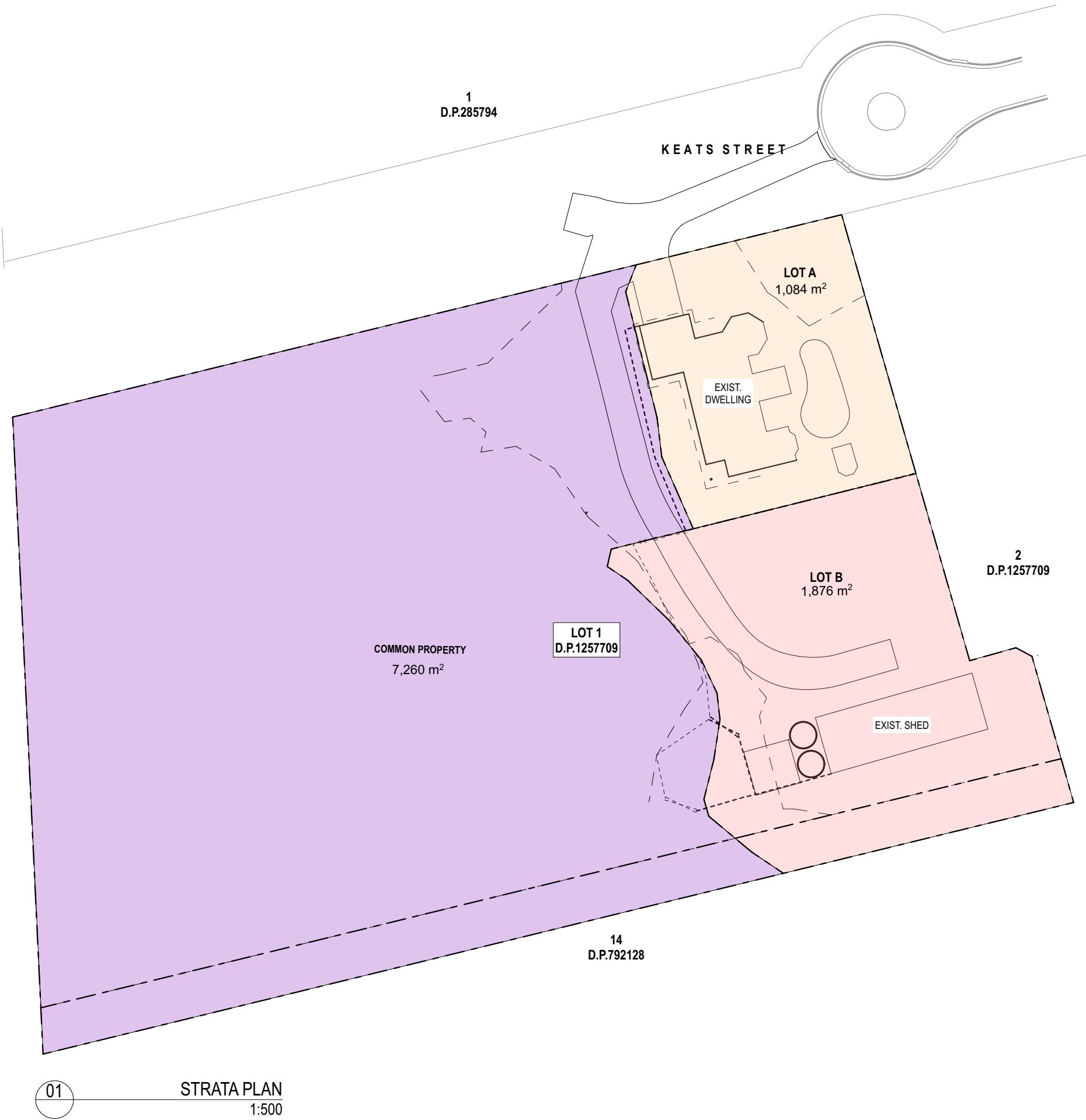




LOCATION PLAN - NTS

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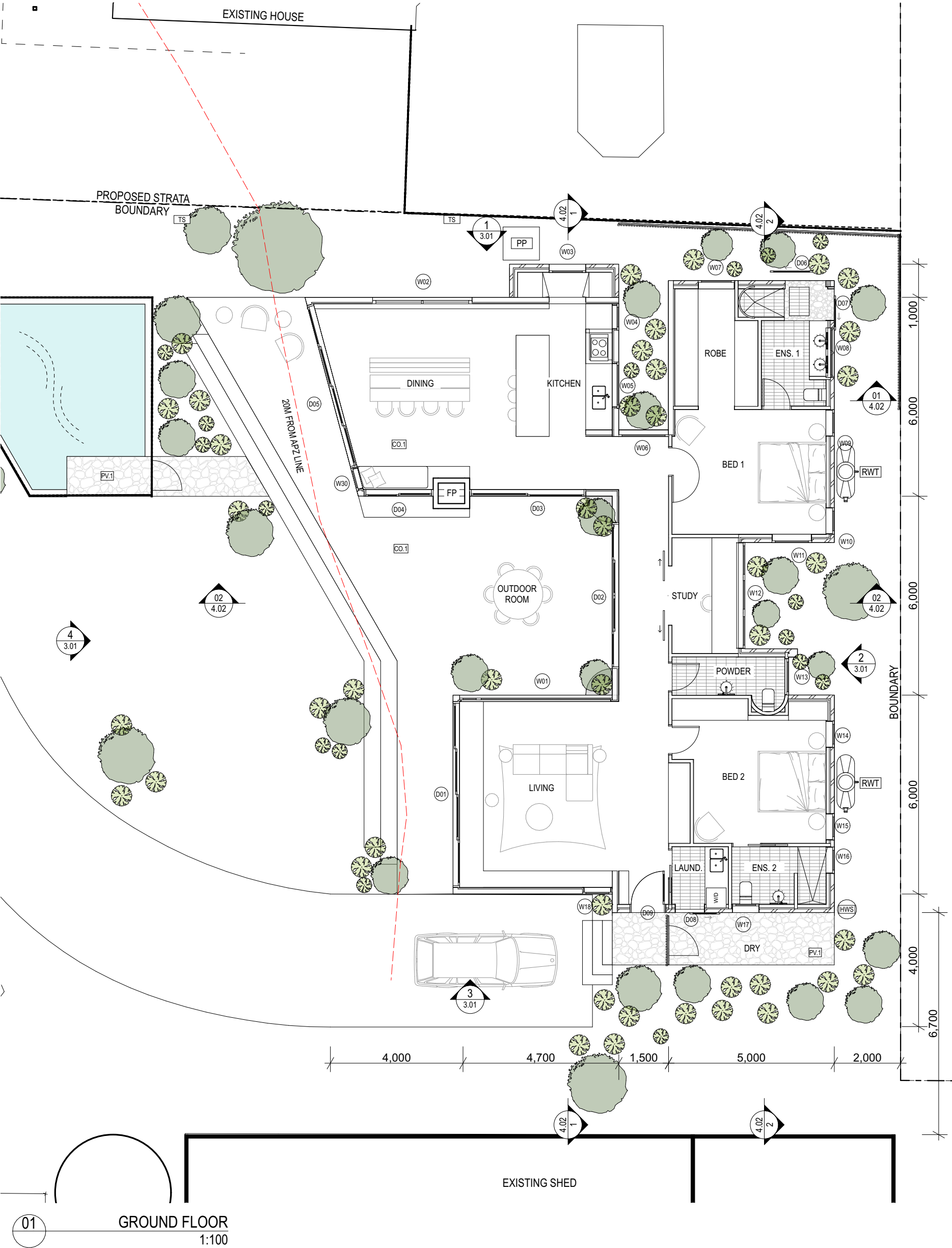
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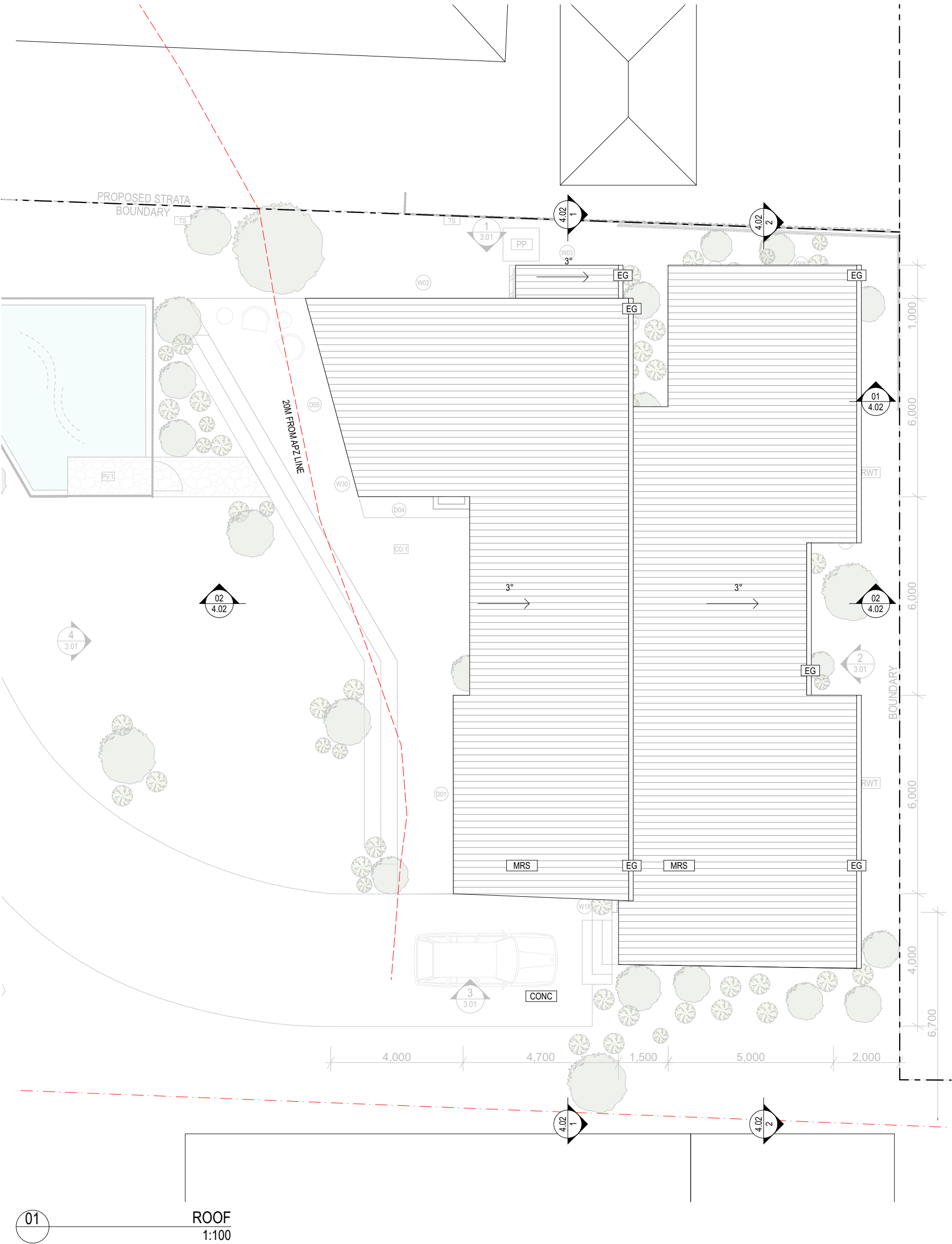


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


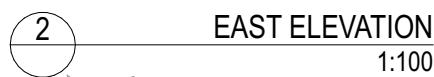
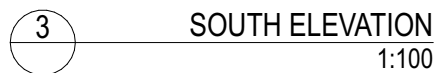



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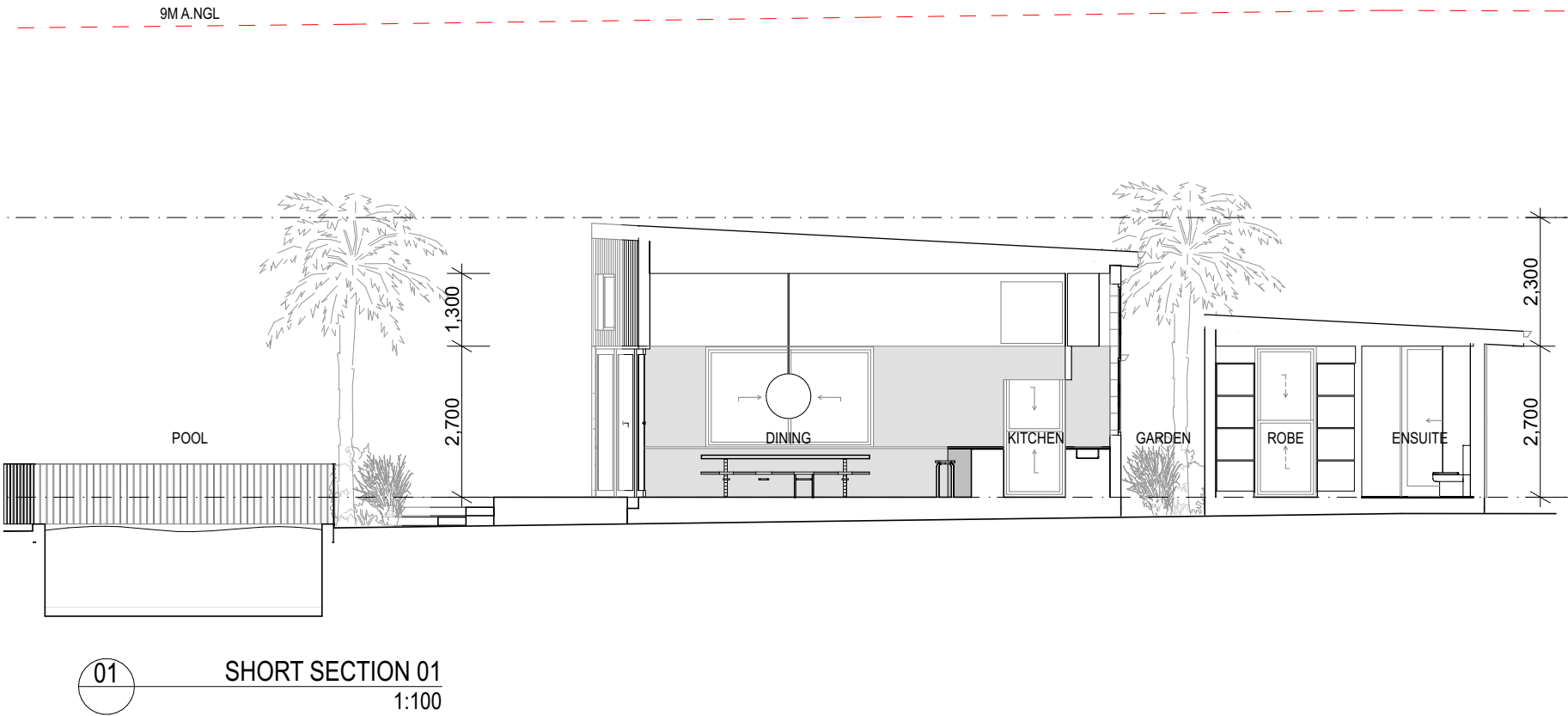




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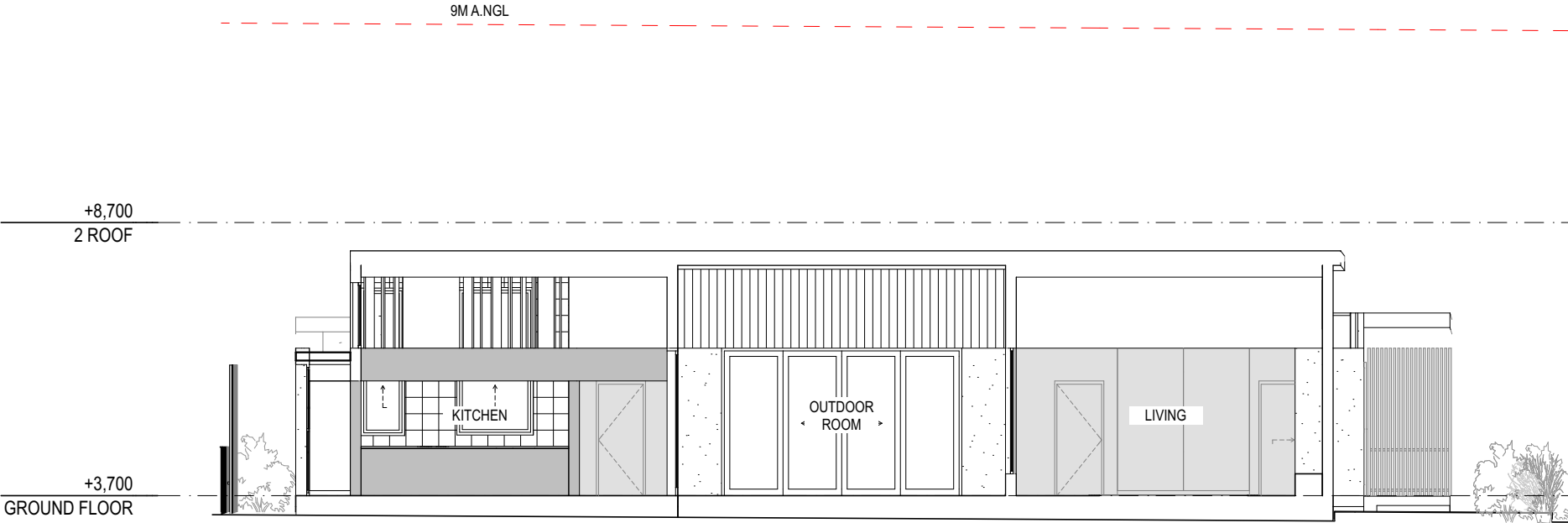
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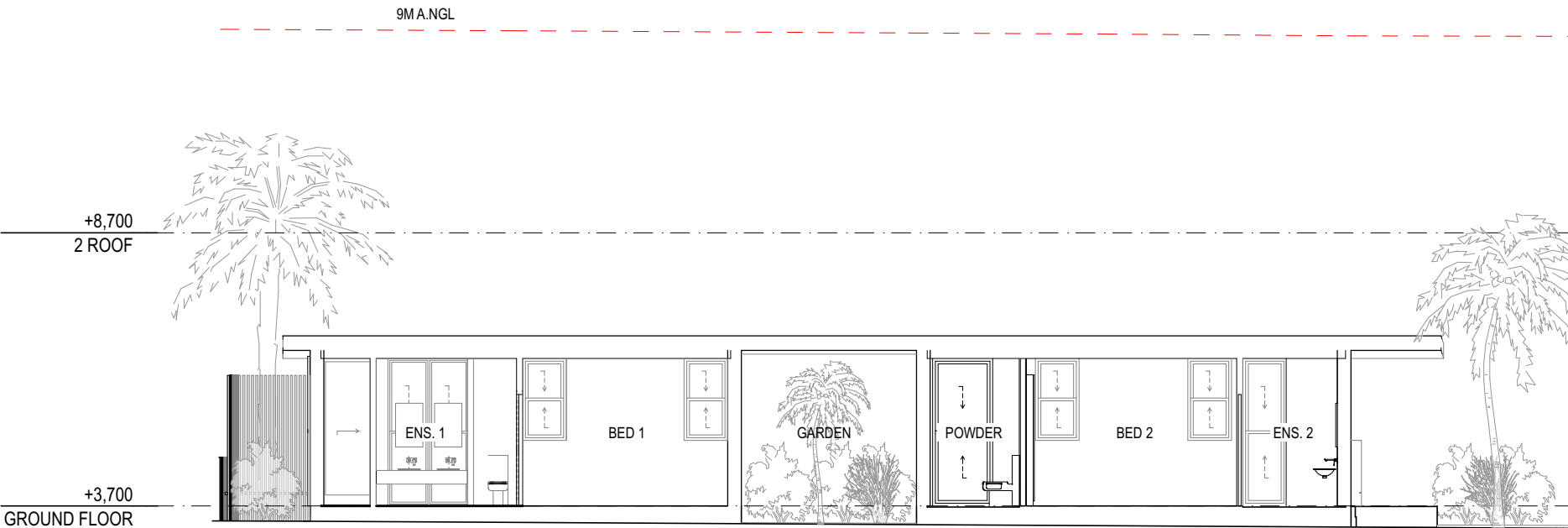
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	<div>ELEVATIONS - SHEET 1</div> <div>All building works to be carried out in accordance with the Building Code of Australia (BCA) and to the satisfaction of the principle certifying authority. Builders/Contractors are to verify all dimensions prior to commencement of site work or off-site fabrication. Figured dimensions take precedence - do not scale.  © Copyright HARLEY GRAHAM ARCHITECTS</div>				Issue Date		Issue ID		Issue Name			
					09.04.20		A		PRELIM. PLANNING QUERY			
					15.04.20		B		INITIAL CONCEPT DESIGN			
					17.04.20		C		REVISED CONCEPT DESIGN			
					20.04.20		D		PLANNING QUERY			
					19.06.20		E		DEVELOPMENT APPLICATION			
					22.03.21		F		REVISED DEVELOPMENT APPLICATION			
					19.04.21		G		REVISED DEVELOPMENT APPLICATION			
					08.06.21		H		REVISED DEVELOPMENT APPLICATION			
					KEATS ST HOUSE							
					JOB NAME							
					2 KEATS STREET, BYRON BAY							
					ADDRESS							
					HGA276		SW		HG		REV	
					JOB NO.		DRAWN		APPROVED		SCALE	
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<div></div> <div>LVL 1/144 JOHNSON STREET BYRON BAY PO BOX 1285 NSW 2481 F: 02 66809820   T: 02 66809690   E: office@harleygraham.com ABN: 85158246003 NSW 7892</div>	<div>NORTH</div> <div></div>	<div>SHEET TITLE</div> <div>SHORT SECTIONS</div>			<div>PAPER</div> <div>A3</div>	<div>DWG NO.</div> <div>4.02</div>	<div>STATUS</div> <div>NOT FOR CONSTRUCTION</div>				
		<div>All building works to be carried out in accordance with the Building Code of Australia (BCA) and to the satisfaction of the principle certifying authority. Builders/Contractors are to verify all dimensions prior to commencement of site work or off-site fabrication. Figured dimensions take precedence - do not scale.</div> <div>© Copyright HARLEY GRAHAM ARCHITECTS</div>			<div>Issue Date</div> <div>09.04.20</div>	<div>Issue ID</div> <div>A</div>	<div>Issue Name</div> <div>PRELIM PLANNING QUERY</div>				
							<div>INITIAL CONCEPT DESIGN</div>				
							<div>REVISED CONCEPT DESIGN</div>				
							<div>PLANNING QUERY</div>				
			<div>20.04.20</div>	<div>D</div>	<div>DEVELOPMENT APPLICATION</div>						
			<div>19.06.20</div>	<div>E</div>	<div>REVISED DEVELOPMENT APPLICATION</div>						
			<div>22.03.21</div>	<div>F</div>	<div>REVISED DEVELOPMENT APPLICATION</div>						
			<div>19.04.21</div>	<div>G</div>	<div>REVISED DEVELOPMENT APPLICATION</div>						
			<div>08.06.21</div>	<div>H</div>	<div>REVISED DEVELOPMENT APPLICATION</div>						
<div>KEATS ST HOUSE</div> <div>JOB NAME</div>						<div>2 KEATS STREET, BYRON BAY</div> <div>ADDRESS</div>					
<div>HGA276</div> <div>JOB NO.</div>		<div>SW</div> <div>DRAWN</div>	<div>HG</div> <div>APPROVED</div>	<div>SCALE</div>		<div>REV</div> <div>H</div>					



1 LONG SECTION 01  
1:100



2 LONG SECTION 02  
1:100

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			20.04.20		D	PLANNING QUERY			
<div>KEATS ST HOUSE</div> <div>JOB NAME</div> <div>HGA276</div> <div>JOB NO.</div>	<div>2 KEATS STREET, BYRON BAY</div> <div>ADDRESS</div> <div>SW</div> <div>DRAWN</div>	<div>STATUS</div> <div>NOT FOR CONSTRUCTION</div> <div>HG</div> <div>APPROVED</div>	<div>SCALE</div>	<div>REV</div> <div>H</div>	19.06.20		E	DEVELOPMENT APPLICATION	
			22.03.21		F	REVISED DEVELOPMENT APPLICATION			
			19.04.21		G	REVISED DEVELOPMENT APPLICATION			
			08.06.21		H	REVISED DEVELOPMENT APPLICATION			



DOOR SCHEDULE

DOOR SCHEDULE					
ID	D01	D02	D03	D04	D05
Door Type	SLIDING	SLIDING	SLIDING	SLIDING	SLIDING
Height	2,300	2,700	2,700	2,300	2,700
Width	5,600	4,400	3,500	2,084	5,080
Frame Material	HWD	HWD	HWD	HWD	HWD
Panel Material	GL	GL	GL	GL	GL
Screen					
Notes					
External View					



DOOR SCHEDULE				
ID	D06	D07	D08	D09
Door Type	SLIDING	SLIDING	SLIDING	HINGED
Height	2,700	2,700	2,400	2,700
Width	1,200	950	820	1,000
Frame Material	HWD	HWD	HWD	HWD
Panel Material	GL	GL	GL	GL
Screen				
Notes				
External View				

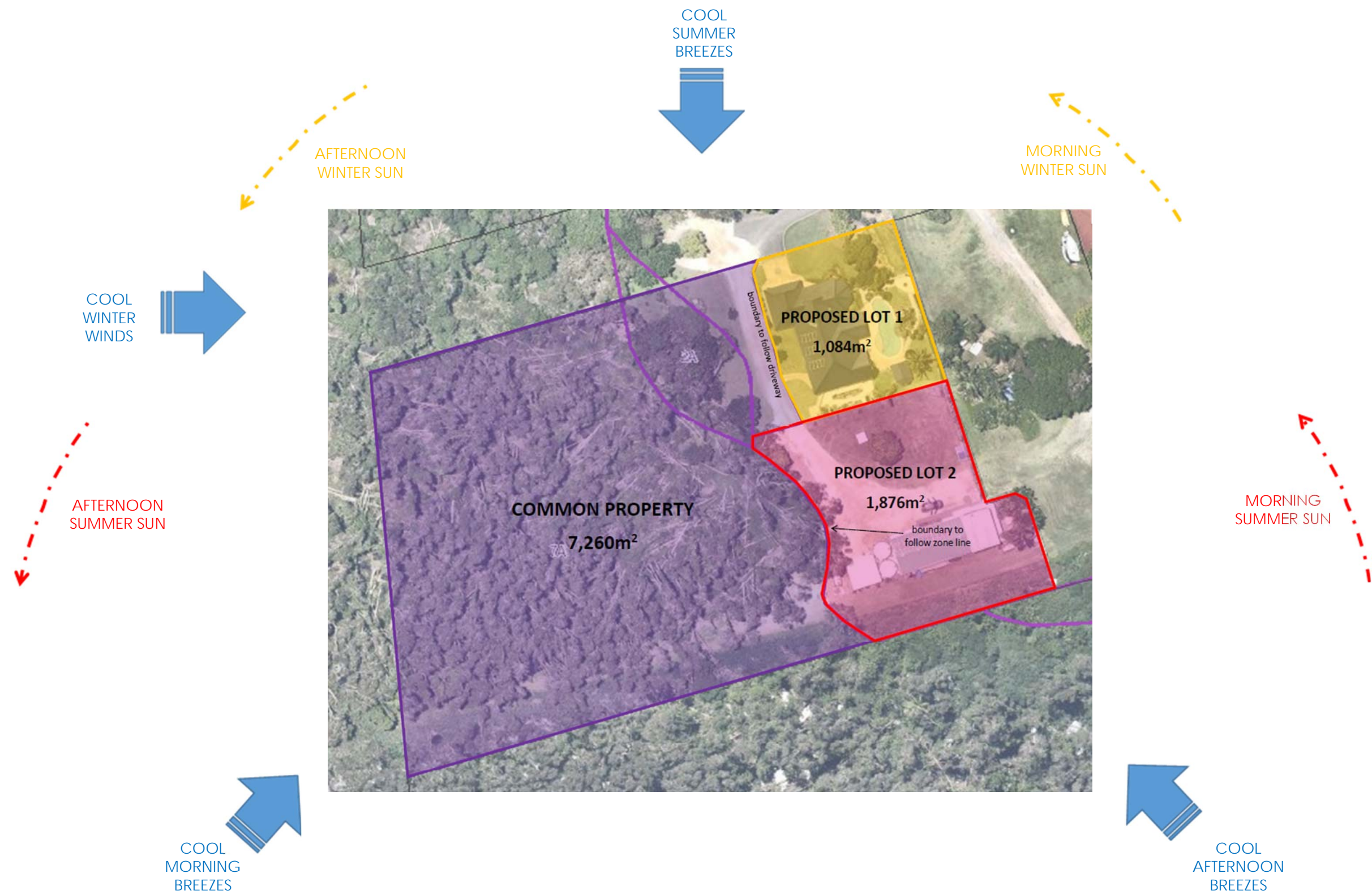
WINDOW SCHEDULE

WINDOW SCHEDULE								
ID	W01	W02	W03	W04	W05	W06	W07	W08
Window Type	FIXED / DOUBLE HUNG	SLIDING	DOUBLE HUNG	DOUBLE HUNG	DOUBLE HUNG	DOUBLE HUNG	DOUBLE HUNG	DOUBLE HUNG
Height	2,300	1,800	2,400	2,700	2,700	3,000	2,700	2,700
Width	4,600	3,000	1,100	800	1,400	1,500	1,100	1,500
Frame Material	HWD	HWD	HWD	HWD	HWD	HWD	ALM	ALM
Panel Material	GL	GL	GL	GL	GL	GL	GL	GL
Screen								
Notes								
External View								

WINDOW SCHEDULE									
ID	W09	W10	W11	W12	W13	W14	W15	W16	W17
Window Type	DOUBLE HUNG	DOUBLE HUNG	DOUBLE HUNG	DOUBLE HUNG	DOUBLE HUNG	DOUBLE HUNG	DOUBLE HUNG	DOUBLE HUNG	DOUBLE HUNG
Height	1,500	1,500	2,700	1,800	2,700	1,500	1,500	2,700	1,200
Width	800	800	1,200	3,200	1,100	800	800	800	800
Frame Material	ALM	ALM	ALM	ALM	ALM	ALM	ALM	ALM	ALM
Panel Material	GL	GL	GL	GL	GL	GL	GL	GL	GL
Screen									
Notes									
External View									

WINDOW SCHEDULE						
ID	W18	W19	W20	W21	W22	W30
Window Type	DOUBLE HUNG	FIXED	FIXED	FIXED	FIXED	DOUBLE HUNG
Height	2,000	1,000	1,000	1,200	1,000	2,300
Width	900	1,400	1,300	1,200	1,000	720
Frame Material	ALM	ALM	ALM	ALM	ALM	ALM
Panel Material	GL	GL	GL	GL	GL	GL
Screen						
Notes		HIGH LEVEL	HIGH LEVEL	HIGH LEVEL	HIGH LEVEL	
External View						

<div></div> <div>LVL 1/144 JOHNSON STREET BYRON BAY PO BOX 1285 NSW 2481 F: 02 66809820   T: 02 66809690   E: office@harleygraham.com ABN: 85158246003 NSW 7892</div>	<div>NORTH</div> <div></div> <div>SHEET TITLE</div> <div>DOOR / WINDOW SCHEDULE</div> <div>All building works to be carried out in accordance with the Building Code of Australia (BCA) and to the satisfaction of the principle certifying authority. Builders/Contractors are to verify all dimensions prior to commencement of site work or off-site fabrication. Figured dimensions take precedence - do not scale.</div> <div>© Copyright HARLEY GRAHAM ARCHITECTS</div>	PAPER		DWG NO.	STATUS		
		A3		7.01	NOT FOR CONSTRUCTION		
		KEATS ST HOUSE		2 KEATS STREET, BYRON BAY			
		JOB NAME		ADDRESS			
		HGA276		SW	HG		REV
		JOB NO.		DRAWN	APPROVED	SCALE	H







Site of proposed dwelling construction to the south of the established dwelling



Coastal wetland area to the west of the established dwelling



Existing access driveway leading to Keats Street



Existing access driveway adjacent to established dwelling

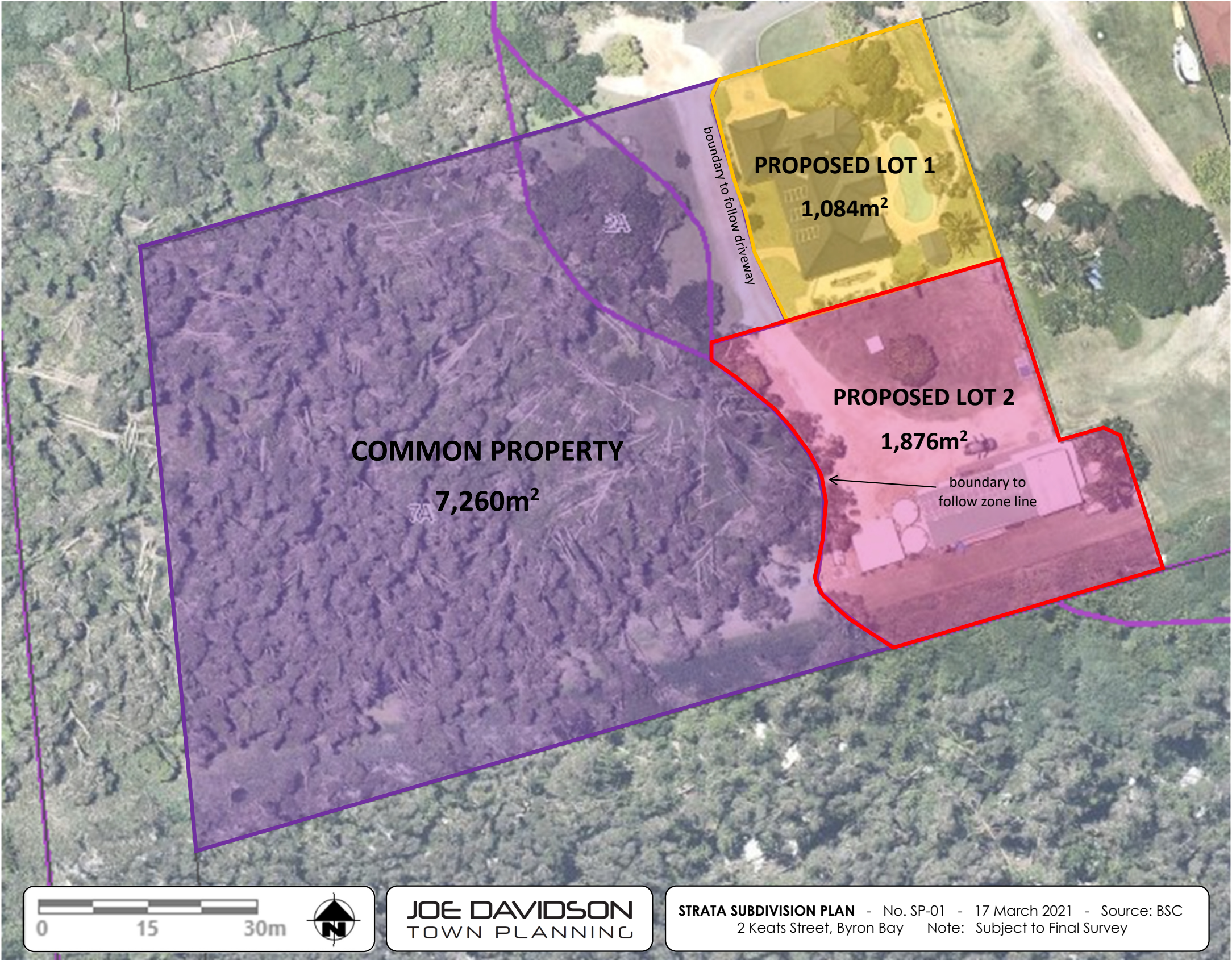


Existing shed within the south of the property



Coastal wetland area to the west of the proposed dwelling site







LEGEND

- D

INDICATES 100mm THICK CONCRETE DRIVEWAY SLAB ON 100 MINIMUM COMPACTED ROAD BASE WITH SL82 MESH TOP (30 COVER)
- P

INDICATES 100mm THICK CONCRETE PATHWAY SLAB ON 100 MINIMUM COMPACTED ROAD BASE WITH SL72 MESH TOP (30 COVER)
- SW—

INDICATES STORMWATER PIPE
- (e)

DENOTES "EXISTING"
- EJ

DENOTES EXPANSION JOINT
- KA

DENOTES KERB ADAPTOR
- KIP

DENOTES KERB INLET PIT
- KJ

DENOTES "CONNELLY" KEY JOINT OR EQUIVALENT
- MJ

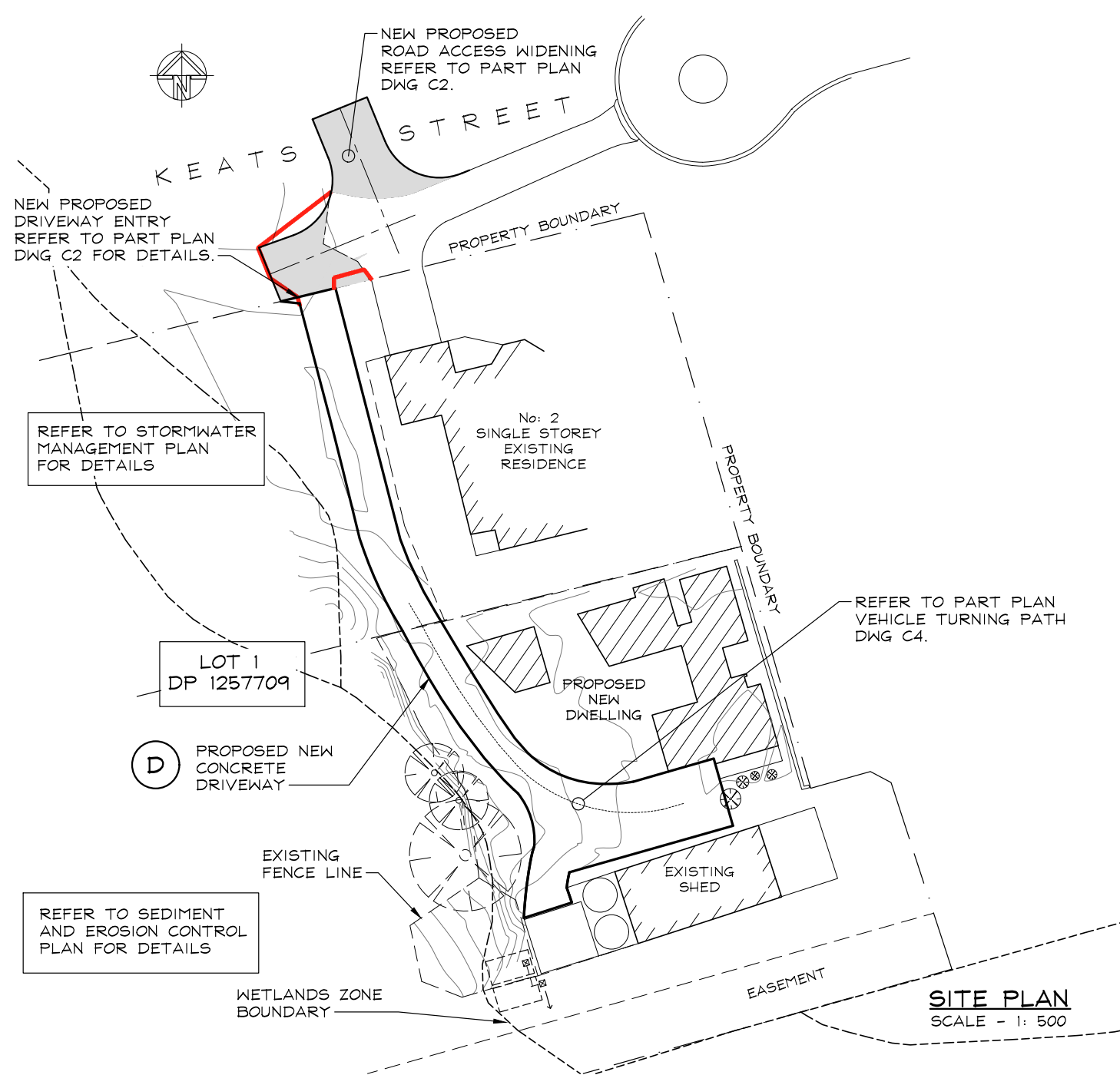
DENOTES MASTIC JOINT
- RL

DENOTES RELATIVE LEVEL
- SIP

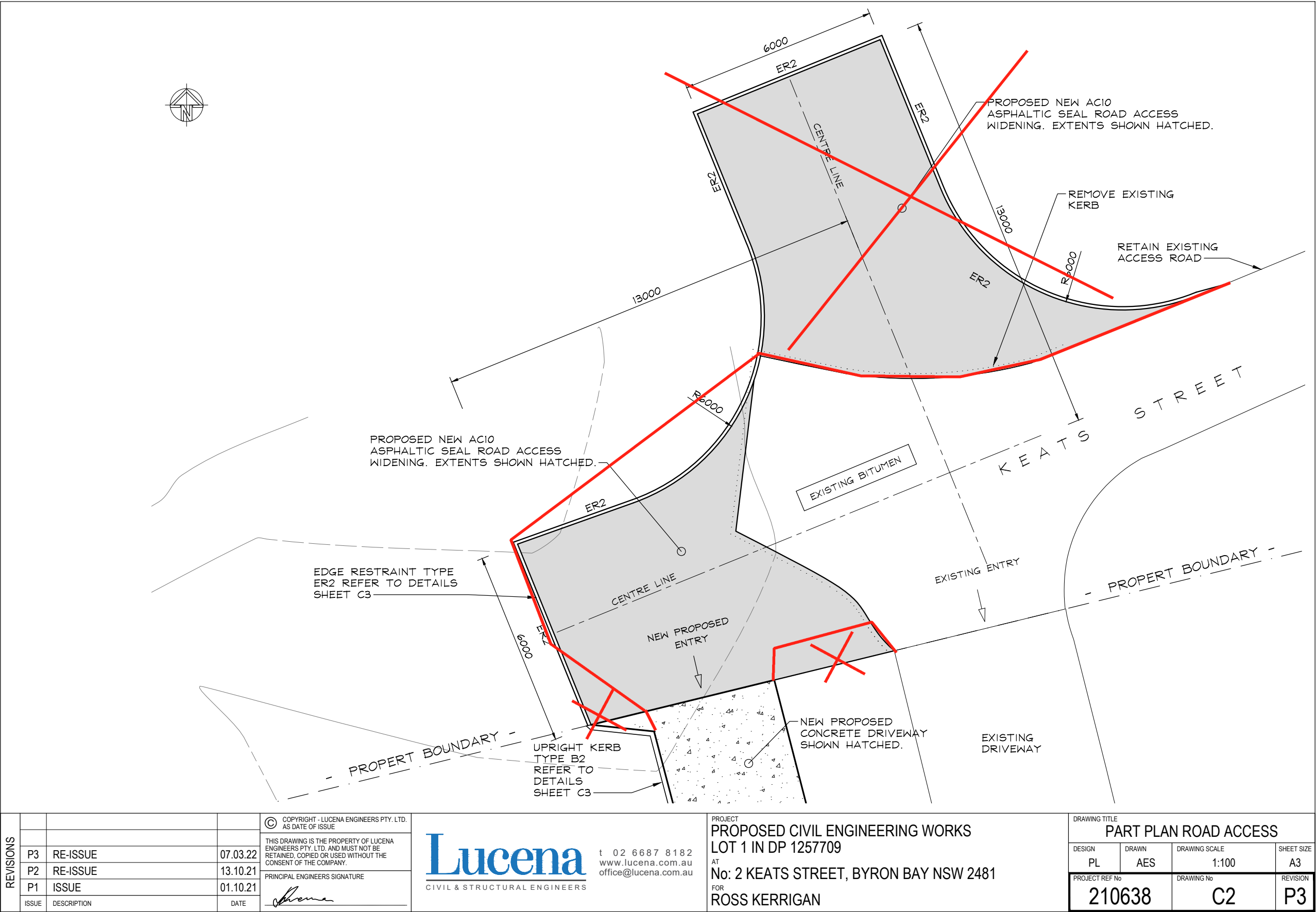
DENOTES SURFACE INLET PIT

NOTES

1. REFER TO DRAWINGS C2 FOR ROAD ACCESS WIDENING AND NEW DRIVEWAY ENTRY DETAILS.
2. REFER TO DRAWING CGNI FOR CIVIL WORKS GENERAL NOTES.
3. ROOF DRAINAGE DESIGN BY OTHERS.
- ROAD PAVEMENTS:-
1. 25mm AC10 ASPHALTIC SEAL.
2. 7mm PRIMER SEAL.
3. 150mm THICK CRUSHED ROCK ROAD BASE LAYER (DGB20) COMPACTED TO MINIMUM 100% STANDARD COMPACTION.
4. 150mm THICK CRUSHED ROCK SUB-BASE LAYER (DGS40) COMPACTED TO MINIMUM 100% STANDARD COMPACTION.
5. ROLL AND COMPACT SUBGRADE TO MINIMUM 98% STANDARD COMPACTION. PROOF ROLL IN PRESENCE OF ENGINEER. MINIMUM CBR OF 10% TO BE CONFIRMED BY TESTING UNDERTAKEN BY A LICENSED GEOTECHNICAL AUTHORITY.
6. ALL WORK TO BE COMPLETED TO AUSPEC STANDARDS AND COUNCIL SATISFACTION.
7. FINAL PAVEMENT DEPTHS TO BE CONFIRMED BY COUNCIL WHEN SUBGRADE EXPOSED.



REVISIONS				© COPYRIGHT - LUCENA ENGINEERS PTY. LTD. AS DATE OF ISSUE	<div><div>Lucena</div><div>CIVIL &amp; STRUCTURAL ENGINEERS</div></div> <div>t 02 6687 8182 www.lucena.com.au office@lucena.com.au</div>	PROJECT PROPOSED CIVIL ENGINEERING WORKS LOT 1 IN DP 1257709 AT No: 2 KEATS STREET, BYRON BAY NSW 2481 FOR ROSS KERRIGAN	DRAWING TITLE SITE LAYOUT PLAN						
	P3	RE-ISSUE	07.03.22	THIS DRAWING IS THE PROPERTY OF LUCENA ENGINEERS PTY. LTD. AND MUST NOT BE RETAINED, COPIED OR USED WITHOUT THE CONSENT OF THE COMPANY. PRINCIPAL ENGINEERS SIGNATURE 				DESIGN PL	DRAWN AES	DRAWING SCALE 1:500	SHEET SIZE A3		
	P2	RE-ISSUE	13.10.21										
	P1	ISSUE	01.10.21										
	ISSUE	DESCRIPTION	DATE								PROJECT REF No 210638	DRAWING No C1	REVISION P3



## DA 10.2021.685.1 – 2 Keats Street – Recommended conditions

## SCHEDULE 1. CONDITIONS OF CONSENT

*Upon satisfaction of the deferred commencement condition/s, the following conditions apply:*

## Parameters of consent

1. **Approved plans and supporting documentation**  
Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Revision No.	Plan Title	Drawn by	Dated
1.02	H	Proposed Site Plan	Harley Graham Architects	08/06/2021
2.01	H	Proposed Plan - Ground Floor	Harley Graham Architects	08/06/2021
2.01	H	Proposed Roof Plan	Harley Graham Architects	08/06/2021
3.01	H	Elevations – Sheet 1	Harley Graham Architects	08/06/2021
4.02	H	Short Sections	Harley Graham Architects	08/06/2021
4.02	H	Long Sections	Harley Graham Architects	08/06/2021
1.02	H	Proposed Strata Plan	Harley Graham Architects	08/06/2021
C1	P3	Site Layout Plan	Lucena	07/03/2022
C2	P3	Part Plan Road Access	Lucena	07/03/2022

Plan Title	Version No.	By	Dated
Proposed Stormwater Management Plan - Site Plan	SWMP1 rev P3	Lucena	07/03/2022



Acid Sulfate Soil Management Plan		Tim Fitzroy & Associates	
Vegetation Management Plan	3830-1015	GeoLink	04/06/2021

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

**Note:** an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

2. **Car parking to be available for the approved use**  
Parking within the development, together with all driveways and turning areas, must be provided and maintained as follows:
  - a) Two (2) car spaces in the double garage for the existing dwelling; and
  - b) One (1) hardstand parking space for the proposed dwelling.
3. **No native tree removal**  
This development consent does not authorise any native tree or vegetation to be ringbarked, cut down, lopped, removed or damaged, or caused to be ringbarked, cut down, lopped, removed or damaged.
4. **Payment of security deposits**  
Before the commencement of any works on the site or the issue of a construction certificate, the applicant must make all of the following payments to Council and provide written evidence of these payments to the certifier:

Security deposit	\$3000
Inspection fee	\$200

The

payments will be used for the cost of:

- making good any damage caused to any council property (including street trees) as a consequence of carrying out the works to which the consent relates,
- completing any public work such as roadwork, kerbing and guttering, footway construction, stormwater drainage and environmental controls, required in connection with this consent, and
- any inspection carried out by Council in connection with the completion of public work or the making good any damage to council property.

**Note:** The inspection fee includes Council's fees and charges and includes the Public Road and Footpath Infrastructure Inspection Fee (under the *Roads Act 1993*). The amount payable must be in accordance with council's fees and charges at the payment date.

5. **Conditions prescribed by the Regulation**  
This development consent is subject to the conditions prescribed by the regulations in accordance with subsection 4.17(11) of the Environmental Planning and Assessment Act 1979. Conditions are provided in a **Schedule** of this consent.

6. **Integrated Approvals from other State Government Approval Bodies**

This development consent includes an Integrated development approval under Sections 4.46 and 4.47 of the Environmental Planning and Assessment Act 1979, being an authorisation under section 100B of the *Rural Fires Act 1997* in respect of bush fire safety of subdivision of land that could lawfully be used for residential purposes and is subject to the General Terms of Approval from NSW Rural Fire Service (Ref. DA20220706009128-Original-1) dated 2 September 2022 contained in a **Schedule** of this Notice of Determination.

7. **Removal of habitable components from shed**

The southeast section of the building identified as "existing shed" on the Proposed Site Plan (1.02) must be restored to a shed which shall include removing the kitchen/cooking facilities, bathrooms, laundry, non-structural internal walls/partitions and glass sliding doors

Evidence is required to be submitted of compliance with the above condition, sufficient to satisfy the Council as to those matters, within 12 months of the date of this Notice of Determination or prior to the issue of an Occupation Certificate whichever comes first. Council to inspect the building to ensure the works have been completed.

**The following conditions are to be complied with prior to issue of a Construction Certificate for building works**

8. **Construction site management plan**

Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- location and materials for protective fencing and hoardings to the perimeter on the site
- provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- details of any bulk earthworks to be carried out
- location of site storage areas and sheds
- equipment used to carry out all works
- a garbage container with a tight-fitting lid
- dust, noise and vibration control measures
- location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

9. **Sewerage, water service and meter to be connected to dual occupancy**

An approval under Section 68 of the *Local Government Act 1993* to carry out water supply work and sewerage work must be obtained.

Water metering to be in accordance with Byron Shire Council's water metering requirements

See: <https://www.byron.nsw.gov.au/Services/Building-development/Other-approvals-and-permits/Plumbing-and-Drainage-Applications>

Any new water service and meter will be at applicants cost.

10. **Certificate of Compliance – s307 Water Management Act 2000**

Prior to issue of any Construction Certificate, a Certificate of Compliance under Section 307 of the Water Management Act 2000 must be obtained upon payment of developer charges for water and sewer as calculated in accordance with Byron Shire Council and Rous County Council Development Servicing Plans. Where staging of the Construction Certificate occurs, a separate s307 Compliance Certificate must be obtained for each stage.

Byron Shire Council acts as Rous County Council's agent in this matter and will issue a Certificate of Compliance on behalf of Rous County Council upon payment of the Rous County Council Development Servicing Charge to this Council.

**Note:** For issue of the Certificate of Compliance, an application form and associated fee must be lodged via Council's website. Copies of Byron Shire Council's Development Servicing Plans are available via Council's website.

Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment. A check must be made with Council to ascertain the current rates by contacting Council's Principal Engineer Systems Planning, Utilities on 02 6626 7000. Applicable charges can also be found on Council's website: <https://www.byron.nsw.gov.au/Services/Water-sewer/Plumbers-and-developers/Calculate-the-cost-of-an-Equivalent-Tenement#section-3>

**The contributions payable will be adjusted in accordance with relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.**

**Payment by Personal or Company Cheque will not be Accepted**

11. **Geotechnical Report required – Soil classification**

A soil report is to be provided to the Principal Certifying Authority from a professional Engineer experienced in Geotechnical Science as to the classification of the soil type on the site, consistent with the requirements of Australian Standard 2870.

12. **On-site stormwater detention and bioretention required**

The application for a Construction Certificate is to include plans and specifications for stormwater drainage in accordance with the approved Stormwater Management Plan and relevant Australian Standard. All stormwater drainage for the development must be conveyed via the bioretention basin and on-site stormwater detention system by gravity to the open drain within the existing easement on the south-eastern boundary.

The bioretention basin must be minimum 15m<sup>2</sup> in area and 600mm deep with the depth comprising 400mm filter media, 50mm transition layer and 150mm drainage layer.

The on-site stormwater detention must provide a permissible site discharge and storage volume in accordance with Council's Stormwater Guidelines.

Such plans and specifications must be approved as part of the Construction Certificate.

All stormwater drainage systems within the lot and the connection to a public or an inter-allotment drainage system must:

- a) comply with any requirements for the disposal of stormwater drainage and on-site stormwater detention contained in Council's Development Control Plan, Stormwater Guideline and Local Approvals Policy; and
- b) unless exempt from obtaining an approval under section 68 of the *Local Government Act 1993* by a Local Approvals Policy, an approval must be obtained under that Act prior to issue of a Construction Certificate.

13. **Consent required for works within the road reserve**

Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the *Roads Act 1993*. Three (3) copies of engineering construction plans must accompany the application for consent for works within the road reserve.

Such plans are to be in accordance with Council's current Design & Construction Manuals and are to provide for the following works:

- a) **Driveway**  
A driveway generally consistent with the approved plan titled "Part Plan Road Access" and in accordance with Council's Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings. No trees are permitted to be removed.
- b) **Removal of boom gate**  
The plans are to indicate removal of the unauthorised boom gate constructed within the road reserve.

14. **Vehicular access and parking**

The application for a Construction Certificate is to include plans and specification that indicate access, parking and manoeuvring details in accordance with the plans approved by this consent.

The access, parking and manoeuvring for the site is to comply with the requirements of Australian Standard 2890.1-2004: Parking facilities, Part 1: Off-street car parking and Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings". Plans are to include, but not be limited to, the following items:

- a) pavement design, comprising an all-weather surface, such as asphalt, bitumen seal, concrete, pavers or suitably designed permeable pavements;
- b) site conditions affecting the access;
- c) existing and design levels; and
- d) access requirements of any bushfire safety conditions.

Such plans and specifications must be approved as part of the Construction Certificate.

15. **Erosion and Sediment Control Plan required**

The application for a Construction Certificate is to include an Erosion and Sediment Control Plan that details the location and specification of measures to be employed to control erosion and loss of sediment from the site. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises must be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as filter fences and sedimentation basins.

Such plans and specifications must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings" and must be approved as part of the Construction Certificate.

16. **Building materials and colours to be specified**

The application for a Construction Certificate is to include plans and specifications that indicate the proposed building materials and colours. Highly reflective, white or light-coloured roofing may not be used.

Such plans and specifications must be approved as part of the Construction Certificate.

17. **Native trees to be identified on plans**

All native trees within 5m of the development footprint, which includes the driveway and any infrastructure, must be illustrated on all relevant Construction Plans, along with their Tree Protection Zones formulated in accordance with AS 4970-2009 – *Protection of Trees on Development Sites*.

18. **Compliance with BASIX Certificate requirements**

The development is to comply with Basix Certificate No. 1210454S, dated 8 June 2021.

The commitments indicated in the Certificate are to be indicated on the plans submitted for approval of the Construction Certificate.

The plans submitted must clearly indicate all windows numbered or identified in a manner that is consistent with the identification on the Basix Certificate.

Minor changes to the measures may be undertaken without the issue of any amendment under Section 4.55 of the Act, provided that the changes do not affect the form, shape or size of the building.

Such plans and specifications must be approved as part of the Construction Certificate.

19. **Developer Contributions to be paid**

Contributions set out in the schedule below are to be paid to Council prior to the release of a construction certificate. Contributions are levied in accordance with the Byron Shire Developer Contributions Plan 2012 (as amended). The Plan may be viewed on line at [www.byron.nsw.gov.au](http://www.byron.nsw.gov.au) or during office hours at the Council Offices located at Station Street, Mullumbimby. These contributions are to fund public amenities and services as listed in the schedule. Additional details on the specific amenities are to be found in the Byron Shire Developer Contributions Plan 2012 (as amended).

The contributions in the schedule are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the **amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment**. The schedule contains a date for which the schedule remains valid, after this date you will have to contact Council for an updated schedule.

20. **Long Service Levy to be paid**

In accordance with Section 6.8 of the Environmental Planning and Assessment Act 1979 (as amended), a Construction Certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any Long Service Levy payable under Section 34 of the



Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid (as applicable).

These payments can be made online at [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au). Proof of payment is required to be submitted with the Construction Certificate application.

For further information regarding the Long Service Payment please refer to the website above.

21. **Details of pool fence required**

The application for a Construction Certificate is to include plans and specifications that indicate the details of the fence around the swimming pool in accordance with the *Swimming Pools Act 1992* and Australian Standard 1926.1.

Such plans and specifications must be approved as part of the Construction Certificate.

22. **Swimming pool backwash - Section 68 Part B approval (where required)**

An **Approval** under Section 68 Part B of the *Local Government Act 1993* to carry out sewerage work must be obtained where the swimming pool backwash is to be connected to the sewer via a new overflow relief gully.

23. **Waste Management Plan**

Before the issue of a construction certificate, the applicant is to ensure that a waste management plan is prepared in accordance with the EPA's Waste Classification Guidelines and the Chapter B8 - Waste Minimisation and Management of the Byron Shire Development Control Plan 2014.

The applicant must ensure the waste management plan is referred to in the construction site management plan and kept on-site at all times during construction.

24. **Tree Removal**

No trees or vegetation to be cleared or removed until a Construction Certificate has been issued.

25. **Insect screening required**

The application for a Construction Certificate is to include plans and specifications that provide effective insect screening to all windows, doors and other openings to all parts of the new dwelling.

Such plans are to be approved as part of the Construction Certificate.

**The following conditions are to be complied with prior to any building or construction works commencing**

26. **Erosion and Sediment Control Plan implementation**

Erosion and sedimentation controls are to be in place in accordance with the approved Erosion and Sediment Control Plan.

27. **Toilet facilities**

Toilet facilities are to be provided, at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be a toilet connected to an accredited sewage management system approved by the Council.

28. **Water service to be connected**

A water service must be connected to the property using an approved backflow prevention device. It is the applicant's responsibility to engage a licensed plumber who shall liaise with council during this process.

Any new water service will be at the applicants cost.

**The following conditions are to be complied with during any building or construction works**

29. **Hours of work**

The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:

- 7am to 6pm on Monday to Friday.
- 8am to 1pm on Saturday.

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

**Note:** Any variation to the hours of work requires Council's approval.

30. **Construction Noise**

While building work is being carried out, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

31. **Implementation of BASIX commitments**

While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent, for the development to which the consent applies.

32. **Implementation of Vegetation Management Plan**

Prior to building work commencing, the first round of weed monitoring and weed control, as required by the approved Vegetation Management Plan (VMP) must be carried out.

33. **Signs to be erected on building and demolition sites**

A sign must be erected in a prominent position on the work site:

- a. stating that unauthorised entry to the work site is prohibited, and
- b. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

Any such sign is to be removed when the work has been completed.

34. **Builder's rubbish to be contained on site**  
All builder's rubbish is to be contained on the site in a 'Builder's Skips' or an enclosure. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.
35. **Prevention of water pollution**  
Only clean and unpolluted water is to be discharged to Council's stormwater drainage system or any watercourse to ensure compliance with the Protection of Environment Operations Act.
36. **Maintenance of erosion and sediment control measures**  
Erosion and sediment control measures must be maintained in accordance with the approved Erosion and Sediment Control Plan and at all times until the site has been stabilised by permanent vegetation cover or hard surface.
37. **Acid sulfate soils management**  
All earthworks and excavation associated with the development must be carried out in accordance with the approved Acid Sulfate Soil Management Plan.
38. **Removal of demolition and other wastes**  
All excavated soils to be disposed of off-site and all wastes, associated with these works, are to be handled and disposed of in accordance with the requirements of the Work Cover Authority. The applicant/owner is to produce documentary evidence that this condition has been met. Wastes must be disposed of at a Licenced Waste Facility. All wastes removed from the site must be managed and disposed of in accordance with the [NSW EPA Waste Classification Guidelines \(2014\)](#)
39. **Excavated natural materials and demolition waste disposal**  
Any and all excavated natural materials and demolition and builders waste transported from the site must be accompanied (a copy kept with the transporter) by a NSW *Protection of The Environment Operations Act* s143 Notice. Template s143 Notices are available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/wasteregulation/160095-notices143-form.docx>
40. **Protection of native trees**  
All trees nominated to be retained as a requirement of the development consent shall be maintained and protected during demolition, excavation and construction on the site in accordance with Australian Standard 4970-2009 – Protection of Trees on Development Sites.
41. **Aboriginal Relics**  
While demolition or building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment.

In this condition:

- “relic” means any deposit, artefact, object or material evidence that:
  - a. relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
  - b. is of State or local heritage significance; and
- “Aboriginal object” means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

42. **Site Location**

The location of the building on the site to be established by a suitably qualified Surveyor and must comply with this approval including any required setbacks to boundaries.

**The following conditions are to be complied with prior to occupation of the building**

43. **Works to be completed prior to issue of a Final Occupation Certificate**

All of the works indicated on the plans and approved by this consent, including any other consents that are necessary for the completion of this development including approvals issued under the Local Government Act 1993 and the Roads Act 1993, are to be completed and approved by the relevant consent authority/s prior to the issue of a Final Occupation Certificate.

Any Security bond paid for this application will be held until Council is satisfied that no further works are to be carried out that may result in damage to Council's road/footpath reserve.

44. **Plumbing Works**

All works in relation to any associated Section 68 Water and Sewerage approval must be fully complied with and have a Final Plumbing Certificate issued prior to the issue of an Interim or Final Occupation Certificate.

45. **Vehicular access and parking areas to be completed**

The access and parking areas are to be constructed in accordance with the approved plans and Roads Act consent prior to the issue of an occupation certificate.

46. **On-site stormwater detention – Certification of works**

All stormwater drainage works, including on-site stormwater detention and stormwater quality works, for the development must be constructed in accordance with the approved plans and specification prior to issue of an occupation certificate. Certificate/s of Compliance and Work-As-Executed (WAE) plans for the stormwater works must be submitted to the Principal Certifying Authority prior to the issue of an occupation certificate.

The certificate/s and WAE plans are to be prepared by a suitably qualified engineer and must be in accordance with Council's [Comprehensive Guidelines for Stormwater Management](#).

47. **Vegetation Management Plan report**

A report by a suitably qualified expert must be provided that details progress with implementation of the VMP prior to the issue of an occupation certificate. The report must include evidence to demonstrate the first round of weed monitoring and weed control, has been carried out.

48. **Site Location Survey**

A final survey of the structures showing setbacks to boundaries to be submitted to the Private Certifier with the Occupation Certificate demonstrating compliance with the approved plans.

49. **Swimming pool fencing**

Swimming pool fencing is to comply with the requirements of the *Swimming Pools Act 1992* and Regulations.

50. **Swimming pool backwash**

Swimming pool backwash is to be connected to a sewer overflow relief gully.

51. **Compliance with bushfire conditions**

Documentary evidence from a suitably qualified professional is to be submitted demonstrating that the bush fire conditions of this Notice of Determination have been complied with.

52. **New Street number**

The street addressing for this property must be approved by Council. A written request seeking approval of street addresses is to be submitted to Council's Land Information Officer with an appropriate plan showing dwellings/units approved for separate occupation and pedestrian access to each dwelling/unit from the public road servicing the development. The approved street number must be displayed in a prominent location near the approved main point of access prior to issue of any occupation certificate.

**The following conditions are to be complied with prior to issue of a Strata Certificate**

53. **Strata plan**

The strata plan must be in accordance with the approved plan/s.

54. **Completion of building works**

A final occupation certificate must be obtained for the building works approved by this development consent prior to issue of the strata certificate. A copy of the final occupation certificate must be submitted with the application for the strata certificate.

55. **Certificate of compliance – *Water Management Act 2000***

A Certificate of Compliance under Section 307 of the *Water Management Act 2000* is to be obtained from Byron Shire Council for the subdivision prior to the issue of the Strata Certificate.

Application forms are available from Council's administration building or online to be submitted for a Certificate of Compliance with the required payment.

56. **Section 88B instrument**



A Section 88B Instrument and one (1) copy are to be submitted with the application for a strata certificate. The strata plan and accompanying Section 88B Instrument are to provide for:

**a) Easement for Services**

The creation of suitable easements for services over all services and/or service conduits located within the proposed allotments, where not created as common property.

**b) Easement for Electricity**

The creation of any necessary easements for electricity purposes as required by the electricity supply authority.

**c) Restriction of use for Conservation**

A restriction of use applying to the area of land identified as "coastal wetlands" on the Coastal Wetlands and Littoral Rainforests Area Map pursuant to clause 2.7 of the *State Environmental Planning Policy (Resilience and Hazards) 2021*. The restriction on user must prohibit, except as otherwise permissible by law, all the following within the area covered by the restriction on user:

- the destruction or removal of any local indigenous trees, shrubs, grasses or other vegetation, or the planting of any flora other than local indigenous flora;
- any act or omission which may adversely affect any local indigenous flora or any indigenous fauna or their related habitats;
- any act or omission which may result in the deterioration in the natural state or in the flow, supply, quantity or quality of any body of water or in the natural moisture regime of the area;
- the creation or maintenance of any new tracks through the area;
- the removal, introduction or disturbance of any soil, rock or other minerals;
- any structures or dwellings other than as approved by this development consent;
- deposition of rubbish or refuse, including garden refuse and weed propagules; and/or
- the use of the area for storage of any substance or material.

**57. Electricity supply certificate**

Prior to the issue of the Strata Certificate, a Notice of Arrangement (NOA) requested from the Distribution Network Service Provider, currently Essential Energy, must be submitted to the Principal Certifying Authority. The NOA must confirm that satisfactory electricity supply has been provided to each of the proposed lots.

**Note:** Requests for a NOA are to be made to the Contestable Works section at Essential Energy.

**The following conditions are to be complied with at all times**

**58. Approved use**

Use of the development is approved for dwelling house / dual occupancy (detached). The dwelling houses are not approved as short-term rental accommodation, tourist and visitor accommodation or to be "holiday let". Any activity other than that defined as dwelling house / dual occupancy (detached) must not be carried out unless development consent is sought.

**Note:**

*dual occupancy (detached)* means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.

*dwelling house* means "a building containing only one dwelling".

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*dwelling* means “a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile”.

59. **Vegetation Management Plan ongoing implementation**  
Weed monitoring and weed control, as required by the approved Vegetation Management Plan (VMP) must be carried out for at least five (5) years. Annual progress reports on the implementation of the VMP must be prepared, in accordance with the approved VMP, by a suitably qualified expert and provided to Council on request.
60. **Pool Safety Sign**  
The occupier of the premises must ensure that there is a sign in the immediate vicinity of the swimming pool bearing the words ‘Young children must be supervised when using this swimming pool’. The sign is to be a prominent position and be otherwise in accordance with clause 9 of the Swimming Pools Regulation.  
  
A pool resuscitation sign is to be installed in a conspicuous location within the pool area to the satisfaction of the Principle Certifying Authority.
61. **Swimming pool discharge (backwash and overflow)**  
Swimming pools must discharge or backwash to an overflow retention gully in accordance with AS/NZS 3500.2.2, Section 10.9 & Figure 10.2.  
  
This work is exempt development in accordance with Councils Local Approvals Policy (2009), however, where it is not possible to discharge to an existing overflow retention gully, a new charged gully may be required. In such circumstances, an application under Section 68 of the Local Government Act is required.
62. **Swimming pool pump location**  
The filter pump is to be located such that noise from its operations does not cause a nuisance to adjoining residents. If necessary, an acoustic enclosure must be provided around the pump to achieve the required noise attenuation.
63. **Swimming Pool Fencing**  
Swimming pool fencing is to comply with the requirements of the *Swimming Pool Act 1992* and Regulations.
64. **Swimming pool health requirements**  
The swimming pool water is to be re-circulated, filtered and disinfected in accordance with the requirements of Council and NSW Health. The swimming pool water is to be maintained at satisfactory levels of purity for bathing.

## SCHEDULE 2. PRESCRIBED CONDITIONS

The prescribed conditions in accordance with Part 6 Division 8A of the Environmental Planning and Assessment Regulation as at the date of this development consent as are of relevance to this development must be complied with:

Clause 98 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

Clause 98A Erection of signs

Clause 98B Notification of Home Building Act 1989 requirements

Clause 98C Conditions relating to entertainment venues

Clause 98D Condition relating to maximum capacity signage

Clause 98E Condition relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Part 6 Division 8A of the [Environmental Planning and Assessment Regulation 2000](http://www.legislation.nsw.gov.au). This can be accessed at <http://www.legislation.nsw.gov.au>.

**SCHEDULE 3. INTEGRATED DEVELOPMENT GENERAL TERMS OF APPROVAL**



NSW RURAL FIRE SERVICE

Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

Your reference: (CNR-31702) 10.2021.685.1  
Our reference: DA20220706009128-Original-1

ATTENTION: Ivan Holland

Date: Friday 2 September 2022

Dear Sir/Madam,

**Integrated Development Application**  
s100B – Subdivision – Strata Title Subdivision  
2 KEATS STREET BYRON BAY 2481, 1//DP1257709

I refer to your correspondence dated 18/07/2022 seeking general terms of approval for the above Integrated Development Application.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted. General Terms of Approval, under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and a Bush Fire Safety Authority, under section 100B of the *Rural Fires Act 1997*, are now issued subject to the following conditions:

#### Asset Protection Zones

**The intent of measures is to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the buildings are below critical limits and prevent direct flame contact.**

1. At the issue of a subdivision certificate, and in perpetuity, the site around the proposed dwelling must be maintained as an inner protection area (IPA) as follows:

- north for a distance of 20 metres;
- east to the boundary;
- south to the boundary; and,
- west for a distance of 20 metres.

When establishing and maintaining an inner protection area, the following requirements apply:

- a. tree canopy cover should be less than 15% at maturity,
- b. trees at maturity should not touch or overhang the building,
- c. lower limbs should be removed up to a height of 2m above the ground,
- d. tree canopies should be separated by 2 to 5m,
- e. preference should be given to smooth-barked and evergreen trees,
- f. large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings,
- g. shrubs should not be located under trees,
- h. shrubs should not form more than 10% ground cover,

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#### Postal address

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

#### Street address

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555  
F (02) 8741 5550  
www.rfs.nsw.gov.au

- i. clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation,
- j. grass should be kept mowed (as a guide, grass should be kept to no more than 100mm in height), and
- k. leaves and vegetation debris should be removed.

2. At the issue of a subdivision certificate, and in perpetuity, the site around the existing dwelling must be maintained as an inner protection area (IPA) as follows:

- north to the boundary;
- east to the boundary;
- south to the boundary; and,
- west for a distance of 15 metres.

When establishing and maintaining an inner protection area, the following requirements apply:

- a. tree canopy cover should be less than 15% at maturity,
- b. trees at maturity should not touch or overhang the building,
- c. lower limbs should be removed up to a height of 2m above the ground,
- d. tree canopies should be separated by 2 to 5m,
- e. preference should be given to smooth-barked and evergreen trees,
- f. large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings,
- g. shrubs should not be located under trees,
- h. shrubs should not form more than 10% ground cover,
- i. clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation,
- j. grass should be kept mowed (as a guide, grass should be kept to no more than 100mm in height), and
- k. leaves and vegetation debris should be removed.

#### **Construction Standards**

*The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.*

3. New construction must comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 'Construction of buildings in bushfire-prone areas' or the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of 'Planning for Bush Fire Protection 2019'.

4. At the issue of the subdivision certificate, the existing dwelling must be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any subfloor areas, openable windows, vents, weep holes and eaves. External doors are to be fitted with draft excluders.

5. Fences and gates must comply with Section 7.6 of Planning for Bush Fire Protection 2019. New fences and gates are to be made of either hardwood or non-combustible material. Where a fence or gate is constructed within 6m of a dwelling or in areas of BAL-29 or greater, they must be made of non-combustible material only.

6. The proposed dwelling is to be located a minimum of 6.7 metres from the existing shed adjacent to the southern boundary.

#### **Access – Property Access**

*The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.*

7. Internal access roads must comply with the following requirements of Table 7.4a of 'Planning for Bush Fire Protection 2019':

- a. property access roads are two-wheel drive, all-weather roads;





- b. the capacity of road surfaces and any bridges/causeways is sufficient to carry fully loaded firefighting vehicles (up to 23 tonnes); bridges and causeways clearly, indicate load rating.
- c. there is suitable access for a Category 1 fire appliance to within 4m of the static water supply where no reticulated supply is available;
- d. at least one alternative property access road is provided for individual dwellings or groups of dwellings that are located more than 200 metres from the public through road;
- e. minimum 4m carriageway width;
- f. in a forest, woodland and heath situations, rural property roads have passing bays every 200m that are 20m long by 2m wide, making a minimum trafficable width of 6m, at the passing bay;
- g. a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches;
- h. property access must provide a suitable turning area in accordance with Appendix 3;
- i. curves have a minimum inner radius of 6m and are minimal in number to allow for rapid access and egress;
- j. the minimum distance between inner and outer curves is 6m;
- k. the cross fall is not more than 10 degrees; and
- l. maximum grades for sealed roads do not exceed 15 degrees and not more than 10 degrees for unsealed roads;

#### Water and Utility Services

*The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.*

8. The provision of water must comply with the following in accordance with Table 7.4a of Planning for Bush Fire Protection 2019:

- a. a 10,000 litre static water supply must be provided on-site,
- b. an outlet for firefighting purposes is located within the IPA or non-hazard side and away from the structure (5-20 metres),
- c. 65mm Storz connection with a ball valve is fitted to the outlet,
- d. the ball valve, pipes and tank penetration are adequate for the full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material,
- e. underground tanks have an access hole of 200mm to allow tankers to refill, direct from the tank,
- f. a hardened ground surface for truck access is supplied within 4m of the water outlet or access hole,
- g. above-ground tanks are manufactured from concrete or metal,
- h. raised tanks have their stands constructed from non-combustible material or bush fire-resisting timber. The bush fire-resisting timbers are Silvertop Ash, Blackbutt, Red or River Gum, Spotted Gum, Red Ironbark, Kwila (Merbau) or Turpentine,
- i. unobstructed access can be provided at all times,
- j. underground tanks are clearly marked,
- k. tanks on the hazard side of a building are provided with adequate shielding for the protection of firefighters,
- l. all exposed water pipes external to the building are metal, including any fittings,
- m. where pumps are provided, they are a minimum 5hp or 3kW petrol or diesel-powered pump, and are shielded against bush fire attack,
- n. any hose and reel for firefighting connected to the pump shall be 19mm internal diameter,
- o. fire hose reels are constructed in accordance with AS/NZS 1221:1997, and installed in accordance with the relevant clauses of AS 2441:2005,
- p. a Static Water Supply (SWS) sign shall be obtained from the local NSW Rural Fire Service (RFS) and positioned for ease of identification by RFS personnel and other users of the SWS. In this regard:
  - i. Markers must be fixed in a suitable location to be highly visible, and
  - ii. Markers should be positioned adjacent to the most appropriate access for the water supply.

9. The provision of electricity must comply with the following in accordance with Table 7.4a of Planning for Bush Fire Protection 2019:

- a. where practicable, electrical transmission lines are underground,
- b. where overhead, electrical transmission lines are proposed as follows:

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- i. lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas, and
- ii. no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines

**General Advice – Consent Authority to Note**

The assessment has considered the referred documents identified below;

- The plan titled 'Proposed Strata Plan', prepared by Harley Graham Architects, reference HGA276, drawing number 1.02 revision H.
- Bush Fire Assessment prepared by Bushfire Certifiers, reference 21/080 dated 31 May 2021.

For any queries regarding this correspondence, please contact Wayne Sketchley on 1300 NSW RFS.

Yours sincerely,

Ivan Perkins  
**Manager Planning & Environment Services**  
**Built & Natural Environment**



## BUSH FIRE SAFETY AUTHORITY

Subdivision – Strata Title Subdivision  
2 KEATS STREET BYRON BAY 2481, 1//DP1257709  
RFS Reference: DA20220706009128-Original-1  
Your Reference: (CNR-31702) 10.2021.685.1

This Bush Fire Safety Authority is issued on behalf of the Commissioner of the NSW Rural Fire Service under s100b of the Rural Fires Act (1997) subject to the attached General Terms of Approval.

This authority confirms that, subject to the General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under *s100b of the Rural Fires Act 1997*.

**Ivan Perkins**

Manager Planning & Environment Services  
Built & Natural Environment

Friday 2 September 2022

**SCHEDULE 4. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED**

*Note: From July 1 2018, Councils are required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.*

**Statement of Reasons**

The proposed development complies with the provisions of Byron Local Environmental Plan 1988.
The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development complies with relevant provisions of Development Control Plan 2010
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The proposed development is unlikely to prejudice or compromise the public interest.

**How community views were addressed**

The DA was notified/advertised in accordance with Council's Community Participation Plan. No submissions were received.

**SCHEDULE 5. NOTES****Construction Certificate required:**

This development consent is issued under the Environmental Planning and Assessment Act 1979 and does not relate to structural aspects or specifications of the building under the Building Code of Australia. All buildings and alterations require the issue of a Construction Certificate prior to works commencing.

Application for a Construction Certificate must be made online using the [NSW Planning Portal](#).

**Principal Certifying Authority:**

Work must not commence until the applicant has:-

- appointed a Principal Certifying Authority (if the Council is not the PCA); and
- given Council at least two days' notice of the intention to commence the erection of the building. Notice must be given by using the prescribed 'Form 7'.
- notified the Principal Certifying Authority of the Compliance with Part 6 of the Home Building Act 1989.

**Occupation Certificate required:**

The building must not be occupied until the Principal Certifying Authority has issued an Occupation Certificate.

**Protection of the Environment Operations Act 1997:**

It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ("on-the-spot fine") or prosecution.

**Penalties apply for failure to comply with development consents**

Failure to comply with conditions of development consent may lead to an on the spot fine being issued pursuant to section 4.2(1) of the Environmental Planning & Assessment Act 1979 or prosecution pursuant to section 9.50 of the Environmental Planning & Assessment Act 1979.

**Plumbing Standards and requirements.**

All Plumbing, Water Supply, Sewerage and Stormwater Works shall be installed in accordance with the Local Government Act 1993, Plumbers Code of Australia and AS/NZS 3500 Parts 0-5, the approved plans (any notations on those plans) and the approved specifications. Any plumbing inspections required under a Section 68 Approval are to occur in accordance with that approval.

**Swimming pool discharge (reticulated systems)**

Swimming pool waste - irrespective of the filtering system is to be disposed into the property's house drainage - sewerage system via an overflow relief gully with a 100mm visible air gap in accordance with AS/NZS 3500.2, Section 10.9 & Figure 10.2.

This activity is now an exempt activity and does not require approval under Section 68 of the Local Government Act.

If, however, site conditions prevent discharge through the existing gully and a new gully is required, this activity will require an approval under S68 before this work can commence. Note also that this activity must be carried out by a licensed plumber.

**Relics Provisions- Advice**

Attention is directed to the *Heritage Act 1977* and the provisions of the Act in relation to the exposure of relics. The Act requires that if:

- a) a relic is suspected, or there are reasonable grounds to suspect a relic in ground, that is likely to be disturbed damaged or destroyed by excavation; and/or
- b) any relic is discovered in the course of excavation that will be disturbed, damaged or destroyed by further excavation;

Those responsible for the discovery must notify nominated management personnel who will in turn notify the Heritage Council of New South Wales or its delegate, the Office of Environment and Heritage, NSW Heritage Branch, and suspend work that might have the effect of disturbing, damaging or destroying such relic until the requirements of the NSW Heritage Council have been satisfied (ss139, 146).

**Water payments under the *Water Management Act 2000***

Charges will be calculated based on the additional water and sewerage load that the proposed development generates, shown in Equivalent Tenements (ET) by the following table:

**ADDITIONAL WATER & SEWER LOAD OF DEVELOPMENT**  
**(ET Policy 2018)**

Water	1.20 ET
Bulk Water	1.20 ET
Sewer	1.00 ET

NB: Information regarding Development Servicing charges can be found on the Byron Shire Council website (<https://www.byron.nsw.gov.au/Services/Water-sewer/Plumbers-and-developers/Calculate-the-cost-of-an-Equivalent-Tenement#section-3>).

These charges will enable you to calculate the total contribution charges payable when you are ready to pay them. Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment.

**S7.11 Schedule of Development Contributions**

The following contributions are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the **amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.** The current contribution rates are available from Council offices during office hours. **Payments will only be accepted by cash or bank cheque.**



<b>Section 7.11 contributions Schedule</b>						
<b>Byron Bay Suffolk Park</b>						
<b>Catchment</b>						
This schedule was calculated in spreadsheet #E2021/99005						
1 bedroom units =		0	@	0.55 SDU	=	0
2 bedroom units =		0	@	0.75 SDU	=	0
3 bedroom units/dwellings =		0	@	1 SDU	=	0
Allotments =		2	@	1	=	2
Less Site Credits =		1	@	-1	=	-1
<b>Total SDU</b>					=	<b>1</b>
Schedule valid until		<b>25 Jan 2023</b>	<b>After this date contact Council for CPI update.</b>			
Local Open Space & Recreation	(OS-BB)	1.00	SDU @	\$ 4,661.06	=	\$ 4,661.06
LGA Wide Open Space & Recreation	(OS-SW)	1.00	SDU @	\$ 838.94	=	\$ 838.94
LGA wide Community Facilities	(CF-SW)	1.00	SDU @	\$ 1,228.73	=	\$ 1,228.73
Local Community Facilities	(CF-BB)	1.00	SDU @	\$ 1,384.57	=	\$ 1,384.57
Bikeways & Footpaths	(CW-BB)	1.00	SDU @	\$ 1,534.94	=	\$ 1,534.94
Shire Wide Bikeways & Footpaths	(CW-SW)	1.00	SDU @	\$ 90.13	=	\$ 90.13
Urban Roads	(R-BB)	1.00	SDU @	\$ 3,357.03	=	\$ 3,357.03
LGA Wide Roads	(R-SW)	1.00	SDU @	\$ 253.86	=	\$ 253.86
Rural Roads	#N/A	1.00	SDU @	\$ -	=	\$ -
Administration Levy	(OF-SW)	1.00	SDU @	\$ 1,268.98	=	\$ 1,268.98
<b>Total</b>						<b>\$ 14,618.24</b>

## Notice of Motion No. 16.2 Changing policy to remove fossil fuel sponsorship

File No: I2022/1664

5

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I move:

1. That Council recognises that fossil fuels are the main driver of climate change and that we are in a climate emergency.
2. That Council recognises that the marketing of high emissions products, such as petroleum and gas through sponsorships or advertising increases demand and delays behaviour changes in the community that are required to reduce emissions.
3. That the Federal Government has a responsibility to implement restrictions on fossil fuel advertising through national laws, like what was done for tobacco advertising which saw a proven reduction in tobacco consumption per capita, therefore reducing the health burden of tobacco use.
4. That Council:
  - a) write to the Federal Minister for Communications, The Hon Michelle Rowland MP, to ask the Federal Government to pass national laws that restrict fossil fuel advertising; and
  - b) write to the organisers of prominent local organisations and events outlining Council's position against fossil fuel advertising and sponsorships and requesting they adopt similar policies.
5. That the General Manager be requested to:
  - a) Update the *Byron Sponsorships received by Council Policy*, to prohibit accepting sponsorships from companies whose main business is the extraction, production or sale of coal, petroleum and gas.
  - b) Review other policies as appropriate to remove support for companies whose main business is the extraction, production or sale of coal, petroleum and gas.

Attachments:

- 1 DRAFT Policy: Sponsorship Received by Council 2022, E2022/113064 , page 73 [↗](#)

Signed: Cr Asren Pugh

## Councillor's supporting information:

Air pollution from burning fossil fuels takes 8.7 million lives prematurely each year – more than tobacco. An estimated 150,000 people are dying due to climate change impacts every year.

- 5 At least eight Australian Councils, as well as France and jurisdictions in the UK and Netherlands are restricting fossil fuel advertising.

Council has a duty to ensure that its activities do not adversely impact the health and wellbeing of residents. Because of this, Council restricts the advertising of tobacco and other harmful products in *Byron Sponsorships received by Council Policy*.

- 10 Item 4.4 of the Policy states:

*The following companies, partnerships, sole traders or individuals are not suitable sponsors in Byron Shire, those:*

- *involved in the manufacture, distribution and wholesaling of tobacco related products, pornography and/or addictive drugs;*
- 15 • *found guilty of illegal or improper conduct by ICAC or any similar authority;*
- *involved in political fields eg political parties;*
- *involved in a competitive tender or purchasing process at or around the time of negotiating a sponsorship agreement;*
- 20 • *who have an unacceptable sponsorship record with Council or with any other government authority.*

The first dot point could be updated to state:

*"involved in the manufacture, distribution and wholesaling of tobacco related products, involved in the extraction and sale of coal, petroleum and gas, pornography and/or addictive drugs"*

- 25 Coal, oil and gas are affecting our health, environment and climate. Air pollution from burning fossil fuels takes 8.7 million lives prematurely each year – more than tobacco.<sup>12</sup> An estimated 150,000 people are dying due to climate change impacts every year<sup>3</sup>.

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<sup>1</sup> <https://yaleclimateconnections.org/2021/04/air-pollution-from-fossil-fuels-caused-8-7-million-premature-deaths-in-2018-study-finds/>

<sup>2</sup> <https://www.who.int/news-room/fact-sheets/detail/tobacco>

<sup>3</sup> <https://www.who.int/heli/risks/climate/climatechange/en/>

Fossil fuels are the primary cause of global warming<sup>4</sup>, which is impacting our LGA in the form of more intense and frequent heatwaves, storms, bushfires, floods, droughts and coastal erosion.

5 Council has adopted that we are facing a climate emergency and we are aiming to reach net zero by 2025. Advertising of companies involved with fossil fuel production or supply, as well as products such as gas, oil and coal is inconsistent with this adopted Council position.

10 At least eight Australian Councils, including the City of Sydney, have voted for a Staff Report on how to restrict fossil fuel promotions on Council-managed land. Restrictions on fossil fuel advertising are in place in France, and several local government areas in the UK and the Netherlands.

### **Staff comments**

**by Shannon Burt, Director, Sustainable Environment and Economy and Esmeralda Davis, Director Corporate and Community Services**

15

#### **Comments on Point 1**

20 Council has been taking action to reduce its reliance on fossil fuels for more than a decade through the *Greenhouse Action Strategy 2004* and the *Byron Shire Low Carbon Strategy 2014*. The current *Net Zero Emissions Strategy for Council Operations 2025* maps out a pathway to continue Council's move away from fossil fuels and associated technologies.

#### **Comments on Point 5**

25 Point 5 of the recommendation requests amendments to Council Policies. When reviewing our policies, Council's Corporate Documents Standard (internal policy) provides the following guidance to staff:

30 *A Policy sets out Byron Shire Council's position on a specific matter – a formal statement of intent and non-discretionary governing principles that apply to Byron Shire Council's practice. The principles are derived from and shaped by the law and regulations that apply, community expectations, and the values and mission contained in the adopted Community Strategic Plan. A Policy is a concise document that may facilitate, enable or constrain practice, standard, guidelines or delegated functions but does not prescribe in detail how to perform certain functions - instead it provides a framework for action with its*  
35 *primary role being to guide the achievement of the adopted strategic goals and ensure legislative compliance.*

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<sup>4</sup> <https://climate.nasa.gov/causes/>

## BYRON SHIRE COUNCIL

### LATE REPORTS

16.2

Each point is addressed below:

- 5 a) **Update the *Byron Sponsorships received by Council Policy*, to prohibit accepting sponsorships from companies whose main business is the extraction, production or sale of coal, petroleum and gas.**

The Councillor Supporting Information provides suggested wording for inclusion in Part 4.4 of the [\*Sponsorship received by Council Policy\*](#):

10 *"involved in the manufacture, distribution and wholesaling of tobacco related products, involved in the extraction and sale of coal, petroleum and gas, pornography and/or addictive drugs"*

This suggested wording has been incorporated into a draft *Sponsorships received by Council Policy* (Attachment 1). The draft Policy, if supported by Council, should be placed on public exhibition for a period of 28 days.

- 15 b) **Review other policies as appropriate to remove support for companies whose main business is the extraction, production or sale of coal, petroleum and gas.**

This can be considered as other policies are reviewed.

### **Financial/Resource/Legal Implications:**

The Policy amendments may limit sponsorship opportunities.

### **Is the proposal consistent with any Delivery Program tasks?**

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>1: Effective Leadership</b> We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.1: Leadership - Enhance leadership effectiveness, capacity, and ethical behaviour	1.1.1.1	Coordinate Council's annual policy review program, update and publish adopted policies





## **DRAFT Policy**

### **Sponsorship Received by Council**

**20212022**

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## Information about this document

Date Adopted by Council	29 March 1994
Resolution No	N/A
Document Owner	Director Corporate and Community Services
Document Development Officer	Manager Corporate Services
Review Timeframe	4 years
Last Review Date	<del>3 February 2021</del> <u>18 December 2022</u>
Next Scheduled Review Date	<del>3 February 2025</del> <u>18 December 2026</u>

## Document History

Doc No.	Date Amended	Details/Comments eg Resolution No.
357215	29/3/1994	Policy 1.7 – Sponsorship of Council – due for review on 4/6/1996
993114	09/08/2010	First Draft – Sponsorship Policy
1038056	10/12/2010	Amendments for Public Exhibition as per Council resolution 10-851
1065530	04/03/2011	Final Draft for formal adoption at Strategic Planning Committee meeting 24 March 2011
#1087975	28/4/2011	Adopted 11-375 with amendments
#E2013/28105	08/08/2013	Draft to Council 08/08/2013 see report #E2013/28111
#E2013/51767	14/08/2013	Amended for Public Exhibition as per Council resolution 13-397
#E2013/75699	20/11/13	Adopted – no submission received as per Res No. 13-397
E2021/3034	3 February 2021	Minor amendments endorsed by ET: Updated format for accessibility and improved readability
<u>E2022/113056</u>	<u>8 December 2022</u>	<u>Draft for review by Council – addition to part 4.4, first dot point</u>

**Further Document Information and Relationships**

Related Legislation	
Related Policies	E2019/6941 – Policy: Community Initiatives Program
Related Standards, Procedures, Statements, documents	ICAC Sponsorship in the Public Sector (May 2006) (#DM1006143) Byron Shire Council Code of Conduct (E2019/858)

Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.



**DRAFT** Policy: Sponsorship Received by Council 202~~2~~<sup>4</sup>

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**DRAFT** Policy: Sponsorship Received by Council 2022~~23~~<sup>24</sup>

## 1. Objectives

Byron Shire Council has a range of responsibilities to deliver services and facilities and to provide assets under relevant legislation and policies. To enhance, vary or reduce the cost of Council services, facilities or assets, Council may enter sponsorship agreements to receive sponsorship.

While sponsorship can be advantageous for parties, Council must ensure all sponsorship agreements do not compromise or question the integrity of Council operations.

This Policy formalises general principles and procedures applicable when negotiating and implementing sponsorship agreements. These principles include Council:

- (a) maximising receipt of sponsorship to offset costs of services, facilities and assets;
- (b) assessing risk and managing potential conflicts of interest;
- (c) ensuring there is public accountability and transparency for all sponsorship agreements;
- (d) maximising long term financial sustainability of Council;
- (e) securing best value for the community;
- (f) consistency with Council's Community Strategic Plan.

## 2. Scope

This Policy covers Council receiving sponsorship not Council providing sponsorship.

This Policy applies to the General Manager and all delegated staff.

## 3. Definitions

Policy acronym	Definition
Sponsorship	<ul style="list-style-type: none"> <li>(a) is a commercial arrangement in which a sponsor provides a contribution in money or in kind to support an activity in return for certain benefits.</li> <li>(b) is provided by the corporate sector or private individuals, in support of Council activity.</li> <li>(c) does not include: <ul style="list-style-type: none"> <li>• selling of advertising space</li> <li>• joint ventures;</li> <li>• consultancies;</li> <li>• grants to Council;</li> <li>• unconditional gifts, donations, bequeaths or endowments to Council.</li> </ul> </li> <li>(d) is not philanthropic because a sponsor expects to receive a reciprocal benefit beyond a modest acknowledgement.</li> </ul>

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Sponsor	an organisation or individual providing sponsorship to Council in return for specific benefits.
ICAC Sponsorship Principles	the principles set out in the Independent Commission Against Corruption "Sponsorship in the Public Sector" May 2006 Guide. The Guide can be downloaded from <a href="http://www.icac.nsw.gov.au/preventing-corruption/knowning-your-risks/sponsorship/4900">http://www.icac.nsw.gov.au/preventing-corruption/knowning-your-risks/sponsorship/4900</a> and the Principles are reproduced at Attachment 1.

## 4. Statement

### 4.1 General Principles

Sponsorship agreements must reflect the objectives of and be consistent with the Community Strategic Plan.

The General Manager and his/her delegates have authority to seek and enter sponsorship agreements.

Any consideration given to the establishment of sponsorship agreements shall have regard to the following:

- maintaining the reputation of the Council and of the sponsor at all times;
- the ICAC Sponsorship Principles;
- achieving best value for the community; and
- capacity to realistically service the sponsorship agreement;
- complying with statutory requirements (eg provisions of the Local Government Act in relation to tendering or public land etc);
- putting adequate risk management regimes in place.

### 4.2 Roles and Responsibilities

In accordance with ICAC Sponsorship Principle 10, final approval for sponsorship agreements rests with the General Manager.

Consistent with Council's Code of Conduct, it is inappropriate for a Council employee, delegate, designated person or Councillor, a person associated with any of them, (each role as defined in the Local Government Act 1993) to receive a personal benefit from sponsorship.

Depending on the conditions of the contract, contractors and consultants can also be regarded as employees or delegates of the Council and they must not receive a personal benefit from sponsorship. It is the responsibility of contractors and consultants of Council to ensure that they comply with the Code of Conduct and this Policy.

### 4.3 Suitable Activities for Sponsorship

Council can enter into sponsorship agreements with any company, partnership or sole trader who wishes to participate in Council's sponsorship program and which is a



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reputable organisation whose public image, products and services are consistent with the values, goals and specific policies of local government in Byron Shire.

Council considers that activities suitable for sponsorship include but are not limited to:

- Community wellbeing programs and events eg library or youth programs;
- Festivals and community events eg New Year's Eve;
- Programs and or events which promote increased opportunities for participation in sport and recreation;
- Training, scholarships, awards, education programs and economic, business and industry development;
- Events or programs that promote awareness of environmental or social principles such as disability awareness campaigns or sustainability programs etc;
- Publications produced by Council;
- Provision, construction and/or maintenance of infrastructure, facilities or assets.

A sponsorship must not:

- involve or create an actual or perceived conflict of interest;
- influence or hinder how Council operates;
- impose or imply a fetter or influence on Council's ability to carry out its functions fully or impartially.

#### 4.4 Suitable Sponsors

Sponsors are to be reputable entities or individuals.

The objectives, values and products of sponsors must be consistent with the values, objectives and services of Council.

The following companies, partnerships, sole traders or individuals are not suitable sponsors in Byron Shire, those:

- involved in the manufacture, distribution and wholesaling of tobacco related products, involved in the extraction and sale of coal, petroleum and gas, pornography and/or addictive drugs;
- found guilty of illegal or improper conduct by ICAC or any similar authority;
- involved in political fields eg political parties;
- involved in a competitive tender or purchasing process at or around the time of negotiating a sponsorship agreement;
- who have an unacceptable sponsorship record with Council or with any other government authority.

#### 4.5 Suitable Types of Recognition of Sponsorship

The extent of Council recognition for sponsorship will be determined having regard to the level, nature and benefits to Council of the sponsorship.

Sponsorship recognition should be tasteful and discreet taking into account the type and location of the sponsorship recognition and should not create situations of potential embarrassment or criticism for Council.

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Suitable types of recognition of sponsorship include but are not limited to:

- Signage (compliant with applicable Council regulatory standards);
- Media releases and associated media opportunities;
- Invitations to selected Council functions, which may include hospitality, preferential seating or award presentation etc;
- Inclusion of sponsor's name and logo in Council's Annual Report or other external publications;
- Naming rights for an event, building etc for the term of the sponsorship;
- Award or trophy struck in the sponsor's name and publicly presented;
- Professional footage and photography of a Council asset, service or event etc for use by a sponsor in their advertising or sales promotion in a form and on occasions as mutually agreed;
- Use of a Council asset or facility, subject to approval in each individual case, in static displays or for an activity of the sponsor when not required for Council's use;
- Merchandising of goods at selected points of sale;
- Opportunity for sponsor's name and/or logo to be promoted through appropriate general advertising by Council;
- Print advertising campaign to thank major sponsors.

Recognition must not involve explicit endorsement of the sponsor or the sponsor's products.

#### 4.6 Public Accountability, Transparency and Reporting

Council is committed to principles of open government, involving public accountability, transparency and accessibility. To meet these objectives, Council agrees that:

- Decisions, with reasons, to enter into or terminate a sponsorship agreement will be recorded.
- Sponsorship agreements will be written agreements.
- As much of the information relating to sponsorship agreements as can be made public will be open for public inspection (examples of exceptions could be copyrighted, privileged or commercial in confidence information).
- Council's Sponsorship policy will be publicly available and listed on Council's website.
- A public list of sponsorship agreements will be maintained by Council and will be included in each Annual Report.

#### 4.7 Sponsorship Brokers

Council may contract the services of sponsorship brokers to assist Council in attracting or negotiating with sponsors. Council will exclusively retain the right to select sponsors. Any sponsorship brokers must, like all consultants, disclose all conflicts of interest to Council including any potential commissions or payments that may become payable to the broker other than under the terms of the consultancy agreement with the Council.



**DRAFT** Policy: Sponsorship Received by Council 202~~2~~<sup>4</sup>

## ATTACHMENT 1

### The Independent Commission Against Corruption's 'Ten Sponsorship Principles'

1. *A sponsorship agreement should not impose or imply conditions that would limit, or appear to limit, a public sector agency's ability to carry out its functions fully and impartially.*
2. *There should be no actual conflict between the objectives and/or mission of the sponsored agency and those of the sponsor.*
3. *In general, a public sector agency with regulatory or inspection responsibilities should not seek, or accept sponsorship from people or organisations which are, or may be, subject to regulation or inspection by the agency during the life of the sponsorship. Where adhering to this principle would unduly limit the agency's sponsorship prospects, the agency should develop alternative strategies to ensure it can carry out its regulatory or inspection responsibilities in relation to sponsors in an open, fair, accountable and impartial manner.*
4. *Sponsorship of a public sector agency or activity should not involve explicit endorsement of the sponsor or the sponsor's products.*
5. *Where sponsorship involves the sponsor providing a product to the agency, the agency should evaluate the product for its fitness for purpose against objective criteria that are relevant to the agency's needs.*
6. *It is inappropriate for any employee of a public sector agency to receive a personal benefit from a sponsorship.*
7. *In most circumstances, the public interest is best served by making sponsorship opportunities widely known. To this end sponsorships should be sought and granted by using broadly based, open processes that are not limited solely to invited sponsors.*
8. *Public sector agencies should assess sponsorship proposals against predetermined criteria which have been published in advance or which are circulated to organisations that submit an expression of interest.*
9. *A sponsorship arrangement is a contract and should be described in a written agreement.*
10. *All sponsorship arrangements should be approved by the CEO or another designated senior officer of the agency and described in the agency's annual report in a form commensurate with the significance of the sponsorship.*

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## Notice of Motion No. 16.3 Roadworks on Ewingsdale Road

File No: I2022/1665

5

I move:

1. That Council implements a policy of only conducting roadworks on Ewingsdale Road at night.
- 10 2. That Council implements a policy of not conducting roadworks on Bangalow Road and Broken Head Road during morning and afternoon peak hours.
3. That Council writes to all relevant authorities, such as Essential Energy, requesting that they adhere to the same policies.
4. That the emergency road works be exempt from the above policies.
- 15 5. That Council receives a report to update Council on Transport for NSW plans to fix the Ewingsdale Highway interchange.

Signed: Cr Asren Pugh

### Councillor's supporting information:

20 The Ewingsdale Highway interchange is dangerous. Traffic consistently backing up along the highway in the morning peak is a threat to those cars and other traffic utilising the highway, including large trucks.

25 Contractors working for Council fixing a siderail on Tuesday 8 November 2022 ran the job late. This resulted in a massive exacerbation of the existing issues. The Highway backup was even more dangerous, with cars stopping in the right-hand lane of the Highway trying to merge left as they had missed the end of the line. Residents and workers were delayed by up to 1.5 hours. Schools and businesses were significantly affected.

30 In addition, there has been a number of instances recently on Bangalow Road and Broken Head Road where Essential Energy has conducted tree lopping during peak hour that has significantly impacted residents, workers and school children. This has been done without proper notice to residents or consultation with Council.

The Ewingsdale Highway interchange needs to be fixed properly. I understand there have been discussions between Council and Transport for NSW and it is time to move this project forward.



## **Staff comments**

A Policy for Roadworks on Ewingsdale Road will be developed in accordance with the above Notice of Motion and presented to Council for further consideration.

- 5 The Works Department (IS) have already committed to no day works on Ewingsdale Road unless works are deemed an emergency. This will remain in place until Council adopts a revised policy.

The Open Spaces Department (IS) have a maintenance program along Ewingsdale Road and Broken Head Road, including the Butlers Street Bypass. This program is currently carried out monthly, outside of peak traffic periods.

- 10 These works have been successfully carried out for the last few years without negatively impacting peak traffic flows. As these works have demonstrated ability to be completed with minimal impact on traffic flows, it is recommended that Council mowing and garden maintenance works are not included within the definition of “roadworks”.

- 15 Conducting mowing and garden maintenance works roadside at night would create additional risk for workers and would require increased levels of traffic control. Any decision requiring mowing and gardening to be completed as nightworks needs to be informed by the additional cost requirement for lighting and traffic safety measures so that the impacts upon maintenance budgets can be quantified. Investigation into the availability and cost of contractors able and willing to conduct mowing and gardening activities as nightworks needs also to be explored so that the budget and services implications of this variation can be quantified.
- 20

The M1 Interchange and Ewingsdale Road upgrades draft options study are currently being prepared by Transport for NSW (TfNSW).

- 25 Once TfNSW has completed a draft options study and it has been reviewed by staff it is intended that prior to commencement of stakeholder engagement the options are presented to Council at a workshop. This matter can be addressed in a separate report to Council after the workshop.

## **Financial/Resource/Legal Implications:**

- 30 Night works will have a significant increase cost and reduce the amount of work achievable within current budgets. Additional costs are not known at this time.

## **Is the proposal consistent with any Delivery Program tasks?**

No.

## Notice of Motion No. 16.4 Update on Resolution 22-361

File No: I2022/1739

5

**I move that Council:**

1. **Notes the recent vote of members of the Bangalow Bowling and Sports Club to support amalgamation with North Sydney Leagues Club**
- 10 2. **Notes that North Sydney Leagues Club had pre covid (2019) revenue of over \$58 million and does not need financial support from council**
3. **Rescinds the budget allocation of \$2,000 established via Resolution 22-361**
- 15 4. **Continues to ensure that the Bangalow Bowling Club be engaged in the Plan of Management process for the Bangalow Sports Fields as per the rest of Resolution 22-361**

**Signed: Cr Asren Pugh**

### **Councillor's supporting information:**

20 The purpose behind Resolution **22-361** was to support the community run Bangalow Bowling Club to engage with the Bangalow Sports Fields Plan of Management. The Bangalow Bowling Club membership have voted to amalgamate with North Sydney Leagues Club and no longer be run locally by community members.

25 Given the financial and paid staffing resources of the North Sydney Leagues Club, and the current financial situation of council, it would not be appropriate to provide financial support to this organisation.

If a workshop or meeting is appropriate for the Sports Field PoM process, North Sydney Leagues Club should be able resource this themselves.

## Staff comments

**by James Brickley, Manager Finance, Corporate & Community Services:**

- As detailed in the Council report for the 11 August 2022 meeting, Council is required to renew the 2005 Plan of Management for the Bangalow Sports Fields. A new Plan of Management is proposed that includes the skate park and that will provide clarification to the Bangalow community on the future uses proposed for the site. Any additions that, require any new categories of use of the community land, will be determined by the adoption of the new Plan of Management. The new Plan of Management will be an essential component in the planning for the whole area.
- Council must undertake mandatory public hearings with the local members and interested stakeholders on the proposed new Plan of Management in accordance with section 40A of the *Local Government Act*.
- Resolution **22-361** required \$2,000 to be set aside to support a workshop with the Bowling Club and Sports Club Limited stakeholders. Council is required to consult with and invite the Bangalow Bowling Club to all public hearings for the proposed new Plan of Management for the Bangalow Sports Fields.

## Financial/Resource/Legal Implications:

- Resolution **22-361** when adopted by Council did not identify a funding source, so the \$2,000 was included in the 2022/2023 budget, by increasing the budget deficit from \$205,000 to \$207,000. Should Council support part 3 of this Notice of Motion, the impact of removing the \$2,000 budget will reduce the projected budget deficit back to \$205,000.

## Is the proposal consistent with any Delivery Program tasks?

- The proposal is consistent with Delivery Plan Tasks in that Part 4 of the Notice of Motion is continuing to engage with the Bangalow Bowling Club in regards to the Plan of Management.

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>5: Connected Infrastructure</b> We have connected infrastructure, transport, and facilities that are safe, accessible, and reliable	5.4: Provide accessible community facilities and open spaces	5.4.4: Sporting facilities and swimming pools - Ensure ongoing maintenance and upgrade of inclusive sporting facilities and swimming pools	5.4.4.3	Complete review of Plan of Management and associated Landscape Masterplan for Bangalow Sportsfields and seek funding opportunities for implementation