



Byron Shire Council



Ordinary (Planning) Meeting

held at Council Chambers, Station Street, Mullumbimby
commencing at 11.00am

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

Mark Arnold
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

Committee, or

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

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

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BUSINESS OF ORDINARY (PLANNING)
MEETING

1. PUBLIC ACCESS

2. APOLOGIES

3. REQUESTS FOR LEAVE OF ABSENCE

4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)

6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

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9. NOTICES OF MOTION

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driveway design - 8 Cemetery Road Byron Bay 38

14. QUESTIONS WITH NOTICE

Nil

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

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person/organisation prior to the next Ordinary Meeting and placed on Councils website
www.byron.nsw.gov.au/Council/Council-meetings/Questions-on-Notice

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

NOTICES OF MOTION

Notice of Motion No. 9.1 Brunswick Heads Heritage Conservation

5 **File No:** I2021/133

I move that Council:

- 10
1. **Develops a plan for parts of Brunswick Heads to be included in the Shire as a Heritage Conservation Area.**
 2. **Works with community organisations to further this outcome.**
 3. **Sets a timeframe for the consultation to occur.**

Signed: Cr Catherine Coorey

15 **Councillor's supporting information:**

Representatives from the Progress Association and the Chamber of Commerce have been meeting to consider the future of Brunswick Heads.

20 Both groups would like to begin the process of declaring Brunswick Heads or part thereof, a Heritage Conservation Area. Brunswick Heads was included in the Community Based Heritage Study that led to Mullumbimby, Bangalow and some areas of Byron Bay incorporated into the DCP and LEP in 2014 as Heritage Conservation Areas. However, Brunswick Heads was not included despite its historical significance and the fact that 45 individual properties were recommended in the study for heritage protection. The community had indicated during the Character Narrative consultation process that they
25 would like the heritage and character of the town strongly protected.

Staff comments

by Shannon Burt, Director Sustainable Environment and Economy:

(Management Comments must not include formatted recommendations – resolution 11-979)

30 A request from the Brunswick Progress Association was made to staff 6 January 2021 for the commencement of the process of declaring Brunswick Heads part thereof a Heritage Conservation Area.

Staff replied to this request as follows:

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9.1

Preliminary work has already commenced on such a proposal through the Heritage Panel see report below.

https://byron.infocouncil.biz/Open/2020/03/HER_12032020_AGN_1189_AT.PDF

- 5 20-265 Resolved that Council adopt the following Panel and Management Recommendation(s):

Report No. 4.1 Heritage Panel Walk - Brunswick Heads

File No: I2020/168

Committee Recommendation 4.1.1

That the Heritage Panel:

- 10 1. Note the results from the heritage walk will be retained as a basis for any future heritage studies for Brunswick Heads.
2. Note the results from the heritage walk will be provided to planning staff to inform character narratives for Brunswick Heads that may be prepared for future LEP or DCP amendments that result from the adoption of the Residential Strategy.
- 15 3. Be invited to review and contribute to any future character narrative statements for Brunswick Heads.
4. **Recommend Council consider a heritage conservation area for Brunswick Heads to be determined by further survey, subject to funding and staff availability.**
- 20 5. Request staff to confirm the time frame and process for the drafting of the character narratives in item 2. (Richardson/Cameron)

Staff have been asked to further liaise with Council's Heritage Advisor, to progress an assessment report for Council consideration FY21/22 as part of a future Local Environment Plan and Development Control Plan (house keeping) amendment on same.

25 **Financial/Resource/Legal Implications:**

To be considered as part of the 21/22 OP actions and budget allocation for the Heritage Program.

Is the proposal consistent with any Delivery Program tasks?

Yes 2.5.2 Recognise and Support the Heritage of the Byron Shire.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.1 Department of Primary Industries -
Agricultural Land Use Planning Strategy
Options Paper - Submission**

5

Directorate: Sustainable Environment and Economy

Report Author: Sharyn French, Manager Environmental and Economic Planning

File No: I2021/13

Summary:

- 10 The NSW Government's Right to Farm Policy was reviewed in 2020. The review found, amongst other matters, that the Policy has been delivered but has not fixed the issues of land use conflict with farmers. The review recommends the state government prepare an Agricultural Land Use Planning Strategy (Strategy). Once this Strategy is finalised it may initiate a review of Council's adopted strategies such as the Rural Land Use Strategy and
- 15 LEP provisions including changes to rural land use definitions and buffers.

The Department of Primary Industries is currently seeking comment on the proposed content of the Strategy and have released an 'Agricultural Land Use Planning Strategy Options Paper' (Attachment 2). Submissions can be made on the options paper or via their online survey before 28 February 2021.

- 20 Staff have drafted a response to the Options Paper (Attachment 1). The draft submission is presented to Council for consideration.

RECOMMENDATION:

That Council endorses the submission at Attachment 1 (E2021/592) on the Department of Primary Industries, Agricultural Land Use Planning Strategy Options Paper.

.Attachments:

- 25
- 1 Submission: on NSW Agriculture Commissioner Agricultural land use planning strategy options paper Dec 2020, E2021/592 
 - 2 NSW Government Options Paper Agricultural Land Use Strategy, E2021/6569 

Report

The NSW Agriculture Commissioner (Commissioner) was appointed in August 2020 and was tasked with reviewing the NSW Government's Right to Farm Policy. The Commissioner has conducted a **review** informed by stakeholder feedback, and a number of research reports, including the Australian Farm Institutes Managing farm-related land use conflicts in NSW. The review found that the Policy has been delivered but has not fixed the issues of land use conflict with farmers. In addition, other barriers in the planning framework to primary production have been identified.

The Commissioner recommends the development of an Agricultural Land Use Planning Strategy (Strategy) to address three key issues:

Issue 1: Long term availability of productive land

Issue 2: Reducing land use conflict and supporting dispute resolution

Issue 3: Support the growth of agriculture and regional economies

An Options Paper (Attachment 2) has been drafted to inform the content of the Strategy. Submissions must be received on the Options Paper before Sunday 28 February 2021.

Submission

Council is well advanced in land use planning measures to protect important farmland and ways to support our important agricultural sector.

The Northern Rivers Farmland Protections Mapping Project 2005 and Council's rural land use strategies have ensured a sound rural land management position for over 15 years. Our good quality agricultural land (regional and state-significant) is protected under a RU1 Primary Production Zoning and generally a 40ha minimum subdivision lot size. Additionally implementing the Far North Coast Environmental Zone review, delivers a new approach to environmental zoning in Byron Shire to support farming and protect the environment.

On a daily basis Council staff (land use planners, environmental scientist, engineers, compliance officers and community development officers) engage with farmers, land care groups and the broader rural community. Assistance is broad; on-ground work, technical advice and supporting farmer well-being.

Unlike Council's in the north coast, the majority of the State does not have farmland protection mapping. As such the Options Paper's scope is myopic. It is generally about enabling the rest of the state to 'catch up', with measures aimed at protecting agricultural land and the right to farm.

Therefore, our submission whilst responding to the options put forward by DPI, importantly seeks to broaden their consideration to other issues:

- an approach grounded in a collective sense of land custodial stewardship

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- respect and recognition of traditional landowners deep knowledge of the land, harvesting food sustainably and how to care for and nourish land
- appreciation of the diversity within the farming sector and land with farming potential, hence policies to cater for and acknowledge diversity
- 5 • a response to emerging pressures/opportunities such as global trends and events, including climate change and regenerative farming
- recognition of the role and value of Council rural land use strategies with continued allowances for local responses and provisions
- 10 • acknowledgement that state regulations and policies outside agriculture affect the right to farm and access to farmland.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.4	Support and secure our farming future	3.4.1	Develop and implement strategies to support agriculture, agri-business and farmers	3.4.1.1	Finalise and commence implementation of the Agriculture Action Plan
Community Objective 3: We protect and enhance our natural environment	3.4	Support and secure our farming future	3.4.1	Develop and implement strategies to support agriculture, agri-business and farmers	3.4.1.2	Continue to deliver Smart Farms –Small Grants project
Community Objective 3: We protect and enhance our natural environment	3.4	Support and secure our farming future	3.4.1	Develop and implement strategies to support agriculture, agri-business and farmers	3.4.1.3	Continue to convene Agricultural Cluster Group Meetings

Related Resolutions

- 5 Council **Res 17-504** which adopted the Rural Land Use Strategy includes: Action 48-
*Consult with relevant State government agencies throughout the development and
implementation of this Strategy to enable better planning outcomes through better data-
sharing and management.*

Legal/Statutory/Policy Considerations

Nil

Financial Considerations

- 10 Nil

Consultation and Engagement

Key rural groups, including our Agricultural Cluster Group, were informed of the Options Paper.

Report No. 13.2 PLANNING - s4.55 to Modify approved Motel at 3 Shirley Street, Byron Bay - DA10.2014.398.4

Directorate: Sustainable Environment and Economy

5 **Report Author:** Jordan Vickers, Planner

File No: I2021/39

Proposal:

Section 4.55 Application No:	10.2014.398.4			
Proposed modification:	S4.55 to Modify Internal Layout and Carpark of Approved Motel			
Original Development:	Motel - two storey 16 guest rooms with a roof top terrace and basement parking for 27 cars			
Type of modification sought:				
Property description:	LOT: 1 DP: 123737, LOT: A DP: 346870, LOT: B DP: 346870, LOT: 1 DP: 1068193, LOT: 2 DP: 1073355, LOT: 13 DP: 1143269			
	3 Shirley Street BYRON BAY, 7 Shirley Street BYRON BAY, 5 Shirley Street BYRON BAY			
Parcel No/s:	7400, 83040, 83030, 239166, 239405, 240879			
Applicant:	Mr R A McEwen			
Owner:	McEwen Holdings Pty Ltd			
Zoning:	R3 Medium Density Residential / PART 7F2 Urban Coastal Lands			
S4.55 Date received:	11 February 2020			
Original DA determination date:	16/07/2015			
Public notification or exhibition:	<ul style="list-style-type: none"> – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications – Exhibition period: 27/2 - 11/3/2020 – No Submissions were received 			
Issues:	<ul style="list-style-type: none"> • No Issues 			

Summary:

- 10 This S4.55 application seeks approval to modify the internal layout and carpark of an approved motel.

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5 The internal modifications result in a reconfiguration of the internal layout to increase the density of the approved motel from 15 rooms + 1 manager's room (total 16 bedrooms) to 26 rooms + 1 manager's room (total 27 bedrooms). Minor changes to the building façade are proposed (change to windows), and the underground car park is to be expanded from 27 to 32 spaces.

10 Additional bedrooms are provided by reducing the floor area of the proposed restaurant and bar, and by segmenting a number of large single-bed rooms into two individual single-bed rooms. The proposal will delete spa/treatment rooms from the development, reduce the floor area of communal spaces (bar and dining) and maintain the approved building footprint at ground floor.

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




NOTE TO COUNCILLORS:

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

RECOMMENDATION:

That Development Application No. 10.2014.398.4 for S4.55 to Modify Internal Layout and Carpark of Approved Motel, be approved by modifying Development consent number 10.2014.398.1 as per the modified conditions in Attachment 1 (E2021/4955).

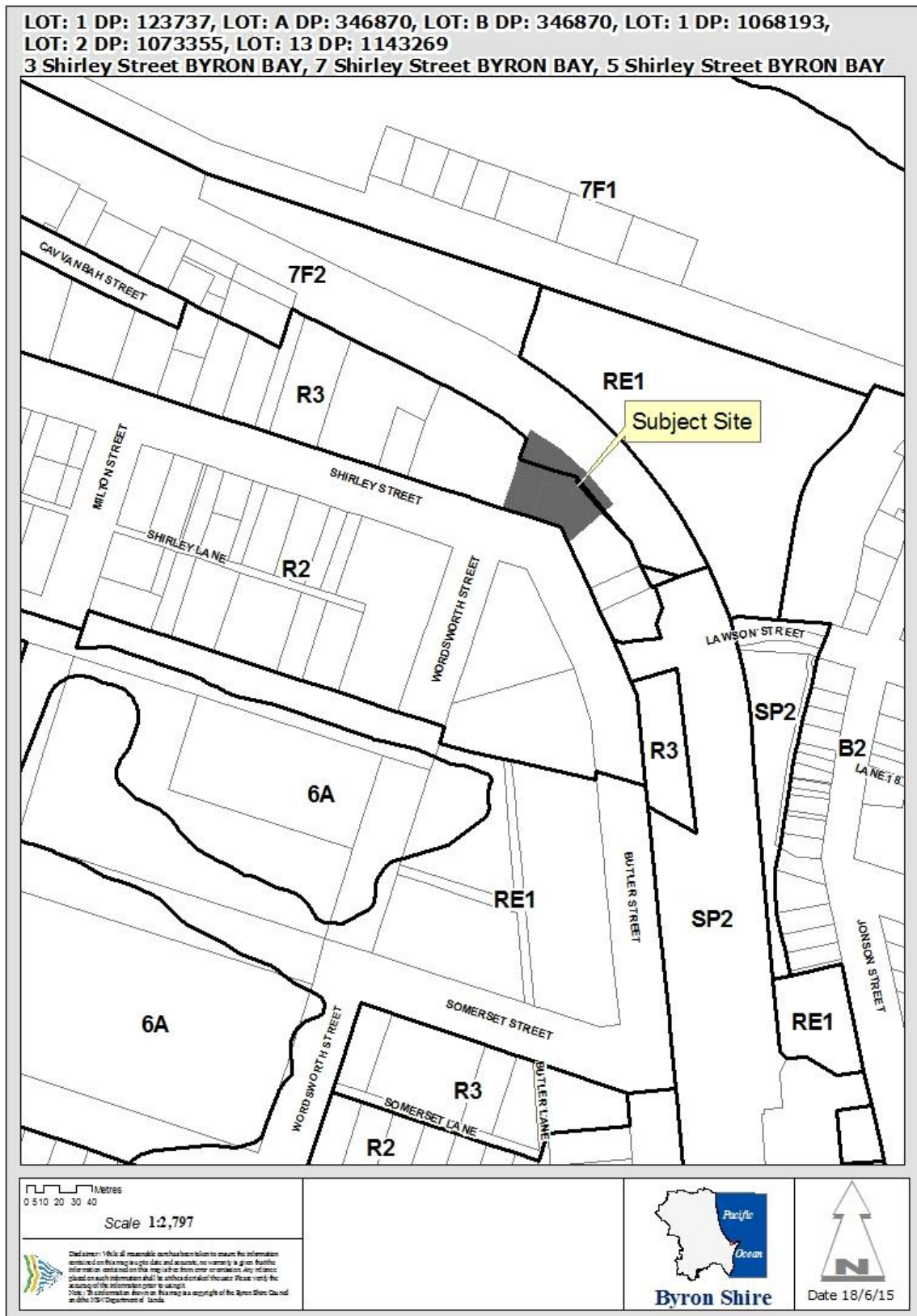
Attachments:

- 20
- 1 Conditions for Modification DA10.2014398.4 at 3 Shirley Street BYRON BAY 2481 - S4.55 to Modify Internal Layout and Carpark of Approved Motel, E2021/4955 
 - 2 Modified architectural plans for approval DA10.2014.398.4, E2020/101718 
 - 3 Approved Vs. Proposed Images of proposal, E2021/12872 
- 25

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Assessment:

1. INTRODUCTION

1.1. History/Background

- 5 10.2014.398.1: Two storey motel – approved 16/7/15
 10.2014.398.2: Modification to deferred commencement condition – Approved 19/5/16
 10.2014.398.3: Modification to deferred commencement condition – Approved 13/12/18

1.2. Description of the proposed development

10 This application seeks approval to modify the internal layout and carpark of an approved motel. The modifications involve:

- Reconfiguration of rooms to increase room numbers from 16 to 26 plus managers quarters;
- Delete spa/treatment rooms;
- Extend the basement car park to increase parking spaces from 27 to 32; and
- 15 - Reduce the floor area of communal spaces (bar and dining) to allow for additional bedrooms.

In modifying the development consent, the proposal aims to modify Conditions 1 and 45 of DA10.2019.398.1, which read as follows:

Condition 1:

20 **Development is to be in accordance with approved plans**

The development is to be in accordance with the plans approved under deferred commencement Condition No.1.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

25 **Condition 45:**

Car Parking spaces are to be available for the approved use

A minimum of 27 car spaces, a loading bay, a mini bus drop off and pick up bay, customer arrival bay under the porte-cochere are to be provided and maintained, together with all necessary access driveways and turning areas, to the satisfaction of
 30 Council. Valet Parking Service is to be provided at all times.

1.3. Description of the site

The subject site is commonly known as 3-7 Shirley Street and comprises six properties legally described as:

- Lot 1 DP 123737
- 35 - Lot A DP 346870
- Lot B DP 346870
- Lot 1 DP 1068193

- Lot 2 DP 1073355
- Lot 13 DP 1143269

5 The property is zoned R3 Medium Density pursuant to Byron LEP 2014 and 7f2 under Byron LEP 1988. The property has a total area of 2283m² and is relatively level. The property adjoins the North Coast Railway Line along its rear boundary and overlooks the First Sun Caravan Park. Adjoining development to the west and east is characterised by holiday apartments, opposite is the Byron Bay Police Station and former Hospital.

SECTION 4.15 – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

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

Increased density:

15 The proposal seeks to increase the density of the approved motel from 15 rooms + 1 manager's room (total 16 bedrooms) to 26 rooms + 1 manager's room (total 27 bedrooms). Additional bedrooms are provided by reducing the floor area of the proposed restaurant and bar, and by segmenting a number of large single-bed rooms into two individual single-bed rooms.

20 As a result of the increased room density, the proposal has increased the number of car parks for the development from 26 (+ 1 accessible) to 32 (+ 1 accessible). Despite the increase in bedrooms, the footprint of the building remains unaltered by the proposal with only minor visible alterations to the façade and building design.

Despite increasing room and car parking numbers, the development maintains the approved building design, structure and footprint.

High resolution images of the following can be viewed in Attachments 2 and 3.



Figure 1: Approved Ground floor



Figure 2: Proposed Ground Floor



Car Parking:

- 5 The proposal seeks to amend the car parking layout to provide 32 (+ 1 accessible) car parking spaces in lieu of the 26 (+ 1 accessible) approved. Council's Development Engineer reviewed the proposal and confirmed that the proposed car parking spaces achieve compliance with the Byron DCP. High resolution images of the following can be viewed in Attachments 2 and 3.

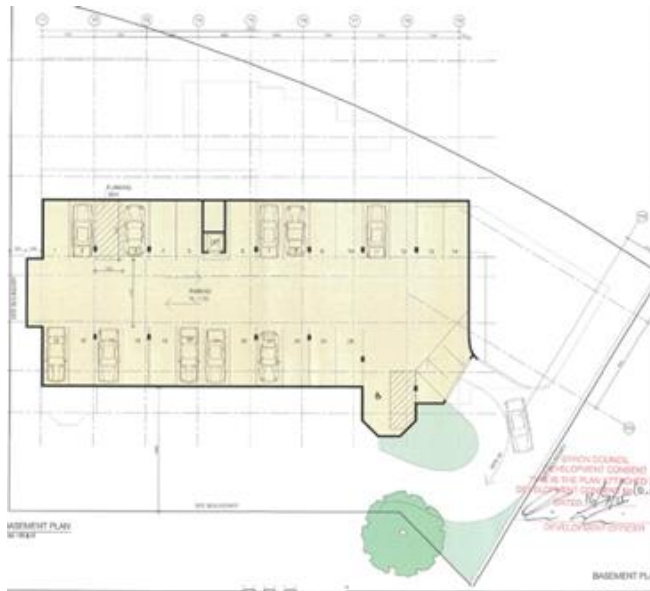


Figure 5: Approved car parking



Figure 6: Proposed car parking

Additional excavation:

- 10 The amended proposal extends the underground car parking area. A merit-based assessment of the original underground car park was already undertaken and approved with relevant conditions applied as necessary in the original consent. The additional excavation required for the proposal will not result in any new impacts.

Additional condition updates as a result of proposal:

- 15 As a result of the proposed modification, it is recommended that various conditions are updated, including conditions: 15 (On-site stormwater detention), 16 (works within road reserve), 40 (internal & external driveway), and 41 (stormwater disposal).

S4.55 EP&A Act:

s4.55 (2)(a):

- 20 Pursuant to s4.55(2)(a), Council must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all).

- 25 This Section 4.55(2) application seeks to modify the approved development, being 'Motel - two storey, 16 guest rooms with a roof top terrace and basement parking for 27 cars', resulting in a development which is defined as 'Motel – two storey, 26 rooms (plus Managers residence) with a rooftop terrace and basement parking for 32 cars'. The proposal does not modify the approved above-ground building footprint, design, or colour/

construction materials, and will remain substantially the same as the development which consent was originally granted.

s4.55 (2)(b):

5 Pursuant to s4.55(2)(b), Council must not decide an application unless it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent.

10 No conditions imposed as a requirement of concurrence to the consent or in accordance with the general terms of approval are proposed to be modified by this application.

s4.55(2)(c):

Pursuant to s4.55 (2)(c) the subject application was notified in accordance with the regulations. No submissions were received.

15 s4.55(3):

In determining an application for modification of consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

20 The subject application has been considered against relevant provisions of: all relevant planning instruments, Byron DCPs, and the Regulation (to the extent that they prescribe matters). The likely impacts and the suitability of the site for the development are discussed under headings 2.5 and 2.6 respectively below. No submissions were received to the notification of this application, and the proposal complies with the relevant environmental planning instruments.

1.4. State/Regional Planning Policies, Instruments, EPA Regulations 2000

Proposed amendments raise no issues under the relevant SEPPs, Policies or clauses of the EPA Regulations 2000

30 **1.5. Byron Local Environmental Plan 1988**

The original DA which was granted consent (10.2014.398.1) under the Byron LEP 1988 within the Residential (2a) zone and the development (defined as Motel) was permitted with consent.

35 The site is now within the Medium Density Residential (R3) zone of the Byron LEP 2014, where Motel (defined by parent definition as Tourist Accommodation) is a prohibited development. Notwithstanding, s4.70 of the Environmental Planning & Assessment Act 1979 contains savings provisions for existing consents.

Section 4.70, 2(b) of the EP&A Act 1979 permits the modification of consent of this nature.

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The development remains consistent with, and the proposed amendments raise no further issues under, the provisions of the Byron LEP 1988.

1.6. Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority – Issues

- 5 No draft EPIs affect the proposal.

1.7. Development Control Plan 2010

Part G – Car Parking:

- 10 The proposed development seeks to increase the density of motel rooms on site while simultaneously reducing the GFA of the on-site restaurant. Council's Development Engineer reviewed the proposal and submitted Traffic Impact Assessment and has recommended approval of the proposal subject to amended conditions of consent.

Further to this, the amendments do not generate any additional issues that have not been previously considered.

- 15 **1.8. The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

Environment: No change to that of the original development as built.

Social and Economic: Improve the supply of tourist accommodation proximal to central Byron Bay which will benefit local business.

- 20 **1.9. The suitability of the site for the development**

The development already exists on the site.

2.7 Submissions made in accordance with this Act or the regulations

No submissions were received.

2.8 Public interest

- 25 Proposed amendments do not change or compromise the public interest.

3. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

There is no nexus to levy additional s7.11 developer contributions (see doc#A2020/5889).

Notwithstanding, the proposal will increase the demand on Council water and sewer infrastructure. Consequently, ET charges will increase as a result of this development.

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4. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

5. CONCLUSION

- 5 The proposal is satisfactory having regard to relevant matters for consideration and the section 4.55 application is recommended for approval subject to amended conditions of consent.

10 *Note: From July 1 2018, Council's 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 modifications were minor and substantially the same as the original development approval with no detrimental environmental impacts.
How community views were addressed
The DA was notified/advertised in accordance with Development Control Plan 2014. No submissions were received.

Report No. 13.3 PLANNING - DA 10.2020.443.1 - New Dwelling to Create Dual Occupancy (Detached)

Directorate: Sustainable Environment and Economy

5 **Report Author:** Lachlan Wall, Gateway Planner

File No: I2021/43

Proposal:

DA No:	10.2020.443.1		
Proposal description:	New Dwelling to Create Dual Occupancy (Detached)		
Property description:	LOT: 1 DP: 1079539		
	67 New City Road MULLUMBIMBY		
Parcel No/s:	239579		
Applicant:	Ms J K Brown		
Owner:	Ms J K Brown		
Zoning:	R2 Low Density Residential		
Date received:	7 September 2020		
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
Public notification or exhibition:	<ul style="list-style-type: none"> – Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications – Exhibition period: 17/9/20 to 30/9/20 – Submissions received: 1 (against) 		
Delegation to determine	Council		
Issues:	Building height plane Neighbourhood character		

Summary:

- 10 The application is seeking approval for a new dwelling to create a dual occupancy (detached). The new dwelling comprises two (2) bedrooms in a two (2) storey configuration, with a maximum height of 8.867m. The second storey contains an internal deck as a breezeway. The dwelling site is located at the rear of the property adjoining Hollingworth Lane to the South. The proposal also requires the demolition of two (2)
- 15 existing sheds which are located within footprint of the proposed dwelling.

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The subject property is zoned R2 Low Density Residential under Byron LEP 2014. The subject property contains an existing single storey dwelling of brick construction and sheds on the site. The site is the result of two previous lots being consolidated to create a larger lot that is 1152m². The site also has rear lane access.

- 5 This application is being reported to Council due to a non-compliance with the building height plan control in Development Control Plan 2014.

The proposed dual occupancy otherwise complies with the Byron LEP 2014 and DCP 2014 except for the building height plane.

- 10 Given the flood level of the site, and that the dwelling is located on the southern elevation facing surrounding paddocks and farmland, a variation to the control does not create significant impacts on adjoining properties. The application is recommended for approval subject to conditions of consent.

NOTE TO COUNCILLORS:






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

RECOMMENDATION:

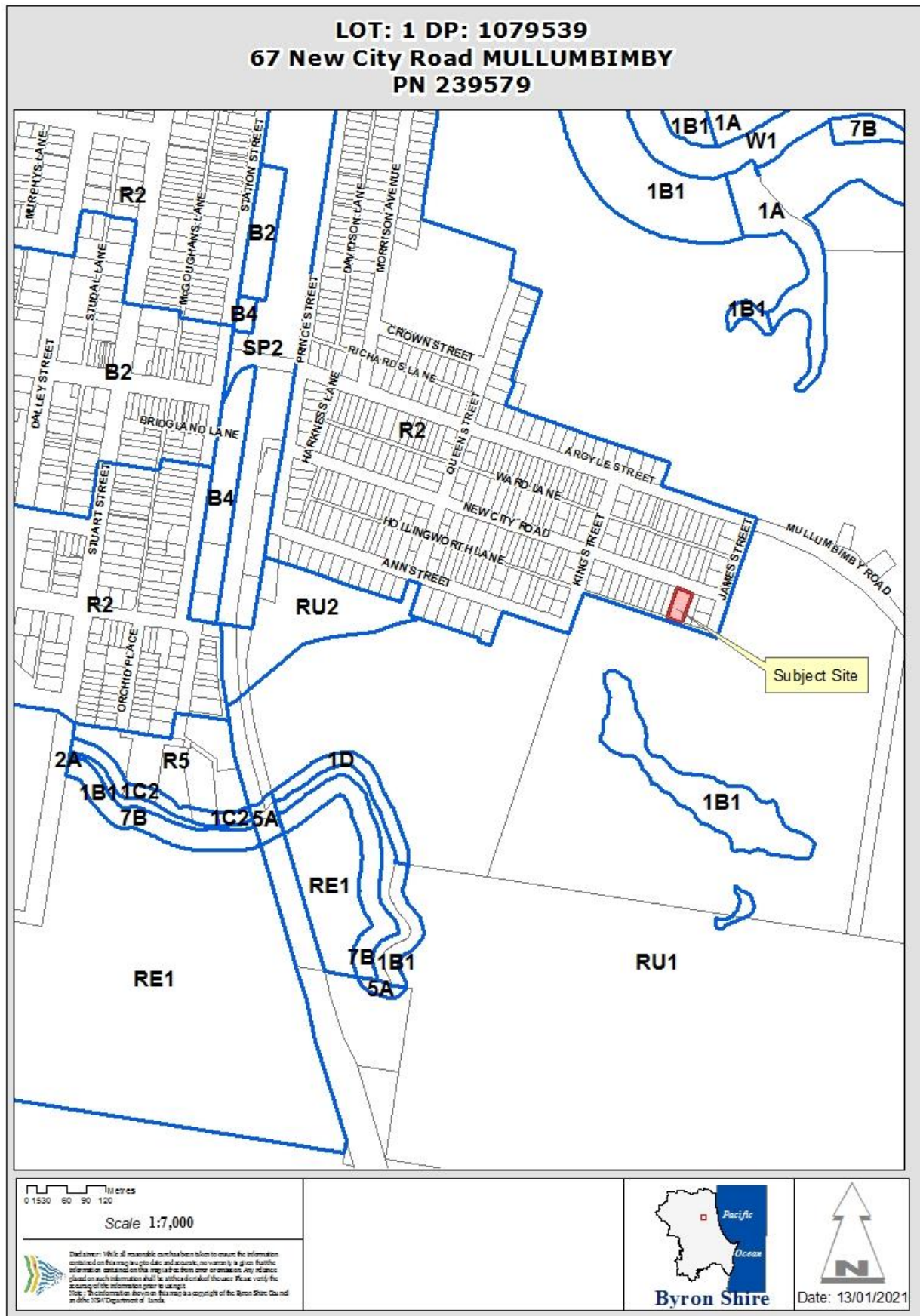
That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.443.1 for New Dwelling to Create Dual Occupancy (Detached), be granted consent subject to conditions in Attachment 2 (E2021/4856).

20

Attachments:

- 1 DA 10.2020.443.1 - Plans, E2021/4503 
2 DA 10.2020.443.1 - Conditions of consent, E2021/4856 
25 3 DA 10.2020.443.1 - BASIX Certificate, E2020/102928 
4 Confidential - DA 10.2020.443.1 - Submission, E2021/4512
5 DA 10.2020.443.1 - Shadow Diagrams, E2021/17798 
6 DA 10.2020.443.1 - Figures and pictures, E2021/17799 

30



Assessment:

1. INTRODUCTION

1.1. History/Background

5

Development history

DA / BA Number	Description	Status	Date
10.1998.327.1	Renovate fire damage dwelling	Approved	21/01/1998
10.2004.665.1	Alterations and additions to create a 2 storey dwelling and swimming pool	Approved	04/02/2005
10.2004.465.1	Removal of three (3) trees	Approved	20/12/2004
10.2004.665.1	Alterations and additions to create a two storey dwelling and swimming pool	Approved	04/02/2005
10.2004.665.2	S96 to modify alterations and additions to dwelling-house	Approved	31/07/2006
10.2006.222.1	Garage	Approved	22/05/2006
10.2020.443.1	New dwelling to create dual occupancy (detached)	Pending	-

1.2. Description of the proposed development

This application seeks approval for a new dwelling to create a dual occupancy (detached).

- 10 The proposed dwelling is located behind the existing dwelling on the site. The design is a two (2) storey dwelling at a maximum height of 8.867m. The dwelling contains 2 bedrooms. The proposal also requires the demolition of two (2) existing sheds which are located within footprint of the proposed dwelling.
- 15 The ground floor is elevated 1.279m from the existing ground level to achieve the minimum floor level to meet the flood planning level as applicable to the site. The floor planning level is 3.74 AHD. The elevated first floor contains vertical privacy screens to the windows on the east and western elevations to improve the privacy of adjoining dwellings.
- 20 The proposal includes a steep 40 degree pitched roof and will be partially covered with solar panels for electricity generation. The dwelling also proposes a wood heating system. A chimney flue for this heating system is proposed to be located on the south western edge of the roofline that will protrude above the roofline of the dwelling.

1.3. Description of the site

A site inspection was carried out on 30 November 2020

Land is legally described	LOT: 1 DP: 1079539
Property address	67 New City Road MULLUMBIMBY
Land is zoned:	R2 Low Density Residential
Land area is:	1152 m ²

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Property is constrained by:	Flood Liabile Land	
	Acid Sulfate Soils Class 3	
	Is a BDAR required due to the location of the proposed development?	<input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input checked="" type="checkbox"/> No



View from New City Road. Timber slats above 1.2 metres not approved. A larger higher resolution version of this image is available within attachment 6 – Figures and images.

5

The site currently contains a single storey 3 bedroom dwelling of brick and tile construction, and two sheds

2. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S94 / Contributions Officer	No objections subject to conditions.

Unapproved development on site

- 10 A carport has been constructed within the front setback without development consent, whilst the garage has been converted into additional living area. Further, the front fence has elements that exceed 1.2 metres in height. No consent for the carport or fence has been sought under this application. Conditions have been recommended for unapproved works to be demolished and the garage to be reinstated.

15



View from New City Road street frontage looking south. Car port is not approved and to be removed, garage to be converted back to garage. – A higher resolution image is available within attachment 6 – Figures and pictures

5 3. SECTION 4.14 – BUSH FIRE PRONE LAND

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

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55— Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site contains an existing dwelling and is located within an area of Mullumbimby that has been used for residential purposes for a significant period of time. The site is not located within proximity to a cattle dip buffer. There is no change in land use proposed. The site is considered to be suitable for the proposed dwelling.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A valid BASIX Certificate has been provided.		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

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

Zone Objective	Consideration
To provide for the housing needs of the community within a low density residential environment	The application provides an additional dwelling within the Mullumbimby township.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	N/a - residential land use proposed only. And is consistent with the zone objective

10 **Clause 4.1(e) Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings**

The site area is 1152m² by DP1079539. Minimum lot size for a dual occupancy is 800m². The proposal complies.

15 **Clause 4.3 – Height of Buildings**

DA05 - elevations show the height at 8.867m, both of these comply with the prescribed limit of 9m. The elevation plans show a chimney flue above the ridge of the building to a height of 9.3m. The definition of building height (or height of building) excludes chimneys, flues or the like from the calculation of the height of buildings.

20 **Clause 4.4 – Floor Space Ratio / Clause 4.5 Calculation of Floor Space Ratio and Site Area**

25 The subject property has a site area of 1152m². Both dwellings combined have a total floor area of approximately 240m² and the development with an FSR of 0.21:1, complies with the FSR requirements of 0.5:1.0.

Clause 6.1 – Acid Sulfate Soils

30 The site is mapped as containing class 3 Acid Sulfate Soils. No excavation works exceeding 1m in depth have been proposed. No management plan is required under this clause. The development complies with this clause

Clause 6.3 – Flood Planning

35 Council's Development Engineer has reviewed the application and has raised no concerns from a flood planning perspective. The proposed dwelling achieves the minimum flood planning level for floor levels. The development complies with the flood controls for the site.

Clause 6.6 – Essential Services

The site is capable of being connected to all essential services. Suitable vehicular access can be provided subject to conditions recommended by Council's Development Engineer.

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

No draft instruments apply to the site.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

Chapter B2 Preservation of Trees and Other Vegetation

Some tree and vegetation removal is required to facilitate the development including a native plum pine. However it is considered the bulk of the vegetation is likely to have been planted. It is expected further landscaping of the site post construction will occur to compensate for any trees to be removed, with the Basix certificate requiring the planting of a minimum area of 50m² of low water use or indigenous vegetation. It is considered the proposal is consistent with this chapter.

Chapter B3 Services

Council's Development Engineer has recommended conditions in relation to property access, and stormwater disposal, on site stormwater detention will be required for the development.

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access

A total of three spaces are required, two for the existing dwelling and one for the new dwelling. With the garage converted back into a garage, a second space provided in the rear yard and a further space proposed under the new dwelling the development complies. Conditions of consent to apply in relation to access, parking and driveways.

Chapter B7 Mosquitos and Biting Midges

The site is located within the Saltmarsh primary habitat 1000m buffer (blue) and the Coastal Swamp 200m buffer (purple) areas. A condition requiring effective insect screening to be provided to all openings is recommended.

Chapter B9 Landscaping

A landscaping plan is required by the BASIX Certificate 1130409S_02. The site plan shows the location of this planting area and identifies species as required

D1 Residential Accommodation in Urban, Village & Special Purpose Zones

1.2.1 Building Height Plane

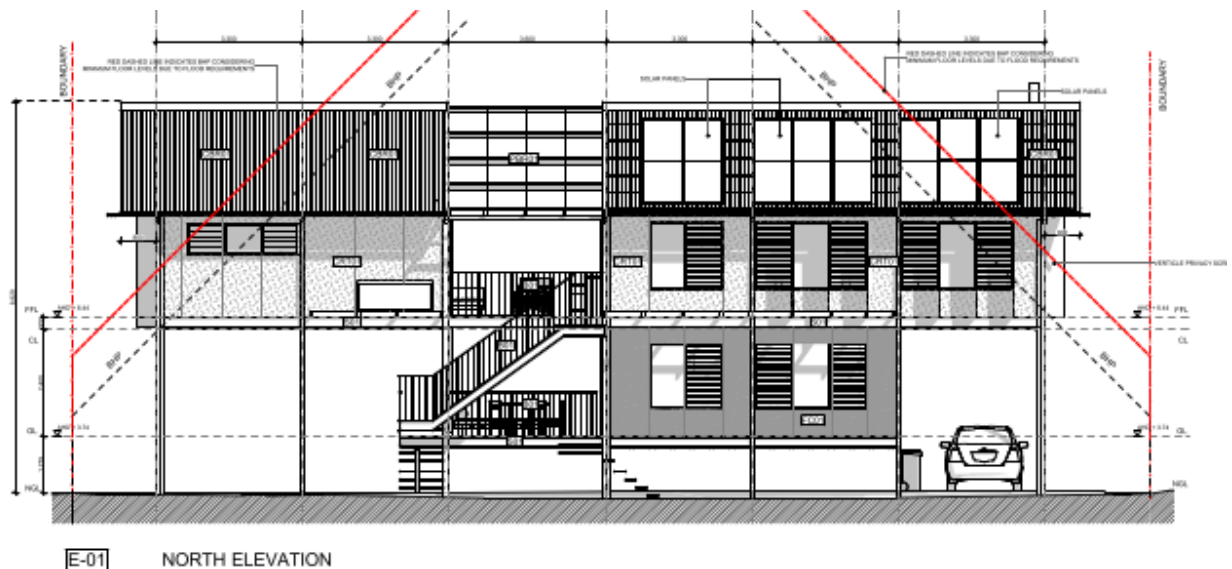
The proposed development breaches the prescribed building height plane which is defined under DCP 2014 as:

Building Height Plane means the plane projected at an angle of 45⁰ over the land to be built upon, measured from a vertical distance of 1.8 metres above ground level (existing) at the site boundary.

Variations to the east and west building height planes of the proposed dwelling are sought

It is acknowledged that the site is constrained by flooding, and as such the floor level is required to be raised to provide flood immunity for the development (with a minimum floor level of 3.74m AHD). As a consequence of the floor level raising to achieve flood immunity, the design of the dwelling is unable to achieve full compliance with the building height plane control without a lowering of the roof pitch and other changes to the layout and roof design.

It is noted the adjoining properties contain single storey dwellings which are situated towards New City Road.



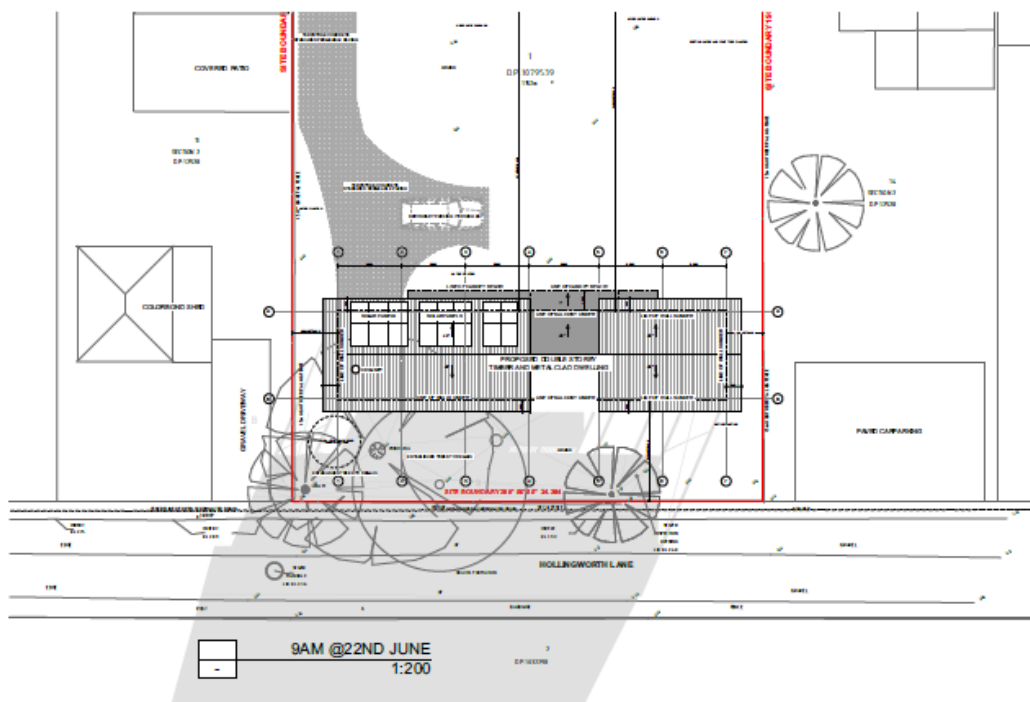
North Elevation showing the Building Height Plane Encroachment - dotted black line. A high resolution image is available within attachment 1 – Plans

The following comments are provided having regards to the Objectives and performance criteria underpinning the Building Height Plane Controls.

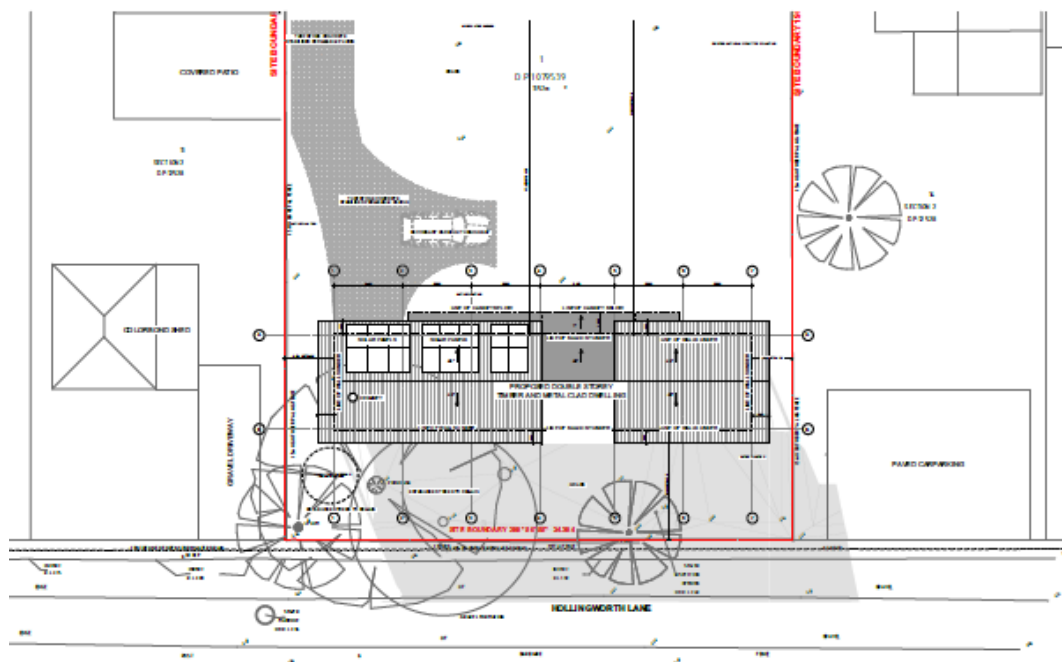
Objective 1. To ensure that residential development is designed to minimise impacts on solar access and privacy on adjoining properties, and on the views from adjacent existing buildings

Objective 2. To ensure that the occupants of the building or buildings will enjoy the optimum use of winter sunlight and summer shade.

The application is accompanied by shadow diagrams which demonstrate that there is minimal overshadowing of adjacent properties between 9am and 3pm during the midwinter. High resolution images are available within attachment 5 Shadow diagrams.

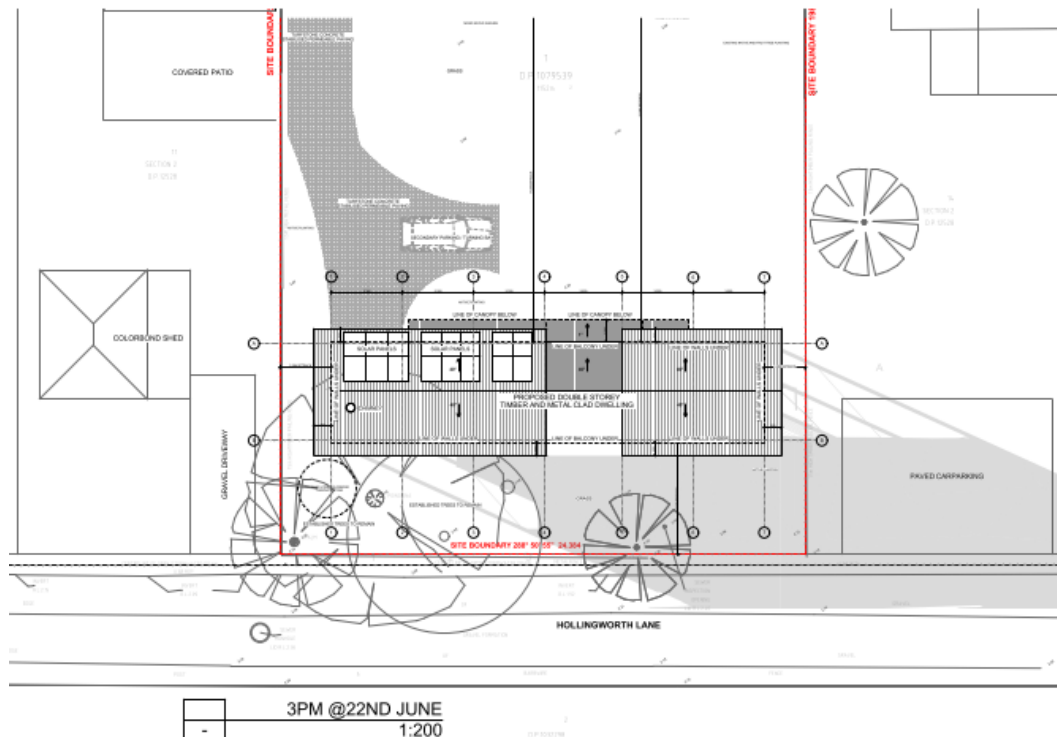


9am Midwinter shadow plan



5

Midday Midwinter Shadow Plan



3pm Midwinter Shadow Plan

- 5 Such shadow impact generally falls across Hollingworth Lane to the rear of the site. Some elements of the adjacent shed to the east are overshadowed during the late pm.

- 10 In terms of privacy, there are two (2) small windows located on the east and western façade of the dwelling. Both of these windows include a fixed privacy screen proposed by the applicant. However windows on the northern elevation have the potential to overlook the yards of the two immediate neighbours

To protect the privacy of the adjoining properties it is recommended that these windows are modified to include privacy screening.

- 15 In terms of the large rural property to the south it is considered the development will not adversely impact upon the parcel in terms of overshadowing or overlooking

It is considered the proposal is acceptable in terms of the Objectives.

Performance Criteria 1

- 20 *Developments must be set back progressively from the site boundaries as height increases so that they do not adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views.*

- 25 The design of the building has not been progressively stepped in from the site boundaries as the building has increased in height, however as discussed above impacts from overshadowing and overlooking are considered acceptable subject to conditions of consent.

Performance Criteria 2

Developments must be designed so that they will promote energy efficiency and so that residents may enjoy optimum use of winter sunlight and summer shade.

- 5 The proposed dwelling has sufficient private open space with amenity to the north of the dwelling and does not impact the private open space area of the existing dwelling. The proposed dwelling has been designed to include large windows to the north and south

Performance Criteria 3

- 10 *Development applications must demonstrate that the windows of living areas (decks, living rooms, bedrooms, kitchens, etc.) of development on adjoining properties will, as a minimum, retain full solar access between the hours of 9.00am to 3.00pm on any day.*

- 15 Shadow diagrams provided show that the proposed dwelling during June 22 (winter) and December 20 (summer) and the equinox will not cause overshadowing to habitable rooms on adjoining properties between 9am and 3pm.

Conclusion

- 20 The proposal although contrary to the performance criteria 1 is considered acceptable having regards to the dwellings siting at the rear of the lot adjacent to the southern boundary

- 25 Options existing to provide for a more compliant design including; a lowering of the roof pitch and other changes to the layout and roof design however these have not been adopted by the applicant during discussions with the applicant.

D1.2.3 Screening the Underfloor Space of Buildings

- 30 No underfloor screening has been proposed as part of this application. Conditions of consent are proposed requiring partial screening on the eastern and western elevations to improve the external appearance of the dwelling.

Chapter E3 Mullumbimby

- 35 The site is located within Pocket B, Sensitive Character category and Precinct 3 of the Mullumbimby Township.

Pocket B is described as: *east of the rail corridor, reflects the various styles of the post war era with an eclectic mix of low set homes with a blend of external materials including fibro, rendered brick and weatherboard.*

- 40 The defining features of this area are typically single storey, with low pitched roofs, setbacks that minimise their impact and front doors and verandahs facing the street.

- 45 The dwelling design contains a significantly raised second storey that comprises the bulk of the dwelling, a steeply pitched roof of 40 degrees and it can be argued is inconsistent with the intent of this chapter. Refer to Attachment 6 of this report for a section plan which shows the pedestrian cone of vision from New City Road frontage.

However, in support of the proposal the dwelling house is located on the eastern periphery of Mullumbimby, overlooks farmland to the south, and has a minimum footprint and floor

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area, leaving significant area within the property for private open space and garden use. A variation to the provisions is supported in this instance.

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	Yes 92(b) demolition	Yes	Yes subject to conditions
93	No	N/a	N/a
94	No	N/a	N/a
94A	No	N/a	N/a

* Non-compliances and any other significant issues discussed below

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

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	Potential for privacy impacts on neighbours as discussed above. Conditions to apply to ameliorate such impacts.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

4.7 The suitability of the site for the development

10 The site is a serviced, and generally unconstrained other than flooding and is suitable for the proposed development. Conditions to apply in relation to minimum floor levels in relation to flooding.

4.8 Submissions made in accordance with this Act or the regulations

15 The development application was publicly exhibited. Council received one submission which raised the following concerns

Submission	Comment
Height of building in relation to the	The proposal complies with the BLEP clause 4.3 Height of buildings and is less

surrounding existing dwellings (character)	<p>than the prescribed 9m height limit.</p> <p>The chimney flue exceeds the 9m limit however this element of the structure is excluded by the definition of building height within the LEP.</p>
<p>Overshadowing</p> <p>The objection received requests that additional shadow diagrams be provided for 3pm to 8:30pm in summer.</p>	<p>Performance criteria 3 of the Building height plane requires applications to demonstrate that “windows of living areas...of development on adjoining properties between the hours of 9am to 3pm on any day. There is no requirement for additional shadow diagrams to be provided between 3pm and 8.30pm.</p> <p>Shadow diagrams for winter show the worst case scenario of shadows cast by the dwelling. These diagrams are available higher resolution in attachment 5. Shadow diagrams for summer have also been provided and do not create a significant impact.</p> <p>The shadow diagrams provided show that there is no or minimal overshadowing of the adjoining dwellings would occur as a result of the non-compliance with the Building height plane.</p>

4.9 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent having regards to the site location on the eastern periphery of Mullumbimby.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable.

5.2 Section 7.11 Contributions

10 Section 7.11 Contributions will be payable.

6. CONCLUSION

5 The application proposes New Dwelling to Create a Dual Occupancy (Detached). Variations to council's planning controls have been sought in relation to building height plane and the residential character narrative provisions for Mullumbimby and these are supported. The proposal raises no issues in terms of environmental impact or site suitability. The application is recommended for approval subject to conditions of consent.

7. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

10 *Note: From July 1 2018, Council's 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 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 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 development application was notified/advertised in accordance with the Community Participation Plan. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.
How community views were addressed
The DA was advertised in accordance with Byron Shire Council Community Participation Plan (CPP). The submissions received were considered on merit and addressed during assessment of the application.

8. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

Report No. 13.4 PLANNING - S4.55 application to modify consent 10.2018.480.1 to amend driveway design - 8 Cemetery Road Byron Bay

Directorate: Sustainable Environment and Economy

5 **Report Author:** Ivan Holland, Planner

File No: I2021/78

Proposal:

Section 96 Application No: 10.2018.480.2

Proposed modification: To Include Use of Unauthorised Carport and Amend Condition 8 in relation to Driveway Design Standards

Original Development: Stage 1: Strata Subdivision to Create Two (2) Lots including One (1) Vacant Lot, Stage 2: Construction of New Dwelling House on Vacant Strata Lot to Create Dual Occupancy (Detached) with Expanded Dwelling Module

Type of modification sought:

Property description: LOT: 21 DP: 838192

8 Cemetery Road BYRON BAY

Parcel No/s: 195230

Applicant: Ardill Payne & Partners

Owner: Mr P R Shine & Ms C M Coorey

Zoning: 2(a) Residential Zone (BLEP1988)

S96 Date received: 3 September 2020

Original DA determination date: 11/04/2019

Integrated Development: Yes CNR-12098 (Bush fire safety authority)

Public notification or exhibition:

- Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 14/9 - 27/9/2020
- Submissions received: Nil (0)

Planning Review Committee: Not applicable

Issues: Carport associated with parking required for the dwelling on Lot 1 encroaches the street front setback.

Summary:

The current application has been referred for determination by the elected Council as it relates to land jointly owned by a Councillor.

5 An application has been received to modify development application 10.2018.480.1 to Include Use of Unauthorised Carport and Amend Condition 8 in relation to Driveway Design Standards. The subject development consent authorises strata subdivision and construction of a new dwellings to create a dual occupancy (detached) with expanded dwelling module.

10 The original proposed modification was to reduce the driveway width to avoid impacting a tree designated for retention. During assessment of the application an alternate solution was identified being to alter the strata subdivision boundary thus enabling the driveway to be constructed in compliance with the relevant Australian Standard. The proposal to amend the driveway design is satisfactory having regard to relevant matters for consideration and the section 4.55 application is recommended for approval subject to
15 conditions.

The proposal to authorise use of the Unauthorised Carport is not supported having regard to relevant matters for consideration.

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NOTE TO COUNCILLORS:

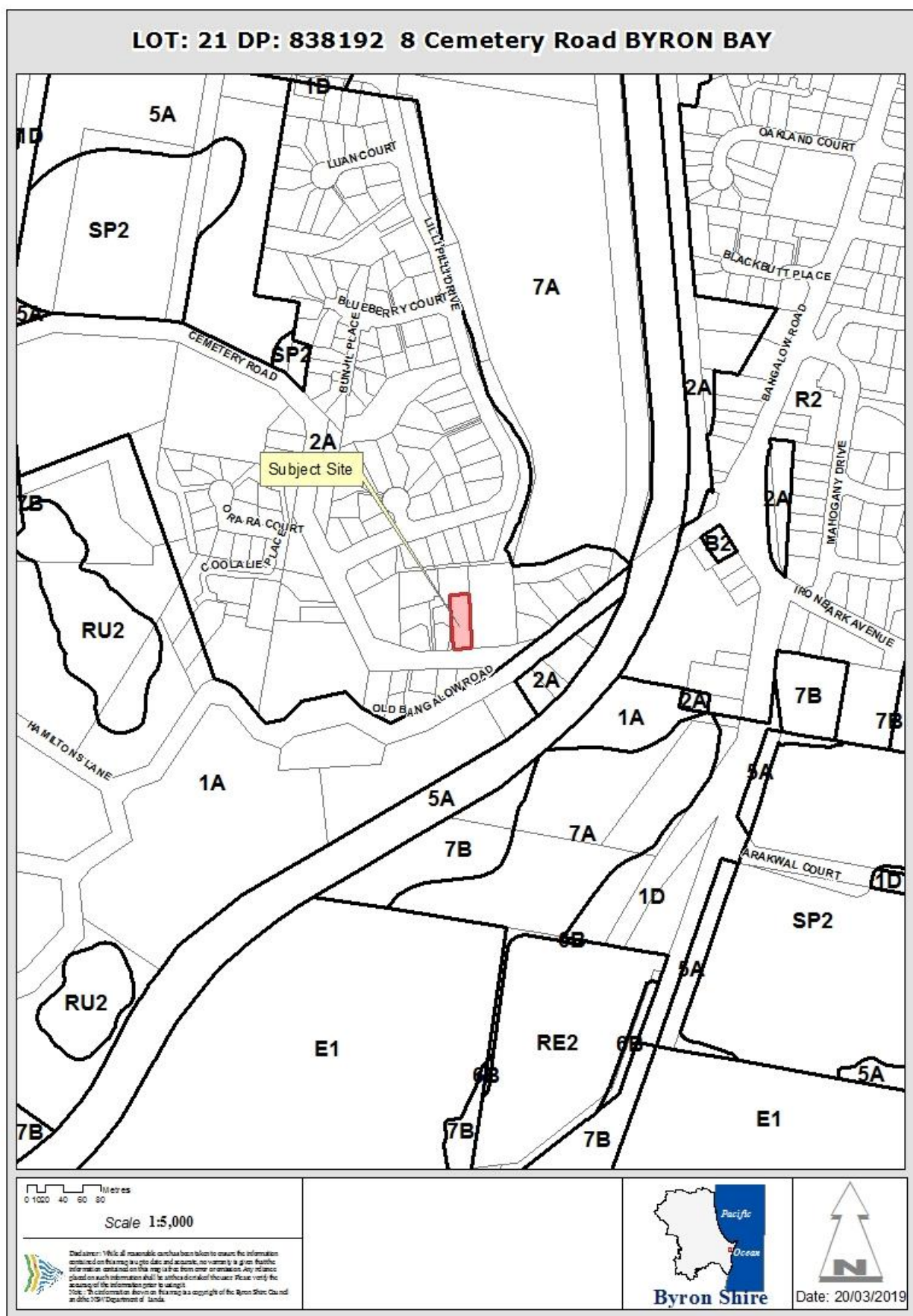
- 5 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

RECOMMENDATION:

- 10 1. That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Application No. 10.2018.480.2, for S4.55 to Amend the Driveway Design, be approved by modifying Development consent number 10.2018.480.1 as indicated in Attachment 1 (E2021/8918).
2. That Council notes that the Unauthorised Carport is not recommended for approval for the reasons outlined in this report.

15 Attachments:

- 1 Modified conditions of consent for DA 10.2018.480.1, E2021/8919 



Assessment

1. INTRODUCTION

1.1. History/Background

- 5 Below is an extract from development assessment report for original development application (DA 10.2018.480.1):

<i>Application</i>	<i>Description</i>	<i>Determination Date</i>	<i>Determination</i>
10.2012.560.1	Installation of an insulated patio roof and construction of a deck	30/01/2013	Approved
10.2014.405.1	Use of works (insulated patio roof and deck)	05/08/2014	Approved
10.2014.428.1	Roof over Patio	18/08/2014	Withdrawn
10.2017.223.1	Secondary Dwelling	25/10/2017	Withdrawn
10.2018.480.1	Stage 1: Strata Subdivision to Create Two (2) Lots including One (1) Vacant Lot, Stage 2: Construction of New Dwelling House on Vacant Strata Lot to Create Dual Occupancy (Detached) with Expanded Dwelling Module		



Figure 1. Above is the approved strata plan

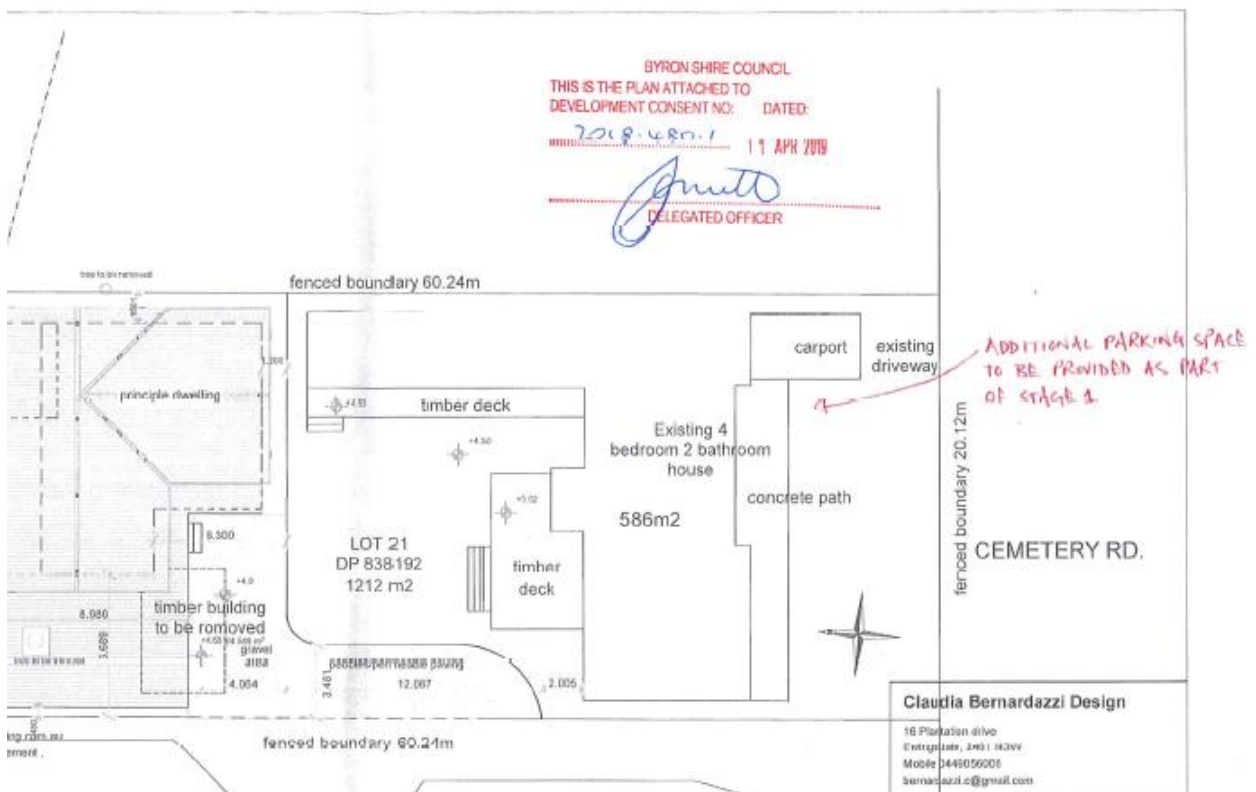


Figure 2. Above is the approved site plan

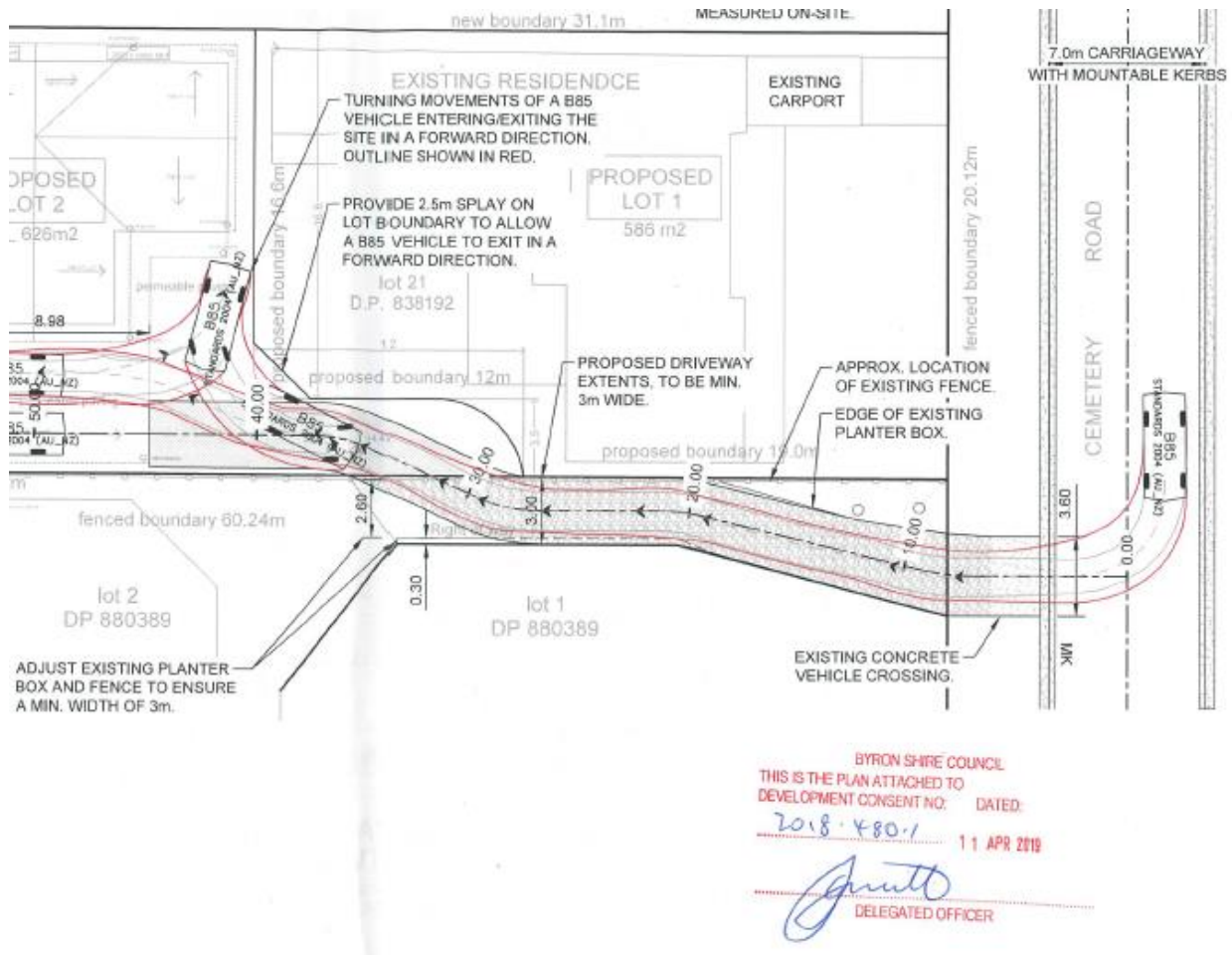


Figure 3. Above is the approved access and parking layout plan



Figure 4. Above is the Google Street View image of carport (July 2019)

1.2. Description of the proposed development

This application seeks approval to modify DA 10.2018.480.1 to:

1. Allow use of an unauthorised carport; and
2. Amend condition 8 to remove the requirement for the driveway access to comply with design requirements in Australia Standard 2890.1:2004.

The application is recommended for approval in relation to amending the driveway layout. Use of the unauthorised carport is not included in the modifications that are recommended for approval by this Report. The reasons for this recommendation are outlined in Section 2 of this report.

1.3. Description of the site

Following is an extract from development assessment report for DA 10.2018.480.1:

Land is legally described as *LOT: 21 DP: 838192*

Property address is *8 Cemetery Road BYRON BAY*

Land is zoned: *2(a) Residential Zone (BLEP1988)*

Land area is: *1212 m²*

Property is constrained by the following:

Easement *The rear portion of the site is constrained by a 5m wide easement for water supply. The easement traverses the rear of the property on a diagonal and represents a significant limitation on the available building envelope. The easement will separate the proposed 'main dwelling' on proposed Lot 2 from the expanded dwelling module.*

Bushfire prone land *The land is mapped as containing a small area of Category 1 bushfire vegetation, with the remainder of the property being located within the buffer to that vegetation. Accordingly, the application was classified as 'Integrated Development' and referred to the NSW RFS as part of the assessment process.*

Acid Sulfate Soils *The land is mapped as comprising a combination of Class 2 and Class 5 ASS.*

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5 *The rear of the property comprises landscaped grounds with assorted trees and plantings. A small cabin / cubby house is located at the rear of the land which will be demolished to accommodate the development. The following plates illustrate the existing improvements on the site. The existing driveway access for the adjoining property which is to be utilised by proposed Lot 2 is also illustrated in the plates below. This driveway is relatively narrow and is currently finished with a gravel all weather surface.*

The site was inspected on 5 November 2020



Photo 1 – Carport for proposed lot 1.



Photo 2 – Carport viewed from Cemetery Road to the east.



Photo 3 – Carport viewed from Cemetery Road to the west.



Photo 4 – Cemetery Road to the west of the subject property.



Photo 5 – Current driveway to proposed Lot 2.

2. SECTION 4.15 – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

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

5 2.1. State/Regional Planning Policies, Instruments, EPA Regulations 2000

	Agree or No (add comments as required)
Proposed amendments raise no issues under the relevant SEPPS, Policies or clauses of the EPA Regulations 2000	<p>Agree</p> <p>The development will remain compliant with Council's "Provision of Driveways Policy" subject to the conditions recommended by Council's Development Engineer.</p> <p>The development will remain compliant with Council's "Building over pipelines and other underground structures Policy" subject to the current conditions and as confirmed by Rous Water.</p>

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2.2. Byron Local Environmental Plan 2014

	Agree or No (add comments as required)
Proposed amendments raise no issues under the LEP	Agree

2.3. Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues

	Agree or No (Add comments as required)
No draft EPIs affect the proposal.	Agree

2.4. Development Control Plans

	Agree or No (Add comments as required)
Proposed amendments do not generate any additional issues that have not been previously considered.	<p>No - see below</p> <p><u>A. Driveway design</u></p> <p>In relation to the amended driveway design for proposed lot 2, Council's Development Engineer is of the view that the proposed driveway width reduction is not adequately justified and that the issue (retention of the tree) is better solved through amending the strata lot boundary to accommodate the required driveway width. Recommended conditions reflect this approach.</p> <p><u>B. Use of carport</u></p> <p>In the assessment of the original DA, Council's Development Engineer identified a "<i>Shortfall of one carparking space for existing dwelling. Condition to be applied requiring provision of additional space adjacent to existing.</i>" In relation to car parking for the existing dwelling</p>

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	Agree or No (Add comments as required)
	<p>pursuant to C5.1 BDCP2010, the original DA assessment report noted, <i>“Given that the proposal seeks to establish a new development outcome for the site, it is reasonable that the project provide a second space in accordance with the DCP requirements (particularly having regard to the potential for ownership changes in the future). The applicant has agreed to this requirement and a suitable condition has been applied.</i></p> <p>The original approval for the single carport for the existing dwelling could not be located in Council’s records. However this structure appears to have been approved under DA 10.2018.480.1 owing to it appearing on the stamped plans (see Figures 1, 2 and 3 above). The additional car parking space was required to be sealed by the conditions of approval <u>but not covered</u>.</p> <p>The original carport was set back ~3 metres from the street front boundary and sloped towards the street (see Figure 4).</p> <p>The new carport building is set back approximately 1 metre from the front boundary. This represents a significant encroachment into the required street front setback of 6.5 metres (C2.6 of DCP2010) and an increase in encroachment of ~2 metres from the carport under the original DA.</p> <p>The prescriptive measures expressly state <i>“Car spaces must not be provided within the setback”</i>. However, the setback requirements are designed to be flexible to achieve the objective of <i>“To achieve varied and interesting streetscapes, good orientation of residential developments with regard to sun, shade, wind and neighbouring development, and effective use of allotments to create private open space and courtyards”</i>.</p> <p>The carport location is inconsistent with (less than) the current street front setback pattern. The carport increases in height towards to street, reaching 3.75 metres in height, which increases the visual impact of the structure.</p> <p>Further, the carport is longer and higher than required by Australian Standards (AS2890.1:2004).</p> <p>It is acknowledged that there are factors that mitigate the street front setback encroachment such as:</p>

	Agree or No (Add comments as required)
	<ul style="list-style-type: none"> • Being an open structure the impact on views from neighbouring properties will be minimised; • The structure is partially screened by established vegetation (however, some of this screening vegetation is located on the neighbouring property to the east); • The structure is located to the south of the dwelling thus minimising solar access impacts; • The structure will not impact on private open space of dwelling; and • The reduced setback of the carport provides variety in the streetscape. <p>Further, design options are available to reduce the encroachment and impact of the carport on the street front and achieve compliance with Australian standards. For this reason and the other issues outlined above, the carport structure is not considered to adequately meet the objective and is not supported. The applicant was informed of this staff position on 14/12/20.</p> <p>In response, the applicant has offered to grow climbing plants on the carport and install a sliding, timber gate to mitigate the visual impact of the carport. A collection of photos of garages and carports in Byron Shire was also provided by the applicant.</p>

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

	Agree or No (Add comments as required)
Proposed amendments do not generate any impacts that have not been previously considered.	No - see below Non-compliance of single carport with street front setback requirements was not expressly considered in the development assessment report for the original DA. The impacts of the encroachment of the carport in the street front setback are considered above (section 2.4).

2.6. The suitability of the site for the development

	Agree or No. (Add comments as required)
Proposed amendments do not affect the Sites Suitability.	Agree

5 2.7 Submissions made in accordance with this Act or the regulations

	Agree or No. (Add comments as required)
No Submissions were received.	Agree

2.8 Public interest

	Agree or No Add comments as required
Proposed amendments are unlikely to prejudice or compromise the public	No - see below The proposed carport is not in accordance with Council's

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	Agree or No Add comments as required
interest.	development controls, Australian standards for design and does not meet the relevant planning objective as detailed above.

3. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

	Agree or No. (Add comments as required)
There is no nexus to levy additional contributions.	Agree

4. BUSH FIRE – INTEGRATED DEVELOPMENT

- 5 The original development application was for integrated development. Accordingly, the modification application was referred to the Rural Fire Service for an updated Bush Fire Safety Authority and general terms of approval. The Rural Fire Service provided an updated Bush Fire Safety Authority and general terms of approval on 27 November 2020.

3. CONCLUSION

- 10 An application has been received to modify development application 10.2018.480.1 to Include Use of Unauthorised Carport and Amend Condition 8 in relation to Driveway Design Standards.

The proposal to amend the driveway design is satisfactory having regard to relevant matters for consideration and the section 4.55 application is recommended for approval subject to conditions.

- 15 The proposal to authorise use of the Unauthorised Carport is not supported having regard to relevant matters for consideration.

STATEMENT OF REASONS

Note: From July 1 2018, Council's 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 modifications were minor and substantially the same as the original development approval with no detrimental environmental impacts.

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How community views were addressed

The DA was notified/advertised in accordance with Development Control Plan 2014. No submissions were received.