

Statement of Environmental Effects  
& DCP Modification Request

# Habitat

Stage 4

Part Lot 1 & Lot 10 DP 271119  
Fullerton Lane, Gallagher Street  
& Easy Street, Byron Bay

**PLANNERS NORTH**, September, 2019



## COMPLIANCE AND USAGE STATEMENT

This Statement of Environmental Effects & Development Control Plan Modification Request has been prepared and submitted under the *Environmental Planning and Assessment Act 1979* by:

### Preparation

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In respect of: Stage 4 at HABITAT

### Application

Proponent: Bayshore Development Pty Ltd  
Address: C/ - PLANNERS NORTH  
P.O. Box 538, Lennox Head NSW 2478  
Land to be developed: Part Lot 1 & Lot 10 DP 271119, Byron Bay  
Proposed development: Stage 4 at HABITAT, entailing the erection of a part-one and part-two level complex, providing retail premises, restaurant / café and recreation facilities (indoor) land uses, together with 37 car parking spaces.  
Environmental Assessment: Statement of Environmental Effects

### Certificate

I certify that I have prepared the content of this Development Application and Development Control Plan Modification Request and to the best of my knowledge:

- it is in accordance with the Act and Regulations, and
- it is true in all material particulars and does not, by its presentation or omission of information, materially mislead.

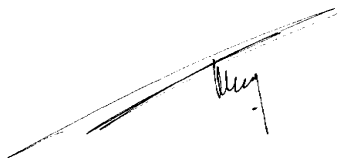
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Ref: 1017.2822

Date: September 2019

# HABITAT • STAGE 4

## EXECUTIVE SUMMARY

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PLANNERS NORTH has been engaged by Bayshore Development Pty Ltd to provide Town Planning advice with respect to the preparation and lodgement of a Development Application, Statement of Environmental Effects and Development Control Plan Modification Request with Byron Shire Council in regard to land described as Part Lot 1 & Lot 10 DP 271119, Byron Bay.

This Development Application relates to "Stage 4" of the HABITAT development. After this stage, only one more construction stage is envisaged for the HABITAT project.

The Development Consent is sought for a mixed use development, entailing the erection of a part 1 and part 2 level above ground complex, providing business premises, office premises, retail premises, restaurant / café and recreation facilities (indoor) land uses together with 37 car parking spaces. These land uses are permissible within the B4 - Mixed Use zone under Byron Local Environmental Plan 2014 (BLEP14).

At ground floor level, it is intended to provide 448m<sup>2</sup> of retail floor space, food and drink premises of 102m<sup>2</sup> and indoor recreation facility of 208m<sup>2</sup>. At this level, 37 car parking spaces are provided, as well as amenities (26m<sup>2</sup>), landscaping and the like. The first level involves business and office space (449m<sup>2</sup>), meeting rooms and amenities (48 m<sup>2</sup>). To the east, the premises at this level are proposed for three indoor recreation facility rooms (with a total area of 405m<sup>2</sup>). The Level 2 level is composed of business and office premises, meeting room and amenities. The business and office areas at this floor have an area of 449m<sup>2</sup>. This floor also has a meeting room and amenities (26m<sup>2</sup>).

The estimated construction cost of the development is \$5.85m.

Currently, the Byron Development Control Plan 2014 (BDCP14) Precinct 1 Chapter E5 covers the three undeveloped Deposited Plan blocks. This application seeks a modification to the DCP to split Precinct 1 into two precincts (1A and 1B). The Precinct 1A relates to the two Deposited Plan blocks north of Easy Street. No substantive changes are proposed in relation to the provisions of the DCP applicable to that component of the site. The main changes sought relate to the Deposited Plan block south of Easy street. The amendments proposed seek to facilitate the mixed-use development described in this Development Application.

The proposal exceeds the 9m height specified by Clause 4.3 of BLEP14. We respectfully seek the relaxation of that standard in the special circumstances of the subject case. Having regard to the considerations specified in Clause 4.6, we submit that the variation proposed is consistent with the objectives of the clause; achieves a better planning outcome and the variation will be in line with the decisions of the Land and Environment Court in *Wehbe -v- Pittwater Council and Winten Developments -v- North Sydney Council*.

The proposal by Bayshore Developments Pty Ltd to carry out a further stage of mixed-use development entailing retailing, office, café and recreation facility uses is a product of many factors. Those factors include:

- the success of HABITAT as a vibrant Live/ Work environment;
- policies of all levels of government to promote the orderly development and use of land which can be demonstrated to be suitable for mixed use development;
- strong demand for business and retail accommodation, as well as additional recreation facilities; and
- the site planning opportunities presented by the HABITAT property.

The proposed development application is permissible under BLEP14 and is consistent with relevant State Environmental Planning Policies.

In our opinion, the development can be seen to satisfy a legitimate need and is capable of construction and use in a manner which mitigates potential adverse impacts consistent with the zone objectives detailed in Council's BLEP14. We submit approval of HABITAT Stage 4 would be in the public interest within the meaning of Section 4.15(1)(e) of the Act.

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**BUNDLE OF TECHNICAL REPORTS LIST**

- 
1. Architectural Statement
  2. Civil Engineering Report
  3. Traffic Report
  4. Building Code of Australia Assessment
  5. Construction Waste Management Plan
  6. Operational Waste Management Plan
  7. Quantity Surveyors Report
  8. Mobility Access Report

## 1. INTRODUCTION

*This section of the report identifies the nature of client instructions, relevant background information and the structure of the report.*

### 1.1 BACKGROUND

PLANNERS NORTH has been engaged by Bayshore Development Pty Ltd to provide Town Planning advice with respect to the preparation and lodgement of a Development Application, Statement of Environmental Effects and Development Control Plan Modification Request with Byron Shire Council in regard to land described as Part Lot 1 & Lot 10 DP 271119, Byron Bay.

This Development Application relates to “Stage 4” of the HABITAT development. After this stage, only one more construction stage is envisaged for the HABITAT project.

**Plan 1.1** illustrates a locality plan generally identifying Stage 4.



**Plan 1.1 Site Locality Plan**

### 1.2 STRUCTURE OF REPORT AND ITS SCOPE

Section 2 of this report describes the physical characteristics of the subject land and its planning context. Section 3 describes in detail the development proposal and the Development Control Plan Modification Request. Having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 (EPAA), Section 4 sets out

an examination of the statutory and policy planning status relating to the land, with particular regard to the development proposal described in Section 3. Section 5 looks at the environmental interactions of the proposal, particularly as specified by Section 4.15(1)(b) and (c) of the EPAA Act. The final section of the report undertakes a general review of the project and summation as to the appropriateness of the project considering the planning controls applying to the land, land use needs in the locality and matters set out for consideration in Section 4.15(1)(e).



*View of the north-eastern part of Stage 4 from Easy Street*

The Development Application form and landowner authorities for Lots 1 and 10 authorising lodgement of the subject application is contained in **Appendix A** to this report. Details in relation to the DCP modification sought are set out at **Appendix B**. Our objection in relation to the height standard in BLEP14 is contained at **Appendix C**.

This Statement of Environmental Effects is accompanied by a **Bundle of Technical Reports** and a **Plan Set** prepared by DFJ Architects.

### 1.3 SPECIALIST TECHNICAL ADVICE

Specialist advice was sought from:

- **DFJ Architects** in relation to the preparation of architectural design and plans for this application;

- **East Coast Certification Group** in relation to Building Code of Australia assessment;
- **National Access** in relation to Accessibility assessment;
- **Ardill Payne and Partners** in relation to civil engineering matters;
- **Rytenskild Traffic Solutions** in relation to traffic and parking considerations arising from this application; and
- **Mitchell Brandtman** quantity surveyors with respect to building cost estimates.

#### **1.4 FURTHER INFORMATION**

Should Council require any additional information, or wish to clarify any matter raised by this proposal or submissions made to same, Council is requested to consult with **Steve Connelly** prior to the determination of this application.



## 2. THE SITE AND ITS CONTEXT

*This section of the report identifies the subject site and describes its environmental planning context.*

### 2.1 CADASTRAL DESCRIPTION

The primary site, as illustrated in **Plan 2.1**, and is described in Real Property terms as Part Lot 10 DP 271119. The site has an area of 2403.4m<sup>2</sup> and is rectangular in shape (see **Plans DA 050 & 051** in the **Plan Set**).

The proposal also includes “development activities” by the proponent on Community Association land, being part of Lot 1 DP 271119.

HABITAT is managed pursuant to a Community Management Statement which sets out:

- the Community Management Statement objectives;
- architectural and landscape standards;
- restricted Community Property provisions;
- mandatory matter provisions;
- optional matter provisions;
- bylaws required by authorities;
- definitions and interpretation; and
- plans.

The Management Statement is binding on the Community Association as well as subsidiary body corporates.

### 2.2 DEVELOPMENT APPROVAL HISTORY

The initial construction of roadworks, implementation of utility services and environmental enhancement works was undertaken pursuant to DA consents 2008/360 and 2011/162.

#### Stage 1

DA 2015/353 provided for the mixed-use development comprising residential dwellings, commercial and retail units, recreation facilities, associated infrastructure and subdivision.

Alterations to the physical form of the Stage 1 approval have related mainly to enhancements to the recreation facilities approved pursuant to DA 2016/617.

#### Stage 2

Stage 2 involved the erection of a residential flat building with associated light industry, approved pursuant to DA 2017/4. This Development Application provided for two additional live/work buildings extending on the two buildings approved at Stage 1.



*View of the eastern part of Stage 4 from Easy Street towards Fullerton Lane.*

#### Stage 3

DA 2017/628 provided for the construction of 60 “pocket living” apartments. This stage is under construction at the time of lodgement of this application.

### 2.3 BUSHFIRE

The HABITAT site is particularly mapped as being located within a vegetation buffer pursuant to the published Bushfire Prone Land mapping.

No part of Stage 4 is mapped as bushfire prone land. Further, nothing in this application requires referral of the proposal to the Rural Fire Service.

### 2.4 SITE ANALYSIS

The below site analysis sketch shows the subject site and includes an illustration of land mapped as part of a bushfire vegetation buffer. To the south of the subject site between



Fullerton Lane and Parkes Avenue HABITAT has been developed for Live/Work purposes.



*Site Analysis Sketch*

To the west 60 Pocket Living apartments are currently under construction.

The relevant utility services are available to the subject site.

## 2.5 CAR PARKING

With respect to the overall HABITAT Precinct, Stage 1-3 have completed. The completed stages currently operate with a car parking surplus of 53 spaces. The car parking spaces attributable to the completed stages are illustrated in **Plan 2.1**.

	Commercial Terraces		
	Required	Provided	Net
Carparks	22	22	0
PWD (incl. above)	(0)	(0)	(0)
Loading Bays	1	0	-1

Warehouse Lofts C+D			
	Required	Provided	Net
Carparks	33	33	0
PWD (incl. above)	1	1	0
Loading Bays	1	1	0

Warehouse Lofts A+B			
	Required	Provided	Net
Carparks	33	33	0
PWD (incl. above)	1	1	0
Loading Bays	1	1	0

	Pocket Living		
	Required	Provided	Net
Carparks	77	77	0
PWD (incl. above)	16	16	0
Loading Bays	1	1	0

	Site Surplus		
	Provided	+ Others	Net
Carparks	53	0	53
PWD (incl. above)	0	2	0
Loading Bays	1	-1	0





### 3. THE DEVELOPMENT PROPOSAL

*This section of the report defines the site planning objectives utilised in schematic design. Further, this section describes the project by way of text, mapping and statistical information.*

#### 3.1 SITE PLANNING OBJECTIVES

The following site planning objectives have been adopted for Stage 4:

- Provide an architectural form that relates well with the existing land use pattern and built form at HABITAT;
- Ensure that waste from both construction and the commercial utilisation of Stage 4 is appropriately managed;
- Incorporate best practice sustainability principles in both the design and the long-term utilisation of the mixed use of Stage 4;
- Ensure that noise and vibration associated with both the construction and the operation of the new mixed use premises and the HABITAT neighbourhood generally;



*Eastern view from Fullerton Lane of 1 Porter Street.*

- Ensure that adequate utility services are available;
- Ensure that the proposed mixed use conforms with the HABITAT road network hierarchy and that adequate parking is provided;
- Carry out development in a manner which protects the existing mixed use/residential amenity of the locality;
- Ensure that construction works are appropriately managed; and

- Review potential for any cumulative impacts associated with implementation of Stage 4.

#### 3.2 GENERAL DESCRIPTION OF DEVELOPMENT APPLICATION PROPOSAL

The Development Consent is sought for a mixed use development, entailing the erection of a part 1 and part 2 level above ground complex, providing business premises, office premises, retail premises, restaurant / café and recreation facilities (indoor) land uses together with 37 car parking spaces.

As illustrated in Plan **DA200** of the **Plan Set**, at ground floor level, it is intended to provide 448m<sup>2</sup> of retail floor space, food and drink premises of 102m<sup>2</sup> and indoor recreation facility of 208m<sup>2</sup>. At this level, 37 car parking spaces are provided, as well as amenities (26m<sup>2</sup>), landscaping and the like.

**Plan Set** architectural drawing **DA201** depicts the first level. That level involves business and office space (449m<sup>2</sup>), meeting rooms and amenities (48 m<sup>2</sup>). To the east, the premises at this level are proposed for three indoor recreation facility rooms (with a total area of 405m<sup>2</sup>).

The Level 2 development is illustrated in the architectural drawing **DA202**. This level is composed of business and office premises, meeting room and amenities. The business and office areas at this floor have an area of 449m<sup>2</sup>. This floor also has a meeting room and amenities (26m<sup>2</sup>). The estimated cost of the development is 5.85m.

The “shorthand” land use descriptions shown in the drawings in the **Plan Set** are clarified as follows.

BLEP14 land uses of “Business premises” and “office premises” will apply for buildings depicted as “business & office” or “retail

premises” in relation to the areas nominated as “retail”.

The areas denoted “food and drink” is to be operated in accordance with the definition of “restaurant or café” contained in BLEP14.

The area labelled “Recreation Facilities (Indoor)” is to be operated in accordance with the definition of “Recreation Facilities (Indoor)” in BLEP14.





The project architect describes the design rationale for Stage 4 in the following way.

*"... with the existing commercial terraces, warehouse lofts and soon to be completed Pocket Living Precinct [HABITAT's] residential quota is nearing capacity. There is now demand for additional commercial, retail and recreation facilities to balance the site mix and also to meet the growing demand from both the A + I Estate and Byron more generally... In addition to meeting demand, we believe that delivering a critical mass of commercial uses across the site will help support and sustain the business of HABITAT long term. Additional recreation facilities (indoor) will increase foot traffic and patronage within the site and ensure a healthy and active lifestyle is readily available to the community. Additional food + drink offer will help drive foot traffic and provide an alternative dietary option for residents, tenants and visitors."*

Tabulated below is the land use budget in relation to Stage 4.

**TABLE 3.1 LAND USE BUDGET**

USE	Area (m <sup>2</sup> )
Amenities	100.06
Business and Office	898.20
Food and Drink	102.10
Rec, Facility (indoor)	613.43
Retail	448.3
<b>TOTAL</b>	<b>2,162.09</b>

Within Lot 1 it is proposed to undertake works generally as illustrated in **Plan DA 150** in the **Plan Set**. The works include:

- tree planting on the northern side of Fullerton Lane;
- the conversion of 3 car parking spaces to loading adjacent to the western boundary of Stage 4 in Gallagher Street;
- the adjustment of 6 car parking spaces in Easy Street for use for loading;
- the implementation of further landscaping in Easy Street;

- vehicular crossovers for car park access in Fullerton Lane and Gallagher Street;
- timber entry deck bridges from Easy Street into Stage 4; and
- a terraced deck on the north eastern edge of Stage 4.

### 3.3 HOURS OF OPERATION

In relation to construction, it is proposed to implement the Interim Construction Noise Guidelines (published by DECC).

The general "opening hours" defined for the HABITAT commercial precinct have evolved and now appear to be working reasonably well. The opening hours sought specifically for the uses in this application are sunrise to 8pm.

### 3.4 DESCRIPTION OF DEVELOPMENT CONTROL PLAN MODIFICATION PROPOSAL

Currently, the Byron Development Control Plan 2014 (BDP14) Precinct 1 Chapter E5 covers three Deposited Plan blocks. This modification to the DCP seeks to split Precinct 1 into two precincts (1A and 1B) (see **Plan 3.2**). The Precinct 1A relates to the two Deposited Plan blocks north of Easy Street. No substantive changes are proposed in relation to the provisions of the DCP applicable to that component of the site.

The main changes sought relate to the Deposited Plan block south of Easy Street. Amendments proposed seek to facilitate the mixed-use development described in this Development Application.

Full details in relation to proposed BDCP14 changes are set out in **Appendix B**. In summary, the changes provide for:

- changes to Clause E5.5.3.4 to provide for Precincts 1A and 1B;
- changes to Clause E5.5.3.4(2) to provide for Precinct 1A related to tiered living and Precinct 1B relating to mixed use;
- changes to Table E5.1 to provide for Precincts 1A and 1B. Precinct B sets out the key land uses proposed;



- change to Table E5.2 to provide for a zero setback to internal roads;
- alterations to Table E5.3 to set out appropriate parking standards for proposed Precinct 1B;
- alterations to Clause E5.5.4.3 to better background the “Byron Style commentary” and to adjust the Performance Criteria with the possibility of three (3) storey building forms;
- alteration to the Performance Criteria in Clause E5.5.4.3 to facilitate the use of masonry concrete;
- alteration to Performance Criteria 2 in Clause E5.5.4.6 to facilitate the possibility of three (3) storey buildings.



SCALE: 1:2000 @ A4



## 4. STATUTORY AND POLICY PLANNING

Section 4.1 documents the range of planning controls applicable in the subject case pursuant to Section 4.15 (1)(a) of the Act and tabulates the effect of these instruments in the circumstances of the development proposal described at Section 3. Section 4.2 examines policy adopted by Council or other authority applicable in the subject matter which, whilst relevant, are not controls within the meaning of Section 4.15 (1)(a).

### 4.1 STATUTORY CONSIDERATIONS

Pursuant to the Environmental Planning & Assessment Act, 1979, a number of statutes are potentially applicable to any single development proposal. This section reviews the range of instruments and notes their application in terms of the subject development application proposal.

#### 4.1.1 DEEMED ENVIRONMENTAL PLANNING INSTRUMENTS

No deemed environmental planning instruments apply to the subject land.

#### 4.1.2 LOCAL ENVIRONMENTAL PLANS

Name: Byron Local Environmental Plan 2014, (BLEP14)

Application in Subject Case:

Zone: **The land is zoned B4 - Mixed Use.**

#### Land Zoning



**Legend** B4 B4 - Mixed Use

**Key Land Uses:** Key land use definitions relevant to this application include:

**commercial premises** means any of the following:

(a) business premises,

(b) office premises,

(c) retail premises

**business premises** means a building or place at or on which:

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or  
(b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.



View of the northern part of the recreation building looking west towards Stage 4.

**office premises** means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

**retail premises** means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) (Repealed)
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

**recreation facility (indoor)** means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club

**restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

**Permissibility:** The land uses proposed by this Development Application are permissible with Council's consent.

**Concurrence:** No concurrence from any Government Department is required in relation to this application.

**Advertising:** Advertising of this development is required pursuant to Council's Development Control Plan.

**Special Provisions Applicable:** The following provisions of BLEP14 are applicable to Council's consideration of the subject proposal:

**Clause 2.3 - Zone Objectives:** The objectives of the relevant zones are set out below.

#### **B4 - Mixed Use**

##### **1 Objectives of zone**

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible

locations so as to maximise public transport patronage and encourage walking and cycling.

##### **2 Permitted without consent**

Environmental protection works; Home-based child care; Home occupations

##### **3 Permitted with consent**

Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Dual occupancies; Dwelling houses; Educational establishments; Entertainment facilities; Function centres; Hostels; Hotel or motel accommodation; Information and education facilities; Light industries; Medical centres; Multi dwelling housing; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Seniors housing; Serviced apartments; Shop top housing; Any other development not specified in item 2 or 4

##### **4 Prohibited**

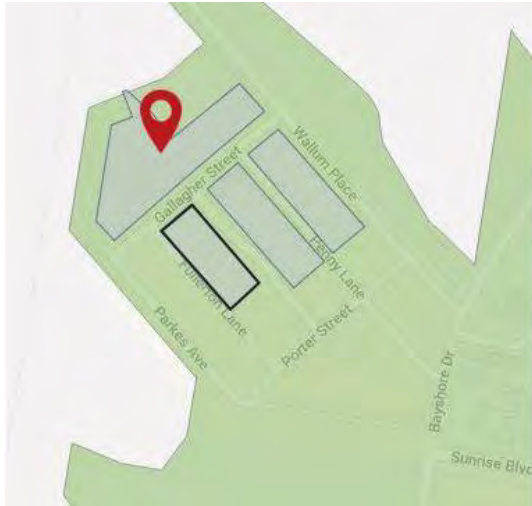
Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Residential accommodation; Rural industries; Sewage treatment plants; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Waste or resource management facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies

#### Comment:

Land uses proposed in Stage 4 project are all permissible with the consent of the Council.

#### Height of Buildings

Clause 4.3 of the BLEP14 specifies a maximum building height.



**Legend** J J - 9.0 m : Range [ 9.0 - 9.9 m ]

#### Comment:

As illustrated in the architectural drawing **DA800**, the proposal exceeds the 9m height specified by Clause 4.3 of BLEP14. We respectfully seek the relaxation of that standard in the special circumstances of the subject case. Those circumstances are described in more detail at **Appendix C**.

#### Floor Space Ratio

Clause 4.4 of BLEP14 specifies a maximum Floor Space Ratio for the subject site.



**Legend** L L - 0.90 Ratio: Range [0.90-0.94]

#### Comment:

**Plan DA 825** in the **Architectural Plan Set** bundle tabulates Gross Floor Area (GFA) calculations of 2,162.09m<sup>2</sup>. The 0.90:1 Floor Space Ratio for the land permits a maximum GFA of 2,163.06m<sup>2</sup>.

#### Lot Size

Clause 1 of BLEP14 specifies a minimum subdivision size.



**Legend** M M - 600.00 m<sup>2</sup>: Range [600-624 sqm]

#### Comment:

No subdivision is proposed by this Development Application. At a future time, it is intended to lodge a separate application to excise the Stage 4 part from the existing residual development site.

#### Acid Sulfate Soils

Clause 6.1 of BLEP14 specifies considerations in relation to Acid Sulfate Soil management. The site is Class 3.



**Legend** 3 Class 3



**PLANNERS  
NORTH**

1017.2822

**Comment:**

Class 3 only relates to works that are more than 1m below the natural surface or works which are likely to lower the water table by more than 1m below natural ground level.

No works proposed by this Development Application which trigger the requirements for Class 3.

**4.6 Exceptions to development standards**

(1) *The objectives of this clause are as follows:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

(b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

(i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the*

*objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Secretary has been obtained.*

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

(a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

(b) *the public benefit of maintaining the development standard, and*

(c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

**Comment:**

Having regard to the considerations specified in Clause 4.6, we are of the opinion that the variation proposed is consistent with the objectives of this clause; achieve a better planning outcome and the variation is in line with the decisions of the Land and Environment Court in *Wehbe -v- Pittwater Council* and *Winten Developments -v- North Sydney Council*. Full details with respect to this aspect are described in **Appendix C**.

**6.6 Essential services**

*Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:*

(a) *the supply of water,*

(b) *the supply of electricity,*

(c) *the disposal and management of sewage,*

(d) *stormwater drainage or on-site conservation,*

(e) *suitable vehicular access.*

**Comment:**

As described in more detail in the *Ardill Payne and Partners* Civil Engineering Report contained in the **Technical Reports Bundle**, all relevant essential services are provided to the Stage 4 land and are satisfactory to meet the needs of this project.



#### 4.1.3 DEVELOPMENT CONTROL PLANS

**Name:** Byron Development Control Plan 2014 (BDCP14)

*Application in Subject Case:*

Relevant provisions of BDCP14 are set out below with brief comments in relation to applicable DCP sections and concise comments relevant to the specific part.

*Part A Preliminary*

*Part B Controls Applying Generally to Development Applications*

*Chapter B2 Preservation of Trees and Other Vegetation*

**Comment:**

As illustrated in the **Plan Set**, a number of trees planted as part of the original landscaping work are intended to be removed. This tree removal is to facilitate the implementation of additional plantings to reinforce the visual separation between the Stage 4 development and the Live / Work premises south of Fullerton Lane.

*Chapter B3 Services*

**Comment:**

As described in more detail in the *Ardill Payne and Partners* Civil Engineering Report contained in the **Technical Reports Bundle**, all relevant essential services are provided to Stage 4. They are satisfactory to meet the needs of this project.

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

**Comment:**

This Development Application is accompanied by a specialist report in relation to access and car parking by Rytenskild Traffic Solutions. That report concludes that in accordance with BDCP14, the proposed development requires a minimum car parking provision of 74 spaces. The proposed layout provides 37 car parking spaces. As outlined in Section 2.5, HABITAT currently enjoys a car parking surplus. **Plan 4.1** shows that compliance with the BDCP14 standards for Stage 4 (including the conversion of some parking spaces to loading bays) will exhaust that car parking surplus.

The geometric layout of the proposed parking has been designed to comply with the relevant Australian Standards.

Access onto the development is proposed to be gained via a separate entry and exit crossovers from Gallagher Street and Fullerton Lane. The proposed crossovers have been designed in accordance with the standard drawings of the Council.

The proposal provides a total of five loading bays along Gallagher Street and Easy Street. It is proposed that three loading bays suitable for medium-sized trucks will be provided in Gallagher Street and two bays suitable for smaller trucks will be provided from Easy Street.

*Chapter B5 Providing for Cycling*

**Comment:**

Provision has been made for 14 bicycle parking spaces.

*Chapter B8 Waste Minimisation and Management*

**Comment:**

Accompanying this Development Application in the **Bundle of Technical Reports** are 2 Waste Management Plans. The plan drafted by *PLANNERS NORTH*, deals with waste generated by construction activity. The plan prepared by *DFJ Architects* relates to servicing waste generated by the development when it is operational.

*Chapter B9 Landscaping*

**Comment:**

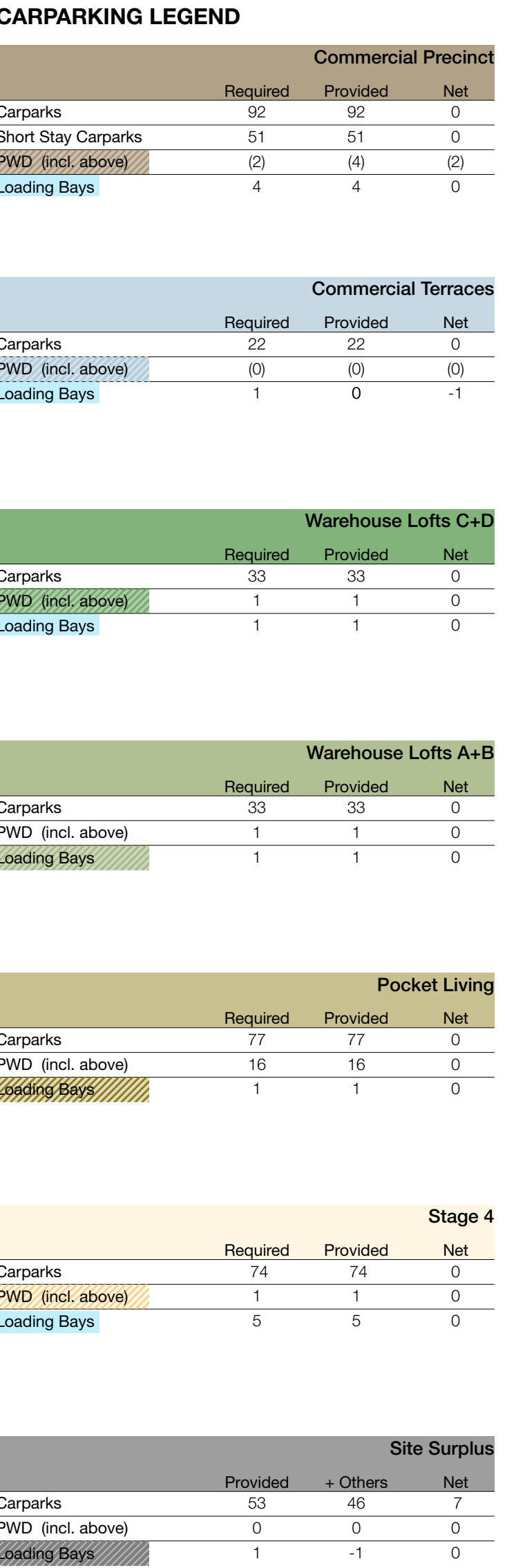
DA level landscaping proposals are set out at Drawing DA 150 External Works. That plan illustrates landscaping areas and massing but does not nominate species. At Construction Certificate stage, full landscape architecture drawings will be prepared.

*Chapter B10 Signage*

**Comment:**

No special signage proposals are submitted with this application. All signs erected in relation to the completed built form are envisaged to be within the parameters of Exempt or Complying Development within the meaning of BLEP14.





BASED UNDER EXISTING BYRON DCP 2014. PLEASE REFER TO TRAFFIC REPORT PREPARED BY LUKE RYTENSKILD FROM RYTENSKILD TRAFFIC ENGINEERING FOR DETAILED TRAFFIC & CARPARKING ANALYSIS

<b>Site Surplus</b>	Parks on site not attributed to specific Lot / required under current DA's	<b>53</b>
<b>Lost to S4</b>	Number of parks required from site surplus to meet parking deficit on S4	37
<b>Lost to Loading</b>	3no. Gallagher St. + 6no. Easy Street. Refer CD_150	9
<b>Adjusted Site Surplus</b>		<b>7</b>

### Plan 4.1 Surplus Car Parking Utilisation

*Chapter B11 Planning for Crime Prevention***Comment:**

Crime considerations have been foremost in the mind of the architect in the preparation of this Development Application. The proposal implements the following CPTED considerations:

- The buildings have been designed to eliminate dead ends and ensure clear sight lines through the development. All points of entry and exit are open, well connected to public spaces that are clearly visible from the surrounding road network and lots.
- Street lighting within the car park will eliminate dead spots and ensure high visibility of people outside of daylight hours.
- External lighting will be installed throughout the precinct ensuring coverage of all external spaces. Lighting will be permanently lit until 10pm and linked to motion/ infrared sensors from 10pm to sunrise.
- With respect to passive surveillance, Stage 4 is passively monitored by the Live/ Work premises to the southwest and Pocket Living units to the north west. The communal recreation precinct to the south east is also well lit at night and for the exclusive use of residents and tenants of HABITAT.

**Plan 4.2** illustrates the above described CPTED considerations.

*Chapter B13 Access and Mobility***Comment:**

In relation to access and mobility, an Accessibility Report prepared by *National Access* is contained in the **Technical Reports Bundle**. That report provides an assessment against the provisions of the National Construction Code BCA 2019 and the Premises Standard Access Code as relevant for people with disabilities. The full report provides details of the items to be included in the construction documentation to achieve full compliance with the relevant Standards.

*Part D Further Controls Applying to Specific Land Uses**Chapter D4 Commercial and Retail Development***Comment:**

The proposal is consistent with the design criteria specified at Chapter D4. In particular:

- Stage 4 has been designed to promote and encourage safe, convenient pedestrian and cycle access to and from the Stage 4 site and surrounding HABITAT precinct.
- The development is compatible with the diversity and multifunction character of the locality.
- The retail areas have been designed to promote visual interest and to maximise shop front window access, minimising blank walls along street frontages.
- The development respects the Shire's subtropical climatic conditions and provides appropriate protection.
- The development is compatible with and reinforces the role of HABITAT within the commercial centres hierarchy of Byron Shire generally.
- Pedestrian areas, community areas and car parking are all paved, furnished and landscaped in accordance with Council's guidelines and good practice.
- With respect to Clause D4.2.2, the new buildings reflect and enhance existing character of the HABITAT precinct. The design, scale, bulk, and operation of the premises will be compatible with the streetscape and aesthetic characteristics of HABITAT.
- The Stage 4 provides for safe and effective vehicular access, manoeuvring and parking.
- Careful consideration has been given in the Stage 4 Development Application for loading and service areas for garbage and bin storage.
- The proposed cafés have been designed and located to be compatible with the surrounding HABITAT land use.







- The hours of operation are well within the prescriptive measures set out in Council's DCP.

#### Chapter D8 Public Art

##### Comment:

Separately, the HABITAT developer has submitted to Council a Draft Voluntary Planning Agreement (VPA). The object of that VPA is to comprehensively address the implementation of public art at HABITAT for the forthcoming stages *Part E Further Controls Applying to Specific Localities*

#### Chapter E5 Certain Locations in Byron Bay and Ewingsdale

#### E5.5 HABITAT

##### E5.5.2 Objectives of this Section

##### Comment:

HABITAT Stage 4 is consistent with the objectives specified in E5.5.2 adopting ESD approach, blending a compatible mix of business, office and retail as well as recreational opportunities. The siting, scale and intensity of HABITAT Stage 4 responds to local and regional values and reflects the Byron Bay character and scale. The architectural approach adopted will contribute to the identity of West Byron.

##### E5.5.3 Desired Future Character and Development Principles

##### E5.5.3.1 Statement of Desired Future Character

##### Comment:

The HABITAT Stage 4 is consistent with the commercial aspects of the Statement of Design Future Character as described in Section E5.5.3.1

##### E5.5.3.2 Planning Principles

##### Comment:

HABITAT Stage 4 adopts all of the key planning principles in relation to social equity, economic vitality, environmental performance and cultural expression as described in DCP Clause E5.5.3.2.

##### E5.5.3.3 Achieving the Desired Future Character

##### Comment:

Clause E5.5.3.3 is sought to be amended to facilitate the subjected scheme.

##### E5.5.3.4 Precinct Plan

##### Comment:

Modifications to the adopted DCP seek to break Precinct 1 into two precincts.

##### E5.5.4 Design and Development Controls

##### Comment:

HABITAT Stage 4 complies with the objectives and performance criteria for this clause. The modifications sought to the DCP pursuant to this application refine Table E5.1.

##### E5.5.4.1 Land Use, Management and Environmental Assessment

##### Comment:

Clause E5.5.4.1 is sought to be amended to facilitate the subjected scheme.

##### E5.5.4.2 Car Parking

##### Comment:

The car parking provision is consistent with DCP controls and contemporary practice.

##### E5.5.4.3 Building Design

##### Comment:

The building design complements existing site structures and avoids becoming a repetition of earlier stages in terms of its built form.

##### E5.5.4.4 Site and Open Space Design

##### Comment:

HABITAT Stage 4 is consistent with the terms of this section of the DCP.

##### E5.5.4.6 Water Cycle Management

##### Comment:

This HABITAT Stage 4 continues the best practice water quality management approach adopted elsewhere in the development.

## E5.5.4.7 Ecological Enhancement

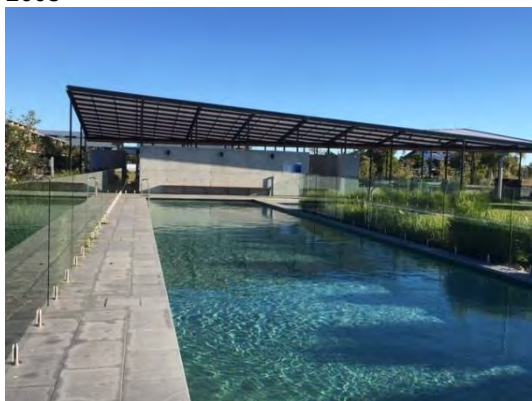
### Comment:

HABITAT Stage 4 does not involve any ecological enhancement lands.

### 4.1.4 STATE ENVIRONMENTAL PLANNING POLICIES

A search undertaken on the NSW Planning Portal on 1<sup>st</sup> July 2019 indicated that the following SEPPs as being applicable to the land.

- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Coastal Management) 2018
- State Environmental Planning Policy (Concurrences) 2018
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008



*View of the swimming pool and recreation building.*

- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007
- State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007

- State Environmental Planning Policy (Primary Production and Rural Development) 2019
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy No 1—Development Standards
- State Environmental Planning Policy No 21—Caravan Parks
- State Environmental Planning Policy No 33—Hazardous and Offensive Development
- State Environmental Planning Policy No 36—Manufactured Home Estates
- State Environmental Planning Policy No 44—Koala HABITAT Protection
- State Environmental Planning Policy No 50—Canal Estate Development
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

Of these, the following SEPPs require noting or are of particular relevance to the subject application.

**Title:** State Environmental Planning Policy (Coastal Management) 2018

Gazetted: 25 March 2019

### Abstract

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:

- managing development in the coastal zone and protecting the environmental assets of the coast, and
- establishing a framework for land use planning to guide decision-making in the coastal zone, and



- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.

#### Coastal Wetlands and Littoral Rainforest Map



##### Legend

- Coastal Wetlands
- ▨ Proximity Area for Coastal Wetlands
- Littoral Rainforests
- ▨ Proximity Area for Littoral Rainforests

##### Comment:

As illustrated in the above plan, no part of Stage 4 is located within a "proximity area" for Coastal Wetlands.

**Title:** SEPP No. 55 - Remediation of Land

Gazetted: 28.08.98

##### Abstract

Introduces state-wide planning controls for the remediation of contaminated land. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals.

##### Comment:

This application relies on the contamination assessment submitted with DA 2008/360.

#### 4.1.5 CERTIFIED DRAFT PLANS

No draft plan is known to exist which would impinge upon the subject proposal.

#### 4.1.6 SPECIFIC ENVIRONMENTAL PLANNING & ASSESSMENT ACT REQUIREMENTS

Development in the manner proposed is not Designated Development under the Act and no reliance is placed on any existing use rights applicable to the land. The proposal is not Exempt of Complying Development and does not trigger any State Significant Development considerations.

#### 4.1.7 PART 7 OF BIODIVERSITY CONSERVATION ACT 2016 AND PART 7A OF FISHERIES MANAGEMENT ACT 1994

Pursuant to Section 1.7, *"This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment."*

The subject site is not identified in the relevant biodiversity mapping.

#### 4.1.8 INTEGRATED DEVELOPMENT CONSIDERATIONS

No integrated approvals within the meaning of Section 4.46 apply to this project.



View of Easy Street looking east, showing part of the Stage 4 site in the right hand side of the image.

#### 4.2 CONTRIBUTION PLANS

The Byron Shire Contribution Plan applies to development of this land. Under this plan Council may condition a consent for a 1% levy in relation to the cost of implementing the development.

In addition, contributions to both Byron Shire Council and Rous County Council are payable in relation to water and sewerage headworks.

#### **4.3 LOCAL POLICY CONTROLS**

Other than the provisions described in the above, it is understood that no specific policy of Council is applicable to the subject project.

#### **4.4 ANCILLARY LEGISLATION**

The applicant is aware that, in addition to the consent authority's approval of the subject application, the provisions of the following statutes may regulate development in the manner proposed:

- Disability Inclusion Act 2014
- Food Act 2003
- Protection of the Environment Operations Act 1997
- Protection of the Environment Operations (General) Regulation 2009
- Protection of the Environment Operations (Waste) Regulation 2005
- Waste Avoidance and Resource Recovery Act 2001
- Contaminated Land Management Act 1997
- National Greenhouse and Energy Reporting Act 2007
- Noxious Weeds Act 1993
- Environmentally Hazardous Chemicals Act 1985
- Energy Efficiency Opportunities Act 2006
- Clean Energy Act 2011
- Local Government Act 1993
- Long Service Leave Act 1955
- Retail Trading Act 2008



## 5. ENVIRONMENTAL INTERACTIONS

*This section of the report expands on the contextual description of the physical environment given in Section 2, and undertakes an analysis of environmental interactions (particularly those at aspects of S.4.15 (1) (b) and (c) relevant in the subject circumstances) applicable to the proposed development with specific reference to the site planning objectives specified in Section 3.1 of the report. Further, this section reviews a range of comprehensive environmental management measures, again aimed at specifically addressing adopted site planning objectives.*

### 5.1 CONTEXT AND SETTING

#### Objective

*Provide an architectural form that relates well with the existing land use pattern and built form at HABITAT.*

The objective of Stage 4 is to develop a quality piece of architecture that complements existing site structures and avoids becoming a repetition of the earlier stages built form. The project architect has sought to provide a building form which is iconic to encourage people to explore HABITAT and engage with the new uses within Stage 4. That said, it has been architecturally important that the roof form complements rather than competes with the existing butterfly roof of the recreation precinct.

The Stage 4 HABITAT roofing seeks to replace the pitched and skillion rooves of previous stages with a combination of sawtooth and parapet roofing. The sawtooth roof is proposed over the Recreation Facility (Indoor). It references the classic form of many industrial warehouses. The primary use of this space will be for gym, pilates, yoga and the like. The sawtooth roof will provide volume and light which will positively contribute to the quality of the indoor environment.

Buildings S4\_A and S4\_B comprise a solid masonry structure with visually light balconies and walkways extending out along the front and rear elevations. These buildings are both three storeys in scale, with a 5° pitched roof falling towards the southwest of the site. Solar panels are proposed across the entirety of the roof. They will feed into the HABITAT Embedded Energy Network. A nominal 600mm parapet has been introduced around the perimeter of the roof to hide the visual clutter and solar panels. It will retain the uniform mass and form of these buildings.

Native subtropical landscaping is proposed as an integral part of the architecture and design. The proposal includes planted screens, large trees and green walls as part of the Stage 4 HABITAT overall aesthetic.

In relation to construction, block walls, concrete slabs and concrete columns will form the basis of the structure. Similar construction exists elsewhere in HABITAT and has proven to be an effective and efficient approach. Given the BCA classification of the spaces, this type of construction will address relevant fire separation & acoustic requirements. The roof of the upper levels will be lightweight steel construction.



*The Stage 4 is located partly at the corner of Easy Street and Gallagher Street. The photo shows part of the pocket living development currently under construction on the western side of Gallagher Street.*

The primary material palette is as follows:

- Bricks (for external walls);
- Timber (roof structure and balustrades);
- Concrete (structural slabs and walkways);
- Steel (structural steelwork, balustrade screens);
- Compressed fibre cement (used along less visible elevations);
- Danpalon (roof over external spaces);

- Metal roof sheeting (along visible roofs);
- Block work wall (amenities core); and
- Cobblestones (floor finish used throughout the external public spaces).

## 5.2 WASTE MANAGEMENT

### Objective

---

*Ensure that waste from both construction and the commercial utilisation of Stage 4 is appropriately managed.*

---

Two Waste Management Plans have been prepared for the subject development. The first plan deals with the management of construction waste. The second plan looks at the management of waste generated by the development when it is operational. Both plans are consistent with contemporary best practice. The two Waste Management Plans accompany this SEE in the **Bundle of Technical Reports**.

## 5.3 SUSTAINABILITY

### Objective

---

*Incorporate best practice sustainability principles in both the design and the long-term utilisation of the mixed use of Stage 4.*

---

The following is a list of key design features incorporated into HABITAT Stage 4 to assist in achieving sustainability:

#### 1. Design

Good urban planning and sub-tropical architectural design principles are at the core of the Stage 4 design including - large eaves over the balconies and walkways, good building orientation, cross ventilation, good insulation and large, protected openings ensure buildings stay cool in summer and warm in winter.

#### 2. Simplicity

The simple, paired back design and limited material palette of Stage 4 complement the HABITAT philosophy of building only what is needed. External walkways, shared facilities and outdoor meeting spaces limit the need for conditioned space while also encouraging a healthy outdoor lifestyle.

#### 3. Quality

Hi-quality, natural and long-lasting materials are proposed throughout in order to increase longevity, reduce maintenance and generally stand the test of time.

#### 4. Solar Access

Large openings and good building orientation ensure maximum solar access and natural light to all spaces, reducing the need for artificial lighting.

#### 5. Ventilation

Front and rear elevation louvres are utilised throughout to promote passive cross ventilation. This natural cooling reduces the need for air conditioning.

#### 6. Landscaping

Continuing the HABITAT commitment to sub-tropical, native landscaping throughout this stage of HABITAT will provide a natural HABITAT for local animals to live and thrive, while also providing clean air and shade for residents and guests.

#### 7. Biomimicry

HABITAT's dry creek bed swales naturally reduce erosion and drain excess water in a way that mimics the natural hydrology of the site.

#### 8. Green Waste

HABITAT will continue to deal with green waste on site via the use of the *Subpod* system (worm-farm/ veggie gardens).

#### 9. Filtration Beds

Large filtration beds, located throughout the site, capture stormwater, stabilise the PH balance of the water and release it back into the natural wetlands bounding the site.

#### 10. Water Conservation

HABITAT's agreement to purchase recycled water from the council will continue in Stage 4. The recycled water will be used for both landscape irrigation and to service the toilets.

#### 11. On-site Stormwater Detention

On-site Stormwater Detention tanks capture stormwater and release it back into the

landscape slowly over time. This helps reduce the velocity of the water and limit erosion.

#### 12. Solar

Stage 4 will form part of HABITAT's Embedded Energy Network (EEN). Electricity generated by the solar power is distributed to the community via the EEN to enable efficient use in peak periods, directly reducing the amount of electricity imported from external sources. Solar is purchased by the Community at reduced rates. Stage 4 is aiming to install a 50kW (min) system. There are plans for in excess of 400kW of solar to be installed across the site as a whole.



*View of the southern part of the commercial precinct on the eastern side of Porter Street.*

#### 13. Lighting

LED lighting and low energy fittings will be used throughout the development. The lights in shared facilities are on timers, maximising energy efficiency.

#### 14. Electric Car Charging

Electric car charging stations are nominated in two locations within the car park.

#### 15. Bikes

Dedicated bicycle storage facilities are nominated within Stage 4, promoting the use of bicycles as the main mode of transport and reducing one's carbon footprint in their daily routine.

#### 16. Solar Train

HABITAT is located a short 5-minute walk from the world's first-ever solar-powered train offering direct access into Byron town centre,

further reducing the reliance on car transportation.

#### 17. Source Local

Where possible, materials will be sourced locally, reducing the energy embodied in transport.

#### 18. Support Local

Where possible, local trades will be engaged for construction.

### 5.4 NOISE AND VIBRATION

#### Objective

*Ensure that noise and vibration associated with both the construction and the operation of the new mixed-use premises and the HABITAT neighbourhood generally.*

#### Construction hours

Construction work would be undertaken during standard daytime construction hours in accordance with the Interim Construction Noise Guidelines (ICNG) (DECC, 2009) as follows:

- Monday to Friday: 7 am to 6 pm.
- Saturday: 8 am to 1 pm.
- Sunday and public holidays: No work.

Out of hours work is not proposed for the project.

#### Offensive noise

Noise generated at the site once it has completed will be regulated pursuant to the provisions of *Protections of the Environment Operations Act 1997* and *General Regulations of 2009*. The noise level emanating from the use of the premises will comply with the *NSW Industrial Noise Policy*. For other Development Applications for HABITAT, Council has conditioned the consent as follows:

*"the use of the premises shall not interfere with the amenity of the neighbourhood by reason of noise, vibration, smells, fumes, smoke, dust, wastewater or otherwise..."*

We anticipate a condition of consent will similarly be applied to Stage 4 and will continue to ensure a high-quality amenity within the HABITAT precinct.



## 5.5 SERVICES

### Objective

---

*Ensure that adequate utility services are available.*

---

A detailed report has been prepared by *Ardill Payne & Partners* describing servicing and other matters. That report accompanies this Development Application as part of the **Technical Reports Bundle**.

### 5.5.1 WATER SUPPLY

Changes anticipated to peak daily water demands are in the order of 1.8ET. The original proposal anticipated 8ET and the current proposal is estimated to be 9.8ET. The minor increase in demand for Stage 4 will not create a noticeable reduction in pressure across the site.

### 5.5.2 SEWERAGE

The site is serviced by a combination of gravity and pressure sewerage systems. *Ardill Payne & Partners* have reviewed the sewerage loads for the proposed Stage 4 against the original proposal in accordance with Council's water and sewerage Equivalent Tenements policy. The Stage 4 daily and peak loads show a decrease in peak wet weather flow. The overall loads remain under the available SPS capacity.

### 5.5.3 ELECTRICITY

*Ardill Payne & Partners* advised that communications and power infrastructure were installed with the construction works associated with CC2011/162. These provisions are generally suitable for the proposed development. However, *Ardill Payne & Partners* note that minor alterations such as "lead in" location changes may be required.

## 5.6 ACCESS

### Objective

---

*Ensure that the proposed mixed use conforms with the HABITAT road network hierarchy and that adequate parking is provided.*

---

A traffic and parking report has been prepared by Rytenksild Traffic Solutions. That report is to be found in the **Technical Reports Bundle**. As discussed in the Rytenksild report, the Stage 4

proposal generates a need for 74 car parking spaces. 37 spaces have been provided onsite. To meet the Council's requirements, this application utilises the surplus car parking provision enjoyed by Habitat generally. The situation in relation to car park utilisation is illustrated in **Plan 4.1**.

The geometric layout of the proposed parking has been designed to comply with the relevant Australian Standards. The proposed crossovers have been designed in accordance with the standard drawings of the Council.

The proposal provides a total of five loading bays along Gallagher Street and Easy Street.



*This photo illustrates the sub pod implemented in Easy Street to provide for composting for the residents of HABITAT.*

## 5.7 AMENITY

### Objective

---

*Carry out development in a manner which protects the existing mixed use/residential amenity of the locality.*

---

### 5.7.1 RELATIONSHIP TO ADJOINING DEVELOPMENT

In addition to meeting demand, the delivery of a "critical mass" of commercial uses across the site supports and sustains the businesses of HABITAT in the long term. Additional recreation facilities will likely increase foot traffic and patronage within the site. We submit that this will reinforce the amenity of the locality by supporting a healthy and active lifestyle that is already available at the community.

Additional food and drink offering will also help drive foot traffic and provide better amenity with an alternative dietary option for residents, tenants and visitors.



In physical terms, Stage 4 is located centrally within the HABITAT development. The site abuts the recreation precinct to the southeast; Fullerton Lane and the Live / Work premises to the southwest; Gallagher Street and the Pocket Living precinct to the northwest; and Easy Street to the northeast. Vehicular access from Gallagher Street is supported by pedestrian access primarily from Easy Street and the recreation precinct. Buildings and uses have been designed to engage directly with both Easy Street and the recreation precinct extending the public realm through the site and activating important community spaces. The positioning of the buildings prevents overlooking and overshadowing of the Live / Work premises on the lot to the southwest. Covered spaces between the three buildings allow easy access and loading along Easy Street and Gallagher Street away from the live / work premises.

### 5.7.2 NEIGHBOURHOOD AMENITY

Locating the taller building northward and encouraging Easy Street for pedestrian utilisation, as well as implementing further extensive plantings along Fullerton Lane will protect the residential amenity of persons working and residing in the Live / Work premises to the south.

## 5.8 CONSTRUCTION CONSIDERATIONS

### Objective

*Ensure that construction works are appropriately managed.*

### Construction hours

Construction work would be undertaken during standard daytime construction hours in accordance with the Interim Construction Noise Guidelines (ICNG) (DECC, 2009) as follows:

- Monday to Friday: 7 am to 6 pm.
- Saturday: 8 am to 1 pm.
- Sunday and public holidays: No work.

Out of hours work is not proposed for the project.

### Construction staging

Construction is anticipated to take around 10-12 months. Construction is currently scheduled to commence in mid-2020 and be concluded in early- to mid-2021.

### Earthworks

The site has previously been filled to Level 1 Certification. Such work was completed under DA's 2008/360 and 2011/162. It is not anticipated that the import of fill material will be required other than in relation to trenching materials.

All earthworks will be completed with appropriate sedimentation and erosion control measures being implemented.

## 5.9 CUMULATIVE IMPACTS

### Objective

*Review potential for any cumulative impacts associated with implementation of Stage 4.*

There will be a construction-type impact during the building phase of Stage 4. This impact will be most acute in relation to the Live / Work premises to the south. Once completed, cumulative impacts, (i.e. repetitious or individual impacts which have the potential to erode environmental conditions) are not expected.



*View of the bike storage facility located west of the recreation building and immediately adjacent to Stage 4.*

## 6. CONCLUSION

*This section sets out our concluding remarks in relation to the Development Application for Stage 4 of HABITAT.*

The proposal by Bayshore Developments Pty Ltd to carry out a further stage of mixed-use development entailing retail premises, office premises, restaurant/café and recreation facilities is a product of many factors. Those factors include:

- the success of HABITAT as a vibrant Live/ Work environment;
- policies of all levels of government to promote the orderly development and use of land which can be demonstrated to be suitable for mixed use development;
- strong demand for business and retail accommodation, as well as additional recreation facilities; and
- the site planning opportunities presented by the HABITAT site.

The proposed development application is permissible under the BLEP14 and is consistent with relevant SEPPs.

In our opinion the development can be seen to satisfy a legitimate need and is capable of construction and use in a manner which mitigates potential adverse impacts consistent with the zone objectives detailed in Council's LEP.

We submit its approval would be in the public interest within the meaning of Section 4.15(1)(e) of the Act.



*View of Fullerton Lane looking west from adjacent to the swimming pool.*

Stephen Connelly RPIA (Fellow)  
PLANNERS NORTH

## REFERENCES

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- RTA, 1993. *Guide to Traffic Generating Development*. Roads and Traffic Authority.
- DECC, 2009 *Interim Construction Noise Guidelines (ICNG)*, Department of Environment and Climate Change (DECC) 2009
- BLEP, 2014 *Byron Local Environmental Plan 2014*, Byron Shire Council, 2014
- BDCP, 2014 *Byron Development Control Plan 2014*, Byron Shire Council, 2014
- DPE, 2017 *North Coast Regional Plan 2036*, Department of Planning & Environment, March 2017

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**APPENDIX A**

Development Application Form and  
Land Owners Authority



## BYRON SHIRE COUNCIL

PO Box 219<sup>32</sup>  
Mullumbimby NSW 2482  
DX 20007 MULLUMBIMBY  
Ph : (02) 6626 7000  
E-mail: council@byron.nsw.gov.au  
Web: www.byron.nsw.gov.au

\*\*\*Office Use Only\*\*\*

DA No: **10.** ..... **1** Date .....

Concurrent application/s ☐ YES ☐ NO see Step 5

Parcel No(s): .....

Zoning: .....

Notations: FPL DIP ASS BPL HCV HER (item / area)  
PR123 (Precinct:..... )

Record No: #...../.....Container: .....

E2018/61985

# Development Application Form

Issued under Section 4.12 of the Environmental Planning and Assessment Act 1979

Use this form to apply for **consent to carry out development**. Please ensure you have submitted all relevant information to minimise delays. Once your application has been assessed the applicant will be advised in writing of Council's Determination.

## Step 1 Description of Land you propose to Develop

Unit No.	House No.	Street
Suburb or Town		
Lot / DP / SP No. / Sec No.		
Owner/s Name		
Owner/s Email		

## Step 2 Details of the Applicant/s

Anyone can submit an application but if the applicant is not the owner of the land, the Owner(s) written consent to lodge the application is required. All correspondence will be sent to the applicant. It is important to notify Council of any change of address and/or telephone number if this occurs during the processing of the application.

Name/ Company Name	
Contact Name (in the case of a Company)	
Postal address	
Email	
Mobile	Daytime Telephone

## Step 3 Describe the Development you wish to carry out

You may select more than one - will this work involve:

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> New Construction (vacant)      | <input type="checkbox"/> Fit-Out of Existing Building    | <input type="checkbox"/> Change of Use – No Building Works |
| <input type="checkbox"/> Alterations and / or Additions | <input type="checkbox"/> Demolition of Existing Building | <input type="checkbox"/> Change of Use – Building Works    |
| <input type="checkbox"/> Subdivision of Land            | <input type="checkbox"/> Relocation of Existing Building | <input type="checkbox"/> Tree Removal                      |
| <input type="checkbox"/> Other .....                    |  |  |

**Description of Proposal:** Describe briefly everything you want approved by Council


**Genuine and accurate estimated cost of Development (inc GST)** \$

You must provide a cost summary report to lodge the DA depending on the estimated cost of works. For further information refer to the **Fact Sheet – Estimating the Cost of Development**:

- |   |
|---|
| <input type="checkbox"/> \$0 - \$150,000 - a cost summary report prepared by the applicant or a suitably qualified person * |
| <input type="checkbox"/> > \$150,000 - \$3 million - cost summary report prepared by a suitably qualified person *          |
| <input type="checkbox"/> > \$3 million - cost summary report prepared by a suitably qualified person *                      |

\* Refer Page 10

Floor area of proposed development	m <sup>2</sup>	Volume of pool where relevant	m <sup>2</sup>
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#### Step 4 Concept Development Application

Your development application can set out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications. Refer to section [4.4 of the Environmental Planning and Assessment Act 1979](#)

Are you lodging a Concept Development Application?

No ☐ Go to next question

Yes ☐ Please describe stages:

**Warning:** If “Yes” is ticked, then all stages might need to be the subject of a separate development application/s. If all stages are to be approved under one consent, then it might be more appropriate to tick “No” in answer to this question and simply describe the staging of the development in your SEE or EIS.

#### Step 5 Other Approvals from Council

Certain types of development may include activities that also require other approvals from Council in addition to development consent. These additional approvals are required by the Local Government Act 1993 and the Roads Act 1993. You can apply for consent as part of the DA process, or apply separately once your development has been approved. If you are applying for any other approval, you will need to supply additional documentation as outlined on the relevant forms below. Additional fees will also be required.

Are you applying for other approvals from Council as part of this DA? ☐ Yes (refer to forms below) ☐ No

- Please complete a separate [Activity\(s\) Approval Application Form](#).
- Where the approval is to install a new Onsite Sewage Management System (OSMS) or upgrade an existing system, a [On-Site Sewage Management System Application Form](#) is required

Office use only

Works in Council Road Reserve (ie. driveway) (Roads Act 1993)	51.
Plumbing, Water Supply, Trade Waste or Sewer Drainage Connected to Council Infrastructure (LGA 1993)	60.
Stormwater connected to Council Infrastructure or On-Site Detention (LGA 1993)	55.
Onsite Sewage Management System (LGA 1993)	70.
Other Local Government Act Approvals – Please Specify: .....	

#### Step 6 Environmental Effects of your Development

All applications are to be supported by a Statement of Environmental Effects (in some cases a more detailed Environmental Impact Statement may be required (see below).

6a A Statement of Environmental Effects is a report that details and explains the likely impacts of the development both during and after development, and the proposed measures that will mitigate impacts. It also includes a detailed assessment of the proposed development having regard to all the planning controls that apply to the land or type of development. Refer to Council’s Fact Sheet ‘Preparing a Statement of Environmental Effects’.

**I have prepared a Statement of Environmental Effects**

☐ Yes

☐ No The proposal is Designated Development or is part of Critical Habitat and requires detailed assessment.  
Go to Step 6B

6b **Designated Development** refers to developments that are high impact (eg likely to cause pollution) or are located in or near an environmentally sensitive area (eg wetland).

**Is your development Designated Development?**

☐ Yes I have prepared an Environmental Impact Statement.

☐ No

6c A Species Impact Statement is required where the development is proposed on land that is part of a **critical habitat**, or is likely to have significant impact on threatened species, populations, ecological communities or their habitats?

**Is the development on land that is part of a Critical Habitat or is it likely to have significant impact as above?**

☐ Yes A Species Impact Statement has been prepared.

☐ No



**6d Does your proposal require works to a heritage item?**

- ☐ Yes Please attach a **heritage impact statement** <sup>34</sup>
- ☐ No

**6e Does your proposal involve a variation to a development standard(s) (as contained within the Byron LEP 1988 or Byron LEP 2014) or a variation to a development control(s) (as contained within the Byron DCP 2014)?**

- ☐ No
- ☐ Yes, variation to a development standard - attach a written application for variation to development standard
- ☐ Yes, variation to a development control - attach a written application for variation to development control(s)
- X

**Step 7 Concurrence from State Agencies**

Council may need the agreement or concurrence of a State Government Agency before it can give you a consent to carry out your development. The need for Council to obtain that agreement is specified in various regulations and environmental planning instruments affecting your land. Council can tell you whether it needs to refer your application to a Government Agency for concurrence.

**Does the proposed development require Concurrence?**

- ☐ No
- ☐ Yes - please indicate from whom Concurrence is required

NSW Government Planning and Environment

NSW Government Roads and Maritime Service

NSW Government Environment and Heritage

Other .....

*A cheque made payable to each agency for the applicable fees and additional copies of all supporting documents is required to be lodged.*

**Step 8 Approvals from State Agencies – Integrated Development**

Integrated development is development that requires licences or approvals from a NSW Government agency. Council will refer the application to the necessary agency/ies so that there is an integrated assessment of the proposal. Most forms of development will not be “integrated”.

**Does this proposal require additional approval as Integrated Development?**

- ☐ No
- ☐ Yes - Please tick the relevant box

Fisheries Management Act

☐ s144

☐ s201

☐ s205

☐ s219

Heritage Act 1977

☐ s58

Mine Subsidence Compensation Act 1961

☐ 1544

Mining Act

☐ ss63, 64

National Parks and Wildlife Act 1994

☐ s90

Petroleum (Onshore) Act 1991

☐ s9

Protection of the Environment Operations Act 1997

☐ ss43(a), 47, 55

☐ ss43(a), 47, 55

☐ ss43(a), 47, 55

Roads Act 1993

☐ s138

Rural Fires Act 1997

☐ s100B

Water Management Act 2000

☐ ss89, 90, 91

*For further information, refer to the **Integrated Development Checklist**.*

*A cheque made payable to each agency for applicable fees and additional copies of the application and all supporting documentation is required.*

## Step 9 BASIX Certificate

BASIX stands for Building Sustainability Index. BASIX is an initiative that was introduced by the NSW Government to ensure homes are designed to be more energy and water efficient. BASIX applies to:

- New residential dwellings with a total cost of \$50,000 or more.
- Alterations or additions to existing residential dwellings with a total cost of \$50,000 or more.
- Swimming pools with a capacity greater than 40,000 litres.

If your proposal falls into of the above three categories, then you will need to submit a BASIX Certificate with your Development Application or application for a Complying Development Certificate.

If a BASIX Certificate must be less than 3 months old at the date of DA lodgement. All details indicated on the BASIX Certificate as “show on DA plans” must be shown on the plans.

### Is a BASIX Certificate required?

- ☐ No – Go to Step 8
- ☐ Yes - BASIX Certificate No: .....

## Step 10 Construction Certificate

If your proposal involves construction or structural work, you may need a Construction Certificate. You can apply for a Construction Certificate now, or at a later date, either from Council’s Building and Construction Services Team or from a Private Certifier.

### Is a Construction Certificate application to be lodged with Council at the same time as this application?

- ☐ No
- ☐ Yes *Please complete separate [Construction Approval Application Form](#) and submit along with the two (2) hardcopies of the associated plans/documentation, one digital copy and payment of the required fees.*

## Step 11 Privacy Policy

The information you provide in this application will enable your application to be assessed by Council and any relevant state agency. If the information is not provided, Council can refuse the application. Your application may be notified or advertised to the public for comment. Council will keep the application in a Register that can be viewed by the public at any time. Please contact the Council if the information in your application is incorrect or if it changes. Information collected will be used in accordance with Council’s Privacy and Personal Information Management Plan.

## Step 12 Political Donations and Gifts

Please be aware of the Statutory obligations to disclose **Political Donations and Gifts** that may apply to you or associated people if you are lodging a Development or S4.55 Application. A failure to meet your obligations is an offence. Links to information and resources on this topic are available from Council’s website. All Political Donations and Gifts Disclosure Statements will be public documents.

### Does a Political Donations and Gifts Disclosure Statement accompany this application?

- ☐ No
- ☐ Yes – You will need to lodge a [Political Donations and Gifts Disclosure Statement](#)

## Step 13 Payment Options

Council accepts payments by cash, cheque, money order, eftpos or credit card (Visa and Master only) at Council’s Administration Office. All cheques are to made payable to **Byron Shire Council**. Should you wish to mail your application package to Council and wish to use the credit card facility, please download an [Authority to Charge Credit Card](#) form which can be found on Councils website or alternatively enclose a cheque or money order.

**Step 14 Signature of all Owner/s**

**All owners of the land to be developed must sign the application prior to the application being submitted.**

- If you are not the owner of the land, you must have all the owner/s sign the application. You can only sign on behalf of the owner/s if you have power of attorney or a letter of authority. Refer to Council's **Factsheet regarding Owners Consent** for more information.
- If signing on behalf of a company, a statement beside each signature clearly identifying the position of the person signing is required. (If the signatures or seal as per the Fact Sheet in relation to corporation are NOT given on the Development Application form it MUST be given on a business letter (ie on a letterhead) that states the Australian Company Number (CAN) or if the last 9 digits of the CAN are the same, then the Australian Business Number (ABN)).
- If Council is the owner of the land, you will need to obtain owners consent prior to lodging the development application. Complete a [Request for owners consent to lodge an application on Council owned land](#) and submit it to Council with any of the required information. If owners consent is granted, this is to be attached to the development application on lodgement of the development application.

**As the owner/s of the above property, I/we consent to this application and consent to the Council, its servants or agents entering upon the property without first having given notice, for the purpose of carrying out all or any inspections which the Council may deem appropriate in connection with the processing of this application.**

**Conflict of Interest declaration**

To ensure transparency in Council's decision making process and to avoid potential conflicts of interest owners are to make a declaration as to whether they are a Council employee or Councillor or are a friend/relative/associate to a Council employee or Councillor.

I am a Council employee or Councillor

☒

No

☐

Yes

I am a friend, relative or associate to a Council employee or Councillor

☐

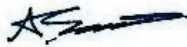
No

☒

Yes (state relationship below)

– Relationship: **OWNERS SEEK GOOD COUNCIL**

**Signature**



**Signature**

Abel East on behalf of Bayshore Development

**Name** Abel East on behalf of Bay. Dev.

**Name**

**Date** 10th September 2019

**Date**

**Step 15 Signature of all Applicant/s**

By signing this application,

1. I confirm that the application form is completed and the information (e.g. Number and type of plans, etc) required by Council is attached.
2. I licence Council to make all documents lodged with this application of which I am the copyright owner publicly available on Council's website both during the assessment of this application and thereafter, and further licence Council to reproduce all such documents for any purpose associated with the exercise of its functions under the Environmental Planning & Assessment Act 1979 in respect of this application, and for the purpose of complying with its obligations under the Government Information (Public Access) Act 2009.
3. I warrant that to the extent that I do not own the copyright in any documents lodged with this application, the Council is licensed by the copyright owner to use the documents lodged with this application in accordance with paragraph 2 above.
4. I indemnify the Council against all claims and actions in respect of a breach of copyright arising from any unauthorised use of any documents lodged with this application."

**Note: ALL correspondence will be forwarded to the applicant, including the determination.**

**Conflict of Interest declaration**

To ensure transparency in Council's decision making process and to avoid potential conflicts of interest applicants are to make a declaration as to whether they are a Council employee or Councillor or are a friend/relative/associate to a Council employee or Councillor.

I am a Council employee or Councillor

☒

No

☐

Yes

I am a friend, relative or associate to a Council employee or Councillor

☐

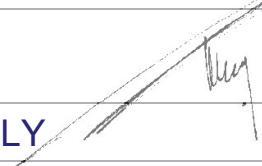
No

☒

Yes (state relationship below)

– Relationship: **WE SEEK GOOD COUNCIL RELA**

**Signature**



**Signature**

**Name** STEVE CONNELLY

**Name**

**Date** 10/9/19

**Date**




☐

## Application Requirements

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The following matrix and checklist will assist you with the preparation of your application. In providing the information outlined below, you will be assisting Council staff to process your application in a timely manner.

The matrix identifies the **minimum** information (plans and supporting documents) required for common types of developments. Please note that if any other plans or documents relate to your proposal that are not listed in the matrix they may still be submitted to Council for assessment.

<b>Legend</b>  Document required  Document may be required  Document not required	New Residential Dwellings	Alts / Adds to Residential Dwelling	Garage, Outbuilding, Awning, Carport, etc	Secondary Dwelling	Farm Building	Swimming Pool	Dual Occupancy	Multi Dwelling Housing	Commercial / Industrial Buildings	Subdivision
Statement of Environmental Effects	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Site Plan	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Floor Plan	✓	✓	✓	✓	✓	✓	✓	✓	✓	●
Elevations	✓	✓	✓	✓	✓	●	✓	✓	✓	●
Section Plans	✓	✓	✓	✓	✓	✓	✓	✓	✓	●
BASIX (correct type of certificate)	✓	●	n/a	✓	n/a	●	✓	✓	n/a	n/a
BASIX stamped plans & Certificate	✓	●	n/a	✓	n/a	●	✓	✓	n/a	n/a
Landscaping Plan	●	●	●	●	●	●	●	●	●	●
Erosion & Sediment Control	✓	●	●	✓	●	✓	✓	✓	✓	✓
Driveway Plan & Section	✓	●	●	●	●	n/a	✓	✓	✓	✓
Stormwater Plan & Calculations	●	●	●	✓	●	n/a	✓	✓	✓	●
OSMS Report / Plans	●	●	●	●	●	n/a	●	●	●	●
Waste Minimisation Plan	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
External Finishes & Materials	✓	●	✓	✓	✓	✓	✓	✓	✓	●
Heritage Management Document	●	●	●	●	●	●	●	●	●	●
SEPP 55 Contamination Report	●	●	●	●	●	●	●	●	●	●
Car parking Plan	✓	●	●	●	●	n/a	✓	✓	✓	●

## Checklist of documentation to accompany your application

**This checklist will assist with the lodgement of your application by ensuring you have included all the necessary details. This will prevent delays in processing your application.**

- Please do not lodge your Development Application until you have checked each items on this checklist and indicated whether you have included the required information.
- All documentation, including plans, must be prepared to a scale which will enable easy assessment, A3 in size and a scale of 1:100 is generally preferred.
- The following information should be included on all plans and documents:
  - Applicant name, block / house / shop / flat number, street / road name, town or locality.
  - Lot number, section number, DP number.
  - Measurements in metric.
  - The position of true north.
  - Building or parts of building to be demolished to be indicated in outline.
  - Author name and date of plan
- Two (o) copies of the application form, all plans and supporting documents are required to be provided, along with a digital copy (preferably on CD or USB drive) in accordance with Council's digital requirements. All documents should be labelled correctly to reflect the type of documentation submitted.
- Be aware that if the required information is not provided, your application will not be accepted by Council.

	REQUIRED INFORMATION	SUPPLIED
Application form	a. Have mobile phone numbers and email addresses been provided for the Applicant at Step 2?	<input type="checkbox"/> Yes
	b. Has the proposed development been adequately described and the cost of works provided at Step 3?	
	c. Is Concurrence from State Agencies noted at Step 9? If so please ensure that the application fee to each of the relevant State Authorities has been provided and the required administration fee/s paid.	
	d. Is the application Integrated Development as noted at Step 10? If so please ensure that the application fee to each of the relevant State Authorities has been provided and the required administration fee/s paid.	
	e. Have ALL owner/s provided consent at Step 13? <i>Note if owner is a company then two (2) directors or one (1) director and one (1) company secretary must sign. If the owner is a Strata then a Strata Seal is required.</i>	
	f. Have ALL applicant/s provided consent at Step 14? <i>Note if applicant is a company then two (2) directors or one (1) director and one (1) company secretary must sign.</i>	
	g. Estimating the cost of development The following people are recognised as suitably qualified persons: <ul style="list-style-type: none"> <li>– a builder who is licensed to undertake the proposed building works</li> <li>– a registered quantity surveyor</li> <li>– a registered land surveyor</li> <li>– a registered architect</li> <li>– a practising qualified building estimator</li> <li>– a qualified and accredited building designer</li> <li>– a person who is licensed and has the relevant qualifications and proven experience in costing of development works at least to a similar scale and type as is proposed.</li> </ul>	
Statement of Environmental Effects	a. Environmental impacts of the development described?	<input type="checkbox"/> Yes
	b. Have the environmental impacts of the development have been identified?	
	c. Have the steps to be taken to protect the environment or to lessen the expected harm to the environment been described?	
	d. Relevant provisions of the following addressed:	
	1. Environmental Planning and Assessment Regulation 2000	
	2. State Environmental Planning Policies	
	3. Byron Local Environmental Plan (LEP 1988 and / or LEP 2014)	
	4. Byron Shire Development Control Plan (DCP 2010 and / or DCP 2014)	
	e. If the proposal relates to residential flat developments to which State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development, have all details as described in the State Policy been provided?	

<b>Environmental Impact Statement</b>	If the development was identified in Step 6c as requiring an Environmental Impact Statement (EIS), have the required copies been provided? <i>Note: For full details regarding the requirements for an EIS, please contact NSW Planning and Environment or see their website as follows: <a href="http://www.planningportal.nsw.gov.au/understanding-planning/assessment-systems/local-development">www.planningportal.nsw.gov.au/understanding-planning/assessment-systems/local-development</a>.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> N/A
<b>Species Impact Statement</b>	If the development was identified in Step 6 as requiring a Species Impact Statement, have the required copies been provided?	<input type="checkbox"/> Yes <input type="checkbox"/> N/A
<b>Site Plan</b>	a. Location, boundary dimensions, site area and north point clearly shown? b. Existing vegetation and trees on the land indicated? c. Location and uses of existing buildings on the land listed? d. Existing levels of the land in relation to buildings and roads provided? e. Location and uses of buildings on sites adjoining the land provided? f. If the property is flood affected, are the existing contours or spot heights to be provided in A.H.D?	<input type="checkbox"/> Yes
<b>Plans / Sketches</b>	a. Floor plans of existing and proposed building indicating layout, partitioning, room sizes and intended uses of each part of the building provided? b. Elevations and sections showing existing and proposed external finishes and heights of any proposed buildings provided? c. Proposed finished levels of the land in relation to existing and proposed buildings and roads provided? d. If the property is flood affected, are the existing and proposed finished floor levels provided in A.H.D? e. Proposed parking arrangements, entry and exit points for vehicles and provision for movement of vehicles within the site provided, including dimensions? f. Proposed landscaping and treatment of the land provided including plant type, height and maturity? g. Proposed methods of draining the land provided? h. For BASIX affected and BASIX optional development, are all BASIX requirements indicated on plans? i. Do the plans contain details of existing and proposed subdivision pattern, including the number of lots and location of roads? j. For proposals involving subdivision, have the appropriate engineering details and plans been provided?	<input type="checkbox"/> Yes
<b>BASIX Certificate</b>	A BASIX certificate is required for all new dwellings (including secondary dwellings), dwelling alterations and additions (where the cost of works exceeds \$50,000.00) and swimming pools over 40,000 litres. a. For BASIX affected and BASIX optional development has certificate/s issued no earlier than 3 months before the date of lodgement has been provided? b. Have the required details been included on the plans?	<input type="checkbox"/> Yes <input type="checkbox"/> N/A
<b>Fire Safety Schedule</b>	a. If the proposal includes change of use of a building, has a list of category 1 fire safety provisions been provided for both current provisions and provisions that apply following the change of use? b. For commercial, retail and industrial development, has a list of category 1 fire safety provisions been provided?	<input type="checkbox"/> Yes <input type="checkbox"/> N/A
<b>Specific Use Requirements</b>	If the proposal involves the use of a building as an <b>entertainment venue or a function centre, pub, registered club or restaurant</b> , has a statement that specifies the maximum number of persons proposed to occupy, at any one time, that part of the building to which the use applies been provided?	<input type="checkbox"/> Yes <input type="checkbox"/> N/A
<b>Other Required Documents</b>	a. If applicable, have details regarding the access to and impact of the development upon infrastructure including water, sewerage, electricity, stormwater disposal and vehicular access, noting in particular the requirements of Council Policy 4.20 "Building over pipelines and other underground structures" been provided? b. If the property is not in a sewered area, have details of the proposed on site sewage management system been provided? c. If stormwater works are proposed, have engineer's plans and calculations been provided? d. Where the property is identified as having contaminated soil, have details addressing the requirements of State Environmental Planning Policy 55 – Remediation of Contaminated Land been provided? e. For residential building works, has a schedule of the building materials and colours, in accordance with the provisions of Chapter D1.2.4 of Council's Development Control Plan 2014 been provided? f. For works in a Heritage Conservation Area or Heritage Item, has a Heritage Impact	<input type="checkbox"/> Yes <input type="checkbox"/> N/A



	Statement addressing the requirements of Chapter C1 of Council's Development Control Plan 2014 been provided?	
	g. Has a Site Waste Minimisation Plan been provided?	
	h. Where the property is identified as being bushfire effected, have bushfire requirements been addressed in accordance with NSW Rural Fire Service?	
	i. Stormwater Concept Plan checklist (see below)	
<b>Documents Provided</b>	a. Have TWO (2) copies of the SEE, all plans and all supporting documents been provided? It is preferred that plans and supporting documents are not bound and that all documents are stapled / bundled as required.	<input type="checkbox"/> Yes <input type="checkbox"/> N/A
	b. Has an digital copy of the application form, SEE, all plans and all supporting documents been provided? Additional fees will apply if not.	
	c. Have additional copies of the application form, SEE, all plans and all supporting documents been provided for any referral bodies noted at Steps 8 and 9.	

Is additional information required for this application?

☐ No    ☐ Yes[illegible]

Advertising level

□ Level 0

#### □ Level 1

☐ Level 2

Development Support Officer

---

Date



# PLANNERS<sup>42</sup> NORTH

## LAND OWNER AUTHORITY

### TO WHOM IT MAY CONCERN

This is to advise that PLANNERS NORTH abn: 56 291 496 553 has been engaged by:

Client Name:	Community Association DP 271119		
Client Address:	48/117 Old Pittwater Road Brookvale NSW 2100		
Dated:	05/09/2019		
in respect to land described as:	Habitat Byron Bay		
No:	1	Street:	1 Porter Street
Locality/Suburb:	Byron Bay 2481		
Real Property Description:	LOT/SECTION/DP DP 271119		

The owner of the abovementioned land hereby authorises PLANNERS NORTH or its agents to:

1. Inspect Records
2. Carry out searches and site inspections
3. Take Site Samples
4. Lodge applications, objections or appeals

The owner confirms that no Reportable Political Donations have been made in the last 2 years by persons or companies associated with the subject land. We will immediately notify PLANNERS NORTH if the Reportable Political Donation situation changes.

Signed:



PRINT NAME:

**Darren Delgaty**

POSITION (if applicable):

**Strata Manager**

PRINT NAME:

POSITION (if applicable):

PRINT NAME:

POSITION (if applicable):

*This form needs to be completed and signed by all persons who own the subject land. If the land is owned by a company, please ensure that at least **two Directors** of that company sign the form, unless a sole director company.*

20<sup>th</sup> March 2018

To Whom It May Concern,

As Directors of the following companies, we hereby authorise Mr Abel East, as Project Manager, to sign documents in relation to development projects and other related interests of the for and on behalf of the following companies:

1. Bayshore Developments Pty Ltd (ABN: 68 148 921 886)
2. Habitat Workspace Pty Ltd (ABN: 35 620 463 541)

Yours Sincerely



Brandon Saul  
Director



David Knappick  
Director



Ian Callow  
Director

**APPENDIX B****Proposed Development Control Plan Modification**

This appendix sets out changes to the Byron DCP 2014 to facilitate the Stage 4 proposal. Clauses sought to be changed are recited below. Provisions that are sought to be deleted are shown ~~struck through~~ and provisions sought to be inserted are shown in **blue font**.

**E5.5.3.4 Precinct Plan****1. c) Land use 'precincts', including:**

i.i) Precinct 1A – ~~commercial terraces /~~ tiered living.

i.ii) Precinct 1B - Mixed use, retail / business / food and drink / recreation facility (indoor).

**2. b.1) Precinct 1A: ~~Commercial terraces /~~ Tiered Living**

~~The three Commercial Terrace buildings are comprised of 4x two-bedroom units, each with integrated, dedicated commercial or home office spaces. This product will suit an array of people wanting to run a small professional business from home.~~

Tiered Living consists of 8x two-and-a-half storey buildings along the northern edge of the site (half storey comprised of a mezzanine or loft that utilises the roof space). Tiered living provides for a range of housing options, with 12x one bedroom units, 22x two bedroom units and 12x three bedroom units.

**b.2) Precinct 1B: Mixed use**

The Precinct will offer a mix of business, retail, recreation facilities (indoor) and food and drink, including; approx. 450m<sup>2</sup> of retail space; approx. 900m<sup>2</sup> of commercial office space; 615m<sup>2</sup> of recreation facilities (indoor) and 105m<sup>2</sup> of food and drink premises space.

Table E5.1 – Land Uses Consistent with Desired Future Character

<b>Precinct 1A</b>	<b>Consistent Land Uses*</b>	<b>Maximum Densities*</b>
Land Area: Approximately <del>12,129m<sup>2</sup></del> <b>8,419m<sup>2</sup></b>  Built Gross Floor Area: <del>7,430m<sup>2</sup></del> <b>Approximately 6,042m<sup>2</sup></b>  Bedroom Total: 126	<ul style="list-style-type: none"> <li>- <del>Commercial Terraces (CT)</del></li> <li>- Tiered Living (TL)</li> </ul>	Commercial Terraces <ul style="list-style-type: none"> <li>- Part of the ground floor is for home office / creative industry or use as an additional bedroom</li> <li>- Rear portion of the ground floor and all of upstairs is residential (Class 1A or Class 2)</li> <li>- 2 bedrooms</li> </ul> Tiered Living <ul style="list-style-type: none"> <li>- Mix of configurations ranging from 1 – 3 bedrooms depending on how the space is used.</li> <li>- Garage to ground floor.</li> </ul>

Precinct 1B	Consistent Land Uses*	Maximum Densities*
Land Area: Approximately <b>3,710m<sup>2</sup></b>  Built Gross Floor Area: <b>2,160m<sup>2</sup></b>	<ul style="list-style-type: none"> <li>- Retail</li> <li>- Business</li> <li>- Food and Drink</li> <li>- Recreation Facilities (indoor)</li> </ul>	<ul style="list-style-type: none"> <li>- Retail (class 6) to the lower level.</li> <li>- Commercial (class 5) to the upper two levels.</li> <li>- Food and drink and Recreation Facilities (indoor) to the lower level.</li> <li>- Recreation Facilities (indoor) to the upper level.</li> <li>- Shared meeting rooms, wc's, storage and garbage facilities.</li> </ul>

Table E5.2 – Setbacks

Land Use	Minimum Setback	Distance (m)
Precinct 1	Internal Roads	<del>0.5</del> <b>0</b>

Table E5.5.4.2 – Car Parking Standards

Type of Development	Minimum Car Parking Provision	Special Requirements	Precinct Requirements
<b><i>Precinct 1A – Commercial Terraces / Tiered Living</i></b>			
large dwellings - 3 or 4 bedrooms	2 spaces per dwelling	1 space must be capable of being covered (stacked car parking will not be acceptable)	1 per cent of spaces to be provided for people with a disability
small dwellings – 1 bedroom	1 space per dwelling		
visitor car parking	1 space per 4 dwellings		
<b>Workspace</b>	1 space per workspace		
delivery / service vehicles	1 space per 50 units	Visitor parking can be used if designed for dual use	

Type of Development	Minimum Car Parking Provision	Special Requirements	Precinct Requirements
<b><i>Precinct 1B – Mixed use, retail / business / food and drink / recreation facility (indoor)</i></b>			
retail	1 space per 20m <sup>2</sup> gross floor area		1 per cent of spaces to be provided for people with a disability
office / professional rooms/ business premises	1 space per 40m <sup>2</sup> gross floor area x 70%		
Recreation facility (indoor)	1 space per 20m <sup>2</sup> gross floor area		
delivery / service vehicles	1 space per 400 m <sup>2</sup>		



### Background

The climate, coastal location and the evolving culture of Byron Bay has given rise to a 'Byron style' which can be characterised as informal, **often** light weight construction and is referred to in this Section as the 'Byron vernacular' and the 'Byron style'. Achieving the Byron vernacular will **be reinforced within the developments' residential precincts, with the development as a whole** ensure that the site will be characterised by lush vegetation, open spaces and linked landscaped areas, **a mix of flat and** sloping rooflines, timber, **masonry** and glass structures typical of the local Byron style ~~of lightweight construction and tropical appearance~~ (refer to Figure E5.1).

### Performance Criteria

1. Provide low-rise (~~two and a half storey maximum~~) **two and three storey** building forms that are in proportion to street trees **or existing built form. Two and** (half storey comprised of a mezzanine or loft that utilises the roof space) **are also possible.**

### Prescriptive Measures

2. External materials must ~~demonstrate consistency with~~ **complement** the 'Byron vernacular' and ~~must be light weight in appearance and~~ can include various forms of cladding including pre-painted corrugated steel, fibrous cement, weatherboard, **masonry, concrete** and timber;

### E5.5.4.6 – Water Cycle Management

#### Performance Criteria

2. Minimise building footprints by including two storey and **three** ~~two and a half storey~~ building forms in order to maximise pervious open space areas;

## Clause 4.6 Objection

## Clause 4.6 Objection to Clause 4.3 - Height of Buildings under Byron Local Environmental Plan 2014 (BLEP14)

### Introduction

I, Stephen J Connelly, of PLANNERS NORTH, 6 Porter Street, Byron Bay on behalf of Bayshore Developments Pty Ltd object under Clause 4.6 Byron Local Environmental Plan 2014 (BLEP14) to the Development Standard relating to Building Height at Clause 4.6 of BLEP14.

I contend for the reasons set out following that the Development Standard prescribed at Clause 4.3 of BLEP14 is unreasonable and unnecessary in the circumstances of the subject case. Further, I am of the view that the proposed development raises no matters of adverse significance in local, regional or State terms and no public benefit will result from the maintenance of the subject standard in this case.

This objection is to be considered in conjunction with the Statement of Environmental Effects (SEE) published for HABITAT Stage 4.

### Structure of Objection

This objection:

- describes the variation proposed;
- provides justification for the exemption;
- reviews the proposal with respect to the guidance provided by *Wehbe v Pittwater Council*;
- reviews the proposal in light of the guidance provided by *Winten Developments v North Sydney Council*;
- examines considerations relevant to the public interest and State and regional planning significance; and
- provides a summary justification of the objection.

### Clause 4.6 Objection

#### Development Standard

Pursuant to Clause 4.6 of the BLEP14, this objection seeks to vary the building height standard stipulated in Clause 4.3 that states:

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The relevant portion of the Heights of Building Map (Sheet HOB\_003 CC) of the BLEP14 is shown below. It specifies a maximum height of 9m for the site.



Extract from BLEP14 Sheet HOB\_003 CC

**Plan C.1** Height Control Points Plan (being Drawing DA 210 from the Plan Set) is attached. It shows the roof view of the proposed development and highlights key locations to test height compliance. The table below outlines the corresponding building reference points and specifies the building heights variation in numerical and percentage terms.

**Table C1 Building Height Reference Points Table**

Ref. Point	Existing Ground Level (AHD)	Proposed Height Level (AHD)	Proposed (m)	Max (m)	Variation (m)	Variation %
A	5.830	15.800	9.970	9.00	0.970	10.78
B	5.974	15.800	9.826	9.00	0.826	9.18
C	5.853	15.800	9.947	9.00	0.947	10.52
D	5.750	15.800	10.050	9.00	1.050	11.67
E	6.029	15.800	9.771	9.00	0.771	8.57
F	6.110	15.800	9.690	9.00	0.690	7.67
G	5.965	15.800	9.835	9.00	0.835	9.28
H	5.914	15.800	9.886	9.00	0.886	9.84
I	6.110	12.330	6.220	9.00	No Variation	0
J	6.100	12.330	6.230	9.00	No Variation	0
K	5.670	14.440	8.770	9.00	No Variation	0
L	5.700	14.440	8.740	9.00	No Variation	0
M	5.830	15.800	9.970	9.00	0.970	10.78
N	5.868	15.800	9.932	9.00	0.932	10.36
O	5.813	15.800	9.987	9.00	0.987	10.97
P	5.803	15.800	9.997	9.00	0.997	11.08

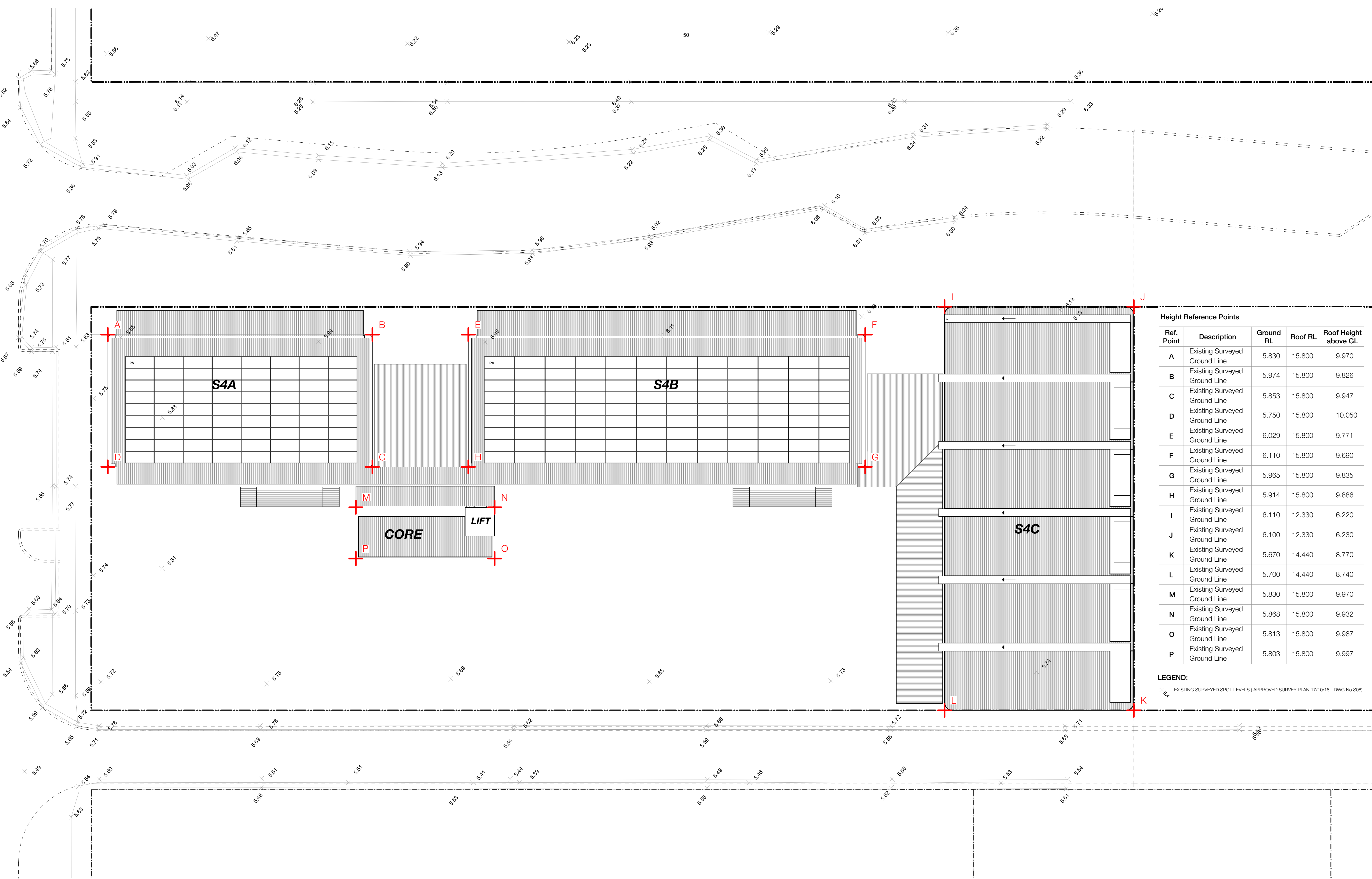
## Justification for the exception and matters for consideration

### Compliance to Clause 4.6 BLEP14

The following provides the justification with regards to the objectives of Clause 4.6 of BLEP14:

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances*



Height Reference Points				
Ref. Point	Description	Ground RL	Roof RL	Roof Height above GL
A	Existing Surveyed Ground Line	5.830	15.800	9.970
B	Existing Surveyed Ground Line	5.974	15.800	9.826
C	Existing Surveyed Ground Line	5.853	15.800	9.947
D	Existing Surveyed Ground Line	5.750	15.800	10.050
E	Existing Surveyed Ground Line	6.029	15.800	9.771
F	Existing Surveyed Ground Line	6.110	15.800	9.690
G	Existing Surveyed Ground Line	5.965	15.800	9.835
H	Existing Surveyed Ground Line	5.914	15.800	9.886
I	Existing Surveyed Ground Line	6.110	12.330	6.220
J	Existing Surveyed Ground Line	6.100	12.330	6.230
K	Existing Surveyed Ground Line	5.670	14.440	8.770
L	Existing Surveyed Ground Line	5.700	14.440	8.740
M	Existing Surveyed Ground Line	5.830	15.800	9.970
N	Existing Surveyed Ground Line	5.868	15.800	9.932
O	Existing Surveyed Ground Line	5.813	15.800	9.987
P	Existing Surveyed Ground Line	5.803	15.800	9.997

LEGEND:  
x 5.4 EXISTING SURVEYED SPOT LEVELS (APPROVED SURVEY PLAN 17/10/18 - DWG No S08)

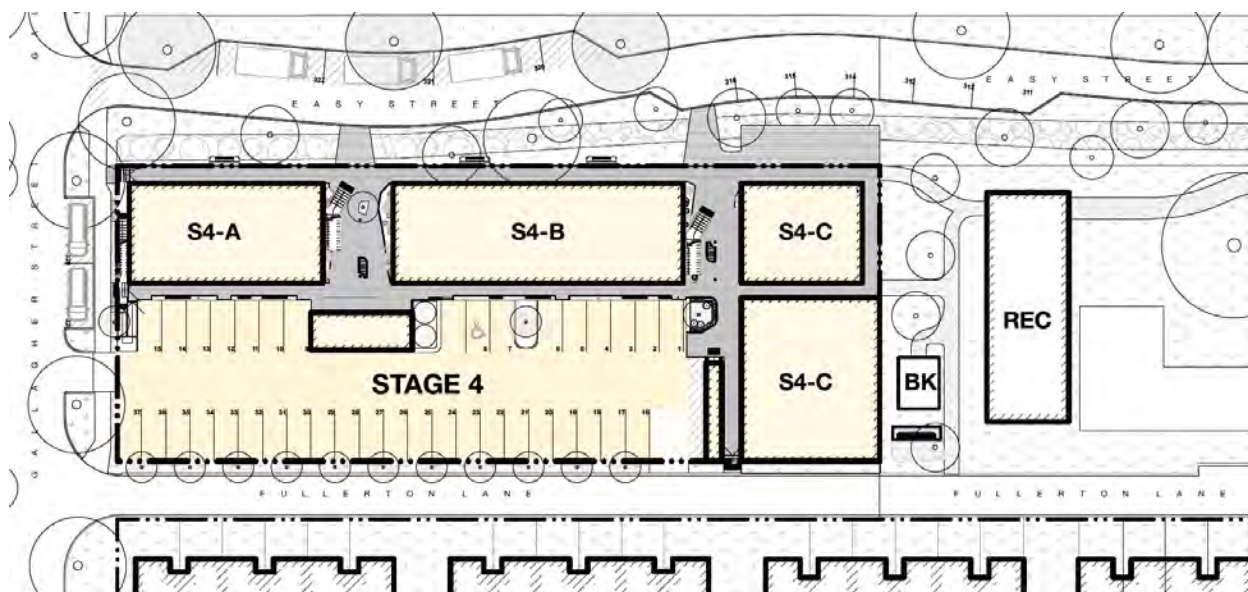
01 BUILDING HEIGHT RELATIVE TO NGL  
HABITAT, STAGE 04  
SCALE: 1:125 AT A3

Plan C.1 Height Control Points Plan

**Comment:**

51

The proposed variation sought only relates to the S4-A and S2-B buildings (not S4-C) and is generally 10% but up to a maximum of 11.6% (at point D).



Extract from Plan Set showing the building groupings.

By applying an appropriate degree of flexibility with respect to the height development standard, the resultant buildings will be consistent in height with the general height of development in the vicinity. We submit that for the reasons further outlined below, this will achieve better outcomes for and from development.

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

**Comment:**

The building height standards are not excluded from the operation of this clause.

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

**Comment:**

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for seven fundamental reasons.

Firstly, the buildings as proposed are consistent of development in the vicinity. **Plan C.2** shows adjacent build heights. It depicts a cross section of Stage 4 adjacent to the Live/ Work apartments. The maximum Reduced Level (RL) of the architectural roof feature of the Pocket Living Apartments is RL 15.850m. The maximum RL of the Stage 4 complex is RL 15.800. In relation to the Live/ Work apartments on the southern side of Fullerton Lane the roof height is RL 14.2m. The maximum height of the Saw Tooth Recreation Building roof is RL 14.44m.

Secondly, building bulk is reduced as the roof structures are fragmented into two roof styles and the structures massed as three buildings.





View from the recreation precinct back to S4\_C



View to S4\_A from Gallagher Street

*Example of the two building roof styles utilised.*

Thirdly, strict compliance would maintain 2 x 3 story structures but would result in an overall floor height of 2.6m rather than 3m as is best practice.

Fourthly, the part of the proposed works that has the taller building height is sufficiently setback from the Fullerton Lane so that those structures have the maximum separation from the Live/ Work buildings south of Fullerton Lane.

Fifthly, there is no disruption to existing views, loss of privacy or visual intrusion occasioned by the numerical excess in the BLEP14 specified building heights.

Sixthly, in terms of overshadowing, the proposal has no material impact. **Plans C.3 and C.4** illustrate shadow projections. **Plan C.3** shows shadow plots of a building form in strict compliance with a 9m building height and **Plan C.4** shows the projection of shadows based on the proposed building form. The impact to the current amenity will be insignificant.

Seventhly, the design meets the BDCP14 density (FSR) requirements demonstrating the suitability of the site for the intensity proposed without “over development” of the land.

Given the seven above described aspects, we submit that strict compliance with the 9m building height in BLEP14 is unreasonable and unnecessary and strict compliance with those standards would, in any particular case, tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Environmental Planning and Assessment Act 1979 (the Act).

Clause 4.6 of the BLEP14 allows a proponent to seek approval from the Council for consent to be granted to an application that contravenes a development standard. As outlined in this SEE, the proposed development complies with all other standards of BLEP14 and BDCP 2014 will create a minimal impact on the locality and its surrounds.

The consistency with the objectives of Cl. 4.3 Height of buildings as described above satisfies the “Wehbe test” and the absence of any environmental impacts, demonstrates that strict compliance with the building height standard is both unreasonable and unnecessary in this instance.

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

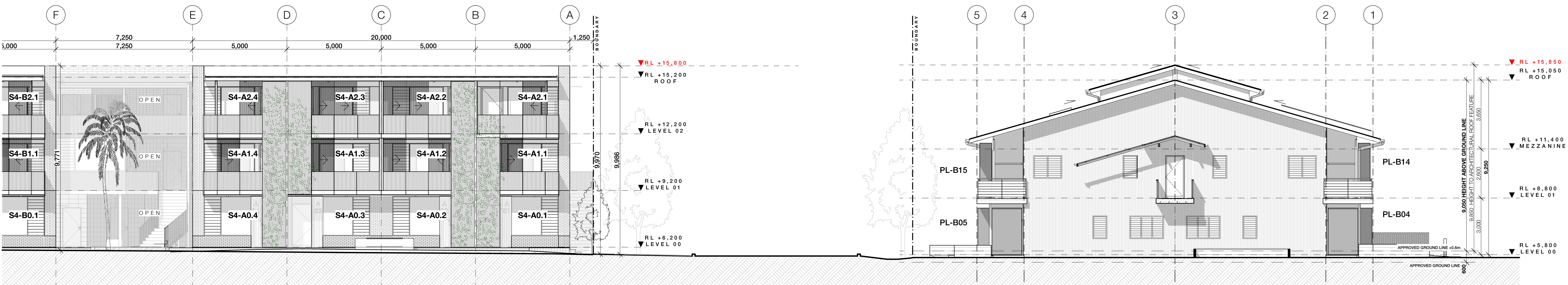
#### **Comment**

There will be no impact to the prevailing HABITAT character and amenity. No disruption to existing views, loss of privacy, overshadowing or visual intrusion results in the additional storey and minimal excess in building and wall heights standards.

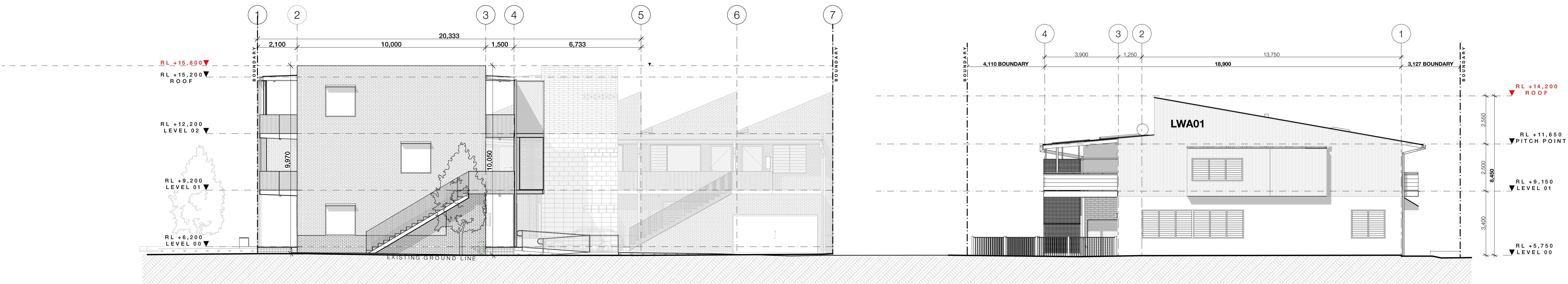
The use of a composite massing strategy together with the choice of building materials and colours, façade and fenestration treatment as well as landscaping measures all ensure that the buildings fits well to the existing and future streetscape and character of the area.

The solar access and privacy are considerations that have been addressed and demonstrated that the additional building and wall heights will not create any unreasonable additional impact on the nearest properties or surrounding public domain of HABITAT.





00 S4\_A HEIGHT RELATIVE TO PL\_B  
HABITAT, STAGE 04  
SCALE: 1/100 AT A1



**01** S4\_A HEIGHT RELATIVE TO LW\_A  
HABITAT, STAGE 04  
SCALE: 1:100 AT A1

Based on the above, we submit there are sufficient environmental planning grounds to justify contravening the development standard.

*(4) Development consent must not be granted unless:*

*(a) the consent authority is satisfied that:*

*(i) the written request has addressed sub clause (3)*

**Comment**

This Appendix is our formal written request.

*(ii) the proposed development is in the public interest (consistent with the objectives of the standard and the zone)*

**Comment**

The objectives of Zone B4 are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The above objectives of the zone are met by the proposal in the following ways:

- Development in the manner proposed assists in providing a mixture of compatible uses;
- The development sits comfortably with the existing and the future character of HABITAT and surrounding area; and

Landscaping is used throughout the site to enhance the overall development by softening the hard surfaces including the carparking bays, driveways and pedestrian pathways.

*(b) the concurrence of the Secretary has been obtained.*

**Comment**

We understand that the Council enjoys assumed concurrence from the Planning Secretary in relation to this matter.

*(5) The Secretary must consider:*

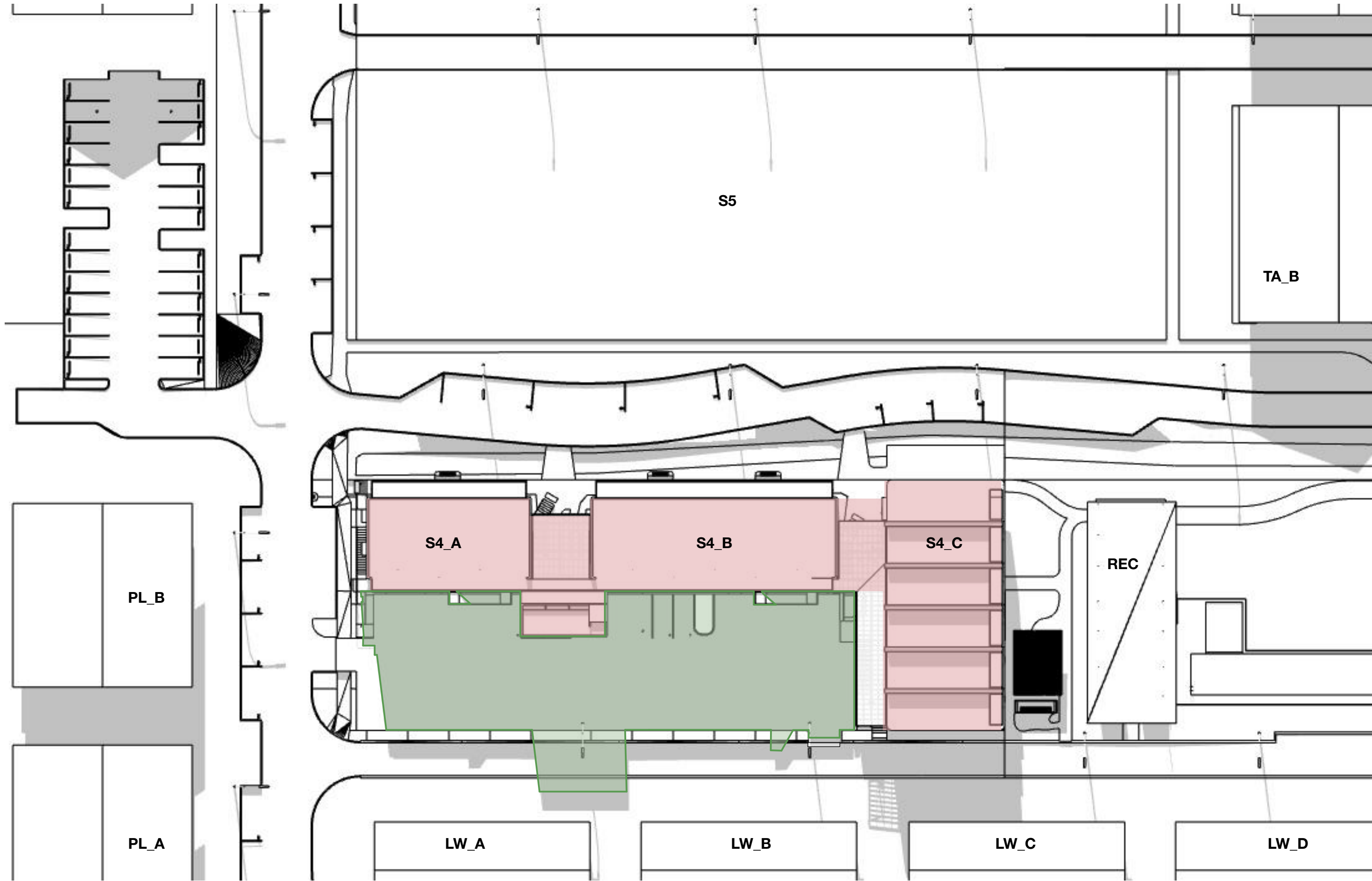
*(a) whether contravention raises any matter of significance for State or regional environmental planning.*

**Comment**

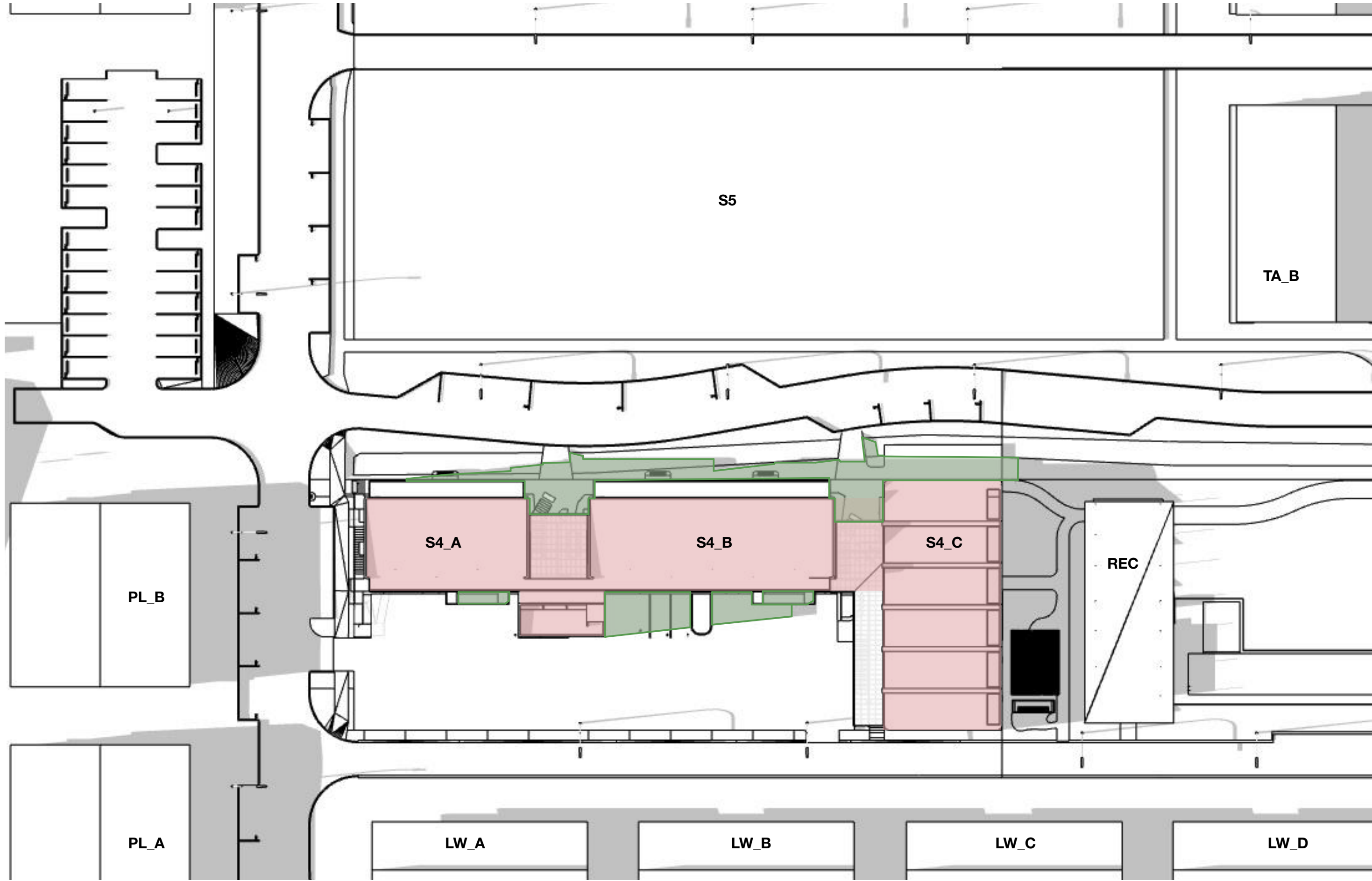
An examination of the Stage 4 project against relevant strategies raises no issues of State or Regional planning significance. The development is consistent with the objectives and aspirations set out in the *North Coast Regional Plan 2036*, particularly provisions:

- Direction 6: Develop successful centres of employment;
- Direction 14: Provide great places to live and work;
- Direction 15: Develop healthy, safe, socially engaged and well-connected communities; and
- Direction 20: Maintain the region's distinctive built character

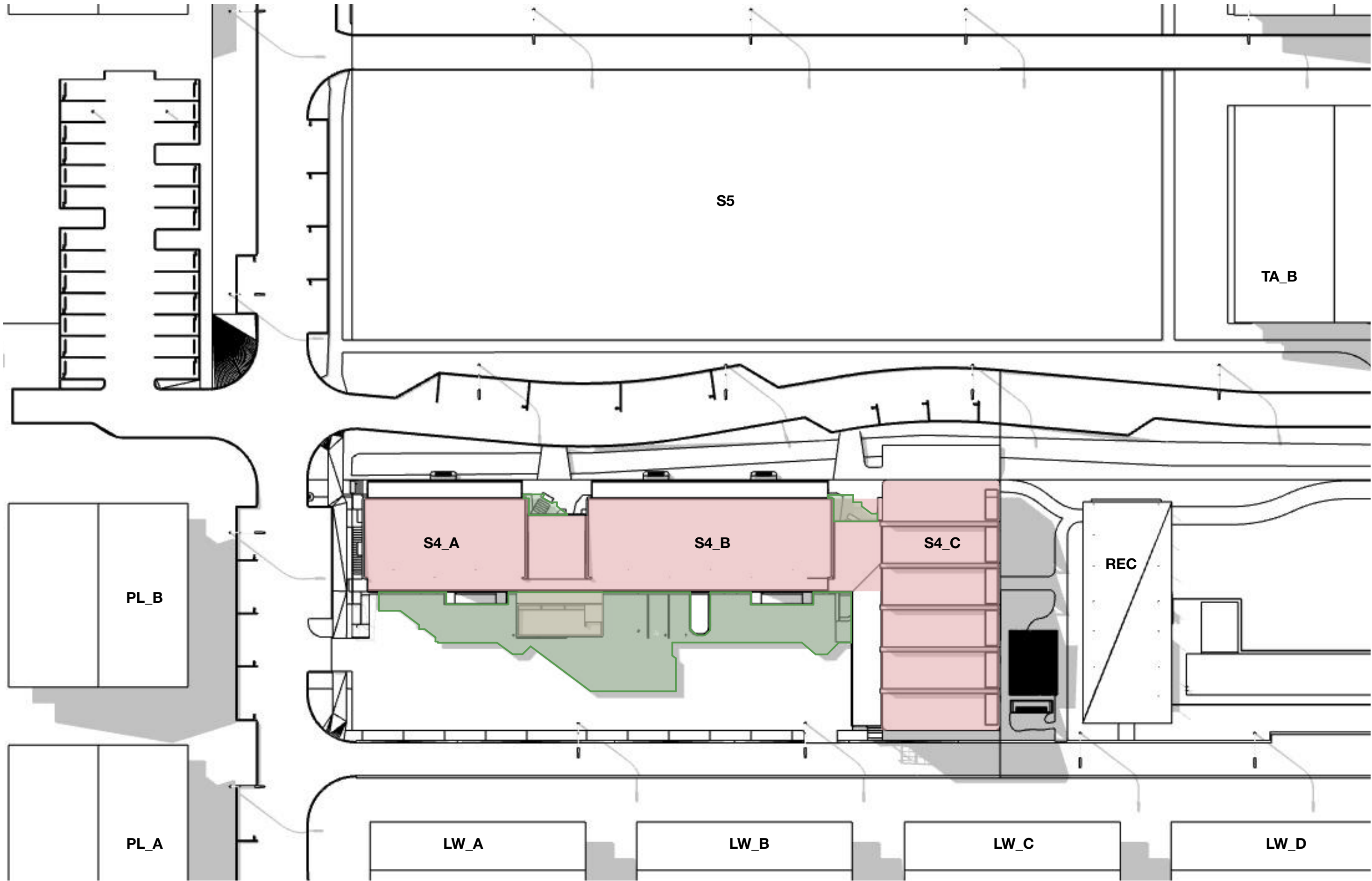




01 21st JUNE 9am  
HABITAT, STAGE 04  
SCALE: 1:100



03 21st JUNE 3pm  
HABITAT, STAGE 04  
SCALE: 1:100



02 21st JUNE 12pm  
HABITAT, STAGE 04  
SCALE: 1:100

KEY NOTES

: EXTENT OF SHADOW BASED ON PROPOSED DESIGN

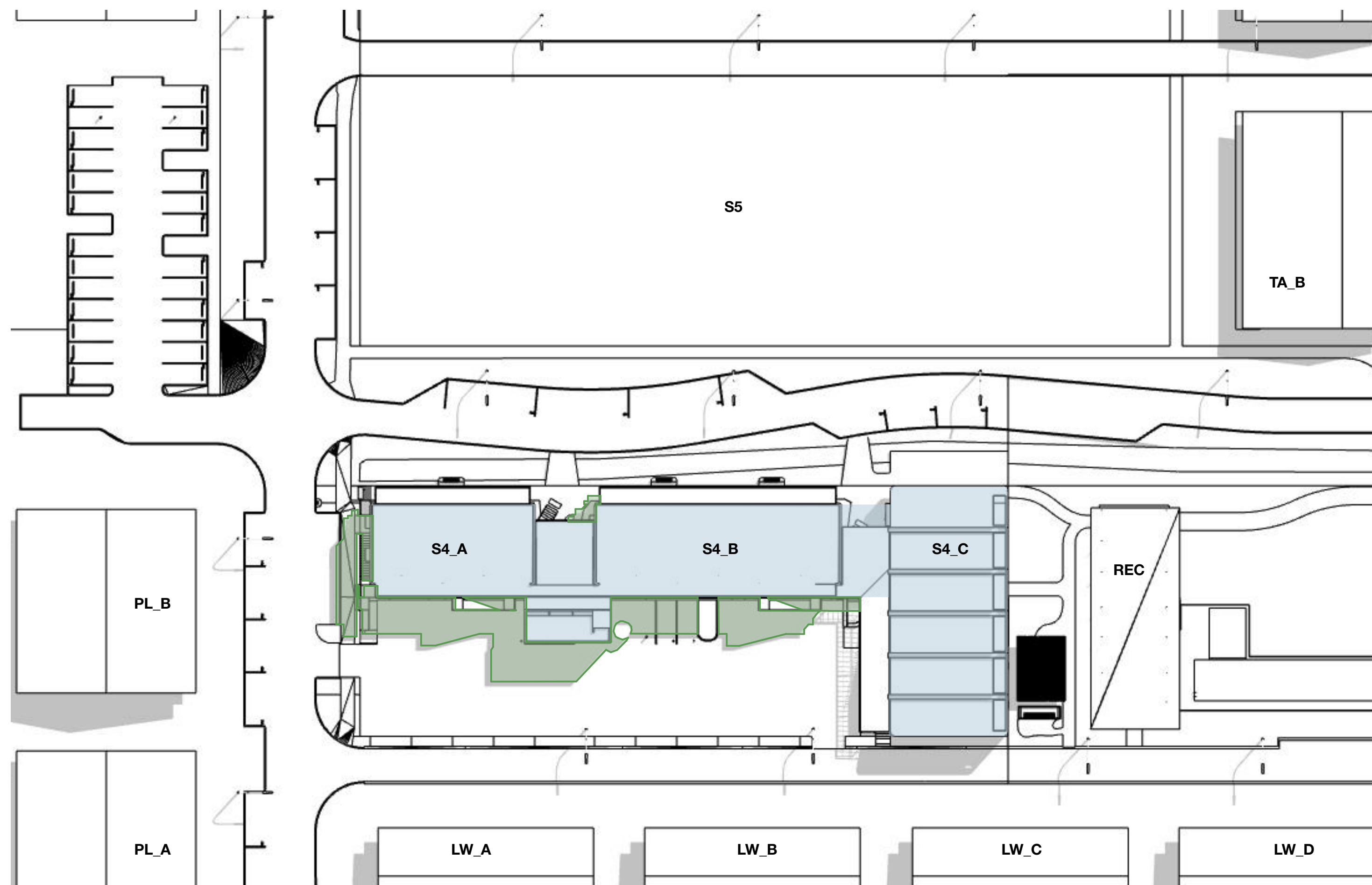
: EXTENT OF SHADOW IF S4-A + S4-B REDUCED IN HEIGHT TO A MAXIMUM OF 9M ABOVE EXISTING SURVEYED LEVELS

Plan C.3 Shadow Diagram (Winter)

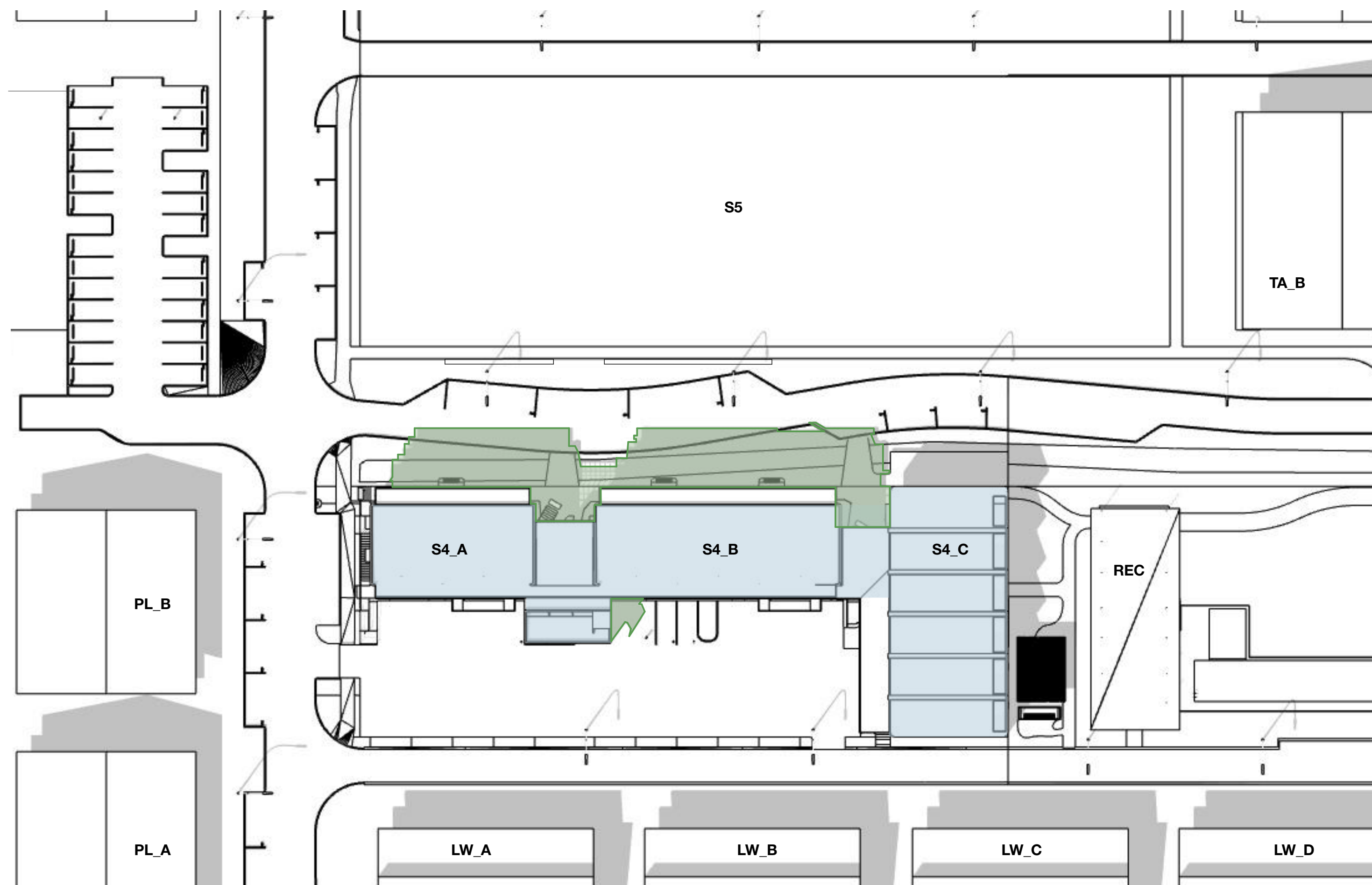
<div>DOMINIC FINLAY JONES ARCHITECTS PTY LTD</div> <div><div>dfj</div></div> <div>VERIFY ALL DIMENSIONS &amp; CHECK LEVELS ON SITE BEFORE COMMENCING WORK. DO NOT SCALE FROM THE DRAWING. THE ARCHITECT'S SHALL NOT BE RESPONSIBLE FOR COPIES IN ANY FORM OR BY ANY MEANS WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.</div>	REVISION	ISSUE DATE
	01	20/8/19

PROJECT HABITAT, STAGE 04 FOR BAYSHORE PROPERTY TRUST, PTY, LTD AT  DOMINIC FINLAY-JONES BANGALOW AUSTRALIA  NOMINATED ARCHITECT DOMINIC FINLAY-JONES NEW REG ARCHITECT TEN	DRAWING TITLE  WINTER SHADOW DIAGRAMS  DEVELOPMENT APPLICATION	<div>NORTH</div> <div><div></div></div>	JOB NUMBER DFJ102	SCALE AT A1
				SCALE AT A3
		DRAWING NUMBER DA 925	REVISION 01	

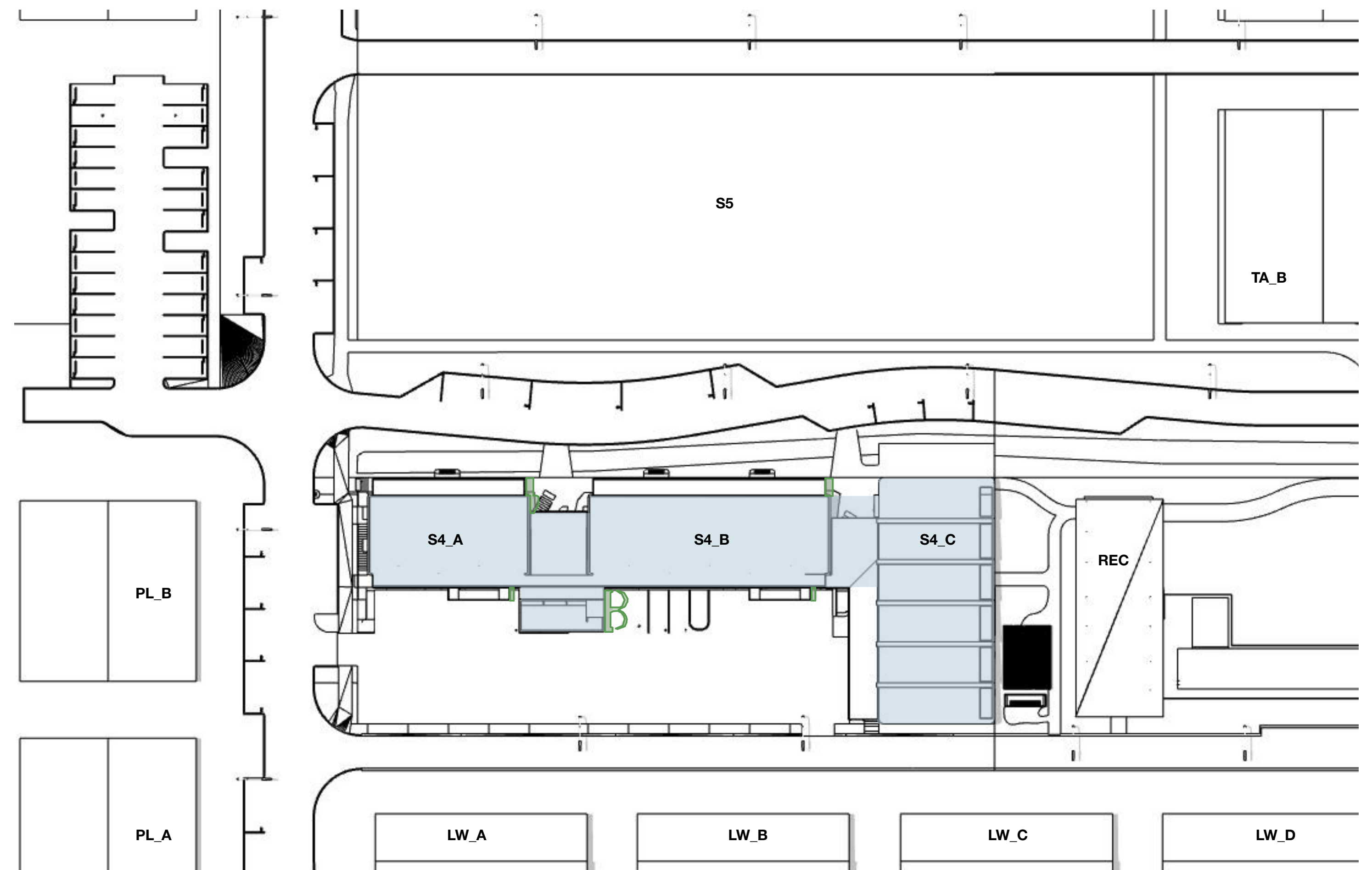




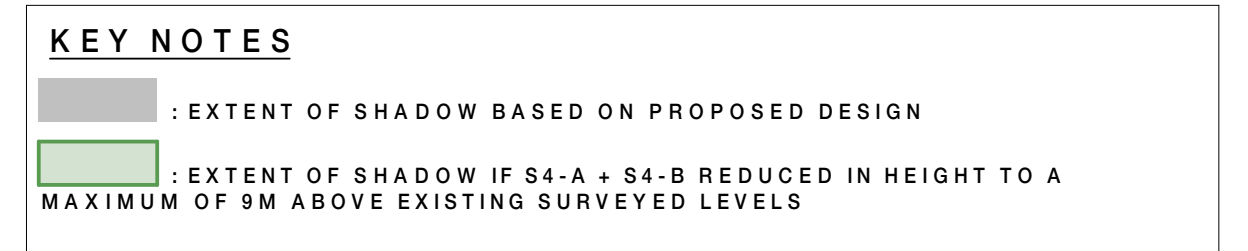
**01** 21st DECEMBER 9am  
HABITAT, STAGE 04  
SCALE: A1A1



**03** 21st DECEMBER 3pm  
HABITAT, STAGE 04  
SCALE: A1A1



**02** 21st DECEMBER 12pm  
HABITAT, STAGE 04  
SCALE: AT A1



### Plan C.4 Shadow Diagram (Summer)

## Wehbe v Pittwater Council

In his decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy.

Those five tests are considered in the table below.

<p><i>(i) The objectives of the standard are achieved notwithstanding non-compliance with the standard</i></p>	<p>The BLEP14 Clause 4.3 Height of Buildings and corresponding responses are as follows:</p> <p><i>(1) The objectives of this clause are as follows:</i></p> <p><i>(e) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,</i></p> <p><b>Comment</b></p> <p>In our submission, scale, height and built form is adequately resolved by ensuring the absolute height of buildings proposed is consistent with the height of development immediately adjoining and, in the HABITAT, neighbourhood generally. Further, by breaking up the building mass and articulated building facades.</p> <p>The solar access considerations have been addressed and demonstrated that the additional height will not create any unreasonable additional impact on the nearest properties or surrounding public domain.</p>
<p><i>(ii) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary</i></p>	<p>Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above.</p>
<p><i>(iii) the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable</i></p>	<p>Not applicable. The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required.</p>
<p><i>(iv) the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and</i></p>	<p>This exception to development standards request does not rely on this reason.</p>
<p><i>(v) the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.</i></p>	<p>This exception to development standards request does not rely on this reason.</p>



## Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46

The exception to development standards request is assessed below against the accepted test for the assessment of development standard variation established by *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46.

<i>A Is the planning control in question a development standard?</i>	Yes, Cl. 4.3(2) of BLEP14 is a development standard.
<i>B What is the underlying object or purpose of the standard?</i>	<p>The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> <li>• <i>to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,</i></li> <li>• <i>to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located, and to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i></li> </ul>
<i>C Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?</i>	<p>Compliance with the development standard unnecessary or unreasonable in the circumstances of HABITAT Stage 4 because:</p> <p>The proposed non-complying elements from the 9m building height came about to enable optimum utilisation of the site to the 0.9:1 Floor Space Ratio but also maintaining best practice height between floors.</p> <p>The project is consistent with the general height of development in the locality.</p> <p>The portion of the proposed works that have a building height greater than 9m occupy a small proportion of the site and building bulk. It is also sufficiently setback from the Fullerton Lane frontage. The building and roof designs aim to reduce height and minimise bulk. Located in a small portion to the centre of the site, this breach is inconspicuous and unobtrusive to surrounding development.</p> <p>The front elevation demonstrates that the development sits comfortably within the existing streetscape and surrounding area. The minor breach will not be incompatible with any future development.</p> <p>The taller commercial buildings are located well away from existing development. The non compliances on building heights to have no impact on the adjacent properties and dwellings within the site.</p> <p>Scale and built form is well resolved by breaking up the building massing and articulating building facades. The roof forms utilised reduce the bulk and size of the roof structure.</p> <p>There is no disruption to existing views, loss of privacy, overshadowing or visual intrusion. There will be an insignificant impact to the current amenity.</p>



<p><i>D. Is compliance with the development standard consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?</i></p>	<p>The arguments contained in this Clause 4.6 variation support the case to allow flexibility in the application of the standard.</p> <p>The non-compliance with the development standard allows for an orderly use of the land and has been designed with consideration to the desired future character of the area.</p> <p>Additionally, the Objects of the Act are satisfied as:</p> <p>The departure from the height standard in BLEP14 will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and</p> <p>The departure from the height standard in BLEP14 allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls.</p>
<p><i>E. Is the objection well founded?</i></p>	<p>As our Clause 4.6 exception to development standards request appropriately addresses <i>Wehbe v Pittwater Council</i> [2007] NSW LEC 827, we submit that the proposed variation is well founded.</p>

## Public interest and matters of State or regional significance

### Is the proposal in the public interest?

Clause 4.6 exception to development standards request and the accompanying plans and technical reports contained within the SEE demonstrate the public advantages of developing the site. In summary:

- Strict compliance to the building height requirements will result in the ceiling height of the building HABITAT Stage 4 to be reduced from the current 3m height to only 2.6m. Whilst this height is permissible pursuant to the Building Code of Australia, the project architect strenuously submits that it would be an undesirable approach. In the context of the existing height already established by the architectural roof features associated with the Live/ Work building and the Pocket Living residential flat building.
- The new and modern structure will contribute to the quality of building stock in HABITAT. Notwithstanding non compliances in building.
- Optimum utilisation of the site which is consistent with the Council plans and strategies for Byron Bay.
- The project will generate employment during the construction and continuing into the long-term future.
- No unreasonable public disadvantages have been identified as it has been demonstrated that any environmental or other impacts associated with the development are minimal and/or can be adequately managed.

### Matters of State or Regional Significance

The non-compliance with Cl 4.3 Height of buildings standard does not raise matters of significance for State or regional planning. The proposed development is consistent with the aspirations of the *North Coast Regional Plan 2036*.

### The public benefit of maintaining the standard

There is no public benefit in maintaining strict compliance with the development standard in this instance. On the contrary, the general public will benefit in the increase of the supply of affordable housing in the area.

## Summary justification

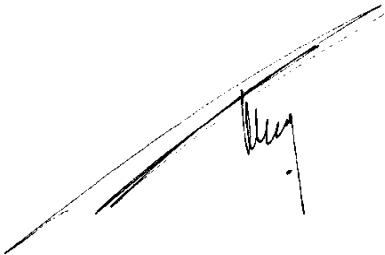
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A summary of the matters set out in Clause 4.6 exceptions to development standards request to vary the height of building and wall standards are as follows:

- The proposed non-complying elements from the 9m building height was brought about to enable optimum utilisation of the site to the 0.9:1 Floor Space Ratio but also maintaining best practice height between floors.
- The project is consistent with the general height of development in the locality.
- The portion of the proposed works that have a building height greater than 9m occupy a small proportion of the site and building bulk. It is also sufficiently setback from the Fullerton Lane frontage. The building and roof design aims to reduce height and minimize bulk. Located in a small portion to the centre of the site, this breach is inconspicuous and unobtrusive to surrounding development.
- The front elevation demonstrates that the development sits comfortably within the existing streetscape and surrounding area. The minor breach will not be incompatible with any future development.
- The taller commercial buildings are located well away from existing development. The non compliances on building heights to have no impact on the adjacent properties and dwellings within the site.
- Scale and built form is well resolved by breaking up the building massing and articulating building facades. The roof forms utilised reduce the bulk and size of the roof structure.
- There is no disruption to existing views, loss of privacy, overshadowing or visual intrusion. There will be an insignificant impact to the current amenity.
- The proposed variations satisfy the tests and considerations established in *Wehbe v Pittwater Council* [2007] NSW LEC 82 and *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46.

In summary, compliance with the development standard restricting building and wall height is unreasonable and unnecessary. This is because the objectives of the development standard can still be achieved notwithstanding non-compliance. The development standard is not an end in itself but rather a means of achieving desired outcomes.

Council is therefore urged to support this Clause 4.6 objection.



Stephen Connelly RPIA (Fellow)  
Partnership Principal  
**PLANNERS NORTH**