

22 November 2018

The General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Dear Sir

RE: Development application 10.2018.534.1, proposed dual occupancy, roof top swimming pools, ancillary driveways, garages and landscaping at Lot 7 DP 258688, No. 44 Brownell Drive.

We are the owners of [REDACTED]. We have reviewed the development application documentation submitted to Council and would like to raise the following issues in relation to the proposed development. Generally, the proposal involves numerous variations to Council's planning controls. This reflects the proposed development being an overdevelopment of the site.

The proposal also omits to provide key information required to adequately assess the proposed development including a visual impact assessment, ecological report, noise assessment and geotechnical report.

The following issues are raised in relation to the development application presently before Council.

Byron Local Environmental Plan 2014 (Byron LEP)

- **Clause 4.3 Height of Buildings**

As detailed in the application, a height limit of 9m as measured to the top most part of the building applies to the subject land. The proposed development exceeds this height provision as illustrated on Plan 05 containing sections of the development. It is our view that given the proposal involves excavation up to 2.6m in depth the proposal should be required to comply with the building height limit.

The variation application accompanying the DA does not adequately argue why a variation should be granted in the circumstances. The report states that the application is compliant with relevant provisions of the Byron DCP 2014 such as car parking, deep soil zones, landscaping and setback. This is not correct. As detailed later in this submission the proposed development includes breaches of the floor space ratio, building setbacks and private open space requirements of Council's controls. In our view there is no sufficient justification for the variation to the height limit proposed by the application.

- **Clause 4.4 Floor Space Ratio**

The development seeks a variation to Council's floor space ratio of 0.4:1. The report argues that it is unreasonable that the locality has such a low FSR considering current

land values. It is our view that any proposed amendment to the floor space ratio provisions should be achieved via changes to the LEP, not variations to individual development applications. The variation fails to argue how strict compliance with the floor space ratio would hinder the attainment of the objectives of the Environmental Planning and Assessment Act 1979.

The report states that the proposal is “generally compliant with all other applicable controls” contained within BSC DCP 2014 and BLEP 2014. This is simply not the case. The plans submitted with the application including Plan 06 and Plan 07 containing elevations illustrate that the proposed development presents as three (3) storeys. It is submitted that compliance with the height and FSR controls of Byron LEP would reduce the bulk and scale of the development in accordance with that determined appropriate for this location.

Byron Development Control Plan 2014

Chapter D1 Residential Accommodation in Urban Villages – Special Purpose Zones

- D1.2.1 Building Height Plane

The proposed development does not comply with the building height plane as illustrated on Plan 05. The application states that the breaches are minor. However, it is our view that the breaches are significant. Further, the objectives of the building height plane provision include ensuring that development is designed to minimise impacts on solar access and privacy on adjoining properties and on the views from adjacent existing buildings. The application does not include an assessment of the impact of the proposed development on views presently enjoyed from adjoining properties. No shadow diagrams accompany the application. It is submitted that in the absence of this material Council is not able to conclude that the building height plane breach will have minimal impacts on solar access, privacy and views from adjacent properties.

- D1.2.2 Setback from Boundaries

The setback provisions require a minimum setback of 4.5 metres from the primary front boundary. The proposed development provides a setback of 2.282 to 3.011 metres from Brownell Drive. This setback variation is significant particularly given the height of the building. The grounds for variation to the setback provision are not considered to be adequately argued. Further, the Statement of Environmental Effects states that the proposal complies with side and rear boundary setbacks. However, the side and rear boundary setbacks are determined by the building height plane and the proposed development breaches these.

- D1.5.2 Character

The provisions of 1.5.2 provide as follows:

Objectives

1. *To ensure that dual occupancy and semi-detached dwelling development is compatible in character with development in the locality, provides adequate private open space and addresses slope and drainage Issues.*

Performance Criteria

1. *In assessing any proposal for dual occupancy or semi-detached dwelling development, particular consideration will be given to the topography and slope of the site, the use of design to minimise loss of privacy, the visual impact of the proposal and the likely impact on water flows and drainage.*
2. *To encourage better visual quality and greater public acceptance, any dual occupancy (attached) or semi-detached dwelling development must be designed as far as possible to look like a dwelling house. Mirror-image dwellings must be avoided.*
3. *Private open space must be specifically designed to be easily accessible to each dwelling.*

Prescriptive Measures

There are no Prescriptive Measures.

The above provisions require particular consideration to be given to the topography and slope of the site and visual impact of the proposal. The provisions also require dual occupancy to be designed as far as possible to look like a dwelling house. No assessment has been made in relation to the proposed impact of the development on existing views from surrounding properties. It is also submitted that the development does not present the appearance of a dwelling but rather two large separate dwelling houses.

- D1.5.3 Adjoining and Adjacent Development

D1.5.3 provides as follows:

Objectives

1. *To ensure that new development is consistent with the character and amenity of existing development in the locality.*

Performance Criteria

1. *Development must be compatible with the bulk, scale, height and character of adjoining and adjacent development. The site characteristics, including slope and aspect, must be taken into consideration in assessing the appropriate height and number of storeys.*
2. *Adequate provision must be made for solar access and privacy of the proposed dwelling(s) and any adjacent dwelling.*

Prescriptive Measures

Council will only consider dual occupancy and semi-detached dwelling development in urban areas where, in its opinion, it has been demonstrated that the following objectives have been met:

1. *Adequate provision for reasonable protection of existing views from neighbouring houses;*
2. *Adequate provision for privacy of the proposed dwelling(s) and any adjacent dwelling(s);*
3. *Adequate provision for access to natural light and solar access for the proposed dwelling(s) and any adjacent dwelling(s);*
4. *Maintenance of the character and neighbourhood amenity of the adjoining residential area.*

D1.5.3 requires development to demonstrate that the objective of providing for reasonable projection of the existing views from neighbouring houses is achieved. No assessment has been provided in this regard.

- D1.5.4 Private Open Space

D1.5.4 provides as follows:

Objectives

1. *To ensure that adequate accessible and useable open space is provided to meet the recreational, gardening and landscape needs of residents.*

Performance Criteria

1. *Private open space areas must be of dimensions to suit the projected requirements of the occupants and guests and to accommodate outdoor recreation needs, as well as providing space for service functions such as clothes drying and domestic storage.*

2. *Part of the private open space must be capable of enabling an extension of the function of the **dwelling** for relaxation, dining, entertainment, recreation and children's play, and be directly accessible from the **dwelling**. Provision must be made for space for private gardening such as vegetable gardens.*
3. *Location of private open space must take account of outlook, natural features of the site and neighbouring buildings or open space. Orientation of private open space must provide for maximum year round use in terms of sunlight.*
4. *Private recreational facilities must not adversely affect the amenity of adjacent properties.*

Prescriptive Measures

1. *Each **dwelling** must have an area of private open space at ground level not located in the front **setback**, having a minimum area of 30m² and a minimum length and width each of 4m, excluding any area used for vehicle circulation or parking.*
2. *The private open space area must not include any areas used for the management of on-site sewage effluent.*

The proposed development does not comply with the prescriptive measures provided at D1.5.4. The development fails to provide private open space at ground level and instead proposes rooftop private open space including swimming pools. In the case of proposed dwelling 2 the open space is located on the roof and does not provide for an extension of the function of the dwelling. The private open space provided is not directly accessible from the living areas of the dwelling. The provision of roof top open space including swimming pools will potentially impact on the amenity of existing surrounding dwellings. In this regard similar applications have been required in the past to provide a Noise Impact Assessment. It is submitted that the proposed private open space is not adequate, accessible and usable in terms of meeting the recreational gardening and landscape needs of residents.

Chapter C3 – Visually prominent sites, visually prominent development & view sharing

- C3.1.2 Application of this Chapter.

This Chapter applies to **visually prominent development** on a **visually prominent site** on land subject to Byron LEP 2014.

Visually prominent development on visually prominent sites are defined as follows:

Visually prominent development

*means any development located on a **visually prominent site** or development in a location that has the potential to impact the visual or scenic character of a **visually prominent site**.*

Visually prominent site

*means land that is wholly or partly within the **coastal zone**; and land in Zone RU1 Primary Production, RU2 Rural Landscape with a height of 60m AHD or greater.*

The subject site is located within the coastal zone and has the potential to impact on visual or scenic character of the locality.

C3.2 General Provisions

- C3.2.1 Visual Impact Assessment

Objectives

1. *To retain and enhance the unique character of Byron Shire and its towns, villages, rural, coastal and natural areas.*

2. *To ensure that development does not adversely impact on the Shire's scenic character and visual quality.*
3. *To ensure that where possible new development contributes to enhancement of the Shire's scenic character and visual quality.*
4. *To ensure adequate information is available to properly assess visual impact.*

Performance Criteria

There are no Performance Criteria for this item

Prescriptive Measures

*Unless Council determines in a particular case that the proposed development is not likely to create adverse visual impacts, Development Applications seeking consent for **visually prominent development** must be accompanied by a Visual Impact Statement that includes, but is not necessarily limited to:*

1. *detailed description and photographs of the site and surrounds, including existing vegetation, topography, slope, surrounding development and other features that may affect visual impact;*
2. *description of the proposed development, including proposed earthworks, vegetation removal, built form, design, height, bulk, scale, roofline, materials, colour schemes, external surface finishes, fencing and landscape treatment;*
3. *a description of the measures proposed to ameliorate visual impacts;*
4. *provision of graphic evidence to illustrate the proposal, including models and/or photomontages where relevant;*
5. *description of the visual prominence of the site and visual impact of the development, including responses to the following questions:*
 - a) *can the site be viewed from public locations, including public reserves, waterways, beaches and roads?*
 - b) *is the site located on a high topographical location such as a hillside, ridgeline, knoll or crest?*
 - c) *can the site be viewed from the beach front?*
 - d) *is the site located on land that slopes at a grade of more than 20%?*
 - e) *would proposed development on the site visually disrupt the skyline when viewed from a public location by protruding above any ridgeline, or above adjacent buildings?*
 - f) *would proposed development on the site have the potential to obstruct views to and/ or from another visually prominent location?*
 - g) *would the development on the site have the potential to result in a loss of significant views from another property?*
 - h) *would development on the site become visually prominent due to the removal of vegetation that would otherwise screen the development?*
 - i) *how will the development be visually integrated with the surrounding natural landscape and built environment?*
 - j) *how will the development incorporate measures to avoid reflection of sunlight from glazed surfaces?*

C3.2.1 requires a Visual Impact Statement to accompany development applications or visually prominent development. A Visual Impact Statement has not been prepared for the proposed development and no assessment has been made in relation for the potential for the development to obstruct views of existing surrounding development.

- C3.2.2 Assessment of Impacts on Views and View Sharing

C3.2.2 provides as follows:

Objectives

1. To ensure that (where possible) new development does not impact unreasonably on the views of another property.
2. To encourage view sharing where possible.

Performance Criteria

There are no Performance Criteria for this item.

Prescriptive Measures

Where any proposed development has potential to impact upon views from another property to a significant vista, landscape or to one or more **visually prominent sites** and locations, the supporting information must include the following:

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

Regard should be given to past NSW Land and Environment Court Planning Principles including:

Water views are valued more highly than land views

Iconic views (e.g. of the Cape Byron Lighthouse) are valued more highly than views without icons

Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured

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

For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic

3. Assessment of the **extent of the impact**.

This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating

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

A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The proposed development does not include an assessment of the potential to impact upon views from another property. It is submitted that the proposed development has the potential to impact on existing iconic views from surrounding sites and that an

assessment of this impact is required to be submitted and should be made available to adjoining property owners for review.

State Environmental Planning Policies

- State Environmental Planning Policy (Coastal Management) 2018

The subject land is identified as land in proximity area to littoral rainforest. The Coastal Management SEPP requires the Consent Authority to be satisfied that the proposed development will not significantly impact on:

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

It is submitted that no Ecological Assessment has been undertaken in relation to the proposed development.

- State Environmental Planning Policy No. 55 - Remediation of Land

The Statement of Environmental Effects refers to the foundation of a demolished dwelling and scattered domestic landscaping. Given that no approvals are evident on Council's files the previous dwelling located on the site may well have included lead paint and it is considered that a SEPP 55 assessment should be undertaken in the circumstances to satisfy Council that the subject site is not contaminated from past land use practice. This is considered particularly important given the drainage regime in this locality.

Insufficient Documentation

The subject application fails to provide a SEPP 55 assessment of potential contamination from past land use practice as indicated above. It is submitted that this should be required in order to adequately address this issue.

The application involves the removal of six Tuckeroo trees. No assessment has been made in terms of the potential impacts of the proposal on flora and fauna. This should be required for the subject application and compensatory planting should be identified.

The application proposes rooftop swimming pools which have the potential to impact on existing surrounding neighbours in terms of amenity. No assessment has been provided in relation to potential noise impact.

As discussed earlier in this submission, no assessment of the potential impact of the development on existing views from surrounding development has been provided. It is considered that this should be required and that surrounding owners should be given the opportunity to review this material.

Historically properties in this locality have been identified as containing springs and areas of potential geotechnical instability. It is submitted that given the excavation proposed in association with this development a geotechnical report should be required to be submitted with the development application.

It is our view that the application is inadequate in terms of the information provided to Council. We are of the view that the inadequate information makes it difficult for Council to assess the potential impacts of the proposed development.

We also submit that the breaches of Council's height, FSR, building height plane, setback and private open space provisions indicate that the proposed development is an over development of a constrained site. It is submitted that a fully complying scheme can be accommodated on the subject land and that the variations proposed are not justified in the circumstances submitted by the applicant.

In the event that Council does request additional information from the applicant we would like the opportunity to view that material and make further submission if we so desire.

Yours faithfully,



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Telephone: 1300 66 00 87

19 May 2022

Our reference: 1394.4037

The General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Attention: Mr Ben Grant

Email: council@byron.nsw.gov.au; bgrant@byron.nsw.gov.au

Dear Sir

RE: Section 4.55(2) Application to Amend DA 10.2018.534.1 – Dual Occupancy (Detached) including swimming pool for each dwelling

PLANNERS NORTH has been engaged by the owners of 22 Palm Valley Drive to prepare a submission in relation to the above-mentioned application.

Firstly, it is also noted that previous emails have been sent to Council in relation to the removal of vegetation both within the site and on the Council road reserve. Concerns have also been raised that the floor levels of the buildings have not been constructed in accordance with the relevant conditions of consent.

The key issues of concern raised in relation to the subject application are:

1. Vegetation removal / protection

There are some 14 conditions of development consent that relate to vegetation removal and / or protection. In the event that these conditions have not / will not be able to be complied with it would appear appropriate that those conditions are also dealt with via this application.

Further, our clients have raised concerns with Council previously in relation to the removal of vegetation within the Council road reserve. A review of the aerial photos on record should enable Council to determine whether the proposal has resulted in vegetation removal within the road reserve without consent.

2. Variation to the 9m Height Limit

Given the requirements of Condition 11 and Condition 47 of the consent, it is submitted that Council should require survey detail now to confirm that the levels referred to in the conditions and those depicted on the architectural plans align. The levels should be shown on all sections and include all levels of the building. This will ensure that the variation as described in the modification application is accurate and that there are no other conditions or approved elements of the building which also require amendment.

It is submitted that there is insufficient justification for the proposed breach of the height limit. The Statement of Environmental Effects merely states that the proposal will result in a development that is “essentially identical” and that no Clause 4.6 Variation is required. No rationale for the breach of the height limit or supporting material demonstrating the potential impact of the height increase is provided. The proposals are not essentially identical given that the approved scheme complied with the height limit

prescribed by the LEP and the proposed does not. Council, rightly so, requires applications to demonstrate why variations to the statutory controls should be supported. No case is provided in relation to the proposed modification.

It is also reasonable to require the applicant to prepare material depicting the impact of the existing approved and proposed amended scheme on existing views from surrounding dwellings. C3.2.1 of Chapter C3 – Visually Prominent Sites requires a visual impact assessment to be prepared for the development. This assessment should assess the existing and proposed development.

3. Level 2 – Top Floor

The proposed modification seeks to include a shower and toilet on Level 3 for Dwelling 2. The approved sink is also proposed to be relocated. It is evident from the plans that there are no external western walls for the pool plant which is unusual given the potential noise impacts from pool plant. Our client has previously questioned the size of the pool plant area with both Council and the Certifier and has an email in response from the Certifier stating that "...the plant room is a 'plant room' and there is no intention to create this as a habitable space".

The design and layout of this area is concerning from an amenity perspective. The landing area is open and the sink now appears to be sited partly in the plant room (although there are no external walls to the plant room). It is also evident that there is no pool plant room depicted on the plans for Dwelling 1.

The additional facilities proposed for Level 3 increase the potential for this area to be used for by groups for to socialise and result in potential adverse impacts on the amenity of the surrounding dwellings in terms of noise. It is submitted that Council should clarify the proposed use of the terrace area at the top of the stairs and require the pool plant room to be enclosed.

Finally, the development as constructed to date contains a large concrete slab which appears to make no provision for the landscaping as indicated on the approved plans between the deck of Dwelling 2 and the south western boundary. The landscaping approved is considered essential to soften the development.

We would welcome the opportunity to review additional material submitted by the Applicant to address these issues. Should you require any additional information or wish to clarify any matter raised by this confirmation of your engagement letter, please feel free to contact me at any time.

Yours faithfully,

PLANNERS NORTH



Kate Singleton RPIA

PARTNERSHIP PRINCIPAL



Objection to Variations at 44 Brownell Drive, Byron Bay - DA 10.2018.534.2

To the General Manager, Byron Shire Council

I write to object to the most recent Variation Application made for height variations for the Duplex under construction at No. 44 Brownell Drive Wategos Beach. [REDACTED]

November 2018

We always knew that a house would be built on 44 Brownell Drive. However, when a DA came in November 2018 for a Duplex not a single dwelling, many of the residents in the area surrounding 44 Brownell lodged objections. The objections were unsuccessful.

In summary, the initial application contained breaches to the Byron LEP including the Height and Floor Space Ratio requirements. It also showed non-compliance with the Byron DCP including its Building Height Plane and Setback requirements, plus by incorporating the roof top decks, it did not meet the DCP Private Open Space requirements for ground level private open space.

March 2020

In March 2020 there was a further 0.724m height variation applied for and granted to the duplex. We now look at a large structure containing 8 bedrooms, 4 car ports, 2 swimming pools, 6 bathrooms. This is all on an 839 sq m block.

We do not look over the structure, we look directly into the structure and its living areas and pools. This will have an impact our privacy.

April 2022

There has now been another application for an increase in height of 0.615m to Structure 2, making it possible to apply for a 7th bathroom. The original DA called this area a plant room. Seven bathrooms on an 839 sq m residential block surely must be considered excessive.

There has also been an application of 0.626m height increase to the front of Structure 2 effectively allowing an increase to the roof area by approximately 5 sq m. If the Variation is granted, it will effectively increase the entertaining area of Structure 2.

Both Variations are to increase the usability of Structure 2 on what was initially a roof with a plant room for the pool. Also there has already been a large variation of 0.724 m height increase granted. Why were all these variations not included in the original 2018 DA? Would they have been rejected? Multiple height increases and the addition of a bathroom are not minor adjustments and in our opinion are excessive additions to the original DA.

We object to both Variations to Structure 2. Due to the increased usability of a rooftop, we will suffer further invasion of our privacy and as such diminished amenity. We request that the Variation application be dealt with by Council with copies of all submissions provided to all Councilors for their consideration.

BACKGROUND INFORMATION

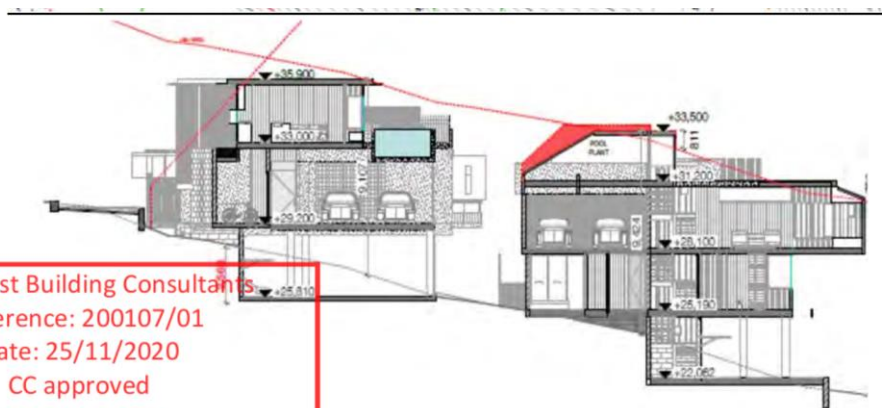
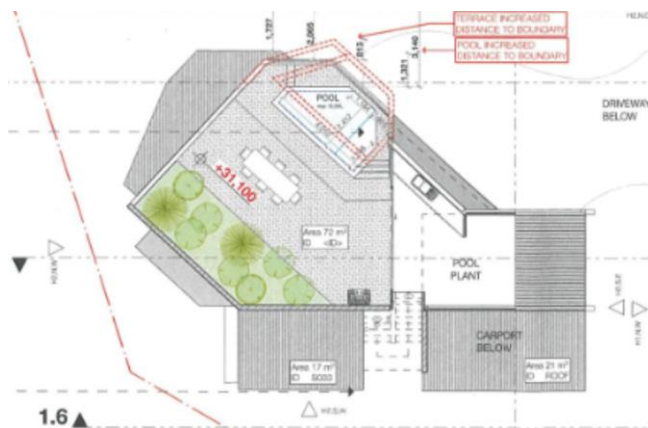
I have had concerns about the development at 44 Brownell Drive (22/11/2011; concerns submitted). Approval was granted for the development, and when the building actually commenced, there was a reservation that the development was not consistent with the approval. I raised my concerns with council and requested that a proper investigation take place (called council 15 November and spoke to Craig Bridge; sent correspondence emailed 17 November 2021; followed up with Council 13/12 – see attachment).

My concerns in relation to Dwelling Two are as follows

The dwelling was granted floor space that is greater than the maximum permitted 0.4:1

The Approved Plans stated that the floor space is as follows

- Basement “clothing /drying area”
- L1 4 bedrooms
- L2 Entry lounge/dining/kitchen/garage
- L3 rooftop pool and outdoor area; pool plant room



East Coast Building Consultants
Reference: 200107/01
Date: 25/11/2020
CC approved
Brett Crawford
Accredited Building Surveyor A3
BPB0075

Once the building actually commenced, it became clear that they were not building to the approved plans.


LEVEL 3: PLANT ROOM/PARTY ROOM/ADDITIONAL FLOOR SPACE

Level 3 has consistently been referred to, and was approved by council to house a “pool plant”. Both the approved plans and the report on the DA acknowledged that this is “pool plant space”. Pool plant rooms do not count towards the total floor space. **Plant rooms are to be used *exclusively* for mechanical services or ducting and is not to be converted to gross floor area at any time**, especially given that the dwelling already has floor space that is greater than the maximum permitted 0.4:1

I have been concerned that the plant room was always intended to be an entertainment room. This became increasingly apparent as the development proceeded (see below). The addition of large sliding aluminium doors (see below), coupled with lights, benches, high ceilings etc, seem to be extravagant for a space designed to house pool plant equipment, and to be used exclusively for this reason. It also seemed strange that Dwelling One, which also has a pool (that is larger) does not have a dedicated “pool plant room”.



Referring to this space as a plant room in the development application, was most likely with the intent to "get the plans approved". If this space was referred to as anything other than a "plant room" at the time of the development application, it is very unlikely it would have been approved. The build was already over the floor space limit. It would also have necessitated a noise impact assessment to be conducted.



NOISE AND IMPACT

The plant room potentially being used as an entertainment room, or for any other purpose not only raises concerns about going well over the floor space ratio, but also about noise, lighting and privacy within the neighbourhood. I am concerned that the provision of an entertainment/living space on the roof top will impact on the amenity of existing surrounding dwellings. Our house directly looks into this "plant room" – and therefore anyone in this space looks directly into us.

ADDITIONAL AREAS OF POSSIBLE CONCERN

It was stated that the development at 44 Brownell Drive will not impact surrounding dwellings in any way (see below) or impact your views.

D1.5.3 – Adjoining and Adjacent development

The development has given due consideration to existing views from neighbouring properties. It is considered that the dwellings will not impact surrounding dwellings in any way as the proposed dwellings are located at a lower RL than the dwellings to the south and west. The dwelling to the north would enjoy views towards Wategos beach to the north west. The dwellings will not impact on these views given they are located to the south of this property.

VISUAL CONSIDERATIONS

The dwelling at 44 Brownell already has a significant impact on privacy and views of neighbouring properties.

In the Exhibition copy 10.1018.534.1 (2018) Visual Considerations (page 11) it was stated the dwellings will “**merge into the existing street scape**”; and “Dwellings to the south of the subject parcel across Palm Valley Drive are at a higher contour than the subject site and will look over the subject dwellings” (refer section titled Adjoining Land Uses; page 11)

This is incorrect and is now very apparent. Palm Valley Drive residents south of the development do not “look over” the dwelling, they look right in to the dwelling. Same with Brownell residents.

It is also noted that the development is a detached dual occupancy on a lot size that exceeds the minimum dual occupancy requirement. Such development should only have been approved when key objectives were met, including adequate provision for reasonable protection of existing views from neighbouring houses.


The building has gone over its allocated floor space or height limitations, and does not comply.

A development modification application has been lodged and the changes have been stated as “minor”.

Whilst the applicants may argue that the impact of any additional height or floor space gain is minimal, as a resident I raise my concerns with council and emphasise that the current impact (what was already approved) was already significant, and that the additional space and height is therefore not minimal.

A plant room being converted into a living space (effectively a fourth floor, with a bathroom) is not "substantially the same development".

The additional height and habitable space would never have been approved had the developer disclosed the intent at the outset.





10.2018.534.2 - eForm Submission Object - Robin Ormerod Wategos Beach Protection Association

10.2018.534.2 - eForm Submission of Object - Robin Ormerod Wategos Beach Protection Association

Contact details	
Name	[REDACTED]
Organisation (where relevant)	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Application details	
Development application number	10.2018.534.2
Street address	44 Brownell Drive
Suburb	BYRON BAY
Submission details	

Type of submission	Object
Grounds for submission	<p>I write on behalf of the Wategos Beach Protection Association (WBPA) to object to the recent Application made for Variations to the duplex development under construction at No. 44 Brownell Drive Wategos Beach. WBPA is an Incorporated Association limited to members living in and/or owning properties at Wategos.</p> <p>Our Association tends not to be concerned with individual developments as much as with the overarching public interest issues associated with development in our area. With the volume of rebuilds completed, in process or planned for the Wategos area our Association is concerned by the size & structure of some of Council's approvals.</p> <p>As a residential area, our public infrastructure is already under extreme stress due to the large numbers of day visitors competing for limited space, adversely affecting our residential amenity. We also find ourselves becoming increasingly alarmed at Council's attitude towards density and other aspects where the intent of the DCP and LEP seem to be given inadequate consideration.</p> <p>A delegation from WBPA recently met with the Director Sustainable Environment & Economy and the Manager Sustainable Development to discuss a range of issues and concerns associated with developments at Wategos.</p> <p>In light of this background, we find ourselves in the reluctant position of objecting to this specific Application, as a means of highlighting a more general problem. In this case, we see a clear example of how overdevelopment of a site can be 'gamed' by seeking and obtaining incremental breaches of various aspects of the LEP and DCP. WBPA's objection is particularly focused on the incremental methodology used in this type of development process. It is reminiscent of the colloquial expression: give them an inch and they take a mile.</p> <p>The current Variation being put forward constitutes one of several applications by the proponents that collectively achieve an undesirable net result: over-development of the site.</p> <p>In November 2018, a DA was lodged for a duplex development, which</p>

attracted objections from many of the nearby residents. The development was nevertheless approved.

In summary, the initial application contained breaches of the Byron LEP including the Height and Floor Space Ratio requirements. It also showed non-compliance with the Byron DCP including its Building Height Plane and Setback requirements, plus by incorporating the roof top decks, it did not meet the DCP Private Open Space requirements for ground level private open space.

Collectively, these breaches would usually indicate to Council that the application was essentially an over-development of the site leading to a refusal. This is particularly so as the design incorporated a large reinforced basement undercroft and which has now induced these breaches and subsequent Variations requests.


In March 2020 a further 0.72 m height variation was applied for. This variation was also granted, and now as of April 2022 there is a further application for an increase in height of 0.62 m to Structure 2, making it possible to apply for a 7th bathroom. The original DA called this area a plant room.

The end result of these applications will be a large structure containing 8 bedrooms, 4 car ports, 2 swimming pools and (if approved) 7 bathrooms. Seven bathrooms on an 839 sq m residential block is excessive.

There has also been an application for 0.62 m height increase to the front of Structure 2, effectively allowing an increase to the roof area by approximately 5 sq m. If the Variation is granted, it will effectively increase the entertaining area of Structure 2.

We understand that there can be legitimate reasons for design modifications to be made during a project, so that is not point of contention. However, we do believe that there needs to be more critical attention given to those modifications that simply extend non-compliance further. The final bulk and scale of this development, as well as its usage intensity and potential impacts on amenity in the neighbourhood, are matters of concern.

We object to both Variations to Structure 2. However, as indicated at

	<p>the outset, the Association’s key concern driving the objection is the process by which breaches can be incrementally achieved and/or extended. We defer to individual members to address their more specific concerns about the development in their personal submissions.</p> <p>We request that the Variation application be dealt with by Council with copies of all submissions provided to all Councillors for their consideration.</p> <p>Yours sincerely On behalf of Wategos Beach Protection Association </p>
File upload	
Declarations	
Lodgement declarations	<p>I declare that the information in my submission is true and correct. I have read and acknowledge the Political Donations, Privacy Statement and Submissions and Confidentiality declarations.</p>

To Byron Shire Council

Re: Council letter 19/4/22 relating to DA 10.2018.534.2/44 Brownell Drive/Submission.

The building appears nearing completion and when final trims, painting and gardens are completed I am sure it will look great and compliment the immediate area.

By way of a submission, as a near neighbour I become concerned when views, and therefor amenity, privacy & property values are impacted directly relating to setbacks, shadow and heights, if overlooked or not enforced by Council.

I expect that council has attended to all regulations in this case.

I note however, that 44 Brownell accommodates a maximum of 4 vehicles (for 8 bedrooms) causing excess vehicles to street parking.

Importantly re safety, my driveway entry & exit is diagonally opposite adding to my existing safety concerns because of the increasing traffic using Brownell Drive, negotiating its limited vision, blind corners, lack of kerb and guttering, shoulders or footpaths. All of which makes many already steep driveways in this area ever more challenging.

Obviously this is a council responsibility and not an issue of number 44.

However, the driveway positioning permitted by council in 44 does compromise my driveway accessibility & safety.

I therefor take this opportunity to register my concerns relating to the driveway location and would appreciate if council could assist with a satisfactory alternative, or indeed advice on how I can adjust or

realign my existing driveway to increase vision for safe entry & exit.

With regards,

A solid black rectangular box used to redact the sender's name and contact information.